

Act CIV of 2010

on the freedom of the press and the fundamental rules on media content

Having realised that – for the promotion of community and individual interests and social integrity, for ensuring proper operation of the democratic order and for strengthening national and cultural identity, and in line with the norms of international law and the European Union and developments in technology – new regulations need to be formulated, the Parliament – giving due heed to ensuring the freedom of expression, speech and the press, and considering the importance of media services in cultural, social and economic terms and to ensuring competition in the media market – with regard to Article 61 of the Constitution of the Republic of Hungary – hereby formulates the Act on the freedom of the press, the fundamental rules on media content as well as the fundamental rights and obligations of media content providers and the general public, as follows:

TITLE I DEFINITION OF TERMS

Article 1

1. *Media service*: A service for remuneration as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, for which a media service provider assumes editorial responsibility, the primary objective of which is to distribute programming content to the public for information, entertainment or training purposes via an electronic communications network.

2. *Media service provider*: a natural person or legal entity or a business association without legal personality under editorial responsibility for the selection of media service content and in charge of determining the manner in which it is organised. Editorial responsibility shall refer to responsibility for control over the selection and compilation of media content, however, it does not necessarily imply legal liability in relation to the media service.

3. *Single programme unit*: Sounds, and series of motion pictures, with or without sound, constituting a single unit in the programming schedule or the programme lineup provided by a media service provider, the form and content of which are comparable to a programme service broadcast via radio or television channels.

4. *On-demand media service*: a media service provided by a media service provider, whereby, on the basis of a selection of programmes compiled by the media service provider, the user may, at his request, watch or listen to programme units at an arbitrarily selected point of time .

5. *Provision of linear media services*: media service by a media service provider that allows for the simultaneous watching of, or listening to programmes on the basis of a programming schedule.

6. *Printed press materials*: Individual issues of daily newspapers and other periodicals as well as on-line newspapers and news portals provided as a service for profit, for the content of which a natural or legal person or a business association without legal personality bears editorial responsibility, the primary objective of which is to distribute textual or image contents to the public for information, entertainment or training purposes in a printed form or via an electronic communications network. Editorial responsibility shall refer to responsibility for control over the selection and compilation of media content, however, it does not necessarily imply legal liability in relation to printed press materials.

7. *Media content*: The content provided in any media service or printed press material.

8. *Media content provider*: The media provider, or the provider of any media content.

9. *Commercial announcement*: Media content the purpose of which is to directly or indirectly promote the merchandise, service or image of a natural or legal person or a business association without legal personality engaged in business activities. Such contents accompany or are included in media content for consideration or other remuneration or for the purposes of self-advertisement. Commercial announcements may take the form of advertisements, displaying the name, brand, image or product of the sponsor, and teleshopping and product display.

10. *Implicit commercial announcement*: A commercial announcement that, given its nature, may be used to mislead the public.

11. *Advertising* Communications, information or means of display intended to promote the sale or any other use of any tangible and marketable movables – including money, securities and financial instruments and natural assets suitable for utilisation as tangible assets –, as well as services, property, rights representing an asset value or in connection with this purpose, for increasing public awareness of the name, designation or activities of an enterprise, or any merchandise or brand name.

12. *Sponsorship*: Contribution from a natural or legal person or a business association without legal personality to a media content provider or to specific media content with a view to promoting the name, brand, image, activity or products of the enterprise or those of another enterprise.

TITLE II

SCOPE OF THE ACT

Article 2

(1) This Act shall apply to media services and printed press materials provided by a media content provider established in the Republic of Hungary.

(2) For the purposes of this Act, a media content provider shall be deemed as established in the Republic of Hungary when it meets the following criteria:

a) the pertaining media service is provided via a frequency owned by the Republic of Hungary or the printed press product is accessible primarily through an electronic communications identifier allocated to users in the Republic of Hungary;

b) the central seat of executive management is located, and editorial decisions related to the media service and printed press materials are made within the boundaries of the Republic of Hungary;

c) when either the central seat of executive management or the place where editorial decisions are made is located in the territory of the Republic of Hungary, with the majority of the media content provider's staff being employed in the territory of the Republic of Hungary;

d) if the majority of the media content provider's staff is employed both in and outside the territory of the Republic of Hungary but the central seat of executive management is located in the territory of the Republic of Hungary; or

e) when either the central seat of executive management or the place where editorial decisions are made is located in the territory of the Republic of Hungary, however the operations were commenced in the territory of the Republic of Hungary and actual, continuous contact is being maintained with players of the Hungarian economy;

(3) The scope of this Act shall extend to media services provided by a media content provider to which paragraphs (1) and (2) cannot be applied whenever such media content provider operates a satellite up-link station located in the territory of the Republic of Hungary or uses the transmission capacity of a satellite in the ownership of the Republic of Hungary.

(4) When, on the basis of paragraphs (1) – (3), it cannot be determined whether a particular media content provider falls under the jurisdiction of the Republic of Hungary or some other Member State, the media content provider shall fall under the jurisdiction of a state/country where, pursuant to the provisions of Articles 49 - 55 of the Treaty on the Functioning of the European Union, it qualifies as established.

Article 3

(1) This Act shall apply to media services and printed press materials which, although outside the scope of Paragraphs 1-4 of Section 2, are targeted at, or distributed or published in the territory of the Republic of Hungary subject to the conditions set forth in Articles 176 – 180 of the Act CLXXXV of 2010 (hereinafter: the Media Act) on media services and mass communications.

(2) This Act shall apply to media services and printed press materials targeted at or distributed or published in the territory of the Republic of Hungary that are not deemed as established in any Member State of the European Economic Area, and the media services or printed press materials of which are not subject to the jurisdiction of any one of the Member States.

(3) This Act shall apply to media content providers rendering media services or publishing printed press materials that fall under the scope of the Act under Article 2 and paragraphs (1) - (2).

(4) In case of violation of this Act, the Media Council of the National Media and Infocommunications Authority may proceed and apply sanctions in accordance with the provisions of the Media Act on official proceedings.

TITLE III

FREEDOM OF THE PRESS

Article 4

(1) The legal system of the Republic of Hungary recognises and respects the freedom of the press and ensures the diversity thereof.

(2) The freedom of the press also includes independence from the State and from any organisations or interest groups.

(3) The exercise of the freedom of the press may not constitute or abet an act of crime, violate public morals or prejudice the inherent rights of others.

Article 5

(1) The Act may set official registration as a precondition for the commencement of media services and the publication of printed press materials. The conditions set for registration may not restrict the freedom of press.

(2) When limited state-owned resources are used by the media service provider, successful participation in a tendering procedure advertised and conducted by the Media Authority may also be set as a condition for the commencement of the media service.

Article 6

(1) The media content provider and any person employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider shall have the right to keep the identity of its informant confidential (hereinafter referred to as: source of information). The right to keep such data confidential shall not apply to the protection of sources disclosing qualified data unlawfully.

(2) The media content provider and any person employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider shall have the right to keep the identity of their sources of information confidential even in judicial or other official proceedings, provided that the information thereby supplied were disclosed in the interest of the public.

(3) In exceptionally justified cases, courts or authorities may – in the interest of protecting national security and public order or uncovering or preventing criminal acts – require the media service provider and any person employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider to reveal the identity of the informant.

Article 7

(1) Persons employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider shall be entitled to professional independence from the owner of the media content provider or from natural or legal persons or business associations without legal personality supporting the content provider or placing commercial announcements in the media content, as well as to protection against pressure from the owner or the sponsor aimed to influence media content (editorial independence and independence of journalism).

(2) No sanctions set forth in the labour law or originating from any other legal relationship intended for the performance of work may be applied against any person employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider for their rejection to comply with instructions resulting in a breach of editorial freedom and the freedom of journalism.

Article 8

(1) The media content provider and the persons employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider may not be held liable for any breach of law committed in connection with obtaining information of public interest provided the particular piece of information could not have been obtained otherwise or when the difficulties endured while obtaining such information would be out of proportion, unless such breach of law constitutes a disproportionate or serious violation and such information was obtained in disregard of the Act on the protection of qualified data.

(2) The entitlement laid down in paragraph (1) does not constitute an exemption from the enforceability of claims under civil law for compensation for damage in property caused by such unlawful conduct.

Article 9

Central and local government entities, institutions, officers, persons performing official and public duties and directors/managers of business associations in the majority ownership of the Government or municipalities shall assist media content providers with performing their reporting obligations by supplying the necessary information and data to the media content providers in a timely manner and in accordance with pertaining legislation on the disclosure of information of public interest and the freedom of information

TITLE IV

THE RIGHTS OF THE GENERAL PUBLIC

Article 10

All persons shall have the right to receive proper information on public affairs at a local, national and EU level, as well as on any event bearing relevance to the citizens of the Republic of Hungary and members of the Hungarian nation.

Article 11

In the Republic of Hungary, the public service media operates in order to preserve and strengthen integrity both on a national and European level, foster national, family, ethnic and

religious communities, as well as promote and enrich national and minority languages and culture and meet the needs of citizens for information and culture.

TITLE V

THE RIGHT FOR PRESS CORRECTIONS

Article 12

(1) If false facts are stated or being disseminated about a person or facts related to this person are distorted, whatever the media content, such person may demand the publication of a press correction suitable for identifying the part of the statement that is false or unfounded, and the facts that the statement has distorted, while also presenting the true and accurate facts.

(2) For newspapers, online content and news agencies, the press correction shall be published within five days upon receipt of the pertaining request, in a manner and to an extent similar to the publication of the challenged part of the statement: In case of on-demand media services, corrections shall be made within eight days upon receipt of the pertaining request, in a manner and to an extent similar to the publication of the challenged part of the statement, in case of other periodicals in the next issue/edition, eight days after receipt of the request to that effect, in a manner and to an extent similar to the publication of the challenged part of the statement, and in case of a linear media service within eight days in a manner similar to the publication of the challenged part of the statement and during the part of the day in which the challenged part was published.

TITLE VI

OBLIGATIONS OF THE PRESS

Article 13

(1) All media content providers shall 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.

(2) Linear and on-demand media content providers engaged in news coverage operations shall 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.

Article 14

(1) The media content provider shall – in the media content that it publishes and while preparing such media content – respect human dignity.

(2) No self-gratifying and detrimental coverage of persons in humiliating or defenceless situations is allowed in the media content.

Article 15

(1) It is prohibited to misuse the approval granted to the media content provider for the publication of statements intended for public disclosure.

(2) The media content provider shall present the statement intended for public disclosure to the person having made the statement at such person's request, and may not publish the statement if the person having made the statement refuses to grant approval for publication because the media content provider has modified it materially and such modification is detrimental to the person having made the statement.

(3) The approval for the publication of statement may be withheld without any legal consequences in the event of misuse by the media content provider as defined in paragraph (1) provided that:

a) the statement was not made in connection with an event in public life at a local, national or European level;

b) the statement does not concern an event that bears relevance to the citizens of the Republic of Hungary and members of the Hungarian nation, or

c) although voiced by a civil servant or a person holding public office or a politically exposed person, the withdrawal statement has not been made in relation to such person's public duties

provided that such withdrawal is made within reasonable time before the publication and, therefore, will not cause disproportionate harm to the media content provider. Restrictions on this right under any contract shall be held invalid.

Article 16

The media content provider shall respect the constitutional order of the Republic of Hungary and its operations may not violate human rights.

Article 17

(1) The media content may not incite hatred against persons, nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups.

(2) The media content may not offend or discriminate against - whether expressly or by implication - persons, nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups.

Article 18

The media content may not be suitable for the invasion of privacy.

Article 19

(1) Linear media services may not include media content that could materially damage the intellectual, spiritual, moral or physical development of minors especially by broadcasting pornography or extreme or unreasonable violence.

(2) Access to media content in on-demand media services that could materially damage the intellectual, spiritual, moral or physical development of minors especially by displaying pornography or extreme or unreasonable violence may only be granted to the general public in a manner that prevents minors from accessing such content in ordinary circumstances.

(3) Access to media content in the printed press media that could materially damage the intellectual, spiritual, moral or physical development of minors especially by displaying pornography or extreme or unreasonable violence may only be granted to the general public in a manner that prevents minors – by the application of an appropriate technical or other solution – from accessing such content. In case the application of such solutions is not possible, the given content may only be published with a warning label informing about its possible harm to minors.

(4) Media content in linear media services that could damage the intellectual, spiritual, moral or physical development of minors may only be published in a manner that ensures – either by selecting the time of broadcasting or by means of a technical solution – that minors do not have the opportunity to listen to or watch such programmes in ordinary circumstances.

(5) The rules on the protection of minors against media content are laid down in detail in separate legislation.

Article 20

(1) Commercial announcements in the media content shall be easily recognisable.

(2) Advertisements in the media content shall be distinguishable from other media content.

(3) No implied commercial announcements may be published in the media content.

(4) Commercial announcements in the media content may not utilise techniques unperceivable by the conscious mind.

(5) No media content with a commercial announcement that may offend religious or ideological convictions may be published.

(6) Commercial announcements presented in media content may not encourage a conduct that could be harmful to health, safety or the environment.

(7) The media content may not contain a commercial announcement aimed at promoting or presenting tobacco products, weapons, ammunition, explosives, prescription medication and therapeutic procedures. This restriction shall not apply to exemptions set forth in the Act on commercial advertising and other relevant legislation.

(8) The party sponsoring the media content shall be named concurrently with, immediately before, or after, the publication of such content.

(9) The media content published and financed in the context of the media service may not encourage, call for or discourage the use of products or services of the sponsoring party or a third party it has defined.

(10) The sponsoring party may not influence the media content or the publication thereof in a manner that could affect the liability or editorial freedom of the media content provider.

TITLE VII

LIABILITY

Article 21

(1) The media content provider shall exercise sole discretion in the publication of media content and shall be responsible for compliance with the provisions of this Act.

(2) The provisions of paragraph (1) shall not affect the responsibility of persons providing information to the media content provider or the persons employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider in relation to the compilation of the media content as defined in other legislation.

TITLE VIII

AMENDED LEGISLATION

Article 22

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TITLE IX.

ENTRY INTO FORCE

Article 23

(1) This Act shall enter into force on 1 January 2011.

(2) Article 22 of this Act shall be repealed on the day following the entry into force hereof.

TITLE X

ABBREVIATED NAME OF THE ACT

Article 24

This Act shall be referred to in other legislation as “Smtv.” <Press and Media Act>.

TITLE XI

COMPLIANCE WITH EUROPEAN UNION LAW

Article 25

This Act serves the purposes of compliance with the following legislative acts of the European Union:

a) 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 (codified version) (Audiovisual Media Services Directive);

b) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

c) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version);

d) Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products;

e) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’);

f) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the community code relating to medicinal products for human use.