[LU] Amendment of Regulations on European Works and Advertising in Audiovisual Media

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On 17 of December 2010 a package of legislation specific to the media was enacted in Luxembourg. In addition to the modifications made to the Law on Electronic Media (see IRIS 2011-2/31) which transposes the EU Audiovisual Media Services (AVMS) Directive, several regulations have been amended in parallel (see IRIS 2011-4/29). The amendments principally aim at bringing the executing regulations into line with the new version of the Electronic Media Law of 2010 (see IRIS 2011-2/31). The two regulations on the promotion of European works and on commercial communication have, however, been changed substantially.

With these two regulations the adaptation of the Luxembourgish law concerning audiovisual media to the requirements of the AVMS Directive has been completed. The Regulation of 17 December 2010 on the rules about content in European works and in the works of independent producers of television programmes deemed to fall within Luxembourgish jurisdiction under the European Television without Frontiers Directive and the Regulation of 17 December 2010 on the rules about advertising, sponsorship, teleshopping and self-promotion in television programmes were enacted on the same day as the modified Electronic Media Law of 2010.

The regulation on European works and works of independent producers henceforth applies to audiovisual media services, but excludes from its scope of application local television services and channels exclusively devoted to teleshopping and self-promotion. Art. 7 introduces a new Art. 5bis, which stipulates in its first paragraph that on-demand audiovisual media service providers are to ensure the promotion of and access to European works. Service providers have a reporting duty on a four-yearly basis, the first report being due before 30 September 2011.

Moreover, in line with Art. 1 para. 1 lit. n) of the AVMS Directive, the notion of European works is broadened to encompass those works co-produced within the framework of agreements between third countries and EU member states. Several other changes concern the adaptation of the terminology to that of the AVMS Directive, such as the inclusion of the terms “audiovisual media service provider”, “programme” or “promotion”.

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In a similar vein, the scope of application of the regulation on advertising, sponsorship, teleshopping and self-promotion is extended to non-linear audiovisual media services. The first modification of this regulation of 2001 in June 2008 had already taken account of the changes to the content requirements of advertising and the limits on its frequency resulting from the AVMS Directive (see IRIS 2008-7/103). The current amendments concern editorial changes and most importantly the insertion of a provision on product placement (Art. 5bis). As a derogation to the newly introduced Art. 26ter of the Law on Electronic Media, product placement is admissible in certain types of programmes, or if products or services were provided free of charge. The first exception does not apply to children's programmes. In addition, the minimum requirements of programmes that contain product placement are codified. In general, the wording of Art. 5bis is very close to Art. 11 of the AVMS Directive.

Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal du 5 avril 2001 fixant les règles applicables en matière de contenu en œuvres européennes et en œuvres de producteurs indépendants des programmes de télévision réputés relever de la compétence du Luxembourg conformément à la Directive européenne Télévision sans frontières, Mémorial A, n° 241 du 24 décembre 2010.

http://www.legilux.public.lu/leg/a/archives/2010/0241/a241.pdf#page=15

Regulation on the rules on content in European works and in the works of independent producers of television programmes deemed to fall within Luxembourgish jurisdiction under the European Television without Frontiers Directive of 17 December 2010, Mémorial A, n°241 of 24 December 2010

Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal modifié du 5 avril 2001 fixant les règles applicables en matière de publicité, de parrainage, de téléachat et d'autoproduction dans les programmes de télévision, Mémorial A, n° 241 du 24 décembre 2010.

http://www.legilux.public.lu/leg/a/archives/2010/0241/a241.pdf#page=17

Regulation on the rules on advertising, sponsorship, teleshopping and self-promotion in television programmes of 17 December 2010, Mémorial A, n°241 of 24 December 2010

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