



***Independent Study on  
Indicators for Media Pluralism  
in the Member States – Towards  
a Risk-based Approach***

Prepared for the European Commission  
Directorate-General Information Society and Media  
SMART 007A 2007-0002

*by*

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**Final Report - Annex III**

**COUNTRY REPORTS**

**The Netherlands**

Contract No.: 30-CE-0154276/00-76

Leuven, July 2009



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By the Commission of the European Communities  
Directorate-General for Information Society and Media

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**Important Notice**

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The country reports are not in any way intended to be an implementation of the Media Pluralism Monitor in the Member States. They were drafted during the initial stages of the study, with the intention of obtaining a better view of regulatory measures in the broad sense – including co- and self-regulatory measures – adopted in the Member States to promote or safeguard, directly or indirectly, pluralism in the media. The intention was to obtain a high-level snapshot of possible implementation problems and not to express any value judgements on existing rules. The resulting overview facilitated the development of methods for assessing the effective implementation of regulatory safeguards, which had to be, according to the Terms of Reference for the study, an intrinsic element of the legal indicators. We strongly recommend that you also download the file containing our Introduction as it sets out our approach to the initial stages of the project in detail and includes a short manual on how to read the country reports. We draw your attention to the Overview file as well.

Please note that the country reports were finalized in the middle of 2008 and do not therefore reflect progress made with the transposition of the Audiovisual Media Services Directive or any subsequent initiative by Member States. They are made available not as final deliverables of the study, but as interim deliverables, intended to illuminate part of the route taken by the study team and thereby to contribute towards the full transparency of the MPM project.

## 19. Overview of legal and policy measures promoting/supporting media pluralism

### [THE NETHERLANDS]

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Country correspondent: Ad van Loon

#### **National regulations relevant in the area of media pluralism**

- **Legislation**

- *Sector specific legislation*

*Proposal for a new Media Act (Media Act 20..)*

*Media Decree (will have to be revised in the light of the new Media Act)*

*Temporary Law Media Concentrations*

*Law on Fixed Book Price*

*Telecom Act*

*Decree on Conditional Access*

- *General legislation*

*The Netherland Constitution*

*Government Information (Public Access) Act (1991)*

*Civil Code*

*Competition Act*

- **Codes of conduct**

*Declaration of Principles on the conduct of Journalist*

- **Other**

*Market Analysis Decisions and Revised Decisions of OPTA*

*Articles of association of the Foundation of the Council for Journalism*

**TABLE 1. Constitutional protection of press and communication freedoms**

| Measure                           | Source   | Scope of application | Key features   |
|-----------------------------------|--|----------------------|--|
| <b>1.1. Freedom of expression</b> | art. 7 Constitution<br><br>art. 93 Constitution<br><br>art. 94 Constitution<br><br>art. 147 Penal Code<br><br>artt. 111-113 Penal Code<br><br>artt. 118-119 Penal Code |                      | <p>Censorship and limitations to dissemination are prohibited, also for radio and television broadcasts. Exceptions must be made by law. Para. 2 opens the door to a licensing system for radio and TV. Not applicable to commercial advertising</p> <p>‘by law’ means ‘by an Act of Parliament’ (i.e., not by local government or administrative authorities)</p> <p>Provisions in international treaties and decisions by international organisations which are formulated in such a way that they can be directly binding, will have the power of law upon their publication.</p> <p>The laws and regulations of the Kingdom will not apply to the extent that their application would not be in conformity with international treaties and decisions by international organisations.</p> <p>Prohibition of blasphemy</p> <p>Prohibition of slander of majesty</p> <p>Prohibition of slander of the Head of a State with which friendly relations exist</p> |

Note:  
*In cases where provisions of an international treaty offer higher protection than the national Constitution, the international treaty will take priority over the provisions of the Constitution. This may be the case of Art. 10 ECHR in respect of commercial advertising.*  
*Individuals can rely directly on the provisions of an international treaty before the national courts.*  
*Provisions of international treaties are directly applicable.*  
*Courts can assess ordinary laws and administrative measures directly under international treaties, but not under the provisions of the Constitution. Only Parliament can determine whether provisions of ordinary laws are in line with the Constitution.*  
*There is no Constitutional Court..*

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| <p>Art. 147 Penal Code exists since 1932. Attempts in 2004 and 2007 by MPs to delete it from the Penal Code, failed. The article has not been used successfully since the 1960s.<br/>         Art. 111-113 Penal Code exist since 1881; still used (2003 and 2007).<br/>         Art. 118-119 Penal Code exist Since 1980</p>   |  |  |  |
| <p><b>1.2. Freedom of / right to information</b></p>  | <p>art.110 Constitution</p>  |  | <p>Government bodies must respect the right of public access to information in accordance with the law.</p>  |
| <p><i>Is there – besides constitutional provisions – a specific act dealing with citizens’ or journalists’ access to public sector information?</i></p>   | <p>Government Information (Public Access) Act (1991)</p>   |  | <p>Regulates how individuals can demand information on administrative matters contained documents held by public authorities or companies carrying out work for a public authority. The authority in question has two weeks to respond.</p>  |
| <p><i>Note:</i> This term of two weeks for the authority to respond can easily be expanded to 8 weeks or more.</p>  |  |  |  |
| <p><i>Are there specific rules dealing with journalists’ access to events for news reporting?</i></p>   | <p>No specific rules.</p>  |  |  |
| <p><i>Note:</i> A consultation body, the judicial authorities, the police and the press (called ‘Overlegorgaan Justitie-Politie-Pers’) took the initiative to create an organisation called ‘Stichting Landelijke Politieperskaart’ (national police press card - <a href="http://www.politieperskaart.nl/">http://www.politieperskaart.nl/</a>). The organisation was established by 4 organisations of journalists:<br/>         - NVJ (i.e., the national association of journalists)<br/>         - NVF (i.e., the association of foto journalists)<br/>         - Buitenlandse Persvereniging (i.e., the foreign press association)<br/>         - Nederlands Genootschap van Hoofdredacteuren (i.e., the national society of editors-in-chief).<br/> <i>The card provides access to places/events to which access is denied to other persons (e.g., demonstrations, riots, disasters such as hostage taking, plane crashes, floodings, fires, accidents, etc.</i></p> |  |  |  |
| <p><b>1.3. Explicit recognition of media pluralism</b></p>  | <p>art. 2.1, 2 proposal for a new Media Act (Media Act 20..)</p>   |  | <p>Public media services offer a media offer which:<br/>         a) is balanced, pluriform, varied and of high qualitative standards and is divers in form and content<br/>         b) gives a balanced view on society and the pluriformity of convictions, views and interests on a social, cultural and ideological level.<br/>         c) targets and reaches in a relevant way a broad and general audience as well as population and age groups of different size and composition, with a special focus on smaller target groups;<br/>         d) reflects and contributes to the Dutch identity including the cultural diversity thereof.</p> |
| <p><b>1.4. Protection of journalistic sources</b></p>   | <p>10 May 1996, Hoge Raad der Nederlanden (Van den Biggelaar) j. art. 10 ECHR j. 22 November 2007 Court of Justice (Voskuil) j. announcement of reform (de lege ferenda)</p> |  | <p>There is no national legal base for journalists to protect their sources. Case law grants in some cases the right to not disclose them on the basis of art. 10 ECHR, unless this disclosure is necessary in a</p>   |

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|  |   |  | democratic society. Minister of Justice announced (end 2007) a law to arrange this specific matter in order to determine who can rely on it and to balance this right against other interests, especially in the framework of criminal investigations. |
|  | art. 6 Declaration of Principles on the conduct of Journalist |  | "The journalist shall observe professional secrecy regarding the source of information obtained in confidence."  |
| 1.5. Right of reply  | art.6-167 Civil Code  |  | There is no formal right of reply, only a "special tort procedure" that provides the possibility to claim a rectification before the judge in case of false or incomplete publication  |
| 1.6. Ratification of international instruments:<br>- CoE's Framework Convention For The Protection Of National Minorities<br>- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Oct 2005) | -Yes<br>-No   |  |  |

**TABLE 2. Editorial independence**

| Measure  | Source   | Scope of application | Key features  |
|--|--|----------------------|---|
| <b>2.1. Journalists</b>  | art.1-3 Declaration of Principles on the conduct of Journalist |                      | <p>"1.Respect for truth and for the right of the public to truth is the first duty of the journalist.</p> <p>2. In pursuance of this duty, the journalist shall at all times defend the principles of freedom in the honest collection and publication of news, and of the right of fair comment and criticism.</p> <p>3. The journalist shall report only in accordance with facts of which he/ she knows the origin. The journalist shall not suppress essential information or falsify documents."</p> |
| <p><i>Note: Copyright law is private law granting exclusive rights to creators of original works (including to journalists who are not employed; in cases where they are employed, the employer is granted the copyright to their works (unless the journalists made a reservation in his employment contract). Freelance journalists retain their copyrights unless they transfer it to a publisher.</i></p>  |  |                      |   |
|  | Codes of conduct   |                      | "Dutch publishers, newspapers editors and the union of journalist also commit themselves to editorial statutes which are intended to guarantee complete editorial freedom for each individual newspaper."   |
| <p><i>Note: Editorial statutes are agreed upon by owners of press publications (newspapers; sometime also magazines) and their editors'-in-chief. They provide the general framework for the editorial policy agreed upon between the editor and the owner. Once agreed upon, they form part of the employment contract of the editor. As long as the editor stays within the framework he agreed upon with the owner, he can act independently of the owner. The rights of the other editors and of the journalists are derived from the freedoms negotiated by the editor-in-chief. If the owner (or a new owner) wants to bring changes to the editorial line of the publication, he will have to re-negotiate with the editor-in-chief. If they don't come to an agreement, the editor will have to leave, but he will be compensated financially.</i></p> <p><i>TV channels, in general, do not work with editorial statutes, although occasionally the editor-in-chief of the main news programme may have negotiated an editorial statute in his contract with the owner.</i></p> |  |                      |   |
| <b>2.2. News / information programmes</b>  | art. 2.1, 2 Media Act 20..                                     |                      | <p>Public media services offer a media offer which:</p> <p>e) is independent from commercial and political influence except, in the latter case, when provided for by law</p> <p>f) meets high journalistic and professional quality standards</p>  |
|  | art. 2.88 Media Act 20..                                       |                      | <p>Public media institutions determine form and content of their media offer and are responsible. They create, in co-operation with the employees who are composing and editing the media offer, an editorial statute. This editorial statute contains the journalistic rights and obligations and at least guarantees regarding journalistic deontology and quality and guarantees</p>   |

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|   |  |  | for editorial independency vis-à-vis advertisers, sponsors and others contributors.   |
|   | art. 2.106, 3 Media Act 20..   |  | The media offer of public media services can not be sponsored –not even if the offer has a cultural or educative nature or is a sports event or good cause event- if it partly of entirely exist of news, current affairs or political information.   |
|   | art. 3.5 Media Act 20..  |  | Commercial media institutions determine form and content of their media offer and are responsible. They create, in co-operation with the employees who are composing and editing the media offer, an editorial statute. This editorial statute contains the journalistic rights and obligations of these employees. |
|   | art. 3.15 , 3 Media Act  |  | News, current affaires programmes and political information cannot be sponsored.  |
| <b>2.3. Other media content</b>   | art. 2.1, 2 Media Act 20..   |  | <i>Cfr. Supra</i>   |
|   | art. 2.88 Media Act 20..   |  | <i>Cfr. Supra</i>   |
|   | art. 2.106, 1-2 Media Act 20..   |  | Sponsoring on public media services is principally forbidden, except for certain programme types (cfr. supra) if they are not news, current affaires, political information or aiming at children.  |
|   | art. 3.15, 1 Media Act 20..  |  | Sponsoring of programmes on commercial media is only allowed if the editorial statute guarantees the editorial independence of the employees composing and editing the programme, vis-à-vis the sponsor.  |
| <b>2.4. Subsidies/<br/>Training of journalists (independence, ethic, recruitment, etc.)</b>   | Fonds Bijzondere Journalistieke Projecten<br>( <a href="http://www.fondsbijs.nl/">http://www.fondsbijs.nl/</a> ) |  | Financial support for special journalistic projects   |
| <b>2.5. Consultative programming structure for participation of the public/citizens to media (i.e. a mechanism to allow citizens to participate in editorial decisions, under the form of e.g. an ombudsman, ethics or liaison committee, "Société des rédacteurs" ...)</b> | Artt. 2.25 Media Act 20...   |  | The broadcasting associations with a licence to broadcast in the public system are assigned broadcasting time on the basis of the number of members they have. The members of a broadcasting association determine the association's policy (if need be also the editorial line).                                   |



**TABLE 3. Cultural pluralism**

| Measure  | Source                                    | Scope of application | Key features   |
|--|---|----------------------|--|
| <p><b>3.1. Structural rules (guaranteeing or promoting access by the various cultural groupings to media companies' bodies, structures...)</b></p> | <p>Art. 2.35 jo, 2.38 Media Act 20...</p> |                      | <p>The Media Act established 'De Nederlandse Programma Stichting' (NPS). NPS has been given the task to produce a programme service consisting of elements which cater for the needs of the social, cultural, religious or spiritual needs of all groupings in society, in such a way that the service together with the programme services of the establishments which have been granted broadcasting time for nationwide broadcasting, provides a balanced picture of the social, cultural, religious and spiritual diversity in NL.</p> <p>The NPS has a Programme Council<br/>       Which advises the Board of NPS on the programme service produced by NPS.</p> <p>The Programme Council consists of a chairperson and 19 members.</p> <p>The chairperson is appointed by the Minister; all other members by social and cultural organisations appointed thereto by the Minister.</p> <p>Contains criteria for 'educational broadcasting establishments'.</p> <p>These establishments need to have a programme council which determines the programme policy. The members of the programme council must be representative for the social and philosophical organisations in the areas of</p> |

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|  | <p>Art. 2.28 Media Act 20...</p> <p>Art. 2.28 para. 2 under d. Media Act 20...</p><br><p>Art. 2.61 para. 2 onder c. Media Act 20...</p><br><p>Art. 2.66 Media Act 20...</p><br><p>Art. 2.80 Media Act 20...</p> | <p>education, training and formation.</p> <p>All public regional and local broadcasters must have an organ which determines their programme policies. Its composition must be representative for the most important social, cultural, religious and spiritual groupings in the community concerned.</p> <p>The municipal resp. the provincial governments advise the Media Authority, inter alia, whether or not the above requirement of art. 2.61 para. 2 under c. is fulfilled.</p> <p>The World Service (Radio Nederland) has a programme council which advises the board on the programme policy. There are no legal requirements in regard to the structure and composition of the programme council.</p> <p>In municipalities where there is a wire-based network for the distribution of broadcast channels, the municipal council is to establish a programme council which advises the provider of the distribution network on which 15 TV and which 25 radio channels are to be distributed as a minimum over the network(s) to all subscribers within the municipality concerned. The programme council is to be representative for the most important social, cultural, religious and spiritual groupings in the community concerned and jointly, the members should have sufficient knowledge of the information needs of the population and age groups of different size and composition amongst the viewers and</p> |
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|   | Artt. 6.15 – 6.22 Media Act 20...           |  | listeners.<br>The municipal council determines the size of the local programme council, albeit that the minimum size is 7 and the maximum size is 15 members.   |
| <p><i>Note: In practice, the composition of programme councils is not representative of the population; it often consists of senior and middle aged white men. In many cases there is a serious lack of knowledge of the information needs of the different social and age groups in the local communities.</i></p> |   |  |   |
| 3.1.1. Special representation requirements in media company structures  |   |  | - see above -   |
| 3.1.2. Special representation requirements in media advisory bodies   |   |  | - see above -   |
| 3.1.3. Legal or policy measures either prohibiting discrimination in recruitment or promoting equal opportunities (ethnic minorities, gender, age, disabled...)   | Art. 1 Constitution                         |  | Discrimination on the basis of religion, philosophy of life, political inclination, race, gender or any other ground whatsoever is prohibited.  |
| <b>3.2. Representation of the various cultural groupings in the media</b>   |   |  |   |
| 3.2.1. Access to airtime for cultural groupings   | Section 2.2.2, art. 2.24 etc Media Act 20.. |  | Once every five years, the Minister can acknowledge so called broadcasting associations. These broadcasting associations are legal persons, who are committed to broadcasting on a national scale and in order to fulfill a public task of general interest. A broadcasting association represents a determined social, cultural, religious or spiritual movement withing society and aims at fulfilling in its media offer the social, cultural or religious/spiritual needs. The members of a broadcasting association have an acceptable |

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|  |                                   |  | influence on the policy of the association and have to pay an annual contribution of at least € 7,50. In order to receive a licence, a broadcasting association needs 150.000 members. For a temporary licence an association needs at least 50.000 members.   |
|  | art. 6.15 Media Act 20..          |  | If there is a broadcasting network in a municipality the city council creates a “programme council”. This programme council represents the most important social, cultural, religious and spiritual movements within the municipality and dispose of sufficient knowledge about the need on information of the different population groups and age groups within the audience. This programme council advises the network on what programme offer he should broadcast (cfr. infra)   |
|  | Artt. 2.42 – 2.49 Media Act 20... |  | Once every five years, the Media Authority may allocate national broadcasting time<br><br>to religious and other spiritual organisations or to legal persons in which two or more such organisations collaborate. This allocation of broadcasting time shall remain effective for a period of five years, after which the right to broadcasting time shall have lapsed.<br>The religious and other spiritual organisations which have obtained broadcasting time shall be entitled to place the provision of their programme services in the hands of the Broadcasting Foundation of the Netherlands (see Art. 2.35: the body responsible for coordination and cooperation for national broadcasting purposes), a broadcasting association which has obtained broadcasting time or |

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|  |                           |  | a body established by the aforesaid establishments themselves.   |
| 3.2.2. Content obligations   |                           |  |  |
| 3.2.2.1. Promotion of European works   | art. 2.115 Media Act 20.. |  | On every television channel of the public media on national and regional level at least 50% of the time of the programme exists of European productions in the sense of art. 6 of the European Directive   |
| <i>Note: Foreign broadcasters which are established in The Netherlands are exempted from the quota rules as long as they do not distribute their channels in The Netherlands. New channels are partially exempted from the quota rules, but in the third year of their existence they have to fulfil the quota obligations entirely. The European quota rules are not imposed on pornographic channels since the Media Authority does not want to promote the production of European pornographic television productions..</i> |                           |  |  |
|  | art. 3.20 Media Act 20..  |  | On a television channel of a commercial media service at least 50% of the time of the programme exists of European productions in the sense of art. 6 of the European Directive.   |
| 3.2.2.2. Promotion of European independent works   | art. 2.116 Media Act 20.. |  | On the general television channels for the national public media service, at least 25% of the total time of all the general TV channels together exists of European independent productions. On every separate general TV channel of the public media service, this is at least 17,5 % of the time. On every other television channel of the national public media service, at least 10% of the time exists of European independent productions. |
| <i>Note: Art. 2.5 of the draft law (Media Act 20...) stipulates that during the concession period, the national public media service will produce at least three general TV channels and five general radio channels. In addition, it can produce other TV channels, e.g. thematic channels (for which the 10% rule will apply).</i>   |                           |  |  |
|  | art. 2.117 Media Act 20.. |  | 10% of the time on a regional public media service   |
|  | art. 3.21 Media Act 20..  |  | On a commercial channel at least 10% of the time of the programme.   |
| 3.2.2.3. Promotion of national/regional works  | art. 2.122 Media Act 20.. |  | At least 50% of the time on every television channel of national and regional public media service exists of originally Dutch or Fries-spoken productions.   |
|  | art. 3.24 Media Act 20..  |  | At least 40% of the time on a commercial television service exists of originally Dutch or Fries-spoken productions   |

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|   | art. 6.23 Media Act 20..   |  | The Minister determines the FM frequencies which are used for broadcasting a radio programme of mainly Dutch-language music.   |
| 3.2.2.4. <i>Language requirements</i>   | Unlike political parties and churches, language communities (Frysiyan, Chinese, Turkish, Arab, etc.) do not get broadcasting time of their own. They depend on broadcasting time made available by NOS, NPS or the educational broadcasting organisation, RVU. At local level, the local public broadcaster may provide independent access to local language communities.  |  |  |
| 3.2.3. Representation of minorities on the screen (e.g. presenting the news, in drama, movies...; can be engagement in an internal charter or can be imposed statutory) | Is currently under discussion within and amongst the broadcasting associations broadcasting in the public system.<br><br>Basis: Report by TNO on how to obtain diversity on the work floor:<br><a href="http://www.tno.nl/downloads%5CKvL-ARB-Aan-de-slag-met%20diversiteit.pdf">http://www.tno.nl/downloads%5CKvL-ARB-Aan-de-slag-met%20diversiteit.pdf</a><br>see also:<br><a href="http://www.diversityatwork.net/EN/en_index.htm">http://www.diversityatwork.net/EN/en_index.htm</a><br>The Board of NOS has established a working group to study the issue. |  |  |
| 3.2.4. Subsidies (apart from general PSB funding)   | Section 2.5.5, art. 2.125 Media Act 20..   |  | There is a Fund for the Stimulation of Dutch cultural media productions who offers financial aid for the production of this type of programmes to national a regional public media institutions.   |
|   | art. 2.172 Media Act 20..  |  | Each provincial government finances at least one regional public media institution for costs linked to the service and if not yet covered by other means.  |
|   | Title 8.1 etc. Media Act 20..  |  | There is a Press Fund. The goal of this fund is to enhance ‘pluriformity’ (i.e., pluralism and diversity) of the press. Therefore they are entitled to grant subsidies to press organs who are publishing for the Dutch market and for a Dutch audience, publish mainly news, analyses, commentaries and background info on society and current events, also in the interest of political opinion shaping, depend on an independent editorial board,... The fund can also grant subsidies for research in the interest of the sector as a whole. |
| <b>3.3. Accessibility<br/>(i.e. special measures to promote access to media contents by special needs</b>   | art. 2.123 Media Act 20..  |  | A general rule of governance can determine the percentage of the offer of Dutch or Fries-spoken productions on public media that   |

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| <p>groupings in society, like the elderly, disabled...)</p> |                                 |  | <p>must be provided with subtitles in the interest of the audibly disabled.</p>  |
|   | <p>art. 3.25 Media Act 20..</p> |  | <p>A general rule of governance can determine the percentage of the offer of Dutch or Fries-spoken productions on commercial media that must be provided with subtitles in the interest of the audibly disabled.</p> |

**TABLE 4. Political pluralism**

| Measure   | Source                            | Scope of application | Key features  |
|---|-----------------------------------|----------------------|---|
| <b>4.1. Structural rules (relating to the organization and structures of media companies/advisory bodies)</b>                   |                                   |                      |   |
| 4.1.1. Restrictions to politicians’ ownership/control of media (avoid one dominating voice)                                     |                                   |                      |   |
| 4.1.2. Requirements of independence from political parties / politicians  | art. 2.1, 2, e Media Act 20..     |                      | Cfr. supra  |
| 4.1.3. Incompatibility of political mandate with membership in media advisory or regulatory bodies                              |                                   |                      |   |
| 4.1.4. Representation requirements in media companies’ bodies (board of directors...)   |                                   |                      |   |
| 4.1.5. Representation requirements in media advisory bodies and/or regulators   |                                   |                      |   |
| <b>4.2. Content rules (relating to media programmes, press articles, other content)</b>   |                                   |                      |   |
| 4.2.1. (Equal/proportionate) Access to airtime for political groupings  |                                   |                      |   |
| 4.2.1.a. Non-paid access, e.g. right to insert own programmes or messages on the public channels                                | Artt. 6.1 jo. 6.7 Media Act 20... |                      | The Media Authority shall allocate national broadcasting time to those political parties which gained one or more seats in the First or Second Chamber of Parliament at the last election.<br>The Media Authority shall allocate national broadcasting time to political parties which are standing in all constituencies in an election for the First Chamber of the Parliament, as well as to political parties in the Netherlands participating in an election for the European Parliament. Broadcasting time shall be allocated not on an annual basis, but only for such a period - to be determined by the Media Authority - as immediately precedes the day fixed for the relevant election in the Netherlands |
| 4.2.1.b. Paid access: rules on political advertising  |                                   |                      | Allowed   |
| <i>Note: Political parties can purchase broadcast advertising time if they wish to do so; in practice, however, they don’t.</i> |                                   |                      |   |
| 4.2.2. Government announcements   | Artt. 6.5 jo. 6.7 Media Act 20... |                      | On the recommendation of the Prime Minister after consultation with the Minister of Culture, rules shall be laid down by or pursuant to a Media Decree regarding the allocation by the Media Authority of national broadcasting time for the purpose of disseminating government information.   |
| 4.2.3. Impartiality obligations   |                                   |                      |   |



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| 4.2.4. Fair representation of political viewpoints; special rules in election periods | art. 6.1 Media Act 20.. |  | Cfr. supra<br><br>But there are no rules that guarantee an equal access to news and current affairs programmes for political parties. |
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**TABLE 5. Geographical pluralism**

| Measure  | Source | Scope of application | Key features | Implementation problems |
|--|--------|----------------------|--------------|-------------------------|
| 5.1. Licensing policy fostering local/regional types of media<br>(for instance: is part of the spectrum explicitly reserved for regional/ local media; are there any rules safeguarding the local character of these media once they are operating, e.g. restrictions to cooperate or centralize programming/advertising decisions...) |        |                      |              |                         |
| 5.2. Structural measures: access of various localities to media (e.g. obligation to have branches throughout country)  |        |                      |              |                         |
| 5.3. Content obligations: requirements to cover local events, etc.   |        |                      |              |                         |
| 5.4. Regional State Aids   |        |                      |              |                         |
| 5.5. Rules on national minorities  |        |                      |              |                         |
| 5.6. Rules on social inclusion of remote areas (Aménagement du territoire)   |        |                      |              |                         |

**TABLE 6. Pluralism of ownership/control**

| Measure   | Source  | Scope of application | Key features  |
|---|---|----------------------|---|
| <b>6.1. Sector specific rules limiting media ownership</b>  |   |                      |   |
| 6.1.1. Moment of intervention   |   |                      |   |
| 6.1.1.1. <i>At moment of market entry (licensing procedure)</i>   |   |                      |   |
| 6.1.1.2. <i>At the moment of mergers &amp; acquisitions</i>   | art. 2, 1, a Temporary Law Media Concentrations | Press media          | Prohibition to merge if merger leads to a market share of over 35% on the market of daily press.  |
| <i>Note: The Act was drafted to meet the growing needs of the publishing industry; they feared that their printed publications might eventually become obsolete as a distribution medium and they wanted to have the opportunity to innovate, i.e. experiment with electronic distribution. The Act gives publishers this opportunity on an experimental basis. The consequences of the Act will be evaluated in 2009 after which it will be decided whether the Act is still necessary. There will be no return to the previous situation in which the publishers had much less development opportunities.</i> |   |                      |   |
|   | art.2, 1, b Temporary Law Media Concentrations  |                      | Prohibition to merge if, in case of combining two or three of the markets of press, television or radio, the sum of the market shares on the related markets exceeds 90%. |
| 6.1.1.3. <i>Other (constant monitoring/supervision)</i>   |   |                      |   |
| 6.1.2. Scope ( <i>i.e. trying to prevent one of the following forms of concentrated ownership and/or control</i> )  |   |                      |   |
| 6.1.2.1. <i>Monomedia</i>   | art. 2, 1, a Temporary Law Media Concentrations |                      | Cfr. <i>supra</i>   |
| 6.1.2.2. <i>Crossmedia</i>  | art.2, 1, b Temporary Law Media Concentrations  |                      | Cfr. <i>supra</i>   |
| 6.1.2.3. <i>Vertical integration with networks</i>  |   |                      |   |
| 6.1.2.4. <i>Integration with advertising sector</i>   |   |                      |   |
| 6.1.2.5. <i>Integration with other (e.g. energy) sectors</i>  |   |                      |   |
| 6.1.2.6. <i>Control over both commercial and public media</i>   |   |                      |   |
| 6.1.3. Criteria used to define thresholds for maximum ownership and/or control  |   |                      |   |
| 6.1.3.1. <i>Number of licences</i>  |   |                      |   |
| 6.1.3.2. <i>Market shares</i>   | art. 2 Temporary Law Media Concentrations       |                      | Cfr. <i>supra</i>   |
| 6.1.3.3. <i>Circulation and audience shares</i>   |   |                      |   |
| 6.1.3.4. <i>Capital shares</i>  |   |                      |   |
| 6.1.3.5. <i>Voting shares</i>   |   |                      |   |
| 6.1.3.6. <i>Advertising revenues</i>  |   |                      |   |
| 6.1.3.7. <i>Involvement in number of media sectors</i>  | art. 2,1,b Temporary Law Media Concentrations   |                      | Cfr. <i>supra</i>   |

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| <b>6.2. Sector specific rules preventing cooperation between media companies</b>   |   |  |  |
| <b>6.3. (Sector specific or general) rules preventing foreign (non-EU) ownership</b>   |   |  |  |
| <b>6.4. General competition rules</b>  |   |  |  |
| 6.4.1. Antitrust   |   |  |  |
| 6.4.1.1. <i>Specific provisions for media sectors (e.g. public interest test...)</i>   |   |  |  |
| 6.4.1.2. <i>Case law in media sectors (examples of leading cases; any specificities?)</i>  |   |  |  |
| 6.4.2. Merger control  |   |  |  |
| 6.4.2.1. <i>Specific provisions for media sector (e.g. possibility for government to overrule NCA decision, public interest test...)</i>                                 | art. 9 Temporary Law Media Concentrations |  | The Commissariat monitors the media market and advises the Competition Authority before the Authority takes a decision regarding prohibited mergers. |
| 6.4.2.2. <i>Case law in media sectors (examples of leading cases; any specificities?)</i>  |   |  |  |
| <b>6.5. Transparency obligations</b>   |   |  |  |
| 6.5.1. Transparency towards consumer (e.g. identification obligation; cf. Art. 3a AVMS Directive)  |   |  |  |
| 6.5.2. Transparency obligations towards regulator or in general (info on capital structure, balance sheets, either in specific media laws or in general company laws...) |   |  |  |

**TABLE 7. Pluralism of media types and genres**

| Measure   | Source   | Scope of application | Key features  |
|---|--|----------------------|---|
| <b>7.1. Minimum service in a number of programme strands for commercial / community / public service media</b>  | In the Media Act 20.. the old thresholds concerning different types of programmes for public broadcasting (percentages for cultural programmes, information, education and entertainment) (art. 50 etc. (old) Media Act) disappeared |                      |   |
| 7.1bis. Special framework for community media (“medias associatifs”): Is there a special legal framework granting protection to community media (including rules determining the criteria - e.g. being independent of political parties, non-profit, respecting the law, etc. - in order to qualify as community media; granting certain privileges to that type of media, like guaranteed access to spectrum or networks, etc.).   |  |                      |   |
| <b>7.2. Events list</b><br>(please indicate what type of events are listed, e.g. only sports events or also cultural, political events...)  | art. 5.1-5.3 Media Act 20.. j. art. 35 etc. Media Decree j. Annex II Media Decree  |                      | By means of a Decree (governmental decision) a list of ‘major events’ can be created. The events on this list have to be broadcasted on an ‘open net’ (to be received by at least 75% of the households and at reasonable cost). An event can be put on the list if it complies with at least two of the following conditions:<br><ul style="list-style-type: none"> <li>- general interest</li> <li>- special cultural meaning</li> <li>- open broadcasting in the past and high audience share</li> <li>- international sport event with a national team involved.</li> </ul> |
| <p><i>Note: The major events list is attached to the Media Decree. The list is not endorsed by the European Community and can therefore not be imposed upon broadcasters from other EU States who choose not to respect the Dutch national list (e.g., RTL 4, RTL 5 or RTL 7).<br/>           The reason why the list was not sent to the European Commission for endorsement by the Contact Committee of the Television without Frontiers Directive is, that initial orientations in Brussels had shown that the European Commission thought that the list was too long.</i></p> |  |                      |   |
| <b>7.3. Short news reporting</b>  | art. 3.27 Media Act 20..   |                      | No real right on short reporting, but a pre-emption right for national public broadcasting.<br>A commercial media institution can not broadcast a programme of which the rights must be obtained before broadcasting if the commercial institution did not notify the NOS of the fact they wanted to obtain these rights and the NOS has notified the commercial institution they or another national media institution wants to offer this programme.  |

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| 7.4. Fixed book price   | Law on Fixed Book Price       |  | Since 1 January 2005 there is a special law on the fixed book price. Goal is to assure a broad and widespread offer of books and music transcripts. Commissariaat voor de Media is the controlling authority.   |
| 7.5. Public service media   |                               |  |   |
| 7.5.1. Structural rules - organization  |                               |  |   |
| 7.5.1.1. Independence (from government, political powers, economic powers; is this explicitly guaranteed, how?) | art. 2.1, 2, e Media Act 20.. |  | Public media services offer a media offer which:<br>e) is independent form commercial and political influence except, in the latter case, when provided for by law  |
|   | art. 2.144 Media Act 20..     |  | Members of organs or employees of public media services who has a task of public media at the public media institution can not stipulate or accept an assessable benefit for themselves or others which has a direct or indirect link with their activities within the institution, except in case of permission of the institution. Permission will only be granted if it is likely that the benefit is not a quid pro quo for favours done in his professional capacity.  |
| 7.5.1.2. Election of management, composition of board members...(government? Parliament? Other?)                | art. 2.4 etc. Media Act 20..  |  | The organs of the NOS are: Supervisory board, board of directors and Advisory College.<br>The Board of Directors (3) is appointed by the Supervisory Board. This Supervisory Board (max 7) is appointed by the Minister (mainly).<br>The members of these boards can not be member of another organ of the NOS, work for another public or commercial media institution or be member of parliament, provincial or community government, work at a Ministry or have financial or other interests in companies or institutions and side activities that can compromise the independency and the credibility of the member in question |
| 7.5.1.3. Specific representation requirements for board of directors, other bodies                              |                               |  |   |
| 7.5.1.4. Advisory bodies: ensured broad representation of cultural, political and geographic groupings          | art. 2.12 Media Act 20..      |  | The Advisory College exists of one member appointed by the accepted broadcasting associations and educational media institutions, one member appointed by the NPS, one member appointed by the churches and the spiritual associations, Media Director of NOS (advisory voice) and observers from the broadcasting associations   |

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|---|--|--|--|
|   |  |  | without a licence.   |
| 7.5.1.5. <i>Employment: ensured broad representation of cultural, political and geographic groupings</i>    |  |  |  |
| 7.5.2. Structural rules - funding   |  |  |  |
| 7.5.2.1. <i>Source of funding (state / tax money, public / licence fees, advertising, merchandising...)</i> | Art. 2.145 Media Act 20.. j. art. 9.1                            |  | Public media institutions can claim financing from the State. This is the “State Media Contribution”. This contribution is at least 577, 093 million euros increased with 49,799 million euros in 2008. Annual revision of the contribution  |
|   | art. 2.151 Media Act 20..  |  | The Minister determines before 1 December the budget for the next year for the broadcasting associations and NPS together, the NOS,..., the improvement of the media offer of the national public media services.  |
|   | art. 2.105 Media Act 20..  |  | Revenues out of advertising and tele-shopping are gathered by the Ster and given to the Minister   |
|   | art. 2.137 Media Act 20..  |  | Revenues out of side activities are used entirely for the public media task.   |
|   | art. 2.24, 2, e Media Act 20..                                   |  | An annual contribution of the members to broadcasting associations   |
| 7.5.2.2. <i>Sufficiency of resources (taking into account the missions and new media activities)</i>        | Press release IP/06/822 of the European Commission, 22 June 2006 |  | Commission orders Dutch public service broadcaster NOS to pay back €76.3 million excess ad hoc funding<br>The European Commission has ordered the Dutch authorities to recover €76.3 million plus interest from NOS, the umbrella organisation of public broadcasters in the Netherlands, following an investigation under EC Treaty state aid rules into ad hoc payments from the Dutch State to the public broadcasters between 1994 and 2005. The investigation has shown that the payments went beyond the financial needs of broadcasters for public service purposes and resulted in NOS building up financial reserves. |
| 7.5.3. Definition of public service remit   |  |  |  |
| 7.5.3.1. <i>Obligation to provide a varied and pluralistic offer</i>  | art. 2.1 Media Act 20..  |  | Cfr. <i>supra</i>  |
| 7.5.3.2. <i>Obligation to engage in new media activities</i>  | art. 2.1, 4 Media Act 20..                                       |  | Public media institution has the obligation to follow and stimulate technological developments use the possibilities to offer media to the public via new media and distribution techniques.   |
| 7.5.4. Content obligations (not yet mentioned in table 3, 4 or 5)   |  |  | Apart from the quota for European productions, independent productions and language, there are currently still quota for cultural, informational and educational programme elements for the public   |

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|---------------------------------------|----------------------------|--|--|
|                                       |                            |  | <p>broadcasters: at least 25% of their broadcasting time should consist of cultural programme elements (of which 12.5% is devoted to arts) and 25% of informational or educational programme elements. Under the new Media Act, these quota will disappear and be negotiated in the concession contract.</p>   |
|                                       |                            |  | <p>Part of the mission of the national public broadcasters is to provide daily news. Private commercial broadcasters do not have this obligation. Private commercial radio broadcasters have accepted an obligation to provide news in the framework of the format obligations which they accepted when they tried to obtain an FM frequency for the distribution of their programme services.</p> |
| 7.5.5. Universal coverage obligations | art. 2.1, 3 Media Act 20.. |  | <p>The programme of the general channels of national, regional and local public media service is broadcasted via transmitters to all the households in the target area of the programme and without other costs than the cost for the technical support of the reception of the programme.</p>   |



**TABLE 8. Distribution (networks/network facilities/print distribution)**

| Measure   | Source                           | Scope of application | Key features   |
|---|----------------------------------|----------------------|--|
| <b>8.1. Guarantees for 'public contents' to be distributed (must carry or other)</b>                            | art. 6.12-6.13 Media Act 20..    |                      | <p>In case a broadcasting network is the most important medium to a significant number of end-users, the provider of this network must distribute to the subscribers, freely accessible, the programme of :</p> <ul style="list-style-type: none"> <li>- the national public service media (3 for television, 4 for radio)</li> <li>-the regional public service media for that region (1 for television, 1 for radio)</li> <li>-the local public service media for that municipality (1, 1)</li> <li>- the Flemish public service media from Belgium (2, 2)</li> <li>- other programmes from a local public service media aiming at specific population and age groups, including minorities (2,5)</li> </ul> |
|   | art. 6.15 j. 6.20 Media Act 20.. |                      | <p>Each municipality will set up a programme service Council that will decide which channels to include in the must-carry obligations in addition to those defined by the Media act.</p> <p>The Council shall be composed in such a way as to be representative of the major social, cultural, religious, or other spiritual movements in the municipality. The provider of the network has to follow the decision of the council except in case of important reasons (zwaarwichtige redenen).</p>   |
| <b>8.2. Guarantees for network operators to distribute 'public contents' (must offer or other)</b>              |                                  |                      |  |
| <b>8.3. Ex ante regulation (in electronic communication): SMP market analysis for broadcasting transmission</b> |                                  |                      |  |
| 8.3.1. Implementation of market analysis procedure in ECNS Directives   | Cullen International Study       |                      | <p>Included in market analysis:</p> <ol style="list-style-type: none"> <li>1. Transmission of pay and free-to-air radio- and television packages via cable in the coverage area of UPC, Casema, Essent, Delta, Multikabel, and 52 small cable operators.</li> <li>2. Transmission of radio via radio spectrum</li> <li>3. Supply of free-to-air radio- and television packages in the coverage area of each cable operator (retail market)</li> </ol> <p>Not included:</p> <ol style="list-style-type: none"> <li>1. Transmission for analogue terrestrial TV ( phased out in 2006)</li> <li>2. Transmission for digital terrestrial TV (DVB-T), TV</li> </ol>   |

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|   |   |  | over DSL, and TV over fibre optic cable (no pass for ex ante regulation test)<br>3. Satellite transmission (transnational market)  |
| 8.3.2. Result of (first) round of market analysis of market 18  | Market analysis decisions and revised decisions of OPTA |  | Obligations are imposed on wholesale market players with SMP (5 largest cable operators): access under cost oriented tariffs in case of reasonable request, transparency obligation and non-discrimination obligation.<br><br>Obligations to retail market (big five+52 small operators): Prohibition to pure bundle services and transparency in tariffs.                       |
| <b>8.4. Ex ante regulation for associated facilities of networks, so-called 'bottleneck facilities'</b>                             |   |  |  |
| 8.4.1. Conditional access   | art. 8.5 Telecom Act j. Decree on Conditional Access    |  | Scope of access:<br>Cf. Annex 1 of "Access Directive"<br><br>Who has the obligation to provide access?:<br>Operators of conditional access systems used for the broadcasting of services that can be received by digital TV and radio systems<br><br>Obligation/remuneration?:<br>Fair, reasonable and non-discriminatory rates (undefined)                                      |
| 8.4.2. EPG (or other search tools)  | art. 8.6 Telecom Act                                    |  | In order to guarantee access to end users to services, which are selected by government rule (OPTA), which are broadcasted in a digital way and which can be received by television or radio systems, rules can be adopted by the national regulator (OPTA) concerning the granting of acces to application programme interfaces or electronic programme guides by the providers |
| 8.4.3. API  | art. 8.6 Telecom Act                                    |  | Cfr. <i>supra</i>  |
| 8.4.4. Other  |   |  |  |
| <b>8.5. Interoperability requirements</b>   |   |  |  |
| <b>8.6. Specific rules for distribution systems in print media</b>  |   |  |  |
| <b>8.7. General competition law</b>   |   |  |  |
| <b>8.8. Policies fostering distribution systems (libraries, broadband networks...) - are these in line with EU state aid rules?</b> |   |  |  |

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| <p><b>8.9. State Aids to distribution platforms and/or schemes (can be based on one or more of the following criteria:</b><br/>- Regional<br/>- Linguistic/minority<br/>- National )</p> |  |  |  |
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**TABLE 9. Supervision**

| Measure   | Source  | Scope of application | Key features  |
|---|---|----------------------|---|
| <b>9.1. National Regulatory Authority</b>   | Chapter 7 Media Act 20..  |                      | Commissariat for the Media ( <a href="http://www.cvdm.nl/">http://www.cvdm.nl/</a> )  |
| 9.1.1. Structure/ organisation  |   |                      |   |
| 9.1.1.1. <i>Guarantees for independence</i>   | art. 7.3 Media Act 20..   |                      | The members of the Commissariat can not be member of an organ of or work for a public media institution, a commercial media institution or a publisher of a press organ or be member of parliament, provincial or community government, work at a Ministry or have financial or other interests in companies or institutions and side activities that can compromise the independency and the credibility of the member in question |
| 9.1.1.2. <i>Representation requirements</i>   |   |                      |   |
| 9.1.2. Credibility and efficiency   |   |                      |   |
| 9.1.2.1. <i>Sufficient resources</i>  | art. 7.5,2 Media Act 20..   |                      | The costs of the Commissariat are paid by the Minister on the basis of an approved budget.  |
| 9.1.2.2. <i>Tasks and duties</i>  | art. 7.1 j. 7.14 etc. Media Act 20..  |                      | Execution of tasks described in the Media Act 20. and other acts (authorizations, content matters, must-carry obligations,...)  |
| 9.1.2.3. <i>Effective sanctioning powers</i>  | art. 7.15 etc. Media Act 20..   |                      | Possibility to impose fines up to 225.000 euro per infringement   |
| 9.1.3. Cooperation with other regulators  | art. 9 Temporary Law Media Concentrations                                       |                      | Cfr. <i>supra</i>   |
| <b>9.2. Press Council</b>   | <a href="http://www.rvdj.nl">www.rvdj.nl</a>                                    |                      | Council for Journalism  |
| 9.2.1. Broad representation of sector   | art. 10 articles of association of the Foundation of the Council for Journalism |                      | The governance of the foundation is done by at least six members elected by a large group of associations and foundations representing the sector (journalists, employers, editors, daily press, broadcasting, magazines, national level, local level,...)  |
| 9.2.2. Sufficient resources   | art. 8 articles of association of the Foundation of the Council for Journalism  |                      | The capital of the Foundation exists in: Incidental or periodical contributions from the organizations of art. 10 (cfr. <i>supra</i> ) and “other” revenues.  |
| 9.2.3. Credibility  |   |                      |   |
| <b>9.3. Competition Authority</b>   | art. 2 Competition Act  |                      | The Netherlands Competition Authority ( <a href="http://www.nmanet.nl/nederlands/home/index.asp">http://www.nmanet.nl/nederlands/home/index.asp</a> )   |
| 9.3.1. Structure/ organization<br><i>(What this row should learn is whether there is a problem for media pluralism because NCA does not function properly; it should not contain an in-depth analysis of functioning of NCA!)</i> |   |                      |   |
| 9.3.1.1. <i>Guarantees for independence</i>   | art. 2 Competition Act  |                      | The competition authority shall be managed by a Director-General and operate under the responsibility of the Minister. The Minister can set   |

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|  |   |  | out policy rules to the Director-General regarding the tasks set out in the law. The policy rules must be promulgated in the Netherlands Government Gazette. Regarding individual cases the Minister shall only issue in writing his instruction to the Director-General. |
| 9.3.1.2. Representation requirements     |   |  |   |
| 9.3.2. Credibility and efficiency        | art. 5 Competition Act                    |  | The Director shall report to the Minister annually. The Minister shall notify the Parliament of the report.   |
| 9.3.2.1. Sufficient resources            |   |  |   |
| 9.3.2.2. Tasks and duties                | art. 3 Competition Act                    |  | The task of the competition authority shall be to perform activities for the implementation of the Competition Act as well as for the implementation of other Acts (eg. Temporary Law Media Concentrations)   |
| 9.3.2.3. Effective sanctioning powers    | art. 56 etc. Competition Act              |  | Possibility to impose fines and orders subject to penalties,...   |
| 9.3.3. Cooperation with other regulators | art. 9 Temporary Law Media Concentrations |  | Cfr. <i>supra</i>   |

### Short summary of major implementation problems

At the moment of research (March 2008) a proposal for a new Media Act passed the first stages of the legislative process and was sent to the Second Chamber (press announcement from the Ministry of Education, Culture and Science on the 15<sup>th</sup> of February 2008).

On 4 March, 2008 this original proposal was withdrawn by the government – see the letter of the Minister of Education, Culture and Science to Parliament: Kamerstukken 2007-2008, 30 571, nr. 6; the proposal was replaced by a new one, which was sent to Parliament on 25 Feb., 2008 and which was published in Kamerstukken 2007-2008, 31 356, nrs 1-4. According to the government, the new proposal provides a better regulation of the multimedia mission of public broadcasting as well as several other measures, such as a better structure of the Media Act, restrictions on alcohol advertising, liberalisation of the advertising and sponsorship regime for private commercial broadcasters and provisions to act against channels involved in hate speech. The first reading by Parliament took place on 25 April 2008. It is now up to the government to answer the questions raised by Parliament. Once the government response is received by Parliament, the proposal will be discussed and voted upon in a plenary session of Parliament.

In this table we take this proposal into account to a great extent. The preset date of entry into force for the new Media Act is before the end of 2008