



ROMANIA – CONSUMER PROTECTION UPDATES IN THE AUDIO-VISUAL MEDIA FIELD

1. Background

In November 2018, the European Parliament and the Council of the European Union have enacted the Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination on certain provisions laid down by law, regulation or administration in Member States concerning the provision of audio-visual media services in view of changing market realities (the “**Audio-Visual Media Services Directive**”).

The Audio-Visual Media Services Directive, as amended by Directive (EU) 2018/1808 aims at adapting rules set out for audio-visual media services providers to the new realities applicable in this field, generated by technological developments and by the new viewing habits of consumers.

Although Directive (EU) 2018/1808 should have been transposed into national legislation by September 19, 2020, the same has not happened thus far in most Member States.

In April 2020, the Romanian Ministry of Culture submitted for public consultation a draft law for the transposition of the Directive (EU) 2018/1808 (by amending and supplementing the Broadcasting Law in order for YouTube and other video-streaming platforms to enter under the supervision of the National Broadcasting Council - “CNA”). However, on April 30, 2020, following strong criticism in the online environment, the same decided to withdraw the draft law. In its public statement, the Ministry of Culture stated that any other draft law will be resubmitted in public consultation only after consultations with all relevant stakeholders, including media representatives. Thus, audio-visual media services providers should get acquainted with the provisions of the same and use their expertise in the filed to contribute to a fair and

transparent transposition of the Audio-Visual Media Services Directive into Romanian legislation.

Nevertheless, seen that in the end it is difficult to anticipate when and how Romania will transpose Directive (EU) 2018/1808 into national legislation, it is better for the audio-visual media services providers to start and undertake the necessary steps so that to be ready to implement the same when the national transposition will occur.

2. Main novelties

The amendments to the Audio-Visual Media Services Directive expanded the sphere of audio-visual media services, by including:

- (i) video-sharing platform services (such as YouTube)¹;
- (ii) user-generated videos uploaded to video-sharing platforms;
- (iii) audio-visual commercial communications that contain images designated to promote goods and services included in user-generated videos in return for payment or a similar consideration or for self-promotional purposes, as well as product placement in user-generated videos.

At the same time, the amendments to the Audio-Visual Media Services Directive intended to bring more clarity with regards to the means of determining the Member State where a media services provider shall be deemed to be established.

In this respect, the relevant criteria to be taken into account when determining the place of establishment refers to (i) the location of the head office, (ii) the location where the editorial decisions concerning the audio-visual media service are taken and (iii) the location where a significant part of the workforce involved in the pursuit of the programme-related audio-visual media service activity operates.

Taken into account how the new relevant legal provisions will be construed, this obligation to establish the applicable jurisdiction will likely apply (indirectly) to the media services providers, since the Member States need to ensure that media service providers will inform the competent regulatory authorities/bodies about any changes that may affect the determination of the applicable jurisdiction.

Additionally, the Member States will be obliged to establish and maintain an up-to-date list of media service providers under their jurisdiction, to be communicated to the European Commission.

¹ Video-sharing platform services (such as YouTube) are ever-increasingly popular with consumers, especially young people and minors and are becoming one of the favourite platforms for businesses to market their goods and services.

Seen Romanian authorities approach to similar databases (such as, for example, the ultimate beneficial owners registry operated by the Trade Registry), the media services providers (including those using video-sharing platforms) will likely be required to provide the Romanian authorities with the necessary information to establish and maintain such list.

That will most likely increase the possibility that their content (including user-created content and content shared on video-sharing platforms) to be scrutinized by the competent authorities in the audio-visual and consumer protection fields.

Taken into account the above, it is important to highlight the new obligations set by the amended Audio-Visual Media Services Directive that, once transposed, will need to be complied with by media services providers and that are focused on consumer protection, namely:

- media services providers will need to make easily, directly and permanently accessible to the recipients of their services at least the following information: (i) their names; (ii) the geographical addressees where they are established; (iii) the details, including their e-mail addresses or website which allow them to be contacted rapidly in a direct and effective manner; and (iv) the Member State having jurisdiction over the same and the competent regulatory authorities or bodies or supervisory bodies;
- the audio-visual media services provided by media services providers, will not contain any (i) incitement to violence or hatred directed against a group of persons or a member of a group on various grounds such as, for example, sex, race, colour, ethnic or social origin, religion, disability, age or sexual orientation and/or any (ii) public provocation to commit a terrorist offence;
- the audio-visual media services provided by media services providers which may impair the physical, mental or moral development of minors are only made available in such way as to ensure that minors will normally not hear or see them (such measures may include age verification tools). In relation to this, it is important to mention that the personal data of minors collected or generated by media services provider for this purposes above are forbidden to be processed for commercial purposes;
- media services providers will be required to provide sufficient information to viewers about the content which may impair the physical, mental or moral development of minors;
- media services providers will be required to make their services continuously and progressively more accessible to persons with disabilities;

- as regards audio-visual commercial communications, the same: (i) will need to be readily recognisable as such and (ii) will not be allowed to use subliminal techniques;
- audio-visual commercial communications or programmes that are sponsored will need to meet certain requirements, such as, for example, not directly encouraging the purchase or rental of goods or services and clearly informing viewers of the existence of a sponsorship agreement. Sponsored programmes will need to be clearly identified as such;
- news and current affairs programmes shall not be sponsored;
- the media services providers of an on-demand audio-visual media services must secure at least a 30% share of European works.

Romanian legislators and competent authorities will need to ensure appropriate means for the observance of these obligations.

3. Potential impact on media services providers

The amendments brought to the Audio-Visual Media Services Directive aim not only to update its content to new technological advancements and viewing habits, but also to increase the consumer protection in relation to aspects such as:

- (i) commercial communications and product placement;
- (ii) discrimination of any kind;
- (iii) increasing protection for minors and persons with disabilities.

As a result, not only will user-generated videos and content placed on video-sharing platforms be expressly regulated, the same will also be subject to a set of rules which are not currently applicable to programmes specific to more traditional audio-visual means, such as television.

Moreover, seen that currently many content creators and businesses use only video-sharing platforms to promote goods and services (or considering the same), the same will most probably be considered media services providers and will need to comply with new rules in order to continue their activity without the risk of sanctions.

While many of the rules set up by the amended Audio-Visual Media Services Directive are already complied with by well-established content creators using video-sharing platforms, Romanian players will need to get acquainted with the new rules and start considering implementing the same in order to be prepared when the transposition of the same into national legislation will be finalized.

Since the Romanian Ministry of Culture has stated that any draft law transposing the amended Audio-Visual Media Services Directive will be resubmitted in public consultation only after consultations with all relevant stakeholders, including media representatives, it is essential for media services providers (including those using video-sharing platforms) to get acquainted with their future obligations and get involved in the transposition process, as to ensure the same will be achieved in a fair and transparent manner.

Seen that the transposition deadline has already passed, public consultations on the new national legislation to transpose the amended Audio-Visual Media Services Directive may be commenced at any time, thus being important for media services providers to start actions for the implementation of the same as soon as possible.



Daniel Alexie

Senior Associate

daniel.alexie@mprpartners.com



Cristina Crețu

Senior Privacy & Technology Consultant

cristina.cretu@mprpartners.com