[BG] New regulations affecting the media sector

IRIS 2021-5:1/23

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On 19 March 2021 a new *Закон за предоставяне на цифрово съдържание и цифрови услуги и за продажба на стоки* (Supply of Digital Content and Digital Services and Sale of Goods Act – the Act) was promulgated in *Държавен вестник* (State Gazette). With this, Bulgaria has transposed two EU directives: 1) Directive 2019/770 on digital content and digital services; and 2) Directive 2019/771 on certain aspects concerning contracts for the sale of goods.

The Parliament has adopted a rather strange approach where both directives are transposed in a single legal act. At the same time, multiple amendments have been made to *Закон за защита на потребителите* (the Consumer Protection Act) which generally transposes most of the consumer related directives until now.

The Act concerns all traders supplying goods, digital content, and digital services to consumers. The new regulation applies to all contracts for the supply of digital content or digital services where the consumer pays or undertakes to pay a price. Where consumers do not pay but provide personal data, which the trader uses for purposes other than supplying the service/content and fulfilling their legal obligations, the trader's activity will also fall within the scope of the Act. Thus, a lot of traders need to be extra cautious about the fact that the scope of the Act includes anyone who uses consumers' data for any purpose other than supplying service/content and fulfilling legal obligations. There is no requirement that these purposes are necessarily commercial, neither that the use of data generates income for the trader, etc. For example, a trader using the contact details of their users for the purpose of sending them a newsletter about social activities and campaigns, is supposed to be subject to the Act.

In accordance with the directives, a digital service is defined as a service allowing the consumer: 1) to create, process, store or access data in digital form; or 2) the sharing of, or any other interaction with data in digital form uploaded or created by the consumer or other users of that service. Digital content is defined as any data produced and supplied in digital form.

Looking at these definitions they seem to cover a wide range of contracts for the supply of digital content and services. These include, *inter alia*, contracts for supply of content like computer programs, applications, video files, audio files,

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music files, digital games, e-books or other e-publications, as well as the supply of various digital services such as video and audio sharing services, hosting services, word processing or games offered in the cloud computing environment and social media, etc.

The Act applies independently of the medium used for the transmission of, or for giving access to, the digital content or digital service. This includes downloading by consumers on their devices, web-streaming, allowing access to storage capabilities of digital content or access to the use of social media. OTT services, video-sharing platforms or video-on-demand services obviously fall within the scope of the Act. Thus, they will have to comply with these new rules and eventually revise their terms and conditions.

As a general comment, the Act does not seem to establish entirely unknown concepts and rights/obligations but is rather aimed at introducing special rules needed for the development of technology. It is introducing rules for digital services and digital content, adapted to their specificity – requirements for updating services or content, rules regarding liability in case of non-compliance of the service or content upon integration, special rights of users of digital services and content, such as when they may terminate the contract, for which periods they owe compensation for non-compliance, and in what time frames they may file a complaint.

The Act will enter into force on 1 January 2022. With some minor exceptions it will be applicable to all contracts for supply of digital content and digital service, and even for some concluded before this date.

It remains to be seen to what extent the various providers will comply with the Act and whether they will start preparing early or leave any action until 2022.

Finally, a brief mention will be made that, on 09 March 2021 amendments were promulgated to *Закон за електронните съобщения* (the Electronic Communications Act - ECA) by which the European Electronic Communications Code (EECC) has been transposed.

With the implementation of the EECC the local law stipulates numerous new rules for subscribers of TV services, new powers to the telecom regulator, changes to the coordination procedures between the telecom and the media regulator, rules and requirements concerning the interoperability of TV and radio reception equipment, radio spectrum management, and many others affecting the intertwined telecom and media sector.

Закон за предоставяне на цифрово съдържание и цифрови услуги и за продажба на стоки

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https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=156454

Supply of Digital Content and Digital Services and Sale of Goods Act

Закон за изменение и допълнение на Закона за електронните съобщения

https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=156329

Act amending and supplementing the Electronic Communications Act

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