[IT] Draft Decree Implementing the Audiovisual Media Services Directive

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On 17 December 2009, the Italian Government issued a draft legislative decree for the implementation of Directive 2007/65/EC on Audiovisual Media Services (AVMSD). The legal basis for the decree is contained in the *Legge comunitaria 2008*, the annual statute enacted by the Italian Parliament to bring national law into line with EU law. The legislature afforded the Italian Government wide latitude in transposing the AVMSD, as the Parliament restrained itself to opting in favour of product placement. The Government, in turn, has taken advantage of the leeway granted by the Italian legislature, as well as of the right set out in Article 3(1) AVMSD to enact stricter provisions for national audiovisual media service providers.

The draft decree for the most part transposes the AVMSD verbatim by amending Legislative Decree no. 177 of 2005, now renamed "Code for Audiovisual Media Services". Below only the provisions of the draft decree that differ from the default framework laid down by the AVMSD will be examined.

The first divergence is to be found in the definitions set out in the draft decree. While Recital no. 59 AVMSD defines a ‘television advertising spot’ as "television advertising ...having a duration of not more than twelve minutes", the draft decree contains no reference to such a temporal criterion.

As far as the advertising of tobacco products is concerned, the draft decree lays down a stricter framework than the one set out in Article 3e(1)(d) AVMSD, insofar as the Italian prohibition covers not only direct advertising, but also indirect forms of advertising using brand names, symbols or other distinctive features of tobacco products or undertakings whose known or main activities is the production or sale of such products. The language of that provision echoes, albeit with some differences, that of Recital no. 28 of Directive 89/552/EEC.

Unlike the AVMSD, which abolished the daily advertising limits set out in the previous directive, the Italian draft decree still provides for a daily 15% airtime limit for free-to-air broadcasters, that can be increased to 20% if the broadcasters also broadcast advertisement forms other than advertising spots. The draft decree also preserves the stricter advertising limits applicable to the public service broadcaster.

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As to hourly limits for advertising and teleshopping spots, instead of the 20% ceiling set out in the AVMSD, the draft decree provides for an 18% limit. Although the AVMSD contains no reference to that effect, the Government deemed it appropriate to introduce a 16% special hourly advertising limit for pay-tv operators; this limit will be reduced to 14% in 2011 and to 12% in 2012.

The provisions on sponsored programmes are also interesting to examine. While the Directive allows references to the sponsor's products, services or distinctive signs, the draft decree stipulates that only the former's name and logo can be displayed. By the same token, while under the AVMSD such references can occur at the beginning, during and/or at the end of the sponsored programmes, according to the draft decree no reference can be made to sponsors during the course of the programme. As to the types of programmes that cannot be sponsored, the Italian Government took advantage of the option set out in Article 3f(4) AVMSD, whereby "Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes."

As regards product placement, while some provisions of the draft decree appear to be stricter than those set out in the AVMSD, others lay down a more lenient regime. As to the first category, while the AVMSD states that Member States can allow product placement i) in certain types of programmes listed in the Directive, "or" ii) where the goods or services to be included in the programme are provided free of charge, the draft decree allows product placement only in the types of programmes mentioned in the AVMSD, but clarifies that remuneration can be both monetary or consist of the free provision of goods or services.

To the contrary, the rules concerning the obligation to inform the viewers of the existence of product placement can be considered to be more lenient. According to the AVMSD, Member States can waive this obligation only "by way of exception", provided that the programme in question has neither been produced nor commissioned by the media service provider. This exception becomes the rule in the Italian draft decree, which states that viewers must be informed of the presence of product placement "only" in the case of programmes produced or commissioned by media service providers.

Possibly the most relevant difference between the AVMSD and the draft decree is the notion of "schedule" (*palinsesto*), defined in the draft implementation measure as follows: "the set, defined by a television or radio broadcaster, be it analogue or digital, of a series of programmes characterised by the same trademark and intended for reception by the public, not including i) the time-shifted broadcast of the same set of programmes, ii) merely repetitive transmissions, iii) the provision, for a fee, of individual programmes or sets of linear audiovisual programmes which can be purchased by the user immediately

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before the start of the individual programme or, in the case of sets of programmes, of the first programme." As a consequence, certain programmes (pay-tv, time-shifted programmes, etc.) are exempted from the rules on advertising limits, the protection of minors, etc. This definition does not appear to be in line with the AVMSD, whose references to programme "schedules" do not contain any such exclusions.

The draft decree is currently undergoing examination in both the Houses of Parliament. The Seventh Committee of the House of Representatives (Transport, Postal Services, and Telecommunications), as well as the Eighth Committee of the Senate (Public Works and Communications), have launched broad consultations with stakeholders. Once the relevant Parliamentary Committees have delivered their non-binding opinions, which should occur in early February, the draft decree will be passed by the Council of Ministers and promulgated by the President of the Republic.

Schema di Decreto legislativo 17 dicembre 2009 "Attuazione della Direttiva 2007/65/CE del Parlamento europeo e del Consiglio dell'11 dicembre 2007, che modifica la direttiva 89/552/CEE del Consiglio relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri concernenti l'esercizio delle attività televisive

http://www.senato.it/service/PDF/PDFServer?tipo=BGT&id=449426

Draft legislative decree of 17 December 2009, "Implementation of Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities"

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