[BE] Transposition of the AVMS Directive

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The decree of 5 February 2009 of the French-speaking Community amending the decree on broadcasting of 27 February 2003, the founding text for the audiovisual scene in the French-speaking Community - renamed the “decree on audiovisual media services” for the occasion - was published in the Moniteur Belge on 18 March 2009. This is of course the main text transposing the AVMS Directive for the French-speaking Community - it was transposed for the Flemish Community by a decree of 18 March 2009 (see IRIS 2009-5: 8). It should, however, be pointed out that the legislator for the French-speaking Community had already anticipated this transposition for various aspects of commercial audiovisual communication (still called “advertising” at the time), by introducing beforehand the distinction between linear services and non-linear services in the RTBF management contract concluded in 2006, and in legalising virtual advertising by an earlier amending decree adopted on 19 July 2007, almost five months before the Directive was adopted.

The decree transposes the main elements of the new Directive into the domestic law of the French-speaking Community of Belgium - new definitions and new rules for commercial communication (product placement is to be allowed in certain programmes), distinction between the schemes applicable to linear services and to non-linear services (more particularly with regard to the methods for promotion, of and by, available European works), making precise the criterion for editorial responsibility, and a minor change in the mechanisms for co-regulation by means of slight reinforcement of the role of the opinion panel of the audiovisual regulatory authority (Conseil Supérieur de l’Audiovisuel - CSA).

The text also contains a number of specific features that go beyond the Directive. It is, for example, applicable to sound broadcasting services, and it abolishes the system of prior authorisation and introduces a simple declaration scheme for audiovisual media services and for sound services broadcast other than terrestrially. Thus the scheme for linear services is brought into line with the scheme for non-linear services, except for radio stations requiring a radio relay frequency, for which - because of the shortage of frequencies - a selection and authorisation procedure remains in force. Lastly, the new decree establishes a distinction between open distribution platforms (which any editor may access freely) and closed platforms (accessible only once the distributor’s agreement has been obtained), with stricter legal obligations for audiovisual media services distributed on closed platforms.

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Décret sur les services de médias audiovisuels

http://www.csa.be/documents/show/502

Decree on audiovisual media services

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