

Official Gazette No. 150 enters into force on 21 December 2013.

Pursuant to the provisions of Article 64, Paragraph 5 and Article 69, Paragraph 1, Subparagraph 7 of the Electronic Media Act (Official Gazette, No. 153/09, 84/11 and 94/13), with respect to the provision of Article 39 of the Act on Amendments to the Electronic Media Act (Official Gazette, No. 94/13) and Article 20, Paragraph 1 of the Statute of the Agency for Electronic Media (Official Gazette No. 90 /10) and the opinion of the Ministry of Culture, the Council for Electronic Media has adopted the

**THE ORDINANCE
ON THE FUND FOR THE PROMOTION OF PLURALISM AND DIVERSITY IN ELECTRONIC MEDIA**

Article 1

This Ordinance stipulates the manner and procedure of conducting public tenders for co-financing audiovisual and radio programs including content in electronic publications from the Fund for the Promotion of Pluralism and Diversity in Electronic Media, the proportion in which assistance from the Fund for the Promotion of Pluralism and Diversity in Electronic Media is allocated to particular beneficiaries, tracking the use of assistance and the establishment of programmes and content for which they are allocated, and the scope and manner of work undertaken by expert assessors.

Article 2

Concepts: audiovisual programme, radio programme, electronic publications, non-profit television and/or radio broadcaster, non-profit provider of media service as referred to in Articles 19 and 79 of the Electronic Media Act, non-profit provider of electronic publications and non-profit producer of audiovisual and/or radio programmes have the meaning as defined by the Electronic Media Act.

Article 3

- (1) The Fund for the Promotion of Pluralism and Diversity in Electronic Media (hereinafter: the Fund) is a fund of the Agency for Electronic Media.
- (2) Sources of assistance from the Fund is assistance ensured by the provisions of the Electronic Media Act and the Croatian Radio and Television Act to the amount of 3% of the total of monthly collected funds that Croatian Radio and Television collects on behalf of fees.
- (3) The amount of assistance from the Fund, awarded by public tender, is determined by the Fund's financial plan for a one-year or multi-year period and may not be exceed a period of three years.
- (4) Assistance that has not been assigned and justified by a public tender for the allocation of assistance from the Fund is to be included in the financial plan for the following period and allocated in accordance with Article 4 of this Ordinance.

Article 4

Assistance from the Fund is allocated to particular beneficiaries of the Fund in the following proportion:

- 1. Television broadcasters at the local and regional level, non-profit television broadcasters and non-profit media service providers according to Article 19 and 79 of the Electronic Media Act
- 46.5 %

2. Radio broadcasters at the local and regional level, non-profit radio broadcasters and non-profit media service providers according to Article 19 and 79 of the Electronic Media Act - 46.5 %
3. non-profit providers of electronic publications - 3 %
4. non-profit producers of audiovisual programmes - 3 %
5. non-profit producers of radio programmes - 1 %

Article 5

(1) Assistance from the Fund is state assistance and is allocated in the form of :

- *De minimis* aid under the Commission Regulation (EC) No. 1998/2006 of 15 December 2006 on the application of Article 87 and 88 Treaty for *de minimis* aid (OJ L 379, 28/12/2006, hereinafter: Regulation (EC) no. 1998/ 06);

- State aid pursuant to the Communication from the European Council, European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects pertaining to cinematographic and other audiovisual activities (2002 /C 42/1, 2004/C 123/1, 2007/C 134/3 and 2009/C 31/01; hereinafter: Communication on Cinematography).

(2) Total *de minimis* aid granted shall not exceed the amount of € 200,000.00 in the equivalent value of Croatian kuna over a period of three fiscal years, taking into account all aid of smaller value granted that the applicant has acquired in the period with respect to other state aid providers, regardless of such amounts and in accordance with the provisions of Article 2, Paragraph 2 to 5 of Regulation (EC) no. 1998/2006.

(3) The intensity of aid referred to in Paragraph 2 of this Article amounts up to 100% in accordance with the provisions of Article 2, Paragraph 2 to 5 of Regulation (EC) No. 1998/2006.

(4) The intensity of aid for the promotion of audiovisual activities in accordance with the *Communication for Cinematography* amounts to 50% of the production budget. In the case of an audiovisual work of particular importance for culture, and the development of education and science, the aid intensity may be increased, but only if it is a difficult (complex) or low budget work.

(5) In accordance with Paragraph 4 of this Article, aid intensity may be increased in cases of severe (complex) or low budget works that are not economically justifiable and which are not attractive to a wide audience if the programme/content is:

- a) Designated especially for disadvantaged groups (people with disabilities, single-parent families, unemployed youth, the elderly, war veterans, women who are victims of domestic violence, members of the Roma community, drug addicts, the homeless, displaced persons, refugees and returnees) up to 30 %
- b) For persons with intellectual disabilities, hearing impaired people, visually impaired people, so that the programme is specifically adapted to these target groups - up to 30 %
- c) For preserving the diversity of the Croatian language and script - up to 30 %
- d) For the preservation of languages of national minorities and fully produced in the language of national minorities - up to 30 %
- e) For the preservation of traditional uniqueness – up to 30 %
- f) For projects possessing a contemporary cultural expression – up to 30 %
- g) For the development of civil society – up to 30 %.

(6) The eligible costs directly related to planning, production and publishing are:

- Costs of production planning and production costs, and publication costs
- Expenditures for salaries and fees (wages, piece work contracts, royalties and student service fees)
- Travel expenses (per diem for official travel and related travel expenses in accordance with travel orders, followed by the cost of transportation to and from work and the cost of local mileage by privately owned vehicle / reimbursement for use of private cars for business purposes / in accordance with the travel orders and reimbursements for local mileage by privately owned vehicle)
- Material costs (overheads, communications services, postal costs, office supplies, rent/lease of business premises, bookkeeping services, bank charges and the cost of financial audits including other material costs) to a maximum of 20 % of total costs.

Article 6

(1) Assistance from the Fund will be used to promote the production and publication of audiovisual and radio programmes and content of television and/or radio broadcasters on a local and regional level, non-profit broadcasters of television and/or radio, non-profit providers of media service as referred to in Articles 19 and 79 of the Electronic Media Act, non-profit providers of electronic publications, non-profit producers of audiovisual and/or radio programmes, all of which are of public interest and are especially important for :

- Citizens exercising their right to public information,
- Encouraging cultural diversity and fostering heritage,
- Development of education,
- Development of science,
- Development of the arts,
- Encouraging creativity in the dialects of the Croatian language,
- Promoting special projects and cultural events,
- National minorities in the Republic of Croatia,
- Encouraging an awareness of gender equality and other absolute values stemming from the constitutional order,
- Raising awareness of equality of gender identity and sexual orientation,
- Encouraging high-quality programmes for children and young people aimed at promoting their well-being,
- Raising public awareness of the capabilities and contributions of persons with disabilities, and the promotion and respect of their rights and dignity, including combating stereotypes, prejudices and harmful practices towards persons with disabilities,
- Historically authentic representation of the Homeland War,
- Development and promotion of media literacy programmes,
- Environmental protection,
- Promotion of health and encouraging health education.

(2) The aid from the Fund will be used to encourage the employment of highly skilled workers by the television and/or radio broadcasters on a local and regional level, non-profit broadcasters of television and/or radio, non-profit providers of media services as referred to in Articles 19 and 79 of the Electronic Media Act, non-profit providers of electronic publications and non-profit producers of audiovisual and/or radio programmes that are directly related to the production of programmes and contents as referred to in Paragraph 1 of this Article.

Article 7

(1) Assistance from the Fund cannot be granted to:

- Television and/or radio broadcasters, non-profit providers of media services as referred to in Articles 19 and 79 of the Electronic Media Act and non-profit providers of electronic publications which the Electronic Media Council has reprimanded in the past 12 months and/or those who in the previous 12 months have been penalised for a misdemeanour for violating the provisions of the Electronic Media Act that has become legally binding,
- Television and/or radio broadcasters, non-profit providers of media services as referred to in Articles 19 and 79 of the Electronic Media Act and non-profit providers of electronic publications that have no media statute,
- Beneficiaries of the Fund under Article 4 of this Ordinance who comply with the provisions of Articles 9 - 12 of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02, 2009/C 156/02 and 2012/C 296/02)
- Beneficiaries of the Fund under Article 4 of this Ordinance who have been ordered to return illegally acquired state aid or are in the process of returning such aid.

(2) The deadline referred to in Subparagraph 1, Paragraph 1 of this Article commences from the date of publishing invitations to the tender and ends on the day of the publishing invitations for the next tender.

Article 8

(1) The tender for granting aid from the Fund according to the criteria and requirements of this Ordinance shall be published at least once a year by a decision of the Electronic Media Council.

(2) The tender referred to in Paragraph 1 of this article is published for a one-year or multi-year period.

(3) The tender is published in the *Official Gazette* and on the website of the Agency for Electronic Media.

(4) The Electronic Media Council (hereinafter: the Council) may publish more than one tender in a single year in accordance with the Fund's Financial Plan and approved state aid schemes.

Article 9

(1) The Council determines in more detail the contents of the application and a list of documents to be submitted along with the application, and then publishes them as an integral part of the public tender.

(2) The public tender submission deadline for granting assistance from the Fund is 30 days from the announcement of the tender in the *Official Gazette*.

(3) The manner of applying by lodging the tender documentation and documents as referred to in Article 12, Paragraph 4 shall be stipulated in the tender.

(4) Television and radio broadcasters on the local and regional level, non-profit broadcasters of television and radio, non-profit providers of media service in accordance with Article 19 and 79 of the Electronic Media Act, and non-profit producers of audiovisual and radio programmes may apply for the tender in order to receive assistance from the Fund for up to five programmes/contents in accordance with Article 6, Paragraph 1 of this Ordinance.

(5) Non-profit providers of electronic publications may register one (1) programme/content that includes up to five (5) different thematic units as referred to in Article 6, Paragraph 1 of this Ordinance.

(6) For the purposes of this Ordinance, a program/content means a show, article or some other form that depends on media.

(7) For the purposes of this Ordinance, a program/content unit means a project when a multi-year tender is announced for granting assistance from the Fund.

(8) Pending the Decision on Granting Assistance, applications are deemed classified information and are designated CONFIDENTIAL.

Article 10

(1) Tender documentation must be clear and understandable, and written in the Croatian language and Latin script.

(2) The information in the tender documentation must conform to the data in the decision to publish a public tender.

Article 11

(1) Tender applicants may be legal or natural persons registered with the court, business or some other stipulated register in the Republic of Croatia in accordance with the Electronic Media Act and other applicable law.

(2) In addition to the conditions referred to in Paragraph 1 of this Article, television and/or radio broadcasters on a local and regional level, and non-profit broadcasters of television and/or radio must have a concession agreement signed.

(3) In addition to the conditions referred to in Paragraph 1 of this Article, non-profit providers of media services referred to in Articles 19 and 79 of the Electronic Media act, non-profit providers of electronic publications and non-profit producers of audiovisual and/or radio programmes must have been entered into the Register as referred to in Article 75, Paragraph 6 of the Electronic Media Act.

(4) The applicant, along with the application for tender must also submit :

- Excerpt from the court, business or other stipulated registry in the Republic of Croatia,
- Statute on Media in accordance with the Media Act (Official Gazette, No. 59/04, 84/11 and 81/13),
- Extract from criminal records or a notarized statement that the applicant and the person authorized by law to represent the applicant has not received a final conviction for one or more of the following offenses: fraud (Article 236), fraud in business activities (Article 247), receiving bribery in business transactions (Article 252), giving bribery in business transactions (Article 253), abuse of the procurement procedure (Article 254), evasion of tax or import duties (Article 256), subsidy fraud (Article 258), money laundering (Article 265), abuse of office and authority (Article 291), illegal facilitation (Article 292), receiving bribery (Article 293), giving bribery (Article 294), trading in influence (Article 295), bribery for trading in influence (Article 296), criminal association (Article 328) and the committing of an offense within a criminal association (Article 329) of the Criminal Code (Official Gazette, 125/11 and 144 /12),

- Certificate from the relevant Tax Administration office on the balance of debt relating to overdue tax liabilities and to pension and health insurance liabilities,
- Balance sheet, income statement, and a financial report for the previous year,
- A document issued by a bank or other financial institution proving solvency of the business entity,
- Non-profit producers of audiovisual and/or radio programmes possessing an agreement on broadcasting/content with television or radio broadcasters on the local and regional level,
- Other documents stipulated by the tender and/or the tender documentation.

(5) The documents referred to in Paragraph 4 of this article should not have been issued more than 30 days prior to the announcement of the tender in the Official Gazette.

(6) Pending the decision on the granting of assistance from the Fund, the Council may verify the authenticity of the documents submitted, request from the competent authority the issuance of a certificate of the facts concerning which the body maintains as official records.

(7) If the Council, in accordance with Paragraph 6 of this Article, establishes that the applicant has submitted false information when submitting the documents referred to in Paragraph 4 of this Article, that applicant's application will be rejected.

Article 12

(1) The decision on granting assistance from the Fund is made by the Council within 90 days after the deadline for submitting the application for the tender and is sent to all applicants that have submitted applications for the tender.

(2) Within the deadline referred to in Paragraph 1 of this Article, the Council shall make a decision on cancelling the tender if not a single application meets the stipulated requirements.

(3) The Decisions referred to in Paragraph 1 and 2 of this article are forwarded for public disclosure in the Official Gazette. Such delivery shall be deemed completed after the eighth day of the public disclosure.

Article 13

(1) The Council shall decide on the amount of assistance for each applicant that has applied for the tender on the basis of a total score as referred to in Article 14, Paragraph 3 of this Ordinance subject to the criteria of the Electronic Media Act and this Ordinance.

(2) All the programmes/contents of an applicant that has submitted an application are assessed, with particularly attention given to quality and significance of the programmes/contents offered in the respective category.

(3) The criteria for granting assistance from the Fund are:

- The significance of the audiovisual and/or radio programmes, or the content of electronic publications for achieving the objectives referred to in Article 6 of this Ordinance,
- The quality and content innovation of the offered audiovisual and/or radio programmes, or the content of electronic publications,
- Interest for general, local or regional cultural development,
- Availability of programmes and content for people with disabilities.

Article 14

(1) The Council shall analyse and evaluate the proposed programmes/contents of each particular applicant in accordance with the criteria set out in Article 13, Paragraph 3 of this Ordinance by scoring each registered programme/content a score of 0-100 points. Further refined criteria for analysis and evaluation of the proposed programmes as well as the minimum number of points for granting assistance from the Fund will be published by the Council as an integral part of a public tender documentation.

(2) Only programmes/contents may be analysed and evaluated, in terms of Paragraph 1 of this Article, for which timely and complete applications that meet all legal requirements have been received.

(3) Assistance is granted for a particular programme/content in proportion to the score referred to in Paragraph 1 of this Article and the rules for granting aid subject to Article 5 of this Ordinance.

Article 15

(1) Notwithstanding the provisions of Article 14, Paragraph 1 of this Ordinance, the Council may entrust the analysis and evaluation of registered programmes/content to professional assessors.

(2) After conducting a public invitation, professional assessors are appointed by the Council which shall adopt a decision determining the composition of the Commission, the number of Commission, programmes/contents to be evaluated, the deadline for assessing and the amount of fees for the undertaken work.

(3) For the role of professional assessors people may be engaged from the ranks of public employees who are media professionals and those professionals in audiovisual activities, prominent intellectuals, renowned artists and other public figures who have distinguished themselves in their commitment to the development of a civil society, the defence of human rights and freedoms, the promotion of culture, arts and sciences, as well as the protection of freedom of the media and freedom of expression.

(4) The following persons may not be appointed as professional assessors: the owner of a business stake, shares or other rights on the basis of which he or she participates in the management of any of the applicants; a member of the supervisory or administrative or executive body of the applicant that is applying; a worker of the applicant that is applying, nor an author, producer, director of one of the registered programmes/contents.

(5) A person may not be appointed as a professional assessor who is a blood relatives in direct lineage, or relatives in lateral lineage up to and including the fourth degree, who is a spouse or relative by marriage to the second degree, or according to termination rights; a guardian, adoptive parent or adopted child of a person referred to in Paragraph 4 of this Article and/or members of the Electronic Media Council.

(6) The provision in Paragraph 3 and 4 of this Article shall apply in the appropriate manner also to related companies.

Article 16

(1) Analysis and evaluation of programmes/contents referred to in Article 14, Paragraph 2 of this Ordinance are conducted by the appointed professional assessors in the Commission, which is composed of at least three members.

(2) The work of the Commission shall have a chairman appointed by the Council.

(3) Each member of the Commission analyses and evaluates programmes/contents under the terms of Article 14 of this Ordinance.

(4) The Commission proposes to the Council an overall score of the assessed programmes/contents.

(5) If the Council does not accept the score referred to in Paragraph 4 of this Article, the Council itself will conduct the analysis and evaluation.

Article 17

(1) The applicant applying for a tender for which the Council has approved certain assistance from the Fund must use such assistance in accordance with the decision of the Electronic Media Council and the tender application.

(2) The Electronic Media Council in its decision on granting assistance from the Fund also determines the schedule for implementing and planned use of the assistance for a period of one year, or for each year within a multi-year period.

(3) Based on the decision of the Council, an agreement is concluded with those who have submitted applications for the purpose of granting assistance.

(4) Assistance from the Fund is paid out upon accepted justification of assistance for the previous year.

(5) Assistance from the Fund may not be paid out to the beneficiary if financial obligations towards the Agency for Electronic Media have not been settled previously.

Article 18

(1) The Council monitors the spending of approved assistance from the Fund and the implementation of each programme/content in the following manner:

- Through annual or multi-year financial reports (forms for justified expenses and associated accounting documentation) from the beneficiaries of assistance from the Fund from which approved spending of assistance and implementation of programmes/contents is evident for which they are granted (when justifying the multi-year reports, the beneficiary of assistance from the Fund shall, pursuant to the signed contract in the stipulated manner shall justify the granted assistance for each year separately) in the system of smaller aid,
- Through annual or multi-year financial reports (forms for justified expenses and associated accounting documentation) from the beneficiaries of assistance from the Fund from which approved spending of assistance and implementation of programmes/contents is evident for which they are assigned and through financial audits of forms for justification, annual financial reports and related accounting documentation of the broadcasters (when justifying the multi-annual reports, the beneficiary of assistance from the Fund shall, pursuant to the signed contract in the stipulated manner shall justify the granted assistance for each year separately) in the system of state aid,
- Through quarterly programme reports,
- Within the framework of regular compliance monitoring of programme principles and obligations,
- Direct supervision.

(2) The Council may at any time request from the beneficiary of assistance of the Fund a statement on adherence to the schedule for implementation and use of assistance, and for this will undertake an extraordinary or direct audit.

Article 19

(1) The beneficiary of assistance from the Fund who is not using the approved assistance or is using such assistance contrary to the provisions of this Ordinance, or has not implemented the programmes/contents or the programmes/contents are achieved contrary to the provisions of this Ordinance, and contrary to the signed grant agreement, is obligated upon the decision by the Electronic Media Council to repay the approved assistance from the Fund including interest in accordance with Commission Regulation (EC) no. 794/2004 (OJ L 140).

(2) An appeal against the decision as referred to in Paragraph 1 of this Article is not permitted, but a complaint may be lodged before the competent administrative court.

Article 20

The list of beneficiaries of assistance, the programmes and contents for which the assistance is granted and reports on their implementation are published on the website of the Electronic Media Council.

Article 21

Proceedings initiated by the provisions of the Ordinance on the Fund for the Promotion of Pluralism and Diversity in Electronic Media (Official Gazette No. 51 /12 and 79 /12) will be completed under the provisions of this Ordinance.

Article 22

On the date of the the enactment of this Ordinance, the Ordinance on the Fund for the Promotion of Pluralism and Diversity in Electronic Media (Official Gazette 51/12 and 79 /12) ceases to remain in force.

Article 23

(1) Notwithstanding the provisions of Article 4 of this Ordinance for non-profit media service providers who have permission to perform such activities, non-profit providers of electronic publications and non-profit producers of audiovisual and/or radio programmes will in 2013 be allocated a total of 3 % of assistance from the Fund for the promotion of pluralism and diversity in electronic media.

(2) Notwithstanding the provisions of Article 11, Paragraph 3 of this Ordinance, non-profit providers of media services referred to in Articles 19 and 79 of the Electronic Media Act, non-profit providers of electronic publications and non-profit producers of audiovisual and/or radio programmes must apply for entry into the Register referred to in Article 75, Paragraph 6 of the Electronic Media Act by the publication date of the tender for granting of assistance from the Fund which is allocated in 2013.

(3) Prior to the decision of the competent authority or the European Commission for regulating marketing competition, which approves state aid schemes established under the provisions of the Act on Amendments to the Electronic Media Act and the ordinances referred to in Article 28 of the Act on Amendments to the Electronic Media Act, the provisions of Articles 48 and 64 of the Electronic Media Act (Official Gazette, no. 153/09 and 84/11) including the Ordinance on the Fund for the Promotion of Pluralism and Diversity in Electronic Media (Official Gazette , no. 51 /12 and 79

/12) shall apply for granting of assistance from the Fund for the Promotion of Pluralism and Diversity in Electronic Media, including television and/or radio broadcasters on a local and regional level, and non-profit publishers of television and/or radio and the approved state aid scheme.

Article 24

This Ordinance shall enter into force on date of its publication in the Official Gazette.

**ELECTRONIC MEDIA COUNCIL
COUNCIL PRESIDENT**

Zdenko Ljevak, BE

CLASS: 612-12/13-01/0158

REGNO: 567-02/01-13-10

Zagreb, 9 December 2013