

UNOFFICIAL TRANSLATION

The Government of the Republic of Croatia recommends that Croatian Parliament not accept the Report on the Work of the Electronic Media Council and the Agency for Electronic Media for 2014, which the Agency for Electronic Media and the Electronic Media Council submitted to the president of Croatian Parliament on 7 July 2015 for the following reasons:

The Electronic Media Council (hereinafter: Council) manages the Agency for Electronic Media (hereinafter: Agency) and undertakes tasks of a regulatory body in the area of electronic media as stipulated by Article 69 of the Electronic Media Act. The Council also undertakes tasks as stipulated by the provisions of the Croatian Radio-Television Act (public service).

In the respective Report on Work, the Council, with reference to the governing provisions of the Electronic Media Act and the Croatian Radio-Television Act, has presented before Parliament its scope of work (pages 6 and 7), whereupon it has failed to mention its authority as established by the provision in Article 44 of the Croatian Radio-Television Act, according to which the Council, as an independent regulatory body, supervises the implementation of provisions from the Croatian Radio-Television Act referred to in Article 13 thereof. Besides the Council not correctly presenting its authority assigned to it, further in the Report on its Work complete information as to whether the Council has fulfilled its legal obligation does not exist. Furthermore, the Government cautions as to the particular significant segment of supervision which has been omitted, but is within the authority of the Council pursuant to Article 44 of the Croatian Radio-Television Act; specifically, supervision of the use of monthly broadcast user fee and other public revenue in accordance with regulations on government subsidies for public radio broadcasting services.

The Council supervises whether Croatian Radio-Television (hereinafter: CRT) manages its business books in accordance with Article 38, Paragraphs 7 and 8 of the Croatian Radio-Television Act and whether Croatian Radio-Television uses the funds from the broadcast user fee and other public revenue for financing commercial activities of CRT contrary to the prohibition referred to in Article 39, Paragraph 1 of the Act, and inasmuch as it has been asserted that CRT does not abide by these provisions, it requests from the competent bodies of CRT the imposition of relevant measures. The role of the Council as an independent regulatory body in conducting this type of supervision has been established by the respective Act as a consequence of complying with the appropriate directive and notice of the European Commission on the manner of allocating public revenue (Directive of the European Commission 2006/111/EC, of 16 November 2006 on the transparency of financial relations between Member States and public undertakings and the Commission Notice on the application of regulations towards state aid for public radio broadcasting services), while keeping in mind that the monthly broadcast user fee is considered state aid which must be spent solely for the purpose of providing public services, i.e. fulfilling programme obligations at CRT as asserted by the Agreement between HRT, as the service provider, and the Government.

Conducting financial supervision by the Council as an independent body, enables supervision of the transparency of CRT's business and enforces the managing of separate accounting, which implies that all costs and revenue must be separated based on the principle of cost accounting and the managing of separate accounts for public and non-public services, including the imposition of clear boundaries between public services and commercial services. Such supervision has the purpose of auditing the actual manner of the spending of public funds and prevents so-called crisis subsidising of commercial activities (utilisation of funds from public

revenue to finance commercial activities), which by law is not permitted or justified, and represents a prohibited government aid. What also needs to be mentioned is that prohibited government aid imposes the obligation of repaying illegally acquired funds, including a reduction in the broadcast user fee in the amount equivalent to illegally spent funds in the coming period. With reference to the above, the Government notes that the Council has not in any section of the respective Report on its Work mentioned that in 2014 an audit of CRT was carried out relating to the use of the monthly broadcast user fee and other public revenue in accordance with the regulations on government aid for public radio broadcasting services, even though upon perusal of the Council's and Agency's 2014 Annual Work Programme, the conclusion is that in 2014 the obligation was asserted that activities relating to financial audits in accordance with the Croatian Radio-Television Act continue.

Furthermore, the Government points out that the respective Report on Work does not contain information on the Council's approach concerning the fact that a member of the Council, with reference to that position, was found to be in conflict of interest in terms of Article 12 and Article 13, Paragraph 1 of the Act on the Prevention of Conflict of Interest, such that the lawful and proper conduct in the work of this body for the stated period has been brought into question, which the Council could have eliminated had it initiated a procedure for the dismissal of the member of the Council, given that the legal presumptions had existed. With reference to that, the Report is ambiguous and incomplete, and fails to reflect the situation in terms of the legal obligations of members of the Council to undertake their responsibility professionally and on a full-time basis.

In regard to the above said, the Government deems that the Council has not fulfilled its legal obligation as stipulated according to Article 68, Paragraph 12 of the Electronic Media Act, and has not reported to the Government of the existence of grounds for the dismissal of the member of the Council prior to expiration of the mandate, given that a conflict of interest was asserted for the member of the Council, Gordana Šimonović. The opinion of the Committee for Determining Conflict of Interest of 28 June 2013 and the Decision of 18 December 2014.

Specifically, the member of the Council, Gordana Šimonović, from 1 May 2013 to 16 December 2016, at the same time illegally undertook two public positions as member of the Council and as member of the Administrative Board of Hina, contrary to the legal provisions and the Electronic Media Act which, among other things, stipulate that members of the Council may not be persons who are undertaking jobs due to which they might come into conflict of interest (Paragraph 9), and must not enter into arrangements that lead to conflict of interest in relation to the tasks stipulated by the Act (Paragraph 10), keeping in mind that Hina, as a reporting agency, also provides electronic publications which are within the scope of work of the Electronic Media Council.

In view of the above, the Government deems that due to obvious and especially serious oversight in fulfilling the legal obligations of the Council and Agency, conditions for accepting the Report on their Work for 2014 have not been fulfilled. Furthermore, the Government is of the opinion that the conditions referred to in Article 68, Paragraph 11, Sub-paragraph 8 of the Electronic Media Act have been fulfilled for the dismissal of the president and member of the Council prior to expiration of the mandate due to the failure of fulfilling goals and tasks as determined in the annual work programme of the Agency for 2014.