

**Flemish Government**

**Draft Decree amending the Decree of 27 March 2009 on radio broadcasting and television, as regards** **promoting the audiovisual sector** **by financial contributions to the production of audiovisual works**

On the proposal of the Flemish Minister of Brussels, Youth, Media and the Fight against Poverty;

After deliberation,

THE FLEMISH GOVERNMENT HEREBY DECREES THE FOLLOWING:

The Flemish Minister of Brussels, Youth, Media and the Fight against Poverty is responsible, on behalf of the Flemish Government, for submitting to the Flemish Parliament the draft decree, the text of which is as follows:

Chapter 1. Preliminary provisions

**Article 1.** This decree regulates a community matter.

Chapter 2. Amendments to the Decree of 27 March 2009 on radio broadcasting and television

**Article 2.** Article 2 of the Decree of 27 March 2009 on radio broadcasting and television, last amended by the Decree of 2 July 2021, makes the following amendments:

1° point 49° is replaced by the following:

‘49° independent producer: one of the following producers:

1. a producer meeting all of the following conditions:

1) the legal personality of the producer is distinguished from that of a television broadcaster;

2) the producer is not related, as referred to in Article 1:20 of the Code of Companies and Associations, to a television broadcasting organisation;

3) the producer does not hold, directly or indirectly, more than 25 % of the voting rights or property rights of a television broadcaster;

4) no more than 25 % of the producer’s voting rights or property rights are held directly or indirectly by a television broadcaster;

5) no more than 25 % of the producer’s voting rights or property rights are held directly or indirectly by a company holding, that directly or indirectly, holds more than 25 % of the voting rights or property rights of a television broadcaster;

b) a producer who is dependent in accordance with points (a), (2), (3), (4) or (5), but fulfils any of the following conditions:

1. the figures underlying the last three annual accounts approved show that the producer has had an average annual turnover from audiovisual works of which less than 25 % has been realised directly or indirectly by the television broadcasters on which that producer is dependent.

For the producer who does not yet have three approved annual accounts, the average annual turnover shall be assessed on the basis of a good faith estimate;

1. the television broadcaster on which the producer is dependent has only a limited proven average annual turnover as shown in the figures underlying the last three annual accounts approved, i.e. a maximum of EUR 10 million. The mentioned income, excluding VAT, shall be understood as being acquired in the context of:

i) payment by the consumer;

ii) B2B agreements relating to the exploitation and/or distribution of audiovisual content;

iii) valorisation of data;

iv) audiovisual commercial communications.’;

For the television broadcaster that does not yet have three approved annual accounts, the average annual turnover is assessed on the basis of a good faith estimate.

2° a point 45°/2 shall be added with the following text:

‘45°/2 Flemish Audiovisual Fund: Vlaams Audiovisueel Fonds vzw, established by the Decree of 13 April 1999 authorising the Flemish Government to join and to participate in the establishment of the non-profit Flemish Audiovisual Fund.’

3° a point 54 is added with the following text:

‘54° audiovisual work: an animation, documentary or fiction film or an animation, documentary or fiction series.’

**Article 3.** In Article 155(1) of the same Decree, the words ‘producers independent from television broadcasting organisations’ are replaced by the phrase ‘by independent producers or by producers that are not independent producers as mentioned in Article 2, 49° but which are independent within the meaning of Article 2, 49°, (a) of the television broadcasting organisation broadcasting the production’;

**Article 4.** In Article 157 of the same Decree, replaced by the Decree of 29 June 2018 and amended by the Decree of 22 March 2019, the following amendments are made:

1° In Section 1, paragraph 1, the words ‘non-linear television broadcasting organisations’ are replaced by the words ‘TV broadcasters offering non-linear television services’.

2 ° in Section 1, paragraph 2 is replaced by the following:

‘The obligations set out in paragraph 1 shall not apply to television broadcasters providing non-linear television services which meet at least one of the following conditions:

1. they are a micro-enterprise;
2. by offering non-linear television services, they reach less than 0.5 % of all residents of the Dutch-speaking region.’;

3° a paragraph is inserted between paragraphs 2 and 3, reading:

‘The Flemish Government shall determine the detailed conditions and modalities for the exemptions referred to in paragraph 2.’;

4° Section 2 is deleted;

5 ° in Section 3, the phrase ‘Sections 1 and 2’ is replaced by the phrase ‘Section 1’;

6° Section 4 is deleted;

7 ° in the new Section 2, the words ‘non-linear television broadcasters’ are replaced by the following: ‘television broadcasting organisations providing non-linear television services’.

**Article 5.** In Part IV of the same Decree, last amended by the Decree of 2 July 2021, Title 1/1, which consists of Article 184/1, is repealed.

**Article 6.** In the same Decree, last amended by the Decree of 12 February 2021, a Part IV/1 is inserted, which reads as follows:

‘Part IV/1. Promoting the audiovisual sector through participation in the production of audiovisual works”.

**Article 7.** In the same decree, last amended by the Decree of 12 February 2021, a Title I is inserted in Part IV/1, inserted by Article 6, which reads as follows:

‘Title I. Scope’.

**Article 8.** In the same Decree, last amended by the Decree of 12 February 2021, an Article 188/1 is inserted in Title I by Article 7, which reads as follows:

‘Article 188/1. §1. The following investors shall participate annually in the production of audiovisual works in the form of a direct financial contribution to the production of audiovisual works or in the form of an equivalent financial contribution to the Flemish Audiovisual Fund:

1. service distributors who make available to the public one or more broadcasting services of one or more television broadcasting organisations falling within the competence of the Flemish Community in a linear or non-linear manner;
2. private broadcasting organisations, including private broadcasters established in a Member State of the European Union or of the European Economic Area, or beyond, or which are located in Belgium and do not fall within the competence of the Flemish Community, providing non-linear television services aimed at the Dutch-speaking area;
3. providers of video platform services, including providers of video platform services established in a Member State of the European Union or of the European Economic Area, or located in Belgium and not within the competence of the Flemish Community, which provide video platform services aimed at the Dutch-speaking area.

§2. The direct financial contribution to the production of audiovisual works referred to in Section 1 may take the following forms:

1. a contribution to production projects, which are submitted to the Flemish Media Regulator to assess their admissibility and recognition;
2. a contribution to acquire broadcasting rights for the Dutch-speaking area on a production project as referred to in Section 2, paragraph 1, 1°.

The Flemish Audiovisual Fund provides the equivalent financial contribution to the Flemish Audiovisual Fund, as referred to in Section 1, in accordance with the management agreements between the Flemish Community and the Flemish Audiovisual Fund, concerning the VAF/Mediafonds and VAF/Filmfonds.

§3. The Flemish Government shall determine:

1. the detailed modalities for the criteria, conditions and procedure for submission of the production projects referred to in Section 2, paragraph 1,  1°;
2. the conditions and modalities to take into account a contribution to acquire broadcasting rights as specified in Section 2, paragraph 1, 2°;
3. the conditions and modalities relating to the assessment of the admissibility, recognition and follow-up of the production projects and contributions to the acquisition of broadcasting rights, referred to in Section 2, paragraph 1;

4 ° the detailed modalities relating to the procedure for the equivalent financial contribution to the Flemish Audiovisual Fund referred to in Section 2, paragraph 2.

§4. Investors who, pursuant to Section 2, have submitted insufficient financial contributions to production projects to the Flemish Media Regulator, or who are unable to make sufficient financial contributions to production projects as a result of the decision of the Flemish Regulator for the Media that one or more production projects are inadmissible or not recognised, are obliged to makethe financial contribution to the Flemish Audiovisual Fund for the full amount indicated in Title III, with deduction of contributions already submitted for production projects already submitted and recognised.

§5. The compulsory financial contribution to the production of audiovisual works referred to in Section 1 shall not apply to:

1. private broadcasters providing non-linear television services and meeting at least one of the following conditions:
2. they are a micro-enterprise;
3. with their offer of non-linear television services, they reach less than 0.5 % of all residents of the Dutch-speaking area;
4. they offer fewer than 10 audiovisual works each year;
5. Their offer consists mainly of programs that are basedon Broadcaster Video-On-Demand rights.
6. service distributors and providers of video platform services that are a micro-enterprise.

The Flemish Government determines the further conditions and modalities for the exemptions of the contribution, including the further interpretation of the term ‘audiovisual works’ mentioned in paragraph 1.

§6. A financial contribution to a production to fulfil another legal or regulatory obligation or which entails another legal or regulatory advantage cannot be provided in the context of the contribution obligation referred to in Section 1.’

**Article 9.** In the same Decree, last amended by the Decree of 12 February 2021, a Title II is inserted in Part IV/1, inserted by Article 6, which reads as follows:

‘Title II. General provisions’.

**Article 10.** In the same Decree, last amended by the Decree of 12 February 2021, in Title II, inserted by Article 9, an Article 188/2 is inserted, which reads as follows:

“Article 188/2. Every investor mentioned in article 188/1, §1, provides the Flemish Regulator for the Media, the Flemish Audiovisual Fund, the Flemish Minister responsible for media and, if appropriate, the Flemish Minister responsible for culture the following data and supporting documents annually before February 15:

1. the chosen form of participation in the production of audiovisual works referred to in Article 188/1, §1;
2. the amount of the financial contribution referred to in Title III and, where appropriate, the supporting documents to support the aforementioned amount;
3. where applicable, proof of applicability of one of the grounds for exclusion referred to in Article 188/1, §5. The supporting documents of the conditions referred to in Article 188/1, §5(1), 1° and 2° that relate to the data of the second year preceding the year of participation to the production of audiovisual works, listed in Article 188/1, §1.

If the information or supporting documents referred to in paragraph 1, 1°, 2° and 3° have not been submitted in time, the investor shall be deemed to have opted to participate in the production of audiovisual works by means of an equivalent financial contribution to the Flemish Audiovisual Fund for the lump sum due by the investor on the basis of Articles 188/3, 1°, 188/4, §1(1), 1° or 188/5 §1(1), 1° respectively.

The files containing the particulars and supporting documents referred to in paragraph 1 shall be submitted in Dutch. An investor who does not fall under the competence of the Flemish Community, but which falls within the scope of Part IV/1, may submit the file in English.

The data and supporting documents referred to in paragraph 1 shall be submitted electronically, in the manner determined by the Flemish Government.

The Flemish Government determines the conditions and modalities concerning the reporting by the Flemish Regulator for the Media and the Flemish Audiovisual Fund on the participation in the production of audiovisual works in the form of a direct financial contribution to the production of audiovisual works or in the form of an equivalent financial contribution to the Flemish Audiovisual Fund as referred to in Article 188/1.’.

**Article 11.** In the same Decree, last amended by the Decree of 12 February 2021, a Title III is inserted in Part IV/1, inserted by Article 6, which reads as follows:

‘Title III. Contribution’.

**Article 12.** In the same Decree, last amended by the Decree of 12 February 2021, a Chapter I is inserted in Title III by Article 11, which reads as follows:

“Chapter I. Service Distributors”.

**Article 13.** In the same decree, last amended by the Decree of 12 February 2021, in Chapter I, inserted by Article 12, an Article 188/3 is inserted which reads as follows:

‘Article 188/3. The service distributors shall choose one of the following systems for determining the annual contribution to comply with their obligation to participate in the production of audiovisual works referred to in Article 188/1, §1:

1. the payment of a lump sum of EUR 6 million. The aforementioned flat-rate amount shall be indexed annually in accordance with Article 188/6;
2. payment of an amount of EUR 3 per subscriber in the Dutch-speaking area. The aforementioned amount shall be indexed annually in accordance with Article 188/6. The number of subscribers shall be determined on the basis of the latest data communicated pursuant to Article 182 prior to the year of participation in the production of audiovisual works, which have been accepted by the Flemish Media Regulator.’;

**Article 14.** In the same Decree, last amended by the Decree of 12 February 2021, in Title III, inserted by Article 11, a Chapter II is inserted which reads as follows:

‘Chapter II. Private broadcasters providing non-linear television services’.

**Article 15.** In the same decree, last amended by the decree of 12 February 2021, in Chapter II, inserted by Article 14, an Article 188/4 is inserted which reads as follows:

‘Article 188/4. §1. Private broadcasters providing non-linear television services shall choose one of the following systems for determining the annual contribution to comply with their obligation to participate in the production of audiovisual works referred to in Article 188/1, §1:

1. the payment of a lump sum of EUR 6 million. The aforementioned flat-rate amount shall be indexed annually in accordance with Article 188/6;
2. the payment of an amount equal to:
3. 2 % of their turnover if it is between EUR 0 and EUR 15 million;
4. 3 % of their turnover if it is between EUR 15 and EUR 30 million;
5. 4 % of their turnover if it exceeds EUR 30 million.

The turnover referred to in paragraph 1, 2°, refers to turnover realised in the second year preceding the year of participation in the production of audiovisual works.

In paragraph 1, 2°, turnover shall mean: the following revenue from the supply to the end-user of non-linear television services, excluding VAT:

1 ° the income from the payment by the end user. They do not include the income of private broadcasters providing non-linear television services that do not have a distinct legal entity from a service distributor or that are subject to exclusive control by a service distributor covered by Article 188/1, §1, 1°, for their offer of non-linear television services available on a transactional basis only to subscribers of that service distributor;

2° Revenue from agreements with service distributors and terminal equipment providers with interactive computer functions for access to television services;

3 ° revenue from the valorisation of data;

4 ° revenue from audiovisual commercial communications.

If a private broadcaster providing non-linear television services was active for less than 12 months during the second year preceding the year of participation in the production of audiovisual works, the annual turnover shall be calculated by multiplying by twelve the average monthly turnover of the second year preceding the year of participation in the production of audiovisual works.

Private broadcasters providing non-linear television services shall prove their turnover, as indicated in paragraph 1, 2°, with documents validated by a business reviewer. The documents referred to above shall be annexed in full to the particulars and supporting documents referred to in Article 188/2. The Flemish Media Regulator is authorised to request all relevant information and documents on the aforementioned documents from the private broadcaster providing non-linear television services.

§2. For private broadcasters providing non-linear television services falling within the competence of the Flemish Community, for the purpose of calculating turnover referred to in Section 1, paragraph 1, 2°, account shall be taken of the revenues in all Member States of the European Union to which they are directed, after deduction, where appropriate, of the revenue from a Member State to which the broadcasting organisation is directed and where it is subject to a system of financial contributions to the production of European works pursuant to Article 13 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.

For private broadcasters providing non-linear television services established in a Member State of the European Union or of the European Economic Area, or located in Belgium and not within the competence of the Flemish Community, and which offer non-linear television services aimed at the Dutch language area, account shall be taken of the income of services offered to residents in the Dutch-speaking area in order to calculate the turnover referred to in Section 1, paragraph 1, 2°.’.

**Article 16.** In the same Decree, last amended by the Decree of 12 February 2021, a Chapter III is inserted in Title III by Article 11, which reads as follows:

“Chapter III. Providers of video platform services”.

**Article 17.** In the same Decree, last amended by the Decree of 12 February 2021, in Chapter III, inserted by Article 16, an Article 188/5 is inserted which reads as follows:

‘Article 188/5. §1. Video platform service providers shall choose one of the following systems for determining the annual contribution to comply with their obligation to participate in the production of audiovisual works as referred to in Article 188/1, §1:

1. the payment of a lump sum of EUR 6 million. The aforementioned flat-rate amount shall be indexed annually in accordance with Article 188/6;
2. the payment of an amount equal to:
3. 2 % of their turnover if it is between EUR 0 and EUR 15 million;
4. 3 % of their turnover if it is between EUR 15 and EUR 30 million;
5. 4 % of their turnover if it exceeds EUR 30 million.

The turnover referred to in paragraph 1, 2°, refers to turnover realised in the Dutch language area in the second year preceding the year of participation in the production of audiovisual works.

In paragraph 1, 2°, turnover shall mean: the income, excluding VAT, obtained from:

1. payment by the end user;
2. the agreements with service distributors and terminal equipment providers with interactive computer functions for access to television services;
3. the valorisation of data;
4. commercial communications.

§2. The providers of video platform services shall prove the turnover in the Dutch language area referred to in Section 1, paragraph 2, with documents validated by an auditor. The documents referred to above shall be annexed in full to the particulars and supporting documents referred to in Article 188/2. The Flemish Media Regulator is authorised to request all relevant information and documents from the video platform providers on the aforementioned documents.’

**Article 18.** In the same decree, last amended by the decree of 12 February 2021, in Title III, inserted by Article 11, a Chapter IV is inserted which reads as follows:

‘Chapter IV. Indexing.’

**Article 19.** In the same Decree, last amended by the Decree of 12 February 2021, in Chapter IV, inserted by Article 18, an Article 188/6 is inserted which reads as follows:

‘Article 188/6. The amounts referred to in Articles 188/3, 188/4 and 188/5 of this Decree shall be indexed annually from 1 January 2025 on the basis of the price index as provided for in Article 2 of the Royal Decree of 24 December 1993 implementing the Law of 6 January 1989 on safeguarding the country’s competitiveness.

The indexation referred to in paragraph 1 shall be carried out by multiplying the amounts referred to in Articles 188/3, 188/4 and 188/5 of this Decree by the aforementioned price index established for the month of January of the current year, and by dividing that result by the above-mentioned price index established for the month January of the current year and dividing it by the price index set out above for February of the year 2024.’;

**Article 20.** In the same Decree, last amended by the Decree of 12 February 2021, in Title III, inserted by Article 11, a Chapter V is inserted which reads as follows:

'Chapter V. Evaluation’.

**Article 21.** In the same Decree, last amended by the Decree of 12 February 2021, in Chapter V, inserted by Article 20, an Article 188/7 is inserted which reads as follows:

‘Article 188/7. The Flemish Government shall, latest by the third year following its entry into force, carry out an evaluation of the scheme referred to in Articles 188/1 to 188/6 of this Decree.’

**Article 22.** In Article 218, §2(1) of the same Decree, last amended by the Decree of 3 June 2022, the following amendments are made:

1° in point 12°, the phrase ‘Article 184/1’ and the phrase ‘Article 184/1, § 2’ are replaced by the phrase ‘Articles 188/1 to 188/5’;

2° point 16° is deleted.

**Article 23.** In Article 228(1) of the same Decree, as amended by decrees of 19 March 2021 and 3 June 2022, a point 7a° is added as follows:

‘7a° the order to suspend or discontinue the activities as video platform services if the provider of a video platform service fails to comply with the obligation set out in Part IV/1.’.

**Article 24.** The Flemish Government Decree of 1 February 2019 on the participation of private non-linear television broadcasters in the production of Flemish audiovisual works is repealed.

Chapter 3. Entry into force

**Article 25.** This Decree shall enter into force on a date set by the Flemish Government and no later than (date).

Brussels, (date).

The Minister-President of the Flemish Government,

Jan JAMBON

The Flemish Minister of Brussels, Youth, Media and the Fight against Poverty,

Benjamin DALLE