[EE] A glimpse at Estonia’s new rules for audio-visual media services

IRIS 2022-4:1/5

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For some time, Estonia has led the way when it comes to technological advancements and digital innovation.

Therefore, its failure to transpose the Audio-Visual Media Services Directive (AVMSD) and the European Electronic Communications Code in a timely manner has brought the country into total disrepute.

Media services are regulated by the Media Services Act (MSA), in force since 16 January 2011 (as amended). The implementation of the AVMSD was initially scheduled for May 2021. Finally, on 16th February 2022, the Act on Amendments to the Media Services Act and Amendments to Other Associated Acts initiated by the Government of the Republic of Estonia, was introduced into Estonian legislation. The new regulations of the MSA, transposing the AVMSD, came into force on 9 March 2022.

In a fairly general way, the amendments of the MSA follow the mandatory provisions of the AVMSD. Even though the AVMSD provides some room for certain deviation and implementation of voluntary regulations, at least for now, with regard to majority of optional clauses, it was decided not to transpose them into the national legislation for the time being for a variety of reasons. For example, the Estonian legislator did not implement Article 13 (2) and (3) of the AVMSD concerning the requirement of contribution to the production of European works since, according to the preliminary assessment of Estonian Ministry of Finance, the benefits of the measure would not outweigh the costs.

There are, of course, a couple of examples of implementation of voluntary clauses:

Codes of conduct for the transmission of audio-visual commercial communications in children’s programmes and user-generate videos targeted at children may be established by service providers. However, in cases where a code of conduct has not been established, or has not proved to be sufficiently effective, the requirements for audio-visual commercial communications introducing food and drinks in children's programs ,or user-generated videos targeted at children, or during them are to be established by a regulation of the minister in charge of the policy sector. Such a regulation by the minister is currently planned to be

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established by 1 April 2023. Although there are no known operators of video-sharing platforms in Estonia that would be subject to Estonian jurisdiction, Estonia still adopted the guidelines provided in the AVMSD regarding the protection of minors and legality on video-sharing platforms. Video sharing platform operators are now obligated to describe in their terms of services that it is prohibited to transmit content which includes incited to hatred, violence, discrimination, violation of law or depicts child pornography. If discovered, such content must be removed immediately. The terms of service must also prescribe (and the service provider must provide technical means for users to comply with such terms) that at the beginning of programmes, user-generated videos and commercial communications that may impair the physical, mental or moral development of minors, a warning must be presented in a manner understandable to the viewer, stating that the subsequent programme is unsuitable for minors, and a relevant symbol about the unsuitability of the programme to minors or some age groups of minors must be seen on the screen during the whole programme, video or commercial communication. In the case where such a warning has not been presented, the platform operator must add such a warning themselves or ensure that the content is not available to minors.

Other amendments to the MSA include updates to the activity license system, including the obligation on providers of the service to apply for an activity license, submit reports on the programme structure and disclose their ownership structure. Updated provisions of the MSA reduce the volume of mandatory news programmes, that is, the obligation of television and radio service providers to broadcast news is reduced from six days to five days a week, and the share of news programmes in the programme from five per cent to two per cent.

By the date of this article, the new provisions of the MSA have been in force for only a limited time, therefore, it is difficult to draw any conclusions on the adoption and response of society and the concerned service providers. As mentioned above, in certain sectors there is a limited number of concerned market participants (or in some cases, there are none) under Estonian jurisdiction, hence, the actual impact is yet to be measured.

Press release. Stepping up legal action: Commission urges 19 Member States to implement EU digital and media laws

https://ec.europa.eu/commission/presscorner/detail/e%20n/ip_21_4612

Meediateenuste Seadus

https://www.riigiteataja.ee/akt/127022022009

Media Services Act

https://www.riigiteataja.ee/en/eli/514032022003/consolide

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