[BE] New Flemish Media Decree Approved

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On 18 March 2009, the Flemish Parliament officially approved the text of the new media decree, which primarily aims at transposing the Audiovisual Media Services Directive 2007/65/EC into regional law. Following this final approval, only publication in the *Belgisch Staatsblad* (Belgian Monitor), which is expected in a short time, is necessary so as to make the new Flemish decree legally binding. As the French Community also already adopted a decree in pursuance of Directive 2007/65/EC on 5 February 2009 (published in the Belgian Monitor on 18 March 2009), Belgium is proving itself to be one of the most motivated students in the European classroom. As several articles on this matter already have appeared in this periodical (see IRIS 2009-1: 8, IRIS 2009-2: 8 and IRIS 2009-4: 6), this contribution will limit its goal to a concluding follow-up on the final outcome, highlighting the principal features of the new Flemish decree.

The main “formal” characteristics of the decree can be outlined as follows: first, the text differentiates between “broadcasting activities” and “broadcasting services”. The latter are to be compared with the audiovisual media services covered by Directive 2007/65/EC 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 (Articles 38-39). Second, 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. Third, all “commercial communications” (a notion extracted from the Directive) are treated in the same chapter (IV). The decree here explicitly expands some basic rules of advertising to all types of commercial communication, following the lead of the Directive (see IRIS 2009-2: 8).

The new decree also contains some important “content-related” changes in pursuance of Directive 2007/65/EC. For the first time, it introduces a regulation on product placement, which is allowed in the programmes and under the conditions stipulated in the Audiovisual Media Services Directive, although the decree is

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more stringent than the Directive as to the insertion of “free” product placement in children’s programmes (Article 99) (see IRIS 2009-1: 8). Furthermore, the new decree follows the Directive very closely as to the relaxation of advertising regulation (Articles 11 and 18 of the Directive, clarified by para. 55, 57 and 59 of the Preamble) (see IRIS 2009-2: 8). Finally, the decree responds to the aspiration of the Directive to introduce rules to protect minors in all audiovisual media services, including audiovisual commercial communications (para. 44 of the Preamble). With this view in mind, the text adopts the code concerning publicity and sponsorship on radio and television (20 September 1995), which contains a new Chapter VII, entitled "Publicity directed towards children and young people", thereby affording a protection level beyond the one required by the Directive (Articles 70-77 of the Flemish decree) (see IRIS 2009-2: 8). Moreover, the Flemish legislator has directly transposed the admonition in the Directive as to the development of codes of conduct regarding inappropriate audiovisual commercial communication (Article 3sexies, 2), into a binding provision concerning commercial communication of foods and beverages containing nutrients and substances, excessive intakes of which are not recommended, such as fat, trans-fatty acids, salt or sodium and sugars: commercial communications directed towards children and young people cannot encourage excessive intakes of such foods and beverages (Article 77).

More striking, and not required by the Directive, is the abolition of the existing ban on political advertising on radio and television. The new text allows paid political ads on radio and television in pre-election time, within the framework provided by the federal legislation on election expenditure and election campaigns (Article 49). In exchange, the free pre-electoral broadcasting time on public radio and television, given, during a period of two months preceding the elections, to the political parties that are represented in the Flemish Parliament (former Articles 29 and 30 § 6) has been abrogated (see IRIS 2009-4: 6).

On some domains however, the Flemish legislator seems to ignore the aspirations of Directive 2007/65/EC. No references to co- and self-regulation can be found, 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). Next, although the Directive urges the promotion of the development of media literacy, as an alternative for protective, legal measures (para. 37 of the Preamble), the new Flemish decree does not contain any provisions in this direction.

Decreet betreffende de radio-omroep en televisie

http://jsp.vlaamsparlement.be/docs/stukken/2008-2009/g2014-13.pdf

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