

[PL] VoD Provisions Incorporated into Broadcasting Act

IRIS 2013-5:1/36

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On 28 February 2013, the Act amending the Polish Broadcasting Act entered into force (see IRIS 2013-1/32 for the draft amendment). The Act concerns content regulation of on-demand audiovisual media services (in particular Video on Demand - VoD). It is intended to constitute the last step of the transposition of the Audiovisual Media Services Directive 2010/13/EU (AVMSD) into Polish national law. The provisions regarding linear services had been implemented before (see IRIS 2010-8/41).

The implementation process of the the VoD provisions involved a careful analysis of the market conditions and consumer needs. The rules for VoD service providers now follow the idea of less stringent regulation being nevertheless in conformity with the AVMSD.

There is no obligation of authorisation, registration or even notification for providers of VoD services. The Act provides only for a minimal reporting obligation requiring media service providers to submit an annual report to the regulatory authority (National Broadcasting Council - NBC) outlining

- data of the provider (including a description of the audiovisual media service and the way of dissemination);
- the description of the types of technical security measures or other appropriate measures to prevent minors from the reception of seriously harmful content (Art. 12 AVMSD);
- the description of the promotion of European works (Art. 13 AVMSD), including works originally produced in the Polish language, including the share of these programmes in the catalogue in terms of quantity and overall programming hours. The report must be submitted annually by 31 March for the previous year.

In case of failure to deliver the report, following a notice to file the report within a delay of 14 days from the date of receipt of said notice, the Chairman of the NBC is entitled to impose a fine upon the person publishing the VoD service in the amount of up to PLN 1,000 (approximately EUR 250). The fine may be imposed anew in case of continued non-compliance with the obligation to deliver the report.

As regards Art. 13 AVMSD, the Act stipulates that providers of VoD services shall promote European works, including works produced originally in the Polish language. The Broadcasting Acts foresees particular ways of promotion:

- distinct identification of the origin of programmes available in the catalogue,
- the option to search in particular for both European works and those originally produced in the Polish language, or
- information and additional material about European works, including works produced originally in the Polish language.

VoD providers must allocate at least 20% of the content in their catalogue for European and Polish works. They have to ensure an adequate visibility of such programmes in the catalogue. This obligation does not apply to the catalogues containing specifically non-European works.

The main obligations regarding protection of minors are:

- respect of the ban on VoD content that threatens the physical, mental or moral development of minors (especially pornography or gratuitous violence) without implementing technical security measures or other appropriate measures to prevent the access of minors,
- appropriate qualification and designation of content labelling the degree of harmfulness to minors by different age groups. The labelling shall make the qualification clearly visible both in the catalogue and throughout the playing of the audiovisual programme itself.

The NBC 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. 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 codes of best practice, e.g. in the area of specific requirements for technical measures protecting minors.

Ustawa z dnia 12 października 2012 r. o zmianie ustawy o radiofonii i telewizji - Dz.U. 2012.1315

<http://sejmometr.pl/prawo/126803>

Act amending the Law on Radio and Television of 12 October 2012

