

**Law no. 504/July 11th, 2002  
The Audiovisual Law**

**Text in force as of November 22nd, 2009**

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**Basic document**

**#B The Audiovisual Law no. 504/2002**

**Modifying documents**

#M1: *Law nr. 591/2002*

#M2: *Law nr. 402/2003*

#M3: *Law nr. 510/2004*

#M4: *Government Emergency Decree nr. 123/2005*

#M5: *Government Emergency Decree nr. 3/2006*

#M6: *Law nr. 197/2006*

#M7: *Law a nr. 364/2007*

#M8: *Law a nr. 116/2008*

#M9: *Government Emergency Decree nr. 181/2008*

#M10: *Law nr. 330/2009*

#M11: *Law nr. 333/2009*

All further modifications and completions made by the above mentioned documents shall be written in italic. In front of each modification or completion the document that brought about the respective change shall be mentioned under the form of **#M1** , **#M2** *aso.*

**#CIN**

Note:

All the sums of money previously mentioned under former *lei* value have been updated in new *lei in* the updated text .

**#B**

**Chapter 1  
General Provisions**

**#M9**

ART. 1

*(1) For the purpose of the present law, the terms and expressions below shall have the following meaning:*

**#M11**

*1. audiovisual media service – a service under the editorial responsibility of a media service provider, whose main purpose is to provide by means of electronic communication networks programs meant to inform, to entertain or to educate the general public. Such an audiovisual media service shall be either a television broadcast/ radio broadcast as defined by point 2 of the present article, or an on-demand audiovisual media service, as defined by point 3 in the present article – and/or a media service that is an audiovisual commercial communication,*

*as defined in point 15 of the present article;*

**#M9**

2. *radio/television broadcasting program service – an audiovisual linear media service provided by a broadcaster whose programs are broadcast in a continuous sequence, irrespective of the technical means used, having a pre-established content and time-table, for simultaneous program viewing/listening in keeping with a program chart, provided under a certain name, and identified by a logo, for television broadcast and sound signal for radio broadcasting;*

3. *on-demand audiovisual service – a non-linear audiovisual media service, provided by an media service provider for the viewing of programs at the moment chosen by the user and at his individual request on the basis of a catalogue of programs selected by the media service provider;*

4. *program – a set of moving images with or without sound constituting an individual item, identifiable by title, content, type or author, within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the form and content of television broadcasting.*

5. *a generality television or radio service – a service that broadcasts in a cumulated way and under balanced percentages audiovisual programs with content meant to inform, entertain or educate, in the main fields of interest and that addresses majority part of the public;*

**#M11**

*51 public television and radio services –television program services provided by the Romanian Television Broadcasting Corporation and radio program services provided by the Romanian Radio Broadcasting Corporation;*

**#M9**

6. *a television or radio community service – a service that broadcasts audiovisual programs dedicated to the public of a specific community;*

7. *a thematic television or radio service – a service that broadcasts audiovisual programs mainly dedicated to a specific topic and that addresses a certain part of the public;*

8. *teletext service – the entire amount of information provided to the public under text form, encoded within image signal, that may be accessed by means of a TV set standard decoder at the moment and for a time lapse and content chosen by the receiver;*

**#M11**

9. *videotext service – the entire amount of messages provided to the public under text form or graphic signs, during a program chart or a catalogue from an audiovisual media service provider under the form and content of TV program transmissions or similar to those.*

**#M9**

10. *retransmission - the interception and simultaneous transmission of linear audiovisual media services provided by radio-broadcasters and intended to be received by the public by any technical means, in their entirety and without any modification of their content;*

11. *editorial responsibility - means the exercise of effective control both over the selection of the programmes and over their organization either in a chronological program chart, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. For the purpose of the present law, editorial responsibility does not necessarily imply in itself another type of legal liability for the content of the services provided;*

12. *media service provider - means the natural or legal person that has editorial*

*responsibility for the choice of the audiovisual content of the audiovisual media service and that determines the manner in which it is organized;*

*13. broadcaster - means an audiovisual media service provider in the field of television and/or radio services;*

*14. service distributor – any person that makes and provides the public with an offer of retransmitted program services to be received, upon signed contract provisions with broadcasters or with other distributors;*

*15. audiovisual commercial communication - regards sound messages or images with or without sound, which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a program in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include radio and television advertising, sponsorship, teleshopping and product placement and other types of advertising;*

*16. surreptitious audiovisual commercial communication means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programs when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;*

**#M11**

*17. television advertising - means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;*

**#M9**

*18. subliminal advertising – any kind of advertising that employs such stimuli that by being too faint to be perceived consciously, might exert an influence upon the economic behavior of the public;*

*19. sponsorship - means any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media programs with a view to promoting its name, its trade mark, its image, its activities or its products;*

*20. teleshopping – means the direct offer broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;*

*21. product placement - means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a program, in return for payment or for similar consideration;*

*22. television promotion – type of advertising made by program presenters, by inserting in the program of some scenes meant to promote one or more products or services. These scenes introduced in the program are being kept separate from the other parts of the program by acoustic and optical means;*

*23. interactive advertising – broadcasting technique for television advertising allowing viewers to choose access to advertising by means of non-linear audiovisual media service, at the moment, for the time lapse and the advertising content decided by viewers;*

*24. split screen advertising - broadcasting technique for television advertising, including self-promotion or of elements that identifies the sponsor. This technique allows for simultaneous*

*broadcasting of the editorial content and of advertising content or of a message regarding the sponsor, the latter being kept separate from the rest of the program by acoustic and optical means, so that their nature shall be obvious to the public;*

*25. virtual advertising - broadcasting technique for television advertising which allows image processing, during broadcast of some events, by replacing images of the advertising on the panels inside the place where the events unfold, with advertising messages introduced by broadcasters, or by overlapping new images with such messages in any part of the image transmitted;*

*26. virtual sponsorship – broadcasting technique of sponsor’s identification elements which allows image processing during broadcast of some events, by replacing images of the advertising on the panels inside the place where the events unfold, with messages regarding sponsors, introduced by the broadcaster or by overlapping new images with such messages in any part of the image transmitted;*

*27. scheduled duration – time lapse including the effective duration of the program or part of program section and television advertising time broadcast, as the case may arise, inside them;*

*28. exclusivity rights – rights gained by a broadcaster, in keeping with contract provisions, from an event organizer or from the owner or administrator of the location where the event unfolds, from the authors or other owners’ rights, with a view to exclusive television broadcasting by the respective broadcaster, on limited geographical area;*

*29. major importance event – any event that may be of interest to an important part of the public, that is included in the list approved by the Government Decision following the National Audiovisual Council proposal;*

*30. audiovisual license – the legal document issued in keeping with the National Audiovisual Council decision that grants a broadcaster under Romanian jurisdiction the right to broadcast, in a certain area, a certain program service; the audiovisual license may be analogic or digital license, according to the technical means of transmission;*

**#M11**

*31. the broadcasting license – the legal document by which the National Authority for Administration and Regulations in Communications, grants the analogic audiovisual licensee the right to use, for a certain period of time, one or more radio-electric frequencies, as the case arises in keeping with the analogic audiovisual license;*

*31^1. digital terrestrial system – means the television and/or radio system where the signals are broadcast from the broadcasting stations to end users by terrestrial radio means under the form of a multiplex, in keeping with the digital radio/ television audio/video standard;*

*31^2. license for use of radio frequencies in a terrestrial digital system – the administrative document that grants a natural or legal person authorized in keeping with the law by the National Authority for Regulations in Communications and IT to provide electronic communication networks and electronic communication services to the public, the right to use for a given period of time the radio frequencies, in a terrestrial digital system;*

**#M9**

*32. retransmission authorization – the legal document issued in keeping with the National Audiovisual Council decision, granting the right to retransmit on the Romanian territory a program service, not complying with the provisions in art. 75, par. (1) and (2);*

**#M11**

*33.\*\*\* Annulled*

*34. digital terrestrial multiplex – package of radio and television programs services, supplementary multimedia services and other associated identification data transmitted from the broadcasting stations to the final users by terrestrial radio way, using digital modulation within the limits of a standard television channel/block of frequency, with national, regional*

*or local coverage, as the case may arise;*

*35. radio/television multiplex operator – a Romanian or foreign, legal or a moral person, holding a digital broadcasting license and having the right to operate a network/ a radio or television broadcasting stations, under law provisions, with a view to broadcasting a program or a package of radio or television programs, multimedia services and associated data of identification, multiplexed;*

*36. encoding – procedure of presenting information in electronic format that may be accessed only by means of a code;*

*37. encrypting - means of changing a flow of information in electronic format, according to a pre-established formula, with a view to protecting it during transmission in unsafe media, where the initial information may be rebuilt only by using an adequate decoding formula;*

**#M9**

*38. conditional access system – any technical means or device by means of which access in an understandable way to a radio or television protected broadcasting service is restricted, in keeping with a subscription or another way of previous individual authorization.*

**#M11**

*(2) For the purpose of the present law, the definitions in art. 2 of the Government Decree nr.34/2002, regarding access to electronic communications public networks and to their infrastructure, as well as their being interconnected, as stipulated by Law no. 527/2002 with further modifications and completions are also applicable.*

**#M9**

**ART. 1<sup>1</sup>**

*(1) For the purpose of the present law, European works means the following:*

*a) works originating in the Member States of the European Union;*

*b) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of point (3);*

*c) works co-produced within the framework of agreements related to the audiovisual sector, concluded between the European Community and third countries that fulfill the conditions defined in each of those agreements.*

*(2) Definitions from par.(1) b) and c) shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned;*

*(3) Works referred in par.(1) a) and b) are works mainly made with the authors and workers residing in one or more of the respective states provided that they comply with one of the following conditions:*

*a) they are made by one or more producers established in one or more of those states; b) the production of such works is supervised and actually controlled by one or more producers established in one or more of those states;*

*c) the contribution of the co-producers of those states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside the respective states.*

*(4) Works which are not European works within the meaning of paragraph (1), but that are produced within the framework of bilateral co-production treaties concluded between 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 member states .*

**#M9**

**ART. 2**

*(1) The right of any audiovisual media services provider under Romanian jurisdiction, to broadcast and the right to retransmit any audiovisual media service is recognized and guaranteed by the present law.*

*(2) For the purpose of the present law, audiovisual media services providers are those that:*

*(a) are considered to be established in Romania in keeping with the provisions of par.(3);*

*(b) comply with the provisions of par.(4).*

*( 3 ) For the purpose of the present law, a media service provider shall be deemed to be established in Romania in case it complies with one of the following conditions:*

*a) the media service provider has its main headquarter in Romania, and the editorial decisions regarding the audiovisual media service are taken in Romania;*

*b) in case a media service provider has its main headquarter in Romania and a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in Romania.*

*c) if editorial decisions on the audiovisual media service are taken in Romania and a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in Romania ;*

*d) if the workforce involved in the pursuit of the audiovisual media service activity operates in Romania and also in another Member State of the European Union and, by applying the provisions provided for at letters b) and c) it cannot be ascertained if a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in Romania or in that member State of the European Union, then the media service provider shall be deemed to have its headquarter in Romania if its main headquarter is in Romania.*

*e) if a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates neither in Romania nor in other member State of the European Union, the media service provider shall be deemed to have its headquarter in Romania if it first began its activity in Romania and he maintains a stable and effective link with the economy of Romania.*

*4 ) Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under Romania's jurisdiction in the following cases:*

*(a) they use a satellite up-link belonging to Romania;*

*(b) although they do not use a satellite up-link belonging to Romania, they use satellite capacity appertaining to Romania.*

**#M11**

*(c) they use short wavelength broadcasting stations to transmit programs in other countries.*

**#M9**

*5. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, then the media service provider shall be deemed to be established outside Romania's jurisdiction.*

**#M9**

### **ART. 3**

*(1) Political and social pluralism, cultural, linguistic and religious diversity, information, education and public entertainment are accomplished and ensured by the broadcasting and the retransmission of program services with the observance of the freedoms and fundamental rights of the person. (2) All audiovisual media services providers must ensure the objective information of the public by correctly presenting the facts and events and they must favor the free formation of opinions.*

**#M11**

*(3) The liability for the content of broadcast program services, including audiovisual*

*commercial communications is incumbent in keeping to the law on the audiovisual media services provider.*

**#M9**

**ART. 4**

*The right of each person to freely receive audiovisual media services offered to the public by audiovisual media services providers under the jurisdiction of Romania and of the Member States of the EU is acknowledged and warranted by this Law.*

**#M9**

**ART. 5**

*(1) This Law also acknowledges and guarantees the freedom to provide on Romania's territory audiovisual media services under the jurisdiction of Member States of the EU.*

*(2) The option made by any person in regard to program and services offered by audiovisual media services providers or by service distributors are confidential and may not be disclosed to a third party without the consent of the respective person.*

**#M9**

**ART. 6**

*(1) Censorship of any kind upon audio-visual communication is forbidden.*

*(2) Editorial independence of audiovisual media services providers is acknowledged and warranted by this Law.*

*(3) Any kind of interference of public authorities or any Romanian or foreign natural or legal persons in the content, shape or illustration methods of elements comprised in the audiovisual media services is forbidden.*

*(4) The decisions and the norms issued by the National Audio-visual Council with a view to applying the provisions of the present Law and by observing the legal provisions, as well as the norms on human rights stipulated in the conventions and treaties ratified by Romania are not deemed interference.*

*(5) Provisions of professional conduct codes adopted by journalists and audiovisual media services providers applied within self-regulation mechanisms and structures of their activity are not deemed interference, unless they infringe the legal provisions in force.*

**#B**

**ART. 7**

*(1) The confidential nature of the information sources used in conceiving or issuing news, shows or other elements of program services is warranted by this Law.*

*(2) Any journalist or program creator is free not to disclose the information that could identify the source of information obtained in direct connection to his professional activity;*

*(3) Information able to identify a source are deemed the following:*

*a) the personal name and data, as well as the voice or image of a source;*

*b) the concrete circumstances under which a journalist gets information;*

*c) the unpublished part of the information supplied by the journalist's source;*

*d) the personal data of the journalist or radio-broadcasters related to their activity of obtaining the broadcasted information.*

*(4) The confidential nature of the information sources obliges in return to assume the liability for the reality of the supplied data.*

*(5) Persons who by virtue of their professional relations with journalists, learn about information that could identify a source by gathering, editorial treating or publishing such information will benefit of the same protection as journalists do.*

*(6) The disclosure of an information source may be ordered by law courts insofar it is*

*necessary in order to protect national safety or public order and insofar such disclosure is necessary to solve a case judged at a law court when:*

*a) alternative measures of similar effect, to the disclosure do not exist or have been exhausted;*

*b) the legitimate interest for disclosure exceeds the legitimate interest for non-disclosure.*

*Art.8 - (1) Authorized public authorities shall ensure upon request:*

*a) journalists' protection in case they are subject to pressures or threats that could effectively impede or restrict the free exertion of their profession;*

*b) the protection of the head quarters and offices of the radio-broadcasters in case they are subject to threats that could impede or affect the free development of their activity.*

*(2) The protection of journalists and of headquarters or offices of radio-broadcasters in the terms of paragraph (1) may not become a pretext to prevent or restrict the free exertion of their profession or activity. Art. 9 - Searches unfolded at radio-broadcasters' head offices or precincts shall not prejudice the free expression of journalists nor shall suspend program broadcasting.*

## **Chapter 2**

### **The National Audiovisual Council**

**#M9**

#### **Art. 10**

*(1) The National Audiovisual Council, hereinafter called the Council, is a public autonomous authority under the control of the Parliament and the warrantor of the public interest in the field of audiovisual communication.*

*(2) The National Audiovisual Council is the unique regulatory authority in the field of audiovisual media services under the terms of and by observing the provisions of this Law.*

*(3) The National Audiovisual Council as the warrantor of the public interest in the field of audiovisual communications shall provide for:*

*a) the observance of a pluralist expression of ideas and opinions in the audiovisual media services content transmitted by media service providers under the jurisdiction of Romania;*

*b) the pluralism of information sources of the public;*

*c) favoring free competition;*

*d) a fair balance between the national coverage radio-broadcasting services and local, regional or thematic services;*

*e) the protection of human dignity, of the right to one's own image as well as children's protection;*

*f) the protection of the Romanian culture and language, as well as of the culture and languages of national ethnic minorities;*

**#M11**

*g) the transparency of organizing, operating and financing mass communication means in the audio-visual sector;*

**#M9** *h) the transparency of own activities*

**#M11**

*i) increase the level of public opinion sensitivity regarding the efficient and safe use of audiovisual media services by promoting and developing media education for all social categories;*

**#M9**

*j) encouragement of co-regulation and self-regulation in the audiovisual field;*



*k) encouragement of audiovisual media services providers with a view to ensuring conditions that provided services are available to persons with hearing or seeing disabilities;*

**#M11**

*l) monitoring audiovisual programs services and audiovisual media services including those on-demand with a view to their compliance with the legal provisions in this field.*

**#M9**

*(4) The National Audiovisual Council exerts its control right upon the content of the programs offered by radio-broadcasters audiovisual media services providers only after the public communication of such programs.*

**#M11**

*(5) The control exerted by the Council regarding the content of program services offered by radio-broadcasters audiovisual media services providers and upon the offer of program services ensured by service distributors shall be usually accomplished on a periodical basis and whenever the Council deems it necessary or whenever a complaint is forwarded in regard to a radio-broadcaster's failure to observe the legal provisions, the regulation norms in the field or the liabilities recorded in the audio-visual license.*

**#M9**

*(6) The Council must notify the competent authorities in regard to the occurrence or existence of practices restricting competition, the abuse of the dominant position or of economic concentrations, as well as the existence of any other infringement of the legal provisions that does not fall under its competency.*

**#B**

***Art. 11 - (1) The Council is made up of 11 members and it is assigned by the Parliament, following the recommendations made as follows:***

***a) The Senate: 3 members;***

***b) The Chamber of Deputies: 3 members;***

***c) The President of Romania: 2 members;***

***d) The Government: 3 members .***

***(2) The proposals assign the candidate for the position of a titleholder, as well as the candidate for the position of a deputy and they shall be forwarded to the standing offices of the two Chambers within 15 days since the date of commencing the assignment procedure.***

***(3) The standing offices of the two Chambers forward the proposals to the specialized standing commissions with a view to the candidates' hearing in joint session.***

***(4) After the hearing, the specialized standing commissions draw up a joint notification which they present to the joint session of the Chamber of Deputies and of the Senate.***

**#M2**

***(5) Candidateship shall be approved by the vote of the majority of deputies and senators, provided that the two Chambers are in quorum.***

**#B**

***6) The members of the Council are the warrantors of the public interest and do not represent the authority that proposed them.***

**#M2**

***(7) The duration of the mandate of the members in the Council is of 6 years and their appointment shall be made upon schedule, according to the expiry of the mandate.***

***(8) When a place becomes vacant in the Council before the expiry of the mandate, it shall be occupied by a deputy until the expiry of the initial 6-year mandate.***

**#B**

## **Art.12**

**(1) The members in the Council have the position of a public office assimilated to the position of a State Secretary.**

**(2) The position of a member in the Council is incompatible with any other public or private office, save for didactical ones, provided they do not result in conflicts of interests.**

**(3) The members in the Council may not be members of political parties or other political structures while exerting their mandate.**

**(4) The members of the Council may not directly or indirectly hold shares or social parts in companies with activities in fields where they would be in conflict of interests with the capacity of a member in the Council.**

**(5) Members of the Council who at the moment of appointment are undergoing one of the situations stipulated in paragraphs (2) to (4) dispose of a maximum 3-month term to renounce the respective positions or shares, a period wherein they are not entitled to vote in the Council.**

**(6) In case of failing to observe the provisions of this Article, the concerned person is rightfully dismissed and his position becomes vacant and is to be occupied by the deputy on the proposal of the specialised standing commission of the Parliament. Art. 13**

**(1) The members in the Council may be revoked on the proposal of the specialized commissions of the Parliament in the following situations:**

- a) in case it is impossible to exert the functions for a period longer than 6 months;**
- b) in case of a penal conviction applied by a final court decision.**

**(2) With a view to applying the provisions from paragraph (1), The Council notifies the Parliament.**

## **Art.14**

*(1) The Council is managed by a President, assimilated to the position of a Minister, appointed by the vote of the Parliament from among the members of the Council, on their proposal. The mandate is of 6 years.*

**#B**

**(2) In the absence of the President, the management of the Council is ensured by the Vice-President.**

**#M2**

*(3) The Vice-President is elected by secret vote by the Council in the presence of at least 9 of its members, for a 6-year mandate.*

**#B**

**(4) If the position of President or of Vice-President becomes vacant, a new President, respectively a Vice-President will be elected in keeping with the provisions of paragraphs (1) and (3).**

## **Art.15**

**(1) The Council issues decisions, instructions and recommendations in the presence of at least 8 members and with the vote of at least 6 members in order to fulfill its functions and attributions incumbent thereupon according to this Law.**

**(2) The Council meetings are public, save the case when the President is proposed and the Vice-President is elected according to provisions of Art. 14 paragraphs (1) and (3).**

**(3) The vote is always open, save the case stipulated in Art. 14 paragraphs (1) and (3).**

**(4) The expression of each open vote is accompanied by its motivation.**

**#M2**

*(5) Decisions of the Council due to their normative characteristic, including their motivation*

are published in the Official Gazette of Romania, Part I.

(6) The Decisions of the Council, including their motivation, other than those specified at par.(5), as well as instructions and recommendations issued by the Council, shall be made public.

(7) Normative documents issued by the Council may be contested at the competent administrative court by any person who considers itself prejudiced thereby. (8) Decisions having an individual character are notified to whom may be concerned and come into force since their notification, if there are not other specifications.

**#M9**

**Art.16** - (1) The activity of the Council is financed from the state budget.

**#B**

**(2) The President of the Council is a main credit accountant.**

**Art. 17**

**(1) The Council is authorized:**

**#M9**

a) to establish the conditions, procedure and criteria for the granting of analogue and digital audio-visual licenses;

**#B b) to establish the procedure for the granting of the retransmission authorization;**

**#M9**

c) to issue analogue and digital audio-visual licenses and retransmission authorizations for the operating of radio and TV program services and to issue the audio-visual authorization decisions;

d) to issue with a view to the application of the provisions from this Law, regulatory normative decisions in order to accomplish its attributions as expressly stipulated in this Law and mainly in regard to:

1. the ensuring of accurate information of the public;

2. the monitoring of the correct expression in the Romanian language and in the languages of national minorities;

**#M11**

3. the assurance of equidistance and pluralism;

**#M9**

4. the transmission of official information and communiqués of public authorities regarding calamities, states of necessity or emergency, state of siege or armed conflict;

5. children's protection;

6. the defense of human dignity and of the right to one's own image;

7. non-discriminatory policies regarding race, sex, nationality, religion, political beliefs and sexual orientation;

8. the exertion of the right to reply, rectification and other equivalent remedies ;

9. audiovisual commercial communications, including advertising, product placement, political campaign advertising and teleshopping;

10. sponsorship;

**#M11**

11. rules and principles for unfolding electoral campaigns and those for referendum, in audiovisual program services within the frame and for the application of the electoral legislation;

**#M9**

12. cultural responsibilities of audiovisual media services providers;

**#B**

e) to draw up instructions and issue recommendations for the development of the activities in the field of audio-visual communication;

(2) The Council is consulted in the process of defining Romania's position and it may attend by means of its representatives, international negotiations regarding the audio-visual field.

**#M11**

(3) The Council is consulted in regard to all draft normative acts whereby the activities in the field of audio-visual communication or related thereto are regulated;

(4) The Council is authorized to request and receive from providers and distributors of audio-visual program services any necessary data, information and documents in order to accomplish its attributions, having the obligation to keep confidential data that are not of public nature.

**#B**

**Art. 18**

(1) The Council draws up its own organizing and operating regulation that shall be approved by the vote of the majority of its members.

(2) With a view to exerting its attributions, the Council sets up its own operational structure, including territorial control and monitoring structures, as stipulated in the organization and operating regulation,

(3) The specialized personnel of the Council is composed of civil servants and personnel employed with an individual labor contract, salaried according to the provisions of Art. 98.

**#M9**

(4) The civil servants of the Council may not be members in the board of directors of providers and distributors of audiovisual program services and they may not exert positions or hold shares or social parts in a company holding an audio-visual license.

**#B**

(5) For the purpose of applying the provisions from paragraph (4), civil servants within the Council shall submit with the President of the Council a conformation statement on own liability.

**Art. 19**

1) With a view to establishing the strategy in the field of radio-electric frequencies use, of the National Plan for radio-electric frequencies allotted to the audio-visual communication and for the purpose of analyzing the issues related to the use of the radio-electric spectrum destined to audio-visual communication, as well as those regarding the new technological developments with an impact upon audio-visual communication, a Mixed Consultative Commission composed of 3 members proposed by the Council and 3 members proposed by the Ministry of Communications and the Information Technology is established.

(2) The Mixed Consultative Commission adopts its own organizing and operating regulation that shall be approved by the management of the two authorities.

**Art 20**

(1) The activity of the Council is analyzed by the Parliament by debating upon the annual report that is presented for the previous year and whenever the specialized commissions of the Parliament request from the President of the Council specific reports.

(2) The annual activity report of the Council is forward to the specialized commissions of the Parliament until April 15th.

(3) When the specialized commissions vote down the annual report of the Council, the latter must produce to the reunited commission a program of substantial measures for the remedy of the shortcoming within 30 days, a program that shall be subjected to the debate and approval of the specialized commissions of the Parliament.

(4) The report of the specialized commissions regarding the annual activity report of the Council and, as the case may arise, the program of measures shall be subjected to the debate in the session of the reunited Chambers of Parliament, in the presence of the members in the Council.

(5) The members of the Council must appropriate the conclusions resulting from the debates and assume the liability for the fulfilling of the program of measures established by the decision of the Parliament.

(6) The report of the specialized commissions refers to the lawfulness of the Council's activities, as well as to the accuracy and transparency of the financial operations.

(7) In fulfilling its mission of a guarantor of public interest, the Council must publish periodical reports regarding the way it exerts its attributions.

## **CHAPTER 3**

### **THE CONTENT OF THE AUDIOVISUAL COMMUNICATION**

#### **Art. 21**

1) Major importance events may be exclusively broadcast only if the transmission does not deprive a significant part of the public from Romania of the possibility of watching them live or in a deferred free television.

(2) The list of events considered of major significance shall be drawn up by Government Decision following the Council's proposal and it shall be communicated to the European Commission; subsequent amendments shall follow the same procedure. During the period of Romania's pre-accession to the EU, the list shall produce its effects after the decision has been published in the Official Gazette of Romania, Part I.

(3) By the Government decision stipulated in paragraph (2) the percentage of the population that represents a significant part of the public is specified; it is also established by means of the same decision for each major importance event whether its live coverage may be performed entirely or partially or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage shall be chosen.

(4) The exercise by radio-broadcasters under the jurisdiction of Romania of the exclusive rights to broadcast certain events declared by a member state of the European Union as being of major importance and which are comprised in the list published in the Official Journal of the European Union shall not deprive a significant part of the public from the respective state from the possibility to watch those events live or deferred, in compliance with the provisions established by that member state.

#### **Art. 22**

(1) Since the date of accession, any radio-broadcaster under the jurisdiction of Romania shall reserve to European works a majority proportion of its transmission time, excepting the time dedicated to the news, sportive events, games, advertising, as well as teletext and teleshopping services.

(2) Until the date of accession, a significant proportion shall be reserved to Romanian audiovisual works. This proportion, having regard to the broadcaster's informational, educational, cultural and entertaining responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

(3) The Council shall monitor the application of the provisions from paragraphs (1) and (2).

(4) The complete mechanisms of the implementation measures shall be established by the Council.

#M9

#### **Art. 23**

(1) On-demand audiovisual media services promote, where practicable and by appropriate

means, , the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the percentage and/or prominence of European works in the catalogue of programs offered. (2) The Government, by means of The National Audiovisual Council shall report to the Commission no later than 19th of December 2011 and every four years thereafter on the implementation of the provisions in paragraph 1.

#B

Art. 24

(1) Any radiobroadcaster under the jurisdiction of Romania shall reserve at least 10% from its transmission time, excluding the time dedicated to news, sport events, games, advertising, as well as tele-text and tele-shopping services or alternately at least 10% from their programming budgets for European works created by producers who are independent broadcasters.

(2) An adequate proportion of recent works, that is to say works transmitted within five years of their production shall be included in the European works created by independent producers.

(3) A producer shall be deemed to be independent from a certain radiobroadcaster if its activity of creating certain audio-visual productions is financially supported within an amount lower than 25% from the same sources as the program service within which his production is broadcast and if he holds less than 25% from the capital of the company that finances the concerned program services.

#M9

**Art.25** - Provisions of art. 22 and art. 24 shall not apply to program services that are intended for local audiences, covered by broadcasters that are not part of a national network .

**#B Art. 26** - The broadcasting of a cinema work may be performed only during certain periods stipulated in the contracts concluded with the holders of copyrights.

#M9

**Art.26^1** --(1) With a view to encouraging and facilitating a pluralist expression of opinion trends, broadcasters shall have the obligation to cover the election campaigns in a fair, balanced and unbiased way.

(2)With a view to correctly implement provisions of par.(1), the Council shall issue compulsory norms, shall control the abidance by law and by norms provisions and shall sanction their infringement.

#M9

## **CHAPTER I 3^1**

### **AUDIOVISUAL COMMERCIAL COMMUNICATIONS**

#M11

Art. 27

(1) Television advertising and teleshopping shall be readily recognizable and distinguishable from the editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the program by optical and/or acoustic and/or spatial means.

#M9

(2) Isolated advertising spots and teleshopping other than in transmissions of sports events, shall remain an exception and may be broadcast only in cases established as such, by the Council.

**#B Art. 28**

(1) Advertising spots, including self-promoting or teleshopping ones may be included only between programs. If the terms stipulated in paragraphs (4) - (7) are observed, advertising or teleshopping spots may be also included during a program so that:

- a) the integrity and value of the respective program are not prejudiced, taking into account natural breaks and the duration and the nature of the program;
- b) the rights of the right holders are not prejudiced.

(2) In their capacity of public services, the Romanian Radio-broadcasting Company and the Romanian Television Company may insert advertising spots, including self-promoting or teleshopping ones, only between programs.

(3) Advertising spots and teleshopping may be inserted only between the parts or during breaks of the programs made from independent parts or within the broadcasting of sporting competitions or of other events or similarly structured programs comprising breaks.

**#M9**

(4) The broadcasting of news programs and of audio-visual works, such as feature films or films created for television, except series, serials, and documentaries, may be interrupted by television advertising and/or teleshopping spots only once for a scheduled duration of the program of at least 30 minutes.

**#M11**

(5) The transmission of children's programs may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the program is greater than 30 minutes. **#B**

(6) It will be interdicted to insert advertising or teleshopping in the transmission of any program that comprises a religious sermon.

**#M11**

(7) \*\*\*Annulled

**#M9**

Art. 29

(1) Audiovisual commercial communications provided by audiovisual media service providers shall comply with the following requirements:

- a) they shall be readily recognizable as such and surreptitious audiovisual commercial communications shall be prohibited;
- b) audiovisual commercial communications shall not use subliminal techniques;
- c) audiovisual commercial communications shall not prejudice respect for human dignity;
- d) audiovisual commercial communications shall not include any discrimination based on race, ethnic origin, nationality, religion, belief, disability, age or sexual orientation;
- e) audiovisual commercial communications shall not prejudice respect for viewers' or listeners' religious or political beliefs;
- f) audiovisual commercial communications shall not encourage behavior prejudicial to population's health or safety;
- g) audiovisual commercial communications shall not encourage behavior prejudicial to the protection of the environment;
- h) audiovisual commercial communications shall not encourage a indecent or immoral conduct
- i) audiovisual commercial communications shall not promote directly or indirectly occult practice.

(2) Audiovisual commercial communications shall not cause moral, physical or mental detriment to minors and especially they shall not:

- a) directly exhort minors to buy a product or service by exploiting their inexperience or credulity,
  - b) directly encourage them to persuade their parents or others to purchase the goods or services being advertised
  - c) exploit the special trust minors place in parents, teachers or other persons or
  - d) unreasonably show minors in dangerous situations.
- (3) Audiovisual commercial communications with surreptitious commercial content shall be prohibited.
- (4) Audiovisual commercial communications for alcoholic beverages shall not encourage immoderate consumption of such beverages and shall not be aimed specifically at minors.
- (5) Any form of audiovisual commercial communication for cigarettes and other tobacco products shall be prohibited;
- (6) Audiovisual commercial communications for medicinal products and medical treatment available only on prescription shall be prohibited;
- (7) Audiovisual commercial communication that prejudice consumers' legal interests shall be prohibited.
- (8) Audiovisual media services providers are encouraged to develop codes of conduct regarding inappropriate audiovisual commercial communications, especially those accompanying or included in children's programs, of foods and beverages containing substances with a nutritional or physiological effect , in particular those such as fat, trans-fatty acids, salt and sugar, that are not recommended in a balanced alimentary diet.

#M9

**Art. 30** - \*\*\*Annulled

#M9

**Art. 31** - (1) Product placement shall be prohibited.

(2) By way of derogation from par. 1, product placement shall be admissible:

- a) in cinematographic works, films and series made for audiovisual media services, sports programs and entertainment programs;
- b) 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 program.

(3) The derogation provided for par. 2, (a) shall not apply to children's programs.

#M11

(4) Programs that contain product placement shall meet at least all of the following requirements:

- a) their content and, in case of television broadcasting their scheduling shall in no circumstance be influenced in such away as to affect the responsibility and editorial independence of the media service provider;

#M9

- b) 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;

- c) they shall not give undue prominence to the product in question;

(5) Programs where product placement is inserted, shall contain clear information on it and shall be appropriately identified at the start and at the end of the program, and when a program resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

(6) Requirements in par .(5) shall not apply to the program that has neither been produced nor commissioned by the media service provider itself or by a company affiliated to the media service provider.

(7) Product placement of tobacco products or cigarettes or other products of undertakings



whose principal activity is the manufacture or sale of such products, as well as product placement of medicinal products or medical treatments available only on prescription are forbidden.

#B

Art. 32

Advertising and teleshopping for alcoholic beverages must observe the following terms:

- a) shall not be addressed to minor children or not show minors consuming alcoholic beverages;
- b) shall not establish a link between the alcohol consume and the improving of physical and psychical qualities or the capacity of driving vehicles;
- c) shall not create the impression that through the consume of alcohol social or sexual performances can be obtained;
- d) shall not suggest the idea that alcohol has therapeutic qualities or that it is a stimulant, sedative or a means to solve personal problems;
- e) shall not encourage the exaggerated consume of alcohol or set in a negative light the refrain from the consume or moderate consume of alcohol beverage;
- f) shall not indicate that a high degree in alcohol represents a quality of beverages.

#M9

Art. 33 - \*\*\*Annulled

#M9

Art. 34

(1) Sponsored programs shall comply with the following requirements:

- a) their content and their scheduling shall by no means be influenced by the sponsor so as to affect the liability and editorial independence of the media services provider towards the concerned programs;
- b) the mention of a sponsorship agreement made known by the name or brand and/or sponsors' products/services shall be distinctly shown at the beginning, during the respective programs and at the end of the program;
- c) they shall not encourage directly the purchase or rental of the sponsor's or a third party's products or services, especially by special promotional references to such products or services.

#B

(2) No program may be sponsored by natural or legal persons whose main activity is the manufacturing or trading of cigarettes and of other tobacco products.

#M11

(3) The sponsorship of audiovisual media services or programs by natural or legal persons whose activities include manufacturing or trading of medical products or medical treatments may be performed by promoting the sponsor's name, mark and/or any other distinctive element of the sponsor or of certain of his medical products or services, save the name or image of the medicinal products or medical treatments available only on prescription

#M9

(4) Sponsorship of program services as a whole, as well as that of news programs and programs on analysis and debates on political and/or current economical topics is forbidden.

#M9

Art. 35

1) The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%, 12 minutes respectively; in case of public television, their duration shall not exceed 8 minutes from the given time of any hour.

(2) Provisions of par.(1) shall not apply to announcements made by the broadcaster in

connection with its own programs and ancillary products directly derived from those programs, sponsorship announcements and product placement.

#M9

**Art. 36** - 1) Windows dedicated to broadcasting of teleshopping by a program service that is not exclusively dedicated to teleshopping shall have an uninterrupted duration of minimum 15 minutes.

#M11

(2) These must be clearly delimited and identifiable by adequate optic or acoustic signals.

(3) Teleshopping shall not instigate minors to ask for the purchase or rental of goods or services.

#M9

(4) Teleshopping for medicinal products which are subject to a marketing authorization specified in title XVII, chapter III, section 1 of the Law no.95/2006 regarding the reform of public health with its further modifications and completions , as well as teleshopping for medical treatment, shall be prohibited.

#M9

Art.37

(1) The provisions of the present Law shall adequately apply to the program services exclusively dedicated to advertising and teleshopping, as well as to program services dedicated exclusively to self-promotion.

#M11

(2) Provisions in art.22 – 24 regarding the promotion of European works and works of independent producers, as well as provisions in art.28 and 35 shall not apply to program services in par.(1).

#M9

**Art.38** - The National Audiovisual Council is authorized to establish other conditions than those stipulated by art. 28 par. (4)-(7) and art. 35 regarding television program services exclusively dedicated to the national territory and that cannot be directly and indirectly received by the public in one or more other EU member states.

#M9

## **CHAPTER 3^2. MINORS' PROTECTION**

#M9

Art. 39

(1) The transmission of programs, within radio and television services, that may seriously impair the physical, mental or moral development of minors, especially programs containing pornography or unjustifiable violence is forbidden.

#M11

(2) The broadcasting of radio and television programs services, that are likely to impair the physical, mental or moral development of minors may be performed only if, by selecting the time of the broadcast or by any technical measure by means of encoding or as an effect of other system of conditioned access, it can be assured the fact that under normal conditions minors in the transmission area do not have audio or video access to the respective programs.

(3) The un-encoded transmission or the transmission without other restrictive technical measures of the access to the programs stipulated in par.(2) may be performed only after presenting an acoustic or graphic warning and the presence of a warning visual symbol during the entire show is ensured.

#M9

**Art. 39<sup>1</sup>** - Programs within on-demand audiovisual media services which might impair the physical, mental or moral development of minors shall only be made available only if restriction measures of access are ensured in such a way that minors will not normally hear or see such programs.

#M9

### **CHAPTER 3<sup>3</sup>. THE RIGHT OF REPLY**

#B

**Art. 40** - The transmission of programs comprising any form of incitement to hate due to race, religion, nationality, gender or sexual orientation is forbidden.

**Art. 41** - (1) Any natural or legal person regardless of nationality whose legitimate rights or interests, in particular reputation and good name have been damaged by an assertion of incorrect facts in a program must have a right to reply or equivalent remedies.

(2) The Council will adopt the necessary procedure for the effective exertion of the right to reply or equivalent remedies, as well as any other measures, including sanctions, necessary in order to warrant the right to reply or rectify within a reasonable time limit, after receiving the request from the applicant.

(3) The broadcasting of the rectification or granting of the right to reply does not remove the right of the damaged person to resort to juridical review. #M9

**Art. 42** )\*\*\* Annulled

#B

### **CHAPTER 4. THE LEGAL REGIME OF THE OWNERSHIP WITHIN THE AUDIO- VISUAL FIELD**

#M11

Art.43

(1) Radio-broadcasters shall be legal persons of public or private law, foundations and associations without patrimony purpose, as well as authorized natural persons in keeping with law provisions .

#M11

(2)\*\*\* Annulled

#B

(3) Radiobroadcasters of private law that are legal persons are set up and operate as companies.

(4) The ownership rights on shares and social parts may be transferred according to the provisions of the present Law provided also that they do not harm the rights and liabilities stipulated in the license(s) held by the respective commercial company.

(5) Any natural or legal person holding or acquiring a quota from the share capital that is equal to or higher than 10% of the share capital or of the voting rights of a company holding an audio-visual or broadcasting license or of a company that controls a company holding such a license must notify the Council thereabout within one month since the date when it has reached such a quota.

(6) Shares representing the social capital of joint-stock companies shall be only nominal.

(7) The use in whatever way of another person's name by a company that applies for an

audio-visual or broadcasting license or of any other authorization regarding an audio-visual communication service or that controls a company holding such an authorization for the purpose of eluding the provisions of this Law is forbidden.

#M11

Art. 44

(1) With a view to protecting pluralism and cultural diversity, ownership concentration and the extension of the audience in the audio-visual field are limited to dimensions ensuring economic efficiency, but not generating dominant positions in forming of public opinion.

#M9

2) For the purpose of this Law and in order to establish the market share of the program services, it is considered that:

a) the market of national coverage television programs comprises all the program services transmitted at national level by radio-broadcasters under the jurisdiction of Romania, including public television service programs;

b) the market of national coverage sound radio-broadcasting programs comprises all program services transmitted at national level by radio-broadcasters under the jurisdiction of Romania, including the public radio-broadcasting service programs.

c) the market for regional or local radio and/or television program services includes all program services in the respective area; d) program services with significant importance in shaping public opinion are generalist programs, news, analysis and debates on latest political and/or economical topics;

e) the relevant market covers all radio and television services mentioned at point d) broadcast in a certain geographical area. f) the audience share or the market share shall represent the share provided to a certain program service, established under the conditions stipulated by art. 45.

#M11

(3) During the procedure for evaluating the dominant position in shaping public opinion of a natural or legal person, the program services stipulated in par. 2, point d) it shall be taken into account. The program services stipulated in par (2), point d) provided by this person, either as an audiovisual license holder, for which it holds directly or indirectly a percentage of more than 20% of the capital or of the voting rights of a company holding an audiovisual license shall be considered during the evaluation of the dominant position.

#M9

(4) During the procedure of evaluating the dominant position in shaping public opinion, family relationship connections, in keeping with the legislation in force in the field of trade, economy and finance shall be taken into account and evaluated.

5) For the purpose of the present law, by family is understood the relationship to spouse, kin and in-laws, up to the second kinship. (6) A natural or legal person shall be deemed to hold a dominant position in shaping public opinion, in case the average market share of its services surpasses 30% of the relevant market.

(7) The establishing of the market share of each national, regional or local program service is performed annually by establishing the average market share registered during the respective year for the entire broadcasting duration.

(8) The average market share of program services covered by a natural or legal person represents the sum of market shares of each program service in par. 3, multiplied by the capital share or voting right held by the respective person.

(9) The Council initiates the procedure for the evaluation of the dominant position in shaping public opinion by a natural or legal person in case there are serious reasons to believe that the dominant position may have been reached, according to par. (6) provisions.

(10) In case the Competition Council identifies by decision an anti-competition practice (an

agreement or an abuse of dominant position), or authorizes an economic concentration in the field of audiovisual media services respectively, the Council shall act according to the provisions of par. (9).

(11) Upon the Council's request the institute appointed in keeping with art. 45 provisions, shall unfold ad-hoc measurements, required by the procedure for the evaluation of the pre-averaged position in forming public opinion. Program services not included in the audience measurement system, which should be included in the evaluation process, shall be submitted to ad-hoc measurement for a three-month period; in case the market share surpass accepted is confirmed, provisions of art. 46 apply.

(12) For the purpose of the present law:

a) the national audiovisual license shall provide the right to broadcast the same program in a geographical area covering a potential audience of over 60% for radio and 70% for television of the country's censused population;

b) the regional audiovisual license shall entitle the broadcasting of the same program on the territory of one or more counties without reaching the coverage stipulated in point a);

c) the local audiovisual license is the license which has a geographical coverage area that is smaller than that stipulated for a regional license, serving a unique local community ;

d) the audiovisual licenses granted for Bucharest, that are not part of a national or regional radio or television network shall be deemed to be local licenses.

13) Situations stipulated in par. 12, a) and b) that do not fall in the case of initial grant of national/regional license, but are the result of accumulation of local licenses, shall be taken into account by the Council as such, or upon the express request of the license owner, with the adequate modification of the license data.

#B

Art. 45

(1) The measurement of audiences and market shares shall be accomplished in compliance with the international standards and practices by specialized institutions assigned by tender.

(2) The tender shall be organized by a commission composed of 5 representatives of radio-broadcasters, 5 representatives of advertising agencies and 5 representatives of the Council.

(3) The first tender shall be organized within maximum one year after the date of entry into force of this Law and the following tenders shall be organized every four years.

(4) The Council shall benefit for free of the results of measurements.

#M9

Art. 46

(1) Should the case arise when a natural or legal person holds a dominant position in shaping public opinion that surpasses the rating accepted in keeping with art. 44 (6), the Council shall summon broadcasters with a majority position in shaping it, so as to abide by the accepted rating and to the time compliance which should be fulfilled.

2) By the time the summon expires, a new evaluation shall be made and should the situation in which the rating continue to be surpassed, the Council shall decide upon the precise ways to diminish some of the participation quotas or the number of licenses held, in keeping with the natural or legal person's choice, within a three-month period.

(3) In case, even after this latter term expires, the dominant position persists for the license for which the natural or legal person holds the largest participation share, then conditions for applying provisions of art. 57, par. 1, c) shall be deemed to be fulfilled.

(4) Broadcasters shall cooperate in establishing the rating by providing all information required by the Council. Refusal to communicate the required information or false data shall lead to applying provisions of art. 57, par. 1 c).

#B

Art. 47

(1) By way of derogation from the provisions of Art. 43, audio-visual licenses may be granted to the local public authorities, provided :

- a) there is no other audio-visual license for a local program service;
- b) it provides exclusive information services regarding the respective community.

(2) In case of granting another audio-visual license, the license granted under the terms of paragraph (1) shall be rightfully withdrawn.

#M9

Art. 48

Providers of audiovisual media services shall assure simple, direct and permanent access of the public to at least the following information categories:

- a) name, legal status, social headquarter
- b) name of the legal representative and the structure of the shareholders to the level of the natural and legal person, as associate or shareholder having a larger share than 20% of the social capital or of the voting rights of a company holding audiovisual license;
- c) names of the persons in charge of the trade company management and of those that are mainly in charge of the editorial responsibility;
- d) data of media services provider, including the e-mail and web-site, for rapid, direct and efficient contact;
- e) list of publications edited by the respective legal person and list of the other program services that it provides;

#M11

f) \*\*\*Annulled

#M9

g) competent regulatory or supervision authorities.

#M9

Art.49

The operation of the audiovisual media services shall comply with transparency rules, in keeping with which persons operating an audiovisual media service shall inform the Council on the following aspects:

- a) changes that arose during service operation, regarding information categories mentioned in art. 48, within 30 days since the time of the respective changes;
- b) other categories of data regarding service operation, as soon as the activity has started.

#B

## **CHAPTER 5**

### **LICENSES AND AUTHORIZATIONS**

#M11

Art.50

(1) The transmission of an analogue program service by a radiobroadcaster under Romanian jurisdiction may be performed only based on an analogue audiovisual license and as the case may arise on a broadcasting license.

(2) – A digital terrestrial program service may be provided by a radio/television multiplex operator under Romanian jurisdiction which shall be performed only based on a license that allows the use of digital terrestrial radio frequencies for the benefit of the holders of a digital audiovisual license.

#M9

#### Art.51

The procedure and the conditions for the issuing or the modification of the audiovisual license are established by Council decision. The applicants have the obligation to hand in notary declarations issued at the moment the license is applied for, by means of which the applying trade company as well as each associate or shareholder holding more than 20% of the company's social capital or voting rights of an audiovisual license holder shall declare on their own responsibility whether they are investors or direct or indirect shareholders in other audiovisual communications trade companies, mentioning the precise percentage they hold in those companies' social capital.

#M9

#### Art.52 –

(1) The audio-visual analogue or digital license shall be issued either based on a contest, in case of a program service broadcast by terrestrial radio-electric means, or based on a Council decision, in case of a program service broadcast by any type of electronic communication networks.

(2) The Council shall issue special regulations, observing the provisions of the transition strategy from analogue to digital, including criteria and means according to which, by exception from the provisions in par. 1, for television program services, broadcast by terrestrial radio-electric means, the digital audiovisual license shall be granted in keeping with a decision for radiobroadcasters that:

#M11

- a) hold an analogue audiovisual license the validity of which has not expired and choose to broadcast their program service by a digital terrestrial multiplex, as well;
- b) are about to cease their analogue transmission or whose analogue transmission shall no longer be protected, under the conditions imposed by the provisions of the present law and by the strategy for the switchover from analogue to terrestrial digital broadcasting and the implementation of national .multimedia services,

(3) The grant of digital audiovisual license provides the broadcasters with the possibility to choose the multiplex within which their radio/television program services will be included.

#M9

(4) The audiovisual analogue or digital licenses for radio-broadcasting and television public services shall be granted without competition.

#M11

(5) The broadcasting by terrestrial radio-electric means of public radio and television services shall be carried out in an analogue system by an operator of electronic communications networks, based on a broadcasting license granted to the National Authority for Management and Regulation in Communications of Romania.

(6) The transmission by radio-electric means of radio and television public services in a digital terrestrial system shall be performed by a provider of networks and electronic communications services, on the basis of a license that allows the digital terrestrial use of the radio frequencies granted by the National Authority for Management and Regulation in Communications of Romania under the terms mentioned in art. 59 par. (4) – (7).

#M11

**Art.53 - \*\*\*\*Annulled**

#M9

#### Art.54

(1) The audio-visual analogue and digital license comprises:

- a) the number of the license;
- b) the holder's identification data, as well as the structure of the shareholders, down to the level of natural and legal person, associate or shareholder having more than 20% of the social

- capital or voting rights of an audiovisual license holder;
- c) the type of program services;
- d) the name and identification elements of the program service;
- e) the general format of the program service and the structure of the programs;
- f) the broadcasting area;
- g) the validity term;

#M11

h)\*\*\*Annulled

#M9

- i) the telecommunication means used for broadcasting and its holder;

#M11

- j) the assigned frequency/frequencies, channel/channels, in case of an analogue audiovisual license;

- k) the digital multiplex to which the digital audiovisual license belongs.

(2) The media services providers shall ask the Council its approval for any modification occurred in the documents and data they declared, mentioned in art.54, par.(1), letters b) and e).

#M9

Art.55

(1) The analogue or digital audio-visual license is granted for a 9-year period, both in the field of sound radio-broadcasting and that of television .

#B

2) The 9-year period runs:

a) since the date of obtaining the technical operating certificate in case of broadcasting by terrestrial radio-electric way;

b) since the date of obtaining the audio-visual authorization decision in case of broadcasting by any other telecommunication means.

#M9

(3) The analogue or digital audiovisual license may be extended every 9-years upon request under the conditions established by the Council.

#M11

**Art.56** - (1) The analogue or digital audio-visual license may be ceded to a third party only with the approval of the Council and if the new holder assumes all the liabilities deriving from the license and presents the tax certificate of the company that holds the license .

#B

(2) The licenses granted to the education institutions, religious affairs and public administration authorities are exempted from the provisions of paragraph (1).

(3) The Decision of the Council shall be issued within 30 days since the date of application.

#M11

**Art.57** - 1) The analogue audio-visual license shall be withdrawn by the Council under the following circumstances:

#M9

a) the license holder does not start to broadcast the program service under the terms established by the license, within 12 months since the date of obtaining the audio-visual license; the Council may grant two successive six- month-extensions under justified situations;

#M11

b) the license holder ceases to broadcast the program service for which he was granted the audio-visual license for more than 90 days, due to technical reasons , and for more than 96 hours, due to any other reason imputable to the license holder;



#M9

c) as a result of infringing the norms on the ownership regime in the audio-visual field, stipulated by art. 46 and for infringement of provisions in art. 56;

#M2

c<sup>1</sup>) as a result of infringing the provisions of par. (8) and (9) of the art.44 and art.56;

#B

d) the holder does not submit to the Council proof of paying a fine, within 6 months since the fining;

e) upon holder's request.

2) The audio-visual license for broadcasting a program service by terrestrial radio-electric way shall be also withdrawn under the following circumstances:

a) the license holder does not obtain the audio-visual authorization decision due to reasons imputable to him, within 60 days since obtaining the technical operating authorization;

b) as a consequence of withdrawing the broadcasting license.

#M11

Art.57<sup>1</sup>

The digital audio-visual license shall be withdrawn by the Council under the following conditions:

a) the license holder does not provide the program service to the multiplex operator;

b) the license holder ceases to provide the program service to the multiplex operator;

c) for infringement of provisions in art.57 par.(1) letters b), c), c<sup>1</sup>), d) și e).

#B

Art.58

(1) The broadcasting of the program service may start after obtaining the audio-visual authorization decision.

#M9

2) The audio-visual authorization decision shall be granted by the Council within 30 days since the holder of the audio-visual license has obtained the appropriate authorization document, issued by the National Authority for Management and Regulation in Communications.

#M11

Art.59

(1) In case the broadcasting of a program service implies the use of a terrestrial radio-electric frequency for analogue transmission, it will be done based on the analogue audio-visual license, as well as the broadcasting license, granted to the audiovisual license holder under the terms of the present law by the National Authority for Management and Regulation in Communications.

(2) In case the broadcasting of a program service implies the use of a terrestrial radio-electric frequency for digital transmission, it will be done based on the license for the use of the digital radio frequencies and only for the benefit of the digital audiovisual license holders.

#M9

(3) The operation and use of the audiovisual licenses by other persons than their rightful holders are forbidden.

#M11

(4) The licenses for the use of digital terrestrial radio frequencies are granted by the National Authority for Management and Regulation in Communications to radio/television multiplex operators in keeping with selection procedures organized by this authority and with the strategy for the switchover from analogue to terrestrial digital broadcasting and multimedia services countrywide implementation.

(5) The granting of the licenses for the use of the digital terrestrial radio frequencies may be

conditioned by the payment of a license fee to the state budget.

(6) The way the procedures mentioned at par.(4) take place, the conditions under which the licenses for the use of digital terrestrial radio frequencies are granted and the amount of the license fee mentioned at par.(5) shall be established by Government decision.

(7) The preliminary qualification criteria of technical, administrative and/or financial nature, as well as the obligations that must be assumed by the persons obtaining the licenses for the use of digital terrestrial radio frequencies shall be established by the terms of supply realized with a view to organize the selection procedures, a document that takes into account the strategy for the switchover from analogue to terrestrial digital broadcasting and multimedia services countrywide implementation, adopted in keeping with the provisions of the present law.

#M11

Art.60

The procedure and the terms of issuing and amending the broadcasting license shall be established by decision of the president of the National Authority for Management and Regulation in Communications.

#B

Art.61

1) The broadcasting license shall be granted for a 9-year period, both in the field of sonorous radio-broadcasting and that of television.

2) The 9-year term runs since the date of issuing the technical operating certificate.

#M9

(3) The license may be extended upon request every 9 years, under the terms established by the National Authority for Management and Regulation in Communications.

#M11

ART. 61^1

(1)The license validity term for the use of radio frequencies in digital terrestrial system is 10 years since the date of its communication.

(2)The license for the use of radio frequencies in digital terrestrial system can be extended every 10 years, under the conditions established by the National Authority for Management and Regulation in Communications.

(3) When extending the license validity term for use of radio frequencies in digital terrestrial system, by the National Authority for Management and Regulation in Communications may review the conditions according to which the license had been initially granted.

(4)Under the conditions stipulated by par.(3), by the National Authority for Management and Regulation in Communications informs the holder of license for use of radio frequencies in digital terrestrial system as to the changes arisen and grants a term for conformity proportional with the latter's quantitative and qualitative nature.

#M11

ART. 62

(1) The broadcasting license holder or the holder of the license for the use of radio frequencies in digital terrestrial system shall annually pay in advance a fee for spectrum use established by the National Authority for Management and Regulation in Communications, except the broadcasting license holder that transmits the programs of the public radio and television stations.

(2) \*\*\*\* Annulled

(3) The obligation to pay a fee for the first year of license validity becomes effective within 45 days since the broadcasting license has been communicated or of the license for the use of radio frequency in digital terrestrial system.

(4) The fee stipulated in par.(1)shall be paid to the National Authority for Management and

Regulation in Communications.

(5) \*\*\* Annulled.

**#M11**

ART. 62<sup>1</sup> \_The multiplex operator broadcasting programs of the public radio and television stations, license holder for the use of radio frequencies in digital terrestrial system shall pay a fee the use radio spectrum, that shall be diminished according to the bad width assigned for transport of public stations programs.

**#M11**

ART. 63

Monitoring and control during license validity period shall be unfolded by the National Authority for Management and Regulation in Communications for those parameters stipulated in broadcasting licenses, in the licenses for the use of radio frequencies in digital terrestrial system, as well as in the technical authorization regarding technical regulations in force in the field of radio communication.

**#M11**

ART. 64

The National Authority for Management and Regulation in Communications may alter broadcasting licenses and licenses for use of radio in digital terrestrial system, without interrupting the program service and by providing for an equivalent, good quality signal reception, under the conditions stipulated by art. 14, par.(2)and (3)in the Government Emergency Decree no. 79/2002 regarding the general regulatory framework, approved with further modifications and completions by L aw nr. 591/2002, with its further modifications and completion.

**#M11**

ART. 65

The broadcasting license shall be withdrawn by the National Authority for Management and Regulation in Communications under the following conditions:

- a) in case the license holder, for reasons that are imputable to him, fails to obtain the technical operating authorization within 12 months since the date the broadcasting license was granted;
- b) following withdrawal of the audiovisual analogical license;
- c) due to infringements stipulated in the broadcasting license;
- d) the license holder fails to make proof towards The National Authority for Management and Regulation in Communications within 6 months since he was fined of the fact that he paid the fine;
- e) upon license holder's request;
- f) holder's failure to pay the fee for spectrum use and subsequent delay penalties within 45 days since deadline.

**#M11**

ART. 65<sup>1</sup>

The license for use of radio frequencies in digital terrestrial system may be withdrawn by The National Authority for Management and Regulation in Communications in the following conditions:

- a) failure to abide by the obligations in the license;
- b) holder's failure to pay the fee for spectrum use and subsequent delay penalties within 45 days since deadline;
- c) upon holder's request;
- d) as a consequence of withdrawal of the general authorization regime;
- e) the license holder fails to make proof towards The National Authority for Management and Regulation in Communications within 6 months since he was fined of the fact that he paid the

fine;

**#M11**

ART. 66

*(1) The broadcasting license may be ceded towards a third party together with the analogical audiovisual license, upon prior approval from the Council and from The National Authority for Management and Regulation in Communications, as well as upon new license holder's approval to comply with all the obligations in the license also by making proof of the revenue certificate of the company that holds the license.*

*(2) The license for radio spectrum use in digital terrestrial system may be ceded towards a third party together with the analogical audiovisual license, upon prior approval from The National Authority for Management and Regulation in Communications and advisory opinion from the National Audiovisual Council and only upon new license holder's approval to comply with all the obligations in the license.*

**#M11**

ART. 67 \*\*\*Annulled

**#B**

ART. 68

With a view to serving public interest, the Council shall annually revise the strategy for covering the national territory with audiovisual program services.

**#M11**

ART. 69

The National Authority for Management and Regulation in Communications forwards the proposal for frequency allocation for multiplexes, in keeping with the results from the international frequency coordination.

**#M11**

ART. 70 \*\*\* Annulled

ART. 71 \*\*\* Annulled

ART. 72 \*\*\* Annulled

**#M11**

ART. 73

*(1) Operation of broadcasting licenses under Romania's jurisdiction, with a view to providing any type of program service for the Romanian territory or from Romania's territory is permitted only after The National Authority for Management and Regulation in Communications granted the technical authorization, according to a pre-established procedure.*

*(2) The procedure stipulated in par.(1) shall be subject of approval by decision of the President of The National Authority for Management and Regulation in Communications.*

**#B**

ART. 74

(1) Retransmission of program services by service distributors shall be made only in keeping with the Council's approval.

(2) In order to get this approval, distributors shall inform the Council as to the structure of the retransmitted program services.

**#M9**

*(3) Service distributors may change the structure of the offer for retransmitted program services only upon Council's approval.*

*(4) The Council withdraws the approval stipulated by par.(1), if a service distributor retransmits a program service without rights.*

*(5) The person intending to provide on-demand audiovisual media services shall notify the*

*Council at least 7 days prior to the start of the activity as to this intention. The notification shall include at least the information stipulated in art. 48 (a)-(c).*

**#B**

ART. 75

(1) Retransmission of any program service, legally provided by radiobroadcasters under Romania's jurisdiction, or under the jurisdiction of another state with which Romania has signed an international agreement for free retransmission in the audiovisual field shall be free, under law provisions.

**#M5**

*(2) Retransmission on Romania's territory of program services, provided by radiobroadcasters under the jurisdiction of EU Member States shall be free and shall not request any prior approval.*

**#B**

(3) The Council may temporarily restrain a broadcaster's right to free retransmission of a program service from another EU member state, if the following conditions are met cumulatively:

- a) the program service manifestly, seriously and gravely infringes provisions of art.39 or art.40;
- b) during the previous 12 months, the broadcaster has infringed the provisions referred to in art. 39 or art. 40 on at least two prior occasions ;
- c) The Council has notified the broadcaster and the European Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;

**#M2**

*a) consultations with the transmitting Member State and the European Commission have not produced an amicable settlement within 15 days of the notification provided for in (c), and the alleged infringement persists, on condition that within 2 months following the notification of the measures adopted in Romania, the European Commission has not taken a decision on whether the measures are compatible with Community law.*

**#M9**

ART. 75<sup>1</sup>

*(1) In respect of an on-demand audiovisual media service from an EU Member State, the Council may temporarily restrain the right to free retransmission should such a measure be imposed by one the following reasons:*

- a) public policy, in particular the prevention, investigation, detection and prosecution of criminal offenses, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality and violations of human dignity concerning individual persons,
- b) the protection of public health,
- c) public security, including the safeguarding of national security and defense,
- d) the protection of consumers, including investors.

*(2) The measure stipulated in par.(1) may be adopted if the following conditions are met cumulatively:*

- a) the audiovisual media service which prejudices the objectives referred to in par. 1(a)-(d) or which presents a serious and severe risk to prejudice those objectives;
- b) proportionate to those objectives in par. 1(a)-(d);
- c) The Council required the competent authority in the EU Member State under whose jurisdiction the media service provider falls to take measures and the latter did not take such measures or they were inadequate;
- d) The Council notified the European Commission and the competent authority in the EU

*Member State under whose jurisdiction the media service provider falls of its intention to take such measures;*

*(3) The Council may, in the case of urgency, derogate from the conditions in par. 2 (c) and (d). When this is the case, the measures shall be notified in the shortest possible time to the Commission and to the member state under whose jurisdiction the media service provider falls, indicating the reasons for which the member state considers that there is urgency.*

*(4) Should the European Commission reach the conclusion that the measures are incompatible with Community law, the Council shall provide for refraining from taking any proposed measures or urgently putting an end to the measures in question.*

**#M9**

ART. 76

*Any service distributor retransmitting a program service under the provisions of art. 75(1) and (2) shall notify the Council regarding the state under whose jurisdiction the respective broadcaster falls and as the case may arise, the retransmission approval which includes the technical parameters and those of the retransmission quality established among the broadcasters and the service distributors.*

**#B**

ART. 77

The retransmission of a program service not falling under the provisions of art. 75(1) and (2) is possible only in keeping with the retransmission authorization.

**#M2**

ART. 78

Any interested party with editorial responsibility of a program service may apply to the Council for a retransmission authorization for a certain program service.

**#B**

ART. 79

The procedure for issuing, modification and withdrawal of retransmission authorization is established by Council's decision.

ART. 80

Retransmission of any program service that was granted a retransmission authorization is free for any service distributor, without any prior authorization, under provisions of art. 74.

ART. 81

The Council shall annually publish the list of the program services with retransmission authorization.

**#M11**

ART. 82

*(1) Any distributor retransmitting program services by means of electronic communication networks, except those using radio spectrum shall include in its offer the program services of the Romanian Television Corporation broadcast for the public in Romania, as well as other program services of private broadcasters under Romania's jurisdiction, free for retransmission and free of technical or financial restraints, within a limit of 25% of the total number of the program services distributed by the respective network, as well as TV. services for which the retransmission is made compulsory by means of international agreements for which Romania is party. The criteria for evaluating private broadcasters is the decreasing order of their annual rating.*

**#M9**

*(1) Distributors retransmitting program services shall include in their offer at regional and at local level at least two regional and two local programs, where such programs exist; the criteria for choosing programs shall be that of decreasing order of their audience.*

**#B**

(2) In rural areas, for networks with less than 100 subscribers, the Romanian Television Corporation may provide for free reception, with a view to retransmission, of the public programs.

(3) In those areas where a national minority represents more than 20% of the population, distributors shall also provide for the free reception of programs in the language of the respective minority.

(4) Where practicable, distributors retransmitting program services by means of electronic communication services, shall include in their offer the public program services of the Romanian Broadcasting Corporation, those of a national coverage radiobroadcaster and those of a local, private broadcaster.

## **Chapter 6**

### **Exclusive rights limits**

Art. 83

Anyone is entitled to receiving information by means of radio and audiovisual program services on any issue or public interest event.

ART. 84

(1) To this end, extension of exclusive rights provided by a signed contract with a radiobroadcaster, further called primary radiobroadcaster, shall be limited by any other broadcaster's right to short reports on condition that it does not prejudice the author or the exploitation rights owner, as follows:

- a) by recording a primary broadcaster's signal for the purpose of broadcasting a short report;
- b) by an organizer's or another entitled person's right to provide for a secondary broadcaster's access to places where a public interest event takes place with a view to making personal recordings meant for editing a short news report.

**#M9**

*(2) Access stipulated in par. 1(b) guarantees for the broadcasters' free choice of short extracts from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.*

*(3) As an alternative, the Council may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.*

**#B**

ART. 85

(1) The short report is a brief succession of images and sounds regarding a public interest event, with a view to informing the public on essential aspects of the respective event.

(2) In case an event which is of general public interest is made from several autonomous events from an organizational point of view, each element shall be deemed to be of a public interest event.

(3) If a general interest event unfolds for several days, secondary radiobroadcasters are entitled to broadcast daily only one short report.

**#M9**

*(3) Irrespective of the number of parts of the general interest event and of its period, the short report may not surpass 90 seconds.*

*(4) Short extracts shall be used by radiobroadcasters solely in general news programs within max. 24 hours since the initial broadcasting. With on-demand audiovisual media services such extracts may be used only if the same program is offered on a deferred basis by the same media service provider.*

## **#B**

(5) All the elements of the program or of the recording which were not used for making the extract shall be destroyed by the secondary rights holder after broadcasting the respective extract.

(6) If the extract is made by recording the signal from a primary broadcaster, then the name and logo of the primary broadcaster must be mentioned in the extract, except in those cases where radiobroadcasters decide otherwise.

(7) The extract may be broadcast before the primary broadcaster does it, except the case in which the primary broadcaster does not broadcast the event for 24 h since it had occurred.

(8) An extract cannot be broadcast unless there is a direct link between its content and another breaking news event.

## **#M9**

(9) Without prejudice to other arrangements among parties, primary broadcasters shall not impose onto secondary broadcasters compensation arrangements for broadcasting an extract. In case such compensations are provided for, they shall not exceed the additional costs incurred in providing access.

## **#M9**

ART. 86

*(1) Any broadcaster established in the Community has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction, with a view to making short extracts.*

## **#M11**

*(2) The broadcaster under Romania's jurisdiction that has acquired exclusive rights to an event of high interest to the public shall provide access for one broadcaster in each Member State of the European Union, in keeping with the provisions in par.(1).*

## **#B**

## **Chapter 7**

### **Offences and sanctions**

ART. 87

Any contract provisions, irrespective of the parties involved, that infringe, in the audiovisual field, the public's right to receive information of public interest and the free competition are null.

## **#M11**

ART. 88

*(1) The Council monitors, controls compliance with obligations and sanctions infringements of the present law infringements, as well as those of the decisions and instructions with law-making force issued for the purpose of the present law. Provisions regarding broadcasting licenses, licenses for the use of radio frequencies in a digital terrestrial system or technical authorizations, for whose compliance, supervision, control and sanctioning respectively are exempted from the provisions of the present law and are rightfully under the law of the National Authority for Administration and Regulation in Communications, in keeping with its lawful duties.*

*(2) \*\*\* Annulled*

*(3) In carrying out its supervision attributions, the control staff may require media services providers or distributors the necessary information for the implementations of the present*



*law provisions, by mentioning the cause of action and the purpose of the request. The control staff may also establish deadlines for providing the above mentioned information, in keeping with the law sanctioning provisions.*

**#B**

**ART. 89**

The exercise of the control activity stipulated by art. 88 shall be carried out as follows:

- a) ex officio;
- b) upon request from a public authority;
- c) following a complaint from a natural or a legal person directly affected by the infringement of the present law;

**#M8**

*d) following a complaint from a non-governmental organization specialized in protecting human rights, women's and children's rights.*

**#M9**

**Art.90**

(1) The following deeds shall be deemed to be offences:

- a) the broadcasting of a cinema work outside the periods stipulated in the contracts concluded with copyrights holders;
- b) the use of subliminal techniques in audiovisual commercial communications;
- c) *the use of audiovisual commercial communication with surreptitious content;*
- d) *the failure to observe the legal provisions regarding the granting of the right to reply;*
- e) *the broadcasting of a program service outside the area specified in the audio-visual license;*
- f) *the operating of the audio-visual licenses by other persons than their rightful holders;*
- g) *the scheduling and broadcasting of programs infringing the provisions of art. 27, art. 28, art. 29 par.(1)-(7), art. 31 paragraph (7 art. 32, art. 34, art. 35 paragraph (1 art. 36, art. 39, art. 40, art. 41 and of art. 85 alin. (3) - (9);*

**#M11**

h) the infringement of the provisions of the art.3, art.17 paragraph (4), art.49, art.54 paragraph (2) and of art.58 paragraph (1);

**#M9**

- i) the retransmission by a distributor of a program service that is not covered by the provisions of art. 75 paragraphs (1) and (2) and that has not obtained the retransmission authorization;
- j) the retransmission of program services by distributors by infringing Art. 74 and Art. 82;
- k) the supply of a media service without holding an audiovisual license or without the notification mentioned in art.74 paragraph (5);
- l) refusal of the radio-broadcaster or of the service distributor to communicate to the control staff, under the conditions of art.88 paragraph (3), the information they request.

**#M11**

(2) The deeds stipulated in paragraph (1) shall be sanctioned with a fine from 10,000 – to 200,000 RON.

**#B**

(3) If the Council decides that the effects of a deed stipulated in paragraph (1) are minor, it shall address the licensee a public summon with a view to complying with the law.

(4) The individualization of the sanction in case of committing one of the offences stipulated by this Law shall be made by taking into account the seriousness of the deed, its effects, as well as prior sanctions for a period of maximum one year.

**#M11**

**Art.90^1** - (1) The following deeds shall also be deemed as offences:

- a) the transmission of the program services without holding a broadcasting license, license for the use of digital terrestrial radio frequencies or without having a technical authorization;
  - b) the non-observance of the technical data, of the parameters or of the conditions stipulated by the broadcasting license, by the license for the use of the digital terrestrial radio frequencies or by the technical authorization;
  - c) the refusal of a broadcasting license holder or of a license for the use of the digital terrestrial radio frequencies to submit to a control or to provide the authorized persons with the requested documents;
- (2) The deeds stipulated in paragraph (1) shall be sanctioned with a civil penalty from RON 5,000 – to 100,000 RON.

**#M11**

**ART. 91**

1) The infringement by radio-broadcasters or service distributors of the provisions of this Law, mentioned in art.22 paragraph (1), art.24 paragraphs (1) and (2), art.26<sup>1</sup> paragraph (1), art. 31 paragraphs (1), (3), (4) and (5), art. 39<sup>1</sup> și art. 48 and of the decisions representing regulation norms issued by the Council, shall be considered offences.

**#M9**

2) In cases stipulated in paragraph (1), the Council shall issue a summon including the conditions and terms for abiding by the law.

**#M11**

3) If the radio-broadcaster or the service distributor does not abide by the law within the terms and under the conditions established in the summons or if he infringes again these provisions, a civil penalty from 5,000 – RON 100,000 shall be applied.

**#M9**

**ART. 91<sup>1</sup> \*\*\* Annulled**

**#B**

**Art.92**

The amount of the fines stipulated in Art. 90 and Art 91 may be updated by the decision of the Government, according to the evolution of the inflation index.

**#M11**

**ART. 93**

(1) The sanctions for infringing the provisions of this Law shall be applied by documents issued by the Council or by the National Authority for Management and Regulation in Communications, that take action by specialized staff authorized to this end.

**#M2**

(2) The sanctioning decisions issued by the Council in keeping with the provisions stipulated in art. 90 and 91 produce their effects after its communication.

**#M11**

(3) The documents issued in keeping with the provisions of paragraph (1) may be challenged in the administrative contentious court of the appeal court without the necessity to previously lodge a complaint, within 15 days after its communication; the delay of 15 days does not rightfully suspend their effects.

**#M2**

4) The documents issued in keeping with the provisions of paragraph (1) that are not challenged within the delay mentioned in par.(3) are rightfully considered as having writ of execution.

**#M11**

**ART. 93<sup>1</sup>**

(1) Any broadcaster to whom the Council applied a sanction or sent a summon for abiding by the law shall inform the audience about the reasons and the object of the sanction or of the

summons, in keeping with the wording sent by the Council.

(2) In the case of the television program services, the text of the summon or of the sanction shall be broadcast sonorously and visually within the next 24 hours after its communication between 18.00-20.00 at least 3 times, out of which one during the main news transmission.

(3) In the case of the sonorous radio-broadcasting program services, the text of the summons or of the sanction shall be broadcast sonorously and visually within the next 24 hours after its communication between 6.00-14.00 at least 3 times, out of which one in the main news transmission.

(4) For the television or the sonorous radio-broadcasting program services which during the time laps mentioned in par.(2) and (3) retransmit other program services, the possibility of broadcasting is established by the sanctioning decision or in the summons.

(5) The non-observance of the provisions in par.(1)-(4) shall be sanctioned with a civil penalty from 2,500 – to 50,000 RON.

#### **#M11**

##### **ART. 94**

The provisions of Government Ordinance no. 2/2001 on the legal regime of offences, with its amendments and completions in the law no. 180/2002 and its further amendments, excepted the provisions stipulated in art. 28 par.(1) and art. 32, shall be applied to the offences found by the National Authority for Management and Regulation in Communications.

#### **#M6**

##### **ART. 95**

(1) If one of the offences stipulated in Art. 90 par. (1) and Art. 91 par (1) is repeated, the Council may decide to apply one of the following sanctions:

#### **#M2**

a) the broadcaster shall transmit for a 10 minutes period, between 19.00 and 19.10, only the text of the sanctioning decision;

b) the broadcaster shall transmit for a three - hour period, between 18.00 and 21.00, only the text of the sanctioning decision;

c) the reduction of up to half of the validity term of the audio-visual license, cumulated with the sanction mentioned under letter a);

(2) Sanctions under the terms of paragraph (1) may be applied only gradually, as follows:

a) the sanction mentioned under letter a), only if the broadcaster was previously fined at least twice;

b) the sanction mentioned under letter b), only if the sanction mentioned under par.(1) letter a) was previously applied at least twice;

c) the sanction mentioned under letter c), only if the sanction mentioned under par.(1) letter b) was previously applied at least twice;

#### **#M5**

(3) \*\*\* Annulled

#### **#M9**

##### **ART. 95^1**

The Council may decide to withdraw an audiovisual license or the right to provide an audiovisual media service on-demand, for repeated infringements of one of the following deeds by the media service provider :

#### **#M2**

a) incitement of the public to hatred based on nationality, race or religion;

b) explicit incitement to public violence;

c) incitement to actions meant to dissolve the state authority;

d) incitement to terrorist actions.

#### **#M2**

#### ART. 95<sup>2</sup>

- 1) The decisions issued under the conditions of art. 95 și 95<sup>1</sup> may be challenged in the administration contentious court; the matter shall be determined within maximum 15 days since the intimation;
- (2) The appeal does not rightfully suspend a sanction, but the court may decide, upon request, within 24 hours since the appeal registration to suspend the sanction until an irrevocable injunction is pronounced by the court;
- (3) The ruling of the appeal court may be challenged by appeal to Supreme Court of Justice;
- (4) The ruling of the Supreme Court of Justice is final and irrevocable and shall be pronounced within maximum 10 days since the appeal.

#### #M11

#### ART. 96

(1) The transmission of the television/radio-broadcasting program services without a broadcasting license or a license for the use of the digital terrestrial radio frequencies is considered to be a perpetration and shall be punished by imprisonment from 3 months to 1 year or by civil penalty from 5.000 RON to 100.000 RON, if this deed represents a danger for the national security, the public order or the public health or causes problems of economic or operational nature to the other providers of networks or electronic communication services or to the users.

#### #M9

(1<sup>1</sup>) \*\*\*Annulled

#### #M11

(2)\*\*\*Annulled

(3)\*\*\*Annulled

#### #M9

(4) In the case of perpetrations committed according to provisions in par. (1) the Court may decide to equally apply provisions in the Penal Code regarding special impounding.

#### #B

## CHAPTER 8. FINAL AND TRANSITORY PROVISIONS

#### #M2

#### ART. 97

(1) The broadcasting licenses for the audio-visual communication on radio-electric way granted on basis of the provisions of the Audio-Visual Law no. 48/1992, with subsequent amendments are considered as audiovisual licenses and shall remain valid in the terms of the Law until the rightful expiry of the terms they were granted for; the procedure of granting the broadcasting licenses shall submit to the same conditions.

#### #B

(2) The normative decisions issued by the Council in keeping with Art 32 paragraph (1) from the Audio-Visual Law no. 48/1992 with subsequent amendments and completions shall remain valid for maximum one year after the entering into force of this Law.

(3) The broadcasting licenses for radio-broadcasting or television transmitted by cable for the purpose of Art. 22 from the Audio-Visual Law no. 48/1992, with subsequent amendments and completions shall remain valid in the terms of the law.

#### ART. 98

(1) Starting with the entering into force of this Law, the remuneration of the civil servants and of the personnel employed on basis of individual labor contract in the Council shall be performed at the level corresponding to the other autonomous public authorities under the

control of the Parliament, according to Annex no. I point II of the Emergency Government Ordinance no. 24/2000 on the system of establishing the basic salaries for the contractual personnel within the budgetary sector, with subsequent amendments and completions.

(2) Besides the basic salary and the incentives stipulated by the labor legislation, the personnel of the Council should also benefit of the following incentives :

- the stability incentive of 5-20% of the basic salary; for persons with a seniority in the institution of at least 2 years 5% and for each further year 3%, without exceeding a total benefit of 20%;

**#M10**

- [The 2nd dash]\*\*\*Annulled

**#B**

- the annual premium corresponding to the basic salary earned during the last month of the year for which the payment is performed.

Art. 99

The Audio-visual Law no. 48/1992, published in the Official Gazette of Romania, Part I, no. 104 from May 25, 1992, with subsequent amendments and completions, as well as any other contrary provisions will be abrogated.

**#M9**

*The present law shall transpose the provisions of the 89/552/EEC Directive of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by documents with law power or administrative norms in member States concerning the provision of audiovisual media services (The Directive of Audiovisual Media Services) published by the Official Journal of the European Communities, series L no. 298 dated 17 October 1989, as amended by Directive 97/36/EEC and Directive 2007/65/EC.*

**#CIN**

NOTE We reproduce below the provisions of art. II and art. III of the Government's Emergency Ordinance no. 181/2008 ( **#M9**) with further modifications:

**#M11**

„Art. II. (1) The provisions of the par. (1)-(5) of the art. 31 in the Audiovisual Law no. 504/2002, with further completions and modifications, as well as those brought by the present emergency ordinance shall apply only to the programs produced after December 19th, 2009.

2) *Analogue television audiovisual licenses existing at the moment of the entering into force of the present law may be prolonged till a date imposed by the provisions of the strategy for the switchover from analogue to terrestrial digital broadcasting and multimedia services countrywide implementation, no later then the moment of the compulsory cessation of the analogue transmission.*

(3) *Within a 12 month - period, since the entrance into force of the provisions of the present emergency ordinance, the Ministry of Communications and Information Technology in co-operation with the Ministry of Culture, Religious Affairs and National Heritage, the Ministry of Public Finance, the National Audiovisual Council and the National Authority for Management and Regulation in Communications shall draw up the strategy for the switchover from analogue to terrestrial digital broadcasting and multimedia services countrywide implementation, strategy to be approved by Government decision .*

(4)\*\*\*Annulled.

(5) *During the drawing up and implementation process of the strategy mentioned in par.(3) shall be adopted the technical solutions that provide for the most efficient exploitation of the terrestrial radio-electric frequencies spectrum, in keeping with the quality requirements for*

*the broadcast signal. .*

*(6)\*\*\*\*\*Annulled*

**#M9**

7) In order to apply the provisions of the article 10 par.(3) letters i) and l), the National Audiovisual Council shall be allocated supplementary budgetary resources to ensure staff, its professional training and adequate technical endowment.”

**#M9**

*“Art. III. The provisions of the present Emergency Ordinance are addressed to all audiovisual media services providers under Romanian jurisdiction and shall be applied to all audiovisual media services, as defined in art. 49 and art. 50 from the Treaty of the European Union and offered to the public by electronic communication networks for the purpose of art. 2 letter (a) from the 2002/21/CE Directive, according to the provisions of the 89/552/CEE Directive of the European Parliament and of the Council of 3 October 1989 on the coordination of some provisions established by documents with law power and administrative norms within Member States regarding audiovisual media services, with their further modifications and completions.”*

**#B**