

# Screening report

## Croatia

### Chapter 10 – Information society and media

**Date of screening meetings:**

Explanatory meeting: 12-13 June 2006

Bilateral meeting: 17-18 July 2006

## I. CHAPTER CONTENT

The *acquis* includes specific rules on electronic communications, on information society services, in particular electronic signatures, electronic commerce and conditional access services, and on audio-visual services. In the field of electronic communications, the *acquis* aims to eliminate obstacles to the effective operation of the internal market in telecommunications services and networks, to promote competition and to safeguard consumer interests in the sector, including universal availability of modern services. The Stabilisation and Association Agreement provides for cooperation between EU and Croatia in the area of electronic communications infrastructure and associated services, including information society development. The objective as stated in the relevant provision of the Stabilisation and Association Agreement is to achieve ultimate alignment with the Community *acquis* as from the entry into force of that agreement. As regards audio-visual policy, the *acquis* entails the legislative alignment with the Television without Frontiers Directive, which creates the conditions for the free movement of television broadcasts within the EU. The *acquis* aims to the establishment of a transparent, predictable and effective regulatory framework for public and private broadcasting in line with European standards. Once Croatia complies with the audiovisual *acquis*, a participation in the Community support mechanisms (MEDIA programmes) can be envisaged.

## II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Croatia and the discussion at the screening meeting. Croatia indicates that it can accept the *acquis* regarding Information Society and Media and that it does not expect any difficulties to implement the *acquis* by accession.

### II.a. Electronic communications and information technologies

The current Telecommunications Act was enacted in June 2003 and amended three times with the latest amendment being adopted in May 2005. It constitutes the general legal framework in Croatia and contains provisions, *inter alia*, on the promotion on market competition, non-discrimination in the treatment of undertakings and the promotion of consumer interests. With respect to enforcement, it stipulates that the powers and competencies of the National Regulatory Authority should be exercised following the principles of impartiality, independence and transparency. As stated by Croatia, the principles of management of radio frequencies, numbering and addressing resources and the mechanisms to ensure rights of way, co-location and facility-sharing are in line with the *acquis*. Croatia acknowledges that further improvements are needed as regards the judicial appeal procedure and the procedures for resolution of disputes between consumers and service providers. Moreover, the provisions on interoperability of digital interactive TV services are not aligned with the *acquis*.

As concerns **relevant markets and market analysis**, the basic provisions are contained in Article 51 of the Telecommunications Act, as amended in 2005. Case by case exemptions are possible according to the procedure laid down in the Ordinance on Relevant Markets. Croatia acknowledges that the current system is based on the 1998 *acquis* with some elements of the 2002 *acquis*, in particular regarding the designation of SMP companies and remedies. The regulator aims at being able to meet the requirements of the new framework by 2008, thus enabling harmonization of the whole system with the current *acquis*.

The area of **access** to, and interconnection of, electronic communications networks and associated facilities is regulated by Chapter VII of the Telecommunications Act, the Ordinance on Network Access and Interconnection and the Ordinance on Access to the Unbundled Local Loop. Although compliant with the old regulatory framework, Croatia

stated that these provisions are not in line with the current *acquis*. The regulator is developing the cost-accounting model and, in the meantime, it has been applying benchmarks in cases where SMP operators did not prove cost orientation.

Regarding **authorisation** of electronic communications networks and services, Croatia acknowledges that the current licensing regime is not in line with the *acquis*. Existing licences and concessions have not yet been converted into a general authorisation and are not yet technology neutral.

The **universal service** obligation in the Croatian legislation follows from the Telecommunications Act and the Ordinance on Universal Telecommunications Services. A high level of compliance with the Universal Service Directive has been achieved. However, Croatia aims at improving the calculation of the net cost of universal service provision and funding mechanism.

As regards **competition** in the markets for electronic communications networks and services, Croatia stated that it has adopted the principles contained in the Commission Competition Directive and empowered the regulator to enforce these. There were restrictive provisions in previous privatisation contracts which were contrary to the country's commitments to EU at the time. Most of these are no longer in effect. Any remaining restrictive provisions will be removed in the third phase of the privatisation of the incumbent operator, in connection to which the preparatory activities are already in progress. The Government has started consultations with the incumbent in order to make the remaining restrictive provisions ineffective as soon as possible.

In the area of processing of personal data and the protection of **privacy** in the electronic communications sector, Croatia claims that the relevant *acquis* has been fully transposed by Chapter XII of the Telecommunications Act.

The legal basis for the management of the **radio spectrum** by the TA is provided in the Telecommunications Act, three specific ordinances and a regulation. Croatia contends that the management is in line with the Radio Spectrum Decision. It is also largely in line with the supplementing *acquis* instruments. Remaining discrepancies are of a technical nature and will be addressed in the context of the 2007 World Radio Conference.

**Broadband** penetration is about 4,3% (as of November 2006). In order to accelerate the development, the Government has adopted and published a broadband development strategy, together with an action plan for the implementation of the strategy in 2007.

In the area of the organisation and the management of the **Internet**, the Internet Domain Names and the European Network and Information Security Agency, Croatia is taking active part in global consultations on Internet governance and has adopted a national programme for information security. Croatia stated that with the adoption of the new Information Security Act, which should be submitted to Parliament by the end of 2006, Croatia will align its legislation with the best practice and experience of the European Commission in the field of information security. The implementing bodies will be the National Security Authority, the National Information System Security Institute and the Croatian Academic and Research Network. Croatia indicated that these bodies will be fully operational by 2007.

## **II.b. Information society regulations**

Croatia has implemented the **E-signatures** Directive by the Electronic Signatures Act and by secondary legislation issued by the Ministry of Economy, Labour and Entrepreneurship and

the Ministry of Science, Education and Sports. In order to ensure implementation of the Electronic Signatures Act and the secondary legislation three bodies have been established: the Croatian Bridge Certification Authority (NCARH), the Policy Management Authority (PMA) and the Operational Authority for NCARH (OA NCARH). As in the EU, e-signatures are used in Croatia in e-banking and e-government sectors. Until now there is one qualified certification service provider established in Croatia.

As regards **electronic commerce**, Croatia contends that it to a large extent has transposed the *acquis* by adopting the 2003 Electronic Commerce Act. Further alignment is planned through amendments to the law in 2007. The main responsibility for the implementation of the legislation on electronic commerce lies with Ministry of Economy, Labour and Entrepreneurship. The supervision is carried out by the State Inspector's Office and may also be performed by the inspectors of the ministry in accordance with authorisations determined by the act.

Croatia also claims a good level of alignment in the area of **conditional access** services. The protected services, the prohibited activities without prior consent and the sanctions and remedies are regulated by the Electronic Media Act. Further relevant provisions are contained in the Telecommunications Act and the Penal Code. The Ministry of Culture is in charge of the implementation of the legislation on conditional access services. It has initiated the procedure for signing the European Convention on the legal protection of services based on, or consisting of, conditional access.

### **II.c. Audiovisual policy**

With respect to the **general framework**, Croatia contends that its media legislation enshrines all fundamental freedoms, such as the freedom of expression, the freedom of media and the freedom of reception and transmission of information. Legislative cornerstones are the Media Act, the Electronic Media Act, the Law on Croatia Radio Television and the Law on Croatian Information News Agency. Following a recent amendment to the Penal Code, libel can no longer lead to imprisonment. The Croatian Radio-Television Act will be amended in full compliance with the *acquis*, in order to establish an efficient legislative framework for the activities of the Programme Council of the Croatian Radio-Television.

The procedure for election of the Electronic Media Council will be changed by end 2006. The planned amendments to the Electronic Media Act will contain a reference to the European Convention on Human Rights and Fundamental Freedoms. The use of the Croatian language and its dialects will be clarified and implemented by the Electronic Media Council before accession.

As regards the audiovisual *acquis*, notably in the area of **television without frontiers**, the Electronic Media Act and the Media Act are claimed to be largely in line with the *acquis*. In order to fully align with the *acquis*, amendments are planned with regard to European works (51% European works majority rule and at least 10% of transmission time or at least 10% of their programming budget of European works created by producers who are independent of broadcasters). As regards advertising, teleshopping and protection of minors, Croatia acknowledges that amendments are needed to regulate the proportion of transmission time devoted to teleshopping and advertising, spots and other forms of advertising for local broadcasters, as well as the protection of minors. Also, it is planned to include natural persons in the definition of broadcasters and add provisions on freedom of reception and the definition of jurisdiction. Moreover, it will be stipulated that the list of events of major

importance for society shall be notified to the European Commission by the Council for Electronic Media

Croatia claims that it has the legal framework necessary for the implementation of measures to protect **film heritage**. It is composed mainly of the 1976 Law on Croatian Cinema and the 1997 Law on Archive Documents and Archive Institutions and implemented by the Ministry of Culture and the Croatian Cinematheque.

### III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Croatia has reached a good level of alignment of the *acquis* in the area of information society and media. However, the alignment is only partial in the context of the effective liberalisation of the electronic communications market. A positive step towards liberalisation is the decision by the Croatian government to terminate the concession agreement with the incumbent. The effective date of termination remains to be communicated. According to the government, the termination of the agreement will take effect in December 2006 at the latest. Any other agreements which may restrict market liberalisation and are contrary to commitments vis-à-vis the EU must also be terminated. In addition, the Agency needs to reinforce its organisation and capacities and demonstrate a higher degree of transparency and predictability in its work. In the area of audiovisual policy, some amendments remain to be adopted to complete the alignment with the OSCE/Council of Europe/Commission recommendations as well as with the Television without Frontiers Directive. It is necessary to strengthen the independence of the Public Service Broadcaster HRT as well as addressing a number of issues related to the well functioning of the media sector (competition rules, the Croatian News Agency HINA and the development of self-regulation in the media).

#### III.a. Electronic Communications

The Telecommunications Act transposes fairly well the European regulatory framework of 1998 and also partly the 2002 framework. The main legal gaps have been identified on the following issues:

- the current provision in chapter IV of the Telecommunications Act does not transpose the concept of general authorisation for the provision of electronic communications networks and services, as required in the Authorisation Directive (Directive 2002/20/EC). The conditions attached to the general authorisation and rights of use should be strictly limited to those listed in the annexes of the Directive. Any other restrictive provisions should be deleted or amended. This shall especially apply to the incumbent operator. Its concession agreement shall cease to exist (as stated in Article 119 of the Telecommunications Act of 2003), and if there are provisions in other agreements which impose limitations on Croatian regulatory policy or confer special or exclusive rights to any operator, they must be cancelled or declared void. This part of the legislation should be redrafted to bring alignment with the regulatory framework and Article 98 of the Stabilisation and Association Agreement.
- SMP regulations are a hybrid with elements from both the 1998 *acquis* and the 2002 *acquis*. The regulator must simply detect SMP on the basis of a 25% market share test and imposes prescribed remedies, while at the same time being asked to perform market analysis (and tracing the 2002 EU framework). As it stands, the Telecommunications Act brings inconsistencies in its Article 51 and leaves open the possibility that the 1998 framework might not be fully implemented with regard to regulatory accounting

(suitable model of cost accounting system in use) before market analyses begin. In short, the whole procedure of market definition and market analysis should be redrafted together with the choice of ex-ante regulatory obligations (remedies) on SMP operators. In addition, consultation and transparency mechanism (Articles 6 and 7 of the Framework Directive) needs to be transposed. Finally, transitional provisions must ensure that the remedies of the 1998 framework stay in force until the Agency has decided on new remedies according to the 2002 framework.

- Chapter V of the Telecommunications Act is a fairly good transposition of the Universal Service Directive, although designation of universal service providers, and costing and financing of universal service would require some clarifications. In addition there is a lack of must-carry provisions in the current primary legislation.
- Frequency management provisions is in line with the *acquis*, but possible solutions to make the frequency management provisions lighter and to introduce more flexible procedures should be envisaged (use of general licenses).

Whereas transposition of the *acquis* in the primary law has reached a good level, some regulatory decisions have been difficult to enforce and are suffering difficult implementation, such as carrier selection/carrier pre-selection, number portability, accounting separation and cost accounting systems, reference unbundling offer, leased lines wholesale offer and pricing, rights of way and facility sharing.

The Croatian Agency for Telecommunications has its independence, autonomy, and powers assured by the Law. It is well staffed and now backed by a technical assistance unit (within an 18 month assistance project of the CARDS programme). In practice however, it has been difficult for the Agency to exercise its rights to request information and enforce its decisions. Although the amended Law obliges the Agency to operate with a greater standard of transparency, its procedures and decision are still felt insufficiently transparent and focused by stakeholders. In addition cooperation with the competition authority should be enhanced on ex-ante and ex-post regulatory measures applied to SMP operators. Moreover, Art 266 of the Telecommunications Act on General Administrative Procedures gives the government the power to overturn decisions of any administrative authority, which goes against the principle of independence as required in Article 3 and 4 of the Framework Directive.

### **III.b. Information Society Services**

Regarding Information Society development the Croatian authorities have been very active to bring national policies (e-Croatia 2007 Programme) well aligned with those of the EU (eEurope and i2010).

Croatia's Electronic Signature Act, the Electronic Commerce Act and the Electronic Media Act implement the general principles of the *acquis* requirements for e-signatures, electronic commerce, conditional access and e-government. However, some articles of the Croatian legislation are not fully aligned with the *acquis*. The Croatian legislation imposes some conditions to the provision of services by certification authorities. It also imposes the licensing of the certification authorities delivering key certificates. These provisions are contrary to some articles of the e-signature Directive. The international clause of the Croatian legislation is also more restrictive than the international clause of the directive, since it contains the obligation of registration in Croatia for the third country certification authority.

### **III.c. Audiovisual Policy**

In the field of European audiovisual standards and the EC audiovisual *acquis*, the alignment is considerable.

As regards defamation, the Croatian legislation is largely in line with international and European legal standards regarding free expression. On the basis of an amendment proposed by the Government, the Parliament voted in June 2006 to remove imprisonment as a sanction for defamation. Defamation in general will be punished by a fine in an amount equivalent to a maximum of 150 days of earnings. Defamation disseminated through the media will be punished by a fine. The amount is not specified in the Criminal Code.

In May 2006, Croatia ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

As regards the alignment of the legislation with the recommendations of the OSCE, Council and Europe and European Commission; some amendments to the Law on Electronic Media and Law on Croatian Radio and Television (HRT) are needed, as planned, to guarantee the independence of the two regulatory bodies (Council for Electronic Media and Croatian Radio and Television Council) as well as the election of their members without political interference. In this context, civil society should play a more active part in the nomination process of members of both Councils.

Similarly, as regards the approximation of the legislation with the provisions of the Television without Frontiers Directive, the Law on Electronic Media will have to be amended, as planned, with regard to advertising, the majority rule of European Works and independent works, freedom of reception and judicial appeal.

Further amendments to the Law on Electronic Media, as well as amendments to the Law on Croatian Radio and Television (HRT), are necessary in order to align with the *acquis* in the area of access to public information and disclosure of journalists' sources. Three issues will have to be addressed: the compliance of the Croatian Radio and Television HRT's financing with EU competition rules (including state aids), the independence of the Croatian News Agency HINA and the development of self-regulation in the media.

Croatia has reached an advanced level of preparations with the implementation of the Law on Electronic Media and the Media Law. The Council for Electronic Media adopted two set of detailed Rules: Rules on detailed measures for defining the programme content to be considered as independent domestic production and Rules on exercising the right to correction in radio and television programmes.

However, there is still room for improvement in order to strengthen the independence of the Public Service Broadcaster HRT. Towards the end of 2005, events have shown that political pressure was exerted on the HRT. The nomination procedure will have to be addressed.