



*REPUBLIC OF CROATIA*

*MINISTRY OF THE SEA, TRANSPORT  
AND INFRASTRUCTURE*

*ELECTRONIC COMMUNICATIONS ACT*



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# CROATIAN PARLIAMENT

Pursuant to Article 88 of the Constitution of the Republic of Croatia I hereby issue the

## DECISION

### PROMULGATING THE ELECTRONIC COMMUNICATIONS ACT

I hereby promulgate the Electronic Communications Act passed by the Croatian Parliament at its session on 19 June 2008.

Class: 011-01/08-01/67

No: 71-05-03/1-08-2

Zagreb, 24 June 2008

The President of the Republic of Croatia  
**Stjepan Mesić**, m.p.

## ***ELECTRONIC COMMUNICATIONS ACT***

### **I. GENERAL PROVISIONS**

#### *Contents of the Act*

#### *Article 1*

This Act regulates the field of electronic communications, including the use of electronic communications networks and the provision of electronic communications services, the provision of universal services and the protection of rights of users of services, construction, installation, maintenance and use of electronic communications infrastructure and associated facilities, competition conditions and rights and obligations of participants in the market of electronic communications networks and services, addressing, numbering and management of the radio frequency spectrum, digital broadcasting, data protection and security in electronic communications and the performance of inspection and expert supervision and control in electronic communications, as well as the establishment of a national regulatory authority for electronic communications and postal services and its organisation, scope and competence, including the decision-making procedure and resolution of disputes concerning electronic communications.

#### *Definitions*

#### *Article 2*

Within the meaning of this Act, individual terms shall have the following meanings:

1. **address**: the total of all components of addressing (signs, letters, digits and signals) used to determine the destination of a connection;
2. **numbers**: series of digits used for addressing in electronic communications networks;
3. **provision of electronic communications networks and services**: installation, management and making available of electronic communications networks and electronic communications infrastructure and associated facilities and/or provision of electronic communications services;

4. **assignment of addresses and numbers:** the transfer of rights to use numbers and addresses without the transfer of ownership over numbers and addresses;
5. **electromagnetic compatibility (EMC):** the ability of a device, unit of equipment or system to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbances to other equipment or systems in that environment;
6. **electronic communications network:** transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, broadcasting networks, and cable television networks, irrespective of the type of information conveyed;
7. **electronic communications infrastructure and associated facilities:** the infrastructure and facilities associated with an electronic communications network and/or electronic communications service which enable and/or support the provision of services via that network and/or service. It includes ducts, masts, buildings and other associated facilities and equipment and conditional access systems and electronic programme guides;
8. **electronic communications equipment:** equipment used for the provision of electronic communications networks and services;
9. **electronic communications service:** a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services. This service does not include information society services which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;
10. **electronic mail:** any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient;
11. **electronic communications:** making available of electronic communications networks and/or the provision of electronic communications services;
12. **electronic communications line:** an underground or surface wire, optical or related line between access points of an electronic communications network with the relevant interface, without the switching function;
13. **electronic programme guide:** a guide through radio and television programmes on the television screen;
14. **European Telephony Numbering Space (ETNS):** all numbers starting with access code 3883;
15. **infrastructure operator:** a legal entity or a natural person using own property and/or property of others for the purpose of construction, maintenance, development and use of the electronic communications network and electronic communications infrastructure and associated facilities or which has been granted the right of way pursuant to this Act, or is obliged to provide access to electronic communications infrastructure and associated facilities on the basis of an analysis of the relevant market conducted pursuant to this Act;
16. **unbundled access to local loop:** full unbundled access to the local loop enabling an interested third party to use the entire frequency spectrum of a local loop, and shared access to the local loop enabling an interested third party to use a band width above the voice band frequency spectrum of an unbundled local loop; it does not entail a change in ownership of the local loop;
17. **public communications network:** an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;
18. **public communications service:** a publicly available electronic communication service on a market basis;
19. **public pay telephone:** a telephone device available to the general public, for the use of which the means of payment may include coins credit/debit cards or pre-payment cards, including cards for use with dialling codes;

20. **public telephone network:** an electronic communications network which is used to provide publicly available telephone services. It supports the conveyance of voice communications, voice mail, facsimile, short text messages (SMS), multimedia messages (MMS) and other forms of communication between network termination points;
21. **publicly available telephone service:** a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory enquiry services, directories, provision of public pay phones, provision of service under special terms, provision of special facilities for customers with disabilities or with special social needs and/or the provision of non-geographic services;
22. **Commission:** Commission of the European Communities;
23. **communication:** any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service. This does not include any information conveyed as part of radio and television activities to the public over an electronic communications network, except to for information that can be related to an identifiable subscriber or user receiving the information;
24. **user:** a legal entity or a natural person using or requesting a publicly available electronic communications service for private or business purposes whereby that person does not have to be a subscriber of this service;
25. **end-user:** a user not providing public communications networks and services;
26. **local loop:** the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network;
27. **Ministry:** the central state administration body competent for electronic communications;
28. **Minister:** the head of the central state administration body competent for electronic communications;
29. **interconnection:** a special access between operators of public communications networks establishing physical and logical linking of communications networks used by the same or several different operators in order to allow the users of one operator to communicate with users of the same or of other operators or to access services provided by other operators where services may be provided by interconnected parties or other parties who have access to the network;
30. **multiplex:** a stream of digital signals containing several radio or television programmes and/or other data simultaneously transferred via one radio frequency channel;
31. **unsuccessful call attempt:** a communication where a telephone call has been successfully connected but not answered or there has been a network management intervention.
32. **non-geographic number:** a number from the national Numbering Plan which is not a geographic number, and comprises, *inter alia*, mobile, freephone and single access number services, and numbers for value added services;
33. **carrier selection:** a service which enables the users, by selecting the provider of public communications services mediating in the realization of the connection, to realize the pre-selected types of connections in the fixed public communications network. Carrier selection may be programmed in advance or realized by selecting the dialling code or by applying another procedure for such diverting,
34. **operator:** a legal entity or a natural person providing or authorised to provide a public communications service, or to make available a public communications network or associated facilities;
35. **beneficiary operator:** an operator who, pursuant to this Act, uses electronic communications infrastructure and infrastructure operator's associated facilities for the purpose of installation and use of its own electronic communications network. The beneficiary operator is neither the owner nor the holder of another real right or right of way on electronic communications infrastructure and associated facilities;

36. **Addressing Plan:** all possible combinations of addressing elements which are used for the unique identification of persons, computer processes, machines, devices or the electronic communications equipment which is included in the procedure of establishing a connection;
37. **Numbering Plan:** all possible combinations of addressing elements by means of digits for the purpose of unique identification of persons, computer processes, machines, devices or electronic communications equipment which is included in the procedure of establishing a connection;
38. **location data:** any data processed in the electronic communications network, which indicate the geographic position of the terminal equipment of a user of the publicly available electronic communications service;
39. **consumer:** any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession;
40. **call :** a connection established by means of a publicly available telephone service allowing two-way communication in real time;
41. **right of way:** the right of access, installation, use, repair and maintenance of electronic communications network and electronic communications infrastructure and associated facilities, including ducts, and other related rights, which impose a burden on a real estate on which the electronic communications infrastructure and associated facilities have been constructed. The manager of public property or the owner of private property must tolerate the right of way and refrain from any action that might in any way disturb the realisation of this right.
42. **carrier pre-selection:** a service providing that subscribers, by means of a programmed pre-selection of public communication services provider that mediates in the establishment of the connection (who has a contract with a subscriber), establish pre-selected types of communications connections in a fixed public communications network without dialling a dialling code or without applying any other procedure for such diverting;
43. **number portability:** the possibility provided to the subscriber of publicly available telephone services, including services in a mobile electronic communications network, at his own request, to keep the number which was assigned to him irrespective of the change of the operator;
44. **subscriber:** any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services;
45. **network termination point:** a physical connection point at which a subscriber is provided with access to public telecommunications network. In networks involving switching or routing, network termination point is recognised by means of a special network address which may be connected to the subscriber's number or name, or company name;
46. **access:** the making available of equipment and/or services, to another operator, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services. It covers *inter alia*: access to network elements and associated infrastructure and associated facilities, which may involve the connection of equipment, by fixed or non-fixed: (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop), access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems, access to number translation systems or systems offering equivalent functionality, access to fixed and mobile networks, in particular for roaming, access to conditional access systems for digital television services, access to virtual network services;
47. **consent:** any freely given specific and informed indication of the wishes of the user or subscriber expressing his agreement to personal data relating to him being processed for certain purposes;
48. **traffic data:** any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the calculation and billing thereof;

49. **radio equipment:** a product or its corresponding component which enables communication by transmitting or receiving radio waves with the use of the radio frequency spectrum intended for terrestrial/satellite radio communications;
50. **radio station:** one or more transmitters or receivers, or a combination of transmitters and receivers, including the associated equipment, which is necessary in a single place for providing the radio communication service;
51. **radio communications:** electronic communications via radio waves;
52. **radio:** electronic communications comprising conveyance, transmitting and/or receiving sound, voice, speech or other signals intended for direct reception by the public;
53. **broadcasting:** radio communications comprising conveyance, transmitting and/or receiving of analogue or digital radio and/or television signal via terrestrial transmitters or satellites;
54. **radio frequency spectrum:** electromagnetic waves in frequencies between 9 kHz and 3 000 GHz propagated in space without artificial guide;
55. **radio communications service:** a type of radio communications pursuant to Radio Regulations of the International Telecommunication Union (ITU);
56. **R&TT equipment:** radio equipment and telecommunications terminal equipment;
57. **interference:** an effect of unwanted energy which endangers the functioning of a radio navigation, radio location other radio communication service or which otherwise seriously degrades the quality, obstructs or repeatedly interrupts a radio communications service operating in accordance with the relevant regulations or interfering with the provision of electronic communications service;
58. **interface:** a network termination point or a radio connection determining the radio path between radio equipment, together with their technical specifications;
59. **application programme interface:** a programme interface between application programmes made available by electronic media broadcasters or service providers as well as means in advanced digital equipment for digital radio and television services;
60. **conditional access system:** any technical measure or arrangement whereby access to protected services in intelligible form is made conditional upon subscription or other form of prior individual authorisation;
61. **telecommunications terminal equipment:** a product enabling communication or a relevant component thereof which is intended to be connected directly or indirectly by any means whatsoever to interfaces of public electronic communications networks used wholly or partly for the provision of publicly available electronic communications services;
62. **television:** electronic communications comprising conveyance, transmitting and/or receiving image and sound and other data intended for direct reception by the public;
63. **harmonised radio frequency band:** a radio frequency band which is in all European countries intended for use in radio systems with identical technical specifications (radio frequency, modulation, power etc.);
64. **value added service:** any service which requires the processing of traffic data or location data other than traffic data beyond what is necessary for the transmission of a communication or the billing thereof;
65. **geographic number:** a number from the national Numbering Plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point.

(2) The terms used in this Act in the masculine gender shall be neutral and shall refer both to male and female persons.

### *Interest of the Republic of Croatia*

#### *Article 3*

Electronic communications infrastructure, the provision of electronic communications networks and services, construction, maintenance, development and use of electronic communications networks and electronic communications infrastructure and associated facilities, and the management and use of the

radio frequency spectrum and the addressing and numbering space as naturally limited public resources shall be of interest for the Republic of Croatia.

### ***Competent state administration bodies***

#### ***Article 4***

(1) The Government of the Republic of Croatia shall adopt strategies, studies, guidelines and programmes establishing the general principles and objectives of the policy for the development of electronic communications in the Republic of Croatia and defining national priorities in relation to the planning of construction, installation and use of public electronic communications networks and electronic communications infrastructure and associated facilities and the development of electronic communications services of special interest for the Republic of Croatia.

(2) The Government of the Republic of Croatia shall adopt implementation plans for the established principles and policy objectives for the development of electronic communications in the Republic of Croatia.

(3) The Ministry shall prepare proposals for strategies, studies, guidelines, programmes and implementation plans referred to in paragraphs 1 and 2 of this Article and, for the purpose of their implementation, shall carry out the following tasks:

- coordinate and supervise the work of all authorities competent for individual measures and activities in the process of implementation of strategies, guidelines, programmes and implementation plans referred to in paragraphs 1 and 2 of this Article;
- it may give guidelines and instructions to the Croatian Post and Electronic Communications Agency concerning the implementation of the established principles and policy objectives for the development of electronic communications. By means of these guidelines and instructions, which must be made public in a publicly accessible manner, it must not influence the adoption of decisions of the Croatian Post and Electronic Communications Agency in individual cases;
- perform other tasks related to the implementation of the established principles and policy objectives for the development of electronic communications.

(4) The Ministry shall prepare secondary legislation for this Act, which, pursuant to this Act, is to be adopted by the Minister. For the purposes of drafting proposals for these regulations and proposals for legal acts referred to in paragraph 3 of this Article the minister may establish commissions, appoint members and secretaries of commissions, prescribe the functioning of commissions and determine remuneration to be received by members and secretaries for their work in commissions.

(5) The Ministry shall represent the Republic of Croatia in European and international organisations and institutions in the electronic communications and information society sectors and shall be responsible for the implementation of international agreements, treaties and conventions in the electronic communications and information society sectors. The Ministry and the Croatian Post and Electronic Communications Agency shall participate in the work of administrative and working bodies of those international organisations and institutions.

(6) The Ministry shall carry out inspection supervision in electronic communications pursuant to the provisions of this Act and special regulations.

### ***National regulatory authority***

#### ***Article 5***

(1) The Croatian Post and Electronic Communications Agency (hereinafter: the Agency) shall be the national regulatory authority carrying out regulatory and other tasks under the scope and competence prescribed by this Act and a special law regulating the postal services sector.

(2) In carrying out the regulatory tasks specified in this Act, the Agency shall be obliged to take all the appropriate measures which are aimed at achieving the regulatory principles and objectives laid down in Articles 3,4, and 5 of this Article, while at the same time respecting the principle of proportionality.

(3) The Agency shall promote competition in the provision of electronic communications networks and services and electronic communications infrastructure and associated facilities, in particular by:

1. ensuring that users, including disabled users, derive maximum benefit in terms of choice, price and quality of service;
2. preventing the distortion or restriction of competition in the electronic communications sector;
3. encouraging efficient investment into infrastructure and promoting innovation;
4. encouraging efficient use and ensuring the effective management of the radio frequency spectrum and addressing and numbering space.

(4) The Agency shall promote interests of users, in particular by:

1. ensuring that all users have access to universal services pursuant to the provisions of this Act,
2. ensuring a high level of protection of users – consumers in their relations with operators, in particular by making available simple and inexpensive dispute resolution procedures pursuant to the provisions of this Act;
3. ensuring a high level of protection of personal data and privacy;
4. promoting the provision of clear information, in particular concerning the transparency of prices and conditions of use of publicly available electronic communications services;
5. addressing the needs of specific social groups, in particular disabled uses; and
6. ensuring that the integrity and security of public communications networks are maintained.

(5) The Agency shall contribute to the development of the internal market of the European Union, in particular by:

1. removing the remaining obstacles to the provision of electronic communications networks and services and electronic communications infrastructure and associated facilities at the European level;
2. encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity;
3. preventing discrimination in the treatment of operators providing electronic communications networks and services in similar circumstances;
4. cooperating with other competent national regulatory authorities and the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of the relevant *acquis communautaire*.

(6) In carrying out of regulatory tasks provided for in this Act, the Agency shall take the utmost account of recommendations and guidelines adopted by the Commission for the purpose of harmonised application of the relevant *acquis communautaire* in the electronic communications sector in Member States of the European Union.

(7) If it adopts a decision not to apply the Commission's recommendations or guidelines referred to in paragraph 6 of this Article, the Agency must notify the Commission thereof and specify the reasons for such a decision.

#### ***Relation to other laws***

#### ***Article 6***

(1) The application of provisions of this Act shall not influence the scope and competence of the competition protection authority established in accordance with a special law.

(2) The application of provisions of this Act shall not influence the rights of users or consumers, which are regulated by a special law.



(3) The provisions of this Act shall not apply to contents produced, conveyed or published by means of providing electronic communications networks and services.

(4) In the implementation of the provisions of this Act the Agency shall, in particular, cooperate with the following bodies:

- the competition protection authority in such a manner that it requests the opinion of this authority or proposes the institution of proceedings before this authority in all cases of prevention, restriction or distortion of competition, in accordance with a special law regulating competition protection;
- the consumer protection authority, in accordance with a special law regulating consumer protection;
- the authority competent for electronic media, in accordance with this Act and a special law regulating electronic media.

(5) In the application of regulations referred to in paragraph 4 of this Article, the Agency shall provide adequate expert and technical assistance to authorities referred to in paragraph 4, and, where appropriate, it may conclude the appropriate mutual cooperation agreements.

## **II. CROATIAN POST AND ELECTRONIC COMMUNICATIONS AGENCY**

### *Legal status of the Agency*

#### *Article 7*

(1) The Agency shall be an autonomous, independent and non-profit legal entity with public authority within the scope and competence prescribed by this Act and a special law regulating the field of postal services.

(2) The founder of the Agency shall be the Republic of Croatia, and founding rights shall be exercised by the Croatian Parliament and the Government of the Republic of Croatia. The Agency shall be entered into the court register.

(3) The Agency shall be accountable to the Croatian Parliament for its work.

(4) Any type of influence on the Agency's work that might jeopardise its autonomy and independence shall be prohibited.

(5) The work of the Agency shall be public.

(6) The Agency's seat shall be in Zagreb.

(7) Internal organisation and functioning of the Agency, internal rules of the Agency and other issues important for the functioning of the Agency shall be regulated in more detail by the Agency's Statute, as the basic bylaw of the Agency.

### *Agency's Council*

#### *Article 8*

(1) The Agency shall be governed by the Agency's Council consisting of seven members, including a Chairman and a Deputy Chairman of the Agency's Council.

(2) The Chairman, Deputy Chairman and members of the Agency's Council shall be appointed and dismissed by the Croatian Parliament upon proposal of the Government of the Republic of Croatia. In the procedure for the proposal of members of the Agency's Council the Government of the Republic of Croatia shall publish a public invitation to propose candidates for members of the Agency's Council.

(3) The Chairman, Deputy Chairman and members of the Agency's Council shall be appointed for a period of five years with the possibility of reappointment.

(4) The Chairman of the Agency's Council shall carry out the following tasks:

- represent the Agency;
- be accountable for the lawfulness of the work of the Agency;
- convoke and preside the meetings of the Agency's Council;
- sign decisions and other documents of the Agency's Council;
- and carry out other tasks provided for in this Act, a special law regulating the postal services sector and the Agency's Statute.

(5) The Chairman of the Agency's Council may transfer a part of his or her authorities provided for in this Act to the Director of the Agency in accordance with the Agency's Statute on the basis of a special law regulating the postal services sector and the Agency's Statute.

(6) To be appointed member of the Agency's Council a person must be Croatian citizen domiciled in the Republic of Croatia with completed graduate studies or specialised graduate studies in electronic communications, postal services, law or economics, adequate work experience and active knowledge of at least one foreign language (English, French or German). At least one member of the Agency's Council must have a completed a graduate course or a specialised graduate course in the field of electronic communications, postal services, law and economics. Five members of the Agency's Council must have at least five years of work experience in the electronic communications sector, and two members of the Agency's Council must have at least five years of work experience in the postal services sector.

(7) The members of the Agency's Council may not be state officials, high-ranking persons in bodies of political parties, units of local and regional self-government or unions or persons employed, having influence or performing other tasks in legal entities subject to the application of provisions of this Act and a special law regulating the postal services sector, or members of their management boards, supervisory boards or management councils. They may not be owners, stockholders or shareholders in legal entities subject to the provisions of this Act, or carry out perform any other tasks that may result in a conflict of interest.

(8) The members of the Agency's Council shall be entitled to publish expert and scientific papers and participate in the work of expert or science gatherings.

(9) The members of the Agency's Council must behave in the manner that does not damage their personal reputation or the reputation of the Agency or jeopardize autonomy and independence in the performance of their duty or autonomy and independence of the Agency.

(10) In the carrying out of their tasks specified by this Act, a special law regulating the postal services sector and the Agency's Statute, the members of the Agency's Council must act conscientiously and in accordance with the moral and ethical principles and rules of profession.

(11) The Chairman, Deputy Chairman and members of the Agency's Council shall be employees of the Agency who are, during their term of office, entitled to a salary established by a decision of the Government of the Republic of Croatia and other material rights in accordance with the Agency's internal rules.

(12) The decision by the Government of the Republic of Croatia referred to in paragraph 11 of this Article shall be published in the Official Gazette and on the Agency's website.

### ***Dismissal of members of the Agency's Council***

#### ***Article 9***

(1) The Croatian Parliament shall dismiss the Chairman, Deputy Chairman or a member of the Agency's Council before the expiry of his term of office, upon proposal of the Government of the Republic of Croatia, in the following cases:

1. upon his/her request;
2. if it is established that, when he/she was proposed to become a member of the Agency's Council, he/she gave false information or failed to give information about circumstances important for his/her appointment;
3. serious professional misconduct defined by the Agency's Statute;
4. inability to properly carry out his/her duty for more than six months in the row;
5. permanent loss of ability to perform his/her duty;
6. final conviction of a criminal offence;
7. non-fulfilment of objectives and tasks defined in the Agency's annual work programme
8. occurrence of circumstances referred to in Article 8, paragraph 7 of this Act.

(2) Before the expiry of their term of office, the Agency must inform the Government of the Republic of Croatia of the existence of reasons for dismissal of the Chairman, Deputy Chairman or a member of the Agency's Council.

(3) The Chairman, Deputy Chairman or a member of the Agency's Council may not be appointed members of the management board, supervisory board or management council in legal entities subject to the application of provisions of this Act or a special law regulating the postal service sector in the period of one year following his dismissal from duty.

(4) The Chairman, Deputy Chairman or a member of the Agency's Council, after their dismissal from duty in case referred to in paragraph 1, items 1, 4, 5 and 7 of this Article shall be entitled to a remuneration amounting to the last salary they received in the month preceding their dismissal until they start receiving salary on another basis or until they become entitled to a pension in accordance with general legislation, but for a maximum of one year after their dismissal.

### ***Director and the Agency's administrative service***

#### ***Article 10***

(1) The Agency shall have an administrative service performing expert, administrative and technical tasks of the Agency. The administrative service shall be organised in accordance with the Statute and other Agency's internal rules.

(2) The Agency's administrative service shall be managed by the Agency's Director. The Director of the Agency shall carry out the following tasks:

- manage the business operations of the Agency;
- be held accountable for the work of the Agency's administrative service;
- make decisions in the Agency's affairs referred to in Article 17, paragraph 3 of this Act;
- propose the annual work programme of the Agency, the annual financial plan, annual activity report and the Agency's annual financial statement to the Agency's Council;
- propose the adoption of decisions and other administrative acts to the Agency's Council; referred to in Article 18 of this Act and a special law regulating the postal services sector;
- prepare for the Agency's Council proposals for secondary legislation and Agency's internal rules referred to in Article 19 of this Act;

- carry out tasks delegated to him or her in accordance with Article 8, paragraph 5 of this Act;
- carry out other tasks defined by this Act, a special law regulating the postal services sector and the Agency's Statute.

(3) The Director of the Agency shall be accountable for his work to the Agency's Council.

(4) The Director of the Agency shall participate in the meetings of the Agency's Council, without decision-making rights.

(5) The Director of the Agency shall be appointed by the Agency's Council on the basis of a public competition for a period of four years with the possibility of reappointment.

(6) To be appointed Director of the Agency a person must be a Croatian citizen domiciled in the Republic of Croatia with completed graduate or specialised graduate studies in electronic communications, postal services, law or economics, with at least three years of managerial work experience in the field of electronic communications and postal services and active knowledge of at least one foreign language (English, French or German).

(7) The provisions of Article 8, paragraphs 7, 8, 9 and 10 of this Act shall apply *mutatis mutandis* to the Director of the Agency.

(8) The Director of the Agency shall carry out his/her duties in a professional capacity, as an Agency's employee, and during his/her term of office he/she shall be entitled to a salary and other material rights in accordance with the Agency's internal rules. The Director of the Agency shall conclude an employment contract with the Chairman of the Agency's Council.

(9) The Director of the Agency may have one or more assistants for individual areas who are appointed and dismissed by the Agency's Council, upon proposal of the Director of the Agency.

(10) Employment rights of Assistant Directors of the Agency and other employees of the administrative service of the Agency shall be regulated by Agency's internal rules in accordance with general labour legislation. Assistant Directors of the Agency and other employees of the Agency's administrative service shall conclude employment contracts with the Director of the Agency.

(11) The provisions of the Institutions Act shall apply *mutatis mutandis* to all other issues concerning the functioning of the Agency which are not regulated by this Act.

### ***Dismissal of the Director of the Agency***

#### ***Article 11***

(1) The Agency's Council shall dismiss the Director of the Agency before the expiry of his term of office in accordance with the procedure and in cases prescribed by the Institutions Act, and in the following cases:

1. upon his/her request;
2. if it is established that, during public tender for the appointment of the Director of the Agency, he/she gave false information or failed to give information about circumstances important for his/her appointment;
3. serious professional misconduct defined by the Agency's Statute;
4. inability to properly carry out his/her duty for more than six months in a row;
5. permanent loss of ability to carry out his/her duty;
6. final conviction of a criminal offence;
7. occurrence of circumstances referred to in Article 8, paragraph 7 of this Act.

(2) The provisions of Article 9, paragraphs 3 and 4 of this Act shall apply *mutatis mutandis* to the Director of the Agency after his dismissal.

### ***Competence of the Agency***

#### ***Article 12***

(1) The following regulatory and other tasks shall be within the competence of the Agency:

1. adoption of secondary legislation for this Act, which are under the competence of the Agency pursuant to the provisions of this Act;
2. monitoring and regulation of prices, pricing systems and general business terms and conditions of operators in the market of electronic communications networks and/or services;
3. adoption of decisions concerning the definition of relevant markets, carrying out of market analysis and imposition and withdrawal of regulatory obligators to operators with significant market power;
4. adoption of decisions concerning the determination of operators of universal services and the definition of their rights and obligations;
5. resolution of disputes between operators of electronic communications networks and/or services and between operators of electronic communications networks and operators providing value added services;
6. imposition of obligations to infrastructure operators and resolution of disputes concerning the right of way and shared use of electronic communications infrastructure and associated facilities;
7. adoption of decisions concerning the prohibition of provision of electronic communications networks and services;
8. adoption of decisions concerning the granting, transfer and revocation of individual licenses for use of the radio frequency spectrum on the basis of a public tender and public auction;
9. adoption of the Addressing Plan, Numbering Plan and the radio frequency assignment plans, and drawing up of the proposal for the Radio Frequency Allocation Table;
10. adoption of decisions concerning the must-carry rules for radio and television channels;
11. resolution of disputes between subscribers and operators of public communications services;
12. management of the radio frequency spectrum and the addressing and numbering space in electronic communications;
13. expert supervision over the application of this Act and secondary legislation adopted pursuant to this Act;
14. radio frequency spectrum control and measurement, testing and determination of causes of interference in the radio frequency spectrum;
15. technical inspection and radio measurements and the calculation and measuring of the electromagnetic field value;
16. conclusion of concession agreements with electronic media broadcasters pursuant to a special law regulating the field of electronic media;
17. issuing of certificates, approvals, special authorisations and other acts in accordance with the provisions of this Act and regulations adopted pursuant to this Act;
18. keeping and regular updating of the radio frequency spectrum database and other databases and registers, records and other data collected by this Agency pursuant to the provisions of this Act and regulations adopted pursuant to this Act;
19. regular publishing of data, information and documents in the field of electronic communications, in particular market development indicators, in accordance with the provisions of this Act and regulations adopted pursuant to this Act;
20. participation in the preparation of proposals of strategies, studies, guidelines, programmes and implementation plans referred to in Article 4, paragraphs 1 and 2 of this Act;
21. provision of expert opinions and explanations concerning the application of this Act and regulations adopted pursuant to this Act;

22. organisation of public counselling and expert gatherings and the conduct of market analysis and opinion polls concerning certain issues in the electronic communications sector;
23. international cooperation in the electronic communications sectors and participation in the work of administrative and working bodies of competent European and international organisations and institutions in the electronic communications sector;
24. conclusion of bilateral and multilateral implementing agreements in the electronic communications sector, on the basis of received authorisations;
25. cooperation with competent national regulatory authorities of Member States of the European Union, associations of competent regulatory authorities and national regulatory authorities of other countries in electronic communications;
26. carrying out of other tasks defined by this Act and the Agency's Statute.

(2) Regulatory and other tasks in the postal services sector shall be performed by the Agency pursuant to a special Act regulating the postal services sector.

(3) Regulatory and other tasks referred to in paragraph 1, items 1 to 19 and paragraph 2 of this Article shall be performed by the Agency as public authority.

### *Annual activity report and annual work programme of the Agency*

#### *Article 13*

(1) The Agency's Council shall submit the Agency's annual activity report to the Croatian Parliament and to the Government of the Republic of Croatia. The report shall contain in particular the following:

1. information about fulfilment of objectives and tasks established in the Agency's annual work programme, and, in particular, about the application of the established principles and objectives of the electronic communications development policy;
2. information about the development of the electronic communications market and the fulfilment of regulatory principles and objectives referred to in Article 5 of this Act;
3. information about the development of the postal services market and the fulfilment of regulatory principles and objectives in accordance with a special law regulating the postal services sector;
4. financial reports and the Agency's final statement;
5. other information important for an overview of the development of the electronic communications and postal services markets in the Republic of Croatia;
6. other information related to the implementation of this Act, a special law regulating the postal services sector and regulations adopted pursuant to these acts.

(2) The annual report referred to in paragraph 1 of this Article shall be submitted at the latest by the end of April for the previous calendar year.

(3) Upon request of the Croatian Parliament or the Government of the Republic of Croatia, the Agency's Council must, within the maximum of 30 days from the receipt of the request, submit the report referred to in paragraph 1 of this Article for a period shorter than one year.

(4) In accordance with the provisions of Articles 19 and 22 of this Act, the Agency's Council shall adopt the annual work programme of the Agency at the latest by the end of the year for the following calendar year.

(5) The annual programme referred to in paragraph 4 of this Article shall in particular define the objectives and tasks of the Agency in the performance of regulatory and other tasks provided for in this Act and a special law regulating the postal services sector.

## *Transparency of the Agency's work*

### *Article 14*

(1) The Agency shall keep and regularly update databases with all registers and records kept for the purpose of performing tasks within its competence, comprising in particular:

- a list of operators which have been issued a certificate in accordance with Article 32 of this Act;
- a list of operators which have been prohibited to perform their activity in accordance with Article 33 of this Act;
- a list of infrastructure operators which have been issued the right of way certificate in accordance with Articles 27 and 28 of this Act;
- special conditions related to the procedure for issuing building site permits referred to in Article 26 of this Act;
- issued special authorisations referred to in Article 94 of this Act;
- assigned and available addresses and numbers in public communications networks;
- assigned and available radio frequencies and radio frequency channels;
- granted general and individual licenses for use of the radio frequency spectrum referred to in Articles 87, 88, 89 and 90 of this Act;
- defined relevant markets and operators with significant market power with certain regulatory obligations on these relevant markets;
- approved reference offers that must be drafted and published by operators pursuant to the provisions of this Act;
- data prescribed by a special law regulating the postal services sector.

(2) Databases referred to in paragraph 1 of this Article must be accessible to the public on the Agency's web site, free of charge and in the electronic form which must be regularly maintained and updated by the Agency and offering the possibility of comprehensive data browsing according to chosen parameters.

(3) The radio frequency spectrum database shall be kept and published in accordance with the provisions of Article 83 of this Act.

(4) In addition to acts and information referred to in paragraph 1 of this Article, the Agency shall, on a regular basis and free of charge, publish on its web site and in the Official Gazette, and, where relevant, in another adequate manner, in particular the following acts and information:

- decisions and other administrative acts of the Agency;
- public tenders and invitations to public consultations;
- expert opinions and explanations about the application of this Act and regulations adopted pursuant to this Act;
- statistical and other indicators of the electronic communications and postal services market development;
- secondary legislation and internal rules of the Agency referred to in Article 19 of this Act;
- the Agency's annual work programme;
- the Agency's annual financial plan and the realization of this plan, and the Agency's annual financial statement;
- the Agency's annual activity report;
- other data and information about the functioning and business operations of the Agency.

(5) Statistical and other indicators of the electronic communications and postal services market development referred to in paragraph 4 of this Article must be updated and published on the Agency's website at least every three months.

(6) For the purpose of regular publication of acts and information referred to in paragraphs 1 and 4 of this Article, and other information important for the work of the Agency, the Agency may publish an official journal in printed and electronic form.

(7) Final judgements and decisions of the Administrative Court of the Republic of Croatia in administrative disputes initiated pursuant to the provisions of Article 18 of this Act shall be published in the Official Gazette and on the Agency's website, and may also be published in the Agency's official journal or in any other appropriate manner.

(8) By way of derogation from the provisions of this Article, acts and information regarded as classified within the meaning of Article 15 of this Act or special data secrecy regulations shall not be made publicly available.

### ***Collecting data and data secrecy protection***

#### ***Article 15***

(1) In carrying out the tasks referred to in Article 12 of this Act the Agency shall be authorized to require the following information to be provided in writing by the operators and persons designated by a special law regulating the postal services sector:

- delivery of all necessary data and information, including financial data and classified data and data regarded as a business secret, and the delivery of all the necessary data and documents for consideration;
- immediate inspection of business premises, associated infrastructure, equipment and other technical means for the provision of electronic communications networks and services and postal services and of business books, archives, databases and other documents;
- carrying out of other activities deemed by the Agency to be necessary for the establishment of all the important facts in the decision-making process.

(2) The Agency's request referred to in paragraph 1 of this Article must be proportionate to the tasks carried out by the Agency and must contain a legal basis, the subject and purpose of the request, the extent of detail in every requested information and the adequate time limit for the implementation of the request, which may not be less than eight days.

(3) The operators and persons designated by a special law regulating the postal services sector shall be obliged to act in accordance with the Agency's request referred to in paragraph 1 of this Article.

(4) Data referred to in paragraph 1 of this Article shall be delivered by the Agency to the Ministry or another competent state administration body upon its written request. The request must be elaborated in accordance with paragraph 2 of this Article taking into account special data secrecy regulations.

(5) Data referred to in paragraph 1 of this Article may be submitted by the Agency to the Commission and to competent national regulatory authorities of other Member States of the European Union on the basis of their request if necessary for the performance of tasks referred to in the Treaty establishing the European Community or for the fulfilment of obligations of individual national regulatory authorities in accordance with the *acquis communautaire*. The request for the delivery of data referred to in paragraph 1 of this Article must be elaborated pursuant to paragraph 2 of this Article, taking into account special data secrecy regulations.

(6) In case of delivery of data referred to in paragraph 5 of this Article, the Agency shall inform thereof the operator, or a person referred to in paragraph 3 of this Article, who delivered the data. The Commission may place the delivered data at the disposal of competent national regulatory authorities of other Member States of the European Union, unless the Agency strongly objects.



(7) The Chairman, Deputy Chairman and members of the Agency's Council, the Director of the Agency and employees of the Agency's administrative service, as well as other legal entities and natural persons, entrusted by the Agency with the performance of certain tasks shall be obliged to keep the secrecy of classified data or a business secret, regardless of the manner in which they have learnt about it, during and after they have finished carrying out the tasks or during their employment and after the termination thereof for as long as the data is designated with a degree of secrecy or until they are relieved from the obligation to keep the data secret by the owner of the data.

(8) Classified data or a business secret referred to in paragraph 7 of this Article, shall in particular include the following:

- any information that is classified or designated as business secret in accordance with a special law or another regulation;
- any information that is classified or designated as business secret in accordance with internal rules or other act of the owner of the information;
- any information that is specially designated as classified information or as a business secret, by the owner of the information;
- any information classified or designated as business secret in accordance with the Agency's internal rules.

(9) By way of derogation from the provisions of paragraphs 7 and 8 of this Article, data or acts that have in any way been made publicly available or published on the basis of special regulations or decisions of data owners, shall not be regarded as classified data or a business secret.

### *Funds for the carrying out of Agency's tasks*

#### *Article 16*

(1) The Agency shall keep separate accounting for the electronic communications sector and for the postal services sector.

(2) The funds for the carrying out of the tasks of Agency referred to in Article 12, paragraph 1 of this Act, in accordance with the annual financial plan, shall be secured from the following sources:

1. from the fee for the use of addresses and numbers;
2. from the fee for the use of the radio frequency spectrum;
3. from the fee for performance of other tasks of the Agency in the percentage of the total annual gross revenue earned by operators in the previous calendar year by providing electronic communications networks and services on the market, except for electronic media broadcasters broadcasting their radio and television programmes by means of their own electronic communications network used exclusively for that purpose.

(3) The funds for the carrying out of the tasks of Agency referred to in Article 12, paragraph 2 of this Act shall be provided for in the Agency's annual financial plan in accordance with a special law regulating the postal services sector.

(4) The calculation and the amount of fees and the manner of payment of fees referred to in paragraph 2 of this Article shall be prescribed by an ordinance adopted by the Agency's Council, on the basis of the Agency's annual financial plan, at the latest by the end of the current year for the following calendar year.

(5) Fees referred to in paragraph 2 of this Article shall be determined in accordance with the principles of objectivity, transparency, proportionality and non-discrimination, whereby special account must be taken of the regulatory principles and objectives referred to in Article 5 of this Act.

(6) The Agency shall transfer the surplus of collected funds compared to the annual financial plan to the following calendar year.

(7) The Agency shall be accountable for its liabilities by its entire assets, and the Republic of Croatia shall have joint and several liability for the Agency's obligations.

(8) The Agency's liabilities shall first be settled from its own assets, and then from the State Budget of the Republic of Croatia.

(9) The Agency may not, without prior consent from the Government of the Republic of Croatia, acquire, burden or alienate real estate or another asset or conclude a another legal transaction if the value of the contract or another legal transaction exceeds the amount established by the Agency's Statute.

(10) The Agency's financial reports shall be subject to annual audit performed by an independent authorized auditor. The Agency shall decide on the selection of the auditor in accordance with special audit regulations.

### **III. PROCEDURE FOR THE ADOPTION OF DECISIONS AND OTHER ACTS**

#### ***Decision-making in Agency's affairs***

##### ***Article 17***

(1) The Agency's Council shall decide on the Agency's affairs in accordance with Article 12, paragraph 1, items 1 to 10 of this Act, and on affairs referred to in Article 12, paragraph 2 of this Act which are under the competence of the Agency's Council in accordance with a special law regulating the postal services sector.

(2) In addition to tasks referred to in paragraph 1 of this Article, the Agency's Council shall carry out the following tasks:

1. submit the annual activity report in accordance with Article 13 of this Act;
2. adopt internal rules and other acts of the Agency referred to in Article 19 of this Act;
3. monitor the implementation and realisation of the Agency's annual work programme and its financial plan, and other programmes, plans and acts under its competence;
4. give guidelines and instructions to the Agency's Director and to supervisors of electronic communications and monitor the implementation of these guidelines and instructions;
5. prepare proposals for secondary legislation for this Act under the competence of the Ministry or Minister in accordance with the provisions of this Act or upon the Ministry's or Minister's request;
6. adopt its Rules of Procedure;
7. carry out other tasks defined by this Act and the Agency's Statute.

(3) The Director of the Agency shall decide on the Agency's affairs referred to in Article 12, paragraphs 1 and 2 of this Act which, according to paragraph 1 of this Article, are not under the competence of the Agency's Council.

(4) In affairs under the competence of the Agency the decision-making procedure shall be initiated *ex officio* or upon a party's request.

(5) A party in the procedure before the Agency must be given the opportunity, before the adoption of the decision, to make his/her statement about the facts relevant for the adoption of the decision, and to deliver all the necessary documentation and propose evidence which he/she considers important for the adoption of the decision within a time limit of a minimum of eight days. By way of derogation, when performing expert supervision, an electronic communications supervisor may, if he or she establishes the violation of provisions of this Act or regulations adopted pursuant to this Act, adopt a decision without hearing the party.

## ***Adoption and enforcement of Agency's decisions***

### ***Article 18***

- (1) The Agency's Council shall adopt decisions by a majority vote of all members of the Agency's Council.
- (2) Decisions and other administrative acts of the Agency shall be final in the administrative procedure.
- (3) Decisions and other administrative acts of the Agency may not be appealed, but administrative proceedings may be initiated before the Administrative Court of the Republic of Croatia.
- (4) The provisions of the General Administrative Procedure Act shall not apply to decisions and other administrative acts referred to in paragraph 3 of this Article in the part referring to annulment and repealing under supervision rights, to extraordinary repeal and to making the ruling null and void by a competent body.
- (5) Proceedings before the Administrative Court of the Republic of Croatia in administrative disputes initiated pursuant to the provisions of this Act shall be regarded as emergency proceedings.
- (6) A decision or another administrative act of the Agency must be enforced within fifteen days from the date of service to the party unless another deadline for enforcement has been determined by a decision or another administrative act. If the party does not act upon the decision or another administrative act within the prescribed or determined time limit, the Agency shall carry out the enforcement procedure via another person or coercively, except when a decision on temporary postponement of the enforcement has been adopted upon a party's request.
- (7) In case of failure to act upon the decision or another administrative act of the Agency within the time limit referred to in paragraph 6 of this Article, an electronic communications inspector or electronic communications supervisor may issue a misdemeanour order or propose the filing of a motion to initiate misdemeanour proceedings pursuant to the provisions of Articles 112 and 114 of the Act.
- (8) The provisions of the General Administrative Procedure Act shall apply in administrative proceedings under the competence of the Agency to issues not regulated by this Act.

## ***Adoption of secondary legislation and of Agency's internal rules***

### ***Article 19***

- (1) Secondary legislation for this Act, which is under the competence of the Agency pursuant to the provisions of this Act, shall be adopted by the Agency's Council.
- (2) The Agency's Council shall adopt the Agency's Statute, the annual financial plan and the annual financial statement of the Agency as well as the Agency's annual work programme with prior consent of the Government of the Republic of Croatia.
- (3) The Agency's Council shall adopt other internal rules of the Agency prescribed by this Act and the Agency's Statute. The Agency's Statute may provide for the Director's authority to adopt certain internal rules of the Agency.
- (4) Legislation referred to in paragraph 1 of this Article, the Statute of the Agency and internal rules referred to in paragraph 2 of this Article shall be published in the Official Gazette and on the Agency's website, and may also be published in the Agency's official journal. Other Agency's internal rules

referred to in paragraph 3 of this Article shall be published in the manner established by the Agency's Statute.

### ***Dispute resolution between operators***

#### ***Article 20***

(1) In case of dispute between two or more operators of electronic communications networks and/or services concerning the obligations under this Act, the Agency must, upon request of any of the parties in the dispute, adopt a final decision on the resolution of the dispute as soon as possible, and at the latest within four months following the initiation of the dispute resolution procedure. The deadline for dispute resolution may be extended only in exceptional circumstances.

(2) All the parties in the dispute must fully cooperate with the Agency for the purpose of resolving the dispute.

(3) In the dispute resolution procedure the Agency shall adopt decisions aimed at achieving the regulatory principles and objectives referred to in Article 5 of this Act. Any obligation imposed by the Agency on the operator for the purpose of dispute resolution must be based on the provisions of this Act.

(4) The Agency's decisions concerning dispute resolution must be elaborated in detail, and delivered to all the parties in the dispute and published pursuant to the provisions of Article 14 of this Act, taking into account the confidentiality of business information.

(5) The dispute resolution procedure referred to in this Article shall not exclude the right of any party in the dispute to institute court proceedings before a competent court.

### ***Cross-border dispute resolution***

#### ***Article 21***

(1) In case of a cross-border dispute between parties from other Member States of the European Union concerning the obligations arising from this Act or the relevant European Union directives in the field of electronic communications, where dispute resolution is under the competence of national regulatory authorities from two or more Member States of the European Union, each of the parties in the dispute may initiate proceedings before the relevant national regulatory body.

(2) When resolving disputes referred to in paragraph 1 of this Article, the Agency must conduct proceedings pursuant to Article 20 of this Act coordinating its actions aimed at the resolution of the dispute with other competent national regulatory authorities.

(3) The cross-border dispute resolution procedure referred to in this Article shall not exclude the right of any party in the dispute to institute proceedings before a competent court.

### ***Public consultation procedure***

#### ***Article 22***

(1) Before adopting decisions and other administrative acts with significant influence on the relevant market, which are adopted pursuant to the provisions of this Act, the Agency shall publish the proposal for the decision or another administrative act for the purpose of a public consultation in order to enable all interested parties to give their opinions, comments and proposals in relation to the proposed measures.

(2) The subject matter, procedure and duration of the public consultation referred to in paragraph 1 of this Article, which may not be shorter than 30 days, shall be published pursuant to the provisions of Article 14 of this Act.

(3) The public consultation procedure in accordance with paragraphs 1 and 2 of this Article shall also apply in the procedure for the adoption of regulations referred to in Article 19, paragraph 1, Article 70, paragraph 5, item 2 and Article 84, paragraph 1, item 2 of this Act, the Agency's Statute, the annual financial plan and the annual work programme of the Agency, the Addressing Plan and the Numbering Plan, the Radio Frequency Allocation Table and radio frequency assignment plans, and in the procedure for the adoption of their amendments.

(4) The Agency must ensure, on its website or in any other appropriate manner, the establishment of a single information centre providing immediate public insight and participation in all current public consultations and public access to the results of public consultations, taking into account the confidentiality of data pursuant to the provisions of this Act and special regulations on data secrecy.

### *Consolidation procedure in the adoption of decisions*

#### *Article 23*

(1) In the procedure for the imposition of a certain regulatory obligation on an operator pursuant to the provisions of this Act, the Agency shall cooperate with and adjust its actions with the competent national regulatory authorities of other Member States of the European Union and with the Commission in order to ensure a consolidated application of the relevant *acquis communautaire* concerning internal market.

(2) In case of an intention to adopt a decision referred to in Articles 53 and 56 of this Act, which might influence trade between Member States of the European Union, the Agency shall, simultaneously with the carrying out of the public consultation procedure referred to in Article 22 of this Act, make available an elaborated proposal of the decision to the Commission and to competent national regulatory authorities of Member States of the European Union. It shall notify without delay the Commission and competent national regulatory authorities thereof.

(3) The Commission and competent national regulatory authorities of other Member States of the European Union may submit comments and proposals to the Agency within the time limit envisaged for public consultation referred to in Article 22, paragraph 2 of this Act. This time limit may not be extended.

(4) When adopting the decision referred to in paragraph 2 of this Article, the Agency shall take the utmost account of the comments and proposals referred to in paragraph 3 of this Article and adopt its final decision in accordance with that. It shall deliver its decision to the Commission except in case of the application of procedures referred to in paragraphs 5, 6 and 7 of this Article.

(5) If, according to the Commission's opinion which was delivered to the Agency, the decision referred to in paragraph 2 of this Article could create obstacles for a common market and it is uncertain whether the proposal for the decision is harmonised with the relevant *acquis communautaire*, and, in particular, with the regulatory principles and objectives referred to in Article 5 of this Act, the adoption of the decision must be postponed for two months without the possibility of extension.

(6) In the period referred to in paragraph 5 of this Article, the Commission may submit to the Agency a request for the withdrawal of the proposal for the decision, which must be elaborated in detail and in an analytical manner, and must contain a proposal for the amendments to the decision referred to in paragraph 5 of this Article.

(7) The Agency must act in accordance with the Commission's request referred to in paragraph 6 of this Article, and accept the amendments to the decision in accordance with the submitted Commission's proposal.

(8) By way of derogation, the Agency may, when it assesses that certain issues must be provisionally regulated in order to maintain competition and protect interests of users, recede from the implementation of procedures referred to in paragraphs 2 to 7 of this Act and without delay adopt a provisional decision, while respecting the principle of proportionality.

(9) An elaborated provisional decision referred to in paragraph 8 of this Article shall be without delay delivered by the Agency to the Commission and competent national regulatory authorities of Member States of the European Union. The provisional decision shall be revoked by a decision adopted after the completion of procedures referred to in paragraphs 2 to 7 of this Article. This decision shall permanently regulate the issues in question.

#### **IV. ELECTRONIC COMMUNICATIONS INFRASTRUCTURE AND ASSOCIATED FACILITIES**

##### ***Basic requirements for electronic communications network and electronic communications infrastructure and associated facilities***

##### ***Article 24***

(1) Electronic communications network and electronic communications infrastructure and associated facilities must be planned, designed, manufactured, constructed, maintained and used in accordance with standards and technical specifications contained in the list of binding standards and/or technical specifications published in the Official Journal of the European Union in accordance with the relevant European Union Directive.

(2) If there are no relevant binding standards and/or technical specifications published in accordance with paragraph 1 of this Article, standards and technical specifications of the European Telecommunications Standards Institute (ETSI), European Committee for Standardization (CEN), and the European Committee for Electrotechnical Standardization (CENELEC) and standards, decisions and recommendations of the International Telecommunication Union (ITU), International Organisation for Standardization (ISO), International Electrotechnical Commission (IEC) and the European Conference of Postal and Telecommunications Administrations (CEPT) shall apply.

(3) If there are no adequate standards, technical specifications and other international regulations referred to in paragraph 2 of this Article, original Croatian standards shall apply *mutatis mutandis*.

(4) Electronic communications network and electronic communications infrastructure and associated facilities must be planned, designed, manufactured, erected and installed in the manner that will make possible the access to and the availability of public electronic communications services to disabled persons.

(5) When constructing an office or residential building, intended for further sale, an investor of the building must build ducts for electronic communications network adequate for the building's purpose and install an electronic communications network and associated electronic communications facilities for the needs of that building in accordance with the main and final projects, which must be prepared in accordance with ordinances referred to in paragraph 8 of this Article. The constructed electronic communications infrastructure and installed electronic communications network and associated facilities must allow to all building owners free selection of the operator, and equal and non-discriminatory access to the building to all operators.

(6) The owners of an office or residential building must allow all operators access for the purpose of installing, maintenance and development of electronic communications networks and associated electronic communications facilities in accordance with ordinances referred to in paragraph 8 of this Article.

(7) If the construction of a residential, office or another building or facility causes interference in the reception of radio and television programmes of electronic media broadcasters, the investor of that building or facility must, within 60 days from the detection of the interference and at his own expense ensure that radio and television programmes of equal quality as before the occurrence of the interference are received.

(8) The Agency's Council may, in special ordinances, provide for technical, usage and other conditions for certain types of electronic communications networks and electronic communications infrastructure and associated facilities.

***Construction, use and maintenance of electronic communications network and electronic communications infrastructure and associated facilities***

***Article 25***

(1) The installation and use of electronic communications network and the provision of electronic communications services must comply with the safety conditions for the use of a network, with network integrity and interoperability of electronic communications services. Electronic communications networks intended for the provision of public electronic communications services, including electronic communications services with the use of the radio frequency spectrum, as far as technically feasible, must be constructed, installed and used in the manner that does not disrupt the quality of service or allow interception to other users.

(2) The Agency shall encourage interoperability of electronic communications networks and electronic communications services.

(3) Electronic communications infrastructure and associated facilities must be planned in the town and country planning documents in the manner that development of the electronic communications network and the electronic communications infrastructure and associated facilities is not restricted, whereby the conditions of protection of public health, protection of space and of environmental protection must be satisfied.

(4) If the Republic of Croatia or a local or regional self-government unit has ownership or keeps control over legal entities managing the electronic communications network and/or providing electronic communication services, bodies competent for issuing building licenses and licenses for the use of electronic communications networks and electronic communications infrastructure and associated facilities must be structurally separate from bodies having ownership or supervisory authority over those legal entities while respecting the principle of non-discrimination.

(5) An infrastructure operator must, within 30 days since the beginning of use, notify the Agency in writing that it started using the newly-built electronic communications network and electronic communications infrastructure and associated facilities.

(6) Operators must ensure access to their electronic communications network and electronic communications infrastructure and associated facilities and allow precedence in the provision of electronic communications services to central state administration bodies competent for defence and national security, for internal affairs, and for protection and rescue, to competent intelligence services, legal entities competent for air-traffic, maritime traffic and inland waterways traffic security, and to emergency services.

(7) Operators and owners or users of radio stations must, in case of war or immediate danger to the independence and integrity of the country, and in case of great accidents or natural disasters, offer its electronic communications network and electronic communications infrastructure and associated facilities or its radio station, for use to the competent state administration bodies, legal entities and emergency services referred to in paragraph 6 of this Article and allow the conveyance of messages and information in case of danger to life and health of people, or very valuable property or environment, in accordance with special regulations.

***Carrying out of works in the zone of electronic communications infrastructure and associated facilities***

***Article 26***

(1) No works may be carried out or new buildings constructed in the zone of electronic communications infrastructure and associated facilities that might impair or disturb the functioning of that infrastructure or associated facilities.

(2) No works may be carried out or buildings constructed or electronic communications infrastructure or associated facilities installed in the protected zone and radio corridor of certain radio stations. Plants that might diminish the quality of work, disturb or interrupt the work of radio stations or create interference in the radio frequency spectrum may not be installed.

(3) Plantations that might impair electronic communications lines or diminish the quality or work, interrupt or disturb the functioning of radio stations may not be built under surface and above underground electronic communications lines or in their immediate vicinity and in the protected zone and the radio corridor of certain radio stations.

(4) If the protection or relocation of electronic communications infrastructure and associated facilities is necessary for the purpose of carrying out works or constructing a new building, the investor of the works or the building must, at its own expense, ensure the protection or relocation of electronic communications infrastructure and associated facilities.

(5) For interventions in the area within the zone of electronic communications infrastructure and associated facilities and the protected zone and the radio corridor of certain radio stations, the Agency shall, in accordance with a special law regulating town and country planning and construction, determine and issue:

- requests and opinions in the procedure for the drafting and submission of town and country planning documents;
- special conditions in the procedure for granting location permits referring to the compliance with provisions of this Act and regulations adopted pursuant to this Act.

(6) The manner and conditions for the determination of the zone of electronic communications infrastructure and associated facilities referred to in paragraph 1 of this Article and the protected zone and the radio corridor referred to in paragraph 2 of this Article and detailed obligations of the investor of works or the building referred to in paragraph 4 of this Article shall be prescribed by an ordinance adopted by the Agency's Council.

***Use of public and private property***

***Article 27***

(1) Operators of public communications networks shall have infrastructure operator's rights in the entire territory of the Republic of Croatia, including the right to build, maintain, develop and use the electronic communications infrastructure and associated facilities on public property, on property



owned by the Republic of Croatia and local and regional self-government units and on property owned by other legal entities and natural persons, in accordance with this Act and special regulations.

(2) An infrastructure operator may acquire the right of use of public property and private property referred to in paragraph 1 of this Act and the right of way on public and private property in accordance with this Act and other regulations.

(3) Public property managers, the Republic of Croatia, local and regional self-government units and legal entities in the majority ownership of the Republic of Croatia or of local and regional self-government units must abide by the principle of non-discrimination when granting the right of use of property for the purpose of building electronic communications infrastructure and associated facilities and when granting access to electronic communications infrastructure and associated facilities they manage.

(4) If consent from the manager of public property or owner of private property is necessary in the process of granting building permits and other licenses in accordance with a special law regulating town and country planning and construction for the construction of electronic communications infrastructure and associated facilities on public property or property owned by the Republic of Croatia or units of local and regional self-government, a competent body of the public property manager or owner of private property shall grant its consent within 30 days from the submission of the request for granting the consent.

(5) The competent body of the manager of public property or owner of private property may deny the request for granting the consent referred to in paragraph 4 in the following cases:

- if it is established that construction is not technically feasible on public or private property which is the subject of the request for the granting of consent;
- if the construction would be contrary to the requirements concerning the protection of human health, environmental protection and protection of space, in accordance with special regulations.

(6) If the consent referred to in paragraph 4 of this Article is not suitable to establish any real right on the property, or any other legal relation between the infrastructure operator and the manager of public property or owner of private property, the date of granting this consent shall be regarded as the date of the establishment of the right of way on this public or private property.

(7) The right of way shall also be regarded as established pursuant to paragraph 6 of this Article in the case of granting the consent for the use of property owned by a legal entity or a natural person referred to in paragraph 1 of this Article to the infrastructure operator if the infrastructure operator and the owner of the property do not agree upon some other type of legal relation in accordance with special regulations.

(8) In cases referred to in paragraphs 6 and 7 of this Article the Agency shall issue a right-of-way certificate to the infrastructure operation, pursuant to the ordinance referred to in Article 29, paragraph 1 of this Act.

### *Use of public and private property on the basis of right of way*

#### **Article 28**

(1) It shall be regarded that the infrastructure operator has the right of way if it has constructed an electronic communications network and associated facilities on public property or property referred to in Article 27, paragraph 1 of this Act provided that any of the following conditions have been met:

- the operator has acquired a building permit issued in its name or in the name of its universal or individual legal predecessors;

- the operator has used electronic communications infrastructure and associated facilities without a court dispute with the manager of public property or owner of private property, on which the infrastructure was built, for at least three years since it was first used.

(2) In the case referred to in paragraph 1 of this Article the Agency shall issue a right-of-way certificate to the infrastructure operator in accordance with the ordinance referred to in Article 29, paragraph 1 of this Act.

(3) The manager of public property or the owner of private property shall endure the right of way and refrain from any action that might in any way interfere with the realisation of the right of way of the infrastructure operator.

(4) The infrastructure operator shall pay a fee for the right of way to the manager of public property or owner of private property it uses in accordance with the provisions of Article 29 of this Act, unless the infrastructure operator is at the same time the owner of private property or has some other real right on the property or some other legal relation with the manager of public property or owner of private property laying down the obligation to pay an appropriate fee for the use of public or private property.

(5) The manager of public property or owner of private property shall not be entitled to require compensation from the beneficiary operator using the electronic communications infrastructure and associated facilities of the infrastructure operator on the basis of a concluded contract referred to in Article 30, paragraph 2 of this Act in the same manner and under the same conditions as the infrastructure operator.

#### ***Fee for use of property on the basis of right of way***

##### ***Article 29***

(1) A fee is paid for the right of way on public property and property referred to in Article 27, paragraph 1 of this Act on the basis of an issued right-of-way certificate referred to in Articles 27 or 28 of this Act. The calculation and the amount of the fee and the manner of payment shall be prescribed by an ordinance adopted by the Agency's Council whereby the amount of the fee may not represent a disproportionate burden for the provision of electronic communications services and for the development of the electronic communications market.

(2) The fee referred to in paragraph 1 of this Article for public property and property owned by the Republic of Croatia and local and regional self-government units shall be paid on an annual basis per square metre of land used for ducts and electronic communications lines installed outside ducts, and it shall be established separately for each individual type of private property or for public property in the entire territory of the Republic of Croatia.

(3) The ordinance referred to in paragraph 1 of this Article shall lay down in more detail the granting procedure and the content of the form of the right-of-way certificate referred to in Articles 27 and 28 of this Act.

#### ***Shared use of electronic communications infrastructure and associated facilities***

##### ***Article 30***

(1) In the achievement of regulatory principles and objectives referred to in Article 5 of this Act, the Agency shall encourage shared use of electronic communications infrastructure and associated facilities, in particular with the aim of protecting human health, environment, space, and protecting and preserving cultural goods and national security.

(2) The infrastructure operator must allow to the beneficiary operator, for a fee and on the basis of a concluded contract, access to and shared use of its electronic communications infrastructure and associated facilities provided that the relevant conditions for access and shared use laid down in the ordinance referred to in paragraph 12 of this Article have been met.

(3) If the beneficiary operator was not permitted to access electronic communications infrastructure and associated facilities due to the requirements concerning the protection of human health, environmental protection, spatial protection, protection and preservation of cultural goods or national security, the Agency may adopt a decision obliging the infrastructure operator to allow access and shared use of its electronic communications infrastructure and associated facilities to the beneficiary operator.

(4) Before adopting the decision referred to in paragraph 3 of this Article, the Agency must organise public consultation in accordance with Article 22 of this Act.

(5) The Agency may adopt a decision imposing the following obligations on the infrastructure operator referred to in paragraph 2 of this Article:

- to apply the principle of non-discrimination and grant access to all beneficiary operators under equal conditions;
- to apply principles of cost-orientation on the basis of costs of construction and maintenance of the electronic communications infrastructure and associated facilities with the adequate rate of return on investments;
- to draft and publish the reference offer for access and the obligation to negotiate access with beneficiary operators.

(6) The infrastructure operator referred to in paragraph 2 of this Article shall process applications of beneficiary operators concerning access and shared use of electronic communications infrastructure and associated facilities in the order of receipt if the availability of free space in its infrastructure does not exceed the level laid down in the ordinance referred to in paragraph 12 of this Article.

(7) In case of receipt of applications referred to in paragraph 6 of this Article when the availability of free space is below the level referred to in paragraph 6 of this Article, the infrastructure operator must, within 30 days from the date of receipt of the request, invite a public tender for granting access and shared use of electronic communications infrastructure and associated facilities.

(8) One authorised representative of the Agency must be a member of the commission of the infrastructure operator inviting a public tender referred to in paragraph 7 of this Article. After the comparison and assessment of all applications received in the public tender procedure referred to in paragraph 7 of this Article, and on the basis of criteria laid down in the ordinance referred to in paragraph 12 of this Article, the infrastructure operator shall adopt a well-argued decision on the selection of one or more beneficiary operators, depending on available space, within the maximum of 60 days from the adoption of the decision on the invitation of the public tender referred to in paragraph 7 of this Article. On the basis of the decision on the selection of the beneficiary operator, the infrastructure operator shall conclude the contract referred to in paragraph 2 of this Article with the selected beneficiary operator, except in the case referred to in paragraph 9 of this Article.

(9) The decision of the infrastructure operator referred to in paragraph 8 of this Article may be appealed to the Agency within eight days from the receipt thereof. This does not postpone the conclusion of the contract referred to in paragraph 2 of this Article. The Agency may adopt a decision on the annulment of the public tender referred to in paragraph 7 of this Article if it establishes, *ex officio* or on the basis of the beneficiary operator's complaint, that the public tender was not conducted in compliance with the provisions of this Act or regulations adopted pursuant to this Act.

(10) If the beneficiary operator refuses to conclude the contract referred to in paragraph 2 of this Article, or does not allow access and shared use of its electronic communications infrastructure and

associated facilities to the beneficiary operator under the conditions referred to in paragraph 2 of this Article, the Agency shall, upon request of the beneficiary operator, within 30 days from the submission of the request, establish the existence of the relevant conditions referred to in paragraph 2 of this Article, and where such conditions exist, it shall adopt a decision completely replacing this contract.

(11) If the infrastructure operator referred to in paragraph 2 of this Article does not reply to the application of the beneficiary operator within 30 days from the submission of the application, it shall be regarded that it refused to conclude the contract within the meaning of paragraph 10 of this Article.

(12) The manner and conditions for access to and shared use of electronic communications infrastructure and associated facilities, the availability of free space, the selection criteria, the procedure, conditions and deadlines for the implementation of the public tender referred to in paragraph 7 of this Article, the complaints procedure referred to in paragraph 9 of this Article and the main elements of the contract on access and shared use of electronic communications infrastructure and associated facilities shall be prescribed in more detail by an ordinance adopted by the Agency's Council.

(13) The decisions of the infrastructure operator referred to in paragraphs 7 and 8 of this Article and the decisions of the Agency referred to in paragraph 9 of this Article shall be published in the Official Gazette and on the website of the infrastructure operator and of the Agency, and may also be published in some other appropriate manner. The decision on the selection of the beneficiary operator referred to in paragraph 8 of this Article shall be delivered by the infrastructure operator to all beneficiary operators who participated in the public tender procedure referred to in paragraph 7 of this Article.

(14) In case of dispute between the infrastructure operator and a beneficiary operator concerning the concluded contract on access and shared use of electronic communications infrastructure and associated facilities, or concerning the payment of the fee for such access and shared use, the Agency shall carry out dispute resolution proceedings in accordance with the provisions of Article 20 of this Act, taking into account the relevant conditions for access and shared use referred to in paragraph 2 of this Article.

## **V. ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES**

### ***General authorisation***

#### ***Article 31***

(1) Any natural person or legal entity shall be entitled to install, use and make available an electronic communications network and provide electronic communications services in the territory of the Republic of Croatia without obtaining a special authorisation (hereinafter: general authorisation) under the conditions laid down in this Act and in the ordinance referred to in Article 34 of this Act.

(2) The general authorisation shall entitle the operator to:

- provide electronic communications networks and services;
- build, install, and use electronic communications infrastructure pursuant to the provision of this Act;
- nationally and internationally negotiate and agree upon access and interconnection;
- be designated an operator of one or more universal services pursuant to the provisions of this Act.

## ***Prior notification and certificate***

### ***Article 32***

- (1) Operators of public electronic communications networks and publicly available electronic communications services, which are provided on a commercial basis, must notify the Agency in writing, at least fifteen days in advance, about the start, changes and termination of the provision of electronic communications networks and services.
- (2) Prior notification referred to in paragraph 1 of this Article must contain in particular the following:
  - name and seat, or name and surname, and address of the operator;
  - evidence of legal status, or of the right to perform the activity;
  - a short description of the network and/or service the provision of which is intended;
  - envisaged dates for start, change and termination of the provision thereof.
- (3) The operator must notify the Agency, in writing and without delay, about any change of data contained in the prior notification.
- (4) The Agency may, as far as technically feasible, receive notifications referred to in paragraphs 1 and 3 of this Article electronically.
- (5) The Agency shall issue to the operator, within eight days following the receipt of a complete prior notification in accordance with paragraph 2 of this Article, a certificate confirming the submission of the prior notification in accordance with the ordinance referred to in Article 34 of this Act. This certificate shall not be an administrative act.
- (6) The operator shall be entitled to start providing the mentioned services on the basis of the general authorisation even before the receipt of the certificate referred to in paragraph 5 of this Article.
- (7) The layout and content of the form of the written and electronic notification referred to in paragraphs 1 and 3 of this Article, as well as the layout and content of the form of the certificate referred to in paragraph 5 shall be prescribed by an ordinance referred to in Article 34 of this Act.
- (8) The Agency shall keep and regularly update a list of operators of electronic communications networks and/or services which have been issued the certificate referred to in paragraph 5 of this Article. The entry into the list of operators shall not be a condition for the realisation of rights and obligations that the operators have pursuant to the provisions of this Act.
- (9) The Agency shall *ex officio* delete the operator from the list in the following cases:
  - if the operator notifies the Agency in writing of the termination of the provision of services;
  - if the operator interrupts the provision of services for a period exceeding one year;
  - if the operator has been prohibited to provide the notified services by a final court judgement;
  - after the winding up of the legal entity of the operator or of the craft.
- (10) The list of operators referred to in paragraph 8 of this Article shall be published by the Agency in accordance with the provisions of Article 14 of this Act.

## ***Compliance with conditions of general authorisation***

### ***Article 33***

- (1) Where the Agency establishes that the operator does not comply with one or more conditions of the general authorisation, it shall immediately notify the operator thereof and set a time limit of, as a rule, 30 days from the date of the delivery of the notification for the operator to notify the Agency

about the justified reasons for non-compliance with the conditions and remedy the established breaches.

(2) The time limit referred to in paragraph 1 of this Article may be extended upon the operator's request, in accordance with the Agency's decision, and may also be shorter than 30 days on the basis of agreement with the operator or in case of repeated non-compliance with conditions from the general authorisation.

(3) If the operator does not remedy the breaches within the time limit referred to in paragraphs 1 and 2 of this Article, the Agency shall adopt a resolution stating that the conditions of the general authorisation have not been complied with and define measures and a reasonable time limit of a maximum of another 30 days to remedy the breaches.

(4) In case the breaches are not remedied within the time limit referred to in paragraph 3 of this Article or in case of repeated non-compliance with the conditions of the general authorisation, the Agency may adopt a resolution prohibiting the provision of electronic communications networks and services to the operator.

(5) When the decision referred to in paragraph 4 of this Article becomes final, the operator shall be obliged to discontinue the provision of electronic communications networks and services, without a right to compensation.

### *Secondary legislation on electronic communications networks and services*

#### *Article 34*

(1) The manner and conditions for the provision of electronic communications networks and services and standards for the quality of electronic communications networks and services shall be prescribed in more detail by an ordinance adopted by the Agency's Council.

(2) The ordinance referred to in paragraph 1 of this Article may in particular oblige operators of publicly available electronic communications services to regularly publish adequate, up-to date and comparable information on quality of service parameters and deliver them to the Agency upon its request.

## **VI. UNIVERSAL SERVICES**

### *The scope of universal services*

#### *Article 35*

(1) Universal services shall be available to all end-users in the Republic of Croatia at a reasonable request, regardless of their geographical location and at an affordable price. Universal services shall be provided taking into account the principles of objectivity, transparency, proportionality and non-discrimination, while distorting market competition to the least possible extent.

(2) Universal services referred to in paragraph 1 of this Article shall comprise one or more of the following services:

1. access to public telephone network and publicly available telephone services at a fixed location allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers, as well as their technological feasibility;

2. access of end-users to at least one comprehensive directory of all subscribers of publicly available telephone services, in a form approved by the Agency, whether printed or electronic, which must be updated on a regular basis in accordance with the provisions of Article 47 of this Act;
3. access of end-users, including users of public pay telephones, to a telephone directory enquiry service in accordance with the provisions of Article 47 of this Act;
4. installation of public pay telephones at public and always accessible places in accordance with reasonable needs of end-users in terms of the geographical coverage, the quality of service, the number of public pay telephones and their accessibility to disabled users;
5. special measures for disabled users including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users, and an adequate choice of operators available to the majority of end-users;
6. special tariff systems adjusted to the groups of end-users with special social needs.

(3) The price of an individual universal service must be affordable and equal in the entire territory where the operator is providing this universal service. The prices of universal services referred to in paragraph 2, item 6 of this Article must take into account the affordability to the group of end-users with special social needs.

(4) The Agency shall follow the development and level of retail prices of universal services listed in paragraph 2 of this Article in particular in relation to consumer prices and income. Operators of universal services referred to in paragraph 2 of this Article must obtain a prior approval from the Agency for retail prices of these services. The Agency shall decide on the request for prior approval within 30 days from the date of receipt of the request.

(5) The Agency may impose the following obligations on universal service operators in the procedure referred to in Article 36 of this Act:

- to ensure pre-paid systems for access to public telephone network and the use of publicly available telephone services;
- make possible to users the phased payment of connection fees.

(6) Universal service operators shall publish in the appropriate and publicly available manner adequate and updated information and data on the conditions for the provision of universal services and deliver them to the Agency on a regular basis.

(7) The manner and conditions for the provision of universal services and quality of service parameters, as well as the form, content and manner of the publication of information and data referred to in paragraph 6 of this Article may be prescribed in more detail by an ordinance adopted by the Agency's Council.

### *Designation of universal service operators*

#### *Article 36*

(1) The Agency shall organise a public consultation at least once in every two years in order to determine:

- whether universal services referred to in Article 35 of this Act have been provided in the prescribed and adequate manner;
- which operators are interested in providing one or more services within universal services referred to in Article 35, paragraph 2 of this Act and/or covering different geographical areas of territory of the Republic of Croatia.

(2) If the Agency establishes that an individual service within the framework of universal services referred to in Article 35, paragraph 2 of this Act is provided in the prescribed and adequate manner, it does not have to designate an operator to provide this part of universal services, that is, if an universal

service operator is already obliged to provide this part of universal services, it may adopt a decision withdrawing that obligation. The Agency shall ensure that services referred to in Article 35, paragraph 2, item 1 of this Act are provided by at least one universal services operator.

(3) If the Agency establishes that an individual service within the framework of universal services referred to in Article 35, paragraph 2 of this Act is not provided in the prescribed and adequate manner, it shall do one of the following:

1. adopt a decision designating one or more operators to provide this part of universal services,
2. adopt a decision to invite a public tender for the provision of universal services on the basis of which it shall select the most favourable operator for the provision of this part of services.

(4) If no operator submits a tender referred to in paragraph 3, item 2 of this Article, the Agency may adopt a decision referred to in paragraph 3, item 1 of this Article, whereby it must take special account of the existence of significant market power of the operator on the relevant market.

(5) The Agency shall lay down the conditions for the provision of universal service and a more detailed description and quality of service parameters in its decision on the designation of universal services operator referred to in paragraphs 3 and 4 of this Article.

(6) In the procedures for the designation of universal service operators referred to in paragraphs 3 and 4 of this Article, the Agency must be careful not to distort competition and to take into account the principles of objectivity, transparency and non-discrimination, whereby no operator may be a priori excluded from being designated the universal service obligation.

### ***Special obligations of universal service operators***

#### ***Article 37***

(1) Universal service operators must ensure proper and undisturbed provision of its services pursuant to the provisions of this Act and regulations adopted pursuant to this Act, and pursuant to decisions of the Agency referred to in Article 36 of this Act.

(2) If universal service operators are forced, due to force majeure, to temporarily cancel or limit a certain number or type of service, they must inform the Ministry and the Agency thereof, in writing and without delay, and, if possible, even in advance, and the users of universal services via the mass media or in any other appropriate manner.

### ***Costs of universal service obligations***

#### ***Article 38***

(1) Upon request of the universal service operator, the Agency shall decide whether the costs of the universal service obligation in accordance with Articles 35 and 36 of this Act represent unfair cost burden for universal service operators. In doing so, one of the following procedures shall be carried out:

- calculate the net cost of the universal service provision pursuant to Article 39 of this Act, while taking into account any market benefit realised by universal service operators, or
- take into account net costs of the universal service provision as enclosed by universal service operators in the tender referred to in Article 36, paragraph 3, item 2 of this Act.

(2) When submitting the request for the compensation of net costs referred to in paragraph 1 of this Article, universal service operators must submit evidence confirming that the request was substantiated, and the Agency or an auditor authorised by the Agency shall be entitled to inspect business books and other documents of the operator on the basis of which net costs for universal service provision may be calculated.



(3) The Agency shall adopt a decision determining the amount of compensation of net costs to universal service operators if it establishes that the request for the compensation of net costs referred to in paragraph 1 of this Article is substantiated.

(4) The Agency's decisions referred to in paragraph 3 of this Article shall be published in accordance with the provisions of Article 14 of this Act.

### ***Calculation of net costs of universal services provision***

#### ***Article 39***

(1) The Agency shall calculate net costs of providing universal services as a difference between net costs incurred by operators designated for the provision of universal services during their business operation with the universal service obligation and without this obligation.

(2) The calculation of net costs of providing universal services must accurately estimate the costs that any universal service operator would have chosen to avoid had there been no universal service obligations, and all benefits of universal service operators, including intangible benefit, whereby double accounting of any direct or indirect benefits and costs shall not be allowed.

(3) The calculation referred to in paragraph 2 of this Article must be based on the costs attributable to:

- elements of the identified universal services which can only be provided at a loss or provided under cost conditions falling outside normal market rules, which shall, in particular, include the installation of certain public pay telephones and the provision of certain communications services or equipment for disabled people;
- specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed in accordance with Article 35, paragraph 3 of this Act, can only be served at a loss or under cost conditions falling outside normal market rules, whereby these end-users or groups of end-users would not be served by a commercial operator which did not have an obligation to provide universal service.

### ***Recovery of costs of universal services provision***

#### ***Article 40***

(1) The funds for the recovery of net costs referred to in Article 38 of this Act shall be secured from a special account opened with the Agency.

(2) The Agency shall decide on mechanism for the recovery of net costs to universal service operators after the adoption of the decision referred to in Article 38, paragraph 3 of this Act.

(3) The recovery mechanism referred to in paragraph 2 of this Article shall comprise the funds from contributions by all operators of publicly available telephone services with share in total revenue on national retail markets for publicly available telephone services exceeding 2%. The amount of contribution by any individual operator of publicly available telephone services must be proportionate to the share of its annual revenue in relation to the total annual revenue of all operators who are under the obligation to make contributions in accordance with this Article. The total amount must correspond to the amount of compensations of net costs established by the decisions referred to in Article 38, paragraph 3 of this Act.

(4) After the establishment of the recovery mechanism for net costs referred to in paragraph 2 of this Article, all operators of publicly available telephone services must notify to the Agency their annual revenue on retail markets of publicly available telephone services for each calendar year, at the latest by the end of February for the previous calendar year.

(5) If the operators of publicly available telephone services do not fulfil the obligation referred to in paragraph 4 of this Article, the Agency shall be entitled to make an estimate of their annual revenue.

(6) The Agency shall adopt a decision on the amount of contributions of operators of publicly available telephone services referred to in paragraph 3 of this Article, which they are obliged to pay within 30 days from the date on which the decision became final, to the account of the Agency referred to in paragraph 1 of this Article.

(7) The recovery of net costs referred to in paragraph 2 of this Article shall be determined by the decisions of the Agency referred to in Article 38, paragraph 3 of this Act, at the end of each month in which the Agency received payments to its account referred to in paragraph 1 of this Article.

## **VI. RIGHTS OF USERS OF SERVICES AND CONSUMER PROTECTION**

### *Subscriber relations*

#### *Article 41*

(1) Rights and obligations arising from the subscription between the operator and subscribers of these services shall be regulated by a contract concluded between them.

(2) Operators of public communications services must base the contracts referred to in paragraph 1 of this Article on general business terms and conditions and tariffs pursuant to Article 42 of this Act. Every consumer shall be entitled to conclude the contract referred to in paragraph 1 of this Article on the basis of published general business terms and conditions and tariffs.

(3) Contracts referred to in paragraph 1 of this Article must contain provisions established by a special law regulating consumer protection and other special regulations. Contracts concluded via means of distance communication and electronic commerce must contain provisions in compliance with special regulations.

(4) A subscriber shall be entitled to terminate the subscription at any time. The contract may specify that the subscriber, who terminates the contract before the expiry of the period of mandatory contract duration, must pay a monthly fee for the remainder of the period of mandatory contract duration or some other adequate compensation in accordance with general business terms and conditions, except in cases referred to in Article 42, paragraph 9 of this Act. The mandatory contract duration may not exceed two years.

(5) If the operator of publicly available telephone services intends to discontinue the provision of its services, it must inform the subscribers of these services in writing or electronically thereof at least 30 days in advance.

### *General business terms and conditions and tariffs*

#### *Article 42*

(1) Operators of public communications services must prepare and publish the general business terms and conditions and tariffs in at least one daily newspaper sold in the entire territory of the Republic of Croatia and on its website.

(2) General business terms and conditions referred to in paragraph 1 of this Article shall define in particular:

- name and seat of the operator;

- service provided, level of quality of these services and deadline for the establishment of connection;
  - type of maintenance services offered;
  - content of the offer for the provision of public communications services;
  - manner and conditions for the establishment, duration, transfer, renewal and termination of subscription;
  - provisions on fees and recovery of funds applied in cases when the agreed levels of quality of service have not been met;
  - provisions on the manner of initiating subscriber complaints resolution procedures, including dispute resolution procedures referred to in Articles 50 and 51 of this Act;
  - provisions on procedures in case of non-payment for the provided services;
  - information about the possibility to dial the single European emergency call number "112" and other emergency call numbers free of charge.
- (3) The tariffs referred to in paragraph 1 of this Article shall in particular contain the following:
- prices and a detailed description of prices in relation to the type, time and duration of calls or the amount of transferred data;
  - information about the available service packages and maintenance costs.
- (4) Tariffs referred to in paragraph 1 of this Article may contain the following:
- a one-off connection fee;
  - a fee corresponding to a monthly price for access to the electronic communications network;
  - discounts.
- (5) Operators of public communications services must submit their general business terms and conditions and tariffs referred to in paragraph 1 of this Article to the Agency for inspection at the latest eight days before their publication.
- (6) The Agency may, before or after the publication of the general business terms and conditions referred to in paragraph 1 of this Article, adopt a decision amending or repealing certain provisions of those general terms and conditions if it establishes that they are contrary to the provisions this Act or a special law regulating consumer protection.
- (7) Operators of public communications services may apply the amendments to the general business terms and conditions and tariffs referred to in paragraph 1 of this Article to the existing subscribers at the earliest 30 days following their publication. Amendments that exclusively benefit subscribers may be applied without delay.
- (8) In the case referred to in paragraph 7 of this Article the operator of public communications services must inform the subscriber in writing or electronically about the proposed amendments and his right to terminate the contract, in accordance with the general business terms and conditions referred to in paragraph 1 of this Article.
- (9) In case of amendment of general terms and conditions and tariffs referred to in paragraph 1 of this Article, which are less favourable to subscribers in relation to the agreed general terms and conditions and tariffs, the subscriber shall be entitled to terminate the subscription without compensation within the time limit referred to in paragraph 7 of this Article.
- (10) The Agency shall publish at its website all information concerning tariffs of all operators of public communications services and allow consumers to independently estimate the costs of those tariffs.

## ***Special obligations of operators of public communications services***

### ***Article 43***

- (1) Operators of public communications services must, as far as technically feasible, ensure equal availability of their services to disabled persons.
- (2) Operators of public communications services must ensure to end-users of its services appropriate protection against abuse and fraud in the public communications networks and notify them about such protection in writing before initiating the provision of public communications services.
- (3) End-users of public communications services shall not be obliged to cover expenses incurred to end-users or operators of public communications services by a third person if operators did not satisfy the obligations referred to in paragraph 2 of this Article.

### ***Itemised billing***

#### ***Article 44***

- (1) Operators of public communications services must automatically record data on provided services for their subscribers for the purpose of calculation of costs and must allow their subscribers verification and control of data on the charges for the provided services and an itemised bill for provided services.
- (2) The itemised bill referred to in paragraph 1 of this Article must contain all the necessary data that allow to subscribers verification and control of costs incurred by the provided services. These data shall not comprise data about calls to emergency numbers or data incompatible with provisions of special data protection regulations.
- (3) The Agency may adopt a decision specifying additional data, in addition to data referred to in paragraph 2 of this Article, which must be included in the itemised bill referred to in paragraph 1 of this Article free of charge.
- (4) The itemised bill referred to in paragraph 1 of this Article shall be delivered, free of charge, to all subscribers on the basis of a request submitted to the operator.
- (5) The itemised bill referred to in paragraph 1 of this Article must protect the right to privacy of subscribers in accordance with special data protection regulations.

### ***Barring of outgoing calls***

#### ***Article 45***

- (1) Operators of public telecommunications services must allow their subscribers, without delay and upon their request and free of charge, the barring of outgoing calls when monthly costs of these calls exceed a certain predetermined amount, in accordance with the Agency's decision.
- (2) Operators of public telecommunications services must allow subscribers, without delay and upon their request, a simple and free of charge barring of certain types of outgoing calls or calls to certain types of numbers or groups of numbers.

## *Automatic call forwarding*

### *Article 46*

Operators of public communications services must allow to each subscriber a simple and free of charge barring of automatic call forwarding towards a subscriber's terminal device made by a third party.

## *Subscribers' directory*

### *Article 47*

(1) Operators of publicly available telephone services must regularly update the public directory of all subscribers, except for those subscribers who have expressly prohibited in writing the entry of their data into the directory. The public directory must be available to all users in an adequate electronic form.

(2) All subscribers of publicly available telephone services shall be entitled to be entered in the public directory.

(3) An operator of publicly available telephone services must, without compensation, inform subscribers before the entry of their personal data into the directory, about the purpose of the electronic and printed edition of the directory or a directory that is available to the public via the directory enquiry service, and about all other possibilities of use of their personal data based on the browsing through the electronic edition of the directory.

(4) An operator of publicly available telephone services must inform subscribers in advance, free of charge, of the intention to enter their personal data in the public directory in electronic or printed form, about the right to enter personal data in a public directory free of charge, depending on their own choice, taking into account the necessary number of data that the provider of the directory services determined in order realise the purpose of the directory, and about the right to free verifications, amendments, or deletion of personal data from the public directory. Subscribers may request, free of charge, that their personal data do not be entered in the public directory.

(5) The provider of the directory services must request a subscriber's consent for any purpose other than browsing through personal data on the basis of subscribers' name and surname or company name, and, where necessary, the smallest possible number of other parameters.

(6) Provisions referred to in paragraphs 3 and 4 of this Article shall apply to subscribers who are natural persons. Legal entities may not ask for the restriction of the entry of data necessary for their identification and communication in the public directory.

(7) The manner and conditions for the establishment and publication of a printed and electronic edition of at least one comprehensive public directory and at least one public directory enquiry service of subscribers of all publicly available telephone services in the Republic of Croatia referred to in Article 35, paragraph 2, item 2 of this Act shall be prescribed in more detail by an ordinance adopted by the Agency's Council.

(8) Operators of publicly available telephone services must ensure access to all legal and natural persons providing the services of information about subscribers' numbers.

(9) Operators of publicly available telephone services shall be obliged to, in order to make possible the accessibility of data from public directories, satisfy all reasonable requests of users, persons referred to in paragraph 8 of this Article and persons providing the services of publishing public directories,

concerning access to information about subscribers in an appropriate manner in accordance with the principles of independence, non-discrimination and cost-orientation.

(10) Persons referred to in paragraph 8 of this Article must take into account the rights of subscribers referred to in paragraphs 3, 4 and 5 of this Article.

(11) The provisions of Articles 3, 4, 5, and 6 of this Article shall not apply to public directories created and placed on the market in electronic or printed form before the entry into force of this Act.

(12) Where personal data of subscribers have been entered in the public directory before the entry into force of this Act, personal data of those subscribers may remain in the directory in its electronic or printed form, including procedures for reverse browsing, unless otherwise requested by the subscribers on the basis of submitted information in accordance with the provisions of paragraphs 3 and 4 of this Article.

### ***Procedure in case of non-payment of bills***

#### ***Article 48***

(1) If a subscriber has not paid the bill for the provided services, the operator of public communications service shall be entitled to temporarily disconnect the subscriber terminal equipment from the electronic communications network in accordance with the general business terms and conditions.

(2) The operator of public telecommunications services may temporarily disconnect subscriber terminal equipment from the electronic communications network in case of non-payment of the total amount owed by the subscriber within 30 days from the delivery of a written dunning letter indicating temporary disconnection in case of non-payment and if the subscriber failed to file a complaint referred to in Article 50 of this Act.

(3) Temporary disconnection of the subscriber terminal equipment referred to in paragraph 2 of this Article must be, as far as it is technically feasible, limited only to those services for which the bills have not been paid.

(4) Prior to complete disconnection of subscriber terminal equipment, a subscriber shall be entitled to receive incoming calls for at least 30 days. If the subscriber does not pay the bill even after the expiry of 30 days from the date of temporary interruption of service, the operator shall be entitled to permanently disconnect the subscriber terminal equipment from the electronic communications network and terminate the subscription in accordance with the general business terms and conditions.

### ***Value added services***

#### ***Article 49***

(1) Operators providing value added services must, when advertising their services, give a description of the service and its price in an appropriate and easily intelligible manner. Deception of users by giving false or misleading information or by concealing important information, such as the price of services or age-related limitations of use of service, shall be prohibited.

(2) Every call made to the value added service shall represent a special contract between the user and the operator of value added services in accordance with the provisions of the general regulations concerning civil obligations. When providing their services operators providing value added services must abide by provisions of special regulations regulating distance contracts.

(3) Operators of value added services must ensure that the price and the start of the charging period are announced at the beginning of every call towards a value added service, and that the termination of the call after this announcement is possible, within a reasonable period of time, and before the charging period starts.

(4) If a subscriber files a complaint to the operator of publicly available telephone services concerning the amount he is charged with for the provided value added service or a complaint concerning the quality of the provided service in accordance with Article 50 of this Act, the operator of publicly available telephone services shall forward the subscriber's complaint, after verification, to the operator providing value added services within fifteen days from the receipt of the complaint.

(5) In the case referred to in paragraph 4, item 2 of this Act, the operator of publicly available telephone services must deliver to the operator providing value added services the name and surname and address, or the company name and seat of the subscriber and verified data about the disputed bill or service.

(6) The operator providing value added services shall deal with the complaint referred to in paragraph 4 of this Article in accordance with Article 50 of this Act.

(7) The application of obligations referred to in paragraphs 4 and 5 of this Article shall be regulated in more detail by a contract concluded between the operator of publicly available telephone services and the operator providing value added services. The main provisions of this contract shall make a constituent part of general business terms and conditions of the operator of publicly available telephone services.

(8) Users shall access value added services via special numbers allocated in accordance with the Numbering Plan.

(9) Computer software used to connect subscriber computers to the Internet via the value added service (hereinafter: Internet dialler software) may use only special dialling codes established by the Numbering Plan. It shall be prohibited to use any other dialling codes for the purpose of Internet dialler software in the Republic of Croatia.

(10) Operators of publicly available telephone services shall make possible the switching of calls to Internet dialler software in accordance with paragraph 9 of this Article after having obtained prior consent from the subscriber.

(11) The manner and conditions for the provision of value added services, including measures for the prevention of deceitful and unlawful actions in relation to the provision of value added services and for the suppression of fraud caused by Internet dialler shall be prescribed in more detail by the ordinance referred to in Article 34 of this Act.

### ***Complaints resolution procedures***

#### ***Article 50***

(1) A subscriber may complain to the operator of public communications services about the amount charged for the provided service, and about the quality of the provided service.

(2) The complaint referred to in paragraph 1 of this Article shall be submitted in writing by the subscriber to the public communications services operator who conducts complaints procedures. The complaint must contain facts and evidence on which it is based.

(3) The complaint referred to in paragraph 1 of this Article may be submitted within 30 days following the due date of the bill for the provided service if the complaint refers to the amount charged for the

provided service or within 30 days from the provided service if the complaint refers to the quality of the provided service.

(4) In case of the complaint referred to in paragraph 1 of this Article, the operator of public communications services must verify the amount charged for the provided services or the quality of the provided services, and, on the basis of the verification, confirm the charged amount or adjust it to the correct amount.

(5) The subscriber who submitted the complaint referred to in paragraph 1 of this Article for the amount charged for the provided service shall pay, until the resolution of the complaint, the undisputed part of the bill or the average amount he or she was charged in the period of a maximum of three months before the period in question.

(6) The operator of public communications services must not terminate the provision of the service or disconnect the subscriber terminal equipment from the electronic communications network pursuant to Article 48 of this Act to subscriber referred to in paragraph 5 of this Article, who regularly pays all his subsequent undisputed bills for the provided services, until the termination of court procedure or a dispute resolution procedure before the Agency referred to in Article 51 of this Act or any other out-of-court proceedings, except in cases when the subscription was terminated by the subscriber.

(7) If the operator of public communications services has already interrupted the provision of service to the subscriber, that is, disconnected the subscriber terminal equipment from the electronic communications network before having received from the subscriber, competent body or entity a notification about the dispute resolution procedure in accordance with Article 51 of this Act or about any initiated out-of court or court proceedings, it shall immediately and free of charge reconnect the subscriber and continue with the provision of the service (reconnection) until the termination of court procedure or a dispute resolution procedure before the Agency referred to in Article 51 of this Act or any other out-of-court proceedings, except in cases when the subscriber terminated the subscription.

(8) The obligation of the operator of public communications services referred to in paragraph 7 of this Article shall exist even in the case when the operator initiates a debt collection procedure against the subscriber.

(9) The subscriber who submitted a complaint referred to in paragraph 1 of this Article concerning the quality of the provided service may ask for the compensation of damage from the operator of public communications service if it is established that the quality of the provided service is lower than the level of quality of service prescribed by the subscription contract concluded with the operator of public communication services, general business conditions of the operator of public communication service or the ordinance referred to in Article 34 of this Act.

(10) The operator of public communications services shall not be obliged to compensate the damage referred to in paragraph 9 of this Article if the level of quality of the provided service is lower than the prescribed or agreed level of quality due to objective causes that could not be predicted, avoided or removed (force majeure).

(11) The operator of public communications services must deliver a written answer to the subscriber concerning the foundation of the submitted complaint referred to in paragraph 1 of this Article within the maximum of fifteen days from the date of submission of the complaint.

(12) The subscriber shall be entitled to file a complaint against the operator's written answer referred to in paragraph 11 to the Consumer Complaints Commission with the operator of public communications services within 30 days from the delivery of the written answer. The Consumer Complaints Commission must deliver a written answer to the subscriber within 30 days from the day of receipt of the subscriber's complaint.



## ***Dispute resolution between subscribers and operators***

### ***Article 51***

(1) In case of a dispute between a subscriber and an operator of public communications services concerning the debt referred to in Article 50, paragraph 4, or concerning the amount of the damages referred to in Article 50, paragraph 9 of this Article, the subscriber may, before bringing charges before the competent court or initiating any other out-of court proceedings, submit a motion for the resolution of the dispute to the Agency within the maximum of 30 days following the delivery of the written answer from the Consumer Complaints Commission referred to in Article 50, paragraph 12 of this Act.

(2) The Agency shall resolve disputes referred to in paragraph 1 of this Article in a transparent, objective and non-discriminating manner on the basis of an opinion of an internal organisation unit for the protection of users' rights in accordance with the provisions of this Act and special regulations.

(3) The internal organisational unit of the Agency referred to in paragraph 2 of this Article shall function as an advisory body established pursuant to a special law regulating consumer protection. The functioning this unit shall be prescribed in more detail by an ordinance adopted by the Agency Council and its organisation shall be regulated by the Agency's internal rules.

(4) The operator of public communications services must participate in dispute resolution procedures referred to in paragraph 1 of this Article, fully cooperate with the Agency for the purpose of dispute resolution, and deliver to the Agency all the necessary data and documents.

(5) The Agency must adopt a final decision about the resolution of the dispute referred to in paragraph 1 of this Article as soon as possible and at the latest within four months from the date of submission of the motion for resolution of the dispute. The time limit for the resolution of the dispute may be extended only exceptionally.

(6) The decision of the Agency about dispute resolution referred to in paragraph 1 of this Article must be well-argued, and delivered to all parties in the dispute.

(7) The Agency shall regularly publish information about disputes referred to in paragraph 1 of this Article in accordance with the provisions of Article 14 of this Act and the ordinance referred to in paragraph 3 of this Article taking into account personal data protection and confidentiality of business information.

(8) The report about the resolution of disputes referred to in paragraph 1 of this Article in procedures before the Agency shall make a constituent part of the Agency's annual activity report.

## **VIII. COMPETITION**

### ***Market analysis procedure***

#### ***Article 52***

(1) When imposing regulatory obligations on operators with significant market power, the Agency shall in particular perform the following:

- identify relevant markets susceptible to *ex ante* regulation in accordance with Article 53 of this Act;
- conduct market analysis consisting of the definition of relevant markets and of an assessment as to the existence of one or more operators with significant market power in order to assess

- whether the relevant market is effectively competitive in accordance with Article 54 of this Act;
- impose regulatory obligations on the operators with significant market power if the analysed relevant market is not effectively competitive pursuant to Article 56, paragraph 2 of this Act;
  - withdraw all regulatory obligations from the operators with significant market power if the analysed relevant market is effectively competitive in accordance with Article 56, paragraph 1 of this Act.

(2) The Agency shall carry out the procedure referred to in paragraph 1 of this Article on a regular basis, at least once in every three years.

(3) An operator may request from the Agency to carry out the procedures referred to in paragraph 1 of this Article if it makes probable the existence of changes which exert a significant influence on regulatory obligations on the relevant market.

(4) The Agency shall, when carrying out the procedures referred to in paragraph 1 of this Article, take special account of the application of the relevant Commission's recommendation on relevant markets susceptible to *ex ante* regulation and of the relevant Commission guidelines on market analysis and determination of significant market power.

(5) During market analysis the Agency shall, where necessary, cooperate with the body competent for competition protection.

### ***Identification of markets susceptible to ex ante regulation***

#### ***Article 53***

(1) The Agency shall adopt a decision identifying relevant markets susceptible to *ex ante* regulation taking into account the relevant Commission recommendation referred to in Article 52, paragraph 4 of this Act.

(2) In addition to relevant markets specified paragraph 1 of this Act, the Agency may adopt a decision identifying other markets susceptible to *ex ante* regulation, if all following three criteria have been met at the same time in these markets:

1. the presence of high and non-transitory market entry barriers of structural, legal or regulatory nature;
2. market structure which does not aim towards the development of effective competition within a certain time framework;
3. the application of relevant competition legislation alone does not make possible the elimination of market entry failures concerned.

(3) The Agency may adopt a decision defining operators who are obliged to deliver all the necessary data for the identification of relevant markets.

(4) The Agency shall apply procedures referred to in Article 52, paragraph 1 of this Act to those relevant markets which simultaneously satisfy all three criteria referred to in paragraph 2 of this Article.

(5) The Agency shall adopt a decision withdrawing all regulatory obligations previously imposed on operators with significant market power and it shall not impose new regulatory obligations, in accordance with Article 56, paragraph 1 of this Act, should it establish that a certain market is not susceptible *ex ante* regulation.

## ***Market definition and analysis***

### ***Article 54***

- (1) The Agency shall conduct market definition and analysis in the relevant markets established in the relevant Commission recommendation referred to in Article 52, paragraph 4 of this Act and in every relevant market identified pursuant to Article 53 of this Act, taking in particular into account the Commission guideline referred to in Article 52, paragraph 4 of this Act.
- (2) The Agency shall adopt a decision specifying operators who are obliged to submit all the necessary data for market definition and analysis.
- (3) For the purpose of defining a relevant market, the Agency shall establish the dimension of products and the geographical dimension of the market, taking in particular into account the relevant Commission guidelines for market analysis and for the assessment of significant market power and the relevant *acquis communautaire* in the competition sector.
- (4) The Agency shall, in accordance with the criteria referred to in Article 55 of this Act, assess whether operators with significant market power exist in a certain relevant market and whether this market is effectively competitive, and adopt an adequate decision referred to in Article 56 of this Act.
- (5) Before adopting the decision referred to in Article 56 of this Act, the Agency may ask for the opinion of the body competent for competition protection.
- (6) In addition to market analysis in procedures for the imposition of regulatory obligations referred to in Article 52, paragraph 1 of this Act, the Agency may carry out other market analyses aimed at the achievement and promotion of regulatory principles and objectives referred to in Article 5 of this Act.
- (7) Operators must deliver to the Agency all data necessary for carrying out other market analyses referred to in paragraph 6 of this Act, pursuant to the provisions of Article 15 of this Act.

## ***Operators with significant market power***

### ***Article 55***

- (1) An operator shall be deemed to have significant market power if, either individually or jointly with other operators, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, users and consumers.
- (2) For the purpose of assessing significant market power of an operator, the Agency shall calculate the market share in a certain relevant market and interpret it in accordance with the Commission guideline referred to in Article 52, paragraph 4 of this Act and the applicable *acquis communautaire* in the field of competition.
- (3) Criteria applied to the assessment of individual significant market power of an operator may, in particular, include the following:
  - market share of the operator in the relevant market,
  - supervision of infrastructure where there are high barriers to the development of infrastructural competition,
  - technological advantage or superiority,
  - lack of countervailing buying power,
  - easy or privileged access to capital markets and money sources,
  - diversity of products or services (for example, connected products or services),
  - economies of scale,

- economies of scope,
- level of vertical integration,
- highly developed distribution and sales network,
- lack of potential competition,
- obstacles to growth.

(4) Criteria applied in the assessment of joint significant market power of two or more operators may, in particular, comprise the following:

- mature market,
- stagnant or moderate growth on the demand side,
- low elasticity of demand,
- homogeneous product,
- similar cost structures,
- similar market shares,
- lack of technical innovation, mature technology,
- absence of excess capacity,
- high barriers to entry,
- lack of countervailing buying power,
- lack of potential competition,
- various kinds of informal or other links between the undertakings concerned,
- retaliatory mechanisms,
- lack or reduced scope for price competition.

(5) Where one of the operators has significant market power in a specific relevant market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the operator.

### ***Regulatory obligations***

#### ***Article 56***

(1) Where the Agency establishes in the market definition and analysis procedure referred to in Article 54 of this Act that the relevant market is effectively competitive, it may not impose any regulatory obligation referred to in Articles 58 to 65 of this Act. When previously imposed regulatory obligations exist, the Agency shall adopt a decision withdrawing these obligations in the relevant market.

(2) If the Agency establishes in the market definition and market analysis procedures referred to in Article 54 of this Act that competition on the relevant market is insufficiently effective, it shall adopt a decision defining operators with significant market power in that market in accordance with Article 55 of this Act and impose, maintain or amend certain regulatory obligations referred to in Articles 58 to 65 of this Act.. Every operator with significant market power must be imposed at least one regulatory obligation by the Agency.

(3) Regulatory obligations imposed in accordance with this Article must be based on the nature of the identified market problem, and must be proportionate and justified considering the regulatory principles and objectives referred to in Article 5 of this Act. When deciding on the regulatory obligations the Agency shall take into account the operator’s investments, in particular investments into emerging markets and the possibility of reasonable rate of return of invested capital while paying attention to the included risk.

(4) A public consultation and a consolidation procedure referred to in Articles 22 and 23 of this Act will be held before adopting decisions referred to in paragraphs 1 and 2 of this Article.

(5) After the adoption, the Agency shall deliver decisions referred to in paragraphs 1 and 2 of this Article to the Commission in accordance with the provisions of Article 23 of this Act.

### ***Trans-national markets***

#### ***Article 57***

In case of trans-national markets defined by a Commission decision in accordance with the relevant European Union Directive, the Agency and competent national regulatory authorities of Member States of the European Union shall conduct a joint market analysis taking the utmost account of the relevant Commission guidelines, and jointly decide on the imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in Articles 58 to 65 of this Act.

### ***Obligation of transparency***

#### ***Article 58***

(1) The Agency may, in accordance with the provisions of Article 56 of this Act, impose on operators the obligation for transparency in relation to interconnection and/or access requiring that certain information are made publicly accessible, such as:

- accounting information,
- technical specifications,
- network characteristics,
- terms and conditions for supply and use,
- prices.

(2) The Agency may request from the operator, where this operator was imposed the obligation of non-discrimination, to publish a reference offer that will help other operators avoid additional costs which are not necessary for the provision of the service in question. The reference offer must be broken down into components according to market needs, and it must include the associated time limits, terms and conditions and prices of services.

(3) The Agency shall carry out the amendment procedure of reference offers referred to in paragraph 2 of this Article once a year for the purpose of implementing regulatory obligations defined in accordance with the provisions of this Act. For the purpose of implementing regulatory principles and objectives referred to in Article 5 of this Act, the amendment procedure of reference offers referred to in paragraph 2 of this Act may exceptionally be carried out several times in one year.

(4) The obligatory content of the reference offer, the level of detail required and the manner of publication of the reference offer shall be prescribed by an ordinance adopted by the Agency's Council.

(5) The ordinance referred to in paragraph 4 of this Article shall prescribe the content, the level of detail required and the manner of publication of the reference offer for unbundled access to local loop for operators that have been imposed the obligation of unbundled access to local loop pursuant to Article 61 of this Act, whereby this reference offer must, in particular, contain data defined in the relevant European Union Access Directive.

### ***Obligation of non-discrimination***

#### ***Article 59***

(1) The Agency's Council may, in accordance with provisions of Article 56 of this Act, impose on operators the obligation of non-discrimination in relation to interconnection and/or access.

(2) An operator who has been imposed the obligation of non-discrimination shall in particular ensure identical conditions under identical circumstances to other operators providing identical services, and must provide services and information to other operators under the same conditions and of the same quality as if they were providing the service for their own needs and for the needs of its subsidiaries.

### ***Obligation of accounting separation***

#### ***Article 60***

(1) The Agency may, pursuant to the provisions of Article 56 of this Act, impose on operators the obligation of accounting separation of certain activities related to interconnection and/or network access.

(2) In particular, the Agency may request from a vertically integrated operator to render visible its wholesale prices and internal price transfers in order to, among other things, ensure the fulfilment of the requirement for non-discrimination under Article 59 of this Act and, where necessary, to prevent unfair cross-subsidy.

(3) The format and accounting methodology to be used may be specified in more detail in the Agency's decision referred to in Article 56 of this Act.

(4) The Agency may request the possibility of inspection of accounting records, including data on revenue received from third parties, for the purpose of verification of compliance with the obligations of transparency and non-discrimination and it may publish these data if the publication of such data would contribute to an open and competitive market, while taking into account the protection of data secrecy pursuant to Article 15 of this Act.

### ***Obligation of access to, and use of, special network facilities***

#### ***Article 61***

(1) The Agency may, in accordance with provisions of Article 56 of this Act, impose obligations on operators with significant market power to meet reasonable requirements for access to and use of specific network elements and the associated infrastructure and associated facilities.

(2) The obligation referred to in paragraph 1 of this Article may be imposed on the operators by the Agency in particular where it considers that denial of access or any other unreasonable terms and conditions or restrictions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-users' interest.

(3) In relation to imposing the obligation referred to in paragraph 1 of this Article, the Agency may, in particular, require from the operator the following:

- to give third parties access to specified network elements and/or equipment, including unbundled access to the local loop;
- to negotiate in good faith with operators requesting access;
- not to withdraw access to facilities already granted;
- to provide specified services on a wholesale basis for resale by third parties;
- to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- to provide co-location or other forms of shared use of electronic communications infrastructure and associated facilities, including, in particular, shared use of ducts, antennae or mast sharing, shared use of buildings and other premises and their entrances;
- to provide special services necessary for ensuring interaction of services for the end-users, including the facilities for intelligent networks services or roaming services in mobile networks;

- to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
- to interconnect networks or network facilities.

(4) In relation to obligations referred to in paragraph 3 of this Article, the Agency may specify additional requirements concerning the fulfilment of the principles of fairness, reasonableness and timeliness.

(5) When considering whether to impose the obligations referred in paragraph 3 of this Article, and in particular when assessing whether such obligations would be proportionate to the regulatory principles and the objectives set out in Article 5 of this Act, the Agency shall take account in particular of the following factors:

- the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved;
- the feasibility of providing the access proposed, in relation to the capacity available;
- the initial investment by the facility owner, bearing in mind the risks involved in making the investment;
- the need to safeguard competition in the long term;
- where appropriate, any relevant intellectual property rights;
- the provision of pan-European services.

### *Price control and cost accounting obligations*

#### *Article 62*

(1) In situations where a market analysis indicates that a lack of effective competition means that a certain operator might sustain prices at an excessively high level, or apply a price squeeze to the detriment of end-users, the Agency may, in accordance with the provisions of Article 56 of this Act, impose on operators obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access.

(2) The Agency shall ensure that any cost recovery mechanism or pricing methodology that is mandated to operators serves to promote efficiency and sustainable competition and maximise consumer benefits, while taking into account the prices available on comparable competitive markets.

(3) Where an operator has an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on investment shall lie with the operator concerned. For the purpose of calculating the cost of efficient provision of services, the Agency may use cost accounting methods independent of those used by the operator, or the reference value method, and it may require the operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

(4) Where the Agency has mandated the implementation of a cost accounting system in order to support price controls, it shall ensure that a description of the cost accounting system is made publicly available in accordance with the provisions of Article 14 of this Act, showing, in particular, the main categories under which costs are grouped and the rules used for the allocation of costs.

(5) Compliance with the cost accounting system shall be verified by an authorised independent auditor once a year. A statement concerning compliance shall be published by the Agency in accordance with the provisions of Article 14 of this Act.

## *Regulatory control on retail services*

### *Article 63*

(1) Where, as a result of market analysis in accordance with Articles 52 to 57 of this Act, the Agency determines that a given retail market is not effectively competitive and that regulatory obligations referred to in Articles 58 to 62 and Article 65 of this Act would not result in the achievement of the regulatory principles and objectives referred to in Article 5 of this Act, the Agency shall impose appropriate regulatory obligations in accordance with the provisions of this Act on operators identified as having significant market power on a given retail market.

(2) In the case referred to in paragraph 1 of this Article, the Agency shall, without delay, initiate the analysis of causes of the identified situation at a retail market and undertake all the necessary measures to remove these identified market problems.

(3) Regulatory obligations of operators referred to in paragraph 1 of this Article may, in particular, include the prohibition to charge excessive prices, inhibit market entry or restrict competition by setting predatory prices, the prohibition to show undue preference to specific end-users or to unreasonably bundle certain types of services.

(4) The Agency may, in order to promote effective competition and protect interests of end-users, apply the following measures to operators referred to in paragraph 1 of this Article:

- introduce retail price caps,
- control of individual tariffs,
- cost-orientation of prices,
- setting of prices according to prices on comparable markets.

(5) Operators referred to in paragraph 1 of this Article must submit retail prices for their services to the Agency at least 30 days before their publication, and the Agency may, before or after the publication of these prices, adopt a decision amending or revoking retail prices of services where it establishes that they are contrary to regulatory obligations or criteria referred to in this Article or to the provisions of a special act regulating consumer protection.

(6) The Agency may adopt a decision defining the principles of the pricing system referred to in Article 42 of this Act for operators referred to in paragraph 1 of this Article.

(7) Upon Commission's request, the Agency will deliver data on regulatory obligations of operators imposed in accordance with this Article, and, where necessary, data on cost accounting systems used by operators referred to in paragraph 1 of this Article.

(8) The Agency shall ensure that, in case of operators subject to retail price regulation in accordance with this Article, the necessary and appropriate cost accounting systems are implemented, whereby it may adopt a decision specifying the format and accounting methodology to be used.

(9) The compliance of the operator with the established cost accounting system shall be verified by an authorised independent auditor once a year, and the auditor's report shall be published by the Agency in accordance with the provisions of Article 14 of this Act.

(10) The Agency may, only in exceptional cases, regulate retail prices of services in relevant markets where competition is effective, when the following must be ensured:

- availability of special pricing systems adjusted to end-users with special social needs referred to in Article 35, paragraph 2, item 6 of this Act;
- the possibility for end-users of universal services referred to in Article 35, paragraph 2 of this Act not to pay additional costs that are not necessary for the provision of these services.



## ***Minimum set of leased lines***

### ***Article 64***

(1) Where, as a result of the market analysis carried out in accordance with Articles 52 to 57 of this Act, the Agency determines that the relevant market comprising a part or all of the minimum set of leased lines is not effectively competitive, it shall identify operators with significant market power in on that relevant market, in the entire territory of the Republic of Croatia or in a certain part of this area in accordance with Article 55 of this Act.

(2) The Agency shall impose obligations on operators referred to in paragraph 1 of this Article regarding the provision of the minimum set of leased lines in accordance with the relevant standards referred to in Article 24 of this Act, and the conditions for the provision of leased lines in accordance with the provisions of paragraphs 3 and 4 of this Article.

(3) The Agency shall, in addition to the obligation in accordance with paragraph 2 of this Article, impose on operators referred to in paragraph 1 of this Article obligations of transparency and non-discrimination, and, where appropriate, obligations of price control and cost accounting in accordance with Articles 58, 59 and 62 of this Act.

(4) The Agency shall publish, in accordance with provisions of Article 14 of this Act, detailed information about cost accounting systems applied by operators referred to in paragraph 1 of this Article.

(5) The operator referred to in paragraph 1 of this Article under the obligation of transparency must publish, in a publicly accessible form, the following information:

- technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point;
- tariffs, including the initial connection charges, the regular rental charges and other charges. Where tariffs are differentiated, this must be indicated;
- supply conditions, including, in particular, information concerning the ordering procedure, the typical delivery period, the typical repair time and refund procedure.

(6) Where, as a result of the market analysis referred to in paragraph 1 of this Article, the Agency determines that the relevant market for the provision leased lines is effectively competitive, it shall adopt a decision withdrawing all regulatory obligations to operators referred to in paragraph 1 of this Article in accordance with Article 56, paragraph 1 of this Act.

## ***Carrier selection and pre-selection***

### ***Article 65***

(1) Where, as a result of the market analysis carried out in accordance with Articles 52 to 57 of this Act, the Agency determines that the operator has significant market power for the provision of connection to the fixed public telephone network and to the use of that network at a fixed location or on an adequate wholesale market, the operator shall be obliged to enable its subscribers to access the services of any interconnected provider of publicly available telephone services, in the following manners:

- on a call-by-call basis by dialling a carrier selection code;
- by means of pre-selection, with a facility to override any pre-selected choice on a call-by-call basis by dialling a carrier selection code.

(2) The Agency shall assess the requirements of users for the provision of services of carrier selection and pre-selection in other electronic communications networks or in some other manner on the basis

of market analysis procedures referred to in paragraph 1 of this Article, and it shall define them within the framework of the obligation of access to and use of special network facilities, in accordance with Article 61 of this Act.

(3) The Agency shall ensure that pricing for access and interconnection for the services of carrier selection and pre-selection is cost oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities.

### ***Access and interconnection***

#### ***Article 66***

(1) Operators may negotiate or conclude contracts about technical and commercial solutions for access and/or interconnection at the national and international level.

(2) An operator requesting or granting access and/or interconnection shall not be obliged to notify the Agency in advance, in accordance with Article 32 of this Act, unless it provides electronic communications networks and services in the Republic of Croatia.

(3) Operators of public communications networks shall have a right and, when requested by other operators of public communications networks, an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services.

(4) Operators with significant market power must offer access and interconnection to other operators in accordance with terms and conditions arising from regulatory obligations imposed by the Agency pursuant to the provisions of this Act.

(5) Operators which acquired information from another operator before, during or after the process of negotiating access or interconnection may use that information solely for the purpose for which it was supplied while respecting the confidentiality of information in accordance with Article 15 of this Act. The received information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage.

(6) In disputes concerning access and interconnection, the Agency shall, *ex officio* or upon request of any of the parties, and in accordance with provisions of Articles 20 and 21 of this Act, adopt a decision imposing obligations on operators that control access to its end-users in order to ensure end-to-end-connectivity. This, in particular, includes the obligation to interconnect networks where this is not already the case and the imposition of technical or operational conditions to ensure normal operation of the network, in accordance with the relevant standards referred to in Article 24 of this Act. Obligations and terms and conditions imposed shall be objective, transparent, proportionate and non-discriminatory.

### ***Accounting separation and financial reports***

#### ***Article 67***

(1) Operators providing public communications networks or publicly available electronic communications services, and have special or exclusive rights for the provision of services in other sectors in the Republic of Croatia or in another Member State of the European Union shall be obliged to fulfil one of the following requirements:

1. keep separate accounts for the activities associated with the provision of electronic communications networks or services, to the extent that would be required if these activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to

- their activities associated with the provision of electronic communications networks or services including an itemised breakdown of fixed asset and structural costs, or
2. have structural separation for the activities associated with the provision of electronic communications networks or services.

(2) Requirements referred to in paragraph 1 of this Article shall not apply to operators whose total annual revenue earned in previous year from the provision of electronic communications networks or services in the Republic of Croatia and in Member States of the European Union is less than HRK 350 million, whereby revenue earned in Member States of the European Union is calculated according to the mean exchange rate of the Croatian National Bank on 31 December of the previous year.

(3) Operators providing publicly available electronic communications services or making available public communications networks, which are, pursuant to the provisions of the general act regulating companies, not subject to the requirements under this paragraph, and do not satisfy the small and medium-sized enterprise criteria of Community law accounting rules shall draw up and publish their financial statements, in an appropriate and publicly accessible manner, and publish the annual audit of their business operations.

(4) The audit referred to in paragraph 3 of this Article shall be carried out by an independent auditor in accordance with special audit regulations.

(5) Requirements referred to in paragraph 3 of this Article shall apply to operators obliged to keep separate accounts in accordance with paragraph 1, item 1 of this Article.

(6) The Agency may, *ex officio* or upon the operator's request, start a verification procedure, which includes audit in accordance with paragraph 4 of this Article, if there is reasonable doubt that it was acted contrary to the provisions laid down in this Article or Article 60 of this Act, and adopt the appropriate decision on the basis of the conducted procedure and the established facts.

***Assessment of merger, consolidation or any other form  
of joint or coordinated action of operators***

***Article 68***

(1) Operators must notify in writing the authority competent for competition protection of any intention to merge or consolidate operators, of gaining control or prevailing influence in a company of an operator, of joint investment or venture in the electronic communications sector, and of the intention to make any other joint or coordinated action of operators considered to be a merger and subject to notification within the meaning of competition protection legislation.

(2) Operators with significant market power and operators who have been granted licenses to use radio frequencies referred to in paragraph 89 and 90 of this Act at the level of the Republic of Croatia, and which are not subject to assessment of merger referred to in paragraph 1 of this Article, must notify to the Agency in writing any intention of merging or consolidating operators and the intention of any other type of joint or coordinated action of operators, regardless of the requirements prescribed by competition protection legislation.

(3) In the procedure for the assessment of merger referred to in paragraph 1 of this Article, the authority competent for competition protection shall ask for an expert opinion of the Agency on possible effects of this merger on the relevant market.

(4) The Agency shall deliver the expert opinion referred to in paragraph 3 of this Article to the authority competent for competition protection within fifteen days from the receipt of the request for the delivery of this opinion. If the Agency does not deliver the requested opinion after the expiry of

this time limit, it shall be regarded that there are no objections to the implementation of the notified merger referred to in paragraph 1 of this Article.

(5) The authority competent for competition protection shall assess the notification of intention of merger referred to in paragraph 1 of this Article and adopt a decision in accordance with the provisions of special regulations on competition protection.

(6) The Agency shall assess the notification of intention referred to in paragraph 2 of this Article and its effects on the realisation of regulatory principles and objectives referred to in Article 5 of this Act and adopt the relevant decision on the basis of the procedure and established facts within 30 days from the delivery of the notification of intention referred to in paragraph 2 of this Article.

## **IX. ADDRESSING AND NUMBERING**

### ***Addressing Plan and Numbering Plan***

#### ***Article 69***

(1) The efficient management of addressing and numbering resources in the Republic of Croatia as a naturally limited public resource, for the purpose of ensuring a reasonable, equal and efficient use of addresses and numbers, shall be based on international regulations and international agreements binding upon the Republic of Croatia.

(2) The Agency shall manage addressing and numbering resources, and plan the use and allocate addresses and numbers in accordance with the Addressing and Numbering Plans.

(3) After a public consultation referred to in Article 22 of this Act, the Agency shall adopt the Addressing and the Numbering Plans making sure that the needs of operators and users related to the assignment of addresses and numbers are satisfied at any time in a transparent, objective, equal and impartial manner.

(4) The Addressing and Numbering Plans shall specify the use of addresses and numbers, make available a corresponding number of addresses and numbers to all operators and users, and ensure the necessary addressing and numbering resources for number portability and carrier selection, and for the introduction of new electronic communications services.

(5) The Agency shall regularly verify the Addressing and Numbering Plans and may amend these plans in order to fulfil obligations arising from international regulations, treaties or agreements and in order to protect the availability of addresses and numbers bearing in mind the impact of those amendments, in particular direct and indirect costs of adjustment which in that case may be incurred by operators or users.

(6) The Agency shall publish the Addressing and Numbering Plans and the amendments thereof in compliance with the provisions of Article 14 of this Act.

### ***Assignment and fee for use of addresses and numbers***

#### ***Article 70***

(1) The assignment of addresses and numbers may be primary or secondary.

(2) Any operator shall be entitled to submit an application for the primary assignment of addresses and numbers established by the Addressing and Numbering Plans.

- (3) Addresses and numbers assigned by the Agency through primary assignment may be further assigned by means of secondary assignment to other operators and end-users.
- (4) By way of derogation from the provision of paragraph 3 of this Article, the operator access codes (carrier pre-selection) may not be further assigned to other operators or end-users.
- (5) A fee shall be paid for the use of addresses and numbers assigned to the operator through primary assignment and the calculation and the amount of the fee as well as the manner of payment shall be prescribed by:
1. an ordinance adopted by the Agency's Council in accordance with Article 16 of this Act in order to cover the Agency's expenses incurred as a result of the management of addressing and numbering resources
  2. an ordinance adopted by the Minister concerning the right to use the addresses and numbers.
- (6) The fee established by the ordinance referred to in paragraph 5, item 1 of this Article shall be paid for the benefit of the Agency, and it may be paid annually or multiannually.
- (7) The fee established by the ordinance referred to in paragraph 5, item 2 of this Article shall be paid for the benefit of the State Budget of the Republic of Croatia on the basis of an invoice issued by the Agency as a one-off amount or annually.
- (8) The fee referred to in paragraph 7 of this Article must ensure the optimal use of addresses and numbers in accordance with the principles of objectivity, transparency, proportionality and non-discrimination whereby special account should be taken of the regulatory principles and objectives referred to in Article 5 of this Act.
- (9) A more detailed manner and procedure concerning the assignment of addresses and numbers and the format and content of the form referred to in Articles 71 and 74 of this Act shall be prescribed by an ordinance adopted by the Agency's Council.

### *Application for the assignment of addresses and numbers*

#### *Article 71*

- (1) The application for the primary assignment of addresses or numbers shall be submitted to the Agency on a prescribed form, and, if technically feasible, the Agency may receive applications electronically as well.
- (2) The application referred to in paragraph 1 of this Article must in particular contain the following data:
- name and address of the applicant;
  - type of electronic communications network or service for the provision of which the assignment of addresses and the numbers is requested;
  - the requested addresses and numbers;
  - evidence about the insufficiency of the addresses and numbers which were previously assigned to the same applicant.
- (3) The Agency may, in case of need, ask the applicant referred to in paragraph 1 of this Article to provide additional data which it deems important for processing the application.

## *Processing of applications for the assignment of addresses and numbers*

### *Article 72*

(1) Applications for primary assignment of addresses or numbers containing all the data within the meaning of Article 71 of this Act shall be processed in the order they are received by the Agency.

(2) The Agency shall accept the application referred to in paragraph 1 of this Article and adopt the decision on primary assignment of addresses or numbers within 30 days following the receipt of the of the application provided that the following two conditions have been met:

- the addresses or numbers are envisaged in the Addressing or Numbering Plans for the purposes stated in the submitted application;
- the addresses or numbers are available.

(3) The decision on primary assignment of addresses or numbers must contain in particular the following data:

- about the operator that was assigned addresses or numbers;
- about the assigned addresses or numbers;
- about the conditions of use of the assigned addresses or numbers.

(4) The Agency may, in a joint procedure for the resolution of several identical applications for the assignment of addresses or numbers of the same applicant referred to in paragraph 1 of this Article, adopt one decision on primary assignment of addresses or numbers, which contains all the assigned addresses or numbers.

(5) The Agency shall reject the application for the primary assignment of addresses or numbers if it establishes that the application does not contain all the data within the meaning of Article 71, paragraph 1 of this Act or if the applicant did not, within the adequate time limit set by the Agency, deliver additional data within the meaning of Article 71, paragraph 2 of this Act.

(6) The Agency shall reject the application for the primary assignment of addresses or number if it establishes:

- that the assignment of addresses or numbers, for which the application was submitted, is not in accordance with the Addressing or Numbering Plans;
- that addresses or numbers are not available;
- that the applicant for primary assignment of addresses or numbers intentionally acted contrary to regulations on the assignment of addresses or numbers;
- that the applicant for primary assignment of addresses or numbers did not pay the prescribed fee for the use of addresses or numbers even after having received a dunning letter.

## *Conditions of use of addresses and numbers*

### *Article 73*

Operators shall acquire the right to use of addresses or numbers on the basis of the Agency's decision on primary assignment of addresses or numbers, whereby they are obliged to comply with the following conditions of use:

- they must use the assigned addresses and numbers in accordance with the Addressing Plan and the Numbering Plan;
- they may use the assigned addresses and numbers exclusively for purposes stated in the application for the assignment of addresses or numbers;
- they must start with the use of the assigned addresses and numbers within six months from the date of receipt of the decision on the assignment of those addresses or numbers;
- they must keep an up-to-date list of addresses and numbers which were assigned to them through primary assignment;

- they must keep a list of addresses and numbers which they assigned through secondary assignment and submit it to the Agency upon its request;
- they must not trade with assigned addresses and numbers in any way.

### *Transfer of rights to use addresses and numbers*

#### *Article 74*

(1) An operator who was granted the right to use addresses and numbers on the basis of a decision on primary assignment of addresses or numbers may transfer that right to another operator on the basis of a prior consent from the Agency.

(2) The application for granting the consent for the transfer of the right of use of addresses and numbers shall be submitted to the Agency in a prescribed form jointly by both operators referred to in paragraph 1 of this Article, and, if technically feasible, the Agency may also receive applications electronically.

(3) The application referred to in paragraph 2 of this Article must in particular contain the following data:

- name and address of the applicant transferring right of use of addresses or numbers;
- name and address of the applicant to which the right of use of addresses or numbers is transferred;
- type of electronic communications network or service for which the transfer of right of use of addresses or numbers is requested;
- addresses, numbers or blocks of numbers which the application for the transfer of license refers to.

(4) The Agency shall grant the consent referred to in paragraph 1 of this Article and adopt a new decision on primary assignment of addresses or numbers within 30 days from the receipt of the application referred to in paragraph 2 of this Article, if the operator, to whom the right of use of addresses and numbers is to be transferred, satisfies all the conditions for primary assignment and use of addresses and numbers in accordance with the provisions of this Act.

### *Revocation of assigned addresses and numbers*

#### *Article 75*

(1) The Agency shall adopt a decision on complete or partial revocation of the assigned addresses or numbers if it determines that any of the following conditions has been met:

1. if the decision on primary assignment of addresses was adopted on the basis of incorrect data or documentation important for processing the applications for primary assignment of addresses or numbers;
2. if the use of the assigned addresses and numbers is not in compliance with the Addressing Plan or the Numbering Plan;
3. if the operator has not started using those addresses and numbers within the period of six months from the date of the receipt of the decision on primary assignment of the addresses or numbers;
4. if the operator does not use the assigned addresses or numbers in accordance with the conditions of use prescribed by this Act or the decision on primary assignment of addresses or numbers;
5. if, even after the receipt of the dunning letter, the prescribed fee for the use of addresses or numbers was not paid in due time;
6. the operator was prohibited to provide electronic communications networks or services in accordance with Article 33, paragraph 4 of this Act;

7. if the operator was banned from providing electronic communications networks or services by a final court judgement;
8. if the operator waived the use of assigned addresses or numbers in writing;
9. if the operator ceased to exist without a legal successor;
10. if considerable amendments to the Addressing or the Numbering Plan are necessary due to the need to adjust the range of addresses and numbers at the national or international level, or due to the implementation of international treaties, agreements or conventions binding for the Republic of Croatia, or in order to prevent the distortion or restriction of competition after a previously obtained opinion from the operator to which those amendments refer;
11. if the use of the assigned addresses or numbers is contrary to the public interest of the Republic of Croatia.

(2) The decision referred to in paragraph 1 of this Article must be elaborated and based on the principle of proportionality, taking into account the public interest of the Republic of Croatia and the economic impact of the revocation of the assigned addresses or numbers on the operator.

(3) In case of revocation of the assigned addresses and numbers due to reasons stated in paragraph 1, item 10 of this Article, the Agency shall immediately replace the revoked addresses and numbers with other addresses or numbers taking into account the requirements referred to in paragraph 1 of this Article. In that case, the operator and end-users shall not be entitled to remuneration of expenses.

(4) The decision referred to in paragraph 1 of this Article must contain a suitable time limit for the operator to stop using the addresses or numbers revoked by that decision.

### *Number portability*

#### *Article 76*

(1) Operators of publicly available telephone services, including mobile electronic communications network services, must enable subscribers of their services, upon their request, to retain their assigned numbers independently of the change of the operator:

- in the case of geographic numbers, at a specific location;
- in the case of non-geographic numbers, at any location.

(2) The obligation of number portability referred to in paragraph 1 of this Article shall not refer to:

- number portability in case of change of geographical location of the user;
- number portability between fixed and mobile electronic communications networks.

(3) The manner, conditions and the procedure for ensuring number portability in fixed and mobile electronic communications networks shall be prescribed in more detail by an ordinance adopted by the Agency's Council.

### *Single European emergency call number*

#### *Article 77*

(1) Operators of public telephone networks and publicly available telephone services must make possible to all users free-of-charge calls to the single European emergency call number "112" and to other emergency service numbers in the Republic of Croatia in accordance with the Numbering Plan from any telephone, including all public pay telephones.

(2) Operators referred to in paragraph 1 of this Article must deliver, where technically feasible, free-of-charge and in accordance with a special regulation, to the central authority competent for receiving calls to emergency services all available data on calls made to the "112" number, in particular data



about the name and surname or company name of the calling party and the calling number, time and duration of the call and the location from which the call was made.

(3) The manner and conditions of use of the single European emergency call number "112", as well as technical and other requirements for operators referred to in paragraph 1 of this Article aimed at fulfilling the obligations towards the competent central body referred to in paragraph 2 of this Article, as well as quality of service parameters for the "112" number shall be prescribed in more detail by an ordinance adopted by the Minister.

(4) The Agency shall, in cooperation with the central state administration body competent for protection and rescue, ensure that citizens are informed in an adequate and publicly available manner about the purpose and the manner of use of the single European emergency call number "112".

### ***European telephone access codes and access to non-geographic numbers***

#### ***Article 78***

(1) Operators of public telephone networks must support the standard international access code "00" when making international calls towards public telecommunications networks outside the Republic of Croatia.

(2) The Agency shall ensure that all operators of public telephone networks handle all calls to the European telephony numbering space (ETNS) without prejudice to the right of the operator of a public telephone network to recover the cost of the conveyance of calls on its network.

(3) Operators of public telephone networks must ensure that end-users from other countries are able to access non-geographic numbers in the Republic of Croatia where technically and economically feasible, except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas.

### ***Management of the national Internet top-level domain***

#### ***Article 79***

(1) A public institution, the Croatian Academic and Research Network – CARNet is responsible for the management of the national Internet top-level domain of the Republic of Croatia (".hr" domain). It has been granted the authority to manage the national domain space by the competent international organisation.

(2) The organisation of the national domain space of the Republic of Croatia, the principles for the management of the national Internet top-level domain, of secondary domains and lower level domains, mutual relations, rights and obligations of the public institution referred to in paragraph 1 of this Article and users of domains within the national Internet top-level domain, and of other interested persons, and dispute resolution procedures concerning the use of the national domain space of the Republic of Croatia shall be provided for in an ordinance adopted by the minister competent for information technology upon proposal of the Management Council of the public institution referred to in paragraph 1 of this Article and with the consent from the minister and the head of the central state administration body competent for e-Croatia.

## **X. RADIO FREQUENCY SPECTRUM MANAGEMENT**

### *Principles of radio frequency spectrum management*

#### *Article 80*

- (1) The management and use of the radio frequency spectrum, as a naturally limited public resource, shall be of interest for the Republic of Croatia.
- (2) The Agency shall manage the radio frequency spectrum and plan the use of satellite orbits in accordance with the Constitution, the Convention and the Radio Regulations of the International Telecommunication Union (ITU) and provisions of this Act and regulations adopted pursuant to this Act.
- (3) Efficient management of the radio frequency spectrum must be based on the principles of objectivity, transparency, proportionality and non-discrimination and on the achieved degree of harmonisation at the European and international levels.
- (4) The achievement of maximum benefits for users and the stimulation of development of competition shall be in particular taken into account when defining the manner of granting the license for use of the radio frequency spectrum referred to in Article 82 of this Act.

### *Radio Frequency Allocation Table*

#### *Article 81*

- (1) The Radio Frequency Allocation Table shall make a constituent part of the Ordinance on the radio frequency spectrum allocation which is adopted by the minister upon proposal of the Agency's Council.
- (2) The Radio Frequency Allocation Table shall specify the allocation of radio frequency bands for individual radio communications services in accordance with Radio Regulations of the International Telecommunication Union (ITU) and shall additionally establish for each radio frequency band the following:
  - its allocation to one or more radio communications services in the Republic of Croatia, with individual radio frequency bands not being intended for certain radio communications services (radio communications service neutral use);
  - its assignment to one or more relevant applications or technologies, with the use of individual radio frequency bands being independent of the applied technology (technologically neutral use);
  - its allocation for civil and/or military use;
  - conditions for assignment and use of the associated radio frequencies which may, in particular, indicate the application of other relevant regulations, international treaties and agreements and decisions and recommendations of the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT) and other competent international organisations and institutions;
  - the manner of granting licenses for use of radio frequencies establishing the obligation to obtain these licenses in accordance with Article 82 of this Act.
- (3) The Radio Frequency Allocation Table may specify different allocations, conditions of assignment and use and manners for granting a license for the same radio frequency band.
- (4) The conditions for the assignment and use of radio frequencies shall be prescribed in more detail by the ordinance referred to in Article 82, paragraph 4 of this Act.

## *Detailed conditions for assignment and use of radio frequencies*

### *Article 82*

- (1) More specific conditions for the assignment and use of radio frequencies within the framework of individual radio frequency bands determined by the Radio Frequency Allocation Table shall be established in radio frequency assignment plans adopted by the Agency.
- (2) Radio frequency assignment plans must be based on the Ordinance on the radio frequency spectrum allocation and they must be in compliance with the provisions of this Act and other regulations adopted pursuant to this Act.
- (3) Radio frequency assignment plans may in particular contain the following:
  - the division of the territory of the Republic of Croatia into areas for the granting of the license for use of the radio frequency spectrum with the definition of special conditions of use for the protection of adjacent areas from interference;
  - the division of radio frequency bands to radio frequency channels together with the width of these channels, the space between these channels and safeguard channels;
  - other necessary technical conditions for the use of radio frequencies.
- (4) The basic conditions for the assignment and use of the radio frequency spectrum and the procedure for granting licenses for use of the radio frequency spectrum shall be provided for in the ordinance adopted by the Agency's Council.
- (5) The ordinance referred to in paragraph 4 of this Article must in particular contain the following:
  - more detailed conditions and procedure for the granting of licenses for use of the radio frequency spectrum;
  - layout and content of the application forms for the granting of licenses for use and forms for licenses for use of the radio frequency spectrum;
  - adequate technical documentation enclosed with the application for granting of licenses;
  - expiry of licenses for use of the radio frequency spectrum;
  - selection criteria in the procedure for granting the license referred to in Article 89 of this Act;
  - selection criteria and public auction rules in the procedure for granting the license referred to in Article 90 of this Act;
  - manner and conditions for the transfer of licenses for use of the radio frequency spectrum to another person;
  - manner and conditions for the delivery of technical and other information about certain types of radio stations when necessary for the purpose of protection from interference and supervision of use of the radio frequency spectrum;
  - manner and conditions for carrying out technical checks, radio measurements and other measurements and tests in order to detect the causes of interference in the radio frequency spectrum for specific types of radio stations;
  - manner and conditions for the restriction of use of radio frequencies;
  - manner and conditions for obligatory identification of certain types of radio stations;
  - manner and conditions of use of radio stations in case of danger and other emergencies.
- (6) The radio frequency spectrum shall be used in the following manners:
  - without a license for use of the radio frequency spectrum in accordance with Article 86 of this Act;
  - on the basis of a general license for use of the radio frequency spectrum referred to in Article 87 of this Act;
  - on the basis of an individual license for use of the radio frequency spectrum issued on the basis of the procedure referred to in Articles 88, 89 and 90 of this Act.

(7) The number of individual licenses for use of the radio frequency spectrum granted according to the procedure referred to in Articles 88 and 89 of this Act may be limited only in case when more valid applications for granting the license have been received and licenses cannot be granted due to the availability of a certain radio frequency band.

(8) The license for use of the radio frequency spectrum intended for digital broadcasting may be granted only to an operator of a public communications network.

(9) The license for use of the radio frequency spectrum intended for analogous broadcasting shall be granted in accordance with the provisions of this Act to an electronic media broadcaster who carries out its activity in accordance with a special law regulating electronic media.

(10) More detailed conditions for the assignment and use of the radio frequency spectrum for the purposes of amateur radio communications, radio amateur classes, harmonised testing programmes and taking of the radio amateur exam, technical and other conditions of use of amateur radio stations and equipment shall be provided for in an ordinance adopted by the Agency's Council.

(11) Technical checks, radio measurements and other measurements and tests for the purpose of detecting the cause of interference in the radio frequency spectrum shall be carried out by the Agency or a legal entity with a special authorisation from the Agency in accordance with Article 94 of this Act.

### ***Radio frequency spectrum database***

#### ***Article 83***

(1) The Agency shall keep and regularly update the radio frequency spectrum database which shall in particular contain a list of assigned and available radio frequencies and radiofrequency channels pursuant to the radio frequency assignment plans referred to in Article 82 hereof, with associated data on the conditions of allocation, assignment and use of these radio frequencies and channels, the geographical area of their use and the licensees for radio frequencies and channels.

(2) The data referred to in paragraph 1 of this Article published by the Agency in accordance with the provisions of Article 14 of this Act must be publicly available, free of charge, in electronic form on the Agency's website offering the possibility of comprehensive data browsing according to chosen parameters.

### ***Fee for use of the radio frequency spectrum***

#### ***Article 84***

(1) A fee shall be paid for the use of the radio frequency spectrum, and the calculation and the amount of the fee, as well as the manner of payment shall be provided for in:

1. an ordinance adopted by the Agency's Council in accordance with Article 16 of this Act for the coverage of Agency's expenses incurred as a result of the management of the radio frequency spectrum;
2. an ordinance adopted by the minister in accordance with Article 85 of this Act concerning the right to use the radio frequency spectrum.

(2) The fee established by the ordinance referred to in paragraph 1, item 1 of this Article shall be paid for the benefit of the Agency annually or multiannually.

(3) The fee established by the ordinance referred to in paragraph 1, item 2 of this Article shall be paid for the benefit of the State Budget Republic of Croatia on the basis of an invoice issued by the Agency as a one-off amount or annually.

(4) The fee referred to in paragraph 3 of this Article must ensure the optimal use of the radio frequency spectrum in accordance with the principles of objectivity, transparency, proportionality and non-discrimination bearing in mind in particular the regulatory principles and objectives referred to in Article 5 of this Act.

(5) The calculation and the amount of the fee referred to in paragraph 3 of this Article shall not apply to radio frequency bands which are, according to the Radio Frequency Allocation Table, subject to a public auction procedure in accordance with Article 90 of this Act whereby the amount of the fee for the right to use the radio frequency spectrum shall be established in the public auction procedure.

### ***Review of radio frequency spectrum management***

#### ***Article 85***

(1) The Agency shall perform regular review of the radio frequency spectrum management via public consultation in order to make possible for all interested parties to give their opinion, comments and proposals concerning the existing manner of the radio frequency spectrum management.

(2) In the review procedure referred to in paragraph 1 of this Article, which may comprise the entire radio frequency spectrum or only selected radio frequency bands, the Agency shall cooperate with the Ministry, and in case of review of radio frequency bands for the purposes of broadcasting it shall also cooperate with the body competent for electronic media.

(3) The Agency shall carry out the review of the entire radio frequency spectrum at least once a year, and the review of selected radio frequency bands as necessary.

(4) Public consultation as part of the review procedure referred to in paragraph 1 of this Article shall be carried out in case of a proposal for amendments to the Radio Frequency Allocation Table, radio frequency assignment plans and ordinance referred to in Article 84, paragraph 1, item 2 of this Act.

(5) When making proposals for amendments to acts referred to in paragraph 4 of this Article, which are published for the purpose of public consultation in accordance with Article 22 of this Act, the Agency and the Ministry must in particular take into account the following:

- harmonisation of the allocation of the radio frequency spectrum at the European and international levels;
- technology development;
- possible impact of the proposed amendments on the electronic communications markets;
- possible influence of proposed amendments on the economic value of the radio frequency spectrum, in particular of radio frequencies for which licenses have already been granted;
- possible influence of proposed amendments to the Radio Frequency Allocation Table on the relevant amendments of the radio frequency assignment plans and ordinances referred to in Article 82, paragraph 4 and Article 84, paragraph 1, item 2 of this Act.

(6) When defining final proposals for amendments to the Radio Frequency Allocation Table and adopting the radio frequency assignment plans, the Agency shall in particular take into account opinions, comments and proposals received during public consultation while respecting the principles of objectivity, transparency, proportionality and non-discrimination and the regulatory principles and objectives referred to in Article 5 of this Act.

(7) When adopting amendments to the Ordinance on the radio frequency spectrum allocation referred to in Article 84, paragraph 1, item 2 of this Act, the Minister shall take into account, in particular, the

Agency's proposal referred to in paragraph 6 of this Article and opinions, comments and proposals received during public consultation while respecting the principles of objectivity, transparency, proportionality and non-discrimination and the regulatory principles and objectives referred to in Article 5 of this Act.

(8) Where appropriate, the Agency's Council shall harmonise the ordinance referred to in Article 82, paragraph 4 of this Act with amendments to the ordinance referred to in paragraph 7 of this Article taking into account the opinions, comments and proposals received during public consultation.

### *Use of the radio frequency spectrum without a license*

#### *Article 86*

(1) The Armed Forces of the Republic of Croatia shall use radio frequency bands reserved by the Radio Frequency Allocation Table exclusively for military use, without obtaining a license for use of the radio frequency spectrum in accordance with conditions for the assignment and use laid down in the Table and the ordinance referred to in Article 82, paragraph 4 of this Act. The report about the use of these radio frequency bands must be submitted to the Agency in writing upon its request.

(2) The Armed Forces of the Republic of Croatia, the police, the intelligence agencies, the state administration body competent for protection and rescue and emergency services shall use radio frequency bands reserved for civil and military use by the Radio Frequency Allocation Table without obtaining a license for use of the radio frequency spectrum in accordance with conditions for the assignment and use laid down in the Table and the ordinance referred to in Article 82, paragraph 4 of this Act. A prior approval of the Agency must be obtained for such use of radio frequency bands.

(3) In the case referred to in paragraph 2 of this Article, the Armed Forces of the Republic of Croatia, the police, the intelligence services, the state administration body competent for protection and rescue and emergency services must take effective measures to prevent and eliminate the interference.

(4) No fee referred to in Article 84 of this Act shall be paid for the use of the radio frequency spectrum without a license in accordance with provisions of this Article.

### *General license*

#### *Article 87*

(1) Any legal entity or natural person shall be entitled to use the radio frequency band which may be used according to the Radio Frequency Allocation Table on the basis of a general license for use of the radio frequency spectrum in accordance with the conditions of assignment and use defined in the Table and ordinance referred to in Article 82, paragraph 4 of this Act.

(2) The Agency shall grant the general license for use of the radio frequency spectrum in case of a negligible danger from interference or in harmonised radio frequency bands, in particular for the purpose of implementation of the relevant decisions and recommendations of the European Conference of Postal and Telecommunications Administrations (CEPT) and its bodies, which are accepted in the Republic of Croatia.

### *Procedure for granting individual licenses on the basis of applications*

#### *Article 88*

(1) The Agency shall grant an individual license for use of the radio frequency spectrum on the basis of a submitted application for granting the license for use of the radio frequency band in relation to

which such a manner of granting licenses has been established in the Radio Frequency Allocation Table.

(2) The Agency shall grant the license referred to in paragraph 1 of this Article within 30 days following the receipt of the application for granting the license provided that the following conditions have been met:

- if the application for granting the license has been submitted in accordance with the ordinance referred to in Article 82, paragraph 4 of this Article;
- if the application for granting a license has been harmonised with the conditions for assignment and use which have been defined for the associated radio frequencies in the Radio Frequency Allocation Table and the radio frequency assignment plan;
- if the requested radio frequencies are available.

(3) Applications for granting the license referred to in paragraph 1 of this Article shall be processed in the order they are received by the Agency, and, if technically feasible, the Agency may receive such applications electronically as well.

(4) The Agency shall adopt a decision rejecting the application for granting the license referred to in paragraph 1 of this Article if it established that the conditions referred to in paragraph 2 of this Article have not been met.

(5) The license referred to in paragraph 1 of this Article shall in particular specify the conditions for the assignment and use which have been established for the associated radio frequencies in the Radio Frequency Allocation Table and the ordinance referred to in Article 82, paragraph 4 of this Act.

(6) On the basis of a submitted application by a competent state administration body or a competent security intelligence agency, when required for the purpose of defence and national security, the Agency shall grant an individual license for use of a device for interfering with radio frequencies of public electronic communications networks on a certain location or territory. The license shall be granted following a procedure during which all operators who have been granted license for use of the associated radio frequency spectrum are heard.

***Procedure for granting individual licenses on the basis of a public invitation or a public tender***

***Article 89***

(1) The Agency shall grant an individual license for use of the radio frequency spectrum on the basis of a previously conducted public tender, for the radio frequency band in which, due to limited availability of the radio frequency spectrum, such a manner of granting licenses has been established in the Radio Frequency Allocation Table.

(2) The procedure for granting the license referred to in paragraph 1 of this Article shall be initiated by the Agency *ex officio* or on the basis of an application for granting the license submitted in accordance with the ordinance referred to in Article 82, paragraph 4 of this Act.

(3) The Agency shall publish the information about having received the application referred to in paragraph 2 of this Article in the Official Gazette and on its website within fifteen days from the receipt of the application together with a public invitation to submit new applications for the same radio frequency band within 45 days following the publication of the public invitation. If technically feasible, the Agency may receive applications electronically as well.

(4) Where, within the time limit referred to in paragraph 3 of this Article, the Agency receives more applications referred to in paragraph 2 of this Article, which may not be considered favourably due to the availability of the radio frequency band, it shall immediately adopt the decision to invite a public

tender for the use of the radio frequency spectrum within 30 days from the date of the expiry of the deadline for the submission of the application referred to in paragraph 3 of this Act.

(5) The selection criteria, on the basis of which the Agency shall choose one or more applicants in the public tender procedure referred to in paragraph 4 of this Article, shall in particular refer to the fulfilment of technical and financial requirements, and the ability to manage the electronic communications network and provide electronic communications services, and to the fulfilment of conditions of assignment and use specified in the license referred to in paragraph 1 of this Article.

(6) The selection criteria referred to in paragraph 5 of this Article must be based on the principles of objectivity, transparency, proportionality and non-discrimination taking in particular into account the regulatory principles and objectives referred to in Article 5 of this Act.

(7) The conditions of assignment and use, specified by the Agency in the license referred to in paragraph 1 of this Article, in accordance with Radio Frequency Allocation Table and the ordinance referred to in Article 82, paragraph 4 of this Act, shall comprise in particular:

- the minimum and the maximum part of the radio frequency spectrum that may be assigned to an applicant;
- the expiry date of the license referred to in paragraph 1 of this Article;
- the manner and conditions for transfer of the license referred to in paragraph 1 of this Article to another person;
- the obligation to provide electronic communications networks and services by covering a certain geographical area and/or a certain percentage of population in the area covered by the license, within a certain period of time;
- the obligation to notify an installed radio station.

(8) After the comparison and assessment of all applications received in the public tender procedure referred to in paragraph 4 of this Article, on the basis of selection criteria referred to in paragraph 5 of this Article, the Agency shall adopt a substantiated decision on the selection of one or more most favourable applicants, depending on the available radio frequency band for which a public tender was invited, within the maximum of eight months from the date of initiation of the procedure for granting the license or from the receipt of the application for granting the license referred to in paragraph 2 of this Article.

(9) By the decision referred to in paragraph 8 of this Article the Agency shall grant one or more licenses for use of the radio frequency spectrum to selected applicants. If no application submitted in the public tender procedure satisfies the selection criteria referred to in paragraph 5 of this Article, the Agency shall revoke the public tender by a substantiated decision, and the granting of licenses referred to in paragraph 1 of this Article may be conducted by reinitiating the procedure in accordance with the provisions of this Article.

(10) The Agency may decide on applications referred to in paragraph 4 of this Article, which may be satisfied considering the availability of the radio frequency band, after a summary procedure, without inviting a public tender, within the following 30 days and in the order they were received. In the procedure the Agency shall adequately apply the selection criteria referred to in paragraph 5 of this Article and the conditions of assignment and use referred to in paragraph 7 of this Article.

(11) The contents of the application referred to in paragraph 2, the contents of the public invitation referred to in paragraph 3, the procedure, conditions and time limits for the public tender referred to in paragraph 4 and the selection criteria referred to in paragraph 5 of this Article shall be prescribed in more detail by the ordinance referred to in Article 82, paragraph 4 of this Act.

(12) Decisions referred to in paragraphs 4, 8, 9 and 10 of this Article shall be published by the Agency in accordance with the provisions of Article 14 of this Act. Decisions referred to in paragraphs 8, 9 and 10 of this Article shall be delivered by the Agency to all applicants in the public tender procedure.



## ***Procedure for granting individual licenses on the basis of a public auction***

### ***Article 90***

(1) The Agency shall grant individual licenses for use of the radio frequency spectrum on the basis of a previously conducted public auction for the radio frequency band in which such a manner of granting licenses has been established in the Radio Frequency Allocation Table due to the limited availability radio frequency spectrum.

(2) The procedure for granting licenses referred to in paragraph 1 of this Article shall be initiated by the Agency *ex officio* or on the basis of an application for granting the license submitted in accordance with the ordinance referred to in Article 82, paragraph 4 of this Act.

(3) The Agency shall publish the information about having received the application referred to in paragraph 2 of this Article in the Official Gazette and on its website within fifteen days from the receipt of the application together with a public invitation to submit new applications for the same radio frequency band within 45 days following the publication of the public invitation. The Agency may receive applications electronically as well, if technically feasible.

(4) Where, within the time limit referred to in paragraph 3 of this Article, the Agency receives at least two applications referred to in paragraph 2 of this Article, it shall immediately adopt the decision to organise a public auction for the use of the radio frequency spectrum within 30 days from the expiry of the deadline for the submission of the application referred to in paragraph 3 of this Article.

(5) The selection criteria and public auction rules, on the basis of which the Agency shall choose one or more applicants in the public auction procedure referred to in paragraph 4 of this Article, shall in particular refer to the fulfilment of technical and financial requirements and to the ability to manage the electronic communications network and provide electronic communications services, and to the fulfilment of conditions of assignment and use specified in the license referred to in paragraph 1 of this Article.

(6) The selection criteria and public auction rules referred to in paragraph 5 of this Article must be based on the principles of objectivity, transparency, proportionality and non-discrimination bearing in mind in particular the regulatory principles and objectives referred to in Article 5 of this Act.

(7) The conditions of assignment and use, specified by the Agency in the license referred to in paragraph 1 of this Article, in accordance with Radio Frequency Allocation Table and the ordinance referred to in Article 82, paragraph 4 of this Act, shall comprise in particular:

- the minimum and the maximum part of the radio frequency spectrum that may be assigned to an applicant;
- the expiry date of the license referred to in paragraph 1 of this Article;
- the manner and conditions for transfer of the license referred to in paragraph 1 of this Article to another person;
- the obligation to provide electronic communications networks and services by covering a certain geographical area and/or a certain percentage of population in the area covered by the license, within a certain period of time;
- obligation to notify an installed radio station.

(8) After the comparison and assessment of all applications received in the public auction procedure referred to in paragraph 4 of this Article, the Agency shall select those applicants which satisfy the selection criteria and are subject to further procedure in accordance with public auction rules referred to in paragraph 5 of this Article.

(9) Depending on the public auction rules referred to in paragraph 5 of this Article and the available radio frequency band for which the public auction was organised, the Agency shall adopt an

substantiated decision on the selection of one or more applicants referred to in paragraph 8 of this Article on the basis of the highest price offered in public auction procedure within the maximum of eight months following the date of the initiation of procedure for granting the license, that is, of the receipt of the application for granting the license referred to in paragraph 2 of this Article.

(10) By the decision referred to in paragraph 9 of this Article the Agency shall grant one or more licenses for use of the radio frequency spectrum to selected applicants. If at least two applications received in the public auction procedure do not satisfy the selection criteria and public auction rules referred to in paragraph 5 of this Article, the Agency shall annul the public auction by an substantiated decision, and the granting of the license referred to in paragraph 1 of this Article may be conducted by reinitiating the procedure in accordance with the provisions of this Article.

(11) If it received only one application referred to in paragraph 4 of this Article, and in case of annulment of the public tender referred to in paragraph 10 of this Article, the Agency may conduct the procedure for granting individual licenses for use of the radio frequency spectrum in accordance with the provisions of Article 89 of this Act with the appropriate application of the selection criteria referred to in paragraph 5 of this Article and conditions for the assignment and use referred to in paragraph 7 of this Article.

(12) The contents of the application referred to in paragraph 2, the contents of the public invitation referred to in paragraph 3, the procedure, conditions and time limits for the public auction referred to in paragraph 4 and the selection criteria and public auction rules referred to in paragraph 5 of this Article shall be provided for in more detail by the ordinance referred to in Article 82, paragraph 4 of this Act.

(13) The decisions referred to in paragraphs 4, 9 and 10 of this Article shall be published in accordance with the provisions of Article 14 of this Act. Decisions referred to in paragraphs 9 and 10 of this Article shall be delivered by the Agency to all applicants in the public auction procedure.

### ***Temporary license for use of the radio frequency spectrum***

#### ***Article 91***

(1) By way of derogation from the allocated radio communications service or technology, or conditions for assignment and use specified in the Radio Frequency Allocation Table and the ordinance referred to in Article 82, paragraph 4 of this Act, the Agency may, on the basis of a submitted application, grant a temporary license for use of the radio frequency spectrum not subject to procedures for granting licenses referred to in Articles 88, 89, and 90 of this Act.

(2) The temporary license referred to in paragraph 1 of this Article may be issued, in the order in which the applications referred to in paragraph 1 of this Article are received, for a radio station or a radio system used for the purpose of market or technical inspection, research or design or for the purposes of sports, cultural, entertainment and other events of temporary character.

(3) The Agency shall specify in the temporary license referred to in paragraph 1 the appropriate validity thereof as well as the corresponding conditions for the assignment and use of the associated radio frequencies, in particular, for the purpose of protection against interference.

(4) The Agency shall adopt a decision rejecting the application for granting the temporary license referred to in paragraph 1 of this Article if it is not in compliance with the principles of objectivity, transparency, proportionality and non-discrimination or is contrary to regulatory principles and objectives referred to in Article 5 of this Act or if it establishes that it was submitted exclusively in order to avoid the application of one of the procedures for granting the license referred to in Articles 88, 89 and 90 of this Act.

## ***Transfer of the license for use of the radio frequency spectrum***

### ***Article 92***

- (1) Licenses for use of the radio frequency spectrum referred to in Article 88, 89 and 90 of this Act may be transferred to another person with a prior consent from the Agency.
- (2) The holder of the license for use of the radio frequency spectrum and the person to which the license is transferred shall jointly submit to the Agency a written request for granting consent referred to in paragraph 1 of this Article.
- (3) When processing the request referred to in paragraph 2 of this Article, the Agency shall verify whether the principles of objectivity, transparency, proportionality and non-discrimination and regulatory principles and objectives referred to in Article 5 of this Act have been satisfied, and, in particular, whether the person to which the license is being transferred fulfils the conditions of assignment and use specified in the license.
- (4) The Agency shall adopt a decision rejecting the request referred to in paragraph 2 of this Article which does not satisfy the principles or objectives, or does not meet the conditions referred to in paragraph 3 of this Article.
- (5) The transfer of the license for use of the radio frequency spectrum to the person referred to in paragraph 3 of this Article shall entail the full transfer of rights and obligations arising from the license, including the conditions of assignment and use specified in the license.
- (6) The manner and conditions for the transfer of license for use of the radio frequency spectrum to another person shall be provided for in more detail by the ordinance referred to in Article 82, paragraph 4 of this Act.

## ***Revocation of a license for use of the radio frequency spectrum***

### ***Article 93***

- (1) The Agency shall adopt a decision on the revocation of a license for use of the radio frequency spectrum if it establishes that any of the following conditions has been met:
  1. if the license was issued on the basis of incorrect data or documents important for the procedure for granting the license;
  2. if the licensee does not comply with the conditions of assignment and use provided for in the license even after the imposition of measures by electronic communications inspectors or electronic communications supervisors;
  3. if the licensee, even after the imposition of prescribed measures by electronic communications inspectors or electronic communications supervisors, does not adjust the use of the assigned radio frequencies with the Radio Frequency Allocation Table, the associated radio frequency assignment plan and the ordinance referred to in Article 82, paragraph 4 of this Act;
  4. if significant amendments to the Radio Frequency Allocation Table or the associated radio frequency assignment plan are necessary in order to harmonise the use of radio frequencies at the national or international level or to implement national treaties, agreements or conventions binding upon the Republic of Croatia, or for the purpose of more efficient protection from interference or prevention of distortion or restriction of competition, after a previously obtained opinion of the licensee;
  5. if the prescribed fee for the use of radio frequencies referred to in Article 84 of this Act was not paid even after the receipt of the dunning letter;
  6. if the licensee was prohibited to provide electronic communications networks and services on the basis of the Agency's decision referred to in Article 33, paragraph 4 of this Act;

7. if the concession for the provision of radio and television services was revoked from the licensee in accordance with a special law, or the period for which it was granted the concession has expired;
8. if the licensee was prohibited by a final court judgement to provide electronic communications networks and services;
9. if the licensee has renounced the use of the assigned radio frequencies in writing;
10. if the licensee ceased to exist, without an heir or legal successor;
11. if a priori decision of the Agency referred to in Article 68, paragraph 6 or the expert opinion of the Agency referred to in Article 68, paragraph 3 of this Act established that regulatory principles and objectives referred to in Article 5 of this Act have been violated;
12. if the use of assigned radio frequencies is contrary to the public interest of the Republic of Croatia.

(2) The decision referred to in paragraph 1 of this Article must be well-argued and based on the principle of proportionality taking into account the public interest of the Republic of Croatia and the economic impact of the revocation of the license for use of the radio frequency spectrum on the licensee.

(3) In case of revoked licenses for use of the radio frequency spectrum due to reasons referred to in paragraph 1, item 4 of this Article, the Agency shall change the assigned radio frequencies by granting a new license in which it may, where appropriate, specify other conditions for assignment and use of changed radio frequencies while taking into account the requirements referred to in paragraph 2 of this Article. In this case the licensee is not entitled to reimbursement of costs.

(4) The decision referred to in paragraph 1 of this Article must contain an appropriate time limit during which the licensee shall be obliged to cease using the radio frequencies granted by the license revoked by this decision.

### ***Radio frequency spectrum monitoring and protection from interference***

#### ***Article 94***

(1) For the purpose of harmonisation of use of radio frequencies at the national and international levels, radio frequency spectrum monitoring, measurements, tests and determination of causes of interference in the radio frequency spectrum and taking of prescribed measures for their elimination, and in order to perform other expert and technical tasks within the framework of efficient radio frequency spectrum management, a system of monitoring and measurement centres and monitoring and measurement stations shall be established within the Agency, with a necessary measuring, computer and communications equipment, software and measurement and other vehicles.

(2) Internal organisation, tasks and equipment of the system referred to in paragraph 1 of this Article shall be regulated in more detail by the Agency's internal rules.

(3) Operators of electronic communications networks must perform measuring, testing and detection of cause of interference and take measures for their elimination within their own electronic communications network.

(4) The Agency shall perform the tasks of measuring, testing and detecting causes of interference created by radio stations, radio system and other R&TT equipment or other electronic communications equipment outside the electronic communications networks of operators.

(5) The tasks referred to in paragraph 3 of this Article in relation to interference in the radio frequency spectrum caused by electronic communications networks, radio stations, radio systems and other R&TT equipment of a foreign country shall be performed by the Agency in cooperation with the competent authority of that country, and in accordance with the relevant regulations of the

International Telecommunication Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT).

(6) The tasks referred to in paragraph 3 of this Article in relation to interference in the radio frequency spectrum used by the Armed Forces of the Republic of Croatia, the police and the security intelligence agencies in accordance with the Radio Frequency Allocation Table shall be performed by their authorised persons, *ex officio* or upon the Agency's request, in cooperation with an electronic communications supervisor.

(7) While carrying out the inspection, an electronic communications supervisor may take or order the taking of measures prescribed by Article 114 of this Act for the purpose of measuring, testing and determining causes of interference in the radio frequency spectrum caused by a radio station or other R&TT equipment, an electronic communications network or other electronic communications equipment, and their elimination.

(8) If interference is detected in radio communications of the state administration body competent for protection and rescue and of the emergency services, in maritime and air traffic radio communications, and radio communications in the inland waterways transport the purpose of which is the protection of safety of human lives on land, at sea and in the air and on inland waterways, measures referred to in paragraph 7 of this Act must be carried out without delay.

(9) When undertaking the measures prescribed by the electronic communications supervisor, operators of electronic communications networks referred to in paragraph 3 of this Article and owners or users of radio stations, radio systems and other R&TT equipment and other electronic communications equipment referred to in paragraph 4 of this Article shall have the obligations of supervised persons referred to in Article 115 of this Act.

(10) In the manner and under the conditions prescribed by the ordinance referred to in Article 82, paragraph 4 and Article 95, paragraph 2 of this Act, the Agency may grant a special authorisation to a legal entity to carry out the following tasks:

- technical inspection and radio measurements referred to in Article 82 of this Act;
- measuring and testing aimed at detecting the cause of interference in the radio frequency spectrum;
- calculation and measuring of the value of the electromagnetic field referred to in Article 95 of this Act.

(11) If it is established that a legal entity referred to in paragraph 10 of this Article does not carry out the tasks from the special authorisation in accordance with the provisions of this Act or regulations adopted pursuant to this Act, the Agency shall adopt a decision on temporary or permanent withdrawal of the special authorisation from this legal entity.

### ***Limitation in the intensity of electromagnetic fields***

#### ***Article 95***

(1) For the purpose of efficient protection of human health from the influence of the electromagnetic field, electronic communications networks, radio stations and other R&TT equipment and other electronic communications equipment, as sources of electromagnetic radiation, shall be subject to limitations in terms of values of certain parameters of electromagnetic fields, in accordance with this Act and special regulations.

(2) Basic limitations, reference levels and limit values of parameters of electromagnetic fields, limit values of the radiation power of radio stations, reference regulations and standards referring to the exposure of humans to the electromagnetic field, special conditions for the installation and use of

certain types of radio stations and manner and conditions for the calculation and measurement of electromagnetic fields values shall be prescribed by an ordinance adopted by the Minister.

(3) The ordinance referred to in paragraph 2 of this Article shall prescribe, when necessary for the purpose of the efficient protection of human health, the granting of a certificate of conformity of a radio station with the provisions of this ordinance, whereby the Agency confirms that the installed radio station does not create levels of electromagnetic field exceeding the values prescribed by this ordinance.

(4) The certificate of conformity referred to in paragraph 3 of this Article shall represent a condition for the granting of an inspection certificate for the radio station if the procurement of the inspection certificate has been prescribed by special regulations on construction.

(5) The Agency may issue the certificate of conformity referred to in paragraph 3 of this Article upon request of the holder of the license for use of the radio frequency spectrum where the ordinance referred to in paragraph 2 of this Article does not oblige the holder of the license to obtain the certificate of conformity.

(6) The calculation and measurement of values of the electromagnetic field referred to in paragraph 2 of this Article shall be carried out by the Agency or a legal entity which has obtained a special authorization by the Agency referred to in Article 94 of this Act.

## **XI. DIGITAL RADIO AND TELEVISION**

### ***Transmission of the digital radio and television signal***

#### ***Article 96***

(1) Public communications networks intended for the provision of digital television services must be planned in the manner appropriate for digital television services and programmes with wide-screen format (16:9).

(2) When receiving and retransmitting the service and programmes referred to in paragraph 1 of this Article operators of public communications networks referred to in paragraph 1 of this Article must keep the wide-screen format if intended for reception on television screen. Operators of public communications networks may transmit television programmes using different screen aspect ratios as well.

(3) The Agency may adopt a decision imposing the following obligations on operators of public communications networks referred to in paragraph 2 of this Article:

- ensure access to application programme interfaces and/or electronic programme guides under fair, reasonable and non-discriminating conditions;
- apply the standards for the transmission of the digital radio and television signal which have been determined as obligatory by the Commission.

(4) The manner and conditions of the transition from analogue to digital transmission of radio and television programmes and access to multiplex positions in terrestrial broadcasting of digital radio and television signals shall be regulated in more detail by an ordinance adopted by the Minister upon proposal of the Agency's Council and with prior opinion of the body competent for electronic media.

(5) Within the framework of its competence, the Agency shall supervise the application of provisions of this Acts and regulations adopted on the basis of this Act concerning the transmission of digital radio and television signals.

## ***Must-carry obligations***

### ***Article 97***

- (1) On the basis of a decision adopted by the authority competent for electronic media on must-carry obligations concerning one or more radio and/or television programmes in the Republic of Croatia at the national, regional or other levels, the Agency shall adopt a decision designating operators of public communications networks which are obliged to carry such programmes.
- (2) The must-carry obligations referred to in paragraph 1 of this Article may be imposed, in compliance with the principles of proportionality and transparency, only on those operators of public communications networks which are used by a significant number of end-users as their main means of receiving radio and television programmes, and only if there is a public interest thereof.
- (3) The fee for the carrying of programmes in accordance with the obligations referred to in paragraph 1 of this Article shall be determined in accordance with the principles of proportionality, transparency and non-discrimination.
- (4) The Agency shall regularly verify the implementation of the must-carry obligations referred to in paragraph 1 of this Article and every operator of the public communications network, that has been imposed the must-carry obligations, shall be entitled to request the Agency to re-examine these obligations after the expiry of the period of four years following the adoption of the decision referred to in paragraph 1 of this Article.

## ***Conditional access systems***

### ***Article 98***

- (1) Conditional access systems for digital radio and television services must have the necessary technical arrangements enabling operators of public communications networks, at the national, regional or other levels, to have complete control over services using such conditional access systems.
- (2) Operators of conditional access services, who provide access to digital radio and television services for electronic media broadcasters, shall be obliged to offer all electronic media broadcasters, under fair, reasonable and non-discriminating terms, technical services which allow to their subscribers access to services by means of conditional access devices.
- (3) Operators referred to in paragraph 2 of this Article may not hinder the reception of conditional access programme by means of conditional access devices referred to in paragraph 2 of this Article, except in case of mature claims towards the subscriber concerning the digital radio and television services, in accordance with the general business terms and conditions of the operator.
- (4) Operators referred to in paragraph 2 of this Article must keep separate accounting for the provision of conditional access services in relation to other activities.
- (5) Holders of industrial property rights to conditional access devices and systems shall grant licenses to manufacturers of consumer equipment under fair, reasonable and non-discriminatory terms. Holders of rights may not prevent the manufacturers of consumer equipment from including in the same product a common interface allowing connection with several other access systems, or means specific to another access system, provided that the common interfaces comply with the relevant and reasonable conditions ensuring the security of transactions of conditional access system operator.
- (6) Within the framework of its competence, the Agency shall supervise the application of provisions of this Act and regulations on conditional access systems adopted pursuant to this Act.

## **XII. DATA PROTECTION AND SECURITY OF ELECTRONIC COMMUNICATIONS**

### *Security of electronic communications networks and services*

#### *Article 99*

(1) Operators of public communications services must take appropriate technical and organisational measures to safeguard security of their services, and, together with the operators of public communications networks take the necessary measures with respect to security of the electronic communications network. Having regard to the available technical and technological solutions and the costs of their implementation, these measures shall ensure a level of security appropriate to the network security risk presented.

(2) In case of a particular risk of a breach of the security of the network, the operator of publicly available electronic communications services must inform the users of its services about such risk. Where the risk lies outside the scope of the measures to be taken by the operator of publicly available electronic communications services, users must be informed about any possible measures for the elimination of the risk and/or consequences thereof, including an indication of the likely costs involved.

(3) The operator of publicly available electronic communications services must appoint a person responsible for the implementation of the measures referred to in this Article.

### *Confidentiality of electronic communications*

#### *Article 100*

(1) In order to secure the confidentiality of electronic communications and related traffic data in the public communications network and publicly available communications services, listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data shall be prohibited, except in cases referred to in Article 108 of this Act and in cases prescribed by special laws.

(2) The prohibition referred to in paragraph 1 of this Article shall not refer to technical storage of data necessary for the conveyance of communications, without prejudice to the principle of confidentiality.

(3) The provisions of paragraphs 1 and 2 of this Article shall not refer to legally authorised recording of communications and the related traffic data when carried out in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication.

(4) The use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or user shall be allowed only on condition that the subscriber or user concerned is provided with clear and comprehensive information in accordance with special regulations on personal data protection, *inter alia* about the purposes of the processing, and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access to data for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.



## ***Confidentiality of radio communications***

### ***Article 101***

- (1) The owner or user of a radio station shall be prohibited to:
- learn, use, publish or proceed to others, without authorization, the content of a radio message not intended for the public;
  - transmit in a decoded form radio messages marked as confidential;
  - transmit false or wrong signals and communications, especially if referring to danger, emergency cases, security or identification;
  - transmit signals and communications not referring to its activity;
  - receive signals and communications not intended for it and not for general reception.
- (2) The reception of a message, signal or communication in the form of a radio interference shall not be regarded as a breach of secrecy of radio communications referred to in paragraph 1 of this Article, provided that the Agency is notified, without delay and in writing, of such a reception in order to determine the cause of interference and take measures for its elimination.

### ***Traffic data***

#### ***Article 102***

- (1) Traffic data relating to subscribers or users processed and stored by the operator of public communications networks or publicly available electronic communications services must be erased or made anonymous when they are no longer needed for the purpose of conveyance of communication, except in cases referred to in paragraphs 2, 3 and 5 of this Article, and Article 109, paragraphs 3 and 5, item 4 of this Act.
- (2) Traffic data necessary for the purposes of billing of electronic communications services of subscribers or users and interconnection payments may be processed only until the expiry of the statute of limitations on claims in accordance with general legislation on civil obligations.
- (3) For the purpose of marketing and sale electronic communications services or the provision of value added services, the operator of publicly available electronic communications services may process the traffic data referred to in paragraph 1 in the manner and for the duration necessary for marketing and sale or provision of such services, if the subscriber or user to whom the data relate has given his/her consent. Users or subscribers may deny or withdraw their consent for the processing of traffic data at any time.
- (4) Prior to obtaining the consent of the subscriber or user for the use of data for the purposes mentioned in paragraph 3 of this Article, the operator must inform the subscriber or user of the types of traffic data which are processed and of the duration of such processing in the case referred to in paragraph 2 of this Article.
- (5) The access to the processing of traffic data in accordance with the provisions of Articles 1, 2, 3 and 4 of this Article shall be restricted to authorised persons in operators of public communications networks and publicly available electronic communications services handling billing, electronic communications network management, customer complaints, fraud detection, marketing and sale electronic communications services or providing a value added service. The access to the processing of traffic data must be restricted to what is necessary for the purposes of such activities.
- (6) The provisions of paragraphs 1, 2, 3 and 5 of this Article shall not apply to the notification about traffic data to the Ministry, the Agency, competent court and other competent state administration bodies in compliance with special regulations with a view of settling disputes referred to in Articles 20

and 21 of this Act, in particular interconnection or billing dispute, or disputes referred to in Article 51 of this Act, in relation to the outstanding amount for the services provided.

### ***Presentation and restriction of calling and connected line identification***

#### ***Article 103***

- (1) Operator of public communications services offering the possibility of calling line identification must offer the calling user the possibility, using a simple means and free of charge, of preventing the presentation of the calling line identification on a per-call basis or for all calls.
- (2) The operator of public communications services referred to in paragraph 1 of this Article must offer the called subscriber the possibility, using a simple means and free of charge for reasonable use of this function, of preventing the presentation of the calling line identification of incoming calls.
- (3) The operator of public communications services referred to in paragraph 1 of this Article, and where the calling line identification is presented prior to the call being established, must offer the called subscriber the possibility, using a simple means, of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling user or subscriber.
- (4) The operator of public communications services offering the possibility of presentation of connected line identification must offer the called subscriber the possibility, using a simple means and free of charge, of preventing the presentation of the connected line identification to the calling user.
- (5) The provisions of this Article shall also apply to incoming and outgoing calls towards third countries.
- (6) Operators of publicly available communications services offering the presentation of the calling and/or connected line identification must inform the public about those services and possibilities referred to in paragraphs 1, 2, 3 and 4 of this Article in a simple and accessible manner.

### ***Location data other than traffic data***

#### ***Article 104***

- (1) Location data other than traffic data, relating to subscribers or users of public communications networks or publicly available electronic communications services may only be processed when they are made anonymous, or with the consent of the users or subscribers in the manner and for the duration necessary for the provision of a value added service.
- (2) The operator must inform the subscriber or user, prior to obtaining their consent referred to in paragraph 1 of this Article, of the type of location data other than traffic data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service. The subscriber or user shall be given the possibility to withdraw his or her consent for the processing of location data other than traffic data at any time.
- (3) Where consent of the subscribers or users referred to in paragraph 1 of this Article has been obtained, the subscriber or user must continue to have the possibility, using a simple means and free of charge, of temporarily refusing the processing of location data other than traffic data for each connection to the network or for each transmission of a communication.
- (4) Processing of location data other than traffic data in accordance with paragraphs 1, 2 and 3 shall be restricted to authorised persons of the operator of the public communications network or publicly available communications service or to authorised persons of a third party providing the value added

service, and must be restricted to actions necessary for the purposes of providing the value added service.

### ***Malicious or nuisance calls***

#### ***Article 105***

(1) If a subscriber of a publicly available telephone service, in a written letter, makes probable the case of receiving malicious or nuisance calls, the operator of this publicly available telephone service shall, upon receipt of the letter, store and make available data containing the identification of the calling subscriber, date and time of the call or the attempt to establish the call. The operator shall be allowed to record and store these data only on the basis of a subscriber's written letter.

(2) In the letter referred to in paragraph 1 of this Article, the subscriber must give the approximate date or time of certain malicious or nuisance calls. On the basis of this information the operator of publicly available telephone services shall establish the name and surname or title and address of the subscriber or user who made such calls, if such information is available.

(3) The operator of publicly available telephone services shall keep the collected data about malicious or nuisance calls in accordance with Article 109 of this Act and it shall, without delay, deliver such data to the competent police authority that will act in accordance with special regulations and inform the subscriber who submitted the letter referred to in paragraph 1 of this Article in writing.

(4) Operators of publicly available electronic communications services must cooperate with each other for the purpose of tracking and discovering malicious or nuisance calls, and, in particular, for the purpose of the exchange of data referred to in paragraph 2 of this Article.

### ***Emergency calls***

#### ***Article 106***

(1) Operators of publicly available telephone services must disable the prevention of presentation of incoming call identification referred to in Article 103 of this Act and temporary denial or absence of consent of a subscriber or user for the processing of location data other than traffic data in accordance with Article 104 of this Act, for each dialling code separately upon the written request of competent state administration bodies and emergency services, for the purpose of responding to emergency calls.

(2) The list of competent state administration bodies and emergency services with the corresponding dialling codes referred to in paragraph 1 of this Article shall be established by the Agency with the consent of the Ministry and on a regular basis, and at least once a year, published in accordance with the provisions of Article 14 of this Act.

### ***Unsolicited communications***

#### ***Article 107***

(1) The use of automated calling systems, with or without human intervention, facsimile machines or electronic mail, including short text messages (SMS) and multimedia messages (MMS), for the purposes of direct marketing and sale may only be allowed in respect of subscribers or users who have given their prior consent.

(2) The application of technical systems for obtaining consent referred to in paragraph 1 of this Article shall be regarded as direct marketing and sale and shall not be allowed.

(3) A natural person or legal entity who is a trader may use details about electronic addresses obtained from its customers for the purpose of sale of products or services for direct marketing and sale of its own similar products or services provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner, to such use of electronic contact details when they are collected and on the occasion of each message in case the customer has not initially refused such use.

(4) In any event, the practice of sending electronic mail, including short text messages (SMS) and multimedia messages (MMS), for purposes of direct marketing and sale disguising or concealing the identity of the sender on whose behalf the communication is made, or without a valid electronic address or a number to which the recipient may send, free of charge, a request that such communications cease, shall be prohibited.

(5) The provisions referred to in paragraphs 1 and 3 of this Article shall not apply to non-automated calls to legal entities for the purposes of direct marketing and sale.

(6) Operators providing electronic mail services must offer to subscribers of those services the possibility of filtering incoming electronic mail containing unsolicited communications or harmful content. Subscribers must be given the opportunity to turn on and off, and configure these filters in a simple manner.

(7) Operators providing electronic mail services must, in an appropriate manner, publish the electronic address which users may use in case of abuse, and they must, at the latest within 15 days from the receipt of the complaint via electronic mail, answer all complaints concerning the abuse of electronic mail.

(8) Operators providing electronic mail services must prohibit their subscribers in their subscription contracts the sending of unsolicited communications in accordance with the provision of this Article, and they must undertake the appropriate measures to prevent the abuse of the electronic mail account of their subscriber.

(9) When the operator providing electronic mail services receives proof that the subscriber has sent unsolicited communications or that the subscriber's electronic mail account has been abused, it shall establish the facts of the case and undertake the appropriate measures. Depending on the seriousness of the abuse, the operator shall warn the subscriber or temporarily disconnect the subscriber's electronic mail and, without delay, inform the subscriber thereof.

(10) If the subscriber continues to breach the obligations referred to in paragraph 8 of this Article and defined in the subscription contract, the operator shall be entitled to permanently delete the subscriber's electronic mail account and terminate the contract with the subscriber in accordance with general business terms and conditions.

(11) The provisions of paragraphs 8, 9 and 10 of this Article shall not apply to subscribers where it was established that the abuse of the electronic mail account was made by a third party.

(12) The manner and conditions of efficient prevention and suppression of abuse and fraud in the provision of electronic mail services and the fulfilment of obligations by operators and subscribers established in this Article shall be prescribed in more detail by an ordinance adopted by the Agency's Council. In the adoption of this ordinance the Agency shall cooperate in particular with operators of electronic mail services.

## *Secret surveillance of electronic communications networks and services*

### *Article 108*

(1) Operators of public communications networks and publicly available electronic communications services must ensure, at their own expense, and organise the function of secret surveillance of electronic communications networks and services, as well as electronic communications lines to the operational and technical body competent for the surveillance of electronic communications in accordance with a special law regulating the field of national security.

(2) The obligations of operators of public communications networks and publicly available electronic communications services towards the competent body referred to in paragraph 1 of this Article and towards bodies authorised to apply measures of secret surveillance of communications networks and services, in accordance with special laws in the field of national security and criminal procedure, shall be laid down in these laws and in a special legislation regulating the obligations of operators in the field of national security.

(3) The provisions of Articles 99 to 104 of this Act or provisions of special regulations on personal data protection shall not apply to obligations of operators public communications networks and publicly available electronic communications services referred to in paragraph 2 of this Article.

(4) Operators of public communications networks and publicly available electronic communications services must enable to competent bodies referred to in paragraph 2 of this Article immediate identification of users.

### *Data retention obligation*

### *Article 109*

(1) Operators of public communications networks and publicly available electronic communications services shall be obliged to retain electronic communications data referred to in Article 110 of this Act in order to make possible the conduct of the investigation, discovery and criminal prosecution of criminal offences, in accordance with a special law concerning criminal procedure and in order to protect defence and national security in accordance with special laws in the fields of defence and national security.

(2) The operators referred to in paragraph 1 of this Article shall be obliged to retain data referred to in paragraph 1 of this Article in their original form or as data processed in the course of provision of public communications networks and services. Operators shall not be obliged to retain data referred to in paragraph 1 of this Article not originating from or processed by them.

(3) Operators referred to in paragraph 1 of this Article must retain data referred to in paragraph 1 of this Article for the period of twelve months from the date of the communication, notwithstanding the provisions of Article 102, paragraphs 1 and 2 of this Act.

(4) The operators referred to in paragraph 1 of this Article shall comply with the data retention obligation in the manner that retained data, together with all other necessary and related data, may be without delay delivered to the competent body referred to in Article 108, paragraph 1 of this Act.

(5) The operators referred to in paragraph 1 of this Article must in particular apply the following data security principles with respect to retained data:

1. the retained data shall be of the same quality and subject to the same security and protection as those data on the operator's electronic communications network;

2. the data must be protected in the appropriate manner against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure;
3. in case when retained data are not used for purposes referred to in Article 102 of this Act the data, the access to retained data must be exclusively limited to authorised persons of competent bodies referred to in Article 105, paragraph 3 and Article 108, paragraph 1 of this Act;
4. the retained data must be destroyed after the expiry of the period of retention referred to in paragraph 3 of this Article, except for data that were processed and stored for the needs of competent bodies referred to in Article 105, paragraph 3 and Article 108, paragraph 1 of this Act.

(6) For the purpose of application of data security principles referred to in paragraph 5 of this Article, the operators referred to in paragraph 1 of this Article must ensure at their own expense the implementation of all appropriate technical and organisational measures.

(7) The supervision of the implementation of retained data security principles referred to in paragraph 5 of this Article, the collection of statistical indicators on retained data and annual reporting to the Commission on the access to retained data shall be prescribed in more detail in a special legislation regulating the obligations of operators in the field of national security pursuant to the relevant European Union directive on data retention.

### *Categories of retained data*

#### *Article 110*

(1) The data retention obligation referred to in paragraph 109 of this Act shall refer to the following categories of data:

- data necessary to trace and identify the source of a communication;
- data necessary to identify the destination of a communication;
- data necessary to identify the date, time and duration of a communication;
- data necessary to identify the type of communication;
- data necessary to identify users' communication equipment or what purports to be their equipment;
- data necessary to identify the location of mobile communication equipment.

(2) The retained data referred to in paragraph 1 of this Article shall also refer to data relating to unsuccessful call attempts, whereby there is no obligation to retain data relating to unconnected calls.

(3) Data revealing the contents of the communication may not be retained.

(4) More detailed information about individual categories of retained data referred to in paragraph 1 of this Article shall be laid down in a special legislation regulating the obligations of operators in the field of national security pursuant to the relevant European Union directive on data retention.

## **XIII. INSPECTION AND EXPERT SUPERVISION**

### *Performing inspection supervision*

#### *Article 111*

(1) The Ministry shall carry out inspection of the application of this Act and of the regulations adopted pursuant to this Act, and treaties and agreements in the field of electronic communications binding for the Republic of Croatia.

(2) The inspection referred to in paragraph 1 of this Article shall be carried out by electronic communications inspectors (hereinafter: inspectors).

(3) The inspection tasks related to the enforcement of the provisions of this Act and regulations adopted pursuant to this Act regulating R&TT equipment shall be carried out by inspectors authorized to undertake measures in relation to such supervision in accordance with this Act and special regulations.

(4) The inspection tasks referred to in paragraphs 1 and 3 of this Article shall be regarded as jobs with special working conditions.

(5) Jobs with inspection authority and detailed conditions that must be met by persons employed to perform such jobs shall be established by the minister in the Ordinance on Internal Organization of the Ministry.

(6) The inspector must have on him/her an official card and badge, which prove his/her official capacity, identity and authority.

(7) The format and content of the official ID and badge and the manner of their issuance, use and the keeping of a register about issued official ID cards and badges shall be prescribed by an ordinance adopted by the Minister.

(8) The inspector shall take minutes of the performed inspection, determined state of affairs, and of measures and actions undertook or ordered. The inspector shall hand over a copy of the minutes of the inspection to the inspected person.

(9) The inspector shall keep records of performed inspections. The content and manner of keeping records shall be stipulated in an ordinance adopted by the Minister.

### *Authority of electronic communications inspectors*

#### *Article 112*

(1) When carrying out the inspection, an inspector shall be authorized to:

1. request and inspect documents (ID card, passport and the similar) on the basis of which he/she may establish the identity of the inspected person and other persons present during inspection;
2. enter and inspect business premises, buildings, objects, construction sites and land, and use technical facilities and equipment of the inspected person for the purpose of inspection;
3. inspect business documents, equipment and other things enabling insight into business operations of the inspected person in relation to the application of this Act;
4. take statements from responsible persons in order to collect evidence about facts that may not be directly established, and from other persons present during inspection, and hear individual persons in administrative proceedings;
5. request in writing from the inspected person to provide correct and complete data and documents necessary for the purpose of inspection;
6. ask for a written report from the inspected person about measures and actions that were undertaken as ordered during inspection;
7. order the alignment of the provisions of electronic communications networks and services with the provisions of this Act and regulations adopted pursuant to this Act;
8. temporarily prohibit the provisions of electronic communications networks and services of which the Agency was not notified or which were continuously provided contrary to the provisions of this Act and regulations adopted pursuant to this Act, and order measures preventing further performance of these activities until the Agency adopts its decision;

9. prohibit the import, manufacture, sale, renting and use of a radio station, R&TT equipment, or other electronic communications equipment which does not satisfy the requirements prescribed by this Act and regulations adopted pursuant to this Act, and order measures for its temporary or permanent withdrawal from the market;
10. prohibit the operation and use of a radio station without a proper license or technical inspection, that is, of a radio station continuously used contrary to the provisions of this Act and regulations adopted pursuant to this Act and order measures disabling further operation and use of this radio station;
11. temporarily prohibit the operation and use of a radio station or other R&TT equipment, electronic communications network or other electronic communications equipment or other technical equipment causing harmful interference, until such interference is removed;
12. prohibit the installation of technical equipment in the protected zone or radio corridor of radio stations, or in the zone of electronic communications infrastructure and associated facilities, if the installation of such equipment is not in compliance with the provisions of this Act and regulations adopted pursuant to this Act;
13. inform the competent building inspection in writing in case of carrying out works or construction of new buildings in the protected zone or the radio corridor of a radio station, or in the zone of electronic communications infrastructure and associated facilities, if the carrying out of such works or construction of such buildings is not in conformity with the provisions of this Act and regulations adopted pursuant to this Act, that is, with special regulations regulating construction;
14. order the removal of other irregularities, deficiencies or oversights in the application of this Act and regulations adopted pursuant to this Act;
15. propose to the Ministry the filing of a motion for the institution of misdemeanour proceedings to the competent misdemeanour court, in accordance with the provisions of the Misdemeanour Act;
16. order the undertaking of other measures and perform other actions in compliance with the purpose of inspection.

(2) Business premises within the meaning of this Act shall comprise residential and business premises and other premises where the inspected person carries out its activity.

(3) An inspector must handle data, which the inspected person has proven to be a business secret, in accordance with the prescribed conditions for the keeping of such data.

(4) During inspection and until the adoption of a court judgement, an inspector may temporarily confiscate documents and objects which may serve as evidence in misdemeanour proceedings and he/she may seal or temporarily seize a radio station, R&TT equipment and other electronic communications equipment, in full or only certain parts of the equipment, which is entered into the minutes of the inspection. The inspector shall issue a certificate thereof containing detailed information about confiscated documents and objects, that is, equipment and parts of equipment.

(5) The form, content and manner of use of the seal for sealing equipment referred to in paragraph 4 of this Article shall be prescribed by an ordinance adopted by the minister.

(6) If, during inspection or on the basis of a supervisor's report or a report by another inspector authorised to carry out inspection pursuant to a special law, the inspector establishes a breach of the provisions of this Act or regulations adopted pursuant to this Act, he or she shall adopt a decision or undertake other measures prescribed under paragraph 1 of this Article at the latest within 30 days from the completion of the inspection or from the receipt of the report containing facts important for adopting the decision. If the decision is not adopted within this time limit, this shall not exclude the obligation for its adoption.

(7) The inspector may propose to the Ministry the filing of a motion for the institution of misdemeanour proceedings or issue a misdemeanour order in accordance with the provisions of the



Misdemeanour Act specifying fines and safeguard measures prescribed by the provisions of Articles 118, 119, 120 and 121 of this Act. The inspector shall notify an electronic communications supervisor thereof in writing.

(8) The misdemeanour order referred to in paragraph 7 of this Article may be issued against a legal entity or a natural person, that is, against a responsible person in a legal entity.

(9) The competent misdemeanour court shall notify the Ministry about the outcome of misdemeanour proceedings.

### ***Performing expert supervision***

#### ***Article 113***

(1) The Agency shall carry out expert supervision over the application of this Act and regulations adopted pursuant to this Act regulating the provisions of electronic communications networks and services on the market, realization of regulatory obligations of operators with significant market power, addressing and numbering, use and control of the radio frequency spectrum, building, installation, maintenance and use of electronic communications networks, electronic communications infrastructure and associated facilities, radio stations and R&TT equipment, measuring and testing for the purpose of detecting the cause of interference and undertaking measures for the elimination thereof.

(2) The expert supervision referred to in paragraph 1 of this Article shall be carried out by electronic communications supervisors (hereinafter: supervisors), who are authorised employees of the Agency's Administrative Service.

(3) Supervision jobs referred to in paragraph 1 of this Article shall be regarded as jobs with special conditions of work.

(4) Jobs with authority of expert supervision and more detailed requirements that must be fulfilled by persons working on those jobs shall be established by the Agency's internal rules.

(5) The supervisor shall be obliged to regularly notify the inspector in writing about the supervision and the established state of affairs within the maximum of 30 days from the completion of expert supervision.

(6) In addition to expert supervision referred to in paragraph 1 of this Article, the supervisor shall, upon the inspector's request, cooperate in the carrying out of inspection and provide adequate expert and technical assistance.

(7) The supervisor must have on him/her the official card and badge, which prove his/her official capacity, identity and authority.

(8) The format and content of the official ID and badge and the manner of their issuance, use and the keeping of a register about issued official ID cards and badges shall be prescribed the ordinance referred to in Article 11, paragraph 7 of this Act.

(9) The supervisor shall make a report on the expert supervision performed, the determined state of affairs and measures and actions undertaken or ordered. The supervisor shall hand over a copy of the report on expert supervision to the supervised person.

(10) The supervisor shall keep records on performed expert supervision. The content and manner of keeping records shall be stipulated in an ordinance referred to in Article 111, paragraph 9 of this Act.

## *Authority of electronic communications supervisor*

### *Article 114*

(1) When carrying out the supervision, the supervisor shall be authorized to:

1. request and inspect documents (ID card, passport and the similar) on the basis of which he/she may establish the identity of the supervised person and other persons present during expert supervision;
2. enter and inspect business premises, buildings, facilities, construction sites and land, and use technical facilities and equipment of the supervised person for the purpose of expert supervision;
3. inspect business documents, equipment and other things enabling insight into business operations of the supervised person in relation to the application of this Act;
4. take statements from responsible persons in order to collect evidence about facts that may not be directly established, and from other persons present during inspection, and hear individual persons in administrative proceedings;
5. request from the supervised person to provide correct and complete data and documents necessary for the purpose of expert supervision in writing;
6. ask for a written report from the supervised person about measures and actions that were undertaken as ordered during inspection;
7. carry out expert supervision and inspection of the provision of electronic communications networks and services, in particular the fulfilment of requirements from general authorisation, laid down in this Act and regulations adopted pursuant to this Act;
8. temporarily prohibit the provision of electronic communications networks and services of which the Agency was not notified or which are continuously provided contrary to the provisions of this Act and regulations adopted pursuant to this Act, and order measures preventing further provision of these services until the Agency adopts its decision;
9. prohibit the import, manufacture, sale, renting and use of a radio station, other R&TT equipment, or other electronic communications equipment which does not satisfy the conditions prescribed by this Act or regulations adopted pursuant to this Act, and order measures for its temporary or permanent withdrawal from the market;
10. supervise the use of the radio frequency spectrum and check the operation and use of radio stations, in particular, the fulfilment of requirements established by this Act and regulations adopted pursuant to this Act, that is, of requirements established in license for use of the radio frequency spectrum;
11. prohibit the operation and use of a radio station without a proper license or technical inspection, that is, of a radio station repeatedly used contrary to the provisions of this Act and regulations adopted pursuant to this Act and order measures disabling further operation and use of this radio station;
12. supervise and inspect electronic communications infrastructure and associated facilities, radio station, R&TT equipment, electronic communications network and other electronic communications equipment and verify the fulfilment of requirements established by this Act and regulations adopted pursuant to this Act;
13. temporarily forbid the operation and use of a radio station, R&TT equipment, electronic communications network or other electronic communications equipment, or other technical equipment causing harmful interference, until such interference is eliminated;
14. prohibit the installation of technical equipment in the protected zone or radio corridor of radio stations, or in the zone of electronic communications infrastructure and associated facilities, if the installation of such equipment is not in compliance with the provisions of this Act and regulations adopted pursuant to this Act;
15. detect the cause of interference caused by a radio station, R&TT equipment, electronic communications network or other electronic communications equipment, or other technical equipment, and undertake or order measures for their elimination;

16. supervise and check the measuring, testing and elimination of determined interference carried out in accordance with the provisions of this Act and regulations adopted pursuant to this Act and independently implement, that is, order the implementation of the necessary measurements, testing and elimination of the established interference;
17. order the elimination of the established irregularities, deficiencies or oversights in the application of this Act and regulations adopted pursuant to this Act;
18. propose to the Agency the filing of a motion for the institution of misdemeanour proceedings to the competent misdemeanour court, in accordance with the provisions of the Misdemeanour Act;
19. order the undertaking of other measures and perform other actions in compliance with the purpose of supervision.

(2) Business premises within the meaning of this Act shall comprise residential and business premises and other premises where the supervised person carries out its activity.

(3) An inspector must treat data which are proven by the supervised person to be a business secret in accordance with the prescribed conditions for the keeping thereof.

(4) In case of undertaking measures referred to in paragraph 1, items 8, 9, 11, 13 and 14 of this Article, the supervisor must, without delay, inform the inspector about measures and actions that were undertaken or ordered.

(5) If measures referred to in paragraph 1, items 8, 9, 10, 11, 12, 13, 14 and 15 of this Article are undertaken, the supervisor shall have the authority and obligations of the inspector referred to in Article 112, paragraph 4 of this Act.

(6) If, in the course of supervision, the supervisor establishes a breach of the provisions of this Act or regulations adopted pursuant to this Act, he or she shall adopt a decision or undertake other measures prescribed under paragraph 1 of this Article at the latest within 30 days from the completion of the supervision with established facts important for adopting the decision. If the decision is not adopted within this time limit, this shall not exclude the obligation for its adoption.

(7) The supervisor must immediately inform in writing the inspector about the supervision, the adopted decision and the undertaken measures referred to in paragraph 6 of this Article, and, if necessary, deliver a proposal for taking the adequate measures referred to in Article 112 of this Act.

(8) In addition to obligations referred to in paragraph 7 of this Article, the supervisor may, if he establishes a violation referred to in Articles 118, 119, 120 and 121 of this Act, propose to the Agency to file a motion for the institution of misdemeanour proceedings or issue a misdemeanour order in accordance with the provisions of Article 112, paragraphs 7 and 8 of this Act and, without delay, notify the inspector thereof in writing.

(9) The competent misdemeanour court shall notify the outcome of misdemeanour proceedings to the Agency.

### *Obligations of supervised persons*

#### *Article 115*

(1) Supervised persons and state administration bodies, local and regional self-government units, and legal entities with public authority must allow the inspector and supervisor to carry out inspection and expert supervision and ensure that they can work without being disturbed. They must be provided insight into and use of all the necessary data and documents, of the associated infrastructure, equipment and other technical facilities, and, upon the inspector's or supervisor's written request,

prepare and deliver free of charge additional data and documents necessary for inspection and expert supervision.

(2) Supervised persons must, upon request of the inspector or supervisor, temporarily discontinue work and business operations in the supervised premises, buildings or facilities during inspection or expert supervision, if the inspector or supervisor could not in any other way carry out inspection or expert supervision or establish the state of affairs.

(3) An inspector or supervisor may, even following inspection or expert supervision, request from the supervised person to carry out certain actions for the purpose of complete establishment of the state of affairs, and set a time limit for the execution of this action.

(4) The supervised person did not allow the inspector or supervisor to carry out inspection or expert supervision if he/she:

- does not allow the entry and inspection of business premises, buildings, objects, construction sites or land where inspection or expert supervision is performed;
- does not allow the inspection of electronic communications infrastructure and associated facilities, radio stations, R&TT equipment, electronic communications network or other electronic communications equipment which is the subject of the inspection or expert supervision is carried out;
- does not allow the inspection of requested documentation, IDs and data in order to establish the facts during inspection or expert supervision or within a time limit determined in the minutes of the inspection, or of the expert supervision;
- does not deliver, upon written request of the inspector or supervisor, within a certain time limit all data and documents necessary for the performance of inspection or expert supervision;
- does not notify within a certain time limit the undertaken measures ordered by the inspector or supervisor in order to eliminate the established irregularities, deficiencies or oversights;
- does not carry out actions referred to in paragraphs 2 and 3 of this Article.

(5) If the inspector or supervisor is faced with physical resistance during inspection or expert supervision, or if there are grounds to expect such resistance, an authorised official person from the competent police administration must provide all the necessary assistance to the inspector or supervisor upon his/her request.

#### ***Enforcement of decisions of electronic communications inspector and supervisor***

##### ***Article 116***

(1) The enforcement of a decision of an inspector and supervisor shall start with the delivery of the decision to the party.

(2) The decision of the inspector or supervisor may not be appealed, but administrative proceedings may be initiated before the Administrative Court of the Republic of Croatia, which does not postpone the enforcement of the decision.

(3) Proceedings before Administrative Court of the Republic of Croatia in administrative disputes initiated in accordance with paragraph 2 of this Article shall be emergency proceedings.

(4) In case of failure to act in accordance with the decision referred to in paragraph 1 of this Article, the inspector or supervisor shall impose on a natural person or a responsible person in a legal entity, to which the decision refers, an administrative fine in the amount of twenty times the average salary in the Republic of Croatia in the last trimester. Every following administrative measure shall be imposed in the double amount.

(5) The administrative measure referred to in paragraph 4 of this Article shall be enforced by authorities competent for collecting fines imposed for misdemeanours, and the amount is paid for the benefit of the State Budget of the Republic of Croatia.

### ***Competence for misdemeanour proceedings***

#### ***Article 117***

(1) A Misdemeanour Court shall be competent for first-instance misdemeanour proceedings in case of misdemeanours prescribed by this Act.

(2) A misdemeanour order in misdemeanour proceedings may be issued by an inspector and a supervisor in accordance with the provisions of the Misdemeanour Act and under the conditions provided for under this Act.

## **XIV. PENAL PROVISIONS**

### ***Particularly serious violations of this Act***

#### ***Article 118***

(1) A legal entity shall be punished with a fine ranging from 1% to the maximum of 5% of the total annual gross revenue earned by providing electronic communications networks and services in the year preceding the year in which the violation was committed in the following cases:

1. if, in the capacity of the universal services operation, it fails to obtain the Agency's prior approval for retail prices of universal services referred to in Article 35, paragraph 4 of this Act;
2. if, in the capacity of the operator with significant market power, it fails to comply with the Agency's decisions or requirements concerning the imposition, maintenance or amendment of regulatory obligations referred to in Articles 58 to 65 of this Act;
3. if it fails to submit the notification referred to in Article 68, paragraph 2 of this Act or fails to comply with the Agency's decision referred to in Article 68, paragraph 6 of this Act;
4. if it does not ensure or does not maintain at its own cost secret surveillance of electronic communications networks and services or electronic communications lines to the operational and technical body competent for surveillance of electronic communications or fails to comply with its obligations towards this body or bodies authorised to apply the measures of secret surveillance of communications networks and services pursuant to the provisions of Article 108, paragraphs 1, 2 or 3 of this Act.

(2) For the violation referred to in paragraph 1 of this Article a responsible person in the legal entity shall also be punished with a fine ranging from HRK 20,000 to 100,000.

(3) If the violation referred to in paragraph 1 of this Article is committed by a natural person, he or she shall be punished with a fine ranging from HRK 20,000 to 100,000.

(4) By way of derogation from the provisions of paragraphs 2 and 3 of this Article, if a responsible person in a legal entity or a natural person committed a violation for their own gain, which resulted in a pecuniary gain, this person shall be punished with a fine ranging from HRK 40,000 to 200,000.

(5) The violation referred to in paragraph 1 of this Article may result in the imposition of a safeguard measure consisting of the prohibition of performance of activities for a period ranging from three months to one year to a legal entity or, in case of a natural person or a responsible person in a legal

entity, a safeguard measure consisting of the prohibition of performance of activities, business or duties for a period of three months to one year.

(6) Pecuniary gain obtained as a result of the violation shall be confiscated.

### *Serious violations of this Act*

#### *Article 119*

(1) A legal entity shall be punished for a violation with a fine ranging from HRK 100,000 to 1,000,000 in the following cases:

1. if it appoints a member of the Agency's Council or the Director of the Agency who was dismissed from his duty, contrary to the provisions of Article 9, paragraph 3 of this Act;
2. if it fails to comply with the Agency's request referred to in Article 15, paragraph 1 of this Act;
3. if it fails to comply with a decision or another administrative act of the Agency referred to in Article 18 of this Act, except in case of decisions referred to in Article 56 of this Act within the prescribed or determined time limit;
4. if it fails to carry out structural separation in accordance with Article 25, paragraph 4 of this Act;
5. if it fails to ensure access to electronic communications network or electronic communications infrastructure and associated facilities or does not allow precedence in the provision of electronic communications services in accordance with Article 25, paragraph 6 of this Act;
6. if it fails to use the electronic communications network or electronic communications infrastructure and associated facilities or a radio station in compliance with the provisions of Article 25, paragraph 7 of this Act;
7. if, in the capacity of a manager of public property or a local or regional self-government unit or a legal entity in majority ownership by the Republic of Croatia or local or regional self-government units fails to comply with the principle of non-discrimination in accordance with Article 27, paragraph 3 of this Act;
8. if, in the capacity of a manager of public property or owner of private property, acts contrary to the provision of Article 28, paragraph 3 of this Act;
9. if, in the capacity of infrastructure operator, it refuses to conclude a contract with the beneficiary operator or prevents the beneficiary operator from accessing or sharing electronic communications infrastructure and associated facilities in accordance with the provisions of Article 30 of this Act;
10. if, in the capacity of an infrastructure operator, it fails to process applications from beneficiary operators in accordance with Article 30, paragraph 6 of this Act or if it fails to invite a public tender pursuant to Article 30, paragraph 7 of this Act or invites a public tender referred to in Article 30, paragraph 7 of this Act without an authorised representative of the Agency or conclude a contract referred to in Article 30, paragraph 2 of this Act contrary to Article 30, paragraph 9 of this Act;
11. if it provides electronic communications networks and services even after the decision referred to in Article 33, paragraph 4 of this Act becomes final;
12. if, in the capacity of a universal services operator, it does not fulfil the obligations referred to in Article 35, paragraph 5 of this Act;
13. if, in the capacity of a universal service operator, it does not fulfil special obligations referred to in Article 37, paragraphs 1 or 2 of this Act;
14. if, in the capacity of an operator of publicly available telephone services, it fails to notify the Agency about annual revenue on retail markets of these services pursuant to Article 40, paragraph 4 of this Act;
15. if it does not base on or conclude contracts with subscribers in accordance with the provisions of Article 41 of this Act;

16. if it does not draw up, amend, apply, publish or deliver to the Agency its general business terms and conditions or tariffs pursuant to the provisions of Article 42 of this Act;
17. if it fails to ensure equal availability of public communications services to disabled persons in accordance with Article 43, paragraph 1 of this Act;
18. if it does not provide to end-users of its services adequate protection from abuse or fraud in the public communications network or fails to inform end-users of its services with such protection in accordance with Article 43, paragraph 2 of this Act;
19. if it terminates the provision of services to a subscriber or disconnects subscriber terminal equipment from the electronic communications network or does not restart or continue providing services to the subscriber (reconnection) contrary to the provisions of Article 50, paragraphs 6, 7 or 8 of this Act;
20. if, in the capacity of an operator of public communications services, it refuses to participate in dispute resolution procedures referred to in Article 51, paragraph 1 of this Act or does not cooperate with the Agency for the purpose of resolution of these disputes in accordance with Article 51, paragraph 4 of this Act;
21. if it acts contrary to the Agency's decision referred to in Article 53, paragraph 3 of this Act;
22. if it fails to act in compliance with the Agency's decision referred to in Article 54, paragraph 2 of this Act or does not deliver to the Agency the necessary data referred to in Article 54, paragraph 7 of this Act;
23. if, in the capacity of the operator with significant market power, it fails to deliver to the Agency the retail prices of its services pursuant to Article 63, paragraph 5 of this Act;
24. if it refuses to negotiate interconnection for the purpose of providing publicly available electronic communications services or refuses to offer access or interconnection to other operators in accordance with the provisions of Article 66, paragraphs 3 or 4 of this Act;
25. if it processes data collected in relation to access or interconnection contrary to the provisions of Article 66, paragraph 5 of this Act;
26. if it does not fulfil the obligations or conditions set by the Agency in accordance with the provisions of Article 66, paragraph 6 of this Act;
27. if it does not fulfil the obligations concerning separate accounting referred to in Article 67, paragraph 1, item 1 of this Act or does not have structural separation for the activities referred to in Article 67, paragraph 1, item 2 of this Act;
28. if it does not prepare or publish financial statements or does not perform annual audit in accordance with the provisions of Article 67, paragraphs 3, 4 or 5 of this Act;
29. if it uses the assigned addresses or numbers contrary to the provisions of Article 73 of this Act;
30. if it does not stop using the revoked addresses or numbers within the time limit defined in the Agency's decision referred to in Article 75, paragraph 1 of this Act;
31. if it fails to allow number portability in accordance with the provisions of Article 76 of this Act;
32. if it fails to allow free-of-charge calls to the single European emergency call number "112" or to other emergency services in the Republic of Croatia or fails to deliver, free of charge, to the competent central body all available data on calls made to the "112" number in accordance with the provisions of Article 77, paragraphs 1 or 2 of this Act or does not satisfy technical or other requirements or quality of service parameters related to calls to the "112" number established in the ordinance referred to in Article 77, paragraph 3 of this Act;
33. if it uses the radio frequency spectrum contrary to the manner and conditions of assignment and use defined in the Radio Frequency Allocation Table or radio frequency assignment plans or in the ordinance referred to in Article 82, paragraph 4 of this Act;
34. if it fails to comply with the conditions defined in the general license referred to in Article 87 of this Act;
35. if it fails to obtain the proper license for the use of the radio frequency spectrum referred to in Articles 88, 89, 90 or 91 of this Act or does not abide by the conditions laid down in these licenses;
36. if it uses a device for interfering with radio frequencies of public electronic communications networks contrary to the provisions of Article 88, paragraph 6 of this Act;

37. if it uses the radio frequency spectrum on the basis of a temporary license contrary to the provisions of Article 91, paragraphs 2 or 3 of this Act;
38. if it does not stop using radio frequencies within a time limit set by the Agency's decision referred to in Article 93, paragraph 1 of this Act;
39. if it builds, installs or uses electronic communications network, radio station, other R&TT equipment or other electronic communications equipment creating values of sizes of electromagnetic fields or intensity of radiation higher than values established in the ordinance referred to in Article 95, paragraph 2 of this Act or installs or uses radio stations contrary to the conditions of installation and use laid down in this ordinance;
40. if it fails to obtain the prescribed certificate of conformity of a radio station in accordance with Article 95, paragraph 3 of this Act;
41. if it fails to undertake the prescribed measures for the purpose of safeguarding the security of electronic communications networks or services or to inform users about the risk of the breach of the security of the network or to appoint a responsible person in accordance with the provisions of Article 99 of this Act;
42. if it fails to ensure the confidentiality of electronic communications and associated traffic data in accordance with Article 100, paragraph 1 of this Act;
43. if it uses the electronic communications network for storing data or for access to stored data contrary to the provisions of Article 100, paragraph 4 of this Act;
44. if it uses the automated calling systems, facsimile machines or electronic mail for the purposes of direct marketing or sale, or uses data about electronic mail addresses of consumers or sends electronic mail for the purposes of direct marketing or sale contrary to the provisions of Article 107, paragraphs 1, 2, 3 or 4 of this Act;
45. if, in the capacity of an operator of electronic mail services, does not allow the filtering of incoming electronic mail, or does not publish the electronic mail address for reporting abuse, or does not process complaints concerning abuse of electronic mail, or does not undertake appropriate measures if abuse of a subscriber's electronic mail account is established in accordance with the provisions of Article 107, paragraphs 6, 7, 8 or 9 of this Act or does not undertake measures for the purpose of prevention or suppression of abuse or fraud in the provision of electronic mail services laid down in the ordinance referred to in Article 107, paragraph 12 of this Act;
46. if it fails to ensure to competent bodies immediate identification of users in accordance with Article 108, paragraph 4 of this Act;
47. if it fails to retain data about electronic communications, or fails to store or deliver the retained data or does not apply the principles of security of retained data or does not ensure, at its own expense, the necessary technical or organisational measures in accordance with the provisions of Article 109 of this Act;
48. if fails to retain certain categories of data in accordance with Article 110 of this Act or retains data revealing the contents of the communication;
49. if, as a supervised entity during inspection supervision, it does not allow an inspector to enter or inspect business premises, buildings, facilities, construction sites or land where inspection is performed or does not allow the inspection of electronic communications infrastructure or associated facilities, radio stations, R&TT equipment, electronic communications networks or other electronic communications equipment subject to inspection supervision or does not ensure inspection of requested documentation, identification documents or data in order to establish facts in the course of inspection supervision or within the time limit set in the minutes of inspection, or fails to deliver for inspection, upon the inspector's written request and within a certain time limit, all data or documents necessary for inspection or fails to inform within a specified time limit about the undertaken measures ordered by the inspector for the purpose of eliminating the established irregularities, deficiencies or oversights or it fails to carry out actions referred to in Article 115, paragraphs 2 or 3 of this Act;
50. if, as a supervised entity during expert supervision, does not allow the supervisor to enter or inspect business premises, buildings, objects, construction sites or land where inspection is performed or does not allow the inspection of electronic communications infrastructure or associated facilities, radio stations, R&TT equipment, electronic communications networks or



other electronic communications equipment subject to inspection supervision or does not ensure inspection of requested documentation, identification documents or data in order to establish facts in the course of expert supervision or within the time limit set in the minutes of inspection, or fails to provide for inspection, upon the inspector's written request and within a certain time limit, all data or documents necessary for inspection or fails to inform within a specified time limit about the undertaken measures ordered by the supervisor for the purpose of eliminating the established irregularities, flaws or oversights or it fails to carry out actions referred to in Article 115, paragraphs 2 or 3 of this Act.

(2) For the violation referred to in paragraph 1 of this Article the responsible person in a legal entity shall also be punished with a fine ranging from HRK 20,000 to 100,000.

(3) If the violation referred to in paragraph 1 of this Article is committed by a natural person, he or she shall be punished with a fine ranging from HRK 10,000 to 50,000.

(4) By way of derogation from the provisions of paragraphs 2 and 3 of this Article, if the violation was committed for their own gain, which resulted in a pecuniary gain, the responsible person in a legal entity shall be punished with a fine ranging from HRK 40,000 to 200,000, and a natural person with a fine ranging from HRK 20,000 to 100,000.

(5) The violation referred to in paragraph 1 of this Article may result in the imposition of a safeguard measure consisting of the prohibition of performance of activities for a period ranging from three months to one year in case of a legal entity or, in case of a natural person or a responsible person in a legal entity, a safeguard measure consisting of the prohibition of performance of activities, business or duties for a period of three months to one year.

(6) The violation referred to in paragraph 1 of this Article may result in the imposition of the safeguard measure of confiscation of a radio station, R&TT equipment or other electronic communications equipment, and the violation referred to in paragraph 1, item 44 of this Act may result in the imposition of the safeguard measure of confiscation of computer and/or other technical equipment.

(7) Pecuniary gain obtained as a result of the violation shall be confiscated.

#### ***Other violations of this Act***

#### ***Article 120***

(1) A legal entity shall be punished with a fine ranging from HRK 50,000 to 500,000 in the following cases:

1. if it fails to plan, design, produce, build, install, maintain or use electronic communications network or electronic communications infrastructure and associated facilities pursuant to the provisions of Article 24, paragraphs 4 or 5 of this Act;
2. if it fails to provide access to all operators in accordance with Article 24, paragraph 6 of this Act;
3. if, within 60 days from the date of establishment of interference, it fails to ensure at its own expense the reception of radio or television programmes of electronic media broadcasters in accordance with Article 24, paragraph 7 of this Act;
4. if it fails to build, install or use electronic communications network or provide electronic communications services pursuant to the conditions referred to in Article 25, paragraph 1 of this Act;
5. if it carries out works or constructs new buildings, or installs electronic communications infrastructure or associated facilities or plants in the zone of electronic communications infrastructure and associated facilities, that is, in the protected zone or a radio corridor of certain radio stations contrary to the provisions of Article 26, paragraphs 1 or 2 of this Act;

6. if it plants plantations under surface electronic communications lines and above underground electronic communications lines or in their immediate vicinity, that is, in the protected zone or the radio corridor of certain radio stations contrary to the provision of Article 26, paragraph 3 of this Act;
7. if it fails to ensure at its own expense protection or relocation of electronic communications infrastructure or associated facilities in accordance with Article 26, paragraph 4 of this Act;
8. if it fails to provide value added services or it fails to prevent or disable deceitful or unlawful actions related to the provision of value added services or suppress fraud caused by Internet dialler software in accordance with the provisions of the ordinance referred to in Article 34 of this Act;
9. if it does not allow subscribers the verification and control of data about charges for provided services or itemised billing for provided services in accordance with the provisions of Article 44 of this Act;
10. if it fails to make possible to subscribers the barring of outgoing calls in accordance with the provisions of Article 45, paragraphs 1 or 2 of this Act;
11. if it fails to allow to each subscriber the barring of automatic call forwarding under Article 46 of this Act;
12. if it fails to establish and update a public directory of its subscribers, or use personal data of subscribers, or does not ensure access to all legal and natural persons providing information about subscribers' numbers, or fails to satisfy all the reasonable requests of those persons or persons publishing public directories for access to information about subscribers in accordance with the provisions of Article 47 of this Act;
13. if it carries out the procedure of temporary disconnection or permanent disconnection of subscriber terminal equipment contrary to the provisions of Article 48 of this Act;
14. if, in the capacity of an operator providing value added services, provides false or misleading information, or withholds important information, does not advertise its services or does not fulfil the obligations referred to in Article 49, paragraphs 1 and 2 of this Act;
15. if, in the capacity of an operator providing value added services, it does not treat calls towards a value added service in accordance with the provisions of Article 49, paragraph 3 of this Act;
16. if it fails to act upon a subscriber's complaint in accordance with the provisions of Article 49, paragraphs 4 or 5 of this Act;
17. if it uses access codes for Internet dialler software contrary to Article 49, paragraph 9 of this Act;
18. if it enables call switching to Internet dialler software contrary to Article 49, paragraph 10 of this Act;
19. if it transfers the rights to use addresses or numbers contrary to the provisions of Article 74 of this Act;
20. if it does not support the international access code "00" or does not allow making calls towards the European Telephony Numbering Space (ETNS) or fails to ensure access of users from other countries to non-geographic numbers in the Republic of Croatia in accordance with the provisions of Article 78 of this Act;
21. if it performs amateur radio communications contrary to the provisions of the ordinance referred to in Article 82, paragraph 10 of this Act;
22. if it transfers the license for use of the radio frequency spectrum contrary to the provisions of Article 92 of this Act;
23. if it fails to carry out measuring, testing or establishing of the cause of interference or to undertake measures for their elimination in accordance with Article 94, paragraph 3 of this Act;
24. if it carries out technical inspection or radio measurements referred to in Article 82 of this Act or measuring and testing in order to establish the cause of interference in the radio frequency spectrum or calculation and measuring of the value of electromagnetic field referred to in Article 95 of this Act without the prescribed special authorisation referred to in Article 94 of this Act;
25. if it fails to satisfy obligations related to the conveyance of the digital radio or television signal in accordance with the provisions of Article 96 of this Act;

26. if it fails to satisfy the obligation of conveyance of radio or television programmes in the Republic of Croatia referred to in Article 97, paragraph 1 of this Act;
27. if, in the capacity of an operator of conditional access services, fails to satisfy the obligations in accordance with the provisions of Article 98 of this Act;
28. if, in the capacity of the holder of intellectual property rights, acts in relation to conditional access devices or systems contrary to provisions of Article 98, paragraph 5 of this Act;
29. if it breaches the provisions concerning confidentiality of radio communications referred to in Article 101, paragraph 1 of this Act;
30. if it fails to act or to process traffic data or to inform subscribers or users about the processing of traffic data in accordance with the provisions of Article 102 of this Act;
31. if it fails to allow the prevention of presentation of calling line identification or a number related with it or the rejecting incoming calls in case of presentation of the calling line identification in accordance with the provisions of Article 103 of this Act;
32. if it fails to act or process location data other than traffic data or to inform subscribers or users about the processing of such data in accordance with the provisions of Article 104 of this Act;
33. if it fails to record, store or retain data about malicious or nuisance calls or to deliver these data to the competent police administration or fails to cooperate with other operators in accordance with the provisions of Article 105 of this Act;
34. if fails to make impossible the prevention of presentation of calling line identification or temporary rejecting or lack of subscriber's or user's consent to process location data other than traffic data in accordance with Article 106, paragraph 1 of this Act.

(2) A responsible person in a legal entity shall be punished for the violation referred to in paragraph 1 of this Article with a fine ranging from HRK 5,000 to 50,000.

(3) If the violation referred to in paragraph 1 of this Article is committed by a natural person, he or she shall be punished with a fine ranging from HRK 2,000 to 20,000.

(4) By way of derogation from the provisions of paragraphs 2 and 3 of this Article, if the violation was committed for their own gain, which resulted in a pecuniary gain, the responsible person in a legal entity shall be punished with a fine ranging from HRK 10,000 to 100,000, and a natural person with a fine ranging from HRK 4,000 to 40,000.

(5) The violation referred to in paragraph 1 of this Article may result in the imposition of the safeguard measure of confiscation of a radio station, R&TT equipment or other electronic communications equipment.

(6) Pecuniary gain obtained as a result of the violation shall be confiscated.

### *Article 121*

(1) A legal person shall be punished for a violation with a fine ranging from HRK 20,000 to 100,000 in the following cases:

1. if, in the capacity of an infrastructure operator, it fails to deliver to the Agency a written notification in accordance with Article 25, paragraph 5 of this Act;
2. if, in the capacity of infrastructure operator, it does not publish or deliver decisions in accordance with the provisions of Article 30, paragraph 13 of this Act;
3. if it fails to deliver to the Agency a prior written notification or the change of data in that notification in accordance with the provisions of Article 32 of this Act;
4. if, in the capacity of a universal services operator, it fails to publish or regularly deliver to the Agency information or data on conditions for the provision of universal services in accordance with Article 35, paragraph 6 of this Act;
5. if it fails to inform the subscribers of publicly available telephone services in accordance with Article 41, paragraph 5 of this Act;

6. if it fails to inform the public about the possibilities for the prevention of the presentation of calling line or a related line identification or for the rejection of incoming calls in case of presentation of the calling line identification in accordance with Article 103, paragraph 6 of this Act.

(2) A responsible person in a legal entity shall be punished for the violation referred to in paragraph 1 of this Article with a fine ranging from HRK 2,000 to 20,000.

(3) If the violation referred to in paragraph 1 of this Article is committed by a natural person, he or she shall be punished with a fine ranging from HRK 1,000 to 10,000.

#### *Statutes of limitation on misdemeanour prosecution*

##### *Article 122*

Misdemeanour proceedings for violations prescribed by this Act may not be initiated after the expiry of three years from the date of commission of the misdemeanour.

## **XV. TRANSITIONAL AND FINAL PROVISIONS**

### *Concessions, licenses and notifications for the provision of telecommunications services*

#### *Article 123*

(1) A legal or a natural person providing electronic communications networks or services on the date of entry into force of this Act on the basis of a concession, license or a notification issued, that is, submitted pursuant to regulations that were in force until the entry into force of this Act, shall continue providing these services in accordance with provisions of this Act until the expiry of the time for which the concession or license was granted, or notification submitted, under the following conditions:

1. The Concession Agreement for the Provision of Public Voice Services in Fixed Network referred to in Article 12 of the Telecommunications Act (Official Gazette Nos. 76/99, 128/99, 69/01 and 109/01) and Market Telecommunications Services in Fixed Network referred to in Article 25 of the same Act of 22 September 1999 (hereinafter: the Fixed Network Concession Agreement), Agreement Amending the Fixed Network Concession Agreement of 30 July 2001, Second Amendments to the Fixed Network Concession Agreement of 17 October 2001 and Agreement Harmonising the Fixed Network Concession Agreement with the Telecommunications Act in force, of 28 February 2007 concluded between the Government of the Republic of Croatia and the company HT – Croatian Telecom Inc. shall cease to be valid on the date of entry into force of this Act;
2. concession agreements concluded pursuant to Article 30, paragraph 1 of the Telecommunications Act (Official Gazette Nos. 122/03, 158/03, 60/04 and 70/05) and concession agreements concluded on the basis of regulations that were previously in force in the telecommunications sector shall cease to be valid on the date of issue of the Agency's certificate referred to in Article 32, paragraph 5 of this Act;
3. licenses for providing telecommunications services granted in accordance with Article 25 of the Telecommunications Act (Official Gazette Nos. 122/03, 158/03, 60/04 and 70/05) shall cease to be valid on the date of issue of the Agency's certificate referred to in Article 32, paragraph 5 of this Act;
4. notifications for providing telecommunications services referred to in Article 27 of the Telecommunications Act, Official Gazette Nos. 122/03, 158/03, 60/04 and 70/05) shall cease to be valid on the date of issue of the Agency's certificate referred to in Article 32, paragraph 5 of this Act.

(2) The Agency shall, *ex officio*, for the purpose of replacement of concessions, licenses and notifications with the relevant general authorisation in accordance with this Act, issue to operators referred to in paragraph 1, items 2, 3 and 4 of this Article the certificate referred to in Article 32, paragraph 5 of this Act within 60 days from the date of entry into force of the ordinance referred to in Article 34 of this Act.

### ***Decisions on primary assignment of addresses and numbers***

#### ***Article 124***

Decisions on primary assignment of addresses and numbers adopted in accordance with regulations that were effective until the entry into force of this Act shall be valid until the expiry of the time limit laid down by the decision, and the assigned addresses and numbers may be used in accordance with the conditions of use laid down in this Act.

### ***License for use of the radio frequency spectrum***

#### ***Article 125***

(1) Licenses for use of the radio frequency spectrum issued pursuant to regulations that were in force until the entry into force of this Act shall be valid until the expiry of the period for which they were issued, and radio stations or radio frequencies may be used until the expiry of the abovementioned time limit under the conditions stipulated in these licenses which are not contrary to the provisions of this Act.

(2) The Agency shall, *ex officio* or upon request of the licensee referred to in paragraph 1 of this Article, harmonise the conditions for assignment and use of radio frequencies defined in the licenses referred to in paragraph 1 of this Article and, where necessary, grant new licenses for the use of the radio frequency spectrum in accordance with the provisions of this Act.

(3) By way of derogation from the provision of paragraph 1 of this Article, licenses for use of the radio frequency spectrum referred to in Article 82, paragraph 8 of this Act shall be transferred by the Agency to operators of public communications networks selected on the basis of a public tender at the latest by the date of termination of analogous broadcasting of radio and television programmes in accordance with the ordinance referred to in Article 96, paragraph 4 of this Act.

(4) Licenses referred to in paragraph 3 of this Article shall impose on operators of public communications networks an obligation to allow to electronic media broadcasters access to an equal number of assigned multiplex positions and number of transmission hours equivalent to those laid down in the relevant licenses for broadcasting radio or television programme granted to electronic media broadcasters in accordance with regulations valid until the entry into force of this Act.

(5) By way of derogation from the conditions defined in the Radio Frequency Allocation Table and the ordinance referred to in Article 82, paragraph 4 of this Act, the Agency shall, on the basis of a request submitted at least 60 days before the expiry of the license referred to in paragraph 1 of this Article, and after having conducted public consultations in accordance with Article 22 of this Act, issue a new license for the use of the radio frequency spectrum referred to in Article 88 of this Act to the operator of public communications services with the use of the radio frequency spectrum in the system of second generation mobile networks (GSM 900) which has been issued a certificate referred to in Article 32, paragraph 5 of this Act and which has provided its services in compliance with the provisions of the concession agreement referred to in Article 123, paragraph 1, item 2 of this Act and regulations that were valid until the entry into force of this Act.

(6) Certificates of security issued in accordance with regulations that were in force until the entry into force of this Act shall be replaced by certificates of conformity issued in accordance with the

ordinance referred to in Article 95, paragraph 2 of this Act when technical data about radio stations are amended, and at the latest by 1 January 2015.

### ***Authorisations for providing telecommunications services***

#### ***Article 126***

Authorisations for the provision of telecommunications services referred to in Article 35 of the Telecommunications Act (Official Gazette Nos. 122/03, 158/03, 60/04 and 70/05) shall be replaced by the Agency by appropriate special authorisations referred to in Article 94 of this Act within 60 days from the date of entry into force of the ordinance referred to in Article 82, paragraph 4, or Article 95, paragraph 2 of this Act.

### ***Ensuring the provision of universal services***

#### ***Article 127***

(1) Until the designation of a universal services operator in accordance with the provisions of Article 36 of this Act, universal services referred to in Article 35, paragraph 2 of this Act shall be continued to be provided by the universal services operator designated by an Agency's decision pursuant to regulations valid until the entry into force of this Act.

(2) Until the establishment of at least one comprehensive directory and at least one public directory enquiry service of subscribers of all publicly available telephone services in the Republic of Croatia in accordance with Article 47, paragraph 7 of this Act, these services shall be provided by an universal services operator designated by an Agency's decision referred to in paragraph 1 of this Article.

### ***Preservation of regulatory obligations for operators with significant market power***

#### ***Article 128***

(1) On the date of entry into force of this Act the Agency shall *ex officio* initiate procedures referred to in Article 52, paragraph 1 of this Act taking into account in particular the situation on the market of electronic communications networks and services in the Republic of Croatia and the relevant Commission recommendation on relevant markets susceptible to *ex ante* regulation.

(2) All regulatory obligations imposed on or prescribed for these operations that were in force until the entry into force of this Act shall remain in force and shall be applied until the termination of the procedures referred to in paragraph 1 of this Article and the imposition, maintenance, amendment or withdrawal of regulatory obligations to operators with significant market power pursuant to the provisions of this Act.

### ***Implementation of data retention obligation***

#### ***Article 129***

Operators of public communications networks and publicly available electronic communications services must initiate fulfilling the data retention obligation in accordance with Articles 109 and 110 of this Act in relation to Internet access, electronic mail and Internet telephony at the latest within twelve months from the date of entry into force of this Act.

## ***Initiated proceedings***

### ***Article 130***

(1) Proceedings initiated pursuant to the provisions of the Telecommunications Act (Official Gazette No. 122/03, 158/03, 60/04, and 70/05) until the entry into force of this Act shall be completed in compliance with the provisions of that Act and regulations adopted on the basis of that Act.

(2) By way of derogation from the provision of paragraph 1 of this Article, proceedings referred to in paragraph 1 of this Article shall be completed in compliance with the provisions of this Act in case when this is more favourable for a party in the proceedings.

## ***Transitional provisions on the Agency***

### ***Article 131***

(1) Members of the Council of the Croatian Telecommunications Agency and the Chairman of the Postal Services council shall continue with their work even after the entry into force of this Act as members of the Agency's Council until the expiry of their term of office in accordance with the Telecommunications Act (Official Gazette Nos. 122/03, 158/03, 60/04 and 70/05), that is, with the Postal Act (Official Gazette Nos. 172/03, 15/04 and 92/05).

(2) On the date of entry into force of this Act the Chairman of the Council of the Croatian Telecommunications Agency shall become the Chairman of the Agency's Council, and the Chairman of the Postal Services Council shall become Deputy Chairman of the Agency's Council until the expiry of the term of office referred to in paragraph 1 of this Article.

(3) The Government of the Republic of Croatia shall, within 30 days from the entry into force of this Act, issue a public invitation for proposing candidates for three new members of the Agency's Council appointed in accordance with Article 8, paragraph 3 of this Act who must satisfy the requirements referred to in Article 8, paragraph 6 of this Act concerning completed university or polytechnic studies and necessary work experience in relation to all members of the Agency's Council. The Government of the Republic of Croatia shall within the next 30 days following the issuing of a public invitation propose to the Croatian Parliament to appoint three new members of the Agency's Council.

(4) The Director of the Telecommunications Agency shall temporarily stay in his position even after the entry into force of this Act until the date of appointment of the Director of the Agency pursuant to this Act.

(5) Within 30 days from the entry of the force of this Act, the Agency's Council shall adopt a proposal of the Agency's Statute and submit it for prior approval to the Government of the Republic of Croatia.

(6) Until the entry into force of the Statute, the provisions of the Statute of the Croatian Telecommunications Agency shall apply *mutatis mutandis*.

(7) The Agency's Council shall, within 30 days from the entry into force of the Agency's Statute, publish a public competition for the appointment of the Agency's Director and, within the following 30 days, appoint the Director of the Agency.

(8) Within six months from the date of entry into force of the Agency's Statute, the Agency's Council shall adopt other internal rules prescribed by this Act and special regulations

(9) Until the adoption of internal rules referred to in paragraph 8 hereof, internal rules of the Croatian Telecommunications Agency shall apply *mutatis mutandis* to the extent to which they are not contrary to the provisions of this Act and the Agency's Statute.

(10) On the date of entry into force of this Act, the Croatian Telecommunications Agency shall continue to exist as the Agency, while the Postal Services Council shall cease to exist and the term of office of its members shall terminate, except for the Chairman of the Postal Services Council.

(11) The Chairman of the Agency's Council shall within fifteen days from the entry into force of the Agency's Statute submit the application for the deletion of the Postal Services Council from the court register and the application for the adjustment of the entry of the Agency in the court register.

(12) On the date of entry into force of this Act, the employees of the administrative services of the Croatian Telecommunications Agency and the Postal Services Council shall become employees of the Administrative Service of the Agency and shall remain on positions they had at the moment of entry into force of this Act. They shall retain these positions until the conclusion of new employment contracts pursuant to internal rules of the Agency referred to in paragraph 8 of this Article.

(13) The Agency shall be the legal successor of the Postal Services Council and shall take over its moveable and immovable assets, business premises and equipment, archives and other documentations, funds and accounts, as well as all other rights and obligations of the Postal Services Council.

(14) The amount and the manner of allocation of surplus funds resulting from the difference between earned revenue and incurred expenditures of the Croatian Telecommunications Agency in 2007 shall be established in a decision adopted by the Government of the Republic of Croatia at the latest by the 31 December 2008.

#### ***Transitional provisions on the Council of Users of Telecommunications Services***

##### ***Article 132***

(1) The Agency's Council shall adopt the internal rules establishing an internal organisational unit for the protection of rights of users in accordance with Article 51 of this Act within 60 days from the entry into force of the Agency's Statute.

(2) On the date of entry into force of the internal rules referred to in paragraph 1 of this Article, the Council of Users of Telecommunications Services established pursuant to Article 50 of the Telecommunications Act (Official Gazette Nos. 122/03, 158/03, 60/04 and 70/05), shall cease to exist and the term of office of its members shall be terminated.

(3) All procedures and objects from the scope of the Council of Users of Telecommunications Services shall be taken over by the internal organisational unit of the Agency referred to in paragraph 1 of this Act.

#### ***Secondary legislation***

##### ***Article 133***

(1) The Regulation on the limitations of use of radio frequencies (Official Gazette No 2/05) shall apply until the entry into force of the ordinance referred to in Article 82, paragraph 4 of this Act, to the extent to which it is not contrary to the provisions of this Act.

(2) The following shall apply until the entry into force of regulations adopted on the basis of authority established under this Act to the extent to which they are not contrary to the provisions of this Act.

- Ordinance on the radio frequency spectrum allocation (Official Gazette No. 193/03),
- Ordinance on the assignment of radio frequencies (Official Gazette No 129/05),
- Ordinance on the payment of fees for the assignment and use of radio frequencies (Official Gazette Nos. 49/04, 57/04, 93/05 and 106/07),



- Ordinance on the size of the protected zone and radio corridor (Official Gazette No. 5/96),
- Ordinance on the identification of radio stations (Official Gazette No 63/95),
- Ordinance on amateur radio communications (Official Gazette Nos. 198/03 and 3/04),
- Ordinance on technical requirements and conditions of use of radio stations for broadcasting radio programmes in the UHF band with frequency modulation (UHF/FM) (Official Gazette No. 37/96),
- Ordinance on technical requirements and conditions of use of radio stations for broadcasting television programmes in the frequency bands I, III and IV/V (Official Gazette No. 66/96),
- Ordinance on technical requirements and conditions of use of radio frequency converters for the transmission of television programmes in the frequency bands I, III and IV/V (Official Gazette No. 88/96),
- Ordinance on the conditions of use of the encoding standard for a digital television signal in terrestrial broadcasting systems (Official Gazette No. 73/07),
- Ordinance on technical requirements and conditions of use for facilities and technical equipment for cable television (Official Gazette Nos. 83/05 and 29/97),
- Ordinance on technical requirements for construction and use of telecommunications infrastructure (Official Gazette No. 88/01),
- Ordinance on technical inspections in telecommunications (Official Gazette Nos. 7/05 and 129/05),
- Ordinance on authorisations for performance of telecommunications activities (Official Gazette No. 183/04),
- Ordinance on addressing and numbering in public telecommunications and on the payment of fees (Official Gazette No. 177/03 and 108/05),
- Ordinance on concessions and licenses for the provision of telecommunications services (Official Gazette Nos. 49/04, 57/04, 123/04, 26/05 and 106/07),
- Ordinance on the payment of fees for the provision of telecommunications services and activities (Official Gazette Nos. 26/05 and 106/07),
- Ordinance on public telecommunications in the fixed network (Official Gazette Nos. 58/95 and 85/01),
- Ordinance on telecommunications services (Official Gazette Nos. 183/04 and 108/05),
- Ordinance on universal telecommunications services (Official Gazette No.123/05),
- Ordinance on network access and interconnection (Official Gazette No.185/03),
- Ordinance on access to the unbundled local loop (Official Gazette Nos. 45/05 and 99/05),
- Ordinance on number portability and carrier pre-selection (Official Gazette No. 183/04),
- Ordinance on the single European emergency call number (Official Gazette No. 108/05),
- Ordinance on limitations in the intensity of electromagnetic fields for radio equipment and telecommunications terminal equipment (Official Gazette No. 183/04),
- Ordinance on the requirements for market placement, putting into operation and use of radio equipment and telecommunications terminal equipment (Official Gazette No. 5/05),
- Ordinance on electromagnetic compatibility (EMC) (Official Gazette No. 16/05),
- Ordinance on official identity cards and badges of a telecommunications inspector and telecommunications supervisor (Official Gazette No. 49/07),
- Ordinance on registers of a telecommunications inspector and telecommunications supervisor (Official Gazette No. 49/07),
- Ordinance on stamps of a telecommunications inspector and telecommunications supervisor (Official Gazette No. 49/07).

### ***Repeal of regulations***

#### ***Article 134***

(1) On the date of entry into force of this Act, the Telecommunications Act (Official Gazette Nos. 122/03, 158/03, 60/04 and 70/05) shall cease to be valid, except for the provisions of Articles 97, 98, 99, 100 and 102, which cease to be valid on 31 December 2008.

- (2) The following shall cease to be valid on the date of entry into force of this Act:
- Ordinance on conditions and manner of determining relevant markets in telecommunications (Official Gazette No. 127/05),
  - Ordinance on public telecommunications in the mobile network (Official Gazette No. 58/95),
  - Ordinance on cable television (Official Gazette No. 83/95),
  - Ordinance on the manner of carrying out the verification of technical equipment for measuring and registering the provided telecommunications services (Official Gazette No. 95/96),
  - Ordinance on detailed contents of technical instructions of use on devices in the area of radio communications, audio appliances and video appliances, and devices connected to them (Official Journal No. 28/89 and Official Gazette Nos. 53/91 and 158/03),
  - Ordinance on obligatory certification of reception antennas for television and audio radio phonic emissions in the frequency band from 30 MHz to 1000 MHz and on the conditions that must be met by companies and other legal entities authorised to certify these products (Official Journal No. 30/91 and Official Gazette No. 53/91),
  - Ordinance on technical standards for the maintenance of antennae polls (Official Journal No. 65/84),
  - Order on the definition of devices in the field of radio communications, electro acoustics, registration and reproduction of image and sound intended for use in households, which may be put into circulation only with a warrantee, technical instructions and the provision on the shortest warrantee period and the period of secured maintenance for such devices (Official Journal No. 9/81 and Official Gazette No. 53/91),
  - Order on the definition of devices in the field of radio communications, audio appliances and video appliances, and devices connected to them, which may be put into circulation only with a warrantee, technical instructions and the provision on the shortest warrantee period and the period of secured maintenance for such devices (Official Journal No. 28/89 and Official Gazette No. 53/91),
  - Order on the definition of terminal and similar devices in the field of telecommunications and devices connected to them, which may be put into circulation only with a warrantee and technical instructions, and on the shortest warrantee period and the period of secured maintenance for such devices (Official Gazette No. 34/00).

*Entry into force of this Act*

*Article 135*

This Act shall be published in the Official Gazette and enter into force on 1 July 2008, except for the provisions of Article 5, paragraph 7, Article 15, paragraphs 5 and 6, Article 23, Article 56, paragraph 5, Article 57 and Article 63, paragraph 7 which shall enter into force on the date of accession of the Republic of Croatia to the European Union.

Class: 344-03/08-01/01  
Done at Zagreb, 19 July 2008

CROATIAN PARLIAMENT  
The President of the Croatian Parliament  
**Luka Bebić, m.p.**