[PL] Implementation of the Audiovisual Media Services Directive

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On 13 July 2010 the Polish Government adopted the Guidelines for the Draft Act Amending the Broadcasting Act (in relation to the implementation of Directive 2007/65/EC). On the basis of these detailed Guidelines the Draft Act was prepared and sent on 30 July 2010 for intergovernmental consultations that have been already concluded. The AVMSD will be transposed into national legislation mostly by amending the Broadcasting Act. The responsible regulatory authority will be the National Broadcasting Council (NBC), which nowadays has responsibility only in respect of traditional radio and television broadcasting. The scope of tasks of NBC will be significantly broadened.

The Draft Act refers inter alia to authorisation procedures: broadcasting of radio and television programme services either by means of terrestrial, satellite or cable would still require a broadcasting licence. Such licensing obligation will not apply to programme services transmitted solely on computer networks; webcasting of television programme services would require only registration (it would be compulsory to declare such service to the register no later than a month before offering it to the public), while Internet radio will not require any authorisation procedure. The on-demand audiovisual media services would be subject to registration (declaring it on the index of such services no later than at the moment of offering it to the public). A fee will be charged for such registration. The aforementioned register and the index will be kept by the Chairman of the NBC.

The Draft Act envisages that product placement (PP) will be allowed, under certain conditions, in some respects stricter than the AVMSD provisions. These stricter rules include a broader list of services and products that cannot be the subject of PP. The Draft Act provides that the list of banned products and services for PP would be the same as the current list of banned products and services for advertising. Safeguards to protect consumers are envisaged, including the obligation to clearly inform viewers of the existence of PP in the programme, a ban on theme placing, a limitation on the inclusion of PP only to certain kinds of programmes, etc. The NBC shall determine, by regulation the way of informing viewers on PP, specific conditions of determining the significant value and the way of providing the evidence of programmes in which PP was used, as well as the scope of data being covered by this evidence. The Draft Act provides for

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broadcasters the obligation to collect such evidence and make it accessible to the NBC. The provisions on PP will be used solely to programmes produced after entering into force of this Act.

As regards the promotion of European works in on-demand services it is proposed to adopt a flexible form of implementing this obligation, based on alternative solutions embracing catalogue quotas and an exposition obligation, or alternatively investment quota. The promotion of European works by on-demand AVMS providers may take one of two alternative forms:

- reserving 15 % of the catalogue content for European works, 10% for works originally produced in Polish, 5% for European works produced by independent producers plus appropriate exposition of these works in the catalogue, or

- reserving the amount equal to at least 10 % of spending on producing or acquiring of audiovisual works in the proceeding year - for the purpose of production or acquiring rights to European works, with the aim to make them available on the on-demand service.

This goal (catalogue quota or financial contribution limit) should be achieved progressively by 2013.

The implementation of the AVMSD envisages a certain role to be played by self- and co-regulation. NBC would be given the competence to take action encouraging media service providers to engage in self- or co-regulation.

It is also envisaged to make television programme services more accessible to people with visual or hearing disabilities. Television broadcasters will be obliged to provide at least 10 % of the quarterly transmission time of their programme services (excluding advertising and teleshopping) to programmes with appropriate facilities, notably sign language, subtitling, audio-description. This obligation is meant to be achieved progressively by 2012.

It is expected that the Draft Act will be sent to Parliament in autumn 2010. The proposed *vacatio legis* of the proposed Act is 30 days from publication in the Official Journal.

Ustawa o zmianie ustawy o radiofonii i telewizji oraz o zmianie niektórych innych ustaw

http://bip.mkidn.gov.pl/media/docs/proj_ustaw/20100730-rtv-projekt.pdf

Draft Act Amending the Broadcasting Act some other Acts

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Projekt założeń do projektu ustawy o zmianie ustawy o radiofonii i telewizji, w związku z implementacją Dyrektywy o audiowizualnych usługach medialnych

http://bip.mkidn.gov.pl/media/docs/proj_zalozen/20100720_rtv-zalozenia.pdf

Guidelines for the Draft Act Amending the Broadcasting Act (in relation to the implementation of Directive 2007/65/EC)

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