

HUNGARIAN MEDIA LAWS IN EUROPE



**An Assessment of the Consistency of Hungary's
Media Laws with European Practices and Norms**

Published by

Center for Media and Communication Studies (CMCS)
Central European University

Nador u. 9
H-1051 Budapest
Hungary

<http://cmcs.ceu.hu/>

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This study was funded by a grant from the Media Program of the Open Society Foundations.



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Acknowledgements

We would like to thank the numerous friends and colleagues who provided valuable expertise and input in preparing this study, including the research fellows and staff at the Center for Media and Communication Studies. Special thanks to Karol Jakubowicz, Péter Bajomi-Lázár, Judit Bayer, Tamás Szigeti and Éva Simon for their contributions in reviewing the accuracy of the legal aspects of the Hungarian media laws presented in this study.

About the Center for Media and Communication Studies (CMCS)

The Center for Media and Communication Studies (CMCS) is a research center of Central European University in Budapest dedicated to advancing media and communications scholarship and the democratic potential of the media.

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Executive summary

Introduction

This study analyses the consistency of Hungary's new media laws with European practices and norms. It addresses a key international policy debate regarding the conformity of Hungary's new media legislation to European and EU media-regulation standards.

Hungarian lawmakers have established a set of comprehensive new media laws that critics say are inconsistent with democratic free-press principles and European practices and norms. Hungarian officials say the legislation conforms to EU standards and its elements are drawn from existing regulations in other European and EU-member states. In December 2010 and January 2011, the Hungarian Government released two statements summarising the main criticisms of its new laws and providing examples of regulations from 20 European and EU-member states as precedents for Hungary's media legislation. For this study, the Center for Media and Communication Studies (CMCS) commissioned media policy experts in each of these 20 countries to examine every example cited by Hungary's Government. The findings of this report are based on these expert assessments.

The purpose of this study is to examine the accuracy of the precedents cited by the Hungarian Government in order to shed light on the more critical question of how consistent Hungary's media laws are with other media systems in Europe. As such, the focus of the study is narrow by design: the analyses are based on a set of specific examples of similar legislation as cited by the Hungarian Government.

This study reveals a wide diversity in media regulations and policies among European and EU-member states. While freedom of expression and the press are fundamental rights that are codified in the legal frameworks of both domestic and European law, there appears to be no uniform model of media regulation for safeguarding these rights at the domestic level. On the European level, various institutions—the European Commission, European Parliament and Council of Europe—also pursue different, sometimes conflicting priorities with regards to these freedoms.¹

It is therefore important to clarify that the term “European free-press norms” refers to the established body of legal statutes pertaining to press freedom that are contained in the international protocols and conventions to which European and EU-member states are legally bound. These are contained in Article 11 of the *Charter of Fundamental Rights of the European Union*, Article 10 of the *European Convention on Human Rights* (ECHR) and Article 19 of the *UN Declaration of Human Rights*. Each of these conventions guarantee that all individuals have the right to “freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”²

Article 11 of the *Charter of Fundamental Rights of the European Union* also ensures that “freedom and pluralism of the media shall be respected.” According to the Article 10 of the ECHR, the right

1 *Press Freedom and Pluralism in Europe*, Andrea Czepek, Melanie Hellwig and Eva Nowak (Eds), Intellect Books - European Communication Research and Education Association (2009), p. 10; available at: <http://www.scribd.com/doc/19301441/Press-Freedom-and-Pluralism-in-Europe-Concepts-and-Conditions>.

2 Taken from Article 11 of *Charter of Fundamental Rights of the European Union*. Similar statutes with slightly different wording also appear in the Article 10 of *European Convention on Human Rights* (ECHR) and Article 19 of the *UN Declaration of Human Rights*.

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to freedom of expression “shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.” Article 10(2) of the ECHR further specifies that exercising these freedoms comes with “duties and responsibilities” that may be subject to limitations,³ however the European Court of Human Rights has consistently ruled that these exceptions are to be narrowly construed by European and EU-member states.

Findings

This report presents 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 laws. The study finds that Hungary’s media laws are largely inconsistent with the cited European practices and norms, based on an examination of the legal precedents provided and on the expert analyses of how these precedents are implemented in these European and EU-member countries. In a majority of examples, experts report that the Hungarian Government’s references omit or inaccurately characterise relevant factors of the other countries’ regulatory systems, and as a result, the examples do not provide sufficient and/or equivalent comparisons to Hungary’s media regulation system. In many examples, the Hungarian Government accurately presents a portion of a legal provision or regulation, however the reference either omits elements of how the regulation is implemented or the regulation cited does not correspond with the scope and powers of Hungary’s media laws or Media Authority. Overall, this study finds that the European media regulations cited by the Hungarian Government do not serve as adequate precedents for Hungary’s new media laws.

The expert assessments indicate that Hungary’s media laws appear to be inconsistent with the cited European media regulation systems and/or practices in a majority of examples provided by the Hungarian Government in the following areas:

- *the Hungarian Media Authority’s centralised structure and scope of authority over all media sectors and all areas of media regulation, from tendering, licensing and spectrum management to monitoring and issuing sanctions;*
- *the Hungarian media laws’ scope over all media sectors, inclusive of traditional print and online press, and under the supervision of a single media authority;*
- *the Hungarian Media Council’s role in appointing directors to public media outlets, and its management of the funding body for Hungary’s public media;*
- *the Hungarian Media Authority’s sanctioning powers over all media, inclusive of the print and online press;*
- *the process of judicial review of the Hungarian Media Authority’s decisions.*

3 Article 10(2) of the ECHR grants that freedom of expression can be subject to “formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The expert assessments indicate that a majority of the Government's examples do not appear to provide proportionate comparisons to Hungary's Media Authority or to Hungary's media regulation framework. This trend is evident in the assessments throughout this study, as demonstrated by the expert analyses of the Government's examples in the following seven areas:⁴

1. Media Authority independence. In response to international concerns regarding the independence of Hungary's new Media Authority, the Hungarian Government cites examples of media authorities from nine European and EU-member countries which it states are less independent from the government than in Hungary (**Austria, Belgium, Denmark, Ireland, Italy, Netherlands, Sweden, Switzerland** and the **UK**). The Hungarian Government cites examples of the appointment procedures of members to the media regulatory bodies in these countries. Although it is accurate that some or all members of these bodies are appointed by the government, in all nine cases the expert assessments indicate that the Hungarian Government's examples inaccurately cite or omit key formal and informal elements of the appointment and/or regulatory systems which would provide a more complete assessment of the level of regulatory independence with which these bodies operate in practice. Experts also find that the media regulatory bodies cited do not have the equivalent regulatory scope as Hungary's Media Authority. For instance, unlike in Hungary, in all nine examples given, the media authority referenced is responsible for regulating broadcasting and audiovisual media but has no content-related authority over all media sectors, including both the print and online press. Furthermore, in all nine cases, the media regulatory body cited is not the sole—or in some cases even the most powerful—media authority in that country. In six of the nine examples, the Hungarian Government cites an incorrect or former regulatory body and/or an inaccurate or outdated appointment procedure or law.

The analyses also reveal problems with independence in a majority of these cited cases, even with formal safeguards in place. The research therefore indicates that the risk of “government capture” of media regulatory bodies is not unique to any specific appointment system. However, the expert assessments demonstrate that the Hungarian Government's claim that the cited media regulatory bodies have less independence from the government than Hungary's Media Authority is not supported by the examples provided.

2. Media Authority's centralised structure and regulatory scope. In response to the criticism of the Media Authority's centralised structure and wide scope of authority over all media sectors and regulatory activities—from tendering and licensing to monitoring and sanctioning media—the Hungarian Government cites examples of three convergent regulatory bodies as sharing similar powers: **Finland's FICORA, Italy's AGCOM** and the **United Kingdom's Ofcom**. According to the expert evaluations, the single common point between these bodies and Hungary's Media Authority is that each is a formally “convergent” regulator with varying levels of competencies over the media, telecommunications and postal sectors. However, in none of the three examples cited does the body referenced regulate all media sectors, as with Hungary's Media Authority. In all three cases, the regulatory body cited has no authority over the content of traditional print or online press. In addition, in Finland public media are regulated by a separate body, and in the UK, Ofcom has limited regulatory authority over the BBC. **Finland's FICORA** and the **UK's Ofcom** are responsible for both tendering and licensing as well as for monitoring and sanctioning media under its regulatory authority. However Finland's FICORA has the power to grant (and revoke) short-term licenses only; the power to grant (and revoke) broadcasting licenses is the responsibility of the Ministry of Transport and Communications. With **Ofcom**, tendering/licensing and monitoring/sanctioning are handled by two separate units and personnel within that body. **Italy's AGCOM** is not responsible for tendering and licensing. Hence, the specific structure of Hungary's

⁴ Each of these areas are further detailed in the seven chapters of this study.

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Media Authority, in which all of these functions are carried out by a single body, appears to be unique among the three convergent regulatory bodies cited. In addition, in all three cases cited by the Hungarian Government, the regulatory bodies referenced are not the sole media regulator in that country. The expert assessments therefore indicate that the scope of powers afforded to Hungary's convergent Media Authority appears to exceed those in the three examples of convergent regulatory bodies cited.

3. Media laws' scope (regulating print and online press). In response to the criticism of the Hungarian media laws' regulatory scope over all media inclusive of the print and online press, the Hungarian Government cites examples from eight EU-member and European countries in which these media are also regulated (**Austria, France, Italy, Lithuania, Portugal, Slovenia, Sweden and Switzerland**). The expert evaluations of these examples show that the Hungarian Government's general claim that traditional print and online press are regulated in other European and EU-member states is accurate. In all cases cited, the print and online press are bound by certain legal statutes or standards—a separate press law, the constitution, and/or professional codes of ethics—and in some cases, even by provisions in the penal codes. However, in five of these cases (**Austria, France, Italy, Sweden, Switzerland**), print and/or online press are regulated by a separate press law and/or by professional codes of ethics, and these media are self-regulated under the supervision of a press council and/or the courts. In addition, for all seven of the EU-member states in this set of examples, the expert analyses show that the media laws generally extend to the online content of broadcasters and audiovisual media in accordance with the EU Audiovisual Media Services Directive; however in a majority of these cases, these regulations do not extend to traditional print media or their online content.

In three cases, **Italy, Lithuania and Slovenia**, there is a unitary law covering all media, including the print and online press, but these media are either regulated by different bodies (in **Lithuania and Slovenia**) or by the courts (in **Italy**). In one case, **Portugal**, the media authority has supervision over all media but these media are bound by separate obligations under sector-specific laws; the print and online press are subject to the fewest restrictions of all media sectors. In addition, Portugal's media authority is responsible for monitoring content-related provisions of the various media laws, but unlike Hungary's Media Authority, it has no authority over technical and competition-based regulations. Hence, among all eight cases in this set of examples, Hungary's is the only system in which all media are regulated under a comprehensive media law and by a single authority responsible for regulating all media sectors.

4. Public Service Media. In response to criticisms of the Media Council's role in appointing directors of Hungary's public service media outlets, the Hungarian Government cites examples from six European countries (**Austria, Czech Republic, Finland, France, Switzerland and the UK**) in which the CEOs of public media outlets are appointed without tendering. The expert assessments show the Hungarian Government's examples are generally accurate—although in a majority of these cases the experts also report that this practice is both prone to political influence and public criticism. As such, with these examples the Hungarian Government compares its system to a practice with notable deficiencies in relation to European norms, specifically with regard to the Council of Europe's recommendations for the independence of public media. In addition, the expert analyses show that a majority of the examples cited do not adequately correspond with the bodies responsible for and/or systems of appointing public media directors in Hungary. Although experts report that these appointments are often politicised, the analyses indicate that in a majority of the examples cited there are one or more tiers of “checks” that work to mitigate direct governmental influence over these appointments. In five of the six cases cited, Hungary's system appears to have fewer of these safeguards in place. The exception is **France**,

where the appointment procedures appear to provide the least safeguards of all examples cited, including Hungary's. As a result of amendments passed by the Sarkozy Government in 2009, the director of France Télévision is appointed by the French president, after approval by the country's media regulator and relevant parliamentary committees. This new system has raised serious concerns from free-press advocates as a threat to France Télévision's political independence, and would also appear to be inconsistent with the above-mentioned Council of Europe's standards.

In response to the criticism of the centralisation of news production of Hungary's public media system, the Hungarian Government cites similar examples from **Austria, Italy**, and the **UK**. According to the expert evaluations, these examples are partially accurate: in the Austrian and Italian public media systems, some or much of the content is produced regionally, with partial or full editorial independence. The Government's description of the British BBC is more accurate, as news production within the BBC has been increasingly centralised across platforms and channels over the past decade. However, experts in Italy and the UK also report that the centralisation of news production of the public media systems has raised issues with regard to political independence and programming diversity. In the case of the UK, the expert reports that the centralisation of news production of the BBC has sparked much public controversy, as opponents say this process has compromised the BBC's programming diversity and pluralism. Hence, with these examples, Hungary's system appears to be consistent with a news-production structure that experts describe as having notable deficiencies.

In response to criticism over the Media Council's role in managing the new fund for Hungary's public service media, the Hungarian Government cites an example from one EU country, **Finland**, in which it states the media authority has a similar role. According to the country expert, this example is not accurate. The Finnish Communication Regulatory Authority's (FICORA) role in managing public media financing is purely administrative: it collects the annual license fees from households and businesses for the State Television and Radio Fund. FICORA has no authority to set the level of overall funding for public media, to allocate funding to public media outlets or to determine for what activities the funding is to be utilised. FICORA has no relationship with the Fund other than to collect license fees. By comparison, Hungary's Media Council manages Hungary's public service media fund, the MTVA. The chairperson of the Media Council appoints the Fund's director general, deputy directors, the chairperson and the four members of its supervisory board. The Media Council is responsible for approving the Fund's annual plan and subsidy policy, and for determining the rules governing how MTVA's assets can be used, managed and accessed by the public media.

5. Media Authority's powers. In response to critics who claim that Hungary's new media laws allow the Media Authority and Media Council to assert arbitrary control over tendering and licensing processes, as well as concerns over the Media Authority president's powers to issue decrees, the Hungarian Government cites similar precedents from two countries in which media authorities have powers to a) renew licenses without a tender (**France**), and b) issue directives (**Germany**). Although in both cases the examples cited are accurate, according to the expert assessments neither example corresponds to the Media Authority's specific powers in these areas.

In response to the concerns over the powers of Hungary's new Media and Communications Commissioner, the Government cites examples of similar ombudsman and/or press council systems in **Finland, Ireland**, and **Lithuania**. According to the expert evaluations, the comparisons between the bodies cited and Hungary's Media Commissioner are inaccurate: the ombudsman and/or press councils cited in these three systems operate as independent entities from the respective media authority in monitoring compliance with legal regulations, codes of ethics, or in handling disputes between the public and the press. Hungary's Media Commissioner,

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by comparison, is an appointee of the Media Authority president, and operates within and as a representative of Hungary's media regulatory body. The Commissioner has the authority to initiate proceedings that do not involve violations of the law and its proceedings can be enforced by Media Authority-issued fines and sanctions. Although its tasks include handling complaints from the public, the Media Commissioner's additional monitoring and enforcement powers exceed those afforded to the three bodies cited by the Hungarian Government. The Government's examples appear to erroneously equate the Media Commissioner's role and powers with those of a traditional ombudsman, and at the same time to inaccurately or inadequately present the respective powers and roles of the ombudsman and press council systems in the three cases cited.

6. Data Disclosure: In response to the criticism of the Media Authority's powers to demand data from media outlets beyond that which is required for mandatory registration, the Government cites examples of media regulatory bodies with similar powers in **Denmark, Estonia, Italy** and **Lithuania**. The expert assessments of these examples show that the Hungarian Media Authority's data-disclosure powers appear to exceed those in three of the four country cases cited. In each of the four examples cited, media authorities can require data from media outlets as a condition of registration and in the course of its regulatory oversight and investigatory activities. In only one of the four examples (**Italy**) does the cited media regulator's power in this area extend to all media sectors, including print and online press. In addition, the Hungarian Media Authority's powers to demand an unlimited range of data and information from all media, combined with the power to assess financial and other penalties on media outlets for incorrect provision of data and for refusal to comply with data disclosure requests, are similar to those in only one of the four examples cited: **Italy's AGCOM**. The expert assessment shows that AGCOM's investigatory and sanctioning powers regarding data disclosure are in fact greater than those granted to Hungary's Media Authority.

7. Sanctions: In response to criticisms of the Hungarian Media Authority's sanctioning powers, the Hungarian Government cites precedents of similar sanctioning policies from 15 EU-member states: **Czech Republic, Denmark, Estonia, Finland** (two examples), **France, Germany** (two examples), **Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia**, and the **UK**. The expert assessments indicate that the scope of the Hungarian Media Authority's sanctioning powers over all media is inconsistent with those in the examples it provided. The Government cites 17 examples from 15 European countries in which the media can be sanctioned with (some combination of) fines, suspensions, license revocations, and/or terminations. However, as the expert analyses show, the Media Authority's sanctioning scope over all media appears to exceed those afforded to other media authorities in all cited examples. The expert evaluations indicate that the sanctioning policies referenced are often imposed by various regulatory bodies and/or the courts, which have regulatory and sanctioning powers over different media sectors; in Hungary, a single authority has sanctioning power over all media. Although in many of these systems, traditional print and/or online press can be penalised for violating various legal statutes or laws—including in some cases for breaches to provisions in the criminal codes—sanctions in a majority of these examples are managed by separate regulatory bodies, independent press councils and/or the courts.

Based on these expert assessments, the Media Authority's scope of sanctioning powers over all media sectors—public and commercial broadcasting, print and online press—is the broadest of all cases cited. In 14 of 17 cases, the media body referenced has sanctioning powers over broadcast and audiovisual media (commercial and/or public media, and their online content) but not traditional print or online press. In the three cases, **Germany, Portugal, and Slovenia**, the respective state media authorities have certain monitoring and sanctioning powers over print

and/or online press. Yet in each of these examples, there are factors that limit the scope of these powers as compared to those afforded to Hungary's Media Authority. In **Germany**, the state media authorities in extreme cases can order an Internet service provider to remove online content for breaches to regulations on protection of minors, however for websites with journalistic content this order must be approved by a judge. Print media and public service media are self regulated in Germany. In **Slovenia**, the Media Inspectorate has sanctioning powers over all media, including the print and online press, but the Inspectorate is neither the sole media authority in Slovenia nor is it the primary media authority or sanctioning body for broadcast media. In **Portugal**, the media authority's general scope of sanctioning powers over all media appears closest to that of Hungary's Media Authority. However, that body regulates media according to sector-specific statutes; the press and online press are regulated by separate laws and under less restrictive obligations than broadcasters. In addition, Portugal's media authority monitors compliance with and can sanction media for breaches to content-related regulations but has no sanctioning powers over competition and other technical regulations in the media laws. As such, the general scope of the Portuguese media authority's sanctioning powers appears more limited than Hungary's Media Authority.

The expert analyses also reveal that a majority of the Hungarian Government's examples omit or inaccurately characterise key factors which influence or serve as "checks" on how sanctions are applied and enforced in practice. As such, in numerous examples the Hungarian Government correctly cites a specific sanction as provided for in a respective system, however that sanction in some cases applies to specific media sectors, in others to specific breaches, or the particular sanction cited has rarely or ever been imposed in practice. For instance, in seven cases cited, the sanctioning power referenced has never been applied: **Finland** (two examples), **Germany, Ireland, Poland, Portugal** and **Slovenia**. In five examples, the Hungarian Government's comparisons contain one or more factual inaccuracies, in which the citation refers to the incorrect sanctioning body and/or procedure, or erroneously combines two separate statutes into a single claim: **Estonia, Ireland, Italy, Lithuania** and **Slovenia**.

In addition, the expert assessments indicate that the process of judicial review of the Media Authority's decisions appears to be inconsistent with those in this set of countries. In Hungary, the Media Authority's sanctioning decisions can be appealed in an administrative court. Appeals do not automatically suspend the Authority's decisions. In addition, the administrative court may only review whether the Authority's decision complies with the provisions in the media laws but the court cannot consider the Media Authority's decisions on the basis of any other laws or legal precedents. Decisions of the administrative court cannot be further appealed. In all countries in this set of examples, the decisions of the media authorities are subject to judicial review; in some cases, appeals have an automatic suspensive effect on the decision; in all cases but one, **France**, the first court's decision can be further appealed.

In Hungary, the appeals process of the Media Authority's decisions was altered by additional amendments passed by Hungarian lawmakers after the close of Hungary's EU presidency in July 2011. As a result of these amendments, fines imposed by the Media Authority are now deemed "public debt" and collectible by the tax authorities, regardless of whether the Media Authority's sanction has been challenged in court. This change has significantly diminished the key checks-and-balances system of the judicial review process with regard to the Media Authority's fining decisions. Hence, the current legal framework for appealing the Hungarian Media Authority's decisions appears to be inconsistent with judicial review processes in all of these 15 country cases, and would also appear to be inconsistent with established European norms requiring states to provide an effective remedy for appeals at the national level.⁵

⁵ Per Articles 6 and 13 of the European Convention on Human Rights, as detailed further in Chapter 7 of this report.

Conclusions

These analyses indicate that the Hungarian Government's general assertion that its media laws are derived from those in other European and EU-member states cannot be substantiated by the examples it provided. Instead, many of the most important features of Hungary's new media laws appear to be unique to the European media regulation systems cited by the Hungarian Government. This finding is based on both the evaluations of the legal precedents cited, as well as the expert analyses of how these regulations are implemented in these European and EU-member countries in practice.

In numerous cases throughout this study, the Government's examples contain factual inaccuracies—ranging from minor discrepancies, such as citing the inaccurate number of members of a regulatory body, to more substantial errors, such as citing a significantly outdated regulation or misstating the regulatory powers and scope of a particular media authority or media law. While these errors diminish the accuracy and credibility of the Government's overall claims, this study highlights a more important issue, which is the Government's broader misinterpretation of the cited European media regulations on which it has indicated Hungary's new media laws are based.

Country cases in this report range from the top-ranked free-press system in the world, Finland, to the lowest-ranked in Europe, Italy.⁶ Hence, these expert assessments also reveal a wide disparity in media regulations within Europe, as well as a number of key deficiencies in some European systems. For instance, the politicisation of media regulatory bodies appears to be a common issue in a majority of these countries, even with formal safeguards to prevent governmental interference. As discussed in the findings of Chapter 1, it appears to be a widespread condition among the regulatory systems considered in this study that the regulatory bodies reflect in varying degrees the political affiliations of the governments in power.

In addition, these assessments also reveal that the implementation of the EU Audiovisual Media Services Directive (EU AMVSD) has significantly broadened the authority of media regulatory bodies within the EU to include different areas of online media. Although the extent of this authority varies by country, it is evident from these analyses that in many EU-member states the adoption of this directive has transposed the traditional, sector-specific approach with a “technologically neutral” model of media regulation. While some countries have imposed this directive in the most minimal manner possible while still retaining the sector-specific framework of media regulation, others, like Hungary, have adopted more comprehensive definitions of “media services” that include the print and online press.

The data provided in this report substantiates a number of key points raised by critics regarding Hungary's new media laws, specifically with regard to the scope of the Media Authority's powers. Numerous media experts and international organisations have maintained that the scope of powers granted to Hungary's Media Authority is “unprecedented” among other media regulatory bodies in Europe. This claim appears to be validated by the analyses of the media regulatory systems evaluated in this study.

These analyses also invalidate the statement by Hungarian authorities that “no part of [the media laws] contains provisions that are not found in the legislation of one or more EU member states.”⁷ While these assessments show that there are select examples from within the Europe which serve

⁶ According to the Freedom House Global Press Freedom Rankings from 2011, available at: <http://freedomhouse.org/images/File/fop/2011/FOTP2011GlobalRegionalTables.pdf>.

⁷ As expressed by Hungarian Deputy Prime Minister Tibor Navracsics in a letter to European Commissioner Neelie Kroes, 29 December 2010, available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/navracsics_kroes_humedialaw_291210/navracsics_kroes_humedialaw_291210en.pdf.

as precedents for Hungary’s media regulations, a majority of the examples cited by the Hungarian Government do not correlate with the specific regulations as can be applied in the Hungarian system.

The information provided by experts in this report also counters some widespread concerns by critics over specific content regulations contained in Hungary’s new media laws. For instance, the “balanced” coverage obligation, which became a significant point of international criticism of Hungary’s media laws, appears in numerous laws of other European countries in this study, as do the obligations to respect the “constitutional order,” and in some cases, provisions banning content that offends “public morality.” While the specific obligation in Hungary’s system prohibiting content that offends or excludes “nations, communities, national, ethnic, linguistic and other *minorities or any majority* as well as any church or religious groups” appears unique among the examples cited, the expert assessments also reveal a range of problematic and overly broad content regulations in a number of other systems—including in **Ireland, Poland, and Slovenia**—for which media can be sanctioned.

In several countries—including **Italy, France, and Slovenia**—journalists are also bound by criminal defamation laws, a press-restrictive policy which can muzzle critical coverage of politicians and business elites. As noted by the country expert in Chapter 7, in Italy journalists are regularly prosecuted for defamation. In September 2011, two Italian print journalists were sentenced to a year in prison after being found guilty of defaming a local mayor. By comparison, Hungary’s sanctioning system appears less press restrictive than the systems in which criminal defamation sanctions are applied in practice. Although the Hungarian Government’s examples do not address these key deficiencies, these are nevertheless critical baseline standards of press freedom which any study of Hungary’s media system in the European context would be remiss in not highlighting.

This study therefore not only reveals the inconsistencies of Hungary’s media laws to those in the examples cited by the Government, but also highlights key deficiencies in a number of other European countries that may inhibit press freedom in ways that also do not conform to European free-press norms. However, the most unique factor of Hungary’s system, which is demonstrated throughout this study, appears to be that in Hungary these regulations are monitored and enforced by a single regulatory body, which, as noted by the Council of Europe, at the very least lacks “*the appearance of independence and impartiality.*”⁸

⁸ “Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media,” CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701 (emphasis in original).

Report overview

This report presents expert analyses of 56 media regulations from 20 European and EU-member states cited in two statements published by the Hungarian Ministry Of Public Administration And Justice, in December 2010 and January 2011, respectively. Country experts conducted the analyses using a common, six-step methodology in order to examine both the factual accuracy of the regulation as cited by Hungarian Government, as well as to provide an assessment of how the respective regulation is implemented and enforced in practice (*See detailed description of “Methodology,” in the appendix of this report*). As such, each of the assessments include an analysis of the accuracy of the formal regulations as cited in the Hungarian Government’s statement, as well as a description of how the particular regulation is implemented within the respective country’s broader media-regulation landscape. Each expert report also includes any additional elements or practices that influence or serve as “checks” on how these regulations are applied in practice, along with any specific cases in which the particular regulation cited has been considered by domestic or international courts.

The majority of examples in this report are drawn from the Government’s December 20, 2010 statement.⁹ That document contains examples of more than 70 regulations listed under 22 criticisms. Many of these cited examples were listed multiple times under different but related criticisms; hence, this report addresses all 47 unique examples in the December 2010 statement, as well as additional nine examples of appointment procedures of European media regulatory bodies provided in the Hungarian Government’s January 2011 statement.¹⁰

The report is organised into seven chapters, which represent the following general categories of criticisms, as summarised in and addressed by the Hungarian Government’s statements:

- 1) *Media Authority: independence*
- 2) *Media Authority: centralised structure and regulatory scope*
- 3) *Media laws’ scope: regulating print and online press*
- 4) *Public service media: appointing directors of public media; centralisation of news production; and funding*
- 5) *Media Authority powers: tendering and licensing; the Media and Communications Commissioner*
- 6) *Data disclosure*
- 7) *Sanctions*

| Country | Number of regulations cited |
|----------------|-----------------------------|
| Finland | 6 |
| Italy | 6 |
| UK | 5 |
| Lithuania | 4 |
| France | 4 |
| Austria | 4 |
| Germany | 3 |
| Denmark | 3 |
| Ireland | 3 |
| Switzerland | 3 |
| Czech Republic | 2 |
| Estonia | 2 |
| Portugal | 2 |
| Slovenia | 2 |
| Sweden | 2 |
| Belgium | 1 |
| Latvia | 1 |
| Netherlands | 1 |
| Poland | 1 |
| Slovakia | 1 |
| TOTAL | 56 |

9 “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-andjustice/news/criticisms-and-answers-formulated-onthe-subject-of-the-proposed-media-act-examined-in-aeuropean-context>.

10 “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-publicadministration-and-justice/news/reply-to-the-criticism-ofthe-international-media>.

Key criticisms and cited regulations by country

| Media Authority: independence | Media Authority: centralised structure | Media laws' scope (print and online press) | Public Service Media | Media Authority: powers | Data Disclosure | Sanctions |
|-------------------------------|--|--|----------------------|-------------------------|-----------------|----------------|
| Austria | Finland | Italy | Austria (2) | France | Denmark | Czech Republic |
| Belgium | Italy | Lithuania | Czech Republic | Germany | Estonia | Estonia |
| Denmark | UK | France | Finland (2) | Finland | Italy | Denmark |
| Italy | | Austria | France | Ireland | Lithuania | Finland (2) |
| Ireland | | Portugal | Italy | Lithuania | | France |
| Netherlands | | Slovenia | Switzerland | | | Germany (2) |
| Switzerland | | Sweden | UK | | | Ireland |
| Sweden | | Switzerland | | | | Italy |
| UK | | | | | | Latvia |
| | | | | | | Lithuania |
| | | | | | | Poland |
| | | | | | | Portugal |
| | | | | | | Slovakia |
| | | | | | | Slovenia |
| | | | | | | UK |

1/Media Authority: independence

*Hungary's new Media Authority, the National Media and Infocommunications Authority (NMHH), has been widely criticised by European lawmakers, media analysts and free-press advocates since its formation under the country's new media laws in 2010. Opponents have raised particular concerns over the independence of the Media Council, a five-member body within the Media Authority appointed for renewable nine-year terms. Critics say the appointment system gives the Government de facto control over the Media Council, and has enabled Hungary's ruling Fidesz party to use its parliamentary majority to appoint party loyalists to all five Media Council seats. The Hungarian Government claims the Media Council is a democratically elected body in keeping with European practices and principles. The Government also states that media authorities with "a much smaller degree of independence from [the] government are not uncommon in Europe."*¹

The National Media and Infocommunications Authority (the "Media Authority") was established in July 2010 by Act 82/2010, the first major piece of legislation in the Hungarian Government's larger media law "package."² This law initiated a series of changes to Hungary's media regulation system and replaced Hungary's former regulatory bodies with a single entity, the Media Authority, to oversee both the media and telecommunications sectors. The law also established the Media Council, a body within the Media Authority, to monitor and enforce the set of new media laws passed by Parliament in November and December of 2010.³

Under the new legislation, the president of the Media Authority is appointed by the prime minister for indefinitely renewable nine-year terms.⁴ The president of the Media Authority appoints the Media Authority's top management—two vice-presidents, the director general, and deputy director—also to serve renewable nine-year terms.⁵ The president of the Media Authority "from the moment of appointment" also becomes the *ipso iure* candidate for the chairperson of the Media Council, with final appointment subject to two-thirds parliamentary approval.⁶

In case the Parliament does not elect the president of the Authority as chairperson of the Media Council, the president of the Authority shall still convene and chair meetings of the Media Council (without voting rights) until elected as chairperson with full voting powers.⁷ The remaining four members of the Media Council are nominated by an ad-hoc committee composed of delegates of each parliamentary faction.⁸ Votes in

1 "Reply to the criticisms expressed by the international media against the Media Act," Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

2 The National Media and Infocommunications Authority (NMHH), the "Media Authority," was established by Act 82/2010, passed by Parliament on July 22, 2010, which amended several laws regulating the media and telecommunications sectors, including the *Electronic Communications Act 2003* and *1996 Law on Radio and Television Broadcasting*. Text of Act 82/2010, available in Hungarian at: <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk10129.pdf>.

3 *Act CIV of 2010 on the freedom of the press and the fundamental rules on media content* (the "Press Freedom Act") as amended (March 2011), available in English at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf; Act CLXXXV of 2010 *on media services and mass media*, (the "Media Act"), as amended (March 2011), available in English at: <http://nmhh.hu/dokumentum.php?cid=26536>.

4 *Media Act*, Article 111(3) and Article 125(5) available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

5 *Media Act*, Article 111(2)(c)(d)(e), 113(6), 115(7); The president appoints the deputy director on the proposal of the director general, see Article 117(1) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

6 *Media Act*, 125(1) and 125(3). Appointment procedures for the Media Council are generally defined in Articles 124 and 125 of the *Media Act*, available at <http://nmhh.hu/dokumentum.php?cid=26536>.

7 *Media Act*, Article 125(4), available at <http://nmhh.hu/dokumentum.php?cid=26536>.

8 *Media Act*, Article 124(3)(b), available at <http://nmhh.hu/dokumentum.php?cid=26536>.

the nominating committee are weighted according to the proportion of each faction's representation in Parliament.⁹ Candidates selected by the nominating committee are then elected by a two-thirds parliamentary majority, in a simultaneous vote, to serve indefinitely renewable nine-year terms.¹⁰

The autonomy and independence of both the Media Authority and the Media Council are formally guaranteed in the law.¹¹ According to the *Media Act*, the Media Authority and Media Council members must hold an advanced educational degree and have at least three years of "work experience in programme distribution, media services, regulatory supervision of the media services, electronic communications, or in economics, social science, law, technology or management with a focus on the regulatory supervision of communications (including membership of management bodies)."¹²

Members of the Media Council can be dismissed in cases of a member's resignation or death, and for breaches to conflict-of-interest rules as detailed in the *Media Act*.¹³ These rules, for instance, prohibit members from holding local, municipal, national or EU-level political office, from engaging in party politics or representing political parties, and from holding employment with a media service provider.¹⁴ These cases are decided by the chairperson of the Media Council (in cases of a member's death or resignation) and by a plenary session within the Media Council in cases of breaches to conflict-of-interest rules.¹⁵

The mandates of the vice presidents and director general of the Media Authority can be terminated by the president of the Media Authority in cases of their resignation or death, or if a member fails to resolve a breach to the specified conflict-of-interest rules.¹⁶ The president also has the right to recall (without justification),¹⁷ and dismiss the Media Authority's vice presidents and director general.¹⁸ The mandate of the president of the Media Authority can be terminated in the case of the president's resignation or death.¹⁹ The president can also be dismissed by the prime minister if the president fails to resolve a breach to conflict-of-interest rules, is found guilty of a criminal investigation, and for other grounds as specified in the law.²⁰ The duration of the mandate of the chairperson of the Media Council coincides with the mandate of the Media Authority president.²¹

According to an amended provision to the *Media Act* passed in July 2011, the mandate of the Media Authority president and members of the Media Council lasts until new members are elected by a two-thirds parliamentary majority.²² If Parliament fails to elect a new chairperson and members at the end of their nine-year terms, the current president and Media Council members retain their positions, indefinitely, until new members are elected.

When Hungarian Prime Minister Viktor Orbán appointed Annamária Szalai as president of the Media Authority in August 2010,²³ she also became the automatic

9 *Media Act*, Article 124(4). Per Article 124(8), if no unanimity is reached, candidates can be nominated by a two-thirds majority of the votes. Available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

10 *Media Act*, Article 124(1) and Article 125(5), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

11 *Media Act*, Article 109(1), 109(3), 109(6), and 123(1) and 123(2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

12 *Media Act*, 111(4), 117(2), 124(2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

13 *Media Act*, Article 129(1) and (2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

14 *Media Act*, Article 118 and Article 127, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

15 *Media Act*, Article 129(3) and (4), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

16 *Media Act*, 113(4), 115(5), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

17 *Media Act*, Articles 113(6) and 115(7), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

18 *Media Act*, Article 111(2)(c)(d) and (e), 113(6), 115(7) available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

19 *Media Act*, Article 113(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

20 *Media Act*, Article 113(2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

21 *Media Act*, Article 125(7), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

22 *Media Act*, Article 216(8), available in the Hungarian-language law at: <http://www.nmhh.hu/dokumentum.php?cid=27786>; this provision is not included in the most recent version of the English-language text, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

23 "A new organisation to face new challenges," National Media and Infocommunications Authority (NMHH), 18 August 2010, press release available at: <http://www.nmhh.hu>.

nominee for the chairperson of the Media Council. Szalai is a former Fidesz MP who had previously served as a member of the National Radio and Television Board (ORTT), the legal predecessor of the newly created Media Council. In October 2010, Parliament approved Szalai's nomination, and elected the remaining four members of the Media Council. All of these four members were selected by Fidesz MPs using their two-thirds majority in the nominating committee.

International criticism

Opponents have raised a number of concerns over the Media Authority's and Media Council's independence. Critics say the system of "dual appointments" to the positions of Media Authority president and Media Council chairperson gives the Government *de facto* control over the Media Council.²⁴ According to an analysis conducted for the Organization of Security and Cooperation in Europe (OSCE), although the practice of government-appointed directors to telecommunications agencies is not unusual, "the manner of appointment of the Media Council Chairperson amounts to nothing less than government capture" of Hungary's media governance authorities, because "Parliament is left no choice but to vote for the Prime Minister's candidate."²⁵ If it fails to do so, the position will remain vacant, and the prime minister's candidate is still authorised to chair Media Council meetings until nominated by Parliament as chairperson, according to this analysis.²⁶ Another legal review conducted

by the Washington D.C.-based Center for Democracy and Technology concluded that because the law grants the prime minister *de facto* power to select its chairperson, the Media Council is susceptible to political influence.²⁷ "As a result, the interpretation of the Acts, and thus the determination of the extent of the constitutional rights of free expression and public information, are subject to political control," according to this analysis.²⁸ This study also concludes that the law provides inadequate mechanisms for Parliament to elect any candidate for the Media Council chairperson other than the prime minister's appointee for the president of the Media Authority.

Critics also claim that the Hungarian Government has misused its parliamentary majority to fill all five Media Council seats with party loyalists with limited expertise in media policy.²⁹ The OSCE has urged the Government to amend the appointment procedures to ensure that "regardless of whether there is a majority or minority government ... political plurality is guaranteed in the appointment process of communication regulatory organs."³⁰

According to a review by the Council of Europe's Commissioner for Human Rights, the appointment procedures for Hungary's Media Council fail to meet Council of Europe standards for safeguarding media

[hu/index.php?id=hir&cid=12052](http://index.php?id=hir&cid=12052).

24 "Analysis and assessment of a package of Hungarian Legislation and draft legislation On media and telecommunications," Prepared by Dr Karol Jakubowicz, Commissioned by the Office of the OSCE Representative on Freedom of the Media. Warsaw, Poland, September 2010, available at: <http://www.osce.org/fom/71218>.

25 "Analysis and assessment of a package of Hungarian Legislation and draft legislation On media and telecommunications," Prepared by Dr Karol Jakubowicz, Commissioned by the Office of the OSCE Representative on Freedom of the Media. Warsaw, Poland, September 2010, available at: <http://www.osce.org/fom/71218>.

26 "Analysis and assessment of a package of Hungarian Legislation and draft legislation On media and telecommunications," Prepared by Dr Karol Jakubowicz, Commissioned by the Office of the OSCE Representative on Freedom of the Media. Warsaw, Poland, September

2010, available at: <http://www.osce.org/fom/71218>.

27 "Legal Analysis of the 2010 Hungarian Media Laws," Center for Democracy and Technology, Washington D.C., February 9, 2011, available at: http://www.cdt.org/files/CDT_Legal_analysis_of_the_Hungarian_Media_Laws_020911-1.pdf.

28 "Legal Analysis of the 2010 Hungarian Media Laws," Center for Democracy and Technology, Washington D.C., February 9, 2011, http://www.cdt.org/files/CDT_Legal_analysis_of_the_Hungarian_Media_Laws_020911-1.pdf.

29 See "Protest Over the New Media Law," *Hungarian Spectrum*, 3 December 2010, <http://esbalogh.typepad.com/hungarianspectrum/2010/12/protest-over-the-new-media-law.html>.

30 "Analysis of the Hungarian Media Legislation," Prepared by Dr. Katrin Nyman-Metcalf, Professor and Chair of Law and Technology, Tallinn University for the Organization for Security and Co-operation in Europe (OSCE), Office of the Representative on Freedom of the Media. February 2011. See Section on "The Media Regulator," pp 10-13, <http://www.osce.org/fom/75990>.

independence and pluralism.³¹ “The provisions regarding appointment, composition and tenure of [Hungary’s] existing media regulatory bodies demand amendment not least because they lack *the appearance of independence and impartiality*, quite apart from a *de facto* freedom from political pressure or control.”³² The Commissioner urged the Hungarian Government to adopt the Council of Europe’s recommendations for ensuring the independence of media regulatory bodies.³³

Hungarian Government’s response

The Hungarian Government states that the Media Council is an independent body elected in accordance with democratic European principles and standards.³⁴ According to the Government’s December 2010 statement: “The Media Council is a body . . . 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.”³⁵

The statement continues: “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 to the Constitution . . . 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.”³⁶

The Government also emphasises that “in performing their duties, members of the Media Council do not take orders from anyone; they cannot be recalled and they are independent in every respect. The elected members of the Media Council have no ties, either formal or informal, with the ruling political parties.”³⁷

31 “Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media,” CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701.

32 “Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media,” CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701 (emphasis in original).

33 “Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector,” Adopted by the Committee of Ministers on 20 December 2000, 735th meeting of the Ministers’ Deputies, [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

34 See “Criticism 3,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” The Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

35 See “Criticism 3,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” The Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

36 “Criticism 3,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” The Ministry of Public Administration and Justice, December 20, 2010, at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

37 “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

1/Findings: Media Authority independence

In response to the criticism of the Media Authority's independence, the Hungarian Government states that media authorities with a "much smaller degree of independence from [the] government are not uncommon across Europe,"³⁸ and cites examples of the appointment systems of media regulatory bodies from the following countries: **Austria, Belgium, Denmark, Ireland, Italy, Netherlands, Sweden, Switzerland** and the **UK**.³⁹

According to the expert analyses, the Hungarian Government's claim that the media authorities cited have less political independence than Hungary's Media Authority is not substantiated by the examples provided. The Government accurately cites examples from nine European and EU-member states in which the government is involved in appointing some or all members of the respective media regulatory bodies. However, in all nine cases the expert assessments indicate that the Hungarian Government's examples inaccurately cite or omit key elements of the appointment and regulatory systems that influence either how these appointments are made or that serve as "checks" on potential governmental influence. In addition, the expert assessments show that Hungarian Government's examples do not provide proportionate comparisons to Hungary's Media Authority, in terms of these bodies' regulatory scope and position within the respective country's media regulation landscape.

For instance, in all **nine** examples:

- the media authority referenced is responsible for regulating broadcasting and audiovisual media but does not exercise any content-related authority over print and online press;
- the media regulatory body cited is not the sole—or in some cases even the most powerful—media authority in that country.

The examples cited by the Hungarian Government instead highlight a single factor—the system of governmental and/or ministerial appointments—as a sole indicator that the cited regulatory bodies lack political independence. However the expert assessments indicate that the Hungarian Government's examples exclude a range of additional factors, both formal and *de facto*, that provide a more complete description of the level of regulatory independence with which these bodies operate in practice.

Formal factors of independence include: legal provisions establishing the regulatory body's tasks, scope and powers; method of nominations and appointments; membership term lengths; autonomy of decision-makers; professional criteria for membership; financial autonomy; and transparency and accountability mechanisms.⁴⁰ *De facto* independence is defined as the media authority's relationship with other political decision makers that could influence the behaviour of

38 "Reply to the criticisms expressed by the international media against the Media Act," Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

39 The Austrian example is cited under "Criticism 3," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," The Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>; the remaining examples are found in "Reply to the criticisms expressed by the international media against the Media Act," Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

40 "Indicators for independence and efficient functioning of audiovisual media regulatory bodies for the purpose of enforcing the rules in the AVMS Directive." INDIREG: Preliminary Final Report. Hans Bredow Institute for Media Research the Interdisciplinary Centre for Law & ICT (ICRI), Katholieke Universiteit Leuven, Center for Media and Communication Studies (CMCS), Cullen International. January 2011, available at: http://ec.europa.eu/avpolicy/docs/library/studies/regulators/preliminary_final_report.pdf; pp. 30 – 34.

the body's members; the autonomy of members in carrying out regulatory actions; and the general level of protection from political interference.⁴¹

Hence, in **three** of the nine examples (**Austria, Italy, UK**), the Government correctly cites that the members or chairperson of these media authorities are appointed by the government and/or ministries. However in all of these three cases, the expert reports indicate that the Hungarian Government's examples exclude key elements of the appointment processes and/or of the regulatory scope and powers of the media authority referenced. For instance, in the Austrian example the Government accurately states that the members of the Austrian Communications Authority (KommAustria) are appointed by the head of state, however the statement omits that all appointments are also preceded by a public tender and that KommAustria is not the sole or most powerful regulatory body in Austria. The Federal Communications Board (BKS), a majority of whose members are nominated by judicial authorities, oversees all of KommAustria's decisions and is the highest authority for audiovisual media in Austria. In the Italian example, the Hungarian Government accurately describes the appointment process for the chairperson of Italy's Communication Regulatory Authority (AGCOM) but omits to mention that the remaining members of the AGCOM Board are elected by Parliament. In addition, the Hungarian Government accurately states that the members of the UK's Ofcom are appointed by the governmental ministries, but the example does not mention that these appointments are made following an open hearing which are designed to serve as a "check" against direct governmental influence. As the expert notes, the Ofcom Board, to which the Hungarian Government's example refers, also has no power to directly sanction media but rather this is managed by the Content Board, a separate unit within Ofcom.

In **six of the nine** examples, the experts report that the Hungarian Government cites an incorrect or former regulatory body and/or an inaccurate or outdated appointment procedure or law. When assessing the current and/or correct regulatory bodies and appointment procedures, these experts also conclude that the Government's example inaccurately describes the level of governmental influence over these bodies by excluding one or more formal or informal elements of the respective appointment processes. Examples of these inaccuracies include:

- **Belgium:** The Hungarian Government's example mixes the appointment procedures for two different bodies within the CSA and omits the role of the French Community Parliament in electing some of these members;
- **Denmark:** The Hungarian Government's example refers to the "*Medie- og tilskudssekretariatet*" (MTS) which has not operated under that name since 2003. The media regulator in Denmark is the Radio and Television Board (RTB); members are appointed by the Minister of Culture and (one) by a civic group. However according to the expert, the criteria for membership serve as an effective check against governmental influence over this body.
- **Ireland:** The Hungarian Government's example refers to the Broadcasting Commission of Ireland, which was replaced by the Broadcasting Authority of Ireland (BAI) in 2009, and omits to mention the role of Parliament in appointing four of the nine members of the BAI.
- **Netherlands:** The Hungarian Government's example is based on an outdated provision in the *Media Act*, which was amended in 2008. According to the expert, although members of the Media Authority are appointed by the Dutch Government, the

41 "Indicators for independence and efficient functioning of audiovisual media regulatory bodies for the purpose of enforcing the rules in the AVMS Directive." INDIREG: Preliminary Final Report. Hans Bredow Institute for Media Research the Interdisciplinary Centre for Law & ICT (ICRI), Katholieke Universiteit Leuven, Center for Media and Communication Studies (CMCS), Cullen International. January 2011, available at: http://ec.europa.eu/avpolicy/docs/library/studies/regulators/preliminary_final_report.pdf; pp 37-38.

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- regulatory body operates with a high level of *de facto* independence.
- **Sweden:** The Hungarian Government's example appears to refer to the Radio and TV Bureau (*Radio- och TV-verket*), which was replaced by the Radio and Television Authority (RTB) in 2010, and the Swedish Broadcasting Commission, a separate body within the Radio and Television Authority that oversees content-related complaints against broadcasters. Both bodies are appointed by the Swedish Government, but the expert reports that each body has a large degree of *de facto* independence and operates free from political influence. For instance, members of the Swedish Broadcasting Commission are not political appointees or political loyalists but rather senior judges and experts.
 - **Switzerland:** The Hungarian Government's example inaccurately cites the Department of Environment, Transport, Energy and Communication (DETEC) as performing the "duties of the media authority" in Switzerland. DETEC is only responsible for awarding licenses to broadcasters. The regulator for broadcasting is the Federal Office of Communications (OFCOM). The example also omits to mention the Independent Complaints Commission, which is the body responsible for handling complaints against broadcasters.

With these examples, the Hungarian Government appears to suggest that government-appointed media bodies are less independent than those appointed via parliamentary processes, as with Hungary's Media Council. However, the expert analyses demonstrate that more accurate measurements of independence are based on broader assessments of the regulatory frameworks and political systems in which these bodies operate. For instance although the media regulatory bodies in Switzerland are appointed directly by the Swiss Government, the country's system of "concordance democracy" is such that all major parties are represented in the Government and decisions are arrived at by consensus; this means that appointments are not politically oriented and that these bodies exercise a large degree of *de facto* independence. In contrast, the system of parliamentary-style appointments in Hungary's case has not served as an effective safeguard against political-party influence over appointments to Hungary's new media regulatory body.

The expert analyses therefore confirm that both systems of governmental and parliamentary appointments can be prone to political influence, even with formal safeguards in place. A majority of experts in this set of examples report that appointments to top positions of regulatory bodies are, or at some point have been, politically oriented. In the UK, for instance, at least two appointees to Ofcom's chairperson have been close allies of the sitting prime minister. In Italy, the expert reports that the system of parliamentary appointments often means the AGCOM Board can mirror the political composition of the Italian Parliament. Yet as shown by the expert assessments, the impact of governmental influence over appointments to media regulatory bodies varies in accordance with each bodies' overall powers and regulatory scope.

These noted problems with independence highlight that the risk of "government capture" of media regulatory bodies is not unique to any specific system of appointments. However, the examples cited do not support the Hungarian Government's claim that media regulatory boards with a "much smaller degree of independence" from the government than Hungary's Media Authority are not uncommon in Europe. Rather, the expert analyses reveal that the majority of the Hungarian Government's examples do not sufficiently correspond to Hungary's new Media Authority, and that the examples cited either inaccurately or inadequately characterise both the formal elements of the appointment processes and the *de facto* independence with which the respective regulatory bodies operate in practice.

1/Expert assessments: Media Authority independence

Example cited by Hungarian Government: AUSTRIA

“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.”⁴²

Expert assessment Katharine Sarikakis, PhD, Department of Communications, University of Vienna

This statement accurately describes the appointment process for members of the Austrian Communications Authority (KommAustria). KommAustria is composed of five full-time members: a chairperson, deputy chairperson and three members, all appointed by the *Bundespräsident* or the head of state following recommendations from the Federal Government.⁴³ Term of office is six years, renewable.⁴⁴ Appointments are preceded by a public invitation to apply for the position, in accordance with procedures for civil servant appointments under the *Public Tender Act* of 1989.⁴⁵ It should also be noted that KommAustria is not the only media authority in Austria; it shares also a number of regulatory responsibilities with the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR-GmbH)⁴⁶ and the Telekom Control Commission (TKK).⁴⁷ The highest decision-making authority for audiovisual communications in Austria is the Federal Communications Committee (BKS), a judicial body that reviews KommAustria’s decisions, monitors compliance with media laws, issues decisions and handles complaints.⁴⁸

KommAustria was established by the *KommAustria Act* (KOG) in 2001 as the authority responsible for issuing licenses to private broadcasters, managing broadcasting frequencies and handling the legal supervision of private and digital broadcasting.⁴⁹ Austria’s media regulation framework was revised in October 2010, which formally established KommAustria’s independent

42 See “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>. See also Criticism 3, in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” The Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

43 See KommAustria’s website, at: <http://www.rtr.at/en/rtr/OrganeKommAustria>.

44 The number of renewable terms is not specified in the *KommAustria Act*; appointment procedures are detailed in Section 1(3)(2) and 1(3)(3) in the *KommAustria Act* (KOG), unofficial translation available in English at: <http://www.rtr.at/en/m/KOG>.

45 *KommAustria Act*, Section 3(2), available at: <http://www.rtr.at/en/m/KOG>.

46 See Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) at: <http://www.rtr.at/en/rtr/RTRGmbH>.

47 See Telekom Control Commission (TKK) at: <http://www.rtr.at/en/tk/TKK>.

48 For a review of KommAustria’s regulatory scope see “Executive Summary: KommAustria” in “Indicators for independence and efficient functioning of audiovisual media regulatory bodies for the purpose of enforcing the rules in the AVMS Directive.” *INDIREG: Preliminary Final Report*. Hans Bredow Institute for Media Research the Interdisciplinary Centre for Law & ICT (ICRI), Katholieke Universiteit Leuven, Center for Media and Communication Studies (CMCS), Cullen International. January 2011, available at, available at: http://ec.europa.eu/avpolicy/docs/library/studies/regulators/preliminary_final_report.pdf; pp. 100-102.

49 *The Federal Act on the Establishment of an Austrian Communications Authority (“KommAustria”) and a Federal Communications Board (KommAustria Act - KOG)*, Federal Law Gazette I No. 32/2001, unofficial translation available in English at: <http://www.rtr.at/en/m/KOG>.

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status in the Constitution, with expanded decision-making and regulatory powers, whereas previously it had operated under the supervision of the Federal Chancellor.

As noted, KommAustria members serve continuous six-year terms until new members are appointed. Professional criteria for membership excludes members of political parties, or of federal, national or European governmental bodies, as well as members of broadcasting companies or lobbyists of a media enterprise.⁵⁰ Appointments are preceded by an open call for applications and nominations by the Government require consent of the Steering Committee of the National Council. KommAustria's members are independent and not bound by any instructions.⁵¹ Members can be recalled only in cases of physical or mental incapacity or in cases of serious neglect of duty. A plenary committee within KommAustria establishes these cases.⁵²

The Federal Communications Board (BKS) is a judicial body created by the *KommAustria Act* (KOG) to review KommAustria's decisions. It is the highest appellate authority, which decides on appeals against KommAustria (with the exception of appeals in administrative penal cases) as well as on complaints, requests and proceedings concerning violations of administrative broadcasting regulations.⁵³ The BKS is a five-member tribunal; all members are appointed by the federal president on the proposal of the Federal Government for renewable six-year terms.⁵⁴ Three members must be judges. For the appointments of the three judicial members, the federal Government is bound by nominees proposed by the president of the Supreme Court and the president of the Court of Appeals in Vienna, respectively, where the BKS has its seat.⁵⁵ The Federal Government proposes two additional members. All nominees are selected by these bodies following a public invitation.

Criterion for membership requires members to have a law degree and several years of experience in public administration, legal practice, science, or in "matters coming within the executive powers of the Federal Communications Board."⁵⁶ Representatives of the Government, employees or affiliates of the Austria Broadcasting Corporation (ORF) or another broadcaster, or persons with a close legal relationship with anyone who makes use of an activity of the BKS or is affected by such activity, as well as employees of KommAustria or RTR-GmbH may not be members of the Federal Communications Board. Members of the BKS are independent and not bound by any instructions. In cases of death or resignations, substitute members, appointed by the same process described above, become members for the remaining term length. Membership can be terminated in the case a member fails to appear at three consecutive meetings without cause or if a conflict-of-interest regarding membership criterion comes to light.⁵⁷ These cases are established by members of the BKS board itself. Appeals against BKS decisions can be filed with the Austrian Constitutional Court (VfGH) and the Austrian Administrative Court.⁵⁸

As noted above, KommAustria's appointment procedures are based on a public tender process following the appointment procedures for all civil servants in Austria. However, a critical point to be mentioned is that because the Federal Government nominates KommAustria members, this could give way to a politically one-sided occupancy of the media authority, depending on whether

50 *KommAustria Act* (KOG), Paragraph 3(2) and 3(3), available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001213>.

51 *KommAustria Act* (KOG), Section 6(1), available at: <http://www.rtr.at/en/m/KOG>.

52 See KommAustria's rules of procedure and its allocation of duties, available in German at: http://www.rtr.at/en/m/GOKOA/Geschäftsordnung_der_KommAustria.pdf.

53 *KommAustria Act* (KOG), Section 11(2), available at: <http://www.rtr.at/en/m/KOG>.

54 *KommAustria Act* (KOG), Section 12(2), available at: <http://www.rtr.at/en/m/KOG>.

55 *KommAustria Act* (KOG), Section 12(3), available at: <http://www.rtr.at/en/m/KOG>.

56 *KommAustria Act* (KOG), Section 12(5), available at: <http://www.rtr.at/en/m/KOG>.

57 *KommAustria Act* (KOG), Section 12 (5) available at: <http://www.rtr.at/en/m/KOG>.

58 From KommAustria's website, available at: <http://www.rtr.at/en/m/InstittKommAustria>.

the Government has a majority, which was the case from 1970-1983. It also is worth mentioning that despite the law being changed in 2010, the former head of the KommAustria, Michael Orgis, was unanimously re-nominated as chairperson of the new KommAustria. Hence, the consistency of leading personnel during KommAustria's restructuring could be seen as a general weakness of the new system.

On the other hand, KommAustria members are appointed for six-year terms, whereas the Government is elected every four years, which could minimise the risk of politically motivated decisions by its members. It should again be emphasised that all KommAustria's decisions are also subject to oversight and review by the BKS, which serves as a "check" on KommAustria's decisions in the case of its politicisation.

Example cited by Hungarian Government: BELGIUM

*"Members of the Belgian Conseil supérieur de l'audiovisuel (CSA), the broadcasting regulator of the French Community of Belgium are appointed by the government for a term of four years; members can be re-elected and recalled by the government. Members of the German-speaking community's media authority (Medienrat) are also appointed by the government."*⁵⁹

Expert assessment

David Stevens, PhD, Faculty of Law, Catholic University of Leuven, Belgium

This citation not entirely accurate, as it appears to mix the appointment procedures for two different bodies within the High Council for the Audiovisual Sector (CSA), and also omits the role the French Community Parliament plays in appointing some of these members.⁶⁰ Hence, the actual legal framework of the CSA's appointment system offers more guarantees for independence from the Belgian Government than the reference above indicates. Although there have indeed been controversies over appointments to the CSA's chairperson, the citation omits a number of factors which may lead to an inaccurate conclusion about the CSA's general level of regulatory independence.

It should first be noted that in Belgium, each of the country's three cultural communities has its own audiovisual media services regulatory body and media regulations: the High Council for the Audiovisual Sector (CSA) in the French-speaking community;⁶¹ the Flemish regulator for the Media (VRM) in the Flemish speaking community;⁶² and the Media Council (Medienrat) in the German community.⁶³ In case of the Medienrat, the appointments to the chairman, the members of the regulatory chamber and the members of the advisory chamber are made by the Government,

59 "Reply to the criticisms expressed by the international media against the Media Act," Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

60 See the CSA's website at: www.csa.be.

61 The CSA was originally created by the *Act of 24 July 1997*, later replaced by the *Decree on Audiovisual and Multimedia Services (Décret coordonné sur les services de médias audiovisuels)* (30 April 2009). Articles 133 to 158 of this Act contain the basic provisions regarding the legal position and status of the CSA, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452. This Act is also further elaborated in the "Rules of Procedure of the CSA Bureau," available at: http://www.juridat.be/cgi_loi/loi_a.pl?language=nl&caller=list&la=n&fromtab=wet&tri=dd+as+rank&rech=1&numero=1&cn=2006042139&sql=dd++date%272006-4-21%27; and the "Rules of Procedure of the Regulatory Chamber," available at: www.csa.be/documents/categorie/25.

62 See Flemish regulator for the Media (VRM), website at: <http://www.vlaamseregulatormedia.be/nl/home.aspx>.

63 See Media Council (Medien-rat) website at: <http://www.medienrat.be/en/index>.

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as the Hungarian Government's statement correctly cites.⁶⁴ However, this body also has a large degree of *de facto* regulatory independence not accounted for in the statement above. In addition, it is important to note that these regulatory authorities are only competent for audiovisual media sectors, and do not in any way regulate other sectors of the media or press, which are to a large extent unregulated or self-regulated and under the supervision of the courts.⁶⁵

The CSA is an autonomous legal entity and its independence is formally established in the law.⁶⁶ It is composed of several bodies: the Bureau, which is the highest organ of the CSA, and two "colleges:" an advisory body responsible for issuing opinions on broadcasting matters, and a regulatory body, the College of Licensing and Control (*Collège d'autorisation et de contrôle*, CAC), which is responsible for allocating licensing for commercial broadcasters and monitoring compliance with media regulations.⁶⁷ The Bureau is composed of a president and three vice-presidents, appointed by the community Government.⁶⁸ Their mandates last five years and their terms are renewable.⁶⁹ The CAC is composed 10 members, which include the Bureau's four officers and six additional members: three of which are appointed by the French community Parliament and three by the community Government.⁷⁰ The chairperson of the Bureau is *de iure* also chairman of the CAC. Their term of office is four years, renewable.⁷¹ Hence, as the statement above mentions term lengths of four years, it appears the citation is referring to the CAC, which in fact is composed of members appointed both by the Government and by the French Community Parliament.

The CSA is responsible for monitoring audiovisual media service providers within the French-language region for compliance with content regulations in the *Decree on Audiovisual and Multimedia Services*. Competition-based regulations are managed at the federal level and by a separate authority. The CSA, and more specifically, the CAC can issue binding decisions on market players and is entirely independent in doing so.⁷² CAC can issue warnings, impose fines, publish decisions in the media or revoke licenses. It can in some cases also suspend the distribution of a service (requesting distributors or platform operators to stop offering the service).

There are no specific rules about staggering of the terms in order not to coincide with general election cycles and unlimited renewal of a mandate is possible. Members can be dismissed in case of criminal prosecution and for non-compliance with conflict-of-interest or ethical rules.⁷³ However, the Hungarian Government's example only mentions "members can be dismissed by government," which is factually correct in the case of the members of the regulatory chamber

64 *Mediendekret*, Article 86, see www.medienrat.be.

65 In Belgium, there is no integrated press law, but rather there is an old decree on the print press (stipulating that you cannot abuse print for committing crimes), an act on the duties of professional journalists, an act on the protection of journalistic sources, and an act on right of reply.

66 *Decree on Audiovisual and Multimedia Services*, Article 133, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452.

67 Information on the CSA's organisational structure is available at the CSA's website at: <http://www.csa.be/pages/show/4>.

68 *Decree on Audiovisual and Multimedia Services*, Article 142, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452.

69 *Decree on Audiovisual and Multimedia Services*, Article 142, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452

70 *Decree on Audiovisual and Multimedia Services*, Article 139; available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452; see also: <http://www.csa.be/organes/cac>.

71 *Decree on Audiovisual and Multimedia Services*, Article 139, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452.

72 *Decree on Audiovisual and Multimedia Services*, Article 133, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452.

73 *Decree on Audiovisual and Multimedia Services*, Articles 139 and 142, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452.

(CAC),⁷⁴ but members of the governing Bureau can only be dismissed by Parliament.⁷⁵ Hence, the example above is incomplete, as it does not mention that grounds for dismissal are clearly established in the law to safeguard against arbitrary or politically motivated dismissals of CSA members by the Government and/or Parliament.

However there are several areas in which the Government or Parliament can exercise oversight over or can directly and indirectly influence the work of the CSA. For instance, the Government can ask the CSA to investigate a specific case of breaching the law— although the CSA is under no formal obligation to address to these requests.⁷⁶ In addition, formal accountability procedures include the obligation to report yearly to Parliament and/or the community Government regarding the performance of its tasks and its finances.⁷⁷ The CSA's annual budget, which is part of the state budget, must be approved by the Government, and the CSA and Government also “negotiate” a five-year plan (the current plan covers 2009-2013). The procedural rules for both the CSA Bureau and the CAC also require governmental approval. In addition, the Government appoints a representative responsible for safeguarding the good administrative and financial management of CSA.⁷⁸

There have been some controversies in the past over politically appointed positions to the CSA— for instance, the previous chairperson's term was not renewed for what was reported to be political reasons. In general, however, the appointment procedures mentioned have had a minor impact on press freedom because the regulatory bodies are only competent for regulating the audiovisual sectors and focus primarily on guaranteeing fair competition between providers and protecting the interests of listeners and viewers (e.g. commercial communication), rather than on enforcing content regulations.

Example cited by Hungarian Government: DENMARK

“Members of the Danish media authority (Medie- og tilskudssekretariatet) – including its chairperson – are appointed by the Minister for Culture.”⁷⁹

Expert assessment Erik Nordahl Svendsen, Former director, Secretariat of Danish Radio and TV Board

This statement refers to the “*Medie- og tilskudssekretariatet*” (MTS) rather than the Radio and Television Board (RTB), Denmark's independent regulatory authority with powers over “all” electronic media. The “*Medie- og tilskudssekretariatet*” (MTS) was formed in 2001 at the same time as the RTB to serve as the RTB's secretariat. By law, the MTS was never an authority with powers

⁷⁴ *Decree on Audiovisual and Multimedia Services* Article 139, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452.

⁷⁵ *Decree on Audiovisual and Multimedia Services*, Article 142, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452.

⁷⁶ *Decree on Audiovisual and Multimedia Services*, Article 136, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452.

⁷⁷ *Decree on Audiovisual and Multimedia Services*, Articles 146, 152 and 153, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452

⁷⁸ *Decree on Audiovisual and Multimedia Services*, Article 152, available in French at: http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452.

⁷⁹ “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

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of its own but rather acted on behalf of RTB, and in that sense, it was identical with RTB. In 2003, the MTS was changed to “*Mediesekretariatet*” (MS) with the same functions as the MTS had in relation to RTB. In 2008, the MS was merged with Agency for Libraries, which changed its name to “Agency for Library and Media” and since then has served as the secretariat of the RTB. Hence, the mention of MTS indicates that the Hungarian Government has relied on an outdated source for this citation.

The RTB was created in 2001 to supervise private and public broadcasting (TV and radio) under the revised *Radio and Television Broadcasting Act* (BAct).⁸⁰ The RTB’s current competencies include (in varying degrees) supervision over all electronic media—commercial and public television and radio broadcasting, audiovisual media services (television and on-demand)—but not print media or online media, unless these are audiovisual media services. The RTB is composed of eight members: seven, including the chairperson, are appointed by the Minister of Culture without any formal nominations, and one member, the “listener’s representative,” is appointed after nomination from a civic group, the Cooperative Forum of Danish Listeners and Viewers Association.⁸¹ Members serve indefinitely renewable four-year terms. The chairperson is approved by a Government committee of ministers for higher appointments. Appointments are not staggered between election cycles and renewal is common; hence, in the Danish system, there have not been problems with discontinuity.

Article 39 of the BAct stipulates that members must represent expertise in legal, financial/administrative, business and media/cultural affairs, and that the chairman must be a lawyer. At present, four of the eight members of the RTB are university professors (two in law; two in media studies), one (the chairperson) is a lawyer, one is a journalist, one is a publisher, and one (the listener’s representative) is a priest.

In many European countries, members of media authorities are either elected or nominated by different state organs, political parties or professional societies, as the Hungarian Government’s choice of the Danish example shows. In certain circumstances, this can allow for governmental or political influence over the composition of media regulatory boards. However in Denmark, membership criterion of the RTB has served as an effective counterbalance to possible political influence. Since its start in 2001, the RTB has had three chairmen, all with legal education (and no prior involvement with the Government): a professor of law, a judge, and at present, a lawyer. Hence, the members’ professional competencies and independence in the Danish system has actually had a positive effect on press freedom despite that these members are appointed directly by the Government. In 2010, the Minister of Culture even proposed a bill stipulating the chairman of the RTB should be a judge. In the end, the law that passed stipulates that the chairperson must be a lawyer, which in fact had always been the case.

80 *The Radio and Television Broadcasting Act* (2001) as amended by Act 1269 of 16 December 2009. The official English translation of the BAct is not up to date, but all the sections cited in this review reflect current regulations; available at: <http://kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>.

81 Pursuant to Section 39(2) and Section 40(6) of the *Law on Radio and Television Broadcasting Consolidation* (Act No 477 of 6 May 2010), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=136148>.

Example cited by Hungarian Government: IRELAND

“Members of the Broadcasting Commission of Ireland – including its chairperson – are appointed by the government from among experts in the field of media services.”⁸²

Expert assessment

TJ McIntyre, School of Law, University College, Dublin

This statement is generally accurate, although it mistakenly refers to the Broadcasting Commission of Ireland which was replaced by the Broadcasting Authority of Ireland (BAI) in 2009.⁸³ The reference above also does not mention the role of the *Oireachtas* (Parliament) in appointing some members of the BAI. There are nine members of the BAI, holding five-year terms, for a maximum of two consecutive terms. Of these, five are appointed by the Government directly, and four are appointed by the Government following recommendations from a joint *Oireachtas* (Parliament) committee on communications made up of both TDs (members of the lower house) and senators and operating on a cross-party basis.⁸⁴ The law also stipulates that the BAI be composed of no less than four men and four women.⁸⁵ In some ways, however, this statement gives more credit to the Irish system than it deserves, as the Irish legislation does not require members of the BAI to be “experts” in the field of media services.⁸⁶

The BAI is a national independent regulatory agency created by the *Broadcasting Act 2009*. It is the single most powerful media regulatory body in Ireland, although its role is limited to the broadcast media and it has no functions with regard to either print or online media (except insofar as provided by the Irish regulations related to the EU Audiovisual Media Services Directive⁸⁷). The BAI inherited the functions previously carried out by the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission and therefore has a wide range of powers, including:

- licensing of independent commercial and community broadcasters;
- drawing up of broadcasting codes and rules;
- ensuring compliance of broadcasters with their license conditions, the Act and the broadcasting codes and rules;
- development of digital terrestrial television;
- provision of funding for the production of programmes on topics such as Irish culture, adult literacy and the Irish language; and
- enforcement of the linear (traditional television) aspects of the Audio Visual Media Services Directive.

Qualification for membership is detailed in Section 9 of the *Broadcasting Act 2009*, which requires that a member should have experience in at least one of the following areas:

- (a) media affairs;
- (b) public service broadcasting, commercial broadcasting or community broadcasting;
- (c) broadcast content production;

82 “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

83 See Broadcasting Authority of Ireland (BAI) at: <http://www.bai.ie/>.

84 See BAI appointment procedures in Section 8 of the *Broadcasting Act 2009*, available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0008.html>.

85 *Broadcasting Act 2009*, Section 8(4), available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0008.html>.

86 Qualification for membership is detailed in Section 9 of the *Broadcasting Act 2009*, available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0009.html>.

87 See SI 258 of 2010, The European Communities (Audiovisual Media Services) Regulations 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010L0013:EN:NOT>.

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- (d) digital media technologies;
- (e) trade union affairs;
- (f) business or commercial affairs;
- (g) matters pertaining to the development of the Irish language;
- (h) matters pertaining to disability;
- (i) arts, music, sport or culture;
- (j) science, technology or environmental matters;
- (k) legal or regulatory affairs; and
- (l) social, educational or community affairs or Gaeltacht affairs.

It should be noted that this does not require that an appointee be a media policy expert or indeed have any experience in the media whatsoever.

On a legal basis, the BAI's independence is guaranteed by Section 24 of the *Broadcasting Act 2009*. The fact that members cannot be removed by the Government without parliamentary approval also helps to further ensure the BAI's independence. A member may only be removed in cases of ill-health, stated misbehaviour or where "necessary for the effective performance" of the BAI.⁸⁸ However, there is an important safeguard which requires that resolutions be passed by both Houses of the Oireachtas (Parliament) calling for a member's removal.

As noted, four of the nine members are appointed by the Government following recommendations from a joint Oireachtas (Parliament) committee, made up of both TDs (members of the lower house) and senators and operating on a cross-party basis. While the Government is under no obligation on the Government to follow the recommendations of the Committee, this has been done in appointments to date and failure to do so could be expected to generate substantial political controversy. It should be noted that there has not been any significant controversy to date regarding appointments to the BAI.⁸⁹

Example cited by Hungarian Government: ITALY

*"The chairperson of the convergent Italian authority AGCOM is appointed, in conjunction with the Minister for Communication and the competent parliamentary committee, by the decree of the President of the Republic based on the Prime Minister's recommendation."*⁹⁰

Expert assessment **Marco Bellezza**, PhD, University of Bari/**Oreste Pollicino**, PhD, Bocconi University

This statement regarding the appointment procedures for AGCOM's president is accurate but omits the appointment procedures for the remaining members of this body. AGCOM's president is appointed by decree of the president of the Republic acting on the advice of the prime minister, in agreement with the Minister of Communications and after hearing the opinions of the competent

⁸⁸ *Broadcasting Act 2009*, Section 10(4), available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0010.html>.

⁸⁹ It should be mentioned that there has been controversy regarding one appointment – not to the BAI itself but to the independent Compliance Committee, which assesses complaints against broadcasters. See Patricia McDonagh, "Ryan defends promoter's appointment," *Irish Independent*, 1 December 2009, available at <http://www.independent.ie/national-news/ryan-defends-promoters-appointment-1959390.html>.

⁹⁰ "Reply to the criticisms expressed by the international media against the Media Act," Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

parliamentary commissions.⁹¹ AGCOM's Council, the main decision-making organ, is composed of eight commissioners and a president, each appointed for non-renewable seven-year terms. Commissioners are elected by the senate and the chamber of representatives, respectively, and appointed by the president of the Republic.⁹²

The Communications Regulatory Authority (*Autorità per le garanzie nelle comunicazioni* - "AGCOM") was established as an independent regulatory authority in 1997 by the *Maccanico Law*, the aim of which was to reform pervasive market concentration issues in Italian broadcasting.⁹³ AGCOM was created in response for the need to establish an independent regulatory body to govern Italy's media and communications sectors, which since the 1970s had been politically controlled.⁹⁴ As Italy's "convergent" regulatory authority, AGCOM exercises its regulatory competencies in all media sectors: the press, online press, broadcasting, telecommunications and electronic communications. However it should be noted that AGCOM's authority over traditional print and online press extend to handling registration requirements only and it has no content-related authority over these media.

AGCOM is accountable to Parliament, which establishes its powers, defines its statutes, and as noted, elects its members. AGCOM is composed of the following bodies: the President, the Commission for Infrastructure and Networks, the Commission for Services and Products, and the Council.⁹⁵ The Commission for Infrastructure and Networks and the Commission for Services and Products are each composed of four commissioners. Each parliamentary chamber elects four members of each commission. The Council is comprised of the president and all (eight) commissioners. All the bodies are chaired by the AGCOM's president. In case of a commissioner's death, resignation or incapacitation, the competent chamber elects a new commissioner who holds office until the ordinary expiration of the mandate of other commissioners. Members cannot be removed by the Government and can only be substituted only in case of death, resignation or impediment.

The selection process for AGCOM's members is the same as that used to elect members of all administrative authorities in Italy.⁹⁶ According to the law, AGCOM members must qualified experts in the field.⁹⁷ The cited law also includes a series of conflict-of-interest statutes meant to ensure the independence and impartiality of its members—prohibiting, for example, AGCOM members from working in the communications sector for four years after the end of their mandate.⁹⁸

Because members of AGCOM are elected by Parliament, AGCOM's composition often and inevitably reflects the composition of the Italian Parliament. This can be seen as a drawback of this type of appointment system, as the Council can mirror the majority-minority coalitions of the current parliamentary composition.⁹⁹ Even with multiple formal legal "checks" in place

91 Pursuant to Article 3 of the *Maccanico Law* (Law No. 249/1997), in Italian at: http://www2.agcom.it/L_naz/L_249.htm.

92 Pursuant to Article 3 of the *Maccanico Law* (Law No. 249/1997), in Italian at: http://www2.agcom.it/L_naz/L_249.htm.

93 *Maccanico Law* (Law No. 249/1997), in Italian at: http://www2.agcom.it/L_naz/L_249.htm.

94 The *Maccanico Law* (Law No. 249/1997) was adopted in July 1997 after the Corte Costituzionale (*Constitutional Court*) ruled that the antitrust provisions in the 1990 *Broadcast Law* (Law No 223/1990) were inadequate to ensure media pluralism. The *Maccanico Law* created the Communications Regulatory Authority (AGCOM) and introduced new restrictions on concentration national broadcast television. See: lex.europa.eu/Notice.do?mode=dbl&lang=en&ihmlang=en&lng1=en,hu&lng2=bg,cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,mt,nl,pl,pt,ro,sk,sl,sv,&val=455220:cs&page=.

95 See Agcom's structure, available in English at: http://www2.agcom.it/eng/reports_docs/resp_reg.htm.

96 Law 481/1995, "Norms governing competition and the regulation of public utilities. The institution of regulatory bodies for public utilities," available in Italian at: http://www.autorita.energia.it/it/inglese/about/legge_istitutiva.htm.

97 Law 481/1995, Article 2(8)(9)(10)(11), available in Italian at: http://www.autorita.energia.it/it/inglese/about/legge_istitutiva.htm.

98 *Maccanico Law*, (Law No. 249/1997) Article 1(5) with reference to Law 481/1995, Art. 2(8)(9)(10)(11), available in Italian at: http://www.autorita.energia.it/it/inglese/about/legge_istitutiva.htm.

99 *Television across Europe: Regulation, Policy and Independence (Italy)*, EU Monitoring and Advocacy Program

to safeguard AGCOM's independence, the Council has in recent years become increasingly partisan, its members having clear political affiliations, which has fueled concerns regarding the Council's political biases and independence.¹⁰⁰ In addition, the prime minister in practice exerts much influence over the selection of AGCOM's president, which can compromise that member's independence in cases when the president is required to cast a deciding vote.¹⁰¹ But it is important to note that because the mandate for AGCOM members is seven years and the mandate of Parliament is five, the composition of AGCOM does not reflect necessarily the parliament majority in office. This system allows AGCOM to have a certain independence from attempts by lawmakers to control AGCOM through its appointments. (However, this has not safeguarded AGCOM from direct influence by public officials. In March 2010, Prime Minister Berlusconi was put under investigation for allegedly pressuring an AGCOM Council member to "shut down" a talk radio show critical of the Government. The board member reportedly offered to prepare a formal complaint.¹⁰²)

It is also important to note that AGCOM is not the sole authority responsible for regulating the media in Italy. The Ministry of Economic Development's Department of Communications plays an important role in the preparation of legislative proposals and policy guidelines, and also carries out administrative functions related to media sector, such as licensing and frequencies allocation. The Antitrust Authority (AGCM) works in cooperation with AGCOM to supervise the commercial telecommunications market. The Parliamentary Commission on Radio-Television Services supervises the pluralism of the media, specifically with regards to the "par condicio" for coverage allotted to political parties during elections for Italy's public service broadcaster, RAI.

Example cited by Hungarian Government: The NETHERLANDS

*"The Dutch ruler appoints the chairperson and other members of the Media Authority (Commissariaat voor de Media) based on the nomination of the Minister for Education, Culture and Science."*¹⁰³

Expert assessment

Joost van Beek, Center for Media and Communications Studies, CEU

The reference above to "the Dutch ruler" appears to be based on a provision that was part of the Dutch *Media Act* until 2008, which accorded the Queen a ceremonial role in appointing members of the Media Authority. The law as it stood before the adoption of the *Media Act 2008* stipulated: "the Media Authority consists of a chairman and two or four other members. They are appointed and dismissed by royal decision upon nomination by [the] Minister."¹⁰⁴ But the equivalent

(EUMAP), Network Media Program (NMP), Open Society Institute (2005), p. 888; available at: <http://www.decesare.info/OSI%20Rapporto%20Italia%20.pdf>.

100 *Television across Europe: Regulation, Policy and Independence (Italy)*, EU Monitoring and Advocacy Program (EUMAP), Network Media Program (NMP), Open Society Institute (2005), p. 889; available at: <http://www.decesare.info/OSI%20Rapporto%20Italia%20.pdf>.

101 For an analysis of AGCOM's appointment procedures, see *Television across Europe: Regulation, Policy and Independence (Italy)*, EU Monitoring and Advocacy Program (EUMAP), Network Media Program (NMP), Open Society Institute (2005), pp. 887-891; available at: <http://www.decesare.info/OSI%20Rapporto%20Italia%20.pdf>.

102 "Berlusconi in probe over TV talk shows," *Reuters*, March 15, 2010, <http://uk.reuters.com/article/2010/03/15/oukoe-uk-italy-berlusconi-tv-idUKTRE62E5JV20100315>.

103 "Reply to the criticisms expressed by the international media against the Media Act," Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

104 *Media Act*, elapsed as of January 1, 2009, Article 10.1, text as valid on July 24, 2008, http://www.st-ab.nl/wetten/0199_

provision in the *Media Act 2008* omits the second sentence. Instead, the Act merely notes that “the *Framework Act Autonomous Administrative Authorities* applies to the Media Authority.”¹⁰⁵ The *Framework Act* stipulates that members of an autonomous administrative authority are appointed, recalled and dismissed by the relevant Government minister.¹⁰⁶ Therefore the main element of the Hungarian Government’s statement is correct: that the Minister for Education, Culture and Science is responsible for selecting the chairperson and other members of the Dutch Media Authority.

Whether this by itself substantiates the Hungarian Government’s claim that “authorities with a much smaller degree of independence from government” than Hungary’s Media Authority is a separate question. While some concerns have been expressed over the potential for political influence over the Dutch Media Authority, the body generally has a large degree of formal and *de facto* autonomy from the Government, both as specified in the law and with regards to how Media Authority members are currently appointed in practice.

The Dutch Media Authority (*Commissariaat voor de Media*) was established in 1988 by the Dutch *Media Act*, which was amended several times.¹⁰⁷ This law was replaced by the *Media Act 2008*, which re-established the structure and implementation of Dutch media policy and incorporated the EU Audiovisual Media Services Directive.¹⁰⁸ The Media Authority is responsible for overseeing commercial and public broadcasting and audiovisual media for compliance with the *Media Act 2008*, as well as the *Media Decree (Mediabesluit)* and the *Media Regulation (Mediaregeling)*, which further specifies the procedures and implementation of the *Media Act’s* provisions.¹⁰⁹ The Media Authority exercises some authority over audiovisual online services, including those of public service broadcasters but has no competency over traditional print or their online content.

The Media Authority currently consists of a chairman and two members, appointed by the Minister for Education, Culture and Science for five-year terms, for a maximum of two terms.¹¹⁰ Members are accountable to the minister, and can be dismissed by the minister if found to be unfit for violating conflict-of-interest rules.

The Media Authority is a so-called “ZBO,” a formally autonomous administrative authority of the central Government. The Authority’s formal independence is secured by a number of legal provisions, including conflict-of-interest rules that exclude members who are employed by a ministry or an affiliated institution, by Parliament or provincial or local government, or by public or private broadcasters, newspapers and/or magazines.¹¹¹

However, a recent study of sustainable government indicators concluded that while the Media

Mediawet.htm. In fact, the English-language FAQ on the Media Authority website still says that “the members of the Media Authority [...] are being appointed by Royal Decree, upon the recommendation of the Minister of Education, Culture and Science,” which indicates that the current law has not been updated on the Media Authority’s website.

105 Per Article 7(2) of the *Act of 29 December 2008 to establish a new Media Act* (hereafter: the “*Media Act 2008*”), available in Dutch at: http://wetten.overheid.nl/BWBR0025028/volledig/geldigheidsdatum_12-09-2011; translation by author.

106 *Framework Act Autonomous Administrative Authorities (Kaderwet zelfstandige bestuursorganen)*, Article 12.1, available in Dutch at: http://wetten.overheid.nl/BWBR0020495/geldigheidsdatum_12-09-2011; translation by author.

107 Commissariaat voor de Media website, English-language section: <http://www.cvdm.nl/content.jsp?objectid=7264>.

108 Joost Gerritsen, “Netherlands Media Act 2008,” *IRIS Legal Observations of the European Audiovisual Observatory*, 2009-3:18/29, <http://merlin.obs.coe.int/iris/2009/3/article29.en.html>.

109 Commissariaat voor de Media website, English-language section: <http://www.cvdm.nl/content.jsp?objectid=7264>, and Commissariaat voor de Media website, <http://www.cvdm.nl/content.jsp?objectid=7294>.

For legislation, see: *Media Act 2008*: http://wetten.overheid.nl/BWBR0025028/volledig/geldigheidsdatum_12-09-2011; *Mediabesluit 2008*, http://wetten.overheid.nl/BWBR0025036/geldigheidsdatum_12-09-2011; *Mediaregeling 2008*, http://wetten.overheid.nl/BWBR0025040/geldigheidsdatum_12-09-2011.

110 *Media Act 2008*, available in Dutch at: http://wetten.overheid.nl/BWBR0025028/volledig/geldigheidsdatum_12-09-2011; translation by author.

111 “Is the Media Authority independent from the government?” Commissariaat voor de Media, <http://www.cvdm.nl/content.jsp?objectid=5850>.

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Authority is an “independent governmental authority [...] with its own, autonomous tasks and discretionary space,” there is evidence that “politics do influence in particular public media outlets through the Commissariat in ways that may restrict their freedom.”¹¹² The examples the study listed, however, were limited to: the Media Authority’s enforcement of the *Media Act 2008*’s ban on alcohol advertising before 9 p.m.; efforts by the Government to encourage broadcasters to develop a code of conduct about “safe media-provision;” and a Government bill aimed at imposing salary ceilings for executives of publicly funded organisations, including public broadcasters. The study did not specify the Media Authority’s role in these issues or provide evidence of how the Media Authority’s decisions regarding these issues have been influenced by politics.¹¹³

Additional concerns have been raised by some experts over the lack of sufficiently clear appointment criteria for members of administrative bodies such as the Media Authority. For instance, a 2006 report by the Council for Public Administration (Rob), a governmental advisory body, concluded that many of the laws establishing these bodies do not specify the qualifications for appointments, which reduces the transparency of appointment procedures.¹¹⁴ While the report did not specifically mention the Media Authority, the criticism is relevant to this body, as the *Media Act 2008* does not specify the required qualifications for appointed members, beyond the above-mentioned conflict-of-interest provisions.

In the past, there had been an informal practice in the Netherlands in which appointments to top public administrative positions like the Media Authority chairperson were given to individuals with political affiliations. From 1994 to 2001, for instance, the chairperson of the Media Authority was Helmer Koetje, an MP for the Christian Democratic party at the time of his appointment. However, as the above-mentioned government indicators study notes, the chairperson’s political orientation appears to have become less important over the past several years. In current practice, appointments do not seem to be politically motivated and appointed members generally do not have a background in politics, but rather they appear to have been selected on the basis of extensive management, legal and/or media experience. For instance, current Media Authority Chairperson Tineke Bahlmann is a professor of business administration at the University of Utrecht, and a member of the supervisory boards of a number of financial and banking institutions, including the ING Group and Deloitte Holding.¹¹⁵ Media Authority member Madeleine de Cock Buning is a professor of copyright and media law at Utrecht University and director of the Center for Intellectual Property law (CIER), as well as a judge (*raadsheer plaatsvervanger*) on the Court of Appeals in The Hague, and a former attorney-at-law specializing in intellectual property and ICT issues.¹¹⁶ Eric Eljon, prior to his appointment to the Media Authority in July 2011, was a manager at the commercial broadcaster SBS, and previously worked for the public service broadcasting organizations VARA (which has a center-left political orientation) and AVRO (which has a center-right political orientation).¹¹⁷ Hence, the use of the Dutch example do not sufficiently rebut the

112 Robert Hoppe, Thomas Hoppe, Jaap Woldendorp, Nils C. Bandelow, *Sustainable Government Indicators 2011, Netherlands report*, Bertelsmann Stiftung, p.8-9, available at: http://www.sgi-network.org/pdf/SGI11_Netherlands.pdf.

113 Robert Hoppe, Thomas Hoppe, Jaap Woldendorp, Nils C. Bandelow, *Sustainable Government Indicators 2011, Netherlands report*, Bertelsmann Stiftung, p.8-9, available at: http://www.sgi-network.org/pdf/SGI11_Netherlands.pdf.

114 Raad voor het openbaar bestuur (2006), *Benoemingen in het openbaar bestuur: Transparant, onderbouwd en functioneel*, p.55, 58, available at: <http://www.rfv.nl/GetFile.aspx?id=95>.

115 “Tineke Bahlmann,” Commissariaat voor de Media, available at: <http://www.cvdm.nl/content.jsp?objectid=CVDM:7308>;

See also “Bahlmann, Tineke,” *Reuters Finance*, available at: <http://www.reuters.com/finance/stocks/officerProfile?symbol=ISP&officerId=1309099>.

116 “Madeleine de Cock Buning,” Commissariaat voor de Media, available at: <http://www.cvdm.nl/content.jsp?objectid=CVDM:9611>;

“Staff - Curriculum Vitae - Madeleine de Cock Buning,” Center for Intellectual Property Law, available at: <http://www2.law.uu.nl/priv/cier/eng/staff/mcockbuning.htm>; Madeleine De Cock Buning, LinkedIn profile, available at: <http://www.linkedin.com/pub/madeleine-de-cock-buning/5/88b/3a8>.

117 “Eric Eljon,” Commissariaat voor de Media, available at: <http://www.cvdm.nl/content.jsp?objectid=CVDM:11953>;

“Eric Eljon nieuwe commissaris bij Commissariaat voor de Media,” June 1, 2011, available at: <http://www.rijksoverheid.nl/nieuws/2011/06/01/eric-eljon-nieuwe-commissaris-bij-commissariaat-voor-de-media.html>.

criticism to which the Hungarian Government is responding—that “appointed members of the [Hungarian] Media Council were chosen among allies of the incumbent government”—as there is no indication that members of the Dutch Media Authority have any affiliation with the ruling party.

Finally, in evaluating the salience of the Dutch example to the Hungarian Government’s claims, one should keep in mind the scope of authority of the respective regulatory bodies. While any level of political interference over media authority bodies is a threat to press freedom, this becomes increasingly problematic in accordance with the particular media authority’s regulatory scope and powers. The regulatory scope of the Dutch Media Authority is extensive, but from this author’s understanding, it is substantially more limited than the Hungarian Media Authority’s and Media Council’s. In this sense, the use of the Dutch example may not serve as an entirely adequate comparison.

Example cited by Hungarian Government: SWEDEN

“In Sweden, the government appoints the Authority (Radio- och TV Verket) and the Broadcasting Commission, as well as the members of the body overseeing communications – all three organisations are under government control.”¹¹⁸

Expert assessment

Henrik Örnebring, PhD, University of Oxford

It is not entirely clear which three bodies this statement is referring to. By the “Authority,” this likely means the Radio and Television Authority (*Myndigheten för Radio och TV*)¹¹⁹ which replaced the Radio and TV Bureau (*Radio- och TV-verket*) in August 2010.¹²⁰ The “body overseeing communication” most probably refers to the Swedish Broadcasting Commission, a separate body within the Radio and Television Authority that oversees content-related complaints against broadcasters.¹²¹ It is accurate to say that for both the Radio and Television Authority and the Swedish Broadcasting Commission, the cabinet of ministers jointly appoint members to both bodies—although it is not accurate to claim that these bodies “under government control.” Despite being appointed by the Government, both of the Radio and Television Authority and Swedish Broadcasting Commission have a good deal of *de facto* independence and operate free from political influence. In the case of the Swedish Broadcasting Commission in particular, the

118 “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

119 See the Radio and Television Authority (*Myndigheten för Radio och TV*) website available at: <http://www.radioochtv.se/>.

120 The Radio and Television Authority was created by the *Radio and Television Act*. SFS No. 2010:696, available in Swedish at: <http://www.radioochtv.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>; see also “The New Swedish Authority for Radio and TV,” Michael Plogell and Erik Ullberg,” IRIS 2010-8:1/45, available at: <http://merlin.obs.coe.int/iris/2010/8/article45.en.html>.

121 The Swedish Broadcasting Commission (*Granskningsnämnden*) was previously a separate entity, but in August 2010 was brought under the Radio and Television Authority, using the same name. The Swedish Broadcasting Commission still has a separate Board and makes its decisions independently of the Board of the Radio and Television Authority. The new *Radio and Television Act* (SFS No. 2010:696), Chapter 16(2) also establishes that the Broadcasting Commission has a separate mandate and remit; see Swedish Broadcasting Commission available at: <http://www.radioochtv.se/Om-myndigheten/Organisation/Granskningsnamnden-for-radio-och-tv/>, and also the *Radio and Television Act*. SFS No. 2010:696, available in Swedish at: <http://www.radioochtv.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>.

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members are not political appointees or political loyalists but rather senior judges and experts.

The Radio and Television Authority and Swedish Broadcasting Commission are responsible for regulating TV and radio broadcasting, on-demand TV and teletext, under the revised *Radio and Television Act* of 2010. The Radio and Television Authority monitors broadcasters' compliance with licensing and technical provisions of the law and the Swedish Broadcasting Commission deals with monitoring compliance to content-based regulations. A key part of the work of the Swedish Broadcasting Commission is dealing with complaints from the public against Swedish broadcasters. The Commission can also launch investigations into breaches of content regulations *ex officio*. Both bodies also work in cooperation with the Chancellor of Justice in handling content-based breaches to the *Radio and Television Act*.¹²² The Swedish Consumer Agency is a state body that oversees advertising regulations and standards in broadcasting. In addition, the print and online press are governed by the self-governing Press Council and the Swedish Press Ombudsman, and public broadcasting is regulated by three separate boards for each of the three public service stations.

The Radio and Television Authority was established in August 2010 by the revised *Radio and Television Act*. It is a regulatory body under the Ministry of Culture, exercising laws decided on by the Swedish Parliament. It is composed a director general and up to five members, all appointed by the cabinet of ministers without a formal nomination process. The director general serves indefinitely renewable six-year terms; the other five members serve three-year terms which are also renewable. The director general is required to be a lawyer with judicial experience. There are no particular criteria or professional requirements for the remaining members. The director general and the board's members cannot be recalled after they are appointed. New members and/or a new director general can only be appointed if they voluntarily leave their post or in the case of their death.

The Radio and Television Authority's duties include making "decisions on permits, fees and registration of and for radio, TV and electronic media outlets as applicable, and to monitor radio and TV broadcasts, pay-per-view and teletext, and to make decisions on proof of publication according to the *Fundamental Law of Freedom of Expression*."¹²³ The Authority is responsible for monitoring broadcasters' compliance with the *Radio and Television Act*, but any decisions it makes involving constitutional issues—for instance, breaches to the *Freedom of the Press Law*, which governs the print press, and/or the *Fundamental Law of Freedom of Expression*, which regulates broadcast and digital media (including, in some cases, online press)—are enforced by the Office of the Chancellor of Justice.¹²⁴ Other decisions by the Radio and Television Authority can be appealed to the Stockholm Administrative Court.

The Broadcasting Commission is composed of a chairperson and six additional members, also appointed by the cabinet of ministers without a formal nomination process. The *Radio and Television Act* stipulates that the chairperson and vice-chairperson must be active or former permanent judges.¹²⁵ There are no professional criteria or requirements in the law for the

122 According to Chapter 16(1) of the *Radio and Television Act* (SFS No. 2010:696), the Chancellor of Justice also "monitors through post-broadcast review whether programmes that have been broadcast on TV or provided through on-demand TV contain portrayals of violence or pornographic images in violation of Chapter 5. Sections 2 or 3 of the *Radio and Television Act*." Available in Swedish at: <http://www.radioochtv.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>; <http://www.radioochtv.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>.

123 Author's translation from the Radio and Television Authority website, available at: <http://www.radioochtv.se/Ommyndigheten/>.

124 See "Common provisions," Review by the Chancellor of Justice, *Radio and Television Act*, SFS No. 2010:696 <http://www.radioochtv.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>. Registration for online press is often voluntary; see Chapter 3 in this report for more information regarding the regulations for online press in Sweden.

125 Chapter 16(14) of the *Radio and Television Act*, SFS No. 2010:696 <http://www.radioochtv.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>.

remaining members but in practice most have been experts with broad experience in societal issues, culture and media. Often members are academic researchers and senior representatives of cultural institutions or NGOs (e.g. the Swedish Film Institute, The National Opera, the Swedish Red Cross) rather than political appointees. In addition, three replacement members are appointed to serve as members for any of the five media experts in their absence. These replacement members are also media experts, serving three-year terms. Appointment terms are staggered and renewable. Members cannot be recalled by the Government; they remain in office until their term expires, or until they voluntarily leave or in the case of their death.

The Broadcasting Commission was previously a separate entity, but since 2010 it is now an autonomous department within the Radio and Television Authority. The Commission monitors through post-broadcast review of TV, radio and on-demand TV programming for compliance with content and programme-related conditions of the *Radio and Television Act*.¹²⁶ If it finds that a broadcast or a provided service contains portrayals of violence or pornographic images in violation of Chapter 5 Sections 2 or 3 of that Act, the Commission can notify the Chancellor of Justice. The Broadcasting Commission, like the Radio and Television Authority, does not have the remit to investigate or monitor breaches of the *Freedom of the Press Law* or *Fundamental Law of Freedom of Expression*; that is the sole remit of the Chancellor of Justice.

Although appointed by the Government, both of these bodies are considered to be independent, and most observers would agree, apolitical. However, the fact that conservative governments tend to appoint conservative directors (in all cases, not just specific to the media regulatory bodies) and social democratic governments tend to appoint social democratic directors has been debated but has never been a major political issue.

Example cited by Hungarian Government: SWITZERLAND

*“In Switzerland, the duties of the media authority are performed by a ministry (Ministry of Environment, Traffic, Energy and Communication).”*¹²⁷

Expert assessment

Manuel Puppis, Phd/**Matthias Künzler**, Phd, University of Zurich

It is not accurate to reference the Department of Environment, Transport, Energy and Communication (DETEC) as performing the “duties of the media authority” in Switzerland. DETEC is only responsible for awarding licenses to broadcasters.¹²⁸ The regulator for broadcasting is the Federal Office of Communications (OFCOM),¹²⁹ which is subordinated to the DETEC and part of the federal administration.¹³⁰ In Switzerland, media regulation is managed by several different bodies: the OFCOM is responsible for overseeing most of the provisions of the *Federal*

¹²⁶ Chapter 16(2) of the *Radio and Television Act*, SFS No. 2010:696 <http://www.radioochtv.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>.

¹²⁷ “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

¹²⁸ See Article 45(1) of the *Federal Act on Radio and Television* (RTVA), (784.4), 4 March 2006 (status as of 1 February 2010), unofficial English translation available at: http://www.admin.ch/ch/e/rs/784_40/a45.html.

¹²⁹ See Federal Office of Communication (OFCOM) website at: <http://www.bakom.admin.ch/index.html?lang=en>.

¹³⁰ See OFCOM’s mission and legal framework: http://www.bakom.admin.ch/org/strategie/index.html?lang=en#sprungmarke3_1.

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Act on Radio and Television of 2006 (RTVA), which governs broadcasting, processing, transmission and reception of radio and television “programme services” in Switzerland,¹³¹ and the Independent Complaints Authority for Radio and Television (ICA) is an independent regulatory agency that deals with complaints about the content of editorial programmes of all programme services (traditional linear television and radio programmes, irrespective of the form of transmission).¹³²

As noted, the OFCOM is part of DETEC and thus part of a government ministry.¹³³ The federal administration of Switzerland consists of seven federal departments (among them the DETEC) and the Federal Chancellery.¹³⁴ Each department consists of several federal offices (including the OFCOM), headed by a director. The director general of the OFCOM is appointed by the Government for unrestricted term lengths.¹³⁵ Employment with the director of the OFCOM can be terminated by the Government, as the OFCOM is part of the Federal Administration.¹³⁶ However, while it is accurate to claim the OFCOM is not formally independent from the Government, the Swiss political system of “concordance democracy” is such that no single party has a majority in Parliament and appointments to federal offices are therefore not prone to party-political influence.

The ICA has nine part-time members appointed by the Government. The ICA is independent and not bound by any directives.¹³⁷ All members of the ICA are appointed at the same time (coinciding with election cycles) for four-year terms;¹³⁸ additional appointments are made in case of vacancies and end with the normal term length.¹³⁹ The maximum term length is restricted to 12 years, but in extraordinary cases the Federal Council may prolong the term length to 16 years.¹⁴⁰

Members of Parliament, state employees or employees of Swiss broadcasters cannot be elected to the ICA.¹⁴¹ When appointing members, the Federal Council must ensure that both genders and the different linguistic regions are represented.¹⁴² Beyond this, there are no formal professional requirements for membership. But in practice most of the members of the ICA have either a legal or a journalism background. For instance, the current head of the ICA is a former professor of communication studies and journalist. In the explanatory notes of the *Radio and Television Ordinance* (RTVO), the Government also states its commitment to appointing members of the ICA according to professional and not party-political considerations.¹⁴³

131 *Federal Act on Radio and Television* (RTVA), Article 86(1), unofficial English translation available at: http://www.admin.ch/ch/e/rs/784_40/a86.html.

132 See Independent Complaints Authority for Radio and Television website, available at: <http://www.ubi.admin.ch>. *Federal Act on Radio and Television* (RTVA), Articles 4, 5, 83(1) and 86(1), unofficial English translation available at: http://www.admin.ch/ch/e/rs/784_40/index.html.

133 OFCOM's mandate derives from the *Federal Act on Radio and Television* (RTVA), (784.4), The Federal Assembly of the Swiss Confederation, 4 March 2006 (status as of 1 February 2010). unofficial English translation available at: http://www.admin.ch/ch/e/rs/784_40/a45.html.

134 Federal departments are roughly equivalent to the ministries of other states, but their scope is generally broader.

135 *Federal Personnel Ordinance* (BPV), Article 2(1)(b), in German at: <http://www.admin.ch/ch/d/sr/1/172.220.111.3.de.pdf>.

136 *Federal Personnel Ordinance* (BPV), Article 2(1)(b) and Article 26, in German at: <http://www.admin.ch/ch/d/sr/1/172.220.111.3.de.pdf>.

137 *Federal Act on Radio and Television* (RTVA), Article 84, unofficial English translation available at: http://www.admin.ch/ch/e/rs/784_40/a84.html.

138 *Government and Administration Organisation Act* (RVOG), Article 57c(2) and 57c(3), available in German at: <http://www.admin.ch/ch/d/sr/s/172.010.de.pdf>.

139 *Government and Administration Organisation Act* (RVOG), Art. 57c(3), 57c(4) and 57d, available in German at: <http://www.admin.ch/ch/d/sr/s/172.010.de.pdf>; *Government and Administration Organisation Ordinance* (RVOV), Article 8g and 8h(1), available in German at: <http://www.admin.ch/ch/d/sr/1/172.010.1.de.pdf>.

140 *Government and Administration Organisation Ordinance* (RVOV), Article 8i(1) and 8i(2), available in German at: <http://www.admin.ch/ch/d/sr/1/172.010.1.de.pdf>.

141 *Federal Act on Radio and Television* (RTVA), Article 82, unofficial English translation at: http://www.admin.ch/ch/e/rs/784_40/a82.html.

142 *Radio and Television Ordinance* (RTVO), Article 75, unofficial English translation available at: http://www.admin.ch/ch/e/rs/784_40/a75.html.

143 *Radio and Television Ordinance* (RTVO) Explanatory Notes, Article 75, available in German at:

The ICA is an independent agency and governmental intervention is precluded by law: the Government is not allowed to intervene.¹⁴⁴ The members of the ICA cannot be recalled by the Government or any other political institution. Again, it is of major importance to highlight Switzerland's unique political system. The country is a so-called "concordance democracy" and there is no Government-opposition system. The seven-member Federal Council (the Government) is a grand coalition. The seats are distributed in approximate relation to the (major) parties relative strength in the Federal Assembly (parliament). As a consequence, no party dominates and decisions in the Federal Council are normally arrived at by consensus. This also means that changes in government do not involve a change of the ruling parties and thus also no change of heads of the administration. In sum, the Swiss political system is not prone to party political influence on any of the departments and federal offices (e.g. OFCOM). As government decisions are based on consensus, federal offices are not politicised.

However, the Federal Council retains the right to give instructions to the directors of federal offices like OFCOM, which are subordinated to them. Nevertheless, federal offices usually perform their tasks without political interference. The authority to give directions is usually restricted to strategy and policy. Regulatory decisions are usually not interfered with. In addition, the Swiss Press Council holds all media (press, radio, TV, websites of traditional media) to its self-regulatory code of professional ethics.

Example cited by Hungarian Government: UK

"Members of the convergent British authority OFCOM – including its chairperson – are appointed by the Secretary of State for Culture, Media and Sport."¹⁴⁵

Expert assessment

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Appointments to key positions within Ofcom have raised concerns since Ofcom's inception as the UK's new "super regulator" in 2003.¹⁴⁶ However, the statement above is not entirely accurate, as it misleadingly implies that the appointment process is wholly government controlled. The Ofcom Board, including its chairperson, are appointed following procedures for all public appointments in the UK, which are designed as a "check" on the ability of ministers to appoint politically affiliated persons to key public posts, such as the Ofcom chairperson.¹⁴⁷ Hence, it is true the chairperson of Ofcom is appointed jointly by the Department for Business, Enterprise and Regulatory Reform (DBERR) and the Department for Culture, Media and Sport (DCMS). But the appointment process that follows is open to public scrutiny and conducted by a cross-party committee. However

http://www.bakom.admin.ch/dokumentation/gesetzgebung/00512/01031/index.html?lang=de&download=NHZLpZeg7t,lnp610NTU04212Z6lnlacy4Zn4Z2qZpnO2YUq2Z6gpJCDdn96fmym162epYbg2c_JjKbNoKSn6A--

¹⁴⁴ *Federal Act on Radio and Television (RTVA)* Article 84, available at: http://www.admin.ch/ch/e/rs/784_40/a84.html.

¹⁴⁵ "Reply to the criticisms expressed by the international media against the Media Act," Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

¹⁴⁶ "Tories give warning on Ofcom's Labour Party links," *The Sunday Times*, October 6, 2006, available at: http://business.timesonline.co.uk/tol/business/industry_sectors/media/article663004.ece.

¹⁴⁷ Office of the Commissioner for Public Appointments (OCPA), available at: <http://publicappointmentscommissioner.independent.gov.uk/codeofpractice/ef8446f3551.html>; See also Procedures for public appointments - Governance of Britain Green Paper, available at: <http://www.parliament.uk/documents/commons/lib/research/rp2007/rp07-072.pdf>.

1/MEDIA AUTHORITY: INDEPENDENCE

a number of appointments have nevertheless sparked controversy for being politically motivated; as a result, the appointment procedures are under review by the current Government in order to increase Ofcom's independence from political actors.

Ofcom is a “convergent” regulatory authority for broadcast TV and radio, postal services and wireless telecommunications.¹⁴⁸ It has no regulatory authority over the print or online media (other than online content provided by TV and radio broadcasters), or many areas of the BBC. It is important to note that the Ofcom Board, to which the statement above refers, plays no direct role in regulating the media; rather, the Board sets the overall strategy for Ofcom in general, but neither the Board nor its chairperson have any specific competencies to monitor compliance with the media laws or to assess and sanction breaches to it.¹⁴⁹ Rather, these responsibilities are handled by the Content Board,¹⁵⁰ a separate committee within Ofcom that oversees compliance with the regulations in the *Communications Act 2003* and other media laws.¹⁵¹

The Ofcom Board consists of 10 executive and non-executive members: four full-time executive members (including a chief executive) and six part-time non-executive members (including a chairperson). The chairman is appointed by the Department for Business, Enterprise and Regulatory Reform and the Department for Culture, Media and Sport for five-year terms in accordance with the *Codes of Practice for Ministerial Appointment to Public Bodies*.

The recruitment process is conducted by a non-governmental company of consultants, following a publicly advertised call for applications. Six non-executive, part-time board members are appointed jointly by the Secretary of State for Culture Media and Sport and the Secretary of State for Trade and Industry, also based on the same codes of practice for ministerial appointments. A nominations committee composed of four non-executive members of the Ofcom Board also assists the Department for Business, Innovation and Skills (BIS) and the Department for Culture, Media and Sport (DCMS) in identifying and nominating non-executive members to fill vacancies when they arise. The nominations committee is also responsible for appointing executive members to the board. The chief executive is appointed by the (non-executive) chairperson and the other non-executive members of the Ofcom Board with the approval of the state secretaries.¹⁵²

All appointments to the Ofcom Board are made following the code established by the Office of the Commissioner for Public Appointments (OCPA) and subject to open competition and independent scrutiny.¹⁵³ The recruitment is followed by a public hearing, held by select cross-party committees, which examine spending, policies and administration for each government department. These committees produce a report on the candidate's suitability for the post, which includes consideration of the candidate's professional competence and personal independence. Hearings for candidates of Ofcom's chairmanship must be publicly available.¹⁵⁴

These committees are however not able to veto an appointment, a stipulation which is meant

148 See “What is Ofcom?” Available on Ofcom's website at: <http://www.ofcom.org.uk/about/what-is-ofcom/>.

149 Ofcom is divided into eight committees, including the Ofcom Board, the Executive Board, the Spectrum Clearance and Awards Programme Management Board, the Operations Board, the Content Board. Each unit is responsible for different areas of media and telecommunications regulation within Ofcom.

150 See Ofcom's Content Board at: <http://www.ofcom.org.uk/about/how-ofcom-is-run/content-board/>.

151 See Article 12 on the Content Board's remit regarding the *Communications Act 2003*, available at: <http://www.legislation.gov.uk/ukpga/2003/21/part/1/crossheading/ofcoms-content-board>.

152 See “Terms of Reference,” Ofcom website, available at: <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/nominations-committee/terms-of-reference/>.

153 Office of the Commissioner for Public Appointments (OCPA), available at: <http://publicappointmentscommissioner.independent.gov.uk/codeofpractice/ef8446f3551.html>.

154 See “Pre-appointment hearing with the Chairman-elect of Ofcom, Dr Colette Bowe,” First Joint Report of Session 2008–09, House of Commons, 13 January 2008, available at: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmberr/119/119.pdf>.

to ensure that appointments ultimately remain ministerial responsibility. This is policy is under review by the current Government as a result of several controversial appointments, including that of the first Ofcom chairperson, Lord David Currie, a member of the Labour party and a close ally of then Chancellor Gordon Brown.¹⁵⁵ The appointment of former Tony Blair advisor Edward Richards as chief executive of the Ofcom Board in 2006 was also heavily criticised in the UK press.

¹⁵⁵ “Peer named media watchdog chief,” *BBC News World Edition*, 25 July, 2002, <http://news.bbc.co.uk/2/hi/entertainment/2150739.stm>.

2/Media Authority: centralised structure and regulatory scope

Hungary's Media Authority is responsible for overseeing all media sectors and all areas of media regulation—from tendering, licensing and spectrum management to monitoring compliance with and issuing sanctions for breaches to the new media laws. Opponents say the Media Authority's "dual-headed" structure, with the president of the Media Authority also serving as chairperson of the Media Council, centralises media governance in the hands of a single regulator with an unprecedented scope of authority over Hungary's media landscape. Critics claim the Media Authority's far-reaching regulatory scope vastly exceeds that of other media authorities in Europe. According to the Hungarian Government, the new system streamlines regulatory activities in response to digital convergence and the Media Authority is similar to other "convergent" regulatory bodies in Europe.

The Media Authority was established by Hungarian lawmakers in July 2010 as the country's new "super regulator" responsible for overseeing all sectors of the media, telecommunications and postal services.¹ It replaced Hungary's two former regulatory agencies—the National Radio and Television Commission (ORTT), the media regulator, and the National Communications Authority (NHH), the telecommunications regulator—with a single, convergent body to manage all media sectors and areas of media regulation.²

The Media Authority's regulatory powers and scope are specified in the *Act on the Freedom of the Press and the Fundamental Rules on Media Content* (the "Press Freedom Act") and the *Media Services and Mass Media Act* (the "Media Act"), as well as in a number of amended laws in the media law "package."³

These laws introduced new regulations for all "media services" and press products—which includes public and commercial broadcasting, Internet TV and radio, on-demand media, print and online press, and foreign media "aimed at" Hungary—to be overseen by the Media Authority.

The Media Authority is composed of three main entities: the President of the National Media and Infocommunications Authority; the Office of the National Media and Infocommunications Authority; and the Media Council—each with a range of competencies over media, electronic communications and telecommunications regulations.⁴ The president oversees the Media Authority's broader monitoring, regulatory and enforcement activities in the media and telecommunications sectors.⁵ The president's

1 The National Media and Infocommunications Authority (NMHH), the "Media Authority," was established by Act 82/2010, passed by Parliament on July 22, 2010, which amended several laws regulating the media and telecommunications sectors, including the *Electronic Communications Act 2003* and the *1996 Law on Radio and Television Broadcasting*. Text of Act 82/2010, in Hungarian: <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk10129.pdf>.

2 For a summary of these changes, see "Hungary: A Wave of Media Legislation," Mark Lengyel, The European Audiovisual Observatory, *IRIS 2010-8:1/34*, <http://merlin.obs.coe.int/iris/2010/8/article34.en.html>.

3 *Act CIV of 2010 on the freedom of the press and the fundamental rules on media content* (the "Press Freedom Act") as amended March 2011, available at: [---

\[http://cmcs.ceu.hu/files/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf\]\(http://cmcs.ceu.hu/files/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf\); Act CLXXXV of 2010 *on media services and mass media*, \(the "Media Act"\), as amended March 2011, available at: <http://nmhh.hu/dokumentum.php?cid=26536>; other legislation in media law "package" includes the amended *Electronic Communications Act 2003*, the amended Articles 43/A-43/M of the *Act on the Rules of Broadcasting and Digital Switchover \(2007\)*, the amended *1996 Act on the Prohibition of Unfair and Restrictive Market Practices*, and the amended Articles 7/A, 40/E, and 61 in the *Constitution of the Republic of Hungary*.](http://cmcs.c</p></div><div data-bbox=)

4 *Media Act*, Article 109(3), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

5 These include: the *Press Freedom Act*, the *Mass Media Act*, the *Electronic Communications Act 2003*, the amended

general supervisory tasks include monitoring and inspecting compliance with content- and competition-related provisions of the media laws, as well as with provisions in all public contracts in the media register.

The Media Authority president also manages tendering and licensing for digital broadcasters, in accordance with the amended *Act on the Rules of Broadcasting and Digital Switchover*.⁶ Under an amendment to the Hungarian Constitution, the president is vested with ministerial-level powers to issue decrees regarding license and spectrum fees (see Chapter 5 of this report on the Media Authority's powers).⁷

The president oversees the Office of the Media Authority, as well as a number of administrative units,⁸ including the Media and Communications Commissioner, a new official within the Media Authority responsible for “ensuring rights of media consumers.”⁹ The president can appoint, recall, and dismiss the Office's top management—two vice presidents, director general, and deputy director¹⁰—as

well as the Media and Communications Commissioner and the Director of the Public Administration Frequency Management Authority (KFGH).¹¹ The president can recall without justification the vice presidents and director general of the Media Authority.¹² The president also convenes and chairs meetings of the Media Council, with full voting rights once appointed as chairperson.¹³

The Office of the Media Authority is responsible for overseeing the media and electronic communications sectors, with respect to the *Electronic Communications Act*, the *Press Freedom Act* and *Media Act*. The Office oversees media registration and manages frequencies and spectrum allocation. It also handles content-related complaints from the public,¹⁴ and monitors compliance with a range of content- and competition-related provisions of the media laws.¹⁵

The Media Council is a formally autonomous body within the Media Authority, composed of four members and a chairperson, who is also the acting Media Authority president.¹⁶ The Media Council is the primary body responsible for overseeing compliance with the *Press Freedom Act*, or so-called “media constitution,” which introduced a range of content regulations for all media sectors.¹⁷ The Media Council is also responsible for tendering, renewing and awarding licenses for all linear media service providers (analogue radio and TV broadcasters).¹⁸

Articles 43/A-43/M of the *Act on the Rules of Broadcasting and Digital Switchover (2007)*, and the 1996 *Act on the Prohibition of Unfair and Restrictive Market Practices*.

6 Under the amended Articles 43/A-43/M Act LXXIV of 2007 on the Rules of Broadcasting and Digital Switchover, as specified by Article 220 in the *Media Act*. According to Article 43/A (6), a committee supervises the tender procedure, and the Media Authority's decision regarding the winner of the tender must be approved by two-thirds vote of the committee, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

7 Per Articles 7/A and 40/E(4), *The Constitution of the Republic of Hungary*, Act XX of 1949 as revised and restated by Act XXXI of 1989, as of 2 January 2011. According to Article 40/E (4): “Within its competence specified in statute, the President of the National Media and Infocommunications Authority shall issue decrees in accordance with an authorization given by a statute, which shall not conflict with other laws.” Available at: <http://www.mkab.hu/index.php?id=constitution>.

8 The Media Authority also heads two administrative units: the Public Administration Frequency Management Authority (KFGH), which provides support to the Authority in spectrum management, and the National Council for Communication and Information Technology (NHIT), an advisory body to the Government on information technology and communications related matters.

9 *Media Act*, Article 111(2)(f), available at: <http://nmhh.hu/dokumentum.php?cid=26536>; see section on Media and Communications Commissioner in Chapter 5 of this report.

10 *Media Act*, Article 111(2)(c)(d) and (e), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

11 *Media Act*, Article 111(2)(o). According to this article, the President can appoint, dismiss or recall the Director of the KFGH, upon the Director General's proposal, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

12 *Media Act*, Articles 113(6), 115(7), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

13 *Media Act*, Article 111(2)(a), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

14 *Media Act*, Article 145, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

15 Articles 182 and 184 of the *Media Act* contain a list of content regulations the Office is responsible for overseeing, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

16 *Media Act*, Article 123, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

17 Article 3 of the *Press Freedom Act* and Articles 176 to 180 of the *Media Act*, <http://nmhh.hu/dokumentum.php?cid=26536>.

18 *Media Act*, Article 48(3), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

2/MEDIA AUTHORITY: CENTRALISED STRUCTURE

In addition, the Media Council manages the new fund for Hungary's public service media, the MTVA, and the Media Council chairperson appoints, sets the salary for and can terminate its director general.¹⁹ The chairperson of the Media Council also selects the nominees for directors of Hungary's public media outlets (see *Chapter 4 of this report on Public Service Media*).

The Media Authority and the Media Council are empowered, by public request or *ex officio*, to initiate infringement proceedings against media outlets for violations to the media laws as well as the "rules on media administration."²⁰ This includes provisions in the *Media Act*, the *Press Freedom Act*, and all public contracts and licensing/registration agreements.²¹ Each body is vested with a range of sanctioning powers, which include fines, suspensions and license revocations (see *Chapter 7 of this report on Sanctions*).

International criticism

Opponents claim the "dual leadership" of the Media Authority and the Media Council diminishes the operational and *de facto* autonomy of these agencies.²² According to one legal analysis, the new system has created

an "extensive, complex, and overlapping bureaucratic web of administrative authorities, ultimately answerable to the Prime Minister, with far-reaching powers to control the media."²³ Critics warn the system's centralised structure gives Hungary's "media czar," Annamária Szalai, as head of both the Media Authority and the Media Council, an excessive level of regulatory control over the media and communications landscape in Hungary. "There is not an area in the telecommunications and media/content provision field where the President does not have decisive say or cannot exert very strong influence, either single-handedly, or through voting and decision-making procedures," according to media expert Karol Jakubowicz, who conducted an analysis of the draft legislation of the media laws for the OSCE in September 2010.²⁴ "This simply cannot be described as being compatible with the basic principles of democracy," according to Jakubowicz.

According to Miklós Haraszti, former OSCE Representative on Freedom of the Media, the Media Authority's "pyramid" structure "would be unprecedented even if it were not operated by the ruling party alone."²⁵ However according to Haraszti the system of a "dual monarchy" of the Media Authority and Media Council under the leadership of the single person appointed by the prime minister is found no where else in democratic Europe: "Only Russia's *Roskomnadzor* and the Belarus *Ministerstvo Informatsii* has the same dual-head feature (and the 'pyramid')," Haraszti states.²⁶

19 *Media Act*, Article 136 (11), available at: <http://nmhh.hu/dokumentum.php?cid=26536>; see section on Public Service Media in this report.

20 *Media Act*, Article 167(1), Under Article 185(1) of the *Media Act*, <http://nmhh.hu/dokumentum.php?cid=26536>. According to this article: "The Media Council or the Office shall have the right to apply the legal consequence on parties infringing rules on media administration in accordance with the provisions of Articles 186-189."

According to Article 203(39) of the *Media Act*: "Rules on media administration shall mean this Act and Act CIV of 2010 on the *Freedom of the Press and the Fundamental Rules on Media Content*, and any legislation issued in respect of the implementation of the aforementioned acts; any directly applicable legal instrument of the European Union concerning media administration; any public contract entered into by and between the Media Council and the Office, and the regulatory decision issued by the Media Council and the Office."

21 *Media Act*, Article 203(39), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

22 "Analysis and Assessment of a Package of Hungarian Legislation and Draft Legislation on Media and Telecommunications," Prepared by Dr. Karol Jakubowicz, Commissioned by the Office of the OSCE Representative on Freedom of the Media. Warsaw, Poland, September 2010, available at: <http://www.osce.org/fom/71218>.

23 "Legal Analysis Of The Proposed Amendments to the 2010 Hungarian Media Laws," The Center for Democracy and Technology, March 2, 2011, available at: <http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/CDT%20Analysis%20Amendments%20to%20Hungarian%20Media%20Laws.pdf>.

24 "Analysis and Assessment of a Package of Hungarian Legislation and Draft Legislation on Media and Telecommunications," Prepared by Dr. Karol Jakubowicz, Commissioned by the Office of the OSCE Representative on Freedom of the Media. Warsaw, Poland, September 2010, available at: <http://www.osce.org/fom/71218>.

25 "Hungary's Media Law Package," A note by Miklós Haraszti, former OSCE Representative on Freedom of the Media, January 16, 2011, <http://www.statewatch.org/news/2011/jan/hungary-haraszti-media-law-package.pdf>.

26 "Hungary's Media Law Package," A note by Miklós

Hungarian Government's response

The Hungarian Government states that the Media Authority's centralised structure streamlines regulatory activities in response to digital convergence.²⁷ "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," according to the Government's December 2010 statement. "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."²⁸

The Government also points to a number of similar convergent regulatory authorities, including the Federal Communications Commission (FCC) in the United States,

Haraszi, former OSCE Representative on Freedom of the Media, January 16, 2011, <http://www.statewatch.org/news/2011/jan/hungary-haraszti-media-law-package.pdf>.

27 See "Criticism 10," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, 20 December 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

28 See "Criticism 10," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," 20 December 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

whose "powers of authority cannot be challenged on constitutional grounds, as the rules governing public administration procedures are (*sic*) fully conform with the requirements of legal certainty and predictable law enforcement."²⁹ The Government emphasises that the *Media Act* creates 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."³⁰

The Hungarian Government states that Hungary's Media Authority shares similarities with other convergent regulatory bodies in Europe, citing specifically those in **Finland** (FICORA), **Italy** (AGCOM) and **United Kingdom** (Ofcom).³¹

29 See "Criticism 10," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," 20 December 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

30 See "Criticism 10," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," 20 December 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

31 See "Criticism 10," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," 20 December 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

2/Findings: Media Authority's centralised structure and regulatory scope

In response to the criticism of the Media Authority's centralised structure and regulatory scope, the Hungarian Government states that Hungary's Media Authority shares similarities with other convergent regulatory bodies in **Finland** (FICORA), **Italy** (AGCOM) and the **UK** (Ofcom). According to the expert evaluations, the single common point between the three regulatory bodies cited and Hungary's Media Authority is that each are formally "convergent" regulators with varying levels of competencies over the media, telecommunications and postal sectors. Yet the expert assessments indicate that the scope of powers afforded to Hungary's Media Authority exceeds those in the three examples cited in the following areas:

Regulatory scope: Hungary's Media Authority has monitoring and sanctioning powers over all media—including private and public broadcasting, and the print and online press. By comparison, none of three convergent regulatory bodies have content-related authority over traditional print or online press. According to the expert assessments:

- **Finland's FICORA** regulates commercial broadcasting, but has no authority over public media or print and online press.
- **Italy's AGCOM** regulates private and commercial broadcasting; it manages compulsory registration for traditional print and online press but has no content-related regulatory (or sanctioning) authority over these media.
- **UK's Ofcom** regulates commercial broadcast media and their online content but has limited authority over the BBC (or its websites) and does not regulate print or online press.

Regulatory tasks: Hungary's Media Authority is responsible for a range of regulatory duties—from tendering, licensing and spectrum allocation to monitoring compliance with and issuing sanctioning for breaches to Hungary's media laws. Based on the expert assessments, the specific structure of Hungary's Media Authority, in which all of these tasks are carried out by a single body, appears to be unique among the three examples cited.

- **Finland's FICORA** only has powers to grant (and revoke) short-term broadcasting licenses; the power to grant (and revoke) broadcasting licenses is with the Ministry of Transport and Communications. FICORA's oversight deals primarily with technical and economic aspects of media regulation and it has limited decision-making and sanctioning powers beyond these areas.
- **Italy's AGCOM** is not responsible for tendering, licensing, and spectrum allocation; the AGCOM Board is responsible for monitoring compliance (among broadcasters) with media laws and for issuing sanctions.
- **UK's Ofcom** is responsible for tendering, licensing, and spectrum allocation, however these tasks are handled by separate unit within Ofcom; Ofcom's Content Board handles complaints, monitors compliance with the media laws, and issues sanctions.

Regulatory authority's position in the country's media regulation system: Hungary's Media Authority is the sole regulatory authority for the media in Hungary. By comparison, the convergent regulators cited share regulatory responsibilities with a number of other state and/or self-regulatory bodies. According to the expert assessments:

- **Finland's Ficora** shares regulatory responsibilities with the Ministry of Transport and Communications; media in Finland area also supervised by a number of self-regulatory bodies, including the Council for Mass Media and the Council of Ethics in Advertising.
- **Italy's AGCOM** shares regulatory responsibilities with the Department of Communications, the Parliamentary Commission for Public Service Broadcasting, the Antitrust Authority, the Privacy Authority, the Professional Order of Journalists, and the courts.
- **UK's Ofcom** has pursued a so-called "light-touch" policy, opting for co-regulatory schemes involving different bodies, including with the Authority for Television On-Demand (ATVOD), which oversees on-demand TV, the Advertising Standards Authority (ASA), which monitors advertising and marketing regulations for all media in the UK, and the Secretary of State for Sport, Culture and Media, as well as the Secretary of State for Trade and Industry.

Based on the above criteria, Hungary's Media Authority has the broadest regulatory scope of the three convergent regulatory bodies cited. As the expert assessments indicate, Hungary's Media Authority is the only convergent regulatory body among these examples that is responsible for tendering, licensing and spectrum management and also has regulatory and sanctioning powers over all media sectors.

2/Expert Assessments: Media Authority's centralised structure and regulatory scope

Example cited by Hungarian Government: FINLAND

“There is a convergent authority showing similarities with its Hungarian counterpart in Finland (Ficora).”³²

Expert assessment

Kari Karppinen, PhD/Hannu Nieminen, PhD, University of Helsinki

The Finnish Communications Regulatory Authority (FICORA) is a convergent authority, as this statement correctly notes, but without specifying any provisions or powers to compare beyond this, the “similarities” between FICORA and its Hungarian counterpart cannot be substantiated. Convergent media authorities in Europe and elsewhere vary significantly in terms of their regulatory scope, powers and overall regulatory approach. FICORA’s responsibilities extend to commercial TV and radio broadcasting (on the basis of the *Act on Radio and Television Operations*),³³ telecommunications (*Communications Market Act*),³⁴ postal services, privacy protection, data security, and some other areas of information society services specified in the *Act on Communications Administration*.³⁵ FICORA does not regulate print, which are self-regulated by professional codes adopted by the Council for Mass Media,³⁶ or public service media, which are governed by separate administrative provisions detailed in the *Act on the Finnish Broadcasting Company*.

FICORA is a supervisory and administrative agency under the Ministry of Transport and Communications.³⁷ Its oversight deals primarily with technical and economic aspects of media regulation and has limited decision-making and sanctioning powers beyond these areas. It can grant (and revoke) short-term broadcasting licenses, but the real power to grant (and revoke) licenses lies with the Ministry.³⁸ FICORA is organised into seven areas and additional units that function directly under a director general. These areas are: Communications Markets and Services; Networks and Security; Radio Frequencies and Television Fees; Development and Support; Information Technology; and Communications. FICORA’s specific authority and responsibilities are delineated in a number of sectoral laws.³⁹ The main legal act related to FICORA’s regulatory authority is the *Act on Communications Administration*, which details FICORA’s role in supervising regulations for commercial TV and radio broadcasting. Its duties and powers related to other media and telecommunications sectors are further detailed in a number of legal acts, including the *Communications Market Act*, the *Radio Act*, the *Act on Postal Services*,

³² See “Criticism 10,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” December 20, 2010. <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

³³ *Act on Television and Radio Operations* (744/1998; amendments up to 1068/2007 included). Unofficial translation, Ministry of Transport and Communications of Finland, available at: <http://www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf>.

³⁴ *Communications Market Act* (393/2003; amendments up to 363/2011 included), unofficial translation, Ministry of Transport and Communications of Finland, available at: <http://www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf>.

³⁵ *Act on Communications Administration* (625/2001; amendments up to 397/2003 included), unofficial translation, Ministry of Transport and Communications of Finland, available at: <http://www.finlex.fi/en/laki/kaannokset/2001/en20010625.pdf>.

³⁶ See the Council for Mass Media, at: <http://www.jsn.fi/en/>.

³⁷ Finnish Communications Regulatory Authority (FICORA), available at: <http://www.ficora.fi/en/etusivu.html>.

³⁸ Ministry of Transport and Communications, available at: <http://www.lvm.fi/web/en/home>.

³⁹ A summary of FICORA’s organizational structure available at: <http://www.ficora.fi/en/index/viestintavirasto/esittely/organisaatio.html>.

the *Act on State Television and Radio Fund*, the *Act on the Protection of Privacy and Data Security in Telecommunications*, the *Act on Electronic Signatures*, and the *Domain Name Act*. These powers relate to telecommunications operations, and administrative duties in the areas of postal services, privacy protection, data security, and some other areas specified in the *Act on Television and Radio Operations*.

FICORA can impose sanctions on commercial broadcasters for violations to specific technical and content-related provisions of the laws listed above, including the content regulations specified in Chapters 3 and 4 of the *Act on Television and Radio Operations*.⁴⁰ These chapters include regulations on the proportion of European works and programs by independent producers, programmes that may be detrimental to the development of minors, the use of exclusive rights, and restrictions on advertising and sponsoring. Sanctions include a reminder, a conditional fine, or if a broadcaster fails to rectify its actions in a set period, a penalty fine determined by a separate court, and finally, the revocation of a broadcasting license (although these sanctioning powers are limited to the short-term licenses issued by FICORA). It has no general responsibility to handle complaints from the public, but as part of its duty to monitor the provisions of *Act on Television and Radio Operations*, FICORA receives requests for action from individual citizens concerning programmes that may cause detriment to the development of children, and concerning advertisements, sponsoring and product placement.

As noted, FICORA's supervisory role is related mostly to technical areas of media regulation. A number of other regulatory bodies supervise various media sectors, including: the Ministry of Transport and Communications, which works in cooperation with FICORA and other consumer authorities wherever necessary. The supervision of some provisions in the *Act on Television and Radio Operations* has also been entrusted to the Consumer Ombudsman. In addition, the Council for Mass Media is a separate self-regulating committee that interprets and upholds professional ethics and handles complaints from members of the public on breaches of journalism ethics,⁴¹ and the Council of Ethics in Advertising issues statements and handles complaints regarding ethically acceptable advertising.⁴²

⁴⁰ See Chapters 3 and 4 in the *Act on Television and Radio Operations*, available at: <http://www.finlex.fi/en/laki/kaannokset/1998/en19980744>.

⁴¹ The Council for Mass Media, available at: <http://www.jsn.fi/en/>.

⁴² The Council of Ethics in Advertising, available at: http://www.keskuskauppakamari.fi/site_eng/Services/Expert-Services/Statements-on-Ethical-Advertising.

Example cited by Hungarian Government: ITALY

“There is a convergent authority showing similarities with its Hungarian counterpart [in] Italy (AGCOM).”⁴³

Expert assessment Marco Bellezza, PhD, University of Bari/Oreste Pollicino, PhD, Bocconi University

It is true that Italy’s Communications Regulatory Authority (*Autorità per le garanzie nelle comunicazioni* - AGCOM) is formally a “convergent” regulatory authority. However, the agency has yet to establish itself as the sole media regulatory body in Italy.⁴⁴ When AGCOM was created in the 1997, Italian legislators aimed to design a single authority that could exercise different regulatory competencies in the fields of telecommunications, publishing and broadcasting. But at present this process is not yet complete. In practice, AGCOM shares regulatory responsibilities with a number of other state bodies, including the Department of Communications of the Ministry of Economic Development, the Parliamentary Commission for Public Service Broadcasting, the Antitrust Authority, and the Privacy Authority. In addition, Italy’s Constitutional Court (*Corte Costituzionale*) plays a key role in shaping and defining media regulation, including AGCOM’s powers. All journalists in Italy are also supervised by the Order of Journalists,⁴⁵ a professional order under the supervision of the Ministry of Justice, which manages mandatory registration for all professional journalists and monitors compliance with the professional codes and duties.

AGCOM was established as an independent authority by the *Maccanico Law*, which was adopted by Italian lawmakers in 1997 after the Constitutional Court ruled that the antitrust provisions in the 1990 *Broadcast Law* (Law No 223/1990) were inadequate to ensure media pluralism.⁴⁶ As Italy’s “convergent” media regulator, AGCOM’s regulatory competencies include all media sectors: press, online press, broadcast (public and commercial), telecommunications and electronic communications. Its current remit over print and online press, however, extends to registration requirements only; it has no authority to supervise these media for compliance with content regulations.⁴⁷

AGCOM’s primary duties are to ensure competition within the broadcasting, audiovisual and telecommunications sectors by monitoring compliance with anti-trust laws, resolving disputes between operators, and managing Italy’s media register, the Register of Communications Operators (Roc).⁴⁸ It is charged with supervising the content and quality of media services, resolving disputes between operators and the public, ensuring media pluralism and media accessibility for disadvantaged groups. AGCOM’s specific tasks include monitoring compliance with licensing agreements and with content regulations contained in Italy’s various media laws.

AGCOM’s management structure consists of a general secretariat and five units: 1) electronic communication, networks and service; 2) audiovisual contents and media; 3) market analysis and

43 See “Criticism 10,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” December 20, 2010. <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

44 The Communications Regulatory Authority (AGCOM), available at: http://www2.agcom.it/eng/eng_intro.htm.

45 See website of Order of Journalists, available at: <http://www.odg.it/content/storia>.

46 The *Maccanico Law* (Law No. 247/1997), available in Italian at: http://www2.agcom.it/L_naz/L_249.htm.

47 Italy’s print and online press are regulated under the *Press Law of 1948*, the Constitution, provisions in the penal codes and by the courts.

48 AGCOM operates on the basis of annual license fees from media operators, the contribution for licensing satellite broadcast, the concession of sports broadcasting rights and from the fee payable by the owner of services of tariff comparison for electronic communications services.

competition; 4) consumer protection; 5) training, research and study. AGCOM does not have a separate complaints commission, but it is important to point out that all AGCOM's decisions are subject to the judicial review made by the Regional Administrative Courts (*Tar- Tribunali Amministrativi Regionali*), and on appeal, by the Supreme Administrative Court (*Consiglio di Stato*).

As noted, AGCOM regulates the broader media, electronic communications and telecommunications fields in cooperation with a number of other state bodies. The Ministry of Economic Development's Communications Department prepares legislative proposals and policy guidelines for the broadcasting sector and also carries out administrative functions related licensing and frequency allocation. The Parliamentary Commission on Radio-Television Services supervises the pluralism of the media; it checks, in particular, the coverage allotted to political parties during elections on Italy's public broadcaster, RAI. The Antitrust Authority (AGCM) supervises the competitive telecommunications market, including advertising in audiovisual and electronic media. Italian courts in fact recently decided a case on the division of competencies between AGCOM and Antitrust Authority (AGCM) in the field of consumer protection. The Regional Administrative Court of Lazio ruled that AGCOM's powers did not extend to monitoring unfair commercial practices, but rather that this is the responsibility of AGCM.⁴⁹

Example cited by Hungarian Government: UK

“There is a convergent authority showing similarities with its Hungarian counterparty also in the United Kingdom (Ofcom).”⁵⁰

Expert assessment

Lina Denick, PhD, Visiting Faculty, Central European University, Budapest

Ofcom is indeed a “convergent” regulator but any additional similarities between it and Hungary's Media Authority are not specified in the example above. Ofcom's current remit includes commercial broadcast TV and radio (including their websites) and telecommunications but not traditional print or online media (unless supplied by TV and radio broadcasters) or many areas of the BBC.⁵¹ Ofcom's principle role involves managing competition issues and allocating licenses in order to prevent market concentration and to ensure media pluralism. It also has the power to sanction broadcasters—including with fines, suspensions and license revocations—for breaches to the *Communications Act 2003*, as well as to consumer-protection regulations, competition laws and OFCOM's own Broadcasting Code.⁵²

Ofcom was established as the UK's new “super regulator” by the *Communications Act 2003* following an extensive three-year public debate.⁵³ This law created Ofcom as the central regulatory authority for TV and radio broadcasting, and the telecommunications and postal sectors. It

⁴⁹ Tar Lazio decision no. 19893 of June 22th 2010, available at: <http://www.giustizia-amministrativa.it/WEBY2K/intermediate.asp?Reg=Lazio&Tar=Roma>.

⁵⁰ See “Criticism 10,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” December 20, 2010. <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

⁵¹ See a summary of Ofcom's regulatory scope, available at: <http://www.ofcom.org.uk/about/what-is-ofcom/>.

⁵² See Ofcom's Broadcasting Code, available at: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>.

⁵³ *Communications Act 2003*, available at: <http://www.legislation.gov.uk/ukpga/2003/21/contents>.

2/MEDIA AUTHORITY: CENTRALISED STRUCTURE

replaced the five existing regulatory boards with a single regulator in effort to streamline the UK's media and communications regulatory structure.⁵⁴ However, Ofcom has pursued a so-called "light-touch" policy toward its regulatory duties and has increasingly opted for co-regulatory schemes, delegating a number of regulatory responsibilities to other bodies: the Authority for Television On Demand (ATVOD) now oversees television on demand;⁵⁵ the Advertising Standards Authority (ASA) monitors advertising and marketing regulations for all media in the UK;⁵⁶ and the Secretary of State for Sport, Culture and Media and the Secretary of State for Trade and Industry have recently assumed more regulatory responsibilities as well.⁵⁷

Ofcom is divided into eight committees, including the Ofcom Board, the Executive Board, the Spectrum Clearance and Awards Programme Management Board, the Operations Board, and the Content Board.⁵⁸ Each unit is responsible for different areas of media and telecommunications regulations within Ofcom. Ofcom's strongest regulatory presence is in the broadcasting sector. Its oversight encompasses the following: *content* (ensuring high programme standards, diversity, etc.); *competition* (promoting choice of viewing and listening); *media ownership* (safeguarding plurality); *media literacy* (empowering consumers in accessing services); and *spectrum management* (ensuring efficient use of spectrum).⁵⁹ Ofcom is also responsible for protecting audiences against offensive or harmful material, as defined in numerous sections *Communications Act 2003*,⁶⁰ in Articles 10 and 14 of the European Convention on Human Rights,⁶¹ and in Ofcom's Broadcasting Code.⁶²

The Broadcasting Code is a set of basic content regulations for all broadcasters, which includes restrictions on content that harms minors or materials that contains "offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation)."⁶³ However, Ofcom in 2004 ceded responsibility for monitoring compliance with these standards for radio and TV advertising to the Advertising Standards Authority (ASA). The ASA has developed extensive codes applicable to all media, including web-based advertising, designed to protect consumers from misleading or offensive advertising.⁶⁴

A key debate during the drafting of the *Communication Act 2003* was over whether Ofcom's authority should extend to the Internet. The final bill gave Ofcom oversight over the websites of broadcasters but not general "online content" or the websites of the BBC.⁶⁵ Online content is mostly self-regulated by professional codes developed by various bodies, such as the Press Complaints Commission, the Internet Watch Foundation (IWF), the Internet Crime Forum, and Home Office Internet Task Force on Child Safety. More recently, Ofcom considered extending its

54 Ofcom replaced the Broadcasting Standards Commission, the Independent Television Commission, the Office of Communications, and Radio Authority, and the Radio Communications Agency.

55 Authority for Television On Demand (ATVOD), available at: <http://www.atvod.co.uk/>.

56 Advertising Standards Authority (ASA), available at: http://www.asa.org.uk/About-ASA/Who-we-are.aspx#our_remit.

57 The recent Public Bodies Bill returns the policy-setting role to the Secretary of State who will decide when to conduct PSB and media ownership reviews, for example. See a review of these changes here: http://www.culture.gov.uk/news/media_releases/7485.aspx.

58 See Ofcom's management structure, available at: <http://www.ofcom.org.uk/about/how-ofcom-is-run/>.

59 "Why Ofcom?" Andrew Stirling, *Manager, Strategy Development of Ofcom*, EBU Technical Review, October 2004, http://tech.ebu.ch/docs/techreview/trev_300-ofcom.pdf.

60 *Communications Act 2003*, Articles 3(4)(g) and (l) and 319(2)(a), (f) and (l), available at: <http://www.legislation.gov.uk/ukpga/2003/21/contents>.

61 Article 10 protects freedom of expression; Article 14 prohibits discrimination; see *Convention for the Protection of Human Rights and Fundamental Freedoms*, available at: <http://conventions.coe.int/treaty/en/treaties/html/005.htm>.

62 See explanation of "harmful material" under the Broadcasting Code, available at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/harmoffence/>.

63 Section 2.3 of the Broadcasting Code on "Harm and Offence," available at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/harmoffence/>.

64 See the Advertising Standards Authority's advertising codes, available at: <http://www.asa.org.uk/Advertising-Codes.aspx>.

65 See Article 198, "OFCOM in relation to the BBC," the *Communications Act 2003*, available at: <http://www.legislation.gov.uk/ukpga/2003/21/section/198>.

remit to include on-demand video services on the Internet, after the UK adopted the Audiovisual Media Services Directive in 2009. After an extensive review and consultation with industry representatives and the public, Ofcom decided to adopt the co-regulatory approach, ceding regulatory responsibilities for editorial and advertising content of on-demand video services to the Authority for Television On Demand (ATVOD) and the ASA, respectively.⁶⁶

Another point of debate during the bill's drafting was over media ownership rules. Lawmakers and media owners supported lifting the then-existing ban on major newspapers from owning terrestrial TV channels. In the final law passed by Parliament, this ban was relaxed in order to promote competition and lawmakers reluctantly ceded to adding a "public interest plurality" clause that allows the secretary of state to assess and block any mergers or deals that could compromise media pluralism and increase media concentration.⁶⁷ The secretary of state in fact retains a number of (limited) regulatory powers over spectrum management and other areas of media and communication regulations, including the right to issue directions to Ofcom in cases involving national security, international relations and obligations, and in the interest of public safety.

⁶⁶ "Statement on regulation of on-demand services," Ofcom, 18 December 2009, available at: <http://stakeholders.ofcom.org.uk/consultations/vod/statement/>.

⁶⁷ *Communications Act 2003*, Chapter 5, Article 350, on "Media ownership and control," <http://www.legislation.gov.uk/ukpga/2003/21/part/3/chapter/5>.

3/Media laws' scope: regulating print and online press

Hungary's new media laws introduced a single legislative framework for all media, inclusive of the print and online press. Under the new system, all media are bound to a set of common content regulations that include requirements to "respect the constitutional order of Hungary" and prohibiting content that violates "public morals."¹ EU lawmakers and free-press advocates claim that adopting a single regulatory framework for all media sectors defies free-press principles and regulatory practices in Europe. Opponents say these media should be self-regulated by an independent press council and the courts, separately from broadcasting, in keeping with European regulatory practices. Hungarian officials say the new laws were adopted in compliance with the EU Audiovisual Media Services Directive and that the laws delineate different obligations for different media sectors. The Government also states that regulating print and online press is necessary in today's convergent media landscape and follows similar regulatory practices in other European and EU-member states.

The scope of media regulated under Hungary's new media laws is defined in the *Act on the Freedom of the Press and the Fundamental Rules on Media Content* (the "Press Freedom Act") and the *Media Services and Mass Media Act* (or the "Media Act"), the final set of laws in the media law "package" passed by Hungarian lawmakers in November and December 2010, respectively. The legislation replaced Hungary's former broadcast law, the *1996 Act on Radio and Television Broadcasting*,² incorporating the EU Audiovisual Media Services Directive (AVMSD) and introducing new regulations that encompass all media, inclusive of print and online press. Prior to these legislative changes, the print and online press were largely self-regulated, although bound to provisions in Hungary's criminal code prohibiting incitement to hatred and to provisions in the civil code, which were matters decided by the courts.

1 Articles 16 and Article 4 of the *Act CIV of 2010 on the freedom of the press and the fundamental rules on media content* (the "Press Freedom Act"), as amended March 2011, available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

2 *Act I of the 1996 Act on Radio and Television Broadcasting*, available at: <http://www.nhh.hu/dokumentum.php?cid=10622>.

The *Press Freedom Act*, or the so-called "media constitution," contains 25 articles detailing a range of content regulations for all "media content providers," which includes all "media services"³ and "press products," as well as foreign media services and "press products" which are "targeted at" or disseminated in Hungary.⁴ "Press products" are defined as "individual issues of daily newspapers or other periodical papers, internet newspapers or news portals," which are offered as a business or "business-like" service,⁵ the "primary purpose of which is to deliver textual

3 Article 1(1) of the *Press Freedom Act* defines a "media service" as "any independent business-like service as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union – provided on a regular basis, for profit, by taking economic risk – for which the media service provider bears editorial responsibility, the primary aim of which is the delivery of programmes to the general public for informational, entertainment or educational purposes through an electronic communications network." Available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

4 See Article 3(1) of the *Press Freedom Act*, available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

5 Article 1(6) of the *Press Freedom Act* defines a "business service" as "any independent business-like service provided on a regular basis, for profit, by taking economic risk." Available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

or image content to the general public for information, entertainment or educational purposes” and are distributed in print or via electronic communications networks.⁶ The *Press Freedom Act* also mandates registration for all media services and press products, the requirements for which are further detailed in the subsequent law, the *Media Act*, passed by Hungarian lawmakers in December 2010.⁷

Articles 13 to 20 of the *Press Freedom Act* contain a set of “obligations of the press,” which initially required all media content providers, including the print and online press, to provide “authentic, rapid and accurate information on local, national and EU affairs and on any event that bears relevance to the citizens of the Republic of Hungary and members of the Hungarian nation.”⁸ Linear and on-demand media content providers were also required to provide “comprehensive, factual, up-to-date, objective and balanced coverage on local, national and European issues that may be of interest for the general public and on any event bearing relevance to the citizens of the Republic of Hungary and members of the Hungarian nation.”⁹ However, after the European Commission intervened in February 2011, the provision applicable to all media content providers was retracted and the obligation to provide “balanced coverage” was amended to exclude non-linear media (on-demand TV and radio) and foreign media “targeted at” Hungary.¹⁰

Under the amended law, the content

regulations that apply to print and online press include obligations to respect “human dignity,”¹¹ and the “constitutional order” of Hungary,¹² restrictions on content that contains pornographic materials or content that portrays extreme violence that could impair the development of minors,¹³ and prohibitions on content that discriminates against, offends or excludes “nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups,”¹⁴ or that violates “public morals or the moral rights of others.”¹⁵ The Media Council monitors all media content providers, including the print and online press, for compliance with these provisions.¹⁶

The *Media Act*, passed by Hungarian lawmakers in December 2010, also applies to “media services” and “press products.”¹⁷ This law specifies a range of additional content regulations, programming quotas, and commercial restrictions for all media services, as well as specific regulations that apply to different media sectors. For instance, the law specifies that all media services are required to adhere to Articles 13 to 20 in the *Press Freedom Act*, including the provision on “balanced” information, but non-linear and ancillary media services (and press products) are excluded from the “balanced” information

6 *Press Freedom Act*, Article 1(6), available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

7 *Press Freedom Act*, Article 5(1), available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

8 See original text of the *Press Freedom Act*, Article 13(1), available at http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_civ_media_content.pdf.

9 See original text of the *Press Freedom Act*, Article 13(2), available at http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_civ_media_content.pdf.

10 Compare initial text of Article 13 of the *Press Freedom Act* at: http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_civ_media_content.pdf, with the amended text at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

11 *Press Freedom Act*, Article 14(1), available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

12 *Press Freedom Act*, Article 16, available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

13 *Press Freedom Act*, Article 19(2) – Article 19(3), available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

14 *Press Freedom Act*, Article 17(1) and (2), available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

15 *Press Freedom Act*, Article 4, available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

16 *Act CLXXXV of 2010 on media services and mass media* (the “*Media Act*”), Article 182(c), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

17 *Media Act*, Article 1(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

obligation.¹⁸ Compliance with the provision on “balanced” information for media with “substantial influence”¹⁹ and public service media is supervised by the Media Council; the Media Authority oversees this provision for all other media.²⁰ According to the *Media Act*, the Media Authority and Media Council cannot pursue breaches to “balanced information” requirements *ex officio* but only at the request of viewers or listeners. Fines or stronger sanctions cannot be levied for breaches to this provision but the Media Council can require the outlet to broadcast the decision of the infringement.²¹

The law also details a specific set of obligations and regulations for public service media.²² In addition, the *Media Act* specifies new registration obligations for “press products,” which require publishers of print media established in Hungary to register with the Media Authority within 60 days of commencing their service or activity.²³ Registration is not a precondition for starting such a service or activity (*see Chapter 6 of this report on Data Disclosure*).

The law also specifies a range of sanctions—including fines, suspensions, license revocations and deletion from the register—for all media for violations of content and

commercial regulations in the media laws, as well as for violating registration rules, licensing agreements, terms of public contracts, the Media Authority’s additional data requests and its regulatory decisions²⁴ (*see Chapter 7 in this report, on Sanctions*).

International criticism

Media policy experts claim that regulating print and online press under the same legal framework as broadcasting violates accepted regulatory practices in Europe. According to a legal analysis by the Budapest-based Eötvös Károly Institute, the extension of the Media Authority’s powers of oversight to “the printed press and the new media, including online news publication in its entirety and a significant portion of blogs” is a “transgression of generally accepted liberal and democratic principles” established by European case law and by the Constitutional Court of Hungary.²⁵ According to these standards, stronger governmental and regulatory intervention over broadcasting is deemed acceptable, based on the idea that frequencies are a limited resource and that broadcast media have greater power in shaping public opinion.²⁶ “Since the press won the fight for the abolition of censorship in the 19th century, legal action has served as the only basic means to guard against rights violations committed in the printed media,” according to this review. It continues: “[t]

18 Per Article 40 of the *Media Act*, <http://nmhh.hu/dokumentum.php?cid=26536>. “Articles 14 to 18, Article 19 (2) and Article 20 of the *Press Freedom Act* shall apply to ancillary media services *mutatis mutandis*.” Article 203(23) of the *Media Act* defines ancillary media services as a media service “which are transmitted through a media service distribution system and which qualify neither as media services nor as electronic communications services. For example, electronic programme guides are ancillary media services.”

19 Article 69 of the *Media Act* defines media with “substantial influence” as “linear audiovisual media service providers and linear radio media service providers with an average annual audience share of at least fifteen percent, with the proviso that the average annual audience share of at least one media service reaches three percent.” Available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

20 Article 181 of the *Media Act* details rules for bringing legal proceedings against infringements to “balanced coverage” provisions, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

21 *Media Act*, Article 181(5), of the available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

22 *Media Act*, Articles 82 and 83, available at: <http://nmhh.hu/dokumentum.php?cid=26536>

23 *Media Act*, Article 41(2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

24 Sanctions are detailed in Articles 185 to 189 of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

25 Majtényi, László, “A criticism of the Hungarian Act on Media Services and Mass Media, Effective January 1st, 2011,” Eötvös Károly Institute. Presented to the European Parliament, Open Hearing on “Freedom of Press in Hungary,” Brussels, 11 January, 2011, available at: http://ekint.org/ekint/ekint_angol.news.page?nodeid=409. László Majtényi, the director of Eötvös Károly Institute, previously served as the president of Hungary’s former media regulatory board, ORTT, the legal predecessor of the Media Council.

26 Majtényi, László, “A criticism of the Hungarian Act on Media Services and Mass Media, Effective January 1st, 2011,” Eötvös Károly Institute. Presented to the European Parliament, Open Hearing on “Freedom of Press in Hungary,” Brussels, 11 January, 2011, available at: http://ekint.org/ekint/ekint_angol.news.page?nodeid=409. László Majtényi, the director of Eötvös Károly Institute, previously served as the president of Hungary’s former media regulatory board, ORTT, the legal predecessor of the Media Council.

these days, the Internet is certainly the freest medium of all. Incomprehensibly, the new media law seeks to regulate communications in diverse media—online, printed, and electronic—based on the same standardized criteria.”²⁷

A number of legal analysts have also found that several provisions in the laws contain vague and overbroad language that could have a “chilling effect” on the press. Media experts with the Hungarian Civil Liberties Union (TASZ) point to the unusually broad definition of a “press product,” which extends the scope of regulation beyond the print press to include online news portals and professional blogs that are a commercial enterprise. “All ‘press products’ should meet the Act’s strict content requirements, such as refraining from offending public morality or offending directly or indirectly the majority or churches,” which according to TASZ imposes unnecessary restrictions on print and online media and “puts an undue burden on free speech and press.”²⁸ The organisation also finds that Article 19 of the *Press Act* prohibiting content that offends “minorities” and “any majority” is an “unclear compulsory provision” that could work to limit any critical coverage of all groups, hence undermining the media’s essential watchdog role.²⁹

Another legal review found that the media laws’ “overbroad” language regarding the Media Authority’s jurisdictional scope could allow the Authority to assert seemingly

unlimited control over areas of media regulation and sectors not specified in the law.³⁰

Opponents have called on Hungary to narrow the scope of its media laws to broadcast and audiovisual media and to adopt a self-regulatory scheme for the print and online press. “Regulating print media can curb free public debate and pluralism. Even though regulating online media is considered technologically impossible, it introduces self-censorship,” according to OSCE Media Freedom Representative Dunja Mijatovic.³¹ Objecting to how Hungary’s new laws allow authorities to also govern print and online media content, Mijatovic claims that “such concentration of power in regulatory authorities is unprecedented in European democracies, and it harms media freedom.”³²

Hungarian Government’s response

The Hungarian Government states that the regulation of print and online press together with broadcasting is in keeping with the current digital media environment, which has eliminated the boundaries between “traditional” and “new” media: “Media content cannot be distinguished [by] whether it is distributed via an electronic communications network, in printed form or otherwise,” according to the Government’s December 2010 statement.³³ The Government states

27 Majtényi, László, “A criticism of the Hungarian Act on Media Services and Mass Media, Effective January 1st, 2011,” Eötvös Károly Institute. Presented to the European Parliament, Open Hearing on “Freedom of Press in Hungary,” Brussels, 11 January, 2011, available at: http://ekint.org/ekint/ekint_angol.news.page?nodeid=409. László Majtényi, the director of Eötvös Károly Institute, previously served as the president of Hungary’s former media regulatory board, ORTT, the legal predecessor of the Media Council.

28 “Concerns about media legislation in Hungary (part I),” The Hungarian Civil Liberties Union (TASZ), 3 January 2011, available at: <http://tasz.hu/en/szolasszabadsag/concerns-about-media-legislation-hungary-part-i>.

29 “Concerns about media legislation in Hungary (part I),” The Hungarian Civil Liberties Union (TASZ), 3 January 2011, available at: <http://tasz.hu/en/szolasszabadsag/concerns-about-media-legislation-hungary-part-i>.

30 “Legal Analysis of the Proposed Amendments to the 2010 Hungarian Media Laws,” The Center for Democracy and Technology, March 2011, available at: <http://www.cmcs.ceu.hu/files/CDT%20Analysis%20Amendments%20to%20Hungarian%20Media%20Laws.pdf>.

31 “Hungarian media law further endangers media freedom, says OSCE media freedom representative,” Press Release, The Organization For Security and Cooperation in Europe (OSCE), December 22, 2010, available at: <http://www.osce.org/fom/74687>.

32 “Hungarian media law further endangers media freedom, says OSCE media freedom representative,” Press Release, The Organization For Security and Cooperation in Europe (OSCE), December 22, 2010, available at: <http://www.osce.org/fom/74687>.

33 See “Criticism 16,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

that “[c]ontent that is broadcast on television is immediately available on the channel’s website. Similarly, all print outlets are available online. These fundamental rules should be enforced uniformly for all outlets; otherwise loopholes could easily emerge in the regulation (currently television media broadcasters are allowed to freely broadcast online content that is prohibited in traditional media outlets, such as pornographic scenes from reality shows).”³⁴

The Government also states that the media laws were developed in accordance with the EU Audiovisual Media Services Directive (AVMSD), and as such, that the laws delineate different rules for individual media “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.”³⁵ Certain “basic, strictly construed restrictions” applicable to all media should nevertheless be allowed,³⁶ according to the Government, such as 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.”³⁷ However, the

Government emphasises that “such restrictions must prioritise public interest and must in no way hinder the expression of democratic public opinion.”³⁸

In addition, the Hungarian Government states that the regulation of both the print and online press is not a new practice in Europe but that the “novelty” of the Hungarian case is that these media are supervised by a single regulatory authority.³⁹ It also states that the scope of online media which can be regulated is clearly defined in the law. This is defined as online media which provide content “as a business activity to the public, with its primary objective being information coverage, entertainment or education . . . 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.”⁴⁰

34 “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration And Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

35 See “Criticism 7,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

36 “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration and Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

37 See “Criticism 7,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

38 “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration and Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

39 “Reply to the criticisms expressed by the international media against the Media Act,” Ministry Of Public Administration and Justice, January 3, 2011, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/reply-to-the-criticism-of-the-international-media>.

40 See “Criticism 19,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

3/Findings: media laws' scope

The Hungarian Government cites examples from eight European and EU-member countries in which it states the media regulations extend to the print and/or online press: **Austria, France, Italy, Lithuania, Portugal, Slovenia, Sweden and Switzerland.**⁴¹

According to the expert assessments of these examples, the Hungarian Government's general claim that the print and online press are also regulated in other European countries is accurate: as the expert analyses show, in all eight country cases traditional print and online press are bound by certain legal statutes or standards—a separate press law, articles in the constitution, and/or professional codes of ethics—and in some cases even by provisions in the penal codes. However, in none of these cases are traditional print and online media regulated under a comprehensive law for all media and under the supervision of a single regulatory body responsible for regulating all media sectors.

The expert assessments also indicate that the implementation of the EU Audiovisual Media Services Directive (EU AMVSD) has significantly broadened the authority of media regulators within the EU to different areas of online media. Although the extent of this authority varies by country, it is evident from these analyses that in many EU-member states the adoption of this directive has transposed the traditional, sector-specific regulatory approach with a “technologically neutral” model of media regulation. While some countries have imposed this directive in the most minimal manner possible while retaining the sector-specific framework of media regulation, others, like Hungary, have adopted more comprehensive definitions of “media services” that include the print and online press.

As such, for all seven of the EU-member states cited in this set of examples, the implementation of the EU Audiovisual Media Services Directive has extended regulations to include (in varying degrees) online content provided by linear and/or non-linear audiovisual media services (e.g. web content of commercial and/or public broadcasters, Internet TV and radio, and in some cases, on-demand media). In Switzerland, as a non-EU member, only linear services (or “programme services”) irrespective of their mode of transmission (terrestrial, online, cable, etc.) and the website of Switzerland's public service broadcaster are regulated.

For the seven EU-member states cited, the media laws adopted in accordance with the EU AVMSD also contain a set of uniform content regulations, programming quotas and commercial restrictions applicable to these media. Standard content regulations include provisions on the protection of minors and prohibitions on incitement to hatred. Additional requirements regarding the protection of human dignity, restrictions against content that offends “public morality,” and obligations to respect the “constitutional order” also appear in the media laws of some of these country cases.

In **four of the eight** examples, the traditional press and online press are still regulated separately under the “classic” model—by a separate press law and/or codes of professional ethics, and self-regulated via an independent press council and/or by the courts. This is true in: **Austria, France, Italy and Sweden.** For instance in **Sweden**, the online press are regulated under a separate law from print media; if online media meet certain requirements, they are required to register. However registration is often voluntary and doing so affords these media extra constitutional

⁴¹ These examples are drawn from the Government's December 2010 statement, under “Criticism 7,” “Criticism 16,” and “Criticism 19,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

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protections under the law. In the Swedish example, the expert reports that the Hungarian Government's citation inaccurately suggests that registration enables online outlets to avoid "prior censorship" when in fact prior censorship does not exist in Sweden.

In **Switzerland**, the press and online press are self-regulated by professional codes of ethics but there are no statutory regulations governing these media. In this case, the Government's example appears to overstate the "technologically neutral" framework of media regulation in Switzerland. As noted by the expert, the *Radio and Television Act of 2006* regulates "programme services," which covers traditional linear TV and radio programme services irrespective of the form of transmission (terrestrial, cable, satellite or the Internet). However, on-demand audiovisual media, as well as the print and online press, are not regulated under this law.

In **three of the eight** cases, there is a unitary media law covering all media, inclusive of print and online press; however, these media are overseen by a number of different media authorities:

- **Lithuania:** the *Media Law* covers all media, including print and online press, but different regulatory bodies are responsible for overseeing compliance with different provisions of and media regulated by that law. The Lithuanian Radio and Television Commission (LRTK) is responsible for regulating broadcasting and on-demand audiovisual media services (Internet radio and TV). The Inspector of Journalist Ethics and Lithuania's self-regulatory body, the Journalists and Publishers Ethics Commission, are mainly responsible for overseeing print and online press.
- **Slovenia:** the *Mass Media Act 2006* covers all media, including print and online press, but these media are regulated by different bodies, including: the Media Inspectorate; APEK (Agency for Post and Electronic Communications); the Broadcasting Council, an independent body that provides support to APEK in supervising broadcasters' compliance with obligations contained in their licenses; and the Ministry of Culture, which supervises the overall implementation of the *Mass Media Act*.
- **Italy:** media are regulated by a myriad of sector-specific laws and decrees, however all "professional" journalists regardless of media are also bound by a set of uniform content regulations on libel, defamation and protection of privacy. For print and online press, these obligations are primarily overseen by the courts.

Portugal's Media Regulatory Authority (ERC) regulates all media sectors, inclusive of the print and online press. However, the media are governed by sector-specific legal statutes and standards; the press and online press are regulated by separate laws and under comparatively lighter restrictions than public and commercial broadcasters, respectively.

Hungary is the only case this set of countries in which there is a single media authority responsible for regulating all media sectors under a comprehensive media law. Hence, based on the above criteria, the expert assessments indicate that the Hungarian Media Authority's regulatory scope over all media, inclusive of traditional print and online press, appears to exceed those in the eight examples cited. In the three cases in which the media law extends to all media, inclusive of the print and online press, different media authorities are responsible for overseeing different media sectors. In only one example (**Portugal**) does the media regulatory body's power include all media sectors, but media in this system are regulated by sector-specific laws. Hence, Hungary's system is unique among the examples cited in that all media are governed by the same media authority under a single legislative framework.

3/Expert assessments: media laws' scope

Example cited by Hungarian Government: AUSTRIA

“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.”⁴²

Expert assessment Katharine Sarikakis, Phd, Department of Communications, University of Vienna

It is true that the Austrian Communications Authority (*KommAustria*) is currently responsible for supervising Austria’s public broadcaster as well as audiovisual media services and audiovisual commercial communications on the Internet.⁴³ However, *KommAustria* does not regulate the print or online press: its remit over online media extends to audiovisual on-demand (Internet TV and radio), advertising, and online content supplied by ORF. The print and online press are regulated under a separate *Press Law*, as well as by provisions in the civil, constitutional and penal laws, and monitored by various federal ministries, the courts, and more recently, the self-regulatory Austrian Press Council.⁴⁴ For instance, all media and websites are bound by provisions in the civil and penal codes, which prohibits certain content—for instance, the dissemination of Nazi materials and symbols—although these areas are governed by the criminal authorities, the Interior Minister, and the courts, and not specifically by *KommAustria*.⁴⁵ Hence, the use of the Austrian example does not adequately address the criticism to which the Hungarian Government is responding, as in Austria, print and online press (other than that supplied by ORF) are regulated separately from audiovisual services.

KommAustria is responsible for monitoring compliance with general content regulations applicable to all audiovisual media service providers as detailed in the *Audiovisual Media Services Act*,⁴⁶ and with sector-specific laws and regulations dealing with private radio, public broadcasting, and commercial communications.⁴⁷ The implementation of the EU Audiovisual Media Services Directive in 2010 triggered the array of amendments to Austria’s media regulation framework, including a number of changes to the 2001 *Audiovisual Media Services Act* (formerly the *Private Television Act*) which expanded *KommAustria*’s authority over broadcasting to include audiovisual media services (including their online content) and advertising on the Internet.⁴⁸ The legislative restructuring was also result of legal action taken by the European Commission over ORF’s broadcasting monopoly and state financing.⁴⁹ Hence, the *ORF Act*, amended in

42 This example was cited by the Hungarian Government under both “Criticism 7” and “Criticism 19” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

43 Austrian Communications Authority (*KommAustria*), available at: <http://www.rtr.at/en/m/InstittKommAustria>.

44 *The Press and other Publication Media* (the “*Media Act*”) (1981), as amended in 2005, available at: http://www.internet4jurists.at/gesetze/bg_medien1a.htm.

45 The *Prohibition Act of 1947* is a constitutional law that prohibits public denial, belittlement, approval, or justification of the Nazi genocide or other Nazi crimes against humanity in a print publication, a broadcast, or other media. It also prohibits incitement, insult, or contempt against a group because of its members’ race, nationality, or ethnicity if the statement violates human dignity. The Government strictly enforced these laws.

46 *Federal Law on Audiovisual Media Services* (“*Audiovisual Media Services Act*” AMD-G) Federal Law Gazette No. 84/2001, as amended, available at: <http://www.rtr.at/en/m/AMDG>.

47 For a list of laws relating to *KommAustria*’s activities, see: <http://www.rtr.at/en/m/Gesetze>.

48 *Audiovisual Media Services Act* (AMD-G) Federal Law Gazette No. 84/2001, as amended, available at: <http://www.rtr.at/en/m/AMDG>.

49 “State aid: Commission closes investigation into financing regime of Austria’s public service broadcaster ORF,” *Europa.eu*, IP/09/1603, October 2009, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1603>

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February 2010, brought Austria's public service broadcaster (ORF) and its subsidiaries under KommAustria's supervision.⁵⁰

As noted, the *Audiovisual Media Services Act* details general content regulations for all audiovisual media service providers,⁵¹ which include provisions on the protection of human dignity, incitement to hatred, programming for the hearing and visually impaired, and the protection of minors, in addition to a range of general provisions regarding advertising, teleshopping, and programming quotas for independent and European works.⁵² There are also general requirements for commercial communications (including for online media), such as prohibitions against surreptitious advertising and advertising that discriminates by gender, race or ethnic origin, nationality, religion or belief, disability, age or sexual orientation, or that violates human dignity or provisions on protection of minors.⁵³ The law also contains a set of special programming principles for TV broadcasters, including to the obligation to ensure "objectivity and pluralism," to provide programming that represents the public, cultural and economic life within the broadcasters' circulation region, and programming that complies with accepted journalistic principles.⁵⁴

The *Audiovisual Services Act* also details which of these general content regulations are applicable for "teletext and online services."⁵⁵ These include obligations to provide comprehensive coverage of important political, social and economic issues, that promote the understanding of democratic society, as well as prohibitions against content that incite hatred, impair the development of minors, or contain pornography or gratuitous violence. All online content produced by ORF must not violate provisions concerning human dignity and fundamental rights of others.⁵⁶

As noted, KommAustria currently has no remit to monitor content in the print press or electronic press (except that produced by ORF), which are governed by the *Press Law* and also by provisions in civil, constitutional and penal laws. The *Press Law* contains a range of content regulations, including on defamation and libel, the right to privacy, right of reply, and the protection of individuals involved in criminal proceedings. These regulations are overseen and federal ministries—including the Minister of Justice and the Federal Minister for Economy and Labour, the Minister of Interior and the Federal Chancellor—local administrative authorities, and in the case of criminal/illegal content, the police. For instance, the provisions concerning defamation, libel, and slander, which are criminal offenses, are overseen by Federal Minister of Justice.

50 *Federal Act on the Austrian Broadcasting Corporation (ORF Act)* Federal Law Gazette No. 379/1984 as amended by Federal Law Gazette I No. 83/2001, Non-official consolidated version, available at: <http://www.rtr.at/en/m/ORFG/orfg-eng.pdf>.

51 An "audiovisual media service" is defined as a service under the editorial responsibility of a media service provider, whose main purpose the provision of programs to inform, entertain or educate the general public by electronic communications networks (§ 3 No. 11 TKG 2003). This includes television programs and audiovisual media services.

52 Section 30 (1)-(3) *Audiovisual Media Services Act* (AMD-G), <http://www.rtr.at/en/m/AMDG>.

53 Section 31 and 36, *Audiovisual Media Services Act* (AMD-G), <http://www.rtr.at/en/m/AMDG>.

54 Section 41 on "Specific requirements for television programs and broadcasts: Programming Principles," (Inserted by Law Gazette I No. 50/2010 from 10.01.2010 [formerly § 30 and 33]) *Audiovisual Media Services Act* (AMD-G), <http://www.rtr.at/en/m/AMDG>.

55 Section 18, "Content requirements for teletext and online services," *Audiovisual Media Services Act* (AMD-G), <http://www.rtr.at/en/m/AMDG>.

56 Section 10(1), *Audiovisual Media Law*, "All programmes of the Austrian Broadcasting Corporation must respect the human dignity and fundamental rights of others with regard to presentation and content," <http://www.rtr.at/en/m/AMDG>.

Example cited by Hungarian Government: FRANCE

*“From 2009 onwards, the CSA is entrusted to oversee both online and on-demand media services as well.”*⁵⁷

Expert assessment

Guy Durout, Paul Cézanne University, Institute of Political Studies, France

This statement is essentially correct. In 2009, the *Freedom of Communication Act of 1986* was amended to transpose elements of the EU Audiovisual Media Services Directive, which extended the CSA's authority over some areas of online and on-demand media services.⁵⁸ However, the CSA's remit over online press extends to broadcasters' websites and Internet TV and radio but not to traditional print or their online news sites, which are largely self-regulated and under the supervision of the French courts. The amendments introduced in 2009 require domestic audiovisual media services—including Internet TV and video-on-demand (VoD)—to be licensed with the CSA and to adhere to the same content regulations as broadcasters, including provisions the protection of minors, respect for human dignity, and safeguarding public order.⁵⁹ In December 2010, the CSA issued a decree further specifying its regulatory authority over on-demand audiovisual media in relation to protection of minors and the accessibility of programmes that may expose minors to harmful or illegal content.⁶⁰ These measures are based on compliance with Article 12 of Directive 2010/13/EU of the European Parliament and the Council of 10 March 2010 “Audiovisual Media Services” Directive, which states that:

*“Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services.”*⁶¹

The High Council for Broadcasting (*Conseil supérieur de l'audiovisuel* – CSA) is responsible for monitoring compliance with content and competition-related regulations contained in the *Freedom of Communications Act of 1986*, which has been amended many times, as well as in a number of additional laws and governmental decrees related to the broadcasting sector. Under the amended *Freedom of Communications Act of 1986*, online broadcasting and on-demand audiovisual media services that are not a retransmission of a program broadcast by a TVchannel

57 This example was cited by the Hungarian Government under both “Criticism 16” and “Criticism 19,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

58 *The Freedom of Communication Act* (No. 86-1067 of 30 September 1986) not including 2009 amendments, available at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the Act number 2009-258 dated 5 March 2009, provided by the University of Luxembourg, can be accessed here: wwwfr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

59 As per Article 1 of the *Freedom of Communication Act*, (No. 86-1067 of 30 September 1986) not including 2009 amendments, is available at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the Act number 2009-258 dated 5 March 2009, provided by the University of Luxembourg, can be accessed here: wwwfr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

60 “Recommendations and deliberations of the CSA for the protection of minors,” CSA, Deliberation of 14 December 2010 on the protection of young people, ethics and accessibility of programs on audiovisual media services on demand, http://www.csa.fr/infos/textes/textes_detail.php?id=132419 ; http://www.epra.org/content/english/news/f_archive.html.

61 Directive 2010/13/EU Of The European Parliament and of the Council of 10 March 2010 On The Coordination Of Certain Provisions Laid Down By Law, Regulation Or Administrative Action In Member States Concerning The Provision Of Audiovisual Media Services (Audiovisual Media Services Directive), *Official Journal of the European Union*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>.

are allowed to broadcast only after an agreement (in French, “*une convention*”) is signed by the CSA and the media service provider.⁶² On-demand media services broadcasting on a network that does not use frequencies delivered by the CSA can broadcast freely and without the CSA’s permission but are still obliged to uphold the regulations applicable to the audiovisual media sector.

Content regulations in the *Freedom of Communication Act 1986* that apply to all audiovisual media service providers as describe above include provisions on respecting human dignity, the pluralism of opinion, and regulations safeguarding “law and order.”⁶³ That law also includes provisions on the defense of the French language requiring broadcasters to provide a certain proportion of French-language audiovisual material,⁶⁴ and restrictions on content that could harm the physical, mental or moral development of minors, or materials that may cause “incitement to hatred or violence on the grounds of race, sex, morality, religion or nationality.”⁶⁵

The CSA does not oversee print or their online news sites, which are regulated by the *Freedom of the Press Law of 1881*, amended numerous times since, and supervised by the Ministry of Culture and Communications, the Ministry of Justice, and the French courts.⁶⁶ That law contains particularly strict and often controversial provisions regarding defamation, which is a criminal offense under French law.⁶⁷ All journalists are also bound to comply with provisions in the penal codes outlawing certain content, such as Holocaust denial.⁶⁸ In general, however, print media in France have a strong tradition of self-regulation, following the codes of conduct adopted by the national union of journalists, as well as ethical codes adopted by individual newspapers, like those developed by *Le Monde*, *Ouest-France*, *L’Express*, *Le Nouvel Observateur*, *Le Point*, *L’Equipe* and *La Tribune*. More recently, online newspapers like *Mediapart* and *Rue89* have also begun to develop ethical codes.

Although the CSA’s particular remit does not include the online news media, efforts by French lawmakers to regulate Internet content has raised numerous controversies among freedom of expression advocates. French lawmakers for years have pursued aggressive measures to control the Internet in order to curb Internet piracy and hate speech and to protect minors from access to harmful content. In 2004, for instance, the Government introduced measures requiring ISPs to offer filtering tools for banned content and that holds ISPs responsible if illegal or harmful content

62 Article 33(1) of the amended *Freedom of Communications Act of 1986*, (Act number 2009-258, 5 March 2009), translation provided by the University of Luxembourg, available at: www.fr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf. Translation by author.

63 Article 1 of the *Freedom of Communications Act of 1986* (No. 86-1067 of 30 September 1986) not including 2009 amendments, available at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the Act number 2009-258 dated 5 March 2009, provided by the University of Luxembourg, available at: www.fr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

64 Article 1 of the *Freedom of Communications Act of 1986* (No. 86-1067 of 30 September 1986) not including 2009 amendments, available at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the Act number 2009-258 dated 5 March 2009, provided by the University of Luxembourg, available at: www.fr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

65 Article 1 of the *Freedom of Communications Act of 1986* (No. 86-1067 of 30 September 1986) not including 2009 amendments, available at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the Act number 2009-258 dated 5 March 2009, provided by the University of Luxembourg, available at: www.fr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

66 *Law of 29 July 1881 on Freedom of the Press*, available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGI-TEXT000006070722&dateTexte=vig>.

67 A number of these cases have sparked challenges from free press advocates, see for instance: “Tahiti editor found guilty of defaming prosecutor in story about fellow journalist’s disappearance,” *Reporters Without Borders*, June 24, 2009, <http://en.rsf.org/france-tahiti-editor-found-guilty-of-24-06-2009,33585.html>.

68 For instance, journalists are bound by the “Gayssot Act” of 1990, which bans Holocaust denial. See Law No. 90-615 of July 13, 1990, consolidated version February 24, 2004, available in French at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000532990&dateTexte=>.

is transmitted.⁶⁹ In 2009, French lawmakers passed the controversial HADOPI Law that prohibits users from downloading pirated content and introduced a strict “three-strikes policy” that allows authorities to filter the web. It also established a separate regulatory body (the High Authority for Transmission of Creative Works and Copyright Protection on the Internet) to monitor compliance with these new regulations. More recently, in 2011, French Parliament passed the Loppsi Law, which allows the Government to censor and block websites which have pornographic or criminal content. Although enforcement of these rules primarily focuses on controlling pornographic material, hate speech and Internet piracy, these measures have been widely condemned by free press and Internet advocacy groups for threatening freedom of expression.

Example cited by Hungarian Government: ITALY

“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.”⁷⁰

Expert assessment **Marco Bellezza**, PhD, University of Bari/**Oreste Pollicino**, PhD, Bocconi University

It is true that Italy’s Communications Regulatory Authority (*Autorità per le garanzie nelle comunicazioni* - AGCOM) exercises regulatory competences over all media sectors: the press, electronic press, and broadcasting, but it currently does not have any specific content-related authority over print, online newspapers, blogs or private websites.⁷¹ Its regulatory supervision over print and online press extends to registration requirements only and does not include oversight over editorial content. Hence, it is inaccurate to describe AGCOM as the “watchdog” for Italy’s print and online press.

AGCOM’s primary remit is to monitor Italy’s broadcasting and audiovisual media for compliance with competition and anti-trust rules, and to oversee the implementation of the EU Audiovisual Media Services Directive.⁷² In Italy, media are regulated by general provisions applicable to all journalists regardless of media sector, as well as by a number sector-specific laws and decrees detailing different content and regulatory standards for each sector. Enforcement of both “general” and sector-specific regulations are carried out by a consortium of state bodies, including AGCOM, the Ministry of Economic Development’s Department of Communications, the Parliamentary Commission on Radio and Television, the Antitrust Authority, and the Privacy Authority, the Order of Journalists, and the courts.

69 Law No. 2004-575, June 21, 2004, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164&dateTexte=>. Article 2 relieves ISPs of civil and criminal responsibility if they had “no knowledge of illegal activity or material” or if they “acted promptly to remove or block access to it as soon as they discovered it. Providers are also exempt from civil responsibility if they “have no knowledge of how the illegal activity or material arose.”

70 This example was cited by the Hungarian Government with slightly different wording under both “Criticism 7” and “Criticism 16,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

71 As per *Consolidated Act on Radio and Television* (Law-Decree 177/2005, amended by Legislative Decree 44/2010, unofficial translation in English provided by University of Luxembourg, available at: http://www.en.uni.lu/content/download/31290/371510/file/Italy_translation.pdf.

72 See information on AGCOM in Italian at: <http://www.agcom.it/>.

3/MEDIA LAW SCOPE: REGULATING PRINT AND ONLINE PRESS

All journalists in Italy are bound by *Law 69/1963*, which requires professional journalists to be licensed, and establishes a series of “rights and duties” relating to licensed journalists.⁷³ These include requirements to protect the privacy of individuals, the protection of minors, and the protection of dignity of people with mental or physical handicaps, as well as people involved in criminal proceedings. This law also details corresponding disciplinary sanctions (such as warnings, censure, suspension from work and disbarment) which can be imposed on journalists for violations to these professional standards.⁷⁴ Compliance with these provisions is generally supervised by the Order of Journalists (*Ordine dei Giornalisti* - ODG), a professional order under the supervision of the Ministry of Justice, and by the courts.⁷⁵

All licensed journalist are also bound by certain provisions in the criminal code and in the Italian Constitution, which contain regulations on libel and defamation, responsibilities of the director and editor, rules regarding professional secrecy, and restrictions against publishing certain acts and images, and illegal wiretaps.⁷⁶ These provisions, if breached, carry a range of penalties—from fines to imprisonment. For instance, Article 595 of Italian Criminal Code punishes defamation via the press with the penalty of imprisonment ranging from six months to three years.⁷⁷ Since registration is mandatory for all individuals engaged in “journalistic activity,” these regulations apply to all journalists regardless of media.

Moving from general principles to sector-specific regulations, we note that media in Italy are regulated under different laws for each media sector. The print press are governed by *The Press Law of 1948*,⁷⁸ amended many times since, which is composed of 25 articles that provide the basic rules for the sector, including provisions concerning registration requirements, ownership and management structure of publishing houses, and content regulations concerning libel, defamation and right of reply.⁷⁹ There is no specific authority charged with supervising the press, but rather the sector is self-regulated, and monitored primarily by the national and regional councils of the Order of Journalists and by the courts. AGCOM’s specific regulatory power over print press is defined in the *Maccanico Law* which lists the subjects for which Roc registration is compulsory: “[...] daily or periodical newspaper[s] and magazines publishing houses, the national press agencies, telematic and telecommunications companies, including electronic and digital publishing.”⁸⁰ However, registration with AGCOM does not affect the content or informational activities of individual newspapers.

Broadcasting and audiovisual media are currently regulated under the *Consolidated Act on Radio and Television* (2005), amended in 2010 to implement the EU Audiovisual Media Services

73 See Charter of Duties of Journalists, adopted by the National Federation of the Italian Press and National Council Order of Journalists in July 1993, http://ethicnet.uta.fi/italy/charter_of_duties_of_journalists.

74 *Law 69/1963 PM / AAVM*. For instance, Article 2(1) of this law establishes freedom of expression as an “unalienable right,” but also states there are a number of limitations to these rights, especially with regards to protecting the privacy of individuals.

75 Order of Journalists (*Ordine dei Giornalisti*) at: <http://www.odg.it/content/storia>, per *Law 69/1963*.

76 *Provisions in the press, libel, criminal offenses related to the profession and the criminal trial*, <http://www.odg.it/category/categoria-leggi/disposizioni-sulla-stampa-diffamazione-reati-attinenti-alla-professione-e-p>

77 Italian courts in fact prosecute journalists for defamation; see, for instance, “Three Journalists in Italy Handed Prison Sentences on Defamation Charges,” Barbara Trionfi, 28 May 2011, International Press Institute, <http://www.freemedia.at/home/singleview/article/three-journalists-in-italy-handed-prison-sentences-on-defamation-charges.html>.

78 *Press Law No. 47/1948*, available in Italian at: http://www.mcreporter.info/normativa/148_47.htm.

79 Article 8 of the *Press Law*, for instance, on defamation and right of reply, requires the director of the newspaper to ensure the right of reply to the person defamed. Article 12 of the *Press Law* recognizes that victims of defamation are entitled to claim compensation for the financial and moral damages suffered. Punishments for breaches to these articles are detailed in the criminal code, which as noted applies to all registered journalists.

80 Article 6(a)(5) of the *Maccanico Law* (*Law No. 249/1997*), available in Italian at, http://www2.agcom.it/L_naz/L_249.htm.

Directive.⁸¹ The amended law encompasses all audiovisual media services,⁸² which includes radio and television broadcasts as well as digital and analogue TV, live-streaming, web-casting and on-demand services.⁸³ AGCOM is the primary regulatory and sanctioning authority for these media.

There is no a unitary regulation for online newspapers and blogs but rather a wide range of (sometimes conflicting) legislative sources related to electronic communications and audiovisual media—often leaving regulations of online press to the interpretation of national courts. Italian lawmakers have in fact made numerous attempts to regulate online press. The *Press Law* of 2001 (Act 62/2001),⁸⁴ for instance, was aimed at regulating online newspapers by the same rules as traditional press under the *Press Law of 1948*.⁸⁵ This sparked an intense debate about the applicability of the *Press Law of 1948* to online newspapers. The debate subsided after Italian lawmakers approved the Legislative Decree No. 70/2003,⁸⁶ which established that publishers of electronic newspapers were under the same obligations as traditional publishers but only in the case these publishers wished to apply for press subsidies provided by Act 62/2001. The Italian Supreme Court (*Corte di Cassazione*) has since ruled in a number of cases that the *Press Law of 1948* is not applicable to online newspapers, blogs or other informational websites.⁸⁷ In addition, the *Consolidated Act of Radio-Television* expressly excludes “electronic versions of newspapers or magazines” from the definition of “audiovisual media services.” On the basis of the cited article, AGCOM in November 2010 issued a decision on the provision of audiovisual media services in which it definitively clarified that online newspapers, blogs and user-generated content on websites are not under its regulatory powers.⁸⁸

81 *Consolidated Act on Radio and Television* was amended in 2010 by the *Decreto Romani* (Decree No. 44/2010) in order to implement the EU Audiovisual Media Services. Unofficial English translation provided by the University of Luxembourg, http://www.wen.uni.lu/content/download/31290/371510/file/Italy_translation.pdf.

82 As per the *Consolidated Act on Radio-Television*, Law-Decree No. 77/2005 as amended by Decree 44/2010, an “audiovisual media service” is defined as media “under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks.” This definition is in accordance with Articles 56 and 57 of the Lisbon Treaty. Unofficial English translation provided by the University of Luxembourg, available at: http://www.wen.uni.lu/content/download/31290/371510/file/Italy_translation.pdf.

83 *Consolidated Act on Radio-Television*. Law-Decree No. 77/2005, as amended in 2010 by Legislative Decree 44/2010. Unofficial English translation provided by the University of Luxembourg, available at: http://www.wen.uni.lu/content/download/31290/371510/file/Italy_translation.pdf.

84 Act 62/2001, “New rules on publishing and editorial products and changes to the law of 5 August 1981, no 416,” available at: http://www.mcreporter.info/normativa/101_62.htm.

85 Article 1(1) the Act 62/2001 law defines an “editorial product” as a “product made on paper, or on electronic support, intended for publication or communication of information to the public by any media outlet, including electronic ones, or through radio broadcasting or television, except for music record and film.” As such, lawmakers argued online press could be regulated under the *Press Law of 1948*.

86 Legislative Decree No. 70/2003 implemented the EU Electronic Commerce Directive (2000/31/EC), available at: <http://www.camera.it/parlam/leggi/deleghe/testi/05177dl.htm>.

87 See Decisions No. 10535/2009, <http://www.diritto-in-rete.com/sentenza.asp?id=802>; No. 35511/2010, available at: <http://www.diritto-in-rete.com/sentenza.asp?id=989> and No. 7155/2011 (not yet published).

88 Per Deliberations No. 606/10/CONS, available at: <http://www.agcom.it/default.aspx?DocID=5416>, and 607/10/CONS, available at: <http://www.agcom.it/default.aspx?DocID=5417>.

Example cited by Hungarian Government: LITHUANIA

*“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.”*⁸⁹

Expert assessment

Zivile Stubryte, PhD candidate, Legal Studies, Central European University,

It is true that the Lithuanian *Media Law* covers the “entire media spectrum” including print, online press, and commercial and public broadcasting. However, it is not accurate to claim the Lithuanian Radio and Television Commission (LRTK) is responsible for overseeing all media under this law’s scope. The LRTK is responsible for regulating broadcasting and on-demand audiovisual media services (Internet TV and radio), while the Inspector of Journalist Ethics and Lithuania’s self-regulatory body, the Journalists and Publishers Ethics Commission, are mainly responsible for overseeing the print and online press. Each institution is responsible for monitoring compliance by different media sectors with different provisions of the *Media Law*.⁹⁰

The *Media Law* contains a set of general content regulations for all media as well as specific regulations that apply to different media sectors. There are also additional laws that regulate different media sectors in Lithuania. For instance, the main content regulations as established under the *Media Law* and the *Law for the Protection of Minors against the Detrimental Effect of Public Information* apply to both commercial and public media.⁹¹ The *Law on National Radio and Television* contains more specific regulations regarding advertising for public broadcasters.⁹² In addition, all journalists are legally bound to uphold the *Code of Journalistic Ethics*, a set of professional codes adopted by the Parliamentary Assembly of the Council of Europe and by the treaties of the Republic of Lithuania, compliance with which is primarily overseen by the Inspector of Journalist Ethics and the Journalists and Publishers Ethics Commission.⁹³

As noted, the *Media Law* establishes a set general rights, procedures and duties for all “*producers and disseminators of public information as well as journalists and publishers in their activities.*”⁹⁴ The law defines a “producer of public information” as a provider of an audiovisual media service, a broadcaster of radio programmes, a publishing house, a film, audio or video studio, an information, advertising or public relations agency, an editorial office, a manager of information society media (Internet media), an independent producer, a journalist or any other person producing public information or submitting it for dissemination.⁹⁵ Hence, this covers all media sectors, including the print and online press, so long as these media qualify as “producers of information.”

89 See “Criticism 19,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

90 The “*Media Law*,” or the *Law on the Provision of Information to the Public*, Official Gazette, 27 July 2006, No. 82-3254, as amended on 30 September 2010, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

91 *Law on the Protection of Minors against the Detrimental Effect of Public Information*, Official Gazette, 21 July 2009, No. 86-3637, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363137.

92 *Law on National Radio and Television*, Official Gazette, 31 December 2005, No. 153-5639, as amended on 30 September 2010, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=383728.

93 *Code of Journalistic Ethics*, adopted at the General meeting of journalists and publishers, April 2005, available at: http://ethicnet.uta.fi/lithuania/code_of_ethics_of_lithuanian_journalists_and_publishers.

94 Article 1 of the *Media Law*. Per Article 2(73) of the *Media Law*, “public information” means information intended for public dissemination, except for pornography or information which may not be disseminated to the public under the laws of the Republic of Lithuania, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

95 *Media Law*, Article 2(74), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

The law contains general content regulations that apply to these media, which include requirements to present information in a “fair, accurate and impartial manner;” provisions on the protection of privacy, the right to reply, the protection of minors, and prohibitions on content that incites hatred or discrimination, instigates war, or slanders another individual. In addition to these general regulations, the *Media Law* outlines a range of specific programming obligations and regulations for audiovisual media providers,⁹⁶ TV and radio broadcasters,⁹⁷ audiovisual on-demand media service providers,⁹⁸ and for advertisers and audiovisual commercial communications.⁹⁹ The *Media Law* also specifies a set of “duties of journalists” regarding professional ethics and reporting practices.¹⁰⁰ The law defines a journalist as an individual who on a “professional basis, collects, prepares and presents material to the producer and/or disseminator of public information under a contract with him and/or is a member of a professional journalists’ association.”¹⁰¹

As noted, compliance with these regulations is delegated to various regulatory entities. The LRTK is responsible for “broadcasters and re-broadcasters of radio and/or television programmes, providers of on-demand audiovisual media services and other persons broadcasting or re-broadcasting audiovisual and/or audio works by electronic communications networks (the Internet).”¹⁰² Its remit includes monitoring compliance by TV broadcasters providers of on-demand audiovisual media services with the provisions regarding protection of minors, proportion of European works and works by independent producers in broadcast TV programmes, the right to broadcast events of major importance for society, and regulations on TV advertising and audiovisual commercial communications, sponsorship and product placement.¹⁰³ The LRTK’s authority includes the power to revoke a broadcaster’s license for violations to the above-stated content regulations, but any decision to temporarily suspend or revoke a broadcast license must to be sanctioned by a court.¹⁰⁴

The Inspector of Journalist Ethics is a state official responsible for overseeing the broader implementation of *Media Law*,¹⁰⁵ with specific competencies over print and non-broadcast media (including online press). The Inspector is responsible for monitoring compliance with provisions regarding the obligation to respect “honour and dignity,” the protection of privacy, and provisions on the protection of minors. The Journalists and Publishers Ethics Commission is “a collegial self-regulatory body of producers and disseminators of public information,” indirectly supported by the state through the Media Support Foundation.¹⁰⁶ Generally, the Journalists and Publishers Ethics Commission oversees the professional ethics of journalists.

Although the “general” regulations apply to all media, including print and online press, in practice, the regulatory authorities take into consideration the specific nature of the media when considering breaches to these rules. However, the application of these regulations to online media, and specifically to blogs, remains a somewhat ambiguous area of the *Media Law*. For instance, the court in 2009 considered whether a blogger could be considered a “producer of public information” and whether a blog could be considered a “mass medium,”¹⁰⁷ and as such, be subject

96 *Media Law*, Article 34, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

97 *Media Law*, Article 38, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

98 *Media Law*, Article 40, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

99 *Media Law*, Article 39, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

100 *Media Law*, Article 41, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

101 *Media Law*, Article 2 (87), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

102 *Media Law*, Article 48(1)(6), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

103 *Media Law*, Article 48(10), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

104 *Media Law*, Article 31(15), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

105 *Media Law*, Article 49(1), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

106 *Media Law*, Article 46(1), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

107 *Media Law*, Article 2 (82), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

to content regulations under the Lithuanian *Media Law*.¹⁰⁸ The court agreed with the Inspector of Journalist Ethics that a blogger creates and provides information on a website, and as an author of such information is therefore considered to be a “producer of public information” under the *Media Law*. Since the information is made public on an Internet website, a blog is considered a “mass medium” as defined under the *Media Law*. According to the court, the general content regulations as established under the *Media Law* are therefore applicable to bloggers. However, the court held that bloggers are not considered to be journalists, and as such, are not bound by the “Duties of Journalists” as stipulated by Article 41 of the *Media Law*.

Example cited by Hungarian Government: PORTUGAL

“Portugal’s ERC (Entidade Reguladora para a Comunicação 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.”¹⁰⁹

Expert assessment

Joaquim Fidalgo, PhD, University of Minho, Portugal

This statement regarding the ERC’s regulatory scope is accurate in general terms but does not correctly describe the sector-specific regulatory system in Portugal or the ERC’s powers to influence media legislation. The Media Regulatory Authority (*Entidade Reguladora para a Comunicação Social - ERC*) is responsible for regulating radio, television, the press and online press for compliance with pluralism standards, right of reply and other content regulations contained in Portugal’s media laws, as the above statement correctly notes.¹¹⁰ These include provisions in the ERC Statute and the in Portuguese Constitution, as well as in the *Press Law*,¹¹¹ the *Radio Law*,¹¹² and the *Television Law*,¹¹³ each of which detail different regulatory standards and obligations for each media sector. Hence, the use of the Portuguese example appears to imply that there is a uniformity of media regulation in Portugal, when in fact there are different laws and regulatory standards for each media sector. It is also true that the ERC is responsible for issuing, renewing and revoking broadcasting licenses—but these are only required for terrestrial free-to-air programmes

108 Decision of Vilnius Regional Administrative Court of 17 February 2009, No. I-41-171/2009.

109 See “Criticism 16,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

110 *Entidade Reguladora para a Comunicação Social - Media Regulating Authority (ERC)*, at: <http://www.erc.pt/>.

111 *Press Law* (Law Nr. 2/99, as amended by the Rectification Declaration No. 9/99), available in Portuguese at: <http://www.ics.pt/index.php?op=cont&cid=79&sid=349>.

112 The *Radio Law* (Law Nr. 54/2010), unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

113 *Television Law* (Law No. 27/2007, as amended by the Law No. 8/2011), unofficial English translation of the 2007 law available at: <http://www.anacom.pt/render.jsp?contentId=979660>. Amended version (Law No. 8/2011), available in Portuguese at: http://www.gmc.pt/download.php?dir=121.549&file=lei_tv.pdf.

and not for digital cable or Internet radio or TV (which only require authorisation or registration).

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The statement above also overstates the ERC's role in influencing media legislation. As the primary regulator of Portugal's media, the ERC has the power to express its opinion on legislative initiatives regarding the media and can make recommendations for political and legislative measures. But ERC acts only in an advisory capacity and its opinions are non-binding.¹¹⁵ In practice, ERC's opinion is not always followed: for example, the ERC expressed an opinion against the new legislative framework for the Commission of the Journalists Professional Chart, established in 2007, but that new legislation (which granted the Commission with disciplinary powers in cases of breaches of ethical duties) was actually approved.

The ERC's regulatory scope, powers and competences are defined in the ERC's Statute, which created the regulatory authority in 2005.¹¹⁶ Its regulatory scope, as defined by Article 6, includes: press agencies; natural or legal persons who publish periodicals, in whichever form of distribution; radio and television operators, and broadcasted programme services or complementary content under their editorial responsibility, by any means, including electronic; natural or legal persons who make publicly available radio or television programme services, through electronic communications networks, to the extent that they are empowered to decide on their selection and aggregation; natural or legal persons who make publicly available an edited coherent framework of contents, on a regular basis, through electronic communications networks.¹¹⁷

The ERC is also responsible for monitoring compliance with a set of general provisions applicable to all media contained in the Portuguese Constitution.¹¹⁸ These include articles on the right to freedom of expression and information and freedom of the press, as well as more specific provisions concerning media pluralism, right of reply, broadcasting rights on public service media for political parties, trade unions and other groups, and broadcasting rights for political parties on national radio and TV stations during elections.

The ERC also monitors compliance with content provisions in the *Press Law*,¹¹⁹ the *Radio Law*,¹²⁰ and the *Television Law*.¹²¹ The *Press Law*, for instance, guarantees the right to free press, the right to launch newspapers and other publications, and to print and distribute freely.¹²² It also contains a range of obligations prohibiting media concentration, requiring publications to publish its editorial statutes, to observe the right of reply and of rectification,¹²³ to clearly identify advertisements, and to

114 *Television Law* (Law No. 27/2007, as amended by the Law No. 8/2011), unofficial English translation of the 2007 law available at: <http://www.anacom.pt/render.jsp?contentId=979660>. Amended version (Law No. 8/2011), available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

115 Article 25 in the ERC Statute (Law No. 53/2005), available at: <http://apollo.atomicdns.com/~ercfront/documentos/lei53.pdf>.

116 ERC Statute (Law No. 53/2005) available at: <http://apollo.atomicdns.com/~ercfront/documentos/lei53.pdf>.

117 Article 6 of the ERC Statute (Law No. 53/2005), available at: <http://apollo.atomicdns.com/~ercfront/documentos/lei53.pdf>.

118 See Articles 37 – 40 in *The Constitution of the Portuguese Republic* (7th revision, Constitutional Law No. 1/2005). Official translation provided by the Portuguese Parliament, available at: <http://www.en.parlamento.pt/Legislation/index.html>

119 *Press Law* (Law Nr. 2/99, of 13 January, as amended by the Rectification Declaration nr. 9/99, of 18 February), available in Portuguese at: <http://www.ics.pt/index.php?op=cont&cid=79&sid=349>.

120 The *Radio Law* (Law Nr. 54/2010, from 24 December), unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

121 *Television Law*, unofficial English translation of the 2007 law, <http://www.anacom.pt/render.jsp?contentId=979660>. The amended *Television Law* (Law nr. 8/2011), includes audiovisual services on-demand. Available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

122 Article 1 and 2 of the *Press Law*, available in Portuguese at: <http://www.ics.pt/index.php?op=cont&cid=79&sid=349>, translation by author.

123 Article 24 of the *Press Law* states: "everyone's right of reply, whenever one is the subject of references that may harm his/her honour and reputation, and everyone's right of rectification, whenever one is the subject of untruth or mistaken references." Available in Portuguese at: <http://www.ics.pt/index.php?op=cont&cid=79&sid=349>, translation by author.

uphold ethical norms of journalism.¹²⁴ Article 30 prohibits the press from publishing text or images that may “offend the fundamental rights of any citizen,” which are punishable by the criminal law (in which cases the ERC refers these outlets to the authorities).

Under the *Radio Law*, the ERC is responsible for granting, renewing, altering or repealing (terrestrial) radio licenses.¹²⁵ The ERC also monitors compliance with radio broadcasters’ licensing terms and with content-based regulations, which are generally more stringent than for print media.¹²⁶ Article 30 stipulates three content-based restrictions: “Radio programmes shall respect the dignity of human beings as well as fundamental rights, freedoms and guarantees;” radio programmes must not broadcast materials which “incite, through broadcasted programme elements, hatred on grounds of a racial, religious or political nature, or based on colour, ethnic or national origin, sex or sexual orientation;” and “[r]adio operators shall not allow political propaganda airtime in any way, without prejudice to provisions in this law on the right to airtime.”¹²⁷ The *Radio Law* also includes a set of “general obligations” requiring broadcasters to uphold “respect for the human dignity” and the protection of minors, and to provide diversified programming, including regular information slots to “guarantee programming and information that are independent from political and economic powers,” to “guarantee information that observes pluralism, accurateness and independence,” and to “guarantee the right of reply and of rectification as provided for in the Constitution and in the law.”¹²⁸

The *Television Law* distinguishes between three different models, each with different legal frameworks, responsibilities and levels of regulation.¹²⁹ Television stations that broadcast on the terrestrial spectrum and use “unrestricted free-to-air programme services” must obtain a *license*; television stations that do not use the terrestrial channels and do not need to submit a public tender for their broadcast space, which includes cable TV channels, only need to obtain *authorisation*; media that broadcast television programme services exclusively through the Internet simply need to *register*, with no specific obligations attached, except for the general legal rights and duties as detailed in the *Television Law*.

The ERC’s powers of surveillance and regulation apply differently according to each of these categories, with a maximum-level of monitoring of “free-to-air” TV stations and a minimum-level of monitoring for Internet TV. Because of their larger reach and impact, rules and obligations for open-access, free-to-air TV channels (both public and private) are more detailed; the ERC therefore monitors this sector more attentively. For example, Article 27 of the *Television Law* mandates that free-to-air programmes which are “likely to adversely affect the development of children or adolescents shall be identified by the presence of the appropriate visual symbol throughout their duration and shall only be broadcast between 10:30 p.m. and 6.00 a.m.” This rule is not applicable to any other media.

Public service TV and radio are the media sectors which the ERC most strenuously applies its monitoring and surveillance powers. The regulatory framework for public service media is much

124 Article 2 of the *Press Law*, available in Portuguese at: <http://www.ics.pt/index.php?op=cont&cid=79&sid=349>.

125 Article 23 of the *Radio Law* (Law Nr. 54/2010, from 24 December), unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

126 The *Radio Law* (Law Nr. 54/2010, from 24 December), unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

127 Article 30 of the *Radio Law* (Law Nr. 54/2010, from 24 December), unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

128 Article 30 of the *Radio Law* (Law Nr. 54/2010, from 24 December), unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

129 *Television Law*, unofficial English translation of the 2007 law available at: <http://www.anacom.pt/render.jsp?contentId=979660>. The amended *Television Law* (Law Nr. 8/2011), available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

more detailed and strict. For example, public-service broadcasters must comply with regulations regarding respect for: political pluralism, diversity in programming, disabled members of the audience and the right to political response.

In the Portuguese system, regulations are comparatively less restrictive for cable TV channels than for public service broadcasters and even less so for print and online content. For online radio and TV broadcasters, there is no need for a license or authorisation; simple registration is sufficient when these activities are pursued exclusively through the Internet. Although all content published online is subject to the general penal laws and therefore may lead to processes in a judicial court, all online content is not subject to media regulation by the ERC. The last paragraph of Article 6 of the ERC Statute makes it clear that not all kinds of content distributed through electronic communications networks (the Internet) are subject to the ERC's surveillance and regulation. For an online publication to fall under the ERC's scope, two conditions must be met: that it is edited—or submitted to some sort of organised editorial treatment, as far as content selection, elaboration and presentation is concerned—and that it constitutes a “coherent framework of contents,” not just a set of individual, independent texts or images, but organised with some kind of editorial principles, supervision and control. This means that most blogs and individual sites, as well as pages in social networks do not meet these basic criteria and therefore are not treated as “mass media” by the ERC.

The ERC in 2007 considered whether a local government website should be under its regulatory scope, according to these definitions.¹³⁰ The case involved a complaint brought by an opposition party to the ERC, in which the party argued that the institutional site of the Oporto City Hall was frequently used by the mayor and his supporters to publish biased texts allegedly disguised as “news.” According to the complaint, those texts, published on the website of a public entity, offended the rights of opposition parties because they did not offer an equal voice to contradict the mayor's judgments. The opposition claimed that the Oporto City Hall institutional site should be under ERC's scope—that is to say, it should be treated as a mass medium, and/or as a set of “edited coherent framework of contents,” according to the law.¹³¹ The ERC came to the conclusion that the Oporto City Hall actually is responsible for mass media activities, both through its institutional site (where there is some space for “news”) and through its periodical bulletin. That means that City Hall falls under ERC's scope, even though media activity is not its *main* activity, and even though its web content does not meet journalistic criteria and standards – as it is more about “persuasive communication” than about “informative communication.” The ERC also held that the Oporto City Hall institutional site actually may be considered as a set of “edited coherent framework of contents,” which also means it falls under ERC's scope and has extra obligations, including the obligation to respect every citizen's right of reply. As a result of this decision, the site was more than once requested to give citizens or organizations the right of reply, sometimes after a direct intervention by ERC. For example, ERC mediated frequent quarrels against two Oporto newspapers accused by the mayor of being “instruments of the opposition parties.”

130 See ERC's Deliberation 1/DF-NET/200 of 7 November 2007.

131 See ERC's Deliberation 1/DF-NET/200 of 7 November 2007.

Example cited by Hungarian Government: SLOVENIA

“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.”¹³²

Expert assessment

Brankica Petković, The Peace Institute, Ljubljana

This statement accurately describes the media covered under the current *Mass Media Act* (2006): newspapers, magazines, radio and television programmes, electronic publications, teletext and other forms of edited programming and materials (written, audiovisual) disseminated to the public.¹³³ However, the reference to the “internet” is not correct, since the *Mass Media Act* refers to “electronic publications” which does cover to entire Internet as defined by law.¹³⁴ Private websites and unedited blogs, for instance, do not fall under the definition of “electronic publications” and are therefore not regulated under the *Mass Media Act*.¹³⁵ It should also be mentioned that there are a number of entities with different competencies and regulatory responsibilities over different media and provisions under the *Mass Media Act*: the Media Inspectorate, APEK (Agency for Post and Electronic Communications), the Broadcasting Council, and the Ministry of Culture.

It has been part of Slovenia’s post-socialist media-regulation tradition to have a comprehensive media law aimed regulating the entire media sector (and another, separate law for public service broadcasting). The first media law was adopted in 1994 after Slovenia gained its independence in 1991. That law was replaced in 2001 by the *Mass Media Act*, which established APEK as a “convergent” regulator to oversee both the broadcasting and telecommunications sectors. This Act included some general rules applied to all media sectors, including the press. The *Mass Media Act*, as amended in 2006, contains extensive content regulations that apply to all media regulated under that law, as defined above, including general provisions on the protection of Slovenian language, protection of freedom of expression, prohibition of incitement to inequality and intolerance, protection of minors, and particularly detailed and controversial provisions on the right to correction and reply.¹³⁶ Some of these regulations have had a negative impact on press freedom—

132 This example is cited by the Hungarian Government, in slightly different wording, under “Criticism 7,” and “Criticism 19” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

133 The scope of the *Mass Media Act* (2006), according to Article 2(1), is: “newspapers and magazines, radio and television programme services, electronic publications, teletext and other forms of editorially formulated programme published daily or periodically through the transmission of written material, vocal material, sound or pictures in a manner accessible to the public; (2) Under the present Act programme comprises information of all types (news, opinion, notices, reports and other information) and works under copyright disseminated via mass media for the purpose of informing the public, satisfying the public’s cultural, educational another needs, and communicating on a mass basis.” Unofficial English translation of the amended *Mass Media Act* (2006) is provided by Agency for Post and Electronic Communication (APEK). Available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

134 According to Article 115 of the *Mass Media Act* (2006), “electronic publications” are mass media by which legal and natural persons disseminate programme via computer links such that it is accessible to the public at large, irrespective of size.

135 The term “blog” is not explicitly mentioned in the *Mass Media Act*; however, under the definition in the law, blogs are not regulated in Slovenia unless they are regularly edited and intended for a mass audience. Unofficial English translation of the amended *Mass Media Act* (2006) is provided by Agency for Post and Electronic Communication (APEK), available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

136 See Articles 5 – 8, Articles 22 – 44 (right of correction and reply); Article 84 (protection of minors) of the *Mass Media Act* (2006), available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

including the right to correction and reply regulations, which are often misused by powerful political elites and business owners.¹³⁷ The media registration obligations (required for all media under the *Mass Media Act*), if applied in restrictive way, could also endanger media freedom, but according to how the media register is administered by the Ministry of Culture in practice, this is not the case.

The law however delineates specific requirements for broadcasters as well as a number of exceptions to “general regulations” for print and online press. For instance, beyond the previously noted set of general regulations, the *Mass Media Act* contains special content requirements and restrictions for broadcast media regarding protection of minors, and programme and advertising quotas. The protection of minors provisions, as detailed in Article 84, prohibits broadcasters from presenting scenes with “excessive violence or pornography that could seriously harm the mental, moral or physical development of children and other minors”¹³⁸ between the “watershed” hours of midnight and 5 a.m.¹³⁹ It also requires broadcasters to publish audio or visual symbols indicating programmes which are unsuitable for minors, and to develop and submit internal rules on the implementation to the media authority, the relevant ministries and the National Assembly.¹⁴⁰ The *Mass Media Act* also stipulates a set of special programming quotas and advertising rules for Slovenia’s public broadcaster, *Radiotelevizija Slovenija* (RTV Slovenia), although the RTV Slovenia is primarily regulated under separate law, the *Radio and Television Corporation Act* (ZRTVS-2).¹⁴¹

In general, the regulatory standards and enforcement practices as established by the *Mass Media Act* are more stringent for public service and commercial broadcasters than for print or online media. Only some of these general content regulations apply to print and electronic publications—such as provisions on protection of freedom of expression and prohibition of incitement to inequality and intolerance, along with restrictions on access to pornographic content by minors, and the right to reply.¹⁴² The *Mass Media Act* also further stipulates which provisions in that law are not applicable to electronic publications, such as registration requirements, language restrictions, naming a “responsible editor,” and publishing emergency reports.¹⁴³ Hence, electronic publications are generally subject to fewer regulations, supervision and (possible) sanctions by media authorities. For instance, because electronic publications are exempt from registration requirements, as well as from the necessity to disseminate programs as specified in the media register, the media authority cannot punish electronic publishers for violating these terms.¹⁴⁴ Electronic media are, however, bound to comply with right of reply, with some specific rules—for

137 The extensive “right of correction and reply” regulations are covered in Chapter 6, Articles 22 – 44, in the *Mass Media Act* (2006), available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

138 *Mass Media Act* (2006), Article 84(1), available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

139 *Mass Media Act* (2006), Article 84(7), available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

140 *Mass Media Act* (2006), Article 84(5), available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

141 *Radio And Television Corporation Of Slovenia Act* (Zrtvs-2), The National Assembly of The Republic of Slovenia, October 2010, http://www.mk.gov.si/fileadmin/mk.gov.si/pageuploads/Ministrstvo/Zakonodaja/Mediji/zakon_o_rtv/ZRTVS-2_AN.pdf.

142 *Mass Media Act* (2006), Article 84 (8), available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

143 According to Article 115(2) and (3) of the *Mass Media Act* (2006), “The sense of the provisions of Sections 1 to 3 inclusive of Title I and the sixth paragraph of Article 84 of the present Act shall apply to any electronic publication the publisher/broadcaster of which is a legal entity; The sense of the provisions of Sections 1 to 3 inclusive of Title I and the sixth paragraph of Article 84 of the present Act, with the exception of the provisions of Articles 5, 10, 12, 13, 14, 15, 16, 17, 19, 20 and 25 of the present Act shall apply to any electronic publication the publisher/broadcaster of which is a natural person.” Available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

144 *Mass Media Act* (2006), Articles 10, 12 and 13, available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

instance, the correction has to be published within 48 hours after receiving the request.¹⁴⁵ These regulations do extend to regularly edited blogs intended for a mass audience, as defined by the media law. However, according to this author's knowledge, there have been no cases of sanctions imposed by the media authorities on electronic publications (or blogs) for breaches to these regulations.¹⁴⁶

As previously noted, there is no single body responsible for supervising compliance with these regulations; rather, supervision is delegated among Slovenia's various media regulatory authorities, including: the Media Inspectorate, an independent body within the Minister of Culture responsible for overseeing all media under the *Mass Media Act*; APEK (Agency for Post and Electronic Communications), the body responsible for broadcasting and telecommunications;¹⁴⁷ the Broadcasting Council, an independent body that provides support to APEK in supervising broadcasters' compliance with obligations contained in their licenses;¹⁴⁸ and the Ministry of Culture, which supervises the overall implementation of the *Mass Media Act*.¹⁴⁹ Each of these bodies is responsible for overseeing compliance with different provisions within the *Mass Media Act*, as detailed in the law. There is also a self-regulatory body, the Court of Honour of Journalists, established by an association of journalists to deal with complaints, but its power is not established through the media law.

Example cited by Hungarian Government: SWEDEN

*"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.)"*¹⁵⁰

Expert assessment

Henrik Örnebring, PhD, University of Oxford

The citation of the Swedish regulation regarding online media is misleading and inaccurate in several areas. First, the expression "exemption from initial censorship" is misleading, as prior censorship does not exist in Sweden. There is absolutely no prior censorship of websites in Sweden in any way. Similarly, the term "authorisation" is not appropriate, as registration in many cases is voluntary. The Radio and Television Authority (*Myndigheten för Radio och TV*) has denied some providers "proof of publication," which grants these outlets extra legal protections.¹⁵¹ But the Authority is not allowed to use any content criteria when making these judgments: Being granted a "proof of publication" is not an "authorisation" in the sense that the Government has approved

145 *Mass Media Act* (2006), Article 27(2), available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

146 The publicly available annual reports of the Media Inspector are dated, from 2007, and contain no specific data on the type of the media sanctioned, but rather on provisions in the law violated. However, to this author's knowledge, no sanction on electronic media has ever been applied.

147 See the Agency for Post and Electronic Communications (APEK) at: <http://www.apek.si/>.

148 See the Broadcasting Council at: http://www.srdf.si/en/about_the_council.

149 See Ministry of Culture at: <http://www.mk.gov.si/en/>.

150 This example is cited by the Hungarian Government, in slightly different wording, under "Criticism 7," and "Criticism 19" in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

151 See the Radio and Television Authority at: <http://www.radioochtv.se/>

the content of the site, nor is it required for sites to have this proof to operate online. The statement above also appears to misinterpret the designation of a “responsible editor” as a being a press-restrictive policy, when in fact this designation affords that “responsible editor” extra constitutional freedom-of-expression protections under the law.¹⁵²

In Sweden, media are regulated under different legal frameworks: print media are regulated by the *Freedom of the Press Act* (1949),¹⁵³ and broadcast and digital media are regulated by the *Fundamental Law of Freedom of Expression* (1991).¹⁵⁴ Registration of online newspapers is only mandatory if the provider of the online newspaper is deemed a “media company” according to the *Fundamental Law of Freedom of Expression*.¹⁵⁵ The provider counts as a media company¹⁵⁶ under that law if: a) it also provides another media service besides the web page (e.g. a printed newspaper, a radio programme); if the same editorial office produces a website and other media services then the online newspaper may automatically be provided with constitutional protections; b) the website is available to the public; c) it is clearly separated from other web pages; d) it clearly appears as a single unified service; e) it can only be changed by the owner of the service; f) it is connected to/based in Sweden. If *all* these conditions apply, then the provider is required by law to register the “database”—the legal-technical term for a website—and its “responsible editor” with the Radio and Television Authority.

In other cases—including private blogs, corporate web pages that may have the character of newspapers and web-only online newspapers—registration is voluntary. Upon registering, the provider is issued a “proof of publication” (“*utgivningsbevis*”) which also means that the provider is entitled to full constitutional protections. Without a proof of publication, the publisher may be held liable under ordinary criminal law, and regular constitutional protections for the media, such as a right to keep sources confidential, may not apply.

Chapter 7 of the *Freedom of the Press Act* regulates what are considered content-related violations,¹⁵⁷ and the *Fundamental Law of Freedom of Expression*, Chapter 5 Section 1, refers to Chapter 7 of the *Freedom of the Press Act* in this instance. Thus all media in Sweden are covered under the *Freedom of the Press Act*¹⁵⁸ Chapter 7 (Sections 3 through 5), which states that the following types of media may be deemed illegal in Sweden:

- high treason;
- instigation of war;
- espionage;
- unauthorized trafficking in secret information;
- carelessness with secret information;
- insurrection;
- treason or betrayal of country;

152 The specific requirement cited by the Hungarian Government comes from *The Fundamental Law of Freedom of Expression* (primarily Chapter 4, Articles 1 through 6; See also Chapter 6, Liability, Articles through 4, which is based on the requirement of having a ‘responsible editor’ (Swedish: “ansvarig utgivare,” could also be translated as ‘responsible publisher’) for a printed newspaper.

153 *Freedom of the Press Act of 1949*, official English translation available at: http://www.riksdagen.se/templates/R_Page_6313.aspx.

154 *Fundamental Law of Freedom of Expression* (1991), official English translation available at: http://www.riksdagen.se/templates/R_Page_6316.aspx.

155 *Fundamental Law of Freedom of Expression*, Chapter 1, Article 9, official English translation available at: http://www.riksdagen.se/templates/R_Page_6316.aspx.

156 The law does not use the term “media company” but rather “editorial office,” but in practice this has been taken to mean an editorial office within a traditional media company.

157 *Freedom of the Press Act of 1949*, official English translation available at: http://www.riksdagen.se/templates/R_Page_6313.aspx.

158 *Freedom of the Press Act of 1949* (official English translation), official English translation available at: http://www.riksdagen.se/templates/R_Page_6313.aspx.

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- carelessness injurious to the interests of the (Swedish) Realm;
- dissemination of rumours that endanger the security of the (Swedish) Realm;
- agitation against a population group (hate speech);
- offences against civil liberty;
- unlawful portrayal of violence;
- defamation (this and the following point relate to libel);
- insulting language or behaviour (this and the preceding point relate to libel);
- unlawful threats;
- threats made to a public servant;
- perversion of the course of justice;
- wrongful release of an official document to which the public does not have access;
- deliberate disregard of a duty of confidentiality.

There are also some specific content-regulation as relates to broadcasting, including accuracy and balance requirements and limits placed on the types of advertising and the extent of advertising in broadcast media. Again, there is no prior censorship in this regard and this regulation can apply after the fact of broadcasting only. Complaints against these regulations are dealt with by the Swedish Broadcasting Commission.¹⁵⁹ Breaches of the *Freedom of the Press Law* and/or the *Fundamental Law of Freedom of Expression* can be investigated and sanctioned only by the Chancellor of Justice, who is sole prosecutor in freedom of expression cases.

There has been a debate in Sweden as to the legal validity of having slightly different legal frameworks for different media sectors. Since the constitutional framework is largely based on print media, there has been a debate as to the applicability of certain criteria in the *Freedom of the Press Law* to electronic and digital media. However, the general intention of the lawmakers has clearly been to try to extend the strong freedom-of-expression protections present in the *Freedom of the Press Law* to other media forms as well. In this sense, the Hungarian Government's use of the comparison with Sweden misses the overall point of the criticism.

However, it is understandable that the Hungarian Government misinterpreted the idea of a "responsible editor." The concept, to this author's knowledge, is a unique feature of Swedish freedom-of-expression law. The purpose is to *strengthen* the constitutional protections granted to these media rather than weaken it: if a publication has a responsible editor and therefore enjoys constitutional protection, then: a) journalists working for this media organisation cannot be held individually liable for any constitutional transgressions, as the responsible editor is always legally responsible; b) the responsible editor, and therefore the publication as a whole, becomes immune to many forms of prosecution under criminal law; and c) the responsible editor can only be held constitutionally liable in a very limited number of circumstances.

There have been few objections to the requirement for online news media to register with the Radio and Television Authority. In fact a "proof of publication" certification is often a sought-after legal protection. Several credit information companies, for instance, have applied for and have received proof of publication for their websites. This means that they enjoy constitutional protection and are exempt from certain requirements related to the logging and storage of personal data. This also means that the Swedish Data Inspection Board is not able to prosecute these websites under data privacy law. Recently *Dagens Media* ("The Media Daily"), a specialist

¹⁵⁹ The Swedish Broadcasting Commission (*Granskningsnämnden*) was previously a separate entity, but in August 2010 was brought under the Department within the Radio and Television Authority, using the same name. The Swedish Broadcasting Commission still has a separate Board and makes its decisions independently of the Board of the Radio and Television Authority. The new *Radio and TV Law* also makes it clear that the Broadcasting Commission has a separate mandate and remit, see the *Radio and TV Law* Chapter 16 Section 2, available at: <http://www.radioochtv.se/Om-myndigheten/Organisation/Granskningsnamnden-for-radio-och-tv/>.

newspaper focusing on the media business and media issues, was under investigation by the Office of the Chancellor of Justice for not registering their online component with the Radio and Television Authority. When they did register, the Chancellor of Justice dropped the investigation without charges.¹⁶⁰

Example cited by Hungarian Government: SWITZERLAND

“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.”

Expert assessment

Manuel Puppis, Phd/Matthias Künzler, Phd, University of Zurich

This example does not invalidate the criticism that applying the same content rules to all media is contrary to European norms, as in Switzerland different media are subject to different regulations. Print and online press are not regulated, nor are other types of websites (with the exception of the websites of Switzerland’s public service broadcaster). Regarding broadcasting, it is accurate to say that the *Radio and Television Act of 2006* (RTVA) is formulated in a technologically neutral way.¹⁶¹ Instead of regulating broadcasters, the law regulates “programme services.”¹⁶² This term covers traditional linear television and radio programme services irrespective of the form of transmission – terrestrial, cable, satellite or the Internet.¹⁶³ Non-linear services, such as video or audio on-demand, as well as single transmissions of an event are not regulated under the RTVA. Programme services (with the exception of programme services of minor editorial importance, e.g. webcams)¹⁶⁴ are bound to comply with a set of minimum content regulations that include provisions regarding the respect for human dignity and the protection of minors.¹⁶⁵ Only the public service broadcaster SRG and licensed local and regional private broadcasters are subject to additional regulations, such as a programming remit.¹⁶⁶ Private broadcasters do not require a license; notification with the regulator OFCOM is sufficient.¹⁶⁷ The Independent Complaints Authority for Radio and Television (ICA)¹⁶⁸ deals with complaints about the editorial content of programmes.¹⁶⁹ All the other

160 The decision to drop the investigation of Dagens Media for not registering was taken May 17, 2011, and documentation was expected to be posted on the Chancellor of Justice’s searchable database at <http://www.jk.se/Beslut.aspx>.

161 The *Federal Act on Radio and Television of 2006* (RTVA), available at: http://www.admin.ch/ch/e/rs/784_40/index.html.

162 *Federal Act on Radio and Television of 2006* (RTVA), Article 1(1), available at: http://www.admin.ch/ch/e/rs/784_40/index.html.

163 According to Article 2 of the *Federal Act on Radio and Television of 2006* (RTVA), a “programme service means sequence of programmes which are offered continuously, defined in time and transmitted using telecommunications techniques and which are intended for the public.” Available at: http://www.admin.ch/ch/e/rs/784_40/index.html.

164 *Federal Act on Radio and Television of 2006* (RTVA), Article 1(2), available at: http://www.admin.ch/ch/e/rs/784_40/index.html.

Article 1 of the *Radio and Television Ordinance* (RTVO), http://www.admin.ch/ch/e/rs/784_401/a1.html.

165 See Articles 4 to 8 in the *Federal Act on Radio and Television of 2006* (RTVA), available at: http://www.admin.ch/ch/e/rs/784_40/index.html, and Articles 4 to 10 in the *Radio and Television Ordinance* (RTVO), available at: http://www.admin.ch/ch/e/rs/784_401/a1.html.

166 *Federal Constitution of the Swiss Confederation*, Article 93(2), available at: <http://www.admin.ch/ch/e/rs/1/101.en.pdf>; *Federal Act on Radio and Television of 2006* (RTVA), Articles 24, 38 and 43, available at: http://www.admin.ch/ch/e/rs/784_40/index.html.

167 *Federal Act on Radio and Television of 2006* (RTVA), Article 3, available at: http://www.admin.ch/ch/e/rs/784_40/index.html.

168 Independent Complaints Authority for Radio and Television, available at: <http://www.ubi.admin.ch>.

169 *Federal Act on Radio and Television of 2006* (RTVA), Article 83(1) and 86(1), available at: <http://www.admin.ch/ch/e/>

provisions of the RTVA are enforced by the Federal Office of Communications (OFCOM).¹⁷⁰

Due to the technologically neutral definition of programme services, the same content rules apply to programme services distributed over the Internet. In addition, the websites of Switzerland's public service broadcaster, SRG, must comply with RTVA's content regulations, as outlined in Articles 4 to 6.¹⁷¹ These articles specify that all programmes must respect "human dignity" and prohibits content that contributes to "racial hatred," "endangers public morals," glorifies or trivialises violence, jeopardises the national or international security, or impairs the physical, mental, moral or social development of minors. There are also obligations to present information in a fair and accurate manner and with a diversity of opinions. In addition, the independence and autonomy of broadcasters in programming matters is emphasised. OFCOM is responsible for overseeing compliance with these regulations.

As noted, print media and online newspapers as well as other websites (blogs, personal websites) are not regulated by media legislation and do not require authorisation; consequently, these media are not overseen by any government body.

The minimal editorial standards with which programme services and the websites of the public service broadcaster SRG have to comply obviously put some restrictions on media freedom. Nevertheless, all of these restrictions must meet the strict requirements guaranteeing fundamental rights in Switzerland, as established in Article 36 of the Constitution:¹⁷²

"Restrictions on fundamental rights:

- 1) Restrictions on fundamental rights must have a legal basis. Significant restrictions must have their basis in a federal act. The foregoing does not apply in cases of serious and immediate danger where no other course of action is possible.*
- 2) Restrictions on fundamental rights must be justified in the public interest or for the protection of the fundamental rights of others.*
- 3) Any restrictions on fundamental rights must be proportionate.*
- 4) The essence of fundamental rights is sacrosanct."*

However, the fact that the Internet is mostly unregulated (aside from websites of the SRG and traditional linear programme services distributed over the Internet) is generally understood as having a positive impact on media freedom. Finally, self-regulation exists as well. Complaints about violations by newspapers, TV, radio, or websites of traditional media of the Swiss self-regulatory code, the Declaration of the Duties and Rights of a Journalist, may be made to the Swiss Press Council.¹⁷³ The Press Council is a self-regulatory body supported by journalists' associations, publishers and the public service broadcaster, SRG.¹⁷⁴

rs/784_40/index.html.

170 *Federal Act on Radio and Television of 2006* (RTVA), Article 86(1), available at: http://www.admin.ch/ch/e/rs/784_40/index.html.

171 Article 12(2) in License [Konzession] of Public Service Broadcaster SRG, available in German at: http://www.srgssr.ch/fileadmin/pdfs/Konzession_srg_281109_de.pdf.

172 *Federal Constitution of the Swiss Confederation*, available at: <http://www.admin.ch/ch/e/rs/1/101.en.pdf>.

173 See Declaration of the Duties and Rights of a Journalist, available at: <http://www.presserat.ch/24350.htm>.

174 See Swiss Press Council, available at: <http://www.presserat.ch>.

4/Public service media

Hungary's new media laws have made sweeping changes to the country's public service media system. Each of Hungary's public service media outlets—three national TV, three radio stations and one national news service—are now supervised by a single body headed by a chairperson appointed by the Media Council. The assets of these outlets have been transferred to a newly established public media fund, which is managed by the Media Council. News content for all public media stations is produced centrally by Hungary's national news service, MTI, which is headed by a new director who was nominated by the Media Council chairperson. Opponents claim the measures have eliminated the independence of Hungary's public service media, bringing all aspects—from programming to funding to regulatory supervision—under the Media Council's control. Critics also warn that the new centralised news-production system threatens the public media's diversity and pluralism. The Hungarian Government says that the new system is more cost-effective and efficient, while still safeguarding the autonomy of Hungary's public media. It also states that examples of similar public media systems can be found in other European states.

Changes to Hungary's public service media were implemented in a succession of amended and new laws in the Government's larger media law "package." These include an initial amendment to the Hungarian Constitution, passed by Hungarian lawmakers in July 2010, which expanded the definition of the role of public broadcasting to include fostering national and European identity, strengthening "national cohesion," and satisfying "the needs of national, ethnic, familial and religious communities."¹ Two subsequent laws—Act 82/2010² and Act CLXXXV of 2010, *On Media Services and Mass Media* (the "Media Act")³—introduced the new governance, funding and news-production system for Hungary's public service media.

1 The Constitution of the Republic of Hungary (Act XX of 1949 as revised and restated by Act XXXI of 1989) as of 2 January 2011, see Article 61, available at: <http://www.mkab.hu/index.php?id=constitution>.

2 *Act LXXXII of 2010 on the amendment of certain acts on media and telecommunications* amended the 1996 *Act on Radio and Television Broadcasting*, the *Electronic Communications Act* of 2003, and minor elements of other laws. Available in Hungarian at: <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk10129.pdf>. See Summary of these changes in "Hungary: A Wave of Media Legislation," Database on legal information relevant to the audiovisual sector in Europe, IRIS 2010-8:1/34, <http://merlin.obs.coe.int/iris/2010/8/article34.en.html>.

3 Act CLXXXV of 2010 *on media services and mass media*, (hereafter, the "Media Act"), as amended March 2011, available at: <http://nmhh.hu/dokumentum.php?cid=26536>. The updated *Media Act*, with additional amendments passed in July 2011, available in Hungarian at: <http://www.nmhh.hu/dokumentum.php?cid=27786>.

Under the new system, the previously autonomous bodies responsible for overseeing the country's public service media have been merged into a single entity, the Public Service Foundation, which also supervises Hungary's national news agency, MTI.⁴ The Foundation is managed by an eight-member board of trustees. Six of these members are appointed by Parliament: three by the governing faction and three by the opposition. The Media Council appoints the chairperson and an additional member.⁵

The board of trustees is responsible for appointing the directors of Hungary's public media outlets—three national TV and three radio stations and one national news service, MTI. The chairperson of the Media Council proposes two candidates for each post, subject to approval by the Media Council.⁶ The board of trustees of the Public Service Foundation appoints one of the two nominees proposed by the Media Council chairperson for each of

4 Per 82/ 2010 and the *Media Act* (Act CLXXXV of 2010, *On Media Services and Mass Media*), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

5 *Media Act*, Article 102, available at: <http://nmhh.hu/dokumentum.php?cid=26536>. Members of the Public Service Foundation Board of Trustees: http://www.kszka.hu/index.php?option=com_content&view=article&id=436:a-kozszoigalati-kozalapitvany-kuratoriuma&catid=151:a-kuratorium&Itemid=18.

6 *Media Act*, Article 102(2)(a)-(c), available in Hungarian at: <http://www.nmhh.hu/dokumentum.php?cid=27786>.

these outlets.⁷

As specified in the *Media Act*, Hungary's national news agency MTI has been granted the "exclusive right" to produce news programmes for the country's public broadcasters.⁸ The law also placed MTI in charge of the online news portals and products of the public media and their on-demand media services. In addition, MTI provides news content free of charge to other media in Hungary.

The laws also established a new public media fund, the Media Service Support and Asset Management Fund (MTVA), which was assigned all assets of the public media companies.⁹ The MTVA receives the Government's annual funding for public media, as well as the funds from tendering and license fees and fines.¹⁰ The Fund is managed by the Media Council.¹¹ The chairperson of the Media Council appoints, sets the salary for and exercises full employers' rights over the Fund's director general. The chairperson of the Media Council also appoints the Fund's deputy directors, as well as the chairperson and the four members of its Supervisory Board.¹² The Media Council is responsible for approving the Fund's annual plan and subsidy policy and for determining the rules governing how MTVA's assets can be used, managed, and accessed by the public media.¹³ The Fund's annual budget is approved by Parliament.¹⁴

7 *Media Act*, Article 102, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

8 *Media Act*, Article 101(4), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

9 *Media Act*, Article 100; Act 82/2010 initially established the MTVA; the *Media Act* further defined its role in Article 136, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

10 *Media Act*, Article 136(3) and 136(4), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

11 Act 82/2010, Section 22 and 40; Articles 108 and 136 of the *Media Act* further specify the Media Council's role in managing MTVA, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

12 *Media Act*, Article 136(11-14), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

13 *Media Act*, Article 108(13) and Article 136, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

14 *Media Act*, Article 136(15), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

Public media appointments

In November 2010, the board of trustees of Hungary's new Public Service Foundation appointed the following directors to Hungary's public service media outlets:

Hungarian national news agency (MTI):

Csaba Belényesi, co-founder and former editor-in-chief of conservative radio station Lánchíd Rádió, and former Strategic Vice President at MTI.

Hungarian Television (MTV):

Balázs Medveczky, former Vice President of MTV.

Duna TV:

Szilveszter Ókovács, opera singer and music critic, former reviewer for conservative daily Magyar Nemzet and host of political program on conservative Lánchíd Rádió.

Hungarian Radio (MR):

István Jónás, former acting editor-in-chief of conservative radio station Lánchíd Rádió.

The Public Service Fiscal Council decides on the distribution of funds to public media service providers.¹⁵ Under the previous system, funds were allocated to the individual stations according to fixed percentages of annual license-fee revenues.¹⁶ The Public Service Fiscal Council is composed of seven members, including the four director generals of the public media stations and MTI, the director general of the MTVA, and two members appointed by the State Auditors Office.¹⁷ The Fund's director general convenes and chairs an annual meeting with the Public Service Fiscal Council to decide on the distribution of the funding between the public media.¹⁸ The

15 *Media Act*, Article 108(2) and 108(5), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

16 Analysis and Assessment of a Package of Hungarian Legislation and Draft Legislation on Media and Telecommunications," Prepared by Dr. Karol Jakubowicz, Commissioned by the Office of the OSCE Representative on Freedom of the Media. Warsaw, Poland, September 2010, available at: <http://www.osce.org/fom/71218>.

17 *Media Act*, Article 108(3), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

18 *Media Act*, Article 108(4), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

financial management of public media service providers is monitored by the State Audit Office.¹⁹

As specified in the *Media Act*, the Fund has a range of responsibilities beyond managing public service media assets. It is directly involved in the “production, ordering and purchasing of the programmes of the public service broadcasters,”²⁰ and in implementing the ongoing restructuring of Hungary’s public media system.²¹ In February 2011, Media Council Chairperson Annamária Szalai appointed István Böröcz, a former conservative Smallholder Party MP, as the MTVA’s director general.²² Böröcz is responsible for implementing a number of sweeping changes to Hungary’s public media system, including the ongoing dismissal of a third of Hungary’s 3,000 public media journalists.

International criticism

Opponents have raised numerous concerns over the independence of Hungary’s public media, claiming the changes have brought all areas of Hungary’s public media—from appointing public media directors to managing its funding—under the Media Council’s control. Critics warn that the Media Council’s partisan composition has, in effect, brought Hungary’s public media under the Government’s control. A resolution adopted by the European Parliament in March 2011 warned that the legislation contravenes OSCE and international standards “by doing away with the political and financial independence of public-service media.”²³

19 *Media Act*, Article 108(14), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

20 *Media Act*, Article 108(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

21 *Media Act*, Article 136(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

22 Annamária Szalai’s first appointment for MTVA’s director general, Csaba Fazekas, resigned after three months. See “Hungarian media fund head resigns after three months, replaced by former politician,” in *politics.hu*, 14 February, 2011, available at: <http://www.politics.hu/20110214/hungarian-media-fund-head-resigns-after-three-months-replaced-by-former-politician/>.

23 “European Parliament resolution of 10 March 2011 on media law in Hungary,” Resolution P7_TA(2011)0094, available at: [http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN)

A key concern is the Media Council’s role in appointing directors of Hungary’s public media outlets. According to the Council of Europe’s Human Rights Commissioner Thomas Hammarberg, the law limits the board of trustees of the Public Service Foundation to choosing between two nominees selected by the prime minister-appointed president of the Authority, who is also the chairperson of the Media Council. This system, according to Hammarberg, “runs counter to the Council of Europe’s standards aimed at preserving the independence of public service broadcasting from interference, notably political, from any external authority.”²⁴

Opponents have also challenged the centralisation of news production under MTI. According to an analysis by the Budapest-based political think tank Political Capital Policy Research & Consulting Institute, this system could create “a ‘unitary’ approach” among state-owned broadcasters, “endangering the diversity of opinions and information that is available.”²⁵ Critics also fear the new centralised system could effectively eliminate critical news coverage of the Government by appointing party loyalists to top editorial positions. These concerns were reinforced after newly named MTI director Csaba Belényesi told a local media outlet following his appointment that the “public service media should be loyal to the government and fair to the opposition’ and should not be an ‘enemy of the government’ or challenge the ‘power of the freely (democratically) elected cabinet ... It’s not right to accept a position and then defy the employer.”²⁶

0094+0+DOC+XML+V0//EN.

24 “Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media,” Council of Europe Commissioner for Human Rights, 25 February 2011, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289>.

25 “The New Hungarian Media Law: Evaluation and Summary,” Political Capital Policy Research & Consulting Institute, 22 January 2011, http://www.riskandforecast.com/post/hungary/the-new-hungarian-media-law-evaluation-and-summary_645.html.

26 “Belényesi Csaba a köz új szolgálatáról,” *168 Óra Online*, 8 December 2010, available in Hungarian at: <http://www.168ora.hu/itthon/belenyesi-csaba-a-koz-uj-szolgalatarol-66304.html> (Translation by Natália Jánossy).

Free-press advocates have also raised serious concerns over the Media Council's authority over the new public media asset fund, the MTVA. The Council of Europe's Hammarberg asserts that the role of the Fund means that "the [head] of the Media Council [becomes] the indirect employer of all journalists of all public service broadcasting."²⁷ Many contest the manner in which the Fund's powers were expanded under the *Media Act* to include programming and other activities beyond allocating assets. It is "not quite clear what tasks remain with the broadcasters, if ordering, buying and production of the public service programmes is done by the [MTVA] Fund," according to an analysis by the South East European Network for Professionalization of Media (SEENPM). Because the Fund is managed by the Media Council, this allows the Council to assert "direct political influence" over Hungary's public service media, including over its programming and finances, according to this study.²⁸

Hungarian Government's response

Hungarian officials have stated that the extensive restructuring was necessary to correct the country's "dysfunctional" public media system.²⁹ In its December 2010 statement, the Government explains that the board of trustees of the Public Services Foundation, the body responsible for appointing public media directors, is elected by Parliament and that all parliamentary parties are represented on a proportionally equal basis.³⁰

27 "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media," Council of Europe Commissioner for Human Rights, 25 February 2011, available at: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289>.

28 *The New Hungarian Media Law Substantially Curtails Press Freedom*, Prepared by Judit Bayer for the South East European Network for Professionalization of Media (SEENPM), 22 March 2011, available at: http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf.

29 See MTI report "Opposition parties strongly criticize media bill in heated debate," in Politics.hu, June 16, 2011, <http://www.politics.hu/20100616/opposition-parties-strongly-criticize-media-bill-in-heated-debate/>

30 See Criticism 9, "Criticisms and answers formulated on the subject of the proposed media act examined in a

The Government also states that despite the public media's new centralised structure, the system allows for each of these outlets to retain their autonomy. According to the Government, although MTI produces news items, there is no "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."³¹ It continues: "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."³²

In addition, the Government states that the consolidation of formally autonomous supervisory bodies into a single body makes these media "more transparent and better controllable."³³ Officials explain that "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

European context," Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

31 See "Criticism 8" in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

32 See "Criticism 8" in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

33 See "Criticism 13" in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

substantial savings.”³⁴

The Hungarian Government acknowledges that under the previous system funding for individual public media was guaranteed separately but states that the new system gives the public media “more financing related independence.”³⁵ According to the Government, the director generals of the public media are directly involved in process, and as members of the Public Service Fiscal

Council “they will have a say into what should be the relative share of individual public media.”³⁶ The public media companies will “continue to play an active part in deciding key financial issues,” according to the Government, and “questions like asset sharing and employment will have to be decided in consultation between the MTVA, the Board of Trustees of the Public Service Foundation, and the Public Service Budgetary Council.”³⁷

³⁴ See “Criticism 13” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

³⁵ See “Criticism 13” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010 available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

³⁶ See “Criticism 13” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

³⁷ See “Criticism 14” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

4.1/Findings: appointing public service media directors

In response to the concerns over the Media Council's role in appointing directors of Hungary's public service media outlets, the Hungarian Government cites examples from six EU-member and European countries in which it states public media directors are appointed without tendering: **Austria, Czech Republic, Finland, France, Switzerland, and the UK.**³⁸

The expert assessments indicate that the Hungarian Government's general statement is accurate: in a majority of these six cases the directors of public service media outlets are appointed without tendering. However, the experts also note that this style of appointments is prone to both political influence and public criticism. Hence, with these examples the Hungarian Government is comparing its system to a practice with notable deficiencies with regard to the Council of Europe's recommendations regarding the independence of public media from political interference.

In addition, the expert analyses indicate that the specific examples cited by the Hungarian Government do not sufficiently correspond with the body responsible for and/or the system of appointing public media directors in Hungary. The analyses of the examples provided by the Hungarian Government indicate that in a majority of cited cases, there exist one or more tiers of formal "checks" aimed to minimise the government's direct influence over these appointments, despite that appointments are still politicised and often criticised as such, according to the experts.

In **five of these six** cases cited, the system in Hungary appears to have fewer of these formal safeguards in place, as the body responsible for appointing directors of Hungary's public media outlets is limited to choosing one of the two nominees selected by the Media Council chairperson, who is, in effect, an appointee of the prime minister.

However in **France**, the system of appointments to directors of public media outlets appears to have the fewest safeguards from governmental influence than all of these cases, including Hungary's. Following changes to the appointment system in 2009, the director of France Télévisions is appointed directly by the French president, upon approval by the country's media authority and in consultation with relevant parliamentary committees. This new appointment system has raised serious concerns from free-press groups and would also appear to not meet the Council of Europe's above-mentioned recommended standards for the independence of public media.

38 See "Criticism 9" in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010 available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

4.2/Findings: centralisation of public media news production

In response to the criticism of the centralisation of news production of Hungary's public media, the Hungarian Government cites examples of similar public media systems from three EU-member states: **Austria**, **Italy**, and the **UK**.³⁹

The expert analyses indicate that the Hungarian Government's examples regarding the centralisation of public media news production in these three cited cases are partially accurate: in two of three examples cited, **Austria** and **Italy**, the experts report that while there is a certain level of centralised news production at the national level, some or much of the news content is also produced regionally, with partial or full editorial independence. In both systems, regional stations feature a mix of centrally produced national news content, and local content produced by separate editorial teams; national stations also carry content produced regionally. In Austria, each of the country's nine federal regions has its own independently operated radio and TV production facilities, headed by a director responsible for making editorial decisions. In Italy, the public service broadcaster, RAI, has four regional centres responsible for local news production. In addition, the expert states that the decentralised structure of the country's public broadcasting system is formally stipulated in the law and in the RAI's current service contract; as such, only multimedia content for online use is currently produced centrally. The Government's description of the BBC is more accurate, as news production within the BBC has been increasingly centralised across platforms and channels over the past decade.

Experts in **Italy** and the **UK** also note that the centralisation of news production has been a source of significant controversy. In **Italy**, the expert reports that the *decentralisation* the country's public media system has been part of a decades-long effort to decrease political control of the Italy's public TV channels. The expert also states that concerns over the centralisation of news programming can be traced to the system of appointing directors to Italy's public media outlets. Because both the board of directors and general director of RAI are appointed by the Italian Government, editorial content often reflects the political ideologies of the current party in power. In the **UK**, the restructuring and centralisation of the BBC has been heavily criticised for favouring market demands at the expense of programming diversity and pluralism. Hence, based on the analyses of these examples, the centralisation of news production within Hungary's public media appears to be consistent with a system that experts report can be prone to political influence and/or can diminish media pluralism and diversity.

³⁹ See "Criticism 8" in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

4.3/Findings: public service media funding

In response to criticism of the Media Council's role in managing the new fund for Hungary's public service media, the Hungarian Government cites a similar system from one EU-member state:

Finland.⁴⁰

According to the expert assessment, the Hungarian Government's claim that the Finnish Communications Regulatory Authority (FICORA) is responsible for managing the finances of that country's public media system is not accurate. FICORA's role in managing public media financing is purely administrative: it collects the annual license fees from households and businesses for the State Television and Radio Fund. FICORA has no authority to set the level of overall funding for public media, to allocate funding to public media outlets or to determine for what activities the funding is utilised. The expert reports that FICORA has no other relationship with the Fund other than to collect license fees. The Finnish Government determines the installments and times of payments from the State Television and Radio Fund to the YLE. The Finnish Government has no authority over how this funding is used by the YLE; the YLE itself decides how these funds are distributed to various public media outlets. In addition, the Fund itself has no appointed members but rather is run by two state auditors.

By comparison, Hungary's Media Council manages the country's new public service media fund, the MTVA. The chairperson of the Media Council appoints the Fund's director general, deputy directors, the chairperson and the four members of its supervisory board. The Media Council is responsible for approving the Fund's annual plan and subsidy policy and for determining the rules governing how the MTVA's assets can be used, managed and accessed by the public media.

Hence, the expert analysis indicates that the Hungarian Government's comparison between the Media Council and FICORA in terms of their respective roles in managing public media assets is inaccurate. FICORA's relationship with Finland's State Television and Radio Fund is substantively different than the Media Council's management of the MTVA. These bodies are vested with different powers in managing the assets and controlling funding of each country's public media system.

⁴⁰ See "Criticism 14" in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

4.1/Expert assessments: appointing directors of public media

Examples cited by Hungarian Government: AUSTRIA

“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 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.”⁴¹

Expert assessment **Katharine Sarikakis**, PhD, Department of Communications, University of Vienna

The description of the election of the director of ORF (*Österreichischer Rundfunk*) is essentially accurate, and it illustrates a common problem with regulatory bodies and the governance of public service broadcasting across Europe: each government aims to appoint individuals more “friendly” to its policies. However, the Austrian system attempts to reduce the impact of governmental appointments with a multilevel system of internal governance and by allowing civil society to nominate members of the Foundation Council. This means that the Foundation Council or *Stiftungsrat*—which is like the body once known as the “*Kuratorium*” in the *Audiovisual Law* of 1974—is not constructed purely along party lines.

The Foundation Council is responsible for ORF’s budget and other legal obligations but has no remit over programming decisions. The Council has a general director who nominates directors and land directors from each of Austria’s nine federal lands (“Laenders”). The Council has 35 members, serving four-year terms. According to *ORF-Gesetz* (the revised *ORF Act*), six members are appointed by the Government based on the proportionate strength of political parties in the National Assembly; after consultation, nine regional representatives are appointed from each of Austria’s federal regions (“Laender”); nine are appointed by the Government; six are appointed by the Audience Council, a public advocacy group—of which three are elected and three come from groups concerned with religion, art and education; and five are appointed by the Central Works Council, which represents the employees of ORF.⁴² The six members who are nominated by political parties participate in the election of ORF’s general director. On the basis of the general director’s nomination, those six members also elect the directors of ORF’s various broadcast outlets.⁴³

⁴¹ See “Criticism 9” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010 available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

⁴² Federal Act on the Austrian Broadcasting Corporation (ORF Act) Federal Law Gazette No. 379/1984 as amended by Federal Law Gazette I No. 83/2001, available at: <http://www.rtr.at/en/m/ORFG/orfg-eng.pdf>.

⁴³ Section 20 of the Federal Act on the Austrian Broadcasting Corporation (ORF Act) Federal Law Gazette No. 379/1984 as amended by Federal Law Gazette I No. 83/2001, <http://www.rtr.at/en/m/ORFG/orfg-eng.pdf>.

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The director of the Foundation Council holds the most powerful position in Austria's public media system and bears responsibility for all of ORF's activities. Because the director is nominated on the basis of the party composition of the Federal Assembly, the position is always somewhat politicised. Although ORF's independence is formally safeguarded by a multilevel system of governance, the Austrian political world and the public service broadcast system are entangled in a long history of close interaction, and political influence over ORF is informally accepted to a certain extent, which has been a detriment to its public perception as an independent public service broadcaster. The question of the Government's role in the appointment of ORF directors remains a central point of debate regarding the independence of the Austrian public service media system.

However, there are a set of mechanisms in place designed to ensure the accountability of ORF and to neutralise governmental influence. For instance, bodies like the Audience Council and the Public Value Review Board act to insert the viewers' point of view into discussions of what makes for appropriate public broadcasting.⁴⁴ The Audience Council is a body of viewers appointed by chambers of commerce, churches, educators and the academies of sciences. The functions of the Audience Council include making recommendations regarding the design and content of programmes and proposals for technical expansion, and approving decisions of the Foundation Council concerning the amount of radio and television fees. In addition, under the amended *ORF Act*, a new Public Review Board was established to submit feedback on ORF's services. The Board is required to evaluate whether new ORF services effectively fulfill ORF's public mandate and to assess the quality of programming diversity for viewers, listeners and users. The Review Board comprises five members, appointed by the Austrian Government for five-year terms. Members must be experts in the field of media law, media sciences or business administration and economics.

Example cited by Hungarian Government: CZECH REPUBLIC

"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."⁴⁵

Expert assessment

Milan Šmíd, PhD, Charles University, Prague

The statement is accurate—and it also refers to one of the most controversial issues within the public service media system in the Czech Republic. The politicisation of appointments to the Czech Television Council (CTC) was in fact what fueled the so-called "Czech TV crisis" of 2001.⁴⁶ The appointment system as cited above was the result of the legislative changes implemented in the

⁴⁴ Under the amended ORF Act, the Public Value Review board was established within the Austrian Communications Authority (KommAustria); this group must be given the opportunity to submit comments and opinions on new ORF services in accordance with Article 6a of the ORF Act. <http://www.rtr.at/en/m/PVBeirat>.

⁴⁵ See "Criticism 9" in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010 available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

⁴⁶ See a summary of this crisis in the BBC, "Politicians struggle to resolve TV crisis," 2 January, 2001, <http://news.bbc.co.uk/2/hi/europe/1096686.stm>.

wake of this crisis. Whereas under the previous rules the lower house of Parliament nominated and appointed all members of the CTC, the current system requires the involvement of NGOs in this process. Unfortunately, despite the new rules party-friendly nominees still have a better chance to be elected than truly independent representatives. Hence, there is still potential for politicians to influence public service media through appointments to the CTC.

It should be noted, however, that the CTC is not responsible for the entire public broadcasting sector but only public service TV; the Czech Radio Council (CRC) supervises radio and the Czech News Agency Council supervises the Czech News Agency (CTK). Furthermore, the CTC is not a regulatory body but rather it provides a “supervisory” role over Czech public TV. The CTC however has a good deal of control over budgetary and personnel decisions, including the power to appoint and dismiss the general director of Czech public TV, which has sparked numerous controversies over the years.⁴⁷ Although the CTC has no formal role in editorial and programming content decisions, it can still indirectly control these areas via appointments to general director positions and by other informal means.

As noted, the former appointment procedures gave one house of Parliament the power to nominate and elect all nine members of the CTC.⁴⁸ This led to the increasing politicisation of the CTC over the years, which reached a crisis point in 2001. Much of this had to do with the CTC’s power to appoint and dismiss the general director of the Czech public television. Following a six-year period of managerial stability from 1992 to 1998, Czech Television experienced a number of turbulent years during which five general directors were appointed and dismissed in as many years. Some were dismissed because of their poor managerial performance, but at least two were removed for political reasons.⁴⁹

Under these amendments which took effect in January 2001, the CTC was enlarged from nine to 15 members and the procedure of nominating the candidate was “outsourced” from Parliament to civic organisations. Any NGO or other such group that is registered and active in public life has a right to respond to a call for nominees, which is usually made by the chairman of the Chamber of Deputies (lower house of Parliament) several weeks before the election of council members is scheduled to take place.⁵⁰ The nominees are then elected by a committee in the lower Chamber of Deputies, which is composed of members based on the proportional representation of parties in Parliament. This committee prepares for the plenary session a shortlist with three times as many candidates who are to be elected.

Although the new system has deprived political parties of direct nomination of the candidates for membership to Czech Television or Czech Radio councils, parties still try to exert their influence when composing the list for the parliamentary vote. Candidates placed on the top of the list have a better chance of being elected, because voting for candidates usually proceeds one at a time and is concluded once seats are filled. This ad hoc and largely unfair procedure was introduced in 2001 and was abandoned due to public criticism by new parliament elected in 2010. Since then, some by-elections of the CTC or CRC members have been organised as a secret vote.

47 The CTC’s scope and authority are outlined in Articles 4 to 8 of the *Act on Czech Television* (Law No. 483/1991 Coll., as amended), available in English at: <http://www.ceskatelevize.cz/english/act-on-czech-television>.

48 *Act on Czech Television* (Law No. 483/1991 Coll., as amended), available in English at: <http://www.ceskatelevize.cz/english/act-on-czech-television/>.

49 For details about the Czech TV crisis see the chapter on the Czech Republic in *Television Across Europe: regulation, policy and independence*. EU Monitoring And Advocacy Program (EUMAP) Open Society Institute 2005. http://www.soros.org/initiatives/media/articles_publications/publications/eurotv_20051011/volone_20051011.pdf.

50 Rules for selection and election of nominated candidates are described in Article 46a of Parliamentary Law No. 90/1995 Coll.: “(1) For election of members of the Czech Television Council and the Czech Radio Council the Chamber of Deputies establishes the Electoral Committee, whose members are elected by members of parliament under the principle of proportional representation.” Available only in Czech: <http://www.psp.cz/docs/laws/1995/90.html#46a>.

The present system for appointing members to the TV, radio and news agency councils—in which all members are approved by only one chamber of Parliament—have failed to provide effective safeguards against political influence. Because they can be dismissed by the respective councils, the general directors of public service media tend to avoid critical coverage of politicians, who could in turn exert pressure on council members to remove the general director. Although since 2001 political parties have tended to use restraint in appointing the general directors to public media bodies, there is still a possibility that the appointment or dismissal of the general directors could be politically motivated.⁵¹

Example cited by Hungarian Government: FINLAND

“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 organizations.”⁵²

Expert assessment

Kari Karppinen, PhD/Hannu Nieminen, PhD, University of Helsinki

This statement is correct in that the 21 members of the Administrative Council are elected by the Finnish Parliament. However it is not correct that members are “representatives of non-governmental organizations” but rather that members shall include “representatives from the fields of science, art, education, business and economics, as well as representatives of different social and language groups.”⁵³ In practice this has been interpreted by lawmakers in such a way that the members represent all the different political parties in the Finnish Parliament. The Administrative Council does not have any direct formal power to appoint directors of Finland’s public service media, the *Yleisradio Oy* (Yle) but rather the Council elects the external board of directors, which in turn has the power to appoint the company’s director general. However, in practice the process of appointing the director general of Yle has traditionally involved negotiations between the Board, the Administrative Council and representatives of different political parties. Despite the involvement of political parties in electing members to administrative bodies, the Yle’s independence from the Government and political parties is emphasised on all levels of its legal framework and internal editorial guidelines, and the company operates with a high level of independence, with no evidence of any direct governmental influence.

The administrative organs of Yle consist of the Administrative Council, the board of directors, and a director general, who also acts as the managing director.⁵⁴ The Administrative Council

51 Recommendations for strengthening the independence of Czech public broadcasters were provided in the *Television across Europe* report by the Open Society Institute have not been implemented, despite promises to do so by some political parties (TOP-09, Greens) before elections in June 2010. http://www.soros.org/initiatives/media/articles_publications/publications/television_20090313/czechrep_20080229.pdf.

52 See “Criticism 9” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010 available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

53 Section 6 of the *Act on Yleisradio Oy* (Act 1380/1993; amendments up to 635/2005), Ministry of Transport and Communications of Finland, unofficial English translation available at: <http://www.finlex.fi/en/laki/kaannokset/1993/en19931380.pdf>.

54 Finland’s public service broadcasting system, including its administrative organization, is detailed in the *Act on Yleisradio Oy* (Act 1380/1993; amendments up to 635/2005), Ministry of Transport and Communications of Finland, unofficial English translation available at: <http://www.finlex.fi/en/laki/kaannokset/1993/en19931380.pdf>.

is the highest decision-making organ of the Yle. The 21 members of the Council are elected by the Parliament and their terms of office correspond with the parliamentary term.⁵⁵ Along with appointing members of the board of directors, the Administrative Council also supervises the implementation of the tasks involving public service programme activities and decides on the Yle's economic and operational guidelines. As a parliamentary organ, however, the Council is independent of the operational management of Yle. Since 2010, the Council has also taken on the role of supervising the preliminary assessment of significant new public service broadcasting services as required by EU regulations.⁵⁶

As noted, the Council does not have direct power to appoint public service media directors, but it elects the company's external board of directors, which has the power to appoint the company's director general and other senior management.⁵⁷ The board of directors consists of five to eight members who cannot be members of the Administrative Council or the company's senior management. The Board does not make any programming decisions, nor does it interfere in the daily operations or editorial decisions in any other way.

Although in practice the Yle has a large degree of operational independence from the Government, the political independence of Finland's public service media has been a permanently contested question, particularly in terms of its administrative structures, funding and appointment procedures. Historically, there have been many controversies around the process of nominating the director general and his/her political affiliations. More recently, the new role of the Administrative Council as the supervisory organ required by EU regulations has also raised some concerns. Representatives of commercial media in particular have argued for a new external supervisory body that is more independent of the other administrative organs of the company. In general, however, decisions concerning public service media have been agreed on by all political parties and the principle of political independence has been highly valued in Finland.

⁵⁵ Appointment procedures and composition of the Administrative Council are defined in Section 5 and its duties in Section 6 of the *Act on Yleisradio Oy* (Act 1380/1993; amendments up to 635/2005); unofficial English translation available at: <http://www.finlex.fi/en/laki/kaannokset/1993/en19931380.pdf>.

⁵⁶ See Communication from the Commission on the application of State Aid Rules to Public Service broadcasting (2009), available at: http://ec.europa.eu/competition/state_aid/legislation/broadcasting_communication_en.pdf

⁵⁷ *Act on Yleisradio Oy*, Section 6a, (Act 1380/1993; amendments up to 635/2005), unofficial English translation available at: <http://www.finlex.fi/en/laki/kaannokset/1993/en19931380.pdf>.

Example cited by Hungarian Government: FRANCE

“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.”⁵⁸

Expert assessment **Guy Drouot**, PhD, Paul Cézanne University, Institute of Political Studies, France

This statement is not entirely accurate: the board of directors of France Télévisions comprises 14 members and a chairperson, serving five-year terms; five of these members including its chairperson are appointed by France’s broadcasting authority, the High Council for Broadcasting (*Conseil supérieur de l’audiovisuel* – CSA).⁵⁹ The board of directors of Radio France consists of 12 members, serving five-year terms, with four of these members appointed by the CSA. Until recently, the CSA was also responsible for appointing directors of France Télévisions—however this procedure was amended by the Sarkozy Government in 2009. Under the current system, the director of France Télévisions is appointed by governmental decree for five years with approval by the CSA and in consultation with relevant parliamentary committees. These changes have sparked criticism from free-press advocates who claim the new system brings France’s public media under the Government’s direct control.

The board of directors for France Télévisions is composed of two members of Parliament (one appointed by the National Assembly, the other by the Senate); five civil servants appointed by the Government; five members appointed by the CSA who must be “qualified” to serve in the capacity of broadcast regulation; and two members appointed by the staff of France Télévisions.⁶⁰ As noted above, the CSA appoints the chairmen of the board of directors, who also serves as the chairman of the board of directors for France 2, France 3 and La Cinquième. The board of directors of France Télévisions appoints the managing directors of each of these stations.

The board is also responsible for designing and producing TV programs for national, regional and local broadcasts, as well as for editing and broadcasting audiovisual media and on-demand media services. Although public service media are legally required to provide programming that falls within its public interest obligations, France Télévisions offices are granted independent editorial discretion when covering news.

It should be noted, however, that the independence of public service media has been a long-debated issue in France, some of which was due to the CSA’s role in appointing the director of France Télévisions. Because members of the CSA are appointed by the Government, the regulatory body has faced criticism for lacking political independence.⁶¹ Hence, its former role in

58 See “Criticism 9” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010 available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

59 According to Article 47(1)(4) of the *Freedom of Communication Act 1986* (No. 86-1067 of 30 September 1986), not including 2009 amendments, available at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the Act number 2009-258, 5 March 2009, provided by the University of Luxembourg, available at: http://www.fr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

60 *Freedom of Communications Act*, Article 47(1), as amended by Act number 2009-258, 5 March 2009, an unofficial English-language translation of the Act number 2009-258 dated 5 March 2009, provided by the University of Luxembourg available at: www.fr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

61 For a summary of the CSA, see “Television Across Europe: France,” *EU MONITORING AND ADVOCACY PROGRAM (EUMAP)*, Open Society Institute, 2005, p. 661, available at: http://www.soros.org/initiatives/media/articles_publications/

appointing France's public media directors had sometimes been controversial, as critics claimed this allowed for *de facto* governmental control over public media directors. The changes in 2009 actually increased concerns by free-press groups and opposition politicians who claimed the new procedures worked to tighten the Government's control over public media, further eroding its independence.⁶²

Example cited by Hungarian Government: SWITZERLAND

*"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."*⁶³

Expert assessment

Manuel Puppis, PhD/**Matthias Künzler**, Phd, University of Zurich

The claim that the director general of the Swiss Broadcasting Company (SRG) was elected in a strictly confidential procedure is not accurate. The position was publicly advertised and the new director general of the SRG was elected by the independent national board of directors and Assembly of Delegates of the SRG. It is true that the nominating committee of the board of directors was responsible for seeking potential candidates and selecting the number of candidates to a short list: This part of the procedure was confidential in order to protect the privacy of candidates. It is also true that the latest appointment might have stirred complaints from some quarters that the selection process was influenced by politics, but in truth those complaints seem to be politically motivated, while the process has proven to have been fair and transparent.

The SRG is a private association and thus autonomous when it comes to its internal organisation and the appointment of its personnel. However, its Articles of Association need to be approved by the Department of Environment, Transport, Energy and Communication (DETEC). The appointment of the director general is thus an independent matter within the SRG. The procedure for electing the director general of the SRG is neither strictly confidential nor are politicians involved. The procedure conducted in the case of Roger de Weck was carried out exactly according to the procedures as proscribed by law: The director general of the SRG is nominated by the national board of directors⁶⁴ after a search by a nominating committee comprised of four members of the board of directors.⁶⁵ Then the nomination is authorised by the Assembly of Delegates.⁶⁶ The appointment of Roger de Weck was as follows:

publications/eurotv_20051011/voltwo_20051011.pdf.

62 See "Sarkozy wants public television chief to be appointed by government," Reporters Without Borders, June 26, 2008 http://arabia.reporters-sans-frontieres.org/article.php3?id_article=27651; see also: "EFJ Condemns Appointment Process of French TV Head," European Federation of Journalists, 8 July 2010, <http://europe.ifj.org/en/articles/efj-condemns-appointment-process-of-french-tv-head>.

63 See "Criticism 9" in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010 available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

64 SRG Standing Orders Article 10(1), available in German at: <http://www.srgssr.ch/fileadmin/pdfs/Organisationsreglement%20SRG%20SSR.pdf>.

65 SRG Standing Orders Art. 3(1)(4), available at: <http://www.srgssr.ch/fileadmin/pdfs/Organisationsreglement%20SRG%20SSR.pdf>.

66 SRG Articles of Association, Article 6(2)(a), available in German at: http://www.srgssr.ch/fileadmin/pdfs/Statuten_srg_240409_de.pdf.

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- The board of directors made a publicly announcement about the executive search in September 2009;
- the job was publicly advertised by SRG in October 2009;⁶⁷ a company specialised in executive search was then tasked with looking for candidates (this phase was confidential);
- from January to March 2010 the nominating committee selected two candidates (this phase was confidential);
- the board of directors discussed the two candidates in April 2010 and eventually nominated a candidate who was then confirmed by the Assembly of Delegates in May 2010.

The director general manages the SRG and is responsible for the business operations of the organization.⁶⁸ The director general heads the executive board (senior management) which also comprises four regional directors. Switzerland consists of different language-regions; public radio and TV channels operate in each of these language-regions, and each language-region has its own enterprise unit, headed by a regional director. This means that the director general heads the national office but is not involved in the daily operations of the different public channels on the level of language-regions. The director general does, however, retain the right to issue single instructions regarding programming matters in the SRG's interest.⁶⁹

The national board of directors is comprised of nine members, two of whom are appointed by the Federal Council (the Government). The four chairmen of the four regional councils (regional boards of directors at the level of language-regions) are also board members. The chairman of the national board of directors and two additional members are elected by the Assembly of Delegates, the highest body of the SRG composed of 41 delegates from the four different language regions.⁷⁰

Members of the board of directors are not bound to any instructions by the Government.⁷¹ The SRG by law has the obligation to organise itself in a way that guarantees its autonomy and independence from the state and from social, economic and political groupings.⁷² Neither the Assembly of Delegates nor the board of directors can be directly influenced by the Government, Parliament or political parties.

In the case of Mr. de Weck's appointment in 2009, some politicians claimed that the board of directors consulted the media minister before making a decision. This accusation was firmly denied by both the SRG and the media minister and there has been no indication at all that Government was somehow involved in the appointment. In fact, it would appear that any controversy over the appointment was stirred by members of the right-wing SVP party, which did not want to see Mr. de Weck chosen for the position.

67 SRG (2009a). Job Posting for new Director-General, available in German at: <http://www.srgssr.ch/fileadmin/pdfs/Projektbeschreibung%20Executive-Search%20SRG-GeneraldirektorIn.pdf>.

68 SRG License, Article 23(3), available in German at: http://www.srgssr.ch/fileadmin/pdfs/Konzession_srg_281109_de.pdf; SRG Articles of Association, Articles 10(2)(f) and 13(1), available at: http://www.srgssr.ch/fileadmin/pdfs/Statuten_srg_240409_de.pdf; SRG Standing Orders Art. 19(1), available in German at: <http://www.srgssr.ch/fileadmin/pdfs/Organisationsreglement%20SRG%20SSR.pdf>.

69 SRG Standing Orders, Article 19(1)(7), available in German at: <http://www.srgssr.ch/fileadmin/pdfs/Organisationsreglement%20SRG%20SSR.pdf>.

70 *Federal Act on Radio and Television of 2006* (RTVA), Article 33 available at: http://www.admin.ch/ch/e/rs/784_40/a33.html; SRG License Art. 23(1) and 24, available in German at: http://www.srgssr.ch/fileadmin/pdfs/Konzession_srg_281109_de.pdf; SRG Articles of Association Art. 5, 6(1) and 9, available in German at: http://www.srgssr.ch/fileadmin/pdfs/Statuten_srg_240409_de.pdf.

71 *Federal Act on Radio and Television of 2006* (RTVA), Article 33(3), available at: http://www.admin.ch/ch/e/rs/784_40/a33.html.

72 *Federal Act on Radio and Television of 2006* (RTVA), Article 31(1)(a), available at: http://www.admin.ch/ch/e/rs/784_40/a31.html.

Example cited by Hungarian Government: UK

“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.”⁷³

Expert assessment

Lina Dencik, PhD, Visiting Faculty, Central European University, Budapest

It is true that the BBC’s director general is appointed by the BBC Trust—and this system has in fact been criticised as being vulnerable to political influence. The BBC Trust is the highest decision-making body of the BBC system; it is composed of 12 members appointed by the Queen on advice from Government ministers following an open selection process.⁷⁴ The BBC Trust appoints the Executive Board’s director general, who also acts as editor-in-chief of the BBC, and approves nominations for non-executive members of the Executive Board. The Executive Board is responsible for operational management of the BBC according to the plans agreed with by the BBC Trust.⁷⁵ The BBC Trust and Executive Board are independent bodies, both governed by a Royal Charter that serves as the BBC’s constitutional foundation.⁷⁶ The Charter formally establishes the BBC’s autonomy from the Government.⁷⁷ However, there have been several controversies over the BBC’s programming and political independence which has been related to the system of BBC appointments and overall governance structure.

The BBC Trust and the Executive Board were established in 2007, replacing the BBC’s former Board of Governors. The Trust is comprised of a chairman, vice chairman and 10 members, including four members from England, Scotland, Wales and Northern Ireland. The Trust is responsible for setting the overall strategic direction for the BBC, including approving high-level strategies and budgets for the BBC’s services, and assessing the performance of the Executive Board in delivering the BBC’s services. The Trust is accountable to the license-fee payers (the public) and not to Parliament. Whenever the Trust makes a major decision it has to conduct public consultations, audience research and consult with its Audience Councils, which include audience members who advise the BBC Trust on how well the BBC is delivering its services to the public.⁷⁸ The BBC Trust has also launched a public value test (PVT), intended to assess the net public value and to ensure that the BBC’s operations satisfy its obligations to the public.

The BBC Executive Board is responsible for the daily management of the BBC, including the direction of its editorial programming. The Executive Board is composed of executive and non-executive members, headed by a chairperson who also serves as the director general and the editor-in-chief of the BBC. As noted above, there have been some controversies over perceived influence, direct and indirect, by the British Government over the BBC Trust and BBC programming. The Hutton inquiry in 2003, which investigated the circumstances surrounding

⁷³ See “Criticism 9” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010 available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

⁷⁴ “How Trustees are appointed,” from the BBC Web site, http://www.bbc.co.uk/bbctrust/about/who_we_are/trustees/appointment.shtml.

⁷⁵ “About the BBC: Executive Board,” from the BBC Web site, <http://www.bbc.co.uk/aboutthebbc/running/executive/>

⁷⁶ *Broadcasting: Copy of Royal Charter for the continuance of the British Broadcasting Corporation*, Department for Culture, Media and Sport, October 2006, http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

⁷⁷ See Article 6 of the Royal Charter.

⁷⁸ See “BBC Protocol, F3 – Audience Councils,” the BBC Trust, December 2010, http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2011/f3_audience_councils.pdf.

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the death of David Kelly,⁷⁹ sparked widespread criticism of the BBC, including the decision of the governing body of the BBC (then the BBC governors, since reformed into the BBC Trust) to sack the director general of the BBC over the Hutton affair and apologise to the British Government for its handling of the affair.⁸⁰ The BBC had also been criticised in more general terms for its coverage of the Iraq war and its aftermath, which critics say was too supportive of the Government's position. In 2007, the Lords Select Committee on Communications produced a report that stated that the selection process of the chairperson of the BBC Trust (who at the time was Sir Michael Lyons) was too prone to governmental influence.⁸¹

79 The Hutton Inquiry, Investigation into the circumstances surrounding the death of Dr. David Kelly, <http://www.the-hutton-inquiry.org.uk>.

80 BBC News, *BBC apologises as Dyke quits*, 29 January 2004, http://news.bbc.co.uk/2/hi/uk_news/politics/3441181.stm.

81 House of Lords, Select Committee on Communications, *First Report*, 25 July 2007, <http://www.publications.parliament.uk/pa/ld200607/ldselect/ldcomuni/171/17102.htm>.

4.2/Expert assessments: centralisation of public service media news production

Example cited by the Hungarian Government: AUSTRIA

“There are many European countries where broadcast production is centralised . . . Austria (ORF).”⁸²

Expert assessment Katharine Sarikakis, PhD, Department of Communications, University of Vienna

It is true there is some level of centralised news production and programming within Austria’s public service media system, as with most public service media systems. Yet this oversimplifies what is actually a more complex arrangement regarding ORF’s requirements for regional programming and collaborative production with its subsidiaries.⁸³ ORF’s main broadcasting activities are centralised at its headquarters in Vienna. However, ORF is required to address specific “decentralised” needs of regional broadcasting;⁸⁴ hence, ORF’s production is organised geographically by Austria’s nine federal regions. Overall broadcasting is the responsibility of ORF’s general director, who has authority over the management of programming and is responsible for guaranteeing the quality of content.⁸⁵ The general director determines the guidelines of content with the approval of the Foundation Council.

At the same time, each federal region has its own independently operated broadcasting production facilities, headed by a director responsible for making editorial decisions. Programming at the national level is determined by the individual directors of the different media services and also by the individual directors of each of the regional studios. Regional studios produce independent TV and radio news programmes, talk shows, documentaries, music, and arts and entertainment features, all of which are aired on regional ORF2. The regional director is responsible for this content.⁸⁶ Regional studios also contribute 10 to 15 percent of news, culture and other programs for ORF’s two national stations.⁸⁷ In addition, ORF runs local stations with local content in each of the nine regions.

ORF was established as a public foundation by the *Federal Constitutional Act of 10 July 1974*.⁸⁸ It is financed by television-owner license fees and advertising revenues. ORF dominates the broadcast market in Austria, with two national television stations, ORF1 and ORF2, with a combined market share of 38.2 percent in 2009.⁸⁹ (Private nationwide television was only introduced in Austria in

82 See “Criticism 8” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

83 See Austrian Broadcasting Company at: <http://orf.at/>.

84 *Federal Act on the Austrian Broadcasting Corporation* (ORF Act), Section 4, Paragraph 16, Federal Law Gazette No. 379/1984 as amended by Federal Law Gazette I No. 83/2001, available at: <http://www.rtr.at/en/m/ORFG/orfg-eng.pdf>.

85 Sections 22-23, Federal Act on the Austrian Broadcasting Corporation (ORF Act) Federal Law Gazette No. 379/1984 as amended by Federal Law Gazette I No. 83/2001, <http://www.rtr.at/en/m/ORFG/orfg-eng.pdf>.

86 Programm Richtlinien, available at: http://zukunft.orf.at/rte/upload/texte/veroeffentlichungen/komm_kommunikation/programmrichtlinien.pdf.

87 See European Association of *Regional Public Service Television (CIRCOM)* <http://www.circom-regional.eu/member-stations/47-member-stations-austria> (Last Updated 25 March 2010).

88 Federal Constitutional Law of 10 July 1974 Federal Law Gazette No. 396/1974 (in German) <http://zukunft.orf.at/rte/upload/texte/veroeffentlichungen/2010/neu/bvg.pdf>.

89 “TV market in Austria,” MAVISE database of TV companies and TV channels in the European Union, European

2001). In addition, there are the aforementioned regional TV broadcasts.

Regarding the criticism to which the Hungarian Government is responding, centralisation of news production may not be detrimental to pluralism *per se*, so long as the voices represented and stories covered are diverse, journalists are protected and given tools to act independently, and there are provisions that prohibit political and other involvement. In this regard, ORF has a highly developed mandate as to the quality and diversity of its programming, with special attention given to science and culture, innovative programming and European works.⁹⁰ Moreover, under the *ORF Act* there is sophisticated system of editor representatives that make up the Editorial Council, a body charged with protecting the editorial rights and independence of the journalistic staff.⁹¹ In this system, every ten editors elect their own representatives to participate in the Editors Assembly Council, which is responsible for formulating ORF's Editorial Statutes. The Editorial Statutes are based on the *ORF Act* and the constitutional provision on the guarantee of independent audiovisual media.⁹² In addition, under the amended *ORF Act*, a new Public Review Board was established to submit feedback on ORF's services.⁹³ The Review Board is required to evaluate whether new ORF services effectively fulfill ORF's public mandate and to assess the quality of programming diversity for viewers, listeners and users. The review board comprises five members, appointed by the Austrian Federal Government for five-year terms. Members of the review board must be experts in the field of media law, media sciences or business administration and economics.

Example cited by Hungarian Government: ITALY

*“There are many European countries where broadcast production is centralized . . . Italy: RAI.”*⁹⁴

Expert assessment **Marco Bellezza**, PhD, University of Bari/**Oreste Pollicino**, PhD, Bocconi University

Italy's public service broadcaster, RAI (*Radiotelevisione Italiana*), is indeed somewhat “centralised,” as this statement correctly notes, although far less so than in decades past.⁹⁵ In fact the effort to decentralize RAI has been at the heart of a series of often contentious policy reforms aimed at reducing the Government's long-standing control over the network from RAI's headquarters in Rome. A wave of reforms since the 1990s has sought to strengthen regional production centers and restructure RAI's internal management in order to facilitate the decentralisation process. RAI's regionally decentralised production structure is currently detailed in several areas of Italian law, and recent legislative trends and agreements point to a further strengthening of local production centres.

Audiovisual Observatory, <http://mavise.obs.coe.int/country?id=3>.

90 This is explained in considerable depth in the revised *ORF Act* ORF-G text and in *Programmrichtlinien* (P-RL) http://zukunft.orf.at/rte/upload/texte/veroeffentlichungen/komm_kommunikation/programmrichtlinien.pdf.

91 Sections 8-10 of the revised *ORF Act* (ORF-G), Federal Law Gazette No. 379/1984 (WV), http://zukunft.orf.at/rte/upload/texte/recht_grundlagen/orfg.pdf.

92 Sections 6 and 7 of revised *ORF Act*, ORF-G, Redakteurstatut, “ORF Editorial Statutes,” http://zukunft.orf.at/rte/upload/texte/veroeffentlichungen/komm_kommunikation/redakteurstatut.pdf.

93 In accordance with Section 6a of the revised *ORF Act*: <http://www.rtr.at/en/m/PVBeirat>.

94 See “Criticism 8” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

95 See RAI (*Radiotelevisione Italiana*) at: <http://www.rai.it/>.

As noted, the initial effort to decentralise RAI in the late 1990s was part of an attempt by lawmakers to reform the system (the system of “*lottizzazione*”) governing the public service media, which was prone to extensive political interference. The system of *lottizzazione* stemmed from the 1975 *Broadcasting Act*, which carved up the RAI into two separate network directorates for each political “camp,” one for Catholics and the other for lay culture.⁹⁶ The decentralising effort has also been fueled by the need break up the so-called RAI/Mediaset “duopoly,” in which two main networks dominate Italy’s broadcasting market: the RAI and Mediaset, the private network owned by former Italian Prime Minister Silvio Berlusconi.

Since the 1990s, several laws and service agreements have included provisions aimed at decentralizing RAI, including the 2005 *Consolidated Act on Radio and Television*,⁹⁷ and current service contract between RAI and the Ministry of Economic Development for 2010-2012.⁹⁸ This contract specifies the need “to ensure the conditions for the protection of regional linguistic minorities in their areas,” to be achieved by strengthening RAI’s local production centres.⁹⁹

As indicated above, RAI has four production centers—in Turin, Milan, Rome and Naples. While these production centers are coordinated by a production office in Rome, each regional center is given a large measure of editorial autonomy over news production and programming. Only multimedia content for online use, pursuant to Article 11 of the prevailing service contract, is produced centrally.¹⁰⁰ Within the Italian public service media system, there is no single editorial “team” responsible for news gathering, media production and distribution to all public service outlets. RAI is structured into six areas, with separate internal structures for television, radio and new media. The individual areas are responsible for devising and implementing the programs on TV, radio, satellite and digital frequencies and online media. Within the area of television, eight different editorial staffs are responsible for different news broadcasts and programs on different channels. Each team has its own editorial staff director and at least four deputy directors, who together determine the RAI’s editorial policies.

However, RAI’s general production and programming structure are determined jointly by the board of directors, the general director and the heads of the several editorial staffs.¹⁰¹ Because both the board of directors and general director are appointed by the Government, editorial content often reflects the political ideologies of the current party in power. The Government’s role in appointing RAI directors raised serious conflict-of-interest questions when Berlusconi, owner of RAI competitor Mediaset, was elected as prime minister (in 1994, 2001, and 2008). Hence, while there have been considerable concerns regarding RAI’s centralisation, much of this can be traced to the larger problem of RAI appointments and its resulting political influence over the newsrooms of Italy’s public media.

96 For a summary of Italy’s public broadcasting sector, see: Matthew Hibberd, “Public service broadcasting in post-war Italy,” Matthew Hibberd in: *Media, Culture & Society* © 2001 SAGE Publications (London, Thousand Oaks and New Delhi), (Vol. 23: 233–252): 234.

97 Law-Decree no. 177 of 31 July 2005, *Consolidated text on radio and television (Decreto Legislativo 31 luglio 2005)*, available in Italian at: <http://www.camera.it/parlam/leggi/deleghe/testi/05177dl.htm>.

98 Contract of service between the Ministry of Communication and RAI (Contratto di servizio tra il Ministero delle comunicazioni e la RAI – Radiotelevisione Italiana S.p.A.), available in Italian at: http://www.km-studio.net/clienti/100autori.it/usr_files/documenti/pdf_261628.pdf.

99 Contract of service between the Ministry of Communication and RAI (Contratto di servizio tra il Ministero delle comunicazioni e la RAI – Radiotelevisione Italiana S.p.A.), available in Italian at: http://www.km-studio.net/clienti/100autori.it/usr_files/documenti/pdf_261628.pdf.

100 Article 11, Paragraph 1 of “Multimedia offer” provides for the centralized production of multimedia content: “RAI is committed to enhance and upgrade the service on its websites in order to extend, even developing and producing ad hoc content, the current production of content customized for the Internet. The company is also committed to increasing visibility in the supply of specific content, with particular reference to audiovisual.”

101 See RAI’s structure, in Italian at: <http://www.ufficiostampa.rai.it/struttura.html>.

Example cited by Hungarian Government: UK

“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.”¹⁰²

Expert assessment

Lina Dencik, PhD, Visiting Faculty, Central European University, Budapest

It is true that the BBC has become increasingly centralised, and this is one of the more controversial and debated topics regarding the ongoing restructuring of the BBC system. The centralisation of the BBC over the past decade has led to the merging of newsrooms for broadcasting and online as well as the news-production process for BBC domestic and BBC Worldservice. As part of this process, as the statement above correctly notes, the previously independent BBC English Regions was merged with BBC News in 2009. This has sparked much controversy over what has been perceived as the BBC’s prioritising market efficiency over diverse and creative local and regional programming. The new centralised structure has also been criticised for pushing journalists to work across numerous outlets, which has come at the cost of quality and nuanced news reporting.

The BBC’s centralisation has been driven by media convergence and the demands of new technologies, to which the BBC has responded by investing heavily into its online services. As part of this process, the BBC over the past decade has introduced rationalised and market-led news production and scheduling.¹⁰³ This, as noted, has led to the integration news production services throughout the BBC system, including the merging of the BBC English Regions with the BBC News division in 2009.¹⁰⁴ Under the new structure, the BBC English Regions are responsible for all non-networked television, text and radio output in England and the BBC’s English Regions websites. The English Regions produce several daily regional news programs and provide entertainment news for all of England via 44 BBC Local websites. Teams of journalists are stationed at each of the 12 BBC English Regions, providing the news content for both the BBC Local websites and the News Interactive site. Each regional office has a regional director who reports to the Controller English Regions based in Birmingham.¹⁰⁵

As mentioned, the centralisation process has been highly controversial. Critics have said the BBC is remodeling itself after big American “news factories” like NBC or CNN at the expense of diverse, pluralistic public interest programming.¹⁰⁶ There has also been some concerns about the increased London-centric approach to news programming. This is being partly addressed by the upcoming move of parts of the BBC to its newly built production center “MediaCity” in Salford, close to Manchester.

It should also be noted that the BBC is not the only public service broadcaster within the UK. All terrestrial channels operate under public service obligations and have their own news production

¹⁰² See “Criticism 8” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

¹⁰³ See for example Georgina Born’s study on the BBC: *Uncertain Vision: Birt, Dyke and the Reinvention of the BBC*. London: Secker & Warburg, 2004.

¹⁰⁴ “BBC promotes role of national and regional broadcasting in leadership restructuring,” *BBC Press Release* (07.10.2008) http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/10_october/07_forums.shtml.

¹⁰⁵ From BBC English Regions website at: <http://www.bbc.co.uk/england/about.shtml>.

¹⁰⁶ See “The new-look BBC,” *Economist*, Aug 27th 1998, <http://www.economist.com/node/162842>.

teams. Channel 4, while commercially funded, is legally a public service broadcaster (and not shareholder owned), and it airs its own news broadcasts, which are supplied by Independent Television News (ITN). ITV, meanwhile, as a terrestrial channel, also comes under public service obligations, despite its fully commercial status, and produces its own news broadcasts.

4.3/Expert assessment: public service media funding

Example cited by Hungarian Government: FINLAND

“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.”¹⁰⁷

Expert assessment

Kari Karppinen/Hannu Nieminen, University of Helsinki

Although it is true that the Finnish Communications Regulatory Authority (FICORA) manages the administration and accounts of the State Television and Radio Fund, citing FICORA’s role in the given context is misleading. The role FICORA plays in relation to the Fund is purely administrative. It plays no role in decisions about the level of funding for Finnish public service media or in deciding how the Fund’s assets—which are used directly to finance the activities of the Finnish Broadcasting Company (YLE)¹⁰⁸—are utilised. It has no budgetary authority over the activities of YLE. Consequently, the example of FICORA and the Finnish State Television and Radio Fund does not seem relevant to the criticism that the new funding structure for the Hungarian public service media poses a risk to its independence.

The operations of the Finnish public broadcasting company YLE are financed through license fees (“television fees”), the level of which is decided by the Government and collected into an extra-budgetary State Television and Radio Fund.¹⁰⁹ The management of the State Television and Radio Fund, and the role therein of FICORA, is governed by the *Act on the State Television and Radio Fund*.¹¹⁰ This law stipulates that the assets in the fund are used to finance the activities of YLE, and are otherwise only used to cover the costs of collecting the fees and promote television and radio operations. FICORA’s role in relation to the Fund is purely administrative: it collects the license fees which each household and place of business that uses a television set must pay into the State Television and Radio Fund.

Decisions concerning the assets in the Fund are made by the Government not by FICORA. The Government establishes a utilisation plan that determines the installments and times of payments of assets from the Fund to YLE. However the Government has no say in how this funding is used

107 See “Criticism 14” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

108 Finnish Broadcasting Company (YLE): <http://avoinyyle.fi/www/en/index.php>.

109 The annual television license fee in Finland has been EUR 231.05 since the beginning of 2010. See YLE 2010 Annual Report http://avoinyyle.fi/www/en/liitetiedostot/yle_annualreport_2009.pdf.

110 *Act on the State Television and Radio Fund* (745/1998; amendments up to 1069/2007 included), <http://www.finlex.fi/fi/laki/kaannokset/1998/en19980745.pdf>.

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by the YLE. The YLE itself exclusively decides on the allocation of these funds to TV, radio and other public media services, and on the distribution of funding for individual YLE activities.

The Fund has no appointed members. The Ministry of Transport and Communications annually appoints two auditors to review the administration, finance and accounts of the Fund. However, it is important to point out that the funding for the YLE has been one of the most debated media policy issues in Finland in recent years. The current funding scheme on the basis of license fees is generally considered adequate in safeguarding the independence of public service media. The feasibility of license fees as a source of funding, however, has been questioned on several grounds, including for the practical difficulties of collecting these fees and on the grounds that it is an unfair burden for economically disadvantaged households.

Alternatives to the license-fee funding system have included direct budgetary funding from the Government, but such a solution has been feared to make public media more susceptible to political pressures and financial fluctuations. Another alternative funding model that has been raised is a system of a so-called “media fee” of around €175, which would replace the current license fee and would be paid by all Finnish households irrespective of whether they own a television, following a model similar to that in used in Germany.

5/Media Authority: powers

Hungary's Media Authority has a range of powers over all aspects of media regulation. Critics have challenged in particular the Media Council's role in tendering and awarding broadcasting licenses, including its powers to award licenses without a tender, as well as the Media Authority president's power to issue ministerial-level decrees regarding licensing and spectrum fees (Section 5.1). Opponents have also raised concerns over the new Commissioner for Media and Communications, an appointee of the Media Authority responsible for handling complaints from the public, and monitoring the media field for content deemed "harmful" but not in violation of any regulations specified in the law. Critics say the Media Commissioner's powers extend the Media Authority's regulatory scope and sanctioning powers to areas not defined in the media laws, which could have a "chilling effect" on the press (Section 5.2). Opponents claim these powers enable the Media Authority to assert arbitrary and far-reaching control over the country's media landscape. The Government maintains that the Media Authority's regulatory duties in these areas are clearly defined in the law and that media authorities in a number of EU-member states are vested with similar powers.

5.1/Media Authority powers: tendering and licensing

Under the *Media Act*, the collective bodies of the Media Authority are responsible for all aspects of tendering and licensing for commercial and public broadcasters, both analogue and digital.¹ The Media Council is responsible for drafting and issuing tenders, and for renewing and awarding licenses for all linear media service providers (analogue radio and TV broadcasters);² the Media Authority allocates and manages the radio frequency and broadcasting spectrum; and the Media Authority president is responsible for tendering and licensing for digital broadcasting and for facilitating Hungary's digital switchover by the end of 2012.³

When preparing and issuing tenders for linear broadcasting licenses, the Media Council

requests that the Media Authority draw up frequency plans.⁴ The criteria for spectrum allocation are not specified in the *Media Act* but rather are defined in the internal rules of procedures created by the Media Authority. The Media Council then drafts the tender and holds a public hearing.⁵ Once the tender is issued, the Council is responsible for reviewing the formal and substantive validity of the applications.⁶ The Council can invalidate tender applications on various grounds, as specified in the *Media Act* and in the tender invitation. The Media Council can render a tender application invalid on formal grounds, such as for failing to provide the required information or if the applicant does not meet the formal criteria of the tender.⁷ The Media Council also assesses the substantive validity of tender applications to assure the tenderer meets the criteria as specified in the tender invitation.⁸ It can invalidate the tender

1 *Act CLXXXV of 2010 On Media Services and Mass Media* (hereafter: the "*Media Act*"), entry into force 1 January 2011, as amended in March 2011, in English at: <http://nmhh.hu/dokumentum.php?cid=26536>.

2 *Media Act*, Article 48(3), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

3 *Act LXXIV of 2007 on the Rules of Broadcasting and Digital Switchover*, Article 38 (1) and (2); see also the amended Articles 43/A-43 on the *Rules of Broadcasting and Digital Switchover*, as specified in the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

4 *Media Act*, Article 49, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

5 *Media Act*, Article 50, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

6 *Media Act*, Article 57(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

7 These are specified in Articles 56 and 57 of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

8 *Media Act*, Article 59, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

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application for substantive reasons, including if: the application contains “incomprehensible, contradicting or clearly unfeasible commitments and conditions that impede the evaluation of the tender;” if it contains “undertakings that are unfeasible, excessive or insufficient;” or if the tenderer fails to meet the substantive requirements defined in the tender invitation.⁹ The law also specifies that media companies which have been found in “serious breach of obligations stemming from a broadcasting or a public contract” in the previous five years can be barred from participating in the tender procedure.¹⁰

In the case the Media Council invalidates a tender, this terminates the tenderer’s status in the procedure.¹¹ The tenderer may request the Regional Court of Budapest review the final decision on grounds of a breach of law. Additional appeals cannot be lodged against this Court’s ruling.¹²

Licenses are valid for a maximum of seven years for radio broadcasters and 10 years for audiovisual media service providers. The Media Council can renew these licenses once without a tender procedure for a maximum of five years.¹³ The Media Council can also award a license without a tender once for a maximum of three years provided the media service provider meets certain requirements to perform certain “public duties.”¹⁴ This is defined as media that provides content “in the event of and in relation to a state of emergency promulgated pursuant to the Constitution, a natural disaster affecting a significant territory of the country, or an industrial disaster,” or that serves a community’s “special educational, cultural, information needs, or needs associated with a specific event affecting the

given community.”¹⁵

The Media Council can amend and recall the tender invitation up to 15 days before the tender submission deadline, in which case it is required to publish reasons for its decision.¹⁶ The Council may also terminate a tender procedure if no tenders are submitted, if none of the tenders submitted satisfy the objectives or basic principles of the *Media Act*, or if the “national or international economic environment” or the “economic, legal, frequency management or media service provision market circumstances” change substantially from the time the tender invitation was issued.¹⁷

The president of the Media Authority is responsible for issuing, reviewing and assessing the validity of tender applications, and awarding digital broadcasting licenses.¹⁸ The president can issue tender invitations and assess the formal and substantive validity of the applications, based on the similar criteria described above. The president can invalidate tender applications both on formal and substantive grounds, as specified in the amended *Act on the Rules of Broadcasting and Digital Switchover*.¹⁹ A committee must approve by a two-thirds vote the president’s decision to award tenders.²⁰ The committee can refuse its consent only on grounds the award was granted in violation of the law, such as if

9 *Media Act*, Article 59, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

10 *Media Act*, Article 55(1)(c), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

11 *Media Act*, Article 58(2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

12 *Media Act*, Article 58(2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

13 *Media Act*, Article 48(5), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

14 *Media Act*, Article 48(4), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

15 *Media Act*, Article 48(4)(a) and (b), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

16 *Media Act*, Article 53, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

17 *Media Act*, Article 61, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

18 Per amended Articles 43/A-43/M to the *Act on the Rules of Broadcasting and Digital Switchover*, as stipulated in the *Media Act*. According to Article 43/C (1), the “President shall examine whether the applicant (participant) fulfils formal and substantive eligibility criteria,” available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

19 *Act on the Rules of Broadcasting and Digital Switchover*, Article 43/C(2), as amended per the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

20 Per Article 43/A (6), *Act on the Rules of Broadcasting and Digital Switchover* as stipulated in the *Media Act*: “The Committee’s consent is necessary to the decision of the Authority’s President regarding the winner of the tender. Two-thirds of the total votes are required to take decision by the Committee,” see amended articles 43/A-43/M to the *Act on the Rules of Broadcasting and Digital Switchover* as stipulated in the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

there was a violation of the tender notice or procedure.²¹ The president can in exceptional cases award licenses to local or regional digital broadcasters for up to three years without a tender if the media service provider meets certain requirements to perform certain “public duties.”²² This is defined as media that provides content “in the event of and in relation to a state of emergency promulgated pursuant to the Constitution, a natural disaster affecting a significant territory of the country, or an industrial disaster,” or that serves a community’s “special educational, cultural, information needs, or needs associated with a specific event affecting the given community.”²³

Under an amendment to the Hungarian Constitution passed by lawmakers in early January 2011, the Media Authority president also has the right to issue ministerial-level decrees on matters related to license and spectrum fees.²⁴

International criticism

Critics have raised objections to the Media Authority’s general decision-making powers over all aspects of the tendering and licensing process, and warn that these powers give the Authority extensive control over Hungary’s media landscape. Opponents have challenged in particular several provisions in the *Media Act* enabling the Media Council to issue,

amend and withdraw tenders, and to issue licenses without a tender. Critics say this gives the Council “arbitrary” control over the tendering and licensing process, which could allow the Media Council to issue and revise tenders until finding a suitable applicant, or to cancel tenders if no applicant suits the Media Council.²⁵ This issue sparked controversy after the Media Council in July 2011 issued a tender for the frequency used by Klubrádió, a popular liberal political news and talk radio station, as the station’s license came up for renewal.²⁶ The tender call was made for an all-music radio station, effectively eliminating Klubrádió from the competition. In December 2011, the Media Council awarded the frequency to an unknown company, Autoradio, stirring outrage from domestic and international critics who claim the decision was a politically motivated effort by the Media Council to remove an important source of independent political analysis and opinion.²⁷

Article 19, the Hungarian Civil Liberties Union (TASZ), and other media experts have also challenged in particular the five-year ban on companies from participating in future tender offers if sanctioned for a “gross breach” of broadcasting and licensing obligations. Since the determination of what amounts to a “gross breach” is left to the Media Council, “broadcasters must take care not to upset the [Media Council] if they wish to remain on the market,” according to a joint report by Article 19 and the Hungarian Civil Liberties Union.²⁸ “This will obviously have a chilling

21 Per Article 43/I(5) of the *Act on the Rules of Broadcasting and Digital Switchover*, see amended articles 43/A-43/M to the *Act on the Rules of Broadcasting and Digital Switchover* as stipulated in the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

22 Per Article 43/M(1) of the *Act on the Rules of Broadcasting and Digital Switchover*, see amended articles 43/A-43/M to the *Act on the Rules of Broadcasting and Digital Switchover* as stipulated in the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

23 Per Article 43/M(1) of the *Act on the Rules of Broadcasting and Digital Switchover*, see amended articles 43/A-43/M to the *Act on the Rules of Broadcasting and Digital Switchover* as stipulated in the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

24 Per Articles 7/A and 40/E(4), *The Constitution of the Republic of Hungary*, Act XX of 1949 as revised and restated by Act XXXI of 1989, as of 2 January 2011. According to Article 40/E (4): “Within its competence specified in statute, the President of the National Media and Infocommunications Authority shall issue decrees in accordance with an authorization given by a statute, which shall not conflict with other laws,” available at: <http://www.mkab.hu/index.php?id=constitution>.

25 See “Hungarian Media Laws Q&A,” Article 19 and the Hungarian Civil Liberties Union (TASZ), August 2011, <http://www.article19.org/data/files/medialibrary/2714/11-09-01-REPORT-hungary.pdf>.

26 The tender call for Hungary’s 94.5 FM frequency is available (in Hungarian) at: http://www.ortt.hu/uploads/9/25/1306490299pft_budapest_95-3_updated.pdf.

27 “Hungary: independent voice faces closure,” *Index on Censorship*, 7 September 2011, <http://www.indexoncensorship.org/2011/09/hungary-independent-voice-faces-closure/>. See also: “Hungary: Response to letter from National Media Infocommunications Authority,” Article 19, 11 November 2011, <http://www.article19.org/resources.php/resource/2839/en/hungary:-response-to-letter-from-national-media-infocommunications-authority>.

28 “Hungarian Media Laws Q&A,” Article 19 and the Hungarian Civil Liberties Union (TASZ), August 2011, p 5, available at: <http://www.article19.org/resources.php/resource/2723/en/hungary:-klubradio-case-shows-recent->

effect on free expression and could lead to self-censorship,” according to the report.²⁹

Government response

The Hungarian Government states that the *Media Act* does not enable the media authorities to assert arbitrary control over the tendering and licensing system. In its December 2010 statement, the Government says the *Media Act* provides clear rules under which the Media Council and Media Authority President can draft, issue and award tenders, including conditions that allow these bodies to invalidate and withdraw tenders.³⁰ These include cases where no applications are received, if the “domestic or international economic environment changes which render the purpose of the tender invalid,” or if the winning applicant “does not satisfy in part or in full the aims and basic principles set forth in this legislation.”³¹

media-laws-censoring.

29 “Hungarian Media Laws Q&A,” Article 19 and the Hungarian Civil Liberties Union (TASZ), August 2011, p 5, available at: <http://www.article19.org/resources.php/resource/2723/en/hungary:-klubradio-case-shows-recent-media-laws-censoring>.

30 See Criticism 4, “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

31 See “Criticism 4,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

The Government also states that only in strictly defined cases can the media authorities grant licenses without tendering: “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.”³² It cites an example from one EU-member state in which the media authorities are permitted to renew licenses without a tender: **France**. Hungarian officials also maintain that the Media Authority president’s decree-making powers are limited to setting licensing and spectrum fees, and cites an example from one EU-member state in which it states the regulatory body has the power to issue directives: **Germany**.

subject-of-the-proposed-media-act-examined-in-a-european-context.

32 See Criticism 4, “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

5.1/Findings: tendering and licensing, issuing decrees

The Hungarian Government accurately cites two examples in which media authorities have powers to **a)** renew licenses without a tender (**France**), and **b)** issue directives (**Germany**). However the expert assessments indicate that neither example cited corresponds to the criticisms of the Media Authority's specific powers in these areas.

a) Tendering/licensing

The expert assessment shows that the Hungarian Government's example correctly claims that the French High Council for Broadcasting (*Conseil supérieur de l'audiovisuel* – CSA) can renew existing broadcasting licenses without a tender. The CSA has the right to renew existing licenses for analogue and digital terrestrial commercial TV and radio up to two times for a maximum of five years each time, following a specific set of procedures and conditions as specified in the law. Yet this example does not correspond to the criticism to which the Hungarian Government is responding: the Media Authority's power to *award new licenses* without a tender. According to the expert assessment, the CSA does not have any power to grant new licenses without tendering under the current law.

b) Issuing directives

The Hungarian Government accurately claims that each of Germany's 14 state media authorities may issue directives related to advertising and sponsorship, media concentration and the protection of minors. According to the country expert, these directives are used as guidelines for executing existing legislation in order to ensure that media authorities apply common, transparent decision-making practices. It should be noted that in many European countries the media authorities are empowered to issue these kinds of directives as means of further elaborating their competencies over certain aspects of media regulation. In the German case, these powers are limited to the areas specified above, and for instance do not include the authority to issue decisions on new grounds for sanctions, which would require legislation enacted by the respective parliament(s).

By comparison, Hungary's Media Authority president is vested with ministerial-level decree-making powers in matters of licensing and spectrum fees. However, the Hungarian Government cites an example of a state-level regulatory body with powers to issue directives; an example of an individual media regulator within a national-level regulatory body with decree-making powers similar to those granted to Hungary's Media Authority president would provide a more proportionate comparison.

5.1/Expert assessments: tendering and licensing, and issuing decrees

Example cited by Hungarian Government: FRANCE

“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.”³³

Expert assessment **Guy Drouot**, PhD, Paul Cézanne University, Institute of Political Studies, France

The citation above is essentially accurate: the High Council for Broadcasting (*Conseil supérieur de l’audiovisuel* – CSA) may renew a frequency without a tender up to two times, except under certain conditions as specified in the *Freedom of Communication Act of 1986*.³⁴ According to the *Freedom of Communication Act of 1986*, the CSA can renew a license without a tender, unless:

- a) the state modifies the destination of the frequency or frequencies;
- b) the license holder has been penalised for breaches to the *Freedom of Communication Act* or certain articles in the penal code;³⁵
- c) the renewal would infringe on media pluralism requirements on the national, local and regional levels;
- d) if the license holder is unable to financially continue operations, and
- e) if, for radio broadcasting, the license holder does not fulfil the specific requirements of the license for which it has been granted.

If none of these conditions apply, the CSA may renew a license without a tender up to two times for a maximum of five years each time.

The CSA handles tendering and licensing for all terrestrial private TV and radio channels in France.³⁶ The license renewal procedure is as follows: one year prior to the expiration of a broadcasting license, the CSA publishes its decision of whether or not to implement the renewal procedure. In the event the CSA decides to renew an audiovisual communication service without a tender, it is required to cite the main clauses of the agreement in force that it wishes to see revised as well as those clauses of which the holder requests amendment. For the audiovisual communication services other than radio, the CSA holds a public hearing within one month

³³ See “Criticism 4,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

³⁴ Article 28(1) in the *Freedom of Communication Act* (No. 86-1067 of 30 September 1986; hereafter: “*Freedom of Communications Act 1986*”), available at: http://www.csa.fr/upload/dossier/loi_86_english.pdf.

³⁵ *Freedom of Communication Act 1986*, Articles 28(1)(2) at: http://www.csa.fr/upload/dossier/loi_86_english.pdf.

³⁶ See the CSA’s website, available in English at: <http://www.csa.fr/multi/index.php?l=uk>.

following publication of its decision. It may also hold a public hearing for concerned third parties.

The CSA frequently renews licenses without a tender for both TV and radio broadcasters. In 2011, for instance, the CSA renewed the frequencies for many radio stations in the Ile de France region. The CSA did the same for a number of local TV stations in 2009.³⁷ There have also been cases in which the CSA has refused to renew a license for exceeding maximum allotted advertising revenue (more than 20 percent) or for not broadcasting the required proportion of local programs.

The CSA's decisions can be challenged in the French *Conseil d'Etat* (the Supreme Administrative Court). In general, the power to renew frequencies without tendering has not been criticised as a press-restrictive system in France, as in many cases it has worked to ensure media pluralism. It also helps to simplify the procedures of renewing the licenses, while excluding media that does not respect the law.

Example cited by Hungarian Government: GERMANY

*“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.”*³⁸

Expert assessment

Stephan Dreyer, Hans Bredow Institute for Media Research. Hamburg

This statement is accurate in that each of Germany's 14 State Media Authorities can issue directives. However, this author cannot state whether the directives in the Hungarian media law are comparable to those exercised by Germany's State Media Authorities. Directives issued by German State Media Authorities are only guidelines, which define specific steps for executing existing legislation. These directives are meant to ensure that the various State Media Authorities use common decision-making practices and that those practices are transparent. But this power is limited: State Media Authorities, for instance, are not allowed to issue new grounds for sanctions within their directives. Such a change would be subject to legislative acts of parliament(s).

The *Interstate Treaty on Broadcasting and Telemedia (Rundfunkstaatsvertrag - RStV)*,³⁹ allows the State Media Authorities to issue directives in the following areas:

- Article 33: directives on measures against media concentration;
- Article 46: directives to regulate advertising, product placement and sponsorship in broadcasting;
- Article 53: directives pertaining to platforms.⁴⁰

³⁷ See 2009 CSA Annual Report, http://www.csa.fr/rapport2009/donnees/rapport/II_autoris_conv.htm#11.

³⁸ See “Criticism 4,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

³⁹ *Interstate Treaty on Broadcasting and Telemedia* (hereafter: the “*Interstate Broadcasting Treaty*” - RStV) in the version of the 13th Amendment to the Interstate Broadcasting Treaties, April 2010; translation by the State Media Authorities for information purposes only, available at: http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/13_RStV-englisch.pdf.

⁴⁰ According to Article 2(2)(13) of the *Interstate Broadcasting Treaty* (RStV) a “platform provider” is defined as a “provider that collates broadcasting services and comparable telemedia (telemedia directed at the general public) including

In addition, the *Interstate Treaty on the Protection of Minors (Jugendmedienschutz-Staatsvertrag - JMStV)*⁴¹ obliges the State Media Authorities to issue directives that make it possible to implement and enforce that treaty. In practice, the State Media Authorities have issued directives or statutes in all of the above-mentioned fields. There are directives on advertising in television,⁴² advertising in radio,⁴³ so-called “window programmes,”⁴⁴ times for third-party programmes,⁴⁵ program councils⁴⁶ and youth protection.⁴⁷ Moreover there are statutes regarding platforms,⁴⁸ youth protection in digital television,⁴⁹ and games of chance in TV or telemedia services.⁵⁰

contents by third parties on digital transmission capacities or digital data streams for the purpose of making these contents available as an overall provision, or that decides on the selection for bundling; platform provider does not mean an operator whose exclusive activity is the marketing of broadcasting services or comparable telemedia.” Translation by the State Media Authorities for information purposes only, available at: http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/13._RStV-englisch.pdf.

41 *Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia* (Interstate Treaty on the protection of minors - JMStV), dated 10th to 27th September 2002, in the version of the 11th Treaty for amending the Interstate Treaties with regard to broadcasting law (13th Interstate Broadcasting Treaty) in force since 01 April 2010; translation by the KJM for information purposes only, available at: http://www.kjm-online.de/files/pdf1/_JMStV_Stand_13_RStV_mit_Titel_english.pdf.

42 *Television advertising guidelines, Common guidelines of the regional media authorities for advertising, product placement, sponsorship and teleshopping on TV*, (Werberichtlinien Fernsehen, Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung, die Produktplatzierung, das Sponsoring und das Teleshopping im Fernsehen (WerbeRL / FERNSEHEN), version dated 23rd February 2010, available in German at: http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Richtlinien/10-05-12_RS_Werberichtlinien_FERNSEHEN-23_2_10-Fliesstext_final.pdf.

43 *Radio advertising guidelines, common guidelines of the regional media authorities for advertising, product placement, sponsorship and teleshopping on TV* (Werberichtlinien Hörfunk, Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung, die Produktplatzierung, das Sponsoring und das Teleshopping im Fernsehen (WerbeRL / HÖRFUNK), version dated 23rd February 2010, available in German at http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Richtlinien/10-05-12_RS_Werberichtlinien_HOERFUNK-23_2_10-Fliesstext_final.pdf.

44 Fernsehfensterrichtlinie (FFR), Gemeinsame Richtlinie der Landesmedienanstalten zur Sicherung der Meinungsvielfalt durch regionale Fenster in Fernsehvollprogrammen nach § 25 RStV, dated 6th July 2005, available in German at http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Richtlinien/F Fernsehfensterrichtlinie_06.07.05.pdf.

45 Drittsendezeitrichtlinie (DSZR), Gemeinsame Richtlinien der Landesmedienanstalten über die Sendezeit für unabhängige Dritte nach § 31 RStV, dated 16th December 1997, in the version amended by decision of the DLM on 14th/15th September 2004, available in German at http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Richtlinien/DSZR_vom_16.12.1997_i.d.F._vom_14._15.09.pdf.

46 Programmbeiratsrichtlinie (PBR), Gemeinsame Richtlinie der Landesmedienanstalten über die Berufung, Zusammensetzung und Verfahrensweise von Programmbeiräten nach § 32 RStV, dated 16th December 1997, available in German at <http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze/Programmbeiratsrichtlinie.pdf>.

47 Jugendschutzrichtlinien (JuSchRiL), Gemeinsame Richtlinien der Landesmedienanstalten zur Gewährleistung des Schutzes der Menschenwürde und des Jugendschutzes, dated 8th/9th March 2005, at: <http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze/JuSchRiL2005.pdf>.

48 Plattformratsatzung, Satzung über die Zugangsfreiheit zu digitalen Diensten und zur Plattformregulierung gemäß § 53 Rundfunkstaatsvertrag, dated 4th March 2009, available in German at: http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze/Zugangs-und_Plattformratsatzung_04.03.2009.pdf.

49 Jugendschutzsatzung, Satzung zur Gewährleistung des Jugendschutzes in digital verbreiteten Programmen des privaten Fernsehens, dated 25th November 2003, available in German at: http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Satzungen/Jugendschutzsatzung_2003.pdf.

50 Gewinnspielsatzung, Satzung der Landesmedienanstalten über Gewinnspielsendungen und Gewinnspiele dated 23th February 2009, available in German at: http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Satzungen/Gewinnspielsatzung_23.02.2009.pdf.

5.2/Media Authority powers: the Media Commissioner

Hungary's media laws introduced a new Media and Communications Commissioner, an official within the Media Authority responsible for representing the rights of media consumers and for handling disputes between the media and the public.⁵¹ The Media Authority president appoints, can recall and exercises full employer's rights over the Commissioner.⁵² The Commissioner reports to the Media Authority president and/or the Media Council.⁵³ The Commissioner's formal role is to monitor, investigate and resolve complaints regarding media content which may "harm the interests of" viewers, listeners or readers, but which does not constitute a breach of regulations specified in the media laws, and hence falls beyond the scope of the Media Authority's regulatory powers.⁵⁴

The Commissioner has no formal regulatory powers but can request any data and information—including trade secrets—from any media outlet when investigating a complaint.⁵⁵ If the outlet fails to comply, the Commissioner can alert the Media Authority, which can require the data be produced.⁵⁶ Failure to comply with the Media Authority's data requests can result in a fine between HUF 50,000 (EUR 180) and HUF 50 million (EUR 180,000) based on the media outlet's previous annual revenue.⁵⁷

As specified in the *Media Act*, the

Commissioner conducts written and verbal consultations with media outlets to settle disputes brought by individuals or groups over media content that harms their "interests" or in consumer protection matters.⁵⁸ The Commissioner fields complaints from the public regarding harmful content and can also initiate investigations *ex officio*.⁵⁹

In settling a dispute, the Commissioner can request that media outlet sign a contract with the Commissioner verifying the harmful content and establishing an agreement to prevent future harm.⁶⁰ The Authority is then empowered to verify compliance with provisions in the agreement in the course of its regulatory inspections.⁶¹ The Authority may also take into account "the extent of cooperation displayed by the service provider concluding the agreement . . . in any other official matters involving the service provider as well."⁶²

International criticism

Opponents claim the Media Commissioner has *de facto* sanctioning powers, which expands the Media Authority's monitoring and sanctioning capacities beyond the scope of the specified regulations to include any materials deemed "harmful," as determined by the Commissioner.⁶³ "In case there is no violation of the law, the Commissioner—appointed by the President of the Authority—may lead an investigation, and report to the President of the Authority," according to media lawyer

51 The Media and Communications Commissioner's role and powers are defined in the *Act CLXXXV of 2010 On Media Services and Mass Media* (hereafter: the "*Media Act*"), entry into force 1 January 2011, as amended. Per Article 139(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

52 *Media Act*, Article 111(2)(f), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

53 *Media Act*, Article 139(2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

54 *Media Act*, Article 140(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

55 *Media Act*, Article 142(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

56 *Media Act*, Article 142(2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

57 *Media Act*, Article 142(2), in reference to Article 175(8). A legal remedy lies against this decision as defined in Articles 163–165 of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

58 *Media Act*, Article 142(3-5), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

59 *Media Act*, Article 140(2), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

60 *Media Act*, Article 142(7), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

61 *Media Act*, Article 142(7), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

62 *Media Act*, Article 142(7), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

63 "The New Hungarian Media Law Substantially Curtails Press Freedom" by Dr. Judit Bayer, prepared for the South East European Network for Professionalization of Media (SEENPM) with the support of the International Freedom of Expression eXchange (IFEX), March 2011, http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf.

Judit Bayer.⁶⁴ Another legal review found that the Commissioner's powers "remain virtually unlimited due to being ill-defined. The Commissioner for Media and Communications may not pass decisions with binding force but does possess the right to access any information or document, and reports directly to the President on his investigations. The Commissioner is not only appointed by but also subordinated to the President who exercises employer's rights over him and his staff."⁶⁵ Opponents claim this enables the Authority to exert additional pressure on the media, which could have a "chilling effect" on the press. "By calling this position a 'Commissioner' (which is a term equal to 'ombudsman' in the Hungarian language) and declaring that it does not have any jurisdiction, it may appear that the investigated mediums do not suffer any damage," according to Bayer's analysis.⁶⁶ "[F]irst, the investigation alone has a chilling effect; second, the investigation may entail a procedural fine, or a new procedure by the Authority."⁶⁷

Bayer claims these measures contradict prior case law as specified by Resolution 1/2007 of Hungary's Constitutional Court.⁶⁸ In that

64 "Why Hungary's media law is still unacceptable despite amendments," by Dr. Judit Bayer, *medialaws.eu*, March 15, 2011, <http://www.medialaws.eu/why-hungarys-media-law-is-still-unacceptable-despite-amendments/>.

65 "A criticism of the Hungarian Act on Media Services and Mass Media, Effective January 1st, 2011," László Majtényi's, Eötvös Károly Institute. Presented to the European Parliament, Open Hearing on Freedom of Press in Hungary, Brussels, 11 January, 2011, available at: http://ekint.org/ekint/ekint_angol.news.page?nodeid=409.

66 "The New Hungarian Media Law Substantially Curtails Press Freedom," by Dr. Judit Bayer, prepared for the South East European Network for Professionalization of Media (SEENPM) with the support of the International Freedom of Expression eXchange (IFEX), March 2011, http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf.

67 "The New Hungarian Media Law Substantially Curtails Press Freedom," by Dr. Judit Bayer, prepared for the South East European Network for Professionalization of Media (SEENPM) with the support of the International Freedom of Expression eXchange (IFEX), March 2011, http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf.

68 Decision 1/2007 (I. 18.), available at: http://www.mkab.hu/admin/data/file/651_1_2007.pdf, as referenced in "The New Hungarian Media Law Substantially Curtails Press Freedom," by Dr. Judit Bayer, prepared for the South East European Network for Professionalization of Media (SEENPM) with the support of the International Freedom

case, the Court annulled a provision in Hungary's previous media law that allowed the former Complaints Commission to investigate and sanction complaints about content "not specified in the Act."⁶⁹ According to the Court, such powers "unnecessarily restrict the right to the freedom of the press without a constitutionally justified objective."⁷⁰

Hungarian Government's response

The Hungarian Government claims the Commissioner's role is to represent the rights of media consumers and that it has no regulatory powers. "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," according to its December 2010 statement.⁷¹ The Government also emphasises that the Commissioner's proceedings are clearly established in the law, and that the Commissioner's activities are not "authority procedures," but rather the aim is to establish a mutual agreement between the Commissioner and the service provider on methods to prevent future harms: "[T]he Commissioner may not exercise his/her rights in connection with the investigation of the complaint in a manner that constitutes 'persecution' under any law," the Government states.⁷²

of Expression eXchange (IFEX), March 2011, available at: http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf.

69 In reference to Article 48(1)(3) of the *Act I of 1996 on Radio and Television*, available at: <http://www.nhh.hu/dokumentum.php?cid=10622>.

70 Decision 1/2007 (I. 18.), available at: http://www.mkab.hu/admin/data/file/651_1_2007.pdf, p. 15.

71 See "Criticism 15," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010, <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

72 See "Criticism 15," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010 at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

5.2/Findings: the Media Commissioner

In response to the criticisms of the Media Commissioner's role and powers, the Hungarian Government provides examples of similar ombudsman and press council systems in three EU-member states: **Finland, Ireland, and Lithuania.**

According to the expert assessments, the Hungarian Government's comparisons of Hungary's Media Commissioner to the ombudsman and press council systems in these three examples are not accurate. The expert analyses indicate that the ombudsman and/or press councils cited in Finland, Ireland and Lithuania operate as independent entities from the respective media authority in monitoring and enforcing compliance with legal regulations, codes of ethics, and/or in handling disputes between the public and the press. Hungary's Media Commissioner, by comparison, is an appointee of the Media Authority president, operating within and as a representative of Hungary's Media Authority. The Commissioner has the authority to initiate proceedings that do not involve violations of the law and its proceedings can be enforced by Media Authority-issued fines and sanctions. Although its tasks include handling complaints from the public regarding media content, the Media Commissioner's additional monitoring and enforcement powers exceed those afforded to three bodies cited by the Hungarian Government. According to the expert analyses, the Government's examples appear to erroneously equate the Media Commissioner's role and powers with those of a traditional ombudsman, while also inaccurately presenting the respective powers and roles of the ombudsman and press council systems in the three cited cases.

Finland: According to the expert assessment, the Hungarian Government's example correctly states that compliance with provisions in Finland's media act(s) are overseen by the Finnish Communications Regulatory Authority (FICORA), or in certain cases the Consumer Ombudsman. The Consumer Ombudsman supervises specific provisions in the media laws concerning misleading or unethical advertising and regulations on the protection of minors. But neither body has any role in codifying the media acts, as stated by the Hungarian Government, nor does an ombudsman dedicated to media-related matters exist in the Finnish media regulatory system, as the Government's example seems to imply. Hence, whereas the Consumer Ombudsman's authority extends to monitoring compliance with specific regulations regarding advertising and protection of minors regulations as specified in the laws, Hungary's Media Commissioner is empowered to investigate an unspecified range of content which may cause "harm" to viewers, listeners or readers but does not constitute a breach of any legal regulations.

Ireland: The expert finds that the Hungarian Government's example of the role of the press council and ombudsman in the Irish media system is "misleading." The Irish Press Council and Ombudsman are independent self-regulatory bodies and not a part of Ireland's national media regulatory system. Membership in the Irish Press Council is voluntary. According to the expert, neither body constitute a "judicial panel" nor are their roles confined to print media or to settling "privacy disputes," as the Hungarian Government's statement describes. In addition, neither body has sanctioning powers and their decisions are not legally enforceable: their primary roles are to settle disputes between the public and the press, based on the Press Council's established codes of professional conduct. It is therefore inaccurate to compare these bodies with Hungary's Media Commissioner, which is part of the national media body with legal enforcement powers.

Lithuania: According to the expert analysis, the Hungarian Government's statement appears to refer to the Inspector of Journalist Ethics, a state official responsible for overseeing the print and

www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context.

5/MEDIA AUTHORITY: POWERS

online press, and to the Journalists and Publishers Ethics Commission, a self-regulatory body. The Inspector of Journalist Ethics operates as part of Lithuania's national media regulatory body, and can oversee compliance with and assess sanctions to breaches to the media laws. The Journalists and Publishers Ethics Commission is a self-regulatory body which oversees compliance with the Code of Ethics of Lithuanian Journalists and Publishers. In terms of their competencies and powers, neither bodies sufficiently compare to the Media Commissioner in Hungary.

5.2/Expert assessments: handling complaints

Example cited by Hungarian Government: FINLAND

“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.”⁷³

Expert assessment

Kari Karppinen, PhD/Hannu Nieminen, PhD, University of Helsinki

The citation above referring to the “Ombudsman” is erroneous: the Finnish media regulatory system does not have a media ombudsman. This statement is correct in saying that compliance with the provisions set forth in Finland’s media act(s) are overseen by the Finnish Communications Regulatory Authority (FICORA), or in specific cases, the Consumer Ombudsman. But neither of these bodies have any role in codifying the media acts. Nor does an ombudsman dedicated to media-related matters exist in the Finnish media regulatory system.

The Consumer Ombudsman supervises compliance with specific provisions in the *Act on Television and Radio Operations*⁷⁴ concerning misleading or unethical advertising and the protection of minors.⁷⁵ According to its website: “The Consumer Ombudsman does not resolve individual disagreements, but rather supervises compliance with consumer protection laws and safeguards consumer rights in general.”⁷⁶ In cases of false advertising, the powers of the Consumer Ombudsman are comparable to those of FICORA: it can issue a reminder, or if necessary bring a dispute to a separate Market Court.

This statement correctly notes that FICORA is an agency responsible for overseeing compliance with Finland’s (various) media and telecommunications laws. FICORA’s supervisory responsibilities and sanctioning powers apply to commercial television and radio broadcasting (based on the *Act on Television and Radio Operations*) and telecommunications operators (as per the *Communications Market Act*),⁷⁷ and to areas of postal services, privacy protection, and data security contained in various other legal acts.

But there are notable limitations regarding FICORA’s overall regulatory powers. As mentioned above, FICORA does not participate in codifying the media laws. FICORA also has no general responsibility to handle complaints from the public, but within its duty to monitor the provisions of the *Act on Television and Radio Operations*, it receives requests for action from individual citizens concerning programmes that may cause detriment to the development of children and concerning advertisements, sponsoring and product placement. In these cases, FICORA may request a statement from the broadcaster on the basis of complaints, and if the broadcaster is found to violate the provisions of the *Act on Television and Radio Operations*, then all the normal sanctioning procedures apply (most commonly a reminder, but in principle this can also involve fines).

⁷³ See “Criticism 15,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010 at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

⁷⁴ *Act on Television and Radio Operations*: <http://www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf>.

⁷⁵ The Finnish Consumer Agency (Consumer Ombudsman): <http://www.kuluttajavirasto.fi/en-GB/>.

⁷⁶ From the Consumer Ombudsman’s website at: www.kuluttajavirasto.fi/.

⁷⁷ *Communications Market Act*: <http://www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf>.

However, the Council for Mass Media, a separate self-regulating committee that interprets and upholds professional ethics, handles complaints from members of the public on breaches of journalism ethics.⁷⁸ The Council for Mass Media can also impose sanctions on the basis of the common code of ethics signed by all Finnish media outlets and a common agreement by media outlets to publish any notices issued by the Council. The Council of Ethics in Advertising also issues statements and handles complaints regarding ethically acceptable advertising.⁷⁹ The Ministry of Transport and Communications and FICORA work in cooperation with general competition and consumer authorities wherever necessary.⁸⁰

Example cited by Hungarian Government: IRELAND

“A similar institution as the Media Council’s Commissioner in Ireland is the Press Council and Ombudsman, an independent judicial panel elected to decide in privacy disputes pertaining to printed media.”⁸¹

Expert assessment

TJ McIntyre, School of Law, University College, Dublin

The Hungarian Government’s presentation of the role of the Press Council and Ombudsman in the Irish media system is misleading, as it does not reflect several key elements of this system. First, the Press Council is a self-regulatory body and is not a part of Ireland’s media authority.⁸² It is an independent, self-funded and self-governing institution that operates outside the national legislative media regulatory system; while it has statutory recognition, it is not a state body. Membership in the Press Council is voluntary—there is no requirement for Irish periodicals to join the Press Council. Second, neither the Press Council nor the Ombudsman have any powers to sanction media or levy fines; their primary roles are to settle disputes between the public and the press, based on the Press Council’s established codes of professional conduct. Hence, it is inaccurate to compare Hungary’s Media Commissioner, which is part of the national media authority with a range of legal and enforcement powers, with the Irish Press Council and Ombudsman, which are part of a voluntary self-regulation system with no legally-binding enforcement authority.

The Hungarian Government describes the Press Council and Press Ombudsman in Ireland as being an “independent judicial panel.” This is partially correct, insofar as both are independent of government, but it may be misleading to describe these bodies as “judicial.” Neither the Press Ombudsman nor the members of the Press Council are judges within the meaning of the Irish Constitution. As such, the Press Council or Press Ombudsman do not exercise “judicial” functions as the term is understood in Irish law. At most, each might be described as acting in a “quasi-judicial” manner (that is, they would be required by law to follow fair procedures in hearing complaints). In particular, it should again be noted that the Press Council and Press Ombudsman

78 The Council for Mass Media: <http://www.jsn.fi/en/>

79 The Council of Ethics in Advertising: http://www.keskuskauppakamari.fi/site_eng/Services/Expert-Services/Statements-on-Ethical-Advertising.

80 Ministry of Transport and Communications: <http://www.lvm.fi/web/en/home>.

81 See “Criticism 15,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010 at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

82 Press Council: www.presscouncil.ie; Press Ombudsman: www.pressombudsman.ie.

do not have any power to determine legal rights or to make legally enforceable decisions.

The Hungarian Government's reference also understates the functions of the Press Council and Ombudsman as "pertaining to printed media," which suggests that they are limited to traditional print media. In fact, the Press Council and Ombudsman are willing to consider complaints which relate to the electronic versions of newspapers,⁸³ and more recently for online-only publications as well.⁸⁴ In addition, the Press Council and Ombudsman's role is not confined to settling "privacy disputes," as the Government's statement suggests. Although many complaints refer to privacy issues, the Press Council Code of Practice is substantially wider and requires members to abide by 10 distinct principles, which in addition to privacy include provisions relating to truth and accuracy, distinguishing fact from comment, fairness and honesty, respect for rights, protection of sources, court reporting, racial and religious prejudice, and the protection of minors. Principle 8, for example, provides that newspapers and magazines must not publish materials intended to cause "grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the traveling community, gender, sexual orientation, marital status, disability, illness or age."⁸⁵

The Press Council and Ombudsman can only assess whether a periodical has complied with the Code of Practice. They have no power to assess compliance with any other law. Nor do they have the power to impose any fine or other sanction in relation to a breach of the Code of Practice. The only power that the Press Council and Ombudsman have in relation to a complaint is to direct the periodical to publish their decision. The only "sanction" in Irish law for failure to comply with the Code of Practice is indirect, in that failure may make it more difficult to establish a defense of fair and reasonable publication in defamation actions. Under Section 26 of the *Defamation Act 2009*, a court may take into account the "extent to which [a defendant] adhered to the code of standards of the Press Council and abided by determinations of the Press Ombudsman and determinations of the Press Council" in deciding "whether it was fair and reasonable to publish the statement concerned." Decisions of the Ombudsman may be appealed to the Press Council.

As noted, the Press Council and Ombudsman collectively make up a self-governing press council system. They are funded by a levy on members of the Press Council in accordance with their circulation.⁸⁶ The Press Council is intended to be independent of both the government and the media in its functions and has a majority of non-industry directors. In relation to media specific regulation, the Press Council and Ombudsman operate alongside the primary governmental bodies the Broadcasting Authority of Ireland (BAI), the Censorship of Publications Board and the Irish Film Classification Office.⁸⁷ The advertising industry also operates the Advertising Standards Authority of Ireland on a self-regulatory basis.

The primary role of the Ombudsman and Press Council is to serve as a low-cost complaints procedure for members of the public who are aggrieved by what they read in newspapers and magazines. They are therefore intended to mediate between the public and the press rather than

83 This would appear to be required under the *Defamation Act 2009* as the definition of "periodical" in Section 2 includes versions of traditional newspapers, etc. which are "published on the internet or by other electronic means."

84 See "Accuracy, truth main complaints about press," *The Irish Times*, 2 April 2011.

85 See the Code of Practice, at: <http://www.pressombudsman.ie/code-of-practice.150.html>.

86 See the Press Council's structure and funding at: <http://www.presscouncil.ie/about-the-press-council/structures-and-funding-.2172.html>.

87 The Censorship of Publications Board was established by the *Censorship of Publications Act 1929* and has the power to prohibit the sale and distribution of books or periodicals which it finds to be obscene. While it has been extremely controversial in the past, the Censorship of Publications Board is of little relevance to the modern Irish media and has not banned a title in over 12 years, though some pornographic periodicals remain banned indefinitely. See O'Callaghan, "Censorship of Indecency in Ireland: A View from Abroad" (1998) *Cardozo Arts and Entertainment Law Journal*, 53; Byrne, "What a shocker: no more books to ban," *The Irish Times*, 18 December 2010.

between the press and the government. Politicians and companies are also free to make complaints to the Ombudsman in the same way as any other individual. In 2010, the Press Ombudsman received 315 complaints, the majority of which (224) were not processed.

This author is not aware of any incident in which a periodical has failed to publish a decision of the Ombudsman or Press Council where required to do so. On balance, the Press Council and Ombudsman system is seen by most journalists and media proprietors as having a positive influence on press freedom, insofar as it has helped to bring about reform of Irish defamation law and to stave off more intrusive state regulation in relation to privacy. Although the system is still in its early years, the fact that membership of the Press Council is voluntary provides a natural restraint on policies which would be likely to restrict freedom of the press.

Example cited by Hungarian Government: LITHUANIA

“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.”⁸⁸

Expert assessment

Zivile Stubryte, PhD candidate, Legal Studies, Central European University

This statement appears to refer to the Inspector of Journalist Ethics,⁸⁹ a state official responsible for overseeing the print and online press, and to the Journalists and Publishers Ethics Commission, a self-regulatory body. However the statement above does not distinguish between the powers of the state Inspector, who has legal authority to oversee compliance by non-broadcast media outlets with the *Media Law*,⁹⁰ and the Ethics Commission, which is a self-regulatory body with no legal enforcement powers.

The Inspector has powers to supervise press and online press for compliance with regulations in the *Media Law*, the *Law on Protection of Minors*,⁹¹ the *Law on Protection of Personal Data*,⁹² and “the processing of personal data carried out for the purposes of providing information to the public or the purposes of artistic or literary expression.”⁹³ When there is a violation of one of the above-mentioned laws, the Inspector can impose sanctions, which can be appealed through the administrative court system. The Inspector is a state official and heads the Office of the Inspector of Journalist Ethics, which is “a state budgetary institution.”⁹⁴ The Inspector is appointed for a five-year term by the

⁸⁸ See “Criticism 15,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010 at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

⁸⁹ The Office of Inspector of Journalist Ethics: http://www3.lrs.lt/pls/inter/zetika?r_id=6207&k_id=1&d_id=96765; see also Article 46 of Lithuanian *Media Law*, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

⁹⁰ *Media Law*, Article 49(1), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

⁹¹ *Law on the Protection of Minors against the Detrimental Effect of Public Information*, No. 86-3637, Official Gazette, 21 July 2009, available in English at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363137.

⁹² *Law on the Protection of Personal Data* (No. 22-804), Official Gazette, 1 February 2008, as last amended on 12 May 2011, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400103.

⁹³ The Office of the Inspector of Journalist Ethics, http://www3.lrs.lt/pls/inter/zetika?r_id=6207&k_id=1&d_id=96765.

⁹⁴ Lithuanian *Media Law*, Article 49(10) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

Parliament, upon the recommendation of the Journalists and Publishers Ethics Commission.⁹⁵

The Journalists and Publishers Ethics Commission is “a collegial self-regulatory body of producers and disseminators of public information,” and is headed by a board of 15 members serving three-year terms.⁹⁶ Each of the following organisations delegates one representative to serve as a member of the Commission: “the Lithuanian Centre for Human Rights, the Lithuanian Psychiatric Association, the Lithuanian Bishops’ Conference, the Lithuanian Periodical Press Publishers’ Association, the Lithuanian Radio and Television Association, the Lithuanian Cable Television Association, the Regional Televisions’ Association, the Lithuanian Journalists’ Union, the Lithuanian Journalists’ Society, the Lithuanian Journalism Centre, the National Radio and Television of Lithuania, the National Association of Creative Journalists, the National Association of Publishers of Regional and City Newspapers, the Association of Communication and Advertising Agencies and the Association of Internet Media.”⁹⁷ The members of the Commission elect a chairman among themselves.⁹⁸

Generally, the Journalists and Publishers Ethics Commission oversees the professional ethics of journalists. Under Article 46 Part 4 of the Lithuanian *Media Law*, the Journalists and Publishers Ethics Commission has the responsibility to: “1) ensure the cultivation of professional ethics of journalists; 2) examine violations of professional ethics committed in the course of provision of information to the public by journalists, producers of public information or responsible persons appointed by their participants; 3) examine disputes between journalists and producers or publishers of public information regarding violations of the Code of Ethics of Lithuanian Journalists and Publishers.”⁹⁹

The Journalists and Publishers Ethics Commission’s decides on violations of the Code of Ethics of Lithuanian Journalists and Publishers. The decisions must be published in the same media outlet charged with a violation.¹⁰⁰ If no such publication is made within two weeks, the Commission’s decision shall be made public on national radio.¹⁰¹ All decisions by the Commission are also published on its website.¹⁰² If producers or disseminators of public information disagree with a decision by the Commission, they may seek judicial review, but lodging an appeal does not eliminate the obligation to publish the Commission’s decision in their outlet.¹⁰³ All decisions by these bodies are sanctioned by a court or can be appealed in administrative courts.

95 *Media Law*, Article 49(1), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

96 *Media Law*, Article 46(1), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

97 *Media Law*, Article 46(2), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

98 *Media Law*, Article 46(3), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

99 *Media Law*, Article 46(4), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

100 *Media Law*, Article 46(7), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

101 *Media Law*, Article 46(7), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

102 *Media Law*, Article 46(7), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

103 *Media Law*, Article 46(8), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

6/Data disclosure

The Hungarian Media Authority has the right to request an unlimited range of data and information from media outlets, including corporate secrets and information protected by law, even after mandatory registration. Failure to comply with the Authority's data requests can result in refusal of registration, fines, deletion from the register, and exemption from future tender offers. Free-press advocates and media experts warn these measures enable the Media Authority to exert undue and continuous pressure on the media and threaten press freedom. Hungarian officials say the system allows the Media Authority to exercise its regulatory tasks while still protecting media freedom. The Government also states these powers are in keeping with European community standards, as exemplified by similar data-disclosure policies granted to media authorities in a number of EU-member states.

The *Media Act* requires all media in Hungary, including the print and online press, to register with the Media Authority.¹ For “press products,” on-demand and ancillary media services, publishers must register within 60 days of commencing their service or activity.² The data required for registration differs by media sector, but generally includes names of top officers, basic corporate information, as well as type of media service. The Authority can refuse registration to media service providers and publishers of press products for failing to provide specified data or registration fees, or for violating conflict-of-interest rules or anti-concentration regulations.² In the case a media outlet fails to notify the Media Authority of a change in registration data within 15 days, the Authority may impose a fine of up to HUF 200 million (EUR 722,000) for media service providers

with “significant influence,”³ HUF 50 million (EUR 180,000) for other linear media service providers,⁴ and HUF 1 million (EUR 3,600) for publishers of press products,⁵ in accordance with the gravity of the violation as specified by the principles of proportionality as detailed in Article 185(2) of the *Media Act*.⁶ It can delete a media service or press product from the register for reasons enumerated in the *Media Act*,⁷ including, in the case of linear media, for a “repeated and serious violation” of any of the “rules on media administration.”⁸ Names and contact information of media service providers and press products are publicly available on the Media Authority’s website.⁹

1 Under Article 41(4)(a) of the *Media Act*, the media required to register are: linear audiovisual media services, linear radio media services, audiovisual media services which obtained its services via tendering, on-demand audiovisual media services, on-demand radio media services, ancillary media services, printed press products, online press products and news portals. Article 41(2) of the *Media Act* specifies that for press products, ancillary media services, and on-demand media operating in Hungary registration is not a precondition to commence operations but these media must register with the Media Authority within 60 days of the commencement of their operations, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

2 Conditions for refusing registration are provided in Article 42(6) of the *Media Act*. Article 43 defines conflict-of-interest rules; Article 68 outlines anti-concentration regulations, <http://nmhh.hu/dokumentum.php?cid=26536>.

3 Per Article 42(9) and 42(10) of the *Media Act*, which states: “The Office may impose a fine according to Article 187(3)(ba) or (bb) on the media service provider in case of late or non-performance of the notification on such changes.” Available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

4 Article 187(bb) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

5 Article 46(8)(a) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

6 Article 185(2) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

7 Article 42(7) of the *Media Act* for linear media services; Article 46(6) of the *Media Act* for press products; Article 45(5) of the *Media Act* for on-demand media, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

8 Article 42(7)(f) of the *Media Act*: “The Office shall delete the linear media service from the register ... if the Media Council ordered the application of this legal consequence with regard to the provisions of Articles 185 to 187,” available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

9 Article 41(6) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

The Media Authority can also request on a temporary or continuous basis “any and all” data from media outlets it considers “indispensable” to perform its regulatory duties, including in exceptional cases data protected by law.¹⁰ The Authority’s regulatory duties include monitoring compliance with provisions in the media laws, as well as with all public contracts with the Authority. The law also grants the Media Authority the power to “execute remote data reporting from an audit system installed on-site, attached to a (*sic*) official register or embedded in process, under its regulatory decision.”¹¹ Failure to comply with the Authority’s data requests can result in a fine between HUF 50,000 (EUR 180) and HUF 50 million (EUR 180,000).¹² Clients may appeal the Authority’s requests and decisions in the Budapest Metropolitan administrative court. The petition does not automatically suspend the enforcement of the decision.¹³ No appeal can be lodged against the ruling of the Budapest Metropolitan Court.¹⁴

When “establishing the facts of the case” during an investigation into a violation of the media laws, the Authority has the right to “view, examine and make duplicates and extracts of any and all instruments, deeds and documents containing data related to the media service, publication of a press product or media service distribution, even if containing secrets protected by law.”¹⁵ A witness can also be required to provide information on trade secrets “even if s(he) was not granted exemption from the obligation of confidentiality from the client.”¹⁶ The Authority

also has the right to oblige the client, and in justified cases actors other than the client,¹⁷ to furnish data, and can impose procedural fines of up to HUF 25 million (EUR 90,252) for refusing to comply with these requests.¹⁸ For repeated offenses, the Media Authority may also fine senior officers of the breaching entity a maximum of HUF 3,000,000 (EUR 10,830) for hindering the proceedings or for non or improper fulfilment of the obligation to furnish data.¹⁹

The Media Council is also permitted to request data from media outlets in the course of its regulatory activities as well as during the course of infringement proceedings. As part of its duties in ensuring compliance with anti-concentration rules and regulating media service providers with “significant influence,” for instance, the Media Council may order media service providers to provide data and information.²⁰ In cases of non- or improper provision of data, the Council can impose procedural fines between HUF 50,000 (EUR 180) and HUF 50 million (EUR 180,000) on the breaching entity, and between HUF 50,000 (EUR 180) and HUF 3,000,000 (EUR 7,220) on senior officers of the media outlet, for repeated infringements.²¹

In addition, the Media and Communications Commissioner may also request any data and information, including trade secrets, from any media outlet when investigating activities deemed to cause “harm” to the interests of media consumers.²² If the outlet fails to comply, the Commissioner can alert the Media Authority, which can require the data to be produced.²³ Failure to comply with the Media

10 Article 175(1) and Article 175(3) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

11 Article 175(4) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

12 Article 175(8) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

13 However, according to Article 175(5), “The submission of the application for non-contentious proceedings shall have a suspensive effect on the enforcement of the decision,” available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

14 Article 175(5) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

15 Article 155(2) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

16 Article 155(7) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

17 Article 155(4) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

18 Article 155(5) of the *Media Act*; procedural fines are specified in Article 156, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

19 Article 156(4) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

20 Article 70(2) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

21 Article 175(8) and 70(3) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

22 Article 142(1) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

23 Article 142(2) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

Authority's requests can result in fines between HUF 50,000 (EUR 180) and HUF 50 million (EUR 180,000), based on the media outlet's previous year's revenue and on whether the offense was repeated.²⁴ Appeals can be made against these decisions following procedures detailed above, with regards to Articles 163 to 165 in the *Media Act* (see information on the Media Commissioner in Chapter 5.2 of this report).

The *Media Act* also grants individuals participating in the administration of a case and employed by the Authority "unlimited powers to familiarize themselves with secrets protected by law."²⁵ The law contains a number of provisions regarding the handling of confidential data and allows a client to specify certain data as "restricted" and to be kept from the public record.²⁶ Data deemed as "restricted" is accessible to the keeper of minutes, the president of the Media Authority, members of the Media Council, the competent public prosecutor, and in case of judicial review, the acting judge, as well as other "administrative authorities or government entities," as deemed appropriate by the Authority.²⁷ The law requires the Media Authority to ensure such "restricted" data is protected; the Authority can however lift the "restricted" designation in justified cases, such as the proper enforcement of the law.²⁸

International criticism

Media experts have challenged the new registration requirements for print and online media as a "preemptive restraint" on the press, which violates European norms. According to the Council of Europe's Commissioner for Human Rights, Hungary's new registration requirements for print and online press do not comply with Article 10(1) of the

European Convention on Human Rights, which "recognises that states may require the licensing of audio-visual broadcasters, as well as television and cinema enterprises. However, nowhere in the Convention is provision made for the mandatory registration of the printed press."²⁹

According to a legal review conducted for the OSCE, "[t]he obligation requiring all media – broadcast, print and online – to be registered with the media authority is excessive."³⁰ This report concludes that "[i]nternational practice also shows that registration is normally only required in societies where the media is not really free. Especially if the body that handles the registration is political or perceived to be, it may have a chilling effect on free expression and plurality."³¹

Opponents have also raised concerns over measures in the law granting the Media Authority unlimited powers to require *any* information it deems necessary in the course of the Authority's regulatory inspections and infringement procedures.³² Critics warn this gives the Authority far-reaching investigatory powers, and that the law provides inadequate legal mechanisms for appealing these requests. According to one legal review, the law grants the Authority "oversized" investigatory powers by allowing officials to request an unspecified range of data from media outlets as well as "any other person or organization."³³

29 See "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media, Strasbourg, 25 February 2011, CommDH(2011)10, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289>.

30 "Analysis of The Hungarian Media Legislation," Prepared By Katrin Nyman-Metcalf, Professor And Chair Of Law And Technology, Tallinn University Of Technology, Commissioned By The Office Of The OSCE Representative On Freedom Of The Media 28 February 2011, <http://www.osce.org/fom/75990>.

31 "Analysis of The Hungarian Media Legislation," Prepared By Katrin Nyman-Metcalf, Professor And Chair Of Law And Technology, Tallinn University Of Technology, Commissioned By The Office Of The OSCE Representative On Freedom Of The Media 28 February 2011, <http://www.osce.org/fom/75990>.

32 According to Article 153(1) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

33 "The New Hungarian Media Law Substantially Curtails Press Freedom" by Dr. Judit Bayer, prepared for the South East European Network for Professionalization

24 Article 142(2), in reference to Article 175(8), of the *Media Act*. A legal remedy lies against this decision per Articles 163–165 of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

25 Article 153(1) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

26 Article 153 of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

27 Article 153(4) and (5) of the *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

28 Article 153(7) of the *Media Act*, *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

In addition, the provision granting the Media Authority the power to gather data “*remotely from a supervision system installed on the business’s premises or built in the business’s procedures*” is vague, according to this analysis, as it is unknown what this system is or how such a system would be installed.³⁴ According to this study, the provision allowing the Media Council to administer procedural fines on media outlets and senior officers or any participants in the procedure could also allow the Council to punish anyone who “exhibits behavior that may potentially hinder or delay the procedure,”³⁵ as “the behavior does not need to be intentional, or result in the actual delaying of the procedure – only that it may potentially hinder it.”³⁶

Hungarian Government’s response

The Hungarian Government states that the *Media Act’s* rules on data disclosure are strictly defined in law in order to prevent unnecessary intrusions on the media while also ensuring that authorities can perform their regulatory duties.³⁷ “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,” according to the Hungarian Government’s December 2010 statement. It continues: “[t]he 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.”³⁸

According to the Government, 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.”³⁹ The Government states that the laws were specifically designed to safeguard media freedom, in line with European standards. “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.”⁴⁰

of Media (SEENPM) with the support of the International Freedom of Expression eXchange (IFEX), (emphasis in original), http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf.

34 “The New Hungarian Media Law Substantially Curtails Press Freedom” by Dr. Judit Bayer, prepared for the South East European Network for Professionalization of Media (SEENPM), with the support IFEX, (emphasis in original), http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf.

35 “The New Hungarian Media Law Substantially Curtails Press Freedom” by Dr. Judit Bayer, prepared for the South East European Network for Professionalization of Media (SEENPM), with the support IFEX, http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf.

36 “The New Hungarian Media Law Substantially Curtails Press Freedom” by Dr. Judit Bayer, prepared for the South East European Network for Professionalization of Media (SEENPM) with the support of IFEX, http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf.

37 See “Criticism 20,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

38 See “Criticism 20,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

39 See “Criticism 20,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

40 See “Criticism 20,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

6/Findings: Data disclosure

In response to concerns by critics that Media Authority is granted excessive and overly broad powers to demand data from media outlets, the Hungarian Government cites examples of media authorities with similar powers in **Denmark, Estonia, Italy** and **Lithuania**.

The expert assessments indicate that the Media Authority's general data-disclosure powers over all media sectors appears to exceed those in three of the four cases cited. In all four cases cited, media authorities can require data from media outlets as a condition of registration and in the course of their regulatory oversight and investigatory activities. In two of these country cases cited (**Italy** and **Lithuania**) this power extends to all media sectors, including print and online press. However, in Lithuania, registration obligations for different media sectors are overseen by different media authorities, whereas in Hungary these obligations are managed by a single authority for all media sectors. According to the expert evaluations, the Hungarian Media Authority's powers to demand an unlimited range of data and information from all media, combined with the power to assess financial and other penalties on media outlets for providing incorrect data or refusing to comply with data-disclosure requests, appear most similar to the powers granted to **Italy's AGCOM**. As the expert report shows, AGCOM's investigatory and sanctioning powers regarding data disclosure are in fact greater than those granted to Hungary's Media Authority.

In all four examples, the data-disclosure rules are consistent with those granted to Hungary's Media Authority in that the media authorities cited have the power to:

- require data from media outlets as a matter of registration;
- inspect compliance by media outlets with data provided in registration and/or licensing agreements;
- oblige media outlets to provide any additional information they deems necessary in the course of their regulatory activities, including corporate secrets and proprietary information protected by law.

In two of these four cases—**Denmark** and **Estonia**—data-disclosure rules apply specifically to those media for which registration is required: linear and/or non-linear broadcasters and audiovisual media but not traditional print and online press.

In **Italy** and **Lithuania**, data-disclosure rules apply to all media for which registration is required, inclusive of the print and online press:

In **Lithuania**, print media are required to provide information on ownership; failure to do so can result in administrative penalties. The Inspector of Journalist Ethics, a state official responsible for overseeing compliance with the Media Law, monitors compliance with the data by print outlets. The Lithuanian Radio and Television Commission (LRTK) oversees registration for broadcasters, on-demand audiovisual media service providers, and managers of information society media (Internet). By comparison, Hungary's Media Authority oversees registration requirements for all media sectors; hence, in this regard, its authority appears to exceed those of the LRTK and the Inspector of Journalist Ethics.

In **Italy**, the Communications Regulatory Authority (AGCOM) can request data from all media sectors—including print and online press—both as a condition of registration and as part of AGCOM's responsibility to monitor these media for compliance with Italy's anti-concentration regulations. AGCOM may also fine media outlets a maximum of EUR 250,000 for failure to register or to disclose the requested information, or for providing false information. In the course of an investigation, AGCOM may also inspect the premises of the operator in cooperation

with the financial or postal police. In the most serious cases, AGCOM may suspend the media outlet's activity for up to six months. In Hungary, failure to comply with the Media Authority's data requests could result in penalty fines of up to HUF 50 million (EUR 180,000) and refusal of registration and/or deletion from the register. AGCOM's powers in this area therefore appear to be greater than those granted to Hungary's Media Authority, and in Italy, the penalties for non-disclosure more severe.

Two of the four examples cited contain factual inaccuracies:

- **Estonia:** the Hungarian Government inaccurately claims the Estonian media authority can “seize” data from media outlets. The Ministry of Culture, as the state authority overseeing the *Media Services Act*, can require media service providers to provide information and documents, including recordings of programmes, as part of its regular monitoring activities.
- **Italy:** the Hungarian Government inaccurately cites both the current regulations on data disclosure in Italy, including the amount of the fines which can be levied by AGCOM in cases of non-disclosure.

6/Expert assessments: Data disclosure

Example cited by Hungarian Government: DENMARK

“Denmark’s RTB may also specify obligations on data provision to all broadcasters under its jurisdiction.”⁴¹

Expert assessment **Erik Nordahl Svendsen**, former director, Secretariat of Danish Radio and TV Board

It is true that Denmark’s Radio and Television Board (RTB) can require certain data from broadcasters in order to obtain a broadcast license. However as the licensing authority for broadcasters and electronic media, the RTB’s regulatory oversight is confined to public and commercial TV and radio and does not include the print or online press. Hence, registration requirements apply to electronic media, including TV-like services on electronic networks, but as with most European systems, electronic newspapers and print media are not required to register.⁴² Broadcast and electronic media are required to provide basic business and media activity information to register with the RTB, as specified in the *Radio and Television Broadcasting Act* (BAct).⁴³ Any information requested must be relevant to the RTB’s administrative proceedings, which is made explicit in the statutes of the RTB⁴⁴—information cannot, for example, be requested for statistical or market-research purposes. The data that RTB collects as part of the registration process is not public information.

According to Section 39 of the *Radio and Television Broadcasting Act*, operators are obligated to provide the RTB with any information and to submit any written statements that are requested. This comes in addition to the basic responsibility for broadcasters to register with the RTB, which means providing the information for registration according to criteria established by the Ministry of Culture.

Data required to register includes operator’s name and location, type of enterprise, ownership structure and corporate governance, funding system (advertising, sponsorship, and user fees), geographic area of target audience, and language of service.⁴⁵ The RTB can require any additional

41 See “Criticism 20,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at:

<http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

42 Pursuant to *The Media Liability Act*, print media must have an editor, but registration is not required. The name of the editor must appear in the medium. “Section 3: Any domestic periodical publication shall specify the name of the responsible editor subject to subsection 2 of this section, in the following referred to as the editor. Subsection 2. By editor shall be understood the person authorized to make the final decisions concerning the content of the publication. No publication can have more than one editor.” For “electronic newspapers,” the *Media Liability Act* offers a voluntary registration (Section 8) with the Danish Press Council.

43 The official English translation of the BAct is not up to date in all details, but all the sections cited in my review are valid and reflect current regulations. <http://kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>

44 RTB Statutes (*Bekendtgørelse om forretningsorden for Radio- og tv-nævnet*) BEK Nr. 199 af 09/03/2011, Section 7: “Radio and Television Board may request from DR, the regional TV 2-companies, the licensee, provider of on-demand audiovisual program services or registered company any information which is relevant to Board proceedings,” available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=130031>.

45 “Ministerial order No. 100 of 28/01/2010 On program services on the basis of registration and on-demand audio-visual program services,” available in Danish available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=130027#K2> The procedure for registration with RTB is described here (in Danish): <http://www.bibliotekogmedier.dk/medieomraadet/tv/start-af-en-tv-station/>.

information it considers necessary (for instance, information about company headquarters in order for the RTB to determine if Denmark is the correct country of jurisdiction). There are no particular penalties for not providing information but organisations that fail to comply will not be granted a license or be allowed to register. The information given for registration about such details as program plans is not binding—unlike plans described in a competitive tender for a license. The purpose of registration is generally to document a name and address in case there are complaints or problems arise.

Public access to administrative data, including that provided by media outlets in the course of registration, is regulated by *Law on Public Administration Files*.⁴⁶ Private or propriety information is not made accessible to the public. The RTB has the power to decide on requests for access to this information. In most instances, RTB will follow the wish of the registered enterprise.

Example cited by Hungarian Government: ESTONIA

“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.”⁴⁷

Expert assessment Inka Salovaara-Moring, PhD, Aarhus University/Andra Siibak, University of Tartu

The Ministry of Culture, as the state authority overseeing the *Media Services Act*,⁴⁸ can require media service providers⁴⁹ to provide information and documents, including recordings of programmes.⁵⁰ This is part of the Minister’s regular monitoring activities in order to ensure that media service providers are meeting the statutory requirements of their license agreements. But the Minister may not “seize” these materials, as the above statement suggests, nor can the Minister use this power as a mechanism of controlling editorial content.⁵¹ The Minister’s powers to assess content are limited to checking whether the license holder is upholding the terms of its contract in terms of programming quotas (such as the division of talk/music, original programme/other, programme in Russian or other minority languages, and reporting on local issues). This is a normal regulatory practice in Nordic countries that is geared toward ensuring compliance with the minimum-standard programming benchmarks. Moreover, if the media service provider does

46 *Law on Public Administration Files* (Law nr. 572 19/12/1985), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=59474>.

47 See “Criticism 20,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

48 *Media Services Act*, available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>.

49 In § 5 of *Media Services Act*, media service provider is defined as: “a legal or natural person who provides television, on-demand audiovisual media or radio service, has editorial responsibility for the choice of the content of the media service and determines the order of its presentation and the manner in which it is organised.” Available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>.

50 According to § 54-55 in the *Media Services Act*, the Ministry of Culture has the authority to obtain information from a media service provider that is necessary for executing state supervision, including documents and recordings of the programme services. Available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>

51 This information was provided and verified by the Media and Copyright Department Advisor, Estonian Ministry of Culture.

6/DATA DISCLOSURE

not wish to give this information to the authority, the recordings or documents cannot be “seized” or taken by force. Hence, this statement appears to offer a skewed interpretation of the Minister’s power to request data.

Data-disclosure rules are detailed in the new *Media Services Act*, passed in December 2010 to transpose the EU’s Audiovisual Media Services Directive, which established a new regulatory framework for “media services” in Estonia—defined as linear and non-linear TV and radio. These media are bound by a number of typical programming quotas regarding the proportion content reserved for news and European works, as well as rules on advertising, product placement, teleshopping, etc. Beyond these basic requirements, there are very few content-based regulations in the *Media Services Act*. The Ministry of Culture has the right to inspect conformity of the programme services for compliance with these rules, as well as for compliance with the activity license of the media service provider.

According to Section 55 of the *Media Services Act*, the Ministry of Culture has the authority to obtain information from a media service provider necessary for executing state supervision, including documents, and recordings of the programme service and programmes. Section 21 requires TV and radio service providers to hold recordings of its transmitted programmes for at least 20 days—and the court could impose a longer period in pending court cases.

There have been 12 cases in the past several years in which the Ministry has requested programming recordings from a media service provider. All the cases date back to 2007 to 2009, hence the Ministry was acting under similar rules provided by previous media law, the *Broadcasting Act (Ringhäälinguseadus)*, which under Section 42 granted the Ministry the right to obtain recordings of programmes from broadcasters, if necessary, and Section 12, which required broadcasters to preserve recordings for at least 20 days. Under this act, the Ministry requested recordings as part of its regular monitoring activities to ensure broadcasters were upholding the terms of their licenses. Although the law allows the Minister to suspend licenses for non-compliance, there have been no cases in which this has occurred. In accordance with the previous and current legislation, minor sanctions have been used, such as notifications, warnings, and in the case of TV service providers, a penalty sum.⁵² It should be noted that 12 monitoring checks leading to action by the Ministry is a large number for a small country like Estonia, which indicates that authorities are fairly diligent in requiring the license holders to follow EU regulations and uphold their licensing agreements.

⁵² This information was provided and verified by the Media and Copyright Department Advisor, Estonian Ministry of Culture.

Example cited by Hungarian Government: ITALY

“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).”⁵³

Expert assessment **Marco Bellezza**, Phd, University of Bari/**Oreste Pollicino**, PhD, Bocconi University

This statement regarding registration and data-disclosure regulations in Italy is not entirely accurate—although the regulations regarding data disclosure are in fact quite strict in Italy. The Communications Regulatory Authority (AGCOM) monitors the Registry of Communication Operators (Roc) to ensure transparency of ownership structures in order to enforce the application of antitrust laws.⁵⁴ It is true that media operators must register with AGCOM and provide annual reports, however AGCOM generally does not seek confidential business documents as part of the registration process. The information that operators must provide mainly concerns ownership structure and the characteristics of their activity, and not “business secrets” as cited above. AGCOM can, however, request confidential corporate documents in the course of an investigation into whether an operator is in compliance with anti-trust laws, in which case AGCOM members must comply with procedural safeguards for handling this information.⁵⁵

In addition, the reference to “the prevailing legislation enacted in 2004” does not appear correct, as the regulations related to data disclosure and registration were enacted in 1997 and then revised in 2008.⁵⁶ Under the current rules, failure to register or to disclose the requested information or for providing false information can be sanctioned with fines that can reach EUR 250,000, and in the most serious cases, could warrant the suspension of the activity for a maximum period of six months.⁵⁷

Although registration with Roc is required for all above media in order to initiate activities in the communication market, different information is required from different types of media. Publishers of print or online newspapers, for instance, are simply required to sign up on the Roc and to provide a name of a responsible editor. In general, all operators must provide documents relating corporate ownership structure and the nature of their activity in order for AGCOM to

53 See “Criticism 20,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

54 Provisions regarding the media outlets registration are included in the Article 1(6)(a) (5) of the *Maccanico Law* (Law No. 247/1997), http://www2.agcom.it/L_naz/L_249.htm.

<http://www.agcom.it/default.aspx?docID=405>), and in the Annexes A and B of AGCOM’s deliberation No. 666/08/CONS entitled “Regulation for the organization and maintenance of the Registry of Communication operators (ROC)” (available here <http://www.agcom.it/default.aspx?DocID=2743>).

55 Annex A of Deliberation No. 220/08/Cons (“Operators Charter of Rights”).

56 See Regulation for the organization and maintenance of the Register of Communications Operators, AGCOM’s deliberation No. 666/08/CONS, available in Italian: <http://www.agcom.it/default.aspx?DocID=2743>

57 Exact provisions regarding penalties for breaching the required data disclosure are contained in Article 1, paragraphs 29 to 32 of the Act on “Establishment of the Communications Regulatory Authority (AGCOM) and norms governing telecommunications and broadcasting.”

enforce the application of antitrust laws, to guarantee the protection of information pluralism and the enforcement of the laws governing the media sector in Italy. The operators inscribed at the Roc must also pay an annual contribution fee to finance AGCOM's institutional activities. Media operators are also required to communicate an annual statement, wherein they must provide any relevant information about their activities. Operators are also required to immediately notify AGCOM about any change in the corporate structure.

AGCOM may initiate proceedings *ex officio* or on the recommendation of the public concerning violations to the rules regarding registration or data disclosure. During an investigation AGCOM may require media outlets to submit additional documents and may even inspect the premises of an operator in cooperation with the financial or postal police.⁵⁸ In these cases, AGCOM is obliged by law to respect the fundamental rights of the operator involved in the investigation, including the right to defense, the right to be heard, and the right of access to administrative documents.⁵⁹

Example cited by Hungarian Government: LITHUANIA

*“Lithuania’s media authority, the Radio and Television Committee (LRTK) may also request for submission confidential documents.”*⁶⁰

Expert assessment

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The example of the Lithuanian regulation concerning data-disclosure requirements by the Lithuanian Radio and Television Commission (LRTK) is accurate.⁶¹ The LRTK may indeed request access to various confidential documents from the media under its regulatory authority. However, it should be noted that there are certain safeguards under the Lithuanian *Media Law* that serve to prevent the misuse of such power: first, the requested information should be necessary and directly related to LRTK's performance when carrying out its functions.⁶² Second, LRTK can request such information only from broadcasters, on-demand audiovisual media service providers, and managers of information society media (Internet).⁶³ Data-disclosure requirements for print and non-broadcast media are not handled by the LRTK but by separate entity, the Inspector of Journalist Ethics.⁶⁴ Third, LRTK cannot distribute the information obtained if the information contains trade secrets.⁶⁵ Fourth, parties may appeal the LRTK's decisions in an administrative court.⁶⁶

58 Deliberation no. 136/06/Cons (as amended by the deliberations n. 130/08/Cons, 648/09/Cons and 709/09/Cons). See Deliberation No. 220/08/Cons on AGCOM's authority concerning inspections and supervisory activities.

59 All procedural rights accorded to the operators are explained in the Administrative Procedure Act (Act no. 241/1990), and in the “Operators Charter of Rights” issued by AGCOM in Annex A of the Deliberation No. 220/08/Cons.

60 See “Criticism 20,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a Europea context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

61 Radio and Television Commission of Lithuania (LRTK), <http://www.rtk.lt/en/>. The statement cited by the Hungarian Government inaccurately refers to the Radio and Television “Committee.” The correct title is “Commission.”

62 Article 48(3)(1) and(2) of Lithuanian “*Media Law*,” or the *Law on the Provision of Information to the Public*, Official Gazette, 27 July 2006, No. 82-3254, as last amended on 30 September 2010, amendments valid since 18 October 2010, available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

63 *Media Law*, Article 48(3)(2), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

64 See Inspector of Journalist Ethics, at: http://www3.lrs.lt/pls/inter/zetika?r_id=6207&k_id=1&d_id=96765

65 *Media Law*, Article 47(18), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

66 Article 47(13) of the *Media Law* states: “The decisions of the Commission shall be binding on broadcasters and re-

According to the *Media Law*, the LRTK can request information necessary from these media for conducting its legal functions. Specifically, the body can “obtain free of charge from broadcasters and re-broadcasters of radio and/or television programmes, providers of on-demand audiovisual media services, managers of information society media, state and municipal institutions and agencies, as well as other legal persons, information, including information constituting a commercial secret, necessary for the exercise of the functions of the Commission [LRTK] ... [and] documents and other information necessary for investigation of violations of the relevant laws which are assigned to the competence of the Commission.”⁶⁷ The law further specifies that the LRTK is responsible for protecting the confidentiality of this information: “Members of the Commission [LRTK] and staff of the Administration shall be prohibited from distributing information which is a commercial secret of broadcasters and re-broadcasters of radio and/or television programmes, providers of on-demand audiovisual media services and managers of the information society media.”⁶⁸ There are no penalties for breaching the LRTK’s data disclosure requirements, and to the author’s knowledge there has never been a case where LRTK’s demands for data were opposed in court.

The Inspector of Journalistic Ethics, a state official responsible for overseeing the implementation of *Media Law*, can also request data from all media outlets.⁶⁹ As noted, the Inspector oversees basic registration for print media in Lithuania, which are required to submit information concerning ownership, and this information is published online. Administrative sanctions can be applied for failure to provide the relevant data. The *Media Law* also allows the Inspector of Journalist Ethics to obtain access to documents of producers and disseminators of public information, even documents containing a “state, official, commercial or bank secret,” and “documents containing information about personal data protected by laws.”⁷⁰ The Inspector can obtain such information only “in accordance with the procedure set forth by laws ... [and] only to the extent it is necessary to perform his functions.”⁷¹ Decisions by the Inspector of Journalist Ethics can be reviewed by administrative courts.⁷²

broadcasters of radio and/or TV programmes and providers of on-demand audiovisual media services; persons may appeal to court against the abovementioned decisions within 30 days of the date of their entering into force.” Available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

67 *Media Law*, Article 48(3), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

68 *Media Law*, Article 47(18), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

69 *Media Law*, Article 49(1)), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

70 *Media Law*, Article 50(2)(2) and (4), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

71 *Media Law*, Article 50(2)(2) and (4)) of the available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

72 *Media Law*, Article 50(18)) states: “The decisions of the Inspector may be appealed against in court within 30 days of their publication or, where the decision is not made public, of receipt of the notification of adoption thereof.” Available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

7/Sanctions

Under Hungary's new media laws, the Media Authority can impose a range of sanctions on media outlets, including on individual editors and top officers, for breaches to numerous regulations in the media laws. Penalties include fines, suspensions, revocation of broadcasting licenses, deletion from the media register and banning outlets from participating in future tender offers. Critics say that the fines and sanctions are excessive, and that breaches are vaguely defined in the law, which could lead to "self-censorship" and have a chilling effect on the press. Opponents also claim that the law does not provide effective mechanisms to appeal the Media Authority's sanctioning decisions. Free-press advocates and media experts warn that the Authority's sanctioning powers violate international laws and protocols, including a number of articles in the European Convention on Human Rights. The Hungarian Government says the Media Authority's sanctioning powers are consistent with media-regulation norms and are consistent with common practices in Europe.

The new sanctions were introduced in the *Media Act*, the last piece of legislation in the media law "package" passed by Hungarian lawmakers in December 2010.¹ This law grants the Media Authority and the Media Council the power to monitor by public request or *ex officio* compliance with provisions in the *Media Act*, the *Press Freedom Act*, and various amended laws in the media "package."² These bodies can apply sanctions for violations to content- and competition-related obligations, as well as for breaches to licensing and registration agreements, the Media Authority's regulatory decisions, and to terms of any public contracts with the Media Authority.³

1 *Act CLXXXV of 2010 On Media Services and Mass Media* (the "*Media Act*"), entry into force 1 January 2011, as amended, translation provided by the Media Authority (NMHH) at: <http://nmhh.hu/dokumentum.php?cid=26536>.

2 *Media Act*, available at: <http://nmhh.hu/dokumentum.php?cid=26536>; *Act CIV of 2010 on the freedom of the press and the fundamental rules on media content* (the "*Press Freedom Act*"), translation of the original text of the law in English at: http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_civ_media_content.pdf; as amended, https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

3 Under Article 185(1) of the *Media Act*: "The Media Council or the Office shall have the right to apply the legal consequence on parties infringing rules on media administration in accordance with the provisions of Articles 186-189." Article 203(39) of the *Media Act*: "'Rules on media administration' shall mean [the *Media Act*] and the [*Press Freedom Act*], and any legislation issued in respect of the implementation of the aforementioned acts; any directly applicable legal instrument of the European Union concerning media administration; any public contract

All media, including the press and online press, can be sanctioned for breaches to content regulations specified in Articles 14 to 20 of the *Press Freedom Act*, compliance with which is overseen primarily by the Media Council.⁴ These provisions include requirements to respect "human dignity,"⁵ and the "constitutional order" of Hungary,⁶ and restrictions on content that offends or excludes "nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups nations."⁷ In addition, linear media services (traditional TV and radio) can be sanctioned for violating Article 13 of the *Press Freedom Act*, which requires these media to provide "comprehensive, factual, up-to-date, objective and balanced coverage on local, national and

entered into by and between the Media Council and the Office, and the regulatory decision issued by the Media Council and the Office." See also Article 167(1). Available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

4 *Media Act*, Article 182(c), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

5 *Press Freedom Act*, Article 14(1), available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

6 *Press Freedom Act*, Article 16, available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

7 *Press Freedom Act*, Article 17(1) and 17(2), available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf. Emphasis added.

European issues that may be of interest for the general public and on any event bearing relevance to the citizens of the Republic of Hungary and the members of the Hungarian nation.”⁸ Compliance with this provision for media with “substantial influence”⁹ and public service media is supervised by the Media Council; the Media Authority oversees this provision for all other media.¹⁰ The Media Authority and Media Council cannot pursue breaches to “balanced information” requirements *ex officio* but only at the request of viewers or listeners. Fines or stronger sanctions cannot be levied for breaches to this provision, but the Media Authority or Council can require the outlet to broadcast the decision of the infringement.¹¹

Media can also be sanctioned for violations to content regulations, programming quotas,¹² and restrictions on commercial advertising and product placement established in the *Media Act*.¹³ These include specific requirements regarding the protection of minors, restrictions on teleshopping and surreptitious advertising, and product placement for linear audiovisual, on-demand, and media service providers with a “significant influence.” In addition, the Media

8 *Press Freedom Act*, Article 13, available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf.

9 Article 69 of the *Media Act* defines media with “substantial influence” as “linear audiovisual media service providers and linear radio media service providers with an average annual audience share of at least fifteen percent, with the proviso that the average annual audience share of at least one media service reaches three percent.” Available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

10 Article 181 of the *Media Act* details rules for bringing legal proceedings against infringements to “balanced coverage” provisions, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

11 *Media Act*, Article 181(5), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

12 However, it should be noted, that provisions on programming quotas apply to linear audiovisual media and not to non-linear media services (print and online media). *Media Act*, Articles 20 to 22, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

13 Articles 9 through Articles 40 of the *Media Act* details the range of content and programming requirements for media content providers, including specific requirements regarding protection of minors, restrictions on teleshopping and surreptitious advertising, and product placement for linear audiovisual, on-demand, and media service providers with a “significant influence.” Available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

Maximum fines

Article 187 of the *Media Act* provides maximum fines for:

- media service provider of “significant influence”: HUF 200 million (EUR 722,000)
- media service provider: HUF 50 million (EUR 180,000)
- daily national newspaper: HUF 25 million (EUR 90,252)
- online press product: HUF 25 million (EUR 90,252)
- weekly national newspaper or periodical: HUF 10 million (EUR 36,100)
- other daily or weekly newspapers or periodicals: HUF 5 million (EUR 18,050)
- media service distributor: HUF 5 million (EUR 18,050)
- intermediary service provider: HUF 3 million (EUR 10,830)
- senior officers of media outlets: HUF 2 million (EUR 7,220)

Authority has the right to inspect compliance with licensing and registration agreements and public contracts; if breaches are determined, it can apply sanctions outlined in Article 187 of the *Media Act*.¹⁴

Articles 186 to 187 of the *Media Act* specify a system of “graduated” sanctions, which include warnings, fines, suspensions, license revocations and/or deletion from the registry.¹⁵ Minor offenses are treated with a warning, with 30 days to rectify the infringement.¹⁶ For repeated offenses, the Media Authority and Media Council can issue fines, which are delineated by media sector.¹⁷ The law also specifies separate maximum penalties of HUF

14 *Media Act*, Article 161(4), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

15 Articles 186 to 189 of the *Media Act* specify the legal consequences for infringements. Available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

16 *Media Act*, Article 186(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

17 *Media Act*, Article 187, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

7/SANCTIONS

2 million (EUR 7,220) for top officers and senior editors of media outlets, according to the gravity, nature of the infringement and the circumstances of the particular case.¹⁸

Media outlets may also be ordered to publish the decision of an infringement “in the manner and for the period of time specified in the decision.”¹⁹ If a media service, on-demand media or online press product refuses to comply with the order to publish the infringement, the Media Council may order the suspension of these services.²⁰

The Media Council can also sanction foreign broadcasters “aimed at” Hungary for repeated violations to specific articles in both the *Press Freedom Act* and the *Media Act*, which includes several provisions on protection of minors.²¹ The law also requires the Media Council to notify the European Commission of such a decision concurrently with its announcement and to withdraw the decision if the European Commission obliges the Council to do so.²²

For repeated breaches and after levying a fine, the Media Authority and Media Council may also suspend broadcasts of media services from 15 minutes to a week, based on the frequency and severity of the violation.²³ Suspensions apply also to media service distributors and to intermediary media services (Internet service providers), which can be ordered suspend the service of an online press outlet.²⁴ In cases of serious and repeated breaches, the authorities may terminate a contract of a media service

with immediate effect, delete the media service from the registry and remove the media service from public accessibility.²⁵

The *Media Act* specifies that legal consequences should be applied in line with principles of “progressivity and proportionality,” and that any sanction must be levied “in line with the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the legal consequence.”²⁶

No internal appeals can be made to the Media Authority or Media Council regarding its sanctioning decisions. Decisions can be appealed in administrative court on grounds that the Media Authority’s penalty decision infringed the media law.²⁷ The Court is permitted to assess the compatibility of the Media Council’s decision with the media legislation and cannot rule on the Media Council’s general regulatory or sanctioning powers based on any other laws or legal precedents.²⁸ It must issue a decision

18 *Media Act*, Article 187(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

19 *Media Act*, Article 187(3)(c), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

20 *Media Act*, Article 189, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

21 Per Article 176(a) of the *Media Act*, foreign media “aimed at” Hungary can be sanctioned for Articles 17(1), 19(1) and 19(4) of the *Press Freedom Act* and Articles 9 and 10(1) - 10(3) of the *Media Act*; available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

22 *Media Act*, Article 176 (2)(3), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

23 *Media Act*, Article 187(3)(d), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

24 *Media Act*, Article 188 and 189; see Article 188(3) for suspensions of online press, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

25 Per Article 187(3)(e) of the *Media Act*: “the Media Authority may delete the media service from the registry as defined in Article 41(4) in which the infringement was committed and/or may terminate the public contract on the media service provision right with immediate effect on repeated grave infringement by the infringer. The media service deleted from the registry may not be made accessible for the public once it was deleted.” Per Article 189(1) “When the Media Council resorts to the legal consequence against the media service provider defined in Article 187 (3)(e), the media service distributor shall, on the basis of the request issued by the Media Council after the decision has become final, terminate the broadcasting of the media service constituting the subject of the decision as defined in the request.” Available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

26 *Media Act*, Article 187(3)(d), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

27 According to Article 163(1) of the *Media Act*: “No appeal shall lie against the official decision of the Media Council passed in its capacity as Authority of the first instance. The official decision of the Media Council may be challenged at court by the client — and as regards the provisions expressly applicable to him/her —, the witness, the official witness, the expert, the interpreter, the owner of the object for inspection, the representative of the client and the official mediator by claiming infringement of the law, at the administrative court within thirty days upon announcement of the official decision, by lodging a petition against the Media Council.” Available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

28 Article 163(6) of the *Media Act*: “No supervisory proceedings may be instituted on the regulatory decisions of the Media Council,” available at: <http://nmhh.hu/>

within 30 days²⁹ and can alter the Media Council's ruling.³⁰ The filing of petitions does not automatically suspend the decision, although the Court may be asked to do so while considering the petition.³¹ No appeal may be lodged against the decisions of the Metropolitan Court of Justice.

It should be noted that Hungarian lawmakers passed numerous amendments to the media laws after the close of Hungary's EU presidency in July 2011. According to the amended articles, fines imposed by the Media Authority are now deemed "public debt" and collectible by the tax authorities, regardless of whether the sanction has been challenged in court.³²

International criticism

Media experts have raised serious concerns over the Media Authority's sanctioning powers, claiming the measures threaten press freedom and violate a number of international protocols. The Council of Europe's Human Rights Commissioner has found that Article 187 of the *Media Act* would require "substantial revision" in order to bring it into compliance Article 10 of the European Convention on Human Rights and the related case law of the European Court of Human Rights.³³ According to the Commissioner's review, these articles fail to meet the "test of proportionality" applied by the Court in assessing whether sanctions imposed on media constitute a proportionate level of interference with freedom of expression:³⁴

*"The Court has indicated that a mandatory penalty should not have the effect of discouraging the press from expressing criticism. Any form of sanction based on subjective criteria is likely to deter journalists from contributing to public discussion of issues affecting the life of the society, and is liable to hamper the press in performing its roles as purveyor of information and public watchdog. In this regard, the mere fact that a journalist has been tried and convicted may in certain cases be more important than the minor nature of the penalty ultimately imposed."*³⁵

The report cites in particular the measures on suspensions in Article 187(3)(d) of the *Media Act* as being incompatible with the above mentioned proportionality test and the Council of Europe's standards. The Commissioner also found that the law provides inadequate domestic remedies to appeal the Media Authority's sanctioning decisions, in violation of Articles 6 and 13 of the European Convention on Human Rights.³⁶ Article 6 requires states to provide "the possibility of judicial review by an independent and impartial tribunal in instances where administrative decisions have affected a person's civil rights and obligations."³⁷ Article 13 requires states to "guarantee the availability of an effective remedy at the national level to enforce a person's substantive rights and freedoms under the

standards on freedom of the media," CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701.

³⁵ See, *mutatis mutandis*, *Barthold v. Germany* (Application no. 8734/79), judgment of 25 March 1985, as cited in the "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media," CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701.

³⁶ "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media," CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701.

³⁷ "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media," CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701

dokumentum.php?cid=26536.

²⁹ *Media Act*, Article 164(1), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

³⁰ *Media Act*, Article 164(3), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

³¹ *Media Act*, Article 163(3), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

³² Enacted by Subsection (48) of Section 64 of Act CVII of 2011, effective as of 3 August 2011. See Subsection (3) of Section 71 of Act CVII of 2011, available in Hungarian at: <http://www.kozlonyok.hu/nkonline/MKP/PDF/hiteles/MK11085.pdf>.

³³ "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media," CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701.

³⁴ "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe

Convention, regardless of the form in which they appear in the domestic legal order.”³⁸ According to the Commissioner’s review, the mechanisms for appealing the Hungarian Media Authority’s decisions fail to meet these standards, as appeals can only be made to an administrative court “whose review is limited to an assessment of its compatibility with the media legislation itself. The administrative court appears to have no competence to review such a decision in light of other standards, including the provisions of the ECHR.”³⁹

Human rights advocates have also claimed that breaches are not clearly defined in the law, which could lead to self-censorship and have a “chilling effect” on the press. According to a joint review by Article 19 and the Hungarian Civil Liberties Union (TASZ), the media laws impose numerous restrictions on the freedom of expression on the media, which aside from being unclear also conflict with international law: “These bans are not recognised by international law as legitimate restrictions on freedom of expression. Moreover, these restrictions are not necessary in a democratic society,” according to this report. “Although protection against speech that constitutes incitement to hatred or violence is permitted under international law, the scope of the bans set out in the Press and Media Act is overbroad, as the bans restrict speech in a wide way and go beyond the scope of incitement.”⁴⁰

Critics also warn that the new sanctioning system could allow the Media Council, composed of all five members nominated

38 “Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media,” CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701

39 “Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media,” CommDH(2011)10, Council of Europe Commissioner for Human Rights, February 2011, available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289#P245_30701.

40 “How the New Media Laws Have Deteriorated the Media Situation in Hungary: Questions and Answers on the Infamous New Hungarian Media Laws,” Information Note Prepared by the Hungarian Civil Liberties Union and Article 19 Global Campaign For Free Expression, available at: http://tasz.hu/files/tasz/imce/information_note_hml.pdf

by Hungary’s ruling party, to target media critical of the Government’s policies. “The problem of an apparent lack of independence and impartiality is particularly acute when considering that the Media Council can apply legal consequences for breaches of the legislation,⁴¹ including suspension of a media service provider for up to one week in cases of repeated and grave infringements,⁴² as well as imposition of overly high fines,” according to Frank La Rue, the United Nations special rapporteur for freedom of expression.⁴³

Hungarian Government’s response

In its December 2010 statement, the Hungarian Government rejects claims by critics that high fines allow the government to “exert pressure on Hungarian media,” and maintains its sanctioning policies follow similar practices in many European and EU-member states.⁴⁴ 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),” according to this statement.⁴⁵ The Government also points out that the *Media Act* requires authorities to use the principles

41 *Media Act*, Article 185 to 189, available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

42 *Media Act*, Article 187(3), available at: <http://nmhh.hu/dokumentum.php?cid=26536>.

43 United Nations High Commissioner for Human Rights (OHCHR), “Hungary / Freedom of expression: UN expert still concerned despite moves on controversial media legislation,” United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion expression, Frank La Rue, 5 April 2011, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10916&LangID=E>; see “Full text of the press statement delivered by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,” at http://www2.ohchr.org/english/issues/opinion/docs/2011-04-05_Hungary_Freedex_EndMission.doc.

44 “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

45 “Criticism 5,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>.

of “proportionality, progressiveness and equal treatment, applicable to the legal consequences imposed on the violating outlets.”⁴⁶ In addition, the Government states that 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 ... 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.”⁴⁷ The Government explains that the fines of up to HUF 200 million for major commercial broadcasters are not excessive given their revenue, and that “a few hundred thousand forint fine” would not prevent “a broadcaster with [an] annual revenue of several tens of millions or even hundreds of millions of forints ... from repeating its infringing behaviour and will not set a dissuasive example for other broadcasters.”⁴⁸

In addition, the Hungarian Government states that sanctioning leading officers and senior editors is not unique to the Hungarian system, and 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.”⁴⁹

The Government also emphasises that deletion from the registry is a final sanction that may only be used in the case 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.”⁵⁰ The Government adds that just as “restaurant operating licenses may be revoked, deletion from the registry is also allowed in the communications sector.”⁵¹

The Hungarian Government cites examples of similar sanctioning practices from 15 European and EU-member states: **Czech Republic, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, and the UK.**

46 “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

47 “Criticism 17,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

48 “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

49 See response to “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

50 See response to “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

51 See response to “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

7/Findings: Sanctions

According to the expert assessments, the scope of the Hungarian Media Authority's sanctioning powers does not appear to be consistent with the examples provided. The Government cites 17 examples from 15 European countries in which the media can be sanctioned with (some combination of) fines, suspensions and/or license revocations. However, as the expert analyses show, the Media Authority's sanctioning scope over all media sectors appears to exceed those granted to the media authorities in all examples cited. Although the Government accurately cites examples in which various media can be sanctioned for breaches to media regulations, these sanctions are often imposed by different regulatory bodies and/or the courts; in Hungary, a single authority has sanctioning power over all media. The cited examples therefore do not provide symmetrical comparisons to Hungary's Media Authority, nor do these examples adequately respond to a key criticism of the Hungarian media laws: the Media Authority's supervisory and sanctioning powers over all media, inclusive of the print and online press.

Based on the expert assessments of the examples provided by the Hungarian Government, the Hungarian Media Authority's scope of sanctioning powers over all media sectors—private and commercial broadcasting, print and online press—appears to be the broadest among all country cases cited in these examples. In 14 of 17 examples cited, the media body referenced has sanctioning powers over broadcast and audiovisual media (commercial and/or public media, and their online content) only but not traditional print and/or online press. Although in many of these systems traditional print and/or online press can be penalised for violating various legal statutes or laws—including in some cases provisions in the criminal codes—sanctions in a majority of these examples are managed by separate regulatory bodies, independent press councils and/or the courts. In three of the 17 examples cited, the media authority also has some sanctioning powers over traditional print and/or online press.

In **Germany**, the state media authorities in extreme cases and after warnings have been issued, can order an Internet service provider to remove online content for breaches to regulations on protection of minors; however for websites with journalistic content, this order must be approved by a judge. Print media and public service media are self regulated in Germany, and therefore cannot be sanctioned by the state media authorities.

In **Portugal**, the media authority (ERC) has sanctioning powers over all media sectors, inclusive of the print and online press, according to sector-specific legal statutes and standards; the press and online press are regulated by separate laws and under less restrictive obligations than broadcasters. The ERC cannot order the suspension of print media outlets, which can only be ordered by a court. In addition, the ERC monitors compliance with content-related regulations in the media laws. Competition and other technical regulations are supervised and can be sanctioned by other regulatory bodies.

In **Slovenia**, the Media Inspectorate has a wide scope of authority over the media in general, including print and broadcasting, and can impose fines and sanctions not only on broadcast and print media outlets but also on their responsible officers. However the Inspectorate is not the sole media authority in Slovenia, as there are a number of bodies with regulatory and sanctioning powers over different media, including the Agency for Post and Electronic Communications (APEK), the Broadcasting Council, and the Ministry of Culture.

The expert analyses also reveal that in a majority of cited cases the Hungarian Government's examples omit or inaccurately characterise key factors which influence or serve as "checks" on how sanctions are applied and enforced in practice. As such, in numerous examples the

Hungarian Government correctly cites a specific sanction as provided for in a respective system, however that sanction either only applies to specific media sectors, to specific breaches, or the particular sanction cited has rarely or ever been imposed in practice. For instance, in seven of the 17 cases cited, the sanctioning power referenced has never been applied:

- *Finland (2 examples)*
- *Germany*
- *Ireland*
- *Poland*
- *Portugal*
- *Slovenia*

In another set of examples, the Hungarian Government's comparisons contain one or more factual inaccuracies, in which the citation refers to the incorrect sanctioning body and/or procedure, or erroneously combines two separate statutes into a single claim:

- *Estonia*
- *Ireland*
- *Italy*
- *Lithuania*
- *Slovenia*

In reference to specific criticisms of the Media Authority's sanctioning powers, the expert assessments indicate the following:

Sanctioning of leading officers: The Hungarian Government cites no specific examples in which individual editors and leading officers of media outlets can be sanctioned by media authorities; however based on the information provided by experts in these assessments, the Government's claim that sanctioning leading officers is not a novelty in Europe is accurate. Experts report that "responsible editors" and leading officers can be fined for breaches to specific regulations in: **Estonia, Latvia, Poland, and Slovenia**. In addition, there are a number of systems in this set of examples in which journalists can be held criminally liable for prohibited content, such as for incitement to hatred or for libel and defamation, including in **Italy, France, Finland, Germany, and Slovenia**; however these criminal cases are typically handled by the courts. In countries in which administrative sanctions can be brought against responsible editors and leading officers, this level of sanction appears to be limited (in varying degrees) to specific violations. In Hungary, responsible editors and senior officers may be fined for a range of violations, including for refusing to provide data requested by the Media Authority as well as for "repeated infringements" to the media laws. Although the range of violations for which editors and leading officers may be fined by Hungary's Media Authority appears to be more extensive than in those specified in the media laws of the countries cited above, it is evident that there is an established precedent of sanctioning individual editors and top officers in the EU-member countries in this set of examples. Hence, in this case Hungary's media laws appear to be consistent with what is generally regarded as a press-restrictive policy that could impose a preemptive restraint on the media.

Content regulations: Critics of Hungary's new media laws have described a number of content regulations in Hungary's new media laws as being overly broad, leaving what constitutes breaches to these regulations to the discretion of the Media Authority. The Hungarian Government cites one example, from the **UK**, in which it states breaches to regulations are also not defined in that country's media law, allowing violations to be determined by the UK's media authority, Ofcom. According to the expert assessment, while it is true that the *Communications Act 2003* does not specify what breaches may justify the prescription of which types of sanctions, Ofcom by law

has produced an extensive set of (legally binding) broadcasting codes, with detailed regulations on protection of minors, commercial communications and other restrictions. What constitutes breaches to these rules, as well as what level of sanction breaches to these rules might carry, are specified clearly in these codes. Hence, the Government's Ofcom example is not entirely accurate, according to the expert, as it omits this key factor.

Regarding specific content regulations, the provisions on the protection of minors and incitement to hatred are standard in the media laws of all examples cited. The expert assessments also show that additional content regulations which can be sanctioned by Hungary's Media Authority are also contained in various other media laws, including restrictions on content that violates "human dignity," obligations to protect the "constitutional order," and in some cases, prohibitions on content that violates "public morals." The specific provision in Hungary prohibiting content that offends or excludes "nations, communities, national, ethnic, linguistic and *other minorities or any majority* as well as any church or religious groups nations,"⁵² appears to be unique among this set of examples. However, experts report a number of controversial, and in some cases overly broad, content regulations in a number of other countries, including in: **Ireland**, the prohibition on certain types of advertising relating to political ends, trade disputes, and religion,⁵³ as well as obligations to present news in an "objective and impartial" manner, and restrictions on content which may cause "harm and offense, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State;" **Poland**, the regulation requiring broadcasters to respect Christian values; and **Slovenia**, the extensive regulations on the right of reply. However, the unique factor in Hungary's system appears to be that there is a single media authority responsible for assessing compliance with and issuing sanctions for breaches to these content regulations for all media.

Immediate terminations: The Hungarian Government cites one example in which media authorities in Portugal may immediately suspend or revoke the license of a media service. As the country expert indicates, this provision was revoked when Portugal's media law was amended in April 2011 to implement the EU Audiovisual Media Services Directive. Under the new system, Portuguese media authorities may terminate a broadcaster's license only after an investigation has been opened and previous sanctions have failed to stop the breaching activity; no interim suspensions or immediate terminations are possible. However, the expert assessments reveal that media authorities may immediately revoke a broadcaster's license in at least two other countries in this set of examples—**France** and **Slovakia**. Yet in both cases, this level of sanction can be only imposed under specified circumstances. In **France**, the High Council for Broadcasting (CSA) can withdraw a license without formal notice in cases in which the media outlet fails to report substantial changes in the data for which the license was granted, including changes to ownership, management and shareholder status. In **Slovakia**, the media authority may immediately revoke a license under two conditions specified in the law, in cases relating to content which propagates violence, incites hatred, or promotes war or inhumane behavior. However, this level of sanction can only be applied if the broadcaster has repeatedly and deliberately and seriously continued to breach these rules. By comparison, Hungary's Media Authority may immediately terminate the public contract of a media service for repeated "grave infringement[s]" not only to the media laws but also for what appears to be violations to the "rules on media administration." This is defined as "any legislation issued in respect of the implementation of the aforementioned acts; any directly applicable legal instrument of the European Union concerning media administration; any public contract entered into by and between the Media Council and the Office, and the regulatory

52 *Press Freedom Act*, Article 17(1) and 17(2), available at: https://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf. Emphasis added.

53 *Broadcasting Act 2009*, Section 41, available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0041.html>.

decision issued by the Media Council and the Office.” Hence, the scope of regulations for which the Media Authority can immediately terminate a broadcaster’s license appears to exceed those in the two cases above.

Judicial review: The expert assessments indicate that the process of appeals regarding the Media Authority’s decisions appears to be inconsistent with the legal framework for appeals in the systems in this set of examples. In Hungary, media outlets may appeal the Media Authority’s sanctioning decisions in an administrative court. Appeals do not automatically suspend the Authority’s decisions. In addition, the administrative court may only review whether the Authority’s decision complies with the provisions in the media laws but the court cannot consider the Authority’s decisions on the basis of any other laws or legal precedents. Decisions of the administrative court cannot be further appealed. In all countries in this set of examples, the decisions of the media authorities are subject to judicial review; in some cases, appeals have a suspensive effect on the decision; in all cases but one (**France**) the first court’s decision can be further appealed.

In Hungary, the appeals process of the Media Authority’s decisions was significantly altered by additional amendments passed by Hungarian lawmakers after the close of Hungary’s EU presidency in July 2011. As a result of these amendments, fines imposed by the Media Authority are now deemed “public debt” and collectible by the tax authorities regardless of whether the sanction has been challenged in court. This change has significantly diminished the key checks-and-balances system the judicial review process is meant to provide with regard to the Media Authority’s fining decisions. Hence, the current legal framework for appealing the Hungarian Media Authority’s decisions appears to be inconsistent with judicial review processes in all of these cases.

These expert assessments also reveal a wide disparity in sanctioning practices and standards within Europe, as well as a number of key deficiencies. Experts report a range of problematic content regulations in a number of systems—including in **Ireland, Poland, and Slovenia**—for which media can be sanctioned. In numerous countries—including **Finland, Germany, Italy, and Slovenia**—journalists can be imprisoned for violating content regulations in the media laws and/or penal codes, such as on incitement to hatred, protection of minors, and defamation. In most of these states criminal sanctions are rarely if ever applied in practice—either because there are multiple checks in place preventing this level of sanction from being imposed or because authorities opt to not pursue these breaches as aggressively as the law allows. In Italy, however, journalists are regularly prosecuted for defamation. In September 2011, two Italian print journalists were sentenced to a year in prison after being found guilty of defaming a local mayor. By comparison, Hungary’s sanctioning policies are less press-restrictive than those European countries in which criminal sanctions are applied in practice.

7/Expert assessments: Sanctions

Example cited by Hungarian Government: CZECH REPUBLIC

“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.”⁵⁴

Expert assessment

Milan Šmíd, PhD, Charles University, Prague

This statement is essentially correct although incomplete and takes some provisions out of context. After repeated and severe violations to certain provisions in the *Broadcasting Act*—including breaches to regulations on protection of minors—and after fines have been repeatedly levied, the Czech broadcasting authority, the Council for Radio and Television Broadcasting (RRTV), can revoke a broadcaster’s license.⁵⁵ However, the RRTV’s sanctioning powers apply only to those media regulated under the *Broadcasting Act*: private and public TV and radio, but not print and online press.⁵⁶ The second sentence in the above statement (“*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.*”) refers to the exceptional situation in which a license holder violates the limits of cross-ownership rules as established in the *Broadcasting Act*.⁵⁷ In addition, the RRTV can revoke a license not only for breaches to regulations on protection of minors, as stated above, but also for violating a number of other content regulations.

According to Section 63 of the *Broadcasting Act*, the RRTV can revoke a broadcaster’s license if the broadcaster: obtains the license on the basis of false information in the license application or breaches the rules of cross-ownership; repeatedly commits a particularly serious breach of the license conditions; repeatedly commits a particularly serious breach of the obligations set out in Section 32 (1); and a fine has repeatedly been imposed upon the broadcaster for such breaches.⁵⁸

Section 32(1) lists basic obligations for all broadcasters, which include the prohibitions on

⁵⁴ This example is cited twice by the Hungarian Government, under “Criticism 1,” and “Criticism 18” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

⁵⁵ *On Radio and Television Broadcasting Operation and Amendments to Other Acts* (hereafter the “Broadcasting Act”), Act No. 231/2001, 17 May 2001, unofficial consolidated text available in English at: <http://www.mkcr.cz/en/media-a-audiovize/act-no--231-2001--of-17-may-2001--on-radio-and-television-broadcasting-and-on-amendment-to-other-acts-84912/>.

⁵⁶ *Broadcasting Act*, Article 5(f). The Council consists of 13 members serving 6-year terms, appointed by the prime minister on recommendations by the Czech Parliament (See Article 7 for appointment procedures), unofficial consolidated text available in English at: <http://www.mkcr.cz/en/media-a-audiovize/act-no--231-2001--of-17-may-2001--on-radio-and-television-broadcasting-and-on-amendment-to-other-acts-84912/>.

⁵⁷ *Broadcasting Act*, Sections 55, 55(a) and 56, unofficial consolidated text available in English at: <http://www.mkcr.cz/en/media-a-audiovize/act-no--231-2001--of-17-may-2001--on-radio-and-television-broadcasting-and-on-amendment-to-other-acts-84912/>.

⁵⁸ *Broadcasting Act*, Section 63, unofficial consolidated text available in English at: <http://www.mkcr.cz/en/media-a-audiovize/act-no--231-2001--of-17-may-2001--on-radio-and-television-broadcasting-and-on-amendment-to-other-acts-84912/>.

programming that promotes “war or show[s] brutal or otherwise inhumane behaviour in a manner that would involve its trivialisation, apology or approval;” that incites hatred for reasons relating to “gender, race, colour of the skin, language, faith and religion, political or other opinions, national or social origin, membership of a national or ethnic minority, property, birth or other status;” that contains subliminal communications; and that “may seriously affect the physical, mental or moral development of minors, in particular, programming involving pornography and gross violence as an end itself.”⁵⁹

The RRTV has no power to impose any interim injunction, temporarily suspend a media service or immediately remove a broadcaster’s license. It can withdraw a license only after a series of conditions are met, which has served as an effective check on the RRTV’s revocation powers, as this final sanction can only be applied after the process of repetitive penalisation and after all appellate procedures have been concluded. In addition, while breaches these content regulations can lead to the revocation of a broadcast license, in the course of nearly two decades the RRTV never revoked any radio or TV license for other than technical reasons—and never because of content.

Only once has the RRTV attempted to withdraw the license of a local terrestrial channel, Galaxie TV, because of breaches of license conditions. In December 2001 a conflict between the partner’s operating the channel resulted in a shift from the approved programming as well as interruptions in broadcasting. The RRTV’s attempt to revoke the Galaxie TV’s license failed after the Municipal Court in Prague reversed the decision. The conflict and the legal case were eventually resolved by the bankruptcy of one partner six months later, in June 2002. No attempt to revoke a license has occurred since. In the past, the few instances of withdrawing a license, predominantly of local cable channels, occurred after the license holder proved unable to launch or to continue broadcasting. Sometimes a license holder voluntarily returned the license for being unable to meet the license conditions.

It is important to note that nearly all the decisions made by the RRTV can be appealed with a complaint to a regular court.⁶⁰ In addition, the filing of an appeal has a suspensive effect on the sanction while the court considers the case. The court’s decision can be further appealed at the three highest courts (Constitutional, Supreme and Supreme Administrative courts) depending on the nature of the decision and court verdict.

⁵⁹ *Broadcasting Act*, Section 32(1), unofficial consolidated text available in English at: <http://www.mkcr.cz/en/media-a-audiovize/act-no--231-2001--of-17-may-2001--on-radio-and-television-broadcasting-and-on-amendment-to-other-acts-84912/>.

⁶⁰ Per Act No. 150/2002, the *Code of Administrative Justice*, as well as Section 66 of the *Broadcasting Act*, unofficial consolidated text available in English at: <http://www.mkcr.cz/en/media-a-audiovize/act-no--231-2001--of-17-may-2001--on-radio-and-television-broadcasting-and-on-amendment-to-other-acts-84912/>.

Example cited by Hungarian Government: DENMARK

“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).”⁶¹

Expert assessment Erik Nordahl Svendsen, Former director, Secretariat of Danish Radio and TV Board

This claim is only partially accurate. The Minister of Culture under certain conditions has the power to revoke the license of one public service broadcaster, TV 2/Danmark A/S, but not of others—either because under the *Radio and Television Broadcasting Act* (the “BAct”)⁶² these outlets do not have a license or because the Radio and Television Board (RTB),⁶³ not the Minister, has the power of revocation. The Minister of Culture does not have any sanctioning powers under the BAct besides the mentioned TV 2/Danmark A/S. In addition, the Minister of Culture can only revoke the license of TV2/Danmark A/S at the recommendation of the RTB. Hence, the reference above misleadingly generalises from the unique TV 2/Danmark A/S example.

The RTB, as the statement correctly notes, is the regulatory authority for commercial broadcasters, as well as for public service and audiovisual media services (TV and on-demand media). It has the power to suspend or revoke licenses for breaches to both technical and content-based regulations detailed in the *Radio and Television Broadcasting Act* (the “BAct”). It is important to note that Danish media regulations have few content-based restrictions and gives wide room for freedom of speech. The RTB’s power to suspend or revoke a license due to program content has been seldom used since the authority was established in 2001. The issue of incitement to hatred was behind several of these cases involving the Nazi radio station Oasen.

The BAct covers broadcast, cable and online media services, both public and private media. Print and electronic media like Internet newspapers (which are not audiovisual media services) are regulated by the Press Council and under the *Media Liability Act*, which outlines ethical guidelines and content regulations for all mass media.⁶⁴ According to the *Media Liability Act*, all news media—broadcast, print and online press—must have a responsible editor. But because print and online news media are not required to register, the RTB cannot suspend or revoke their authorisation to publish. Video on-demand (VOD) services are not required to register however the RTB can discontinue a VOD program service if the service grossly or repeatedly infringes the law.⁶⁵

The RTB also supervises all stations, licensed or registered, for compliance with their licenses as well as with rules in the BAct and ministerial orders. The Ministry of Culture is responsible for

61 This example is cited by the Hungarian Government under both “Criticism 1,” and “Criticism 18” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

62 *The Radio and Television Broadcasting Act* of 2001, as amended by Act 1269 of December 2009. The official English translation of the BAct is not up to date, but all the sections cited in this review reflect current regulations; available at: <http://kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>.

63 *The Radio and Television Broadcasting Act* established the Radio and Television Board (RTB) in 2001 as the independent regulator for all media under the Act’s scope. The RTB is currently served by the Agency for Libraries and Media: <http://www.bibliotekogmedier.dk/english/radio-and-tv/radio-and-television-board/>.

64 The Press Council is established pursuant to the Danish *Media Liability Act*, available at: <http://www.pressenaevnet.dk/Information-in-English/The-Media-Liability-Act.aspx>.

65 Section 50 (3) of the *Radio and Television Broadcasting Act (BAct)*, available at: <http://kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>.

issuing ministerial orders, which detail many articles of the BAct, including general rules about advertising, satellite and digital terrestrial distribution, local radio, and regulations regarding the EU Audiovisual Media Services Directive (EU AVMSD).⁶⁶ Hence, the RTB supervises compliance with the EU AVMSD rules about advertising, protection of minors, incitement to hatred, and programming quotas, as specified by these ministerial orders.⁶⁷

The BAct has no general content regulations concerning factual or balanced reporting. As mentioned above, standard rules about protection of minors and against incitement to hatred are contained in licensing agreements, as per ministerial orders. If violated grossly or frequently, the RTB can revoke a media outlet's license.⁶⁸ It is important to note that RTB does not have powers to impose fines, except in the special case of TV 2/Danmark A/S, although the RTB has never done so. As noted, the Minister cannot revoke TV 2/Danmarks A/S license unless this was first recommended by the RTB and if the infringement is gross or frequently repeated.⁶⁹ The media authorities cannot impose sanctions on individual editors and/or journalists, as the sanctions specified under BAct are only against the holder of the license or registration. Nor does the *Media Liability Act* allow authorities to sanction individual editors or journalists.

The RTB uses a system of graduated sanctions that includes: 1) protest of infringement; 2) warnings about suspension, if not redressed or if repeated; 3) suspensions (temporarily, from one hour to three months); and 4) license revocation. Most cases of suspensions or revocations have involved local radio or TV stations for misusing the license for the allocated airtime. As noted, there have been several cases of suspensions and revocations related to content. In 2002, the RTB issued a three-month suspension of Radio Oasen for incitement to hatred. Radio Oasen promotes Nazi ideology, which is not prohibited in Denmark, but incitement to hatred violates terms of its license agreement. In 2006, the RTB revoked the license for Radio Holger for infringement of BAct Section 87, which requires broadcasters to keep to recordings of programs for three months. The RTB had received complaints over a specific program, indicating it was airing content that could violate licensing restrictions prohibiting incitement to hatred.⁷⁰ More recently, the RTB decided on several cases related to Roj TV, which broadcasts by satellite to Kurdish populations in Turkey on a Danish license. The RTB received complaints from Turkish authorities that the station was airing violent images in violation of incitement to hatred regulations. RTB decided in all cases that the programs were normal news reporting and not incitement to hatred.⁷¹ As for all state agencies, decisions made by the RTB can be brought to the ombudsman,⁷² and can be reviewed by

66 These are generally based in Section 48 of *Radio and Television Broadcasting Act (BAct)*, available at: <http://kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>.

67 *Radio and Television Broadcasting Act (BAct)*, Section 48, available at: <http://kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>.

68 *Radio and Television Broadcasting Act (BAct)*, Section 50. The criminal code has other provisions, partly covering the same issues, but the media authorities are not bound by decisions in the courts on those grounds to revoke licenses, available at: <http://kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>.

69 According to Section 44(a) of the *Radio and Television Broadcasting Act (BAct)*, “The Radio and Television Board shall have the following tasks in relation to TV 2/DANMARK A/S’s public service programme activities in accordance with Part 6 a: 1) Supervise the public service programme activities; 2) protest any infringements of the Act and any provisions pursuant to the Act, as well as terms laid down in connection with the issuing of the licence; and 3) submit opinions to the Minister for Culture on the revocation of licences issued pursuant to Section 38 a.” Available at: <http://kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>.

70 The case could not be decided since the recordings of the programme was not delivered, which the RTB found was sufficient grounds to revoke the license permanently. Infringement of Section 87 (the obligation to hold recordings up to three months) is mentioned as one material cause for revocation in Section 50 of the *Radio and Television Broadcasting Act (BAct)*, available at: <http://kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>.

71 The decision in one of the cases is translated into English: http://www.bibliotekogmedier.dk/fileadmin/user_upload/dokumenter/medier/radio_og_tv/satellit_kabel/rojtvang030507.pdf.

72 See Danish Parliamentary Ombudsman at: <http://en.ombudsmanden.dk/>.

the courts. Appeals do not suspend the decision. The court's decision can be appealed to a higher court, and if allowed by the independent appeals board, also to the high court.

Example cited by Hungarian Government: ESTONIA

“[The] Estonian TJA, operating as a government agency, may submit a proposal to their competent ministers of culture authorised to issue licenses, in which they recommend the suspension or revoking of a given license.”⁷³

Expert assessment Inka Salovaara-Moring, PhD, Aarhus University/Andra Siibak, Phd, University of

This example is a distortion of the TJA's role and regulatory powers.⁷⁴ The role of the Estonian Technical Surveillance Authority (TJA) is technical. Hence, the TJA can suspend or revoke broadcasting licenses only when technical requirements of the broadcaster (such as legitimate use of radio frequencies) or other requirements of license application are not met. It has no content-related regulatory powers and it cannot levy fines. The Ministry of Culture supervises compliance with the *Media Services Act*, which was introduced in 2010 to implement the EU Audiovisual Media Services Directive.⁷⁵ Hence the Ministry of Culture has supervisory and sanctioning powers regarding content in the field of audiovisual broadcasting.

However, it must be noted that there are few content regulations in field of media services in Estonia and the EU Audiovisual Media Services Directive has been implemented in the most minimal manner possible. The Ministry of Culture does have power to revoke or suspend a given license in certain cases—for instance if an applicant submits false information about the license activity or fails to transmit the programme service specified in the license. But in the Estonian context, revocation or suspension of licenses is rarely related to journalistic content but rather to specific technical and programming aspects agreed to during the license application process. It should also be noted that neither the Ministry of Culture nor the TJA supervise the print or online press, which are self-regulated by codes of ethics produced by the Estonian Newspaper Association.

Content regulations are covered in Chapter 2 of the *Media Services Act*, which includes provisions on providing balanced transmission time for political parties during elections, regulations on the protection of minors, the right of reply, access for people with visual and hearing disabilities, and the promotion of European works.⁷⁶ Media service providers are also obliged with comply with a number of regulations regarding commercial communications, including provisions on

⁷³ “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

⁷⁴ See Estonian Technical Surveillance Authority (*Tehnilise Järelevalve Amet*) website at: <http://www.tja.ee/?lang=en>

⁷⁵ *Media Services Act*, Resolution No 802 of 29 December 2010, proclaimed by the President of the Republic, official text in English available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>; See also: “Estonia: Two New Legal Acts in the Media Field,” IRIS 2011-2:1/22, *Database on legal information relevant to the audiovisual sector in Europe*. IRIS Merlin, <http://merlin.obs.coe.int/iris/2011/2/Art.22.en.html>.

⁷⁶ See the following sections in the *Media Services Act*, §14 on providing balanced transmission time for political parties during elections), §19 on the protection of minors, §20 on the right of reply, §23 on access for people with visual and hearing disabilities, §24 on promotion of European works; official text in English available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>.

surreptitious commercial communication, codes of conduct for advertising during children's programmes, and product placement.⁷⁷

In cases of a violation to the above provisions in the *Media Services Act* and to other requirements of the service provider's activity license, the official exercising state supervision may first issue a warning, and in case of failure to comply with the precept, a financial penalty may be applied. The upper limit of the penalty is EUR 1,300. In case a broadcaster repeated fails to comply with a precept, the maximum penalty is EUR 5,000. However in cases of violations to regulations on protection of minors and commercial communications, the Ministry can fine the media service provider or "legal person responsible" up to EUR 32,000.⁷⁸

If a broadcaster fails to comply with the penalty assessed, their license may be suspended, and unless changes are made to comply with requirements, the revocation of a license will be initiated. The Ministry can revoke a broadcast license if the person named on the license: 1) fails to meet the requirements provided for by the license; 2) has submitted false information about meeting the requirements specified by the license or about meeting the requirements provided for in this Act; or 3) as a result of his or her acts violates the terms or conditions of this Act.⁷⁹ The Minister of Culture may also suspend the activity license for transmission of the programme service for up to one month if material obstacles become evident in the technical transmission of the programme.⁸⁰

The revocation or suspension of a license has been put into force several times. In the majority of cases, the revocation of the license has been initiated by the license holder because it was unable to continue broadcasting for economic or technical reasons. In several cases, the holders of the broadcasting licenses have written to the Ministry of Culture to apply for changes to the license agreement.⁸¹

As noted, both the print and online press are self-regulated in Estonia. After re-establishing its independence in 1991, lawmakers in the Estonian Parliament attempted to pass a press law but due to active objection from publishers and journalists the draft never became law. Nevertheless, there are several legal provisions, e.g. the *Constitution of the Republic of Estonia*, *Law of Obligations Act*, the *Broadcasting Act*, the *Advertising Act*, which influence the content and operation of the print media in different ways.

All sanctioning decisions can be appealed in the administrative courts, in which case, the decision may be suspended, under certain circumstances. Decisions of the first-instance court can be further appealed at the county court, and upon additional appeal, at the Supreme Court levels.

77 *Media Services Act*, §§25–31, official text in English available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act..>

78 *Media Services Act*, §19 and §§28–31, official text in English available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>.

79 *Media Services Act*, §45, official text in English available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>.

80 *Media Services Act*, §46, official text in English available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>.

81 In accordance with the *Media Services Act* § 39 (1) and § 63 the holders of some broadcasting licenses have written to the Ministry of Culture in order to apply for changes in the license agreement. The changes generally have to do with the changes in the name of the programme. In some cases the holder of the license has also been allowed to make changes in the content of the programme. Official text of the *Media Services Act* in English available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>.

Example cited by Hungarian Government: FINLAND

“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).”⁸²

Expert assessment

Kari Karppinen, PhD/Hannu Nieminen, PhD, University of Helsinki

It is factually correct under Finnish media law that upon Finnish Communications Regulatory Authority’s (FICORA) proposal, a separate Market Court may impose fines on media outlets totalling up to EUR 1 million.⁸³ But in practice FICORA seldom imposes fines on media outlets and the maximum fine has never been imposed. The highest fine proposed by FICORA thus far has been EUR 50,000. Any penalty fine proposed by FICORA cannot be more than 5 percent of the TV or radio broadcaster’s turnover for operations conducted under their license during the previous year. Penalty fines are assessed and imposed by the Market Court, as noted in the example above, which provides an extra “check” on any of FICORA’s sanctioning decisions. In addition, FICORA cannot fine print and public service media in Finland; its monitoring and sanctioning powers apply only to commercial broadcasters, as per the *Act on Television and Radio Operations*,⁸⁴ and to telecommunications operators, as per the *Communications Market Act*.⁸⁵

For commercial broadcasters, FICORA sanctioning powers apply to specifically defined sections of the *Act on Television and Radio Operations*. These include provisions on the proportion of European works and programs by independent producers, programmes that may cause detriment to the development of minors, use of exclusive rights, and certain restrictions on advertising and sponsorship. FICORA cannot levy fines or sanctions on individual journalists or media outlets on matters concerning hate speech or other provisions of criminal law, which belong to the general prosecuting authorities.⁸⁶

FICORA can issue a reminder to a broadcaster or other telecommunications operators for breaches to both technical and content-related provisions in and obligate it to correct its error or breach. The decision may be enforced by a conditional fine as provided for in the *Act on Conditional Fines*.⁸⁷ If the broadcaster fails to rectify its actions within a set period, it may be ordered to pay a penalty fine. The penalty is determined by the Market Court on the proposal of FICORA.

The limits on sanctions, including the maximum amount of fines that can be imposed on media outlets, are specified in the *Act on Television and Radio Operations*. According to Section 36(a), the minimum amount of the penalty is EUR 1,000 and the maximum is EUR 1 million; the penalty may, however, be no more than five percent of the television or radio broadcaster’s turnover for the

82 “Criticism 17” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

83 Information on Finnish Communications Regulatory Authority (FICORA) available at the following website: <http://www.ficora.fi/en/etusivu.html>.

84 *Act on Television and Radio Operations* (744/1998; amendments up to 1068/2007 included), unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf>. www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf.

85 *Communications Market Act* (393/2003; amendments up to 363/2011 included), unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf>. www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf.

86 General criminal liability of individual journalists and responsible editors (all publications must designate a person with the responsibility to direct and supervise editorial work) are detailed in the *Act on the Exercise of Freedom of Expression in Mass Media* (460/2003), unofficial translation available at: <http://www.finlex.fi/en/laki/kaannokset/2003/en20030460.pdf>

87 *Act on Conditional Fines* (14.12.1990/1113), available in Finnish only at: <http://www.finlex.fi/fi/laki/ajantasa/1990/19901113>.

operations during the previous year.⁸⁸ According to this section, a penalty shall not be ordered if the action has no significant effect on the attainment of the objectives of the Act or if the ordering of the penalty is otherwise manifestly unjustified with regard to safeguarding competition. The enforcement of fines is governed by the *Act on Conditional Fines*, which also details the procedures for failure to pay fines.⁸⁹

Hence, it is factually correct that according to the Finnish law a separate Market Court on FICORA's proposal may impose fines on broadcasters totalling up to EUR 1 million. In practice, however, FICORA seldom imposes fines and the maximum fine of EUR 1 million has never been levied. FICORA recently issued a EUR 50,000 fine on Pro Radio Oy for repeated violations of its license conditions. FICORA found that the channels were broadcasting almost identical program streams, even though the licence conditions specify that each channel must have independent, local editorial content.

Conditional fines have also been imposed on television broadcasters for violations of the *Act on Television and Radio Operations* about broadcasting times of programmes that may cause detriment to the development of minors. For instance, Sanoma Television Oy and its television channel Jim was recently found to violate the *Act and Radio and Television Operations* for broadcasting programs with a “restricted to 18+ audience” rating before the designated time slots for such programs.

Cases in which FICORA has issued a reminder or a conditional fine have however been noted by the media and in public debate. However given the economic and technical nature of FICORA monitoring responsibilities, there have been no major controversies over FICORA's sanctioning powers or its supervisory role within Finland's media regulation system. It should also be noted that all decisions by FICORA can be appealed in general administrative courts. Appeals do not automatically suspend the decision, unless provided by court. The administrative court's decisions can be further appealed in the Supreme Administrative Court.

88 *Act on Television and Radio Operations*, Section 36(a), (744/1998; amendments up to 1068/2007 included), unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf>. www.finlex.fi/fi/laki/kaannokset/1998/en19980744.pdf

89 *Administrative Judicial Procedure Act*: <http://www.finlex.fi/fi/laki/kaannokset/1996/en19960586.pdf>

Example cited by Hungarian Government: FINLAND

“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.”⁹⁰

Expert assessment

Kari Karppinen, PhD/Hannu Nieminen, PhD, University of Helsinki

The Hungarian government’s response correctly states that the Finnish media law involves a system of sanctions, including sections on suspensions and license revocations. However, the government’s description of the supervisory responsibilities and sanctioning powers of FICORA under Finnish media law is neither accurate nor complete. The Finnish Communications Regulatory Authority (FICORA) is a supervisory and administrative agency under the Ministry of Transport and Communications.⁹¹ It has little independent decision-making power apart from the specific supervisory responsibilities entrusted to it by the media law, which are mostly limited to the economic and technical aspects of broadcast regulation. FICORA monitors media outlets’ compliance with the terms and conditions of their broadcasting licenses and the regulations in the *Act on Radio and Television Operations*,⁹² but the final power to grant, amend or revoke a broadcasting license lies with the license authority, which in most cases in Finland is the Government – with the exception of some short-term licenses granted by FICORA. However, neither FICORA nor the Government has ever terminated a media outlet’s license.

In addition, neither of these authorities have the power to sanction individual journalists, editors or the heads of media outlets, although journalists and “responsible editors” are liable to provisions in the criminal code regarding hate speech.⁹³ FICORA’s supervisory and sanctioning powers apply to commercial television and radio broadcasting (based on the *Act on Television and Radio Operations*) and telecommunications operators (as per the *Communications Market Act*).⁹⁴ Public service broadcasting is governed by separate administrative provisions detailed in the *Act on Yleisradio Oy* (Finnish Broadcasting Company).⁹⁵

FICORA may impose sanctions for broadcasters who violate the provisions of Chapters 3 and 4 in the *Act on Television and Radio Operations*. These chapters include regulations on the proportion of European works and programs by independent producers, programmes that may be detrimental to the development of children, use of exclusive rights, and certain restrictions on advertising and sponsoring. Provisions, for instance, regarding the protection of minors are outlined in Sections 19 and 25:

Under Section 19: “a television broadcaster shall ensure that television programmes that are likely

90 “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

91 Finnish Communications Regulatory Authority (FICORA): <http://www.ficora.fi/en/etusivu.html>

92 *Act on Television and Radio Operations*, Section 36(a), (744/1998; amendments up to 1068/2007 included), unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf>. www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf

93 General criminal liability of individual journalists and responsible editors (all publications must designate a person with the responsibility to direct and supervise editorial work) are detailed in the *Act on the Exercise of Freedom of Expression in Mass Media* (<http://www.finlex.fi/en/laki/kaannokset/2003/en20030460.pdf>)

94 *Communications Market Act* (393/2003; amendments up to 363/2011 included), unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf>. www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf

95 *Act on Yleisradio Ab*: <http://www.finlex.fi/en/laki/kaannokset/1993/en19931380.pdf>

to cause detriment to the development of children due to their violent nature or sexual content or by provoking horror or in another comparable way are transmitted at times when children do not usually watch television programmes.”⁹⁶

Under Section 25: “television and radio advertising shall not:

- 1) exhort minors to buy a product or service by exploiting their inexperience or credulity;
- 2) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- 3) exploit the special trust minors place in parents, teachers or other persons; nor
- 4) unreasonably show minors in dangerous situations . . .”⁹⁷

As noted above, the final power to grant, amend or revoke a broadcasting license lies with the license authority, which in most cases in Finland is the Government, with the exception of some short-term licenses granted by FICORA. Whether the license authority is the Government, or in the case of some short-term licenses, FICORA, Section 37 of *the Act on Television and Radio Operations*, states that is possible to revoke a licence if: “(1) the broadcaster, notwithstanding the measures provided in accordance with sections 36 or 36(a), severely and repeatedly acts in violation of this Act or the provisions or regulations issued thereunder; or (2) if it is no longer possible to assign a radio frequency required by the operations in question.”

As noted previously, neither FICORA nor the Government have ever terminated a media outlet’s licence. An appeal may be filed against decisions by the Government, the Ministry of Transport and Communications or FICORA, as laid down in the *Administrative Judicial Procedure Act*. Appeals against decisions initiated by FICORA can be lodged in general administrative courts or in the Supreme Administrative Court of Finland. Disputes about individual decisions by FICORA have been considered in the administrative courts, but its sanctioning powers as such have not been challenged in any notable court cases. On the contrary, the monitoring of commercial broadcasters’ compliance with licence conditions has in effect been rather irregular, and there have been calls for a more systematic enforcement of the content requirements included in broadcasting licences.

⁹⁶ *Act on Television and Radio Operations*, Section 36(a), (744/1998; amendments up to 1068/2007 included), unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf>.www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf.

⁹⁷ *Act on Television and Radio Operations*, Section 36(a), (744/1998; amendments up to 1068/2007 included), unofficial translation in English available at: <http://www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf>.www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf.

Example cited by Hungarian Government: FRANCE

“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).”⁹⁸

Expert assessment **Guy Drouot**, PhD, Paul Cézanne University, Institute of Political Studies, France,

This citation is generally accurate in that the CSA’s sanctioning powers include the right to terminate and revoke broadcasting licenses. The High Council for Broadcasting (*Conseil supérieur de l’audiovisuel* – CSA) regularly imposes sanctions, although the most common penalty is a formal notice.⁹⁹ The CSA has also revoked many broadcasting licenses for more serious violations—often for repeated breaches of licensing and frequency-usage agreements or provisions regarding incitement to hatred—although to date this level of sanction has been imposed mostly on radio broadcasters. It should be noted, too, that the CSA’s sanctioning powers apply to public and commercial broadcasters, Internet-based TV and radio, and on-demand media, but does not include the print and online press, which are largely self-regulated and bound to rules in separate legislation and subject to sanctions by the French courts.

The CSA may impose a range of penalties—including formal notices, fines, sanctions and termination—for breaches to content and competition-related regulations in the *Freedom of Communication Act of 1986*, media-related provisions in the penal codes, various broadcasting decrees issued by French Parliament, and the CSA’s own resolutions.¹⁰⁰ In particular, it monitors compliance with regulations regarding the protection of human dignity and public order, pluralism of opinions, protection of minors, provisions on the proportion of European films and audiovisual works, rules on teleshopping, advertising and product placement, and provisions regarding the defense of French language.¹⁰¹ Since 1996, the CSA has also supervised compliance with the requirement that private radio stations broadcast a minimum of 40 percent of French-language songs.¹⁰²

In addition to monitoring compliance with content-based regulations, the CSA also ensures observance with the rules on competition and concentration in the field of audiovisual communication. The CSA’s supervision over commercial communications and product placement is generally quite strict. For instance, the CSA in 2011 announced that broadcasters are no longer permitted to refer audiences to their Facebook or Twitter sites, on grounds this violates rules on product placement.¹⁰³

98 “Criticism 17,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

99 For instance in 2010, the CSA handed down 91 formal notices, initiated 7 penalty proceedings, and imposed 4 sanctions. See *CSA Annual Report 2010*: <http://www.csa.fr/upload/publication/Syntaglaisrap2010.pdf>.

100 *Freedom of Communication Act* (No. 86-1067 of 30 September 1986), not including 2009 amendments, available in French at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the amended Act (Number 2009-258 of 5 March 2009) provided by the University of Luxembourg, available at: wwwfr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

101 See “Le contrôle des programmes” on the CSA’s website at: http://www.csa.fr/infos/controle/controle_intro.php

102 See rules regarding language quotas for private radio on the CSA’s website at: http://www.csa.fr/infos/controle/radio_quotas_accueil.php.

103 “French media can tweet -- but can’t mention Twitter,” *Reuters*, 7 June, 2011, <http://www.reuters.com/article/2011/06/07/us-france-tweets-idUSTRE7561V620110607>.

Upon determining a breach to the above mentioned regulations, the CSA may first serve producers and distributors of radio or television broadcasting services with a formal notice to comply with these obligations.¹⁰⁴ If a producer or a distributor of a radio or television broadcasting service fails to comply with the formal notice served, the CSA may, considering the seriousness of the breach, issue one of the following penalties:

- Suspension of the authorisation or a part of the programme for a maximum of one month at most;
- Reduction of the term of the authorisation within the limit of one year;
- A pecuniary penalty possibly accompanied by a suspension of the authorisation or a part of the programme if the breach does not constitute a criminal offence;
- Withdrawal of the authorisation.¹⁰⁵

The amount of financial penalties is determined according to the severity of the breach committed; however, the fines may not exceed 3 percent of the total revenue of the previous years income, and 5 percent in the case of a repeated breach to the same regulation.¹⁰⁶ The CSA frequently issues fines – in 2010, for instance, the CSA fined France Télévisions EUR 100,000 for repeated violations to regulations on information ethics after the station aired a program in which it revealed the name of a child who was killed during a sexual assault.¹⁰⁷

In the event a media outlet within France's jurisdiction broadcasts programs in breach of the fundamental principles laid down in the *Freedom of Communications Act of 1986*, including respect of human dignity, pluralism of opinion, law and order, protection of minors, and incitement to hatred or violence on grounds of gender, lifestyle, religion or nationality, the CSA is entitled to order the termination of the channel's transmission. The CSA can withdraw a license without formal notice in cases in which the media outlet fails to report substantial changes in the data on which the license was granted, including changes to ownership, management and shareholder status.¹⁰⁸

As noted above, the CSA has used its suspension and revocation powers in many instances, and often these cases have been related to technical violations of licensing agreements or to breaches of regulations regarding commercial communications and product placement. Appeals against the CSA's decisions can be filed with the *Conseil d'Etat*, in which case the decision is suspended until the Court issues a decision, unless the license revocation was initiated on grounds the media outlet violated public order, public security or health.¹⁰⁹ The *Conseil d'Etat* must issue a ruling within

104 Article 42 of the *Freedom of Communications Act 1986*, (No. 86-1067 of 30 September 1986), not including 2009 amendments, available in French at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the amended Act (Number 2009-258 of 5 March 2009) provided by the University of Luxembourg, available at: wwwfr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

105 Article 42(1) of *Freedom of Communications Act 1986* (No. 86-1067 of 30 September 1986), not including 2009 amendments, available in French at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the amended Act (Number 2009-258 of 5 March 2009) provided by the University of Luxembourg, available at: wwwfr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

106 Article 42(2) of the *Freedom of Communications Act 1986* (No. 86-1067 of 30 September 1986), not including 2009 amendments, available in French at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the amended Act (Number 2009-258 of 5 March 2009) provided by the University of Luxembourg, available at: wwwfr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

107 Decisions of the CSA, "Ethics of information: financial penalty of 100,000 euros for France 2," Plenary Meeting December 7, 2010. http://www.csa.fr/actualite/decisions/decisions_detail.php?id=132143.

108 Article 42(9) of the *Freedom of Communications Act 1986*, (No. 86-1067 of 30 September 1986), not including 2009 amendments, available in French at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the amended Act (Number 2009-258 of 5 March 2009) provided by the University of Luxembourg, available at: wwwfr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

109 Article 42(9) of the *Freedom of Communications Act 1986*, (No. 86-1067 of 30 September 1986), not including 2009 amendments, available in French at: http://www.legifrance.gouv.fr/html/codes_traduits/libertecom.htm; an unofficial English-language translation of the amended Act (Number 2009-258 of 5 March 2009) provided by the University of Luxembourg, available at: wwwfr.uni.lu/content/download/31271/371434/.../France_translation_1.pdf.

three months. The judgement of the *Conseil d'Etat* cannot be appealed; hence, it is often said that the *Conseil d'Etat* is the “*juge en premier et dernier resort* (the judge of the first and last resort).”

Example cited by Hungarian Government: GERMANY

“*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.*”¹¹⁰

Expert assessment **Stephan Dreyer**, Hans Bredow Institute for Media Research, University of Hamburg

The statement regarding fines for breaching child-protection regulations is accurate; German law in fact stipulates other infringements by private broadcasters and online media for which a fine of as much as EUR 500,000 can be imposed. However, fines for such breaches are not foreseen for public service media. Editors of these (and all) media are bound to comply with strict child-protection regulations in the criminal code.¹¹¹ There are also several provisions that mitigate how fines are assessed. First, State Media Authorities are obliged to give several warnings before giving the maximum sanction, and if such a fine were to be levied, it could be appealed in a regular administrative court. Second, State Media Authorities are bound to common administrative law and principles when it comes to determining the height of fines. For this reason, a sanction of EUR 500,000 is formally foreseen in media law but it has never been issued thus far and quite likely never will be. Furthermore, stipulations in the law on youth protection provide extra protection for news content. These stipulations, especially in the case of online activities, provide an additional safeguard for media freedom.

Provisions stating the amount of possible fines can be found both in the *Interstate Treaty on Youth Protection* (JMStV)¹¹² as well as in the *Interstate Treaty on Broadcasting and Telemedia* (RStV).¹¹³ According to Article 24 of the *Interstate Treaty on Youth Protection* (JMStV): “A provider commits an administrative offence if the provider, either intentionally or through negligence [...] transmits broadcasting programmes which are assumed to be suited to impair the development of minors pursuant to Article 5(2) ... The administrative offence may be penalised by a fine of up to EUR 500,000.”

110 “Criticism 17,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

111 The responsible person of an infringing publication may be sent to prison for up to one year if the publication contains content that is forbidden by the law, e.g. violent, animal or child pornography, racism or glorification of violence, according to the *Protection of Young Persons Act* (*Jugendschutzgesetz* - JuSchG), 23rd July 2002, *Federal Law Gazette* BGBI. I, p. 2730, 2003 I, p. 476, last amendment by Article 3, Act of 31st October 2008, *Gazette* I, p. 2149. Available at http://www.kjm-online.de/files/pdf1/JuSchG_2008_english.pdf. This punishment is also stipulated in the Criminal Code.

112 *Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia* (hereafter the “Interstate Treaty on the Protection of Minors” - JMStV), dated 10th to 27th September 2002, in the version of the 11th Treaty for amending the Interstate Treaties with regard to broadcasting law (13th Interstate Broadcasting Treaty) in force since 1 April 2010; translation by the State Media Authorities for information purposes only, available at: http://www.kjm-online.de/files/pdf1/_JMStV_Stand_13_RStV_mit_Titel_english.pdf.

113 *Interstate Treaty on Broadcasting and Telemedia* (hereafter the “Interstate Broadcasting Treaty” - RStV) in the version of the 13th Amendment to the Interstate Broadcasting Treaties, entry into force 1 April 2010; translation by the State Media Authorities for information purposes only, available at http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/13._RStV-englisch.pdf.

Article 49 of the *Interstate Treaty on Broadcasting and Telemedia* (RStV) stipulates that penalties issued by State Media Authorities are not restricted to breaches of youth protection provisions, but to almost all areas of broadcasting regulation, such as advertising rules, media concentration rules, interoperability provisions, etc. Any other breach not mentioned in Article 24 of the *Interstate Treaty on Youth Protection* (JMStV) or Article 49 of the *Interstate Treaty on Broadcasting and Telemedia* (RStV) cannot result in fines on the basis of these laws.

In practice, a sanction of EUR 500,000 would be an extraordinary measure in Germany's media regulatory system. The infringement would have to be severe, continuous and clearly intentional. Before penalty fines are issued, State Media Authorities are obliged to use softer measures; this principle of graduated sanctioning starts with a formal objection, an order of omission and—in case of continuous breaches—fines, followed by a possible temporary suspension of license and, as a last measure, the revocation of the license.

The competence for determining the size of the fine lies with the respective State Media Authority. It has to consider common law provisions for administrative sanctions, including the rule of law and proportionality. Formal criteria for assessing the size of the sanction—based on the relevance of the infringement, the gravity of accusation and the severity of the contravention (intention versus negligence)—are outlined in the *Administrative Offences Act*.¹¹⁴ In cases of negligence, for instance, the State Media Authority may not assess a fine higher than EUR 250,000.¹¹⁵ Although a fine of EUR 500,000 has not been imposed by any State Media Authority to date, there have been many instances in which a State Media Authority issued lower fines against broadcasters or telemedia services for breaches to child-protection regulations. In February 2007, for instance, the higher Regional Court in Celle confirmed the legitimacy of two penalty notices against a telemedia service provider for publishing images of minors posing unnaturally. (The fines were EUR 3,000 and EUR 7,000, respectively). Recipients of penalty notices are free to raise a formal objection with the relevant state media authority. If the penalty is confirmed, it can then be subject to judicial review.

Regarding online press publications, Article 5(6) in the *Interstate Treaty on Youth Protection* (JMStV) contains a wide privilege for news coverage regarding the protection minors regulations: “Paragraph (1) above shall not apply to news broadcasts, current affairs broadcasting and similar content available as telemedia to the extent that a justifiable interest in this specific type of presentation or report exists.” This means that, even if content could impair minors, providers of news content are not obliged to implement technical measures (e.g. age verification systems or ID checks) to prevent access for minors. Hence, infringements of youth protection provisions in the area of impairing content result in the shift of the burden of proof: The State Media Authority has to prove that the (harmful) form of reporting is not justifiable.

As noted, decisions by State Media Authorities can be appealed in administrative court. According to general administrative laws, both the objection against the regulatory body issuing the administrative act as well as the plea for annulment before a court have a suspensive effect. The regulatory body can rule that the administrative act comes into force immediately. In this case, the suspensive effect does not take place. However, the party affected can plea for annulment of that decision before a court. Further appeals against the decisions of the administrative court are also possible. The next higher court responsible for these appeals are the administrative

114 See cf. Article 17(3) of the *Administrative Offences Act* (*Gesetz über Ordnungswidrigkeiten - OWiG*), dated 19th February 1987 (BGBl. I S. 602), last revised by Article 2 of the Law dated 29th July 2009 (BGBl. I S. 2353), available in German at http://bundesrecht.juris.de/owig_1968/BJNR004810968.html.

115 See cf. Article 17(2) in the *Administrative Offences Act* (*Gesetz über Ordnungswidrigkeiten - OWiG*), dated 19th February 1987 (BGBl. I S. 602), last revised by Article 2 of the Law dated 29th July 2009 (BGBl. I S. 2353), available in German at http://bundesrecht.juris.de/owig_1968/BJNR004810968.html.

appeals tribunals (*Oberverwaltungsgericht*) as well as the higher administrative courts (*Verwaltungsgerichtshof*). In case of a possible infringement of basic rights by the highest court decision, there is the possibility for a constitutional complaint at the federal Constitutional Court.

Example cited by Hungarian Government: GERMANY

*“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.”*¹¹⁶

Expert assessment **Stephan Dreyer**, Hans Bredow Institute for Media Research, University of Hamburg

This statement is accurate. However, it must be pointed out that because a licensing obligation only exists in the field of broadcasting, a revocation of a license is only possible for (private) broadcasters. There are no revocation procedures when it comes to telemedia services (online media that is not broadcast media), the print press or public service broadcasters; however there are procedures in place to take down or block online services in certain cases. The citation above refers to “media outlets,” which does not seem to be limited to broadcasters only but to other media sectors as well. Hence, while the citation reflects the content of the existing broadcasting regulations, it may exceed the German legal framework for telemedia services and press publications.

Only State Media Authorities are empowered to revoke a license—or, more specifically, that State Media Authority being competent for the respective broadcasting service¹¹⁷—if “the broadcaster has repeatedly and seriously violated its obligations under this Act and has not complied with the instructions of the competent state media authority within the period specified by it.”¹¹⁸ The State Media Authorities are responsible for private broadcasters (national, regional or local) which they have licensed as well as for (illegal) unlicensed private broadcasters and private telemedia (online) services. In Germany, each of the country’s 14 states have their own independent State Media Authority consisting of representatives of socially relevant groups and experts.¹¹⁹ In case of nationwide private broadcasters, the centralised organ of all State Media Authorities for licensing and supervision (ZAK) is competent to decide on infringements and license revocations. The competent State Media Authority will then issue the measure against the broadcaster. In case of youth protection infringements, another centralised organ, the *Commission for the Protection of Minors in the Media* (KJM) decides on infringements, while the respective State Media Authority

116 “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

117 For revocation procedures, see Article 29 of the *Interstate Treaty on Broadcasting and Telemedia* (the “Interstate Broadcasting Treaty” - RStV) in the version of the 13th Amendment to the Interstate Broadcasting Treaties, entry into force 1 April 2010; translation by the State Media Authorities for information purposes only, available at http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/13_RStV-englisch.pdf.

118 As specified in Article 21 of the *Interstate Treaty on Media between Hamburg and Schleswig-Holstein* (Medienstaatsvertrag Hamburg Schleswig-Holstein - MStV HH SH), 13th June 2006, in the version of the third Interstate Treaty amending the Interstate Treaty on Media between Hamburg and Schleswig-Holstein dated 30th June 2009, HmbGVBl. S. 357, GVOBl. Schl.-H. S. 636; available in German at: http://www.ma-hsh.de/cms/upload/downloads/Rechtsvorschriften/3_MStV_Internet.pdf; translation by author.

119 Berlin and Brandenburg as well as Hamburg and Schleswig-Holstein have a common State Media Authority.

will opt for an adequate measure and issue it.

State Media Authorities can revoke a broadcaster's licenses on both structural and content-related grounds. Structural grounds for a revocation could include breaches of rules against media ownership concentration or cases when the licensee does not fulfill conditions the license contains, e.g. to broadcast a minimum amount of programming every day. Content-related grounds for revocation procedures are based on repeated and serious infringements to the *Interstate Treaty on Broadcasting and Telemedia* (RStV)¹²⁰ or the *Interstate Treaty on Youth Protection* (JMStV).¹²¹ Under these treaties, grounds for revocations include breaches to content-related provisions of the European Convention on Transfrontier Television contained in the *Interstate Treaty on Broadcasting and Telemedia* (RStV),¹²² and breaches of provisions against impairing the development of children in the *Interstate Treaty on Youth Protection* (JMStV).¹²³

Measures are applied using a graduated approach, involving “admonition, prohibition, withdrawal and revocation.”¹²⁴ In case the State Media Authority states decides that there has been a breach of the above mentioned provisions, it is authorised to proceed against the broadcaster, i.e. the license holder which usually is a company or corporation. Hence, sanctions based on violations of the media law will usually be applied against companies, not individual persons (except online services that are provided by private persons). However, punishments based on criminal law are only directed against individuals.

Infringements of criminal law by broadcasters may result in a revocation only if the interstate treaties refer to these prohibitions.¹²⁵ Infringements of criminal law will regularly result in prosecution by prosecution authorities, not by State Media Authorities. It should be noted that the *Interstate Treaty on Youth Protection* (JMStV) contains a criminal law provision that may result in prison sentences against the responsible person within the media outlet, usually the individual journalist. Article 23 of the *Interstate Treaty on Youth Protection* (JMStV) refers to infringements against Article 4 of that law, which specifies illegal content in broadcasting and telemedia services, including displaying Nazi insignias, inciting hatred, violating human dignity, presenting cruel and inhuman acts, glorifying war, presenting pornographic and violent material, or content harmful to children.¹²⁶

Regarding “telemedia” services, e.g. online services that are not broadcasting services, there is no licensing requirement. However, Article 59(3) of the *Interstate Treaty on Broadcasting and Telemedia* (RStV) provides procedures allowing State Media Authorities to order the host to take

120 *Interstate Treaty on Broadcasting and Telemedia* (the “*Interstate Broadcasting Treaty*” - RStV), in the version of the 13th Amendment to the Interstate Broadcasting Treaties, entry into force 1 April 2010, available in English at: http://www.kjm-online.de/files/pdf1/RStV_13_english.pdf.

121 *Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia* (hereafter the “*Interstate Treaty on Youth Protection*” – JMStV), September 2002 in the version of the 11th Treaty for amending the Interstate Treaties with regard to broadcasting law (13th Interstate Broadcasting Treaty) entry into force 1 April 2010. Unofficial English translation for information purposes only: http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/JMStV_Stand_13_RStV_mit_Titel_english.pdf.

122 *Interstate Broadcasting Treaty* (RStV), Article 4(5), Article 20(4), Article 29, Article 38(2), Article 38(4), translation by the State Media Authorities for information purposes only, available at: http://www.kjm-online.de/files/pdf1/RStV_13_english.pdf.

123 *Interstate Treaty on Broadcasting and Telemedia* (RStV), Article 38(2)(b), translation by the State Media Authorities for information purposes only, available at: http://www.kjm-online.de/files/pdf1/RStV_13_english.pdf.

124 *Interstate Treaty on Broadcasting and Telemedia* (RStV), Article 38(2), translation by the State Media Authorities for information purposes only, available at: http://www.kjm-online.de/files/pdf1/RStV_13_english.pdf.

125 *Interstate Treaty on Youth Protection* (JMStV), Article 4, translation by the State Media Authorities for information purposes only, available at http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/JMStV_Stand_13_RStV_mit_Titel_english.pdf.

126 *Interstate Treaty on Broadcasting and Telemedia* (RStV), Article 4, translation by the State Media Authorities for information purposes only, available at: http://www.kjm-online.de/files/pdf1/RStV_13_english.pdf.

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down a telemedia service after breaches to the treaty's provisions,¹²⁷ or for breaches of provisions on protection of minors in the *Interstate Treaty on Youth Protection*.¹²⁸ However, these procedures are first aimed at content providers, in the form of an order to cease the infringing content. If the enforcement against the content provider is not possible or successful, the State Media Authorities are allowed to issue orders against the host provider. In case this does not succeed, the authorities are allowed to issue blocking orders against access providers. These procedures are not comparable with license revocations, however, as the content provider only has to delete the infringing content to stop any further sanctioning procedures, while a license revocation aims at ceasing all publication activities of the respective media outlet. Moreover, according to Article 59(3) of the *Interstate Treaty on Broadcasting and Telemedia* (RStV) content "must not be prohibited if the measure is disproportionate in relation to the relevance of the offer to the provider and the general public." The treaty also privileges professionally edited online news sites; as such, procedures to take down a telemedia service are only possible pursuant to a decision by a judge/court.

When it comes to identifying breaches, there are no other organisations in the field of common media law, except in the field of youth protection, where a system of regulated self-regulation (or co-regulation) has been implemented. Within the scope of the *Interstate Treaty on Youth Protection*, there are several bodies that also monitor these breaches. These include the self-regulatory bodies for television (FSF) and multimedia services (FSM), as well as jugend-schutz.net, a body supporting the activities of the central organ of all State Media Authorities in the field of youth protection, and the Commission for the Protection of Minors in the Media (KJM). However, only the KJM has state sanctioning powers against infringing broadcasters and telemedia services.

The above mentioned provisions are of course regulations that can be seen as quite restrictive when it comes to media freedom. However, as the grounds for proceedings against broadcasters are clearly stated in the interstate treaties and media laws, and all sanctioning measures are open to judicial review, infringements of constitutionally guaranteed freedoms of media outlets are unlikely. Hence, most of the grounds for sanctioning/revoking have not been controversial or publicly criticised. In recent years, only one nationwide case of license revocation has occurred, as well as several regional cases, all for violations of technical rules, such as airing programs not specified in the license or failure to use frequencies.

¹²⁷ *Interstate Treaty on Broadcasting and Telemedia* (RStV), Article 4(5), Article 20(4), Article 29, Article 38(2); Article 38(4), translation by the State Media Authorities for information purposes only, available at: http://www.kjm-online.de/files/pdf1/RStV_13_english.pdf.

¹²⁸ *Interstate Treaty on Broadcasting and Telemedia* (RStV), Article 38(2)b, translation by the State Media Authorities for information purposes only, available at: http://www.kjm-online.de/files/pdf1/RStV_13_english.pdf.

Example cited by Hungarian Government: IRELAND

“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).”¹²⁹

Expert assessment

TJ McIntyre, School of Law, University College, Dublin

This statement appears to confuse two distinct statutory powers: the power to levy *fees* on broadcasters to finance the Broadcasting Authority of Ireland (BAI) with the power to *fine* individual broadcasters for breaches of statutory rules.¹³⁰ Hence, it is true that the *Broadcasting Act 2009* in some circumstances permits the BAI to impose a sanction of up to EUR 250,000 on broadcasters.¹³¹ It is not correct to suggest that such sanctions go toward the BAI’s operational costs. It is also not correct that this sanction is subject to approval by Parliament—such approval applies only to general fees on broadcasters intended to cover the operational costs of the BAI. These fees are based on income and do not constitute a penalty on broadcasters.

In addition, the reference above overstates the powers of the BAI with regards to imposing sanctions by failing to mention the role of the High Court. The BAI may propose sanctions to the High Court for a finding that there has been a breach by a broadcaster, but it may not itself make such a finding or impose sanctions unless a broadcaster requests that the BAI deal with the matter itself.¹³² Only in such cases does the BAI have the power to directly fine a broadcaster. It is also important to note that the BAI’s regulatory and sanctioning powers apply to broadcast media and it has no functions with regard to either print or online press, which are supervised by the self-regulatory Press Council according to codes of professional ethics and regulations recognised by the *Defamation Act of 2009*.¹³³

As noted, the statement above appears to confuse two separate statutory powers. The BAI has the power to impose levies on broadcasters for the purpose of financing its operations.¹³⁴ This levy is subject to later annulment by resolution of either house of the *Oireachtas* (Parliament).¹³⁵ However, this levy is based on income, applies to broadcasters generally and does not constitute a penalty on

129 “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

130 See Broadcasting Authority of Ireland (BAI) at: <http://www.bai.ie/>.

131 See *Broadcasting Act 2009*, Part 5, Chapter 2, and specifically Section 54(4)(c), official text available at Irish Statute Book legislative database at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/print.html#part5-chap2>.

132 *Broadcasting Act 2009*, Part 5, Chapter 2, official text available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/print.html#part5-chap2>.

133 The online press is not regulated by the BAI except insofar as provided by the Irish regulations related to the EU Audiovisual Media Services Directive. See SI 258 of 2010, The European Communities (Audiovisual Media Services) Regulations 2010, available at <http://www.dcenr.gov.ie/NR/rdonlyres/88659371-2873-4851-BCDE-6C03F7B6E19E/0/SI258of2010.pdf>. The Press Council is recognised by No. 163/2010, the *Defamation Act 2009* (Press Council) Order 2010, <http://www.irishstatutebook.ie/2010/en/si/0163.html>.

134 *Broadcasting Act 2009*, Section 33: “For the purpose of meeting expenses properly incurred by the Authority, the Contract Awards Committee and the Compliance Committee in the performance of their functions, the Authority shall make an order imposing a levy on public service broadcasters and broadcasting contractors.” Available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0033.html>.

135 *Broadcasting Act 2009*, Section 33(7), available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0033.html>; The current operation of this levy is described in BAI’s *Guide to the BAI Levy* (April 2010), available at: http://www.bai.ie/pdfs/final_levy_brochure.pdf.

an individual broadcaster.

The *Broadcasting Act 2009* defines the circumstances in which the BAI may impose financial sanctions on an individual broadcaster—which is a separate power from the imposition of fees for broadcasters described above.¹³⁶ Fines of up to EUR 250,000 may be assessed for failure to cooperate with an investigation by the BAI or for breaches to programming obligations or content-related provisions in the *Broadcasting Act 2009* and in the set of broadcasting codes which further elaborate rules for broadcasters.¹³⁷ Although there is a wide range of requirements with which broadcasters are required to comply, it should be noted that only a “serious or repeated failure by a broadcaster to comply with a requirement” will amount to a breach which could warrant sanctions.¹³⁸ These regulations include prohibitions on certain types of advertising relating to political ends, trade disputes, and religion,¹³⁹ as well as obligations to present news in an “objective and impartial” manner, and restrictions on content which may cause “harm and offense,” or which is “likely to promote, or incite to, crime or as tending to undermine the authority of the State.”¹⁴⁰ The *Code of Programme Standards* establishes a range of additional content regulations for editorial and commercial content.¹⁴¹ For example, according to these codes “[f]actual programming shall only emphasise age, colour, gender, national or ethnic origin, disability, race, religion or sexual orientation when such references are justified in the context of the programme or in the public interest.”¹⁴²

The amount of possible fines for breaches to these regulations is subject to the factors set out in Section 56 of the *Broadcasting Act 2009*, which details a series of elements the BAI should weigh in deciding the appropriate level of sanctions. These include the need to ensure that any financial sanction imposed is appropriate and proportionate and will act to ensure future compliance, and the seriousness of the breach. The default position is that the BAI may propose sanctions and may apply to the High Court for a finding but BAI may not itself make such a finding or impose sanctions.¹⁴³ However, a broadcaster may make a request in writing that the BAI deal with the matter itself.¹⁴⁴ Only in such a case does the BAI have the power to fine a broadcaster. In practice, most broadcasters are likely to consent to the BAI dealing with these matters, both to reduce the possible costs of a High Court action and to safeguard their ongoing working relationship with the BAI.

This author is not aware of any situation in which either the BAI or the High Court has imposed a this sanction on a broadcaster. This is in part because the BAI is such a new institution (having been established by the *Broadcasting Act 2009*). However, it also reflects a deliberate enforcement strategy by the BAI in which the use of financial penalties is only considered once other softer tactics have failed. While a relatively new authority, the BAI’s powers to impose sanctions on broadcasters do not appear to be a significant threat to press freedom in Ireland. In particular,

136 *Broadcasting Act 2009*, Part 5, Chapter 2, available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0052.html#part5-chap2>.

137 A “breach” is defined in Section 52 of *Broadcasting Act 2009* to mean “a serious or repeated failure by a broadcaster to comply with a requirement referred to in section 53 (1).” Section 53(1) in turn refers to the following requirements: “Section 39(1), 40(1), (2) or (3), 41(2), (3) or (4), 106(3) or 127(6) or a broadcasting code or rule.” Available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0052.html>.

138 *Broadcasting Act 2009*, Section 52, available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0052.html>.

139 *Broadcasting Act 2009*, Section 41, available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0041.html>.

140 *Broadcasting Act 2009*, Section 39, available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0039.html>.

141 Sections 42 and 43 of the *Broadcasting Act 2009* require the BAI to draw up broadcasting codes and broadcasting rules which will elaborate on the above requirements and will also introduce additional requirements (such as the control of advertising to children). The current codes and rules are available at: http://www.bai.ie/publications_codestandards.html.

142 *Code of Programme Standards*, Section 3.5.3. This document was produced by the Broadcasting Commission of Ireland – the predecessor of the Broadcasting Authority of Ireland – but remains in effect.

143 *Broadcasting Act of 2009*, Sections 54 and 55, available at <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0054.html> and <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0055.html>.

144 *Broadcasting Act of 2009*, Section 54(4), available at <http://www.irishstatutebook.ie/2009/en/act/pub/0018/sec0054.html>.

the requirement that broadcasters consent before a matter is dealt with by the BAI rather than by the High Court operates as a “check” against possible overreaching by the BAI. Moreover, appeals to the High Court suspend the BAI’s decisions, and under the Constitution, appeals against the decisions of the High Court are also permitted.

It is worth pointing out, however, that although there is little criticism of the procedure used to enforce Irish broadcasting law this should not be understood to mean that there is no criticism of the substance of that law. A number of aspects of the law have been criticised as being too restrictive – for example, the prohibition on political, religious and trade dispute advertising has long been the subject of some controversy and even litigation.¹⁴⁵ Similarly, the power to fine broadcasters that “cause offence” has been the subject of strong criticism.¹⁴⁶ These complaints, however, essentially relate to the substance of the rules enacted by the *Oireachtas* (Parliament) rather than the manner in which those rules are applied via the BAI.

Example cited by Hungarian Government: ITALY

“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 totaling 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.”¹⁴⁷

Expert assessment **Marco Bellezza**, Phd, University of Bari/**Oreste Pollicino**, PhD, Bocconi University

The citation above describes two separate legislative instruments enforced by different bodies within Italy’s Communications Regulatory Authority (AGCOM).¹⁴⁸ Regulations on data disclosure are included in the *Maccanico Law*, which established AGCOM, and requires all media outlets to register with the Registry of Communication Operators (Roc) and to provide annual information regarding corporate ownership structure so AGCOM can monitor compliance with antitrust provisions in the law.¹⁴⁹ It is true that violators of these regulations can be fined 2 to 5 percent of their annual turnover. The rules concerning child protection are contained in the *Consolidated Text on Radio-Television*, which regulates broadcasters and operators of audiovisual media services.¹⁵⁰

145 See for example Kevin Rafter, “Hear no evil – see no evil: political advertising in Ireland,” (2011) 11(2) *Journal of Political Affairs*, p. 93; *Murphy v Ireland* 44179/98 (2003) 38 EHRR 212, [2003] ECHR 352 (10 July 2003), [http://www.bailii.org/ie/cases/IEHC/1998/117.html](http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=699084&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649; Colgan v IRTC [2000] 2 IR 490, [1999] 1 ILRM 22, [1998] IEHC 117 (20 July 1998), <a href=).

146 See Colum Kenny, “Offence clause may chill broadcasters,” *Irish Independent* 27 September 2009, available at <http://www.independent.ie/opinion/analysis/offence-clause-may-chill-broadcasters-1897811.html>

147 “Criticism 1,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

148 See AGCOM’s website at: <http://www.AGCOM.it>.

149 *Maccanico Law* (Act No. 249/1997), “Establishment of the Communications Regulatory Authority (AGCOM) and norms governing telecommunications and broadcasting,” available in Italian at: http://www2.agcom.it/L_naz/L_249.htm.

150 *Consolidated Act on Radio and Television* (Law-Decree 177/2005, amended by Legislative Decree 44/2010), unofficial English translation provided University of Luxembourg, available at: http://www.en.uni.lu/content/download/31290/371510/file/Italy_translation.pdf.

7/SANCTIONS

Hence, the statement above appears to confuse the penalties provided for violation of the norms on data disclosure with those required by norms regarding child protection. It is important to note, too, that penalties for breaches to child protection regulations can only be assessed by AGCOM on broadcasters and audiovisual media service providers, as AGCOM currently has no remit to handle content-related breaches by the print and online press.

The penalties for breaching data disclosure regulations are specified in the *Maccanico Law*, which states that fines from EUR 516 to EUR 100,000 can be imposed on operators that fail to disclose information requested by AGCOM.¹⁵¹ Fines ranging from EUR 10,000 to EUR 250,000 can be assessed for media outlets that fail to respect the orders and warnings from AGCOM. In cases of serious and repeated violations, including providing false information on corporate ownership, AGCOM can also order the suspension of a media outlet's activity for a period not exceeding six months, or it can withdraw the operator's authorisation to operate. In the case of violations of the antitrust regulations, media operators can be punished with an administrative sanction ranging from 2 percent to 5 percent of the company's annual budget.

Legal norms regarding the protection of minors are established in the *Consolidated Text on Radio-Television* and in self-regulatory codes, with different sanctioning standards contained in different laws. One important regulation in the field of child protection is the self-regulatory Code on Television and Children.¹⁵² The main aim of the code is to protect children from manipulative advertising and from unsuitable programming. The code also provides specific norms about television programs that are dedicated to educating minors, and established a supervisory committee responsible for monitoring compliance with the code. Violations of the code can also be punished by AGCOM, which may impose of fine amounting from EUR 25,000 to EUR 350,000, and in more serious cases may impose the suspension of activity for a period from three to 30 days.”¹⁵³

AGCOM frequently sanctions broadcasters for breaches to child protection regulations. In the first quarter of 2011, fines on operators for violations to child-protection regulations totalled EUR 370,000.¹⁵⁴ In 2004, the Italian Supreme Court (*Corte di Cassazione*) upheld a decision by AGCOM to fine the public service broadcaster RAI for a prime time broadcast of a documentary about the crimes committed by a pedophile. In its decision, the Supreme Court established seven rules regarding broadcasting and the protection of minors: “1) Television programs that may damage children's ability to distinguish between different or opposite values, should not be broadcast; 2) To protect children, it is not sufficient to give a notice that a transmission is not suitable for children; 3) The broadcaster that intends to transmit programs that may harm the development of children must take technical measures to exclude children from seeing the broadcast under normal circumstances; 4) Television operators must consider the child as a person who has the right to peaceful and healthy physical and mental development; 5) The principles of child protection must be applied to all television programs; 6) In cases of conflict between right to information and protection of minors, both constitutionally guaranteed values, the latter must prevail over the former; 7) Broadcasters must avoid transmitting programmes that are violent or not suitable for minors.”

151 *Maccanico Law* (Act No. 249/1997), Article 1 (29) – (32), available in Italian at: http://www2.agcom.it/L_naz/L_249.htm.

152 The Code on Television and Children, adopted November 29, 2002, available in Italian at: <http://www.AGCOM.it/default.aspx?message=viewdocument&DocID=3100>.

153 *Consolidated Act on Radio and Television* (Law-Decree 177/2005, amended by Legislative Decree 44/2010), Article 35, unofficial English translation provided University of Luxembourg at: http://www.wen.uni.lu/content/download/31290/371510/file/Italy_translation.pdf.

154 AGCOM, *Annual Report 2011*, available in Italian at: <http://www.agcom.it/Default.aspx?message=viewrelazioneannual&idRelazione=27###>.

With regards to the broader media sanctioning system in Italy, media are regulated by a number sector-specific laws and decrees detailing different content and regulatory standards for each sector. Enforcement of both “general” and sector-specific regulations are carried out by a consortium of state bodies, including AGCOM, the Ministry of Economic Development’s Department of Communications, the Parliamentary Commission on Radio and Television, the Antitrust Authority, and the Privacy Authority, the Order of Journalists, and the courts.

All journalists in Italy are bound by *Law 69/1963*, which requires professional journalists to be licensed, and establishes a series of “rights and duties” relating to licensed journalists.¹⁵⁵ These include requirements to protect the privacy of individuals, the protection of minors, and the protection of dignity of people with mental or physical handicaps, as well as people involved in criminal proceedings. This law also details corresponding disciplinary sanctions (such as warnings, censure, suspension from work and disbarment) which can be imposed for violations to these professional standards.¹⁵⁶ Compliance with these provisions is generally supervised by the Order of Journalists (*Ordine dei Giornalisti* - ODG), a professional order under the supervision of the Ministry of Justice, and the courts.¹⁵⁷

All licensed journalist are also bound by certain provisions in the criminal code and in the Italian Constitution, which contain regulations on libel and defamation, responsibilities of the director and editor, professional secrecy, prohibition of publication of acts and images, and publication of illegal wiretaps.¹⁵⁸ These provisions, if breached, carry a range of penalties—from fines to imprisonment. For instance, Article 595 of Italian Criminal Code punishes defamation via the press with the penalty of imprisonment ranging from six months to three years.¹⁵⁹ Since registration is mandatory for all individuals engaged in “journalistic activity,” these regulations apply to all journalists regardless of media. In Italy, journalists are regularly prosecuted for defamation. In September 2011, three journalists were sentenced to up to a year in prison for defaming a local mayor.¹⁶⁰

All decisions made by AGCOM are subject to the judicial review in the Regional Administrative Courts (*Tar- Tribunali amministrativi regionali*). The appeal does not automatically suspend the effect of the decision, however in cases in which the enforcement of the decision may create a serious financial loss to the media outlet, the Court may suspend the execution of the decision as a precautionary measure. Decisions of the Regional Administrative Courts may also be appealed to the Supreme Administrative Court (*Consiglio di Stato*).

155 See Charter of Duties of Journalists, adopted by the National Federation of the Italian Press and National Council Order of Journalists in July 1993, available at: http://ethicnet.uta.fi/italy/charter_of_duties_of_journalists.

156 *Law 69/1963 PM / AAVM*. For instance, Article 2(1) of this law establishes freedom of expression as an “unalienable right,” but also states there are a number of limitations to these rights, especially with regards to protecting the privacy of individuals.

157 Order of Journalists (*Ordine dei Giornalisti*) at: <http://www.odg.it/content/storia>, per *Law 69/1963*.

158 *Provisions in the press, libel, criminal offenses related to the profession and the criminal trial*, <http://www.odg.it/category/categoria-leggi/disposizioni-sulla-stampa-diffamazione-reati-attinenti-alla-professione-e-p>

159 Italian Courts have in fact handed down prison sentences to journalists for defamation; see, for instance, “Three Journalists in Italy Handed Prison Sentences on Defamation Charges,” Barbara Trionfi, 28 May 2011, International Press Institute, <http://www.freemedia.at/home/singleview/article/three-journalists-in-italy-handed-prison-sentences-on-defamation-charges.html>.

160 See “Italy: Criminal Defamation Must be Repealed,” Article 19, 7 September 2011. In this case, two journalists were sentenced to a year in prison, and the third was sentenced to eight-months: <http://www.article19.org/resources.php/resource/2721/en/italy:-criminal-defamation-legislation-must-be-repealed>.

Example cited by Hungarian Government: LATVIA

“In Latvia, after having assessed whether 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.”¹⁶¹

Expert assessment

Linda Austere, Centre for Public Policy, Riga, Latvia

The regulation cited by the Hungarian Government is accurate in describing the existing laws and powers of the (now renamed) National Radio and Television Council—which was replaced by the National Electronic Mass Media Council (NEPLP) under a new media law adopted by the Latvian Parliament (*Saeima*) in July 2010.¹⁶² The National Electronic Mass Media Council (NEPLP), which inherited much of the same basic powers from the National Radio and Television Council, is responsible for ensuring that “electronic mass media” do not violate the terms of their licenses or programming and content regulations provided for in Latvia’s media law.¹⁶³ “Electronic mass media” includes broadcasting, radio, audiovisual on-demand services, public, commercial and non-commercial mass media, but not traditional print media. The NEPLP can impose a range of sanctions on these media for breaches to content regulations, including warnings, fines and license revocations. In practice Latvia’s media authorities rarely use their sanctioning powers and when sporadic sanctions *are* imposed they are generally not severe. The media authority can forward information related to criminal violations (e.g. content of programming that incites violence) to the prosecutor’s office should such violations be suspected, which did occur in 2009, although it cannot itself “bring prosecutions against” media outlets as the above statement suggests.¹⁶⁴

Violations that carry possible sanctions, as well as what standards the media authority applies when weighing its decisions, are explicitly defined in the *Electronic Mass Media Law*. Penalties are also detailed in the Latvian *Administrative Violations Code*.¹⁶⁵ According to Section 21 of the *Electronic Mass Media Law*, the National Electronic Mass Media Council can: annul a broadcasting permit if a broadcaster stops broadcasting or broadcasts irregularly; suspend a broadcaster’s operations for up to seven days if that broadcaster has violated the law or failed to comply with the terms of its license; annul a broadcasting permit if the broadcaster has received three

161 “Criticism 18,” in “Criticism and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

162 National Electronic Mass Media Council (NEPLP), <http://www.nrtp.lv/lv/padome/par-padomi/>, was established the Parliament of the Republic of Latvia under the new *Electronic Mass Media Law* in July 2010. English-language translation provided by the *Valsts valodas centrs* (State Language Centre), available at: http://www.nrtp.lv/web/uploads/E1727_-_Electronic_Mass_Media_Law.pdf.

163 Under the new *Electronic Mass Media Law* (2010), “electronic mass media” is defined as “mass media pursuing an economic activity,” which encompasses broadcasting, radio, audiovisual on-demand services, public, commercial and non-commercial mass media across all transmission platforms—terrestrial, digital, satellite and cable.

164 Prohibitions against incitement to national, ethnic and racial hatred applies to all Latvian citizens, including journalists, under the Criminal law, Article 78: “Triggering of National, Ethnic and Racial Hatred: (1) For a person who commits acts intentionally directed towards triggering national, ethnic or racial hatred or enmity, the applicable punishment is deprivation of liberty for a term not exceeding three years or community service, or a fine not exceeding sixty times the minimum monthly wage.” Translation by author.

165 The *Administrative Violations Code* is available in Latvian at, <http://www.likumi.lv/doc.php?id=89648>,

administrative punishments in one year, repeats a violation of the law or terms of its license within a month of receiving a warning for the same offence, violates the terms of its broadcast permit, does not broadcast to its entire coverage area, continues a violation for a month after being cited, or is guilty of crimes against the state.¹⁶⁶

Section 26 of the *Electronic Mass Media Law* stipulates a set of restrictions regarding programming content: “programmes and broadcasts of the electronic mass media may not contain: 1) stories which accentuate violence; 2) materials of a pornographic nature; 3) incitement to hatred or discrimination against a person or group of persons on the grounds of sex, race or ethnic origin, nationality, religious affiliation or faith, disability, age or other circumstances; 4) incitement to war or the initiation of a military conflict; 5) incitement to overthrow State power or to change the State political system by violence, to destroy the territorial integrity of the State or to commit any other crime; or 6) stories which discredit the statehood and national symbols of Latvia.”¹⁶⁷ There are also additional restrictions regarding programming quotas for the national language (mandating that at least 65 percent¹⁶⁸ of content be broadcast in Latvian or provide translation in Latvian), as well as regulations on fair commercial practices.

Violations of any of the above-mentioned restrictions are punishable under the *Administrative Violations Code*, while failure to meet the specific terms of a broadcast permit is a violation of the media law. If the National Electronic Mass Media Council determines there is a violation, it can initiate an administrative procedure. If a media outlet is found guilty of a violation, the Council can either impose a monetary sanction in accordance with the *Administrative Violations Code* or apply other sanctions as provided in Section 21 of the *Electronic Mass Media Law*. If a media outlet is found to commit three administrative violations during one year, the Council has the right to annul the license.

The *Administrative Violations Code* clearly details the violations and the assessable penalties that can be levied by the National Electronic Mass Media Council.¹⁶⁹ It includes maximum fines for violating a number of specific provisions. For instance, providing false advertising information carries a fine up to and LVL 10,000 (EUR 14,000) for media companies; failing to register carries a maximum fine of up to LVL 1,500 (EUR 2100); failure to provide translation of the official language of radio and television broadcasts can incur fines of up to LVL 200 (EUR 280) for repeated violations; failure to comply with approved programming concept (fines of up to LVL 2,500);¹⁷⁰ and fines for distributing erotic type material carry a maximum fine of LVL 100 (EUR 140) for individuals and LVL 1,000 (EUR 1,400) for media companies.¹⁷¹

Section 66 of the *Electronic Mass Media Law* establishes the procedures and standards by which the Council must carry out its decisions, which include weighing the usefulness of the necessity of the sanction to attaining the legal goal, whether the fine serves the public interest, and whether the fine would constitute a disproportion restriction of human rights. All administrative decisions can be appealed in administrative court.

¹⁶⁶ *Electronic Mass Media Law* (2010), Section 21, available at: http://www.nrtp.lv/web/uploads/E1727_-_Electronic_Mass_Media_Law.pdf.

¹⁶⁷ *Electronic Mass Media Law* (2010), Section 26, available at: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Electronic_Mass_Media_Law.doc.

¹⁶⁸ Per Article 32 of the *Electronic Mass Media Law*. This figure was corrected by the author January 9, 2012.

¹⁶⁹ According to Section 215.9 of the *Administrative Violations Code*, the Council “shall examine administrative violation matters provided for in Section 166.13, paragraphs one and two; Sections 173.2, 175.9, 201.5 and 201.32 of the Administrative Code, if the administrative violations are committed in the area of electronic public communications equipment, <http://www.likumi.lv/doc.php?id=89648>.

¹⁷⁰ Section 201.5 of the *Administrative Violations Code*, <http://www.likumi.lv/doc.php?id=89648>.

¹⁷¹ Section 173.2 of the *Administrative Violations Code*, <http://www.likumi.lv/doc.php?id=89648>.

As noted above, Electronic Mass Media Council's sanctioning practices are generally not severe. The occasions of sanctioning are rare and mainly concern rather small and technical issues (commonly for breaches to language quotas). Hence, while the Hungarian Government for the most part correctly describes the Latvian legal framework with regard to sanctions, the example does not adequately address the criticism raised with regard to the excessive sanctioning policies contained in Hungary's new media system.

Example cited by Hungarian Government: LITHUANIA

*"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."*¹⁷²

Expert assessment

Zivile Stubryte, Central European University

The reference to Lithuanian example is not entirely accurate: the authority with the above-mentioned powers is the Lithuanian Radio and Television Commission (LRTK), not the Council of Lithuanian Radio and Television. The LRTK oversees broadcast and audiovisual media;¹⁷³ the Inspector of Journalist Ethics and Journalists, and the Publishers Ethics Commission, as well as the Lithuanian Ministry of Culture, are responsible for print and online press. The LRTK can impose sanctions on broadcasters for breaches to technical and content-related regulations in the *Law on the Protection of Minors*, the *Media Law*, as well as for violations to licensing conditions, or to the LRTK's own regulatory decisions.¹⁷⁴ However the LRTK's decision to suspend or revoke a broadcast license has to be sanctioned by a court.¹⁷⁵ Neither the LRTK nor the Inspector can "bring prosecutions against" broadcasters or media outlets, as the above statement claims.

The *Media Law* clearly establishes a set of content regulations for which broadcasters and audiovisual media service providers can be sanctioned. These provisions include: "protection of personal rights, honour and dignity;" right of reply; protection of minors, and "information not to be published."¹⁷⁶ The Inspector of Journalist Ethics is a state official who oversees the

172 "Criticism 1," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

173 Article 47 of the Law on the Provision of Information to the Public, (hereafter the '*Media Law*'), Official Gazette, 27 July 2006, No. 82-3254, as last amended on 30 September 2010, amendments valid since 18, available in English at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

174 As specified in Article 48(1)(13) of the *Media Law*, available in English at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982; See also *Law on the Protection of Minors against the Detrimental Effect of Public Information*, Official Gazette, 21 July 2009, No. 86-3637, available in English at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363137.

175 *Media Law*, Article 31(15), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

176 *Media Law*, Article 19, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

implementation of *Media Law*.¹⁷⁷ The Inspector may impose the following sanctions: issue a warning to producers and disseminators of public information about legal violations; request a retraction or allow a right of response in cases of “false information degrading the honour and dignity of a person or damaging his professional reputation or legitimate interests;” refer cases involving violations of the *Media Law* “to competent state institutions and the Ethics Commission of Journalists and Publishers;” “draw up reports of administrative offences in the cases set out in the Code of Administrative Offences;” or “consider cases of administrative offences and impose administrative penalties in the cases set out in the *Code of Administrative Offences*.”¹⁷⁸

The regular Lithuanian administrative court system may suspend or even terminate providers of public information (except for broadcasters of radio and TV programs) if the information:

- a) “incites to change the constitutional order of the Republic of Lithuania through the use of force;” or
- b) “instigates attempts against the sovereignty of the Republic of Lithuania, its territorial integrity and political independence.”¹⁷⁹

Article 52 of the Lithuanian *Media Law* stipulates that in such cases “the suspension term set by the court may not exceed one month with respect to newspaper editorial offices and three months with respect to magazine editorial offices.”¹⁸⁰ The court may terminate activities of public information providers only if their activities were already suspended in the last 12 months.¹⁸¹

The Journalists and Publishers Ethics Commission is “a collegial self-regulatory body of producers and disseminators of public information,” indirectly supported by the state through the Media Support Foundation.¹⁸² Generally, the Journalists and Publishers Ethics Commission oversees the professional ethics of journalists. Under Article 46 Part 4 of the *Media Law*, the Journalists and Publishers Ethics Commission is supposed to: “1) ensure the cultivation of professional ethics of journalists; 2) examine violations of professional ethics committed in the course of provision of information to the public by journalists, producers of public information or responsible persons appointed by their participants; 3) examine disputes between journalists and producers or publishers of public information regarding violations of the Code of Ethics of Lithuanian Journalists and Publishers.”¹⁸³

The LRTK has generally been cautious in using its sanctioning powers, which range from warnings to termination of broadcasting license. In 2007, for instance, the most often used sanction by the LRTK was a fine.¹⁸⁴ In contrast, the most common sanction imposed on broadcasters in 2008 and 2009 was a warning.¹⁸⁵ In 2010 the trend changed again and only five out of the 15 of the LRTK’s sanctions were warnings, while the rest were fines.¹⁸⁶ One of the limits on sanctioning powers of LRTK is established under the *Law of Public Administration*, which requires institutions to exercise their oversight powers in a minimal and proportionate manner, in order to ensure as little

177 *Media Law*, Article 49(1), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

178 Sanctions by the Inspector of Journalist Ethics are detailed in Article 50(3) in the *Media Law*, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

179 *Media Law*, Article 52 and Article 19(1) and (2), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

180 *Media Law*, Article 52(2), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

181 *Media Law*, Article 52 (3), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

182 *Media Law*, Article 46(1), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

183 *Media Law*, Article 46(4), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982.

184 Lithuanian Radio and Television Commission, *2007 Annual Report*, available in Lithuanian at: http://www.rtk.lt/lt/komisija/ataskaitos_seimui, p. 25-27.

185 Lithuanian Radio and Television Commission, *2008 Annual Report*, p. 39-42; *2009 Annual Report*, p. 9-12. Annual reports available in Lithuanian at: http://www.rtk.lt/lt/komisija/ataskaitos_seimui.

186 Lithuanian Radio and Television Commission, *2010 Annual Report*, available in Lithuanian at: http://www.rtk.lt/lt/komisija/ataskaitos_seimui, p. 10-13.

interference with activities of private actors as possible.¹⁸⁷

Decisions by the LRTK, the Inspector of Journalist Ethics, or the Journalists and Publishers Ethics Commission may be appealed to the Vilnius Regional Administrative Court or the Supreme Administrative Court.¹⁸⁸ For example, in December 2009 the Court considered an appeal from a broadcaster concerning imposition of a fine by LRTK for the broadcaster's failure to meet conditional-access system requirements as established under the license. The court found that LRTK properly evaluated evidence and reached a reasoned decision concerning the broadcaster's failure to meet its license requirements. Consequently, the court upheld LRTK's decision.¹⁸⁹ In another case, the Supreme Administrative Court of Lithuania considered an appeal by a broadcaster against LRTK's decision to impose a fine for an alleged breach of requirements concerning labeling programs that could have harmful effects on minors. The Supreme Administrative Court of Lithuania found that there was not enough evidence to prove broadcaster's guilt and remitted the case for reconsideration to the court of first instance.¹⁹⁰

Example cited by Hungarian Government: POLAND

“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.”¹⁹¹

Expert assessment

Beata Klimkiewicz, PhD, Jagiellonian University, Kraków

This statement seems to be quite accurate despite not using the exact wording of the legislation.¹⁹² The content rules referenced are typical quota and programming obligations for all EU countries which have either implemented or are in the process of implementing the EU Audiovisual Media Services Directive. As correctly noted above, the National Broadcasting Council (KRRiT)¹⁹³ can impose fines of up to 50 percent of the broadcasters' annual fee for breaches to various content-

187 According to Article 36 (1)(1) of the *Lithuanian Law on Public Administration*, Official Gazette, 14 July 2006, No. 77-2975, as last amended on 23 December 2010, amendments valid since 10 January 2011, available in Lithuanian at http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=390913.

188 Article 47(13) of the *Media Law* states: “The decisions of the Commission shall be binding on broadcasters and re-broadcasters of radio and/or television programmes and providers of on-demand audiovisual media services; persons may appeal to court against the abovementioned decisions within 30 days of the date of their entering into force,” and Article 50(18) states: “The decisions of the Inspector may be appealed against in court within 30 days of their publication or, where the decision is not made public, of receipt of the notification of adoption thereof.” Article 46(8) of the *Media Law* specifies appeals for Journalists and Publishers Ethics Commission.

189 Decision of Vilnius Regional Administrative Court, No. II-1693-662/2008, 1 December 2009.

190 Decision of Supreme Administrative Court of Lithuania, No. N-444-627/2008, 19 November 2008, <http://bylos.lvat.lt/getdocument.aspx?id=d676a84b-3ac3-42c0-ab3b-cbaea0f76dea>

191 “Criticism 17,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

192 The cited provision likely refers to Article 53(1) of the *Broadcasting Act (Ustawa o Radiofonii i Telewizji)*, adopted 29 December 1992, Official Journal, 1993, No 7, item 34, as amended. Unofficial English translation available at: <http://media.parliament.org.ua/uploads/files/f92.pdf>.

193 National Broadcasting Council (KRRiT): <http://www.krrit.gov.pl/bip/Default.aspx?alias=www.krrit.gov.pl/bip/eng>

and advertising-related provisions in the 1992 *Broadcasting Act*.¹⁹⁴ Fines can even be imposed on individual “directors of broadcasting activities” for failing to carry out the National Council’s decisions, but that fine cannot exceed that individual’s six-month remuneration.¹⁹⁵ However, there have not been any cases when a broadcaster was fined 50 percent of its annual frequency usage fee for breaching programming requirements or when an individual broadcaster was fined in the way described above. It should be noted, too, that the KRRiT and the *Broadcasting Act* regulates private and commercial television and radio broadcasting, including public service media, but not print or online press.¹⁹⁶ In addition, the content regulations detailed in the *Broadcasting Act* specifies different obligations for TV versus radio as well as for commercial versus public broadcasting.

The provision cited by the Hungarian government refers to Article 53(1) of the 1992 *Broadcasting Act* which empowers the National Broadcasting Council (KRRiT) to sanction broadcasters for breaches to specific content regulations.¹⁹⁷ These are: programme quota obligations for Polish-language programmes (33 percent of transmission time), European works produced by independent producers (10 percent of transmission time), and European works (50 percent of transmission time). Broadcasters can also be sanctioned for breaching obligations regarding the protection of minors, the protection of moral values and social interest and non-discrimination, the respect for Christian values, protection of health, safety and the natural environment, and monitoring and disclosure rules.¹⁹⁸

The KRRiT’s sanctioning powers include: warning/formal objections,¹⁹⁹ penalty payments/fines,²⁰⁰ and the suspension/revocation of licenses.²⁰¹ The process of sanctioning usually starts with warnings to cease the practices in breach of the relevant content regulation. In cases of repeated breaches, the maximum fines can be applied, which depends on the broadcaster’s frequency usage fee. The usage fee depends on the reach of the broadcaster’s programming and therefore fines can vary considerably. Hence, radio broadcasters pay significantly less than TV broadcasters. For example, a nationwide TV broadcaster transmitting its programme terrestrially can pay up to 2 million PLN (EUR 502,500), with the exact amount dependent on whether the programme reaches less than 500,000, between 500,000 and 5 million, or more than 5 million viewers.²⁰² A nationwide radio broadcaster transmitting its programme terrestrially can pay up to 960,000 PLN (EUR 242,400).

Maximum fines are rarely imposed on broadcasters as a result of breaches to content regulations.

194 See content regulations and programme quotas in Chapter 3, “Radio and Television Programme Services,” Articles 13 to 20 of the *Broadcasting Act*. Violations to Articles 10(4) and 15 – 18 carry potential sanctions. Unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

195 *Broadcasting Act*, Article 54(1), unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

196 *Broadcasting Act*, Article 5: “The National Broadcasting Council (...) shall hereby be established and shall constitute the state authority competent in matters of radio and television broadcasting.” Unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

197 *Broadcasting Act*, Article 53(1), unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

198 See the following articles under the *Broadcasting Act*: Article 15 for rules on programming quotas; Article 15a for rules on works by independent producers; Article 18(2) for regulations on European works; Article 18(4) – 18(6) for regulations on protection of minors; Article 18(1) for rules on moral values and social interest and non-discrimination; Article 18.2 for Christian values; Article 18.3 protection of public health and safety; Article 20 and 20a on monitoring and disclosure rules. Unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

199 *Broadcasting Act*, Article 10(2), 10(3), 10(4), unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

200 *Broadcasting Act*, Article 53 and 54, unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

201 *Broadcasting Act*, Article 38(1) and 38(2), unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

202 The exact algorithm for determining broadcaster’s usage fee is described in the KRRiT’s “Regulation of the National Broadcasting Council,” 4 February 2000, available at: http://www.krrit.gov.pl/Data/Files/_public/pliki/regulations/4_february_2000_nowy.pdf.

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An exception was in 2006 and the high penalty (EUR 125,628) imposed on the commercial broadcaster Telewizja Polsat for broadcasting a programme in which a disabled journalist working at Radio Maryja was ridiculed and satirized by a talk show host and his guest. In practice, however, higher financial sanctions are most often imposed on broadcasters for breaches to limits time of advertising spots under Article 16(2), which states that advertising cannot exceed 15 percent of daily transmission time or 12-minutes each hour, in compliance with the EU Audiovisual Media Service Directive. In 2010, for example, a penalty of 12,800 PLN (EUR 3,216) was imposed on the commercial broadcaster Telewizja Polsat for breaching the Article 16(2) for transmitting advertising that exceeded 12-minutes hourly and 15 percent of the daily limit. Also in 2010, the Warsaw Province of Redemptorists was called on to cease practices in the programme of Catholic Radio Maryja which were considered to be “surreptitious advertising.”²⁰³ However there have not been any cases when a broadcaster has been fined 50 percent of its annual frequency usage fee for breaching programming requirements.

It is also important to recognise the political controversies surrounding the composition of the KRRiT’s membership, which has undermined the neutrality of the authority as a regulatory body. That is, political affiliations have influenced sanctioning decisions especially with regards to interpretation of respect for “the religious beliefs of the public and especially Christian system of values.”²⁰⁴ For instance, in November 2010, the KRRiT called on the Polish Television (a public service broadcaster) to cease practices in breach of Article 21(1)²⁰⁵ of the *Broadcasting Act* concerning the portrayal of events related to a removal of a cross from a front of the Presidential Palace to the St. Anna’s Church.²⁰⁶ The cross was placed in a front of the Presidential Palace after the fatal crash of the presidential airplane in April 2010. The place served to organize commemoration meetings of supporters of the former President Kaczynski. A newly nominated President Komorowski decided to replace the cross to the St. Anna’s Church.

The sanctioning decisions of the chairman of the National Council may be appealed in the Regional Court.²⁰⁷ The appeal suspends the decision. The Regional Court’s decision can also be further appealed. The KRRiT’s activities and decisions are also controlled through a reporting obligation to the *Sejm*, Senate and the president in the form of an annual report on its activities during the proceeding year, as well as information concerning key issues in radio and television broadcasting.²⁰⁸ This includes also description of the use of sanctioning powers by KRRiT. In a case of rejection of the report by both the *Sejm* and the senate, the term of office of KRRiT members expires,²⁰⁹ but only if this decision is approved by the president.²¹⁰

203 The Catholic Redemptorist Order owns a broadcasting license for broadcasting Radio Maryja as a “social broadcaster.” Social broadcasters have a special legal status in Poland, in which they are exempted from paying a license fee, but cannot transmit advertising.

204 *Broadcasting Act*, Article 18(2), unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

205 According to Article 21(1) of the *Broadcasting Act*: “Public radio and television shall carry out their public mission by providing, on terms laid down in this Act, the entire society and its individual groups with diversified programme services and other services in the area of information, journalism, culture, entertainment, education and sports which shall be pluralistic, impartial, well-balanced, independent and innovative, marked by high quality and integrity of broadcast.” Unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

206 The cross was placed in a front of the Presidential Palace after the crash of the presidential airplane on April 10, 2010. The place served to organize commemoration meetings of supporters of the former President Kaczynski. A newly nominated President Komorowski decided to replace the cross to the St Anna’s Church.

207 Decisions of the Chairman of the National Council issued under Articles 10(4) and Articles 53 and 54 of the *Broadcasting Act* may be appealed against to the *Voivodship Court* in Warsaw.

208 *Broadcasting Act*, Article 12(1), unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

209 *Broadcasting Act*, Article 12(4), unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

210 *Broadcasting Act*, Article 12(5), unofficial English translation available at: <http://media.parlament.org.ua/uploads/files/f92.pdf>.

Example cited by Hungarian Government: PORTUGAL

“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.”²¹¹

Expert assessment

Joaquim Fidalgo, PhD, University of Minho, Portugal

The example was true until recently but not any longer in these exact terms. The *Television Law* referred to in the statement above was actually amended quite recently, in April 2011. Under that law, the Media Regulatory Authority (*Entidade Reguladora para a Comunicação Social* - ERC) could order the immediate interim suspension of a programme transmission or of a programme service for serious violations to terms of licensing and transmission-service agreements or various programming- and content-related regulations.²¹² But with the recent revision of this law in order to implement the AVMS Directive, this specific article was revoked.²¹³ According to the new legal framework, the interim suspension of a television programme, with immediate effect, is no longer possible. It should be added that under the previous law, no such suspension had ever been exercised on content-related grounds.²¹⁴

However, there are still certain circumstances under the current law when the ERC may suspend a programme or revoke a broadcasting license on both technical and content-related grounds. But, in these cases a proceeding must be opened until a final decision is reached (only the possibility of an interim suspension, with immediate effect, was revoked when the *Television Law* was amended). As for print media, no such measures are defined in the law, since the launching of print media does not depend on a license or authorisation, but only on a simple registration. The eventual suspension of print media is only possible in the sequence of a decision by a court of law.

The ERC’s sanctioning powers are defined in three different laws: the ERC Statute,²¹⁵ the (amended) *Television Law*, and the *Radio Law*.²¹⁶ ERC’s power to ensure compliance with both content and technical requirements of these laws, and to suspend or revoke licenses and other qualifications necessary for media outlets to pursue of radio and broadcasting activities, is established in the ERC Statute.²¹⁷ Both the *Television Law* and the *Radio Law* give ERC the power to grant, renew, alter or revoke licenses or authorizations for television or radio activity, respectively.²¹⁸ These laws

211 This example was cited by the Hungarian Government under both “Criticism 1,” and “Criticism 18” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

212 *Television and Audiovisual Services On Demand Law* (hereafter the “*Television Law*”). Law Nr. 27/2007, as amended by the Law Nr. 8/2011), unofficial English translation of the 2007 law available at: <http://www.anacom.pt/render.jsp?contentId=979660>. Amended law (Law Nr. 8/2011) available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

213 *Television Law* (Law Nr. 8/2011) available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

214 The only situations where broadcast licenses were revoked were in the case of some small radio operators that could not meet the technical requirements of broadcasting.

215 ERC Statute (Law nr. 53/2005), available at: <http://apollo.atomicdns.com/~ercfront/documentos/lei53.pdf>

216 The *Radio Law* (Law Nr. 54/2010), unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

217 ERC Statute (Law nr. 53/2005), Article 24(3)(c), 24(3)(f) and 24(3)(i), unofficial English translation available at: <http://apollo.atomicdns.com/~ercfront/documentos/lei53.pdf>; sanctioning powers are further specified in Article 67 of the ERC Statute.

218 *Television Law* (Law nr. 8/2011), Article 18, available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf; *Radio Law* (Law Nr. 54/2010), Article 23, unofficial English translation http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

define levels of infringements—“minor,” “serious,” and “very serious” offenses—each with their own level of possible sanctions.²¹⁹ Many of these offenses are related to technical regulations—such as violating terms of licenses or transmission service agreements. However there are a number of content-related regulations which, if breached, carry severe sanctions, such as suspensions and license revocations. The severity of sanctions, in general, correspond to the type of media under consideration—with terrestrial, commercial free-to-air television and public service broadcasting subject to stricter regulations, supervision and sanctions than cable and Internet TV channels, for instance. In the Portuguese system, television broadcasting is organised into three categories, each with different legal frameworks, responsibilities and levels of regulation: terrestrial free-to-air programmes (which are licensed); television stations, such as cable or satellite, which do not use the terrestrial spectrum (and are required to obtain authorisation); and broadcasting services via the Internet (which require registration only).²²⁰

Article 77 of the *Television Law* lists the “very serious breaches” that may allow ERC to revoke or suspend a license or authorization for television activity, together with the imposition of a fine that may vary between EUR 75,000 and EUR 375,000. Almost all breaches relate to technical or administrative issues, as well as to issues of non-concentration and transparency of ownership. Regarding content regulations, a programme may be suspended in the following situations:

- *for free-to-air television programmes* that “cause an obvious and serious harm to the free personality development of children and adolescents, namely programmes that include pornography or gratuitous violence;”²²¹
- *any programmes* that “incite hatred, racism or xenophobia” and are aired by a broadcaster that has committed such a breach at least twice in the course of the preceding 12 months;²²²
- *television operators* that “allow transmission time for political propaganda,” except for the cases previewed in the law, regarding either the right to broadcasting time and the right to political response (in what concerns the public service broadcaster), or the right of reply and right of rectification (in what concerns all television broadcasters).²²³

Under the *Radio Law*, radio broadcasters are bound by a set of “general obligations,” which include the “respect for the human dignity, especially the development of personality of children and adolescents,” to “ensure the broadcasting of a diversified programming, including regular information slots,” to “guarantee programming and information that are independent from political and economic powers,” to “guarantee information that observes pluralism, accurateness and independence,” to “guarantee the right of reply and of rectification as provided for in the Constitution and in the law.”²²⁴

Radio broadcasters are also obliged to comply with a set of content-based restrictions: “Radio programmes shall respect the dignity of human beings as well as fundamental rights, freedoms and guarantees;” radio programmes must not broadcast materials which “incite, through broadcasted

anacom.pt/render.jsp?contentId=1074024.

219 Articles 77, 81 and 82 of the *Television Law* (Law nr. 8/2011) define a series of “very serious breaches” to the operators’ obligations (mainly technical, administrative and financial obligations) that may lead to fines and/or to suspension and revocation of the licenses, available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

220 *Television Law* (Law nr. 8/2011), Article 13, available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

221 *Television Law* (Law nr. 8/2011), Article 27 (3), Article 77 and Article 86, available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

222 *Television Law* (Law nr. 8/2011), Article 27 (2), Article 77 and Article 86, available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

223 *Television Law* (Law nr. 8/2011), Article 31 and Articles 58-69, available in Portuguese at: http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf.

224 *Radio Law* (Law Nr. 54/2010), Article 32, unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

programme elements, hatred on grounds of a racial, religious or political nature, or based on colour, ethnic or national origin, sex or sexual orientation;” and “[r]adio operators shall not allow political propaganda airtime in any way, without prejudice to provisions in this law on the right to airtime.”²²⁵

Articles 69 and 70 in the *Radio Law* establish the amount of fines for breaches of this law (ranging from EUR 1,250 to EUR 100,000, according to the seriousness of the breach), as well as the conditions under which a programme may be suspended. Most of these conditions refer to administrative, technical or financial questions. As for content issues, the breach of the obligation not to broadcast materials which incite to “hatred on grounds of a racial, religious or political nature, or based on colour, ethnic or national origin, sex or sexual orientation,” as well as the obligation not to allow political propaganda airtime (except in the situations previewed in the law), also may lead to the suspension of a programme or of a license or authorisation.²²⁶

As for the revocation of radio licenses or authorisations, the law defines the cases when ERC may impose this sanction: (a) when licensed programme services “do not start within the time-limit set out” by the concession, or “in the absence of broadcasts for a period exceeding two months”; (b) when “the programme service is operated by a body other than the legitimate license or authorization holder;” or (c) in the case of “radio operator’s insolvency.”²²⁷ The ERC may also suspend or revoke a radio broadcasters’ license on additional technical grounds, such as failure to broadcast, failure to broadcast with an appropriately strong signal, or inability to meet basic administrative requirements. The suspension of radio programmes for a maximum of 30 days is also possible as a complimentary sanction to financial penalties, in the case of aggravated breaches to the operators’ obligations defined in their licenses and authorizations. Suspensions can be appealed in court, and the suspension of a broadcast license or authorisation can be delayed for a period of three-to-12 months if the operator has not been convicted for a similar breach in the year before.²²⁸ When the sanction of suspension of a programme is imposed to an operator for the third time in a three-year period, it turns to license revocation.²²⁹

As mentioned previously, the only cases of revocation of a license under the previous law were for small radio broadcasters who could not meet the technical requirements of their licenses. To this author’s knowledge, a television license was never suspended or revoked. But in some cases—for example, in the interim evaluations of the major free-to-air national operators, RTP, SIC and TVI— the ERC has made suggestions and recommended changes so those operators can better meet the obligations of their concession contracts.

Suspension or revocation of broadcast licenses on content-related grounds however is most unusual in Portugal. One of the rare situations in which ERC decided to open a legal proceeding in order to impose a fine against a medium for reasons of content, was the primetime broadcast of the entire sequence of Saddam Hussein’s hanging in Iraq by commercial channel TVI. After a complaint by a viewer, ERC publicly criticised TVI and decided to open legal proceedings against the station on the ground of a “serious breach” of its ethical and legal duties, particularly the duty to respect the dignity of all human beings (Article 27 of the *Television Law*) and prohibiting

225 *Radio Law* (Law Nr. 54/2010), Article 30, unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

226 *Radio Law* (Law Nr. 54/2010), Article 30 (2 and 3), Article 69 and Article 70, unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

227 *Radio Law* (Law Nr. 54/2010), Article 73, unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

228 *Radio Law* (Law Nr. 54/2010), Article 70 (3), unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

229 *Radio Law* (Law Nr. 54/2010), Article 70 (5), unofficial English translation available at: <http://www.anacom.pt/render.jsp?contentId=1074024>.

broadcasting images of unnecessary violence. At the same time, ERC decided not to initiate infringement proceedings against the public channel RTP or the commercial channel SIC. On the contrary, they were praised because both stations dealt with the issue of Saddam Hussein's hanging in a more careful way, with greater concern for the use of raw images.²³⁰ The TVI case is still being decided in the courts.

Any ERC decision concerning the imposition of a penalty or of a sanction leads to the opening of the necessary legal proceedings in a court, during which the operator can contest the charges and state its case. This process may last for years, as with the ongoing case of TVI. Appeals do not have a suspensive effect on the ERC's decisions, unless a specific judicial order for it is asked and granted. The court's decisions can be further appealed to a higher court, and on appeal, to the level of the Supreme Court.

Example cited by Hungarian Government: SLOVAKIA

“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. Similar authority is bestowed upon [...] Slovakia's RVR.”²³¹

Expert assessment

Dr. Andrej Skolkay, School of Communication and Media, Bratislava,

In general, this statement is correct: The sanctioning powers of the Council for Broadcasting and Retransmission (RVR)²³² are quite strong and include revocation of a license or suspension of a part of the programme not only as the last measure but in some cases also as an immediate regulatory step.²³³ But because the example cited above does not refer to specific details of how these regulations are implemented, the statement about the RVR's general regulatory oversight and powers is possibly misleading. The RVR's sanctioning powers extend only to the media under its regulatory supervision, as granted in the *Law on Broadcasting and Retransmission*: TV and radio broadcasting, retransmission, online TV broadcasting and on-demand audiovisual services. Print and non-commercial online broadcasting as well as online radio broadcasting are not regulated under this Act, and therefore cannot be sanctioned by the RVR.²³⁴ The print sector is regulated by the Press Council, a self-regulatory body, and the Ministry of Culture, which has a limited competency to sanction the press under the *Press Act* (2008).²³⁵ In addition, the Telecommunications

230 <http://www.erc.pt/download/YToyOntzOjg6ImZpY2hlaXJvIjtzOjM5OjIjZWRpYS9kZWNPc29lcy9vYmplY3RvX29mZmxpbmUvMTA2MC5wZGYiO3M6NjoidGl0dWxvIjtzOjI0OjIjZWRpYmVvYWNhby0xLWxsYy10djIwMDciO30=/deliberacao-1-llc-tv2007>.

231 This example was cited by the Hungarian Government under both “Criticism 1,” and “Criticism 18” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

232 Council for Broadcasting and Retransmission (RVR): <http://www.rada-rtv.sk/en/>.

233 Based on cases explicitly enumerated in the *Law on Broadcasting and Retransmission* (Act No. 308/2000 Coll. on Broadcasting and Retransmission), http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

234 The print sector is largely self-regulated via codes of ethics established by the Slovak Press Council: <http://www.slovakia.culturalprofiles.net/?id=9417>.

235 *On periodicals and agency news service and the amendment and supplementing of certain acts* (Act 167/2008, the

Authority has competencies over the electronic and digital communications sector.

As noted, the RVR regulates public and private TV (including select Internet broadcasting) and on-demand audiovisual media services independent of the technology used.²³⁶ Public and private Internet radio, including online music and similar on-demand services, is not “broadcasting” according to the law and therefore are not regulated by the RVR. TV broadcast exclusively through the Internet and providers of on-demand services are under (softer) sanctioning powers by the RVR, but they do not need a license (although notification is required).

The RVR can use a range of sanctions against media under its oversight for breaches to a number of technical and content-related regulations and obligations contained in the *Law on Broadcasting and Retransmission*. Content regulations include a set of “duties” which oblige media to ensure plurality of opinions, objectivity and non-partiality of news and current affairs programmes,²³⁷ and to distinguish facts from opinions and to uphold rules for broadcasting during elections campaigns.²³⁸ In addition, there are a number of provisions in concerning the protection of human dignity,²³⁹ the protection of minors,²⁴⁰ and the right of reply,²⁴¹ along with programme quotas for European works and independent producers. For instance, concerning the protection human dignity, broadcasters are prohibited from transmitting programmes which: “propagate violence and in a hidden or open form instigate hatred on the basis of gender, race, colour of skin, language, faith and religion, political or other thinking, national or social origin, membership in a national or ethnic group; “propagate war or describe cruel or other inhumane behaviour by means which means inappropriate trivialise, excuse or approve of it;” or “depict without justification scenes of actual violence where an actual account of dying is emphasized in an inappropriate form, or depict persons subjected to physical or psychic suffering in a way which can be considered an unjustified attack on human dignity; this is valid even when it affects persons who have agreed with such depiction.”²⁴²

For breaches to the above regulations, the RVR can: (a) warn the broadcaster of the infringement; (b) require the broadcaster to announce the infringement;²⁴³ (c) suspend part of or the entire programme in breach of the law; (d) impose a fine; (e) withdraw the license. The law also specifies two conditions when the RVR to revoke a license immediately: first, if the broadcaster propagates violence and in open or hidden form incites to hatred, vilifies, or defames on the basis of gender, race, colour of skin, language, belief or religion, political or other opinion, ethnic or social origin or membership to a nationality or ethnic group; second, if the broadcaster promotes war or depicts cruel or in other way inhumane behaviour in a way that it is improper derogation, apology or approval. However, this can only be done if the broadcaster despite previous sanctions has repeatedly and deliberately and seriously continued to breach these rules.

“Press Act”). The National Council of the Slovak Republic, 9 April 2008.

<http://www.culture.gov.sk/uploads/3q/P0/3qP0AW8PvDmgayCVare-sg/act-168.pdf>. This act was amended in 2011.

²³⁶ This present legal regulation of electronic/digital media is based on technological neutrality and covers audiovisual media services regardless of the technology used for transmission (which includes the Internet), in line with the EU Audiovisual Media Services Directive.

²³⁷ *Law on Broadcasting and Retransmission*, §16(a), available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²³⁸ *Law on Broadcasting and Retransmission*, §16(b) and §16(c), available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²³⁹ *Law on Broadcasting and Retransmission*, §19, available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²⁴⁰ *Law on Broadcasting and Retransmission*, §20, available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²⁴¹ *Law on Broadcasting and Retransmission*, §21, available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²⁴² *Law on Broadcasting and Retransmission*, §19(2), available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²⁴³ The RVR can require the broadcaster to transmit an announcement “when purposeful and necessary to inform the public” about the infringement. The RVR determines the extent, form and broadcasting time of the announcement.

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The RVR can impose a fine if the broadcaster, operator of retransmission (either legal or natural person), or provider of audiovisual on demand media services, after a written warning from the RVR, repeatedly breaches the obligation of which it was previously warned.²⁴⁴ As noted, the RVR can also set a fine *without previous warning* for various breaches of broadcasting obligations, including violating regulations on respecting human dignity and the protection of minors.²⁴⁵ The fining structure varies according to different media, for instance, the RVR can levy fines up to (EUR 165,000) for commercial television broadcasters and (EUR 49,000) for commercial radio broadcasters for violations to obligations regarding protection of minors. In these cases, the RVR can also require these outlets—including Internet broadcasters—to a broadcast an announcement of the violation²⁴⁶ or order a temporary suspension.²⁴⁷

The RVR can suspend for no more than 30 days a broadcast of a particular show for serious breaches to both technical and above mentioned content-related broadcasting obligations contained in the *Broadcasting and Retransmission Act*.²⁴⁸ Internet, audiovisual on-demand broadcasters and retransmissions of foreign broadcasts are again under softer regulations. For license revocations, the RVR is empowered to terminate a broadcast license for airing content which “repeatedly intentionally and seriously” breaches the obligations to protect human dignity despite imposed sanctions.²⁴⁹

The RVR has issued more than 1,000 sanctions since 2000. The total amount of fines during this period was about EUR 3.3 million. During this period, there have been 15 cases of revocation/termination of radio licenses, about 45 cases of revocation/termination of TV licenses, in addition to over 80 cases of revocation/termination of registrations for retransmission. Most of these cases were not related to content but rather for breaches to technical requirement of licenses, such as either the illegal transfer of ownership rights.

The RVR applies three general principles in its sanctioning decisions: “prevention,” “graduality” and “adequacy,” which means that the RVR determines the level of sanction while taking into account seriousness, method, duration, consequences and impact of the breach along with any sanctions imposed by the self-regulatory body. The RVR does not have any powers to sanction editors in any way, but this can be done indirectly by broadcasters themselves through the Labour Code or other internal regulations of broadcasters.

Media outlets can appeal to the RVR’s revocation decisions to the Supreme Court within fifteen days of the decision. Sanctions are often automatically suspended (with some exceptions when sanctions enter into force immediately) when they are challenged at the Supreme Court. Between 2000 and 2009, there were over 170 Supreme Court cases involving the RVR’s decisions. In most cases, the decision of the RVR has been upheld by the Supreme Court, and in a minority of cases

²⁴⁴ Fines are detailed in §67, *Law on Broadcasting and Retransmission*, available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²⁴⁵ *Law on Broadcasting and Retransmission*, §19, §20(1) and §20(3), available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²⁴⁶ *Law on Broadcasting and Retransmission*, § 64 - §65, available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²⁴⁷ *Law on Broadcasting and Retransmission*, § 66, available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²⁴⁸ *Law on Broadcasting and Retransmission*, §66(1), available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf.

²⁴⁹ *Law on Broadcasting and Retransmission*, §54(1)(e), available at: http://www.culture.gov.sk/uploads/88/tA/88tAUy0RyjKu4YqYKYRqew/act_broadcast.pdf; According to §19(2)(a): a programme service and all of its parts must not: “propagate violence and in a hidden or open form instigate hatred on the basis of gender, race, colour of skin, language, faith and religion, political or other thinking, national or social origin, membership in a national or ethnic group; and §19(2)(c) “depict without justification scenes of violence where an actual account of dying is emphasized in an inappropriate form, or depict persons subjected to physical or psychic suffering in a way which can be considered an unjustified attack on human dignity; this is valid even when it affects persons who have agreed with such depiction.”

(about 15 percent) the Supreme Court overturned the decision of the RVR. In exceptional cases, the decisions of the Supreme Court can be appealed to the Constitutional Court, which occurred twice in the past 10 years.

It should be noted, too, that there are other authorities with sanctioning powers in Slovakia: the Telecommunications Regulatory Authority has some competency over digital broadcasting, frequencies and ownership,²⁵⁰ and the Ministry of Culture can also sanction the media under the *Press Law*, specifically with regards to a print publication's failure to publish a public announcement in "urgent public matters" or for failure to inform the Ministry about changes to the corporate/ownership data within 30 days.²⁵¹

Example cited by Hungarian Government: SLOVENIA

*"APEK, Slovenia's regulatory body, may sanction in the form of issuing warnings, imposing fees, banning advertisements or suspending/revoking a broadcaster's license."*²⁵²

Expert assessment

Brankica Petković, The Peace Institute, Ljubljana

The reference to APEK's sanctioning powers is not accurate. Only some of the sanctioning powers mentioned in the statement are actually assigned to APEK, while one (banning advertisements) was dismissed in 2006, and the other (imposing fees) inaccurately represents the context of this regulation. The provision allowing APEK to ban advertisements was deleted from the *Mass Media Act* when it was amended in 2006.²⁵³ Furthermore, while APEK can impose a *fee* for use of a broadcast or telecommunications frequency,²⁵⁴ the statement above implies the authority can "sanction" with fees; however, the fees for frequency usage are not a punishment. APEK has no power to impose fines for violations to content-based requirements in the media laws. Its sanctioning powers do include license revocations, although APEK has never done so.

It is also not accurate to describe APEK as "Slovenia's regulatory body" as there are a number of additional bodies responsible for overseeing media in Slovenia, including the Media Inspectorate, the Broadcasting Council, and the Ministry of Culture, each with different competencies and sanctioning powers over different areas of media. APEK is the regulatory authority for broadcast media. The Media Inspectorate has a wider scope of authority over the media in general, including print and broadcasting, and can impose fines and sanctions not only on broadcast and print media outlets but in some cases on the responsible officers of these media as well.²⁵⁵ The *Mass Media Act*

250 Telecommunications Regulatory Authority of the Slovak Republic, <http://www.teleoff.gov.sk/index.php?ID=9>.

251 *On periodicals and agency news service and the amendment and supplementing of certain acts (Act 167/2008, the "Press Act")*. The National Council of the Slovak Republic, 9 April 2008.

<http://www.culture.gov.sk/uploads/3q/P0/3qP0AW8PvDmgayCVare-sg/act-168.pdf>. This act was amended in 2011.

252 This example was cited by the Hungarian Government under "Criticism 1" and "Criticism 18," in "Criticisms and answers formulated on the subject of the proposed media act examined in a European context," Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

253 The *Mass Media Act* (2006), available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

254 Article 6 of the *Electronic Communications Act (2004)*, available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/electronic_communications_act_official_consolidated_version_zekom-upb1_unofficial_translation_english.pdf.

255 See the Inspectorate for Culture and Media within the web site of the Ministry of Culture at: <http://www.mk.gov.si/en/>

in fact specifies numerous violations for which leading officers can be sanctioned.²⁵⁶

APEK (the Agency for Post and Electronic Communication) was created in 2006 as a “convergent” regulatory body for (broadcast) media, telecommunications and postal services.²⁵⁷ Its powers to supervise implementation of regulations in the field of broadcasting are established in the *Mass Media Act* (adopted in 2001 and amended in 2006). Its power to manage the radio frequency spectrum is established through the *Electronic Communications Act* (2004), which has been amended several times. According to the previous version of the *Mass Media Act* (2001), prior to amendments adopted in 2006, APEK had the power to “temporarily prohibit the publication of commercial advertising (advertisements, sponsorship) for a maximum of three months if it determines that the publisher, despite a warning and the stipulation of a period as specified in the first indent of this paragraph, is infringing the provisions of the act governing advertising or sponsorship.”²⁵⁸ But that provision was deleted from the *Mass Media Act* when it was amended in 2006. According to the current *Electronic Communications Act*, APEK has power to collect annual fees from broadcasters for the radio frequencies they use.²⁵⁹ The same Act grants APEK the power to impose fines on operators for breaches to technical rules established through the regulation. But these fines are not based on content.

The *Mass Media Act* (2006) includes content regulations for all media under that law’s scope—newspapers, magazines, radio and television programmes, electronic publications, teletext and other forms of edited programming and materials (written, audiovisual) disseminated to the public.²⁶⁰ These regulations include restrictions related to the protection of minors, prohibition of incitement to inequality and intolerance, particularly detailed and controversial provisions on the right to correction and reply, as well as programme quotas for proportion of Slovenian, European and independent audiovisual works, and restrictions on product placements and advertising.

APEK’s supervisory and sanctioning powers are established clearly in the law.²⁶¹ APEK can sanction broadcasters by using graduated sanctions, which start with written warnings and gradually grow more severe. In sanctioning violations of the *Mass Media Act*, including for failing to fulfill programme requirements, APEK can issue a written warning to the broadcaster, can temporarily suspend a license to use a frequency for a maximum of three months and can revoke a license of the broadcaster for performing activities.²⁶² Thus far, APEK has never revoked the license of a broadcaster. At present, APEK uses mild sanctions, such as written warnings, and as a next step, the temporary suspension of a license. APEK’s suspensions have never lasted for the maximum period of three months anticipated in the *Mass Media Act*.²⁶³ The procedure allows for

about the ministry/bodies under the responsibility of the ministry/.

256 Article 129 to Article 148a of the *Mass Media Act* contains provisions on fines that shall be imposed upon a publisher or broadcaster for a certain infringements, available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

257 APEK (the Agency for Post and Electronic Communication), available at: <http://www.apek.si/en>.

258 Article 109(3) of the 2001 version of the *Mass Media Act*, available at: http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

259 Article 6 of the *Electronic Communications Act*.

http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/electronic_communications_act_official_consolidated_version_zekom-upb1_unofficial_translation_english.pdf.

260 The scope of the *Mass Media Act* (2006), according to Article 2(1), is: “newspapers and magazines, radio and television programme services, electronic publications, teletext and other forms of editorially formulated programme published daily or periodically through the transmission of written material, vocal material, sound or pictures in a manner accessible to the public; (2) Under the present Act programme comprises information of all types (news, opinion, notices, reports and other information) and works under copyright disseminated via mass media for the purpose of informing the public, satisfying the public’s cultural, educational and other needs, and communicating on a mass basis.”

261 Article 109(2) of the *Mass Media Act* (2006).

262 Article 109(3) of the *Mass Media Act* (2006), http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

263 Article 109, *Mass Media Act* (2006), http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

appeals of APEK's decisions in administrative court.

As noted previously, the *Mass Media Act* delineates various supervisory powers to the Media Inspector, the Broadcasting Council and to Ministry of Culture itself; and the Broadcasting Council. The Media Inspector is a supervisory body with power to impose sanctions not only on broadcast media but also on other media covered by the *Mass Media Act*. The Media Inspector can impose a fine on a broadcaster, operator or publisher but in some cases on a responsible officer of a broadcaster, operator or publisher.²⁶⁴ The fines range from as low as EUR 125 to as much as EUR 100,000 (amounts are still based on the old Slovenian tolar). If the Inspector issues a warning or non-fine sanction, the decision can be appealed to the ministry. When an inspector issues a fine, it can be appealed in a district court as a minor offense.

It is worth mentioning that APEK has no collective decision-making body, but has only a director with governing powers. Since the director is appointed by the Government, there have been many controversies over replacements of APEK's directors with the changes of the government. The role and performance of Media Inspector is also controversial, partly because it entrusts supervision over a wide range of provisions and media outlets to a single individual and partly because the Media Inspector in general has not effectively utilized its sanctioning powers when necessary. While the law seems to give the Inspector too much power, in practice the most common complaint is that there is insufficient monitoring of the many provisions in the *Mass Media Act*. Some have said one inspector is not enough.

All decisions by these regulatory bodies can be appealed in the administrative court, in which case, the decision is suspended. The administrative court's decision can be further appealed to higher courts. There have been number of cases in which broadcasters used the appeal procedure to oppose APEK's decisions. Although most appeals in court have gone in APEK's favour, some have been overturned. One well-noted case involved "Kmetija slavni" ("Farm of Celebrities"), a daily prime time commercial TV programme on POP TV. The case escalated in October and November 2009, when APEK received complaints from viewers and the public service broadcaster RTV Slovenija claiming that the program violates provisions in the *Mass Media Act* on protection of minors. After reviewing programme requirements and restrictions, APEK decided to issue a written warning to the broadcaster, requesting the station cease the infringement of the provisions on protection of minors in the *Mass Media Act* within the period of one month (the shortest period anticipated in the law). The broadcaster claimed it had not violated the law and appealed APEK's decision in the administrative court. The court decided in the broadcaster's favor.²⁶⁵

²⁶⁴ See Article 108 of the *Mass Media Act* (2006) where power of administrative and inspection supervision of the Act is given to the Ministry. See also Chapter Five of the *Mass Media Act* – "Penalty Provisions" (Article 129 – Article 148b) for information about fines, http://www.apek.si/sl/datoteke/File/2007/osebna%20izkaznica/public_media_act_official_consolidated_version_zmed+zmed-a_unofficial_translation_english.pdf.

²⁶⁵ The decision of APEK and press release related to the case are available in Slovenian language on APEK's website at: <http://www.apek.si/datoteke/File/2010/monitoring/0604.44.2009.23.pdf> Press release: http://www.apek.si/sl/agencija_za_posto_in_elektronske_komunikacije_ugotovila_krsenje_medijske_zakonodaje_v_resnicnostni_oddaji_kmetija.

Example cited by Hungarian Government: UK

“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.”²⁶⁶

Expert assessment

Lina Dencik, PhD, Visiting Faculty, Central European University, Budapest

Ofcom’s sanctioning authority does include the power to revoke licenses, but not for public service broadcasters (BBC, Channel 4 and S4C), the print press (which is managed by the self-regulatory body, the Press Complaints Commission) or online media (unless that content is operated by a television or radio broadcaster). It is also true 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. However, Ofcom has fixed internal regulations in place outlining broadcasting codes and rules related to competition and consumer protection. It is obliged to produce these codes under law, outlining any standards which, if breached, may lead to penalties. Ofcom must also publish its decisions, clearly outlining in what way a breach of standard has occurred. If Ofcom decides against a broadcaster, that broadcaster has the opportunity to request a review of the decision.

Ofcom’s sanctioning powers can be initiated as a result of citizen and consumer complaints or *ex officio*. These powers are established in a range of media-related legislation, including the *Communications Act of 2003*,²⁶⁷ the *Competition Act 1998*,²⁶⁸ the *Enterprise Act 2002*, the *Broadcasting Act 1990*, the *Broadcasting Act 1996*, and the *EU Regulations and the Wireless Telegraphy Act 2006*. In 2005, Ofcom also introduced a set of codes clearly outlining broadcasting standards that apply to all broadcasters, including the BBC and S4C.²⁶⁹ When a broadcaster breaches these codes deliberately, seriously or repeatedly, Ofcom may impose statutory sanctions against the broadcaster.²⁷⁰ Sanctions available to Ofcom include: a decision to issue a direction not to repeat a programme or advertisement; a direction to broadcast a correction or a statement of Ofcom’s findings; the imposition a financial penalty; the decision shorten or suspend a license (only applicable in certain cases); and/or the decision to revoke a license (not applicable to the BBC, S4C or Channel 4).

The *Communications Act 2003* requires Ofcom to prepare and publish a statement containing the guidelines for determining the amount of penalties imposed by Ofcom under the *Communications*

266 This example was cited by the Hungarian Government under “Criticism 1” and “Criticism 18,” in “Criticisms and answers formulated on the subject of the proposed media act examined in a European context,” Ministry of Public Administration and Justice, December 20, 2010, available at: <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/criticisms-and-answers-formulated-on-the-subject-of-the-proposed-media-act-examined-in-a-european-context>

267 See the *Communications Act 2003* at: <http://www.legislation.gov.uk/ukpga/2003/21/contents>.
268 See the *Competition Act 1998*, at: http://www.ofcom.gov.uk/shared_ofcom/leaflets/ca98_guidelines/ofcom417.pdf. Under the *Competition Act 1998*, Ofcom may issue such directions as it considers appropriate to bring infringements to an end in relation to anti-competitive agreements or abuses of a dominant position as set out in Chapter 1 and II of the *Competition Act 1998* and Articles 81 and 82 of the EC Treaty. It also has the power to impose financial penalties up to 10 percent of the worldwide turnover of the undertaking concerned.

269 See Ofcom’s Broadcasting Codes at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

270 <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>

Act or any other enactment (apart from the *Competition Act 1998*).²⁷¹ These guidelines are focused on weighing appropriate and proportionate penalties to ensure compliance.

In most cases the maximum financial penalty for commercial TV or radio licensees is £250,000 or 5 percent of the broadcaster's "Qualifying Revenue," whichever is greater. For licensed public service broadcasters the maximum financial penalty is 5 percent of its "qualifying revenue." For the BBC and S4C, the maximum financial penalty is £250,000.²⁷²

There have been several prominent cases in which Ofcom fined a broadcaster for breaches to the broadcasting codes: In 2009, for instance, Ofcom fined the BBC a record £150,000 for broadcasting "gratuitously offensive, humiliating and demeaning" prank phone calls aired over a BBC radio show made by Russell Brand and Jonathan Ross to actor Andrew Sachs.²⁷³

Ofcom is also empowered to revoke a license for breaches to the broadcasting codes as well as for violating condition of licenses and spectrum agreements, and for non-payment of license fees.²⁷⁴ Procedures for revocations start with a notification stating the reason for revocation and specifying the duration of the suspension or revocation. In the broadcasting sector, its revocation powers extend to commercial radio and television and do not include the BBC, S4C or Channel 4.

In 2010, Ofcom revoked four TV broadcast licenses owned by Bang Channels Limited and Bang Media Limited following serious and repeated breaches of the broadcasting code on the protection of viewers under 18.²⁷⁵ The licensees provided the following free-to-air adult chat services: Tease Me; Tease Me TV and Tease Me 2 and 3, in which viewers contact the on-screen female presenters via premium rate telephony services ("PRS"). During the daytime, the channels are not permitted to promote adult chat services and the material must be suitable for a pre-watershed audience (before 9 p.m. and after 5:30 a.m.), as defined by the broadcasting code.²⁷⁶ Ofcom had previously fined the two companies a total of £157,250 for serious breaches of the broadcasting code and other license conditions.

Appeals against OFCOM's decisions can be made to OFCOM, however all of Ofcom's decisions are subject to judicial review. The *Communications Act* also provides for appeals regarding competition-related decisions to be appealed in the Competition Appeal Tribunal (CAT), a special judicial body that decides cases involving regulatory issues in the UK. Decisions by that body can be appealed in the appropriate regional court.

271 <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>.

272 <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>

273 See "BBC Brand/Ross fine," Ofcom: <http://consumers.ofcom.org.uk/2009/04/bbc-brandross-fine/>

274 Procedures for the consideration of statutory sanctions in breaches of broadcast licenses <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>

275 See Ofcom Broadcasting Code on "Protecting the Under Eighteens." <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>.

276 See Ofcom Broadcasting Code on "Protecting the Under Eighteens." <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>.

Country experts: Biographies

AUSTRIA

Katharine Sarikakis (Phd) is a Professor of Media Governance at the Institute of Communication Science, University of Vienna. Prior to this, she was the founder and director of the Centre for International Communication Research at the University of Leeds, UK. She is also the chairperson of the Communication Law and Policy Section of the European Communication Research and Education Association (ECREA) and an elected member of the International Council of IAMCR. Her publications include: *Media Policy and Globalisation* (2006, with P. Chakravarty), *Powers in Media Policy* (2004) and *British Media in a Global Era* (2004). She is the editor of *Media and Cultural Policy in the European Union* (2007) and coeditor of the *International Journal of Media and Cultural Politics*.

BELGIUM

David Stevens (PhD) is a research manager and researcher at the Interdisciplinary Centre for Law & ICT of the Faculty of Law of the Catholic University of Leuven, Belgium. His academic expertise relates to the evolving role of governments and national regulatory authorities in the telecommunications and media sectors. He publishes regularly on communications and media law in Belgian, European and international journals and is a frequent speaker at national and international conferences. Since 2010, he has been a member of the editorial board of *Computerrecht*, a Dutch-Belgian journal on law and informatics.

CZECH REPUBLIC

Milan Šmíd (PhD) is an assistant professor of Journalism and Mass Communications at Charles University in Prague. He has authored numerous studies on the transformation of the electronic media in the Czech Republic and on European media policy. Prior to 1990, he worked for the former Czechoslovak Television, Department of Foreign Programs. In 1990 to 1991 he was a member of an expert group involved in drafting the country's *Broadcasting Law*. He has written a number of studies on broadcasting legislation commissioned by the Czech Parliament, and has participated as a country expert in several international research projects on European media developments and policy, including "Media Ownership and Its Impact on Media Independence and Pluralism" (Ljubljana 2004), a European Commission study on "Co-Regulation Measures in the Media Sector" (Hans Bredow Institut 2005), and *European Media Governance*, (Intellect Book 2008). Milan Šmíd regularly comments on media and on media policy at the webpage: www.louc.cz.

DENMARK

Erik Nordahl Svendsen served as the first director of the Mediasecretariat for the Radio and Television Board (RTB) when it was created in 2001. Prior to that, he served as head of the media research division for Denmark's public broadcaster, DR. He has researched and written extensively on regulation of public service broadcasting in Europe and is a frequent lecturer and an external examiner at Danish universities. His most recent publication, "From

Sovereignty to Liberalisation: Media Policy in Small European Countries,” appears in *Small Among Giants: Television Broadcasting in Smaller Countries* (eds. G.F. Lowe and C.S.Nissen, Nordicom 2011).

ESTONIA

Inka Salovaara (PhD) is an associate professor in the Department of Information and Media Studies at Aarhus University, Denmark. From 2004 to 2009 she served as an associate professor in Communication Studies at Tallinn University, Estonia. Her research focuses on new technology in relation to media and democracy in Europe, as well as comparative media system analysis, digital journalism, press freedom and pluralism. She has contributed chapters and articles to a number of collections and journals including the *European Journal of Communication*, *Qualitative Inquiry*, *The Communication Review*, *Journalism*, and *International Journal of Cultural Studies and Journal of Elections*. Her most recent books include: *Media Geographies. Newspapers and Economic Crisis* (2009) and *Manufacturing Europe: Spaces of Democracy, Diversity and Communication* (2009).

Andra Siibak (PhD) is a research fellow in media studies at the Institute of Journalism and Communication at the University of Tartu, Estonia, and a post-doctoral researcher at the School of Communication, Media and IT, at Södertörn University, Sweden. Her present research interests focus on generations and inter-generational relations in the information society. Her articles have appeared in several peer-reviewed journals, including *Young*, *Journal of Computer-Mediated Communication*, *Cyberpsychology*, *Journal of Children and Media*, and *Journal of Virtual Worlds Research*.

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Guy Druout (PhD) is a professor at the Institute of Political Studies in Aix-en-Provence (France). He teaches media law both at this Institute and at the Faculty of Law and Political Science of Aix-Marseille. His research field concerns media law and communications regulations. He is a member of the CHERPA Research Team at the Institute of Political Studies and of the IREDIC research team of the Faculty of Law. He has been a member of the Comité Territorial Audiovisuel of Marseille since 1990, and serves as vice president of the Standardization Committee of the Media & Society Foundation (Geneva).

FINLAND

Kari Karppinen (PhD) is a postdoctoral research fellow in the Department of Social Research of the University of Helsinki. He defended his doctoral thesis on the concept of media pluralism in 2010 and he currently works in the areas of media and democracy and media policy.

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GERMANY

Stephan Dreyer has been a staff member at the Hans Bredow Institute for Media Research since February 2002. His research interests include the legal aspects of new media services

EXPERTS' BIOGRAPHIES

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ITALY

Marco Bellezza (PhD) is an expert in European media law, internet law and intellectual property law. He graduated cum laude at the Faculty of Law of University of Bari ‘Aldo Moro’ in 2005, and holds a PhD in private law from the University of Bari. In addition to his academic work, he has been a practicing attorney in media and communications law at a national law firm in Italy since 2009. He is a member of the editorial board of the journal *medialaws.eu* and president of the Apulian Centre for Intellectual Property, a research center associated with the University of Bari. He recently completed a study on the implementation of the EU Audiovisual Media Services Directive at the Institute of European and Comparative Law at the University of Oxford.

Oreste Pollicino (PhD) is an associate professor of comparative public law in the Department of Law at Bocconi University in Milan. His research areas include European and comparative constitutional law, media law, and Internet law. He is the editor of *International Journal of Communications Law and Policy*, and a member of the editorial board of *Diritto Pubblico comparato ed europeo*, *Panoptica*, *Revista Eletrônica Acadêmica de Direito*, and *medialaws.eu*.

IRELAND

TJ McIntyre is a lecturer in the School of Law, University College Dublin. He is also a practising solicitor and consultant with Merrion Legal Solicitors, and is chairman of civil rights group Digital Rights Ireland. His blog, IT Law in Ireland, focuses on information technology law issues with a focus on freedom of expression, privacy and other fundamental rights: (www.tjmcintyre.com).

LATVIA

Linda Austere is a policy researcher working at the Centre for Public Policy in Riga, Latvia. She has a law degree from the University of Latvia and an MA in Public Policy (Media, Communications and Telecommunications) from Central European University in Budapest, Hungary. She is actively involved in research, advocacy and consulting in Latvia and abroad regarding management, use and re-use of public sector information, as well as with wider issues of quality of policy-making process. She served as advisor to the Minister of Defense (2009-2010) and is currently a member of the board of the Policy Association for Open Society (PASOS), an organisation that unites research centres and think tanks in Central Eastern Europe, South Caucasus and Central Asia.

LITHUANIA

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THE NETHERLANDS

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POLAND

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PORTUGAL

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EXPERTS' BIOGRAPHIES

new media. He has participated in a number of international research projects on issues of media monitoring, media pluralism and media regulation. He is a member of the European Communication Research and Education Association and of the International Association for Media and Communication Research. In January 2007, he completed his PhD dissertation on journalists' professional identity, ethics and self-regulation.

SLOVAKIA

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SLOVENIA

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SWEDEN

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SWITZERLAND

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UNITED KINGDOM

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Methodology

This project was designed as a targeted assessment of a set of examples rather than as a comprehensive comparative study, and as such, a structured questionnaire was inappropriate for this purpose. Rather, country experts were asked to conduct their analyses of each of the examples cited by the Hungarian Government by means of a semi-structured, six-step methodology. This common approach was designed to ensure balanced and comparable evaluations, while still leaving room to for experts to address the specific regulations cited by the Hungarian Government. In addition, country experts were asked to provide documentation of all relevant regulations, case law and/or materials (see “Documentation Guidelines” below). As such, country experts conducted the assessments following a six-step methodology:

Step 1: Identification and documentation of cited regulation(s)

Identify and provide the text of the specific regulation cited by the Hungarian Government. Provide an English-language translation, an official translation where one is available, or your own where one is not (specify your translation as your own in this case).

Step 2: Accuracy of the regulation’s citation

Assess the accuracy of the citation, in the Hungarian Government’s response, of the regulation(s) it refers to. In this step, country experts should address the following questions:

- Is the citation of the regulation by the Hungarian Government an accurate reflection of the content of the regulation?
- Is the citation of the regulation by the Hungarian Government complete in its description of the regulation in question?
- Specify any omissions, distortions, or mis-translations, where any occur in the citation of the specific regulation.

Step 3: Application of cited regulation

Detail how the regulation is implemented within the country’s broader media regulation environment. The following elements should be considered:

- Describe what additional policies, provisions or laws influence or serve as “checks” on how this regulation is applied/implemented in practice.
- Describe and document any case law, either national or international, in which this regulation has been considered or interpreted by the courts.
- Detail any stipulations/elements related to this regulation that might not be covered or addressed by the Hungarian Government’s statement.

Step 4: Enforcement of cited regulation

Describe the enforcement mechanisms and procedures related to the regulation cited in the Hungarian Government’s statements, addressing the following points:

- Is this regulation enforced? If so, how often, and what threshold for enforcement appears to be applied? Document any relevant instances in which this regulation was enforced.
- Identify the regulatory body which enforces and/or decides on the enforcement of this regulation.

- Identify the status of this regulatory body (i.e. a national regulatory agency; a self-governing press council; a government ministry, etc.), and its regulatory scope within the country's broader media regulation system.
- Explain what, if any, mechanisms are in place to “check,” review or appeal this regulatory body's decisions.

Step 5: Evaluation of statement

Evaluate the Hungarian Government's response to the criticism at hand by assessing the overall accuracy and relevance of the cited regulation(s).

- a) Evaluate, in one to two paragraphs, the accuracy of the Hungarian Government's presentation of the regulation, taking into consideration the information reviewed in Steps 2 through Steps 4.
- b) Evaluate, in one to two paragraphs, the adequacy and relevance of the Hungarian Government's response to the specific criticism. Is the example of the corresponding regulation cited by the Hungarian Government relevant to the criticism to which the government is responding? Does the corresponding example cited by the Hungarian Government sufficiently address the substance of the criticism, or cover only part of it?

Step 6: Evaluation of the regulation

Evaluate the overall quality and influence of the regulation in question in regards to its impact on press freedom in the cited country's media system, addressing the following points:

- a) Is this an “enabling” policy that works to safeguard press freedom?
- b) Or is this a press-restrictive regulation or policy that puts an undue burden on the press?
- c) Are there any controversies or issues around this regulation?
- d) Is anything being done, by free press groups, journalists or other organizations, to redress or challenge this policy?

Documentation Guidelines

Country experts were asked to follow these basic documentation guidelines throughout their assessments:

- Provide all available links or files to English-language sources of media regulations and/or policies referenced;
- Provide native (original) translations of the country's media regulations or related materials;
- Provide English-language (or native language where English is not available) translations of that country's media law(s);
- Personal translations of any material should be indicated as such;
- Provide links to country's media regulation authority, press council or any bodies involved in media regulation decisions;
- Provide links to any case law, domestic or international, referenced in the expert assessment;
- Any secondary sources must be attributed, with links or proper citation.

Laws referenced (by country)

AUSTRIA

Laws

Austrian Audiovisual Media Services Act (2001): <http://www.rtr.at/en/m/amdg>

Federal Constitutional Act (1974):

<http://zukunft.orf.at/rte/upload/texte/veroeffentlichungen/2010/neu/byg.pdf>

KommAustria Act (2001): <http://www.rtr.at/en/m/KOG>

ORF Act (2010): <http://www.rtr.at/en/m/ORFG/orfg-eng.pdf>

ORF-Gesetz (2001): <http://www.rtr.at/en/m/ORFG/orfg-eng.pdf>

Regulatory Bodies

Austrian Regulatory Authority for Broadcasting and Telecommunications:

<http://www.rtr.at/en/rtr/rtrgmbh>

Federal Communications Board: <http://www.rtr.at/en/m/BKS>

Komm Austria: <http://www.rtr.at/en/rtr/organekommaustria>

Telekom Control Commission: <http://www.rtr.at/en/rtr/tkk>

Self-regulatory bodies

Austrian Press Council

http://ethicnet.uta.fi/austria/code_of_ethics_for_the_austrian_press

Other Institutions

Austrian Public Broadcasting Corporation (ORF): <http://www.orf.at/>

BELGIUM

Laws

Decree on Audiovisual and Multimedia Services (2001): http://www.csa.be/system/documents_files/1440/original/20100101_D_cret_SMA_coordonn_.pdf?1299596452

Regulatory Bodies

High Council for the Audiovisual Sector (CSA) – French body

<http://www.csa.be/>

Media Council (Medien-rat) – German body

Media Regulatory (VRM) – Flemish body

<http://www.vlaamseregulatormedia.be/nl/home.aspx>

CZECH REPUBLIC

Laws

Act on Czech Television (Law no. 483/1991): <http://www.ceskatelevize.cz/english/act-on-czech-television/>

“Broadcasting” Act <http://www.mkcr.cz/en/media-a-audiovize/act-no--231-2001--of-17-may-2001--on-radio-and-television-broadcasting-and-on-amendment-to-other-acts-84912/>

Regulatory Bodies

Council for Radio and Television Broadcasting (RRTV): <http://www.rrtv.cz/cz/>

Czech News Agency (CTK): http://www.ctk.eu/about_ctk/

Czech Radio Council (CRC): <http://www.rozhlas.cz/english/council/>

Czech Television Council (CTC): <http://www.ceskatelevize.cz/english/the-czech-television-council/>

DENMARK

Laws

Media Liability Act (1998): <http://www.pressnaevnet.dk/Information-in-English/The-Media-Liability-Act.aspx>

Radio and Television Broadcasting Act 2001: <http://www.kum.dk/Documents/English%20website/Media/Promulgation%20of%20the%20Radio%20and%20Television%20Broadcasting%20Act%202010.pdf>

Regulatory Bodies

Agency for Library and Media -Danish Media Authority (MTS): <http://www.bibliotekogmedier.dk/english/>

Minister of Culture: <http://www.kum.dk/english>

Radio and Television Board (RTB): <http://www.bibliotekogmedier.dk/english/radio-and-tv/radio-and-television-board/>

ESTONIA

Laws

Advertising Act (1997): http://www.aeforum.org/reg_env/estonia_2.PDF

Estonian Constitution: <http://www.legaltext.ee/text/en/X0000K1.htm>

Media Services Act (2010): <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=xxxxxx01&keel=en&pg=1&ptyyp=RT&tyyp=X&query=media+services+act>

Obligations Act (2002): http://www.legaltext.ee/en/andmebaas/paraframe.asp?loc=text&lk=et&sk=en&dok=X30085K2.htm&query=collateral&tyyp=SITE_X&ptyyp=I&pg=1

Regulatory Bodies

Ministry of Culture: <http://www.kul.ee/index.php?lang=en>

Technical Surveillance Authority (TJA): <http://www.tja.ee/?lang=en>

LAWS REFERENCED

FINLAND

Laws

Act on Communications Administration:

<http://www.finlex.fi/fi/laki/kaannokset/2001/en20010625.pdf>

Act on Conditional Fines: <http://www.finlex.fi/fi/laki/>

Act on the Finnish Broadcasting Company:

http://avoinyyle.fi/www/en/liitetiedostot/yle_act_en19931380.pdf

Act on Radio and Television Operations:

<http://www.finlex.fi/en/laki/kaannokset/1998/en19980744.pdf>

Act on Postal ServicesL <http://www.finlex.fi/en/laki/kaannokset/2001/en20010313.pdf>

Act on the Protection of Privacy and Data Security in Telecommunications (As Amended in 516/2004 of the Act on the Protection of Privacy in Electronic Communications):

<http://www.finlex.fi/en/laki/kaannokset/2004/en20040516.pdf>

Act on State Television and Radio Fund:

<http://www.finlex.fi/fi/laki/kaannokset/1998/en19980745.pdf>

Act on Television and Radio Operations:

<http://www.finlex.fi/fi/laki/kaannokset/1998/en19980744.pdf>

Communications Market Act: <http://www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf>

Domain Name Act: <http://www.finlex.fi/en/laki/kaannokset/2003/en20030228.pdf>

Radio Act: <http://www.finlex.fi/fi/laki/kaannokset/2001/en20011015.pdf>

Regulatory Bodies

Administrative Council of YLEL <http://web.eduskunta.fi/Resource.phx/parliament/organs/administrativecouncilofthefinnishbroadcastingcompany.htx>

Consumer Ombudsman: <http://www.kuluttajavirasto.fi/en-GB/consumer-agency/organisation/>

Finnish Communications Regulatory Authority (FICORA): <http://www.ficora.fi/en/>

Ministry of Transport and Communications: <http://www.lvm.fi/web/en/home>

Independent Bodies

Council of Ethics in Advertising: http://www.keskuskauppakamari.fi/site_eng/Services/Expert-Services/Statements-on-Ethical-Advertising

Council for Mass Media: <http://www.jsn.fi/en/>

Other Institutions

Yleisradio Oy (YLE) Finnish Broadcasting Company: <http://avoinyyle.fi/www/en/index.php>

FRANCE

Laws

European Union Audiovisual Media Service Directive: http://ec.europa.eu/avpolicy/reg/avms/index_en.htm

Freedom of Communication Act of 1986: http://www.csa.fr/upload/dossier/loi_86_english.pdf

Freedom of the Press Law of 1881: <http://archive.equal-jus.eu/160/>

“HADOPI” Law 2009: <http://www.senat.fr/dossier-legislatif/pjl07-405.html>

“Loppsi” Internet Security Law 2011: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023707312&dateTexte=&categorieLien=id>

Regulatory Bodies

High Authority for Transmission of Creative Works and Copyright Protection on the Internet: <http://www.senat.fr/dossier-legislatif/pjl07-405.html>

High Council for Broadcasting (CSA): <http://www.csa.fr/>

Ministry of Culture and Communication: <http://www.frenchculture.org/spip.php?article582&tout=ok>

Ministry of Justice: <http://www.justice.gouv.fr/>

Independent Bodies

French National Union of Journalists (SNJ): http://www.snj-afp.org/article.php3?id_article=23

Other Institutions

France Public Radio: <http://www.radiofrance.fr/>

France Television: <http://www.francetelevisions.fr/>

GERMANY

Laws

Administrative Offenses Act: http://www.gesetze-im-internet.de/owig_1968/BJNR004810968.html

Interstate Treaty on Broadcasting and Telemedia (RStV) (2010): http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/13._RStV-englisch.pdf

Interstate Treaty on the Protection of Minors (JMStV) (2002): http://www.kjm-online.de/files/pdf1/_JMStV_Stand_13_RStV_mit_Titel_englisch.pdf

Regulatory Bodies

Commission for the Protection of Minors in the Media (KJM): <http://www.die-medienanstalten.de/profile/organisation/commission-for-the-protection-of-minors-in-the-media-kjm.html>

HUNGARY / GENERAL

Laws

Act 82/2010 revising the Electronic Communications Act 2003 & 1996 Law on Radio and Television Broadcasting: <http://www.kozlonyok.hu/nkonline/MKPPDF/hiteles/mk10129.pdf>

Electronic Communications Act 2003: <http://www.kozlonyok.hu/nkonline/MKPPDF/hiteles/mk10129.pdf>

Act on Radio and Television Broadcasting (1996): <http://www.nhh.hu/dokumentum.php?cid=10622>

Media Act (Act 82/82010 & Act CLXXXV – On Media Services and Mass Media 2010): <http://nmhh.hu/dokumentum.php?cid=26536>

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Press Freedom Act, before amendments: http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_civ_media_content.pdf

Press Freedom Act, as amended March 2011: http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/act_CIV_of_2010_press_freedom_and_fr_of_media_content.pdf

Regulatory Bodies

National Media and Infocommunications Authority (Media Council): <http://www.nmhh.hu/index.php?lang=en>

Other Institutions

Public Service Foundation: <http://nmhh.hu/dokumentum.php?cid=26536>

Media Service Support and Asset Management Fund (MTVA): <http://nmhh.hu/dokumentum.php?cid=26536>

IRELAND

Laws

Broadcasting Act 2009: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/>

Defamation Act 2009: <http://www.irishstatutebook.ie/2009/en/act/pub/0031/>

Regulatory Bodies

Broadcasting Authority of Ireland (BAI): <http://www.bai.ie>

Censorship of Publications Board: http://www.justice.ie/en/JELR/Pages/Publications_censorship

Irish Film Classifications Office: <http://www.ifco.ie/>

Independent Bodies

Advertising Standards Authority of Ireland: <http://www.asai.ie/>

Press Council: <http://www.presscouncil.ie/>

Press Ombudsman: <http://www.pressombudsman.ie/>

ITALY

Law

Article 595 of the Criminal Code: http://dbase.ipzs.it/cgi-free/db2www/notai/arti.mac/TESTO?datagu=10/28/1930&redaz=030G1398&nprv=&subart=1&nart=&ggprv=&mmprv=&aapr=&tipo=&progr=0&emett=&mat=&swpag=12E_cod&gruppo=54&rc_count=1&maxrec=&danumrec=1&attinorm=&publdal=&dataagg=&tit=&sw1=0&wart=595&vers=1&testo=&cntart=&allmax=&cntal=0&allmin=&num_art=2990&gruppo_codici=54

Broadcast Law (223/1990): <http://www.agcom.it/default.aspx?message=viewdocument&DocID=2055>

Competition Law 481/95 (1995): http://www.autorita.energia.it/it/inglese/about/legge_istitutiva.htm

Consolidated Act on Radio and Television (2005): <http://www.camera.it/parlam/leggi/deleghe/testi/05177dl.htm>

Law of Rights and Duties of Journalists (69/1963) (As lastly amended by Legislative Decree of March 26th, 2010, nr. 59): <http://www.odg.it/content/legge-n-691963>

Maccanico Law (249/1997): http://www2.agcom.it/L_naz/L_249.htm

Press law (1948): http://www.fnsi.it/Pdf/Leggi/Legge_Stampa_del_1948.pdf

Press Law Act (2001): <http://www.camera.it/parlam/leggi/deleghe/testi/01170dl.htm>

Regulatory Bodies

Communications Regulatory Authority (AGCOM): <http://www.agcom.it/>

Antitrust Authority (AGCM): <http://www.agcm.it/>

Registry of Communication Operators

Ministry of Economic Development: http://www2.comunicazioni.it/english_version/english_news/pagina100.html

Order of Journalists: <http://www.odg.it/>

Parliamentary Commission on Public Broadcasting

Parliamentary Commission on Radio and Television: <http://www.parlamento.it/bicamerale/43775/43777/48818/48821/paginabicamerale.htm>

Privacy Authority: <http://www.garanteprivacy.it/garante/doc.jsp?ID=1669109>

LATVIA

Laws

Administrative Violations Code:

http://www.knab.gov.lv/uploads/free/extract_admin_violations_code.pdf

Regulatory Bodies

National Electronic Mass Media Council (NEPLP): <http://www.nrtp.lv/lv/padome/par-padomi/>

LITHUANIA

Laws

Code of Journalistic Ethics: http://ethicnet.uta.fi/lithuania/code_of_ethics_of_lithuanian_journalists_and_publishers

Law for the Protection of Minors Against the Detrimental Effect of Public Information:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363137

LAWS REFERENCED

Law on Protection of Personal Data: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400103

Law on National Radio and Television: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=383728

Media Law: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392982

Regulatory Bodies

Lithuanian Ministry of Culture: <http://www.lrkm.lt/>

Lithuanian Radio and Television Commission (LRTK): <http://www.rtk.lt/en/>

Office Inspector of Journalist Ethics: http://www3.lrs.lt/pls/inter/zetika?r_id=6207&k_id=1&d_id=96765

Independent Bodies

Journalists and Publishers Ethics Commission: http://ethicnet.uta.fi/lithuania/code_of_ethics_of_lithuanian_journalists_and_publishers

THE NETHERLANDS

Laws

Media Act (2008): http://wetten.overheid.nl/bwbr0025028/volledig/geldigheidsdatum_12-09-2011

Media Decree (2008): http://wetten.overheid.nl/BWBR0025036/geldigheidsdatum_12-09-2011

Regulatory Bodies

Council for Public Administration (ROB): <http://www.rfv.nl/default.aspx?inc=home&skin=Rob>

Media Authority: <http://www.cvdm.nl/content.jsp?objectid=7264>

Minister for Education, Culture and Science: <http://english.minocw.nl/>

POLAND

Laws

Broadcasting Act (1992): http://www.krrit.gov.pl/Data/Files/_public/pliki/office/broadcasting-act_10-08-2011.pdf

Regulatory Bodies

National Broadcasting Council (KRRiT): <http://www.krrit.gov.pl/en/>

PORTUGAL

Laws

Portuguese Constitution: http://app.parlamento.pt/site_antigo/ingles/cons_leg/Constitution_VII_revisao_definitive.pdf [Official translation into English made by the Parliament].

ERC Statute (Law Nr. 53/2005): <http://www.erc.pt/documentos/legislacaosite/lei53.pdf>

Press Law (Law Nr. 2/99, as amended by the law Nr. 18/2003): <http://www.ics.pt/index.php?op=fs&cid=88&lang=pt>

Radio Law (Law Nr. 54/2010): http://www.gmcs.pt/download.php?dir=111.513&file=lei__54_2010_lei_da_radio.pdf [Unofficial translation into English available at: <http://www.anacom.pt/render.jsp?contentId=1074024>]

Television Law, now renamed Television and Audiovisual Services on Demand Law (Law Nr. 27/2007, as amended by the law nr. 8/2011): http://www.gmcs.pt/download.php?dir=121.549&file=lei_tv.pdf

Journalist Statute (Law Nr. 1/99, as amended by Law nr. 64/2007): <http://www.ics.pt/index.php?op=fs&cid=133&lang=pt>

Law of Electronic Communications (Law Nr. 5/2004, as amended by different Laws in 2007, 2008, 2009 and 2011): <http://www.ics.pt/index.php?op=fs&cid=167&lang=pt>)

Regulatory Bodies

Entidade Reguladora para a Comunicação Social – Media Regulatory Authority (ERC): <http://www.erc.pt/>

SLOVAKIA

Laws

Press Act (2008): <http://merlin.obs.coe.int/iris/2008/5/article29.en.html>

Regulatory Bodies

Council for Broadcasting and Retransmission (RVR): <http://www.rada-rtv.sk/en/>

Telecommunications Regulatory Authority: <http://www.teleoff.gov.sk/index.php?ID=9>

Ministry of Culture: <http://www.culture.gov.sk/en>

Independent Bodies

Press Council

SLOVENIA

Laws

Mass Media ACT (2006): http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/mju_dokumenti/pdf/ZMed_-_Media_act_-_ANG.pdf

Radio and Television Corporation Act: http://www.mk.gov.si/fileadmin/mk.gov.si/pageuploads/min_eng/legislation/ZRTVS_1..pdf

Regulatory Bodies

Agency for Post and Electronic Communications (APEK): <http://www.apek.si/>

Broadcasting Council: http://www.srdf.si/en/about_the_council

Ministry of Culture: <http://www.mk.gov.si/en/>

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Freedom of Press Act (1949): http://www.riksdagen.se/templates/R_Page_____6313.aspx

Fundamental Law of Freedom of Expression (1991): http://www.riksdagen.se/templates/R_Page_____8909.aspx

Radio and Television Act (2010): <http://www.radioochtvtv.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>

Regulatory Bodies Radio and Television Authority (Myndigheten för Radio och TV): <http://www.radioochtvtv.se>

Swedish Consumer Agency: <http://www.konsumentverket.se/otherlanguages/English/About-the-Swedish-Consumer-Agency/>

Sweden Data Inspection Board: <http://www.datainspektionen.se/other-languages/>

Swedish Press Council: <http://www.po.se/om/pon/stadgar/26-stadgar-foer-pressens-opinionsnaemnd-pon>

Swedish Press Ombudsman: <http://www.po.se/>

SWITZERLAND

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Radio and Television Ordinance (RTVO): <http://www.bakom.admin.ch/dokumentation/gesetzgebung/00512/01031/index>

Regulatory Bodies

Department of Environment, Transport, Energy and Communication (DETEC): <http://www.uvek.admin.ch/index.html?lang=en>

Federal Office of Communications (OFCOM): <http://www.bakom.admin.ch/index.html?lang=en>

Independent Complaints Authority for Radio and Television (ICA): <http://www.ubi.admin.ch/en/index.htm>

Independent Bodies

Swiss Press Council: <http://www.presserat.ch/>

Other Institutions

Swiss Broadcasting Company (SRG): <http://www.srgssr.ch/en/>

Board of Directors: Assembly of Delegates

UK

Laws

Broadcasting Code: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>

Codes of Practice for Ministerial Appointment to Public Bodies: <http://publicappointmentscommissioner.independent.gov.uk/publications/publication,393c55aea73.html>

Communications Act 2003: <http://www.legislation.gov.uk/ukpga/2003/21/contents>

European Convention on Human Rights: <http://www.hri.org/docs/ECHR50.html>

Regulatory Bodies

Advertising Standards Authority (ASA): http://www.asa.org.uk/About-ASA/Who-we-are.aspx#our_remit

Authority for Television on Demand (ATVOD): <http://www.atvod.co.uk/>

Department of State for Sport, Culture and Media: <http://www.culture.gov.uk/>

Department of State for Trade and Industry: <http://www.gls.gov.uk/about/departments/bis.htm>

Independent Regulator and Competition Authority (OfCom): <http://www.ofcom.org.uk/>

Office of the Commissioner for Public Appointments (OCPA): <http://publicappointmentscommissioner.independent.gov.uk/>

Independent Bodies

Home Office Internet Task Force on Child Safety: <http://www.manchesterscb.org.uk/newsdetail.asp?id=65>

Internet Crime Forum: <http://www.internetcrimeforum.org.uk/>

Internet Watch Foundation: <http://www.iwf.org.uk/>

Press Complaints Commission: <http://www.pcc.org.uk>

Other Institutions

British Broadcasting System: <http://www.bbc.co.uk/aboutthebbc/>