[SI] Act Transposing the Audiovisual Media Services Directive Adopted

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On 19 October 2011, the Act on Audiovisual Media Services (*Zakon o avdiovizualnih medijskih storitvah* - ZAvMS) was adopted and entered into force on 17 November 2011. As described in previous IRIS issues, its adoption was crucial due to the infringement procedure against Slovenia, started earlier in 2011 by the European Commission for non-transposition of the Directive in due delay (see IRIS 2011-8/42). Despite the fact that Slovenia notified to the Commission a complete transposition of the AVMSD on 21 November 2011, the infringement procedure remains pending, as the Commission needs to analyse the notified measures and to check whether the Slovenian law correctly implements all aspects of the rules on AVMS.

Being exclusively dedicated to AVMS, the Act brought revised jurisdiction criteria and all obligations arising from the Directive, such as rules on identification, accessibility, incitement to hatred, protection of minors, events of major importance, short news extracts and on promotion of European audiovisual works, both in linear and in on-demand services. The latter are expected to notify their activity to the national regulator, as the Act introduced the establishment of an official database of non-linear AVMS providers. The Slovenian regulator APEK has to be informed prior to the start of service of a non-linear AVMS. The notification must contain the information needed for the identification of the service and for determination whether APEK is competent to deal with it. The licensing regime of linear services remains almost unchanged, as it is defined by the *Zakon o medijih* (Media Act - ZMed), which for the most part remains in force. The only difference is that the obligation to get a licence prior to the start of broadcasting now applies to all linear AVMS, regardless of the platform. The extension of the licensing regime therefore affects mainly providers of internet television, as they were exempt from it under the previous regulation.

The new Act includes provisions on audiovisual commercial communications stemming from the Directive, together with rules on product placement, sponsorship and teleshopping. Further guidance will be elaborated within statutory instruments. Under the new legal framework product placement is generally not allowed; however, as in many other EU member states there are derogations, both for commercial and public service broadcasters. Consequently, product placement is permitted in several programmes, provided that they are

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not aimed at children and are properly labelled. There are no exceptions for acquired programming. Production props and prizes included in the programmes without payment, are according to the ZAvMS not considered to be product placement if the goods or services involved are of insignificant value in relation to the production costs. The notion of significant value has to be defined by a general act of APEK, which has overall responsibility for implementation of the ZAvMS.

One of the new aspects in the regulation of television advertising brought by ZAvMS is the reduction in the amount of advertising permitted in public service television channels. Hence, RTV Slovenia can during the day broadcast 10 minutes of advertising per hour, while between 6 pm and 11 pm only 7 minutes per hour. Unlike commercial TV broadcasters, the public service broadcaster is not allowed to interrupt feature films, news shows and cultural, arts, science or educational programmes with advertising.

Under the new Act APEK received much more authority and power for oversight and enforcement, but also much greater accountability in relation to the audiovisual media sector. While currently drafting numerous general acts that are required by the ZAvMS and need to be adopted by May 2012 at the latest, the regulator is preparing also for practical implementation of the new law. One of the most challenging aspects will be that of training staff for the application of the powers of inspection, as the persons who will carry out inspection must pass the prescribed examination. Despite the substantial increase of competencies, APEK however cannot count on recruiting new staff at the moment, as the regulator has a ban on employing new personnel. Another, not less important challenge will be that of providing sufficient financial resources for all the tasks that are required. Since APEK is funded solely by the market players, the introduction of a fee for all AVMS providers, linear and non-linear, brought by the ZAvMS, is welcome. However, at the time being, funding is not guaranteed yet, as the relevant statutory acts determining the method of calculation and the tariff need to be adopted first.

Zakon o avdiovizualnih medijskih storitvah (ZAvMS), Uradni list RS, št. 87/2011 z dne 2. 11. 2011

http://zakonodaja.gov.si/rpsi/r05/predpis_ZAKO6225.html

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