

29 JANUARY 2010 – Flemish Government Decree amending the Flemish Government Decree of 13 June 2003 on the awarding of broadcasting authorisations to accredited private national, regional, and local radio broadcasters and amending the Flemish Government Decree of 30 June 2006 concerning the procedure for the Flemish Media Regulator

The Flemish Government,

Having regard to the special Act of 8 August 1980 on institutional reform, article 20;

Having regard to the Act of 27 March 2009 on radio and television broadcasting;

Having regard to the Flemish Government Decree of 13 June 2003 on the awarding of broadcasting authorisations to accredited private national, regional, and local radio broadcasters;

Having regard to the Flemish Government Decree of 30 June 2006 concerning the procedure for the Flemish Media Regulator;

Having regard to the advice of the Inspector of Finance issued on 3 April 2009;

Having regard to the agreement of the Minister competent for the budget of 29 May 2009;

Having regard to the advice of the Media Sector Council of the Council for Culture, Youth, Sport and Media, issued on 20 July 2009;

Having regard to advice 47.504/3 of the Council of State, issued on 8 December 2009, in application of article 84, § 1, first paragraph, 1^o, of the laws on the Council of State, coordinated on 12 January 1973;

On the proposal of the Flemish Minister of Innovation, Public Investment, Media and Poverty Prevention;

Following deliberation,

Has decided:

Article 1. In Article 6, first paragraph, of the Flemish Government Decree of 13 June 2003 on the awarding of broadcasting authorisations to accredited private national, regional, and local radio broadcasters, replaced by the Flemish Government Decree of 2 June 2007, the sentence "That duty must be paid in advance to account number 435-4538151-86 of the Flemish Regulator for the Media" shall be replaced by the sentence "That duty must be paid in advance to the account number of the Flemish Regulator for the Media."

Art. 2. In the Flemish Government Decree of 30 June 2006 concerning the procedure for the Flemish Media Regulator amended by the Flemish Government Decrees of 30 March 2007, 8 June 2007, and 18 July 2008, the following amendments shall be made:

1° in articles 21, 25, 34, 38, 39 and 40, the word "broadcaster" shall each time be replaced by the word "broadcasting organisation";

2° in articles 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 35 and 39 the words "radio broadcaster" shall each time be replaced by the words "radio broadcasting organisation";

3° in articles 20, 24 and 39 the words "radio broadcasters" shall each time be replaced by the words "radio broadcasting organisations", with the exclusion of article 24, § 2";

4° in article 34 the words "television broadcaster" shall be replaced by the words "television broadcasting organisation";

5° in article 25 the words "television broadcasters" shall be replaced by the words "television broadcasting organisations".

Art. 3. In Article 1, 1°, of the same Decree, the words "Decrees concerning radio broadcasting and television, coordinated on 4 March 2005" shall be replaced by the words "the Act of 27 March 2009 on radio and television broadcasting".

Art. 4. Article 3 of the same decree shall be replaced by the following:

"Art 3. When an application, notification, or complaint is being submitted via e-mail or some other telecommunication medium to the Regulator, the date of dispatch shall serve as the date of submission. That date shall be mentioned on the confirmation of receipt. In the case of a registered letter, the postmark shall serve as the submission date."

Art. 5. Article 9 of the same Decree shall be replaced by the following:

"Art. 9. Before 30 June, the operating and financial reports concerning the previous calendar year, mentioned in article 169, 10°, Article 182, Article 198, first paragraph, 3° and article 202, first paragraph, 4°, of the Media Act shall be submitted to the Regulator."

Art. 6. In article 12, first paragraph, 3°, of the same Decree, the words "advertising, teleshopping, sponsoring and messages of general interest" shall be replaced by the words "commercial communication or announcements of public interest".

Art. 7. In article 18, § 1, of the same Decree, the words "either officially, or" shall be added between the words "of minors decides" and the words "at the request of".

Art. 8. In Article 21 of the same Decree the following amendments shall be entered:

1° in § 1 point 5° shall be replaced by the following:

"5° a note in which it is explained in what manner the information requirement and the

obligation that a Dutch-language music programme be guaranteed in the programming development as mentioned in articles 131 and 138, § 1, 2°, c) and d), of the Media Act will be satisfied;"

2° in § 1 point 9° shall be replaced as follows:

"9° a statement by the legal entity that it shall assume responsibility for the management and the operation of the national radio broadcasting organisation, and wherein the entity demonstrates that the programmes are being realized at the own responsibility of the national radio broadcasting organisation, as specified in article 129, second paragraph, of the Media Act;"

3° in § 1 a point 21° shall be added to read as follows:

"21° the listing of the networks that are being employed to transmit the broadcasting programmes.";

4° § 3 shall be replaced as follows:

" § 3. The applications for an accreditation shall be submitted by means of a standard form, available from the Regulator on simple request."

Art. 9. In article 23 of the same Decree, the following amendments shall be made:

1° in § 4, first paragraph, the number "six" shall be replaced by the number "two";

2° § 7 shall be deleted.

Art. 10. In Article 24 of the same Decree, amended by the Flemish Government Decree of 8 June 2007, the following amendments shall be made:

1° in § 1, third paragraph, the word "VRM" shall be replaced by the word "Regulator";

2° in § 2, third paragraph, the words "second paragraph of the decree of 18 July 2003" shall be replaced by the words "first paragraph of the Decree of 30 March 2007".

Art. 11. In Article 25 of the same Decree, the following amendments shall be made:

1° not applicable;

2° in § 1 point 5° shall be replaced by the following:

"5° a note in which it will be explained in what manner the information requirement mentioned in articles 131 and 141, 2°, c), of the Media Act will be satisfied;"

3° in § 1 point 9° shall be replaced by the following:

"9° a statement by the legal entity that it shall assume responsibility for the management and the operation of the regional radio broadcasting organisation, and wherein it demonstrates that the programmes are being realized at the own responsibility of the regional radio broadcasting organisation, as specified in Article 129, second paragraph, of the Media Act;"

4° to § 1 a point 22° shall be added to read as follows:

"22° the listing of the networks that are being employed to transmit the broadcasting programmes.";

5° § 3 shall be replaced as follows:

" § 3. The applications for an accreditation shall be submitted by means of a standard form, available from the Regulator on simple request."

Art. 12. In Article 27 of the same Decree, the following amendments are made:

1° in § 4, first paragraph, the number "six" shall be replaced by the number "two";

2° in § 6 the words "as the Flemish Regulator for the Media states " shall be replaced by the words "the Flemish Regulator for the Media states ";

3° § 7 shall be deleted.

Art. 13. In Article 29, § 1, of the same Decree, the following amendments are made:

1° point 5° shall be replaced as follows:

"5° a note wherein it is explained in what manner the information requirement mentioned in Articles 131 and 145, 2°, c) of the Media Act will be satisfied;"

2° point 8° shall be replaced by the following:

"8° a statement by the legal entity that it shall assume responsibility for the management and the operation of the local radio broadcasting organisation, and wherein it demonstrates that the programmes are being realized at the own responsibility of the local radio broadcasting organisation, as specified in Article 129, second paragraph, of the Media Act;"

3° a point 20° shall be added to read as follows:

"20° the listing of the networks that are being employed to transmit the broadcasting programmes."

Art. 14. In Article 30 of the same Decree the third paragraph shall be deleted.

Art. 15. In Article 31 of the same Decree, the following amendments shall be made:

1° § 2 shall be deleted;

2° §§ 3, 4 and 5 shall be added to read as follows:

“§ 3. The application files shall consist of the application for accreditation and all accompanying documentation. The application for accreditation and all accompanying documentation need to be submitted in duplicate. The application files shall be submitted in the Dutch language.

The application files shall be deposited against receipt with the Office of the Regulator. The receipt will mention the date and the time of the deposit.

§ 4. The awarding procedure shall commence on the first business day following the expiration of the term as mentioned in § 1.

§ 5. On the first business following the expiration of the term as mentioned in § 1, the Flemish Regulator for the Media shall draft a report wherein all of the submitted applications are mentioned, listed according to date and time of submission. The report shall be signed by all members of the Office of the Flemish Regulator for the Media. A copy of it shall be forwarded to all applicants.”

Art. 16. Articles 32 and 33 of the same decree shall be deleted.

Art. 17. In Article 34, § 1, of the same decree, the following amendments shall be made:

1° point 8° shall be replaced by the following:

"8° a note in which it will be explained in what manner the provisions mentioned in Article 172 of the Media Act will be satisfied, and a statement signed personally by every director with mention of the registered domicile or place of residence and the exercised political mandates, managerial functions, and functions as director, as stated in Article 172 of the Media Act;"

2° point 9° shall be replaced as follows:

"9° an account of the composition of the General Meeting of the association, together with a note wherein is described in what manner Article 171, first paragraph, of the Media Act will be applied;"

3° point 10° shall be deleted;

4° point 13° shall be replaced by what follows:

"13° a note wherein it will be explained in what manner the association intends to process the news bulletins and will satisfy Article 169, 9°, of the Media Act, including therein the editorial

status;";

5° point 14° shall be replaced by what follows:

"14° a note wherein it is explained in what manner Articles 165 and 169, 7° and 8°, of the Media Act will be satisfied;".

Art. 18. The heading of Section III of the same decree shall be replaced as follows:

"Section III. - Procedure concerning broadcasting authorisations for national, regional, or local radio broadcasting organisations ".

Art. 19. Article 37 of the same Decree shall be deleted.

Art. 20. In Article 39, the third sentence in the same Decree, amended by the Flemish Government Decree of 18 July 2008, the words "as of the dispatch of the notice of default" shall be inserted between the words "one month" and the words "to remedy the situation".

Art. 21. Section V of Chapter III of the same Decree, amended by the Flemish Government Decree of 30 March 2007, by the Flemish Government Decree of 8 June 2007, and the Flemish Government Decree of 18 July 2008 that consists of articles 41 and 42, shall be replaced as follows:

"Section V. – Notification procedure

Art. 41. In order to be admissible, the notification of the other radio broadcasting organisations shall include:

1° the articles of association as published in the Belgian Official Gazette, as well as a copy of the deed of incorporation;

2° a copy of the list of the managers or the directors published in the Annexes to the Belgian Official Gazette with mention of their position within the company or association;

3° a statement of the location of the company's registered administrative offices, the operating offices, and the company's headquarters, as well as the location where the programming decisions are taken, where personnel is being employed, and where programmes are broadcast;

4° a clear description of the service to be rendered;

5° the manner in which the programming signal shall be diffused.

Art. 42. In order to be admissible, the notification of the private non-linear radio broadcasting organisations shall include:

1° the articles of association as published in the Belgian Official Gazette, as well as a copy of the deed of incorporation;

2° a copy of the list of the directors published in the Annexes to the Belgian Official Gazette with mention of their position within the company or association;

3° a statement of the location of the company's registered administrative offices, the operating offices, and the company's headquarters, as well as the location where the programming decisions are taken, where personnel is being employed, and where programmes are broadcast;

4° a clear description of the service to be rendered;

5° if the radio broadcasting organisation intends to broadcast in a language other than Dutch, a note wherein that intention is explained, with accurate mention of the number and the duration of the broadcasts in a foreign language;

6° a statement about the financial and shareholder structure, where it concerns a company;

7° the manner in which the programming signal shall be diffused.

Art. 42bis. In order to be admissible, the notification of the private television broadcasting organisations shall include:

1° the articles of association as published in the Belgian Official Gazette, as well as a copy of the deed of incorporation;

2° a copy of the list of the directors published in the Annexes to the Belgian Official Gazette with mention of their position within the company or association;

3° a statement of the location of the company's registered administrative offices, the operating offices, and the company's headquarters, as well as the location where the programming decisions are taken, and where personnel is being employed;

4° a clear description of the service to be rendered;

5° identification of the graphic logo, the sign-on theme and original recognition symbols. The sign-on theme and recognition symbols shall be submitted in duplicate on a currently available audio-visual carrier;

6° a statement about the financial and shareholder structure.

Art. 42ter. In order to be admissible, the notification of the non-linear television broadcasting

organisations shall include:

1° the articles of association as published in the Belgian Official Gazette, as well as a copy of the deed of incorporation;

2° a copy of the list of the directors published in the Annexes to the Belgian Official Gazette with mention of their position within the company or association;

3° a statement of the location of the company's registered administrative offices, the operating offices, and the company's headquarters, as well as the location where the programming decisions are taken, and where personnel is being employed;

4° a clear description of the service to be rendered;

5° identification of the logographic, the sign-on theme and original recognition symbols. The sign-on theme and recognition symbols shall be submitted in duplicate on a currently available audio-visual carrier;

6° if the television broadcasting organisation intends to broadcast in a language other than Dutch, a note wherein that intention is explained, with precise mention of the number and the duration of the broadcasts in a foreign language;

7° a statement about the financial and shareholder structure, where it concerns a company.

Art. 42quater. In order to be admissible, the notification of the service provider who submits his offer to render broadcasting services in the Flemish Community shall include:

1° The identification of the legal entity;

2° the service offer with the contractual conditions with respect to the assumption of the services;

3° the electronic communication network to be employed to transmit these services.

Art. 42quinquies. In order to be admissible, the notification of the providers of cable broadcasting networks shall include de identification of the legal entity."

Art. 22. In the same Decree, a Chapter IIIbis, consisting of article 42sexies and 42septies, shall be added, to read as follows:

"Chapter IIIbis. – Consultations

Art. 42sexies. The Regulator shall announce the organisation of a series of consultation sessions as stated in Article 192, § 3, of the Media Act by the publication of an announcement to that effect on its website.

The announcement shall state the topic of the consultation. A copy of the said announcement shall at the same time be forwarded via e-mail by the Regulator to the company as mentioned in article 192, § 1, of the Media Act, and to the offices as mentioned in article 192, § 3, of this Decree.

The duration of the consultancy shall be 2 months maximum.

Art. 42septies.

The Regulator shall draw up a report about the results of the public consultation.

This report shall be published on the website of the Regulator in the course of the month following the completion of the public consultation session in question. A copy of that report shall at the same time be forwarded via e-mail by the Regulator to the company as mentioned in article 192, § 1, of the Media Act, and to the organisations as mentioned in article 192, § 3, of this Decree."

Art. 23. The Flemish Minister, competent for Media Policy, is charged with the implementation of this Decree.

Brussels, 29 January 2010.

Minister-President of the Flemish Government,
K. PEETERS

The Flemish Minister of Innovation, Public Investment, Media and Poverty Prevention
Mrs I. LIETEN