

February 23, 2011
Budapest

Letter to Neelie Kroes, European Digital Agenda Commissioner

We, the Hungarian Civil Liberties Union (HCLU), a Hungarian human rights organization, are writing to express our grave concern about the amendment proposed to the Hungarian Press and Media Act (MC) and the Media Services and Mass Media Act (MA) by the Hungarian government which it has been said is supported by you as well (hereafter: the Proposal).

The HCLU's position is that Hungarian media laws constitute violations of European Directives in many details as well as that of the Charter of Fundamental Rights of the European Union. Furthermore some points of the proposed amendments are even more restrictive on freedom of the press than the earlier versions.

Please take into consideration the following points.

1. Balanced coverage

(Proposal of the government)

MC Art. 10. Everyone shall have the right to receive proper information on public affairs at local, national and EU level, as well as on any event bearing relevance to the citizens of the Republic of Hungary and the members of the Hungarian nation. It is a task for the entirety of the media system to provide authentic, rapid and accurate information on such affairs and events.

MC Art. 13. Linear media services engaged in the provision of information shall provide comprehensive, factual, up-to-date, objective and balanced coverage on local, national and European issues that may be of interest for the general public and on any event bearing relevance to the citizens of the Republic of Hungary and the members of the Hungarian nation. The detailed rules of this obligation shall be set by act in accordance with the requirements of proportionality and a democratic public opinion.

According to the Proposal, the following part of MC Art. 13 (1) "providing authentic, rapid and accurate information" shall be moved to MA Art. 10. However this change is legally indifferent; it still represents an outright *ex ante* content regulation. The National Media and Infocommunications Authority shall retain the power to inflict sanctions upon the breach of this Article (see: Article 181 of MA for the specific sanction for unbalanced coverage). With reference to MA Article 209. Point 39: 'Rule concerning media governance' and Article 187 it reads that upon the breach of *any* article of MC the Media and Infocommunications Authority shall have the power to inflict sanction.

The Proposal adds an extra sentence to Art. 13 (2) of the MC that increases the state's interference into the media. The obligation of linear media services to broadcast 'balanced coverage' shall be defined by an act of Parliament 'in accordance with the requirements of proportionality and a democratic public opinion'. This represents an enhanced content regulation that seriously restricts the editing freedom of electronic media services. This direct content regulation is more restrictive than the original law. Requirement of proportionality is absolutely meaningless in the context of balanced coverage. We can only hope that by no means 'proportionality' shall be defined with regard to the actual political situation or election results. Requirement of democratic public opinion has never been given an adequate definition in a law, because it is simply impossible. Democratic public opinion requires freedom from being defined by law.

Let us remind you that in your letter in connection with this point you have referred to the Article on Freedom of expression and information (Art. 11) of the EU's Charter of Fundamental Rights. In our opinion the Proposal is even more restrictive than the original law, and consequently that is incompatible with the Charter.

2. Country of Origin Principle

(Proposal of the government)

"Proceedings against a media content provider resident in another Member State in case of circumvention of the law"

MA Art. 176. (1) When the linear audiovisual media service of a media service provider established in another Member State is aimed at the territory of the Republic of Hungary, the Media Council shall have the right to apply, solely as regards the retransmission of the said service within the territory of the Republic of Hungary, the legal consequences as defined in Article 187(3) (c)–(d) against the media service provider under its decision for the period of the infringement but up to 180 days at the most when the following conditions are in existence:

(a) the media service clearly and materially violates Article 17(1), 19(1) or 19(4) of the Press and Media Act or Article 9 or 10(1)–(3) of this Act,

MA Art. 177. (1) When the on-demand audiovisual media service of a media service provider established in another Member State is aimed at, is broadcast or published in the territory of the Republic of Hungary, the Media Council shall have the right to apply, solely as regards the transmission of the said service within the territory of the Republic of Hungary, the legal consequences as defined in Article 187(3) (c)–(d) against the media service provider under its decision for the period of the infringement but up to 180 days at the most when the following conditions are in existence:

The Proposal on Country of Origin Principle still falls short of meeting EU law requirements. We intend to draw your attention to the fact that it does not suffice to meet the requirement of the Country of Origin Principle by merely renaming the titles: 'Proceedings against a media content provider resident in another Member State in case of circumvention of the law' instead of 'Proceedings against a media content provider resident in another Member State'. Given that there is no intention from the government to fundamentally change Art. 178, the National

Media and Infocommunications Authority retains the power to launch procedures against linear radio services, online and printed media products. This is still a kind of regulation that is irrespective of the Country of Origin Principle.

We strive to draw your attention that according to the audiovisual directive preamble (43): ‘Under this Directive, notwithstanding the application of the country of origin principle, Member States may still take measures that restrict freedom of movement of television broadcasting, but only under the conditions and following the procedure laid down in this Directive.’ However Hungarian media laws still leave room for intervention, based on highly unclear purposes: ‘the measures are necessary for the protection of public order, the prevention, investigation and prosecution of criminal acts, necessary on account of infringement of the prohibition of inciting hatred against communities, for the protection of minors, public health, public security, national security and consumers and investors’.

Furthermore Art. 189. (6) of MA is not in line with European Union law. That provision provides that broadcaster and intermediary service provider shall be held responsible under certain circumstances. Their responsibility can be established independently of that of media content providers.

3. Notification and Registration

(Proposal of the government)

Proposal: MA Art. 41. (2) On-demand and ancillary media services provided by media service providers established in the Republic of Hungary, as well as press product published by a publisher established in the Republic of Hungary under the scope of this Act shall be notified to the Authority for registration within 60 days following the commencement of the service or activity. The registration is not a condition for taking up such a service or activity.

MA Art. 45. (8) In the event the media service provider fails to comply with its obligations related to registration, the Authority may impose a fine up to one million forints, taking into consideration the principles set forth in Article 185(2).

MA Art. 46. (8) In the event of a change in the publisher’s person, the publisher on record shall initiate modification of the registered data. In the absence thereof, the founder may also initiate the modification. Paragraphs (1) to (5) shall be applied mutatis mutandis to such procedure.

MA Art. 46. (8a) In the event the publisher or founder of a press product fails to comply with its obligations related to registration, the Authority may impose a fine up to one million forints, taking into consideration the principles set forth in Article 185(2).

According to the Proposal, the registration of on-demand, ancillary media services and online and print press products shall not be a condition of taking up such a service. However, the mandatory registration requirement is an absolute condition for providing media services. This amendment only postpones the date of registration by up to 60 days, but the mandatory obligation still remains a condition for being allowed to enjoy press and media freedom. It is

important to highlight that the sole difference between ‘denying registration’ and ‘withdrawing registration’ is that there shall be no registration fee. In its stead, the Proposal will establish an additional form of sanction. The proposed new MA provisions (Art. 45. (8) and Art. 46. (8a) shall institute a pecuniary sanction (up to one million HUF, equal to 5000 Euro) for those who violate the rules of the registration.

In your letter to the Hungarian Government you raised concerns about MA’s Art. 41 provision requiring the registration of all media content providers (in particular print and online media), that may constitute a disproportionate restriction of the freedom of establishing and providing services. Let us clearly point out that the concern you raised in your letter shall not be dealt with if the Proposal is accepted in its current form.

4. Provisions concerning media content

(Proposal of the government)

MC Art. 17(2) The media content may not discriminate persons, nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups.

We welcome the Proposal that shall change Art. 17 (2) of MC. It is a step forward that an offense of anyone, either directly or in an implied manner, will not be sanctioned. However, a considerable number of similar unclear notions remain in the text of MA: ‘discrimination of persons, nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups’. Due to these overreaching notions, the law still leaves open the door for arbitrary practice of law. The enhanced legal protection of any ‘persons’, ‘majorities’, ‘churches or religious groups’ is gratuitous. Majorities and churches are anything but defenseless, contrary to national, ethnic, religious and sexual minorities.

5. Press product, media service

(Proposal of the government)

MC Art. 1 1. Media service shall mean any economic service as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, pursued independently, businesswise – on a regular basis for profit, taking economic risk – for which the media service provider bears editorial responsibility, the primary aim of which is the delivery of programmes to the general public for informational, entertainment or educational purposes through an electronic communications network.

The Proposal would expand the definition of ‘press product’ and ‘media service’ by an additional provision: ‘any service pursued independently, businesswise – on a regular basis for profit, taking economic risk’. But this amendment still does not provide a proper answer to the core question: why should an administrative authority control the content of *any* press and online media? It is essential to put an emphasis on the point that the media law (MA) established an absolutely new, so far non-existent media supervisory authority in Hungary and that is a severe restriction on freedom of press.

Dear Commissioner Kroes,

Please let us point out some further crucial points about the controversial Hungarian media laws. So far you have restricted your investigation to the Audiovisual Media Services Directive without analyzing the Hungarian media legislation from the point of view of freedom of the press and that of the media, which are considered to be fundamental values of the European Union. So far you have not proceeded to review the MA and the MC with regard to further EU law on the field of e-commerce, competition and info-communication.

The underlying idea of new media supervision system is alien to the very idea of freedom of the press, it is driven by a spirit of restriction. We are bound to state clearly that such a restrictive system does not exist in any other Member State of the Union. We kindly ask you, as a responsible European politician, not to deem satisfactory the so far proposed narrow amendments to the law, and keep negotiating and investigating in order to make the media law respect the entire system of EU directives as well as its underlying principles.

Yours Faithfully,



Balázs Dénes
Hungarian Civil Liberties Union
Executive director