

Serbia: Regulatory aspects of the new

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Electronic Media Act

The Electronic Media Act, along with two other media laws that came into force in August 2014, the Public Information and Media Act and the Public Service Media Act (1), brings the following main changes to the regulatory framework for electronic media services:

- (i) alignment with the EU regulatory framework i.e. the Directive 2010/13/EU (“**Audiovisual Media Services Directive**”) with respect to the categories of services and their providers, as well as new licensing regime;
- (ii) redefinition of restrictions aimed at protection of media pluralism; and
- (iii) mandatory privatisation of media in public ownership.

Electronic media services, providers and licensing

The Electronic Media Act supersedes the Broadcasting Act (2), which divided the categories of licenses depending on the facilities used for broadcasting (terrestrial, cable and satellite). The Broadcasting Act otherwise did not make distinction between different types of audiovisual services, and did not address on-demand services and services provided exclusively over the Internet. The new Electronic Media Act, governing both audiovisual and radio services, makes a distinction between linear and on-demand services (3).

The provisions of the new act defining providers obliged to apply the rules governing audiovisual services in Serbia are similar to the corresponding provisions of the Audiovisual Media Services Directive. A provider falls within the jurisdiction of Serbia if it is established in Serbia or uses either an earth satellite station located on the Serbian territory or a satellite capacity appertaining to it. A provider is being considered established in Serbia on the basis of several alternative criteria (4). A provider which had started its activities in Serbia but subsequently relocated to another jurisdiction shall remain under the jurisdiction of Serbia as long as it keeps maintaining a stable and effective liaison with the Serbian economy, unless a significant part of the workforce involved with such provider’s media services is operating in a EU member state.

The Electronic Media Act introduces approval (*odobrenje*) which is being issued for on-demand

services, and permit (*dozvola*), for linear services provided to persons who are under the jurisdiction of Serbia. The Regulatory Authority for Electronic Media (“**RAEM**”) issues approvals and permits within 30 days from a valid request. For linear services which are provided over terrestrial transmission using scarce resources, permits continue to be subject to a public tender procedure.

The following providers are not subject to any licensing requirement: (i) public broadcaster authorised by the Public Service Media Act, (ii) providers of services using exclusively the global information network (*webcasting, live streaming*) (these providers are merely obliged to register with the RAEM), and (iii) providers of services consisting in retransmission of programs in the territory of Serbia in accordance with the Council of Europe’s European Convention on Transfrontier Television, (5) if the original programme is not altered either by interruption of the signal stream or by insertion of advertising content or any other program content not being part of the original programme.

The Electronic Media Act sets-up the conditions for switch-over from analogue to digital broadcasting of television programmes, scheduled to be finalized by June 2015. The permits granted for analogue broadcasting shall remain valid until their expiration, while the rights of use of radio frequencies necessary for analogue broadcasting shall be replaced by access to digital multiplex.

The Electronic Media Act adds new provisions related to distribution of electronic media services, stipulating that the operators of electronic communications networks over which these services are being transmitted are obliged: (i) to register with the RAEM all consents of providers of electronic media services for distribution over their networks, (ii) to “distribute media services in a fair, transparent and non-discriminatory manner towards providers of media services”, and (iii) to comply with must-carry obligation, which can be imposed under the conditions corresponding to those found in the Universal Service Directive of the EU regulatory framework for electronic communications (6).

Restrictions related to media pluralism

The Electronic Media Act and the Public Information and Media Act loosens restrictions aimed at protection of media pluralism. Inadmissible media concentration exists either in case of simultaneous control of two or more providers of electronic media services together holding 35% of the market, or in case of simultaneous control of 50% of the market of printed media (provided that the controlled media circulates more than 50,000 copies) and of one provider of electronic media service.

There is also a restriction on operators providing the distribution of media content service to operate any media other than through a separate legal entity.

The former restriction of foreign ownership to a minority stake of up to 49%, which in practice was interpreted by the regulator as applicable only to direct ownership, is abolished.

The holders of permits are obliged to notify any change in the ownership structure to the regulator in advance. A failure to comply with a RAEM's recommendation on adjustments aimed at protection of media pluralism leads to revocation of the permit if the rules on protection of media pluralism have been violated. Otherwise, the permit holder will be given six months to remedy the violation and a failure to do so can lead to permit revocation.

Privatisation of media in public ownership

Permits for provision of electronic media services cannot be held by the state, local municipalities or public companies.

Moreover, the Public Information and Media Act mandates privatisation of all state-owned media (with the exception of public broadcasters licensed *ex lege*). Privatisation should be finalised by July 2015. Privatised media are obliged to maintain existing programme schemes for a period of five years following the privatisation.

[1] *Zakon o elektronskim medijima, Zakon o javnom informisanju i medijima, Zakon o javnim medijskim servisima*, "Official Gazette of the Republic of Serbia" no. 83/2014.

[2] *Zakon o radiodifuziji*, "Official Gazette of the Republic of Serbia" nos. 42/2002, 97/2004, 76/2005, 79/2005 – another act, 62/2006, 85/2006, 86/2006 – correction, and 41/2009. In accordance with the Electronic Media Act, only the provisions of the Broadcasting Act referring to the public broadcasting services still remain in force.

[3] There is one more new classification of services made the Electronic Media Act, which is based on content: to general, specialised (which are consisting exclusively of programmes belonging to the same category e.g. sports, culture, music), and to advertising services. However, while the first of these classifications explicitly refers both to audiovisual and radio services, the latter is, without clear reason, limited solely to audiovisual services.

[4] Taking into consideration the provider's seat, place where editorial decisions are taken, place where a significant part of the workforce involved in the pursuit of the service operates, place of commencement of the activities, existence of an effective liaison with the Serbian economy.

[5] The Act on Ratification of the European Convention on Transfrontier Television (Zakon o potvrđivanju Evropske konvencije o prekograničnoj televiziji), "Official Gazette of the Republic of Serbia – International Agreements" no. 42/2009.

[6] Directive 2002/22 as amended by Directive 2009/136.

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