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## 5. Country reports

### 5.1. BE - Belgium

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#### 5.1.1. Introduction

In the federal state of Belgium, the competence for audiovisual matters is split between various linguistic regions.<sup>93</sup> Four distinct legislative and regulatory frameworks apply and are enforced by separate regulatory authorities: one for Flanders (the Flemish-speaking community); one for the Wallonia-Brussels Federation (the French-speaking community); one for the German-speaking community; and one for the bilingual Brussels-Capital Region. This country report focuses on the French-speaking and Flemish-speaking communities as these zones are where most of the services are regulated. The Flemish regulatory body is the *Vlaamse Regulator voor de Media* (VRM) and the regulatory body for the French-speaking community is the *Conseil Supérieur de l'Audiovisuel* (CSA).

The media landscapes in both communities present very different features: in Flanders, local actors play a major role. By contrast, the audiovisual landscape in the French-speaking community is characterised by the endemic cultural dependence on France<sup>94</sup> and the role played by the Luxembourg-based company CLT-UFA. The latest media pluralism monitor report for Belgium notes that “markets are very small and media actors very concentrated to stay afloat”. It adds: “Recent years have witnessed a growing consolidation between media actors (within and across sectors). Belgium has focused its energy on maximum transparency to help mitigate the risks of such concentrations.”<sup>95</sup>

In the exercise of their competences, the French-speaking and Flemish-speaking communities have chosen very different paths. In the French-speaking community, the CSA is authorised to take regulatory action if – thanks to its monitoring – it concludes that the media market is becoming too concentrated. In the Flemish-speaking region, the VRM can

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<sup>93</sup> For the sake of clarity in the rest of this national report, we refer to the ‘French-speaking and Flemish-speaking communities of Belgium’.

<sup>94</sup> F. Antoine & F. Saeys (2007), “Belgium” in L. D’Haenens & F. Saeys (Eds.), *Western broadcast models: structure, conduct, and performance* (Vol. 5, pp. 105–144). Berlin, Germany; New York, NY, USA, de Gruyter, p. 124.

<sup>95</sup> See also the conclusions of the report of the Media Pluralism Monitor on Belgium: P. Valcke, P.-J. Ombelet & I. Lambrecht, *Media Pluralism Monitor 2016 – Monitoring Risks for Media Pluralism in the EU and Beyond*, p. 3. Available at: [https://cadmus.eui.eu/bitstream/handle/1814/46788/Belgium\\_EN.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/46788/Belgium_EN.pdf?sequence=1&isAllowed=y)

only provide an overview of media concentration by publishing annual reports about the state of media markets.<sup>96</sup> Finally, it must be noted that the federal level remains responsible for monitoring the general rules of competition, through the Belgian competition authority (NCA).

## 5.1.2. Control mechanisms under national (media) concentration law

In the French-speaking community, legislation exists to safeguard transparency and to prevent media concentration (Articles 6, 7 and 55 of the Coordinated Act on Audiovisual Media Services).<sup>97</sup> In Flanders, the Act on Radio and Television Broadcasting<sup>98</sup> obliges the VRM to publish an annual report on media pluralism.<sup>99</sup> However, there is no general legal provision aimed at preventing media concentration.

### 5.1.2.1. Transparency measures

#### 5.1.2.1.1. French-speaking community

Article 6 of the AVMS Act sets out quite detailed transparency requirements to enable the public and the CSA to understand the ownership structure of audiovisual media service (AVMS) providers. The public service broadcaster (RTBF) and all AVMS providers (TV and radio, linear and on-demand) must make available basic information about them “to allow the public to forge an opinion on the value of the information and opinion contained in their programmes”. The government has published a decree specifying the content of this basic information, as well as where it needs to be made available.<sup>100</sup> On top of this, these same providers (including radios) but also distributors (such as cable operators), and network operators need to communicate to the CSA<sup>101</sup> more detailed information when they seek an authorisation to enter the market (or any equivalent request). This information is aimed to ensure transparency in their ownership and control structure as well as an understanding of their level of independence. Providers also need to communicate to the CSA all changes in the information submitted during the authorisation period.

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<sup>96</sup> Ibid, p. 2.

<sup>97</sup> Décret coordonné sur les services de médias audiovisuels (Coordinated Act on Audiovisual Media Services - hereafter 'AVMS Act'). Available at: <http://www.csa.be/documents/2882>.

<sup>98</sup> Décret van 27 maart 2009 betreffende radio-omroep en televisie (Flemish Act on Radio and Television Broadcasting – hereafter 'RTB Act'). Available at: [https://cjsm.be/media/sites/cjsm.media/files/public/190614\\_mediadecreet.pdf](https://cjsm.be/media/sites/cjsm.media/files/public/190614_mediadecreet.pdf).

<sup>99</sup> RTB Act, Article 218, § 2, 8°.

<sup>100</sup> The list comprises the name, address of the head office, phone number, email and website address, VAT number, of the CSA, as well as a list of shareholders or members, and their contact details Cf. Arrêté du gouvernement de la Communauté française du 3 décembre 2004 relatif à la transparence des éditeurs de services de radio-diffusion, M.B., 10 mars 2005.

<sup>101</sup> The information must be communicated to the College of Authorisation and Control.

#### 5.1.2.1.2. Flemish-speaking community

The VRM has the responsibility to map concentrations in the media sector.<sup>102</sup> Since 2008, the VRM has published annual reports on media concentration, analysing the situation mainly from an economic perspective. Valcke and Voorhoof explain the methodology followed by the VRM in the compilation of these reports.<sup>103</sup> First, the VRM identifies all companies responsible for, or connected with, the Flemish media offering (television and radio broadcasters, newspaper groups, distributors, telecom operators and advertising agencies). Second, the VRM collects information concerning these media enterprises from two federal databases (Crossroads Bank for Enterprises, National Bank of Belgium) and one Flemish database (Enriched Crossroads Bank for Enterprises - VKBO).

These annual reports present the different players in the Flemish media sector, examine how they relate to each other, and offer a number of indicators allowing the measurement of media concentration. In the 2019 report, the VRM highlights several important changes in the Flemish media landscape. First, the digitalisation of the radio sector has been increasing since 2018. With the granting of a licence to offer two new multiplexes, the available commercial DAB+ capacity doubled in 2019 (this extra capacity has already been completely used up). The report thus notes that the demand for DAB+ capacity already exceeds the available spectrum.<sup>104</sup> Second, media groups are trying to further strengthen their position through acquisition strategies and vertical integration, i.e. taking positions in other links in the value chain. For example, Telenet and Proximus, two companies originally only active in the distribution sector, are also positioning themselves in content production and/or aggregation. The complete acquisition of De Vijver Media (SBS Belgium) by Telenet fits with this strategy (see below).<sup>105</sup> On international developments, the report notes that Netflix is growing in popularity among Flemish viewers. Other international players (Disney, Warner Media, Apple, ...) will focus on Flanders in the near future with the launch of new VOD platforms. The report also notes a general trend towards maximising media consumer satisfaction through personalised offers using algorithms and personal data. These developments are putting pressure on the traditional roles performed by the media. While broadcasters have traditionally exercised editorial responsibility by selecting and organising content, this role is increasingly being played by service distributors and distribution platforms.<sup>106</sup>

#### 5.1.2.2. Measures preventing media concentration

In Belgium, the NCA controls anti-competitive practices and major mergers and acquisitions. Communities may also adopt specific rules aimed at preserving media pluralism. In the French-speaking community, Article 7 of the AVMS Act sets up a general

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<sup>102</sup> RTB Act, Article 218, § 2, 8°.

<sup>103</sup> P. Valcke & D. Voorhof (2014) *Handboek mediarecht*, Brussel, Larcier, p. 650.

<sup>104</sup> VRM, *Mediaconcentratie in Vlaanderen - Rapport 2019*, p. 92. Available at: [https://www.vlaamseregulatormedia.be/sites/default/files/pdfversions/mediaconcentratierapport\\_2019\\_zonder\\_afloop.pdf](https://www.vlaamseregulatormedia.be/sites/default/files/pdfversions/mediaconcentratierapport_2019_zonder_afloop.pdf).

<sup>105</sup> *Ibid*, p. 150.

<sup>106</sup> *Ibid*, p. 92.

mechanism – enforced by the CSA – for the protection of pluralism. Such a general provision does not exist in the Flemish legal framework, where the VRM's main responsibility is to “map” the state of media pluralism in the Flemish-speaking community (see above).

#### 5.1.2.2.1. French-speaking community

Article 7 of the AVMS Act provides as a matter of principle that the exercise of a *significant position* in the audiovisual sector by an AVMS provider or by a distributor or by a number of these providers controlled by a single physical person or legal entity cannot deprive the public from having access to a *pluralistic offering* of AVMS services. A pluralistic offering is defined by reference to an offering by a pluralism of media and/or services that reflect the widest possible diversity of social cultural expressions, opinions and ideas. The College of Authorisation and Control is the internal organ within the CSA in charge of overseeing whether a provider holds a *significant position* and if the finding is positive it will evaluate whether the offering (edited or distributed) by that provider is pluralistic. Article 7 contains a non-exhaustive list of indicators – based on the audience of the provider – to help the College determine if a provider has a significant position. If – following an investigation where interested parties are heard and where the NCA needs to be consulted – it concludes that the public does not have access to a pluralistic offering, it informs the provider(s) and starts negotiations to restore a pluralistic media offering. If a formal agreement is not reached within six months, or if the agreement is not complied with, the College has a range of sanctions at its disposal such as warnings, fines (up to 5 % of annual turnover) and the removal of the licence/authorisation. To date, the CSA has never found an infringement of the public's right to a pluralistic offering. The College must evaluate the state of media pluralism regularly, and at least every two years.

The main other direct link to media pluralism is contained in Article 55 of the AVMS Act which empowers the College of Authorisation and Control of the CSA to grant authorisations to terrestrial radios with a view to making sure that it “ensures a diversity in the radio landscape and an equilibrium between the different radio formats through a musical, cultural and news offering”. When granting authorisations, the CSA must avoid creating situations of significant position.<sup>107</sup> The last implementation of this authorisation procedure took place in 2019. To frame its actions, the College adopted a recommendation explaining how it achieves the objective of ensuring this diversity<sup>108</sup>, as well as internal rules.<sup>109</sup>

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<sup>107</sup> F. Jongen & B. Strowel (2017) *Droit des médias et de la communication*, Bruxelles, Larcier, n° 796.

<sup>108</sup> CSA, *Recommandation relative à la diversité du paysage radiophonique, à l'équilibre des formats et à l'accès du public à une offre pluraliste en radiodiffusion sonore*. Available at : <https://www.csa.be/wp-content/uploads/documents-csa/RECOMMANDATION%20RELATIVE%20A%20LA%20DIVERSITE%20DU%20PAYSAGE%20RADIOPHONIQUE.pdf>.

<sup>109</sup> <https://www.csa.be/document/reglement-dordre-interieur-du-college-dautorisation-et-de-controle-du-csa/>

#### 5.1.2.2.2. Flemish-speaking community

The RTB Act does not contain a general provision to prevent media concentration. However, it does enshrine a limited number of ownership restrictions. For example, a legal entity may not operate (directly or indirectly) more than two national radio services.<sup>110</sup> Similar restrictions also apply to regional and local radio broadcasters, as well as network radio broadcasters.<sup>111</sup> Radio broadcasters cannot have identical programming, with the exception of important one-off actions.<sup>112</sup> Furthermore, there is no mandatory separation between broadcasters, service distributors and network operators, except in two instances: First, terrestrial (digital) broadcasting network operators cannot also provide an electronic communications service to end-users in Flanders.<sup>113</sup> Second, a local television broadcaster can, for the commercial exploitation of its broadcasting programme, conclude an agreement with an operating company in which one or more local television broadcasters may hold shares, but that shareholding cannot exceed 25%, plus one share.<sup>114</sup>

As regards the use of the radio spectrum, the Flemish government is responsible for the recognition of national, regional, network and local radio broadcasters. In order to be recognised, radio broadcasters must meet a number of statutory conditions.<sup>115</sup> The Flemish government imposes additional qualification criteria and assigns a weighting to each of them. One of these additional qualification criteria relates to “the concrete implementation of the programme offering and the broadcasting schedule, in particular the diversity in the programming”.<sup>116</sup> Once recognised, radio broadcasters must submit amendments relating to the information programmes, the articles of association or the shareholder structure to the Flemish government for approval. When assessing such amendments, the Flemish government takes into account the preservation of pluralism and diversity in the radio landscape.<sup>117</sup>

### 5.1.3. (Recent) Decisions of national competition and antitrust authorities regarding media providers or intermediaries/platforms

Two recent cases may be highlighted.

The first concerns the conditional clearance decision by the NCA of the acquisition by Liberty Global (LG) of all the remaining shares of Belgian broadcaster De Vijver Media

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<sup>110</sup> RTB Act, Articles 138.

<sup>111</sup> RTB Act, Articles 141, 143/2 and 145.

<sup>112</sup> RTB Act, Article 134/1.

<sup>113</sup> RTB Act, Article 202, 7°.

<sup>114</sup> RTB Act, Article 166/1.

<sup>115</sup> For example, for the national radio broadcasters: RTB Act, Article 138, par. 1.

<sup>116</sup> RTB Act, Article 138, par. 2, 1°.

<sup>117</sup> RTB Act, Article 139, par. 2.

(DVM) from shareholders Mediahuis and Waterman & Waterman.<sup>118</sup> In Belgium, LG is a fixed and mobile telecoms operator operating under the Telenet and Base brands. Its cable network covers Flanders and the Brussels area, and it is the largest distributor of TV services in Flanders. DVM broadcasts three Dutch-language free-to-air (FTA) TV channels -Vier; Vijf; and Zes - in Belgium. It also produces TV content. The transaction initially fell under the exclusive jurisdiction of the European Commission but upon request by Belgium and in accordance with Article 9 of the EU Merger Regulation,<sup>119</sup> the Commission referred the case to Belgium. The NCA had a number of concerns linked to the fact that the operation created a fully vertically integrated player from the production of content to the distribution of TV channels through a dominant distribution platform. Telenet offered a series of commitments to the NCA in exchange for clearance, including on channel numbering, distribution fees, targeted TV advertising and access to data. These commitments are subject to oversight by a trustee.

The second case concerns the use of infrastructure for the broadcasting of radio programmes by the Flemish public broadcaster VRT. Back in 2009, VRT sold its transmission and mast infrastructure to Norkring Belgium. It also concluded a Service Agreement with Norkring Belgium in March 2009, for a period of 10 years. On the basis of a public tender launched in 2017, VRT decided to entrust the management of the infrastructure to another company – Broadcast Partners – for a period of seven years as from March 2019. This decision led to a dispute between Norkring Belgium and Broadcast Partners at the beginning of 2019, as the latter wanted to rely on Norkring's infrastructure for distribution. However, the two network operators could not reach an agreement. To guarantee the continuity of FM radio broadcasts, VRT filed a complaint with the NCA. As a result of this complaint, Norkring Belgium was obliged by the NCA to ensure the continuity of radio broadcasts via the four major masts until an agreement could be reached.<sup>120</sup> In the Media Committee of the Flemish Parliament, the dispute was raised from the point of view of avoiding a switch-off of radio broadcasts. The Flemish minister for media argued that the NCA's ruling ensured continuity of broadcasts and that the two network operators were responsible for reaching a contractual agreement regarding the use of Norkring's infrastructure.<sup>121</sup>

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<sup>118</sup> Belgian Competition Authority, Decision of 13 May 2019, available at: [https://www.bma-abc.be/sites/default/files/content/download/files/bma-2019-cc-16\\_pub.pdf](https://www.bma-abc.be/sites/default/files/content/download/files/bma-2019-cc-16_pub.pdf).

<sup>119</sup> Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1–22.

<sup>120</sup> Belgian Competition Authority, Decision of 22 January 2019, available at: [https://www.bma-abc.be/sites/default/files/content/download/files/bma-2019-vm-01\\_pub.pdf](https://www.bma-abc.be/sites/default/files/content/download/files/bma-2019-vm-01_pub.pdf).

<sup>121</sup> VRM, Mediaconcentratie in Vlaanderen, Rapport 2019, p. 23. Available at: [https://www.vlaamseregulatormedia.be/sites/default/files/pdfversions/mediaconcentratierapport\\_2019\\_zonder\\_afloop.pdf](https://www.vlaamseregulatormedia.be/sites/default/files/pdfversions/mediaconcentratierapport_2019_zonder_afloop.pdf).

## 5.1.4. Relationship between public service and private/commercial media

### 5.1.4.1. General overview

The Belgian public broadcasting company was set up in 1930. The National Institute for Radio Broadcasting (NIR-INR) was a unitary organisation, which provided radio programmes both in Dutch and French. In 1960, the NIR-INR was split into two distinct organisations. In the French-speaking community, RTBF is an autonomous public undertaking which operates under a special act (RTBF Act).<sup>122</sup> A management contract, concluded with the government of the French-speaking community, determines more precisely the rights, obligations and financing of the public broadcaster. The current RTBF management contract covers the period 2019-2022.<sup>123</sup> In addition to its public funding, RTBF is also allowed to have commercial revenues. In the Flemish-speaking community, VRT is a limited company of public law, currently governed by the Radio and Television Broadcasting Act (RTB Act) and a management contract, valid for the years 2016-2020.<sup>124</sup> VRT also implements a mixed financial system as it receives public funding and generates its own income from advertising and merchandising.

#### 5.1.4.1.1. Flemish-speaking community

In 2004, a private television broadcaster (VMMA)<sup>125</sup> and some radio broadcasters lodged a complaint to the European Commission. Their arguments mainly concerned the creation of the sports channel Sporza, as well as the financing strategies and the monitoring mechanisms of VRT.<sup>126</sup> The development of new media services by VRT was not an issue for the private actors who filed the complaint but the Commission itself put the issue on the table of negotiations with the Flemish government. The commitments made by the Flemish government in this instance were leaner than those made in cases related to other countries (e.g. a case involving Germany<sup>127</sup>). The Commission's decision, adopted in February 2008, led to the development a more specific framework with regard to the definition of public service missions.<sup>128</sup> For example, a public consultation on VRT's public service mission is now foreseen every five years, prior to the signature of a new management contract. Article 18 of the RTB Act introduces an ex-ante test according to which "VRT can provide new

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<sup>122</sup> Décret de la Communauté française du 14 juillet 1997 portant statut de la Radio-Télévision belge de la Communauté française.

<sup>123</sup> RTBF Management Contract (2019-2022). Available at: <https://ds1.static.rtbf.be/article/pdf/2018-12-12-contrat-gestion-rtbf-2019-2022-version-definitive-1545319225.pdf>.

<sup>124</sup> VRT Management Contract (2016-2020). Available at: <https://www.vrt.be/nl/over-de-vrt/beheersovereenkomst/>.

<sup>125</sup> Now DPG Media.

<sup>126</sup> K. Donders (2012) Public service media and policy, Palgrave Macmillan, p.152.

<sup>127</sup> European Commission, Decision n° E 3/2005 (ex- CP 2/2003, CP 232/2002, CP 43/2003, CP 243/2004 and CP 195/2004) – Financing of public service broadcasters in Germany, 24 April 2007.

<sup>128</sup> European Commission, Decision n° E 8/2006 (ex CP 110/2004 et CP 126/2004) - Financement du radiodiffuseur public VRT, 27 February 2008.



services or activities that are not covered by the management contract after explicit approval by the Flemish Government only”.<sup>129</sup> The scope of application of the test is limited, as the current list of existing services is so large that in practice only the launch of a new channel could be subject to an *ex ante* test. Indeed, the only such procedure initiated to date is the evaluation of a new linear channel (Ketnet Jr), aimed specifically at the 0-5 age group. The evaluation procedure started at the beginning of 2017. The general chamber of VRM was responsible for carrying out a public consultation during the evaluation process. The regulator drew up a list of questions, which were sent to all interested stakeholders and distributed widely via different channels. In addition to this public consultation, the regulator also consulted with key stakeholders (competitors, relevant VRT officials, members of the chamber for impartiality and protection of minors). The Flemish government took a negative decision in December 2017 and the channel was therefore never launched.

#### 5.1.4.1.2. French-speaking community

In the French-speaking community, the various actors of the media landscape had long maintained a climate for discussion, which soured, though, in 2010 when RTBF transformed its website into a genuine source of written information.<sup>130</sup> Newspaper publishers then considered RTBF an unfair competitor. The government brought them to the negotiating table, but an agreement could not be reached. Therefore, newspaper publishers turned to the domestic courts in 2010<sup>131</sup> and also filed a complaint to the Commission in February 2011. After the filing of the complaint, the government partly responded to the Commission’s arguments by introducing *ex ante* tests and clarifying RTBF’s mandate in the management contract. In its decision of May 2014<sup>132</sup>, the Commission imposed a clarification of the scope of public service missions, in particular for these three types of content: online services including text, linear radio and television services, and non-linear media services.<sup>133</sup> Any major new media service project not covered by the management contract must be subject to an *ex ante* evaluation.<sup>134</sup> Moreover, the negotiation of the RTBF management contract must be open to a public consultation.<sup>135</sup> Ten months before the expiry of the management contract, the government must seek the opinion of parliament on the main elements of the next management contract. To this end, the government must provide parliament with a detailed memorandum of intent, specifying the scope of the missions and services RTBF would be required to implement under its next management

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<sup>129</sup> Translation by the author.

<sup>130</sup> E. Lecroart (2014) *La concurrence entre presse écrite et médias audiovisuels de service public sur internet*, A& M, p. 455.

<sup>131</sup> The President of the Commercial Court of Charleroi rejected the request of the newspaper publishers considering that “the activity conducted by RTBF on the Internet does not exceed the mandate assigned by its statutory act” (cf. *Comm. Charleroi (pres.)*, 30 December 2011, A&M, 2012/6, p. 610). This decision was confirmed by the Court of Appeal of Mons (*Mons*, 20 January 2014, A&M, 2014/6, p. 527).

<sup>132</sup> European Commission, Decision n° SA.32635 - Financing of the Radio-Télévision belge de la Communauté française (RTBF), 7 July 2014, par. 293.

<sup>133</sup> RTBF Management Contract, Articles 42bis to 42septies.

<sup>134</sup> RTBF Act, Article 9bis ; RTBF Management Contract, Article 45.

<sup>135</sup> RTBF Act, Article 9,3bis.

contract. Parliament then organises a broad public consultation. Within four months, parliament submits its recommendations to the government and publishes them on its website. Finally, the government finalises the new management contract with RTBF, taking into account these recommendations.

### 5.1.5. Transposition of pluralism-related EU provisions

Belgium has not yet proposed any draft laws to implement the new AVMS directive, the European Electronic Communications Code or the Digital Single Market Directive.

A few elements can however be highlighted. On Article 7a (prominence), an advisory committee for culture, youth media and sports (*Strategische Adviesraad voor Cultuur Jeugd, Sport en Media* - SARC) advised the Flemish government to introduce prominence requirements in favour of (linear and on-demand) Flemish content (through regulation or self/co-regulation) into the draft law.<sup>136</sup> The CSA did not include the introduction of the article in its recommendations on the future decree that will transpose the directive in the French-speaking region.<sup>137</sup>

On signal integrity, the Flemish-speaking region stands out because it is one of the only jurisdictions where the rule already exists (since 2013).<sup>138</sup> Distributors must transmit linear TV programmes that form a part of their offering in Flanders in full, unaltered form and in their entirety, simultaneously with the broadcast. The same applies to associated services i.e. subtitles, audio description, etc. When a distributor offers a broadcasting programme on demand, in a shortened or modified form, the distributor must obtain a prior authorisation from the TV broadcaster. The broadcaster and distributor concerned need to negotiate in good faith and must exercise their consent in a reasonable and proportionate manner. If no agreement can be reached within three months, parties invoke mediation through the media regulator.

### 5.1.6. Funding mechanisms to ensure media diversity

In both communities, a range of funding measures exists, with very diverse objectives (e.g. support for media training, development of local information, promotion of cultural diversity), all of which contribute to media pluralism.

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<sup>136</sup> SARC (sectorraad Media), Advies over de omzetting van de herziene AVMD-richtlijn, 18 November 2019. Available at: [https://cjsm.be/sarc/SR\\_media/adviezen/20191118\\_Advies\\_omzetting\\_herziene\\_AVMD-richtlijn.pdf](https://cjsm.be/sarc/SR_media/adviezen/20191118_Advies_omzetting_herziene_AVMD-richtlijn.pdf).

<sup>137</sup> CSA (Collège d'Avis), Avis n° 03/2019-Avis relatif à la transposition de la Directive européenne 2018/1808 dans le Décret sur les SMA. Available at: <https://www.csa.be/document/transposition-de-la-directive-sur-les-services-de-medias-audiovisuels-avis-du-csa>.

<sup>138</sup> Art. 180 was introduced in the RTB Act.

### 5.1.6.1. Local television broadcasters

#### 5.1.6.1.1. French-speaking community

The legal regime for local television broadcasters is set out in the AVMS Act. Local television broadcasters have a public service mission to produce and distribute local information, entertainment, cultural and educational programmes. They must promote the active participation of the local population.<sup>139</sup> Their missions are carried out within a well-defined geographical area of coverage.<sup>140</sup> In the French-speaking community, local television broadcasters are the only editors that still require a licence, which is given for a period of nine years.<sup>141</sup> An agreement is concluded between each local television broadcaster and the government.<sup>142</sup> In order to be authorised and to retain authorisation, each local broadcaster must fulfil numerous conditions laid down by the decree.<sup>143</sup> The composition of the organs of local broadcasters is also governed by very detailed rules.<sup>144</sup> Authorised local television broadcasters receive an annual operating subsidy and may also receive an investment subsidy.<sup>145</sup> Furthermore, any service distributor offering a service package that includes a local television service must pay an annual fee to the local television broadcaster.<sup>146</sup>

#### 5.1.6.1.2. Flemish-speaking community

Under the Radio and Television Broadcasting Act, local television broadcasters are required to perform certain public missions: providing local information, promoting communication among the population and contributing to local cultural and social development.<sup>147</sup> They must receive an authorisation delivered by the Flemish government.<sup>148</sup> In total, 10 local television broadcasters have been recognised, grouped under the association NORTV. Under the current cooperation 2018-2022 agreement, the local television broadcasters commit – in addition to the missions provided for in the Media Decree – to work together for mutual understanding and close cooperation between themselves and with other players, with a view to improving and guaranteeing their economic viability, for example by developing advertising.<sup>149</sup> The local television broadcasters have received a structural

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<sup>139</sup> AVMS Act, Art. 65, §§1-2, art. 68.

<sup>140</sup> AVMS Act, Art. 66.

<sup>141</sup> AVMS Act, Art. 64.

<sup>142</sup> AVMS Act, Art. 65, § 5.

<sup>143</sup> AVMS Act, Art. 67.

<sup>144</sup> AVMS Act, Article 71.

<sup>145</sup> AVMS Act, Article 75, § 1.

<sup>146</sup> AVMS Act, Article 81.

<sup>147</sup> RTB Act, Article 165.

<sup>148</sup> RTB Act, Article 166.

<sup>149</sup> Website of the Flemish government: <https://cjsm.be/media/themas/omroepen/regionale-tv>

subsidy in exchange for various commitments laid down in the cooperation agreement. Since 2015, local television stations also receive an annual fee paid by distributors.<sup>150</sup>

### 5.1.6.2. Financing of audiovisual production

#### 5.1.6.2.1. French-speaking community

The *Centre du Cinéma et de l'Audiovisuel* (CCA) or Film and Audiovisual Centre administers film support based on cultural criteria to feature fiction film, documentary and animation productions, as well as to short films, films intended for TV and TV series.<sup>151</sup> In the realm of features, support is provided at all stages of creation, from script-writing to distribution.<sup>152</sup> A 100% territorial spending obligation applies and a cultural test must be passed. Support based on economic criteria is administered by Wallimage to feature fiction, documentary and animation productions, but also to TV series and new media. Projects must pass a cultural test.<sup>153</sup>

Moreover, the RTBF management contract also stipulates that RTBF must support independent Belgian production and participate in a fund financing the production of new Belgian series. The quantification of these participations is specified in the RTBF management contract.<sup>154</sup>

#### 5.1.6.2.2. Flemish-speaking community

The VAF/Film Fund, which is part of the *Vlaams Audiovisueel Fonds* or VAF (*Flanders Audiovisual Fund*),<sup>155</sup> provides support based on cultural criteria for feature-length fiction films, documentaries, animations and experimental films as well as to medium-length and short films.<sup>156</sup> The fund provides support in the script-writing and development phase, as well as in the production phase of a project. Screen Flanders also provides support for feature fiction films, documentaries and animations, as well as to TV series and single works. VRT also has the obligation to invest a percentage of its total income in external production.<sup>157</sup> The investment obligation only applies to television production (TV fiction and non-fiction) and not to cinema films. In Flanders there is also, notably, a system in place

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<sup>150</sup> RTB Act, Article 166/1, par. 2.

<sup>151</sup> Décret de la Communauté française du 10 novembre 2011 relatif au soutien au cinéma et à la création audiovisuelle.

<sup>152</sup> Website of the Film and Audiovisual Centre: <https://audiovisuel.cfwb.be/missions/centre-cinema-audiovisuel/>.

<sup>153</sup> Website of Wallimage: <https://www.wallimage.be/fr>.

<sup>154</sup> RTBF Management Contract (2019-2022): <https://ds1.static.rtbf.be/article/pdf/2018-12-12-contrat-gestion-rtbf-2019-2022-version-definitive-1545319225.pdf>.

<sup>155</sup> Decreet van de Vlaamse Gemeenschap van 13 April 199 houdende machtiging van de Vlaamse regering om toe te treden tot en om mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds.

<sup>156</sup> Website of the Flanders Audiovisual Fund: <https://www.vaf.be/flanders-audiovisual-fund>.

<sup>157</sup> VRT Management Contract (2016-2020). Available at: <https://www.vrt.be/nl/over-de-vrt/beheersovereenkomst/>.

since 1 January 2019 whereby VOD providers under EU jurisdiction that target their activities towards Flanders must contribute to content creation in Flanders. They can choose between a financial investment in original co-productions or the payment of a levy to the VAF. The amount in both cases is set at 2% of the annual gross income generated from VOD activities in Flanders.<sup>158</sup>

Additionally, since 2003, Belgium has in place a national-level incentive system in the form of a tax shelter, aiming to unlock the investment of private capital in the production of films.<sup>159</sup>

### 5.1.6.3. Financial support for journalists

#### 5.1.6.3.1. French-speaking community

The Journalism Fund, created in 2009, aims to support and promote investigative journalism. It encourages the publication/dissemination of quality content in the Belgian French-speaking news media through the provision of direct assistance to the journalist. It is organised and managed by the Association of Professional Journalists and financed by the Wallonia-Brussels Federation.<sup>160</sup>

#### 5.1.6.3.2. Flemish-speaking community

The Flemish Journalism Fund was launched in 2018 as a project of the non-profit organisation Journalismfund.eu, in collaboration with the Flemish Association of Journalists (VVJ) and the Flemish government. In 2016 and 2017, project grants were already distributed by the Flemish government's Department of Culture, Youth and Media. In November 2019, however, the new Flemish government decided not to provide any more funds in its budget for 2020.<sup>161</sup>

There is also financial support for the training of journalists. MediAcademie is an initiative of professional organisations of the written press aimed at supporting training courses for journalists. Due to its success, MediAcademie is now divided into two sections: MediAcademie Journalistiek and MediAcademie Audiovisueel (the latter is managed by Mediarte, a social fund for the entire Belgian audiovisual, film and digital sector). MediAcademie Journalistiek also extends to online media. The training is financed through a system of co-financing, whereby up to 50% of the cost of a training course is subsidised by the government.<sup>162</sup>

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<sup>158</sup> RTB Act, Article 157; Decision of the Flemish Government of 1 February 2019.

<sup>159</sup> Website of the Belgian Film Tax Shelter: <https://www.belgiumfilm.be/film-financing/tax-shelter>.

<sup>160</sup> Website of the Belgian French-speaking Journalism Fund: <https://fondspourlejournalisme.be/le-fonds>.

<sup>161</sup> Website of the Flemish Journalism Fund: <https://www.vlaamsjournalistiekfonds.be/>.

<sup>162</sup> Website of MediAcademie: <https://www.mediacademie.be/>.