[SI] Slovenia’s draft AVMS law introduces obligations to invest in European works

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In addition to the draft media laws published by the Slovenian Ministry of Culture in July (see IRIS 2020-8/21), the Ministry also published a draft proposal for amending the Law on Audiovisual Media Services on 6 July. A first consultation closed in August, and the Ministry of Culture has redrafted sections of the law and extended the consultation on the draft until 2 October 2020. The purpose of the draft amendments is to transpose the Audiovisual Media Services Directive. For the most part, the law directly reflects the AVMS Directive. During the first consultation period, several issues were raised regarding the proposal.

The draft law introduces obligations for audiovisual media service providers to invest in European audiovisual works. Under a new Article 16.a (1), providers of audiovisual media services are obliged to contribute at least 10% of their gross annual revenue generated in the Republic of Slovenia for the development, production or promotion of European audiovisual works. This obligation is also applicable to media service providers established in a different member state (16a (2)). The following criteria will be considered when determining which non-domestic media service providers are obliged to contribute: advertising intended for viewers in the Republic of Slovenia; the language of programmes and advertising services and other promotional activities, including subtitling and dubbing; and the number of subscribers to a service in the Republic of Slovenia.

The new draft indicates that the following qualify as development, production or promotion: direct investment in the development of scripts and in the recording of a European audiovisual work, as well as the purchase of licensing rights for the European audiovisual works.

According to the Ministry documentation, during the consultation, a broad range of stakeholders expressed concern that this new fee would represent a disproportionate burden on audiovisual media service providers. They also noted that it was not clear which audiovisual media service providers would fall under the scope of the obligation. In addition, they claimed that it was unclear how such fees would be collected.

The new draft published in August added the public service broadcaster RTV Slovenia to the list of audiovisual media services that will be exempt from the

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obligation (presumably as RTV Slovenia already has obligations under the Slovenian Film Centre Act to contribute at least 2% of the licence fee towards funding film production by independent producers, and also perhaps due to the new proposed obligations on RTV Slovenia to contribute 5% of the licence fee to funding public interest media and a further 3% to financing the Slovenian Press Agency. See IRIS 2020-8/21 for more details).

Services of special importance or services whose programmes are intended for a local audience and are not included in a broadcast network that reaches more than 50% of the population are also exempt, as are services intended exclusively for advertising, teleshopping or self-promotion. A general exemption clause is provided in Article 16a (5) providing that the obligations will not apply to audiovisual media services with low traffic or small audiences, in accordance with the European Commission guidelines.

Article 16a (6) outlines that the basis for the calculation of the contribution shall be revenues from advertising and revenues from subscriptions generated by the audiovisual media service provider in the Republic of Slovenia, excluding value added tax. The amount of tax on profits paid in the Republic of Slovenia will also be deducted from the 10% of total revenues.

Regarding the concerns of stakeholders as to how this scheme would be implemented, the latest draft proposal includes an additional Article (16b) which is intended to specify the procedure according to which the obligations from Article 16a will be determined. This introduces a significant role for the regulator – the Agency for Communication Networks and Services (AKOS) – who will be responsible for the implementation of this obligation. In the first instance, the AKOS will decide by September each year which services are within the scope of the obligation, with reference to the various exemptions and criteria outlined above.

Hence, the law will also require all audiovisual media service providers to submit reports every year to the agency; these reports shall include data on revenues from advertising and subscriptions, as well as on the fulfilment of the obligations for investment in the previous year.

Zakon o spremembah in dopolnitvah Zakona o avdiovizualnih medijskih storitvah

https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=11475

Draft Law Amending the Audiovisual Media Services under (second) consultation

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