



Making Ends Meet: Developing ex ante assessments in Flanders

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The trigger

- 2004: private competitors complain to EC about VRT's state financing etc.
- EU consultation rounds (2004-2008) focussing on (among others)
 - vague definition of the remit
 - lack of formal control mechanisms.
- Flemish government promised to
 - provide a legal framework for ex ante tests and explicit entrustment for services/activities not covered by current management contract
 - set criteria to determine a new service and to assess whether or not it falls within the public service goals.
 - obtain advice of an independent specialist advisory body in charge of ex ante test and that will base its public recommendation on it.
 - provide a stakeholder inquest in the run up to every new management contract to ensure clear definition of the PSB remit

Adjusting the legal framework

- New Radio Broadcasting and Television Bill 2009
 - Confirms Flemish Media Regulator VRM's control of VRT's observance of the management contract
 - Ex ante test for new services

'Art. 18. § 1. VRT cannot perform any new services or activities not covered by the management contract, until after explicit permission of the Flemish government

§ 2. To this end, the Flemish government asks advice from the Flemish Media Council [...] In its advice, the Flemish Media Council takes into consideration observations of third parties, [...] important evolutions in the media market and technology, as well as the evolving media landscape and the role of VRT herein.

§ 3. The Flemish Media Council evaluates the media market on the basis of changes in the economic situation of the Flemish media landscape, the overall media offer in the Flemish market, technological evolutions, international trends, protection and promotion of Flemish Culture and Identity and the expectations and needs of the media user.'

Adjusting the legal framework

- Starts from existing regulatory tool of management contracts, adding new detailed instructions and procedures.
- A move away from original intention of the management contract in two ways:
 - impacts on the concept of long term (5 year) agreements allowing PSB a level of freedom by introducing semi-permanent control and accountability measures (annual screening by VRM, ex ante tests).
 - moves
 - from an agreement on VRT's remit and tasks in its own right
 - to an interpretation of the PSB remit first and foremost *vis à vis* its commercial market context.

Implementing the Legal Framework

- Organising body: Flemish Media Council
 - °2007 < SARC
 - composed of
 - representatives of stakeholders in media (VRT, private TV stations, private radio stations, daily/weekly press, professional journalists, electronic communication network providers, independent AV production sector, copyright organisations, media users
 - 4 independent experts
- Legal obligation without financial means
- Looking for attainable measures

Measures taken I: addendum

- June 2009: Explanatory addendum to management contract listing
 - all *existing services* implied in the current management contract
 - activities and services with regards to radio, television, broadband internet, mobile services, distribution and two year media innovation projects
 - *services not included in the current management contract*
 - other than existing linear radio and television services and any operationalisation of innovation projects after the 2year test period.
- Arguments pro
 - Meets demands of EU
 - Defines 'new services' in a reverse way (existing)
- Arguments con
 - dodging future ex ante tests by (too) extensive list
 - Established outside of mandated Flemish Media Council

Measures taken II: research

- Media Bill overlap between criteria
 - for ex ante test
 - for advice on new management contract
- Compromise: extensive 'ex ante' studies for 2010 MC advice
 - survey of a representative sample of Flemish public
 - analysis of the views of all relevant stakeholders
 - economic impact of VRT on the Flemish media landscape
- Further overlap with Administrative studies analysing
 - how VRT (can) enhance(s) and protect(s) national identity
 - key technological developments in the field of media and ICT.
 - audience expectations with regards to media

Evaluation and discussion

- Legal implementation:
 - Seemingly easy adjustment
 - Relatively uncontested adjustment of legal framework to EU requirements
 - Helped by existing legal structure of MCs
 - Yet shift
 - from long to short term agreements
 - from relative freedom to stricter control mechanisms

Evaluation and discussion

- Practical implementation
 - Reluctant implication
 - Strength of ‘gentlemen’s agreement’?
 - Distinct danger of EU interference and conflict
 - core issues
 - Locus of power
 - Time and money
 - Cf other small nations struggle to implement
- Future:
 - may ‘lead to a further narrowing of the remit and revenue streams of public service broadcasters, especially in the field of new media’ (Bardoel, 2009: 1-2).