

**132/2010 Coll.**

**ACT**

of 13 April 2010

**on on-demand audiovisual media services and amendment to certain acts**

**(Act on On-Demand Audiovisual Media Services)**

The Parliament has agreed on the following Act of the Czech Republic:

**PART ONE**

**ON-DEMAND AUDIOVISUAL MEDIA SERVICES**

Section 1

**Subject of the Act**

This Act transposes the relevant European Union regulations<sup>1)</sup> and regulates the conditions for the provision of on-demand audiovisual media services.

Section 2

**Terms and Definitions**

(1) For the purposes of this Act:

(a) on-demand audiovisual media service means an information society service<sup>2)</sup> which the on-demand audiovisual media service provider has editorial responsibility for and the main purpose or the main purpose of a separable part of which is to provide programmes to the public in order to inform, entertain or educate, and which enables viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes compiled by the on-demand media service provider (hereinafter referred to as the “catalogue of programmes”),

(b) a programme means a set of moving images with or without sound, constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting, in particular, feature-length film, video clip, recording of a sports event, situation comedy, documentaries, children’s programme or original drama,

c) editorial responsibility means effective control both over the selection of the programmes and over their organisation within the catalogue of programmes,

d) on-demand audiovisual media service provider means shall be a natural person or a legal entity that the manner in which the on-demand audiovisual media service and has the editorial responsibility for that service,

e) audiovisual commercial communication means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity; or its image in the public, and that accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes; the forms of audiovisual commercial communication include, inter alia, advertising<sup>3)</sup>, sponsorship, and product placement,

f) surreptitious audiovisual commercial communication means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature; the presentation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration,

g) sponsorship means any contribution made by a natural person or legal entity that does not provide the on-demand audiovisual media service, does not operate television broadcasting, does not provide the video sharing platform service and does not produce audiovisual work, provided for direct or indirect funding of the on-demand audiovisual media service, video sharing platform services, programmes with a view to promoting their name, trade mark, products, services, activities or image in the public,

h) product placement means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration,

i) code of conduct means a set of rules for the implementation of self-regulation adopted by its main stakeholders, setting out, in particular, the objectives of self-regulation, procedures for regular, transparent and independent monitoring and evaluation of the achievement of those objectives, and a mechanism for the resolution of complaints, including a mechanism for the enforcement of reasonable sanctions for breaches of the rules set out,

j) the assessment periods means consecutive three-year periods.

(2) The on-demand audiovisual media service shall not include

a) a service which is not primarily economic in nature or which does not compete with television broadcasting,

b) a service which is not intended for reception by the public,

c) a service the principal purpose of which is not the provision of programmes; or

d) a service which cannot be received, directly or indirectly, by the public in any Member State of the European Union through a device technically capable of reproducing an on-demand audiovisual media service on an individually selectable basis and which is available on a commercial network.

## Section 3

### Scope of the Act

(1) This Act shall apply to a provider of on-demand audiovisual media services who is established in the Czech Republic pursuant to subsection 2 or to whom subsection 3 applies.

(2) An on-demand audiovisual media service provider shall be deemed to be established in the Czech Republic

a) if it has its registered seat or place of business in the Czech Republic and takes editorial decisions<sup>15)</sup> in the Czech Republic,

b) if it has its registered seat or place of business in the Czech Republic, but takes editorial decisions in another Member State of the European Union, provided

1. a substantial part of its employees providing on-demand audiovisual media services related to the selection and provision of programmes (hereinafter referred to as the “programme-related”) are based in the Czech Republic,

2. a substantial part of its employees providing on-demand audiovisual media services related to the programmes are based both in the Czech Republic and in that other Member State of the European Union, or

3. a substantial part of its employees providing on-demand audiovisual media services are not based in the Czech Republic or in that other Member State of the European Union, provided that it first started the provision of on-demand audiovisual media services related to programmes in the Czech Republic under Czech law and maintains a continuous and effective involvement in the economic life of the Czech Republic, or

c) if it has its registered seat or place of business in the Czech Republic, but takes decisions on on-demand audiovisual media services in a state which is not a Member State of the European Union or vice versa, provided that a substantial part of its employees providing on-demand audiovisual media services related to the programmes are based in the Czech Republic.

(3) Where a provider of an on-demand audiovisual media service cannot be considered to be established in the Czech Republic pursuant to subsection 2, nor can it be considered to be established in another Member State of the European Union, this Act shall apply to it on the provision that it provides the on-demand audiovisual media service with the use of

a) satellite up-link situated in the Czech Republic, or

b) the capacity of a satellite belonging to the Czech Republic if it does not use the satellite up-link situated in the Czech Republic or in another Member State of the European Union.

(4) The on-demand audiovisual media service provider that cannot be considered established in the Czech Republic pursuant to subsection 2, nor can it be considered established in another Member State of the European Union, and that does not fulfil in the Czech Republic or in another Member State of the European Union any of the conditions pursuant to subsection 3, shall be subject to this Act only if it can be considered established in the Czech Republic pursuant to the EC Treaty<sup>4)</sup>.

## Section 4

## **Competence of the Council for Radio and Television Broadcasting**

(1) The Council for Radio and Television Broadcasting (hereinafter referred to as the “Council”) shall be the administrative authority competent to supervise compliance with this Act.

### **(2) The Council**

- a) maintains and updates a list of providers of on-demand audiovisual media services established or deemed to be established in the Czech Republic, indicating for each provider which of the criteria under Section 3(2) to (4) establishes the jurisdiction of the Czech Republic; the list of the on-demand audiovisual media service providers and its updates shall be transmitted without undue delay to the European Commission to become available in the centralised database,
- b) deals with offences under this Act,
- c) monitors the content of on-demand audiovisual media services,
- d) cooperates with the authorities of the European Union and with the regulatory authorities of the Member States of the European Union with similar subject matter jurisdiction, in particular, in the transmission and acquisition of data and information provided for by law, decisions issued on the basis of law or legal acts of the European Union, and performs other tasks arising from the Czech Republic’s membership in the European Union in the field of regulation of on-demand audiovisual media services,
- e) cooperates with the competent authorities of states which are not Member States of the European Union in the field of the regulation of on-demand audiovisual media services.

## **Section 5**

### **List of On-Demand Audiovisual Media Service Providers**

(1) The on-demand audiovisual media service provider shall deliver to the Council within 30 days as of the date of the establishment of the trade licence a written notification which shall contain

- a) the name of the on-demand audiovisual media service,
- b) the data which the on-demand audiovisual media service provider shall provide access to to the service recipients pursuant to § Section 6(1)(a) and (b),
- c) the details of the entry in the Commercial Register or other similar register, including the entry ref., if any,
- d) the identification of the electronic communications network through which the on-demand audiovisual media service will be provided and information on access to the on-demand audiovisual media service, in particular, the website address,

e) an indication of which of the criteria under Section 3(2) to (4) against the on-demand audiovisual media service provider establishes the jurisdiction of the Czech Republic, and the supporting documents, and

f) the date of commencement of the on-demand audiovisual media service.

(2) If the notification of the information set out in subsection 1 is incomplete, the Council shall promptly invite the person who made the notification to complete the notification within 30 days as of the date of delivery of the invitation; should the invited person fail to do so, the obligation under subsection (1) shall not be deemed fulfilled.

(3) The Council shall enter the information set out in subsection 1 in the list of the on-demand audiovisual media service providers within 30 days from the date of receipt of the notification and shall also send a confirmation of such entry to the person who made the notification.

(4) The on-demand audiovisual media service provider shall notify the Council in writing of a change in the recorded data or of the interruption or termination of the provision of an on-demand audiovisual media service no later than in 30 days as of the date on which the change in the registered data or the interruption or termination of the provision of that service occurred. The Council shall enter that fact in the list of the on-demand audiovisual media service providers within 30 days as of the date of receipt of the notification referred to in the first sentence or as of the date on which it otherwise becomes aware of that fact.

(5) Should the provision of an on-demand audiovisual media service not commence within 1 year as of the date of registration in the list of on-demand audiovisual media service providers or should it be interrupted for more than 1 year, the provision of the on-demand audiovisual media service shall be deemed to have ceased on the last day of that period. The Council shall enter that fact in the list of on-demand audiovisual media service providers and shall inform the on-demand audiovisual media service provider thereof.

(6) Everyone shall have the right to consult the list of on-demand audiovisual media service providers and to obtain extracts or copies thereof.

(7) The Council shall publish the information referred to in subsections (1)(a) and (b) in a manner that allows remote access.

## Section 6

### **Obligations of On-Demand Audiovisual Media Service Providers**

(1) The on-demand audiovisual media service provider shall provide recipients of the service with easy, direct and permanent access to at least

a) the basic data of the on-demand audiovisual media service provider, including the name or company name and identification number, if any, of the provider, the address of the registered seat in the case of a legal entity or the place of residence in the case of a natural person and, in the case of a foreign person, the address of the establishment or organisational unit in the territory of the Czech Republic, if any,

b) data which enable the on-demand audiovisual media service provider to be contacted quickly, directly and efficiently, in particular a postal address for delivery, a telephone number, a website address or, where appropriate, an address for the delivery of electronic mail; and

c) information that its activities are governed by the law of the Czech Republic and that the Council is the supervisory authority for the provision of on-demand audiovisual media services.

(2) The on-demand audiovisual media service provider shall ensure that the on-demand audiovisual media service does not contain a communication deliberately designed to affect the subconscious of a natural person without his or her conscious perception and does not incite violence or hatred against a group of persons or a member of a group on the grounds of sex, race, colour, language, religion or belief, political or other opinion, ethnic or social origin, genetic features, nationality, membership of a national minority, property, birth, sect, disability, age, sexual orientation or other status.

(3) The on-demand audiovisual media service provider shall ensure that recordings of all programmes and audiovisual commercial communications accompanying or included in the programmes and distributed as a part of the on-demand audiovisual media service are preserved in appropriate technical quality for at least 30 days as of the date on which the provision of the programme ceases or for 30 days as of the date on which the distribution of the audiovisual commercial communication ceases, and shall, on a written request, make them available to the Council; the on-demand audiovisual media service provider shall be entitled to reimbursement from the Council of the necessary costs associated with the lending of recordings of programmes and audiovisual commercial communications.

(4) Where proceedings have been initiated before a public authority in respect of a programme or an audiovisual commercial communication, the on-demand audiovisual media service provider shall, on a written request of the competent public authority, retain the recording of the programme or audiovisual commercial communication in the form in which it was provided and in appropriate technical quality until the final decision in the case.

(5) The on-demand audiovisual media service provider shall, upon written request, provide the Council with the statements and information necessary for the exercise of its competence under Section 4(2)(d) and e) and Section 15.

(6) The on-demand audiovisual media service provider shall notify the Council without delay of any change in the facts which affect the determination of whether or not it is subject to this Act.

(7) The on-demand audiovisual media service provider shall ensure that the on-demand audiovisual media services do not contain public incitement to commit a terrorist offence<sup>16)</sup>.

(8) No person shall make an on-demand audiovisual media service available to the public or distribute it for any other purpose without the express consent of the relevant on-demand audiovisual media service provider.

(9) No person shall interfere with an on-demand audiovisual media service without the

express consent of the relevant on-demand audiovisual media service provider, in particular

- a) alter or modify an on-demand audiovisual media service or parts thereof in terms of content or technically,
- b) interrupt the audio or visual component of an on-demand audiovisual media service or parts thereof; or
- c) overlay, in whole or in part, the audio or visual component of an on-demand audiovisual media service or parts thereof, including audiovisual commercial communications and other communications; in the case of the visual component of an on-demand audiovisual media service, including reduction of the extent to which it is displayed on the receiver screen.

(10) The provisions of subsection 9 shall not apply to

- a) overlays reserved by the recipient of an on-demand audiovisual media service exclusively for private use and which are not intended for direct or indirect economic advantage of another person,
- b) user interface controls necessary for the operation of the display receiver or for navigating through programmes, such as volume settings, search functions, navigation menus or lists of available programmes,
- c) overlays supplied by the relevant on-demand audiovisual media service provider, including subtitles or commercial communications; or
- d) data compression techniques which reduce the size of the data file and similar techniques necessary to accommodate the means of distribution, such as resolution or encoding, provided that they do not alter in any way the content of the on-demand audiovisual media service or its individual parts.

## Section 6a

### **Protection of Minors**

(1) The on-demand audiovisual media service provider shall

- a) ensure, through the choice of appropriate measures, that programmes likely to impair the physical, mental or moral development of minors, such as pornography or gross self-inflicted violence, are not normally available for viewing or hearing by minors; such measures shall include age verification tools or other technical measures to prevent minors from accessing the programme; and
- b) provide sufficient information on the programmes referred to in point a) about the potentially objectionable content for minors contained in those programmes in a way making the information available easily and free of charge.

(2) Personal data of minors collected or otherwise obtained by the on-demand audiovisual media service provider for the purpose of complying with subsection (1)(a) may not be processed for commercial purposes, in particular, for direct marketing, profiling and

behavioural advertising.

## Section 6b

### **Making On-Demand Audiovisual Media Services Available to Persons with Hearing and Visual Disability**

(1) The on-demand audiovisual media service provider shall, where practical, provide open or closed captioning<sup>6)</sup> or interpretation into Czech sign language for persons with hearing disability and audio description<sup>7)</sup> for persons with visual disability, if available, or otherwise ensure that certain programmes provided as a part of an on-demand audiovisual media service are accessible to persons with hearing disability and persons with visual disability.

(2) The on-demand audiovisual media service provider shall, in consultation with organisations based in the Czech Republic which associate persons with hearing disability and persons with visual disability, draw up an Action Plan for the assessment period for making the programmes offered accessible to persons with hearing disability and persons with visual disability (hereinafter referred to as the “Action Plan”), committing itself to increase the overall proportion of programmes made available to persons with hearing disability and persons with visual disability through appropriate measures compared to the immediately preceding assessment period. The Action Plan shall be drawn up by the provider of more than one on-demand audiovisual media service by the individual service and individual current years from 1 July to 30 June. The assessment periods of the Action Plans always begin on 1 July of the first calendar year of their duration and end on 30 June of the last calendar year of their duration. The on-demand audiovisual media service provider shall submit a new Action Plan to the Council always by 30 June of each calendar year in which the preceding assessment period ends.

(3) The on-demand audiovisual media service provider shall submit to the Council an evaluation of the implementation of the Action Plan by 30 September of each calendar year in which the relevant assessment period ends.

(4) The obligations under subsections 1 and 2 shall not apply to programmes which, due to their nature, cannot or are not expedient to be made accessible to persons with hearing disability and persons with visual disability, in particular, a) music programmes,

b) programmes aimed exclusively at promoting the on-demand audiovisual media service as such, products, services and other activities related to the provision of the on-demand audiovisual media service as such; or

c) programmes consisting only of graphics or video text without being accompanied by spoken word.

## Section 7

### **Supporting European Creativity**



(1) The on-demand audiovisual media service provider shall reserve at least 30% of the total number of programmes offered in the catalogue of programmes of its service for the reference period for the European works<sup>8)</sup> and ensure highlighting thereof. The total number of programmes from which the proportion of the European works is determined excludes news programmes, recordings of sports events and competition programmes.

(2) The obligations under subsection 1 shall not apply to on-demand audiovisual media service providers with low turnover and to on-demand audiovisual media service providers with low audience. The obligations under subsection 1 shall further not apply to services or programmes where, by their nature or thematic focus, the performance thereof would be infeasible or unjustified. Compliance with the low turnover and low audience conditions is assessed in accordance with guidelines issued by the European Commission which the Council shall publish on its website in the wording published in the Official Journal of the European Union<sup>17)</sup>.

(3) The on-demand audiovisual media service provider shall, within 30 days as of the end of the reference period, submit a report to the Council on the fulfilment of the obligations under subsection 1 and, if it fails to fulfil the obligations under subsection 1 within the reference period, it shall also submit a justification to the Council, explaining why it failed to do so.

(4) For the purposes of subsections 1 to 3, the reference period shall be the calendar year.

## Section 8

### **Obligations of On-Demand Audiovisual Media Service Providers Concerning Audiovisual Commercial Communications**

(1) The on-demand audiovisual media service provider shall ensure that the audiovisual commercial communications contained in the on-demand audiovisual media service provided by it

- a) are readily recognisable,
- b) do not prejudice respect for human dignity,
- c) do not contain or promote discrimination against a group of persons or a member of a group based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation,
- d) do not encourage behaviour prejudicial to health or safety,
- e) do not encourage behaviour that is grossly prejudicial to the protection of the environment.

(2) The following shall be prohibited

- a) surreptitious audiovisual commercial communication,
- b) audiovisual commercial communications relating to cigarettes, other tobacco products,

electronic cigarettes or their refills,

c) audiovisual commercial communications concerning medicinal products or medical procedures available in the Czech Republic only on prescription,

d) audiovisual commercial communication indicating that the country of origin of the food is the Czech Republic, unless the requirements laid down in act on Food and Tobacco Products are complied with<sup>14)</sup>,

e) audiovisual commercial communications containing subliminal techniques.

(3) Audiovisual commercial communications relating to alcoholic beverages shall not be specifically targeted at minors and shall not encourage immoderate consumption of such beverages.

(4) Audiovisual commercial communications shall not cause physical or moral detriment to minors by

a) directly exhorting minors to buy or hire a product or service by exploiting their inexperience or credulity,

b) directly encouraging them to persuade their parents or others to purchase the goods or services being advertised.

c) exploiting the special trust minors place in parents, teachers or other persons, or

d) unreasonably showing minors in dangerous situations.

#### Section 8a

### **Specific Provisions on Audiovisual Commercial Communications Concerning Alcoholic Beverages and Foods and Beverages Containing Nutrients and Substances whose Excessive Intake Is Not Recommended**

(1) Audiovisual commercial communications relating to alcoholic beverages shall not

a) depict minors consuming alcoholic beverages,

b) link the consumption of alcohol to enhanced physical performance or to driving a motor vehicle,

c) create the impression that the consumption of alcohol contributes towards social or sexual success,

d) claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflict,

e) show abstinence from or moderation in the consuming alcoholic beverages unfavourably;  
or

f) emphasise the high alcohol content as a positive quality of the alcoholic beverage.

(2) The provisions of subsection 1 shall not apply to sponsorship and product placement.

(3) Self-regulatory codes of conduct shall lay down more detailed requirements for audiovisual commercial communications relating to alcoholic beverages. Their aim shall be to effectively limit the exposure of minors to audiovisual commercial communications concerning alcoholic beverages.

(4) The self-regulatory codes of conduct shall lay down more detailed requirements for audiovisual commercial communications accompanying or contained in programmes for children concerning foods and beverages containing nutrients and substances with nutritional or physiological effect, in particular fat, saturated fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended. The aim of these codes must be to effectively ensure that audiovisual commercial communications do not emphasise the positive nutritional aspects of these foods and drinks and to effectively limit the exposure of minors to audiovisual commercial communications concerning these foods and drinks.

## Section 9

### **Obligations of On-Demand Audiovisual Media Services in Relation to Sponsored On-Demand Audiovisual Media Services and Programmes**

(1) On-demand audiovisual media services and sponsored programmes shall comply with the following requirements:

a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider,

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

(2) On-demand audiovisual media services and programmes shall not be sponsored by persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products, electronic cigarettes or refills thereof.

(3) The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Czech Republic.

(4) The on-demand audiovisual media service provider shall clearly mark each wholly or partially sponsored programme at the beginning and at the end with the name or title, visual symbol (logo) or other brand of the sponsor, which shall be understood as a reference to its products, services or their distinctive feature. Where an on-demand audiovisual media service is sponsored, the provider of that service shall announce the existence of the sponsorship in

the offered catalogue of programmes, identify the name or title of the sponsor and indicate the main subject of the sponsor's activity; the announcement shall be prominently displayed in the offered catalogue of programmes for at least 30 days.

(5) News and political affairs programmes must not be sponsored.

## Section 10

### **Obligations of On-Demand Audiovisual Media Service Providers in the Product Placement**

(1) Product placement is not permitted in news and political matters programmes, consumer publicity programmes, religious programmes and children's programmes. A product placement is not considered to be a case where no payment is made, but only where some goods or services, in particular, props or prizes, are provided free of charge to contestants for inclusion in the programme.

(2) Programmes containing product placement shall comply with the following requirements:

a) their content and inclusion in the catalogue of programmes shall not be affected in such a way as to affect the editorial responsibility and independence of the audiovisual media service provider,

b) they may not directly encourage the purchase or rental of goods or services, in particular, by making special promotional references to those goods or services; and

c) shall not unduly emphasise the product placed.

(3) Programmes containing product placement shall be clearly identified as containing product placement at the beginning, at the end and, when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer. The obligation referred to in the first sentence shall not apply to programmes have neither been produced nor commissioned by the on-demand audiovisual media service provider itself or a company affiliated to the on-demand audiovisual media service provider in a position of a controlled or controlling entity in accordance with other statutory regulation<sup>9)</sup>.

(4) Programmes shall not contain product placement of

a) cigarettes, other tobacco products, electronic cigarettes or refills or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, electronic cigarettes or refills, or

b) medicinal products or medical treatments that are available in the Czech Republic only on prescription.

## Section 10a

### **Suspension of Distribution of On-Demand Audiovisual Media Service in the Czech Republic, the Provider of Which Is under the Jurisdiction of Another Member State of**

## **the European Union**

(1) The Council may decide to suspend the distribution of an on-demand audiovisual media service in the Czech Republic, the provider of which is under the jurisdiction of another Member State of the European Union, if

- a) in the past 12 months, the service provider has manifestly, seriously and gravely infringed Section 6a(1), or the content of the service was prejudicial to public health or posed a serious and substantial risk of becoming prejudicial it,
- b) it notified the European Commission and the regulatory authority of the Member State of the European Union under whose jurisdiction the service provider is (hereinafter referred to as the “competent regulatory authority of the Member State of the European Union”) of the breach of this Act and of the duly substantiated intention to suspend the distribution of the on-demand audiovisual media service in the Czech Republic in writing, along with a request for consultations,
- c) enabled the on-demand audiovisual media service provider to comment on the matter; and
- d) it considers that consultations with the European Commission and the competent regulatory authority of a Member State of the European Union have not resulted in an amicable settlement within 30 days as of receipt of the notification referred to in point (b) by the European Commission.

(2) The Council may deviate from the procedure under subsection 1 and decide to suspend the distribution of an on-demand audiovisual media service in the Czech Republic which is under the jurisdiction of another Member State of the European Union if

- a) it assesses that the content of the on-demand audiovisual media service has manifestly, seriously and gravely infringed Section 6(7) or the content of the service is prejudicial to public security, including national security and defence, or presents a serious and poses a serious and grave risk of such prejudice, provided this has already occurred at least once during the preceding 12 months,
- b) it notified the provider, the European Commission and the competent regulatory authority of a Member State of the European Union in writing of the breach of this Act and of the duly substantiated intention to suspend the distribution of the on-demand audiovisual media service in the Czech Republic; and
- c) it enabled the on-demand audiovisual media service provider to comment on the matter.

(3) The Council may, in cases of urgency, within 30 days as of the date on which, in its opinion, this Act was infringed, depart from the procedure referred to in subsection 2, provided that it communicates the measure taken without delay to the European Commission and to the competent regulatory authority of a Member State of the European Union, stating the reasons in the communication, on the basis of which it believes that the case is urgent.

(4) If the content of an on-demand audiovisual media service from another Member State of the European Union violates the legislation of another Member State of the European Union, by which that Member State lays down more detailed or stricter rules in areas

coordinated within the European Union and in accordance with European Union law (hereinafter referred to as the “specific rules”), and the service is wholly or mostly directed towards the territory of the Czech Republic, the Council may request the competent regulatory authority of the other Member State of the European Union to resolve the violation. The Council shall cooperate expeditiously with the competent regulatory authority of a Member State of the European Union in this matter in order to reach a satisfactory solution.

(5) The Council may decide to suspend the distribution of an on-demand audiovisual media service in the Czech Republic from another Member State of the European Union referred to in subsection 4, the content of which infringes the specific rules, if

a) it introduced evidence that the on-demand audiovisual media service provider has established itself in another Member State of the European Union in order to evade the specific rules which would apply to it if it were established in the Czech Republic; the evidence must enable proper documenting of the evasion of the specific rules without the on-demand audiovisual media service provider having to prove an intention to evade the specific rules,

b) the duly justified intention to suspend the distribution of an on-demand audiovisual media service under point (a) in the Czech Republic was notified in writing to the European Commission and the competent regulatory authority of a Member State of the European Union, along with the grounds on which it based its assessment of the situation,

c) enable the on-demand audiovisual media service provider to express its opinion on the infringement of the law and on the intention to suspend the distribution of its service in the Czech Republic,

d) it assesses that the results achieved through interaction with the competent regulatory authority of a Member State of the European Union are not satisfactory; and

e) it has received a written decision from the European Commission that the implementation of the plan referred to in point b) is compatible with European Union law and the Council’s decision to suspend the distribution of the on-demand audiovisual media service in the Czech Republic is duly justified.

(6) The decision to suspend the distribution of an on-demand audiovisual media service in the Czech Republic shall be notified by the Council to each connection provider. The access provider may not distribute the programme designated in the Council’s decision in the territory of the Czech Republic as from the day immediately following the date of delivery of the Council’s decision until the date on which the Council’s decision expires.

(7) A decision to suspend the distribution of an on-demand audiovisual media service in the Czech Republic shall expire upon the expiry of the period for which the Council limited its validity in the operative part of the decision, but not later than in 180 days as of the effective date. A decision to suspend the distribution of an on-demand audiovisual media service issued pursuant to subsection 1 shall cease to be effective if the European Commission decides that it is incompatible with European Union law, on the date on which the Council publishes a notice to that effect on its official notice board and on its website. The Council shall publish the notice on the first business day immediately following the day on which it receives a written copy of the European Commission’s decision.

## Section 11

### **Corrective Measures**

(1) If the on-demand audiovisual media service provider breaches the obligations set out in this Act, the Council shall notify the provider of the breach of this Act, setting the term for the provider to rectify the breach.

(2) Duration of the term to rectify the situation under subsection 1 shall be proportionate to the nature of the obligation breached.

(3) If the correction is achieved within the term, the Council shall not initiate the offence proceedings.

(4) The provisions of subsections 1 to 3 shall not apply if the on-demand audiovisual media service provider infringes in a particularly serious manner any of the obligations referred to in Section 6(2) or (7), Section 6a(1) or (2), Section 8(1), (2), (3) or (4) or in Section 8a(1).

### **Offences**

## Section 12

(1) The on-demand audiovisual media service provider commits an offence by

(a) failing to comply with the notification obligation under Section 5(1) or (2), Section 6(6) or under Section 19(1),

b) failing to comply with any of the obligations under Section 5(4),

c) failing to comply with any of the obligations under Section 6(1), (3), (4) or (5) or Section 6b(1), (2) or (3),

d) failing to comply with any of the obligations under Section 6(2) or (7) or Section 6a(1) or (2),

e) failing to comply with any of the obligations under Section 7(1) or (3),

f) failing to comply with any of the obligations under Section 8(1), (2), (3) or (4) or Section 8a(1),

g) failing to comply with any of the obligations under Section 9(1), (2), (3), (4) or (5),

h) failing to comply with any of the obligations under Section 10.

(2) A penalty in the maximum amount of CZK 1,000,000 may be imposed for an offence under subsections 1 a), b), c), e), g) or h) and a penalty in the maximum amount of

CZK 2,000,000 for an offence under subsection 1(d) or (f).

#### Section 12a

(1) A legal entity or natural person commits an offence by failing to comply with any of the obligations under Section 6(8) or (9).

(2) A penalty in the maximum amount of CZK 1,000,000 may be imposed for an offence under subsection 1.

#### Section 13

### **Common Provisions Concerning Offences**

(1) Offences under this Act shall be discussed by the Council.

(2) When determining the type and amount of the administrative penalty, the Council shall also take into account the opinion of the substantively competent self-regulatory authority listed in the list of cooperating self-regulatory authorities<sup>10)</sup>, provided it receives such opinion in writing within 20 business days as of the proceedings start date.

(3) The Council shall issue a decision on the offence no later than in 270 days as of the date of the proceedings start date.

(4) Bringing an accusation against a decision to impose a fine shall have suspensive effect.

#### Section 14

**cancelled**

### **Common and Transitional Provisions**

#### Section 15

The Ministry of Culture may request from the Council data necessary for the purposes of fulfilling the obligations arising for the Czech Republic from international treaties or from its membership in international organisations. The Council shall provide such data to the Ministry of Culture.

#### Section 16

Unless otherwise provided for in this Act, the Code of Administrative Procedure shall apply, with the exception of the provisions on the appeal procedure, remonstrance procedure, review procedure and the retrial procedure.

#### Section 17



Unless otherwise provided for in this Act, the regulation of advertising and sponsorship shall be governed by the Act No. 40/1995 Coll. on the regulation of advertising and on amending and supplementing the Act No. 468/1991 Coll. on the operation of radio and television broadcasting, as amended.

#### Section 18

Unless otherwise provided for in this Act, the rights and obligations established under the Act No. 480/2004 Coll. on certain information society services and on amendments to certain acts (the Act on certain information society services), as amended, shall remain unaffected.

#### Section 18a

**cancelled**

#### Section 19

(1) A legal entity and natural person that, as of the effective date of this Act, provides a service and that service is deemed to be an on-demand audiovisual media service as of the effective date of this Act shall, within 60 days of the effective date of this Act, deliver to the Council a notification with the data to be entered in the Register of On-Demand Audiovisual Media Service Providers pursuant to § Section 5(1) a (2).

(2) Provisions of § 10 shall not apply to programmes produced before the end of 2009.

### **Selected Provisions of Amended Acts**

Section 18 of the Act No. 242/2022 Coll.

#### **Transitional Provisions**

(1) Proceedings commenced before the effective date of this Act shall be completed and the rights and obligations relating thereto shall be assessed in accordance with the Act No. 132/2010 Coll., as in force before the effective date of this Act.

(2) Within 90 days as of the effective date of this Act, the on-demand audiovisual media service provider which provides such a service as of the effective date of this Act shall submit documents to the Council for Radio and Television Broadcasting demonstrating that its broadcasts are subject to the jurisdiction of the Czech Republic based on any of the criteria under Section 3(2) to (4) of the Act No. 132/2010 Coll., as amended as of the effective date of this Act, specifying the relevant criterion, and assigning it to a specific provision of the Act and providing justification. Should the on-demand audiovisual media service provider fail to fulfil the obligations referred to in the first sentence within the time limit set or should the Council for Radio and Television Broadcasting find the documents submitted insufficient, it

shall invite the on-demand audiovisual media service provider to eliminate the discrepancies identified, setting a reasonable additional time limit for doing so. The on-demand audiovisual media service provider shall eliminate the discrepancies identified within an additional period of time. The Council for Radio and Television Broadcasting shall enter the data demonstrating that the on-demand audiovisual media service provider is subject to the jurisdiction of the Czech Republic in the list of on-demand audiovisual media service providers within 30 days as of the date of receipt thereof and shall simultaneously send a confirmation of such entry to the relevant on-demand audiovisual media service provider, indicating the date on which the entry was made.

(3) The on-demand audiovisual media service provider shall, after consultation with the organisations based in the State to the territory of which the service is to be wholly or mainly directed, which bring together persons with hearing disability and persons with visual impairment disability, submit to the Action Plan for the provision of programmes for persons with hearing disability and persons with visual disability the Council for Radio and Television Broadcasting for the period from 1 July 2023 to 30 June 2025 (hereinafter referred to as the “short-term Action Plan“) by 30 June 2023, committing itself to increase the overall proportion of programmes made accessible to the persons with hearing disability and persons with visual disability through proper measures during that period compared to the proportion of programmes made accessible to the extent as per Section 6(4) of the Act No 132/2010 Coll., as in force before the effective date of this Act. The short-term action plan shall be drawn up by the provider of more than one on-demand audiovisual media service, broken down by the individual on-demand service provided. The on-demand audiovisual media service provider shall submit an evaluation of the implementation of the short-term Action Plan to the Council for Radio and Television Broadcasting by 30 September 2025.

(4) The first Action Plan under Section 6b(2) of the Act No. 132/2010 Coll., as amended as of the effective date of this Act, shall be drawn up by the on-demand audiovisual media service provider following the short-term Action Plan.