[BG] Local media law harmonised with the Audiovisual Media Services Directive

IRIS 2021-2:1/14

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On 22 December 2020, a new Act for amendment and supplement to *Закон за радиото и телевизията* (the Radio and Television Act - RTA) was promulgated in *Държавен вестник* (State Gazette) and entered into force on the same day. By way of this Act, Bulgaria has transposed Directive (EU) 2018/1808 (AVMSD/Directive) shortly after the infringement procedure opened by the Commission against Bulgaria and other countries.

Video-sharing platform services

One of the main novelties concerns the regulation of video-sharing platform services and providers within the meaning of the AVMSD. From now on, video-sharing platform providers (platform providers) under the jurisdiction of Bulgaria will be obliged to notify *Съвет за електронни медии* (the Council for Electronic Media - CEM), which will maintain a public register.The notification shall include various information on the platform provider and the platform. What is noteworthy is that a draft of the platform providers' general terms and conditions (GTC) shall be attached to the notification and these shall be subject to an *ex-ante* approval by the CEM. Future amendments to the GTC shall be subject to the same approval procedure. In addition, the CEM will have the right to take the sole initiative to amend them to ensure the interests of the audience.

Apart from the notification procedure, providers shall take appropriate measures to protect the general audience and minors from different types of harmful content. These include discriminatory content; violence and hatred; content whose dissemination constitutes a criminal offence under *Наказателен кодекс* (the Penal Code); and any other types of content which impair the physical, mental or moral development of minors. In addition, video-sharing platform providers shall comply with some of the requirements for commercial communications and *Националните етични правила за реклама и търговска комуникация* (the National Ethical Rules for Advertising and Commercial Communication) developed by *Сдружение „Национален съвет за саморегулация“* (the National Council for Self-Regulation Association).

European works and on-demand media providers

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Another important amendment concerns the promotion of European works by on-demand media providers. Under the new regulation, they will have to reserve at least 30% of their content for European works. The latter shall also be given “sufficient prominence”, for example, through various means such as a dedicated section for European works that is accessible from the service homepage; the possibility of searching for European works in the search tool available as part of that service; the use of European works in campaigns of that service; or a minimum percentage of European works promoted from that service's catalogue, for example by using banners or similar tools. The minimum share of 30% is calculated on an average annual basis and on the basis of the total number of works in the relevant catalogue.

Furthermore, the CEM shall adopt rules for determining the relative weight of individual types of titles in the catalogues of on-demand media services. The rules shall also clarify the process of measuring the audience share of the on-demand audiovisual media services (subject to the EC Communication (OJ C (2020) 4291 of 2 July 2020).

It is worth mentioning that the RTA waives the EU quota requirements: i) for microenterprises; ii) for on-demand providers with an audience of less than 1% of the total audience of all on-demand audiovisual media services offered on the territory of the country; iii) where it would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services.

Closing on the topic of EU quotas, Bulgaria has decided not to transpose Article 13, paragraph 2 of the AVMSD, respectively media providers will not have an obligation to contribute financially to the production of European works.

Accessibility of audiovisual media services for persons with disabilities

The RTA will better ensure the accessibility of audiovisual media services for persons with disabilities such as impaired vision or hearing. The means to achieve greater accessibility now include (non-exhaustively): sign language, subtitling for the deaf and hard of hearing, spoken subtitles, and audio description. The RTA indicates that the achievement of such accessibility shall be gradual and imposes obligations on media service providers to submit 3-year action plans for the continuous and gradual improvement of the accessibility of their services, as well as annual reports to the CEM. The first action plans shall be provided to the media regulator within 8 months.

An obligation long-awaited by people with disabilities has been introduced for: i) all national media service providers who broadcast terrestrial digital television channels with a polythematic or informational programme profile and an average daily audience share of over 20%, and ii) for all channels of the public service broadcaster - *Българска национална телевизия* (Bulgarian National Television –

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BNT). They are now obliged to ensure the translation into Bulgarian sign language of at least one of their news programmes between 7 p.m. and 11 p.m.

Commercial communications

Important amendments have also been introduced in the commercial communications section of the RTA. The RTA now provides that the proportion of television advertising and teleshopping spots within the period between 6 a.m. and 6 p.m. shall not exceed 20%. For the period between 6 p.m. and 12 a.m., the maximum proportion is also 20%. There is no limitation between 12 a.m. and 6 a.m. The new approach gives more freedom to broadcasters and allows them to schedule more advertising spots during primetime. To this effect, in comparison to Article 23, paragraphs 1 and 2 of the AVMSD, the RTA has a wider scope of exceptions which are not counted against the limitations for advertising. Namely, the RTA also stipulates that the promotion of European films and public service announcements and charity appeals shall not count against the advertising quotas. Some confusion is possible, however, as regards the criteria for defining European films, as no definition is given. The most reasonable interpretation is that a European film is a film which meets the criteria for a European work (as defined in the RTA), but there is no clarity at this point, especially as there is a definition of European films in the Film Industry Act.

As regards product placement, it is noteworthy that the RTA waives the requirement set out in Article 11, paragraph 3, letter “d” of the AVMSD, except for programmes produced or commissioned by a media service provider or by a company affiliated with that media service provider. At the same time, both the AVMSD and the RTA refer to “affiliated companies”, but both acts do not stipulate a definition of the term, which may lead to issues with the interpretation and application of the law.

Self-regulation and Code of Conduct (applicable to all media service providers)

The RTA provides several new provisions which essentially change the current regime for the protection of minors. The CEM together with media service providers must prepare *Кодекс за поведение* (a Code of Conduct), which shall include measures to assess, label and restrict access to programmes which are adverse to, or pose a risk of impairing minors’ physical, mental, moral and/ or social development. The Code of Conduct must be prepared within 8 months following the entry into force of the new legislation. Until then, providers shall continue to apply the acts concerning the protection of minors which are still in effect. Furthermore, a new uniform standard for the regulation of sound levels in advertising will have to be developed, and the existing self-regulatory instruments have been given the statue of Codes of Conduct as per Article 4a, paragraph 1 of the AVMSD.

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Country of origin principle (COP)

A comment deserves to be made concerning the COP. A new provision in the RTA essentially states that the rules of the Bulgarian audiovisual media services legislation shall also be applicable to providers under the jurisdiction of other member state who wholly or mainly direct their media services to the territory of Bulgaria. According to documents from the public consultations concerning the transposition of the AVMSD, this text aims to implement Article 4, paragraph 6 of the AVMSD, but it could be argued that this is not entirely compliant with the Directive. As a result, although it is too early to assess the implications of this text, the said local provision (Article 5b, paragraph 9 of the RTA) may potentially undermine to a certain extent the COP when applied in practice.

Final comments

Other amendments in the RTA also include: extending the competences of the CEM; providing possibilities for a derogation from the principle of freedom of retransmission in case of risk of prejudice to public health; providing for effective media literacy measures and tools and raising users' awareness of those measures and tools; and many others. What seems to be missing from the RTA is new provisions to ensure that the CEM has adequate financial and human resources to carry out its functions effectively. Nevertheless, apart from some exceptions, the RTA seems to be mostly in line with the AVMSD, and major deviations from the Directive cannot be identified at this stage.

The media sector now expects the upcoming secondary legislation, which will additionally impact media services and the content that can be broadcast, especially in light of the protection of minors.

Закон за изменение и допълнение на Закона за радиото и телевизията

https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=154572

Law for amendment and supplement of the Radio and Television Act

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