

Consolidated text of the Electronic Media Law includes the following regulations:

1. Electronic Media Law (Official Gazette of Montenegro, no. 046/10 of 6 August 2010),
2. Law Amending the Law Prescribing the Fines for Minor Offences (Official Gazette of Montenegro, no. 040/11 of 8 August 2011),
3. Law Amending the Electronic Media Law (Official Gazette of Montenegro, no. 053/11 of 11 November 2011),
4. Law Amending and Supplementing the Electronic Media Law (Official Gazette of Montenegro, no. 006/13 of 31 January 2013),
5. Law Amending and Supplementing the Electronic Media Law (Official Gazette of Montenegro, no. 055/16 of 17 August 2016) indicating the date of entry into force of those amendments.

## **ELECTRONIC MEDIA LAW**

**(Official Gazette of Montenegro no. 046/10 of 6 August 2010, 040/11 of 8 August 2011, 053/11 of 11 November 2011, 006/13 of 31 January 2013, 055/16 of 17 August 2016)**

### **NOTICE OF THE ISSUER:**

This consolidated text shall be applied as of 1 September 2017.

## **I. BASIC PROVISIONS**

### **Subject**

#### **Article 1**

This law regulates the rights, obligations and responsibilities of legal and natural persons performing the activity of production and provision of audiovisual media services (hereinafter: AVM services), electronic publication services through electronic communications networks of competencies, status and sources of funding of the Agency for Electronic Media to prevent unauthorized media concentration, the promotion of media pluralism and other issues of importance for the provision of AVM services, in accordance with international conventions and standards.

### **Interpretation of the law**

#### **Article 2**

- (1) The provisions of this Law cannot be interpreted in such a way as to give the right to censure or restrict the right to freedom of speech or freedom of expression.
- (2) This law should be interpreted in accordance with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, using the practice of the precedent law of the European Court of Human Rights.

## **Principles**

### **Article 3**

The regulation of relations in the field of AVM services shall be based on the following principles:

- 1) freedom, professionalism and independence;
- 2) prohibition of any form of censorship;
- 3) balanced development of public and commercial providers of AVM services;
- 4) free and equal access to all AVM services;
- 5) development of competition and pluralism;
- 6) application of international standards;
- 6a) application of the rules on state aid to public broadcasting services;
- 7) objectivity, prohibition of discrimination and transparency.

## **AVM Service Provider**

### **Article 4**

- (1) AVM Service Provider is a natural or legal person established in Montenegro and performs the activity of providing AVM services in accordance with this Law and special laws regulating the field of media and electronic communications.
- (2) An AVM service provider is deemed to be established in Montenegro if:
  - 1) it has its seat, or residence in Montenegro, and issues editorial decisions in Montenegro;
  - 2) it has its seat or residence in Montenegro, and the editorial decisions are made in another state, provided that a significant number of employees are involved in the provision of AVM services in Montenegro;
  - 3) it has its seat or residence in Montenegro, the editorial decisions are made in the Member State of the European Union, and a significant number of employees involved in the provision of AVM services is employed in both Montenegro and the Member State of the European Union;
  - 4) it has its seat or residence in Montenegro, the editorial decisions are made in a Member State of the European Union, and a significant number of employees involved in the provision of AVM services are not employed in Montenegro or a Member State of the European Union, but it has started broadcasting AVM services in Montenegro provided it maintains a stable and efficient connection with the Montenegrin economy.
- (3) The provisions of this Law shall also apply to an AVM service provider established in another country if it uses an earth satellite transmitting station located on the territory of Montenegro and / or uses satellite capacities belonging to Montenegro.

- (4) If in accordance with paragraph 2 and 3 of this Article it cannot be determined whether the provider of AVM services is under the jurisdiction of Montenegro or a Member State of the European Union, the AVM service provider shall be within the jurisdiction of the Member State in which it is established pursuant to Art. 52 to 58 of the Stabilization and Association Agreement between Montenegro and the European Union and its Member States.

### **Freedom of reception and retransmission of AVM services**

#### **Article 5**

Montenegro shall provide freedom of reception and does not restrict the retransmission of audiovisual media services from EU Member States and other European countries on its territory.

Montenegro may temporarily derogate from paragraph 1 of this Article only in the cases prescribed by this Law.

### **Restrictions on reception and retransmission of AVM services**

#### **Article 6**

- (1) The restrictions referred to in Article 5 of this Law may be made in respect of television programs and AVM services upon request from other States, provided that:

- 1) for the television program:

- Broadcaster in the previous 12 months by broadcasting a television program coming from a Member State of the European Union at least twice openly, seriously or severely violated the provisions of Article 48, paragraph 2, and Article 55 paragraph 1 and 2 of this Law,
- Montenegro has informed the Broadcasting Commission and the European Commission in writing of the violations and limitations it intends to take if such a breach occurs,
- Montenegro has conducted consultations with a Member State under the jurisdiction of the broadcaster and the European Commission, which, even after 15 days from the date of submission of the notification referred to in paragraph 1 indent 1 of this Article, did not lead to amicable settlement, and continued with the broadcasting of such program;

- 2) for AVM service on request:

- the provision of services endangered or seriously threatened to jeopardize the prevention, investigation, prosecution and detection of criminal offenses, the protection of minors, the fight against incitement to hatred based on race, sex, religion or nationality, endangering dignity, protecting public health and public safety, national security and defense or consumer protection, including investors,

- Montenegro, prior to taking a restriction on the freedom to receive and retransmit the AVM service upon request, requested from the Member State within the jurisdiction of the AVM service provider to take measures that that Member State did not take or the measures taken were inadequate,
  - Montenegro informed the European Commission and the Member State under the authority of AVM services about the intention to take restrictions.
- (2) In urgent cases, Montenegro may, without fulfilling the conditions referred to in paragraph 1, item 2, indents 2 and 3 of this Article, take measures to restrict the freedom to receive and re-cancel AVM services upon request, on which it is obliged to inform the European Commission and the Member State under jurisdiction providing the AVM service upon request, citing reasons for urgency.
- (3) Montenegro shall abolish the restriction measures referred to in paragraphs 1 and 2 of this Article, if the European Commission determines that it has taken measures, which are not in accordance with the *acquis* of the European Union.

### **Program of Development of AVM Services Sector**

#### **Article 7**

- (1) The Government of Montenegro (hereinafter: the Government) shall adopt a program of development of the AVM services sector.
- (2) The program referred to in paragraph 1 of this Article shall contain in particular: a vision; general and concrete goals; mechanisms for achieving goals; the dynamics of the realization, the expected development of the structure and type of providers of AVM services, and other issues that are important for the development of the AVM services sector.
- (3) Following the conducted public debate, the Agency for Electronic Media shall establish a proposal for a program of development of the AVM services sector and submit it to the Government for adoption.

### **Definition of terms**

#### **Article 8**

Certain terms used in this Law shall have the following meaning:

- 1) AVM service means a service under editorial responsibility of an AVM service provider the principal purpose of which is the provision of programs in order to inform, entertain or educate, to the general public by electronic communications networks, and may take the form of electronic media (radio or television broadcast), an on demand AVM service or audiovisual commercial communication;

- 2) AVM service provider means the natural or legal person who has editorial responsibility for the choice of content of the AVM service and organization of its provision;
- 3) electronic media (a linear AVM service) means a radio or television broadcast which presents a set of information in the form of images and/or sound or combination thereof (audiovisual content) constituting an individual item, under the same name, intended to inform and meet the cultural, educational, social and other needs of the public, which enables simultaneous listening to and/or viewing of programs on the basis of a program schedule;
- 4) broadcaster means an AVM service provider registered for radio and television broadcasting who, in terms with this Law, was granted a licence for television and/or radio broadcasts;
- 5) programme means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by an AVM service provider and whose form and content is comparable to the form and content of television or radio broadcasting;
- 6) editorial responsibility means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television and radio broadcasts, or in a catalogue, in the case of on-demand AVM services;
- 7) programme base means a document containing the programme schedule determining: (1) types of programmes, i.e. their classification into various groups, (2) share of specific programme types, (3) maximum share of advertising and sponsored content, and (4) share of own production;
- 8) on-demand audiovisual service (non-linear or encrypted AVM service) means an individual media service which enables the reception of radio and/or television broadcasts based on the individual user request and the catalogue of programmes selected by the AVM service provider, available solely based on a user contract or other form of prior individual authorisation;
- 9) on-demand AVM service provider means a natural or a legal person registered for telecommunication activity who, in accordance with this Law, was granted a licence for distribution of television and/or radio broadcasts or other on-demand media services;
- 10) multiplex means a standardised set of digital signals containing several radio and/or television broadcasts and/or other data transmitted simultaneously within one radio frequency channel;
- 11) catalogue of programmes means a document containing a list of radio and/or television broadcasts or other content offered by the on-demand media service provider

as a single service package of programmes to subscribers by means of electronic communications networks;

12) subscriber means a person using the on-demand media services based on a contract with such media service provider in return for payment, or subscription fee;

13) audiovisual commercial communication means including in a programme a set of images with or without sound designed: (a) to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity, in return for payment or for similar consideration or (b) for self-promotional purposes;

14) radio or television advertising means audiovisual commercial communication which implies any form of announcement broadcast in return for payment or broadcast for self-promotional purposes by a natural or a legal entity which aims to present or draw attention to a certain product, service, including immovable property, right and obligations, i.e. to encourage consumers to use or buy the said product or service, in return for payment;

15) surreptitious advertising means the representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in radio and/or television programmes when such representation is intended to serve as advertising and might mislead the public as to its nature;

16) teleshopping means audiovisual commercial communication which implies direct offers for sale of products and services, in return for payment;

17) sponsorship means audiovisual commercial communication which implies any contribution made by a natural or a legal entity not engaged in providing AVM services or in the production of audiovisual works, to the financing of radio and/or television programmes with a view to promoting its name, its trademark, its image, its attractiveness, its products or services;

18) product placement means any form of audiovisual commercial communication consisting of indication within the programme (by inclusion of or reference to) of a product, a service or the trademark thereof, in return for payment or for similar consideration;

19) electronic publication means editorially shaped web pages and/or portals containing electronic versions of print media and/or information from the media in a way accessible to a wider public regardless of their scope;

20) encrypted service means an AVM service whose availability in a decoded form is conditioned by signing a user contract or other form of prior individual authorisation (conditional access);

21) conditional access measures means technology, a device or a part thereof designed or adjusted to enable or restrict access to an encrypted service;

22) supplementary service for conditional access means a service which implies installation, maintenance or replacement of conditional access measures, as well as provision of audiovisual commercial communication services related to them or encrypted services.

### **Use of gender sensitive language**

#### **Article 9**

Any term used in this Law for natural persons in masculine gender shall mean the same term in the feminine gender.

## **II. AGENCY FOR ELECTRONIC MEDIA**

### **Status of the Agency for Electronic Media**

#### **Article 10**

- (1) The Agency for Electronic Media (hereinafter referred to as the Agency) shall be an independent AVM service regulatory body with public authorities acting pursuant to this Law.
- (2) The Agency shall act in the public interest.
- (3) The Agency shall be an autonomous legal entity, functionally independent from any state authority, and any legal and natural persons engaging in production and broadcasting of radio and TV programmes, or provision of other AVM services.
- (4) The Agency shall be founded by the state.
- (5) Rights of the founder shall be exercised by the Agency Council in accordance with the law.
- (6) The Agency shall enjoy the status of a legal entity and shall be registered with the Central Register of the Commercial Court.

### **Coordination with other regulators and state authorities**

#### **Article 11**

- (1) In accordance with this Law and a separate law governing electronic communications, the Agency and a regulatory body responsible for electronic communications are obliged to mutually cooperate and coordinate their work as regards radio frequencies allocated for AVM services.
- (2) The Agency shall cooperate with the regulatory body responsible for electronic communications and the administration body responsible for electronic communications and the administration body responsible for competition as regards electronic communications market analysis which constitutes a requirement for provision of and/or access to AVM services.
- (3) Before deciding on granting a licence for provision of AVM services, the Agency may exchange information with regulatory bodies of EU Member States on media service providers

if radio or television broadcasting or provision of other AVM services concerns other EU Member States.

(4) With a view of sharing experiences, improvement of operation, and alignment with international experiences and standards, the Agency shall cooperate with counterpart regulatory bodies of other countries.

(5) In coordination with competent state administration authorities, the Agency shall cooperate with relevant international organisations.

(6) Before accepting international conventions and other instruments pertaining to provision of AVM services, responsible administration bodies are obliged to obtain the Agency's opinion.

### **Agency's responsibilities**

#### **Article 12**

Within the scope of its competences, the Agency shall:

- 1) propose the AVM services Development Programme;
- 2) in cooperation with the regulatory body responsible for electronic communications, draft background paper for developing a plan for the use of the radio-frequency band, in the section designated for terrestrial broadcasting;
- 3) approve draft radio frequency allocation plan, as regards terrestrial broadcasting;
- 4) give opinion to the regulatory body for electronic communication on the need to designate an operator with significant market power if the analysis determines that relevant electronic communication services market, which constitutes grounds for provision of and/or access to the AVM services, is not competitive enough;
- 5) issue licences for provision of AVM services (broadcasting licence and on-demand AVM services provision licence);
- 6) determine the fee amount for issuance and use of AVM service provision licence;
- 7) keep a register of AVM service providers and electronic publications;
- 8) decide as per complaints of natural and legal persons regarding the operation of AVM service providers;
- 9) oversee the Law implementation;
- 10) adopt and implement secondary legislation accompanying this Law;
- 11) perform other tasks, as per the Law and the Agency's Articles of Association.

### **Agency's bodies**

#### **Article 13**

The Agency's bodies shall be:

- 1) The Agency Council and
- 2) Agency director.



## **Competences of the Council**

### **Article 14**

The Agency Council (hereinafter: Council) shall:

- 1) adopt the Agency's Articles of Association;
- 2) establish proposal for AVM service sector Development Programme;
- 3) give opinion on the background paper for developing a plan for the use of the radio-frequency band, in the section designated for terrestrial broadcasting, developed by the regulatory body for electronic communications;
- 4) approve draft radio frequency allocation plan, as regards terrestrial broadcasting;
- 5) invite public tenders for granting the right to AVM service provision;
- 6) decide on granting the right to AVM service provision;
- 7) approve temporary or permanent assignment, rental or otherwise transferral of AVM service provision licence;
- 8) adopt the rules on the amount, the method of calculation and payment of a registration fee and licence fees for provision of AVM services;
- 9) adopt rules on programme standards for AVM service provision;
- 10) adopt rules on requirements regarding minimum proportions reserved for European audiovisual works and independent productions, in line with European standards;
- 11) adopt rules determining requirements and proportions reserved for audiovisual commercial communication, in line with European standards;
- 12) adopt rules governing the method of taking measures against AVM service providers and taking decisions as per complaints regarding their operation;
- 13) decide as per appeals against the Agency's first instance decisions;
- 14) take measures for temporary restrictions to the freedom of reception and retransmission of AVM services from other countries in accordance with Article 6 of this Law;
- 15) report to the European Commission in accordance with this Law and the ensuing implementing legislation;
- 16) adopt Council's Rules of Procedure;
- 17) elect the Chair from among the Council members;
- 18) appoint and dismiss the Agency's Director;
- 19) adopt the general legal act on internal organisation and job systematisation;
- 20) adopt work plans, activity reports and periodic and annual accounts of the Agency;
- 21) adopt the financial plan for the coming year and the financial statements for the previous year;
- 22) hire an independent certified auditor to audit final accounts of the Agency;
- 23) adopt other rules for implementing this Law;
- 24) perform other tasks, as per the Law and the Agency's Articles of Association.

## **Publicity of the Agency's operation**

### **Article 15**

(1) Council is obliged, not later than by the end of June of the current year, to make publicly available, by posting it on the Agency's website, the following documents:

- 1) Agency Activity Report for the previous year, focusing on the performance of responsibilities envisaged by law;
- 2) Agency's Financial Report for the previous year, with the audit report from an authorised auditor.

(2) Council is obliged, without delay, to make all documents pertaining to rights and obligations of legal or natural persons available to the public, accompanied by a statement of reasons.

## **Council members**

### **Article 16**

(1) Council shall have five members.

(2) Council members shall be elected from among renowned experts in the fields relevant for Agency's work, holding university degrees, who are Montenegrin citizens and reside in Montenegro.

## **Conflict of interest**

### **Article 17**

(1) The following shall not be eligible for Council members:

- 1) members of the national Parliament and local councils;
- 2) persons elected, nominated or appointed by the President, the Parliament or the Government of Montenegro;
- 3) political party officials (presidents, Presidency members, their deputies, members of Executive and Main Boards, and other party officials);
- 4) persons holding a stake, share-holders, members of management, employees, contracted persons, etc, having a stake in legal entities engaged in production, transmission and/or distribution of radio and/or television programmes or other AVM services and related activities (advertising, electronic communications, etc);
- 5) persons convicted for misuse of office, corruption, fraud or theft, regardless of the punishment pronounced or convicted for other criminal offences to imprisonment sentence exceeding six months, for the period for which the legal consequences of the conviction take effect;

- 6) spouses of persons listed under items 1 to 4 of this paragraph or who are related to them in straight line regardless of the degree of kinship or in indirect family relations up to the second degree and in-laws.
- (2) Should a Council member be in a conflict of interest situation as regards the decision-making as per an item under the scope of Council's competences, he is obliged to inform other Council members thereof in order to be excluded from consideration and decision-making on the matter at hand.
- (3) If a Council member took part in decision-making notwithstanding being in the conflict of interest situation, other Council members are obliged to reconsider the decisions made and may declare them null and void.
- (4) A Council Member shall not be a founder of an AVM service provider or in any other way participate as an applicant for obtaining a licence for AVM service provision within 12 months after the termination of their term.

### **Appointment and dismissal of Council members**

#### **Article 18**

Council shall be appointed and dismissed by the Parliament of Montenegro (hereinafter: Parliament).

### **Authorised nominators**

#### **Article 19**

- (1) Candidates for Council members shall be nominated by:
- 1) academia, one member;
  - 2) non-governmental organisations dealing with human rights and freedoms, one member;
  - 3) non-governmental organisations dealing with the media, one member;
  - 4) Montenegrin PEN Centre, one member;
  - 5) commercial broadcaster associations, one member.
- (2) The person nominated does not necessarily need to come from the ranks of the given authorised nominator.
- (3) The nominators referred to in items 1, 2, 3 and 5 of paragraph 1 may jointly or separately be proposed for Council members.
- (4) The nominees for Council members are nominated by competent bodies of legal entities referred to in paragraph 1 above, in line with their respective Articles of Association.

### **Contents of Council member nomination proposal**

#### **Article 20**

- (1) Council member nomination proposal shall contain: name and surname, address and short resume of the nominee, and shall be signed and certified by the authorised nominator or nominators.
- (2) The nominees for Council members are nominated on a form envisaged by the Parliament's body responsible for appointments (hereinafter: parliamentary committee).
- (3) The proposal from paragraph 1 herein shall be accompanied by:
- 1) proof that the nominee is a Montenegrin national residing in Montenegro;
  - 2) proof of nominee's professional qualifications;
  - 3) nominee's statement of acceptance of nomination and that there are no obstacles as referred to in Article 16 of this Law for his/her appointment as a Council member.
- (4) Apart from the proofs referred to in paragraph 3 herein, non-governmental organisations as nominators are obliged to submit also the following:
- 1) proof of entry into the NGO register kept by the relevant state administration body;
  - 2) memorandum and articles of association, identical to the one held by the relevant state administration body;
  - 3) activity reports and financial statements for the past three years.
- (5) The proposal with nominees for Council members not aligned with paragraphs 1, 2, 3 and 4 above shall not be considered.

### **An NGO as an authorised nominator**

#### **Article 21**

- (1) An NGO may be a nominator of Council members if meeting the following requirements:
- 1) being registered with the relevant state administration body for not fewer than three years before the publication of the call for nominations;
  - 2) that their Memorandum and Articles of Association should envisage, as main goals and tasks, the matters pertaining to areas envisaged by Article 19(1) items 2, 3 and 5 of this Law and to be dealing with these matters in continuity over the last three years.
- (2) One and the same NGO may nominate candidates for Council members only within one category of authorised nominators referred to in Article 19(1) herein.

### **Independence of Council members**

#### **Article 22**

- (1) Council members shall not represent the nominating institutions or organisations, but shall discharge their duties autonomously, independently, to the best of their knowledge and in line

with their consciousness for the sake of exercising the public interest in line with the Law, the Articles of Association and other general legal acts of the Agency.

(2) No one shall have the right to influence in any way the work of the Council members, nor is a Council member obliged to follow any instruction regarding his/her work, except the ruling of a competent court.

### **Council's term of office**

#### **Article 23**

(1) The Council's term of office shall start on the day of appointment and last five years.

(2) Notwithstanding paragraph 1 above, on the occasion of the first appointment, three Council members shall be appointed for five years, and two members for four years only.

(3) The term in office for the members of the first Council shall be determined by drawing lots in the presence of authorised nominators.

(4) The same person may not be appointed for a Council member for more than two consecutive times.

(5) The Council may hold sessions and decide validly when at least three Council members have been appointed.

### **Launching Council member appointment procedure**

#### **Article 24**

Council member appointment procedure shall be launched by the parliamentary committee by a public call to authorised nominators not later than six months before the expiry of the term of office of the current Council member.

### **Public call**

#### **Article 25**

The public call referred to in Article 24 herein shall be published in the Official Gazette of Montenegro, posted on Parliament's website and published in at least one daily in Montenegro.

### **Contents of the public call**

#### **Article 26**

The public call shall contain in particular:

- 1) data on authorised nominators referred to in Article 19(1) herein;
- 2) requirements a nominee for a Council member needs to meet;
- 3) requirements that NGOs as authorised nominators need to meet;
- 4) a list of supporting documents accompanying nominations;

- 5) name and address of the body receiving nominations;
- 6) manner and deadline for submission of nominations.

### **Deadline for nominations**

#### **Article 27**

- (1) The deadline for submission of nominations for Council members shall start running with the day of public call published in a daily newspaper.
- (2) The nominations for Council members shall be submitted within 45 days since the publication of the public call.

### **List of nominees for Council members**

#### **Article 28**

- (1) The Parliamentary committee is obliged, within eight days from the expiry of the deadline for nominations, to publicise the list of timely and orderly nominations for Council members, following the same procedure as for the public call.
- (2) The Parliamentary committee is obliged, within fifteen days from the expiry of the deadline for nominations, to establish the list of nominees for Council members by authorised nominators.
- (3) Should nominators from a certain category referred to in Article 19(1) items 1, 2, 3 and 5 submit more separate nominations, the draft list shall include the nomination meeting the following criteria:
  - 1) enjoying support of the greatest number of authorised nominators;
  - 2) the nominee with more years of experience relevant for Agency's scope of activities.
- (4) Draft List of Nominees for Council Members, with rationale and report of the procedure followed, shall be submitted to the Parliament for consideration and decision.

### **Deciding on nominations**

#### **Article 29**

- (1) Parliament is obliged, within 60 days from submission of the Draft List of Nominees and the Report as referred to in Article 28(4) herein to pass the decision on the Draft List of Nominees.
- (2) Parliament shall decide on the Draft List of Nominees in its entirety.

### **Repeated procedure**

#### **Article 30**

- (1) If the Draft List of Nominees for Council members is not complete, the procedure shall be repeated for appointing the Council members from the category of nominators whose nominees were not determined.

(2) Should a situation referred to in paragraph 1 above occur, the Parliamentary committee is obliged, within 15 days from establishing the Draft List, to publish the repeated call for nominators whose nominees have not been determined.

(3) The term of office of a Council member appointed as per the repeated procedure shall be determined in accordance with Article 23 of this Law.

### **Remuneration for Council members**

#### **Article 31**

For the time served on the Council, Council members shall be entitled to remuneration in the amount of an average net salary of Agency's staff in the month preceding the payment of remuneration and covering of costs incurred in exercising duties, in line with the Agency's Articles of Association.

### **Termination of office of a Council member**

#### **Article 32**

(1) A Council member's term in office shall terminate:

- 1) with the expiry of the time for which he/she was appointed;
- 2) upon dismissal;
- 3) by submitting letter of resignation.

(2) A resigning Council member is obliged to inform the Council and the authorised nominator of his resignation within eight days from submitting a letter of resignation.

### **Dismissal of Council members**

#### **Article 33**

The Parliament shall dismiss a Council member and appoint another in case:

- 1) it is determined he provided wrongful data or omitted presenting data and circumstances significant for the appointment;
- 2) he fails to attend the Council session over the period longer than six months;
- 3) during the term in office some circumstance referred to in Article 17 herein occurred;
- 4) of illness, substantiated by findings of the competent medical establishment, when he is unable to perform the duties of a Council member for a period exceeding six months.

### **Dismissal procedure for Council members**

#### **Article 34**

(1) The dismissal procedure for Council members may be launched by the Council or the Parliamentary committee.

(2) Parliament passes the dismissal decision for Council members after having followed a procedure establishing relevant facts.

(3) A Council member against whom a dismissal procedure has been launched shall be given the opportunity to express his views of the reasons for launching the dismissal procedure.

### **Suspension of a Council member**

#### **Article 35**

By two-third majority of the total number of its members, Council may decide, awaiting Parliament's decision, to suspend the Council member against whom the dismissal procedure has been launched.

### **Appointment of a new Council member**

#### **Article 36**

(1) In case of termination of the term in office before the expiry of the term to which the Council member was appointed, the Parliamentary committee is obliged, within 15 days from the termination of the term in office, to publish a public call to the authorised nominator to nominate a new Council member.

(2) The provisions of this Law governing the nomination of a Council member shall apply mutatis mutandis to the nomination procedure referred to in paragraph 1 above.

(3) The term in office of the new Council member shall last until the expiry of the Council member he replaced.

(4) A Council member who, in accordance with Article 33 items 1 and 2 herein was dismissed before the expiry of the term in office may not be re-nominated for a Council member.

### **Termination of Council's work**

#### **Article 37**

Should, due to the termination of office of individual members, the number of Council members be lower than three, the Council may not validly operate and decide until the appointment of new Council members.

### **Dismissal of the Council**

#### **Article 38**

(1) Parliament shall dismiss the Council in case it fails:

1) to meet for more than six months without a justified reason;

2) to act in accordance with Article 15(1) herein.

(2) In cases referred to in paragraph 1 herein, the Council dismissal procedure shall be launched by the Parliamentary Committee.

### **Council's operation**

#### **Article 39**



- (1) Council shall work in sessions.
- (2) Council sessions shall be held as need be, and not fewer than once a month.
- (3) Council shall be convened by all means at the request of not fewer than three Council members or the Agency's director.
- (4) Council shall decide by majority vote of the total number of its members, if not stipulated otherwise by this Law.
- (5) Council sessions shall be open for the public, unless Council by majority vote of its members decides otherwise.
- (6) The Agency's Director has the right to take part in the Council session, without the right to vote.
- (7) The participation of other persons in the work of the Council shall be governed by its Rules of Procedure.

### **Agency Director**

#### **Article 40**

- (1) The Agency's Director shall be appointed by the Council, based on the public competition.
- (2) The person eligible for the Agency's director, apart from general requirements stipulated by law, shall meet also the following:
  - 1) be a Montenegrin national and reside in Montenegro;
  - 2) hold a university degree;
  - 3) have at least five years of work experience.
- (3) The Agency Director shall:
  - 1) represent and act on behalf of the Agency;
  - 2) manage and guide the Agency's work;
  - 3) be accountable to the Council;
  - 4) be responsible for the operation and regularity of Agency's work;
  - 5) propose a general act on Agency's internal organisation and job systematisation;
  - 6) propose Agency's work plans;
  - 7) submit Agency's activity reports and financial statements to the Council;
  - 8) propose a general act on minimum activity in case of staff being on strike;
  - 9) propose to the Council decisions on purchase, sale and mortgaging of Agency's assets, as well as on taking bank loans and issuing financial guarantees, in accordance with the law and the Agency's Articles of Association;
  - 10) adopt the decision granting and revoking licences for AVM services provision, in accordance with this Law;
  - 11) perform other tasks in accordance with the law and the Agency Articles of Association.
- (4) Agency director shall be appointed for the term of four years.

(5) The same person may be appointed as the Agency's Director not more than for two consecutive terms.

(6) A person not eligible for a Council member, in accordance with the provisions of this Law, may not be appointed as the Agency's Director.

### **Agency's Articles of Association**

#### **Article 41**

The Agency's Articles of Association shall contain in particular the provisions on:

- 1) the Agency's head office;
- 2) Agency's internal organisation;
- 3) method of operation, decision-making and responsibilities of Agency's managing bodies and persons with special authorizations;
- 4) method of publishing Agency's acts;
- 5) other matters in accordance with the Law.

### **Agency's funding**

#### **Article 42**

(1) Agency shall acquire funds from:

- 1) non-recurrent fees for registration of AVM service providers;
- 2) annual fees payable as per issued licences for AVM service provision (transmission fee, on-demand AVM service provision fee);
- 3) other sources of funds in accordance with the law.

(2) The amount of the fee, referred to in paragraph 1 above, shall be determined by Council, on the basis of Agency's annual programme of work and financial plan.

(3) Surplus of revenues over the Agency's expenditures is the revenue of the budget of Montenegro.

### **Financial Plan of the Agency**

#### **Article 43**

(1) The Agency shall be funded in accordance with the financial plan, which is adopted by the Council for each year, not later than three months before the beginning of the fiscal year.

(2) Overall costs of Agency's work covered by the Financial Plan, including reserves for contingencies, shall reflect realistic Agency's costs needed for successful attainment of its role.

(3) All Agency's revenues and expenditures shall be subject to annual audit by an independent authorised auditor.

## **Fees**

### **Article 44**

(1) An AVM service provider shall pay a non-recurrent registration fee, which is determined based on the amount of actual Agency's costs incurred in the registration process.

(2) An AVM service provider shall pay an annual fee as per the licence for provision of AVM services in four equal instalments and it can be either:

- 1) the annual broadcasting fee; or
- 2) the annual fee for provision of on-demand AVM services.

(3) The annual broadcasting fee shall be determined based on:

- 1) size by coverage zone judged by total population covered;
- 2) attractiveness of areas within the coverage zone;
- 3) type of electronic media (radio or television broadcasting);
- 4) transmission platform (terrestrial broadcasting systems, cable and MMDS systems, public land or mobile telecommunication networks, satellite distribution systems and other electronic communication networks).

(4) Annual fee for provision of on-demand AVM service shall be determined based on:

- 1) the fixed amount determined by the size of the area of service provision for the period until the end of the calendar year in which the operation commenced, provided that the fee amount may not exceed the amount of the broadcasting fee for the same area and using the same platform used for service provisions (terrestrial broadcasting systems, cable and MMDS systems, public land or mobile telecommunication networks, satellite distribution systems and other electronic communications networks);
- 2) the annual revenues of service provider accrued on that ground over the previous calendar year for the current year, provided that the fee amount may not exceed 5% of such revenues.

(5) More detailed methodology for determining the amount and method of payment of the registration fee for AVM service providers and the fee payable upon issued licence for provision of AVM service shall be determined in a document adopted by the Council, following a public debate.

(6) The document referred to paragraph 5 herein shall be published in the Official Gazette of Montenegro and posted on Agency's website.

## **Agency's internal acts**

### **Article 45**

(1) The Agency shall adopt general and individual legal acts governing in more details the rights and obligations of AVM service providers and electronic publications in line with this Law and regulations adopted pursuant to this Law.

(2) The Agency is obliged to draft general legal acts referred to in paragraph 1 above, the draft act shall be posted on its website and send invitation to all interested entities to give their comments, proposals and suggestions within a deadline which may not be shorter than 15 days.

### **III. AUDIOVISUAL MEDIA SERVICES**

#### **Types of AVM services and the duty for their identification**

##### **Article 46**

(1) An AVM service may be in the form of:

- 1) electronic media (radio or television broadcasting),
- 2) on-demand AVM service;
- 3) audiovisual commercial communication.

(2) An AVM service provider is obliged to make easily, directly and permanently accessible to the recipients of a service at least the following information:

- 1) the name of the AVM service provider;
- 2) AVM service provider's head office, or place of residence, his electronic mail address or website;
- 3) the competent body of the AV service provider;
- 4) the competent regulatory body.

#### **Right to correction and reply**

##### **Article 47**

The right to correction of and reply to information published through an AVM service shall be exercised in accordance with the law governing media.

#### **Bans**

##### **Article 48**

(1) Provision of AVM service threatening the constitutional order and national security shall be prohibited.

(2) An AVM service must not incite, enable incitement or spread hatred or discrimination on the grounds of race, ethnic background, skin colour, sex, language, religion, political or other belief, national or social background, financial standing, trade union membership, education, social status, marital or family status, age, health status, disability, genetic heritage, gender identity or sexual orientation.

(3) The publication of information revealing the identity of a minor under 18 years of age involved in any case of violence, regardless of whether being a witness, a victim or an offender, or disclosing any particulars of the family relations and private life of a child shall be prohibited.

## **Prize competitions**

### **Article 49**

- (1) An AVM service provider is obliged to conduct fair prize competitions publishing set rules.
- (2) More detailed requirements for provision of the AVM service referred to in paragraph 1 above shall be set by the Council.

## **Cinematographic works**

### **Article 50**

AVM service providers are obliged to transmit cinematographic works in accordance with the law and the contract concluded with the copyright and related rights holder.

## **Persons with a hearing or visual disability**

### **Article 51**

Council is obliged to encourage AVM service providers to make their service gradually accessible to people with a hearing or visual disability.

## **Mandatory publication**

### **Article 52**

An AVM service provider is obliged, upon a reasoned request of a state administration body, or state authorities, without remuneration, to publish notifications and official statements in case of threat to life and public health, national security, and public peace and order.

## **Co-regulation or self-regulation**

### **Article 53**

- (1) Co- or self-regulation may, in accordance with this law, govern the manner and requirements for the attainment of the following goals:
  - 1) ensuring that AVM services are gradually made accessible to people with a visual or hearing disability;
  - 2) enforcement of codes of conduct for AVM service providers as regards children's programmes including or accompanied by audiovisual commercial communication of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugar, excessive intakes of which in the overall diet are not recommended;
  - 3) enforcement of rules regarding audiovisual commercial communication.
- (2) The regimes referred to in paragraph 1 above shall be such that they are broadly accepted by the main stakeholders (associations of AVM service providers, consumers), that they provide for effective enforcement and are approved by Council.
- (3) Council is obliged to post on the Agency's website the documents pertaining to the regulation of matters related to this Article.

**1. Electronic media**  
**Requirements for radio and television broadcasting**

**Article 54**

- (1) A broadcasting licence holder may be a legal or a natural person registered with the competent authority for radio and television programme production and broadcasting.
- (2) Apart from the requirements set in Article 4(1) herein, an AVM service provider shall meet special technical, office and staff requirements for radio and television programme production and broadcasting.
- (3) Compliance with the requirements referred to in paragraph 2 above shall be verified during regular inspection supervision, following granting of a broadcasting licence.
- (4) More detailed requirements referred to in paragraph 2 above shall be set by Council.

**Programme-related obligations of broadcasters**

**Article 55**

- (1) A broadcaster is obliged to respect the privacy and dignity of citizens and protect the integrity of minors.
- (2) A broadcaster is obliged to publish audio and visual warning for programmes which may impair physical, health, moral, mental, intellectual, emotional and social development of minors and clearly identify such programmes by the presence of a visual symbol throughout their duration and to broadcast such programmes at the time and in the manner in which it is least likely that minors will normally hear or see it.
- (3) Transmission of programmes referred to in paragraph 2 above outside the watershed to be established by Council shall be prohibited.
- (4) Transmission of programmes containing pornography or whose content emphasise and support violence, drug addiction or similar forms of criminal conduct, as well as the programmes exploiting credulity of viewers or listeners shall be prohibited.
- (5) A broadcaster is obliged to store transmitted programmes in line with regulations governing media and regulations governing preservation of cultural assets.
- (6) A broadcaster is obliged to contribute to:
  - 1) free, true, integral, impartial and timely information of the public of events in the country and abroad;
  - 2) respect and promote fundamental human rights and freedoms, democratic values, institutions and pluralism of ideas;
  - 3) foster culture of public dialogue and respect for linguistic standards.
- (7) Broadcasters are obliged to transmit radio or television programmes in Montenegrin language in Latin or Cyrillic script or in other language in official use, in accordance with the law.
- (8) The use of Montenegrin language is not mandatory in case of:

- 1) showing films and other audio and audiovisual works in their original form;
  - 2) showing works of music with lyrics partly or wholly in a foreign language,
  - 3) programmes partly or fully intended for study of a foreign language and script.
- (9) The use of Montenegrin language is not mandatory in programmes intended for members of minority nations and other minority communities.

## **Programme base and duties**

### **Article 56**

- (1) Programme base of a general television or radio broadcasting contains the schedule which determines:
- 1) type of programme, or their classification into specific groups;
  - 2) envisaged shares of specific programme groups;
  - 3) envisaged maximum share of advertising contents;
  - 4) envisaged share of own audiovisual works;
  - 5) transmission time.
- (2) The programme base referred to in paragraph 1 above determines the proportions for European works referred to in Articles 60 and 61 herein and independent productions as referred to in Articles 62 and 63 herein.
- (3) The programme base of a specialised television or radio broadcast contains the schedule which determines:
- 1) programme type, of which over 50% shall be programmes of the same type;
  - 2) envisaged proportions of different types of programmes;
  - 3) envisaged maximum share of advertising;
  - 4) share of European audiovisual production and other works for specialised television broadcasting;
  - 5) transmission time.
- (4) Radio or television broadcasts shall meet the following requirements:
- 1) events shall be realistically shown, and difference of approaches and opinions shall be adequately present;
  - 2) news shall truly and accurately present facts and events, shall be impartial and professionally accurate;
  - 3) opinions and comments shall be separated and their source or author recognizable;
  - 4) impartiality shall be encouraged, respecting the difference of opinion on political or economic matters.

## **Obligation of electronic media identification**

### **Article 57**

(1) The name, symbol or short identification sign of the electronic media shall be continuously displayed throughout television broadcasts, and during radio broadcasts it must be stated at least once every hour of the programme.

(2) The use of a name, symbol or short identification sign which does not correspond to the registered name of the electronic media shall be prohibited.

(3) The name, symbol or short identification sign of an electronic media must be displayed even when retransmitting broadcasts, and when broadcasting independent productions, the name shall be stated in the beginning and/or the end of the broadcast.

## **Change of structure of radio or television broadcasts**

### **Article 58**

(1) A broadcaster is obliged to ask for Agency's approval, in writing, of all significant intended changes in the structure of a radio or television broadcast.

(2) A significant change in the programme structure, in the sense of paragraph 1 herein, shall be any change over 10% in the programme structure based on which broadcasting licence was granted.

(3) The Agency may deny a broadcaster the approval for the change of programme structure should it determine that it would lead in the area covered by a certain radio or television broadcast to a lack of a certain type of programmes for which the broadcaster was licensed to use frequencies which by the Radio Frequency Allocation Plan were envisaged for analogue broadcasting or in case of acquiring the right of access to multiplex for digital terrestrial broadcasting.

## **Transmission time**

### **Article 59**

(1) Day transmission time includes all programmes within a radio or television broadcast from 0 to 24 hours, unless otherwise stipulated by this Law.

(2) Annual transmission time includes all radio and television broadcasts between 01 January and 31 December of the current year, with the exception of programmes excluded from it by this Law.

(3) A broadcaster is obliged to broadcast at least 12 hours of programmes on a daily basis.

(4) A broadcaster is obliged to assign at least 10% of total weekly air time to news and current affairs from the coverage zone.

(5) A broadcaster is obliged to broadcast at least 30 minutes of news a day within which it should have at last one block lasting at least 20 minutes.



(6) Paragraphs 4 and 5 above do not refer to broadcasters of specialised radio and/or television programme.

### **European audiovisual works**

#### **Article 60**

(1) European audiovisual works means the following:

- 1) works originating in EU Member States;
- 2) works originating in the state parties to the European Convention on Transfrontier Television and fulfilling the conditions of paragraph 3 below;
- 3) works co-produced within the framework of agreements related to the audiovisual sector concluded between EU Member States and third countries and fulfilling the conditions defined in each of those agreements.

(2) Application of provisions of paragraph 1 items 2 and 3 above shall be conditional on audiovisual works originating in EU Member States not being subject of discriminatory measures.

(3) The works referred to in items 1 and 2 of paragraph 1 above are works mainly made with authors and workers residing in EU Member States or state parties to the European Convention on Transfrontier Television provided that they comply with one of the following conditions:

- 1) they are made by one or more producers established in one or more of those States;
- 2) production of works is supervised and actually controlled by one or more producers established in one or more of those States;
- 3) the contribution of co-producers of those States to the total co-production costs is preponderant and the coproduction is not controlled by one or more producers established outside those States.

(4) Works that are not European works within the meaning of paragraph 1 above but that are produced within the framework of bilateral co-production treaties concluded between EU Member States and third countries shall be deemed to be European works provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the EU Member States.

### **Share of European audiovisual works**

#### **Article 61**

(1) A broadcaster is obliged to ensure that European audiovisual works make up at least 51% of its annual transmission time.

(2) The time intended for news, sport events, advertising, teletext and teleshopping is not included in the annual transmission time from paragraph 1 above.

(3) Audiovisual works of own production are also included in European audiovisual works.

(4) A broadcaster who fails to achieve the share of European works from paragraph 1 above is obliged each year to increase this share as compared to the previous year, with least initial share which cannot be under 5% of annual air time.

(5) More detailed conditions for increasing the share of European audiovisual works shall be set by Council.

(6) Council is obliged to report to the European Commission of the implementation of provisions of paragraphs 1 to 3 above not later than by 31 December 2014, and every two years afterwards.

### **Audiovisual works of independent producers**

#### **Article 62**

(1) An independent producer of audiovisual works is a legal or a natural person (hereinafter: independent producer):

- 1) registered for production of audiovisual works and with its head office in Montenegro or an EU Member State;
- 2) not included in the organisational structure of the broadcaster;
- 3) with television broadcaster having up to a 25% share in capital or up to 25% managerial, or voting rights;
- 4) having not more than one half of won annual production ordered by one television broadcaster;
- 5) with average share of finance for coverage of total production costs, or co-production, that they took part over the last three years, greater than 10%.

(2) An independent producer is also a legal or natural person registered for audiovisual works production seated outside Montenegro or an EU Member State if European works make up more than 50% of its audiovisual production over the last three years and if meeting the requirements of items 2 and 3 of paragraph 1 above.

### **Share of audiovisual works of independent producers**

#### **Article 63**

(1) A broadcaster is obliged to ensure that audiovisual works of independent producers make up at least 10% of its annual transmission time.

(2) The time intended for news, sport events, advertising, teletext service and teleshopping is not included in the annual transmission time from paragraph 1 above.

(3) A broadcaster who fails to achieve the share of audiovisual works from paragraph 1 above is obliged each year to increase this share in accordance with the requirements set by Council.

(4) At least half of the works referred to in paragraph 1 above must be produced over the last five years.

## **Exceptions from provisions on European works and independent productions**

### **Article 64**

Provisions of Articles 61 and 63 of this Law shall not apply to broadcasters licensed to broadcast locally and regionally, broadcasters not included in regional or national networks, non-for-profit broadcasters and radio broadcasters.

## **Own production**

### **Article 65**

(1) Own production is deemed to include information, culture, art, music, sport and other contents, as well as other original programmes, produced by the broadcaster or as per his orders and for his account.

(2) Own production includes first showings and first reruns.

(3) Reruns of radio and television programmes must be clearly designated.

(4) Advertising and teleshopping do not count as programmes created in own production.

(5) The broadcaster shall be obliged, upon request of the competent body of the Agency, to provide evidence of its own production by submitting a license agreement, purchase of format, a bilateral and multilateral co-production, as well as providing information on the fulfillment of the financial obligations of the broadcasters in those transactions.

(6) A broadcaster who does not provide, at the request of the Agency, valid proof of their own production and co-production, a broadcasting license shall be discontinued.

(7) More detailed conditions for programmes deemed as own production shall be set by Council.

## **Events of major importance for society**

### **Article 66**

(1) A television broadcaster under the jurisdiction of Montenegro shall not exercise the exclusive rights purchased after this Law entered into force in such a way that a substantial proportion of the public in an EU Member State or the state party to the international treaty binding Montenegro is deprived of the possibility of following events of major importance for the society and which are in line with its domestic legislation designated for whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television.

(2) A broadcaster may not be granted the right to broadcast on exclusive basis events of major importance for Montenegrin public unless they are able to ensure following of such events by

live coverage or deferred coverage on free television for at least 60% of Montenegro's population or if additional payment would be needed for following such broadcasts.

(3) Several electronic media may be granted the right to broadcast on an exclusive basis an event of major importance for Montenegro's society provided that by networking they ensure good quality reception of television programme for at least 85% of Montenegro's population.

### **List of events of special public interest in Montenegro**

#### **Article 67**

(1) The Council shall draw up a list of national or non-national events of major importance for Montenegro's society for which it shall determine whether these events should be available by whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

(2) The Council is obliged to notify immediately of such list the European Commission, the Standing Committee for Transfrontier Television and state parties to the European Convention on Transfrontier Televisions and international treaties binding Montenegro.

### **Right of access to events of major interest to society**

#### **Article 68**

(1) For the purpose of short news reports, any broadcaster established in European Union or a state party to an international treaty binding Montenegro has access under equal terms to events of high interest to the public which are transmitted on an exclusive basis by broadcasters under the jurisdiction of Montenegro.

(2) If a broadcaster established in Montenegro has acquired exclusive rights to the event of high interest to the public, another broadcaster established in Montenegro may seek access to the event.

(3) Council shall set more detailed conditions for acquiring the right of access to events from paragraphs 1 and 2 above by allowing a broadcaster to freely choose short extracts from the transmitting signal of the other broadcaster.

(4) A broadcaster may, before and instead of access to transmission signal in the meaning of paragraph 3 above, acquire access to events from paragraphs 1 and 2 above and access to the scene of such events for shooting short extracts or using footage of another broadcaster having exclusive rights to broadcast event of high interest for the public.

(5) Short extracts shall be used solely for general news programmes, and may be used in on-demand AVM services only if the same programme is offered on a deferred basis by the same AVM service provider.

### **Right to short information**

#### **Article 69**

- (1) A piece of news lasting not more than 90 seconds published within news programmes is deemed to be short information.
- (2) The right to short information shall be exercised so as not to interrupt the course of the event.
- (3) When an event of high interest for the public consists of several organisationally independent events, in the light of the exercise of the right to short information, each independent event is deemed as an event of special interest for the public.
- (4) When an event of high interest for the public lasts more than two days, the broadcaster has the right each day to produce short information of the event.
- (5) The broadcaster who exercised the right to short information must enable non-recurrent use of the event footage to another broadcaster unable to shoot the event and has the right to seek compensation of the proportional share of actually incurred costs, and featuring its name in the announcement.
- (6) In accordance with Article 68 above, the right to short information may be established even as regards access to major events for the society not broadcasted as per exclusive rights.

### **Types of broadcasters**

#### **Article 70**

- (1) By being granted a broadcasting licence, a legal or a natural person acquires the status of a broadcaster.
- (2) A broadcaster may produce and transmit radio and/or television programmes as:
  - 1) a commercial broadcaster;
  - 2) a non-for-profit broadcaster;
  - 3) a public broadcaster.

### **Commercial broadcaster**

#### **Article 71**

- A commercial broadcaster may produce and broadcast radio and/or television programmes as:
- 1) a national commercial broadcaster covering at least 75% of population in more than 10 local self-government units (national coverage or commercial broadcaster network);
  - 2) a regional commercial broadcaster if covering at least 80% of the population within the territory covering between four and 10 local self-government units (regional coverage or commercial broadcaster network);
  - 3) a local commercial broadcaster if covering at least 85% of the population within the territory covering less than four local self-government units (local coverage or commercial broadcaster network).

## **Non-for-profit broadcaster**

### **Article 72**

- (1) The status of a non-for-profit broadcaster, as defined by this Law, shall be determined by the Council on the occasion of granting the broadcasting licence.
- (2) The provisions of Articles 98 to 115 herein shall apply mutatis mutandis to the procedure of granting or revoking broadcasting licences to non-for-profit broadcasters.
- (3) Non-for-profit broadcasters may only be educational establishments, religious, student and nongovernmental organisations registered at least three years before applying for acquiring the status of a non-for-profit broadcaster.
- (4) A non-for-profit broadcaster is a broadcaster who transmits daily 50% of own production of news, cultural, educational and entertainment programmes, with at least 25% of day production which shall serve the informational, educational, scientific, professional, artistic, cultural and other needs of the public.
- (5) The provisions of this Law referring to programme obligations of public broadcasters shall apply to non-for-profit broadcasters.
- (6) The funds for the operation of non-for-profit broadcasters may be raised from donations, contributions of citizens, sponsorships and other sources of revenues, in accordance with a special law governing the establishment and operation of non-governmental organisations.
- (7) Non-for-profit broadcasters are exempted from payment of the broadcasting licence fee.
- (8) A non-for-profit broadcaster may use profits from radio ad/or television programme production and transmission solely to improve and develop own activity.

## **Public broadcaster**

### **Article 73**

- (1) A public broadcaster may be:
  - 1) a national public broadcaster, founded by the state;
  - 2) a regional public broadcaster, founded by several local self-government units;
  - 3) a local public broadcaster, founded by a local self-government unit.
- (2) National public broadcasters are obliged to ensure good quality reception of radio and television programmes for at least 85% of Montenegro's population (national coverage by a public broadcaster).
- (3) Regional public broadcasters are obliged to ensure good quality reception of radio and television programmes for at least 80% of population of each local self-government unit within whose territory the programme is broadcast (regional coverage by a public broadcaster).

(4) Local public broadcasters are obliged to ensure good quality reception of radio or television programmes for at least 85% of population of the local self-government unit within whose territory the programme is broadcast (local coverage by a public broadcaster).

### **Exercise of public interest**

#### **Article 74**

(1) Public broadcasters are obliged to produce and transmit radio and/or television broadcasts with information, cultural, art, educational, scientific, children's, entertainment, sport and other programmes ensuring the exercise of rights and interests of citizens and other entities in the information sector.

(2) The exercising of public interest, in terms of this Law, means to:

- 1) autonomously and independently produce, edit and transmit programmes not in the service of political, economic or other levers of power;
- 2) inform the public in an objective and timely fashion of political, economic, cultural, educational, scientific, sport and other major events and occurrences in the country and abroad;
- 3) produce and transmit programmes intended for different groups in society, free of discrimination, particularly taking into account specific societal groups such as children and the young, members of minority nations and other minority communities, persons with disabilities, socially and health disadvantaged groups, etc;
- 4) cherish public communication culture and linguistic standards;
- 5) produce and transmit programmes expressing Montenegrin national and cultural identity, and cultural and ethnic identity of minority nations and other minority communities;
- 6) produce and transmit programmes in languages of minority nations and other minority communities within the areas where they reside;
- 7) during election campaigns, based on special rules, ensure equal representation of political parties, coalitions and candidates whose candidacy and candidate lists have been approved;
- 8) mutually cooperate and exchange programmes of interest for the citizens of Montenegro.

### **Provision of commercial audiovisual services**

#### **Article 74a**

(1) In addition to the public services referred to in Article 74 of this Law, a public broadcaster may also perform commercial audio and audiovisual services, as follows:

- 1) selling programs for advertising messages and other audiovisual communications;

- 2) placement of products;
- 3) sponsorship;
- 4) teleshopping.

(2) The performance of services referred to in paragraph 1 of this Article must be separate from the provision of public services referred to in Article 74 of this Law law.

### **Establishment of a public broadcaster**

#### **Article 75**

(1) Public broadcasters shall be established:

- 1) by law, for the territory of Montenegro (a national public broadcaster);
- 2) by the decision of two or more local councils for their territory (a regional public broadcaster);
- 3) by the decision of the local council for its territory (local public broadcaster).

(2) A local parliament may set up only one local public radio and/or television broadcaster.

(3) Two or more local parliaments may set up only one regional public radio and/or television broadcaster.

(4) The broadcasters from paragraph 3 above may broadcast only one radio and/or television programme.

(5) If a local parliament is a co-founder of a regional public radio and/or television broadcaster, it may not at the same time be a founder of a local public broadcaster.

(6) A foreign legal or a natural person may not have a share in the fixed assets of legal entities enjoying the status of public broadcasters.

### **Public broadcasters funding**

#### **Article 76**

(1) Public broadcasters shall acquire revenues as a share of general revenues of the Budget of Montenegro, or a share of general revenues of local self-government units, and from other sources in accordance with the law and the Memorandum of Association.

(2) A share of Budget of Montenegro, or the budget of a local self-government unit, shall be made available for the exercise of rights to information, free of discrimination, as enshrined by the Constitution and laws, based on programmes significant for:

- 1) exercise of the right to public information and notification of Montenegro's citizens, the exercise of the rights of members of minority nations in Montenegro and members of other minority communities and Montenegrin communities abroad,
- 2) exercise of human and political rights of citizens and fostering of rule of law and social state, and civil society;
- 3) development of culture, science, education and art;



- 4) preservation of Montenegrin national and cultural identity, and cultural and ethnic identity of minority nations and other minority communities;
  - 5) encouraging cultural creation;
  - 6) information made available to persons with hearing and visual disabilities.
- (3) With a view of exercising the rights from paragraph 2 above, a share of funds shall be made available in the Budget of Montenegro, or the local self-government unit budget, for programmes in Albanian and Romani languages.
- (4) The Government, that is, the local self-government unit and the public broadcaster, shall regulate the mutual rights and obligations related to the use of the budgetary funds referred to in paragraphs 1, 2 and 3 of this Article, which must be defined in the contract, in a manner that corresponds to the real costs necessary for the fulfillment of obligations under this Article and Article 74 of this Law.
- (5) The manner and conditions for provision of funds from paragraphs 1, 2 and 3 above must not affect the editorial independence and autonomy of a public broadcaster.
- (6) The agreement referred to in paragraph 4 above shall be published in the manner stipulated by the public broadcaster's Memorandum of Association and made available to the Agency.
- (7) Budget of Montenegro, or the budget of a local self- government unit, shall make available the funds to cover the transmission and broadcasting costs of public broadcasters using terrestrial broadcasting systems.

### **Contract on provision of public services**

#### **Article 76a**

- (1) The public services referred to in Article 74 of this Law, as well as the amount of funds and sources for their financing, shall be determined by a contract between the Government and the national public broadcaster, i.e. the local self-government unit and the local public broadcaster (hereinafter: the Contract).
- (2) The contract shall be concluded for a period of three years, in accordance with the macroeconomic and fiscal policy guidelines, with the national public broadcaster, and in accordance with the budget plans and projections of the local public broadcasters.
- (3) Prior to the conclusion of the Contract, the public broadcaster shall prepare a proposal for program obligations for the contract period and conduct a public hearing for 45 days, in order for the public to clarify whether the proposed program obligations fulfill the criteria prescribed in Article 74 of this Law.
- (4) The contract shall determine the type and scope of all public services provided by the public broadcaster, within the meaning of Article 74 of this Law.
- (5) In addition to the program obligations set forth in Article 74 of this Law, the Contract defines the program content, which is intended for the development of science, education and culture, information for the person with hearing and sight impairment, as well as program contents in

the Albanian language and languages of members of minority peoples and other minority national communities are prescribed in Article 76 of this Law.

(6) The amount of funds for public service provision specified by the Contract may not exceed the net costs necessary to provide those services, taking into account other direct or indirect revenues arising from the provision of such services. In determining the net cost of providing public services, account shall be taken of the net benefit of all commercial audiovisual services relating to those services.

(7) The national public broadcaster is obliged to submit the proposal of the Contract to the Government, or local public broadcaster, a unit of local self-government, no later than six months before the expiration of the valid contract.

(8) The public broadcaster is obliged, on the basis of the Contract, to prepare and adopt each year, and no later than 31 December for the next year, the program of work and the financial plan, which will determine the activities and program obligations, as well as the necessary financial resources for their realization.

(9) If the Contract is changed due to the programming obligations of public broadcasters, it is necessary to carry out the procedure in accordance with paragraph 3 of this Article.

(10) The public broadcaster is obliged to submit an agreement on the provision of public services and its modification to an independent regulatory body for the field of electronic media, no later than 15 days from the date of its conclusion.

### **Contents of the Contract**

#### **Article 76b**

(1) The contract shall contain public services which the public broadcaster is obliged to provide within the agreed time period, their type, purpose, program base and number of television and radio programs, websites and portals and conditions for providing other public services taking into account the needs of the public and technological development of electronic media.

(2) The contract determines the financing of public services of the public broadcaster by age and sources, showing the costs by year and type, as well as the authority and obligations of the public broadcasting authority in relation to managing the total funds envisaged for the implementation of the Contract and reporting on its implementation.

(3) The provisions of the Contract determining the financing referred to in paragraph 2 of this Article shall be in accordance with the rules on state aid for public broadcasting services.

### **Introduction of new services**

#### **Article 76c**

(1) A public broadcaster may introduce significantly new audiovisual services on new distribution platforms intended for the general public, provided that they satisfy the

democratic, social and cultural needs of the society and do not lead to disproportionate market consequences that are not necessary for the fulfillment of the public function services.

(2) Significantly new audiovisual service, for the purposes of paragraph 1 of this Article, shall be deemed to be the service that is provided for the first time and is significantly different from the services it provides, as well as the service that has been largely amended in terms of its content, technical preparedness, access and the target group for which it is intended.

(3) The proposal for the introduction of a significantly new audiovisual service or more of such services must include the precise description of the services and the justification for their introduction, the target group to which the services relate, the cost of providing services and the assessment of the possible effects on competitiveness on the market. The introduction of significantly new audiovisual services or more of such services shall be decided by the Public Broadcasting Council, which is obliged to determine the sources of funding of a significantly new service, or to propose to the founder the change of the existing Contract, according to the procedures envisaged for its conclusion.

(4) The Public Broadcasting Council shall, prior to the introduction of significantly new audiovisual services, perform a public test of value, i.e. make an analysis of the fulfillment of the criteria: the impact of the new audiovisual service on the market; financial aspect of introducing new audiovisual services; to what extent the new service affects the public broadcaster and the duration of the new service.

(5) The Public Broadcasting Council is obliged to conduct a public hearing for 45 days on the introduction of significantly new audiovisual services in order to collect all relevant information necessary for making a decision on the introduction of new services.

(6) The Public Broadcasting Council is obliged, prior to the introduction of significantly new audiovisual services, to obtain the opinion of an independent regulator in the field of electronic media on the impact of significantly new services on the electronic media market.

### **Separate accounting**

#### **Article 76č**

The public broadcaster is obliged to keep separate accounting for the provision of public services from the one for performance of commercial audio or audiovisual services.

### **Cross-subsidization**

#### **Article 76ć**

(1) The public broadcaster shall not use funds from the budget of Montenegro, that is, the budget of the local self-government unit, for financing commercial audiovisual services (cross-subsidization).

(2) If a public broadcaster acts contrary to paragraph 1 of this Article, the Public Broadcasting Council shall impose the refund of unlawfully spent funds and their sole use for the

performance of public service activities in accordance with this Law. The repayment of the unlawfully spent funds of the national public broadcaster is effected by payment to the account of the budget of Montenegro, and the refund of the unlawfully spent funds of the local public broadcaster to the account of the budget of the local self-government unit.

(3) Funds that are not spent for the provision of public services, in accordance with the Contract from Article 76a of this Law, exceeding the amount of 10%, shall be paid to the account of the budget of Montenegro or the budget of the local self-government unit.

(4) If the funds referred to in paragraph 3 of this Article exceed for three years the amount of 10%, the Government and the national public broadcaster, i.e. the local self-government unit and the local public broadcaster shall review the methodology for calculating the funds for services that are the subject of the Contract.

### **Management bodies in public broadcasters**

#### **Article 77**

(1) Public broadcasters shall have the following management bodies:

- 1) public broadcaster's Council, and
- 2) Director.

(2) Public broadcaster's Memorandum of Association stipulates the manner for appointment, election, decision-making and responsibilities of bodies referred to in paragraph 1 above and other matters relevant for the work of the public broadcaster.

(3) The provisions of this law governing the appointment procedure for Council members shall apply mutatis mutandis to the appointment and dismissal of public broadcasters' council members.

### **Council of a public broadcaster**

#### **Article 78**

(1) The public broadcaster's council shall represent the interests of citizens of Montenegro, or the local self-government unit(s) on whose territory their radio and/or television programme is broadcasted.

(2) The public broadcaster's council shall be functionally independent from any state authority, and from all legal and natural persons engaged in radio/television programme production, transmission and broadcasting or the related activities.

(3) The national public broadcaster's council may have up to nine members, and in case of regional or local public broadcasters, up to five, provided that it is an odd number at all times.

(4) Public broadcaster's council members are entitled to remuneration in accordance with the Memorandum of Association.

### **Public broadcaster's broadcasting licence**

### **Article 79**

(1) A public broadcaster shall acquire the right to radio and/or television broadcasting based on the application for a broadcasting licence.

(2) Public broadcasters are exempted from payment of broadcasting licence fees.

### **Financial audit of public broadcasters**

#### **Article 80**

All revenues and expenditures of public broadcasters shall be subject to annual audit by an independent certified auditor commissioned by the public broadcaster's council.

## **2. On-demand AVM services**

### **Status of on-demand AVM service providers**

#### **Article 81**

A licence holder for provision of on-demand AVM services may be a legal or a natural person registered with the competent authority, or with the competent court, for pursuing telecommunication activities.

### **Obligations of on-demand AVM service providers**

#### **Article 82**

(1) An on-demand AVM service provider is obliged to make available a service which may impair the physical, mental or moral development of minors only in the manner ensuring that minors will not normally hear or see such broadcasts.

(2) The modalities for actions by AVM service providers from paragraph 1 above shall be set by Council.

(3) An on-demand AVM service provider is obliged to promote production of and access to European works in the following manner:

- 1) by financial contribution to the production or rights acquisition of European works;
- 2) by inclusion and/or prominence of European works in the catalogue of programmes offered.

(4) An on-demand AVM service provider is obliged to perform the obligations from paragraph 3 above in compliance with the criteria set by Council and make available to the Agency, at its demand, the data verifying such compliance.

(5) The Agency is obliged to report to the European Commission no later than 31 December 2014 and every four years thereafter on the implementation of paragraph 4 above.

(6) An on-demand AVM service provider is obliged, within three months from being granted the pertinent licence, to set up and keep separate accounting for on-demand AVM services in line with the law governing accounting practices.

## **Copyright and related rights**

### **Article 83**

- (1) Before including any one radio or television programme into the catalogue and beginning of its distribution, an on demand AVM service provider is obliged to obtain prior written approval of the rights holder which shall, for the sake of record-keeping, be furnished to the Agency.
- (2) An on-demand AVM service provider is obliged to distribute radio and/or television programmes concurrently, wholly and without any changes, in compliance with the approval obtained.
- (3) An on-demand AVM service provider may perform distribution of encoded satellite programmes only if having entered into a distribution agreement with the right holder over such programmes allowing decoding for further retransmission.
- (4) An on-demand AVM service provider shall not be deemed to have acquired the right to distribute programmes from paragraph 3 above by procuring a decoding card intended for individual subscriber use.
- (5) An on-demand AVM service provider is obliged to distribute programmes of:
  - 1) national public broadcasters in the whole service zone;
  - 2) regional and local public broadcasters within the territory of their founding local self-government units.
- (6) Broadcasters are obliged to inform on-demand AVM service providers in a timely fashion if they do not hold the right to transmit certain programmes using a certain platform.
- (7) In case of paragraph 6 above, on-demand AVM service provider shall not distribute such programmes.

## **Obligations of on-demand AVM service providers related to distribution of radio and television programmes**

### **Article 84**

- (1) An on-demand AVM service provider is obliged to:
  - 1) adhere to the list of radio or television programmes included in the catalogue;
  - 2) notify the Agency beforehand, in writing, of any change in the catalogue of radio or television programmes, and any change in the number and structure of programme packages;
  - 3) distribute programmes in compliance with programme standards set by Council.
- (2) An on-demand AVM service provider may distribute radio and television programmes within the territory of Montenegro solely by means of a registered electronic communication network.
- (3) A licence for on-demand AVM service provision does not give any right to the licence holder to distribute radio and television programmes using reception systems with shared antenna device which constitute a cable and antenna structure installed as a standard amenity of

residential units and which are used for reception of programmes distributed by means of land transmitters, as well as other electronic networks which do not make part of registered electronic communication networks, except when approved by the regulatory body for electronic communication for such distribution.

(4) In case an on-demand AVM service provider should hold an approval for provision of on-demand AVM service using digital terrestrial broadcasting systems, it is obliged to distribute programmes of broadcasters who have acquired the right of access to the digital terrestrial broadcasting multiplex in accordance with this Law.

(5) Should an on-demand AVM service provider provide the service of distribution of radio and television programmes which constitute the prevailing mode of reception in a certain service zone, the Agency may obligate that on-demand AVM service provider to transmit specific programmes or contents, upon broadcaster's request.

### **3. Audiovisual commercial communication**

#### **a) Obligations for all forms of audiovisual commercial communication**

#### **Prohibited activities related to audiovisual commercial communication**

##### **Article 85**

(1) Surreptitious and fraudulent audiovisual commercial communication shall be prohibited.

(2) Audiovisual commercial communication shall not send messages which might affect the sub-consciousness and which constitute manipulation or are damaging in social and emotional terms.

(3) Audiovisual commercial communication shall not:

- 1) prejudice respect for human dignity;
- 2) promote discrimination based on sex, race, ethnic origin, religion or belief, disability, age or sexual orientation;
- 3) encourage behaviour prejudicial to health or safety;
- 4) encourage behaviour grossly prejudicial to the protection of the environment;
- 5) use visual and audio forms, contents or elements recognisable as major news or announcements (news, headlines, etc.);
- 6) use recognisability of certain programmes with the intention to mislead the viewer or listener into believing to actually be watching or listening to that programme;
- 7) discredit or disparage competitors, their products or services;
- 8) present the competitor programme or service as an imitation or reproduction;
- 9) use parts of some programmes (headline, logo, music theme, etc.);
- 10) copy advertising content of some other advertiser, their activity, product or service;
- 11) enable unauthorised use of trademark or other feature by which a competitor is recognisable;

- 12) use scenes of death, infliction of injuries, violence or destruction of buildings and nature.
- (4) Advertising sale and purchase of human organs or tissues for transplantation or transfusion shall be prohibited.
- (5) All forms of audiovisual commercial communication promoting tobacco and tobacco products, narcotic drugs, weapons, ammunition and pyrotechnic devices and marketing of goods and services prohibited by law shall be prohibited.
- (6) Audiovisual commercial communications for alcoholic beverages shall not be aimed at minors and shall not encourage consumption of such beverages.
- (7) Audiovisual commercial communication for medicinal products available only on prescription or medical procedures and treatment not compliant to law governing health care shall be prohibited.

### **Protection of minors**

#### **Article 86**

Audiovisual commercial communication shall not:

- 1) cause tangible or intangible detriment to minors;
- 2) directly exhort minors to buy or hire a product or a service by exploiting their inexperience or credulity;
- 3) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- 4) exploit the special trust minors place in parents, teachers or other persons;
- 5) unreasonably show minors in dangerous situations.

### **Obligation to provide audiovisual commercial communication**

#### **Article 87**

The denial to provide audiovisual commercial service shall be prohibited if such denial creates or maintains a monopolistic or other dominant market position or establishes unfair competition.

### **Forms of audiovisual commercial communication**

#### **Article 88**

Audiovisual commercial communication must be readily recognisable and may take the form of:

- 1) radio and television advertising;
- 2) teleshopping;
- 3) sponsorship;
- 4) product placement.



**b) Radio and television advertising and teleshopping**  
**Obligations for all forms of radio and television advertising and teleshopping**

**Article 89**

- (1) Radio and television advertising (hereinafter: advertising) and teleshopping shall be readily recognisable and distinct from other parts of the programme by optical and acoustic means.
- (2) An advertiser shall not exercise any editorial influence on the contents of programmes.
- (3) The use of data which may be misleading as regards the advertiser's identity, activities, features, quality, origin or other data regarding the product or service shall be prohibited.
- (4) As a general rule, advertising and teleshopping shall be broadcast in blocks.
- (5) Exceptionally to paragraph 4 above, isolated advertising and teleshopping spots may be aired during transmissions of sport events.
- (6) The length of advertising and teleshopping shall be determined for the period between 0 and 24 hours.
- (7) Teleshopping may last at least 15 minutes uninterrupted.
- (8) The following shall not be deemed as advertising:
  - 1) free of charge announcements of public works and charity events;
  - 2) free of charge presentation of works of art;
  - 3) free of charge publication of data on producers, organisers, sponsors or donors of works of art, culture and art events and charity events;
  - 4) information about and promotion of own programmes.
- (9) The transmission of television films, cinematographic works, and news programs may be interrupted by television advertising and / or teleshopping once in 30 minutes.

**Advertising ordering party**

**Article 90**

- (1) Advertising shall clearly identify the ordering party.
- (2) The ordering party shall be responsible for the veracity and accuracy of advertising, and the broadcaster is responsible for their compliance with this Law and the law governing media.

**Advertising and teleshopping of alcoholic beverages**

**Article 91**

In addition to prohibitions stipulated in Article 85 of this Law, advertising and teleshopping for alcoholic beverages shall comply with the following criteria:

- 1) it shall not create the impression that the consumption of alcohol may enhance physical performance or driving;
- 2) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;

- 3) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means for resolving personal conflicts;
- 4) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- 5) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

### **Duration of advertising and teleshopping in programmes of public broadcasters**

#### **Article 92**

- (1) The proportion of advertising spots in programmes of public broadcasters within a given clock hour shall not exceed 10% (six minutes).
- (2) The proportion of advertising spots and teleshopping spots in programmes of public broadcasters within a given clock hour during the day shall not exceed 15% (nine minutes).

### **Duration of advertising and teleshopping in programmes of commercial broadcasters**

#### **Article 93**

- (1) The proportion of advertising spots in programmes of commercial broadcasters within a given clock hour shall not exceed 15% (nine minutes).
- (2) The proportion of advertising spots and teleshopping spots in programmes of commercial broadcasters within a given clock hour during the day shall not exceed 20% (twelve minutes).

### **Contents prohibited in advertising**

#### **Article 94**

The following shall not be included in advertising:

- 1) religious contents;
- 2) formal ceremonies (inaugurations etc.);
- 3) programmes related to tragic events of wider scope;
- 4) programmes lasting 30 minutes or shorter.

### **c. Sponsorship**

#### **Article 95**

- (1) AVM services and programmes that are sponsored shall meet the following requirements:
  - 1) the sponsor shall not affect the contents or scheduling of services or programmes sponsored or the responsibility or editorial independence of the AVM service provider;
  - 2) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
  - 3) sponsored services and programmes shall be clearly identified as such;

- 4) wholly or partly sponsored programmes shall be clearly identified by the name, logo and/or other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.
- (2) The AVM services or programmes shall not be sponsored by legal or natural persons whose principal activity is the manufacture or sale of products or provision of services whose advertising is prohibited by law.
- (3) The sponsorship of audiovisual media services or programmes by legal and natural persons whose activities include the manufacture or sale of medicinal products and medical procedures and treatment may promote the name or the image of the sponsoring legal or natural person, but shall not promote specific medicinal products available only on prescription or medical procedures and treatments which are not compliant with a separate law governing health care.
- (4) In sport, culture and art programmes, sponsor identification may be shown only at the beginning and the end of natural breaks.
- (5) News and current affairs programmes shall not be sponsored.
- (6) Political parties, coalitions and other political organisations may not sponsor programmes.
- (7) Showing of a sponsorship logo during children's programmes and religious programmes is not allowed.
- (8) The provisions of this Article shall apply mutatis mutandis to radio programmes.

#### **d. Product placement**

##### **Article 96**

- (1) Product placement shall be prohibited.
- (2) By way of derogation from paragraph 1, product placement shall be admissible:
- 1) in cinematographic works, films and series made for AVM services, sports programmes and entertainment programmes not including programmes intended for children;
  - 2) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.
- (3) Product or service placement, in accordance with item 2 of paragraph 2 above, shall be deemed to mean inclusion into programmes solely of goods or services of substantial value.
- (4) By a separate document, Council shall regulate the manner for determining the substantial value of goods or services placed, taking into account that value is determined in relation to the production costs or costs payable for placing goods or services into the programme.
- (5) Programmes that contain product placement shall meet the following requirements:

- 1) their content, and their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the AVM service provider;
  - 2) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services or by giving prominence to the product;
  - 3) viewers shall be clearly informed of the existence of product placement by appropriate identification at the start and the end of the programme and after an advertising break, in order to avoid any confusion on the part of the viewer.
- (6) By way of exception, the provision of item 3 paragraph 5 above shall not apply to programmes placing products either produced or commissioned by the AVM service provider or an entity affiliated to the AVM service provider in accordance with Article 130 of this Law.

#### **IV. LICENCE FOR AVM SERVICE PROVISION** **Types of licences for AVM service provision**

##### **Article 97**

- (1) Licences for AVM services provisions shall be granted by the Agency following the procedure and the criteria set by this Law.
- (2) The licence from paragraph 1 shall be granted in the form of:
  - 1) a broadcasting licence;
  - 2) a licence for provision of on-demand AVM services.

##### **1. Broadcasting licence**

##### **Granting broadcasting licence**

##### **Article 98**

- (1) The Agency shall grant broadcasting licences for digital or analogue terrestrial, cable, internet or satellite transmission.
- (2) By way of derogation from paragraph 1 above, Internet webcasting shall not be subject to licensing.
- (3) The Agency shall grant broadcasting licences based on:
  - 1) public competitions;
  - 2) applications for broadcasting licence.

##### **Public competition for granting broadcasting licences**

##### **Article 99**

- (1) The Agency is obliged to announce public competition for granting broadcasting rights in case when a legal or a natural person intends to broadcast using frequencies envisaged by the

Frequency Allocation Plan for analogue broadcasting or in case when it intends to obtain access to digital terrestrial broadcasting multiplex (hereinafter: public competition for granting broadcasting rights).

(2) Before announcing public competition, the Agency is obliged to obtain data from the regulatory body responsible for electronic communications on availability of frequencies or free resources within digital terrestrial broadcasting multiplex intended for AVM services.

### **Contents of the public competition for granting broadcasting rights**

#### **Article 100**

(1) Public competition for granting broadcasting rights shall contain mandatorily:

- 1) the scope of public competition (information on the service zone and the pertaining frequencies and/or the number of radio and television programmes for which the right to broadcast in multiplex is granted and the information on the service zone covered by multiplex);
- 2) selection criteria with scoring methodology;
- 3) technical requirements for radio and/or television programme production and transmission;
- 4) the amount of the fee for considering the application for a public competition;
- 5) amount of deposit which may not exceed one quarter of annual broadcasting fee;
- 6) broadcasting licence validity period;
- 7) application submission deadline, which may not be shorter than 30 days from the public announcement;
- 8) deadline for decision, which may not be longer than 60 days from the expiry of the application submission deadline;
- 9) list of supporting documents;
- 10) other application requirements.

(2) The criteria from item 2 paragraph 1 above shall be objective, measurable and non-discriminatory and shall refer to:

- 1) the scope and structure of applicant's programmes (diversity, share of own production, European audiovisual works, independent production);
- 2) financial data related to the ability for profitable operation and market viability.

(3) Should several eligible persons apply to the public competition for using the same frequency or multiplex capacity, the advantage shall be given to the applicant offering better guarantees of fostering quality and programme diversity in the area where the programme is to be broadcast.

(4) Should an applicant already be engaged in radio and/or television broadcasting at the time of public announcement for granting broadcasting rights, Council is obliged to take into account the contribution of such applicant to the exercise of the principles promoted by Article 3 herein.

(5) The public competition from paragraph 1 above shall be published in the Official Gazette of Montenegro, posted on the Agency's website and published in at least one daily in Montenegro.

### **Procedure as per the public competition**

#### **Article 101**

(1) The procedure for granting broadcasting rights shall be a one-instance administrative procedure.

(2) The competent authority for granting broadcasting rights shall be the Council.

(3) In the procedure for granting broadcasting rights, Council shall decide by a written decision, which shall be final.

(4) An administrative dispute may be instigated against the decision from paragraph 3 above.

(5) Council is obliged:

1) within 10 days from the expiry of the deadline for applying to the public competition to post on Agency's website the list of applicants with orderly and timely applications;

2) dismiss incomplete and untimely applications;

3) pass the decision on granting broadcasting rights as per the public competition within the set timeframe;

4) publicly announce the decision as per the competition, in the same way as when announcing the public competition.

(6) Director of the Agency is obliged, following the public competition for granting broadcasting rights to:

1) publicly announce, in the same way as when announcing the public competition, the list of persons being granted broadcasting licence;

2) submit to the regulatory body for electronic communications a copy of the broadcasting licence issued.

### **Granting licence for on-demand services**

#### **Article 102**

(1) The Agency shall grant licences for on-demand broadcasting on basis of an application filed by:

1) a legal or a natural person registered with the competent authority, or with the competent court, for pursuing the activity of radio or television broadcasting and which intends to use electronic communication networks without using radio frequencies for such broadcasts;

2) a public broadcaster.

(2) The following supporting documents shall be filed with the application from paragraph 1 above:

- 1) a valid evidence of entry into the register of the competent authority, or competent court, for pursuing the activity of radio or television broadcasting;
- 2) a certified copy of the Memorandum and the Articles of Association;
- 3) an organisational chart and job systematisation with which the applicant intends to meet the technical and programme requirements for the programme production and transmission;
- 4) a programme base with the data on the scope and structure of programmes (diversity, a share of own production, of European audiovisual works, of independent production) and the identification sign;
- 5) proof of no pending proceedings before the competent court against the applicant, or the responsible person within the applicant for misuse of official authorities or economic crimes or for offences punishable by imprisonment;
- 6) studio technology design.

(3) The documentation referring to items 1 to 5 from paragraphs 2 of this Article shall be published on the Agency's website.

(4) The request for broadcasting rights from paragraph 1 and 2 of this Article shall be decided by the Director of the Agency by a decision which he/she issues within 15 days from the date of submission of the request.

(5) the decision from paragraph 4 above may be appealed against before Council within 15 days from the delivery of the decision.

(6) The appeal from paragraph 5 above shall be decided upon by Council by a written decision, within 15 days from receiving the appeal.

(7) The Council's decision from paragraph 6 above shall be final and contestable by an administrative dispute.

### **Requirements for granting broadcasting licence**

#### **Article 103**

More detailed requirements for granting broadcasting licence, both as per the public competition procedure and the application for granting broadcasting licences, shall be set by Council.

### **Contents of broadcasting licence**

#### **Article 104**

(1) Broadcasting licence shall contain the data on:

- 1) the licence holder;
- 2) the name of the radio or television programme;
- 3) the programme structure and other programme requirements in terms with the application filed per the public competition or the request for granting the licence;

- 4) type of electronic communication networks for distribution of radio and/or television programme;
  - 5) radio frequencies granted as per the public competition, when analogue broadcasting systems are used for provision of AVM service of radio and/or television broadcasts;
  - 6) access of AVM service providers to movable capacities of separate radio or television programmes within a multiplex, when digital broadcasting systems are used for provision of AVM service of radio and/or television broadcasts;
  - 7) identification sign of the radio or television programme;
  - 8) deadline for commencing broadcasting;
  - 9) licence validity period;
  - 10) fee amount and payment modalities;
  - 11) other rights and obligations of licence holders.
- (2) Broadcasting licence may not, on temporary or permanent basis, be assigned, leased or otherwise transferred without Council's approval.
- (3) The broadcasting license for the AVM service provider shall be published in full on the Agency's website within 8 days of its issuance.

### **Restrictions for broadcasting licence holders**

#### **Article 105**

A political party, organisation or coalition, or a legal entity founded by a political party, organisation or coalition may not be a broadcaster.

### **Return of deposit**

#### **Article 106**

- (1) A person who has not acquired the right to broadcast as per the public competition for granting broadcasting rights shall be returned the deposit paid within seven days from passing the final decision as per the competition.
- (2) For the person who has acquired the right to broadcast as per the public competition for granting broadcasting rights the deposit amount shall be factored into the broadcasting fee amount.
- (3) The deposit is not refundable to the broadcasting licence holder who:
  - 1) in writing, before the deadline set for commencing broadcasting, notifies the Agency that they would not broadcast or use radio frequency(ies) granted as per the licence;
  - 2) fails to commence broadcasting within the time stipulated.

### **Licence validity period**

#### **Article 107**

- (1) Broadcasting licence shall be issued for the period of 10 years.



(2) Exceptionally, the licence referred to in paragraph 1 of this Article may also be issued for a longer period if the broadcaster significantly invests in the infrastructure from its own funds.

(3) By way of exception from paragraph 1 above, for the sake of timely switchover from analogue to digital terrestrial broadcasting systems, the licence may be granted with shorter validity period, which may not be shorter than two years.

### **Renewal of broadcasting licence**

#### **Article 108**

(1) The broadcasting licence granted as per the request shall be renewable if the licence holder files a licence renewal request with the Agency not later than six months before the expiry of the current licence.

(2) In case when the broadcasting licence was granted as per the public competition, taking into account the conduct of the licence holder for the period of licence validity, following the public competition the Agency:

- 1) shall grant the licence renewal, with the current licence holder being giving precedence providing he meets the public competition requirements, or
- 2) shall not grant the licence renewal.

### **Termination of broadcasting licence**

#### **Article 109**

The broadcasting licence shall cease to be valid:

- 1) with the expiry of the time period to which it was granted;
- 2) upon the written request of the licence holder;
- 3) by revoking the licence;
- 4) in case of broadcasters liquidation.

### **Revocation of broadcasting licence**

#### **Article 110**

(1) Agency's director shall revoke the licence, by written decision, if:

- 1) the broadcaster fails to pay the fee in line with the licence;
- 2) the broadcaster fails to rectify the irregularities regarding unlawful media concentration within the time stipulated;
- 3) due to the violation of this Law, the broadcaster was pronounced on two consecutive occasions the measure of temporary revocation of licence;
- 4) when filing the application for granting the licence, the broadcaster presented false data or failed to provide data relevant for decision-making;
- 5) the broadcaster failed to broadcast within the time period cited in the licence;

- 6) within 30 days from being granted the licence the broadcaster failed to make available the contract with an operator of at least one electronic communications network;
  - 7) for unjustified reasons, the broadcaster interrupts broadcasting for more than 10 days in a row or 15 days with interruptions within one calendar year;
  - 8) the regulatory body for electronic media revoked the licence for the use of radio frequencies from the broadcaster if terrestrial broadcasting systems were the only electronic communications network for radio or television broadcasting;
  - 9) the broadcaster does not implement the program structure and other program obligations in accordance with the submitted application for a public competition or a request for issuance of a licence;
  - 10) the broadcaster fails to submit valid evidence of his own production and co-production in accordance with the request of the Agency;
  - 11) in other cases envisaged by this Law.
- (2) An appeal against the decision from paragraph 1 above may be lodged with the Council within 15 days from the day of the decision delivery.
  - (3) Council is obliged to decide as per the appeal from paragraph 2 above within 15 days from the day of its receipt by a written decision.
  - (4) The decision from paragraph 3 above shall be final and may be contested in an administrative dispute proceedings.

### **Approval for programme networking of electronic media**

#### **Article 111**

- (1) For the sake of simultaneous broadcasting of two or more radio or television programmes, lasting up to three hours a day continuously or cumulatively, programme networking shall be allowed provided that it does not interfere with the AVM service provision by other broadcasters.
- (2) The approval for programme networking from paragraph 1 above shall be given by Council within 15 days from submission of a written request to that effect.
- (3) Broadcasting of programmes violating provisions on media concentration envisaged by this Law or the antimonopoly provisions envisaged by separate regulations shall be prohibited.

### **Television and radio programmes networking**

#### **Article 112**

- (1) Broadcasters may, upon Council's approval, link into regional or national networks if:
  - 1) networked broadcasters pass the joint programme base and make an agreement as to the shared programme base execution and furnish both documents to Council for approval;

2) networked broadcasters appoint the editor-in-chief of the joint programme and furnish the appointment decision to Council 15 days before starting broadcasting the joint programme;

3) any of the networked broadcasters broadcasts within the area he has been licensed for at least one hour of own production a day between 07 and 22 hours;

4) joint own production of networked broadcasters, excluding programmes from item 2 paragraph 1 above, amounts to 10% of programmes transmitted over the network a day.

(2) A regional or a national network, within the meaning of paragraph 1 above, shall be regarded as a single radio or television broadcast as regards programme requirements and restrictions from this Law.

### **Beginning of broadcasting by means of radio frequencies**

#### **Article 113**

(1) A broadcaster being granted broadcasting licence for the first time is obliged to start transmission on all frequencies allocated within the time stipulated in the licence, and not later than 120 days from the licence issuance date.

(2) A broadcaster who, pursuant to a public competition extends his service zone is obliged to start broadcasting on the allocated frequencies within the time stipulated, and not later than 60 days from the licence issuance date.

(3) In case of failure to comply with the deadlines from paragraphs 1 and 2 above, Agency director shall revoke the licence.

### **Starting broadcasting without the use of radio frequencies**

#### **Article 114**

(1) A broadcaster who has been granted licence to broadcast by means of electronic communication networks without relying on radio frequencies is obliged, not later than within 30 days from the licence issuance date to enter into and furnish the Agency with a copy of a contract with the operator of such a network.

(2) Any contract with operators of electronic communications networks concluded after the expiry of the deadline from paragraph 1 above shall be furnished to the Agency not later than 15 days after entering into such agreements.

### **Ban on multiple coverage of the same service zone by radio frequencies**

#### **Article 115**

If the coverage of the approved service zone of the electronic media has already been established through one radio frequency or within a digital terrestrial broadcasting multiplex,

the same broadcaster may not be issued a broadcasting licence for another frequency or for using another digital terrestrial broadcasting multiplex to cover a larger part of or the whole of the same service zone.

**2. Licence for provision of on-demand AVM services**  
**Granting licence for provision of on-demand AVM services**

**Article 116**

(1) A licence for provision of on-demand AVM services shall be obtained based on:

- 1) a public competition, when the on-demand AVM service provider intends to use terrestrial radio frequencies for provision of AVM services;
- 2) a request, when the on-demand AVM service provider intends to use electronic communications networks for the provision of AVM service without relying on terrestrial broadcasting frequencies.

(2) Before inviting a public competition from paragraph 1 above, the Agency is obliged to obtain from the regulatory body for electronic communications the data on available frequencies or available capacities on digital terrestrial broadcasting multiplex intended for AVM services.

**Contents of the public competition for the provision of on-demand AVM services**

**Article 117**

(1) Public competition for provision of AVM services shall contain:

- 1) information on radio frequencies offered at the public competition and intended for use by on-demand AVM service providers and areas or sites where such frequencies should be used;
- 2) information on the envisaged number of radio and television programmes for which the right to access digital broadcasting multiplex is granted via the public competition from Article 100 of this Law;
- 3) eligibility criteria;
- 4) selection criteria with scoring methodology;
- 5) application fee;
- 6) amount of deposit which may not exceed one quarter of annual fee for provision of on-demand AVM services;
- 7) licence validity period;
- 8) application submission deadline, which may not be shorter than 30 days from the public announcement;
- 9) deadline for decision, which may not be longer than 60 days from the expiry of the application submission deadline;
- 10) list of supporting documents.

(2) The selection criteria shall be non-discriminatory, objective and measurable and shall refer to:

- 1) scope and structure of applicant's programme package (diversity, share of Montenegrin radio and TV programmes, etc) that the on-demand AVM service provider intends to distribute;
- 2) financial data related to ability for profitable operation and market viability.

### **Contents of the licence for provision of on-demand AVM services**

#### **Article 118**

(1) The licence for provision of on-demand AVM services shall contain the data on:

- 1) the licence holder;
- 2) the name of the on-demand AVM service;
- 3) service zone, or zone for on-demand AVM service provision;
- 4) catalogue of programmes and other contents;
- 5) annual fee amount and payment modalities;
- 6) licence validity period;
- 7) deadline for commencing broadcasting;
- 8) other rights and obligations of the licence holder.

(2) The licence from paragraph 1 above may not, on temporary or permanent basis, be assigned, leased or otherwise transferred without Council's approval.

### **Contract with electronic communications network operators**

#### **Article 119**

(1) An on-demand AVM service provider who has been granted licence for provision of on-demand AVM services using the electronic communications network is obliged, not later than within 90 days from the licence issuance date, to furnish to the Agency:

- 1) a contract concluded with the operator of at least one such network;
- 2) proof of entry into the Register of Operators maintained by the regulatory body for electronic communications.

(2) Any contract with operators of electronic communications networks concluded after the expiry of the deadline from paragraph 1 above shall be furnished to the Agency not later than 15 days after entering into such contracts.

### **Requirements and procedure for granting and revoking licence for on-demand AVM service provision**

#### **Article 120**

(1) More detailed conditions for granting a licence for on-demand AVM service provision shall be set by Council.

(2) The provisions of this Law governing the procedure for granting and revocation of broadcasting licence shall apply mutatis mutandis to the procedure for granting and revoking the licence for provision of on-demand AVM services.

### **Subscription contract**

#### **Article 121**

(1) An on-demand AVM service provider is obliged to enter into a contract with the end user governing the manner and terms of provision of the service of radio and television programme distribution and other on-demand AVM services.

(2) The contract from paragraph 1 above shall contain in particular the provisions on:

- 1) access fee amount and payment modality;
- 2) monthly fee amount and payment modality;
- 3) catalogue of programmes included in the distribution service;
- 4) terms and procedure for filing a complaint related to the work of an on-demand AVM service provider.

### **Ban to deny connection**

#### **Article 122**

An on-demand AVM service provider shall not:

- 1) deny connection to an interested user should there be technical capacities in place;
- 2) condition subscriber's access to catalogue of programmes by renouncing the right to use the same or other services offered by another on-demand AVM service provider;
- 3) condition subscriber's access to catalogue of programmes with direct purchase of his reception equipment although the same or similar equipment may be purchased domestically.

## **V. ENCRYPTED SERVICES**

### **Judicial protection for encrypted services providers**

#### **Article 123**

An encrypted service provider shall be entitled to judicial protection.

### **Prohibited activities related to encrypted services**

#### **Article 124**

(1) The production, import, marketing, leasing, advertising or keeping for commercial purposes the devices or software primarily designed, manufactured or adapted to enable or facilitate circumventing any measure of conditional access to an encrypted service and having no other significant purpose except this shall be prohibited.

(2) Mounting, maintenance or replacement of devices from paragraph 1 above for commercial purposes shall be prohibited.

(3) Circumventing any measure of conditional access or provision of service that enables or facilitates that shall be prohibited.

(4) Broadcasting or distribution of any form of audiovisual communications on activities or services from paragraph 1, 2 and 3 above shall be prohibited.

## **VI. ELECTRONIC PUBLICATIONS**

### **Obligations of electronic publication providers**

#### **Article 125**

Provisions of Articles 46, 47, 48 and paragraphs 1 and 2 of Article 55 herein shall apply to the electronic publication identification, the right to correction and reply, and the obligations regarding their contents.

### **Obligation to register an electronic publication**

#### **Article 126**

A natural and a legal person is obliged, before starting publishing an electronic publication, to apply with the Agency for entry into the register of electronic publication service providers.

## **VII. REGISTERS**

### **Registers of AVM service and electronic publication providers**

#### **Article 127**

(1) The Agency shall keep a register of licences for AVM service provision and electronic publications register.

(2) The contents of the application from Article 126 herein and the contents and method of keeping a register from paragraph 1 above shall be set by Council.

### **Entry into media records**

#### **Article 128**

The Agency is obliged to provide to the state administration authority responsible for media the data from the register from Article 127 herein for the sake of entry into media records.

## **VIII. PROTECTION OF ELECTRONIC MEDIA PLURALISM AND DIVERSITY**

### **Ownership transparency among AVM service providers**

#### **Article 129**

(1) An AVM service provider is obliged, by 31 December of the current year, to provide to the Agency the data on natural and legal persons (name, head office/residence) that over the year

have directly or indirectly become holders of share or a stake in the given AVM service provider, giving details of the actual percentage of such a share or stake.

(2) An AVM service provider is obliged, by 31 December of the current year, to provide to the Agency the data on:

- 1) own ownership stake in other legal entities providing AVM services;
- 2) more than 10% share held by its owners in other legal entities providing AVM services.

(3) The Agency is obliged to publish the data from paragraphs 1 and 2 above in the Official Gazette of Montenegro.

(4) Data on share and stake holders up to 1% of capital value shall be published collectively.

### **Related persons**

#### **Article 130**

(1) Related persons, within the meaning of this Law, shall be the persons mutually linked by management, capital or in some other way which enables them to jointly set business policy, operate in accord with the intention of attaining shared goals, or so that one person has the possibility of guiding another or to substantially affect their financial and business decisions, or decision on programme base of electronic media.

(2) Related persons, within the meaning of this Law, shall be:

- 1) closer family members (parents, children, siblings, adoptive parents and children);
- 2) persons related by marriage or common law marriage;
- 3) in-laws as close family members of the spouse;
- 4) holders of a stake or share in business or other titles that give them right to participate in management of another entity with at least 20% of voting rights;
- 5) the same person holds a stake or share in business or other titles that give them right to participate in management of another entity with at least 20% of voting rights in both legal entities;
- 6) through a marketing or other agreement, when over three months or longer within one year they receive over 30% of advertising revenues;
- 7) by being members of management bodies of a legal entity in which they perform this function and persons deemed as related persons with members of management bodies of that legal entity in the manner envisaged by this paragraph.

### **Existence of media concentration**

#### **Article 131**

(1) Media concentration shall exist when a broadcaster:



- 1) has a share in the founding capital of another broadcaster, a legal entity publishing a daily newspaper or a legal person performing the activity of an information agency or vice versa;
  - 2) concurrently holds several broadcasting licences;
  - 3) concurrently broadcasts radio and television programme;
  - 4) concurrently broadcasts radio and/or television programme and publishes daily newspapers distributed within the area of the said radio and/or television programme coverage;
  - 5) concurrently broadcasts radio and/or television programme and pursues the activity of news agencies.
- (2) Media concentration shall also exist when broadcaster's founders are natural or legal persons who are at the same time:
- 1) founders of another broadcaster;
  - 2) founders of a legal person publishing a daily printed media within the area of radio or television programme coverage;
  - 3) founders of an information agency;
  - 4) spouses and common law spouses up to the second degree in the direct or side line of natural persons referred to in paragraph 2 indents 1, 2 and 3 above.
- (3) A broadcaster holding several licences for provision of AVM services is obliged to keep separate accounting in compliance with the law governing accounting practices.

### **Unlawful media concentration**

#### **Article 132**

Unlawful media concentration shall exist when a broadcaster:

- 1) holding a licence for national coverage broadcasting:
  - holds a stake in the founding capital of another broadcaster with such licence with more than 25% share of capital or voting rights,
  - holds more than a 10% stake in the founding capital of a legal entity publishing daily print media with the circulation exceeding 3,000 copies, or vice versa,
  - holds more than a 10% stake in the founding capital of a legal entity performing the activity of a newsagency and vice versa,
  - concurrently publishes the daily print media with the circulation exceeding 3,000 copies;
- 2) except the national public broadcaster, broadcasts over the same area more than one television and one radio programme with the same or similar programme base;
- 3) radio or television programme licensed for broadcasting with local or regional coverage:

- holds more than 30% stake in the founding capital of another broadcaster with regional or local coverage over the same area,
- concurrently, over the same or in neighbouring areas, publishes local daily print media.

### **Special cases of unlawful media concentration**

#### **Article 133**

It shall be deemed that unlawful media concentration exists even when in cases from Article 132 of this Law a natural person who is a founder of a broadcaster or a person who are his relatives in direct line up to the second degree or his spouse holds a stake in the founding capital of another broadcaster, founder of a daily print media or news agency.

### **Granting licences and unlawful media concentration**

#### **Article 134**

- (1) The Agency shall not grant a broadcasting licence if it is established that its granting would lead to unlawful media concentration within the meaning of this Law.
- (2) An applicant for broadcasting licence is obliged, together with the application to the public competition for granting broadcasting rights or the request for granting a broadcasting licence, to submit a certified statement that no unlawful media concentration would occur with possible granting of the licence.
- (3) Should the Agency establish that, following granting of a broadcasting licence, unlawful media concentration occurred, it would order the broadcaster, not later than within three months from establishing such a fact, to rectify the irregularities regarding unlawful media concentration.
- (4) Should a broadcaster, though no justifiable reason, fail to act in accordance with paragraph 3 above, the Agency shall revoke his licence.

### **Changes in ownership structure of broadcasters**

#### **Article 135**

- (1) A broadcaster is obliged to notify the Agency in writing of any changes in its ownership structure.
- (2) A broadcaster shall procure a prior written approval of Council for any change in ownership structure exceeding a 10% share.
- (3) A domestic legal person having as its founders also foreign legal persons incorporated in countries in which it is not possible to establish the origin of founding capital shall not be eligible as a licence holder.

(4) Should it be established, following licence granting, that one of the co-owners of the broadcaster is a foreign legal person from paragraph 3 above, the licence shall be revoked.

### **Fostering media pluralism**

#### **Article 136**

(1) In order to foster media pluralism, commercial broadcaster production and preservation of the diversity of electronic media in Montenegro, funds shall be provided from a share of games of chance revenues in the amount and in the manner laid down by a separate law governing games of chance.

(2) The funds from paragraph 1 above shall be used to foster production of commercial broadcaster programmes of public interest, which are particularly significant for:

- 1) members of minority nations and other minority communities in Montenegro;
- 2) promotion, prevention and combating all forms of discrimination;
- 3) fostering and promotion of social integration of persons with disabilities;
- 4) foster AVM service providers to make their services gradually accessible to persons with a hearing or visual disability;
- 5) promotion of preservation of nature, environment and health;
- 6) foster the culture of public dialogue;
- 7) foster cultural creation;
- 8) development of education, science and arts;
- 9) preservation of Montenegrin national and cultural identity;
- 10) fostering and promotion of human rights exercise and safeguarding;
- 11) foster raising awareness of gender equality.

### **Criteria for awarding funds**

#### **Article 137**

(1) The criteria for awarding funds from Article 136 of this Law shall be the following:

- 1) complexity of programme production (professional standards adhered to, author and editor creativity, meeting the technical requirement, use of human and technical resources);
- 2) the programme importance with a view of attaining the goals from Article 136 herein;
- 3) programme economy and durability.

(2) The funds from Article 136 of this Law shall not be awarded for:

- 1) retransmission of other stations' programmes;
- 2) purchased programmes;
- 3) reruns of own production;

- 4) programmes of own production for which broadcasters have provided coverage of costs from own revenues, donations, sponsorship or grants by domestic and foreign institutions;
- 5) programmes already co-financed on any grounds from the Budget of Montenegro or budgets of local selfgovernment units.
- (3) By way of derogation from paragraph 2 above, investigative, review or documentary programmes partly cofinanced by some institution or organisation shall be treated as coproduction.

## **IX. SUPERVISION**

### **Supervision over the enforcement of obligations of AVM service providers**

#### **Article 138**

- (1) Supervision over the implementation of this Law shall be exercised by the Agency through its authorised person in compliance with the law governing inspection supervision.
- (2) The Agency shall particularly supervise whether AVM service providers adhere in all respects with the requirements from the licence.
- (3) With a view of implementing the competences envisaged by law, an AVM service provider is obliged, at the Agency's request, to make available all data, information and documents needed for performing the regulatory function in this field, within the time set by the Agency, which may not be shorter than 7 days.

### **Compliance orders for AVM service providers**

#### **Article 139**

- (1) In exercising its supervisory functions, the Agency may order:
- 1) a broadcaster to:
    - duly post a warning designating programmes that may jeopardise the health, moral, intellectual, emotional and social development of a child,
    - show the name, symbol or short identification sign of a radio or television programme in compliance with the law,
    - harmonise radio or television broadcasting with the licence granted,
    - enable the exercise of the right to short news in compliance with this law;
  - 2) an on-demand AVM service provider:
    - stop distributing programmes for which it does not hold an approval/contract,
    - distribute radio and/or television programmes concurrently, wholly and unchanged, in compliance with the licence for on-demand AVM service provision and the approval of the programme right holder,
    - adhere to the list of programmes included in the catalogue,
    - stop distributing programmes violating programme standards set by Council,

- enable users access to network under equal terms.

### **Administrative supervision measures**

#### **Article 140**

(1) With a view of rectifying the irregularities noted, the Agency may issue a warning to the AVM service provider, and may also, temporarily or permanently, revoke broadcasting licence or licence for provision of on-demand AVM service in the manner laid down by this Law.

(2) The Agency is obliged to post on its website the decision on the measure pronounced.

(3) An AVM service provider is obliged to publish the information on the measure from paragraph 1 above in an appropriate manner within the service it offers.

#### **Warning**

#### **Article 141**

A warning shall be issued to an AVM service provider for violation of an obligation stipulated by this Law, by the Agency's legal act or in the licence granted.

### **Temporary and permanent revocation of licence for AVM service provision**

#### **Article 142**

(1) Licence for provision of an AVM service shall be temporarily, for 30 days, revoked if the AVM service provider:

- 1) failed to start providing service in the time stipulated;
- 2) failed to act in accordance with Agency's orders as regards compliance with the provisions of this Law governing unlawful media concentration;
- 3) even after being issued a warning and pronounced a fine continues to violate provisions of this Law on programme standards;
- 4) even after being issued a warning fails to settle the annual licence fee;
- 5) as a non-for-profit broadcaster changes its status or if broadcasting audiovisual commercial communications in contravention to this Law;
- 6) after the issuance of warning measures, it fails to implement the program structure and other program obligations in accordance with the submitted application for a public call for competition or a request for licence.

(2) Should an AVM service provider previously been pronounced the measure of temporary licence revocation twice, the licence shall be revoked permanently.

### **Appeal against administrative supervision measures**

#### **Article 143**

(1) An AVM provider who has been pronounced a supervision measure in accordance with this Law shall have the right, within 15 days from being given the decision, to lodge an appeal with the Council that defers its execution.

(2) A representative of the AVM service provider shall have the right to attend the Council session considering the appeal against the decision on temporary or permanent revocation of licence.

(3) The AVM service provider is obliged, without delay, to execute the final Council decision from paragraph 1 above, and in case of failure to do so the involuntary enforcement procedure shall be conducted.

(4) An administrative dispute may be instigated against the Council decision upon appeal.

### **Complaint procedure**

#### **Article 144**

(1) A responsible official shall decide, within 30 days from complaint lodging, upon the complaint of a natural or a legal person regarding the operation of a provider of AVM service or electronic publication.

(2) An appeal may be lodged with Council against the decision from paragraph 1 above within 15 days from the decision delivery.

(3) Council is obliged to adopt the decision on appeal from paragraph 2 above within 15 days from it being lodged.

(4) An administrative dispute may be instigated against the decision from paragraph 3 above.

### **Mutatis mutandis application of administrative procedure rules**

#### **Article 145**

*It is deleted. (Law Amending the Electronic Media Law, "Official Gazette of Montenegro", No. 55/16).*

## **X. PUNITIVE PROVISIONS**

### **Misdemeanour offences**

#### **Article 146**

(1) A legal person shall be punishable by a fine ranging from 500 to 6,000 euros if it:

- 1) denies to a service user access to data on the name of AVM service provider, the registered office, or address, email address or web page of the AVM service provider, or responsible body within the AVM service provider or competent regulatory body (Art. 46 paragraph 2);
- 2) fails to conduct prize competitions with fair publication of set rules (Article 49 paragraph 1);

- 3) fails to transmit cinematographic works in line with the Law and concluded contract with the copyright and related rights holder (Art. 50);
- 4) fails to provide a due warning for programmes which may impair physical, health, moral, mental, intellectual, emotional and social development of minors or clearly identify such programmes by the presence of a visual symbol throughout their duration or to broadcast such programmes at the time and in the manner in which it is least likely that minors will normally hear or see it (Art. 55 paragraph 2);
- 5) transmits programmes which may impair physical, health, moral, mental, intellectual, emotional and social development of minors outside the watershed (Art. 55 paragraph 3);
- 6) transmits programmes containing pornography or whose content emphasise and support violence, drug addiction or similar forms of criminal conduct, or transmits programmes exploiting credulity of viewers or listeners (Art. 55 paragraph 4);
- 7) fails to continuously display name, symbol or short identification sign of an electronic media throughout the television broadcasts or fails to state at least once every hour of the programme during radio broadcasts (Art. 57 paragraph 1);
- 8) uses the name, symbol or short identification sign which does not correspond to the registered name of the electronic media (Art. 57 paragraph 2);
- 9) fails to display name, symbol or short identification sign of an electronic media when retransmitting programmes of other broadcasters, or fails to state the name at the beginning and/or the end when broadcasting programmes of independent producers (Art. 57 paragraph 3);
- 10) without prior Agency's approval, commences radio or television broadcasting with significantly changed structure (Art. 58 paragraph 1);
- 11) fails to broadcast at least 12 hours a day (Art. 59 paragraph 3);
- 12) fails to devote at least 10% of total weekly programme to news and current affairs from the coverage zone (Art. 59 paragraph 4);
- 13) fails to broadcast news programme lasting at least 30 minutes or within it at least one news not shorter than 20 minutes (Art. 59 paragraph 5);
- 14) fails to ensure European audiovisual works to make up at least 51% of its annual transmission time (Art. 61 paragraph 1);
- 15) fails to provide more than 10% share of audiovisual works of independent producers in annual transmission time or that at least half of such works are produced in the last five years (Art. 63 paragraphs 1 and 4);
- 16) fails to clearly mark radio or television programme reruns (Art. 65 paragraph 3);
- 17) uses exclusive rights purchased after entry into force of this Law in such a way that a substantial proportion of the public in an EU Member State or a state party to the international treaty binding Montenegro is deprived of the possibility of following

events of major importance for the society and which are in line with its domestic legislation designated for whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television (Art. 66 paragraph 1);

18) uses short extracts for programmes other than general news programmes, or offers the same programme in on-demand AVM services not on a deferred basis (Art. 68 paragraph 5);

19) fails to enable non-recurrent use of the event footage to another broadcaster unable to shoot the event or seeking disproportionate compensation of actually incurred costs (Art. 69 paragraph 5);

20) in the capacity of a non-for-profit broadcaster violates the provisions of this Law pertaining to programme related obligations (Art. 72 paragraph 5);

21) in the capacity of a non-for-profit broadcaster, does not use profits from radio and/or television programme production and transmission solely to improve and develop own activity (Art. 72 paragraph 8);

22) provides an on-demand AVM service which may impair the physical, mental or moral development of minors without ensuring that minors will not normally hear or see such broadcasts (Art. 82 paragraph 1);

23) at the Agency's demand, fails to furnish data on meeting the requirements of Art. 82 paragraph 3 of this Law (Art. 82 paragraphs 3 and 4);

24) within three months from being granted a pertinent licence, fails to set up and keep accounting for on-demand AVM services separate from the accounting for other activities (Art. 83 paragraph 6);

25) before including any one radio or television programme into the catalogue and beginning of its distribution, fails to obtain prior written approval of the rights holder and furnish it to the Agency for recoding purposes (Art. 83 paragraph 1);

26) fails to distribute radio and/or television programmes concurrently, wholly and without any changes, in compliance with the licence granted (Art. 83 paragraph 2);

27) performs distribution of encoded satellite programmes without having entered into a distribution agreement with the right holder over such programmes allowing encoding for further retransmission or distributes such programmes by procuring a decoding card intended for individual use of a given subscriber (Art. 83 paragraphs 3 and 4);

28) fails to distribute, free of charge, programmes of national public broadcasters in the whole service zone and regional and local public broadcasters in the territory of their founding local self-government units (Art. 83 paragraph 5);

29) fails to notify on-demand AVM service providers in a timely fashion of not holding the right to transmit certain programmes using a certain platform (Art. 83 paragraph 6);



- 30) distributes programmes for which the broadcaster does not hold a broadcasting right using a certain platform (Art. 83 paragraph 7);
- 31) in the capacity of an AVM service provider, fails to adhere to the list of radio or television programmes included in the catalogue; to notify the Agency beforehand, in writing, of any change in the catalogue of radio or television programmes, and any change in the number and structure of programme packages; or to distribute programmes in compliance with programme standards set by Council (Art. 84 paragraph 1);
- 32) distributes radio and television programmes within the territory of Montenegro via an unregistered electronic communication network (Art. 84 paragraph 2);
- 33) holds a licence for provision of on-demand AVM service using digital terrestrial broadcasting systems, and fails to distribute programmes of broadcasters who have acquired the right of access to the digital terrestrial broadcasting multiplex (Art. 84 paragraph 4);
- 34) shows surreptitious and fraudulent audiovisual commercial communication (Art. 85 paragraph 1);
- 35) uses audiovisual commercial communication to send messages which might affect the sub-consciousness and which constitute manipulation or are damaging in social and emotional terms (Art. 85 paragraph 2);
- 36) broadcasts audiovisual commercial communication which: uses visual and audio forms, contents or elements recognisable as major news or announcements (news, headlines, etc.); uses recognisability of certain programmes with the intention to mislead the viewer or listener into believing to actually be watching or listening to that programme; discredits or disparages competitors, their products or services; presents competitor programme or service as an imitation or reproduction; uses parts of some programme (headline, logo, music theme, etc.); copies the advertising of some other advertiser, their activity, product or service; or uses scenes of death, infliction of injuries, violence or destruction of buildings and nature (Art. 85 paragraph 3 items 5, 6, 7, 8, 9, 10 and 12);
- 37) broadcasts audiovisual commercial communication which promotes sale and purchase of human organs or tissues for transplantation or transfusion (Art. 85 paragraph 4);
- 38) broadcasts audiovisual commercial communication which promotes tobacco and tobacco products, narcotic drugs, weapons, ammunition and pyrotechnic devices and marketing of goods and services prohibited by law (Art. 85 paragraph 5);
- 39) broadcasts audiovisual commercial communication which promotes alcoholic beverages aimed at minors or encourage consumption of such beverages (Art. 85 paragraph 6);

- 40) broadcasts audiovisual commercial communication which promotes medicinal products available only on prescription or medical procedures and treatment not compliant with the law governing health care (Art. 85 paragraph 7);
- 41) broadcasts audiovisual commercial communication which: causes tangible or intangible detriment to minors, directly exhorts minors to buy or hire a product or a service by exploiting their inexperience or credulity, directly encourages minors to persuade their parents or others to purchase the goods or services being advertised, exploits the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations (Art. 86 paragraph 1);
- 42) denies to provide audiovisual commercial service if such denial creates or maintains a monopolistic or other dominant market position or establishes unfair competition (Art. 87);
- 43) broadcasts audiovisual commercial communication which is not readily recognisable as such (Art. 88);
- 44) broadcasts radio and television advertising or teleshopping which are not readily recognisable as such and distinct from other parts of the programme by optical and acoustic means (Art. 89 paragraph 1);
- 45) in the capacity of an advertiser, exercises any editorial influence on the contents of programmes (Art. 89 paragraph 2);
- 46) uses data which may be misleading as regards the advertiser's identity, activities, features, quality, origin or other data regarding the product or service (Art. 89 paragraph 3);
- 47) fails to clearly identify the ordering party in advertising (Art. 90 paragraph 1);
- 48) shows advertising or teleshopping of alcoholic beverages which: associates consumption of alcohol with enhanced physical performance or driving; creates the impression that the consumption of alcohol contributes towards social or sexual success: claims that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means for resolving personal conflicts; encourages immoderate consumption of alcohol or presents abstinence or moderation in a negative light; or places emphasis on high alcoholic content as being a positive quality of the beverages (Art. 91);
- 49) in the capacity of a public broadcaster, the proportion of advertising spots exceeds 10% per clock hour, or if the proportion of advertising and teleshopping spots exceeds nine minutes within one clock hour during the day (Art. 92 paragraphs 1 and 2);
- 50) in the capacity of a commercial broadcaster, the proportion of advertising spots exceeds 15% per clock hour, or if the proportion of advertising and teleshopping spots exceeds 20% within one clock hour during the day (Art. 93 paragraphs 1 and 2);

- 51) shows advertising spots within religious contents, formal ceremonies, programmes related to tragic events of wide scope or programmes lasting 30 minutes or shorter (Art. 94);
- 52) broadcasts sponsored AVM services or programmes with their content or scheduling influenced by the sponsor or the sponsor affecting responsibility or editorial independence of the AVM service provider (Art. 95 paragraphs 1 item 1);
- 53) broadcasts sponsored AVM services or programmes directly encouraging the purchase or rental of goods or services, in particular by making special promotional references to those goods or services (Art. 95 para 1 item 2);
- 54) fails to clearly identify sponsored AVM services and programmes (Art. 95 para 1 item 3);
- 55) broadcasts wholly or partially sponsored AVM services or programmes not clearly identified by the name, logo and/or other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes (Art. 95 para 1 item 4);
- 56) broadcasts AVM services or programmes sponsored by legal and natural persons whose principal activity is the manufacture or sale of products or provision of services whose advertising is prohibited by law (Art. 95 paragraph 2);
- 57) broadcasts AVM services or programmes sponsored by legal and natural persons whose activities include the manufacture or sale of medicinal products available only on prescription or medical procedures or treatments which are not compliant with a separate law governing health care (Art. 95 paragraph 3);
- 58) broadcasts sponsored news or current affairs programmes (Art. 95 paragraph 5);
- 59) broadcasts programmes sponsored by political parties, coalitions or other political organisations (Art. 95 paragraph 6);
- 60) shows a sponsorship logo during children's programmes and religious programmes (Art. 95 paragraph 7);
- 61) broadcasts audiovisual programmes containing product placement without meeting the requirements of Art. 96 paragraph 2 of this Law (Art. 96 paragraph 1);
- 62) broadcasts programmes with product placement with their content or scheduling influenced by the person placing the product or such a person affecting responsibility or editorial independence of the AVM service provider (Art. 96 paragraph 5 item 1);
- 63) broadcasts programmes with product placement which directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services or by giving prominence to the product (Art. 96 paragraph 5 item 2);

64) broadcasts programmes with product placement without clearly informing viewers of product placement (Art. 96 paragraph 5 item 3);

65) temporarily or permanently assigns, leases or in any other way transfers the licence for AVM service provision, without Council's approval (Art. 104 paragraph 2 and Art. 118 paragraph 2);

66) in the capacity of a broadcaster who has been granted the broadcasting licence using electronic communication networks without relying on radio frequencies fails, not later than within 30 days from the licence issuance date to enter into and furnish the Agency with a copy of a contract with the operator of at least one such network or fails to furnish to the Agency any contract with operators of electronic communications networks concluded after the expiry of the deadline not later than 15 days after entering into such agreements (Art. 114);

67) fails to furnish to the Agency not later than within 90 days from the issuance of licence for provision of ondemand AVM services using the electronic communications network, a contract concluded with the operator of at least one such network or proof of entry into the Register of Operators maintained by the regulatory body for electronic communications (Art. 119 para 1);

68) fails to furnish to the Agency, not later than within 15 days after signature date, concluded contracts with operators of electronic communications networks (Art. 119 paragraph 2);

69) denies connection to an interested user should there be technical capacities in place or conditions subscriber's access to catalogue of programmes by renouncing the right to use the same or other services offered by another on-demand AVM service provider or conditions subscriber's access to catalogue of programmes with direct purchase of his reception equipment although the same or similar equipment may be purchased domestically (Art. 122);

70) produces, imports, markets, leases, advertises or keeps for commercial purposes the devices or software primarily designed, manufactured or adapted to enable or facilitate circumventing any measure of conditional access to encrypted services and having no other significant purpose, mounts, performs maintenance or replacement of such devices, or circumvents any measure of conditional access or provision of service that enables or facilitates or transmits or distributes any type of audiovisual commercial communication on activities or services from Article 124(1)(2) and (3) above (Art. 124);

71) by 31 December of the current year fails to furnish the Agency with the data on natural and legal persons who have in the course of the year directly or indirectly become holders of shares or a stake in the given AVM service provider, giving information on percentage of such share or stake (Art. 129 paragraph 1);

72) by 31 December of the current year fails to furnish the Agency with the data on the ownership share in other legal entities as AVM service providers and share of its owners exceeding 10% in ownership structure of legal entities AVM service providers (Art. 129 paragraph 2);

73) fails to notify the Agency in writing of change in ownership structure (Art. 135 paragraph 1).

(2) A responsible person within a legal person shall be punishable by a fine ranging from 100 to 2,000 euros for an offence from paragraph 1 above.

## **XI. TRANSITIONAL AND FINAL PROVISIONS**

### **Alignment of public broadcasters' operation**

#### **Art. 147**

Existing public broadcasters are obliged to align their organisation and operation with the provisions of this Law within six months from this Law entering into force.

### **Alignment of the work of commercial broadcasters and operators**

#### **Art. 148**

(1) Commercial broadcaster operating based on licences for transmission and broadcasting of broadcast signals issued pursuant to the Broadcasting Law and decisions on approvals for the use of broadcasting frequencies, issued pursuant to the Law on Electronic Communication, the Agency shall issue broadcasting licences within six months from this Law entering into force.

(2) Operators operating under licences for construction and use of distribution systems (cable, MMDS and satellite systems and public land telecommunication lines), issued under the Broadcasting Law and the decisions on entry into the Register of Operators, issued under the Law on Electronic Communication, the Agency shall issue licences for provision of on-demand AVM service within six months from this Law entering into force.

(3) Broadcasting licence and licence for provision of on-demand AVM service from paragraphs 1 and 2 above shall be issued with the validity corresponding to the one for licences issued under the Broadcasting Law.

#### **Art. 149**

(1) The Broadcasting Agency shall continue operation as the Agency for Electronic Media.

(2) The Agency shall take over the staff, funds, equipment and rights and obligations of the Broadcasting Agency.

(3) The Government of Montenegro shall, within 60 days from this Law entering into force, provide the office space needed for the Agency's operation.

## **The validation of broadcasting permission**

### **Article 149a**

Broadcasting authorizations issued until the beginning of the application of this law shall be valid until the expiration of the period of their issuance.

## **Public call for nominations to authorised nominators of Council members**

### **Art. 150**

The Parliamentary Committee shall, within eight days from this Law entering into force, issue a public call to authorised nominators from Art. 19(1) of this Law for submitting nominations for Council members.

## **Deadline for appointment of Council members**

### **Art. 151**

The Parliament shall pass a decision on the List of Nominees for Council Members within 60 days from the expiry of the deadline for nomination of Council members as per the public competition referred to in Art. 150 of this Law.

## **Termination of office for members of the Council of the Broadcasting Agency**

### **Art. 152**

With the appointment of the Council members, the term in office of the members of the Council to the Broadcasting Agency shall be terminated.

## **Council constitution**

### **Art. 153**

- (1) Council shall be constituted within 15 days from entry into force of Parliament's decision on the list of nominations for the Council members.
- (2) Council shall elect the chair at its constitutional session.

## **Adoption of Articles of Association**

### **Art. 154**

The Council shall adopt the Agency's Articles of Association within 30 days from appointing the Council members.

## **Appointment of the Agency director**

### **Art. 155**

- (1) Council is obliged, within 15 days from the adoption of the Articles of Association, to publish the public competition for the Director of the Agency.

(2) Council is obliged to appoint the Agency's Director within 30 days from the expiry of the deadline for applying to the competition.

### **Termination of office for the Agency director**

#### **Art. 156**

By appointment of the Agency director, the term in office of the Broadcasting Agency director shall terminate.

### **Secondary legislation**

#### **Article 157**

Implementing legislation for this Law shall be passed within six months from the day of constituting the Council.

#### **Article 158**

Provisions of Art. 61 paragraphs 1 and 4, Art. 63 paragraphs 1, 3 and 4, and Art. 96 of this Law shall be applied as of 1 January 2013.

#### **Article 158a**

The provision of Article 42 paragraph 3 of this Law shall be applied until 1 January 2016.

### **Repealing of legislation**

#### **Article 159**

With this Law entering into force the Broadcasting Law (Official Gazette of the Republic of Montenegro 51/02, 62/02, 56/04, 77/06) and the following provisions:

- Art. 18(7) and Art. 24 as refers to electronic media, Art 42(1) indent 18 related to radio programmes, Art. 43(1) items 2 and 4 as regards electronic media of the Media Law (Official Gazette of the Republic of Montenegro 51/02 and 62/02) shall be repealed.

### **Entry into force**

#### **Article 160**

This Law shall enter into force on the eighth day upon its publication in the Official Gazette of Montenegro, and it shall be applied from 1 September 2017.