[NL] Implementation of the Audiovisual Media Services Directive

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On 19 December 2009 the implementation of Audiovisual Media Services Directive (AVMSD) in the Media Act and the Tobacco Act was made official in the Netherlands. The bill for this implementing act was accepted by the Tweede Kamer, the lower chamber of the Dutch Parliament, on 30 June 2009 and by the Eerste Kamer, the first chamber of the Dutch Parliament, on 8 December 2009.

The AVMSD, the successor to the Television without Frontiers Directive, introduced the term ‘audiovisual media service’ as its central concept. The goal of the Directive was to create a modern (technically neutral) and harmonised framework for audiovisual content so that borders no longer present an obstacle to viewers.

The Directive already had an impact on the Dutch Media Act before December 2009. On 1 January of the same year, the Media Act (Mediawet 2008) was revised and some adjustments were made to the definitions. On the final day of the deadline set by the European Commission for the implementation of the Directive, 19 December 2009, the Dutch law was amended. A number of new articles and paragraphs were adopted as part of the Media and Tobacco Act. The following changes are the most significant:

- For the first time, non-linear media services, like on-demand services (as long as they originate from the Netherlands), will be regulated by the government;

- For commercial broadcasting companies, the regulations concerning sponsoring and advertising are now more flexible than under the previous legislation. Accordingly, product placement, for example, is now allowed in certain circumstances. News programmes and films are now permitted to be subject to more commercial breaks.

- The Dutch legislator made use of the possibility given by the Directive for opting for heavier than the minimum regulation (Article 3, paragraph 1) as concerns the rules for alcohol commercials.

- The flexible rules on commercials do not apply to the public broadcasters. The government set stricter rules in order to preserve independence and non-commerciality.

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As a consequence of the change to the regulation of non-linear services, the Dutch suppliers of on-demand media services will need to register at the *Commissariaat voor de Media* (Commissary for the Media). The Commissary will check whether the service is an audiovisual media service in the sense of the Media Act 2008. If so, the Commissary will monitor whether the content of the service is in compliance with the rules set out in the Act. In addition, the Commissary will monitor activity on the internet in search of websites that fall within the increased scope of the Media Act 2008.

It is worth noting that the implementation of the Directive has given rise to criticism in the Netherlands, especially in relation to the regulation of non-linear media services.

Wet van 10 december 2009 tot wijziging van de Mediawet 2008 en de Tabakswet ter implementatie van de richtlijn Audiovisuele mediadiensten

https://zoek.officielebekendmakingen.nl/stb-2009-552.html

Act of 10 December 2009 amending the Media Act 2008 and Tobacco Act for the implementation of the Audiovisual Media Services Directive

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