



Cultural diversity in a competitive industry

A diversity of approaches with focus on small and medium countries

EAO Presidency Conference
Lisbon, 6 June 2023

Sophie Valais

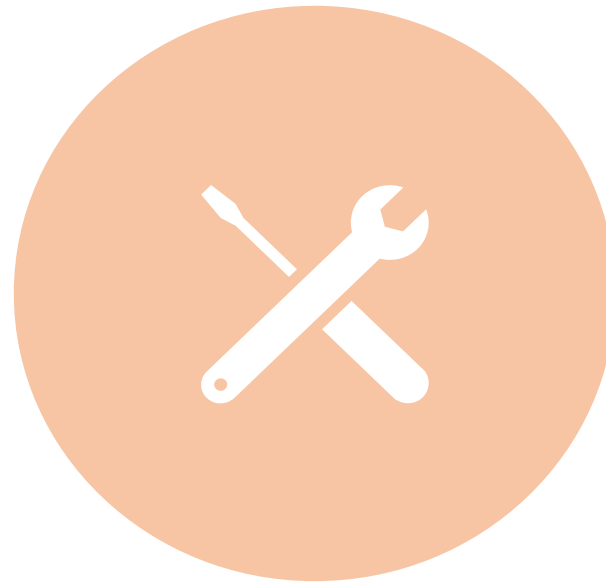
Deputy Head of Department for Legal Information
European Audiovisual Observatory



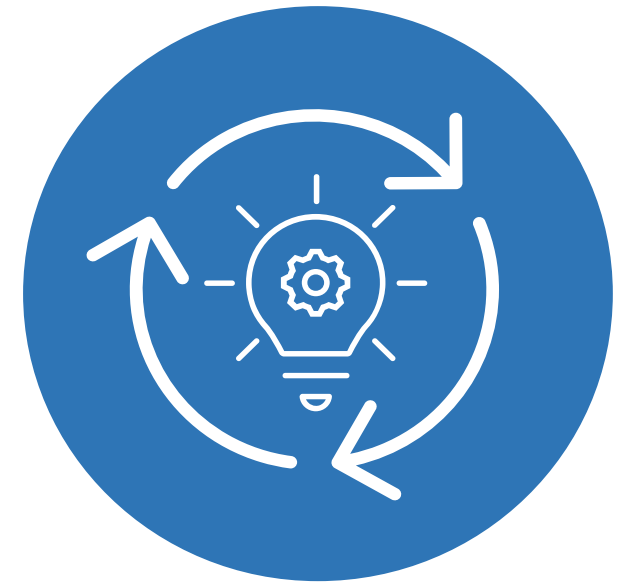
A range of public policy tools based on support to culture and the industry



Legal basis in
EU Treaties



EU toolbox and
key concepts



A diversity of
national approaches

Legal basis in EU Treaties



Image source: Robert Baldwin, A Matter of Principle

A two-fold objective for EU action...

Culture



Industry

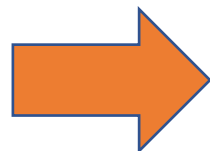
Legal basis for EU action

Culture and subsidiarity

- **Art 167 TFEU:** The EU contributes to the flowering of the cultures of the Member States
- **Art. 5 TEU + Art. 2.5, Art 6(c) TFEU** - Principle of subsidiarity of EU action on culture

Competition and exclusive competence

- **Art. 173 TFEU** - Shared competence to ensure the competitiveness of the EU industry
- **Art. 107(3)(d)** - Exclusive competence of the EU on competition rules



includes rules on state aid

EU toolbox and key concepts



Image source: Simon Laganière, Les outils

A multi-dimensional EU legal framework

Copyright Package

Sat-Cab Directive

**Communication on state aid for films
and other AV works**

EU Competition law

Audiovisual Media Services Directive



**Creative
Europe**

Portability Regulation

Geo-Blocking Regulation

Services Directive

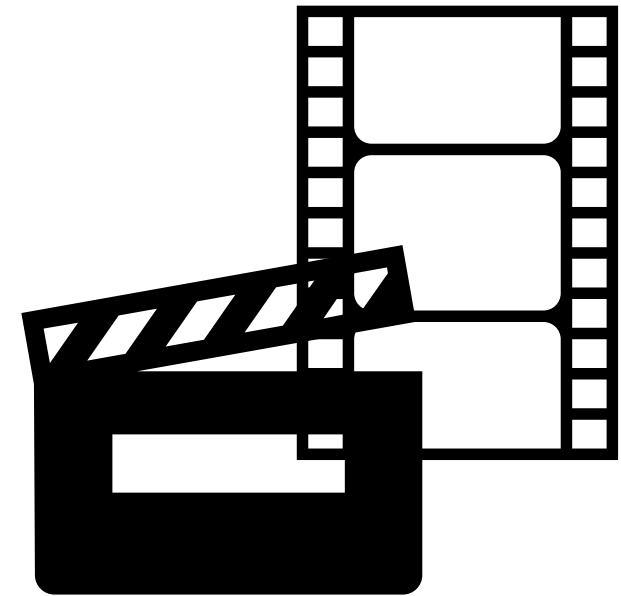
E-Commerce Directive

DSA/DMA

Obligations - Promotion of European works

Audiovisual Media Services Directive (revised in 2018)

- **Obligations on TV broadcasters
(Articles 16-17)**
- **Obligations on on-demand services
(Article 13)**



Promotion and distribution of European works

Obligations for TV broadcasters (Articles 16-17)



majority proportion of
broadcasting time



of broadcasting
time/programming budget for
European works created by
producers who are independent
of broadcasters

Promotion and distribution of European works

Obligations for on-demand services (Article 13)

OBLIGATION



Percentage of European works in their catalogues



Prominence

VOLUNTARY

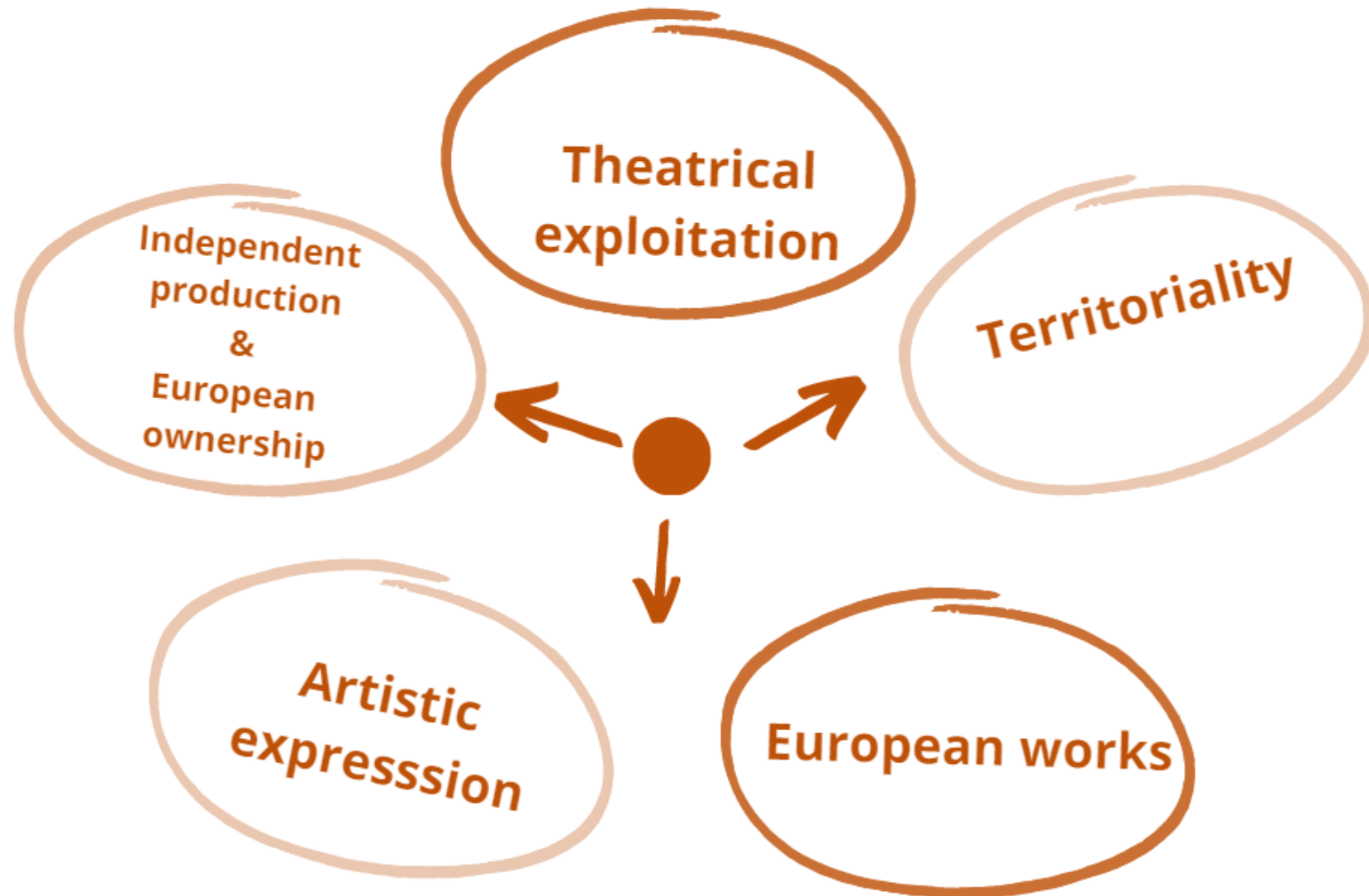


Financial contribution:

- Production
- Acquisition of rights
- Levies -> Funds

Including targeting services

A policy approach based on some key concepts...



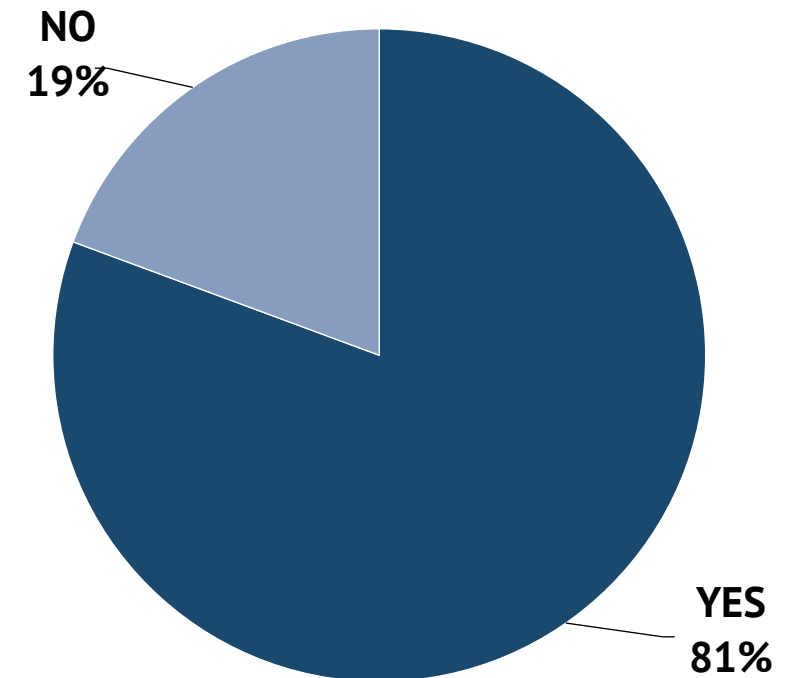
Defining “European works”

Under Art. 1(n) AVMSD, European works are:

- i. **works originating in Member States;**
- ii. works originating in European **third States party to the European Convention on Transfrontier Television** of the CoE;
- iii. **works co-produced** within the framework of agreements related to the audiovisual sector between the Union and third countries.

Without prejudice to the possibility of Member States laying down a more detailed definition as regards media service providers under their jurisdiction.

Definition of “European works” in the EU27



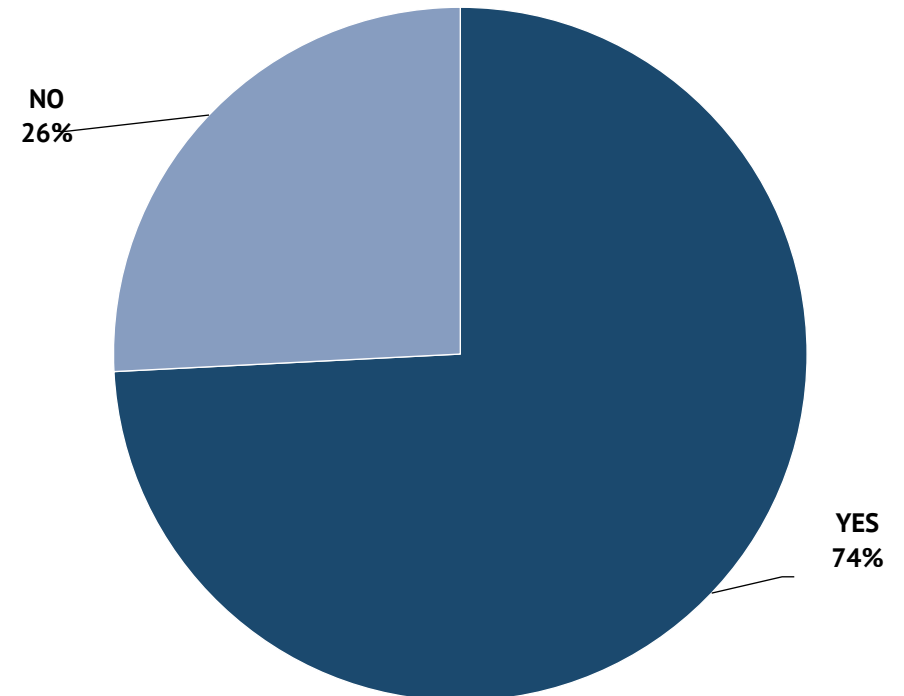
Defining (or not) “independent” producer

Art. 17 AVMSD – Independence from broadcasters

Recital 71 AVMSD: criteria used are:

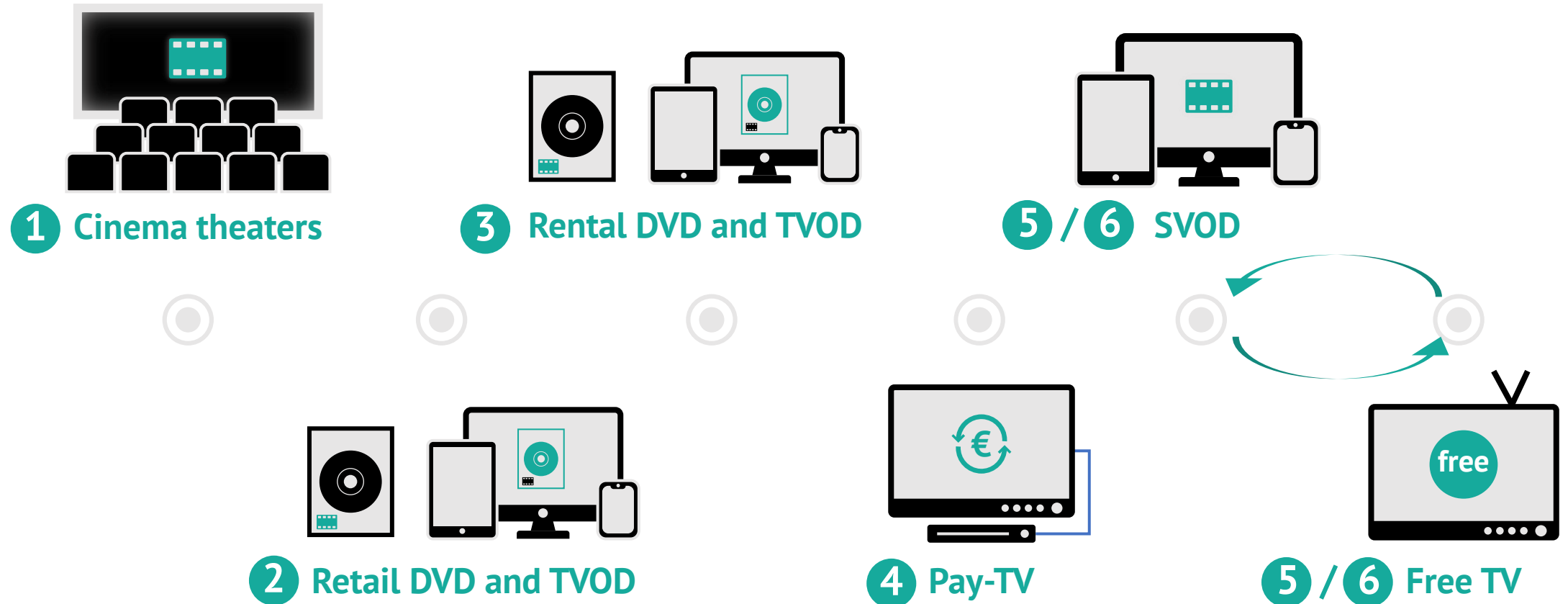
- the **level of shares** hold in the production company (or vice versa);
- the **level of turnover** that a production company makes due to contracts with a single AVMS service.

Definition of “independent producer» in the EU 27



Regulating (or not) release windows

The exploitation of cinematographic works



Release windows – various approaches

EU Legal basis:

EU Competition Law



Art. 8 AVMSD

Legislation

Bulgaria

Film Industry Act



France

Cinema Code



Public grants

Austria

ÖFI Guidelines



Ireland

Screen Ireland Guidelines



Agreements

Spain

Interprofessional agreement



Denmark

Industry agreement



A diversity of national approaches

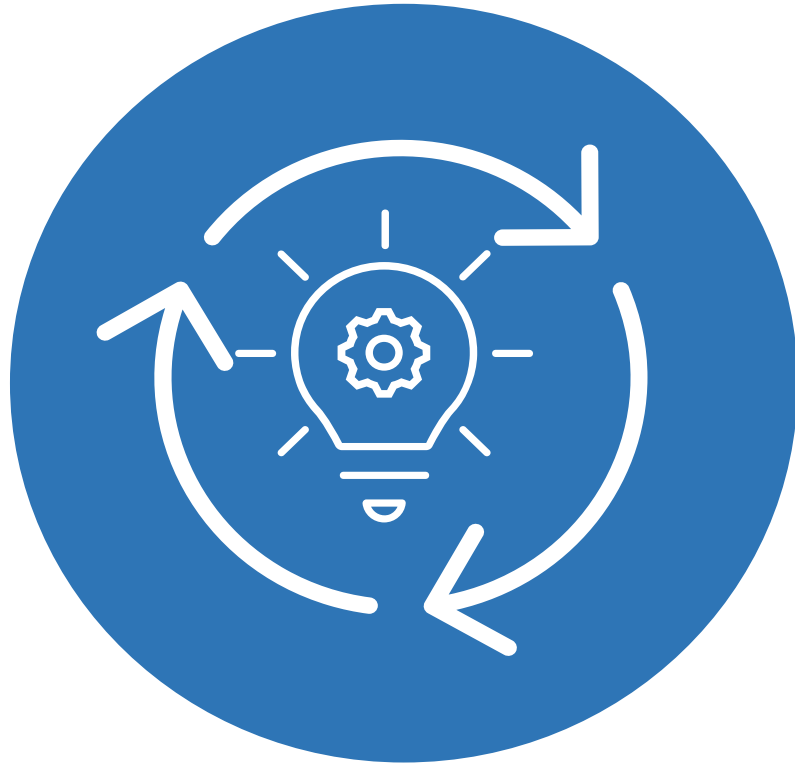
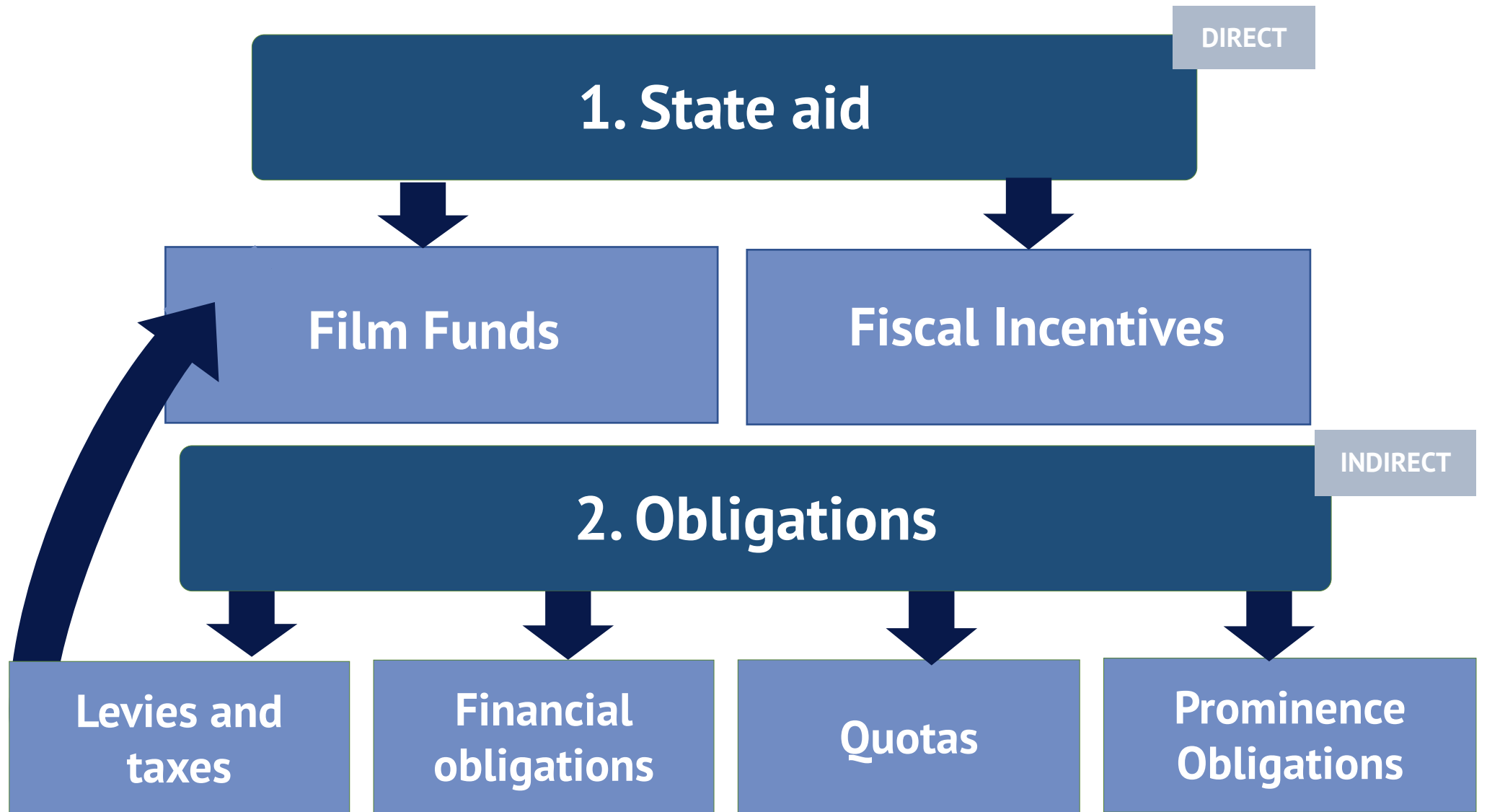
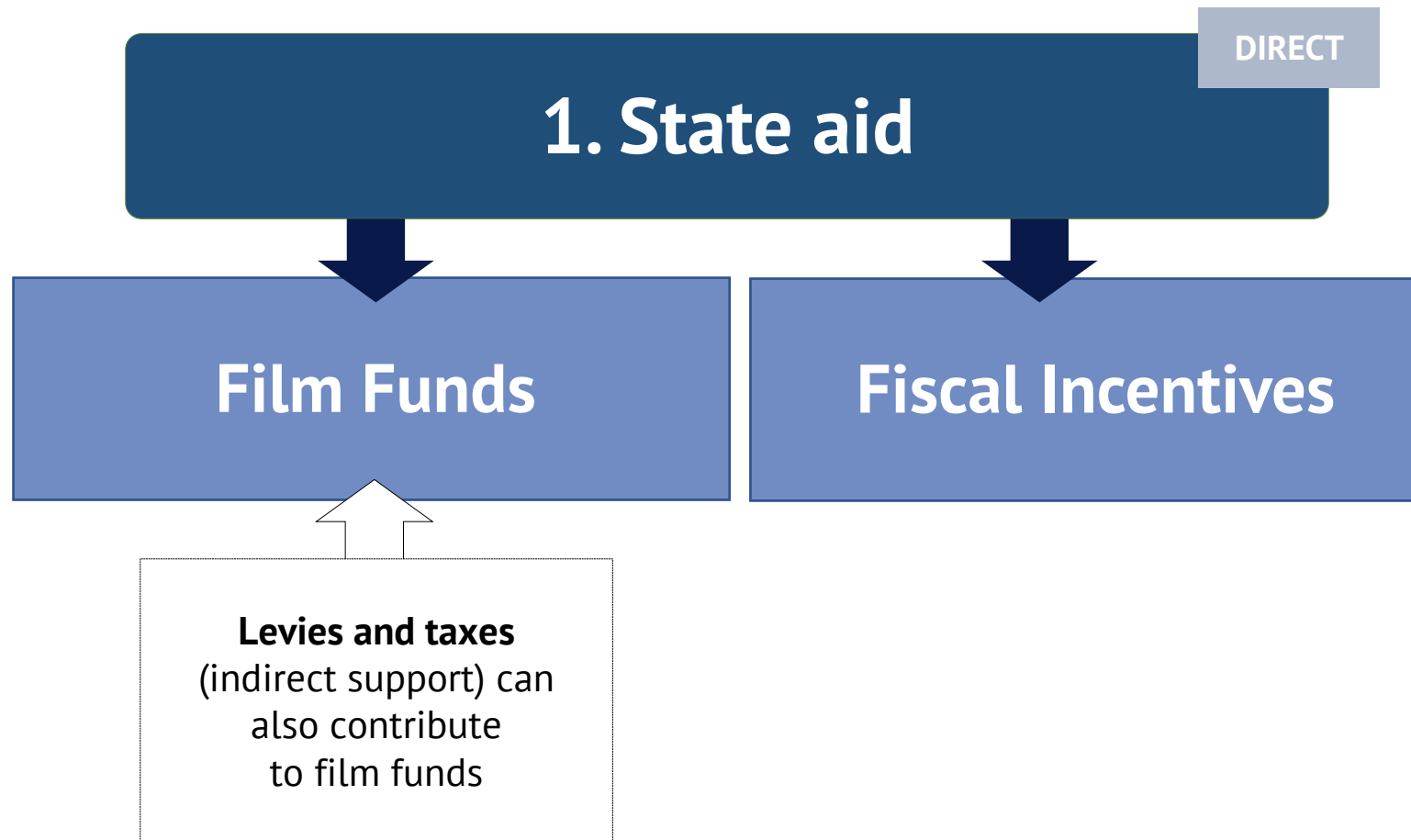


Image source: [DVD: The Wolf of Wall Street \(theartsdesk.com\)](http://DVD:The Wolf of Wall Street (theartsdesk.com))

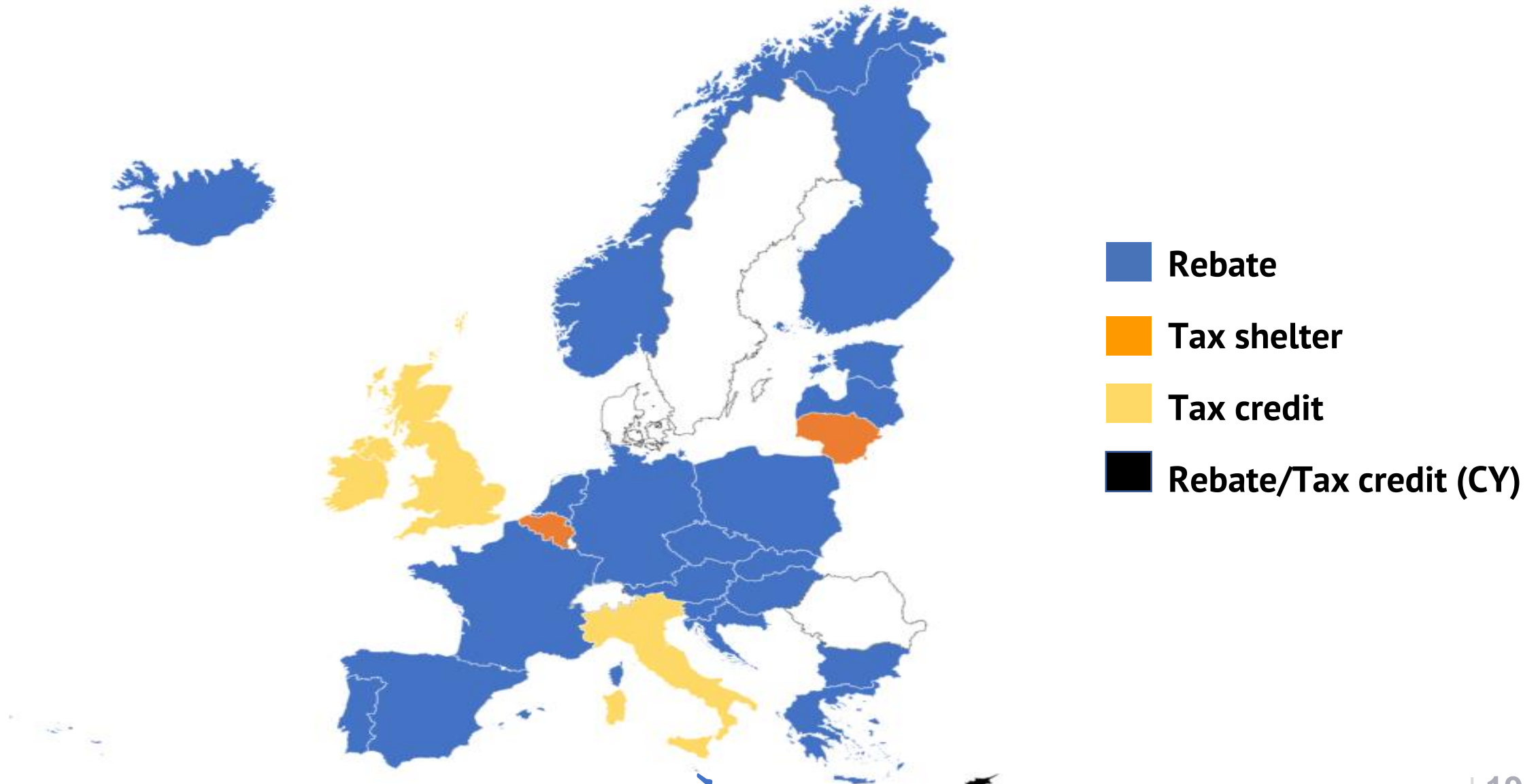
A two-sided full ecosystem...



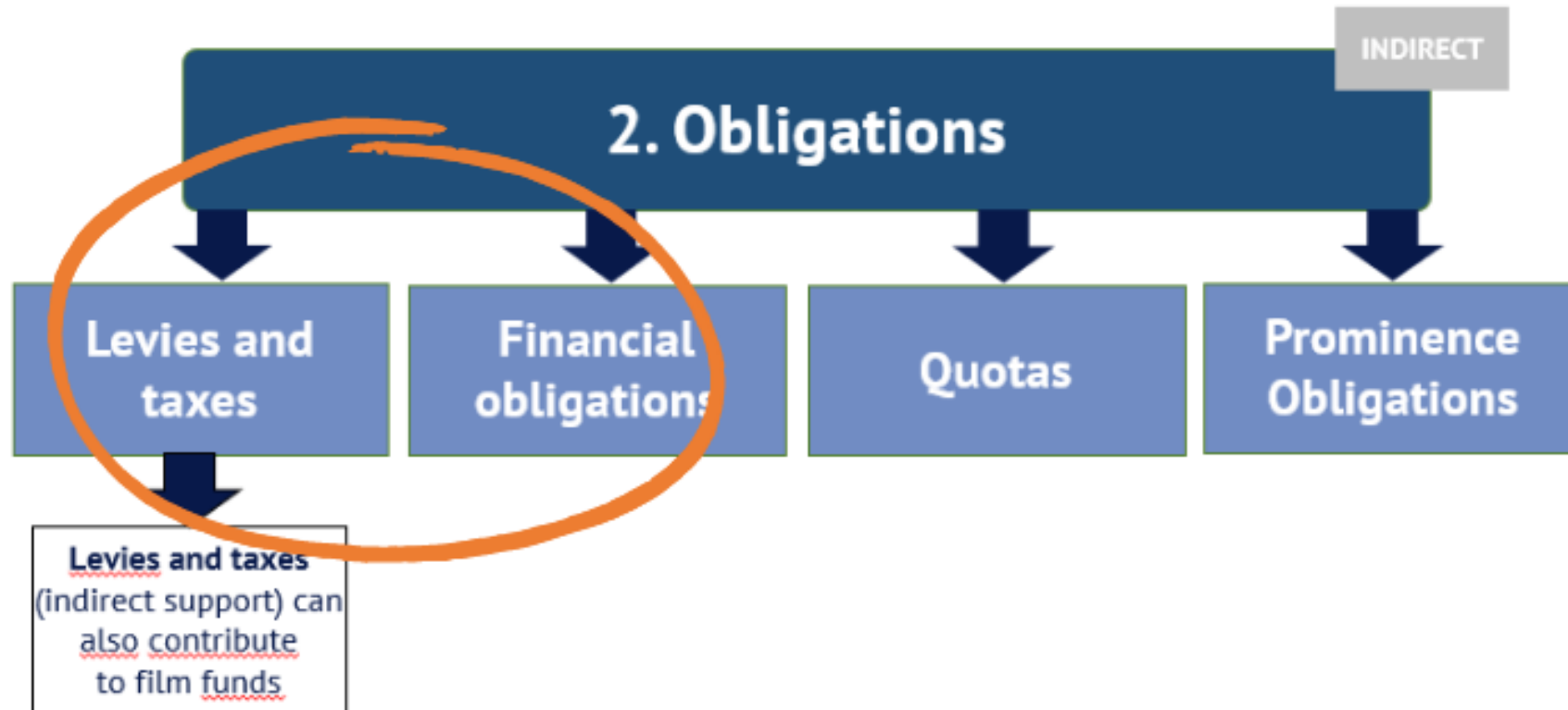
State aid: support to cultural diversity vs. support to the industry?



Overview of fiscal incentives in Europe



Financial obligations, taxes and levies



Financial contribution (Art. 13.2 AVMSD)

VOLUNTARY

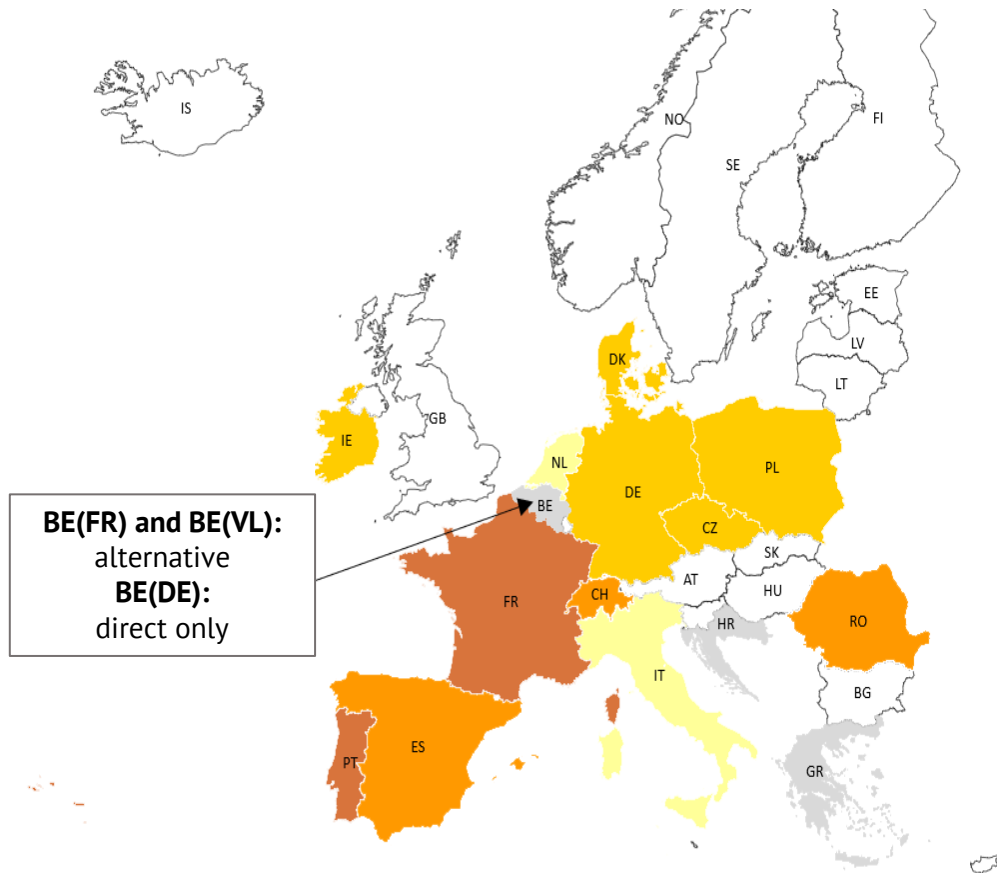


Financial contribution:

- Production
- Direct investments
- National funds

Including targeting services

National overview - Financial contribution



BE(FR) and BE(VL):
alternative
BE(DE):
direct only

VODs

- Direct only
- Levies only
- Alternative
- Cumulative
- See focus box

FOCUS BOX

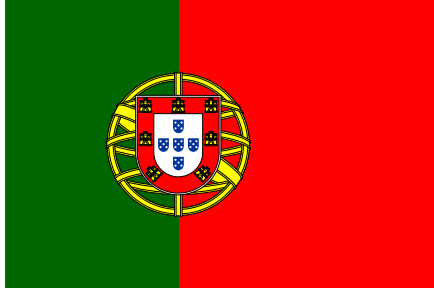
	Domestic	Targeting
CZ		None
HR		
GR		

TV BROADCASTERS

- No obligation
- Obligations on domestic and/or targeting services
- Belgian specificities

BE(FR):
financial obligations
BE(VL) and BE(DE):
no obligation

PORTUGAL



Direct investment

Rate	Base
From: 0,5 % <u>or</u> EUR 0.50 per subscriber <u>or</u> EUR 10 000	Relevant income Between EUR 200 000 and EUR 1 999 999
To: 4 % <u>or</u> EUR 4 per subscriber <u>or</u> EUR 4 000 000.	EUR 50 000 000 or more.

Indirect investment (levies)

Rate	Base
Advertisers 4,0%	Audiovisual commercial communications included in on-demand audiovisual services are subject to a fee of the price paid by the advertiser
SVoDs 1,0%	Relevant income

BELGIUM



Direct investment

German Community

Rate	Base
The government shall specify further rules.	The revenue generated in the German-speaking Community.

Direct investment or levies

Flemish Community

Rate	Base
2,0%	Turnover achieved in the Dutch-speaking region in the second year preceding the year of the compulsory contribution.

Direct investment or levies

French Community

Rate	Base
From: 2,2%	Turnover above EUR 20 million;
To: 0%	Between EUR 0 and 300,000.

CROATIA



Direct investment

Domestic VOD services

Rate	Base
2,0%	Total annual gross revenue.

Direct investment + levies

Targeting VOD services

Rate	Base
2,0%	Total annual gross revenue.

+ Financial contribution to the implementation of the National Program for Promoting Audiovisual Creativity Works

Direct investment or levies

Domestic broadcasting services

Rate	Type	Base
Private TV broadcasters with national licenses: 5%	DIRECT	Total annual gross revenue
PSM: 2%	LEVIES	
Private national broadcaster: 0,8%	LEVIES	
Local TV broadcasters (coverage area >750,000 inhabitants): 0,5%	LEVIES	

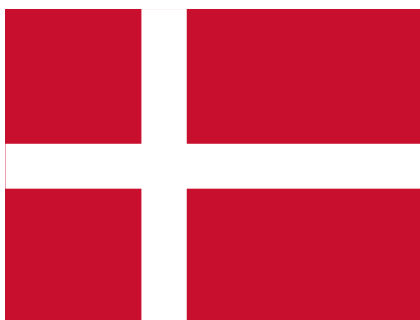
IRELAND



Indirect investment (levies)

Rate	Base
To be defined	The method of calculation of a levy shall be based on the revenue earned by the provider in the State from any audiovisual media service which it provides there.

DENMARK



Indirect investment (levies)

Rate	Base
6,0%	Annual turnover in Denmark if exceeds DKK 15 million

ESTONIA



**No financial
obligation**

LITHUANIA



**No financial
obligation**

Next steps?

- ❖ **Culture or competitiveness: Are these goals still valid today?**
- ❖ **Do the tools match the goals?**
- ❖ **What is cultural diversity in today's market reality?**

Image source: Next, by Eilia Urquiza, La Panda production

A FILM BY ELIA URQUIZA

NEXT

LA PANDA PRODUCTIONS presents NEXT a film by ELIA URQUIZA
produced with TAMARA ARIAS edited with CARLOS MARQUÉS-MARCET
executive producers JULIA FONTANA, DAVID MARTIN-PORRAS and NICOLÁS MONTESINOS
sound editor ALEJANDRA MOLINA sound mixer FERNANDO NOVILLO
additional camera and color correction TIM BALCOMB
distributed by PLAYTIME AUDIOVISUALES



Thank you for your attention!

sophie.valais@coe.int

