

[PL] Draft Amendment to the Broadcasting Act

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On 5 September 2012 the Polish Government presented to the Parliament its draft Act amending the Broadcasting Act. This amendment aims at the full transposition of the Audiovisual Media Services Directive (AVMSD) into national law. The proposal basically concerns content regulation of on-demand audiovisual media services (video on demand - VoD). Provisions regarding linear services had been implemented earlier (see IRIS 2010-8/41). Poland thus follows the European Commission's assessment that the Polish implementation of the AVMSD was not sufficient (see IRIS 2012-8/6, IRIS 2011-5/5, and IRIS 2010-8/4).

On 12 October 2012 the Act amending the Broadcasting Act was adopted by the Sejm (Lower Chamber of the Parliament) and presented to the Senat (Second Chamber). The Senat's Commission of Culture and Mass Media began to work on the draft on 16 October 2012.

General quality standards as outlined in the AVMSD had already been transposed into Polish law. However, by introducing new content regulation on the VoD market, the lawmaker made all possible efforts to keep the VoD market subject to light regulation and put as little administrative burden on service providers as possible. Accordingly, there is no obligation of authorisation, registration or notification for providers of VoD services.

The Draft Act provides only minimal reporting obligations: two annual reports to the regulatory authority outlining (1) the realisation of protection of minors (e.g., technical measures to prevent access to harmful content) and (2) the promotion of European works (e.g., proportion of European works in the catalogue).

The responsible regulatory authority will be the National Broadcasting Council (NBC). It is in charge of monitoring the VoD market in order to identify VoD service providers (established within Polish jurisdiction) and their compliance with the obligations imposed by the Broadcasting Act. In case of violations, the NBC will issue a note of caution. If the infringement is not ceased, the NBC may impose a fine up to PLN 1,000 (approx. EUR 250). The fine may be repeated.

The NBC's tasks also include the initialisation and the support of self- and co-regulation of VoD service providers. The Act strongly supports the development of so-called Codes of Best Practice, e.g., in the area of specific requirements for technical measures protecting minors. The Act yields precedence to self-

regulation in this respect. In case providers do not agree on self-regulation codes or if the latter prove to be an ineffective implementation of the AVMS Directive, the Minister of Administration and Digitalisation may specify, by legislative regulation, the technical requirements.

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