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Investment obligations for VOD providers: A fresh look on the regulatory approaches in Europe

Ivana Kostovska, Tim Raats, Catalina Iordache, Nino Domazetovikj, Stephanie Tintel & Marlen Komorowski

This Policy Brief presents the key findings of our [2022 edition of the Study on investment obligations for VOD providers to contribute to the production of European works](). The study gives a comprehensive overview of the types of investment obligations for VOD providers put in place or developed recently. It is the third edition of the Study on investment obligations for VOD providers, following the editions published in [2018]() and [2021](). The study aims to provide valuable insights to industry and policymakers in Europe and beyond. To that end, we also highlight recent legislative interventions coming up from the transposition of the EU's Audiovisual Media Services Directive. Alongside a comprehensive overview of legislative frameworks, the new edition of the study also includes perspectives on investment obligations from key European stakeholders.

Highlights
13 Member States or regions in the EU27 impose investment obligations for VOD providers to contribute to European works. We identified proposed legislation in three Member States and revision of current investment obligations in at least two other cases.
There are four types of investment obligations introduced in Member States: (1) An obligation for direct investment in production: Belgium (DE) and Italy; (2) A levy payable to a fund: Denmark (legislative proposal), Germany, Poland and Romania; (3) A choice between direct investment or levy: Belgium (FL), Belgium (FR), Spain and Greece; (4) Both levy and direct investment obligation: Croatia, Czech Republic, France and Portugal.
We distinguish between stricter and lightweight regulatory approaches based on the type of investment obligation, the rates, and the sub-requirements. Most of the Member States with investment obligations laid down rates below 5% and are on the other side of the continuum from France and Italy, which introduced rates above 15% of turnover.
The investment obligations vary in terms of requirements for contributions in type of works (audiovisual works, cinematographic works, sub-requirements for specific genres); form of contribution (commissions, co-productions, acquisitions); level of support for independent production (either the whole investment or a portion must be directed to independent works) and if the investment must be in European and/or national works.

Compared to the 2021 edition of the study, we include additional case studies from three EU Member States: Denmark, Greece, and Romania and look into the legislative updates in four countries: Croatia, France, Italy, and Spain. The Czech Republic was the only country whose investment obligations applied only to VOD providers under its jurisdiction at the time of publication. The rest of the Member States or regions introduce investment obligations both for VOD providers established in the country and those targeting their audiences from other EU countries.

1. What rules are set out in the AVMSD?

With the transformation of the audiovisual landscape and audiences embracing on-demand viewing, the balance of power in audiovisual production and distribution in Europe has shifted towards global VOD players. The new paradigm premised on the globalisation of the sector has brought opportunities and challenges to the European audiovisual ecosystems. Given the rapid changes and uncertainties on the horizon, the policymakers at EU and national levels have updated legislation to support the long-term resilience of the audiovisual industries. The transposition of the 2018 AVMSD has provided an opportunity for the Member States to rethink their national audiovisual policy frameworks.

The 2018 AVMSD sets out rules which give Member States the possibility to impose financial contributions (direct investments or levies payable to a fund) on media service providers, including VOD providers established in a different Member State that target their national audiences (such as Netflix, Amazon Prime Video, Disney+, etc.). The rules are set forth in Article 13 of the AVMSD. This is not an obligation at the EU level but a voluntary measure for Member States.

While some Member States already had similar measures in place before the transposition of the AVMSD, many countries have recently introduced investment obligations or plan to do so. Some Member States decided to take more time to explore the options for introducing investment obligations to VOD providers. Sweden, for example, plans to revisit the question of investment obligation as part of the biennial reporting to the European Commission on the provisions concerning European works. Finland is also exploring the option of introducing investment obligations, according to report commissioned by the Ministry of Culture. Slovenia included a proposal for investment obligations in the draft proposal for amending the Audiovisual Media Services Act. The proposal for investment obligations was excluded and put on hold because of the delay in transposition of the AVMSD and the infringement procedure launched by the European Commission against Slovenia, among others.

2. Overview of the investment obligations to VOD providers

As presented in Table 1 below, 13 Member States or regions in the EU impose financial obligations on VOD providers to promote European works: Belgium (the three communities), Croatia, Czech Republic, France, Germany, Greece, Italy, Poland, Portugal, Romania, and Spain. We identified proposed legislation in three Member States: Denmark, Ireland and Netherlands. In at least two other cases (Belgium (FL) and the Czech Republic), a revision of the current investment obligation was taking place at the time of writing.

- Member States most often calculate the investment obligations as a percentage of revenue or turnover generated in the country/region. Under some regulatory regimes, there are more explicit definitions (e.g. turnover from sales of cinema films in Germany; in Poland - revenue obtained from fees for access to VOD services or revenue obtained from broadcasting commercial communications, if this revenue is higher in a given settlement period).
- While the investment obligations in some Member States or regions are required to be in European works, others set rules that the total investment has to be directed to national works. Examples of the latter are Croatia, Greece, Portugal (for SVOD

services), and Belgium (FL). Under the legislation of some Member States, such as Italy, France and Spain, a share of the investment obligation must be in national works.

- In different policy settings, there are variations as to the requirement for VOD providers to contribute to independent production. The regulatory approaches in Italy and Croatia provide that the entire direct investment must be in works by independent producers. In most cases, VOD providers have to invest in audiovisual works, but some Member States impose requirements for investments in cinematographic works.
- Different measurable parameters for exemptions and reductions are used to define the scope and ensure that investment obligations allow the entry of new players, without undermining market development. The exemptions from the investment obligations under the AVMSD are made on two bases: 1) Low audience and low turnover and 2) The nature or theme of the audiovisual media service.

	MS/ Community	Basis for Calculation	%	Investment in:
DIRECT INVESTMENT OBLIGATION	BE (DE)	Revenue	/	Production and rights acquisition of European works or the share and/or prominence of European works in the catalogue of programmes
	IT	Net revenues	17% until 31 Dec	European audiovisual works produced by independent producers (50% for works of original Italian expression)
			18% from 1 Jan 2023	
			20% from 1 Jan 2023	
LEVY	DK	Turnover	6%	Cultural contribution to DFI
	DE	Turnover from sales of cinema films	1.8-2.5%	Levy paid to FFA
	PL	Revenue obtained from fees for access to VOD services or revenue obtained from broadcasting commercial communications, if this revenue in a given settlement period is higher	1.5%	Levy paid to the National Film Institute
	RO	Levy: revenue from the price of audiovisual works downloaded for a cost	3%	Levy paid to the film fund
		Levy: Revenue from single transactions or in the form of subscription	4%	Levy paid to the film fund
		% of the levy may be direct investment	Option to contribute 40% of the levy as direct investment	Film production, including also projects declared winners in the project selection competition for direct financial credits for film production and film development
CHOICE BETWEEN DIRECT INVESTMENT OR LEVY	BE (FL)	Contribution scheme: Revenue	2%	(co-)production of (Flemish) television series (fiction, documentary or animation) or financial contribution to VAF
		Incentive scheme: Lump sum or per subscriber calculated on the basis of the most recent data	Lump sum of €3m or	
	BE (FR)	Turnover i.e. gross revenue derived from advertising and sponsorship and gross receipts from any distributor or third-party services	1.4-2.2%	Co-production or pre-purchase of audiovisual works or paying a levy to CSA
	GR	Turnover	1.5%	Production or acquisition of Greek audiovisual works or amount to be paid to a special account of the EKOME for support of Greek producers
	ES	Annual income	5%	(Pre-)financing, rights acquisition, and/or a contribution to the Fund for the Protection of Cinematography or to the Fund for the promotion of cinematography and audiovisual in co-official languages other than Spanish (Castilian)
BOTH LEVY AND DIRECT INVESTMENT OBLIGATION	HR	Direct investment obligation: Gross revenue	2%	Production or rights acquisition of Croatian audiovisual works by independent producers
		Levy: Annual gross income from VOD services	2%	Levy paid to HAVC
	CZ	Levy: price paid by end users	0.5%	Levy paid to the Czech Film Fund
		Direct: revenue	1%	Production or rights acquisition of European works (as option to meet the quota obligation)
	FR	Levy: Net turnover consisting of the sums collected by the exploitation of cinematographic or audiovisual works	5.15-15%	Levy paid to CNC
		Direct: Net turnover	20-25%	Acquisitions, production or co-production of European works (85% in works of original French expression)
	PT	Levy: Relevant income calculated based on audiovisual commercial communications and on subscriptions or occasional transactions or lump sum;	1% or lump sum of €1million	Levy paid to Portuguese Institute of Cinema and Audiovisual Media
		Direct: relevant income on the fee paid by the subscriber and based on commercial communications or fixed amount	0.5-4% or lump sum of €10,000 to €4million	Production of European cinematographic and audiovisual creative works of independent production, originally in Portuguese or prominence of European works and of works in Portuguese language
		Exhibition fee: advertising charges based on number of subscriptions	4%	

3. What are the views of key stakeholders?

In carrying out this study, we considered views by key groups of stakeholders.

- Independent producers' associations suggest that it is vital for investment obligations to provide not only access to financing for independent production companies - but also rights retention.
- The European Film Agencies Directors association outlines that key factors for successful implementation are the effective exchange of information and collaboration between stakeholders, as well as a clear definition of 'independent producer' and 'independent production'.
- The European VOD coalition underlines that investment obligations might turn out to be a Pyrrhic victory, as significant internal resources are diverted into legal and compliance functions rather than content creation.

4. Recommendations

In the study, we analyse the different legislations in more detail and present case-studies of legislation in the Member States. Based on our findings and lessons learned from different jurisdictions, we come to the following recommendations.

Recommendations
We recognise that, at a national level, an **investment obligation should be modelled as part of a broader policy strategy for strengthening and growing the film and television sector.** This means that the regulatory design of investment obligation should be an integral part of a coherent audiovisual policy framework. Emphasis on the question of independent producers' rights retention is critical to secure long-term viability to rights exploitation.
The regulatory requirements for VOD providers serve as a strategic tool for pulling more VOD investments in local content and facilitating the competitiveness of the domestic film and television sector on a global scale. **Regulators and policymakers are recommended to identify the best route not only by observing the domestic market, but also adapting it to the realities of the European and the global market.** In this sense, before choosing an appropriate regulatory intervention, policymakers must consider the broader regulatory landscape and how policy measures in other territories are evolving. A key question is whether and what type of investment obligation would support building a stronger competitive position internationally for the local film and television sectors.
The strive to achieve a balance between public and private financing of audiovisual production is often mentioned as a rationale for introducing investment obligations to VOD providers. However, **investment obligation is not supposed to be used as an excuse to significantly reduce public support.**
We recommend **creating a transparent regulatory framework** that will not impede the innovation and growth of the VOD sector. A forward-looking regulation would create a stable and predictive regulatory environment without barriers for smaller innovative VOD providers to access the market.
A robust evaluation of investment obligations' policy outcomes is key to avoiding the possibility of overstating the effects. The key question here is how much has changed as a direct result from the policy. The analysis in this study stresses the importance of having better access and obtaining reliable data from VOD providers to execute well-built policy assessment that considers both cultural and economic policy outcomes.

Ivana Kostovska is media economics researcher at SMIT and her PhD research focuses on shifting forms of policy support and their impact on competitiveness and sustainability of audiovisual ecosystems in Europe. (Ivana.Kostovska@vub.be).

Prof. Dr. Tim Raats leads the Media Economics and Policy Unit at SMIT. He is professor at the Department of Communication Sciences at the VUB. (Tim.Raats@vub.be).

Catalina Iordache is post-doc researcher at SMIT and guest professor at the VUB. She recently finalised her PhD on global patterns in production and global distribution of audiovisual content. (Catalina.Iordache@vub.be).

Nino Domazetovikj is PhD researcher at SMIT. His research focusus on investments of VOD providers in small European markets. (Nino.Domazetovikj@vub.be).

Stephanie Tintel is PhD researcher at SMIT and teaching assistant at VUB. Her work focuses on the shifting distribution and consumption of film (Stephanie.Tintel@vub.be).

Prof.Dr. Marlen Komorowski is senior researcher at SMIT and guest professor for European Media Markets at the VUB, and Senior Research Fellow at Cardiff University (marlen.komorowski@vub.be).

The Media & Society Programme of SMIT consists of over 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. For research collaborations: Simon.Delaere@vub.be (Research Valorisation Manager)

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