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## Investment obligations for on-demand players in Europe: an update of current AVMSd transpositions

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The latest revision of the Audiovisual Media Services directive (AVMSd) came into force in autumn 2018. The revised directive aims to strengthen European culture and clarifies the rules for investment obligations, i.e. the obligations for on-demand audiovisual media services (VOD) to contribute financially to the production of European works. For the first time, the directive also allows Member States to capture on-demand players that are targeting domestic audiences but are located outside of their borders (such as Netflix, Amazon Prime Video, Disney+, etc.).

This Policy Brief presents the key findings of our latest report “[A European comparison of obligations on VOD providers to financially contribute to the production of European works](#)”. Building on our [report from 2018](#), the study shows that much has already changed in the media policy landscape and that there are increasing steps taken within Member States to oblige companies that benefit from the distribution of European audiovisual content to also contribute to content production, regardless of the market in which they are based. The findings presented here can support policymakers within and outside the EU that want to introduce or adopt financial obligations for VOD providers in their countries or regions.

### Highlights

Local media markets are increasingly under pressure through the entry of international VOD players into their markets, threatening investment into European content.

EU institutions deemed it wise to offer MS new opportunities to support their local markets. The result was the revised AVMSd in 2018, which stipulates that both foreign and domestic VOD providers can be required to contribute financially to the production of European works.

Based on our research, since 2018, nine MS have already changed or plan to change their legislation to include local and/or domestic VOD providers in their investment obligations. Today, seven countries (or regions) capture foreign VOD providers for such investment obligations compared to two in 2018.

Despite AVMSd's attempts to harmonise, investment obligations for VOD providers in the EU are highly diverse, including levies paid to film funds, taxes, obligations to invest directly in the production or rights acquisition of European content, or a combination of these. This Policy Brief gives a short overview of the status-quo.

Countries that already had investment mechanisms in place prior to the AVMSd transposition are already considering adapting existing regulations, often following pressure from industry stakeholders and a perceived lack of revenue coming from global SVODs.

VOD services are on the rise in Europe, driven by changing consumer preferences and the entry of new services. Revenues from VOD providers in the EU amounted to EUR 11.6 billion in 2020,

with a compound growth rate of 40% from 2010 to 2020.<sup>1</sup> At the same time, European VOD markets are increasingly dominated by US-based companies, which accumulate large market shares in Europe (e.g., Netflix, Amazon Prime Video, Apple TV+, Disney+). However, European broadcasters, both public and private, continue to be the primary investors in original content. Because of this, in combination with an increasing struggle for local broadcasters to capture revenue, **many scholars and policymakers see investment in European content under scrutiny.** The AVMSd opens new opportunities to also oblige VOD providers to contribute to the sustainability of the European audiovisual media market through investment obligations.

## 1. Article 13 of the AVMSd: What can MS do?

**Article 13 stipulates that MS may require the providers of VOD under their jurisdiction to contribute financially to the production of European works next to content quotas in the catalogues.** This can be achieved through direct investments in content and/or by the payment of contributions to national funds. Moreover, MS may also oblige providers who target audiences in their territories but are established in another EU MS to likewise make such financial contributions. In that case, the calculation will be based on the revenues earned in the targeted MS. The MS in question should also take into account financial contributions imposed on this provider in other MS. MS are entitled to waive the requirements of Article 13 for certain providers.

While different **MS already had similar measures in place before the AVMSd, a lot of countries have now, in the last two years, introduced financial obligations** or are planning to introduce them. We also find that MS have considerable freedom to decide if and how far VOD providers have to contribute financially to the production of European works. This has generated fragmentation and has led different MS to:

1. Impose different kinds of financial obligations for VOD providers;
2. Calculate the financial obligations differently;
3. Include different exemptions into the regulations.

## 2. The status quo: Comparison of current legislation in the EU

The development of legal practices in EU MS is still going on and will most likely continue to be highly diverse. In Table 1, we provide an overview of the current practices already in place in the applicable legislations of the MS.

- 12 MS (or regions) in the EU 27 impose financial obligations to promote European work on the providers of VOD services, including Austria, Belgium (the French- and Dutch-speaking Communities), Croatia, the Czech Republic, France, Germany, Italy, Poland, Portugal, Slovenia and Spain (7 of these capture also foreign VOD providers);
- 4 MS have amended regulations since 2018 to change calculations for investment obligations and/or to also capture foreign VOD providers for financial obligations, including Belgium (both the French- and Dutch-speaking Communities), Croatia, Italy and Portugal;
- 5 MS have currently (draft) laws in legislative procedure that will amend relevant legislation, possibly this or next year, including Croatia, the Czech Republic, France, Slovenia and Spain.

| Member States and Regions | Transposition of AVMSd confirmed (April 2021) | Is there an obligation for financial investments for VOD services? | Is this obligation also applicable to foreign VOD? | Changes since 2018?                |
|---------------------------|---|--|--|------------------------------------|
| Austria                   | ✓   | ✓  |  | New case study                     |
| Belgium (NL)              |   | ✓  | ✓  | Yes (foreign VOD included in 2019) |
| Belgium (FR)              |   | ✓  | ✓  | Yes (foreign VOD included in 2021) |
| Belgium (DE)              |   |  |  |                                    |
| Bulgaria                  | ✓   |  |  |                                    |

<sup>1</sup> <https://rm.coe.int/trends-in-the-vod-market-in-eu28-final-version/1680a1511a>

|                 |   |     |                         |                                    |
|-----------------|---|-----|-------------------------|------------------------------------|
| Croatia         |   | ✓   | (proposed in draft law) | New draft law accessible           |
| Cyprus          |   |     |                         |                                    |
| Czech Republic  |   | ✓   |                         | New draft law accessible           |
| Denmark         | ✓ |     |                         |                                    |
| Estonia         |   |     |                         |                                    |
| Finland         | ✓ |     |                         |                                    |
| France          | ✓ | ✓   | ✓                       |                                    |
| Germany         | ✓ | ✓   | ✓                       |                                    |
| Greece          |   |     |                         |                                    |
| Hungary         | ✓ |     |                         |                                    |
| Ireland         |   |     |                         |                                    |
| Italy           |   | ✓   | ✓                       | Yes                                |
| Latvia          | ✓ |     |                         |                                    |
| Lithuania       | ✓ | ✓*  |                         |                                    |
| Luxembourg      |   | ✓*  |                         |                                    |
| Malta           | ✓ |     |                         |                                    |
| The Netherlands | ✓ |     |                         |                                    |
| Poland          |   | ✓   | ✓                       | New case study                     |
| Portugal        | ✓ | ✓   | ✓                       | Yes (foreign VOD included in 2020) |
| Romania         |   | ✓** |                         |                                    |
| Slovakia        |   |     |                         |                                    |
| Slovenia        |   | ✓   | (proposed in draft law) | New draft law accessible           |
| Spain           |   | ✓   | (proposed in draft law) | New draft law accessible           |
| Sweden          | ✓ |     |                         |                                    |

### 3. What financial obligations exist across the EU?

#### There are 4 forms of investment obligations for VOD providers in the EU:

- A levy needs to be paid to the local film funds in Austria, Croatia, Germany and Poland (in Germany and Poland also for foreign VOD services);
- Obligations to invest directly in European works exist in Italy, Spain and Slovenia (only in Italy also for foreign VOD and in Slovenia instead of investment also a quota of 10% of the programme catalogue can be chosen);
- A levy/tax OR obligation (as choice) to invest directly can be found only in Belgium (both the French and Flemish Communities), where both domestic and foreign VOD services are included;
- A levy/tax AND obligation to invest directly can be found in France, the Czech Republic and Portugal (in Portugal for both foreign and domestic, in the Czech Republic only for domestic VOD and in France only the tax is for both).

**MS calculate the financial obligation in terms of a (sometimes variable) percentage, lump sum or amount per subscriber** based on (sometimes specific) turnover/income (some MS give very detailed descriptions about what kind of income needs to be taken into account and how this is calculated, while others do not):

- Percentages range from 0.5% (in Portugal) to 26% (in France) based on (sometimes specific) sales/turnover/income or revenue of the VOD provider. Such a percentage can be found in all 12 MS;
- Some MS have a lump sum or amount per subscriber for VOD providers in place (which can sometimes also be chosen instead of a percentage of income); In Portugal one of these three options can be chosen; In the Flemish Community of Belgium, a lump sum of EUR 3 million or EUR 1.30 per subscriber can be chosen for domestic VOD providers which also offer linear television services.

- As part of the direct investment obligations, some MS also specify sub-quotas that need to be invested in local / local-language content or specific formats. This includes for example Italy (50% sub-quota for works of original Italian expression), Spain (sub-quota of 70% for independent producers, and min 40% in official languages of Spain), France (about 85% sub-quota for works of French original expression), and Portugal (100% into independent European production in the Portuguese language). At the same time the local film funds also have rules around what kind of content or activities levy contributions (of VOD providers) can be used for.

Several MS have **variable obligations in place, that depend on different characteristics of the VOD service or provider**. A differentiation is based on:

- The size of the VOD service or provider in terms of its income or turnover; this is the case in Germany, the French Community in Belgium and Portugal;
- The location of the service's headquarters, which is the case in Italy (up to 4.5% more);
- The kind of VOD provider, which is the case in Spain (where public services providers have +1% higher investment obligations compared to private companies);
- The content that is offered by the VOD service, which is the case in France (for example higher percentages for VOD providing pornographic content).

**In order to determine which VOD services providers are captured, EU Member States have adopted different approaches.** But there are also considerable similarities across them due to the guidelines published by the European Commission and the definitions given in the AVMSd. Based on this, there are three main approaches. VOD providers are exempted, because of:

- The kind of VOD service they are providing; and/or
- Their market share or size; and/or
- Their location.

Finally, we looked at the **applicable procedures in legislation to control the financial obligations of VOD providers**. Most MS transpose similar procedures as are outlined in the AVMSd (e.g., in Article 5). Four different procedural guidelines can be distinguished in the applicable legislations:

- Structural and competence procedures relating to the regulatory authority;
- Payment and financial procedures;
- Procedures for the provision of information;
- Procedures in the event of infringements or non-compliance.

## 4. Final thoughts and recommendations

In the [report](#), we outline the different legislations in more detail and present the full case studies of legislation in the EU. Based on our findings, we come to the following conclusions:

**WE EXPECT VARIOUS OTHER EU MEMBER STATES TO FOLLOW SUIT IN INTRODUCING INVESTMENT OBLIGATIONS FOR (FOREIGN) VOD PROVIDERS IN THE NEXT YEARS.**

First, we found that since [2018 \(when we published our previous study\)](#), new laws have been introduced in different MS to capture VOD services for contributing to investment in European works. Many of these also include foreign VOD players now. As many MS have not yet finalised the transposition of the AVMSd and we also found draft laws and ongoing discussions about changes in MS (see Table 1), we expect other countries to follow or other changes to be introduced in the coming years. In countries that had introduced measures prior to AVMSd entering into force, we already see discussions on increasing existing investment obligation percentages. In that regard, France has introduced the strictest regime, encompassing direct investment obligations as well as a levy, and has been increasing current percentages. Considering that the Covid pandemic has had an immense impact on the film and audiovisual markets in Europe, this might give policymakers even more drive to create new investment obligations to take their local audiovisual markets out of crisis.

## LEGISLATION IN THE EU IS HIGHLY FRAGMENTED DUE TO THE LOCAL LEGISLATIVE CONTEXT AND PATH-DEPENDENT DEVELOPMENTS.

We believe that a certain level of harmonisation should be achieved, with an eye on ensuring legal predictability for companies, as well as more efficient forms of control and enforcement by media regulators and the agencies tasked with the obligation's collection and monitoring. This would also enhance the communication and collaboration between regulatory bodies across EU Member States.

## WE RECOMMEND THAT POLICYMAKERS BUILD FUTURE LEGISLATION ON EXISTING LEGISLATION AND PRACTICES TO ENSURE MORE LEGAL PREDICTABILITY FOR COMPANIES IN THE EU.

Based on the developments we identified, we recommend that policymakers closely investigate existing legislation and discussions in other Member States, in order to find best practices and align future legislation to similar audiovisual markets and legal systems. However, policymakers should also keep in mind path-dependency aspects, regulatory tradition and track record, as well as other contextual factors, as these may impede an accurate comparison between legislative systems and prevent policymakers from copying practices from other MS that may not provide a coherent framework and effective support for their own market.

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This Policy Brief presents insights from SMIT's recent research report "[A European comparison of obligations on VOD providers to financially contribute to the production of European works](#)".

The research is also presented at [SMIT's Symposium "A decade of Netflix in Europe"](#) on June 3<sup>rd</sup> 2021.



*The Media & Society Programme of SMIT consists of 45 researchers specialised in various policy, market, and user research methods. Their work spans the fields of national and European media and competition policy, cultural diversity, public broadcasting, sustainability of creative industries, immersive media, data and valorisation, privacy, media literacy, and digital inclusion. Head of Media Economics and Policy: [Tim.Raats@vub.be](mailto:Tim.Raats@vub.be). For research collaborations: [Simon.Delaere@vub.be](mailto:Simon.Delaere@vub.be) (Research Valorisation Manager)*