[BE] New Draft Media Decree

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On 5 December 2008, the Flemish Government approved a draft of a new Media Decree, which aims to implement the Audiovisual Media Services Directive 2007/65/EC. The draft has been introduced in the Flemish Parliament, which is strongly expected to grant its approval to the final text of the new Decree before the regional elections in June 2009.

The draft contains a set of modifications and modernizes the broadcasting law in the Flemish Community. Some of its most striking characteristics are highlighted below.

The draft differentiates between “broadcasting activities” and “broadcasting services”. The latter are to be compared with the audiovisual media services covered by the Directive and are part of the broader category of “broadcasting activities”, which also implies activities that are primarily non-economic (e.g., private websites). Only “broadcasting services” are submitted to the procedural and content-related requirements of the Decree (compare with para. 16 of the Preamble to the Directive), while “broadcasting activities” that are not “broadcasting services” are only prohibited from inciting hatred (Arts. 38-39).

A basic tier of coordinated rules applies to all audiovisual media services (linear and on-demand; compare with para. 7 of the Preamble to the Directive). In addition, more stringent rules apply to linear services, because of their greater impact and the fewer possibilities for control by users.

All “commercial communications” (a notion extracted from the Directive) are treated in the same chapter. The draft follows the Directive very closely as to the relaxation of advertising regulation (Arts. 11 and 18 of the Directive, clarified by paras. 55, 57 and 59 of the Preamble). Children’s programmes may still not be interrupted for advertisements or teleshopping (Art. 76).

The draft introduces clear regulation of product placement, which is possible in the programmes and under the conditions stipulated in the Directive (Arts. 95-97). Nonetheless, the provision of goods or services on a free of charge basis is prohibited in the children’s programmes of the public broadcasting corporation (VRT). The Flemish Government can expand this prohibition to all children’s programmes (Art. 95, 2).

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The draft responds to the aspiration of the Directive to introduce rules to protect minors, as well as human dignity in all audiovisual media services, including audiovisual commercial communications (para. 44 of the Preamble). With this view in mind, the draft integrates the code concerning publicity and sponsorship on radio and television (20 September 1995) into the Decree. This code contains a new Chapter VII, entitled “Publicity directed towards children and young people” (Decision of the Flemish Government, 7 September 2007, ratified by Decree of 29 February 2008). As a result, the draft contains quantitative and qualitative advertising restrictions, which offer at least the protection level required by the Directive (Arts. 67-73). As to promoting the rights of persons with disabilities, the Flemish Government should take all necessary measures to ensure that television services are made accessible to people with a visual or hearing disability (Article 147; compare with Article 3c of the Directive).

No references to co- and self-regulation can be found in the draft, although the Directive encourages their consideration (para. 36 of the Preamble). The *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media) is, as before, charged with the monitoring and enforcement of media regulation (chapter VII).

Furthermore, future developments may require a specific regulation of “service distributors”, such as intermediaries between content providers and network operators (chapter IV).

Finally, as to short news reports, the draft did not really take notice of the provisions in the Directive, which, amongst others, stress the fair, reasonable and non-discriminatory conditions under which this right should be exercised. The draft simply adopts the provisions of the present decree, the only exception being the explicit restriction of the right to linear broadcasting corporations only (Arts. 114-122).

Ontwerp van decreet betreffende de radio-omroep en televisie

http://jsp.vlaamsparlement.be/docs/stukken/2008-2009/g2014-1.pdf

Draft of a new Flemish Decree on Radio-broadcasting and Television, approved by the Flemish Government on 5 December 2008

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