

Draft Decree amending the Decree of 27 March 2009 on radio broadcasting and television as regards appropriate attention by providers of user interfaces

On the proposal of the Flemish Minister of Brussels and Media;

After deliberations,

THE FLEMISH GOVERNMENT HEREBY DECREES THE FOLLOWING:

The Flemish Minister of Brussels and Media 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 Introductory provisions

Article 1 This Decree regulates a Community matter.

Article 2 This Decree provides for the implementation of Article 7a 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).

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

Article 3 In Article 2 of the Decree of 27 March 2009 on radio broadcasting and television, last amended pursuant to the Decree of 3 June 2022, the following amendments were made:

1° A point 1°/0 shall be inserted, reading as follows:

‘1°/0 provider of a user interface means the natural or juristic person providing a user interface as listed in Article 2 (14) of Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act);’;

2° a point 1°/5/0 shall be added with the following text:

‘1°5/0 application means a software program which provides the user with access to one or more broadcasting programmes of one or more broadcasting organisations, or to the individual programmes forming part of them;’.

Article 4 Article 155/1 of the same Decree, inserted pursuant to the Decree of 19 March 2021, is repealed.

Article 5 In the same Decree, last amended pursuant to the Decree of 3 June 2022, a Part III/3 is inserted, which reads as follows:

‘Part III/3. Providers of user interfaces’.

Article 6 In the same Decree, last amended pursuant to the Decree of 3 June 2022, in Part III/3, inserted pursuant to Article 4, an Article 176/11 shall be inserted which reads as follows:

‘Art. 176/11. §1. Providers of user interfaces shall give appropriate attention to the following television broadcast programmes of public interest:

- 1° the television broadcasting programmes of the public broadcaster of the Flemish Community;
- 2° television broadcasting programmes which, pursuant to Article 176/13, have been qualified by the Flemish Media Regulator as television broadcasting programmes with particular impact;
- 3° the television broadcasting programmes of the regional television broadcasting organisations referred to in Article 166;
- 4° the television broadcasting programmes of private television broadcasters referred to in Article 159 and in Article 174 which do not fall under point 2° and which have been notified in accordance with Article 161 or 175;
- 5° the television broadcasting programme of the non-linear television service referred to in Article 184/0.

The Flemish Government shall determine:

- 1° the manner in which providers of user interfaces give appropriate attention to one or more of the television broadcasting programmes referred to in paragraph 1, and under which modalities;
- 2° the degree of appropriate attention, ensuring the highest degree of appropriate attention at least for the television programmes referred to in points 1° and 2° of the first paragraph.

§2. Providers of user interfaces shall give appropriate attention to the following radio broadcasting programmes of general interest:

- 1° the radio broadcasting programmes of the public broadcaster of the Flemish Community;
- 2° the radio broadcasting programmes of national radio broadcasting organisations recognised under Article 138;
- 3° the radio broadcasting programmes of the network radio broadcasters recognised under Article 143/2 and of the local radio broadcasters recognised under Article 145.

The Flemish Government shall determine:

- 1° the manner in which providers of user interfaces shall give appropriate attention to one or more of the radio broadcasting programmes referred to in Paragraph 1, and the modalities according to which;

- 2° the degree of appropriate attention, with a higher degree of appropriate attention being ensured at least for the radio broadcasting programmes referred to in points 1° and 2° of Paragraph 1.’;

Article 7 In the same Decree, last amended pursuant to the Decree of 3 June 2022, in the same Part III/3, an Article 176/12 is inserted, which reads as follows:

‘Art. 176/12. §1. The obligations set out in Article 176/11 apply to providers of user interfaces that fulfil one of the following conditions:

- 1° they are located in the Dutch language area;
- 2° they are established in the bilingual region of Brussels-Capital and based on their activities belong exclusively to the Flemish Community;
- 3° they offer their services in the Dutch-speaking region or in the bilingual region of Brussels-Capital.

§2. The obligations set out in Article 176/11 shall not apply to the following providers of user interfaces:

- 1° service distributors;
- 2° broadcasting organisations providing only their own broadcasting services;
- 3° providers of user interfaces demonstrating that the implementation of the obligations referred to in Article 176/11 for a specific user interface is technically impossible or only possible with disproportionately high expenses;
- 4° micro-enterprises.

§3. If providers of user interfaces conclude agreements to achieve the appropriate attention referred to in Article 176/11, such agreements shall comply with each of the following conditions:

- 1° the providers of user interfaces shall not require payment or similar remuneration in order to achieve the appropriate attention referred to in Article 176/11;
- 2° the providers of user interfaces shall not be subject to a disproportionate limitation in the manner in which they may implement innovations in the user interface;
- 3° the providers of user interfaces shall have prior authorisation for the manner in which applications, broadcasting programmes and programmes are presented to the user.

§4. The parties concerned shall negotiate in good faith and exercise their consent in a reasonable and proportionate manner.

If an agreement on the appropriate attention cannot be concluded within three months of a broadcasting organisation formulating a request for appropriate attention as referred to in Article 176/11, the parties shall have recourse to mediation. By registered letter addressed to the Chairman of the Board of Directors of the Flemish Media Regulator, the party raising the petition will request the initiation of a mediation procedure within seven working days of receipt of that request. The mediation procedure shall be conducted in accordance with the rules and procedure laid down in the Decree of the Flemish Government of 8 November 2013 on the elaboration of the conditions for a mediation procedure pursuant to Article 180 of the Decree of 27 March 2009 on radio broadcasting and television. If the mediation procedure does not lead to an

agreement between the parties, the mediator shall issue an opinion concluding the mediation mandate.

§5. The providers of user interfaces referred to in Article 176/11 shall report annually before 31 March to the Flemish Media Regulator on the manner in which they have complied with the obligations referred to in Article 176/11 during the preceding year.’.

Article 8 In the same Decree, last amended pursuant to the Decree of 3 June 2022, an Article 176/13 is inserted in the same Part III/3, which reads as follows:

‘Art. 176/13. The Flemish Media Regulator may qualify television broadcasting programmes as television broadcasting programmes with particular impact if they meet all of the following conditions:

- 1° they contain a varied, diverse and pluralistic offering, including informative and cultural programmes;
- 2° they contain a significant percentage of Dutch-language programmes;
- 3° their offering is accessible to persons with disabilities via subtitling and audio description;
- 4° the application of the television broadcaster providing the television programme reaches a yearly average of at least 350,000 unique monthly users;
- 5° the broadcaster broadcasting the television broadcasting programme invests in attracting and supporting young and diverse talent;
- 6° the broadcaster broadcasting the television broadcasting programme invests substantial amounts in the external production sector and in the facilities sector.

The Flemish Government shall determine the procedure for submitting the applications to be qualified as a television broadcasting programme with particular impact, referred to in subparagraph 1, and the deadlines for examining and processing the file.

The Flemish Government shall determine the validity of the qualification as referred to in paragraph 1.’

Article 9 In the first subparagraph of Article 218 (2) of the same Decree, as last amended pursuant to the Decree of 1 March 2024, a point 28° shall be added, reading as follows:

‘28 ° television broadcasting programmes qualify as television broadcasting programmes with particular impact as referred to in Article 176/13.’.

Article 10 A point 9° shall be added to Article 228 of the same Decree, reading:

“9°. Administrative fine up to a maximum of 6% of the worldwide turnover of the provider of a user interface if it does not comply with the obligations set out in Part III/3.’;

Article 11 In Part VIII/1, Title II, of the same Decree, inserted pursuant to the Decree of 19 April 2024 and amended pursuant to the Decree of 19 April 2024, an Article 237/25/2 shall be added, reading as follows:

'Article 237/25/2. The Flemish Media Regulator acts as the controller referred to in Article 4(7) of the General Data Protection Regulation for the processing of personal data in the context of the qualification of television broadcasting programmes as television broadcasting programmes with particular impact referred to in Article 176/13(1) and (2) of this Decree.

The processing of personal data for the processing purpose as referred to in paragraph 1 concerns the following categories of subjects:

- 1° contact persons of private television broadcasters;
- 2° employees of television broadcasting organisations.

The processing of personal data for the processing purpose as referred to in paragraph 1 concerns the following categories of personal data:

- 1° identification details;
- 2° contact details;
- 3° mandate details.

Personal data processed by the Flemish Media Regulator in accordance with this Article may be retained on the basis of this Article at the latest for 10 years after the end of the processing referred to in paragraph 1. After the aforementioned ten-year period, in accordance with Article III.87 (1)(1)(3°) of the Administrative Decree of 7 December 2018, those personal data shall be given a final destination.'

Chapter 3 Entry into force

Article 12 This Decree shall enter into force on 1 July 2026.

The Flemish Government may set a date of entry into force that precedes the date specified in paragraph 1.

Brussels,

The Minister-President of the Flemish Government,

Matthias DIEPENDAELE

The Flemish Minister for Brussels and Media,

Cieltje VAN ACHTER