[BE] A ‘Netflix tax’ in Flanders? The participation of non-linear broadcasters in the production of Flemish audiovisual works

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Pursuant to a Flemish Decree of 29 June 2018, an obligation for non-linear television broadcasting organisations to participate in the production of Flemish audiovisual works on an annual basis was introduced in Article 157, paragraph 2 of the Flemish Media Decree.

This “incentive scheme” (*stimuleringsregeling*) applies both to non-linear television broadcasters that are established in the Flemish Community and to non-linear television broadcasters that are established in a member state of the European Union and offer non-linear television services aimed at the Flemish Community. A private non-linear television broadcaster can choose between two options for fulfilling its obligation: either a financial contribution to the (co-)production of Flemish audiovisual works; or an equivalent financial contribution to the Flemish Audiovisual Fund (*Vlaams Audiovisueel Fonds*, VAF). The latter contribution is spent by the VAF on Flemish, qualitative, independent co-productions in series form. Paragraph 3 requires non-linear broadcasters to provide the Flemish Media Regulator with a report on how the obligation has been met each year before 31 March. The Flemish Media Regulator will make this information public.

On 1 February 2019, a Decision was approved by the Flemish Government which provides more details on the obligatory participation of non-linear broadcasting organisations in the production of Flemish audiovisual works.

First of all, the Decision states that it is not applicable to non-linear television broadcasters whose annual turnover (which is specified in Article 4 of the Decision) is less than EUR 500 000. Additional exemptions might be applicable to actors (television broadcasters and service distributors) who are subject to other incentive schemes under Articles 154, 155, 156 and 184/1 of the Flemish Media Decree.

Every year (X), every non-linear television broadcasting organisation must inform the VAF, the Flemish Media Regulator and the Flemish Government by registered letter before 15 February (for the year 2019, Article 19 of the Decision provides for an adjusted timeline) of their chosen form of participation ((co-)production or

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payment to the VAF) and the amount of the contribution – which should be equal to 2% of the turnover two years previously (X-2) – or must provide the Flemish Media Regulator with evidence to prove that it does not fall within the scope of the decision (based on data from X-2). If the organisation fails to notify, it will be assumed that it has chosen a flat-rate contribution to the VAF, which amounts to EUR 3 000 000 per year.

If an organisation chooses to participate by means of a financial contribution to original co-production projects, it must submit those projects to the Flemish Media Regulator who will assess their admissibility (based on a number of conditions detailed in Article 7 of the Decision – for instance, it must be an animation series, a documentary series or a fiction series) and decide on whether or not to authorise them.

If an organisation chooses to participate by means of a financial contribution to the VAF, it must transfer the amount at the latest by 30 April of that year. Paragraph 3 of Article 17 provides non-linear broadcasting organisations with the possibility of obtaining certain rights on productions that are realised with financial support from the VAF on the basis of the Decision, against payment of an additional financial contribution.

Decreet betreffende radio-omroep en televisie van 27 maart 2009

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2009032749&table_name=wet

Decree on radio broadcasting and television of 27 March 2009

Decreet van 29 juni 2018 houdende wijziging van diverse bepalingen van het decreet van 27 maart 2009 betreffende radio-omroep en televisie

http://www.ejustice.just.fgov.be/eli/decreet/2018/06/29/2018040490/staatsblad

Decree of 29 June 2018 amending various provisions of the Decree of 27 March 2009 on radio broadcasting and television

Besluit van de Vlaamse Regering betreffende de deelname van de particuliere niet-lineaire televisieomroeporganisaties aan de productie van Vlaamse audiovisuele werken, 1 februari 2019

http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2019/03/18/140890.pdf

Decision of the Flemish Government on the participation of private non-linear television broadcasting organisations in the production of Flemish audiovisual

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works, 1 February 2019

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