

## The EU Audiovisual Media Services Directive and its transposition into national law – a comparative study of the 27 Member States

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### Member State: Estonia

#### Media Services Act

#### Important Notice

This text is an unofficial translation conducted at the University of Luxembourg in the framework of a research project on the transposition of the “**Audiovisual Media Services Directive**” in the Member States of the European Union.

The original legal acts which Member States notified to the European Commission as national execution measures were retrieved from official national databases. In order to focus on the core of the research project, several national legal acts have been shortened to include only those provisions of relevance for the study. Subsequently, the modified acts were translated by a translation agency external to the university.

The translations only serve the purpose of being an information source; there is no guarantee whatsoever that the translations correctly correspond to the original versions of the laws. Therefore, evidently, the texts have no legal value. The original, as well as the translated version of the legal acts, are available at: [www.medialaw.lu](http://www.medialaw.lu), where additional information on the comparative study may be found.

## Member State: Estonia

### Media Services Act<sup>1</sup>

Official Journal: *Elektroniline Riigi Teataja I*

Passed on 16 December 2010

#### Chapter 1. General Provisions

##### § 1. Scope of application

The Media Services Act provides for:

- 1) the procedure and principles for the provision of audiovisual media services and radio services (hereinafter together media services) and the requirements for media service providers;
- 2) the procedure for granting activity licences for the provision of television and radio services to legal persons governed by private law and the registration procedure for the provision of on-demand audiovisual services;
- 3) the principles of the protection of a person who has given information to a person processing information for journalistic purposes (hereinafter information source).

##### § 2. Application of Act

(1) This Act shall be applied to the media service provider if:

- 1) the media service provider has its head office in Estonia and the editorial decisions about the media service are made in Estonia;
- 2) a significant part of the workforce involved in the pursuit of the media service activity and the head office of the media service provider are located in Estonia, but the editorial decisions about the media service are made in another Member State of the European Union or in a state party to the European Convention on Transfrontier Television (hereinafter together Member State or a State Party to the Convention);
- 3) the head office of the media service provider is located in Estonia, but a significant part of the workforce involved in the pursuit of the media service activity operates in several Member States or States Party to the Convention;

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<sup>1</sup> Estonian original legal act retrieved from: <https://www.riigiteataja.ee/akt/106012011001>

4) a significant part of the workforce involved in the pursuit of the media service activity does not operate in a Member State or a State Party to the Convention, but the media service provider first began its activity in Estonia in accordance with Estonian laws and a significant part of its economic activities is actually carried out in Estonia on a regular basis or is significantly linked to Estonia;

5) the head office of the media service provider is located in a Member State or a State Party to the Convention but the decisions about the media service are taken in a third country or vice versa, whereas a significant part of the workforce involved in the pursuit of the media service activity operates in Estonia.

(2) This Act shall be applied to a media service provider to whom the provisions of the first paragraph of this section may not be applied, provided that the media service provider uses the satellite up-link situated in Estonia or the satellite frequency resource of Estonia.

(3) If subsection (1) of this section may not be applied to the media service provider, the location of the media service provider shall be determined in accordance with articles 49-55 of the Treaty on the Functioning of the European Union.

(4) This Act shall be applied to the Estonian National Broadcasting in so far as the Estonian National Broadcasting Act does not provide for otherwise. Only section 15 shall be applied to other persons processing information for journalistic purposes that are not referred to in subsections (1)-(3) of this section. Sections 51 and 52 of this Act shall be applied to an electronic communication enterprise providing retransmission of media service.

(5) The requirements provided for in sections 8–12, 14, 20, 22 and 23 of this Act shall not be applied to audiovisual media service providers whose services are intended exclusively for reception in third countries and are not received with standard consumer equipment directly or indirectly by the public in one or more Member States or States Party to the Convention.

### **§ 3. Application of the Administrative Procedure Act**

The provisions of the Administrative Procedure Act shall be applied to administrative procedures provided for in this Act, taking into account the specifications of this Act.

### **§ 4. Media service**

(1) Audiovisual media service is a media service provided under the editorial responsibility of a media service provider, the principal purpose of which is the provision of informative, educational or entertaining programmes to the general public by an electronic communications network. Audiovisual media services are:

1) television service provided on the basis of a schedule for simultaneous viewing of programmes. Television services are principally television broadcasts, television programmes and commercial communication;

2) on-demand audiovisual media service provided for the viewing of programmes at the moment chosen by the users of the service and at their individual request on the basis of a catalogue of programmes;

3) audiovisual commercial communication which is, in particular, television advertising, sponsorship, teleshopping and product placement;

4) other similar services provided in the course of economic activity, except services which are not in competition with television service.

(2) Radio service is a media service which is provided under the editorial responsibility of a radio service provider on the basis of the schedule for simultaneous listening of programmes and the principal purpose of which is the provision of informative, educational or entertaining programmes to the general public by an electronic communications network. Radio services are, in particular, radio broadcasts, radio programmes and commercial communication.

### **§ 5. Media service provider**

A media service provider is a legal or natural person who provides television service, on-demand audiovisual media service or radio service, has editorial responsibility for the selection of the content of the media service, and determines the order of its presentation and the manner in which it is organised.

### **§ 6. Editorial responsibility**

Editorial responsibility is the control over the selection, content and structure of programmes and their organisation in a programme service or a catalogue.

### **§ 7. Programme, programme service and catalogue of programmes**

(1) A programme is a set of moving images with or without sound or a set of mere sounds with time limits constituting an individual item within a programme service or a catalogue of programmes.

(2) A programme service is a set of programmes in the order established by a television or radio service provider, the form and content of which are represented in the chronological schedule. A programme service has its own name.

(3) A catalogue of programmes is a list of programmes provided by an on-demand audiovisual media service provider under its editorial responsibility.

### **§ 8. Structure of programme service**

(1) A television and radio service provider shall reserve at least five per cent of the daily transmission time of the programme service on at least six days a week for transmitting self-produced news programmes, except in the programme service on public holidays. A self-produced news programme is also a news programme containing the news produced by at least two news producers.

(2) A television service provider shall reserve at least ten per cent of the monthly transmission time of a television programme service, deducting the transmission time allocated to news programmes, sports events and games, as well as advertising, teleshopping and teletext

services, for the transmission of own production. A television service provider shall transmit at least 50 per cent of the minimum capacity of own production within the time period from 19:00 to 23:00.

(3) A television service provider shall reserve at least 51 per cent of the annual capacity of the television programme service, deducting the transmission time allocated to news programmes, sports events and games, as well as advertising, teleshopping and teletext services, for the transmission of European audiovisual works.

(4) A television service provider shall reserve at least ten per cent of the annual transmission time of the television programme service, deducting the transmission time allocated to news programmes, sports events and games, as well as advertising, teleshopping and teletext services, for the transmission of such European audiovisual works which have been created by producers who are independent of this television service provider. These works must include works that have been produced less than five years ago.

(5) Upon the application of the requirements provided for in subsections (1) and (2) of this section, derogations may be made from the requirements of the activity licence for the provision of television services at the justified request of a television service provider predominantly transmitting music, sports events or movie programmes.

(6) Requirements set out in subsections (3) and (4) of this section shall not be applied to television programmes transmitting only television advertising and teleshopping or only self-promotion.

(7) Requirements set out in subsections (3) and (4) of this section shall not be applied to television programmes that are intended for local audiences and are transmitted on the basis of a licence for providing regional television service.

(8) Requirements set out in subsections (1)-(4) of this section shall not be applied to television programmes that are transmitted on the basis of a temporary licence for the provision of television and radio service.

(9) Every year, no later than by 25 January and 25 July, a television service provider shall submit to the Ministry of Culture data on meeting the requirements set out in subsections (1) and (2) of this section for the previous half-year by months, taking into account specifications provided for in subsection (5) of this section.

(10) Every year, no later than by 15 February, a television service provider shall submit to the Ministry of Culture data on meeting the requirements set out in subsections (3) and (4) of this section for the calendar year preceding the submission of the data.

## **§ 9. Weekly transmission time of programme services**

The weekly transmission time of a programme service shall be at least:

- 1) 84 hours for the transmission of a radio programme;
- 2) 56 hours for the transmission of a television programme carried out on the basis of an activity licence for the provision of national television service with free or conditional access;

3) 21 hours for the transmission of a television programme carried out on the basis of an activity licence for the provision of regional television service with free or conditional access.

## **§ 10. Own production**

Own production is a programme or a programme service dealing with contemporary Estonia or its cultural heritage, and produced by the audiovisual media service provider itself or in co-operation with a producer from a Member State of the European Union or is ordered from an independent European producer.

## **§ 11. Audiovisual works of European origin**

(1) Audiovisual works of European origin (hereinafter European works) are:

- 1) works originating in a Member State of the European Union;
- 2) works originating in a European third state party to the European Convention on Transfrontier Television;
- 3) works co-produced within the framework of agreement concluded between a Member State of the European Union and a third country and fulfilling the conditions defined in that agreement.

(2) Works originating from a Member State of the European Union or a third State party to the European Convention on Transfrontier Television, which have been mainly made with authors and workers residing in one or more of these States, are European works, provided that they comply with one of the following conditions:

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

(3) Clauses (1) 2) and 3) of this section shall be applied, provided that works originating in Member States are not subject to discriminatory measures in the third country concerned.

(4) Works that are not European works within the meaning of subsection (1) of this section but are produced within the framework of bilateral co-production agreement concluded between a Member State of the European Union and a third country shall be deemed to be European works, provided that the co-producers from the Member State of the European Union 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.

## **§ 12. European independent producer**

A European independent producer is:

- 1) a producer whose majority of shares or the majority of votes determined by the shares belong to a legal or natural person of a Member State or a State Party to the Convention;
- 2) a producer whose copyrights for the production or rights related to the copyrights transferred on the basis of a law or an agreement belong to a legal or natural person of a Member State or a State Party to the Convention;
- 3) a producer that has produced own audiovisual production for at least two audiovisual media service providers during the past two years.

## **Chapter 2. Principles of media service provider**

### **§ 13. Discretion**

(1) A media service provider has a right to freely select the content and placement of its programme and the programme service or the catalogue of programmes in accordance with the law and conditions specified by the activity licence for the provision of television and radio services.

(2) A court may prohibit the transmission of the programme or part of it in the pending court cases on legitimate grounds and procedure.

### **§ 14. Political balance during active election campaigning**

If a television and radio service provider grants transmission time to a party or a political movement to introduce its position during active election campaigning in the election of the European Parliament, the Riigikogu or local government councils, it shall grant, without unreasonable delay, an equal opportunity to speak to another party or political movement at their written request.

### **§ 15. Protection of information source**

(1) A person who is processing information for journalistic purposes has the right not to disclose information that would enable to identify the information source.

(2) A person who is processing information for journalistic purposes shall not disclose information that would enable to identify the information source without their consent.

(3) The obligation provided for in subsection (2) of this section shall not apply if the information source has knowingly provided false information to the person processing information for journalistic purposes.

(4) Subsections (1)–(3) of this section shall be applied to a person who is professionally exposed to information that enables to identify the information source of the person processing information for journalistic purposes.

(5) Using direct or indirect influence on a person processing information for journalistic purposes with the purpose to identify the information source of that person is prohibited.

(6) A person who is processing information for journalistic purposes or a person who is professionally exposed to information that enables to identify the information source of the person processing information for journalistic purposes shall submit this information pursuant to the conditions and procedure provided for in the Code of Criminal Procedure.

## **§ 16. Public information on media service provider**

(1) An audiovisual media service provider shall make at least the following information about itself clearly and consistently available:

1) name;

2) postal address;

3) contact information, including the e-mail address or the web page address;

4) name and contact information of the executive producer;

5) reference to the contact information of the Ministry of Culture as the executor of state supervision.

(2) The name of the television programme service of the television service provider shall be disclosed in the television programme at the time chosen by the provider for at least 12 times during the transmission day, and the titles of the programmes on the schedule of the same day shall also be noted in the electronic chronological schedule of programmes if it is technically possible.

(3) A radio service provider shall make at least the following information about itself clearly available:

1) in the radio programme – name, contact information, including the e-mail address or the web page address for at least four times during the transmission day;

2) at the web page, if there is one – name and postal address, e-mail address, name and contact information of the executive producer and a reference to the contact information of the Ministry of Culture as the executor of state supervision.

## **§ 17. Executive producer**

(1) A media service provider shall designate an executive producer for the programme service or the catalogue of programmes to be transmitted.

(2) The executive producer shall ensure that the transmitted programme or the catalogue of programmes complies with this Act, good journalism practice, and the principles of freedom of expression.

(3) A media service provider shall keep a list of executive producers for one year after the transmission day in the programme or after the termination of the placement of the programme in the catalogue of programmes.

## **§ 18. Transmission of emergency announcements**

A television and radio services provider shall promptly and without charge transmit in all its television and radio programme services:

- 1) official announcements of the Riigikogu, the President of the Republic and the Government of the Republic in the event of a danger to the security of the society or the constitutional order;
- 2) information that is necessary to protect human lives, health and security or to avoid material damage or danger, as well as to prevent or reduce environmental damage.

## **§ 19. Protection of minors and assurance of public morality and legitimacy**

(1) Upon providing media services, the programmes shall not contain incitement to hatred based on sex, racial or ethnic origin, belief or religion, degrading of law-abiding behaviour or incitement to the violation of law.

(2) Television or radio service provider shall not transmit programmes that significantly impair the physical, mental or moral development of minors, in particular programmes which contain pornography or promote violence or cruelty as set out in § 1(2) of the Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty.

(3) Television or radio service provider shall not transmit programmes that might impair the physical, mental or moral development of minors and are age inappropriate due to scenes involving indecent content, violence or cruelty or the demonstration of unlawful behaviour between 6:00 and 22.00.

(4) If the programme referred to in subsection (3) of this section is transmitted outside the specified time period, a warning understandable to viewers must be transmitted before the programme announcing that the following programme is unsuitable for minors, or a relevant visual symbol must be seen on the screen during the whole programme about the unsuitability of this programme to minors or some age groups of minors.

(5) The requirements set out in subsections (3) and (4) of this section shall not be applied when the television service provider takes technical measures to ensure that minors are not able to receive such programmes by ordinary means.

(6) If the programme service contains programmes whose content meets the conditions set out in subsection (3) of this section, the television or radio service provider shall not transmit the scenes that caused the restriction nor highlight these scenes in the programme.

(7) On-demand audiovisual media service that can significantly impair the physical, mental or moral development of minors shall be made available by the on-demand audiovisual media service provider in a way that is not accessible to minors in normal circumstances.

## **§ 20. Right of reply**

(1) Any natural or legal person, regardless of nationality or location, whose legitimate interests, in particular reputation, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent and legal remedies.

(2) Television or radio service provider shall ensure the right of reply or equivalent remedies and shall not hinder this by the imposition of unreasonable terms and conditions. Television or radio service provider must be notified in writing of the desire to file a reply within 20 days after the transmission of the programme to which the request refers. Television or radio service provider shall transmit the reply in the same programme free of charge within 20 days from the receipt of the substantiated request.

(3) An application for the reply may be rejected if such a reply is not justified, would involve a punishable act, would render the broadcaster liable to civil-law proceedings or would transgress standards of public decency.

### **§ 21. Obligation to preserve programmes**

(1) Television and radio service provider shall ensure the recording of transmitted programmes.

(2) Recordings are preserved for at least 20 days from the transmission of the programme.

(3) A court may impose a longer period for the preservation of a specific recording in the pending court cases.

### **§ 22. Self-regulation**

Persons active in the field of media services may create on their own initiative a system whose parties voluntarily define common recommendations and rules and establish standards under a code of conduct in order to regulate the field and define the limits of good and bad practice. Self-regulating associations shall voluntarily determine the procedure and liability of the parties for the compliance with the established rules.

### **§ 23. Access of persons with visual or hearing disability to audiovisual media services**

Audiovisual media service provider shall make its service accessible to people with visual or hearing disabilities, using subtitling, translation into sign language, separate audio channels, teletext services and other additional services which allow persons with visual or hearing disability to use the offered service.

### **§ 24. Promotion of production and accessibility of European works by an on-demand audiovisual media service provider**

(1) On-demand audiovisual media service must promote the production and accessibility of European works, taking into consideration the specific nature and possibilities of the service. The promotion of production and accessibility of European works by on-demand audiovisual media service provider include:

1) financial contribution to the production of European works, ordering the works or the acquisition of rights to transmit the works;

2) prominence of European works, including works produced within the last five years, in the catalogue of programmes, together with the country of origin and the production year of the works;

3) prominence of works that have the characteristics of own production in the catalogue of programmes, together with the production year.

(2) Every year, no later than on 15 February, an On-demand audiovisual service provider shall submit to the Ministry of Culture data on meeting the requirements set out in subsection (1) of this section for the calendar year preceding the submission of the data.

### **Chapter 3. Commercial communications**

#### **§ 25. Commercial communications**

(1) A commercial communication is information transmitted with sound or images which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing economic activity and which accompany or are included in a programme in return for payment or for similar consideration.

(2) Commercial communications transmitted by a media service provider shall be readily recognisable and distinguishable from the rest of the programme.

(3) Requirements set out for advertising in the Advertising Act and other acts shall be applied to the commercial communications.

#### **§ 26. Surreptitious commercial communications**

Surreptitious 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 programmes 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.

#### **§ 27. Code of conduct for the transmission of audiovisual commercial communication in children's programmes**

(1) Persons active in the field of media services may establish a code of conduct by means of self-regulation regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended for children.

(2) The Code of Conduct referred to in subsection (1) of this section shall be established by the regulation of the Minister of Culture, provided that it has not been established by the media service providers by means of self-regulation.

## **§ 28. Television and radio advertising and teleshopping**

(1) Television and radio advertising means an announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a legal or natural person in connection with economic or professional activities in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

(2) Teleshopping means direct offers transmission in television and radio programmes to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

(3) Television and radio advertising and teleshopping shall be readily recognisable and distinguishable from the rest of the programme and other parts of the programme by visual or acoustic signs or special means, taking into account the opportunities offered by advertising techniques.

(4) Television service provider shall transmit television advertising and teleshopping in blocks and ensure that the integrity of programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holder are not prejudiced. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

(5) News programmes, films made for television (excluding series and documentaries), and cinematographic works may be interrupted by television advertising and or teleshopping once for each scheduled period of at least 30 minutes.

(6) Children's programmes may be interrupted by television and radio advertising or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes.

(7) No television or radio advertising or teleshopping shall be inserted during religious services.

(8) The requirements of this shall be applied to such television programmes that transmit only television advertising and teleshopping in so far as it is not in conflict with the nature of the transmitted television programme service.

(9) Television and radio advertising shall not include public service announcements or charity appeals transmitted by the television and radio service provider, unless otherwise provided for in the law.

## **§ 29. Transmission time of television and radio advertising and teleshopping**

(1) The hourly transmission time of television and radio advertising spots and teleshopping shall not exceed 12 minutes, except for the announcements that a television and radio service

provider broadcasts in connection with its own programmes and ancillary products, sponsorship announcements and product placement directly deriving from those programmes.

(2) A teleshopping window shall last uninterruptedly for at least 15 minutes.

### **§ 30. Sponsorship**

(1) For the purposes of this Act, sponsorship shall mean any contribution made by legal or natural persons not engaged in providing media services or in the production of programmes, to the financing of media services or programmes with a view to promoting their image, name, trade mark, activities or products.

(2) Sponsorship information is the information transmitted by the media service provider about the sponsorship of media services.

(3) Sponsored media service and programme must meet the following requirements:  
1) sponsorship shall not affect the editorial responsibility and independence of the media service provider;

2) sponsorship shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

3) viewers shall be clearly informed of the existence of a sponsorship agreement;

4) information about sponsors shall be broadcast to the viewers in such a manner that it is clearly distinguishable from other forms of commercial communication.

(4) The Ministry of Culture is entitled to receive information from the media service provider on effective sponsorship contracts in order to verify the difference of transmitted sponsorship information from other forms of commercial communication.

(5) Sponsored programmes shall be clearly distinguished from the rest of the programme by using the name, logo or any other symbol of the sponsor such as a reference to its products or services or a distinctive sign thereof in an appropriate way for programmes at the beginning, during or at the end of the programmes.

(6) Sponsorship communications shall be clearly distinguished for the viewer from other forms of commercial communication.

(7) A media service or programme shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

(8) Undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking in the sponsored audiovisual media service or programme, but shall not promote medicinal products and medical treatments available only on prescription.

(9) News and current affairs programmes shall not be sponsored.

(10) The showing of a sponsorship logo during children's programmes and religious programmes is prohibited.

### **§ 31. Product placement**

(1) 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 programme, in return for payment or for similar consideration.

(2) Product placement shall be prohibited, except in cases set out in this section.

(3) Product placement shall be allowed:

1) in cinematographic works, films and series;

2) in sports programmes;

3) in light entertainment programmes;

4) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

(4) Programmes that contain product placement shall meet the following requirements:  
1) product placement shall not affect the editorial responsibility and independence of the media service provider;

2) programmes shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

3) programmes shall not give undue prominence to the product in question;

4) In order to inform the viewer clearly and understandably of the product placement, a programme containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, by the use of an appropriate text or a common symbol agreed upon by means of self-regulation.

(5) Product placement in children's programmes shall be prohibited.

(6) Product placement of the following products shall be prohibited:

1) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;

2) medicinal products or medical treatments available only on a medical prescription.

(7) The requirement set out in clause (4)4 of this section shall not be applied to programmes that have been produced an undertaking that is located outside a Member State or a State Party to the Convention.

## **Chapter 4. Activity licence for the provision of television and radio service and registration obligation of an on-demand audiovisual media service provider**

### **§ 32. Activity licences for the provision of television and radio service**

Television or radio service can only be provided on the basis of an activity licence for the provision of television and radio service (hereinafter activity licence) that is issued to a natural or legal person on the following conditions:

- 1) their programme service meets the requirements set out in this Act;
- 2) its activities do not cause the violation of contractual obligations taken by the Republic of Estonia;
- 3) they are not by means of the governing effect over management connected to the undertaking that has been issued an activity licence for the provision of television and radio service and issuing the activity licence may substantially damage the competition in the media services market, particularly through the creation or reinforcement of a dominant position in the market.

### **§ 33. Activity licence for the provision of free access television service**

(1) An activity licence for the provision of free access television service shall be issued for a maximum period of ten years, provided that the requirements set out in section 32 of this Act have been met and the applicant was the best bidder in the selection procedure.

(2) The following activity licences shall be issued for the provision of free access television service:

- 1) activity licence for the provision of free access regional television service in the media coverage area of one or more counties with the population of up to 50% of the population of Estonia;
- 2) activity licence for the provision of free access national television service in the media coverage area with the population of over 50% of the population of Estonia.

### **§ 34. Activity licence for the provision of conditional access television services**

Provided that the requirements set out in section 32 of this Act have been met, the following activity licences for the provision of a conditional access television service shall be issued for a maximum period of five years:

- 1) activity licence for the provision of a conditional access regional television service in the media coverage area of one or more counties with the population of up to 50% of the population of Estonia;
- 2) activity licence for the provision of free access national television service in the media coverage area with the population of over 50% of the population of Estonia.

### **§ 35. Activity licence for the provision of radio service**

(1) An activity licence for the provision of a radio service shall be issued for a maximum period of five years, provided that the requirements set out in section 32 of this Act have been met and the applicant was the best bidder in the selection procedure.

(2) The following activity licences shall be issued for the provision of radio service:

- 1) activity licence for the provision of a regional radio service in the media coverage area of one or more counties with the population of up to 50% of the population of Estonia;
- 2) activity licence for the provision of a national radio service in the media coverage area with the population of over 50% of the population of Estonia;

3) international activity licence for the provision of a radio service directed to a foreign state.

### **§ 36. Activity licence for the provision of a satellite television service**

An activity licence for the provision of a satellite television service shall be issued for a maximum period of five years, provided that the requirements set out in section 32 of this Act have been met and the Ministry of Culture has discussed with the relevant institution of the country of destination as to whether the content of the planned television program service meets the requirements of the country of destination, in particular with regard to television advertising and the protection of minors.

### **§ 37. Temporary activity licence for the provision of television and radio service**

A temporary activity licence for the provision of television and radio service (hereinafter temporary licence) shall be issued for a maximum period of one month for transmitting a programme service that is temporary in nature and whose purpose is to reflect a particular event, provided that the requirements set out in section 32 of this Act have been met.

### **§ 38. Conditions defined by activity licence**

(1) The following shall be defined by the activity licence:

- 1) name of the programme service to be transmitted;
- 2) important information on its structure and weekly transmission time;
- 3) start date of the transmission of the programme service;
- 4) coverage area of the programme service, including the administrative units of Estonia or parts thereof and states in the event of international licences.

(2) In addition to the provision of subsection (1) of this section, the activity licence may specify:

- 1) the proportion of Estonian authors in the programme service;
- 2) the minimum proportion of audiovisual works financed by the state of Estonia in the programme service;
- 3) the proportion of verbal broadcasts and musical works in the programme service;
- 4) amount of programmes on the news and subjects of the coverage area;
- 5) the language of verbal programmes of the programme service.

### **§ 39. Application for activity licence**

(1) The application for an activity licence shall be settled by the Ministry of Culture.

(2) The application for an activity licence shall specify the type of the activity licence applied for, description of the programme service, information on the coverage area of the programme service to be transmitted and other information necessary to determine the conditions of the activity licence.

(3) the description of the programme service shall specify:

- 1) structure of the programme service;
- 2) proportion of programmes produced by the applicant of the activity licence and other producers in the programme service;
- 3) principal target audience of the programme service
- 4) daily transmission time of the programme service in hours;
- 5) proportion of musical works and verbal broadcasts, including news programmes, in the programme service.

(4) The application for an activity licence for providing a television service shall also specify the proportion of cinematographic works, television movies and documentaries and children's, social and light entertainment programmes in the programme service.

(5) The format of the application for an activity licence shall be determined by a regulation of the Ministry of Culture.

(6) The following shall be added to the application for an activity licence;

- 1) investment programme and business plan;
- 2) in case the applicant is a legal person, a document certifying the powers of the representative of the applicant, unless the powers are pursuant to the laws or the articles of association of the legal person;
- 3) annual report for the year preceding the submitting of the application if the applicant is a legal person that is not obliged to submit the annual report to the commercial register.

(7) If an application is submitted for the provision of a television service, the applications shall specify the technical form of transmission of the programme, such as terrestrial networks, satellite networks or other types of electronic communication pursuant to the Electronic Communications Act.

(8) A state fee shall be paid for the reviewing of the application for an activity licence according to the rate set out in the States Fees Act.

#### **§ 40. Issue of activity licence**

(1) The Minister of Culture shall announce a competition for the issue of the activity licence for the provision of free access television and radio service, establishing in advance the technical facilities for the provision of the service with the Estonian Technical Surveillance Authority or the provider of the multiplexing service.

(2) Announcement of the competition, the types and number of the activity licences to be issued, the final date for the submission of the applications for activity licences and other conditions shall be announced on the web page of the Ministry of Culture.

(3) The activity licence for the provision of a conditional television service and satellite television service and the temporary activity licence shall be issued by the Minister of Culture on the basis of the application without announcing a competition, establishing in advance the technical

facilities for the provision of the service with the Estonian Technical Surveillance Authority or the provider of the multiplexing service.

(4) The decision on the issue or refusal to issue an activity licence for the provision of free access television and radio service or the refusal to review the application shall be made by the Minister of Culture within three months after the deadline for submission of the application for an activity licence announced in the competition.

(5) The decision on the issue or refusal to issue the activity licence for the provision of conditional access television and radio service and the temporary activity licence or the refusal to review the application shall be made by the Minister of Culture within one month after the receipt of the application.

(6) The decision on the issue or refusal to issue the activity licence for the provision of a satellite television service or the refusal to review the application shall be made by the Minister of Culture within six months after the receipt of the application.

#### **§ 41. Committee**

The Minister of Culture shall form an advisory committee with up to 11 members for evaluating the applications for activity licences, which shall include the representatives of agencies related to media services and experts. The rules of procedure and functions of the committee shall be established by the directive of the Minister of Culture.

#### **§ 42. Refusal to review an application for an activity licence**

(1) Application for an activity licence shall be refused to be reviewed if the applicant:

- 1) fails to submit the application by the deadline;
- 2) fails to eliminate the faults by the prescribed deadline.

(2) The applicant shall be promptly notified of the refusal to review the application.

#### **§ 43. Determination of best bid in the selection procedure**

(1) A competition shall be organised for the issue of an activity licence for the provision of free access television and radio service, which shall be issued to the applicant who has made the best bid in the selection procedure.

(2) The following shall be evaluated among other aspects in order to determine the best bidder:

- 1) diversity of the proposed programme service and its difference from other similar programme services;
- 2) proportion of own production in the programme service;
- 3) target audience;
- 4) proportion of verbal broadcasts and news programmes in the programme service;
- 5) business plan;

- 6) applicant's previous activity in the field of the provision of media services;
- 7) economic situation of the applicant and its sustainability in the provision of the service.

#### **§ 44. Refusal to issue activity licence**

(1) The Minister of Culture shall refuse to issue an activity licence if the proposed activity of the applicant does not meet the conditions specified in § 32 of this Act or the applicant was not the best bidder in the selection procedure.

(2) The Minister of Culture may refuse to issue an activity licence for the provision of a satellite television service if the television programme service to be transmitted on the basis of this licence would substantially violate the requirements of the country of destination, in particular with regard to television advertising and the protection of minors.

#### **§ 45. Revocation of activity licence**

(1) The Minister of Culture shall revoke the activity licence if the person specified in the activity licence:

- 1) submits an application for it to be revoked;
- 2) has submitted false information to obtain the activity licence;
- 3) has not been transmitting the programme service specified in the activity licence for more than one month.

(2) The Minister of Culture may revoke the activity licence if the person specified by the activity licence:

- 1) does not meet the conditions specified in the activity licence;
- 2) has submitted false information about meeting the conditions specified by the activity licence or about meeting the requirements set out in this Act;
- 3) violates the requirements set out in this Act with their action.

#### **§ 46. Suspension of an activity licence due to technical impossibility of transmission of programme service**

Upon an application of the holder of the activity licence, the Minister of Culture may suspend the activity licence for transmission of the programme service for up to one month if material obstacles have become evident in the technical transmission of the programme.

#### **§ 47. Right of provision of an on-demand audiovisual media service**

On-demand audiovisual media service may be provided solely by a media service provider who has been entered in the register of economic activities.

#### **§ 48. Registration of provision of an on-demand audiovisual media service**

(1) An undertaking who wishes to start to provide an on-demand audiovisual media service shall submit an application to the Ministry of Culture and the information in the application shall be entered in the register of economic activities as set out in the Register of Economic Activities Act.

(2) In addition to the information set out in the register of Economic Activities Act, the following information shall be entered in the register of economic activities:

- 1) web page address of the service provider;
- 2) name and type of the on-demand audiovisual media service and description of the service;
- 3) name and contact information of the executive producer of the catalogue of programmes;
- 4) types of access and coverage areas of the service;
- 5) reference to the Ministry of Culture as the executor of state supervision.

(3) The person submitting the registration application shall be responsible for the accuracy of the information submitted to the register of economic activities.

(4) The registration shall be deleted on grounds set out in the Register of Economic Activities Act.

(5) The Ministry of Culture may make a decision to revoke the registration if the on-demand audiovisual media service provider that has been entered in the register of economic activities repeatedly violates the requirements of this Act with their action.

### **Chapter 5. Exclusive rights and transmission of short extracts**

#### **§ 49. Restriction on the use of exclusive television broadcasting rights**

(1) Television service provider shall not use the acquired television broadcasting rights in a way that deprives a substantial proportion of the public of another Member State or State Party to the Convention of the possibility of the following events which are regarded as being of major importance for society by those states and duly approved of by the European Union Directive of Audiovisual Media Services or by the European Convention of Transfrontier Television Convention either wholly or partially by live coverage or deferred coverage.

(2) The television service provider that has obtained the exclusive television broadcasting right for the events which are regarded as being of major importance for society shall ensure that, for the purpose of short news reports, any television service provider/broadcaster established in the Member State or State Party to the Convention Community has access on a fair, reasonable and non-discriminatory basis to the events.

(3) If another television service provider established in the same Member State as the television service provider seeking access has acquired exclusive rights to the television broadcast of the event of high interest to the public, access shall be sought from the other television service provider of the same state.

## **§ 50. Transmission of short extracts**

(1) Television service provider who has not acquired exclusive rights to the television broadcast of the event of high interest to the public can freely choose short extracts for their general news programmes from the signal of the transmitting television service provider that is holding exclusive rights, indicating their source.

(2) When using short extracts created on the basis of access acquired under the conditions specified in subsections (2) and (3) of section 49 of this Act, the following requirements must be followed:

1) the length of short extracts in news programmes shall be up to 90 seconds and the access for making the short extract shall include neither its longer recording nor broadcast;  
2) short extracts created under such conditions may be used in the news programmes on the date of the event taking place and on the day following the event, with the identification of the television service provider from whom the short extract is received;

3) a television service provider with exclusive rights may require that the user of short extracts shall first show the said short extract in the news programme only after the television broadcast of the news programme has taken place by the television service provider with exclusive rights;  
4) the conditions for further use of the short extract shall be defined with an agreement between the television service provider with exclusive rights and the television service provider that is using the short extract;

5) a television service provider with exclusive television broadcasting rights to the event has the right to receive compensation for the expenses directly connected with ensuring access to the event and signal for the television broadcast from the television service provider that is applying for the right to make the short extract.

(3) In the case of an on-demand audiovisual media service, short extracts can be used in general news programmes only if the on-demand audiovisual media service provider provides the programme after the transmission of the news programme by the television service provider with exclusive rights.

## **Chapter 6. Freedom of reception and retransmission of media service**

### **§ 51. Freedom of reception and retransmission of television and radio service**

(1) The reception and retransmission of a television and radio service from another state shall not be restricted, unless in cases set out in this paragraph.

(2) The Ministry of Culture shall issue a precept to the provider of retransmission on the termination of the retransmission of a television programme coming from another state for the following reasons:

1) a television programme coming from another state has seriously infringed the requirements set out in subsections (1)-(5) of section 19 of this Act at least twice in the past year;

2) The Ministry of Culture has notified the supervisory body of the other state, the provider of the retransmission of the television programme and the European Commission in writing on the infringement referred to in clause 1) of this subsection and on the issue of a precept on the termination of retransmission;

3) consultations with the supervisory body of the other state and the European Commission have not produced an amicable settlement within 15 days of the notification provided for in clause 2) of this subsection, and the infringement persists.

(3) The Ministry of Culture shall refrain from a precept that is proposed or already in effect if the European Commission decides that the acts of Estonia pursuant to subsection (2) of this section are not in accordance with the European Union law.

(4) If the provision of retransmission of a television programme coming from another state infringes seriously and repeatedly the requirements set out in subsections (1)-(5) of section 19 of this Act, the Ministry of Culture is entitled to issue a precept to the provider of the retransmission on the termination of the retransmission of the television programme.

(5) If the provider of retransmission of a radio programme coming from another state infringes seriously and repeatedly the requirements set out in subsections (1)-(3) of section 19 of this Act, the Ministry of Culture is entitled to issue a precept on the termination of the retransmission of the radio programme.

(6) The provider of retransmission may provide a television programme service the broadcast of which has been authorised by the country of location or on another legal basis in accordance with the legislation of the country of location.

## **§ 52. Freedom of reception and retransmission of an on-demand audiovisual media service**

(1) The reception and retransmission of an on-demand audiovisual media service from another state shall not be restricted, unless in cases set out in this paragraph.

(2) The Ministry of Culture may issue a precept to a provider of retransmission coming from a member state of the European Union on the termination of the provision of a catalogue of programmes if it is necessary and proportional and if the catalogue of programmes prejudices or presents a risk of prejudice to at least one of the following principles:

1) protection of public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, 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;

2) the protection of public health;

3) public security, including the safeguarding of national security and defence;

4) the protection of consumers, including investors.

(3) Before issuing a precept on the termination of the provision of a catalogue of programmes and without prejudice to court proceedings, the Ministry of Culture shall:

1) ask the Member State under whose jurisdiction the media service provider falls to take measures;

2) in case the supervisory body of the Member State of the European Union has not taken the required or they were inadequate, notify the European Commission and the supervisory body of the Member State of the European Union of the intention to take such measures.

(4) In urgent cases, such as a clear threat to the public security, derogations can be made from the conditions laid down in subsection (3) of this section. In this case the European Commission and the supervisory body of the Member State of the European Union shall be notified without delay, indicating the reasons for which the Ministry of Culture considers that the case is urgent and requires urgent action.

(5) The Ministry of Culture may refrain from a precept on the termination of the provision of a catalogue of programmes that is proposed or already in effect if the European Commission decides that the precept is not in accordance with the European Union law.

(6) In case of a catalogue of programmes originating from a non-Member State of the European Union, the Ministry of Culture may issue a precept on the basis of subsection (2) of this section to the provider of the catalogue of programmes on the termination of the provision of a catalogue of programmes.

(7) The provider of retransmission may provide a catalogue of programmes, the broadcast of which has been authorised by the country of location or on another legal basis in accordance with the legislation of the country of location.

## **Chapter 7. Exchange of information with the European Commission and the supervisory body of a Member State or a State Party to the Convention**

### **§ 53. Exchange of information with the European Commission and the supervisory body of a Member State or a State Party to the Convention**

(1) The Ministry of Culture shall provide information on the issues relevant to the application of this Act to the Commission and may also provide information to the supervisory body of a Member State or a State Party to the Convention at their request.

(2) If the Ministry of Culture assesses that the disclosure of information to the supervisory body of the Member State of the European Union is not substantiated, it shall notify the European Commission that they do not want the disclosure of the information and shall present appropriate recitals.

(3) If the disclosure of information to the European Commission or to the supervisory body of a Member State or a State Party to the Convention concerns a media service provider that is located in Estonia, the Ministry of Culture shall also notify the media service provider of the disclosure of information.

(4) If a service of a television service provider under the jurisdiction of a Member State or a State Party to the Convention is wholly or mostly directed towards the population of Estonia and the television service provider is established in another Member State or a State Party to the Convention with the obvious purpose to circumvent the requirements provided for by this Act and is consistently infringing them, the Ministry of Culture shall contact the supervisory body of the Member State or the State Party to the Convention in order to find a mutually satisfactory solution.

(5) If in the exchange of information with the supervisory body of the Member State of the European Union provided for in subsection (4) of this section, a mutually satisfactory solution has not been found, the Ministry of Culture has the right to approach the European Commission to get an assessment on whether the measures proposed by the Ministry of Culture are justified, objectively necessary and non-discriminatory.

(6) If the European Commission has decided that those measures comply with the European Union law and the assessments of Estonia are relevant and sufficiently substantiated, the Ministry of Culture may issue a precept, by way of exception, to the provider of the transmission of the television programme specified in subsection (4) of this section on the termination of the retransmission of the television programme.

(7) If a supervisory body of a Member State or a State Party to the Convention notifies the Ministry of Culture that an audiovisual service provider, that is located in Estonia and whose services are intended for reception wholly or partially in one or more the Member States or States Party to the Convention, infringes persistently and materially the requirements set out on the provision of audiovisual media services in the said state, the Ministry of Culture has the right to issue, if necessary, a precept to the audiovisual service provider to comply with the said requirements. The Ministry of Culture shall notify the supervisory body of a Member State or a State Party to the Convention about the measures taken and their results within two months after receiving the information.

(8) The Ministry of Culture is entitled to notify the European Commission about the case specified in subsection (7) of this section if the Ministry of Culture does not agree with the information received from the supervisory body of a Member State of the European Union.

## **Chapter 8. State supervision**

### **§ 54. Executor of state supervision**

The Ministry of Culture shall execute state supervision over the compliance with this act and meeting the requirements laid down on the basis of this act, except for the requirements specified in section 15 of this Act.

### **§ 55. Rights of the official exercising state supervision**

(1) The official exercising state supervision has the following rights for performing their functions:

- 1) to verify the compliance of the programme service of the media service provider with the requirements laid down in the Act;
- 2) to verify the compliance with the requirements specified in the activity licence of the media service provider;
- 3) to obtain information from the media service provider that is necessary for executing state supervision;
- 4) to require documents, recordings of the programme service and programmes from the media service provider;
- 5) to issue precepts within their jurisdiction.

(2) In the cases provided for in the Substitutive Enforcement and Penalty Payment Act, the official exercising state supervision is entitled to impose a substitutive enforcement pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act.

#### **§ 56. Precept**

(1) The official exercising state supervision may, in the event of a violation of this Act and of the requirements of the activity licence of a television and radio service provider, issue a precept to the media service provider which:

- 1) indicates the violation and requests the termination of it;
- 2) obliges to take the necessary measures to continue the provision of media service legitimately.

(2) The precept shall include:

- 1) the name and position of the person who issued the precept and the name and address of the organisation in whose name the precept is issued;
- 2) date of issue of the precept;
- 3) the name and address of the recipient of the precept;
- 4) the factual and legal basis of the precept;
- 5) the clearly expressed claim together with a reference to the provisions of the relevant legal acts;
- 6) the term for observing the precept;
- 7) the limit for a penalty payment applied in the event of a failure to observe the precept;
- 8) the procedure for contesting the precept.

(3) The precept may include a warning that the substitutive enforcement may be applied and the estimated amount of the expenses thereof in case of a failure to observe the precept.

(4) Observing the precept is compulsory. Contestation of the precept does not exempt from observing the precept unless a court has decided otherwise.

(5) In case of a failure to observe the precept by the term specified in subsection (1) of this section, a penalty payment may be applied as provided for in the Substitutive Enforcement and Penalty Payment Act. The upper limit for penalty payment is 1,300 Euros and up to 5,000 Euros in case of a failure to observe the precept repeatedly.

## **Chapter 9. Liability**

### **§ 57. Violation of the requirements of protection of minors**

(1) Violation of the requirements specified in section 19 of this Act shall be penalised with a fine of up to 300 penalty units.

(2) The same act performed by a legal person shall be penalised with a fine of up to 32,000 euros.

### **§ 58. Violation of the requirements for commercial communications**

(1) Violation of the requirements specified in sections 28-31 of this Act shall be penalised with a fine of up to 300 penalty units.

(2) The same act performed by a legal person shall be penalised with a fine of up to 32,000 euros.

### **§ 59. Procedure**

(1) The provisions of the Penal Code and the Code of Misdemeanour Procedure shall be applied to misdemeanours specified in sections 57 and 58 of this Act.

(2) The Ministry of Culture shall conduct the extra-judicial proceedings concerning the misdemeanours provided for in sections 57 and 58 of this Act.

## **Chapter 10. Implementing provisions**

### **§ 60. Access of persons with visual or hearing disability to audiovisual media services**

The audiovisual media service providers shall gradually implement the requirement provided for in section 23 of this Act upon entering into force of this act, submitting to the Ministry of Culture the information concerning making their services accessible to people with a visual or hearing disability. The information shall be submitted for the first time by 15 November in 2011, henceforth by 15 November of each second year for two previous years.

### **§ 61. Code of conduct for the transmission of audiovisual commercial communication in children's programmes**

The Minister of Culture shall establish the code of conduct specified in subsection 27 (2) of this Act for the transmission of commercial communication in children's programmes within a year and a half after this Act enters into force in case the persons engaged in the pursuit of media service have not worked out the said code of conduct by self-regulation within a year after this Act enters into force.

### **§ 62. Specifications on the application of requirements on product placement**

The requirements laid down in section 31 of this Act on product placement shall be applied only to programmes that have been produced after 19 December 2009.

### **§ 63. Validity of broadcasting licences**

(1) Broadcasting licences issued pursuant to the Broadcasting Act shall be valid until the expiration of the term indicated on the licence.

(2) Broadcasting licences in the national terrestrial digital broadcasting network shall be deemed equivalent to the activity licences for the provision of a free access national television service.

(3) Holders of a cable network broadcasting licence shall notify the Ministry of Culture of the coverage area within two months after this act enters into force, pursuant to the requirements laid down in section 34 of this Act. Broadcasting licences valid in cable networks shall be deemed equivalent to the activity licences for the provision of conditional access television services in correspondence with the size of the coverage area.

(4) Holders of a local and regional radio network broadcasting licence shall notify the Ministry of Culture of the coverage area within two months after this Act enters into force, pursuant to the requirements laid down in clauses 35(2)1) and 2) of this Act. Broadcasting licences valid in the local or regional radio network shall be deemed equivalent to the activity licences for provision of regional or national radio service in correspondence with the size of the coverage area.

(5) Broadcasting licences in the international radio analogue network shall be deemed equivalent to the activity licences for the provision of international radio service.

### **§ 64. Specifications on the registration of on-demand audiovisual media service providers**

Until the entry into force of sections 47 and 48 of this Act, the undertakings wishing to commence provision of on-demand media services shall notify the Ministry of Culture, indicating the information on the service provider, the name and type of the service to be provided, the form of accessibility of the service and the coverage area, and the name of the executive producer of the catalogue of programmes.

### **§ 65. Specifications on acquiring exclusive rights**

The requirements laid down in subsection 49 (1) of this Act shall be applied to the exclusive rights that have been acquired after 30 July 1997.

### **§ 66. Amendment to the Copyright Act**

The term “broadcasting organisation” shall be replaced by the terms “television and radio service provider” and “television or radio service provider” and the term “television broadcaster” shall be replaced with the term “television service provider” in the Copyright Acts (RT I 1992, 49, 615; 2010, 22, 108)

### **§ 67. Amendment to the Public Information Act**

The following amendments shall be made to the Public Information Act (RT I 2000, 92, 597; 2010, 41, 241):

- 1) in clause 1) of the subsection (2) of section 29, the words “by broadcast media” shall be replaced with the words “in television or radio programme service”;
- 2) in subsection (4) of section 30, the word “broadcast media” shall be replaced with the words “media service providers”.

### **§ 68. Amendment to the Estonian National Broadcasting Act**

The following amendments shall be made to the Estonian National Broadcasting Act (RT I 2007, 10, 46; 2010, 22, 108):

- 1) subsections 2) and 3) of the section 2 shall be amended and worded as follows:

“(2) In the matters not regulated by this Act, the provisions concerning the media service provider provided by the Media Services Act and the provisions concerning the activity of National Broadcasting provided by other legislation apply.

(3) National Broadcasting does not need an activity licence for the provision of television or radios services for its operation or a registration of the provision of an on-demand audiovisual media service in the register of economic activities. The radio frequencies and channels needed by National Broadcasting for the performance of its functions provided by this Act and other necessary parameters shall be approved by an order of the Government of the Republic at the proposal of the Technical Supervision Board.”

- 2) in sections 15, 24, 36 and 37, the word “broadcaster” shall be replaced with the words “media service provider”;

- 3) section 34 shall be amended and worded as follows:

#### **“§ 34 State Supervision**

(1) The State Audit Office shall exercise economic control over the activity of National Broadcasting pursuant to the State Audit Office Act.

(2) The State Supervision Board shall exercise control over compliance with the Electronic Communications Act pursuant to the procedure provided by the Electronic Communications Act.

(3) The Ministry of Culture shall exercise supervision over adherence to the requirements provided by §§ 8, 9, 16, 17, 19-21, 23-25, 29-31, 49 and 50 of the Media Services Act and §§ 10, 11 and 38 of this Act.

(4) An official of the Ministry of Culture has the right to exercise the supervision specified in subsection (3) of this section as provided for in the Media Services Act.”

### **§ 69. Amendment to the Electronic Communications Act**

The Electronic Communications Act (RT I 2004, 87, 593; 2010, 38, 230) shall be amended as follows:

1) clauses 32<sup>1</sup> and 32<sup>2</sup> of section 2 shall be amended and worded as follows:

“32<sup>1</sup>) "a multiplexer" is a device for the transformation of media or a data transmission service into an integral digital data current which is transmitted to radio transmitting equipment; 32<sup>2</sup>) multiplexing service" is an electronic communications service whereby the owner of a multiplexer transforms media or data transmission service into an integral data current and transmits such current through radio transmission equipment;”;

2) clause 39 of section 2 shall be amended and worded as follows:

“39) “harmful radio interference” is an electromagnetic wave which endangers the functioning of equipment and systems, including a radionavigation service, or which otherwise seriously degrades, obstructs or repeatedly interrupts a legally operating radiocommunications service or provision of media service;”;

3) clause 46<sup>3</sup> shall be added to section 2 and shall be worded as follows:

“46<sup>3</sup>) broadcasting network is a network of publicly available electronic communications which has been created for the provision of a media service.”

4) subsection (3) of section 12 shall be amended and worded as follows:

“(3) If a person applies for a frequency authorisation for the use of radio frequencies in radio services, an activity licence for the provision of a radio service or a written agreement with a broadcaster holding an activity licence for the provision of a radio service for broadcasting their programme service shall be appended to the application specified in subsection (1), unless an activity licence for the provision of a radio service has been issued to the applicant for the frequency authorisation.”;

5) subsection (4) of section 12 shall be repealed;

6) in subsections (1) and (2) of section 15 and in clause (3)5) of section 18 the word “broadcasting licence” shall be replaced with the words “activity licence for the provision of a radio service”;

7) section 67 shall be amended and worded as follows:

### **„§ 67. Conditional access systems to digital television and radio services**

(1) A communications undertaking which provides conditional access systems is required to ensure that the conditional access systems allow the technical conduct of cost-oriented cross-

checks of services provided by other communications undertakings by means of conditional access systems.

(2) A communications undertaking which provides services of conditional access to television and radio service provider, and if the access of a television and radio service provider to the potential viewers and listeners depends on the services, is required to:

1) offer to the television and radio service provider, on a fair, reasonable and non-discriminatory basis, technical services enabling services transmitted by the television and radio service provider to be received by viewers or listeners by means of decoders;

2) keep separate accounts of its activities as a provider of conditional access services.”;

8) subsection (1) of section 90 shall be amended and worded as follows:

“(1) A communications undertaking who provides cable television services shall guarantee the continuous retransmission of the following programmes::

1) television programmes of the Estonian public service media service provides;

2) television programmes transmitted by a free access television service provider within a cable television network area that are received at a signal intensity compatible with the technical requirements and for the transmission of which the television service provider requires no charge.”;

9) section 90<sup>1</sup> shall be amended and reworded as follows:

#### **“§ 90<sup>1</sup>. Special requirement concerning the provision of multiplexer services**

(1) A provider of multiplexing services is required to ensure the transmission of the television programme services of a media service provider in public law and the holder of an activity licence for the provision of a free access media service if they so desire. The media service provider in public law and the holder of an activity licence for the provision of a free access media service shall notify the provider of multiplexing services of their wish to transmit television programmes in writing at least six months before the start of the transmission.

(2) A provider of multiplexing services transmitting the television programmes of a media service provider in public law and a holder of an activity licence for the provision of free access media service may modify the transmission parameters in a way that ensures the reception of television programmes in accordance with the requirements laid down in this Act and Acts issued pursuant to this Act.

(3) The Minister of Economic Affairs and Communications shall establish the requirements for the transmission and retransmission of both free and conditional access television programmes.”;

10) in clause (3)4) of section 122, the words “television or radio broadcasts” shall be replaced with the words “television and radio programmes”.

#### **§ 70. Amendment to the Gambling Act**

The Gambling Act (RT I, 08.11.2010, 3) shall be amended as follows:

1) in subsection (1) of section 5 the word “broadcasts” shall be replaced with the word “media services”;

2) in subsections (4) and (5) of section 56 and in subsection (1) of section 92 the words “broadcasting organisation” shall be replaced with the words “media service provider”;

3) in subsection (3) of section 73 the words “broadcasting organisation in the meaning of the Broadcasting Act” shall be replaced with the words “media service provider”.

### **§ 71. Amendment to the Information Society Services Act**

The Information Society Services Act (RT I 2004, 29, 191; 2010, 38, 230) shall be amended as follows:

1) subsection (3) of section 1 shall be amended and worded as follows:

“The provision of these Acts shall not be applied to matters of information society services that are regulated by the Electronic Communications Act, Personal Data Protection Act and the Media Services Act.”;

2) clause 1) of section 2 shall be amended and worded as follows:

“Services provided by means of a fax or telephone call, and television or radio services are not information society services.”

### **§ 72. Amendment to the Defence Forces Service Act**

The Defence Forces Service Act (RT I 2000, 28, 167; 2010, 41, 240) shall be amended as follows:

1) in clause (1)3) of section 129<sup>9</sup>, in clause (5)3) of section 130 and subsections (6) and (7) of section 130 the words “broadcast” shall be replaced with the words “transmitted in television or a radio programme”;

2) the phrase “(radio or television)” shall be excluded from subsection (6) of section 130”.

### **§ 73. Amendment to the Penal Code**

Section 225<sup>1</sup> of the Penal Code (RT I, 10.12.2010, 1) shall be amended as follows:

1) in the title the word “broadcasting” shall be replaced with the word “media service”;

2) in subsection (1) the phrase “pay-TV or pay-radio programmes or broadcasts” shall be replaced with the word “paid media service”.

### **§ 74. Amendment to the Advertising Act**

The Advertising Act (RT I 2008, 15, 108; 2010, 77, 590) shall be amended as follows:

1) section 11 shall be amended and worded as follows:

#### **“§ 11. Advertising in broadcasting**

(1) In commercial communications transmitted by an audiovisual media service provider it is prohibited to:

1) use subliminal techniques;

2) use the voice or image of a person who appears as a presenter or commentator in programmes of political events and problems or as an announcer in a news programme.

(2) In addition to the provisions of this Act, the requirements provided in the Media Services Act shall be applied to advertising, teleshopping and other commercial communications.”;

2) in clause (1)6) of section 21 the words “by broadcasting” shall be replaced with the words “in television and radio programmes”;

3) in clause (1)9) of section 28 the word “in broadcasting” shall be replaced with the words “in television and radio programme”.

#### **§ 75. Amendment to the Public Procurement Act**

In clause (1)7) of section 14 and in Annex II of the Public Procurement Act (RT I 2007, 15, 76; 2010, 22, 108) the word “broadcasting organisations” shall be replaced with the words “media service providers”.

#### **§ 76. Amendment to the State Fees Act**

The State Fees Act (RT I, 09.12.2010, 1) shall be amended as follows:

1) the title of Chapter 7 division 1 subdivision 1 shall be amended and worded as follows:

“Acts Performed on a Media Services Act”;

2) section 110 shall be amended and worded as follows:

#### **“§ 110. Review of applications for the provision of a television and radio service**

A state fee of 255,64 euros shall be paid for the review of an application for a television and radio service.”;

3) in clause 13 of Annex III the word “broadcasting” shall be replaced with the word “radio service provider’s”.

#### **§ 77. Repealing of Broadcasting Act**

The Broadcasting Act (RT I 1994, 42, 680; 2010, 22, 108) shall be repealed.

#### **§ 78. Entry into force**

Sections 47 and 48 of this Act shall enter into force on 1 July 2011.

<sup>1</sup> Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ L 95, 15.4.2010, p. 1–28).

Keit Pentus

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