

## IMPLEMENTATION OF THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE

The Audiovisual Media Services Directive\* is required to be implemented by 19 December 2009.

The main changes under the directive involve:

- 1) extension of the substantive scope of Community regulation of audiovisual media services; and
- 2) amendment of regulations for audiovisual commercial communications (such as product placement and sponsoring), broadcasting of commercials, audience protection, and jurisdiction.

Extension of the scope of regulation includes introduction of a definition for "audiovisual media service" which covers television broadcasts, on-demand services, and commercial communications. The previous requirements for television broadcasting (digital or analogue) thus now apply also to live streaming, webcasting, near-video-on-demand and video-on-demand. The broad definition of audiovisual media services raises certain doubts whether requirements imposed on television broadcasters will also apply to such services as short films and interviews on news sites, advertising spots on websites, or films viewed on video sharing sites like YouTube or community servers, and broadcasting of

---

\* The full name of the Audiovisual Media Services Directive is Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities. The original directive was also known as the Television Without Frontiers Directive.

advertising spots in retail shops, taxis or the like (digital signage or narrowcasting).

The directive has also been extended to cover product placement. As a rule, product placement is forbidden by the directive, but it will be permissible in certain areas, such as films, serials, and sports and entertainment programming, provided that a number of additional requirements are met; for example, programmes containing product placement must not directly encourage purchase of the placed product or give undue prominence to the product, and must present clear information on the product placement they contain.

Regulations regarding sponsoring of programmes have also been changed. For example, it is now possible to refer to more than one product of a given sponsor; programmes may now be sponsored by pharmaceutical companies; and information about the sponsor must now be provided at the beginning of the programme, during the programme or at the end.

New rules have been introduced for television advertising spots, for example time limits on advertising spots (the number of commercials during a single programme, the length of uninterrupted commercials, and the number of minutes of advertising per hour and per day) and rules on how information about commercials is presented.

The Member States are required to implement the directive by 19 December 2009. In Poland the directive is to be implemented by amendment of the Radio and Television Act dated 29 December 1992. The implementation procedure is currently at the stage of consultation among ministries.

The chief point of the planned amendment of the Radio and Television Act is introduction of

a definition of “media service” which general corresponds with the definition of “audiovisual media service” in the directive. According to the white paper for the bill, “media services” should not include such forms of activity as (i) private blogs, (ii) audio-on-demand, (iii) community servers, except for websites edited by broadcasters, (iv) private websites, (v) print inserts, and (vi) electronic editions of newspapers and magazines, if not chiefly composed of audiovisual content. Adoption of the bill in this form raises many doubts concerning the character of numerous “video” services available on the Internet and requirements imposed on such services.

Another important amendment under consideration would require registration of entities providing video-on-demand services or engaged only in webcasting.

With regard to commercial communications, the bill would implement the directive with more precise requirements for providing information about commercial communications (advertising, sponsoring or product placement), as well as requirements and restrictions on use of various kinds of commercial communications.

Should you wish to obtain additional information on the topic, please contact Paweł Chojecki ([pawel.chojecki@laszczuk.pl](mailto:pawel.chojecki@laszczuk.pl)).

## **NEW RIGHTS OF THE CUSTOMS SERVICE**

The new Customs Service Act entered into force on 31 October 2009. It introduced significant changes in the authority of the Customs Service. The Customs Service was given authority in such

areas as games of chance and pari-mutuel betting, as well as fighting certain types of crimes.

The Customs Service has taken over some authority over games of chance and pari-mutuel betting from the finance ministry, tax chambers and tax offices. Now permits to hold raffles, audiotext lotteries, bingo games, and promotional lotteries in an area extending beyond the jurisdiction of a single customs chamber are to be issued by the director of the customs chamber for the applicant’s place of residence or registered office. In the case of low-stakes gaming machines, raffles, audiotext lotteries, bingo games and promotional lotteries within the territory of a single customs chamber, the permit is to be issued by the director of the customs chamber for the territory where the event will be held. The territorial jurisdiction of the permitting authorities is set forth in a regulation issued by the finance minister.

The new act also authorizes the Customs Service to conduct preparatory proceedings in certain types of cases discovered by the Customs Service, such as intellectual property cases. Thus the Customs Service may now conduct proceedings involving copyright infringement and counterfeit goods. Previously, when customs officials discovered such violations, the cases were transferred to the police or the prosecutor’s office. The change is intended to free up the resources of police and prosecutors while streamlining law enforcement by concentrating all related proceedings within the authority of one institution.

Should you wish to obtain additional information on the topic, please contact Mateusz Orliński ([mateusz.orlinski@laszczuk.pl](mailto:mateusz.orlinski@laszczuk.pl)).