[LU] Draft Grand-Ducal Regulation on Protection of Minors in Audiovisual Media Services

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On 25 July 2014, the Government of Luxembourg proposed a grand-ducal regulation on the protection of minors in audiovisual media services based on the Loi sur les médias électroniques (Law on Electronic Media - LEM). This proposal is closely linked to an infringement procedure brought by the European Commission pursuant to Art. 258 of the Treaty on the Functioning of the European Union. The Commission reprimanded Luxembourg for having failed to implement Art. 12 of the Audiovisual Media Services Directive, which aims at protecting minors in on-demand audiovisual media services. In its reasoned opinion of November 2013, the Commission indicated that the literal transposition set forth in Art. 28 quater LEM was insufficient and required further specification of the measures to be taken by service providers. Thus, the draft regulation constitutes a response to the Commission's criticism.

The draft regulation introduces a system of self-classification, requiring broadcasters established in Luxembourg to classify their programmes. To this end, Art. 1 sets out five categories of age groups: (I) no age distinction - programmes appropriate for all audiences; (II) programmes not suitable for minors under 10; (III) programmes not suitable for minors under 12; (IV) programmes not suitable for minors under 16; and (V) programmes not suitable for minors under 18. Programmes of the first category are to be exempt from labelling. For the other categories, the obligatory identification is to take two forms: first, the form of pictograms (annexed to the regulation) referring to the respective age group in black letters on white ground and, second, the form of a warning stating "not recommended for minors aged below 10/12/16/18". Content of category II is to be made identifiable by the broadcasting of the corresponding pictogram and the respective warning for one minute at the beginning of the programme. Those of categories III and IV should be featured during the entire duration of the programme. In addition, the warning should appear for one minute at the beginning of the programme and when the programme resumes after an interruption (such as an advertising break). Pictograms and warnings will also have to be screened during a trailer for programmes of categories II, III and IV.

The regulation prescribes classifications on the basis of their potential to impair minors. Programmes susceptible to harming minors will have to be classified as being unsuitable for minors under 10. Moreover, programmes resorting to

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physical and psychological violence in a systematic and repeated manner will have to be considered unsuitable for minors under 12. These may not be broadcast in unencoded form between 6 a.m. and 8 p.m. Programmes of erotic character or great violence will be regarded as harmful to minors under 16 and will only be allowed to be disseminated in unencoded form after 10 p.m. and before 6 a.m. For the fifth category of programmes, the draft regulation indicates that their dissemination is in principle legal. However, such content should be reserved for an adult audience due to its sexually explicit or highly violent character. Thus, such programmes shall in every case have to be encoded and, additionally, broadcast only between midnight and 5 a.m. Access shall only be granted to adults by way of a personal access code. The starting screen shall have to display a monochrome image on a blank screen and no sound in order to discourage providers from screening, for instance, sexually explicit stills and thereby attracting minors' attention.

In addition, the draft regulation contains a rule for broadcasters principally targeting the public of another EU Member State, while established in Luxembourg. As an exception, such broadcasters should be able to opt for the classification system applied in that particular Member State, provided that an equivalent level of protection is achieved. Broadcasters shall have to notify the Minister of Communications and Media of the regime applicable based on this choice. The Minister would have to accept (or refuse) the system, after having consulted the Independent Audiovisual Authority of Luxembourg, ALIA (see IRIS 2013-10/32) (Art. 8 (2)). This provision takes into account that a number of international operators in Luxembourg broadcast programmes all over Europe.

Furthermore, providers of on-demand audiovisual media services will also be required to classify their programmes, with a choice between three systems: first, they may apply the labels as prescribed by Art. 1 of the draft regulation, second, they may maintain the classification obtained in the country of origin of the work or third, if the programme is directed to a public in another Member State, they may apply the corresponding system of that Member State. The Minister of Communications and Media will have to be informed about the choice made. Moreover, providers of non-linear services will be obliged to introduce parental control systems (about which users should be adequately informed), which would restrict access to programmes on the basis of a specific code. Material not suitable for minors aged below 18 (category V) will have to be presented in a separate space and will only be allowed to be offered in return for remuneration (either upon subscription or as pay-per-view). Access to such content will have to be permanently blocked and will only be permitted to be accessible after insertion of a special access code, verification of which would take place each time the user returns to the service.

In October 2014, the Luxembourg Conseil d'État (State Council) issued its opinion on the draft regulation. The government may amend the draft regulation

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accordingly before enacting it.

Projet de règlement grand-ducal relatif à la protection des mineurs dans les services de médias audiovisuels

http://www.conseil-etat.public.lu/fr/avis/2014/10/50_794/50794-Texte.pdf

Draft grand-ducal regulation concerning the protection of minors in audiovisual media services

Avis du Conseil d'État, Projet de règlement grand-ducal relatif à la protection des mineurs dans les services de médias audiovisuels, 21 octobre 2014

http://www.conseil-etat.public.lu/fr/avis/2014/10/50_794/50794.pdf

Opinion of the State Council, Draft grand-ducal regulation concerning the protection of minors in audiovisual media services, 21 October 2014

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