[IT] Amended Draft Decree for the Implementation of the Audiovisual Media Services Directive

IRIS 2010-4:1/31

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On 1 March 2010, the Italian Council of Ministers passed an amended draft legislative decree for the implementation of Directive 2007/65/EC on Audiovisual Media Services (AVMSD), to address the recommendations by the relevant Parliamentary Committees on the Government's earlier version of the bill, presented on 17 December 2009 (see IRIS 2010-2: 1/25).

In the context of the consultations on the original bill, several stakeholders had voiced concerns about the purported extension of the rules on audiovisual media services to private blogs and websites publishing user-generated audiovisual content, such as YouTube. This was allegedly due to the vagueness of the statutory definition of 'audiovisual media services' contained in the earlier bill, which excluded "services provided in the exercise of non-economic activities and that are not in competition with television broadcasting", and services in which the provision of audiovisual content was "merely incidental".

The amended version of the draft decree replaced that wording with a substantially more detailed provision, setting out four categories of services that are not covered by the rules on audiovisual media services and also providing some examples of exempted services. The new draft thus expressly exempts private correspondence in any form (including e-mail), private websites and services consisting of the provision or distribution of user-generated audiovisual content, websites containing animated graphics or short advertising spots, online video games, web search engines, gambling websites and online newspapers and periodicals.

The Government also revised the rules on the promotion of European works. The new draft decree, in particular, requires broadcasters, including pay-per-view operators, to reserve at least 10 percent of their transmission time for European works produced in the last five years, including cinematographic works of original Italian expression, regardless of their place of production. The Italian public service broadcaster is subject to special rules in this respect, in that it has to reserve 20 percent of its airtime for the works concerned.

Apart from those amendments and some other minor modifications, the new draft decree substantially resembles the previous bill, which in part built upon, but

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possibly also deviated from, the general framework set out by the AVMSD. These country-specific implementation rules include, inter alia, the definition of 'television advertising spot' (which makes no reference to the 12-minute criterion laid down in the AVMSD Recitals); the ban on indirect advertising of tobacco products (the AVMSD only prohibits direct advertising); the provision of daily advertising limits (abolished by the AVMSD); the stricter hourly advertising limits for pay-tv operators (not envisaged in the AVMSD); the stricter rules on sponsored programmes; and the notion of 'schedule' (palinsesto), which entails the exemption of certain programmes (pay-tv, time-shifted programmes, etc.) from the rules on advertising limits, on the protection of minors, etc.

As per Article 87 of the Italian Constitution, once a draft legislative decree is passed by the Council of Ministers, it is submitted to the President of the Republic for promulgation. This is expected to occur in the upcoming weeks.

Schema di Decreto legislativo 1 marzo 2010 "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://download.repubblica.it/pdf/2010/dlgs-romani.pdf

Draft legislative decree of 1 March 2010, "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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