

[RO] New Decision on the Granting and Modification of Rebroadcasting Notifications

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The Consiliul Național al Audiovizualului (National Council for Electronic Media - CNA) approved on 2 February 2012 Decision no. 72 on the conditions for granting and modifying a rebroadcasting notification. It was published in the Official Journal no. 118 of 16 February 2012 and replaced CNA Decision no. 12/2003 (see *inter alia* IRIS 2010-4/37, IRIS 2011-6/30 and IRIS 2012-2/32).

According to the Decision, any person who intends to distribute TV and/or radio programme services has to request, under Art. 74 of the Audiovisual Law no. 504/2002, a rebroadcasting notification. The applicant has to fill in the Decision's Appendix 1 with relevant personal data and data about the electronic communications network; a copy of the certificate issued by the Autoritatea Națională pentru Administrare și Reglementare în Comunicații (National Authority for Administration and Regulation in Communications - ANCOM), which confirms that it offers electronic communications networks/services; the structure of rebroadcast programme services (Appendix 2) in line with Art. 82 Audiovisual Law with regard to the "must carry" principle; the rebroadcasting acceptance/rebroadcasting contract. The provider can air the rebroadcast programme services offer only after obtaining the rebroadcasting notification. Any modification of the provider's identification data has to be notified to the CNA within 30 days. If the provider intends to modify its rebroadcasting offer, the same steps as above have to be taken. The Council is bound to decide on the modification of the offer within 30 days. If, according to Art. 75 (3) Audiovisual Law (breaches of Art. 39 - programmes that seriously impair the physical, mental or moral development of minors; and Art. 40 - programmes comprising incitement to hatred due to race, religion, nationality, gender or sexual orientation), the Council temporarily limits the right of free-to-air rebroadcasting for a programme service, the providers will suspend the service as provisioned in the decision.

The rebroadcasting notification can be withdrawn under the following circumstances: upon the holder's request; if there is a cease of the right to provide electronic communications networks/services, decided by ANCOM; and in the case of an application of Art. 74 (4) Audiovisual Law (service provider distributing a programme service without rights). If a rebroadcasting notification holder wants to sell it to a third party, it has to ask the Council for permission and the new holder has to take the same steps as the former holder.

The “must carry” index has to be published by the CNA until 1 February. The index also includes the programme services declared by private broadcasters to be free-to-air in descending annual audience order measured and communicated until 15 January each year by the Asociația Română pentru Măsurarea Audiențelor (Romanian Association for Audience Measurement- ARMA).

The interested broadcasters will declare (Appendix 3) until 15 January at the latest for the respective year in which programmes will be free-to-air, without any technical or financial condition (which also means free and unconditioned access to the uncoded/unencrypted signal). The declaration is valid until 15 January of the next year. The “must carry” list is applicable to all service distributors, except those using public networks with Direct-to-Home satellite access for rebroadcasting.

Distributors have to ask the broadcaster in written form within seven days for the annual rebroadcasting permission for every “must carry” service. A lack of written response within 15 days after the release of the “must carry” index is considered tacit approval. The distributors are obliged to insert into their offer the programmes included in the “must carry” index within 30 days after its release. They are obliged to assure for every “must carry” programme the same quality of rebroadcast signal in the electronic communication network as the signal quality offered by broadcasters.

If a broadcaster decides during a year, to give up or it is no longer compliant with the legal conditions for the “must carry” regime for a certain programme service, the Council will announce this publicly on its website.

Infringements of the Decision could be sanctioned in accordance with the Audiovisual Law.

Decizia nr. 72 din 2 februarie 2012 privind condițiile de eliberare și modificare a avizului de retransmisie

http://www.cna.ro/IMG/pdf/Decizie_72_2012_aviz_retransmisie_MOf.pdf

CNA Decision no. 72 of 2 February 2012

