

**ACT**  
**on radio and television broadcasting**

NON OFFICIAL TRANSLATION

## PART I

### General provisions and definitions

#### Article 1

[This Flemish Parliament Act regulates a community and regional matter. It transposes, inter alia, the provisions of Directives:

[1° Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector;]<sup>1</sup>

[2° ...]<sup>2</sup>

3° Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).]<sup>3</sup>

[4° Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 on the European Electronic Communications Code.]<sup>4</sup>

#### Article 2

For the purposes of this Act:

[1° Recommendation means : recommendation of the European Commission on relevant markets for products and services;]<sup>5</sup>

[[1°/1]<sup>6</sup> video-sharing platform provider: the natural or legal person who provides a video-sharing platform service;]<sup>7</sup>

[1°/2 significant market power means: an undertaking shall be deemed to have significant market power if, either individually or jointly with other undertakings, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers;]<sup>8</sup>

[1°/3]<sup>9</sup>] <sup>10</sup> current affairs program: a program in which one or more current events are addressed and/or commented on;]<sup>11</sup>

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<sup>1</sup> Replaced by the act of 02070.2021

<sup>2</sup> Lifted by the act of 02.07.2021

<sup>3</sup> Replaced by the act of 13 July 2012

<sup>4</sup> Added by the act of 12 February 2021. Comes into force on 1 January 2023

<sup>5</sup> Inserted by the act of 02.07.2021

<sup>6</sup> Renumbered from 1° to 1°/1 by the act of 02.07.2021

<sup>7</sup> Inserted by the act of 19 March 2021

<sup>8</sup> Inserted by the act of 02.07.2021

<sup>9</sup> Renumbered from 1° to 1°/1 by the act of 19 March 2021

<sup>10</sup> Renumbered from 1°/1 to 1°/3 by the act of 02.07.2021

[[1°/4]<sup>12]</sup><sup>13]</sup><sup>14</sup> application program interface or API means: software interface between external applications, made available by broadcasters, service providers or network operators, and the resources for digital television and radio broadcasting as regards advanced digital terminal equipment;]<sup>15</sup>

[1°/5 SMP guidelines means: guidelines of the European Commission for market analysis and the assessment of significant market power;]<sup>16</sup>

[1°/6 BEREC means: the Body of European Regulators for Electronic Communications, established by regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009;]<sup>17</sup>

[1°/7 associated service means: a service associated with an electronic communications network or an electronic communications service which enables or supports the provision, self-provision or automated-provision of services via that network or service, or has the potential to do so, and includes conditional access systems and electronic program guides (EPGs), as well as other services such as identity, location and presence information services;]<sup>18</sup>

[1°/8 associated facilities means: associated services, physical infrastructures and other facilities or elements associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;]<sup>19</sup>

2° wide-screen television program means: program that has been partly or wholly produced and edited to be rendered in a full-frame wide-screen format. The 16:9 format is the reference for wide-screen television programs;

3° public service announcements means:

a) each message on policy, emanating from the authorities or from public institutions, associations or government companies, with a Board of Directors or Directors made up of a majority of government representatives and whose task involves carrying out a public service that is not executed by the private sector, and who are competent for and which are wholly or mostly directed at the Flemish Community and the Dutch-speaking population of the bilingual

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<sup>11</sup> Inserted by the act of 13 July 2012

<sup>12</sup> Amended by the act of 13 July 2012.

<sup>13</sup> Renumbered from 1°/1 to 1°/2 by the act of 19 March 2021

<sup>14</sup> Renumbered from 1°/2 to 1°/4 by the act of 02.07.2021

<sup>15</sup> Changed by the act of 19.03.2021

<sup>16</sup> Inserted by the act of 02.07.2021

<sup>17</sup> Inserted by the act of 02.07.2021

<sup>18</sup> Inserted by the act of 02.07.2021

<sup>19</sup> Inserted by the act of 02.07.2021

Brussels-Capital Region, irrespective of the form, and irrespective of the payment or payment method;

b) each message pertaining to their duty of public interest, which emanates from social and humanitarian associations or from associations related to general welfare, irrespective of their form and irrespective of the payment or payment method;

c) each message emanating from the cultural associations that are accredited or funded by the public administration services, and which are aimed at publicizing their cultural activities to the general public, irrespective of their form and irrespective of the payment or payment method;

4° collective aerial for a closed user group means: an installation for capturing radio and television broadcasting signals, to which various receiver terminals are connected and the use of which – excluding the user's contribution to the real costs resulting from its installation, its operation and the maintenance of the installation – does not require a subscription fee of any kind;

[5° commercial communication: images, with or without sound, or sounds which are designed to promote, directly or indirectly, the goods, the services or the image of a natural or legal person pursuing an economic activity. Such images or sounds accompany, or are included in, a program or user-generated content in return for payment or for similar consideration or for self-promotional purposes. Forms of commercial communication include, inter alia, advertising, sponsorship, teleshopping and product placement;]<sup>20</sup>

6° competition means: a series of competitions of a group of clubs in which every club plays all the other clubs or in which two clubs have to play each other, so that the loser is eliminated;

[6°/1 Contact Committee: the contact committee, mentioned in article 29 of directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (audiovisual media services directive); ]<sup>21</sup>

7° service provider means: every legal entity that provides one or more broadcasting services to the general public using electronic communication networks. The broadcaster which only makes available its own broadcasting services to the general public is not a service provider;

[7°/1 user-generated content: a set of moving images, with or without sound, or a series of sounds or noises, aimed at the general public or part of it, constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user;]<sup>22</sup>

[8° electronic communications network means: transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable,

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<sup>20</sup> Replaced by the act of 19.03.2021

<sup>21</sup> Inserted by the act of 19 March 2021

<sup>22</sup> Inserted by the act of 19 March 2021

switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals for radio and television broadcasting by wire, radio, optical or other electromagnetic means, to the extent that they are used for the purpose of transmitting signals including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, radio broadcasting networks and cable broadcasting networks;]<sup>23</sup>

[9° electronic communications service means: a service normally provided for remuneration via electronic communications networks, which consists wholly or mainly in the conveyance of signals for radio broadcasting and television;]<sup>24</sup>

10° radio broadcasting network means: electronic communication network meaning that television and radio broadcasting signals can be encoded and transmitted to third parties in digital form by terrestrial transmitters. A radio broadcasting network can transmit radio and television broadcasting signals throughout the Flemish Community or part thereof;

11° European productions means:

a) the following productions :

1) productions created in the Member States of the European Union;

2) productions from third-party European states that have signed the Council of Europe's Treaty as regards cross-border television and which comply with the conditions, as set out in item b);

3) co-productions produced within the scope of the agreements between the European Union and third-party countries concerning the audiovisual sector and which comply with the conditions of the aforementioned agreements. A condition for the application of items 2) and 3) is that productions made in Member States are not affected by discriminatory measures in the third-party countries concerned;

b) the productions, referred to in items a), 1), and a), 2), are productions that were mainly produced with the help of authors and collaborators who reside in one or more of the Member States mentioned in items a), 1), and a), 2), and meet one of the three following conditions :

1) the productions were created by one or more producers, established in one or more of these Member States;

2) their creation came about under the supervision and effective control of one or more producers established in these Member States;

3) the contribution of the co-producers of these states to the total cost of the co-production is significant and the co-production is not controlled by one or more producers established outside of these Member States;

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<sup>23</sup> Replaced by the act of 02.07.2021

<sup>24</sup> Replaced by the act of 02.07.2021

c) productions that are not European productions as referred to under item a), but which are created within the framework of co-production agreements concluded between the Member States and third-party countries, are considered to be European products as long as the European Union co-producers hold a majority share in the total product costs and the production is not controlled by one or more producers established outside of the Member States;

12° event means: an event that is open to the public. The event is a complete happening with a natural beginning and end. If an event extends over several days, every day is considered as a separate event;

13° holder to the exclusive right means: any broadcaster that falls under the Flemish Community, another community or another European Union Member State, which has acquired the exclusive broadcasting rights for the Flemish Community for a given event;

[14° enhanced digital terminals means: boxes with converter and decoder and integrated digital television sets for the reception of digital interactive broadcasting services;]<sup>25</sup>

[14°/1 interconnection means: a specific type of access implemented between public network operators by means of the physical and logical linking of public electronic communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking where such services are provided by the parties involved or other parties who have access to the network;]<sup>26</sup>

15° minor means: any person between twelve and sixteen years of age;

[15°/1 news program: a program consisting of news reports in which the general news of the day is treated;]<sup>27</sup>

16° cable broadcasting network means: electronic communication network used to transmit potentially encrypted radio and television broadcasting signals, using any type of cable, to third parties;

[17° Administrative Act: the Administrative Act of 7 December 2018]<sup>28</sup>

18° child means: a person under the age of twelve;

19° children's program means: a program that is mainly aimed at children, as is clear, among others, from the content, the time of broadcast, the design, the presentation and the manner in which it is announced;

20° linear radio service means: a linear, audio broadcasting service, i.e. a broadcasting service offered by a broadcaster for the simultaneous listening to audio programs based on a program

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<sup>25</sup> Replaced by the act of 02.07.2021

<sup>26</sup> Inserted by the act of 02.07.2021

<sup>27</sup> Inserted by the act of 13 July 2012

<sup>28</sup> Replaced by the act of 07.12.2018

schedule;

21° linear television broadcasting service means: a linear, audiovisual broadcasting service, i.e. a broadcasting service offered by a broadcaster for the simultaneous viewing of audiovisual programs based on a program schedule;

[21°/1 very high capacity network means: either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation; network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point;]<sup>29</sup>

22° network operator means: the provider of an electronic communication network. This includes the building, exploiting, managing and making available of an electronic communication network;

23° non-linear radio service means: a non-linear, audio broadcasting service or on-demand audio broadcasting service, i.e. a broadcasting service offered by a broadcaster, offering the user the possibility of listening to audio programs at his or her individual request and at a moment of his or her own choice from a program catalogue selected by the broadcaster;

24° non-linear television service means: a non-linear, audiovisual broadcasting service or on-demand audiovisual broadcasting service, i.e. a broadcasting service offered by a broadcaster, enabling the user to watch audiovisual programs at his or her individual request and at a moment of his or her own choice from a program catalogue selected by the broadcaster;

25° broadcasting activity means: any activity consisting of making available moving images, with or without sound, or of a series of sounds or noises aimed at the general public or part thereof by means of electronic communication networks. Broadcasting activity is also referred to as radio and television broadcasting;

[26° broadcasting service:

a) a service as mentioned in articles 56 and 57 of the Treaty on the Functioning of the European Union, which falls under the editorial responsibility of a broadcaster, its main object or the main object of a stand-alone part being to supply audiovisual or audio programs to the general public, with the aim of providing information, entertainment, education or of a cultural nature, by means of electronic communication networks. Broadcasting services are radio services or television services;

b) commercial communication;]<sup>30</sup>

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<sup>29</sup> Inserted by the act of 02.07.2021

<sup>30</sup> Replaced by the act of 19 March 2021

27° broadcaster means: the natural person or legal person which holds editorial responsibility for the choices as regards the broadcaster's content and which determines how it is organized;

28° broadcasting program means: all programs and all supplementary accompanying information, which is offered by a broadcaster based on a program schedule, under a brand or title;

29° organizer means:

- a) the person or association that organizes an event
- b) the holder of the use and operational rights to the event;

[30° product placement: any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service or the trade mark thereof so that it is featured within a program or user-generated content, in return for payment or for similar consideration;]<sup>31</sup>

[31° program: a set of moving images, with or without sound, or a series of sounds or noises, constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a broadcaster, including feature-length films, video clips, sports events, situation comedies, documentaries, children's programs and original drama;]<sup>32</sup>

32° programming means: all programs offered;

33° radio service means: an audio broadcasting service;

34° radio broadcaster means: a provider of radio services;

35° advertising means: the audiovisual or audio message transmitted by a public or private company or natural person – in any form – related to the exercise of a commercial, industrial, or trading activity or of a profession to promote the supply of goods or services in return for payment, including immovable goods, rights and duties, which are then broadcast in the frame of a linear broadcasting service, in return for payment or similar compensation or for self-promotional purposes in a linear broadcasting service;

36° editorial statute means: a written reference framework in which the joint relations are established between the editors, the editor-in-chief and the management. It guarantees editorial independence with respect to the broadcaster;

[36°/1 editorial decision: a decision which is taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of the broadcasting service;]<sup>33</sup>

37° editorial responsibility means: the exercise of effective control on the choice of programs and their organisation, either in a chronological schedule, in case of linear television and radio services, or in a catalogue, in case of non-linear television and radio services;

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<sup>31</sup> Replaced by the act of 19 March 2021

<sup>32</sup> Replaced by the act of 19 March 2021

<sup>33</sup> Inserted by the act of 19 March 2021



38° audiovisual media services Directive means: Directive 89/552/EEC of 3 October 1989 of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, and later amendments to this Directive;

[39° satellite broadcasting network means: an electronic communications network that transmits radio and television broadcasting signals in digital form, whether encrypted or not, by satellite to the general public;]<sup>34</sup>

40° secondary linear broadcaster means: the broadcaster of the Flemish Community or every linear broadcaster that has not acquired exclusive broadcasting rights for the Flemish Community, in case exclusive broadcasting rights have been granted to the event.

[41° sponsorship: any contribution made by a public or private undertaking or natural person not engaged in providing broadcasting services or video-sharing platform services or in producing audiovisual or audio works to the financing of broadcasting services, video-sharing platform services, user-generated content or programs with a view to promoting its name, trade mark, image, activities or products;]<sup>35</sup>

[42° conditional access system means: any technical measure, authentication system and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or another form of prior individual authorisation;]<sup>36</sup>

43° television service means: an audiovisual broadcasting service;

44° television broadcaster means: a provider of television services;

45° teleshopping means: direct offers broadcast to the public with a view to supplying goods or services in return for payment, including immovable property, rights and obligations;

[45°/1 transnational markets means: markets identified in accordance with article 65 of Directive (EU) 2018/1972, which cover the European Union or a substantial part thereof located in more than one Member State;]<sup>37</sup>

[45°/1 video-sharing platform service: a service as mentioned by articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service, of a stand-alone part of it or of an essential functionality of the service is devoted to providing programs, user-generated content, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms, in particular by displaying, tagging and sequencing;]<sup>38</sup>

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<sup>34</sup> Replaced by the act of 02.07.202

<sup>35</sup> Replaced by the act of 19 March 2021

<sup>36</sup> Replaced by the act of 02.07.2021

<sup>37</sup> Inserted by the act of 02.07.2021

<sup>38</sup> Inserted by the act of 19 March 2021

46° self-promotion means: a broadcasting service's recommendation of its own products, services, programs or networks;

47° broadcasting equipment means: any equipment that is destined, in whole or in part, for the wireless broadcast of radio and television broadcasting signals to the general public;

48° broadcasting licence means: licence for the exploitation of any equipment that is destined for transmitting wireless radio or television broadcasting signals;

49° independent producer means: the producer:

a) whose legal personality is different from that of a broadcaster;

b) who does not own more than 15 percent of the capital of a Flemish broadcaster, directly or indirectly;

c) of which no more than 15 percent of the capital is in hands of a venture which directly or indirectly owns more than 15 percent of the capital of a Flemish broadcaster;

50° teletext means: analogue text-based service, which is shown on screen and is transmitted with the linear broadcasting signal, under the editorial responsibility of a provider of broadcasting services, and the digital version thereof;

51° audio subtitling means: an audio rendering of the subtitling of non-Dutch language films and dialogues;

52° audio description means: a technique for facilitating access to audiovisual products such as film and television programs for the blind and the visually impaired. A voice-over describes the visual elements;

53° subtitling means: a textual version of the dialogue, which is shown on screen or which can be called up;

54° sign language means: a visual-manual language, in which concepts and notions are represented using gestures in a three-dimensional gesture space.

## PART II

The public broadcaster of the Flemish Community

### TITLE I

#### STATUTE OF THE VRT

##### Article 3

The Flemish radio and television broadcaster, abbreviated VRT, is a broadcaster which takes the form of a limited company governed by public law. Except for all that is not expressly

regulated otherwise in this Act, the VRT is subject to the provisions of the Company Code which applies to limited companies.

#### Article 4

The VRT's duration is undetermined.

#### Article 5

The Flemish Community cannot transfer its shares in the VRT. Article 646, § 1, paragraph 2 of the Company Code does not apply to the VRT.

The same rights and obligations are attached to all the shares. All the shares are and will continue to be registered.

### TITLE II

#### Purpose, competence and the task of public broadcaster

#### Article 6

§ 1. The VRT's purpose is to provide radio programs, television programs and other types of programs within the mandate of the public broadcaster as set forth below, as well as to carry out activities which directly or indirectly contribute to this, including producing programs or having programs produced, acquiring programs, putting together programming, broadcasting programs, having these broadcast and publicising them in the broadest sense of each of these terms given in Article 2.

§ 2. As a public broadcaster, the VRT has the task to reach the largest possible number of media users with a diversity of high-quality programs which attract and meet the interests of the media users.

The VRT shall provide high-quality programming in the information, culture, educational and entertainment sectors. The VRT must first and foremost provide the viewer and listener with specific information and cultural programs. In addition, it shall also provide sport, contemporary education, original drama and entertainment. The VRT's entire offer must be characterised by the high quality of the programs, both in terms of content and in terms of form and use of language. In all its programs the VRT shall aim to achieve the highest possible quality, professionalism, creativity and originality, while also tapping into new talents and innovative forms of expression. The VRT's programming shall appropriately target certain specific population and age groups, in particular, children and young people.

Programs must contribute to the continued development of the identity and diversity of Flemish culture and of a democratic and tolerant society. With its programs, the VRT shall contribute to forming independent, objective and pluralist opinion in Flanders. For this reason it should aim for leadership in the field of information and culture.

In order to involve the highest possible number of Flemish citizens and in order to safeguard its credibility as a public broadcaster, the VRT will develop a sufficient number of programs aimed at a broad and general public. In addition to these general programs, other programs

will meet the specific areas of interest of the viewers and listeners. The target groups shall be sufficiently broad and will also be reached by the programs concerned.

The VRT shall closely follow technological developments, so that when it is necessary and desirable, it can also offer its programs to viewers and listeners through new media applications.

The public service task of the VRT also includes all the activities which directly or indirectly contribute to the implementation of its task. [This also includes the possibility to process personal data necessary to carry out his public mission.]<sup>39</sup>

§ 3. With the authorisation of the Flemish Government, the VRT can expropriate immovable property in order to carry out its public service tasks related to public broadcasting, as determined in § 2.

§ 4. In the context of its purpose, the VRT can also participate in companies, associations and cooperative ventures insofar as this participation contributes to the exercise of its broadcasting activities.

The VRT can establish a limited company on its own and subscribe to all the shares of that company, and, in derogation of Article 646 of the Company Code, own all the shares in a limited company, without any restriction as regards duration and without being deemed to be severally liable for the obligations of that company.

§ 5. The VRT may take out loans or issue debt securities in the context of the financial plan that was established in the management agreement. The Flemish Government can provide a Flemish Community guarantee for this.

The Flemish Government can issue public loans on the Belgian capital market on behalf of the VRT, insofar as these loans contribute to the exercise of its broadcasting activities.

§ 6. The VRT may receive donations and legacies.

## Article 7

The VRT autonomously determines its programming and its broadcasting schedule.

[The act of 17 June 2016 on the standards for Flemish government communication applies to the VRT. Contrary to the act of 17 June 2016 on the standards for Flemish government communication, this act does not apply to the communication of the VRT about its offer and its policy as a broadcasting organization.]<sup>40</sup>

## Article 8

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<sup>39</sup> Added by the act of 29.06.2018

<sup>40</sup> Added by the act of 29.06.2018

Besides its public broadcasting task, the VRT can carry out merchandising and subsidiary activities if they are related to or associated with its public broadcasting task and if these are incorporated in a framework which is approved beforehand by the Board of Directors, taking into account the following conditions:

1° the aim of these activities is to support the programs and services offered by the VRT within the scope of its public service task, to facilitate distribution thereof and to reduce the costs of offering these;

2° activities are self-sustainable and the transparency of the associated expenses and income is assured through separate accounts;

3° the activities are carried out in accordance with market-compliant conditions and shall not seriously impact competition.

The merchandising activities referred to in the first paragraph should be taken to mean any activities which are aimed at benefiting from the notoriety of programs in the VRT's programming. Additional activities, as referred to in the first paragraph, should be interpreted as all other activities. [The merchandising and ancillary activities are not regarded as an exercise of the tasks of VRT as a public authority within the meaning of the General Data Protection Regulation.]<sup>41</sup>

## TITLE III

### Organisation

#### CHAPTER I

##### General provisions

###### Article 9

The bodies of the VRT are:

1° the General Meeting of all shareholders;

2° the Board of Directors;

3° the Managing Director.

Insofar as this has not been regulated in this Act, the competence and operation of these bodies are determined in the articles of association in accordance with the Company Code.

###### Article 10

The Board of Directors and the Managing Director determine the way in which they exercise their competences on the basis of mutual consultation and in accordance with the provisions

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<sup>41</sup> Added by the act of 29.06.2018

of this Act and the articles of association, in a ‘VRT Charter for Management with due diligence’, as provided in articles 13 and 14. The ‘VRT Charter for Management with due diligence’ is presented to the Flemish Government by way of notification.

## CHAPTER II

### General meeting

#### Article 11

The General Meeting discharges the Directors and the Auditors(s) as well as the Managing Director of their activities in accordance with the provisions of Article 554 of the Company Code.

Without prejudice to the provision of the first paragraph, the General Meeting shall have no other competences than those assigned to it by the Company Code.

## CHAPTER III

### The Board of Directors

#### Article 12

§1. The Board of Directors shall have at least twelve and no more than fifteen members.

Twelve members of the Board of Directors are appointed by the Flemish Government, taking into account the proportional representation of the political parties in the Flemish Parliament.

The members of the Board of Directors, appointed by the Flemish Government, can co-opt a maximum of three directors on the basis of demonstrable expertise with regard to media policy or management policy.

The Board of Directors chooses a president and a deputy president from among its members.

§ 2. The mandate of Director cannot be combined with:

1° membership of a legislative, decreeing or ordinating meeting and membership of the European Parliament;

2° the office of minister or state secretary;

3° the office of provincial governor;

4° the office of provincial delegate;

5° the office of provincial registrar;

6° the office of officer-general of a ministry;

7° the office of member of a ministerial cabinet;

8° the office of mayor, alderman, or chairperson of the public social welfare centre (OCMW).

The mandate of Director is also incompatible with:

1° a position or mandate of permanent or contractual employee of the VRT;

2° a position or a mandate, in:

a) in a media company, including electronic media;

b) in an advertising or promotional company;

3° a management position or mandate in a production firm which supplies to the electronic media, or any other company which provides services for the VRT, supplies it or carries out activities for it.

One exception to this, mentioned in § 2, paragraph 2, concerns a position or mandate in companies, associations or cooperative ventures referred to in Article 6, § 4.

§ 3. The functioning of the Board of Directors is regulated in the articles of association. The board can only make valid decisions if the majority of the directors are present or represented. In accordance with the provisions of this title and with the articles of association, the board can determine how it wishes to exercise its competences, summarised in Article 13, in rules or regulations.

§ 4. The mandate of the members of the Board of Directors shall expire after five years.

## Article 13

§ 1. The Board of Directors has the following competences:

1° laying down the VRT's general strategy;

2° making decisions regarding matters of a strategic nature. A matter shall be deemed to be strategic if it has an important impact on the VRT's actions in Flemish society or on the media landscape. The Board of Directors shall make a decision as to a matter's strategic nature;

3° approving, on behalf of the VRT, the management agreement and any changes to it;

4° approving the annual business plan and of strategic multiannual plans, which set forth the goals and strategy in the medium term. The annual business plan among others comprises the general program policy, the strategy as regards communication and public relations, the estimate of income and expenditure and of the personnel contingent;

5° the drawing up of the inventory and the annual accounts with the balance sheet, the income and expenditure account and information pertaining to it, and the drawing up of the annual report;

- 6° approving the rules as regards personnel recruitment and personnel's legal position;
- 7° appointing and dismissing members of the Management Committee at the suggestion of the Managing Director;
- 8° exercising control on the Managing Director as he implements the management agreement, the business plan and the Board of Directors' decisions;
- 9° negotiating in case of personal conflicts within the Management Committee;
- 10° decisions as regards the VRT's participation in companies, associations and cooperative ventures;
- 11° decisions as regards the establishment of companies by the VRT;
- 12° the supervision of the companies', associations' and collaborative ventures' functioning and results, as referred to in items 10° and 11°;
- 13° the appointment of representatives of the VRT to the administrative bodies of companies, associations and collaborative ventures, as referred to in items 10° and 11°;
- 14° convening a general meeting and setting an agenda;
- 15° the drawing up of the framework within which the VRT carries out merchandising and additional activities.

§ 2. The competences summarised in § 1 cannot be delegated to the Managing Director or to other members of personnel of the VRT.

The decisions of the Board of Directors are taken at the initiative and at the proposal of the Managing Director, the President of the Board of Directors or at least one third of the members of the Board of Directors.

The Managing Director shall provide the Board of Directors with all useful information and shall place all the matters that are deemed useful or necessary for the proper exercise of the Board of Directors' competences on the agenda of the Board of Directors.

§ 3. In order to exercise its competences as summarised in § 1, members of the Board of Directors can inspect all the documents and writings of the VRT at any time via the president. The President can demand any clarifications and any verifications which the Board or a member of the Board deem necessary for the exercise of the competences of the Board of Directors through the Managing Director, from the members of the Management Committee and from all other personnel members.

## CHAPTER IV

### The Managing Director

#### Article 14



§ 1. The Managing Director is appointed and dismissed by the General Meeting.

§ 2. The Managing Director is charged with and is exclusively competent for the following tasks of the operational management of the VRT:

1° with regard to the management of the services provided: the preparation and execution of the annual business plans and strategic multiannual plans, which result from the management agreement and are approved by the Board of Directors;

2° as regards product development: the development of new, and the improvement of existing services, products and processes which correspond with the VRT's policy;

3° as regards HR policy: implementing a coherent personnel policy, aimed at the VRT's strategic development and the environmental factors for the exercise of this service, in accordance with the regulations and the legal position of the personnel and also in accordance with the instructions of the Board of Directors in the annual business plan for this;

4° as regards financial policy: the execution of all the budgetary and bookkeeping transactions within the scope of the annual business plan, including the registration of commitments, the approval and the booking of commitments, the booking of claims and assuring the receipts and expenditures within the authorising budget;

5° as regards the management of infrastructure: implementing a coherent policy for buildings, consumer goods and heritage goods, an efficient management of supplies, as well as the optimum management of the infrastructure of the VRT within the limits of the investment program approved by the Board of Directors;

6° as regards communication and public relations: implementing a contemporary internal and external communication policy, in accordance with the guidelines laid down by the Board of Directors with regard to this;

7° setting the programming and the broadcasting schedule;

8° making operational decisions that are useful or essential for the VRT's proper operation and which do not fall under the Board of Directors' competences.

The Managing Director takes part in the meetings of the Board of Directors with an advisory vote. The Managing Director is charged with the preparation of the decisions of the Board of Directors. He shall provide the Board of Directors with all the necessary information and shall submit all the proposals which are useful or necessary for the operation of the VRT to the agenda of the Board of Directors.

The Managing Director represents the VRT in legal and extra-legal activities, including acting for administrative judicial tribunals and acts in law in the name of and on behalf of the VRT, without requiring the support for this in a decision of the Board of Directors.

Without prejudice to the regulation on the legal position of the personnel, the Managing Director may delegate one or more specific competences, including those mentioned in this Article, under his own responsibility, to one or more members of personnel of the VRT.

The Managing Director carries out the decisions of the Board of Directors.

§ 3. The Managing Director is assisted by the Management Committee, consisting of at least two and no more than five members, besides the Managing Director. The Managing Director chairs the Management Committee.

Under his exclusive responsibility, the Managing Director can delegate part of his competences to one or more members of the Management Committee and to members of personnel of the VRT. The Managing Director determines the limits within which and the forms within which these delegations and other sub-delegations are carried out in a regulation.

§ 4. The Managing Director and the other members of the Management Committee are employed on the basis of an agreement concluded with the VRT.

## CHAPTER V

### The Auditors

#### Article 15

The Auditor(s) is/are appointed by the General Meeting on the nomination of the Managing Director and carry out the competences assigned to him/them in the Company Code.

## TITLE IV

### Management agreement

#### Article 16

The special rules and conditions for granting the financial means required to carry out the VRT's public broadcasting task, determined in Article 6, are laid down in a management agreement between the Flemish Community and the VRT.

The management agreement enters into effect on the date determined by the Flemish Government.

#### Article 17

§ 1. The management agreement in particular regulates the following matters:

[1° the implementation of the public service tasks, set out in Article 6, § 2, including the innovation task, and measurable performance indicators to be achieved. These performance indicators are related to the formulated strategic objectives and ambitions;]<sup>42</sup>

[2° ...]<sup>43</sup>

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<sup>42</sup> Replaced by the act of 14 October 2016

<sup>43</sup> Lifted by the act of 14 October 2016

3° the objectives as regards HR policy, financial policy, technology and transmission;

[4 ° the calculation of the envelope of financial resources required to assure that the public tasks can be fulfilled, and the payment conditions thereof. The provisions of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings apply; ]<sup>44</sup>

[5° ..]<sup>45</sup>

6° the publication of an annual report before 1 June of the following year as regards the execution of the management agreement during the past calendar year and publication of other documents, which have to be submitted annually, for the Flemish Government's approval;

7° the measures to be taken in case one of the parties does not comply with its commitments resulting from the management agreement.

[...]<sup>46</sup>

[...]<sup>47</sup>

§ 2. The Flemish Government can determine further rules for the commercial communication of the VRT in the management agreement, in line with Article 48.

## Article 18

§ 1. The VRT may only undertake new services or activities that are not covered by the management agreement with the express permission of the Flemish Government.

[[§ 2. The Flemish Government requests the advice of the Flemish Regulator for the Media. As part of that advice, the Flemish Regulator for the Media organizes an open public survey. In his advice, the Flemish Regulator for the Media analyzes the public value of the proposal, taking into account the important evolutions in the media market and in technology, the evolving media landscape and the role of the VRT in this. The Flemish Regulator for the Media then weighs the public value of the proposal against the impact of the proposal on the market. The Flemish Regulator for the Media provides its advice within six months after receiving the request for advice from the Flemish Government. The Flemish Regulator for the Media publishes the advice on its website.]<sup>48</sup><sup>49</sup>

[§ 2/1. The Flemish Government publishes the note with the reasons for granting or refusing permission for a new service or activity as stated in paragraph 1, on its website.]<sup>50</sup>

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<sup>44</sup> Replaced by the act of 14 Oktober 2016

<sup>45</sup> Lifted by the act of 14 Oktober 2016

<sup>46</sup> Canceled by the act of 29.06.2018

<sup>47</sup> Canceled by the act of 29.06.2018

<sup>48</sup> Replaced by the act of 14 Oktober 2016

<sup>49</sup> Replaced by the act of 29.06.2018

<sup>50</sup> Inserted by the act of 22.03.2019

[§ 3. The Flemish Government determines further rules for the application of this article.]<sup>51</sup>]<sup>52</sup>

## Article 19

§ 1. The management agreement is concluded for a period of five years.

[§ 1/1. The VRT provides a vision text to the Flemish Government at the latest one year before the expiry of its management agreement, in which it outlines the specific lines of its future public broadcasting assignment, with specific mention of the planned new services. The Flemish Government sends that text to the Council for Culture, Youth, Sport and Media with a view to the advice stated in Article 20, § 3. The VRT publishes this vision text on its website simultaneously with the delivery to the Flemish Government.]<sup>53</sup>

§ 2. The VRT presents the Flemish Government with a draft of a new management agreement, at the latest, six months before the expiry of the management agreement.

If no new management agreement has entered into effect upon the expiry of a management agreement, the management agreement is automatically extended until a new management agreement has entered into effect.

§ 3. The Flemish Parliament is notified immediately of every management agreement, as well as every change and extension of the management agreement .[Any amendment to the management agreement will be formalized through an addendum to the management agreement.]<sup>54</sup>

## Article 20

§ 1. As a preparation for each new management agreement with the VRT, the Media Sectoral Council of the Council for Culture, Youth, Sports and the Media organises a public inquiry about the scope of the public broadcaster's mission and its implementation under the new management agreement, taking account of key media market and technological developments, with due regard to the changing media landscape and the VRT's role therein.

The Media Sectoral Council assesses the media market on the basis of changes in the business and economic situation in the Flemish media sector, the general media opportunities on the Flemish market, technological changes, international trends, the need to protect and promote Flemish cultural and identity and the expectations and needs of the media user.

§ 2. In order to lend support to the public inquiry, the Media Sectoral Council of the Council for Culture, Youth, Sports and the Media calls on the services of scientific experts.

§ 3. In the light of the findings of this public inquiry, the Media Sectoral Council of the Council for Culture, Youth, Sports and the Media presents an advisory opinion to the Flemish Government about the new management agreement with the VRT. This advisory opinion is published on the Media Sectoral Council's website.

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<sup>51</sup> Replaced by the act of 13 July 2012

<sup>52</sup> Replaced by the act of 29.06.2018

<sup>53</sup> Inserted by the act of 22.03.2019

<sup>54</sup> Added by the act of 14 Oktober 2016

## Article 21

The annual report referred to in Article 17, § 1, 6° is submitted to the Flemish Parliament by the Flemish Government before 30 September.

## TITLE V

### Income and bookkeeping

## Article 22

The VRT's income is made up of the financial funds agreed in the management agreement, as well as the income from the activities which the VRT can exercise in accordance with this Act, including the income from any form of distribution of the programs provided or parts thereof to the public.

## Article 23

The bookkeeping of the VRT is carried out in accordance with the legislation on the bookkeeping and annual accounts of companies.

## Article 24

[The Act of 8 July 2011 on the regulation of the budgets, the bookkeeping, the grant of subsidies and the control of their use, and the control by the Court of Auditors applies to the VRT.]<sup>55</sup>

## Article 25

The VRT is authorised to set up a reserve fund. In the budget, the reserve fund is at the level of the whole of the VRT.

The VRT may use the funds in the reserve fund to exercise its public broadcasting task, including the acquisition and management of heritage.

## Article 26

§ 1. The VRT has the option, at the close of each financial year, to build a reserve comprising any aggregate net surplus resulting from the exploitation of its task of public broadcaster during the aforementioned financial year; this is limited to 10 percent of the public grant received during the financial year in question.

The term net surplus, as referred to in the first paragraph, indicates the difference between the government grant and the net costs of the public task.

Should the 10 % limit referred to in the first paragraph be exceeded, then the surplus shall be reimbursed to the Flemish Community.

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<sup>55</sup> Amended by the act of 8 July 2011

§ 2. Any net surplus as mentioned in paragraph 1 throughout the period covered by the management agreement is set off when the accounts for this period are closed against the public funding for the following management agreement.

§ 3. The reimbursement and compensation mechanisms are controlled as a rule by the Finance Inspectorate on the basis of annual accounts approved by the VRT.

§ 4 Paragraphs 1 through 3 do not apply to the 55 million euro reserve fund, referred to in Article 39, § 2, of the management agreement for 2007-2011, which shall be used, as provided for in the said article, throughout the duration of the management agreement, to finance deficits in the funding of the VRT 's task of public broadcaster.

§ 5. Nor are paragraphs 1 through 3 applicable to the income resulting from the increased independence of the channels, of which the income is earmarked for initiatives as referred to in Article 35, § 3, paragraph 2, of the 2007-2011 management agreement.

## TITLE VI

### Personnel

#### Article 27

§ 1. Without prejudice to the provision of Article 14, § 4 with regard to the Managing Director and the other members of the Management Committee, the personnel members of middle management are employed in accordance with the provisions below, on the basis of an employment agreement.

§ 2. The Managing Director establishes the structure of the organization. He terminates the office of the members of personnel who were in office on 12 February 1996 with scales 13, except if that scale was acquired with a promotion in a career, up to 15 and/or of members of personnel who had a position corresponding to scales 13 to 15.

§ 3. As a derogation from Article 13, § 1, 6°, the Managing Director establishes the regulating measures with regard to the administrative and the financial situation of members of personnel whose office was terminated in accordance with § 2, for reasons related to the reorganization of the department.

He declares the new positions in middle management to be established by him to be vacant, selects and recruits the candidates for those positions. The candidates who are recruited are employed with an employment agreement.

The statutory members of personnel who are contractually employed for the implementation of the second paragraph, maintain the statutory and financial position which they had at the start of their contractual employment for the entire duration of their contractual employment, unless they decide not to do so when they sign the agreement.

#### Article 28

The personnel members of the VRT, except those referred to in Article 27, are employed on the basis of an employment agreement. This provision does not detract from the statutory

legal position of personnel members who are already employed.

## TITLE VII

### Special provisions concerning programs

#### Article 29

§ 1. The programs of the news service must comply with the standards of ethical journalism as established in a code of ethics and guarantee the customary editorial independence as established in the editorial statute.

The code of ethics and the editorial statute are established by the Managing Director in consultation with the representative trade unions.

§ 2. In the context of its task of providing information, laid down in Article 6, the VRT provides one television program lasting thirty minutes every two weeks or one television program lasting fifteen minutes every week [and a weekly radio program of no less than four minutes]<sup>56</sup> on socio-economic subjects, except in the months of July and August. These programs are created by the VRT's news service in collaboration with the organizations which are represented in the Socio-Economic Council of Flanders.

[§ 3. As part of its task to contribute to a pluralistic public opinion, set out in Article 6, the VRT provides a specific offer on philosophy that is integrated into the wide range of programming of the public broadcaster. There is consultation with the various accredited philosophical and non-philosophical movements. ]<sup>57</sup>

## TITLE VIII

### Supervision

#### Article 30

§ 1. The Flemish Government appoints a community representative who is responsible for ensuring that the VRT carries out its activities in accordance with the laws, acts, decisions and the management agreement. The Flemish Community covers the costs related to the execution of his office.

The community representative attends the meetings of the general meeting, and of the Board of Directors with an advisory vote. He shall receive the complete agenda of the meetings of the general meeting, the Board of Directors and the Management Committee as well as all documents related to this, at least five working days before the date of the meetings. He shall receive the minutes of these meetings.

The community representative can inspect all the documents and writings of the VRT on site at any time. He can demand any information and clarifications from the Directors, the

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<sup>56</sup> Inserted by the act of 13 July 2012

<sup>57</sup> Added by the act of 14 Oktober 2016

Managing Director and the members of the Management Committee of the VRT and can carry out all the verifications which he deems necessary for the execution of his mandate.

§ 2. Within a period of four working days of the notification or the decision concerned, the community representative can lodge a substantiated appeal with the Flemish Government against any decision of the Board of Directors, the Managing Director, the Management Committee or the organizations or personnel of the VRT to whom they have delegated their competence, which is related to the public broadcasting task determined in Article 6, and of which he considers that it does not comply with the laws, acts, decisions or management agreement.

The Flemish Parliament is informed immediately of the appeal by the Flemish Government.

The appeal suspends the decision. If the Flemish Government has not declared that it is null and void within a period of twenty work days, starting on the same day as the term assigned to the community representative, the decision becomes final. In such case, the Flemish Parliament and Managing Director are informed that the decision has been declared null and void, within the assigned term.

§ 3. Decisions of the Board of Directors, the Managing Director, the Management Committee or of the bodies or the personnel of the VRT to whom they have delegated their competence, which are related to the implementation of the Act of 13 April 13 regulating the legal position of statutory and contractual personnel of the VRT Philharmonic Orchestra and the VRT Choir, or which result in a change of the salary costs mentioned in Article 4, § 1, of that same Act, must be notified to the community representative immediately.

The community representative can appeal against that decision, stating justified reasons, within a period of four working days from the notification or receipt of the decision concerned, if he considers that the decision concerned can reasonably be considered unjustified and harmful to the interests of the Flemish Community.

This appeal suspends the decision.

If the Flemish Government has declared the decision concerned to be null and void within a period of twenty working days starting on the same day as the term assigned to the community representative for lodging an appeal, the decision becomes final.

If the Flemish Government overrules the decision concerned, the Managing Director is informed that the declaration is null and void within the period determined in paragraph 4.

## Article 31

An internal audit entity within the VRT shall evaluate the effectiveness of risk and control management and the policy processes, checks whether they are adequate and formulates recommendations for their improvement. For this purpose, it carries out audits for an Audit Committee established by the Board of Directors, which is chaired by a member of the Board of Directors appointed by the Board of Directors, with the exception of the President and the Managing Director. It also carries out audits for an audit unit in the VRT's Management Committee with a view of ensuring the most optimal operational management possible. The internal audit entity operates independently from the Managing Director and reports directly to the chairman of the Audit Committee.



## Article 32

The Court of Auditors is responsible for checking the accounts of the VRT which are presented to the Audit Office before 31 May. It will report annually to the Flemish Parliament. The Audit Office can inspect all the documents and writings which it needs to carry out its task on site. For this purpose it can also demand any information and clarifications and carry out any verifications.

## Article 33

§ 1.[Audit Flanders]<sup>58</sup>, referred to in [Article III.115 of the Administrative Act]<sup>59</sup>, evaluates the internal control systems of the VRT, checks whether they are adequate and formulates recommendations for their improvement. To this end, it carries out financial audits, audits to ensure correspondence, and operational audits and is authorised to examine all the operational processes and activities.

[Audit Flanders]<sup>60</sup> is also competent to carry out [forensic audits]<sup>61</sup> at the VRT. The confidentiality of commercial and industrial information, as guaranteed in [Article II.35, 3°, of the Administrative Act]<sup>62</sup>, applies fully.

§ 2. [In order to be able to carry out its competences, Audit Flanders has access to all the information and documents of the VRT, whatever its medium, and to all buildings, spaces and installations where tasks are performed by the VRT. Audit Flanders can ask for any information which it deems to be necessary for the execution of its tasks from any member of personnel of the VRT. Every member of personnel of the VRT is obliged to answer in full as quick as possible and without prior authorization and provide all the relevant information and documents]<sup>63</sup>.

[[Pursuant to Article 23(1)(e) and (h) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), Audit Flanders may decide not to apply the obligations and rights referred to in Articles 12 to 22 of that Regulation, when processing personal data in the course of an investigation concerning a particular natural person, if the conditions set out in paragraphs 3 to 7 are met.

The possibility referred to in the second paragraph only applies during the period in which the person concerned is the subject of an audit, an investigation or the preparatory work related thereto, within the framework of the statutory and regulatory assignments of Audit Flanders, and on condition that it is or may be necessary for the proper conduct of the investigation that the obligations and rights referred to in Articles 12 to 22 of the aforementioned Regulation are not applied.

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<sup>58</sup> Amended by the act of 5 July 2013

<sup>59</sup> Replaced by the act of 7 December 2018

<sup>60</sup> Amended by the act of 5 July 2013

<sup>61</sup> Amended by the act of 5 July 2013

<sup>62</sup> Replaced by the act of 7 December 2018

<sup>63</sup> Replaced by the act of 5 July 2013

Audit Flanders shall, where appropriate, justify the decision referred to in the second paragraph at the request of the competent data protection supervisory authority.

When the investigation will be completed, the duties referred to in Articles 13 to 22 of that Regulation shall, where appropriate, be reintroduced in accordance with Article 12 of that Regulation.

If a file containing personal data as referred to in the second paragraph has been sent to the Public Prosecutor's Office and may lead to activities under the direction of the Public Prosecutor's Office or an investigating judge, and there is a lack of clarity about the secret of the investigation under the direction of the Public Prosecutor's Office or an investigating judge, Audit Flanders may, at the request of the person involved in the investigation, in accordance with Articles 12 to 22 of the aforementioned regulation, only reply after that the Public Prosecutor's Office or, as the case may be, the investigating judge, has confirmed to Audit Flanders that an answer does not jeopardise the investigation or cannot jeopardise it.

If, in the case referred to in the second paragraph, during the period referred to in the third paragraph, the person concerned makes a request on the basis of Articles 12 to 22 of the aforementioned Regulation, Audit Flanders shall refer the person concerned to the competent supervisory authority in the field of data protection. The competent data protection supervisory authority shall inform only the data subject that the necessary verifications have been carried out.]<sup>64</sup><sup>65</sup>

## TITLE IX

### Flemish Government announcements

#### Article 34

§ 1. The VRT is required to broadcast a maximum of fifteen minutes of announcements by the Flemish Government, the Flemish Parliament and the ministers of the government and state secretaries of the Brussels Capital Region every month, in accordance with the rules and conditions determined by the Flemish Government.

§ 2. The announcements are broadcast immediately after the main news program. The same message is broadcast only once. The announcements serve to inform the Flemish population with regard to matters of public interest. The VRT does not have any responsibility for these announcements.

§ 3. The announcements must comply with the conditions and the rules to be established by the Flemish Government. They must be clearly identifiable and may not give rise to any confusion with the VRT's own programs. Before and after the announcements, an announcement will be made to say that they have been provided by the Flemish Government or the government of the Brussels Capital Region.

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<sup>64</sup> Added by the act of 08.06.2018

<sup>65</sup> Enters into force on 25.05.2018

§ 4. The production costs of the announcements are covered by the requesting government.

§ 5. Except in urgent cases, acknowledged as such by the Managing Director, the broadcast of such announcements is suspended during the two months preceding the elections for the municipal council, provincial council, national and European elections. In these cases, the communications may not contain the name or the likeness of a Flemish minister, a minister or state secretary or of a member of parliament, and must be purely factual.

[TITLE X]<sup>66</sup><sup>67</sup>

[Article 35...]<sup>68</sup>

[Article 36...]<sup>69</sup>

## PART III

### Radio and television broadcasting

#### TITLE I

##### Provisions covering broadcasting activities

###### Article 37

Freedom of expression is guaranteed for all broadcasting activities.

Broadcasting activities are free and cannot be subjected to any requirements as regards form or prior control, subject to what is set out below for broadcasting services.

###### [Article 38

Broadcasting activities may not:

1° incite violence or hatred towards a group of persons or a member of a group of persons, in particular on the basis of

- a) gender;
- b) race;
- c) colour;
- d) ethnic or social origin;
- e) genetic characteristics;
- f) language;
- g) religion or belief;

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<sup>66</sup> Amended by the act (1) of 18 December 2009 and replaced by the act of 13 July 2012

<sup>67</sup> Lifted by the act of 14 Oktober 2016

<sup>68</sup> Lifted by the act of 14 Oktober 2016

<sup>69</sup> Lifted by the act of 14 Oktober 2016

- h) political or other opinion;
- i) membership of a national minority;
- j) wealth;
- k) birth;
- l) a disability;
- m) age;
- n) sexual orientation;

2° incite publicly to commit a terrorist offence as mentioned in articles 137 and 140bis of the Penal Code.]<sup>70</sup>

## TITLE II

Provisions covering broadcasting services

### CHAPTER I

General provisions

#### Article 39

Any form of discrimination is avoided in the programs. Programming is structured in such a way that it cannot give rise to discrimination between different ideological or philosophical ideas.

Information programs, communications and programs of a general informational nature, as well as all parts of information program must be presented in a spirit of political and ideological impartiality.

This article also applies to teletext.

#### Article 40

Providers of broadcasting services will make the following information available to listeners and viewers, in a user-friendly, direct and permanent manner:

1° the name of the provider of the broadcaster;

2° the geographical address of the provider of the broadcaster;

3° additional data pertaining to the provider of the broadcaster, including its e-mail or web address, so that the provider is easily, directly and permanently accessible;

[4° the statement that the provider of the broadcasting service falls under the competence of the Flemish Community and under the supervision of the Flemish Regulator for the Media.]<sup>71</sup>

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<sup>70</sup> Replaced by the act of 19 March 2021

<sup>71</sup> Replaced by the act of 19 March 2021

[Art. 40/1. § 1. Television broadcasting services from other Member States of the European Union, or from another State in the European Economic Area, have a right to freedom of reception and retransmission.

§2. Without prejudice to paragraph 1, the Flemish Regulator for the Media may take provisional measures relating to freedom of reception or transmission of a specific television broadcasting service offered by a broadcaster falling under the jurisdiction of another Member State. The following conditions apply:

1° during the previous 12 months, the television broadcaster has infringed on at least two prior occasions manifestly, seriously and gravely article 38, 1°, or article 42, or has prejudiced the public health or has presented a serious and grave risk of prejudice to it;

2° the Flemish Regulator for the Media has notified the television broadcaster, the Member State and the European Commission in writing of the alleged infringements and of the proportionate measures the Flemish Regulator for the Media intends to take should any such infringement occur again;

3° The Flemish Regulator for the Media has respected the right of defence of the television broadcaster and, in particular, has given that television broadcaster the opportunity to express its views on the alleged infringements; and

4° consultations with the Member State and with the European Commission have not resulted in an amicable settlement within one month of the European Commission's receipt of the notification referred to in point 2°.

If the European Commission decides that the measures, mentioned in the first paragraph, are not compatible with Union law, the Flemish Regulator for the Media shall put an end to the measures in question as a matter of urgency.

§3. Without prejudice to paragraph 1, the Flemish Regulator for the Media may take provisional measures if a television broadcasting service provided by a television broadcaster under the jurisdiction of another Member State infringes manifestly, seriously and gravely article 38, 2°, or prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence.

This exception is subject to the following conditions:

1° during the previous 12 months, the conduct of the broadcaster referred to in the first paragraph, has occurred on at least one prior occasion;

2° the Flemish Regulator for the Media has notified the television broadcaster, the Member State and the European Commission in writing of the alleged infringements and of the proportionate measures the Flemish Regulator for the Media intends to take should any such infringement occur again.

The Flemish Regulator for the Media respects the right of defence of the concerned television broadcaster and, in particular, gives that television broadcaster the opportunity to express its views on the alleged infringements.

If the European Commission decides that the measures, mentioned in the first paragraph, are not compatible with Union law, the Flemish Regulator for the Media shall put an end to the measures in question as a matter of urgency.

§4. The Flemish Regulator for the Media may, in urgent cases, no later than one month after the alleged infringement, derogate from the conditions laid down in paragraph 3, second subparagraph, 1° and 2°. If this is the case, the measures taken shall be notified in the shortest possible time to the European Commission and to the Member State under whose jurisdiction the broadcaster falls, indicating the reasons why the Flemish Regulator for the Media considers that there is urgency]<sup>72</sup>.

## CHAPTER II

Specific provisions pertaining to the protection of minors when watching linear and non-linear television services

### Article 41

The provisions of this chapter are also applicable to teletext.

### [Article 42

Television broadcasters broadcast, at individual request or not, no programs which may impair the physical, mental or moral development of minors unless the broadcaster ensures that minors will not normally hear or see them by selecting the time of the broadcast, age verification tools or other technical measures. These measures are proportionate to the potential harm the program might cause. Programs containing pornographic scenes or unnecessary violence shall be broadcast or provided encrypted or are subject to effective parental supervision.

Television broadcasters provide sufficient information to viewers about programs which may impair the physical, mental or moral development of minors by using a system describing the potentially harmful nature of the program. The Flemish Government determines the further conditions and procedures for this.

Personal data of minors collected by television broadcasters pursuant to this article shall not be processed for commercial purposes.]<sup>73</sup>

### Article 43 [...] <sup>74</sup>

### Article 44 [...] <sup>75</sup>

### Article 45 [...] <sup>76</sup>

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<sup>72</sup> Added by the act of 19 March 2021

<sup>73</sup> Replaced by the act of 19 March 2021

<sup>74</sup> Lifted by the act of 19 March 2021

<sup>75</sup> Lifted by the act of 19 March 2021

## CHAPTER III - [...] <sup>77</sup>

Article 46 [...] <sup>78</sup>

## CHAPTER IV

[Commercial communication and public service announcements] <sup>79</sup>

### SECTION I

The use of commercial communication

Article 47

The provisions of this Section are also applicable to teletext.

Article 48

Under the application of Article 37, broadcasters are free as regards the transmission, recording, exploiting and implementation of commercial communication, except for the limitations and duties as set out in this Act.

Article 49

[Broadcasters can make available commercial communication to political mandate holders or candidate mandate holders as well as political parties, in return for payment, during the restriction that applies to the period preceding the elections, subject to compliance with legislation as regards electoral expenditure.] <sup>80</sup>

Article 50

The broadcaster of the Flemish Community cannot broadcast any advertising, except for radio advertising and advertising aimed at self-promotion.

The television broadcaster of the Flemish Community may not broadcast teleshopping.

The television broadcaster of the Flemish Community is prohibited from relying on sponsorship for its children's programs and using product placement in children's programs.

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<sup>76</sup> Lifted by the act of 19 March 2021

<sup>77</sup> Cancelled by the act of 13 July 2012

<sup>78</sup> Cancelled by the act of 13 July 2012

<sup>79</sup> Replaced by the act of 13 July 2012

<sup>80</sup> **Cancelled from 30 June 2020 by the act of 29.06.2018**

The Flemish Community's broadcaster is prohibited from broadcasting commercial communication through its teletext service.

## [SECTION I/1

Public service announcements]<sup>81</sup>

[Article 50/1

Broadcasting organizations are authorized to broadcast public service announcements as long as they apply the provisions of this Act.

Public service announcements can be clearly identified and differentiated from regular programming. In a television program they are preceded and followed by a suitable announcement that it concerns a public service announcement and who is responsible for the message. In a radio program they are differentiated from regular programming by means of an audio signal.

Public service announcements by social and humanitarian associations or associations in the general welfare sector may not be directly or indirectly focused on the commercial promotion of individual products or services, nor on the commercial promotion of the membership of such associations.]<sup>82</sup>

## SECTION II

Basic rules as regards the use of commercial communication [and public service announcements]<sup>83</sup>

Article 51

[The provisions of this section are also applicable to teletext.]<sup>84</sup>

Article 52

[Art. 52. Providers of broadcasting services may not broadcast any commercial communication and public service announcements that are in conflict with legal provisions.

[...]<sup>85</sup>]<sup>86</sup>

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<sup>81</sup> Inserted by the act of 13 July 2012

<sup>82</sup> Inserted by the act of 13 July 2012

<sup>83</sup> Inserted by the act of 13 July 2012

<sup>84</sup> Replaced by the act of 13 July 2012

<sup>85</sup> Replaced by the act of 13 July 2012

<sup>86</sup> Lifted by the act of 19.March.2021



## Article 53

[Commercial communication and public service announcements must be easy to identify as such.]<sup>87</sup>

## Article 54

[Surreptitious advertising shall be prohibited.

Surreptitious advertising, as referred to in the first section, should be taken to mean any form of commercial communication which consists of mentioning or representing goods, services, the name, trade mark or activities of a manufacturer of goods or a service provider in programs, when such representation is intended by the broadcaster to serve as advertising and the general public can be misled as regards the nature of the representation. This intention is, in particular, deemed to be present if the mentioning or representation occurs in return for payment or other compensation.]<sup>88</sup>

[Art. 54/1. Commercial communication and public service announcements shall not use subliminal techniques.]<sup>89</sup>

## Article 55

[[Commercial communication may not be set up in such a way that it:

- 1° violates human dignity;
- 2° includes or promotes any discrimination based on:
  - a) sex;
  - b) racial or ethnic origin;
  - c) nationality;
  - d) religion or belief;
  - e) disability;
  - f) age;
  - g) sexual orientation.

Public service announcements may not be set up in such a way that they:

- 1° violate human dignity;
- 2° promote any discrimination based on:
  - a) sex;
  - b) racial or ethnic origin;
  - c) nationality;
  - d) religion or belief;
  - e) disability;
  - f) age;

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<sup>87</sup> Replaced by the act of 13 July 2012

<sup>88</sup> Replaced by the act of 13 July 2012

<sup>89</sup> Inserted by the act of 19 March 2021

g) sexual orientation.]<sup>90</sup><sup>91</sup>

Article 56 [[...] <sup>92</sup>]<sup>93</sup>

Article 57 [...] <sup>94</sup>

Article 58 [[...] <sup>95</sup>]<sup>96</sup>

Article 59 [...] <sup>97</sup>

Article 60 [[...] <sup>98</sup>]<sup>99</sup>

Article 61 [[...] <sup>100</sup>]<sup>101</sup>

Article 62

[Commercial communication and public service announcements may not encourage behaviour that is detrimental to health or safety or that is highly harmful to the environment.

[...] <sup>102</sup>]<sup>103</sup>

Article 63 [...] <sup>104</sup>]<sup>105</sup>

### SECTION III - Commercial communication concerning specific products

Article 64

The provisions of this section are also applicable to teletext.

Article 65

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<sup>90</sup> Replaced by the act of 13 July 2012

<sup>91</sup> Replaced by the act of 19 March 2021

<sup>92</sup> Replaced by the act of 13 July 2012

<sup>93</sup> Lifted by the act of 19 March 2021

<sup>94</sup> Lifted by the act of 19 March 2021

<sup>95</sup> Replaced by the act of 13 July 2012

<sup>96</sup> Lifted by the act of 19 March 2021

<sup>97</sup> Lifted by the act of 19 March 2021

<sup>98</sup> Replaced by the act of 13 July 2012

<sup>99</sup> Lifted by the act of 19 March 2021

<sup>100</sup> Replaced by the act of 13 July 2012

<sup>101</sup> Lifted by the act of 19 March 2021

<sup>102</sup> Replaced by the act of 13 July 2012

<sup>103</sup> Lifted by the act of 19 March 2021

<sup>104</sup> Replaced by the act of 13 July 2012

<sup>105</sup> Lifted by the act of 19 March 2021

Commercial communication concerning cigarettes [, electronic cigarettes and refill containers]<sup>106</sup> and other tobacco products is prohibited.

#### Article 66

Commercial communication about medicinal products for human use and medical treatments for human use, which are only available as prescription treatments, is prohibited.

#### Article 67

Commercial communication concerning arms is prohibited.

#### Article 68

Commercial communication as regards alcoholic beverages has to comply with the following criteria:

1° it is not specifically aimed at minors and specifically does not show minors consuming this type of beverage;

2° it does not relate the consumption of alcoholic beverages with improved physical performance or motorized driving;

3° it does not give the impression that alcohol consumption contributes to social or sexual success;

4° it does not suggest that alcoholic beverages have therapeutic qualities or have a stimulating, soothing or stress-reducing effect;

5° it does not encourage immoderate alcohol consumption or does not portray abstention or moderate alcohol consumption in a negative manner;

6° it does not emphasize the high alcohol percentages of beverages as a positive characteristic.

#### Article 69

Commercial communication pertaining to candy which contains sugar has to show a stylized image of a toothbrush in a clear and contrasting manner for the duration of the commercial communication, respecting a size limitation of one tenth of the height of the film image, as shown below.

### SECTION IV

Commercial communication aimed at minors, young people and children

#### Article 70

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<sup>106</sup> Inserted by the act of 19 March 2021

The provisions of this Section are also applicable to teletext.

#### Article 71

Commercial communication aimed at children and young people has to be clearly recognizable as such to them.

#### Article 72

Commercial communication shall not cause physical or moral detriment to minors. Therefore it shall not do the following:

1° directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity;

2° directly encourage them to persuade their parents or others to purchase the goods or services being advertised;

3° unreasonably show minors in dangerous situations;

4° exploit the special trust minors place in parents, teachers or other persons.

[5° containing pornographic content or scenes of unnecessary violence.]<sup>107</sup>

#### Article 73

§ 1. Commercial communication for children and young people has to be created with the necessary sense of social responsibility so that it does not undermine positive social behaviour, lifestyles and attitudes.

§ 2. Commercial communication to children may not represent violence, trivialize, tolerate, idealize or encourage or show antisocial or reprehensible behaviour or encourage it.

Commercial communication for young people may not represent violence, trivialize, tolerate, idealize or encourage or show antisocial or reprehensible behaviour or encourage it.

§ 3. Commercial communication for children and young people may not undermine the authority, the responsibility or the judgment of parents and educators, taking into account the applicable social and cultural values.

§ 4. Commercial communication about toys that resemble fire arms is prohibited.

#### Article 74

§ 1. Commercial communication for children and young people has to respect the dignity of children and young people and may not portray children and young people in such a way that their physical or moral integrity is violated or endangered.

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<sup>107</sup> Added by the act of 13 July 2012

§ 2. Commercial communication may not elicit feelings of fear or unease in children and young people.

§ 3. Commercial communication for children and young people may not contain texts or visual representations, which can cause mental, moral or physical detriment to children and young people or which can incite them to act dangerously or find themselves in dangerous situations, which can seriously endanger their health or safety or condone this type of behaviour.

§ 4. Commercial communication may not discourage children and young people from following the established safety rules. Special attention in this regard should be paid to :

1° traffic safety with children and young people as pedestrians, cyclists or passengers;

2° domestic situations;

3° medicinal products and chemical products;

4° dangerous equipment, fire, matches;

5° playing in or near water.

#### Article 75

§ 1. Commercial communication for children has to correctly represent the possibilities and properties of the product portrayed in the commercial communication, so that children can certainly not be misled as to any of these properties.

§ 2. Commercial communication may not mislead children as to:

1° the properties, the dimensions, the value, the nature, the lifecycle or performance of the product;

2° the results that can be achieved with the product;

3° the effects on health;

4° the degree of dexterity or the age required for the use of the product.

The use of fantasy, including animation, is allowed in commercial communication for children, but the fantasy and the animation may not mislead children as to the real properties of the product concerned.

#### Article 76

Commercial communication for children may not pretend that the ownership or use of a given product will give them a benefit compared to other children, nor that the fact that they do not own a given product will result in the opposite effect. Commercial communication may not state that children who do not own the product are inferior or less popular.

Commercial communication for children may not minimize the price of the product offered, nor may it suggest that the product offered is within range of every family budget.

#### Article 77

Commercial communication for children and young people may not encourage or trivialize the excessive intake of food and beverages containing nutrients of which immoderate use is not recommended, such as fats, transfatty acids, salt or sodium or sugars.

### SECTION V

#### Specific types of commercial communication

##### Subsection I

#### Television advertising and teleshopping

#### Article 78

The provisions in this subsection are applicable to linear television services.

#### Article 79

§ 1. Television advertising, excluding self-promotion, and teleshopping should be clearly identifiable and should be easy to differentiate from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the program by visual and/or acoustic and/or spatial means.

The provisions of this paragraph are also applicable to teletext.

§ 2. Isolated ads and teleshopping ads should remain an exception. One isolated ad or teleshopping ad is allowed per television broadcast per day.

Isolated ads and teleshopping ads are allowed:

1° during the broadcasts of sport events;

2° when a long ad, of at least two minutes, is broadcast;

3° when a broadcaster has not succeeded in selling more than one ad or teleshopping ad for a specific advertising slot, due to a lack of interest from customers.

§ 3. As an exception to paragraph 2, television broadcasters that broadcast in loops, are allowed one separate ad and teleshopping ad per loop instead of per day.

#### Article 80

Television programs may be interrupted for ads or teleshopping with the understanding that the integrity and the value of the programs is not violated, taking into account natural breaks in and the duration and the nature of the program, and the fact that the rights of the holders of

the rights are not prejudiced.

Broadcasts of children's programs, religious services, religious and philosophical programs and news programs may not be interrupted by advertising and teleshopping.

Teletext pages aimed at children or which pertain to religious and philosophical themes or news may contain advertising or teleshopping.

## Article 81

§ 1. The broadcasts of television films, feature-length films and news programs may be interrupted once per scheduled period of at least thirty minutes for advertising and/or teleshopping.

[§2. The share of television advertising and teleshopping spots between 6 a.m. and 6 p.m. does not exceed 20 percent of that period. The share of television advertising and teleshopping spots does not exceed 20 percent of that period between 6 p.m. and midnight.

[§3. Paragraph 2 shall not apply to:

1° announcements made by the broadcaster in connection with its own programs and ancillary products directly derived from those programs;

2° announcements made by the broadcaster in connection with programs and broadcasting services from other entities belonging to the same broadcaster;

3° sponsorship announcements, product placement and neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots.]<sup>108]</sup><sup>109</sup>

§ 4. The public broadcaster of the Flemish Community and the providers of linear broadcasting services will notify the Flemish Regulator for the Media which public service announcements they are already broadcasting free of charge.

§ 5. The regional and private linear broadcasters can broadcast advertorials that are not taken into account in the calculation of the percentages referred to in § 2 of this article, on condition that these advertorials comply with all the provisions of this chapter.

Advertorials are commercial communication that last longer than advertisements, as the emphasis is on the editorial and informative content.

## Article 82

§ 1. Linear television broadcasters can broadcast teleshopping programs subject to the following conditions:

1° teleshopping programs have to be designated as such using visual and acoustic flags;

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<sup>108</sup> Replaced by the act of 08 May 2020, takes effect on 08 May 2020

<sup>109</sup> Replaced by the act of 19 March 2021

2° teleshopping programs must be distinguishable from editorial content;

3° teleshopping programs without interruption should last at least 15 minutes;

4° no teleshopping programs can be broadcast in the immediate proximity of children's programs. Immediate proximity means a period of fifteen minutes before and after children's programs.

§ 2. Articles 81, 154 and 155 do not apply to linear television broadcasters that are exclusively dedicated to advertising and teleshopping and to linear television broadcasters that are exclusively dedicated to self-promotion.

[§ 3. It is forbidden to broadcast phone-in quiz programs.

A phone-in quiz program is a television program that primarily consists of providing games in which use is made of series of numbers from the Belgian or a foreign telephone numbering plan and for which it is allowed to charge the caller payment for the content as well as the price of communication.]<sup>110</sup>

#### Article 83

Advertising for alcoholic beverages may not be broadcast in the ad slot just before or after children's programs.

#### Article 84

Teleshopping with regard to medicinal products for human use, for which a licence is needed to market them, and teleshopping as regards medical treatments for human use are prohibited.

[Teleshopping programs with regard to services that make use of paranormal means are forbidden.]<sup>111</sup>

This article also applies to teletext.

### SUBSECTION II

#### Radio advertising

#### Article 85

The provisions in this subsection are applicable to linear radio services.

#### Article 86

§ 1. Radio advertising, excluding self-promotion, should be clearly identifiable and should be easy to differentiate from editorial content. Radio advertising has to be acoustically flagged in order to differentiate it from other program components.

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<sup>110</sup> Added by the act of 13 July 2012

<sup>111</sup> Inserted by the act of 13 July 2012



§ 2. Isolated radio ads remain an exception. One isolated radio ad can be broadcast per broadcasting program per day.

In addition, isolated radio ads are also permitted :

1° during the broadcasts of sport events;

2° when a long ad, of at least two minutes, is broadcast;

3° when a broadcaster has not succeeded in selling more than one ad for a specific advertising slot, due to a lack of interest from customers.

#### Article 87

Radio programs can be interrupted for advertising. The broadcaster has to take into account the natural breaks in programming as well as the duration and nature of the program and the rights of the holders of the rights may not be violated.

#### Article 88

Broadcasts of religious services, devotional and philosophical programs and news programs may not be interrupted by advertising.

#### Article 89

Radio advertising for alcoholic beverages may not be broadcast in the ad slot just before or after children's programs.

### SUBSECTION III

#### Sponsorship

#### Article 90

The provisions of this subsection are applicable to television services and to teletext, excluding Article 196, which also applies to radio services.

#### Article 91

Sponsored broadcasting services and programs shall meet the following requirements:

1° the content, and in the case of linear broadcasts, the programming shall never be influenced as such by the sponsor that the responsibility and the editorial independence of the broadcaster are affected;

2° they will not directly encourage listeners or viewers to buy or lease goods or services, specifically by promoting these goods or services;

3° the viewers and listeners will be clearly informed of the existence of a sponsorship agreement. Sponsored programs or teletext pages will be flagged as such, by mentioning the

name and/or the logo and/or another distinctive sign thereof, such as a reference to its product(s) or service(s) or a flag, at the beginning, during, and/or the end of the program, program component or teletext pages.

If the sponsors are mentioned in the announcing ads, this will be done in accordance with the provisions of the first paragraph, 2° and 3°.

#### Article 92

References to sponsorship on the VRT may feature solely the name of the sponsor, the trade name, the logo, the product, the name of the product, the service or name of the service. Sound and/or visual flags of the sponsor or that are related to the sponsor are allowed, as well as image-supporting slogans of the sponsor or the latter's products or services.

Sponsorship mentions may only be inserted at the beginning or the end of the program or program component. The reference may be animated and may be no longer than five seconds per sponsor and 10 seconds in total. No reference to sponsorship may be made within a period of five minutes before and after children's programs broadcast on the television broadcaster of the Flemish Community.

During sports competitions the sponsors may be mentioned when there is an indication of the time or the score is shown.

#### Article 93

Broadcasting services and programs may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes[, electronic cigarettes and refill containers]<sup>112</sup> and other tobacco products.

#### Article 94

Children's programs may not be sponsored by companies whose principal activity is the manufacture or sale of alcoholic beverages.

#### Article 95

For the sponsorship of programs by companies whose activities comprise the production or sale of medicinal products and medical treatments, the name or image of the company may be recommended, but no specific medicinal products or medical treatments which are available only on doctor's prescription in Belgium may be recommended.

#### Article 96

News and political affairs programs may not be sponsored.

The same applies to teletext pages with news and political information.

Traffic announcements, weather bulletins or predictions and stock exchange news are not considered forms of programs as referred to in the first section, provided they are clearly

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<sup>112</sup> Added by the act of 19 March 2021

isolated from the news program.

#### Article 97

It is prohibited to mention or show a sponsor's logo during children's programs or on teletext pages aimed at children.

#### SUBSECTION IV

##### Product placement

#### Article 98

The provisions in this subsection are applicable to television services.

[Article 98/1. The provisions of this subsection are only applicable to programs which have been produced after the commencement of this Act.]<sup>113</sup>

#### Article 99

[Product placement shall be prohibited in:

- 1° news and current affairs programs;
- 2° consumer affairs programs;
- 3° religious programs;
- 4° children's programs.]<sup>114</sup>

#### Article 100

§ 1. Programs that contain product placement shall meet at least all of the following requirements:

[1° the content and organisation within a schedule, in the case of linear television broadcasts, or within a catalogue in the case of non-linear television broadcasts, shall under no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster;]<sup>115</sup>

2° they shall not encourage the viewer to purchase or lease goods or services, specifically by recommending these products or services;

3° the product or the service in question does not benefit from undue prominence;

4° if the program in question is produced or ordered by the broadcaster or by an enterprise associated with it, the viewers will be clearly informed of the presence of product placement. The program shall be flagged in a suitable manner, at the beginning and at the end, or if it is

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<sup>113</sup> Inserted by the act of 19 March 2021

<sup>114</sup> Replaced by the act of 19 March 2021

<sup>115</sup> Replaced by the act of 19 March 2021

repeated after an ad break, in order to avoid any confusion on the part of the viewers. To this end, the Flemish Government can lay down further rules.

[§ 2...] <sup>116</sup>

#### Article 101

In any event programs shall not contain product placement of:

[1° cigarettes and other tobacco products, as well as electronic cigarettes and refill containers or undertakings whose principal activity is the manufacture or sale of these products;] <sup>117</sup>

2° specific medicinal products or medical treatments, which are only available on prescription in Belgium.

### CHAPTER V

#### Right of reply and right of communication

#### Article 102

The provisions of this chapter apply to linear and non-linear broadcasting services and to teletext.

### SECTION I

#### Right of reply

#### Article 103

Everyone has a right to information via the radio and television.

#### Article 104

§ 1. Everyone has a right of reply with regard to radio and television services, exercised as provided in this Act.

§ 2. Without prejudice to the other legal means, every natural or legal person whose lawful interests, e.g. their standing and reputation, have been adversely affected by an incorrect comment during the broadcasting of a program of a linear or non-linear broadcaster, has the right to submit a request to integrate a reply free of charge.

The petitioner, referred to in the first section, can exercise the right of reply with regard to different episodes of a program which form part of a series, in one reply.

However, no reply has to be included if one of the persons referred to in Article 106, § 1, has voluntarily made a satisfactory rectification or if the petitioner has already been granted the right of reply during the broadcast. If the petitioner, referred to in the first section, does not

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<sup>116</sup> Lifted by the act of 19 March 2021

<sup>117</sup> Replaced by the act of 19 March 2021

consider this correction to be satisfactory and compliant with the conditions for a right of reply, he or she can make use of his right of reply.

§ 3. If the person referred to in § 2 has died, the right to request a recording free of charge to submit a reply, passes to any relatives in a direct line and to the spouse or the de facto or legally cohabiting partner, or in the absence of these, to the nearest relatives. The above right is always carried out once and by the most prepared party amongst them. If the period provided in Article 105 is current on the day of the death of the person referred to in § 2, paragraph 1, the persons to whom this right has passed only have this right for the remaining part of that period.

#### Article 105

The request referred to in Article 104 is submitted in writing and sent within a period of one month.

If the right of reply pertains to a program of a linear broadcasting service, this term will start to run on the day of the first broadcast.

If the right of reply pertains to a program of a non-linear broadcasting service, this term will start to run on the first day that the program can be requested by the user.

As an exception to the third section and for programs of non-linear broadcasting services, which have already been previously divided in a linear manner, the term starts to run from the moment of the first linear broadcast.

#### Article 106

§ 1. The request referred to in Article 1 is sent to the editor-in-chief or the final editor of the program or to any person who can have the reply recorded.

At the request of the petitioner, the broadcaster shall immediately provide the necessary information to identify the persons referred to in paragraph 1.

§ 2. On penalty of inadmissibility, the request contains:

1° all precise information on the grounds of which the identity of the broadcaster, the program in question and the information to which the right of reply pertains, can be determined;

2° proof that all the conditions mentioned in Article 104 have been met;

3° for natural persons, the identity, the place of residence of the petitioner; for legal entities, the name and office of the petitioner, and the capacity of the person signing the request; for de facto organisations, the name and place of residence of the petitioner and the capacity of the person signing the request;

4° the signature of the petitioner, or for legal entities or de facto associations, the signature of the person acting in their name;

5° the reply.

#### Article 107

The text of the reply is in the same language as the information that gave rise to the request.

The reply must be directly related to the information which gave rise to the request.

The reply may not be insulting, nor in conflict with the law or morality, and unless it is strictly necessary, may not involve any third party in the case.

#### Article 108

The duration of the reply is limited to what is strictly necessary to respond to the information which gave rise to the reply. It must be possible to read it in at most three minutes or consist of at most 4,500 typographical characters.

#### Article 109

§ 1. If the right of reply pertains to a program of a linear broadcasting service, the reply will be included at the latest in the next broadcast of the same program after a term of two working days, not including Sundays and public holidays, which starts on the day on which one of the persons, mentioned in article 106, § 1, receives the reply.

If no broadcast of the program is planned within fourteen days after receiving the request, the reply must be broadcast within that period at a time that is accessible to the public.

If the right of reply pertains to a program of a non-linear broadcasting service, the answer will be appended to the program concerned, after a term of two working days, not including Sundays and public holidays, which starts on the day that one of the persons, mentioned in article 106, § 1, receives the reply.

The petitioner in any event does not have access to the technical installations used by the broadcaster.

§ 2. The reply must be recorded in its entirety, without insertions, in the same way, and in circumstances which correspond as far as possible to those in which the information which gave rise to the request was disseminated.

§ 3. If there is a response or comment accompanying the reply, the person who has requested a right of reply, can demand a new right of reply in accordance with the conditions of this Act.

#### Article 110

§ 1. The petitioner is informed by registered letter within four working days, starting on the day on which one of the persons referred to in Article 105, § 1 receives the reply, and at the latest on the day on which the insert must take place in accordance with Article 109, of a rejection of a request to include a reply free of charge.

The registered letter referred to in paragraph 1 accurately states the reasons for the refusal and the provisions of this Act which were not observed.

§ 2. One of the persons referred to in Article 106, § 1 can formulate a counter-proposal in the same way within a period determined in § 1.

If the petitioner does not respond to the counter-proposal within fifteen calendar days, the latter is deemed to have been accepted.

A counter-proposal sent by mail by registered letter suspends the obligation to include a reply until the petitioner rejects or accepts the counter-proposal.

§ 2. Including a reply too late, if there has been no rejection or counter proposal in accordance with § 1 and § 2, gives a right to compensation for damages suffered to be determined by the court.

#### Article 111

Without prejudice to the possibility available to the parties, to present the dispute to a competent organisation of the sector, any disputes arising from this title fall under the exclusive competence of the Court of First Instance which is in session, in a hearing in interlocutory proceedings.

The petitioner must present the case to the president of the Court of First Instance within one month, from the date on which the reply had to be included, from the date on which the rejection of the first recording was notified to the person who signed the petition, from the date on which the counter-proposal was rejected or from the date on which a recording was made which does not correspond to the provisions of this Act.

If the president of the Court of First Instance orders that a reply must be included, it decides on the merits of the case and in the last instance.

If the reply has not been included on the date of the decision, the court orders the recording within the period and in the way which it determines, where appropriate on penalty of a fine.

The president of the Court of First Instance can comply with the proposals of the parties which are aimed at modifying the content of the reply.

#### Article 112

The persons referred to in Article 106, § 1 keep the carriers which contain the disseminated information, as long as a request to include a right of reply can be legally submitted and where appropriate, until the dispute has been definitively settled.

The persons referred to in Article 106, § 1 keep the carrier which contains the right of reply for thirty calendar days, starting from the date on which the reply was included and where appropriate, until the dispute has been definitively settled.

## SECTION II

## Right of communication

### Article 113

§ 1. Everyone has a right of communication with regard to radio and television, which is exercised as provided in this Act.

§ 2. Without prejudice to the other legal remedies, every natural person or legal person who has been named as a suspect, or has been accused by name in a program of a broadcaster, has been shown in a recognizable way or has been implicitly indicated, has the right to request a recording of a right of communication, free of charge.

However, no communication has to be recorded if one of the persons referred to in Article 116, § 1 has voluntarily made a satisfactory communication, as an exception to paragraph 1. If the petitioner does not consider this communication to be satisfactory, he can make use of his right of communication.

§ 3. If the person referred to in § 2 has died, the right to submit a request for recording of a communication free of charge passes to any nearest relatives in a direct line and to the spouse or the de facto or legally cohabiting partner, or in the absence of these to the nearest relatives. This right can only be exercised once, by the most prepared party. If the period provided in Article 115 is current on the day of the death of the person referred to in § 2, the persons to whom this right has passed only have this right for the remaining part of that period.

### Article 114

The text of the communication is in the same language as the information that gave rise to the request and exclusively contains the following information:

- 1° the identity of the person, mentioned in article 113, § 2;
- 2° the reference to the communication, mentioned in article 113, § 2, on the grounds of which the right of communication can be demanded;
- 3° the decision to discharge or acquit the petitioner, the date of the decision and the decision-making court;
- 4° the notion that no defence, no appeal or cassation is possible against the aforementioned decision.

If the discharge was obtained as a result of the expiry of the criminal proceedings, there is no right of communication.

### Article 115

The request, referred to in article 113, is made in writing and sent within a term of three months, counting from the day on which the decision to discharge or acquit is no longer susceptible to opposition, an appeal or cassation.

### Article 116



§ 1. The request referred to in Article 113 is sent to the editor-in-chief or the final editor of the program or to any person who can have the reply recorded.

At the request of the petitioner, the broadcaster will immediately provide the correct personal data of the person referred to in the first paragraph.

§ 2. On penalty of inadmissibility, the request contains:

1° all the precise information on the grounds of which the identity of the linear broadcaster, the program concerned and the information to which the request of inclusion of the right to communication pertains, can be established;

2° for natural persons, the identity, the place of residence of the petitioner; for legal entities, the name and office of the petitioner and the capacity of the person signing the request;

3° the signature of the petitioner; or for legal entities, of the person acting on their behalf;

4° the information, mentioned in Article 114.

The proof of the decision to discontinue criminal proceedings or to acquit the petitioner, as well as a declaration of the judicial authorities showing that no appeal has been lodged against that decision and that it is no longer eligible for opposition, appeal or cassation, must be appended.

§ 3. If the right of reply pertains to a program of a linear broadcasting service, the answer will be included at the latest in the next broadcast of the same program after a term of two free working days, not including Sundays and public holidays, which starts on the day that one of the persons, mentioned in paragraph 1, receives the reply.

If no broadcast of the program is planned within fourteen calendar days after receiving the request, the communication must be broadcast within this period at a time accessible to the public.

If the right of communication pertains to a program of a non-linear broadcasting service, the answer will be appended to the program concerned, after a term of two free working days, not including Sundays and public holidays, which starts on the day that one of the persons, mentioned in § 1, receives the reply.

## Article 117

The periods laid down in this Act, with the exception of those which are referred to in Articles 109 and 115, are calculated in accordance with Article 52, paragraph 1, Articles 53 and 54 of the Judicial Code.

## CHAPTER VI

### Right to free information gathering and short news bulletins

Article 118. Each linear broadcaster of or accredited by the Flemish Community or which has registered with the Flemish Regulator for the Media is entitled to free information gathering. This right entails:

1° free access to events for which exclusive broadcasting rights have been granted, insofar as the event takes place in the Flemish-speaking region or in the bilingual Brussels Capital Region, insofar as the body which is organising the event in the Brussels Capital Region can be considered as exclusive part of the Flemish Community due to its activities;

2° the right to record the events, insofar as the events for which exclusive broadcasting rights have been granted take place in the Flemish-speaking region or in the bilingual Brussels-Capital Region, insofar as the body organising the event in the Brussels-Capital Region can be considered as an exclusive part of the Flemish Community due to its activities;

3° the right to short news reports.

With the application of the provisions of this Act, the right to gather information freely applies to linear broadcasting services which fall under the competence of the other communities and the other Member States of the European Union.

#### Article 119

The organizer can restrict the right to free access and recording only in exceptional cases and exclusively for reasons of safety and to prevent nuisance with regard to the duration of the event. In that case, the organizer must give priority to the providers of linear broadcasting services, which have been granted exclusive broadcasting rights. If no providers of linear broadcasting services have acquired exclusive broadcasting rights, precedence should be given to the broadcaster of the Flemish Community or to the providers of linear broadcasting services, as mentioned in Article 158, 2°.

#### Article 120

Short news bulletins are permitted only in news programs and in current affairs programs which are regularly programd.

The secondary linear broadcaster shall determine the content of short news reports autonomously.

#### Article 121

The duration of the brief report is limited to the time that is needed to broadcast the necessary information about the event and may not contain more than three minutes in total of the sound and/or images of the event.

For competitions, the brief report of a competition day may never be longer than six minutes per sports discipline within a news item. For current affairs programs, the duration may not be longer than fifteen minutes. Specific terms and conditions may be specified by the Flemish Government.

#### Article 122

§ 1. The secondary linear broadcaster in principle has the right to make its own recordings with respect to the material priority of the broadcasters which have acquired exclusive broadcasting rights.

For sports events, this right is limited to making recordings on the margins of the event. This restriction does not apply however if holders of exclusive rights violate the right, as mentioned in § 2, first paragraph. If the holders of exclusive rights do not exercise their exclusive broadcasting right for an event, then the secondary linear broadcasters can record free coverage of the event.

§ 2. The secondary linear broadcaster has the right to make use of the recordings and/or signals of the holders of exclusive rights, in return for fair payment, with a view to filing short news reports.

For a brief report in news programs, the payment is made on the basis of the technical costs incurred. For a short report in a current affairs program, it is also possible to take into account the broadcasting rights.

§ 3. When a secondary linear broadcaster takes over the signal and/or the recordings, it is free to choose the fragments of sounds/images for the brief report. As regards the sounds with fragments of images, only environmental sound is transmitted.

#### Article 123

In the case of taking over the signal and/or the recordings, the secondary broadcaster must visibly present the logo of the holder of the exclusive rights during the brief report as an acknowledgement of the source.

#### Article 124

§ 1. In the case a secondary linear broadcaster takes over the signal and/or the recordings of the holder of exclusive rights, the secondary linear broadcaster may present the brief report as soon as the holders of the exclusive rights have broadcast the event wholly or partially the first time, whether or not this was broadcast directly.

If the secondary linear broadcaster has made the recordings itself, it is free to choose the time of broadcasting.

§ 2. The short news reports may not be broadcast separate from the actual event, unless there is a direct relation between its content and another current event.

The short news reports may be rebroadcast in overview programs.

§ 3. The short news reports may be preserved in the archives, but may only be re-broadcast subject to the conditions as mentioned in paragraph 2.

§ 4. The linear broadcaster can offer the same programs, in which short news reports are integrated subject to the conditions outlined in this chapter, and which it has broadcast, on demand.

#### Article 125

On the basis of mutual consultation, the parties concerned may deviate from the provisions of Articles 121 through 124.

## Article 126

The provisions of this chapter do not apply to the exclusivity contracts concluded before 1 January 1998.

## TITLE III

### Radio services

#### CHAPTER I

##### Private linear radio broadcasters

#### SECTION I

##### Common provisions

## Article 127

Linear radio broadcasters belong to one of the following categories:

1° national radio broadcasters;

[2° regional radio broadcasters;]<sup>118</sup>

[2°/1 network radio broadcasters;]<sup>119</sup>

3° local radio broadcasters;

4° other radio broadcasters.

## Article 128

Under the conditions of this chapter, linear radio broadcasters can be accredited by the Flemish Government or must register with the Flemish Regulator for the Media.

The following radio broadcaster can apply for accreditation, as mentioned in section one:

1° national radio broadcasters;

[2° regional radio broadcasters;]<sup>120</sup>

[2°/1 network radio broadcasters;]<sup>121</sup>

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<sup>118</sup> Lifted by the act of 12 February 2021. Comes into force on 1 January 2023

<sup>119</sup> Inserted by the act of 23 December 2016(2)

<sup>120</sup> Lifted by the act of 12 February 2021. Comes into force on 1 January 2023

<sup>121</sup> Inserted by the act of 23 December 2016(2)

3° local radio broadcasters..

Article 129

Linear radio broadcasters have to broadcast in Dutch. The Flemish Government may authorise exceptions to this.

The programs of the linear radio broadcasters come about under their own responsibility.

Article 130

The linear radio broadcasters have to be independent of a political party.

[Article 131

Subject to the provisions of article 143/2 and 145, news programs of linear radio broadcasters are produced by their own editorial staff under the direction and responsibility of an editor-in-chief and the editorial independence is guaranteed and determined in an editorial statute.]<sup>122</sup>

## SECTION II

[Transmission through electronic communications networks.]<sup>123</sup>

### SUBSECTION I

General provisions

Article 132

National, [regional]<sup>124</sup> [, network]<sup>125</sup> and local radio broadcasters are accredited by the Flemish Government.

National, [regional]<sup>126</sup> [, network]<sup>127</sup> and local radio broadcasters have one or more FM or [...] <sup>128</sup> frequencies at their disposal.

[Article 133

§1. National, [regional,]<sup>129</sup> network and local radio broadcasters broadcast within the broadcasting area allocated to them in FM.

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<sup>122</sup> Replaced by the act of 23 December 2016(2)

<sup>123</sup> Replaced by the act of 23 December 2016(2)

<sup>124</sup> Lifted by the act of 12 February 2021. Comes into force on 1 January 2023

<sup>125</sup> Inserted by the act of 23 December 2016(2)

<sup>126</sup> Lifted by the act of 12 February 2021. Comes into force on 1 January 2023

<sup>127</sup> Inserted by the act of 23 December 2016(2)

<sup>128</sup> Lifted by the act of 23 December 2016(2)

<sup>129</sup> Lifted by the act of 12 February 2021. Comes into force on 1 January 2023

The broadcasting programs of national, [regional,]<sup>130</sup> network and local radio broadcasters can be transmitted through cable broadcasting networks, through radio broadcasting networks, through satellite broadcast networks or through the internet.

[The national and regional radio broadcasters which don't transmit their broadcasts on their own initiative through radio broadcasting networks that are intended for the supply of free to air radio broadcasts, are obliged to do so not later than 1 September 2018.]<sup>131</sup>

[The network radio broadcasting organizations broadcast their broadcasting programs via ether broadcasting networks intended for the provision of freely received radio broadcasting programs by 1 September 2019 at the latest.]<sup>132</sup><sup>133</sup>

The broadcasts of the national [and regional]<sup>134</sup> radio broadcasters in FM will be stopped.

The Flemish Government determines the date the FM broadcasts will be stopped and also the modalities. That date depends on a two yearly monitoring report which will examine the evolution of the growth rate of the overall digital radio listening, the progression of DAB+ and the results of the consultations within the sector.

§2. The Flemish Government draws up the FM frequency plan, approves it and determines how many national, [regional,]<sup>135</sup> network and local radio broadcasters can be accredited. Based on those frequency plans, the Flemish Government grants accreditation. [The intention to make amendments to the FM frequency plan, to the authorisations and to the conditions and procedures relating to the acquisition or extension of frequency usage rights as provided for in this section, shall be published in the Belgian Official Gazette. Interested parties, including users and consumers, may, prior to the decision on such amendments, express their views on those amendments during a consultation procedure lasting at least four weeks and organised in the manner and by the competent service designated by the Flemish Government.]<sup>136</sup>

The Flemish Regulator for the Media grants FM broadcasting licences to accredited national, [regional,]<sup>137</sup> network or local radio broadcasters.

The Flemish Regulator for the Media can oblige the accredited national, [regional,]<sup>138</sup> network and local radio broadcasters, with a view to optimizing the broadcasting area, to move their FM transmission installation or use a shared transmission installation.]<sup>139</sup>

[[Article 134

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<sup>130</sup> Lifted by the act of 12 February 2021. Comes into force on 1 January 2023

<sup>131</sup> Replaced by the act of 12.02.2021 by 'The national radio broadcasting organisations transmit their broadcasting programmes via terrestrial broadcasting networks intended to provide free-to-air radio broadcasting programmes.' Comes into force on 1 January 2023

<sup>132</sup> Replaced by the act of 29.06.2018

<sup>133</sup> Inserted by the act of 23.12.2016(2)

<sup>134</sup> Lifted by the act of 12.02.2021. Comes into force on 01.01.2023

<sup>135</sup> Lifted by the act of 12.02.2021. Comes into force on 01.01.2023

<sup>136</sup> Added by the act of 02.07.2021

<sup>137</sup> Lifted by the act of 12.02.2021. Comes into force on 01.01.2023

<sup>138</sup> Lifted by the act of 12.02.2021. Comes into force on 01.01.2023

<sup>139</sup> Replaced by the act of 23 December 2016(2)

§1. The broadcasting accreditations and broadcasting licences of the national radio broadcasting organisations and the de jure national radio broadcasting organisations existing on the date this article enters into force, shall expire on 31 December 2022.

New accreditations for the national radio broadcasting organisations shall be granted with effect from 1 January 2023 for five years. These accreditations can be extended for a period of up to three years. A request for extension shall be submitted in accordance with article 219, at the latest one year before the current accreditation period expires.

If the Flemish Government decides not to extend the accreditation or to extend it for a period of less than three years, it shall notify the applicant by registered letter addressed to the registered office at least six months before the expiry of the accreditation period. The decision whether or not to grant the extension and the duration of the possible extension shall be motivated on the basis of the abolition of FM broadcasting, as referred to in article 133, § 1, fifth and sixth paragraph. If the date of the abolition of FM broadcasts falls within the period of possible extension of the accreditation, the accreditation period may be shortened to less than three years in accordance with the date of the abolition of the FM broadcasts. The Flemish Government shall determine the more detailed conditions and modalities.

§2. The accreditations for the network radio broadcasting organisations and the local radio broadcasting organisations that were obtained in the period between 1 January 2018 and 31 December 2019, are granted for nine years as of the date specified in the accreditation decision.

§3. Upon termination of the activities of a national, network or local radio broadcasting organisation, the accreditation and the broadcasting licence shall expire de jure.

For the frequency package of the national, network or local radio broadcasting organisation of which the accreditation and the broadcasting licence have expired de jure, accreditations may again be granted in accordance with the provisions of this section. In that case, they shall be granted only for the remaining duration of the initial accreditation period.

§4. If the date of the abolition of FM broadcasts set by the Flemish Government in accordance with Article 133, § 1, sixth paragraph, falls before the remaining duration of the accreditation period is expired, the accreditation shall only be granted until the date of such abolition by way of derogation from §3, second paragraph, second sentence.

If the date of the abolition of FM broadcasts set by the Flemish Government is determined before the end of the initial accreditation period, but falls no later than three years after the end of the initial accreditation period, as referred to in § 3, second paragraph, or the first paragraph, the Flemish Government may extend the granted accreditation until that time. The Flemish Government shall determine the further conditions and modalities.

§5. The Flemish Government may decide, notwithstanding §§ 3 and 4, to reallocate FM frequencies which have become available among existing accreditations in order to optimise the reception of those accreditations, as long as the decision to abolish FM broadcasting in accordance with article 133, §1, sixth paragraph, has not been taken. When the date of the abolition of FM broadcasts has been determined, the Flemish Government may decide not to redistribute the frequencies or not to reissue them. The Flemish Government shall determine the further conditions and modalities.

§6. If the national, network or local radio broadcasting organisation still doesn't broadcast one year after the starting date of the accreditation, by means of at least half of the granted frequencies, the Flemish Regulator for the Media may revoke the recognition de jure.]<sup>140]</sup><sup>141</sup>

[Art. 134/1. The broadcast of radio programs, irrespective of their length or the time of broadcast, by a national, [regional,]<sup>142</sup> network or local radio broadcaster, which are identical with radio programs of the radio broadcaster of the Flemish Community or of other national, [regional,]<sup>143</sup> network and local radio broadcasters is prohibited. Each other form of structured uniformity in the programming policy is also prohibited.

Contrary to the first paragraph, national, [regional,]<sup>144</sup> network or local radio broadcasters can cooperate with the radio broadcaster of the Flemish Community or with other national, [regional,]<sup>145</sup> network or local radio broadcasters for the purpose of coordinating one-off comprehensive activities such as charity campaigns, or at the occasion of exceptional or important events. The broadcast of identical radio programs and structured uniformity in the programming policy are in this case allowed.

Without prejudice to the application of the first paragraph, the national, [regional,]<sup>146</sup> network and local radio broadcasters are allowed to broadcast uncoupled radio advertising in the same broadcasting program.]<sup>147</sup>

## Article 135

[The transmission installations of the national, [regional,]<sup>148</sup> network and local radio broadcasters are in the Dutch-speaking region or in the bilingual Brussels-Capital Region and in the broadcasting area of the national, [regional,]<sup>149</sup> network and local radio broadcaster. It is authorized to move the transmission installations, when this can be incorporated in the frequency plan and after the amendment of the broadcasting licence has been approved by the Flemish Regulator for the Media.

The national, [regional,]<sup>150</sup> network and local radio broadcasters use technical equipment that complies with the legal regulations and the regulations under any Act, and comply with the provisions of the broadcasting licence. They accept the examination of their operation on site by the appointed officials.]<sup>151</sup>

## Article 136

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<sup>140</sup> Replaced by the act of 23 December 2016(2)

<sup>141</sup> Replaced by the act of 12.02.2021

<sup>142</sup> Lifted by the act of 12.02.201. Comes into force on 01.01.2023

<sup>143</sup> Lifted by the act of 12.02.201. Comes into force on 01.01.2023

<sup>144</sup> Lifted by the act of 12.02.201. Comes into force on 01.01.2023

<sup>145</sup> Lifted by the act of 12.02.201. Comes into force on 01.01.2023

<sup>146</sup> Lifted by the act of 12.02.201. Comes into force on 01.01.2023

<sup>147</sup> Inserted by the act of 23 December 2016(2)

<sup>148</sup> Lifted by the act of 12.02.201. Comes into force on 01.01.2023

<sup>149</sup> Lifted by the act of 12.02.201. Comes into force on 01.01.2023

<sup>150</sup> Lifted by the act of 12.02.201. Comes into force on 01.01.2023

<sup>151</sup> Replaced by the act of 23 December 2016(2)



[The Flemish Government determines the procedure for submitting the applications for accreditation, and the periods for examining and dealing with the application file. [The applications for accreditation are submitted in Dutch.]<sup>152</sup> The Flemish Government can determine the subscription fee to be paid by the applicants, as well as a payment for retaining the accreditation and the broadcasting licence, including the financial guarantee to be provided.]<sup>153</sup> [Autorisations shall be granted on the basis of objective, transparent, pro-competitive, non-discriminatory and proportionate criteria.]<sup>154</sup>

## SUBSECTION II

### National radio broadcasters

#### Article 137

The national radio broadcasters are responsible for providing a diverse range of programs, in particular with regard to information and entertainment, for the benefit of the entire Flemish Community.

[...] <sup>155</sup>.

[...] <sup>156</sup>

#### Article 138

§ 1. The national radio broadcasters have to meet the following requirements to retain their accreditation:

1° the conditions, mentioned in articles 129, 130, 131 and 135;

2° the following conditions :

a) the national radio broadcasters are established in the form of a legal person. The legal entity's purpose is to make radio programs. The national radio broadcasters can carry out any activities which could directly or indirectly contribute to achieving their purpose, insofar as these activities coincide with or are related to the broadcasting activities. The members of the Board of Directors do not have any political mandate, and are not the director or manager of the public broadcaster or of any other legal person which manages a national radio broadcaster;

b) the legal entity, mentioned in item a), does not operate more than of the national radio broadcasters. Direct or indirect relations between national radio broadcasters do not entitle a company or legal entity to have a say over more than two national radio broadcasters;

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<sup>152</sup> Inserted by the act of 29.06.2018

<sup>153</sup> Replaced by the act of 23 December 2016(2)

<sup>154</sup> Added by the act of 02.07.2021

<sup>155</sup> Lifted by the act of 23 December 2016(2)

<sup>156</sup> Lifted by the act of 23 December 2016(2)

c) the national radio broadcasters broadcast a news program at least four times a day, which covers diverse subjects. News programs and information programs are provided by their own editorial team which consists mainly of accredited professional journalists. An editor-in-chief is responsible for the news programs;

d) a Dutch-language music offering has to be guaranteed in the program structure. The Flemish Government can lay down additional provisions to this end in an Act.

§ 2. The Flemish Government imposes additional qualification criteria and allocates a particular weight to each of these criteria.

The additional qualification criteria, mentioned in the first paragraph, pertain [at least]<sup>157</sup> to:

1° the programs offered and the broadcasting schedule, specifically the diversity of programming;

2° media experience;

3° the financial plan;

4° the business plan;

5° technical (transmission) infrastructure.

[6° the achievements, plans, intentions, and commitments regarding digital radio broadcasting via DAB+ and other forms of digital radio.]<sup>158</sup>

## Article 139

§ 1. After gaining accreditation and for the entire duration of the accreditation, the national radio broadcasters adhere to the tender they have submitted and comply with the basic conditions and the additional qualification criteria referred to in Article 138, in accordance with which the Flemish Government allocated the accreditation.

§ 2. The national radio broadcasters that wish to change data in the offer that they submitted after their accreditation, thus deviating from the basic conditions and the additional qualification criteria referred to in article 138, specifically as regards general programming, need to notify the Flemish Regulator for the Media of this. This notification is made in accordance with article 219.

Changes pertaining to information programs, the articles of association or the shareholder structure will be submitted to the Flemish Government for approval. In evaluating these changes the Flemish Government takes into account in particular the maintenance of the pluralist character and diversity of the radio landscape.

## [SUBSECTION III]

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<sup>157</sup> Inserted by the act of 12.02.2021

<sup>158</sup> Added by the act of 12.02.2021

## Regional radio broadcasters

### Article 140

The regional radio broadcasters are responsible for producing a variety of programs, in particular with regard to information from the region, cultural, sporting and other events in the region, and entertainment, with the aim of promoting communication amongst the population in their area and contributing to the general social and cultural development of the region. They broadcast for no more than one province.

The regional radio broadcasters can only work with the regional linear television broadcasters at the level of making programs, gathering information and attracting advertising.

### Article 141

§ 1. The regional radio broadcasters have to meet the following requirements to retain their accreditation:

1° the conditions, mentioned in articles 129, 130, 131 and 135;

2° the following conditions :

a) the regional radio broadcasters take the form of a legal person. The purpose of the legal person mainly consists of providing radio programs in the area allocated to it. The local radio companies can carry out any activities which directly or indirectly correspond to achieving their purpose; The members of the Board of Directors do not have a political mandate and are not the manager or director of the public broadcaster or of another legal person which manages a national or regional radio broadcaster;

b) the legal entity, mentioned in item a) does not exploit more than two private regional radio broadcasters. Direct or indirect relations between regional or national radio broadcasters do not result in a company or a legal entity having a say or being able to have a say over more than two regional or national radio broadcasters;

c) the regional radio broadcasters broadcast at least four news programs a day, which contain a diversity of subjects pertaining to the region. The news programs and information programs are provided by their own editorial team. An editor-in-chief is responsible for the news programs. For national and international news, the regional radio broadcasters can make use of an editorial team which provides sufficient guarantees with regard to ethical journalism, impartiality and editorial independence, on the basis of its editorial status.

§ 2. The Flemish Government imposes additional qualification criteria and allocates a particular weight to each of these criteria.

The additional qualification criteria, mentioned in the first paragraph, pertain to:

1° the programs offered and the broadcasting schedule, specifically the diversity of programming;

2° media experience, specifically the radio experience available among the participants in the legal entity;

3° the financial plan;

4° the business plan;

5° technical (transmission) infrastructure.

#### Article 142

§ 1. After gaining accreditation and for the entire duration of the accreditation, the regional radio broadcasters adhere to the tender submitted by them and to the basic conditions and the additional qualification criteria referred in Article 141, in accordance with which the Flemish Government allocated the accreditation.

§ 2. The regional radio broadcasters that wish to change data in the offer that they submitted after their accreditation, thus deviating from the basic conditions and the additional qualification criteria referred to in article 141, specifically as regards general programming, need to notify the Flemish Regulator for the Media of this. This notification is made in accordance with Article 219.

Changes pertaining to information programs, the articles of association or the shareholder structure will be submitted to the Flemish Government for approval. In evaluating these changes the Flemish Government takes into account in particular maintaining the pluralist character and diversity of the radio landscape.

#### Article 143

The regional radio broadcasters can operate independently or within a cooperative venture with other regional radio broadcasters.

A cooperative venture that consists of all regional radio broadcasters and takes the form of a legal person which complies with the conditions mentioned in article 138, §1, [is legally a national radio broadcasting organization.]<sup>159</sup>

From the date of accreditation by the Flemish Government as a national radio broadcaster, the provisions of subsection II of this chapter apply to this cooperative venture.

Contrary to article 134, first paragraph, the accreditation of the regional radio broadcasters which participate in this cooperative venture expires from the date of accreditation by the Flemish Government of the cooperative venture as a national radio broadcaster.

As they await a new transmission licence, granted by the Flemish Regulator for the Media, and contrary to article 193, §1, second paragraph, the regional radio broadcasters assign their transmission licence to the cooperative venture accredited as national radio broadcaster.]<sup>160</sup>

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<sup>159</sup> Replaced by the act of 13 July 2012

<sup>160</sup> Lifted by the act of 12.02.2021 Comes into force on 01.01.2023

[Subsection III/1. Network radio broadcasters]<sup>161</sup>

[Article 143/1.

The network radio broadcasters are responsible for offering programs within the broadcasting area allocated to them built up with listening time dedicated to one of the following themes, profiles or offers:

- 1° a generalist profile or music offering, including news programs and information;
- 2° a Dutch speaking and Flemish profile or music offering;
- 3° other profiles or music offering.

The Flemish Government accredits at least one network radio broadcaster whose program offering is built up with a Dutch-speaking and Flemish profile or music offering.]<sup>162</sup>

[Article 143/2.

§1. The network radio broadcasters have to meet the following requirements to retain their accreditation:

- 1° the conditions, mentioned in articles 129, 130, 131, 135 and 143/1;
- 2° the following basic conditions:

- a) the network radio broadcasters are established in the form of a legal person. The purpose of the legal person consists of providing radio programs. The network radio broadcasters can carry out all the activities that tie in directly or indirectly with the fulfilling of their purpose if these activities coincide with or are related to the broadcasting activities.

The members of the Board of Directors do not have any political mandate, and are not the director or manager of the public broadcaster or of any other legal person which manages a national, [regional,]<sup>163</sup> network or local radio broadcaster.

Direct or indirect relations between network radio broadcasters do not entitle a company or legal entity to have a say over more than two network radio broadcasters.

Direct or indirect relations between network radio broadcasters and national radio broadcasters do not entitle a company or legal entity to have a say over more than one network radio broadcaster and one national radio broadcaster;

- b) the network radio broadcaster, mentioned in article 143/1, first paragraph, 1°, broadcasts a news program at least four times a day which covers diverse subjects;
- c) the network radio broadcaster, mentioned in article 143/1, first paragraph, 2°, broadcasts a considerable part of its offering by completing the Dutch-speaking and Flemish profile or

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<sup>161</sup> Inserted by the act of 23 December 2016(2)

<sup>162</sup> Inserted by the act of 23 December 2016(2)

<sup>163</sup> Lifted by the act of 12.02.2021. Comes into force on 01.01.2023

music offering. The Flemish Government determines this part.

The network radio broadcaster, mentioned in article 143/1, first paragraph, 3°, broadcasts a considerable part of its offering by completing the specifically chosen profile or music offering. A part of this music offering consists of Flemish music productions;

- d) contrary to article 131, network radio broadcasters, as mentioned in article 143/1, first paragraph, 2° and 3°, which offer news programs without disposing of an own editorial team under the direction and responsibility of an editor-in-chief and from which the editorial independence is not guaranteed and laid down in an editorial statute, can cooperate with other editorial teams provided that this cooperation does not jeopardize the independence of the reporting and that the editorial team with whom there is a cooperation in its turn meets the conditions, mentioned in article 131;
- e) The network radio broadcasters provide the necessary information when they apply for an accreditation. The Flemish Government determines the content and modalities concerning this information.

§2. The Flemish Government imposes additional qualification criteria for accreditation and allocates a particular weight to each of these criteria.

The additional qualification criteria, mentioned in the first paragraph, pertain to:

1° the programs offered and the broadcasting schedule;

2° media experience;

3° the financial plan;

4° the business plan;

5° technical (transmission) infrastructure;

6° for the network radio broadcaster, mentioned in article 143/1, first paragraph, 1°, the fulfilling of the condition, mentioned in article 143/2, §1, 2°, b);

7° for the network radio broadcasters, mentioned in article 143/1, first paragraph, 2° and 3°, the fulfilling of the conditions, mentioned in article 143/2, §1, 2°, c).]<sup>164</sup>

[Article 143/3.

§1. After gaining accreditation and for the entire duration of the accreditation, the network radio broadcasters comply with the basic conditions, mentioned in article 143/1 and 143/2, §1, in accordance with which the Flemish Government has allocated the accreditation.

§2. After being accredited, the network radio broadcasters that wish to change data in the offer that they submitted thus deviating from the additional qualification criteria, mentioned in article 143/2, §2, 1°, specifically as regards the broadcasting schedule, and in article 143/2,

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<sup>164</sup> Inserted by the act of 23 December 2016(2)

§2, 3°, 4° and 5°, need to notify the Flemish Regulator for the Media. This notification is made in accordance with article 219.

Contrary to paragraph 1 and paragraph 2, first paragraph, [The Flemish Regulator for the Media will be informed about changes pertaining to the statutes or to the shareholder structure and they]<sup>165</sup> will be submitted to the Flemish Government for approval. In evaluating these changes the Flemish Government takes into account the maintenance of the pluralist character and diversity of the radio landscape.]<sup>166</sup>

#### SUBSECTION IV

##### Local radio broadcasters

###### [Article 144

The local radio broadcasters are responsible for producing a variety of programs, with the intention to be a verifying factor among the population or the target audience within the broadcasting area, based on a specific profile, the thematic content of the programs or a program offering targeting a specific audience. They broadcast for a region, a city, a part of a city, a municipality, a limited number of adjacent municipalities, or a particular target group and give information about the allocated broadcasting area.

Without prejudice to the other provisions of this Act, the Flemish Government designates a local radio broadcaster that targets specifically the Dutch-speaking inhabitants of Brussels within the bilingual Brussels-Capital Region and cooperates closely with the regional television broadcaster for the bilingual Brussels-Capital Region. The Flemish Government makes the frequency or frequencies which it needs available to that radio broadcaster.]<sup>167</sup>

###### [Article 145

The local radio broadcasters have to meet all the following requirements to retain their accreditation:

1° the conditions, mentioned in articles 129, 130, 131, 135 and 144;

2° the following basic conditions;

The local radio broadcasters are established in the form of a legal person.

The fulfilling purpose of the legal person mainly consists of providing radio programs. The local radio broadcasters can carry out all the activities that tie in directly or indirectly with the fulfilling of their purpose. Direct or indirect relations between local radio broadcasters are not allowed and do not entitle a company or legal entity to have a say over more than one radio broadcaster. Direct or indirect relations between local radio broadcasters on the one hand and

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<sup>165</sup> Replaced by the act of 29.06.2018

<sup>166</sup> Inserted by the act of 23 December 2016(2)

<sup>167</sup> Replaced by the act of 23 December 2016(2)

one or more national, [regional]<sup>168</sup> or network radio broadcasters on the other hand are not allowed neither and do not entitle a company or a legal entity to have a say over these radio broadcasters. A legal person exploiting a local radio broadcaster for the locality Brussels, can also exploit the [regional]<sup>169</sup> television broadcaster having the bilingual Brussels-Capital Region as its broadcasting area.

the legal person, mentioned in a), does not offer more than two radio broadcasting programs;

the local radio broadcasters, mentioned in article 144, broadcast a considerable part of the offering with a specific music profile, a thematic content of the program offering or a program offering targeting a specific audience;

contrary to article 131 local radio broadcasters which offer news programs without disposing of an own editorial team under the direction and responsibility of an editor-in-chief and from which the editorial independence is not guaranteed and laid down in an editorial statute, can cooperate with other editorial teams provided that this cooperation does not jeopardize the independence of the reporting and that the editorial team with whom there is a cooperation in its turn meets the conditions, mentioned in article 131;

the local radio broadcasters provide the necessary information when they apply for accreditation. The Flemish Government determines the content and the modalities concerning this information.]<sup>170</sup>

[Art. 146. §1. The Flemish Government imposes additional qualification criteria for accreditation and allocates a particular weight tot each of these criteria.

The additional qualification criteria, mentioned in the first paragraph, pertain to:

1° the programs offered and the broadcasting schedule, in particular the fulfilling of the task, mentioned in article 144 and 145, §1, 2°,c);

2° the financial plan;

3° technical (transmission) infrastructure.

§2. After gaining accreditation and for the entire duration of the accreditation, the local radio broadcasters comply with the basic conditions, mentioned in article 145, in accordance with which the Flemish Government allocated the accreditation.

After being accredited, the local radio broadcasters that wish to change data in the offer that they submitted, thus deviating from the additional qualification criteria, mentioned in article 146, §1, need to notify the Flemish Regulator for the Media. This notification is made in accordance with article 219.

[Contrary to the second paragraph, changes to the data stated in the offer submitted by the local broadcaster, which deviate from article 145, 2 °, c), may only be made after the second full calendar year following the date of accreditation. The local radio broadcaster will inform

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<sup>168</sup> Lifted by the act of 12.02.2021. Comes into force on 01.01.2023

<sup>169</sup> Lifted by the act of 12.02.2021. Comes into force on 01.01.2023

<sup>170</sup> Replaced by the act of 23 December 2016(2)



the Flemish Regulator for the Media accordingly. This notification is made in accordance with article 219.]<sup>171</sup>

Contrary to the [first, second and third]<sup>172</sup> paragraph, [The Flemish Regulator for the Media will be informed about changes pertaining to the statutes or to the shareholder structure and they] <sup>173</sup>will be submitted to the Flemish Government for approval. In evaluating these changes the Flemish Government takes into account the maintenance of the pluralist character and diversity of the radio landscape.]<sup>174</sup>

### SECTION III

#### Other radio broadcasters

##### Article 147

Private radio broadcasters, which [do not broadcast over analogue terrestrial radio broadcasting networks]<sup>175</sup> are referred to as other radio broadcasters and should notify the Flemish Regulator for the Media of this.

##### Article 148

[§ 1]<sup>176</sup>[The purpose of the broadcasters, mentioned in article 147, is to provide radio programs in order to make them available to the public and to deliver them via electronic communication networks, excluding analogue terrestrial radio broadcasting networks.]<sup>177</sup> They can carry out any activities which directly or indirectly correspond to achieving their purpose.

[§ 2..]<sup>178</sup>

##### Article 149

[§ 1. Anyone can offer radio services through a cable broadcasting network, a radio network, a satellite broadcasting network or the internet, under the conditions of this chapter, insofar as:

1° the entity offering such services has been established as a private legal person, or is a natural person which carries out a professional activity independently and falls under the competence of the Flemish Community. In the case of a private legal person the purpose is to provide radio services through a cable broadcasting network, a radio network, a satellite broadcasting network or the internet.

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<sup>171</sup> Inserted by the act of 29.06.2018

<sup>172</sup> Replaced by the act of 29.06.2018

<sup>173</sup> Replaced by the act of 29.06.2018

<sup>174</sup> Replaced by the act of 23 December 2016(2)

<sup>175</sup> Replaced by the act of 02.07.2021

<sup>176</sup> Inserted by the act of 25 April 2014(2)

<sup>177</sup> Replaced by the act of 02.07.2021

<sup>178</sup> Lifted by the act of 23 December 2016(2)

2° the entity offering such services meets the conditions, mentioned in articles 129, 130 and 131. ]<sup>179</sup>

§ 2. The Flemish Regulator for the Media has to be notified at least fourteen calendar days prior to the start of service of the fact that these services are being offered.

This notification is made in accordance with Article 219.

This notification must contain at least the following information: the place of broadcast, the place of establishment, the manner in which the program signal is distributed and the articles of association.

A new notification must be given for every individual new service.

The Flemish Regulator for the Media must be notified immediately of any subsequent change in this information, in particular any change in the Board of Directors or the management of the broadcaster.

[§3.The notification, mentioned in paragraph 2, is not required for accredited national, regional, network and local radio broadcasters, which transmit their programs or make them available through electronic communications networks other than analogue terrestrial radio broadcasting networks.]<sup>180</sup>

[§ 4..]<sup>181</sup>

[§ 5..]<sup>182</sup>

## CHAPTER II

### Private non-linear radio broadcasters

#### Article 150

[§ 1. Anyone can offer non-linear radio services, under the conditions of this chapter, insofar as the entity offering such services has been established as a private legal person, or is a natural person which carries out a professional activity independently and falls under the competence of the Flemish Community. In the case of a private legal person the purpose is to provide non-linear radio services. The legal person can carry out any activities which could directly or indirectly contribute to achieving its purpose.]<sup>183</sup>

§ 2. The Flemish Regulator for the Media has to be notified at least fourteen calendar days prior to the start of service of the fact that a non-linear radio service is being offered. This notification is made in accordance with Article 219. This notification must contain at least the

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<sup>179</sup> Replaced by the act of 19 March 2021

<sup>180</sup> Replaced by the act of 02.07.2021

<sup>181</sup> Lifted by the act of 23 December 2016(2)

<sup>182</sup> Lifted by the act of 23 December 2016(2)

<sup>183</sup> Replaced by the act of 19 March 2021

following information: the place of broadcast, the place of establishment, the manner in which the program signal is distributed and the articles of association.

§ 3. The Flemish Government will determine which other data has to be subsequently supplied in the notification and which later changes have to be notified to the Flemish Regulator for the Media.

## TITLE IV

Television services

### CHAPTER I

Provisions applying to all television services

[Section I. Television broadcasters falling within the competence of the Flemish Community.

Art. 150/1. § 1. Television broadcasters fall within the competence of the Flemish Community if they meet any of the following conditions:

1° they are established in the Dutch-language area;

2° they are established in the bilingual Brussels-Capital area and the activities exclusively fall within the Flemish Community.

§ 2. Television broadcasters are established in the Dutch-language area or in the bilingual Brussels-Capital area if they meet any of the following conditions:

1° their head offices are located in the Dutch-language area or in the bilingual Brussels-Capital area, where the editorial decisions are made;

2° a significant part of the television broadcasters' staff [involved in the pursuit of the program-related television service activity]<sup>184</sup> work in the Dutch-language area or in the bilingual Brussels-Capital area, where their head offices are located, while editorial decisions are made in another Member State of the European Union;

3° a significant part of the television broadcasters' staff [involved in the pursuit of the program-related television service activity]<sup>185</sup> work in the Dutch-language area or in the bilingual Brussels-Capital area, where editorial decisions are made, while their head offices are located in another Member State of the European Union;

4° their head offices are located in the Dutch-language area or in the bilingual Brussels-Capital area, where a significant part of the television broadcasters' staff [involved in the pursuit of the program-related television service activity]<sup>186</sup> work, while editorial decisions are made in another Member State of the European Union, where another significant part of the television broadcasters' staff work;

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<sup>184</sup> Inserted by the act of 19 March 2021

<sup>185</sup> Inserted by the act of 19 March 2021

<sup>186</sup> Inserted by the act of 19 March 2021

5° no significant part of the television broadcasters' staff [involved in the pursuit of the program-related television service activity]<sup>187</sup> work in the Dutch-language area, in the bilingual Brussels-Capital area or in another Member State of the European Union but the television broadcasters were the first to start offering television services in the Dutch-language area or in the bilingual Brussels-Capital area in accordance with Flemish Community law and the television broadcasters have a sustainable and real relationship with the economy of the Flemish Community;

6° a significant part of the television broadcasters' staff [involved in the pursuit of the program-related television service activity]<sup>188</sup> work in the Dutch-language area or in the bilingual Brussels-Capital area, where their head offices are located, while editorial decisions are made in another country that is not a Member State of the European Union;

7° a significant part of the television broadcasters' staff [involved in the pursuit of the program-related television service activity]<sup>189</sup> work in the Dutch-language area or in the bilingual Brussels-Capital area, where editorial decisions are made, while their head offices are located in another country that is not a Member State of the European Union.

§ 3. Any television broadcasters that meet none of the conditions referred to in paragraph 2 fall within the competence of the Flemish Community if they meet any of the following conditions:

1° they use a satellite up-link located in the Dutch-language area or a satellite up-link located in the bilingual Brussels-Capital area, which belongs exclusively to the Flemish Community;

2° they use satellite capacity falling within the competence of the Flemish Community although they do not use a satellite up-link located as referred to in point 1°.

§ 4. Any television broadcasters that meet none of the conditions mentioned in paragraph 2 or paragraph 3 fall within the competence of the Flemish Community if they are established in the Dutch-language area or in the bilingual Brussels-Capital area in accordance with Articles 49 to 55, inclusive, of the Treaty on the Functioning of the European Union [and the activities belonging exclusively to the Flemish Community]<sup>190</sup>.

[§4/1. Television broadcasters inform the Flemish Regulator for the Media about any changes that may affect the determination of jurisdiction in accordance with paragraphs 2 to 4. This notification is made in accordance with article 219.

§4/2. The Flemish Regulator for the Media shall establish and maintain an up-to-date list of the television broadcasters under its jurisdiction. This list indicates for each television broadcaster the criteria, mentioned in paragraphs 2 to 4, the jurisdiction of the Flemish Regulator for the Media is based. The Flemish Regulator for the Media shall communicate that list, including any updates thereto, to the European Commission.

§4/3. If the Flemish Regulator for the Media and the national regulatory authority or the national regulatory body of another Member State of the European Union do not agree on

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<sup>187</sup> Inserted by the act of 19 March 2021

<sup>188</sup> Inserted by the act of 19 March 2021

<sup>189</sup> Inserted by the act of 19 March 2021

<sup>190</sup> Added by the act of 19 March 2021

which Member State has jurisdiction over a television broadcaster in connection with procedures, mentioned in articles 40/1, 221 and 222, the Flemish Regulator for the Media shall bring the matter to the European Commission's attention without undue delay.]<sup>191</sup>

§ 5. This Act does not apply to television services intended exclusively for reception in countries that are not Member States of the European Union and that are not directly or indirectly received with standard consumer equipment by the public in the Dutch-language area or in the bilingual Brussels-Capital area or elsewhere in the European Union.]<sup>192</sup>

[SECTION [1/1] <sup>193</sup> Accessibility to television services for persons with disabilities]<sup>194</sup>

## Article 151

[§1. The public broadcaster of the Flemish Community and private television broadcasters shall make their programs continuously and progressively accessible to persons with disabilities through proportionate measures.

In order to make programs accessible to people with visual or hearing disabilities, subtitling, audio description, sign language and audio subtitling shall be used.

§2. Regional television broadcasters shall make their news programs accessible to people with a hearing disability on weekdays from 8:00 p.m. To this end, use shall be made of subtitling.

Private television broadcasters with an average market share of 2% that broadcast a main news program and have had an average market share of 2% for six consecutive months since the first broadcast must subtitle that news program. The main news program is the news program with the highest average number of viewers.

Private television broadcasters that start broadcasting a main news program but on the day of the first broadcast do not have a 2% market share, must subtitle that main news program within a term of 12 months commencing from the day that the private television broadcasters have had an average market share of 2% for 6 consecutive months.

Private television broadcasters that had a 2% market share on 1 January 2010 and still maintain 2 % market share when the Act of [...] amending the Act of 27 March 2009 on radio and television broadcasting, as regards the partial transposition of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, takes effect, and that broadcast news programs other than the main news, and current affairs programs, or that commence broadcasting news programs other than the main news and current affairs programs, must subtitle these news programs other than the main news and 90% of current affairs programs no later than 1 January 2013.

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<sup>191</sup> Inserted by the act of 19 March 2021

<sup>192</sup> Inserted by the act(1) of 17 January 2014

<sup>193</sup> Changed by the act(1) of 17 January 2014

<sup>194</sup> Replaced by the act of 19 March 2021

Private television broadcasters that commence broadcasting news programs other than the main news and current affairs programs, but on 1 January 2010 do not have an average market share of 2 %, must subtitle these news programs other than the main news and 90 % of current affairs programs within 36 months starting from the day that the private television broadcaster has a market share of 2 % and that during 6 consecutive months. That obligation does not apply to current affairs programs that are dedicated solely to sports coverage. The market share of a private television broadcaster is the share of a private broadcaster in the total audience share of the television broadcasting market within a given period.

§ 3. The Flemish Government imposes a time frame and quota for:

1° subtitling other than that mentioned in paragraph 2;

2° audio description;

3° sign language;

4° audio subtitling.

§4. The public broadcaster of the Flemish Community and private television broadcasters shall submit a report to the Flemish Regulator for the Media before 31 March of each year on the manner in which paragraphs 1, 2 and 3 were met during the preceding year, stating any action points. The Flemish Regulator for the Media shall publish those reports.

§5. The Flemish Government shall subsidise any technique making television services accessible. The Flemish Government shall lay down criteria for this purpose.

§6. Television broadcasters shall broadcast, as far as reasonably possible, emergency information, including public communications and announcements in natural disaster situations, in a manner which is accessible to persons with disabilities.

§7. The Flemish Regulator for the Media shall maintain an online point of contact for providing information and receiving complaints regarding this article. The online point of contact is easily accessible for persons with disabilities.]<sup>195</sup>] <sup>196</sup>

## SECTION II

The broadcast of cinematographic works

Article 152

Television service providers may not broadcast cinematographic works outside the periods agreed upon with the holders of rights.

## SECTION III

Events arrangement

Article 153

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<sup>195</sup> Replaced by the act of 13 July 2012

<sup>196</sup> Replaced by the act of 19 March 2021

§ 1. The Flemish Government draws up a list of events which are deemed to be of significant interest to citizens and which cannot for that reason be broadcast on an exclusive basis in such a way that a significant proportion of the public in the Flemish Community is not able to follow these events directly on television free of charge or in a postponed report [...] <sup>197</sup>.

[It is deemed that a significant share of the audience in the Flemish Community should be able to follow on television an event considered to be of considerable interest to society if:

1° the event is broadcast by a broadcaster that broadcasts in the Dutch language;

2° it concerns a television broadcaster that can be received by at least 90 % of the public without additional costs above the price of the basic subscription of a service provider.] <sup>198</sup>

[Television broadcasters that do not comply with the provisions of paragraph 2, 1° or 2°, and that acquire exclusive broadcasting rights to broadcast events which are deemed to be of significant interest to society in the Dutch-language area or in the bilingual Brussels-Capital area, may only exercise such rights if they can guarantee via agreements concluded that a significant part of the public in the Flemish Community will not be prevented from following these events on television, as described in paragraph 2.

Television broadcasters holding exclusive broadcasting rights may grant sub-licences to television broadcasters that meet the conditions specified in paragraph 2, 1° and 2°, at reasonable market prices and within terms that must be agreed by mutual consultation between the television broadcasters. If no television broadcasters who are prepared to take sub-licences under these conditions are found, the television broadcaster in question may yet make use of the broadcasting rights acquired, by way of derogation from the provisions in paragraph 2.] <sup>199</sup>

[§ 1/1. An event can be considered an event of considerable interest to society if at least two of the following conditions are satisfied:

1° the event has considerable general news value and elicits a broad interest from the general public;

2° the event takes place in the framework of an important international competition or is a competition in which the national team, a Belgian club team or one or more Belgian athletes take part;

3° the event is part of an important sports discipline and is of considerable cultural value in the Flemish Community;

4° the event generates high ratings in its category.

The Government of Flanders determines whether these events must be available in complete or partial direct reports, or whether they should be available in completely or partially postponed reports.] <sup>200</sup>

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<sup>197</sup> Cancelled by the act of 13 July 2012

<sup>198</sup> Replaced by the act of 13 July 2012

<sup>199</sup> Added by the act(1) of 17 January 2014

<sup>200</sup> Inserted by the act of 13 July 2012

§ 2. [The television broadcasters]<sup>201</sup> may not exercise the exclusive rights they have been granted in such a way that a significant part of the public in another Member State in the European Community is not able to follow the events designated by that other Member State on television free of charge in a complete or partial direct report, or, if necessary or appropriate for objective reasons of public interest, in completely or partially postponed reports, as determined by that other Member State.

[§ 3. In paragraphs 1 and 2, basic package from a service provider is understood to mean: the general or first package from broadcasting services that is offered by a service provider. This does not preclude additional costs for obtaining additional but necessary equipment, such as a decoder. An additional package from broadcasting services offering premium content, such as sport or film, which is offered by a service provider together with the basic package and for which the consumer must pay extra in addition to the price of the basic package, is not included in the basic package of a service provider.]<sup>202</sup>

## SECTION IV

### The promotion of European productions

#### Article 154

The television broadcaster of the Flemish Community and the private linear television broadcasters aim to reserve the major share of the time that is not reserved for information, sports, games, advertising, teletext and teleshopping for European productions.

A significant proportion of this must be devoted to Dutch-language European productions.

The Flemish Government can impose quota in implementation of paragraph 1 and paragraph 2.

#### Article 155

The television broadcaster of the Flemish Community and the private linear television broadcasters aim to reserve at least ten percent of the time that is not reserved for information, sports, games, advertising, teletext and teleshopping for European productions that have been created by independent producers, which have no ties with television broadcasters.

A significant proportion of these must be devoted to recent productions. These are productions which were broadcast within a period of five years after they were made.

Sufficient room must be provided for recent European Dutch-language productions.

The Flemish Government can impose quota in implementation of paragraphs 1, 2 and 3.

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<sup>201</sup> Replaced by the act(1) of 17 January 2014

<sup>202</sup> Added by the act of 13 July 2012



[Art. 155/1. With a view to ensuring pluralism in the media, freedom of expression and cultural diversity, the Flemish Government can lay down criteria and impose measures on companies to ensure that appropriate attention is paid to, and visibility and traceability is guaranteed for television services of general interest.]<sup>203</sup>

## Article 156

Every year, the television broadcaster of the Flemish Community and the private linear television broadcasters will submit a report to the Flemish Regulator for the Media before 31 March on the manner in which they have complied with the provisions of articles 154 and 155. The Flemish Regulator for the Media will publish these data.

[Art. 157. § 1. The non-linear television broadcasters offer at least 30% European productions in their program catalog, of which a considerable part are Dutch-speaking European productions. The non-linear television broadcasters provide a prominent place for these European productions in their program catalog.

The first paragraph does not apply to non-linear television broadcasting organizations with a low turnover or a small audience and does not apply to small and micro companies. The Flemish Government determines the criteria of a low turnover and of a small audience.

The Flemish Government can impose quotas for the determination of a considerable number of Dutch-speaking European productions as referred to in the first paragraph.

§2. The private non-linear television broadcasters take part in the production of Flemish audiovisual works, either in the form of a financial contribution to the production or the co-production of Flemish audiovisual works, or in the form of an equivalent financial contribution to the non-profit organization Flanders Audiovisual Fund, established by the act of 13 April 1999 authorizing the Flemish Government to join and cooperate in the establishment of the non-profit organization Flemish Audiovisual Fund. This contribution is spent by the Flemish Audiovisual Fund on Flemish, high-quality independent series co-productions.

[The private non-linear television broadcasters that participate in the production of the Flemish audiovisual works in the form of a financial contribution to the Flemish Audiovisual Fund may acquire rights in respect of productions realised with that financial contribution. The Flemish Government determines the further conditions and procedures for this.]<sup>204</sup>

The Flemish Government determines the criteria, the conditions and the procedures for the participation of the private non-linear television broadcasters in the production of Flemish audiovisual works, including the base, the tariff or the amount and any exemptions or reductions of the financial contribution.

The decree of the Flemish Government to implement the second paragraph, as well as any subsequent decree of the Flemish Government to amend the same decree, will be automatically canceled retroactively up to the date of its entry if it is not submitted for

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<sup>203</sup> Inserted by the act of 19 March 2021

<sup>204</sup> Inserted by the act of 22.03.2019

ratification to the Flemish Parliament within one month after the approval by the Flemish Government. The decree is ratified by act within six months of its approval. These periods are suspended during the parliamentary recess and at the dissolution of the Parliament.

§3. Every year non-linear television organizations will submit a report to the Flemish Regulator for the Media before 31 March on the manner the provisions of paragraphs 1 and 2 have been complied with. The Flemish Regulator for the Media will publish these data.

§4. The provisions of paragraphs 2 and 3 also apply to non-linear television broadcasters that [are established in]<sup>205</sup> a Member State of the European Union and offer non-linear television services aimed at [ the Dutch-language area].<sup>206</sup> ]<sup>207</sup>

## CHAPTER II

Private linear television services

### SECTION I

General provisions

Article 158

Private linear television broadcasters include:

1° regional television broadcasters;

2° private television broadcasters.

Article 159

Under the conditions, mentioned in this section, private linear television broadcasters are accredited by the Flemish Government or have registered with the Flemish Regulator for the Media. In order to be accredited, they must be established as a legal person under private law and must fall within the competence of the Flemish Community.

The Flemish Government determines the conditions and the procedure for obtaining accreditation and for the manner of notification.

Article 160

The purpose of private linear television broadcasters is to provide programs. They can carry out any actions, which contribute directly or indirectly to the accomplishment of their purpose.

### SECTION II

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<sup>205</sup> Replaced by the act of 22.03.2019 enter into force from 01.01.2019

<sup>206</sup> Replaced by the act of 22.03.2019 enter into force from 01.01.2019

<sup>207</sup> Replaced by the act of 29.06.2018 enter into force on 01.01.2019

## Private television broadcasters

### Article 161

Private television broadcasters have to register with the Flemish Regulator for the Media. They should notify the Regulator at least fourteen calendar days prior to the start of their linear television services.

The notification has to be carried out in compliance with Article 219 and has to contain at least the following information: all the information which can serve to determine whether the Flemish Community is competent for the television service concerned, the articles of association, the financial structure, a clear description of the service to be provided. [If the linear television service is wholly or mostly targeting the audience of another Member State of the European Union, the Flemish Regulator for the Media shall inform the national regulatory authority or the national regulatory body of the other Member State of the European Union of the notification.]<sup>208</sup>

After notification, each change to the information, mentioned in section two, has to be notified to the Flemish Regulator for the Media as soon as possible by the private broadcaster.

The Flemish Government sets out the subsequent rules for notification, which private television broadcasters have to comply with.

### Article 162

Notification is required for every broadcasting program.

Private broadcasters offering a broadcasting program that is made up exclusively of teleshopping programs and private broadcasters offering a broadcasting program that is made up exclusively of self-promotion, should explicitly mention this in their notification.

### Article 163

[Anyone can offer linear television services, under the conditions of this chapter, insofar as the entity offering such services has been established as a private legal person, or is a natural person which carries out a professional activity independently and falls under the competence of the Flemish Community.

In the case of a private legal person the purpose is to provide linear television services. The legal person can carry out any activities which could directly or indirectly contribute to achieving its purpose.

The linear television broadcasters are independent of political parties.

The broadcasts of linear television broadcasters fall under the editorial responsibility of the staff.

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<sup>208</sup> Added by the act of 19 March 2021

The linear television broadcasters broadcast in Dutch subject to derogations granted by the Flemish Government.]<sup>209</sup>

#### Article 164

When private television broadcasters broadcast news programs and information programs, these have to be produced by their own editorial staff. The editorial independence is guaranteed and laid down in an editorial statute.

### SECTION III

#### Regional television broadcasters

#### Article 165

The duty of a regional television broadcaster is to provide regional information with the aim of promoting communication between the population and between the authorities and the population on the one hand, and to contribute to the region's general social and cultural development on the other hand within the service area allocated to regional television broadcasters by the Flemish Government according to Article 168.

[In addition to the task mentioned in the first paragraph, the regional television broadcaster fulfils the following tasks:

1° to reach as large an audience as possible within the service area with programs that offer regional information related to the service area;

2° to ensure a high degree of involvement among the viewers of the programs by offering interactive applications;

3° to pursue an active diversity policy in the organisation and in the program offer.]<sup>210</sup>.

Regional information includes news bulletins, background information, debates, election broadcasts and service programs, amongst other things.

Within the framework of the description of the duties of regional broadcasters referred to in the first paragraph, the regional broadcasters can make broadcasting time available to regional actors, but they do remain responsible for the broadcasts itself.

#### Article 166

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<sup>209</sup> Replaced by the act of 19 March 2021

<sup>210</sup> Inserted by the act of 21 February 2014

[§1.]<sup>211</sup> Regional television broadcasters can only start producing programs once they have been accredited by the Flemish Government.

The Flemish Government determines the procedure for obtaining accreditation, as well as potential other measures for determining the service area.

[§2. The Government of Flanders shall enter into a five-year cooperation agreement with the recognised regional television broadcasters. This cooperation agreement shall refer to the subtitling task and the performance of the tasks assigned by Flemish Parliament Act, mentioned in Articles 151 and 165, and lay down the criteria and conditions for the obtaining and use of subsidies.]<sup>212</sup> [If at the expiration of the cooperation agreement, no new cooperation agreement has come into force, the cooperation agreement will be extended de jure until the moment a new cooperation agreement will come into force.]<sup>213</sup>

[Article 166/1. § 1. For the commercial operation of its programming, [or the provision of the broadcasting program by the operator, without prejudice to the editorial responsibility of the regional television broadcaster]<sup>214</sup> the regional television broadcaster may enter into an agreement with an operator. Commercial operation shall mean: the whole of commercial activities that contribute to the financing of the programming of the regional television broadcaster.

An operator takes care of the commercial operation of the programming [or without prejudice to the editorial responsibility of the regional television broadcaster, the broadcasting program]<sup>215</sup> of one or more regional television broadcasters. [The shareholding of an operator can be in the hands of one or more regional television broadcasters for a maximum of 25% plus one share.]<sup>216</sup>

The Government of Flanders shall determine the further conditions to be fulfilled by operators and the minimum requirements to be included in the operating agreement between the regional television broadcaster and the operator. [Those minimum requirements include at least the obligation, when the transmission of the broadcasting program is transferred to the operating company, to include in the operating agreement a regulation on editorial independence, compliance with the editorial statute and the responsibility of the regional television broadcaster for the content of the programs.]<sup>217</sup>

[The production of the news and the appointment of the editor-in-chief and of the editors, notwithstanding the first paragraph, cannot be entrusted to the operator via the operating agreement.]<sup>218</sup>

§ 2. From 1 January 2015 onwards, regional television broadcasters shall be paid a fee by

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<sup>211</sup> Inserted by the act of 21 February 2014

<sup>212</sup> Added by the act of 21 February 2014

<sup>213</sup> Added by the act of 23 December 2016

<sup>214</sup> Inserted by the act of 29.06.2018

<sup>215</sup> Inserted by the act of 29.06.2018

<sup>216</sup> Replaced by the act of 29.06.2018

<sup>217</sup> Added by the act of 29.06.2018

<sup>218</sup> Added by the act of 29.06.2018

service distributors who collect payments for third parties and who transmit the programs of the regional television broadcasters based on the coverage measurement of their programs.

[The regional television broadcasting organizations whose broadcasting area comprises fewer than 750,000 inhabitants and of which, on the basis of one or more indicators to be determined by the Flemish Government, it can be assumed that the home language of a relatively high proportion of residents is French, receive starting from 1 January 2018 from the service providers who collect money for third parties and who transmit the broadcasting program of the regional television broadcasters, a compensation of 100,000 euros for this. This amount is withdrawn in advance from the annual total remuneration stated in the fourth paragraph. The Flemish Government determines the further limits of the relatively high share.]<sup>219</sup>

The coverage measurement mentioned in the first paragraph is the result of the average daily coverage of a regional television broadcaster in terms of percentage calculated by the Flemish Regulator for the Media. The average daily coverage in terms of percentage is calculated based on the coverage data made available to the Flemish Regulator for the Media by the service distributors who collect payments for third parties and who transmit the programs of the regional television broadcasters.

The total annual coverage fee to be paid by the service distributors who collect payments for third parties and who transmit the programs of the regional television broadcasters [for the compensation mentioned in the second paragraph and]<sup>220</sup> for the coverage fee of the regional broadcasters is set at 2.3 euros x the total number of subscribers of these service distributors, calculated on the basis of the data provided in application of Article 182 and accepted by the Flemish Regulator for the Media.

The Government of Flanders shall determine the moment at which the total number of subscribers will be determined in application of the [fourth]<sup>221</sup> paragraph.

[The compensation referred to in the second paragraph will be indexed annually from 1 January 2019 on the basis of the price index, as stipulated in article 2 of the royal decree of 24 December 1993 pursuant to the act of 6 January 1989 to safeguard the country's competitiveness. The compensation is indexed by multiplying it by the aforementioned price index, determined for the month of January of the current year and divided by the aforementioned price index, determined for the month of January 2018.]<sup>222</sup>

The [coverage fees]<sup>223</sup> mentioned in the first paragraph, calculated by the Flemish Regulator for the Media based on the coverage measurement as mentioned in the [third]<sup>224</sup> paragraph, shall be paid to the regional television broadcasters by the service distributors who collect payments for third parties and who transmit the programs of the regional television broadcasters.

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<sup>219</sup> Inserted by the act of 29.06.2018

<sup>220</sup> Inserted by the act of 29.06.2018

<sup>221</sup> Replaced by the act of 29.06.2018

<sup>222</sup> Inserted by the act of 29.06.2018

<sup>223</sup> Replaced by the act of 29.06.2018

<sup>224</sup> Replaced by the act of 29.06.2018

The Government of Flanders shall determine the detailed conditions and modalities according to which the coverage data must be made available to the Flemish Regulator for the Media by the service distributors who collect payments for third parties and who transmit the programs of the regional television broadcasters for the calculation of the average daily coverage of the regional television broadcasters by the Flemish Regulator for the Media, for the calculation of the individual coverage fees by the Flemish Regulator for the Media, and for the payment of the coverage fees to each of the regional television broadcasters by these service distributors.

[The [fees]<sup>225</sup> mentioned in the [fourth]<sup>226</sup> paragraph,[are]<sup>227</sup> indexed annually from 1 January 2016 based on the price index as defined in Article 2 of the Royal Decree of 24 December 1993 pursuant to the Act of 6 January 1989 to safeguard the country's competitiveness . This is done by multiplying the [fees]<sup>228</sup> mentioned in the [fourth]<sup>229</sup> paragraph by the price index mentioned above determined for January of the current year and by dividing by the price index mentioned above determined for the month of January 2015.]<sup>230</sup>

The total amount of the [fees]<sup>231</sup> mentioned in the first paragraph is calculated on a quarterly basis after the end of each quarter. The amount must be paid, at the latest, on the last day of the following quarter and shall be equal to the sum of the amounts determined based on the coverage measured in accordance with the [3]<sup>232</sup> paragraph.

The Flemish Regulator for the Media shall calculate for each regional television broadcaster the average daily coverage in terms of percentage in the last quarter of 2014 based on the coverage data made available to the Flemish Regulator for the Media by the service distributors who collect payments for third parties and who transmit the programs of the regional television broadcasters.

As of 1 January 2016, regional television broadcasters whose average daily coverage in the last quarter of each year from 2015 onwards has dropped by more than 20% compared to the average daily coverage of the last quarter of 2014, in order to be entitled to the fee in accordance with this subsection, must enter into an agreement with an operator in accordance with the first subsection. The Government of Flanders shall determine the further conditions for the application of this paragraph.

§ 3. Contrary to Article 169, paragraph 1, 4°, the Government of Flanders may, in individual cases, give permission to an organisation that has entered into an operating agreement to perform more than one programming contract.

§ 4. The bodies of regional television broadcasters that have entered into an operating agreement as mentioned in subsection 1 must, in addition, fulfil the following conditions:

1° the General Meeting and the Board of Directors must be composed, in a representative way, of people who live in the service area in question of the regional television broadcaster;

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<sup>225</sup> Replaced by the act of 29.06.2018

<sup>226</sup> Replaced by the act of 29.06.2018

<sup>227</sup> Replaced by the act of 29.06.2018

<sup>228</sup> Replaced by the act of 29.06.2018

<sup>229</sup> Replaced by the act of 29.06.2018

<sup>230</sup> Replaced by the act(2) of 04 December 2015

<sup>231</sup> Replaced by the act of 29.06.2018

<sup>232</sup> Replaced by the act of 29.06.2018

2° no more than two thirds of the members of the General Meeting and of the Board of Directors may be of the same sex, and at least one of the members of these bodies must have a different ethnic-cultural background. In their composition, the General Meeting and the Board of Directors must reflect a balanced and proportional age diversity in line with the demographic reality of our adult population;

3° one active member of the General Meeting shall be appointed by the operator with whom the regional television broadcaster has entered into an operating agreement;

4° the offices on the Board of Directors shall have a duration of four years. Every four years, at least half of the members of the Board of Directors must be replaced. Individual Directors can never hold office for longer than twelve years.

§ 5. Without prejudice to the application of Articles 169 and 170, the bodies of regional television broadcasters that have entered into an operating agreement as mentioned in subsection 1 and fulfil the other conditions of this Article shall receive a new authorisation from the Government of Flanders in which it is mentioned that the operating agreement has been entered into.

§ 6. This Article shall not apply in the bilingual Brussels Capital Region.]<sup>233</sup>

#### Article 167

With a view to their accreditation, regional television broadcasters will supply all the data which can serve to determine whether the Flemish Community is competent for the broadcaster concerned, the articles of association, the financial structure, the programs provided and the broadcasting schedule to the Flemish Government.

Following accreditation, each fundamental change to the information provided in the first paragraph has to be notified as soon as possible to the Flemish Government by the broadcaster concerned.

#### Article 168

The Flemish Government will demarcate [the service areas of the regional television broadcasters]<sup>234</sup>, including the bilingual area known as Brussels-Capital. The Flemish Government can only grant a licence to one regional television broadcaster within a service area.

[The Government of Flanders shall determine where the programs of the regional television broadcasters can be distributed, and under what conditions. The news bulletins of the regional television broadcasters can be distributed throughout the Flemish Community.]<sup>235</sup>

#### Article 169

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<sup>233</sup> Inserted by the act of 21 February 2014

<sup>234</sup> Replaced by the act of 21 February 2014

<sup>235</sup> Changed by the act of 21 February 2014



In order to receive a licence and to continue to be a licensed broadcaster, regional television broadcasters need to comply with the following conditions:

1° take the form of a non-profit organisation, of which the directors may not serve as the director of another association, which owns or manages a regional television broadcaster;

2° the registered office and the operating office are situated in the Dutch-language region or in the bilingual Brussels-Capital Region, more specifically in their service area;

3° the object of the association is exclusively restricted to producing regional programs;

4° one association does not [provide]<sup>236</sup> more than one [regional broadcasting program]<sup>237</sup>;

5° the regional television broadcasters are not associated with a political party, professional federation or organisation with a commercial object;

6° the regional television broadcaster broadcasts in Dutch subject to derogations granted by the Flemish Government;

7° the regional television broadcasters broadcast their own programs. In their own programs, the regional broadcasters aim to develop the potential for expression of the local population, and encourage its participation. Own programs should be interpreted as programs or program components which were developed and produced by the broadcaster's own staff or at the request of and under the end responsibility of the regional television broadcaster's staff [or developed and produced to implement the operating agreement stated in article 166/1, § 1, without prejudice to the editorial responsibility of the regional television broadcasting organizations]<sup>238</sup>

8° at least eighty percent of the broadcasting program of the regional television broadcaster is related to one's own regional service area;

9° an editor-in-chief is responsible for the news programs. The editorial independence is guaranteed and determined in an editorial statute. The regional television broadcaster can make use of cooperative ventures for its news programs. The conditions for this are determined by the Flemish Government;

10° every year, the regional television broadcasters will submit an operational report and a financial report. The Flemish Regulator for the Media, and in particular the officials appointed for this purpose, can request all the necessary documents and examine in situ whether the conditions for accreditation provided in this section have been observed.

[The provision of section 1, 3°, does not apply to the regional television broadcaster having as its service area the bilingual Brussels-Capital region. This regional television broadcaster can, after fulfilling its contract as stipulated in Article [165]<sup>239</sup>, also operate a local radio broadcast organization with Brussels as its locality.]<sup>240</sup>

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<sup>236</sup> Replaced by the act of 21 February 2014

<sup>237</sup> Replaced by the act of 21 February 2014

<sup>238</sup> Added by the act of 29.06.2018

<sup>239</sup> Replaced by the act of 14 Oktober 2016

<sup>240</sup> Added by the act of 13 July 2012

[Contrary to paragraph 1, 4°, the Government of Flanders may, in individual cases, give permission to an organisation that has entered into an operating agreement to perform more than one programming contract.

Without prejudice to the application of paragraph 1, 5°, a regional television broadcaster may enter into an operating agreement as referred to in Article 166/1, § 1.]<sup>241</sup>

#### Article 170

§ 1. The duration of the accreditation as a regional broadcaster is nine years. The licence can be extended with nine-year periods at the petitioner's request. This request will be submitted at the latest six months before the end of the running licence term, in accordance with Article 219.

The Flemish Government has to notify the regional television broadcaster by registered post, addressed to the president of the Board of Directors at the address of the registered office of the fact that it does not wish to extend a licence at least one year before the end of the licence term.

§ 2 The Flemish Regulator for the Media can suspend or withdraw the licence of a regional television broadcaster for a maximum of three months at any time if the provisions of this section or the operational provisions are not observed.

If the regional broadcaster requests so, the Flemish Government can suspend the execution of the suspension or withdrawal of the accreditation for a maximum of three months in order to give the broadcaster concerned the opportunity to comply with all the regulations. After this period, the dossier is placed on the agenda once again if the grounds for it are still present.

#### Article 171

The general meeting of the regional television broadcaster is composed in a representative way. This takes into account political, social, cultural, philosophical and regional criteria. Every administrative authority situated in the broadcasting area which contributes financially to the annual operating costs can form part of the general meeting of the regional television broadcaster.

#### Article 172

The Board of Directors of the regional television broadcaster must be composed in a representative way and may not consist for more than one fifth of members who:

1° hold a political mandate;

2° hold a managerial position or the position of director in a professional employers or employee federation;

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<sup>241</sup> Added by the act of 21 February 2014

3° hold a managerial position or the position of director in a media, promotional or advertising company or with the Flemish Community's public broadcaster, or with a [private television broadcaster]<sup>242</sup>;

4° hold a managerial position or the position of director with a cable broadcasting network. The members of the Board of Directors may in no case be a mayor or alderman, member of a permanent executive, of the Flemish Government, of the government of the Brussels Capital Region or of the federal government.

#### Article 173

The Flemish Regulator for the Media must be notified of any change in the Board of Directors and the general meeting of the regional television broadcaster.

### CHAPTER III

#### Private non-linear television services

#### Article 174

[Anyone can offer non-linear television services, under the conditions of this chapter, insofar as the entity offering such services has been established as a private legal person, or is a natural person which carries out a professional activity independently and falls under the competence of the Flemish Community. In the case of a private legal person the purpose is to provide non-linear television services, especially in a digital manner.

The legal person can carry out any activities which could directly or indirectly contribute to achieving its purpose.]<sup>243</sup>

Non-linear television broadcasters can encrypt their broadcasts, in whole or in part, in return for payment and are not associated with a political party.

Non-linear television broadcasters will at least broadcast in Dutch, excluding exceptions to this rule as granted by the Flemish Government.

#### Article 175

The Flemish Regulator for the Media has to be notified at least fourteen calendar days prior to the start of service of the fact that a non-linear television service is being offered.

The notification has to be carried out in compliance with Article 219 and has to contain at least the following information: all the information which can serve to determine whether the Flemish Community is competent for the television service concerned, the articles of association, the financial structure and a clear description of the service to be provided. [If the non-linear television service is wholly or mostly targeting the audience of another Member State of the European Union, the Flemish Regulator for the Media informs the

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<sup>242</sup> Replaced by the act of 13 July 2012

<sup>243</sup> Replaced by the act of 19 March 2021

national regulatory authority or national regulatory body of the other Member State of the European Union about this notification.]<sup>244</sup>

The Flemish Government will determine which other data has to be subsequently supplied in the notification and which later changes have to be notified to the Flemish Regulator for the Media.

If the non-linear television broadcasters extend their provision with a new sort of service they must carry out a separate notification.

After notification, each change to the information, mentioned in paragraph one, has to be notified to the Flemish Regulator for the Media as soon as possible by the non-linear television broadcaster.

Article 176 [...] <sup>245</sup>

[Section III/1. Video-sharing platform services] <sup>246</sup>

[Art. 176/1. Anyone can offer video-sharing platform services, under the conditions mentioned of this part, insofar as the entity offering such services has been established as a private legal person, or is a natural person which carries out a professional activity independently and falls under the competence of the Flemish Community.

In the case of a private legal person the purpose is to provide video-sharing platform services. The legal person can carry out any activities which could directly or indirectly contribute to achieving their purpose.] <sup>247</sup>

[Art.176/2. The video-sharing platform service provider informs the Flemish Regulator for the Media at least fourteen calendar days prior to the start of service of the fact that video-sharing platform services are being offered.

The notification has to be carried out in compliance with article 219 and has to contain at least the following information:

- 1° all the information which can serve to determine whether the Flemish Community is competent for the video-sharing platform service concerned,
- 2° the articles of association,
- 3° a clear description of the service to be provided.

The Flemish Government will determine which other data has to be subsequently supplied in the notification and which later changes have to be notified to the Flemish Regulator for the Media.

Providers already offering video-sharing platform services on the date this Act enters into force shall make the notification referred to in the second paragraph no later than six months after the Flemish Government has determined the other data to be provided and the

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<sup>244</sup> Added by the act of 19 March 2021

<sup>245</sup> Lifted by the act of 19 March 2021

<sup>246</sup> Inserted by the act of 19 March 2021

<sup>247</sup> Inserted by the act of 19 March 2021

subsequent changes to those data that are to be communicated to the Flemish Regulator for the Media.

If video-sharing platform service providers expand their offer with a new type of service, they inform the Flemish Regulator for the Media by a separate notification.

After the notification the video-sharing platform service providers notify as soon as possible each change in the information, mentioned in the second paragraph, to the Flemish Regulator for the Media.]<sup>248</sup>

[Art. 176/3. §1. For the purposes of this article:

1° subsidiary undertaking: an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;

2° group: a parent undertaking, all its subsidiary undertakings and all other undertakings having economic and legal organisational links to them;

3° parent undertaking: an undertaking which controls one or more subsidiary undertakings.

§2. For the purposes of this Act, a video-sharing platform service provider falls under the competence of the Flemish Community if, in accordance with article I.18, 4°, of the Economic Code, he is established in the Dutch-language area, or in the bilingual Brussels-Capital Region, and its activities belong exclusively to the Flemish Community.

§3. A video-sharing platform service provider that is not established in a Member State of the European Union in accordance with article I.18, 4°, of the Economic Code shall fall under the competence of the Flemish Community for the purposes of this Act:

1° if it has a parent undertaking or a subsidiary undertaking that is established in the Dutch-language area, or in the bilingual Brussels-Capital Region, and its activities belong exclusively to the Flemish Community; or

2° if it belongs to a group and another undertaking of the group established in the Dutch-language area, or in the bilingual Brussels-Capital Region, and its activities belong exclusively to the Flemish Community; or

§4. If the parent undertaking and the subsidiary undertaking or the other undertakings of the group, mentioned in paragraph 3, are all established in different Member States of the European Union, the video-sharing platform service provider falls under the competence of the Flemish Community:

1° if the parent undertaking is established in the Dutch-language area, or in the bilingual Brussels-Capital Region, and its activities belong exclusively to the Flemish Community; or in the absence of such an establishment

2° if the subsidiary undertaking is established in the Dutch-language area, or in the bilingual Brussels-Capital Region, and its activities belong exclusively to the Flemish Community; or in the absence of such an establishment

3° if another undertaking of the group, mentioned in paragraph 3, is established in the Dutch-language area, or in the bilingual Brussels-Capital Region, and its activities belong exclusively to the Flemish Community.

§5. If the parent undertaking, mentioned in paragraph 3, is not established in a Member State of the European Union and if different subsidiary undertakings, as mentioned in paragraph 3,

are established in different Member States of the European Union, the video-sharing platform service provider falls under the competence of the Flemish Community if a subsidiary undertaking started its activities first in the Dutch-language area, or in the bilingual Brussels-Capital Region, and its activities belong exclusively to the Flemish Community, provided that the video-sharing platform service provider has a durable and real link with the economy of the Flemish Community.

If the parent undertaking and the subsidiary undertaking, mentioned in paragraph 3, are not established in a Member State of the European Union and if different other undertakings of the group as mentioned in paragraph 3, are established in different Member States of the European Union, the video-sharing platform service provider falls under the competence of the Flemish Community if another undertaking of the group started its activities first in the Dutch-language area, or in the bilingual Brussels-Capital Region, and its activities belong exclusively to the Flemish Community, provided that the video-sharing platform service provider has a durable and real link with the economy of the Flemish Community.

§6. The articles XII.3, XII.4, XII.6, XII.17, XII.18, XII.19 and XII.20 of the Economic Code apply to video-sharing platform service providers that fall under the jurisdiction of the Flemish Community.

§7. The Flemish Regulator for the Media establishes and maintains an up-to-date list of the video-sharing platform service providers under its competence.

The list mentions for each video-sharing platform service provider the criteria, mentioned in paragraph 2 to 5, where the competence of the Flemish Regulator for the Media is based on. The Flemish Regulator for the Media notifies that list, including any updates thereto, to the European Commission.

§8. If the Flemish Regulator for the Media and the national regulatory authority or national regulatory body of another Member State of the European Union do not agree on who is competent for a video-sharing platform service provider, the Flemish Regulator for the Media shall bring the matter to the European Commission's attention without undue delay.]<sup>249</sup>

[Art. 176/4. §1. Without prejudice to the application of articles XII.17, XII.18, XII.19 and XII.20 of the Economic Code, video-sharing platform service providers shall take the necessary appropriate measures in order to:

1° protect minors from programs, user-generated content and commercial communication which may impair their physical, mental or moral development as mentioned in article 42 of this Act;

2° protect the general public from programs, user-generated content and commercial communication containing incitement to violence or hatred directed against a group of persons or a member of a group based on grounds of:

a) gender;

b) race;

c) colour;

d) ethnic or social origin;

e) genetic characteristics;

f) language;

g) religion or belief;

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<sup>249</sup> Inserted by the act of 19 March 2021

- h) political or other opinion;
- i) membership of a national minority;
- j) wealth;
- k) birth;
- l) a disability;
- m) age;
- n) sexual orientation;
- 3° protect the general public from programs, user-generated content and commercial communication containing content the dissemination of which constitutes an activity which is a criminal offence, namely:
  - a) public provocation to commit a terrorist offence as mentioned in the articles 137 and 140bis of the Penal Code;
  - b) offences concerning child pornography as mentioned in the article 383bis of the Penal Code;
  - c) offences concerning racism and xenophobia as mentioned in the articles 20 and 21 of the law of 30 July 1981 punishing certain acts inspired by racism or xenophobia.

§2. The following measures are appropriate measures, as mentioned in paragraph 1:

- 1° including and applying the requirements, mentioned in paragraph 1, in the terms and conditions of the video-sharing platform services;
- 2° offer programs, user-generated content and commercial communication containing pornographic images or images of unnecessary violence in encrypted form or subject them to effective parental control;
- 3° establishing and operating transparent and user-friendly mechanisms by which users of video-sharing platform services can report or flag to the concerned video-sharing platform service provider programs, user-generated content and commercial communication offered by the video-sharing platform service provider;
- 4° establishing and operating systems through which video-sharing platform service providers can explain to users of that video-sharing platform service what effect has been given to the reporting and flagging, mentioned in point 3°;
- 5° establishing and operating age verification systems for users of video-sharing platform services with respect to programs, user-generated content and commercial communication which may impair the physical, mental or moral development of minors;
- 6° establishing and operating easy-to-use systems allowing users of video-sharing platform services to rate programs, user-generated content and commercial communication offered by video-sharing platform service providers;
- 7° providing for parental control systems that are under the control of the end-user of the video-sharing platform service for programs, user-generated content and commercial communication which may impair the physical, mental or moral development of minors;
- 8° establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of the video sharing platform service users' complaints to the video-sharing platform service provider in relation to the implementation of the measures, mentioned in point 3° to 7°;
- 9° providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.

Personal data of minors collected by video-sharing platform service providers pursuant to the first subparagraph, 5° and 7°, shall not be processed for commercial purposes.

§3. When taking the appropriate measures, mentioned in paragraph 2, video-sharing platform service providers shall take into account all of the following elements:

- 1° the nature of the content in question;
- 2° the harm the content may cause;
- 3° the characteristics of the category of persons to be protected;
- 4° the rights at stake and legitimate interests, as well as the general public interest.

The appropriate measures, mentioned in paragraph 2, shall be practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided and do not lead to any ex-ante control measures or upload-filtering of content which do not comply with the provisions, mentioned in article XII.20, §1, of the Economic Code.

§4. The Flemish Government determines further rules in this regard.]<sup>250</sup>

[Art. 176/5. Video-sharing platform service providers are free to market, sell or arrange commercial communication in any way they wish, with the exception of the restrictions and obligations mentioned in this Act.

For commercial communication that is marketed, sold or arranged by video-sharing platform service providers, they must comply with the requirements mentioned in articles 52 to 55, article 62, articles 65 to 69, articles 71 to 77 and articles 90 to 97.]<sup>251</sup>

[Art. 176/6. §1. Video-sharing platform service providers shall take for the commercial communication they do not market, sell or arrange the following appropriate measures to comply with the requirements mentioned in articles 52 to 55, article 62, articles 65 to 69, articles 71 to 77 and articles 90 to 101:

- 1° including and applying the requirements mentioned in in articles 52 to 55, article 62, articles 65 to 69, articles 71 to 77 and articles 90 to 101 in the terms and conditions of the video-sharing platform services;
- 2° having a functionality for users who upload user-generated content to declare whether such content contains commercial communication as far as they know or can be reasonably expected to know;
- 3° establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform service to report or flag to the concerned provider commercial communication offered by the video-sharing platform service;
- 4° establishing and operating systems through which video-sharing platform service providers explain to users of this video-sharing platform service what effect has been given to the reporting and flagging, mentioned in point 3°;
- 5° establishing and operating age verification systems for users of video-sharing platform services with respect to commercial communication offered by the video-sharing platform service and which may impair the physical, mental or moral development of minors;
- 6° establishing and operating easy-to-use systems allowing users of video-sharing platform services to rate commercial communication offered by video-sharing platform services;
- 7° providing for parental control systems that are under the control of the end-user of the video-sharing platform service for programs, user-generated content and commercial communication which may impair the physical, mental or moral development of minors;

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<sup>250</sup> Inserted by the act of 19 March 2021

<sup>251</sup> Inserted by the act of 19 March 2021



8° establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of video-sharing platform services users' complaints to the video-sharing platform service provider in relation to the implementation of the measures, mentioned in point 3° to 7°;

9° providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.

Personal data of minors collected by video-sharing platform service providers pursuant to the first subparagraph, 5° and 7°, shall not be processed for commercial purposes.

§2. When taking the appropriate measures, mentioned in paragraph 1, video-sharing platform service providers shall take into account all of the following elements:

1° the nature of the content in question;

2° the harm the content may cause;

3° the characteristics of the category of persons to be protected;

4° the rights at stake and legitimate interests, as well as the general public interest.

The appropriate measures, mentioned in paragraph 1, shall be practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided and do not lead to any ex-ante control measures or upload-filtering of content which do not comply with the provisions, mentioned in article XII.20, §1, of the Economic Code.

§3. The Flemish Government determines further rules in this regard.]<sup>252</sup>

[Art. 176/7. Video-sharing platform service providers shall clearly inform users when programs and user-generated content contain commercial communication, provided the provider has knowledge of that fact.]<sup>253</sup>

[Art. 176/8. The Flemish Regulator for the Media shall ensure that the video-sharing platform service providers under the jurisdiction of the Flemish Community, take appropriate measures in accordance with articles 176/4 to 176/7 and that they apply these measures.

If the Flemish Regulator for the Media receives complaints or remarks about video-sharing platform service providers that do not fall under the jurisdiction of the Flemish Community, the Flemish Regulator for the Media shall forward those complaints or remarks to the national regulatory authority or the national regulatory body of the competent Member State.]<sup>254</sup>

## PART IV

### Service providers

## TITLE I

### General provisions

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<sup>252</sup> Inserted by the act of 19 March 2021

<sup>253</sup> Inserted by the act of 19 March 2021

<sup>254</sup> Inserted by the act of 19 March 2021

## Article 177

Every service provider who markets a range of broadcasting services in the Flemish Community has to notify the Flemish Regulator for the Media of this at least fourteen calendar days prior to the launch of this service. This notification is made in accordance with Article 219.

The notification will comprise at least the following: the identification of the legal entity, the services offered with the contractual conditions for including the services, and the electronic communication network used to broadcast these services.

The Flemish Government will determine which other data has to be subsequently supplied in the notification and which later changes have to be notified to the Flemish Regulator for the Media.

## Article 178

The provisions of this part of the Act are not applicable to service providers who offer their services using a collective aerial as mentioned in Article 197.

## Article 179

Service providers have to make at least the following information available in a user-friendly, direct and permanent manner to their customers:

- 1° the name of the service provider;
- 2° the geographical address where the service provider is located;
- 3° further data, which enable easy, direct and permanent access to the service provider, including its electronic mail address;
- 4° if a service provider is registered in a trade registry or similar public registry: the enterprise number, the registration number and where applicable, the VAT number;
- 5° the nature and content of the services that he or she distributes.

## [Article 180

[§1. Service providers shall transmit the linear television broadcasting programs that form part of their range of television services in the Flemish Community in full, unaltered and in their entirety at the moment that they are broadcast.

This applies also to the related services, mentioned in article 185, § 1, second subparagraph, last sentence.

Service providers shall make available the non-linear television services and the programs contained therein, that form part of their range of television services in the Flemish Community in full, unaltered and in their entirety.

This applies also to the related services mentioned in article 185, § 1, second subparagraph, last sentence.

§ 2. Any function that a service provider offers to the end users and that makes it possible to view the linear television broadcasting programs intended by the first subparagraph of the first paragraph in a delayed, shortened or modified manner, shall be subject to the prior consent of the relevant television broadcaster. Prior consent is required from every television broadcaster that falls under the scope of article 154, first and second subparagraphs.

Any function that a service provider offers to the end users and that makes it possible to view the non-linear television services intended by the second subparagraph of the first paragraph in a delayed, shortened or modified manner, shall be subject to the prior consent of the relevant television broadcaster. Prior consent is required from every television broadcaster that falls under the scope of article 157, first and second paragraphs.

The relevant television broadcaster and service provider shall negotiate in good faith and shall exercise their means of permission in a reasonable and proportional manner. When an agreement about this leads to financial compensation by the service providers to the television broadcasters, then they must be used for Dutch-language European productions in accordance with articles 154 and 157.

The Flemish Government can impose more specific rules with a view to control and/or enforcement of this rule.]<sup>255</sup>

§ 3. Functions that affect the editorial autonomy and accountability of the relevant television broadcasting organizations may always be refused.

§ 4. If no agreement with regard to the permission can be reached within a term of three months starting from the moment that the service provider has informed the television broadcasting organization in detail by registered letter of its intention to offer a function for which permission is required from the television broadcasting organization as indicated in paragraph 2, the parties shall call upon mediation. The most diligent party shall request by registered post sent to the Chairman of the Board of Directors of the Flemish Regulator for the Media the commencement of a mediation procedure within a term of seven working days after receipt of this request. A Flemish Government Decree shall determine the specific rules of the mediation procedure, which may last no longer than three months.

Should the mediation procedure not lead to an agreement between the parties, the mediator shall formulate an opinion to conclude the mediation task. The most diligent party may submit the case before the competent judicial courts.

§ 5. Service providers shall make commercial communication that forms part of their service clearly recognizable as such. The provisions from Section II. Basic rules as regards the use of commercial communication, Section III. Commercial communication about specific products and Section IV Commercial communication that is targeted at minors, youth and children, Part III. Radio Broadcasting and Television, Title II. The provisions of Broadcasting services, Chapter IV Commercial communication, are applicable to all commercial communication offered by service providers in their own services to subscribers.

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<sup>255</sup> Replaced by the act of 19 March 2021

§ 6. Service providers shall take all reasonable technical measures in order to ensure that access of minors to their broadcasting services, which would severely impair their physical, spiritual or moral development, is limited, or that their offer does not comprise such services and will notify subscribers to their services of these measures. This obligation is applicable to all the broadcasting services comprised in their offer, and to the electronic program guide or to other audiovisual or text-based information which is an integral part of the services offered.]<sup>256</sup>

#### Article 181

A service provider is allowed to offer an electronic program guide by means of the electronic communication network used.

Service providers may be required by the Flemish Regulator for the Media, where necessary, to guarantee that end users of specified digital broadcasting services have access to the application program interfaces and to provide electronic program guides subject to fair, reasonable and non-discriminatory conditions.

The Flemish Government may impose conditions on installing, accessing and presenting electronic program guides used in the context of digital programs when required to guarantee the end user's access to a number of clearly specified digital programs available in the Flemish Community.

Article 182.[ Service providers that make available to the public one or more linear or non-linear broadcasting services of one or more television broadcasters falling within the competence of the Flemish Community, annually provide the Flemish Regulator for the Media with an activity report, and refer to the composition of the shareholders, the number of subscribers, the number of subscribers in the Dutch-language area, the programs transmitted and the annual accounts approved by the general meeting of shareholders.]<sup>257</sup>

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<sup>256</sup> Replaced by the act of 19 July 2013

Article 5 from the same act: 'This Act is without prejudice to rights and obligations arising from agreements that service providers and broadcasters have concluded before this Act comes into force, nor to the acts performed by the service providers before the commencement of this Act, in so far they are completely finished before the commencement of this Act.

Article 6 from the same act: 'This Act shall enter into force on the day following its publication in the *Moniteur belge* (Belgian Official Gazette). The service providers that offer today already one or more functionalities, as referred to in Article 180, § 2, to the end users, have a period of three months after the commencement of this Act to come to an agreement, as referred to in Article 180, § 2, with the concerned television broadcasters. If no agreement can be concluded within three months, the parties may appeal to the conciliation procedure as foreseen in Article 180, § 4. If the conciliation procedure does not lead to an agreement between the parties, then the entitlement to offer the concerned functionality by that service provider expires.

*Article 2, § 4, shall enter into force on the tenth day following the publication of the decision of the Flemish Government referred to in Article 2, § 4.*

<sup>257</sup> Replaced by the act(2) of 17 January 2014

## Article 183

Service providers cannot be held liable for the information shared by broadcasters or for providing access to this information, nor to the information saved at the request of the broadcaster, on condition that each of the following requirements has been met:

1° in case of linear and non-linear services, the service provider will not make any changes to the information provided by the broadcasters;

2° in case of non-linear services, the initiative to provide the information does not reside with the service provider;

3° in case of non-linear services, the receiver of the information provided pertaining to these services will not be determined by the service provider.

The first paragraph does not prevent the Flemish Regulator for Media to require that a service provider ends or prevents a violation, in accordance with the provisions of this Act.

[Art.183/1. Service providers as referred to in article 177, first subparagraph, shall not process for commercial purposes personal data of minors collected in implementation of age verification devices or other technical measures they take to ensure that minors will not normally hear or see programs which might impair their physical, mental or moral development.]<sup>258</sup>

## Article 184

The service provider using a radio network or an entity that has control over it cannot exclusively acquire more than one third of the digital capacity of this network that is destined for use with the same technology.

[The restriction referred to in paragraph 1 does not apply to the digital capacity of this network that is destined for the transmission of freely available radio programs.]<sup>259</sup>

[Article 184/0 Service providers providing both linear and non-linear television programs are obliged, through their offer, to give access to the non-linear television service, whether it is a joint paying service or not, of one or more linear television broadcasters falling within the scope of Article 154, first and second paragraph, and who request such access, so that end-users can have direct access to that non-linear television service, whose offer must contain a significant proportion of Dutch-language European works and must give a prominent place to it. The Flemish Government may impose quotas in order to determine a significant proportion of Dutch-language European works.]<sup>260</sup>

[Title 1/1. Service provider incentives for the audiovisual sector .

Art. 184/1.§ 1. Any service provider that makes available to the public one or more linear or non-linear broadcasting services of one or more television broadcasters falling within the

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<sup>258</sup> Inserted by the act of 19 March 2021

<sup>259</sup> Added by the act(1) of 17 January 2014

<sup>260</sup> Added by the act of 3 May 2019

competence of the Flemish Community, participates in the production of audiovisual works, either in the form of a financial contribution to the co-production of audiovisual works or in the form of an equivalent financial contribution to the Flanders Audiovisual Fund npo, established by the Act of 13 April 1999 authorising the Flemish Government to join and participate in the establishment of the non-profit organisation Flanders Audiovisual Fund. The Flanders Audiovisual Fund allocates this contribution to Flemish high-quality and independent series productions, made in co-production with the public broadcaster of the Flemish Community and/or the television broadcasters accredited and/or registered in Flanders and regarding which the Flemish Government concludes a management contract with the Flanders Audiovisual Fund.

Service providers send a registered letter to the Flanders Audiovisual Fund, the Flemish Regulator for the Media and the Flemish Government, informing them of the participation method chosen by 15 February of each year. If they fail to do so, they are deemed to have selected participation by means of a financial contribution to the Flanders Audiovisual Fund.

§ 2. The financial contribution to co-production mentioned in § 1 takes the form of co-production projects which are presented to the Flemish Regulator for the Media for the purposes of evaluating admissibility and accreditation. The Flemish Government defines the specific terms with regard to the procedure for presenting co-production projects and with regard to evaluating admissibility and accreditation of these co-production projects. The Flemish Government also defines the specific terms with regard to the procedure for financial contributions to the Flanders Audiovisual Fund.

§ 3. The fixed amount of every service provider's participation in producing audiovisual works, mentioned in paragraph 1, is EUR 3 million per year. In derogation from this, service providers may opt for participation amounting to EUR 1.3 per subscriber in the Dutch-language area, which is calculated based on the most recent data communicated pursuant to Article 182 and accepted by the Flemish Regulator for the Media. If no adequate data have been provided, the fixed contribution shall be payable.

[The amounts mentioned in the first paragraph shall be indexed annually from 1 January 2015 based on the price index as defined in Article 2 of the Royal Decree of 24 December 1993 pursuant to the Act of 6 January 1989 to safeguard the country's competitiveness . This is done by multiplying the amounts mentioned in the first paragraph by the price index mentioned above determined for January of the current year and by dividing by the price index mentioned above determined for the month of February 2014.]<sup>261</sup>

Any service provider which, pursuant to § 2, is shown to have presented insufficient investments to the Flemish Regulator for the Media for the period in question, is obliged to make the financial contribution specified in § 1 to the Flanders Audiovisual Fund in full as specified in said paragraph. [The]<sup>262</sup> investments already presented shall be deducted.

If the service provider has communicated its choice of investment in the co-production of audiovisual works and the shortage in investment in co-production projects is due to a decision by the Flemish Regulator for the Media stating that one or more co-production projects are not eligible or are not accredited in accordance with the procedure referred to in §

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<sup>261</sup> Replaced by the act(2) of 4 December 2015

<sup>262</sup> Replaced by the act of 22.03.2019

2, the service provider transfers the balance of the total financial contribution owed as specified in § 1 to the Flanders Audiovisual Fund.

§ 4. Participations in co-productions in implementation of other legal or regulatory obligations or entailing other legal or regulatory benefits may not be taken into account as part of the mandatory participation mentioned in this Article.]<sup>263</sup>

## TITLE II

### Transmission possibilities and transmission duties

#### Article 185

§ 1. The service providers using networks that serve as the most important resource to receive [television broadcasting programs]<sup>264</sup> for a significant number of end users, will offer their services in accordance with the provisions of Article 186.

The linear broadcasting programs, [and associated services]<sup>265</sup> as mentioned in article 186, § 1 and § 2, have to be offered unabridged and in their entirety, with a view to ensuring pluralism and cultural diversity in the broadcasting offer. [In this title, associated services is understood to mean: subtitling, audio description, sign language and audio subtitling.]<sup>266</sup>

[§ 1/1. The provisions of paragraph 1 of this article shall not apply to service providers who have access to electronic communication networks as a result of measures taken by the Flemish Regulator for the Media imposed in application of article [191]<sup>267</sup> of this Act [or as a result of a wholesale agreement between service providers whereby service facilities from one service provider to be used by the other so that the latter may define a commercial offer]<sup>268</sup> These service providers can transmit their programs in accordance with article 187]<sup>269</sup>.

§ 2. Service providers using networks that do not serve [as the most important resource to receive television broadcasting programs]<sup>270</sup> for a significant number of end users, can offer their services in accordance with the provisions of article 187.

§ 3. The networks, as mentioned in § 1, first paragraph, will be laid down at least once every [five]<sup>271</sup> years by the Flemish Government, on the recommendation of the Flemish Regulator for the Media. The Flemish Government will lay down these networks for the first time in the calendar year following on the date that this Act takes effect and can review this provision after at least one year, and every subsequent year after this date.

#### Article 186

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<sup>263</sup> Inserted by the act(2) of 17 January 2014

<sup>264</sup> Replaced by the act of 29.06.2018

<sup>265</sup> Inserted by the act of 13 July 2012

<sup>266</sup> Added by the act of 13 July 2012

<sup>267</sup> Replaced by the act of 02.07.2021

<sup>268</sup> Inserted by the act of 14 Oktober 2016

<sup>269</sup> Added by the act of 25 April 2014(1)

<sup>270</sup> Replaced by the act of 29.06.2018

<sup>271</sup> Replaced by the act of 02.07.2021

§ 1. The service providers, [using networks that are for a significant number of end users the most important resource to receive television broadcasting programs]<sup>272</sup> have to distribute the following linear broadcasting programs in their basic offer, as soon as they are broadcast:

1° the broadcasting program of the public broadcaster of the Flemish Community;

2° the broadcasting program of the regional television broadcaster. This will be broadcast free of charge, unabridged and simultaneously within the regional television broadcaster's service area. The free aspect applies to the provision and the transmission of the broadcasting program;

3° two radio programs and two television programs of the public broadcaster of the French-speaking community and the radio broadcasting program of the German-speaking Community;

4° two radio broadcasting programs and the television broadcasts of the Dutch public broadcaster;

[5° the associated services of the television programs indicated in point 1° to 4° and in § 2.]<sup>273</sup>

The Flemish Community shall not be required to pay a fee to a cable network provider for the compulsory transmission of the aforementioned programs [and associated services]<sup>274</sup>.

§ 2. On the recommendation of the Flemish Regulator for the Media, the Flemish Government may decide to include other broadcasting programs of linear broadcasters in this transmission duty, on condition that these broadcasters meet the following requirements:

1° they broadcast a full news program, produced by an in-house editorial team mainly consisting of accredited professional journalists;

2° they provide a varied, diverse and multicultural offer, which includes information and cultural programs and their programming includes a certain percentage of Dutch-language programs;

3° they subtitle a given percentage of their programs for the deaf and the hearing impaired. The Flemish Government sets the percentages, as mentioned in paragraph 1, 2° and 3°.

§ 3. The service providers, [using networks that are for a significant number of end users the most important resource to receive television broadcasting programs]<sup>275</sup> may distribute the following broadcasts in their entirety, as soon as they are broadcast:

1° broadcasts by licensed broadcasters that are not included in paragraph 1, which are accredited by the Flemish Community or registered with the Flemish Regulator for the Media;

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<sup>272</sup> Replaced by the act of 29.06.2018

<sup>273</sup> Added by the act of 13 July 2012

<sup>274</sup> Added by the act of 13 July 2012

<sup>275</sup> Replaced by the act of 29.06.2018



2° the non-linear broadcasts of the broadcaster, mentioned in paragraph 1;

3° digital radio broadcasts of the public broadcaster of the Flemish Community and radio broadcasts of the accredited and registered radio broadcasters [...]<sup>276</sup>

[4° without prejudice to the second paragraph of Article 168, the programs of the regional television broadcasters recognised by the Flemish Community;]<sup>277</sup>;

5° broadcasts of the broadcasters of the French-speaking and German-speaking Communities of Belgium, which do not fall under paragraph 1, and which are aimed at the entire Community;

6° broadcasts of broadcasters, which fall under the competence of another member of the [European Union and European Economic Area]<sup>278</sup>;

7° if prior permission is granted by the Flemish Regulator for the Media, which can impose conditions in this regard, the broadcasts of broadcasters that are the competence of a country that is not an [European Union and European Economic Area]<sup>279</sup>.

§ 4. The Flemish Regulator for the Media must be notified in advance about the transmission of new programs. The notification comprises the location of the broadcast, the location of the establishment and the mention of the country that is competent for the broadcaster.

#### Article 187

[Service providers who are not service providers as referred to in article 185, §1, first subparagraph, can transmit the following broadcasting programs:]<sup>280</sup>

1° broadcasts of the public broadcaster of the Flemish Community;

[2° broadcasting programs from the broadcasters indicated by the Flemish Regulator for the Media;]<sup>281</sup>

[2°/1 the broadcasting program from the regional television broadcaster within the service area of that regional television broadcaster;

2° /2 without prejudice to the second paragraph of Article 168, the programs of the regional television broadcasters recognised by the Flemish Community;]<sup>282</sup>

3° broadcasts of the public broadcasters of the French-speaking and German-speaking Community of Belgium;

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<sup>276</sup> Lifted by the act of 23 December 2016(2)

<sup>277</sup> Changed by the act of 13 July 2012 and replaced by the act of 21 February 2014

<sup>278</sup> Replaced by the act of 02.07.2021

<sup>279</sup> Replaced by the act of 02.07.2021

<sup>280</sup> Replaced by the act of 19 March 2021

<sup>281</sup> Replaced by the act of 13 July 2012

<sup>282</sup> Inserted by the act of 13 July 2012 and Replaced by the act of 21 February 2014

4° broadcasts of the broadcasters of the French-speaking and German-speaking Communities of Belgium, and which are aimed at the entire Community;

5° broadcasts of broadcasters, which fall under the competence of another Member State of the [European Union and European Economic Area]<sup>283</sup>;

6° if prior permission is granted by the Flemish Regulator for the Media, which can impose conditions in this regard, the broadcasts of broadcasters that are the competence of a country that is not an [European Union and European Economic Area]<sup>284</sup>.

[7° digital radio broadcasting programs from the public broadcaster of the Flemish Community and radio broadcasting programs from the accredited or notified radio broadcasters.]<sup>285</sup>

The Flemish Regulator for the Media must be notified in advance about the broadcast of new programs. This notification comprises the location of the broadcast, the location of the establishment and the mention of the country that is competent for the broadcaster.

## Article 188

Service providers are prohibited from transmitting other broadcasts than those for which transmission is authorized under this title, except in case of permission by the Flemish Regulator for the Media, who can impose certain conditions.

A service provider may use one analogue and two digital channels if it mainly uses these to provide information about the broadcasts and services that it transmits or offers and about the difficulties that influence the service's operations.

## PART V

### Networks

#### TITLE I

##### General provisions

## Article 189

[The Flemish Regulator for the Media shall define the relevant markets, in particular the relevant geographical markets, for products and services in the sector of electronic communications networks and services in the Flemish Community, taking the utmost account of the Recommendation, and the SMP Guidelines.

If the Flemish Regulator for the Media defines a relevant market which differs from the markets defined in the Recommendation of the European Commission, it shall submit its draft

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<sup>283</sup> Replaced by the act of 02.07.2021

<sup>284</sup> Replaced by the act of 02.07.2021

<sup>285</sup> Inserted by the act of 23 December 2016(2)

in a public consultation as mentioned in article 192/14 and inform the European Commission thereof in accordance with article 192/15.]<sup>286</sup>

[Article 190

§1. The Flemish Regulator for the Media analyses whether the relevant market, which is determined in accordance with article 189, meets all the following conditions:

- 1° high and non-transitory structural, legal or regulatory barriers to entry are present ;
- 2° there is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry;
- 3° competition law alone is insufficient to adequately address the identified market failure(s).

The relevant markets listed in the Recommendation of the European Commission shall be deemed to comply with the criteria, mentioned in the first subparagraph, unless the Flemish Regulator for the Media determines that one or more of the criteria, mentioned in the first subparagraph, are not met for the geographical market in question.

§2. In the analysis, mentioned in § 1, the Flemish Regulator for the Media assesses developments from a forward-looking perspective, in the absence of regulation imposed on the basis of this article in that relevant market. In this assessment, the Flemish Regulator for the Media takes the following into account:

- 1° market developments affecting the likelihood of the relevant market tending towards effective competition;
- 2° all relevant competitive constraints, at the wholesale and retail levels, irrespective of whether the sources of such constraints are considered to be electronic communications networks, electronic communications services, or other types of services or applications which are comparable from the perspective of the end-user, and irrespective of whether such constraints are part of the relevant market;
- 3° other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period;
- 4° regulation imposed on other relevant markets.

§3. If the Flemish Regulator for the Media, following the analysis, mentioned in §1, is of the opinion that the conditions, mentioned in § 1, are met, it shall identify the undertaking or undertakings with significant market power on the relevant market.

The Flemish Regulator for the Media shall designate an undertaking with significant market power on a specific market as having significant market power on a closely related market if the links between the two markets allow the market power held on the specific market to be leveraged into the closely related market, thereby strengthening the market power of the

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<sup>286</sup> Replaced by the act of 02.07.2021

undertaking. The Flemish Regulator for the Media may apply remedies as mentioned in the articles 192/1, 192/2, 192/3 and 192/6, aiming to prevent such leverage in the closely related market.]<sup>287</sup>

[Article 191

§1. The Flemish Regulator for the Media imposes one or more of the obligations, mentioned in articles 192/1 to 192/7 and in article 192/11, on undertakings with significant market power on a relevant market.

In accordance with the principle of proportionality, the Flemish Regulator for the Media shall choose the least intrusive way of addressing the problems identified in the market analysis, mentioned in article 190.

The obligations, mentioned in the first subparagraph:

- 1° are based on the nature of the problem identified by the Flemish Regulator for the Media in its market analysis,
- 2° are proportionate, having regard, where possible, to the costs and benefits;
- 3° are justified in light of the objectives, mentioned in article 223/1;
- 4° are imposed following consultation, as mentioned in article 192/14;
- 5° are communicated in accordance with article 192/15.

The Flemish Regulator for the Media shall impose the obligations, mentioned in the first subparagraph, only on undertakings with significant market power, without prejudice to:

- 1° the need to comply with international commitments;
- 2° the measures taken by the Flemish Regulator for the Media to ensure adequate access, interconnection and interoperability of services, mentioned in article 200/2;
- 3° the provisions on privacy in the electronic communications sector imposing obligations on undertakings other than those designated as having significant market power;
- 4° the obligations relating to co-location and sharing of network elements and associated facilities, mentioned in article 200, §1/1;
- 5° the obligation of accounting separation for providers disposing of exclusive or special rights in sectors other than the electronic communications one in accordance with article 198, first subparagraph, 2°, and article 202, first subparagraph, 3°.

Within the framework of the need to comply with international commitments, mentioned in the fourth subparagraph, 1°, the Flemish Regulator for the Media shall inform the European

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<sup>287</sup> Changed by the acts of 13.07.2012 and 14.10.2016 and replaced by the act of 02.07.2021

Commission of decisions to impose, amend or lift obligations on undertakings in accordance with the procedure, mentioned in article 192/15.

§2. If, in exceptional circumstances, the Flemish Regulator for the Media intends to impose on undertakings designated as having significant market power obligations for access or interconnection other than those mentioned in the articles 192/1 to 192/7 and article 192/11, it shall submit a request to the European Commission.

§3. The Flemish Regulator for the Media shall only impose the obligations, mentioned in article 192/13, on undertakings with significant market power on a retail market in accordance with article 190, §3, if all of the following conditions are met:

1° the Flemish Regulator for the Media determines, as a result of a market analysis carried out in accordance with article 190, §1, that a given retail market is not effectively competitive;

2° the Flemish Regulator for the Media concludes that the obligations imposed under articles 192/1 to 192/6, would not result in the achievement of the objectives, mentioned in article 223/1.

§4. If the Flemish Regulator for the Media, following the analysis, mentioned in article 190, §1, is of the opinion that the conditions, mentioned in article 190, §1, are not met, it shall not impose any obligations as mentioned in article 192/1 to 192/7 and article 192/11, and shall withdraw the existing obligations.

The Flemish Regulator for the Media shall ensure that parties affected by such a withdrawal of obligations receive an appropriate notice period, defined by balancing the following elements:

3° the need to ensure a sustainable transition for the beneficiaries of those obligations and end-users;

4° end-user choice;

5° safeguards that regulation does not continue for longer than necessary.

If the Flemish Regulator for the Media sets a notice period, as mentioned in the second subparagraph, it may determine specific conditions and notice periods in relation to existing access agreements. The Flemish Regulator for the Media shall determine the duration and detailed rules of these notice periods.

§5. The Flemish Regulator for the Media takes the decisions, mentioned in §1 to 4:

1° within five years from the adoption of a previous decision, mentioned in §1;

2° within three years from the adoption of a revised Recommendation by the European Commission, for those markets of that Recommendation that have not already been notified to the European Commission in accordance with article 192/15.

No later than four months before the expiry of the period, mentioned in the first subparagraph, 1°, the Flemish Regulator for the Media may submit to the European Commission a reasoned proposal to extend that period by no more than one year.

The terms, mentioned in the first subparagraph, shall be extended by six months if the Flemish Regulator for the Media requests BEREC's assistance in completing the analysis of the market and the obligations to be imposed.

The market analysis and the obligations imposed in accordance with §1 to 4, shall remain in force until the next market analysis comes into force.

§6. The Flemish Regulator for the Media consults the Belgian Competition Authority in connection with the draft decisions, mentioned in article 190, §3, and in §4, first subparagraph, of this article, in order to obtain its opinion on:

1° the definition of the relevant market, mentioned in article 189, from a geographical and product viewpoint;

2° the assessment of the conditions, mentioned in article 190, §1, first subparagraph;

3° the identification of the undertakings with significant market power on the relevant market, mentioned in article 190, §3.

The Flemish Regulator for the Media can consult the Belgian Competition Authority on other issues relating to competition law.

If the opinion of the Belgian Competition Authority, mentioned in the first and second subparagraphs, has not been provided within thirty days of receipt of the question from the Flemish Regulator for the Media, the Flemish Regulator for Media shall continue the procedure.

§7. The Flemish Regulator for the Media shall consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, influencing competitive dynamics. If those developments are not sufficiently important to require a new market analysis as mentioned in article 190, §1, the Flemish Regulator for the Media shall assess without delay whether it is necessary to review the obligations imposed on undertakings designated as having significant market power and amend any previous decision, including by withdrawing obligations or imposing new obligations, in order to ensure that such obligations continue to meet the conditions, mentioned in §1, third subparagraph. Such amendments shall be imposed only after a public consultation and a notification as mentioned in article 192/14 and 192/15.]<sup>288</sup>

[Article 192

In the transnational markets defined by the European Commission, the Flemish Regulator for the Media, jointly with the other national regulatory authorities concerned, ensures that the

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<sup>288</sup> Changed by the acts of 13.07.2012 and 14.10.2016 and replaced by the act of 02.07.2021

market analysis is carried out with maximum respect for the SMP Guidelines. They give their opinion in a concerted fashion on the following elements:

1° whether or not there is significant market power;

2° the imposition, maintenance, amendment or lifting of the obligations, mentioned in article 191, § 1.

The Flemish Regulator for the Media, jointly with the national regulatory authorities concerned, shall notify to the European Commission their draft measures regarding the market analysis and any regulatory obligations pursuant to articles 192/15.

In the absence of transnational markets, the Flemish Regulator for the Media may also jointly notify with one or more national regulatory authorities of other Member States their draft measures regarding the market analysis and any regulatory obligations, where they consider that market conditions in their respective jurisdictions are sufficiently homogeneous.]<sup>289</sup>

[Article 192/1

§1. The Flemish Regulator for the Media may, in accordance with article 191, §1, impose obligations for transparency in relation to interconnection or access, requiring operators to make public specified information, such as accounting information, prices, technical specifications, network characteristics and expected developments thereof, as well as terms and conditions for supply and use, including any conditions limiting access to or use of services and applications, in particular with regard to migration of legacy infrastructure, if such conditions are allowed by Member States in conformity with European Union law.

§2. In particular where an operator has obligations of non-discrimination, the Flemish Regulator for the Media may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices.

The Flemish Regulator for the Media shall approve any new reference offer before it is published. The Flemish Regulator for the Media may, among other things, require a reference offer to be amended in order to implement the obligations, mentioned in this Act.

§3. The Flemish Regulator for the Media may specify the precise information to be made available, the level of detail required and the manner of publication.

§4. If an operator has obligations in connection with wholesale access to network infrastructure as mentioned in articles 192/4 and 192/5, the Flemish Regulator for the Media shall ensure that a reference offer is published, taking utmost account of the BEREC guidelines regarding the minimum criteria for a reference offer. The Flemish Regulator for the Media shall ensure that, where appropriate, key performance indicators and the associated service levels are set, and shall monitor compliance with them.

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<sup>289</sup> Changed by the act of 13.07.2012 and replaced by the act of 02.07.2021

In addition, the Flemish Regulator for the Media, if necessary, determines in advance the penalty amounts for non-compliance with the key performance indicators and the corresponding service levels in accordance with European Union law and national law.]<sup>290</sup>

[Article 192/2

In the context of the application of article 190, §3, and article 191, §1, the Flemish Regulator for the Media may impose obligations of non-discrimination, in relation to interconnection or access.]<sup>291</sup>

[Article 192/3

In the context of the application of article 191, §1, the Flemish Regulator for the Media may impose obligations for accounting separation in relation to specified activities related to interconnection or access.

The Flemish Regulator for the Media may require a vertically integrated undertaking to make transparent its wholesale prices and its internal transfer prices, inter alia to ensure compliance where there is an obligation of non-discrimination or, where necessary, to prevent unfair cross-subsidy.

The Flemish Regulator for the Media shall specify the format and accounting methodology to be used by the undertaking, mentioned in the second subparagraph.

The undertaking shall appoint a certified auditor who shall supervise, at the undertaking's expense, compliance with the decisions, mentioned in the first to the third subparagraphs. After this certified auditor has drawn up a report, the Flemish Regulator for the Media shall make public a statement each year on compliance with the obligation to keep separate accounts and to observe the corresponding detailed rules.

§2. The Flemish Regulator for the Media has the power to require all accounting records, including data on revenues received from third parties, to facilitate the verification of compliance with obligations of transparency and non-discrimination. The Flemish Regulator for the Media determines the period in which the documents shall be provided.

The Flemish Regulator for the Media may publish information that would contribute to an open and competitive market, while complying with the rules on commercial confidentiality, mentioned in article 235, §2.]<sup>292</sup>

[Art. 192/4.

The Flemish Regulator for the Media may, in accordance with article 191, §1, impose obligations on undertakings to meet reasonable requests for access to, and use of, civil

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<sup>290</sup> Inserted by the act of 13.07.2012 and replaced by the act of 02.07.2021

<sup>291</sup> Inserted by the act of 13.07.2012 and replaced by the act of 02.07.2021

<sup>292</sup> Inserted by the act of 13.07.2012 and replaced by the act of 02.07.2021



engineering including, but not limited to, buildings or entries to buildings, building cables, including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where, having considered the market analysis, the Flemish Regulator for the Media concludes that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market and would not be in the end-user's interest.

The Flemish Regulator for the Media may impose obligations on an undertaking to provide access in accordance with this article, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives, mentioned in article 223/1.]<sup>293</sup>

[Art. 192/5.

§1. In accordance with article 191, §1, the Flemish Regulator for the Media may impose obligations on undertakings to meet reasonable requests for access to, and use of, specific network elements and associated facilities, inter alia if the Flemish Regulator for the Media considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

The Flemish Regulator for the Media may impose inter alia the following obligations on undertakings:

1° to give third parties access to, and use of, specific physical network elements and associated facilities, as appropriate, including unbundled access to the local loop and sub-loop;

2° to give third parties access to specific active or virtual network elements and services;

3° to negotiate in good faith with undertakings requesting access;

4° not to withdraw access to facilities already granted;

5° to provide specific services on a wholesale basis for resale by third parties;

6° to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;

7° to provide co-location or other forms of associated facilities sharing;

8° to provide specific services needed to ensure interoperability of end-to-end services to users, or roaming on mobile networks;

9° to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;

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<sup>293</sup> Inserted by the act of 14.10.2016 and replaced by the act of 02.07.2021

10° to interconnect networks or network facilities;

11° to provide access to associated services such as identity, location and presence service.

The Flemish Regulator for the Media may subject the obligations, mentioned in the second subparagraph, to conditions covering fairness, reasonableness and timeliness.

§2. If the Flemish Regulator for the Media considers the appropriateness of imposing any of the possible specific obligations, mentioned in § 1, and in particular if it assesses, in accordance with the principle of proportionality, whether and how such obligations are to be imposed, it shall analyse whether other forms of access to wholesale inputs, either on the same or on a related wholesale market, would be sufficient to address the identified problem in the end-user's interest. That assessment shall include commercial access offers, regulated access pursuant to article 200/2, or existing or planned regulated access to other wholesale inputs pursuant to this article. The Flemish Regulator for the Media shall take account in particular of the following factors:

1° the technical and economic viability of using or installing competing facilities, in light of the rate of market development, taking into account the nature and type of interconnection or access involved, including the viability of other upstream access products, such as access to ducts;

2° the expected technological evolution affecting network design and management;

3° the need to ensure technology neutrality enabling the parties to design and manage their own networks;

4° the feasibility of providing the access offered, in relation to the capacity available;

5° the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment, with particular regard to investments in, and risk levels associated with, very high capacity networks;

6° the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure based competition and innovative business models that support sustainable competition, such as those based on co-investment in networks;

7° where appropriate, any relevant intellectual property rights;

8° the provision of pan-European services.

§3. If the Flemish Regulator for the Media considers, in accordance with article 191, §1, imposing obligations on the basis of article 192/4 or of this article, it shall examine whether the imposition of obligations in accordance with article 192/4 alone would be a proportionate means by which to promote competition and the end-user's interest.

§4. When imposing obligations on an undertaking to provide access in accordance with this article, the Flemish Regulator for the Media may lay down technical or operational conditions to be met by the provider or the beneficiaries of such access, where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or

specifications shall comply with the standards and specifications determined by the European Commission.]<sup>294</sup>

[Art. 192/6.

§1. The Flemish Regulator for the Media may, in accordance with article 191, §1, impose obligations relating to cost recovery and price control, including obligations for cost orientation of prices and obligations concerning cost-accounting systems, for the provision of specific types of interconnection or access, in situations where a market analysis indicates that a lack of effective competition means that the undertaking concerned may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users.

In determining whether price control obligations would be appropriate, the Flemish Regulator for the Media shall take into account the need to promote competition and long-term end-user interests related to the deployment and take-up of nextgeneration networks, and in particular of very high capacity networks. In particular, to encourage investments by the undertaking, including in next-generation networks, the Flemish Regulator for the Media shall take into account the investment made by the undertaking. Where the Flemish Regulator for the Media considers price control obligations to be appropriate, they shall allow the undertaking a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

The Flemish Regulator for the Media may consider not imposing or maintaining obligations pursuant to this article, where it establishes that a demonstrable retail price constraint is present and that any obligations imposed in accordance with articles 192/1 to 192/5, including, in particular, any economic replicability test imposed in accordance with article 192/2, ensures effective and non-discriminatory access.

If the Flemish Regulator for the Media considers it appropriate to impose price control obligations on access to existing network elements, it shall also take account of the benefits of predictable and stable wholesale prices in ensuring efficient market entry and sufficient incentives for all undertakings to deploy new and enhanced networks.

§2. The Flemish Regulator for the Media shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote the deployment of new and enhanced networks, efficiency and sustainable competition and maximises sustainable end-user benefits. In this regard, the Flemish Regulator for the Media may also take account of prices available in comparable competitive markets.

§3. Where an undertaking has an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment, shall lie with the undertaking concerned. For the purpose of calculating the cost of efficient provision of services, the Flemish Regulator for the Media may use cost accounting methods independent of those used by the undertaking.

The Flemish Regulator for the Media may require an undertaking to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

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<sup>294</sup> Inserted by the act of 02.07.2021

§4. The Flemish Regulator for the Media shall ensure that, where implementation of a cost-accounting system is mandated in order to support price control, a description of the cost-accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. A certified auditor shall verify, at the undertaking's expense, compliance with the cost-accounting system and shall draw up annually a statement concerning compliance, which the Flemish Regulator for the Media will publish.]<sup>295</sup>

[Art. 192/7.

§1. Undertakings which have been designated in accordance with article 190 as having significant market power in one or several relevant markets may offer commitments, in accordance with the procedure, mentioned in article 192/10, and subject to conditions, mentioned in the second subparagraph, to open the deployment of a new very high capacity network that consists of optical fibre elements up to the end-user premises or base station to co-investment by other providers of electronic communications networks or services.

If the Flemish Regulator for the Media assesses those commitments, mentioned in the first subparagraph, it shall determine, in particular, whether the offer to co-invest complies with all of the following conditions:

1° it is open at any moment during the lifetime of the network to any provider of electronic communications networks or services;

2° it would allow other co-investors which are providers of electronic communications networks or services to compete effectively and sustainably in the long term in downstream markets in which the undertaking designated as having significant market power is active, on terms which include:

a) fair, reasonable and non-discriminatory terms allowing access to the full capacity of the network to the extent that it is subject to co-investment;

b) flexibility in terms of the value and timing of the participation of each co-investor;

c) the possibility to increase such participation in the future;

d) reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

3° it is made public by the undertaking in a timely manner and, if the undertaking does not have the characteristics, mentioned in article 192/11, first subparagraph, at least six months before the start of the deployment of the new network. That period may be prolonged based on national circumstances;

4° access seekers not participating in the co-investment can benefit from the outset from the same quality, speed, conditions and end-user reach as were available before the deployment, accompanied by a mechanism of adaptation over time confirmed by the Flemish Regulator for the Media in light of developments on the related retail markets, that maintains the incentives

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<sup>295</sup> Inserted by the act of 02.07.2021

to participate in the co-investment. Such mechanism shall ensure that access seekers have access to the very high capacity elements of the network at a time, and on the basis of transparent and non-discriminatory terms, which reflect appropriately the degrees of risk incurred by the respective co-investors at different stages of the deployment and take into account the competitive situation in retail markets;

5° it complies at a minimum with the criteria, mentioned in §5, and is made in good faith.

§2. If the Flemish Regulator for the Media concludes, taking into account the results of the market test conducted in accordance with article 192/10, §2, that the co-investment commitment offered complies with the conditions, mentioned in §1, it shall make that commitment binding pursuant to article 192/10, §3, and shall not impose any additional obligations pursuant to article 191, §1, as regards the elements of the new very high capacity network that are subject to the commitments, if at least one potential co-investor has entered into a co-investment agreement with the undertaking designated as having significant market power.

The first subparagraph shall be without prejudice to the regulatory treatment of circumstances that do not comply with the conditions set out in § 1, taking into account the results of any market test conducted in accordance with article 192/10, §2, but that have an impact on competition and are taken into account for the purposes of articles 190 and 191.

By way of derogation from the first subparagraph, the Flemish Regulator for the Media may, in duly justified circumstances, impose, maintain or adapt remedies in accordance with articles 191 to 192/6 as regards new very high capacity networks in order to address significant competition problems on specific markets, where the Flemish Regulator for the Media establishes that, given the specific characteristics of these markets, those competition problems would not otherwise be addressed.

§3. The Flemish Regulator for the Media shall, on an ongoing basis, monitor compliance with the conditions, mentioned in § 1, and may require the undertaking designated as having significant market power to provide it with annual compliance statements. This article shall be without prejudice to the power of the Flemish Regulator for the Media to take decisions pursuant to article 220/1 in the event of a dispute arising between undertakings in connection with a co-investment agreement considered by it to comply with the conditions, mentioned in §1.

§4. When applying this article, the Flemish Regulator for the Media shall take into account the BEREC guidelines to promote the consistent application by the national regulatory authorities of the conditions, mentioned in §1, and the criteria, mentioned in §5.

§5. When assessing a co-investment offer pursuant to §1, the Flemish Regulator for the Media shall verify whether the following criteria have at a minimum been met:

1° the co-investment offer shall be open to any undertaking over the lifetime of the network built under a co-investment offer on a non-discriminatory basis. The undertaking designated as having significant market power may include in the offer reasonable conditions regarding the financial capacity of any undertaking;

2° the co-investment offer shall be transparent, in particular:

a) the offer shall be available and easily identified on the website of the undertaking designated as having significant market power;

b) full detailed terms shall be made available to any potential bidder that has expressed an interest in the offer, including the legal form of the co-investment agreement and, when relevant, the heads of term of the governance rules of the co-investment vehicle;

c) the process, like the road map for the establishment and development of the co-investment project, shall be set in advance, shall be clearly explained in writing to any potential co-investor, and all significant milestones shall be clearly communicated to all undertakings without any discrimination;

3° the co-investment offer shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:

a) all undertakings shall be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential co-investors shall be offered exactly the same terms, including financial terms, but that all variations of the terms offered shall be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end-user lines committed for;

b) the offer shall allow flexibility in terms of the value and timing of the commitment provided by each co-investor. The determination of the financial consideration to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner;

c) a premium increasing over time shall be considered to be justified for commitments made at later stages and for new co-investors entering the co-investment after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages;

d) the co-investment agreement shall allow the assignment of acquired rights by co-investors to other co-investors, or to third parties willing to enter into the co-investment agreement subject to the transferee undertaking being obliged to fulfil all original obligations of the transferor under the co-investment agreement;

e) co-investors shall grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, in accordance with transparent conditions which are to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it shall provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of inputs basis and in

accordance with fair and reasonable terms and conditions, including financial conditions that reflect the different levels of risk accepted by the individual co-investors;

4° the co-investment offer shall ensure a sustainable investment likely to meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.

The Flemish Regulator for the Media may lay down additional criteria, in addition to those mentioned in the first subparagraph, if they are necessary to ensure accessibility for potential investors to the co-investment, in the light of specific local conditions and of the market structure.]<sup>296</sup>

[Art. 192/8.

§1. Where the Flemish Regulator for the Media concludes that the appropriate obligations imposed under articles 192/1 to 192/6 have failed to achieve effective competition and that there are important and persisting competition problems or market failures identified in relation to the wholesale provision of certain access product markets, it may, on an exceptional basis, impose an obligation on a vertically integrated undertaking to place activities related to the wholesale provision of relevant access products in a business entity operating independently.

The operating independently business entity, mentioned in the first subparagraph, shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.

§2. When the Flemish Regulator for the Media intends to impose an obligation of functional separation, it shall submit a request to the European Commission. That request includes:

1° evidence justifying the decision of the Flemish Regulator for the Media, mentioned in §1;

2° a reasoned assessment concluding that there is no or little prospect of effective and sustainable infrastructure-based competition within a reasonable time-frame;

3° an analysis of the expected impact on the following actors and aspects:

a) the Flemish Regulator for the Media;

b) the undertaking, in particular on the workforce of the separated undertaking;

c) the electronic communications sector as a whole;

d) the incentives to invest in the electronic communications sector, mentioned in c), in particular with regard to the need to ensure social and territorial cohesion;

e) other stakeholders, in particular, the expected impact on infrastructure competition and any resulting impact on consumers;

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<sup>296</sup> Inserted by the act of 02.07.2021

4° an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems or the markets failures identified.

§3. The draft measure, mentioned in §2, shall include the following elements:

1° the precise nature and level of separation, specifying in particular the legal status of the separate business entity;

2° the identification of the assets of the separate business entity and the products or services to be supplied by that entity;

3° the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

4° rules for ensuring compliance with the obligations;

5° rules for ensuring transparency of operational procedures, towards the stakeholders;

6° a monitoring program to ensure compliance, including the publication of an annual report.

Following the European Commission's decision taken in accordance with article 191, §2, on that draft measure, mentioned in the first subparagraph, the Flemish Regulator for the Media shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure mentioned in article 190. On the basis of that analysis, the Flemish Regulator for the Media shall impose, maintain, amend or withdraw obligations in accordance with article 192/14 and 192/15.

§4. An undertaking on which functional separation has been imposed, may be subject to any of the obligations referred to in articles 192/1 to 192/6 in any specific market where it has been designated as having significant market power in accordance with article 190, or any other obligations authorised by the European Commission.]<sup>297</sup>

[Art. 192/9.

§1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with article 190 shall inform the Flemish Regulator for the Media at least three months before any intended transfer of their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or establishment of a separate business entity in order to provide all retail providers, including its own retail divisions, with fully equivalent access products.

The undertakings, mentioned in the first subparagraph, shall also inform the Flemish Regulator for the Media of any change of that intent, mentioned in the first subparagraph, as well as the final outcome of the process of separation.

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<sup>297</sup> Inserted by the act of 02.07.2021



The undertakings, mentioned in the first subparagraph, may also offer commitments regarding access conditions that are to apply to their network during an implementation period after the proposed form of separation is implemented, with a view to ensuring effective and non-discriminatory access by third parties. The offer of commitments shall include sufficient details, including in terms of timing of implementation and duration, in order to allow the Flemish Regulator for the Media to conduct its tasks in accordance with § 2.

Such commitments may extend beyond the maximum period for market reviews, mentioned in article 191, §5.

§2. The Flemish Regulator for the Media shall assess the effect of the intended transaction, together with the commitments offered, where applicable, on existing regulatory obligations, mentioned in this Act.

For that purpose, the Flemish Regulator for the Media shall conduct an analysis of the different markets related to the access network in accordance with the procedure mentioned in article 190. The Flemish Regulator for the Media shall take into account any commitments offered by the undertaking, having regard in particular to the objectives, mentioned in article 223/1. In so doing, the Flemish Regulator for the Media shall consult third parties in accordance with article 192/14, and shall address, in particular, those third parties which are directly affected by the intended transaction.

On the basis of its analysis, mentioned in the second subparagraph, the Flemish Regulator for the Media shall impose, maintain, amend or withdraw obligations in accordance with articles 192/14 and 192/15. If appropriate, the procedure, mentioned in article 192/11, will be applied.

In its decision, the Flemish Regulator for the Media may make the commitments binding, wholly or in part. By way of derogation from article 191, §5, the Flemish Regulator for the Media may make the commitments binding, wholly or in part, for the entire period for which they are offered.

§3. Without prejudice to article 192/11, the legally or operationally separate business entity that has been designated as having significant market power in any specific market in accordance with article 190, may be subject, as appropriate, to any of the obligations mentioned in articles 192/1 to 192/6 or any other obligations authorised by the European Commission pursuant to article 191, §2, where any commitments offered are insufficient to meet the objectives, mentioned in article 223/1.

§4. The Flemish Regulator for the Media shall monitor the implementation of the commitments offered by the undertakings that it has made binding in accordance with § 2 and shall consider their extension when the period for which they are initially offered has expired.]<sup>298</sup>

[Art. 192/10.

§1. Undertakings designated as having significant market power may offer to the Flemish Regulator for the Media commitments regarding conditions for access, co-investment, or both, applicable to their networks in relation, inter alia, to:

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<sup>298</sup> Inserted by the act of 02.07.2021

1° cooperative arrangements relevant to the assessment of appropriate and proportionate obligations pursuant to article 191;

2° co-investment in very high capacity networks pursuant to article 192/7;

3° effective and non-discriminatory access by third parties pursuant to article 192/9, during an implementation period of voluntary separation by a vertically integrated undertaking or after the proposed form of separation is implemented.

The offer for commitments shall be sufficiently detailed including as to the timing and scope of their implementation and their duration, to allow the Flemish Regulator for the Media to undertake its assessment pursuant to § 2. Such commitments may extend beyond the periods for carrying out market analysis, mentioned in article 191, §5.

§2. In order to assess any commitments offered by an undertaking pursuant to § 1, the Flemish Regulator for the Media shall, except where such commitments clearly do not fulfil one or more relevant conditions or criteria, perform a market test, in particular on the offered terms, by conducting a public consultation of interested parties, in particular third parties which are directly affected. Potential co-investors or access seekers may provide views on the compliance of the commitments offered with the conditions provided, as applicable, mentioned in articles 191, 192/7 or 192/9, and may propose changes.

As regards the commitments offered under this article, the Flemish Regulator for the Media shall, when assessing obligations pursuant to article 191, §1, third subparagraph, have particular regard to:

1° evidence regarding the fair and reasonable character of the commitments offered;

2° the openness of the commitments to all market participants;

3° the timely availability of access under fair, reasonable and non-discriminatory conditions, including to very high capacity networks, before the launch of related retail services;

4° the overall adequacy of the commitments offered to enable sustainable competition on downstream markets and to facilitate cooperative deployment and take-up of very high capacity networks in the interest of end-users.

The Flemish Regulator for the Media, taking into account all the views expressed in the consultation, and the extent to which such views are representative of different stakeholders, shall communicate to the undertaking designated as having significant market power its preliminary conclusions whether the commitments offered comply with the objectives, criteria and procedures, mentioned in this article and article 191, 192/7 or 192/9. The Flemish Regulator for the Media also announces under which conditions it may consider making the commitments binding. The undertaking may revise its initial offer to take account of the preliminary conclusions of the Flemish Regulator for the Media and with a view to satisfying the criteria, mentioned in this article and the criteria, as applicable, mentioned in article 191, 192/7 or 192/9.

§3. Without prejudice to article 192/7, §2, first subparagraph, the Flemish Regulator for the Media may issue a decision to make the commitments binding, wholly or in part.

By way of derogation from article 191, §5, the Flemish Regulator for the Media may make some or all commitments binding for one of the following periods:

1° for the entire period for which they are offered;

2° for a period of minimum seven years in the case of co-investment commitments made binding pursuant to article 192/7, §2, first subparagraph.

Subject to article 192/7, this article is without prejudice to the application of the market analysis procedure pursuant to article 190 and the imposition of obligations pursuant to article 191, §1.

When the Flemish Regulator for the Media makes commitments binding pursuant to this article, it shall assess the following aspects:

1° with application of article 191, §7, the consequences of that decision for market development;

2° the appropriateness of any obligation that it has imposed or would, absent those commitments, have considered imposing pursuant to article 191, §7, or article 192/1 to 192/6.

When notifying, in accordance with article 192/15, the draft measure as mentioned in article 191 to the European Commission, BEREC and the national regulatory authorities of other Member States, the Flemish Regulator for the Media shall also notify the European Commission, BEREC and the national regulatory authorities of other Member States of the commitment decision.

§4. The Flemish Regulator for the Media shall monitor, supervise and ensure compliance with the commitments that it has made binding in accordance with § 3 in the same way in which it monitors, supervises and ensures compliance with obligations imposed under article 191, §1.

The Flemish Regulator for the Media shall consider the extension of the period for which they have been made binding when the initial period expires.

If the Flemish Regulator for the Media concludes that an undertaking has not complied with the commitments that have been made binding in accordance with § 3, it may impose penalties on such undertaking in accordance with article 228. Without prejudice to the procedure, mentioned in article 220, §4, the Flemish Regulator for the Media may reassess the obligations imposed in accordance with article 191, §7.]<sup>299</sup>

[Art. 192/11.

When the Flemish Regulator for the Media designates an undertaking which is absent from any retail markets for electronic communications services as having significant market power in one or several wholesale markets in accordance with article 190, §3, it shall consider whether that undertaking has the following characteristics:

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<sup>299</sup> Inserted by the act of 02.07.2021

1° all companies and business units within the undertaking, all companies that are controlled but not necessarily wholly owned by the same ultimate owner, and any shareholder capable of exercising control over the undertaking, only have activities in wholesale markets for electronic communications services and have the intention to do so in future, and therefore do not have activities in any retail market for electronic communications services provided to end-users in the European Union or in the European Economic Space;

2° the undertaking is not bound to deal with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to end-users, because of an exclusive agreement, or an agreement which de facto amounts to an exclusive agreement.

If the Flemish Regulator for the Media concludes that the conditions, mentioned in subparagraph 1, are fulfilled, it may impose on that undertaking only obligations pursuant to articles 192/2 and 192/5, or obligations relative to fair and reasonable pricing if justified on the basis of a market analysis including a prospective assessment of the likely behaviour of the undertaking designated as having significant market power.

The Flemish Regulator for the Media may review obligations imposed on the undertaking in accordance with this article at any time if it concludes that the conditions laid down in subparagraph 1 are no longer met and it shall, as appropriate, apply articles 190 to 192/6. The undertakings shall, without undue delay, inform the Flemish Regulator for the Media of any change of circumstance relevant to the conditions, mentioned in subparagraph 1, 1° and 2°.

The Flemish Regulator for the Media shall also review obligations imposed on the undertaking in accordance with this article if on the basis of evidence of terms and conditions offered by the undertaking to its downstream customers, it concludes that competition problems have arisen or are likely to arise to the detriment of end-users which require the imposition of one or more obligations, mentioned in artikel 192/1, 192/3, 192/4 or 192/6 or the amendment of the obligations imposed in accordance with subparagraph 2.

The imposition of obligations and their review shall be implemented in accordance with articles 192/14 and 192/15.]<sup>300</sup>

[Art. 192/12.

§1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with article 190 shall notify the Flemish Regulator for the Media in advance and in a timely manner when they plan to decommission or replace with a new infrastructure parts of the network, including legacy infrastructure necessary to operate a copper network, which are subject to obligations pursuant to articles 191 to 192/11.

§2. The Flemish Regulator for the Media shall ensure that the decommissioning or replacement process includes a transparent timetable and conditions, including an appropriate notice period for transition, and establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users.

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<sup>300</sup> Inserted by the act of 02.07.2021

With regard to assets which are proposed for decommissioning or replacement, the Flemish Regulator for the Media may withdraw the obligations after having ascertained that the access provider:

1° has established the appropriate conditions for migration, including making available an alternative access product of at least comparable quality as was available using the legacy infrastructure enabling the access seekers to reach the same end-users;

2° has complied with the conditions and process notified to the Flemish Regulator for the Media in accordance with this article.

Such withdrawal shall be implemented in accordance with articles 192/14 and 192/15.]<sup>301</sup>

[Art. 192/13.

§1. Pursuant to article 191, §3, the Flemish Regulator for the Media shall impose appropriate regulatory obligations, as mentioned in §2, on undertakings identified as having significant market power on a given retail market in accordance with article 190, §3.

§2. Obligations imposed in application of § 1 shall be based on the nature of the problem identified and shall be proportionate and justified in light of the objectives, mentioned in article 223/1.

In order to protect end-user interests whilst promoting effective competition, the Flemish Regulator for the Media may impose the following obligations to undertakings, as mentioned in §1:

1° appropriate retail price cap measures;

2° measures to control individual tariffs;

3° measures to orient tariffs towards costs or prices on comparable markets.

§3. The Flemish Regulator for the Media shall ensure that, where an undertaking is subject to retail tariff regulation or other relevant retail controls, the necessary and appropriate cost-accounting systems are implemented.

The Flemish Regulator for the Media may specify the format and accounting methodology to be used. Compliance with the cost-accounting system shall be verified, at the undertaking's expense, by a certified auditor who shall draw up annually a statement concerning compliance, which the Flemish Regulator for the Media will publish.]<sup>302</sup>

[Art. 192/14.

The Flemish Regulator for the Media shall organise a prior public consultation of at least 30 days if it:

1° intends to take measures pursuant to this title;

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<sup>301</sup> Inserted by the act of 02.07.2021

<sup>302</sup> Inserted by the act of 02.07.2021

2° intends to impose restrictions pursuant to Title II which have a significant impact on the relevant market.

The public consultation, mentioned in the first subparagraph, shall be organised with due observance of the rules on the confidentiality of business information, mentioned in article 235, §2, and with due observance of the rules on the protection of personal data.

In exceptional circumstances, the period of public consultation, mentioned in subparagraph 1, may be less than 30 days.

The Flemish Regulator for the Media publishes its consultation procedure on its website.

The Flemish Regulator for the Media shall establish a central online information point where all current consultation procedures relating to measures planned by the Flemish Regulator for the Media which have a significant impact on electronic communications markets can be accessed.

The Flemish Regulator for the Media shall publish the results of a public consultation in accordance with the rules on confidentiality of business information and the protection of personal data. The Flemish Regulator for the Media shall publish its draft decision, as possibly amended following the public consultation, mentioned in this article.

The Flemish Government shall lay down the detailed rules for public consultation and publication of the results thereof. Such rules shall at least cover the publication of the consultation, the conditions for participation in the consultation, the duration of the consultation, and the reporting on the consultation.]<sup>303</sup>

[Art. 192/15. § 1. The Flemish Regulator for the Media shall announce any draft measure it intends to take and shall notify it, with an accompanying statement of reasons, to the European Commission, to BEREC, and to the national regulatory authorities of other Member States, insofar as this measure affects trade between Member States and is intended to do so:

1° impose appropriate access and interconnection, or interoperability of services in accordance with article 200/2;

2° to define a relevant market which differs from the markets defined in the Recommendation of the European Commission referred to in article 189, second subparagraph;

3° in accordance with article 190, §1, second subparagraph, establish that one of the conditions, mentioned in article 190, §1, first subparagraph is not fulfilled;

4° to determine whether the characteristics of a market defined as relevant pursuant to article 190, §3, first subparagraph, and article 191, §3, are such that the imposition of regulatory obligations is justified or not;

5° following a decision as mentioned in point 4° to identify the undertaking or undertakings with significant market power on that market, in accordance with article 190, §3, first subparagraph;

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<sup>303</sup> Inserted by the act of 02.07.2021

6° to impose, modify or withdraw regulatory obligations on the undertaking or undertakings with significant market power in accordance with article 191, §§1 to 4.

§2. The Flemish Regulator for the Media shall take the utmost account of the comments submitted to it by the European Commission, BEREC, and the national regulatory authorities of the other Member States within one month of the notification of the draft decision.

§3. If the draft decision is amended in accordance with paragraph 6 or 10, the Flemish Regulator for the Media may initiate a public consultation in accordance with article 192/14 and shall again inform the European Commission of the amended draft in accordance with § 1

§4. The Flemish Regulator for the Media shall inform the European Commission and BEREC of the final adoption of the draft measure mentioned in § 1.

§5. The Flemish Regulator for the Media shall postpone the final adoption of the draft measure by two months if all the following conditions are met:

1° The draft decision, mentioned in § 1, aims to:

- a) define a relevant market which is different from the markets defined by the European Commission;
- b) designate an undertaking which, either individually or jointly with other undertakings, has significant market power on a relevant market;

2° the draft decision would affect trade between Member States;

3° the European Commission has indicated to the Vlaamse Regulator voor de Media within one month of the notification, mentioned in §1, that the draft decision would create a barrier to the internal market or if it has serious doubts as to compatibility of the draft decision with European Union law.

§6. If the European Commission takes a decision requiring the withdrawal of the draft decision within the two-month period, mentioned in §5, the Flemish Regulator for the Media shall amend its draft decision or withdraw it within six months of the date of the European Commission's decision.

§7. If, within one month from the notification of the draft decision by the Flemish Regulator for the Media in accordance with article 192/5, the European Commission informs the Flemish Regulator for Media that the draft decision, which aims to impose, modify, or withdraw an obligation on an undertaking with significant market power, would create a barrier to the internal market or has serious doubts as to its compatibility with European Union law, the Flemish Regulator for the Media shall postpone its decision by three additional months.

§8. Within the period of three months, mentioned in § 7, the European Commission, BEREC and the Flemish Regulator for the Media shall cooperate closely in order to identify the most appropriate and effective measure, taking into account the objectives mentioned in article 223/1, and shall take into account the views of market participants and the need to ensure the development of a consistent regulatory practice.

§9. If, within six weeks from the start of the three-month period, mentioned in §7, BEREC issues an opinion on the notification from the European Commission, mentioned in §7, in which BEREC states that it shares the serious doubts of the European Commission, the Flemish Regulator for the Media may, before the end of the three months, mentioned in §7, take the following actions:

1° amend or withdraw its draft decision, taking utmost account of the notification from the European Commission, mentioned in §7, and the aforementioned opinion from BEREC;

2° maintain its draft decision.

§10. If BEREC does not share the serious doubts of the European Commission or does not issue an opinion, or if the Flemish Regulator for the Media amends or maintains its draft decision in accordance with § 9, the European Commission may, within one month of the three-month period, mentioned in § 7:

1° issue a reasoned recommendation asking the Flemish Regulator for the Media to amend or withdraw the draft decision;

2° take a decision to lift its reservations pursuant to §7.

For the draft decisions that fall under article 192/7, §2, first subparagraph, the European Commission may, if BEREC shares its serious doubts, within the same period as that referred to in the first subparagraph, take a decision requesting the Flemish Regulator for the Media to withdraw its draft.

Within one month from the issuance of the recommendation by the European Commission, mentioned in the first subparagraph, 1°, or the lifting of the reservation, mentioned in the first subparagraph, 2°, the Flemish Regulator for the Media shall communicate the final adopted decision to the European Commission and BEREC. The aforementioned period may be extended to allow the Flemish Regulator for the Media to conduct a public consultation on the amended draft decision, in accordance with article 192/14.

If the Flemish Regulator for the Media decides not to amend or withdraw the draft decision pursuant to the recommendation, mentioned in the first subparagraph, 1°, it shall provide a reasoned justification for doing so.

§11. In exceptional circumstances, if the Flemish Regulator for the Media considers that there is an urgent need to act, in order to safeguard competition and protect the interests of users, by way of derogation from the procedure set out in §§1 and 5, it may immediately adopt proportionate and provisional measures. The Flemish Regulator for the Media shall, without delay, communicate those measures, with full reasons, to the European Commission, to BEREC and to the other national regulatory authorities of the other Member States.

A decision of the Flemish Regulator for the Media to render such measures permanent or extend the period for which they are applicable shall be subject to §§ 1 and 5.

§12. The Flemish Regulator for the Media may withdraw the draft measure at any time.]<sup>304</sup>

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<sup>304</sup> Inserted by the act of 02.07.2021



## TITLE II

### Provisions regarding broadcasting licences for the use of frequencies

#### Article 193

§ 1. Nobody can use broadcasting equipment without a written broadcasting licence issued by the Flemish Regulator for the Media.

This broadcasting licence is personal and may only be transferred to a third party subject to the Flemish Regulator for the Media's consent in writing.

§ 2. The Flemish Regulator for the Media can exclusively grant a broadcasting licence to linear broadcasters and radio networks under the application of the provisions of paragraph 4. In addition, in relation to events and for experiments which test new technologies, the Flemish Regulator for the Media can issue a temporary licence for the duration of the event.

§ 3. The Flemish Government determines the modalities and the procedure for the application, the amendment, the suspension or the withdrawal of the broadcasting licences.

The broadcasting licence thus is applicable for the duration of the accreditation of the national, [regional]<sup>305</sup> [, network]<sup>306</sup> or local broadcaster or of the network. Suspending or withdrawing the accreditation results in a suspension or withdrawal of the broadcasting licence.

§ 4. The licences referred to in § 1 are not required for the public broadcaster of the Flemish Community. The Flemish Government makes the frequencies which it needs available to that broadcaster.

#### Article 194

The Flemish Government can lay down specific police ordinances, which impact broadcasters and the providers of a broadcasting network.

#### Article 195

The Flemish Government determines the specific technical regulations of the licences, mentioned in Article 193.

#### Article 196

The Flemish Government determines the amount that must be paid by the holders of the licences to cover the costs of issuing, amending and supervising the licences, as mentioned in Article 193. It determines the payment conditions for these rights.

## TITLE III

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<sup>305</sup> Lifted by the act of 12.02.2021. Comes into force on 01.01.2023

<sup>306</sup> Inserted by the act of 23 December 2016(2)

## Offering cable broadcasting networks

### Article 197

The provisions in this title shall not apply to the installation and operation of a collective aerial that is solely intended for holders of receiver terminals located in:

- 1° rooms or apartment of the same building or grouped residences of institutions that are part of the public health or welfare sector;
- 2° the same building with maximum fifty rooms or apartment;
- 3° dwellings that have been grouped into a collective entity, at the initiative of an association or an institution that promotes social housing construction; no more than fifty dwellings;
- 4° grouped dwellings, of which the number is not higher than fifty;
- 5° caravans or parcels of the same camping site.

### Article 198

Anyone can offer a cable broadcasting network, under the conditions of this chapter, if he meets the following requirements:

- 1° take the form of a company or a statutory legal person whose object is the installation and operation of a cable network in the Flemish Region. The providers of cable networks can carry out all activities that tie in directly or indirectly with the accomplishment of their object;
- 2° differentiate between the activities within the framework of the construction and the operation of the cable network on the one hand, and offering other networks or services for which it has been granted exclusive or specific rights, on the other hand, in the accounts;
- 3° submit an annual activities report, mentioning the shareholder structure, the number of subscribers and broadcasts, as well as the balance sheet and annual accounts, as approved by the general shareholders meeting;
- 4° have the necessary technical infrastructure or a technical investment plan and submit a financial plan to this effect.

[The Flemish Regulator for the Media must be notified in advance, in accordance with article 219, of the provision of a cable broadcasting network or its transfer to a third party. The Flemish Government shall determine what information this notification must contain and what subsequent changes to it must be communicated to the Flemish Regulator for the Media.]<sup>307</sup>

[The Flemish Government may impose additional obligations in addition to those, mentioned in the first subparagraph. Such obligations shall comply with the following requirements:

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<sup>307</sup> Replaced by the act of 02.07.2021

- 1° they are objectively justified in relation to the network concerned;
- 2° they are non-discriminatory;
- 3° they are proportionate;
- 4° they are transparent.

Within one week of the notification mentioned in the first subparagraph, the Flemish Regulator for the Media shall issue a standard declaration confirming that the undertaking has made a notification in accordance with this article and article 219. This statement shall stipulate the conditions under which the undertaking may submit an application for the right:

- 1° to install facilities in accordance with article 200;
- 2° to negotiate interconnection and access;
- 3° to obtain interconnection.

The Flemish Regulator for the Media shall immediately send BEREC, by electronic means, all notifications that it has received. It shall send to BEREC, all the notifications that it has received before 21 December 2020, at the latest by 21 December 2021.]<sup>308</sup>

#### Article 199

The Flemish Government may determine the general management rules and police ordinances concerning the installation and operation of the cable networks and may set forth the minimum technical requirements the cable networks have to meet. In specific cases, the Flemish Government may impose special conditions to improve the quality of a network whose operations are defective.

#### Article 200

§1. Providers of cable networks shall be entitled to install and maintain cables and the related equipment, at their own cost, on or under public squares, roads, streets, paths, bodies of water and canals, provided they act according to the public laws and decisions and they respect the purpose thereof.

Before exercising this right, the relevant provider of a cable network shall submit the plan of the location and the special features concerning the installation of the pipes for the approval of the authorities in charge of the public domain. These authorities will decide within a period of two months, starting from the date on which the plan was submitted. They will notify the provider concerned of their decision. When this period has expired, the authority's silence shall be deemed to signal approval. In the event of a continuing disagreement a decision shall be taken via a resolution of the Flemish Government.

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<sup>308</sup> Added by the act of 02.07.2021

The public authorities shall invariably be entitled, each in their fields of competence, to have changes made to the organisation or the planning scheme, as well as the related activities. The costs for these works are to be borne by the provider of the cable network if the changes have been imposed due to one of the following reasons:

1° with a view to maintaining public security;

2° with a view to preserving nature and city heritage;

3° in the interest of roads, rivers, canals or a public service;

4° as a consequence of a change which the owners of land alongside the roads used made to the entrance of their properties.

In other cases, they will be borne by the government imposing the changes. The authority may require a prior estimate of the costs and in the event of a disagreement may have the work carried out itself.

[§ 1/1. The Flemish Regulator for the Media can disregard the provisions that govern the use of the public domain, in accordance with the principle of proportionality, in order to protect the environment, public health and public safety, or for reasons of town planning, and impose shared use on providers of radio broadcasting networks for the construction of their network elements and their associated facilities [...]<sup>309</sup> This shared use applies to facilities or property, inclusive of buildings, access to buildings, building cabling, masts, antennas, towers and other support buildings, ducts, conduits, manholes and street cabinets.

[...]<sup>310</sup>

The Flemish Regulator for the Media can impose the obligations indicated in the first section after an appropriate period of public consultation in which all interested parties are enabled the opportunity to present their position.

After an appropriate period of public consultation in which all interested parties are enabled the opportunity to present their position, the Flemish Regulator for the Media can impose obligations on the radio broadcasting networks for the shared use of building cabling or up to the initial point of connection or distribution should this be located outside the building if duplication of such infrastructure is economically inefficient or physically impracticable.

The obligations mentioned in the first and fourth sections can include an allocation regulation for the costs of the shared use of facilities or property which is adjusted to the risks.]<sup>311</sup> [The obligations, mentioned in subparagraphs 1 and 4, shall be objective, transparent, non-discriminatory and proportionate.]<sup>312</sup>

§ 2. Cable network providers shall also be entitled to place support and anchors, for the installation of cables and the related equipment of their cable network, on walls and facades facing the public highway. They shall also be entitled to install their cables in open and vacant

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<sup>309</sup> Lifted by the act of 02.07.2021

<sup>310</sup> Lifted by the act of 02.07.2021

<sup>311</sup> Inserted by the act of 13 July 2012

<sup>312</sup> Added by the act of 02.07.2021

land or have it pass without any fastening or securing over private property.

The activities may start only after duly established written notification is provided to the owners, according to the information in the land register, to the tenants and inhabitants.

If the provider of a cable network has the intention of installing cables, overground wiring and associated equipment, to remove them or work on them, then the cable network provider will try to arrive at an agreement with the person on whose property support is required or whose property will be spanned or crossed, as regards the location and the manner in which the works are carried out.

The implementation of the activities shall not result in the removal of ownership. Supports and anchors placed in walls or facades may not restrict the owner's rights to demolish or repair the property.

Underground cables and supports placed in open or vacant land must be removed at the request of the owner, when the latter exercises the right to carry out conversions or install fencing. The removal costs shall be charged to the provider of the cable network.

The owner has to notify the cable network provider of this at least two months before the start of the works, mentioned in the fourth and fifth paragraphs.

§ 3. The installation and execution of all other works to the cables, overground wiring and associated equipment, against and on buildings and on the land associated with it, for connections to the infrastructure in these buildings, have to be tolerated by the owner and the party entitled, unless they are prepared to bear the supplementary costs of a counterproposal.

§ 4. If branches or roots constitute a reasonable obstacle for the installation, maintenance or operation of cables, overground wiring and associated equipment, then the owner or the party entitled have to cut them back at the request of a cable network provider.

If the owner or the party entitled have not complied with a request for the term of a month, then the cable network provider can cut back the roots or branches itself.

The costs of this will be borne by:

1° the owner or the party entitled, if the trees and plantings are situated on his private property and their branches and cables constitute an obstacle for the cables, overground wiring and associated equipment:

- a) they are situated in or above the public domain;
- b) they are situated in or above his private property and serve to provide his connection;

2° the provider of the cable network in all other cases.

§ 5. If the provider of a cable network carries out works, the provider is obliged to restore the property to its original state within a reasonable term, depending on the case, of his own means or by relying on the services of a third party. It is possible to deviate from the provisions of this first paragraph subject to an agreement between a cable network provider

and the owner or the party entitled to the property.

The provisions of the first paragraph do not apply to the damages that are irretrievably caused to a property if the cable network provider carries out works that are required for the connections of the owner or the party entitled to the property.

§ 6. Compensation for damage caused by installing or operating a cable network shall be chargeable to the cable network provider, who shall continue to be liable for any resulting damage for third parties.

§ 7. The cable network provider shall be required to respond immediately to any action by the Flemish Regulator for the Media, the Belgian Postal Services and Telecommunications Institution or any electricity supplier service or company so as to put an immediate stop to a breakdown or any harmful impact on telephone or telegraph installations or electricity supply installations.

Otherwise, the relevant services or companies shall take the measures that are thought necessary, including relocating the cables and related installations, at the expense of the broadcasting network provider.

§ 8. The cables, overground wiring and associated equipment installed will remain the property of the cable network provider.

[Article 200/1.

If the Flemish Regulator for the Media, taking into account, where appropriate, the obligations resulting from a relevant market analysis, concludes that the obligations imposed in accordance with article 200, §1/1, do not sufficiently address the high and non-transitory economic or physical barriers to replication that underlie an existing or emerging market situation which significantly limits the competitive outcome for end-users, it may, on fair and reasonable terms, extend access obligations beyond the first point of convergence or distribution to reach a point which it considers to be closest to end-users, capable of reaching a sufficient number of end-user connections to be commercially viable for efficient access seekers. In determining how far beyond the first point of convergence or distribution such an extension should go, the Flemish Regulator for the Media shall take the utmost account of the relevant BEREC Guidelines. If justified from a technical or economic point of view, the Flemish Regulator for the Media may impose active or virtual access obligations.

The Flemish Regulator for the Media shall not impose any obligations on providers of electronic communication networks pursuant to the first subparagraph if it finds that one of the following applies:

1° the provider meets the conditions, mentioned in article 192/11, and he provides a feasible and comparable alternative means of reaching end-users by offering access to a very high capacity network to undertakings under fair, non-discriminatory and reasonable conditions. The Flemish Regulator for the Media may extend this exemption to other undertakings offering access to a very high capacity network on fair, non-discriminatory and reasonable terms;

2° the imposition of obligations jeopardises the economic or financial viability of rolling out a new network, in particular by small local projects.

By way of derogation to the second subparagraph, 1°, the Flemish Regulator for the Media may impose obligations on providers of electronic communication networks that meet the criteria mentioned in the second subparagraph, 1°, if the network concerned is financed from public funds.

The obligations imposed in application of this article shall be objective, transparent, proportionate and non-discriminatory. These obligations shall be imposed in accordance with the consultation procedures, mentioned in articles 192/14 and 192/15.]<sup>313</sup>

[Article 200/2.

The Flemish Regulator for the Media may intervene, on its own initiative if justified, in order to promote and, where necessary, guarantee adequate access and interconnection or interoperability of services in accordance with this Title and Section VI, and in order to guarantee the basic objectives, mentioned in article 223/1.

Without prejudice to measures with respect to undertakings with significant market power pursuant to article 191, the Flemish Regulator for the Media may impose obligations on undertakings that control access to end-users, if this is necessary to ensure end-to-end connections, which in cases where this is justified also includes the obligation to interconnect their networks where this has not already been done.

Undertakings that control access to end-users can be required by the Flemish Regulator for the Media to make their services interoperable, if this is justified and necessary.

Providers of electronic communication networks may be required by the Flemish Regulator for the Media, if this is necessary to ensure end-user access to specified digital broadcasting services, to offer access to application programme interfaces and electronic programme guides on fair, reasonable and non-discriminatory terms.

The consultation procedures, mentioned in articles 192/14 and 192/15, shall apply. Obligations and conditions imposed in accordance with the first subparagraph shall be objective, transparent, proportionate and non-discriminatory.

The Flemish Regulator for the Media provides guidelines and makes the procedures for obtaining access and interconnection available to the public in order to ensure that small and medium-sized undertakings and operators with a limited geographical reach can benefit from the obligations imposed.]<sup>314</sup>

## TITLE IV

### Offering radio broadcasting networks

#### Article 201

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<sup>313</sup> Inserted by the act of 02.07.2021

<sup>314</sup> Inserted by the act of 02.07.2021

§ 1. No one can offer a radio broadcasting network without a written licence from the Flemish Regulator for the Media. This licence is personal and may only be transferred to a third party subject to the Flemish Regulator for the Media's consent in writing.

The Flemish Government shall determine the duration of the licences referred to in the first paragraph, the conditions for obtaining them and the arrangements and procedures for seeking, changing, suspending or withdrawing them. [The licences, mentioned in the first subparagraph, shall be granted on the basis of objective, transparent, procompetitive, non-discriminatory and proportionate criteria.]<sup>315</sup>

[The Flemish Government shall announce amendments to the duration of the licences, the conditions under which they can be obtained, the modalities and procedure for applying, amending, suspending or withdrawing them, and the digital frequency plan, mentioned in § 2, in an appropriate manner. Interested parties, including users and consumers, may, prior to the decision on the aforementioned amendment, make their views known during a consultation procedure lasting a minimum of four weeks and organised in the manner and by the competent service designated by the Flemish Government.]<sup>316</sup>

§ 2. The Flemish Government shall draw up and approve a digital frequency plan. It shall determine the number of frequency blocks and frequency channels, including the related technical procedures that shall be granted in part or full to the providers of radio broadcasting networks.

[The frequency blocks and frequency channels mentioned in the first paragraph, including the associated technical conditions granted in whole or in part to the provider of a radio broadcasting network, may be withdrawn, replaced or modified as a result of international or European regulations and duties.]<sup>317</sup>

§ 3. The Flemish Government shall provide the public broadcaster with the frequency blocks and frequency channels the public broadcaster requires [in order to achieve the objectives of general interest in accordance with the management agreement, mentioned in article 17, §1, 1°.]<sup>318</sup>

## Article 202

In order to obtain a licence as referred to in Article 201 the provider has to comply with the following conditions. It has to:

1° take the form of a company or a statutory legal person whose object is to install and operate a radio broadcasting network in the Flemish Community. The providers of a radio network can carry out all activities that tie in directly or indirectly with the accomplishment of their object;

2° fall under the competence of the Flemish Community;

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<sup>315</sup> Added by the act of 02.07.2021

<sup>316</sup> Added by the act of 02.07.2021

<sup>317</sup> Added by the act of 14 Oktober 2016

<sup>318</sup> Replaced by the act of 02.07.2021



3° differentiate in their accounts between the activities within the framework of offering a radio broadcasting network on the one hand and offering other networks or services for which exclusive or specific rights have been granted, on the other hand;

4° every year, submit an activities report to the Flemish Regulator for the Media before 30 June, mentioning, where applicable, the number of subscribers and broadcasts, the balance sheet and the annual accounts, as approved by the general shareholders meeting;

5° pay annual compensation for using the required frequency blocks and channels; [Such compensation shall be objectively justified, transparent and non-discriminatory.]<sup>319</sup>

6° have the required technical infrastructure or technical investment plan and also submit a financial plan to this effect;

7° not provide electronic communication networks which offer broadcasting or electronic communication services, in return for payment, to end users in Flanders;

8° not be a company in which the companies mentioned in item 7 have control. Control includes the rights, agreements or other means that facilitate the individual or joint determining control on the company's activities, taking into account all factual and legal circumstances, in particular:

a) property or user rights on all or part of a company's capital components;

b) rights or agreements, which provide for determining control on the composition, voting behaviour or decisions of the company's bodies.

The Flemish Government shall determine the amount and the payment conditions for the annual fee referred to in the first paragraph, 5°, for the use of the required frequency blocks and channels.

[The Flemish Government may attach the following additional obligations to the licences:

1° technical and operational conditions necessary for the prevention of harmful interference and for the protection of public health against electromagnetic fields, taking the utmost account of Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz);

2° maximum duration, subject to changes in the national frequency allocation plan;

3° conditions relating to the transfer or lease of rights of use of spectrum subject to the authorisation at the initiative of the holder of the authorisation;]<sup>320</sup>

[The obligations, mentioned in the third subparagraph shall be objectively justified in relation to the network concerned, non-discriminatory, proportionate and transparent.]<sup>321</sup>

[Article 202/1

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<sup>319</sup> Added by the act of 02.07.2021

<sup>320</sup> Replaced by the act of 02.07.2021

<sup>321</sup> Added by the act of 02.07.2021

§ 1. Providers of radio broadcasting networks shall be entitled to install and maintain cables and the equipment associated with their radio broadcasting network, at their own cost, on or under public squares, roads, streets, paths, waterways and canals, provided they act according to the public laws and decisions and they respect the purpose thereof.

Before exercising this right, the relevant provider of a radio broadcasting network shall submit the plan of the location and the special features concerning the installation of the cables for the approval of the authority competent for the public domain. This authority will decide within a period of two months starting from the date on which the plan is submitted. It shall inform the relevant provider of a radio broadcasting network of its decision. When this period has expired, the authority's silence shall be deemed to signal approval. In the event of a continuing disagreement a decision shall be taken via a Decree of the Government of Flanders.

The authorities have the right to later alter the layout or the planning scheme and the works arising therefrom on their domain. The costs for these works are to be borne by the provider of the radio broadcasting network if the changes have been imposed due to one of the following reasons:

1° with a view to public safety;

2° to preserve the natural and urban beauty;

3° in the interest of roads, waterways, canals or a public service;

4° as a consequence of a change which the owners of land alongside the roads used made to the entrance of their properties.

In cases other than the cases indicated in the second section, they are at the expense of the authorities that imposed the changes. The authority may require a prior estimate of the costs and in the event of a disagreement may have the work carried out itself.

§ 2. The Flemish Regulator for the Media can disregard the provisions that govern the use of the public domain, in accordance with the principle of proportionality, in order to protect the environment, public health and public safety, or for reasons of town planning, and impose shared use on providers of radio broadcasting networks for the construction of their network elements and their associated facilities only after an appropriate period of public consultation. This shared use applies to facilities or property, inclusive of buildings, access to buildings, building cabling, masts, antennas, towers and other support buildings, ducts, conduits, manholes and street cabinets.

Associated facilities is understood to mean services that belong to an electronic communications network or an electronic communications service, physical infrastructures and other elements that enable or support the provision of services via that network or that enable or support that service or that possess the potential to do so, such as buildings or access to buildings, building cabling, antennas, towers and other support constructions, ducts, conduits, masts, manholes and street cabinets.

The Flemish Regulator for the Media can impose the obligations indicated in the first section

after an appropriate period of public consultation in which all interested parties are enabled the opportunity to present their position.

After an appropriate period of public consultation in which all interested parties are enabled the opportunity to present their position, the Flemish Regulator for the Media can impose obligations on the radio broadcasting networks for the shared use of building cabling or up to the initial point of connection or distribution should this be located outside the building if duplication of such infrastructure is economically inefficient or physically impracticable.

The obligations mentioned in the first and fourth sections can include an allocation regulation for the costs of the shared use of facilities or property which can be adjusted to the risks.

§ 3. For laying the cables and associated equipment, providers of radio broadcasting networks permanently install supports and anchors on walls and façades that face public roads and can lay their cables in open and undeveloped land or let them run above private properties without attachment or contact.

The works may start only after duly established written notification is provided to the owners, according to the information in the land register, and to the tenants and inhabitants.

If the provider of a radio broadcasting network wishes to lay, clean up or conduct works on cables, surface lines and associated equipment, it will pursue agreement concerning the location and the method of conducting the works with the person from whose property support is received or from the person whose property is spanned or crossed.

The implementation of the activities shall not result in the removal of ownership. The placement of supports and anchors on walls or façades may not interfere with the owner's right to tear down or repair his property.

Underground cables and supports placed in open or undeveloped land must be removed upon request of the owner if he exercises his right to build or to fence. The removal costs shall be charged to the provider of the radio broadcasting network.

The owner has to notify the radio broadcasting network provider of this at least two months before the start of the works, mentioned in the fourth and fifth sections.

§ 4. The installation and execution of all other works to the cables, overground lines and associated equipment, against and on buildings and on the land associated with it, for connections to the infrastructure in these buildings, must be allowed by the owner and the party entitled, unless they are prepared to bear the supplementary costs of a counterproposal.

§ 5. If branches or roots constitute a reasonable obstacle for the installation, maintenance or operation of cables, overground wiring and associated equipment, then the owner or the party entitled must cut them back at the request of a radio broadcasting network provider.

If the owner or the party entitled has not complied with a request during the term of one month, then the radio broadcasting network provider can cut back the roots or branches itself. The cost of cutting them back are at the expense of:

1° the owner or the party entitled, if the trees and plantings are situated on his private property

and their branches or roots constitute an obstacle for the cables, overground lines and associated equipment which:

a) are located in or above the public domain;

b) are located on or above his private property and are necessary for his connection;

2° the provider of the radio broadcasting network in all other cases.

§ 6. If the provider of a radio broadcasting network conducts works, it must repair the property to its original condition within a reasonable amount of time according to the case, of its own accord or by enlisting the services of a third party.

The obligation, mentioned in the first section, does not apply to damages that were unavoidably caused by the provider of a radio broadcasting network to a property if the provider is conducting works that are necessary for the connection of the owner or the party entitled of that property.

The provider of a radio broadcasting network and the owner or party entitled of the property can deviate from the obligations indicated in the first section.

§ 7. Compensation for damage caused by installing or operating a radio broadcasting network shall be at the expense of the radio broadcasting network provider, who shall continue to be liable for any resulting damage to third parties.

§ 8. The radio broadcasting network provider shall be required to respond immediately to any action by the Flemish Regulator for the Media, the Belgian Postal Services and Telecommunications Institution or any electricity supplier service or company so as to put an immediate stop to a disturbance or any harmful impact on telephone or telegraph installations or electricity supply installations.

Otherwise, the relevant services or companies shall take the measures that are thought necessary, including relocating the cables and related installations, at the expense of the broadcasting network provider.

§ 9. The cables, overground lines and associated equipment installed will remain the property of the radio broadcasting network provider.]<sup>322</sup>

## Article 203

The provider of a radio broadcasting network will use its network's digital capacity to transmit broadcasts.

## Article 204

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<sup>322</sup> Inserted by the act of 13 July 2012

The Flemish Government may determine the general management rules and police ordinances concerning the installation and operation of the cable networks and may set forth the minimum technical requirements the radio networks have to meet. In specific cases, the Flemish Government may impose special conditions to improve the quality of a network whose operations are defective.

#### Article 205

The Flemish Regulator for the Media shall be authorised to check at any time to see if the radio broadcasting network and its operations are consistent with the provisions in this chapter and the implementing orders.

#### [PART VI

The use of standards to transmit television and radio signals]<sup>323</sup>

#### Article 206

Television broadcasters which fall within the jurisdiction of the Flemish Community must:

1° conduct their broadcasts using a 16:9 system, that is completely compatible with PAL, for wide-screen broadcasts and broadcasts in 625 lines which are not fully digital;

2° to assure their broadcasts using a transmission system that has been standardized by an accredited European standardization body, for fully digital broadcasts.

#### Article 207

Electronic communication networks that are set up to distribute digital television programs have to be able to broadcast wide-screen television programs. Providers [of electronic communications networks receiving wide-screen television programmes]<sup>324</sup> have to broadcast these programs in the same wide-screen format as the one in which it is delivered.

#### Article 208

Any analogue television set with an integral screen where the visible diagonal is more than 42 cm and is available to buy or lease on the market has to be provided with at least one connection socket, standardised by an accredited European standardisation body, with an open interface enabling peripheral equipment to be connected, such as other decoders and digital receivers.

[Any digital television set with an integral screen of visible diagonal greater than 30 cm which is put on the market for sale or rent in the European Union or the European Economic Area shall be fitted with at least one open interface socket, either standardised or conforming to a standard adopted by a recognised European standards organisation, or conforming to an industry-wide specification, permitting simple connection of peripherals, and able to pass all the relevant elements of a digital television signal, including information relating to interactive and conditionally accessed services.]<sup>325</sup>

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<sup>323</sup> Replaced by the act of 12.02.2021

<sup>324</sup> Replaced by the act of 02.07.2021

<sup>325</sup> Replaced by the act of 02.07.2021

## Article 209

Any equipment intended for the reception of digital television signals sold, leased or otherwise made available in Flanders and enabling digital television signals to be decoded has to be suitable for:

1° facilitating the decoding of such signals in accordance with the European encryption algorithm that is managed by an accredited European standardization body;

2° to represent signals that are transmitted without encryption, if the lessee complies with the lease agreement in the case of leased equipment.

[Art. 209/1 All equipment intended for the reception of FM radio signals from a radio broadcasting organisation and sold in Flanders must be capable of receiving digital radio signals. The obligation referred to in the first sentence of this paragraph does not apply to radio equipment used by radio amateurs, smartphones and tablets.]<sup>326</sup>

[A car radio receiver fitted in a new vehicle of category M vehicles offered for sale or lease shall include a receiver which is capable of receiving and reproducing at least radio services transmitted via digital terrestrial radio broadcasts. Vehicle of category M refers to vehicles as defined in the Royal Decree of 15 March 1968 containing general regulations on the technical requirements to which the cars, their trailers, their components and their safety accessories must satisfy.]<sup>327</sup>

[The Flemish Government may also exempt other types of FM receivers with a specific functionality, of a specific type, below a specific price threshold or of which the radio reception is only incidental, from the obligation referred to in the first paragraph, first sentence, when they are marketed.]<sup>328</sup>

## Article 210

The providers of broadcasting services and service providers using conditional access systems should make exclusive use of conditional access systems, which offer the required technical possibilities for a cheap control transfer. This entails that service providers or the providers of broadcasting networks are offered the facility to have complete control of their services by means of such conditional access systems.

## [Article 211

All service providers offering conditional access services, irrespective of the means of transmission, which provide access services to digital television and digital radio services and on which broadcasters depend to reach potential viewers or listeners, shall comply with all of the following conditions:

1° they shall offer to all broadcasters, on fair, reasonable and non-discriminatory terms compatible with the competition rules of the European Union, technical services enabling the

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<sup>326</sup> Inserted by the act of 12.02.2021. Comes into force on 01.01.2023

<sup>327</sup> Added by the act of 12.02.2021

<sup>328</sup> Added by the act of 12.02.2021. Comes into force on 01.01.2023

services of the broadcaster transmitted in digital mode to be received by authorised viewers or listeners by means of decoders operated by the service provider and complying with the competition rules of the European Union;

2° they keep separate accounts for their activities as conditional access providers.]<sup>329</sup>

#### Article 212

Broadcasting companies that use a decoder or other conditional access systems for their digital transmissions have to publish a price list for viewers taking account of any provision of corresponding equipment.

#### Article 213

When holders of industrial property rights for conditional access systems and products grant authorisations to manufacturers of consumer equipment, they must do so in a fair, reasonable and non-discriminatory way.

Holders of certain rights may not make the granting of authorisations, where account is taken of technical and commercial factors, dependent upon conditions where it is forbidden, discouraged or made unappealing to do the following to the product in question:

1° to integrate a common interface which enables connection with various access systems; 2° integrate other resources belonging to another access system, when the licence holder meets the reasonable and suitable conditions for protecting the transactions of the operators and conditional access systems.

#### Article 214

The Flemish Regulator for the Media may impose conditions on suppliers of digital interactive programs on digital interactive platforms and suppliers of advanced digital terminal equipment governing the use of an open API pursuant to the minimum requirements of the relevant standards or specifications.

The Flemish Regulator for the Media may impose conditions on API owners so that all the necessary information is made available to enable suppliers of digital interactive programs to provide all services supported by the API in a fully functional form.

[Article 214/1

The Government of Flanders can impose conditions on broadcasters and service providers with regard to offering interoperable television services to end-users with a disability.]<sup>330</sup>

## PART VII

### The Flemish Regulator for the Media

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<sup>329</sup> Replaced by the act of 02.07.2021

<sup>330</sup> Inserted by the act of 13 July 2012

## TITLE I

### Establishment and composition

#### Article 215

The Flemish Regulator for the Media is an external independent agency with a legal personality under public law as referred to in [Article III.7 of the Administrative Act]<sup>331</sup>.

The Flemish Government determines to which uniform policy area the Flemish Regulator for the Media belongs.

The head office of the Flemish Regulator for the Media is located in Brussels.

[The provisions of the Administrative Act apply to the Agency, with the exception of Article III.9, § 2. Article III.13 of the Administrative Act does not apply to the general chamber and the chamber for impartiality and protection of minors of the VRM.]<sup>332</sup>

§ 2. In the Flemish Regulator for the Media there are two chambers:

1° a general chamber;

2° a chamber overseeing impartiality and the protection of minors.

#### Article 216

§ 1. The general chamber consists of five members: two magistrates, among which the president, and three media experts.

Persons can be appointed as members of the general chamber if they meet the following requirements:

1° for the magistrates : the magistrates must have held the office of magistrate in the courts and courts of appeal or in the Council of State for at least five years;

2° for the media experts: the media experts must have held a scientific post or teaching post at a Flemish university or at a Flemish institute of higher education leading to higher degrees for at least five years, or must have at least five years' professional experience in the media.

In order to be appointed president to the general chamber, it is necessary to have held the position of magistrate in the courts or courts of appeal or in the Council of State for at least five years.

Without prejudice to the irreconcilable situations referred to in [Article III. 12, § 1, of the Administrative Act]<sup>333</sup>, which apply to all the members of the Flemish Regulator for the Media, a member of the general chamber may not have any link with a media, advertising or promotional company or organization, or with a distributor of broadcasting signals, nor have

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<sup>331</sup> Replaced by the act of 7 December 2018

<sup>332</sup> Replaced by the act of 7 December 2018

<sup>333</sup> Replaced by the act of 7 December 2018



economic interests in such companies or bodies.

§ 2. The chamber overseeing impartiality and the protection of minors is composed of nine members, including the president, of whom four are professional journalists.

In order to be as a member of the chamber overseeing impartiality and the protection of minors, it is necessary to comply with the following conditions:

1° have held the office of magistrate in the courts and courts of appeal or in the Council of State for at least five years;

2° have held a scientific post or teaching post at a Flemish university or at a Flemish institute of higher education leading to higher degrees for at least five years,

3° have at least five years' professional experience in the media.

§ 3. The chamber overseeing impartiality and the protection of minors is extended with the following members to deal with complaints relating to the application of [Article 42, 44, 45, 72, 5°, and [Article 180, §6]<sup>334</sup>]<sup>335</sup>

1° two experts with at least five years of professional experience in the fields of child psychology, child psychiatry or education;

2° two experts who are involved in the interests of families and children.

Without prejudice to the irreconcilable situations referred in [Article III. 12, § 1, of the Administrative Act]<sup>336</sup>, which apply to all the members of the Flemish Regulator for the Media, a member of the chamber overseeing impartiality and the protection of minors, with the exception of the professional journalists, may not have any link with a media, advertising or promotional company or organization. Professional journalists who are members of the chamber overseeing impartiality and the protection of minors may not exercise a management position or mandate in a broadcaster, or exercise a management mandate in a media, advertising or promotional company or institution.

§ 4. The members of the chambers of the Flemish Regulator for the Media are appointed by a decision of the Flemish Government for a renewable period of five years.

The Flemish Government proceeds to replace a member of the chamber when this member:

1° is physically or mentally incapacitated;

2° resigns or is forced to resign due to incompatibility;

3° requests that his mandate be terminated in application of § 5, first paragraph;

4° is officially dismissed in application of § 5, second paragraph;

5° is dismissed in application of Article 217.

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<sup>334</sup> Replaced by the act of 13 July 2012

<sup>335</sup> Replaced by the act of 19 July 2013

<sup>336</sup> Replaced by the act of 7 December 2018

[The decision referred to in the second subparagraph of this article shall be duly justified, subject to prior notification and made available to the public.]<sup>337</sup>

The president and deputy president of the two chambers are appointed by Decree of the Flemish Government.

The Flemish Government determines the amount of the payments which must be made to the members of the chambers of the Flemish Regulator for the Media. It determines the reimbursement of travel and accommodation expenses.

§ 5. If the president, deputy president or a member of the chamber asks to terminate that person's appointment, provided the Flemish Government agrees, a six-month period of notice is required. Subject to a mutual agreement the period may be shortened.

The president of a chamber will conclude the official dismissal of a member, if this member has been absent nine successive times.

## Article 217

§ 1. The general chamber and the chamber overseeing impartiality and the protection of minors draw up the rules of procedure.

The rules of procedure cover various items such as the arrangements, the procedure for the general meeting of the Flemish Regulator for the Media, as well as the professional code the members of each chamber have to observe.

§ 2. Should a member of a chamber violate the rules of procedure the board of Directors acts as a disciplinary chamber.

The board of presidents may subject the members of the chambers to a reprimand, a suspension of up to six months or a reduction in the attendance fees and/or fixed compensation as a disciplinary measure, providing justification for this.

Pursuant to a substantiated opinion issued to the Flemish Government, the board of presidents may recommend the dismissal of a member who violates the ethical rules.

§ 3. Should the rules of procedure be violated by the president or deputy president of the general chamber or the chamber overseeing impartiality and protection of minors, a general meeting of the Flemish Regulator for the Media is convened.

The general meeting of the Flemish Regulator for the Media includes all the members of the general chamber and the chamber overseeing impartiality and protection of minors, excluding the respective presidents.

Should the rules of procedure be violated by the president or deputy president of the general chamber or the chamber overseeing impartiality and protection of minors, the general meeting of the Flemish Regulator for the Media may impose a reprimand, a suspension of up to six months or a reduction in the attendance fees and/or fixed compensation as a disciplinary

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<sup>337</sup> Inserted by the act of 19 March 2021

measure, providing justification for this.

Pursuant to a substantiated opinion issued to the Flemish Government, the general meeting of the Flemish Regulator for the Media may recommend the dismissal of the president or deputy president from any one of the two chambers who violate the ethical rules.

§ 4. The Flemish Government decides on the circumstances where the dismissal, referred to in 4 and 2 may be recommended.

In any event a dismissal results from the reason ensuing from the application of Article 404 of the Judicial Code.

## TITLE II

### Mission, tasks and competences

#### Article 218

§ 1. The mission of the Flemish Regulator for the Media is to enforce the media regulations within the Flemish Community, settle disputes related to the media regulations and issue media accreditation and licences in accordance with the regulations.

§ 2. The general chamber has the following tasks:

1° in application of paragraph 3 and of articles 13 and 30, the supervision of compliance with and restriction of violations on the provisions of this Act [and its implementing decisions]<sup>338</sup>, including the supervision on compliance by the public broadcaster and restriction of violations by the public broadcaster;

2° issuing, changing, suspending and rescinding broadcasting licences;

3° granting, suspending or rescinding licences for offering a radio broadcasting network;

4° granting and rescinding permission to service providers to transmit broadcasts;

5° receiving different types of notifications aimed at the Flemish Regulator for the Media, mentioned in this Act;

6° determining the relevant markets and their geographical scope for products and services in the electronic communication networks sector, and analysing these markets in order to determine whether they are effectively competitive;

7° identifying enterprises with considerable market power in the markets analysed in accordance with item 6° and enforcing, where applicable, one or more of the obligations mentioned in [Article 191]<sup>339</sup>;

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<sup>338</sup> Inserted by the act of 13 July 2012

<sup>339</sup> Replaced by the act of 02.07.2021

8° mapping concentrations in the Flemish media sector [including the state of the market for electronic communications]<sup>340</sup>;

9° supervision of compliance by the public broadcasters of the Flemish Community's management agreement and annual reporting on this subject to the Flemish Government;

[9°/1 the providing of recommendations to the Government of Flanders should the Flemish Public Broadcasting Company wish to conduct new services or activities that are not covered by the management agreement as stipulated in Article 18;]<sup>341</sup>

10° carrying out special assignments, which can be entrusted to the General Chamber, if necessary, by the Flemish Government, insofar as they pertain to the duties mentioned in items 1° to [9°/1;]<sup>342</sup>

[11° taking measures pursuant to [articles 192/12, 200, §1/1, 200/1 and 200/2.]<sup>343</sup>]<sup>344</sup>

[12° performance of the contracts outlined in and/or arising from Article 184/1 and the Flemish Government Decree implementing Article 184/1, § 2.]<sup>345</sup>

[13° the supervision of the correctness of the coverage data made available by the service distributors, the calculation of the average daily coverage of the regional television broadcasters, and the calculation of the individual coverage fees, as mentioned in Article 166/1, § 2, paragraph 6, to be paid to the regional television broadcasters by the service distributors.]<sup>346</sup>

[14° without prejudice to the application of paragraph 3, first paragraph, 2°, drawing up non-binding interpretative guidelines that clarify the provisions of this act or its implementing decrees;

15° without prejudice to the application of paragraph 3, first paragraph, 3°, the providing of recommendations if these are foreseen in this act and its implementing decrees or at the request of the Flemish Government.]<sup>347</sup>

[16° the execution of the assignments described in and/or resulting from article 157 and its implementing decrees.]<sup>348</sup>

[17° establishing and maintaining an up-to-date list, mentioned in article 150/1, §4/2;

18° informing the European Commission as mentioned in article 150/1, §4/3;

19° making public the reports, mentioned in article 151, §4;

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<sup>340</sup> Added by the act of 02.07.2021

<sup>341</sup> Inserted by the act of 13 July 2012

<sup>342</sup> Replaced by the act of 13 July 2012

<sup>343</sup> Added by the act of 13 July 2012

<sup>344</sup> Replaced by the act of 02.07.2021

<sup>345</sup> Added by the act(2) of 17 January 2014

<sup>346</sup> Added by the act of 21 February 2014

<sup>347</sup> Added by the act of 29.06.2018

<sup>348</sup> Added by the act of 22.03.2019

20° maintaining the point of contact as mentioned in article 151, §7;

21° informing the national regulatory authority or national regulatory body of the other Member State of the European Union of the notification, mentioned in article 161, second subparagraph, and in article 175, second subparagraph;

22° informing the national regulatory authority or national regulatory body of the other Member State about the complaints or remarks, mentioned in article 176/8;

23° informing the national regulatory authority or national regulatory body of the other Member State of the European Union, mentioned in article 220/1.]<sup>349</sup>

The general chamber acts completely autonomously in exercising its competences, referred to in § 2. [However, when performing the tasks, mentioned in the first subparagraph, 1° to 7° and 11°, the General Chamber shall take very careful account of guidelines, opinions, recommendations, common positions, best practices and methodologies adopted by BEREC; and for the tasks, mentioned in the first subparagraph, 1° to 7°, also of the recommendations and decisions of the European Commission adopted to ensure the harmonised application of Directive 2018/1972.]<sup>350</sup> In the case of disputes, the general chamber is represented in law by its president.

§ 3. [The chamber overseeing impartiality and the protection of minors has the following tasks:

1° pronouncing on disputes which have arisen in connection with the application of articles 38, 39, [40/1, 42, 72, 5°, 176/4, §1, 1°, and article 176/4, §1, 2°]<sup>351</sup>]<sup>352</sup>]<sup>353</sup>

2° drawing up non-binding interpretative guidelines on articles 38, 39[40/1, 42, 72, 5°, 176/4, §1, 1°, and article 176/4, §1, 2°;]<sup>354</sup>

3° formulating recommendations on articles 38, 39, [40/1, 42, 72, 5°, 176/4, §1, 1°, and article 176/4, §1, 2°]<sup>355</sup>, if foreseen by this act and its implementing decrees, or at the request of the Flemish Government.]<sup>356</sup>

The chamber overseeing impartiality and the protection of minors pronounces completely autonomously in this respect. In the case of disputes, the chamber overseeing impartiality and the protection of minors is represented in law by its president.

§ 4. The minister is presented with a copy of every decision of the Flemish Regulator for the Media.

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<sup>349</sup> Added by the act of 19 March 2021

<sup>350</sup> Inserted by the act of 02.07.2021

<sup>351</sup> Replaced by the act of 13.07.2012

<sup>352</sup> Replaced by the act of 19.07.2013

<sup>353</sup> Replaced by the act of 19 March 2021

<sup>354</sup> Replaced by the act of 19 March 2021

<sup>355</sup> Replaced by the act of 19 March 2021

<sup>356</sup> Replaced by the act of 29.06.2018

§ 5. [...] <sup>357</sup> the Flemish Regulator for the Media submits an annual activity report to the Flemish Government and the Flemish parliament, which is presented before 31 March of the following calendar year.

[§ 6. If necessary, the Flemish Media Regulator shall cooperate with the following actors in the context of the application of Sections IV and V:

1° the competent regulatory authorities for radio broadcasting and telecommunications of the French and German-speaking Community, the Federal Government and the other Member States of the European Union and the European Economic Area;

2° the Belgian competition authorities;

3° the regulatory and supervisory bodies in the other economic sectors in Belgium;

4° the European Commission;

5° BEREC.

Upon a reasoned request from the European Commission, the Flemish Regulator for the Media shall provide the European Commission with the information necessary to perform its tasks pursuant to the Treaty on the Functioning of the European Union. If the information provided by the Flemish Regulator for the Media relates to information previously provided by undertakings at the request of the Flemish Regulator for the Media, those undertakings shall be informed thereof. If the European Commission requests information from the Flemish Regulator for the Media in accordance with this article, which the Flemish Regulator for the Media has obtained from undertakings, and if those undertakings so request, the Flemish Regulator for the Media shall request the European Commission, giving its reasons, not to make the information provided available to regulatory authorities of other Member States.] <sup>358</sup>

[§7. When drawing up non-binding interpretative guidelines, stated in paragraph 2, first paragraph, 14 °, and paragraph 3, first paragraph, 2 °, the Flemish Regulator for the Media organizes a public consultation.] <sup>359</sup>

## Article 219

Notifications, applications for accreditation or a broadcasting licence and complaints are submitted to the Flemish Regulator for the Media by registered letter or by electronic mail or any other means of telecommunication which results in a written document on the part of the addressee and for which an electronic signature is placed which complies with the requirements of Article 1322 of the Civil Code.

For complaints, notifications and applications which are submitted by electronic mail or by any other means of communication, the Flemish Regulator for the Media immediately sends the applicant a confirmation of receipt.

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<sup>357</sup> Canceled by the act of 7.12.2018

<sup>358</sup> Replaced by the act of 02.07.2021

<sup>359</sup> Added by the act of 29.06.2018

## Article 220

§ 1. The general chamber pronounces its decision either officially, or at the request of the Flemish Government, or following a complaint in writing, signed and stating reasons, which can be presented to it by any interested party, and in the case of a complaint regarding the provisions on advertising, teleshopping, sponsorship and public service announcements, by any natural or legal person.

The general chamber can only pronounce itself on a complaint as regards the content of advertising subject to a written and signed and duly substantiated complaint. In order to be admissible, the complaint must be submitted at the latest fifteen days after the event which gave rise to the complaint.

§ 2. The chamber overseeing impartiality and the protection of minors pronounces its decision, officially as regards supervision on [Articles [40/1, 42, 72, 5°, 176/4, §1, 1°, and article 176/4, §1, 2°] <sup>360</sup><sup>361</sup> either at the request of the Flemish Government or following a complaint which was submitted on penalty of inadmissibility, at the latest fifteen days after the date on which the program was broadcast, by anyone who can demonstrate an interest or a disadvantage.

§ 3. In the case of a dispute regarding which chamber is competent to deal with a complaint, the board of presidents of the Flemish Regulator for the Media designates the chamber which is competent to deal with the complaint. The board of presidents consists of the presidents of the general chamber and of the chamber overseeing impartiality and the protection of minors. If the president of the general chamber or the president of the chamber overseeing impartiality and the protection of minors is unable to deal with the complaint, he is replaced in the board of presidents by the deputy president of the respective chamber.

§ 4. The Flemish Government determines the procedures and the periods for submitting, examining and dealing with the requests and complaints and to impose sanctions. In this respect, the right to defend an action, the obligation to state reasons and the principles of open administration must be guaranteed.

[Article 220/1.

If a Member State of the European Union has a request concerning the activities of a television broadcaster falling under the jurisdiction of the Flemish Community but offering a television service targeting that Member State of the European Union, the Flemish Regulator for the Media shall provide the regulatory authority or the regulatory body of the competent Member State all information that may be useful for the purpose of considering the request. The Flemish Regulator for the Media shall do its utmost to address the request within two months.]<sup>362</sup>

[Article 220/2.

§1. In the event of a dispute arising in connection with the obligations imposed pursuant to Section V between providers of electronic communications networks or services, or between

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<sup>360</sup> Replaced by the act of 13 July 2012

<sup>361</sup> Replaced by the act of 19 March 2021

<sup>362</sup> Inserted by the act of 19 March 2021

such undertakings and other undertakings benefiting from the obligations of access or interconnection, the Flemish Regulator for the Media shall, at the request of either party, take a binding decision to resolve the dispute within four months, save in exceptional circumstances. All parties involved shall cooperate fully with the Flemish Regulator for the Media.

When settling a dispute, the Flemish Regulator for the Media shall take into account the objectives, mentioned in article 223/1.

The decision of the Flemish Regulator for the Media, mentioned in the first subparagraph, shall be made public, with due observance of the regulations governing the confidentiality of commercial information. The Flemish Regulator for the Media shall provide the parties involved with a full report of the reasons for its decision.

§2. If a dispute arises between undertakings in different Member States in connection with obligations imposed pursuant to Section V, either party may submit the dispute to the Flemish Regulator for the Media or to the competent national regulatory authorities of the other Member States. If the dispute affects trade between Member States, it will be brought to the attention of BEREC by the Flemish Regulator for the Media.

The Flemish Regulator for the Media shall take the utmost account of the recommendation by BEREC, in which BEREC requests the national regulatory authorities concerned to take specific measures to settle the dispute or not to take any measures. The Flemish Regulator for the Media and/or the other national regulatory authorities concerned shall, except in exceptional circumstances, take measures to settle the dispute as soon as possible and in any event within one month after the recommendation has been issued.

In exceptional circumstances, if there is an urgent need to act in order to protect competition or the interests of end-users, the Flemish Regulator for the Media may, at the request of the parties or on its own initiative, adopt provisional measures without awaiting BEREC's opinion.

This Section shall not apply to disputes regarding the coordination of the frequency spectrum.

§3. The procedure, mentioned in § 1 and 2, shall not affect the right of either party to bring an action before the court.]<sup>363</sup>

## Article 221

[§1. If the Flemish Regulator for the Media is of the opinion that a television broadcaster falling under the jurisdiction of a Member State of the European Union is offering a television service that is wholly or mostly targeting the Flemish Community, it may contact the competent Member State of the European Union with a view to achieving a mutually satisfactory solution.

The Flemish Regulator for the Media may invite the Contact Committee to examine the case.

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<sup>363</sup> Inserted by the act of 02.07.2021



§2. The Flemish Regulator for the Media can take appropriate measures against the television broadcaster, mentioned in paragraph 1, subject to the following conditions:

1° it is of the opinion that the results achieved through the application of paragraph 1 are not satisfactory;

2° it has adduced evidence showing that the television broadcaster, mentioned in paragraph 1, has established itself in a Member State of the European Union in order to circumvent the stricter rules, in the fields coordinated by directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (audiovisual media services directive), which would be applicable to the television broadcaster if this broadcaster were established in the Flemish Community, without the need to prove the television broadcaster, mentioned in paragraph 1, has the intention to circumvent those stricter rules.

The appropriate measures, mentioned in the first subparagraph, are subject to the following conditions:

1° they are objectively necessary;

2° they are taken in a non-discriminatory manner;

3° they are suitable to achieve the objectives which they pursue;

4° they are proportionate to the objectives which they pursue.

The Flemish Regulator for the Media can, to this end, impose sanctions as mentioned in Title IV, and oblige the service providers or network operators to suspend the transmission of the television service.

§3. The Flemish Regulator for the Media takes the appropriate measures, mentioned in paragraph 2, subject to the following conditions:

1° it has notified the European Commission and the Member State of the European Union in which the television broadcaster is established of its intention to take such measures while substantiating the grounds on which it bases its assessment;

2° it has respected the rights of defence of the concerned television broadcaster and has given that television broadcaster the opportunity to express its views on the alleged circumvention and the measures it intends to take;

3° the European Commission has decided that the measures are compatible with Union law, in particular that the assessment made by the Flemish Regulator for the Media is correctly founded.]<sup>364</sup>

## Article 222

[The Flemish Regulator for the Media will request the television broadcaster, whose television services are mainly or mostly targeting the territory of a Member State of the European Union, to observe the rules of general public interest if it receives a substantiated request from this Member State of the European Union regarding problems encountered as a result of these television services.

The Flemish Regulator for the Media shall regularly inform the requesting Member State of the European Union of the steps taken to address the problems identified, mentioned in the first subparagraph. Within two months of the receipt of the substantiated request, mentioned

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<sup>364</sup> Replaced by the act of 19 March 2021

in the first subparagraph, the Flemish Regulator for the Media shall inform the requesting Member State and the European Commission of the results obtained and explain, when applicable, the reasons why a solution could not be found.

The Flemish Regulator for the Media may invite the Contact Committee to examine the case.]<sup>365</sup>

## Article 223

The Flemish Regulator for the Media cannot act against violations of this Act based on facts that took place more than six months ago. This term of limitation is applied in case of a complaint or an official investigation and is suspended during holiday periods. The Flemish Government will determine the terms of limitation during holiday periods.

[Article 223/1.

With the allocation of radio spectrum and the application of Sections IV and V, the Flemish Government and the Flemish Regulator for the Media, respectively, shall pursue the following general objectives, presented in random order, insofar as they are applicable:

1° to promote connectivity to, and access to, and use of very high capacity networks, including fixed, mobile and wireless networks, for all citizens and enterprises of the European Union and the European Economic Area;

2° to promote competition in the provision of electronic communications networks and associated facilities, including efficient infrastructure-based competition, and in the provision of electronic communications services and associated services;

3° contributing to the development of the internal market by removing remaining obstacles and promoting convergent conditions for investment in and the provision of electronic communications networks, electronic communications services, associated facilities and associated services throughout the European Union and the European Economic Area, by developing common rules and predictable regulatory approaches, and by promoting the effective, efficient and coordinated use of radio spectrum, open innovation, the establishment and development of trans-European networks, the provision, availability and interoperability of pan-European services, and end-to-end connectivity;

4° promote the interests of the citizens of the European Union and of the European Economic Area in the following manner:

a) by ensuring connectivity to, and the widespread availability and use of, very high capacity networks, including fixed, mobile and wireless networks, and electronic communication services;

b) by ensuring optimal benefits in terms of choice, price and quality on the basis of effective competition;

c) by maintaining the security of networks and services;

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<sup>365</sup> Replaced by the act of 19 March 2021

d) by ensuring a high common level of protection for end-users through appropriate sector-specific rules;

e) by paying attention to the needs, such as affordable prices, of specific social groups, in particular disabled end-users, elderly end-users and end-users with special social needs, as well as freedom of choice and equal access for disabled end-users.

The Flemish Regulator for the Media shall act impartially, objectively, transparently and in a non-discriminatory and proportionate manner when carrying out the tasks, mentioned in the first subparagraph.]<sup>366</sup>

### TITLE III

#### Management and operation

##### Article 224

The management bodies of the Flemish Regulator for the Media are:

1° the Board of Directors;

2° the Managing Director.

##### Article 225

The Board of Directors and President are appointed by the Flemish Government. An appointment as director is incompatible with an appointment as a member to one of the Flemish Regulator for the Media's two chambers.

##### Article 226

[The Board of Directors is competent]<sup>367</sup> to carry out any actions which are necessary or useful to achieve the agency's object. The Board of Directors, however, does not have any competence with regard to the decisions which are taken concerning the execution of Article 217, § 2 and § 3 and Article 218, § 2 and § 3.

In particular, the Board of Directors has the following tasks and competences:

1° conclude the management agreement with the competent Minister;

2° approve reports concerning the implementation of the management agreement;

3° establish a [yearly]<sup>368</sup> budget;

4° redistribute the budgetary funds;

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<sup>366</sup> Inserted by the act of 02.07.2021

<sup>367</sup> Replaced by the act of 7.12.2018

<sup>368</sup> Inserted by the act of 19 March 2021

5° draw up the accounts;

6° report on budget implementation;

7° draw up the annual activity report [...]<sup>369</sup>.

[The annual budget, mentioned in the second paragraph, shall be made public.]<sup>370</sup>

## Article 227

The Managing Director is responsible for the day-to-day management and represents the Flemish Regulator for the Media in law, as regards the competences of the Board of Directors.

The Managing Director attends the meetings of the Flemish Media Regulator's chambers as an observer.

[Art. 227/1. The Flemish Regulator for the Media participates in Flemish, interfederal and national cooperative ventures or disputes committees in which it has a seat. For this purpose, the competent chamber can delegate a member of the competent chamber or a staff member of the Flemish Regulator for the Media.]<sup>371</sup>

[The Flemish Regulator for the Media shall contribute to the work of the European Regulators Group for Audiovisual Media Services (ERGA), mentioned in article 30ter of directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (audiovisual media services directive).]<sup>372</sup>

## TITLE IV

### Sanctions

## Article 228

If the general chamber establishes a violation of the provisions of this Act, that falls within the limits of its competences, as mentioned in Article 220, § 1, it may impose the following sanctions on [any natural or legal person to whom this Act applies]<sup>373</sup>:

1° warning with the order to put an end to the violation;

2° the order to broadcast the decision at the time and in the way that was instructed by the general chamber, at the expense of the party which committed the violation. If the decision is

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<sup>369</sup> Canceled by the act of 7.12.2018

<sup>370</sup> Added by the act of 19 March 2021

<sup>371</sup> Inserted by the act of 29.06.2018

<sup>372</sup> Added by the act of 19 March 2021

<sup>373</sup> Replaced by the act of 19 March 2021

not broadcast at the time and in the way that was instructed, an administrative penalty, as mentioned in item 4°, can be imposed;

3° the mandatory publication of the decision in dailies and weeklies, at the expense of the party which committed the violation. If the decision is not published in the way that was instructed, an administrative penalty, as mentioned in item 4, can be imposed;

4° an administrative penalty up to 125,000 euros;

5° the suspension or withdrawal of the broadcasting licence;

6° the suspension or withdrawal of the accreditation of the broadcaster;

7° the suspension of transmission [, mentioned in article 40/1]<sup>374</sup>.

In the case that the allocated broadcasting possibilities are not used, or are wrongly used, the general chamber can suspend or withdraw the accreditation of a national, [regional]<sup>375</sup> [, network]<sup>376</sup> or local radio broadcaster or suspend or withdraw the licence for a radio network.

#### Article 229

If the chamber overseeing impartiality and the protection of minors establishes a violation of the provisions of this Act, that falls within the limits of its competences, as mentioned in Article 220, § 2, it can impose the following sanctions to [any natural or legal person to whom this Act applies]<sup>377</sup> ]<sup>378</sup>:

1° warning with the order to put an end to the violation;

2° the order to broadcast the decision at the time and in the way that was instructed by it. In case of a violation of [the provisions, mentioned in article 40/1, 42 and 72, 5°,]<sup>379</sup>]<sup>380</sup> an administrative penalty, as mentioned in item 4°, can be imposed if the decision is not broadcast at the time and in the way that was instructed;

3° in case of a violation of [the provisions, mentioned in article 40/1, 42 and 72, 5°,]<sup>381</sup>]<sup>382</sup> the mandatory publication of the decision in dailies and weeklies, at the expense of the party which committed the violation; If the decision is not published in the way that was instructed, an administrative penalty, as mentioned in item 4, can be imposed;

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<sup>374</sup> Replaced by the act of 19 March 2021

<sup>375</sup> Lifted by the act of 12.02.2021. Comes into force on 01.01.2023

<sup>376</sup> Inserted by the act of 23 December 2016(2)

<sup>377</sup> Added by the act of 13 July 2012

<sup>378</sup> Replaced by the act of 19 March 2021

<sup>379</sup> Replaced by the act of 13 July 2012

<sup>380</sup> Replaced by the act of 19 March 2021

<sup>381</sup> Replaced by the act of 13 July 2012

<sup>382</sup> Replaced by the act of 19 March 2021

4° in case of a violation of [the provisions, mentioned in article 40/1, 42 and 72, 5°,]<sup>383</sup><sup>384</sup> an administrative penalty up to 125,000 euros;

5° the suspension of transmission [in accordance with article 40/1]<sup>385</sup>.

If the chamber overseeing impartiality and the protection of minors established a clear, important and serious violation of the provisions of Articles 38, 39 [, 42 and 72, 5°]<sup>386</sup>, the chamber overseeing impartiality and the protection of minors can propose to the Flemish Government the suspension of the transmission of a program [in accordance with article 40/1]<sup>387</sup>, with regard to all the broadcasting companies.

## Article 230

In case of non-payment of the administrative fine, the entity that was charged by the Flemish Government with collecting it at the request of the general chamber or the chamber overseeing impartiality and the protection of minors, issues a writ of execution. The writ of execution is served by a bailiff's writ of summons ordering the broadcaster to pay.

Within a period of 30 days after serving the writ, the party concerned can submit a defence, stating reasons, served in a bailiff's writ to the entity that was charged with the collection by the Flemish Government. This defence suspends the execution of the writ.

The service and enforcement of a writ of execution takes place, taking into account the provisions of part 5 of the Judicial Code with regard to attachment and means of enforcement.

## TITLE V

### Management agreement

#### Article 231

A management agreement is concluded between the Flemish Government and the Flemish Regulator for the Media, [...]<sup>388</sup>

The management agreement regulates the cooperation with other entities in the Flemish administration and with other governments.

## TITLE VI

### Financial provisions and personnel

## CHAPTER I

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<sup>383</sup> Replaced by the act of 13 July 2012

<sup>384</sup> Replaced by the act of 19 March 2021

<sup>385</sup> Replaced by the act of 19 March 2021

<sup>386</sup> Replaced by the act of 13 July 2012

<sup>387</sup> Replaced by the act of 19 March 2021

<sup>388</sup> Canceled by the act of 7 December 2018

## Financial provisions

### Article 232

The income of the Flemish Regulator for the Media consists of the following:

1° allocations;

2° the registration fees of candidates requesting accreditation and the compensation for maintaining such accreditation, as mentioned in Article 136;

3° tax levies if these are allocated under an Act to the Flemish Regulator for the Media;

4° retributions if these are allocated under an Act to the Flemish Regulator for the Media.

[5° revenues arising from acts of management or disposal with respect to own properties;

6° claims for refunds of wrongly made expenditure.]<sup>389</sup>

Unless determined otherwise under any Act, the income referred to in paragraph 1 is deemed to be income intended for joint expenditure.

[The income from the administrative penalties, mentioned in Articles 228 and 229, will be collected by the Flemish Regulator for the Media.

The Flemish Regulator for the Media will transfer the administrative penalties received to the general resource budget of the Flemish Community or, in case the decision by which the penalty is imposed would be cancelled by the Council of State, repay it to the broadcaster, service provider or network.]<sup>390</sup>

## CHAPTER II

### Personnel

#### Article 233

The Managing Director manages personnel and attends the meeting of the chambers as an observer in accordance with Article 227.

## TITLE VII

### Information and cooperation

#### Article 234

[The Flemish Regulator for the Media is authorised to request information and documents, including financial information, from any natural or legal person to whom this Act applies, if

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<sup>389</sup> Added by the act of 13 July 2012

<sup>390</sup> Amended by the act (2) of 18 December 2009

this is necessary for the fulfilment of its task or if it is requested by the European Commission. Any request for information shall be proportionate to the performance of the task in question and shall state the reasons on which it is based.]<sup>391</sup>

[Any natural or legal person to whom this Act applies]<sup>392</sup> is required to cooperate with the Flemish Regulator for Media and the personnel designated by the Flemish Government with the Flemish authorities in the exercise of their competences.

Any broadcaster of or accredited by the Flemish Community or which has registered with the Flemish Regulator for the Media is required to maintain a copy of all its broadcasting signals, as broadcast, for the term of one month, starting from the broadcast date [...] <sup>393</sup>.

[If the Flemish Regulator for the Media requests a copy of the broadcast signals as indicated in the third section from a broadcaster from or recognized by the Flemish Community, or registered with the Flemish Regulator for the Media, the broadcaster shall provide the copy to the Flemish Regulator for the Media within fifteen days after it received the request. The Flemish Regulator for the Media determines the conditions that the copy must satisfy.]<sup>394</sup>

[The Flemish Regulator for the Media shall indicate the time limit within which the information and documents, mentioned in the first subparagraph, must be provided, as well as the level of specification, and shall inform the undertakings of the purpose for which the information will be used.

If the information and documents, mentioned in the first subparagraph, are insufficient for the Flemish Regulator for the Media to perform its tasks, it may request information from other relevant undertakings operating in the electronic communications sector, the media sector, or in sectors closely related thereto.]<sup>395</sup>

## Art. 235

§ 1. The members of the Flemish Regulator for the Media may not disclose any confidential information which they acquired in the context of carrying out their duties, to third parties, except for exceptions laid down by law.

The requirement stated in paragraph 1 continues to apply after the expiry of the mandate of every member or the termination of the employment of any employee of the Flemish Regulator for the Media.

§ 2. The Flemish Regulator for the Media is responsible for maintaining confidentiality with regard to the information which was provided by companies and which the company considers to be confidential business and manufacturing information.

## PART VIII

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<sup>391</sup> Changed by the act of 13.07.2021 en replaced by the act of 02.07.2021

<sup>392</sup> Replaced by the act of 02.07.2021

<sup>393</sup> Cancelled by the act of 13 July 2012

<sup>394</sup> Added by the act of 13 July 2012

<sup>395</sup> Added by the act of 02.07.2021



## Penalties

### Article 236

The following persons are punished with a prison sentence from eight days to five years and with a fine of 25 to 2,500 euros or with one of these penalties on its own:

Anyone who:

1° manufactures, sells or leases, offers for sale or lease, imports, distributes, promotes, installs, maintains or replaces equipment or software including chip cards, which are intended, without the permission of the service provider:

a) to receive programs broadcast by means of an electronic communication network;

b) to provide access in an understandable form to radio or television programs or services, which are only offered to the general public in return for payment of a supplement and based on conditional access;

2° sells, leases or owns equipment or software with a view to using it for commercial purposes, including chip cards;

3° encrypts or uses, in whole or in part, encrypted radio or television programs or services, in any manner whatsoever, without permission of the owner of the encryption technology or of a third party, who was designated to grant this permission by the aforementioned owner;

4° uses commercial communication in order to publicize this illegal equipment or software.

### Article 237

All the provisions of the first book of the Penal Code, including Chapter VII and Article 85, apply to the offences described in Article 236.

## PART IX

### Transitional and final provisions

#### Article 238

The Decree of the Flemish Government of 20 September 1995 on the establishment of a code for advertising and sponsorship on radio or television, amended by the Decree of the Flemish Government of 7 September 2007, is repealed.

#### Article 239

The Acts on radio and television broadcasting, coordinated on 4 March 2005, last amended by the Act of 18 July 2008, are repealed.

[The provisions of Title IV, Chapter II, Sections I to IV, of the Act on Radio and Television Broadcasting, coordinated on 4 March 2005, remain applicable up to 31 August 2009.]<sup>396</sup>

#### Article 240

Chapter II of the Act of 23 June 1961 on the right of reply inserted by the Act of 4 March 1977 is repealed.

[Article 241..]<sup>397</sup>

[[Article 242 ...]<sup>398</sup>]<sup>399</sup>

#### Article 243

[Television broadcasters]<sup>400</sup> that were accredited under the Acts on radio and television broadcasting, coordinated on 4 March 2005, and to which a notification rule now applies, are deemed to have fulfilled this obligation of notification for the broadcaster concerned.

#### Article 244

The provisions of part III, title II, chapter IV, will take effect from 1 September 2009.

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<sup>396</sup> Added by the act of 24 July 2009

<sup>397</sup> Lifted by the act of 23 December 2016(2)

<sup>398</sup> Added by the act of 23.12.2016(2)

<sup>399</sup> Lifted by the act of 12.02.2021

<sup>400</sup> Replaced by the act of 23 December 2016(2)