

The logic behind the EU regulation on works of independent producers (art 17 of the AVMSD) and on the list of events of major importance (art 14 of the AVMSD)

Comp 1, Activity 1.1, Session 1

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Independent producers and events of major importance in the AVMSD

1. Independent producers

1. Definitions
2. Financial and operational independence and IPR retention

2. Events of major importance

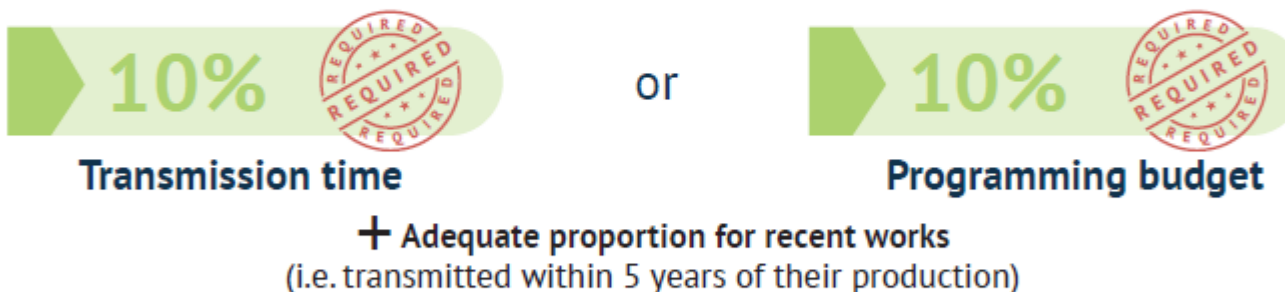
1. Balancing exclusive rights with right to information
2. Notified lists



Quotas for independent producers and recent works (art. 17 AVMSD)

“ Article 17: Member States shall ensure, [...] that broadcasters reserve **at least 10% of their transmission time**, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, **or alternately**, at the discretion of the Member State, **at least 10% of their programming budget**, for European works created by producers who are independent of broadcasters. [...] It must be achieved by earmarking an **adequate proportion for recent works**, that is to say works transmitted within 5 years of their production. ”

Proportion of independent productions



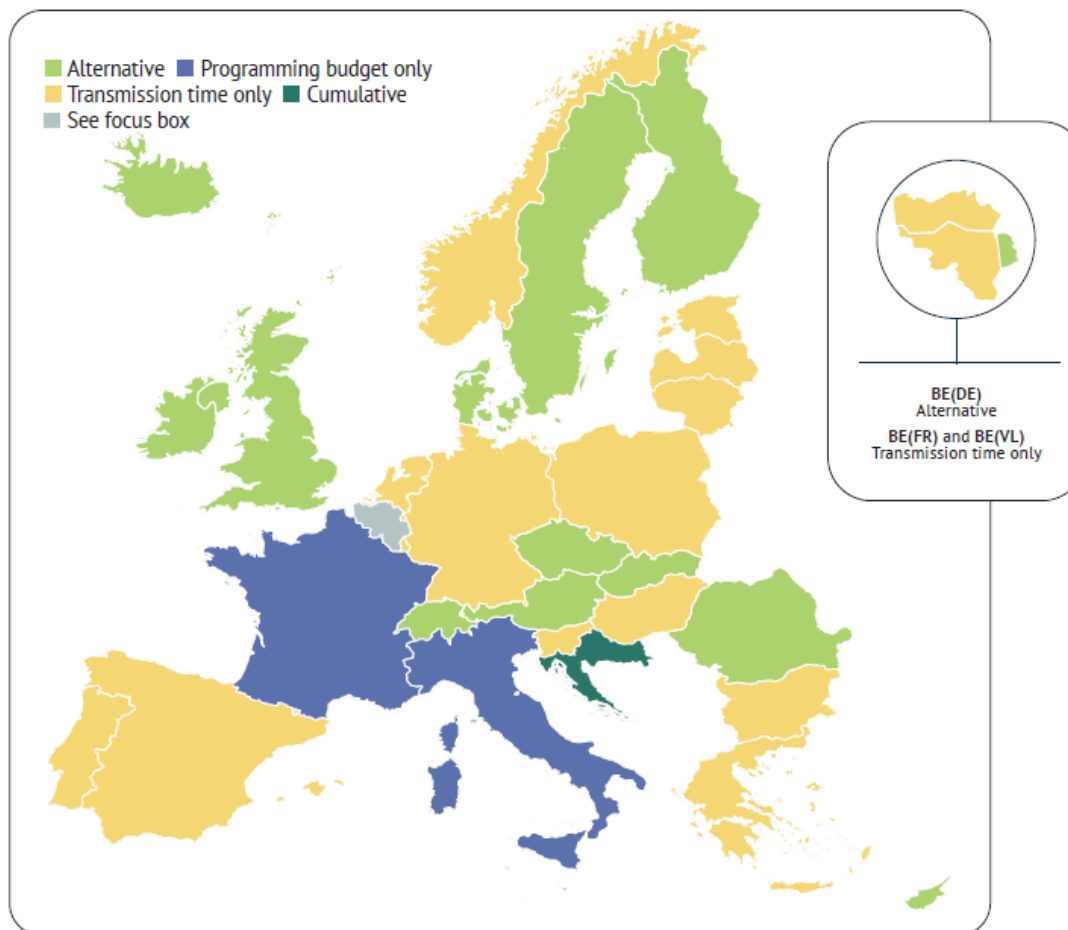
UNDER ARTICLE 4(1)

Detailed national sub-quotas

Some countries imposed specific sub-quotas

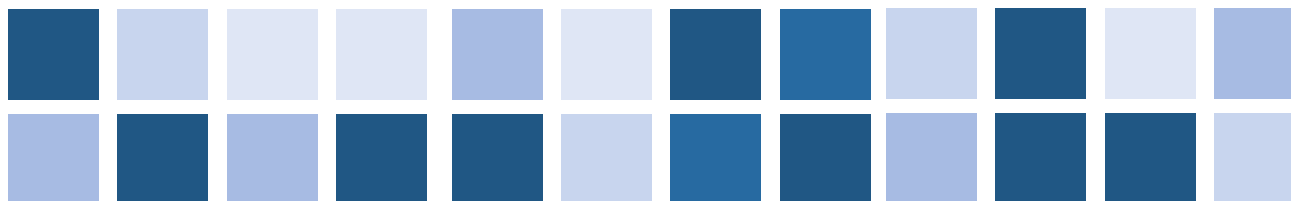


State of the implementation of art. 17 AVMSD



The definition of independent producers


NO DEFINITION AT EU LEVEL



- National definition used in the context of the obligations to promote European works, under **Article 17 of the AVMSD** and its transposition into national law
- Independence criteria set by national and regional support schemes such as **film funds**



Existence of definitions at national level

 **Existence of a definition of independence in the context of AVMSD**

 **Absence of definition of independence in the context of AVMSD**



Definition of independence in the AVMSD context

While the AVMSD of 2018 does not provide a unified EU definition of **'independent production/producer'**. Recital 71 of the 2010 AVMSD offers guidance criteria such as:

- **Ownership of the production company**
- **Amount of programmes supplied to the same broadcaster**
- **Ownership of secondary rights**



National definitions in the AVMSD context

Criteria:

Financial independence



Ownership



Producer's
content supply
quota to AVMS
provider



Producer's ability
to finance (parts
of) the work



Operational
independence



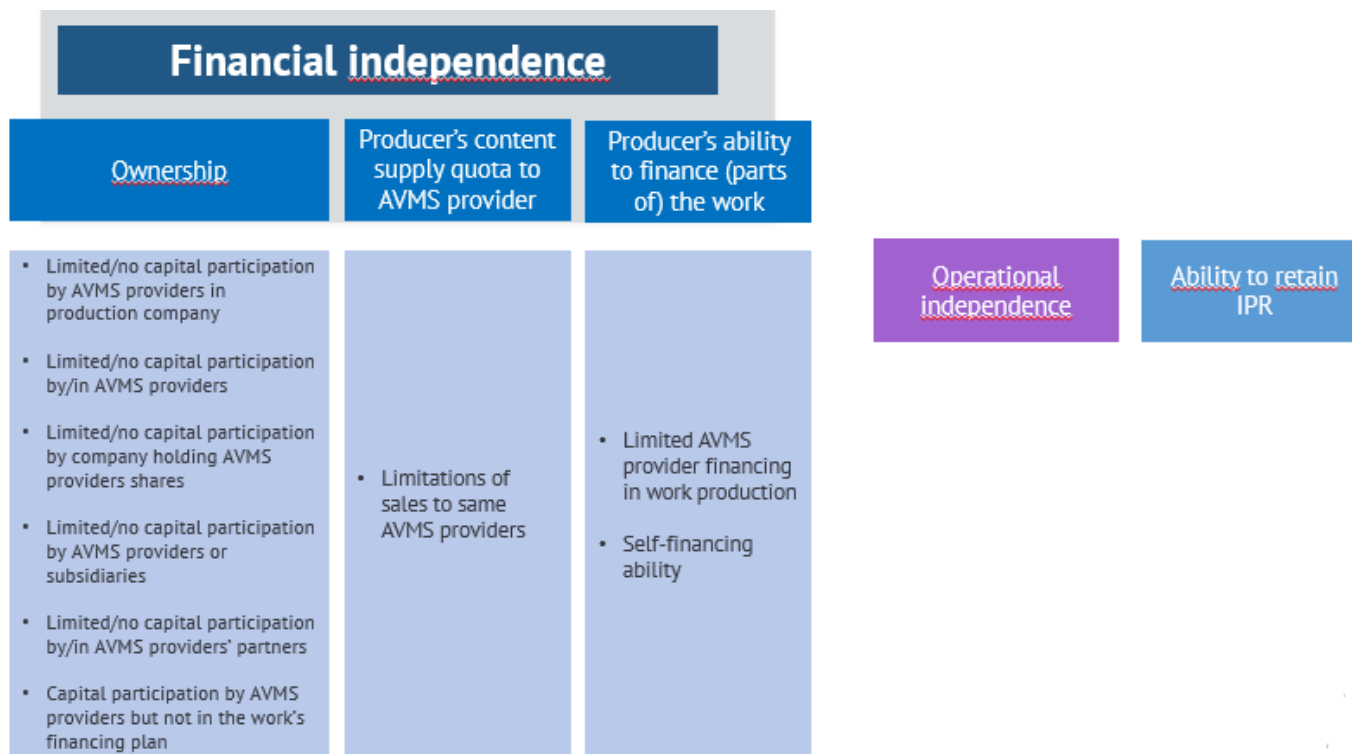
Ability to retain
IPR



The same criteria guide also national film funds in their assessments for public support.



Financial independence



Operational independence

Financial independence

Ownership

Producer's content
supply quota to
AVMS provider

Producer's ability
to finance (parts
of) the work

Operational
independence

Ability to retain
IPR

- Distinctive legal personality
- Limited/ no AVMS provider control over production company
- Limited/no control by/in AVMS providers
- Limited/no AVMS provider control over work production
- Sufficient commercial freedom of applicants



Intellectual property retention

Financial independence

Ownership

Producer's content
supply quota to
AVMS provider

Producer's ability
to finance (parts
of) the work





Operational
independence

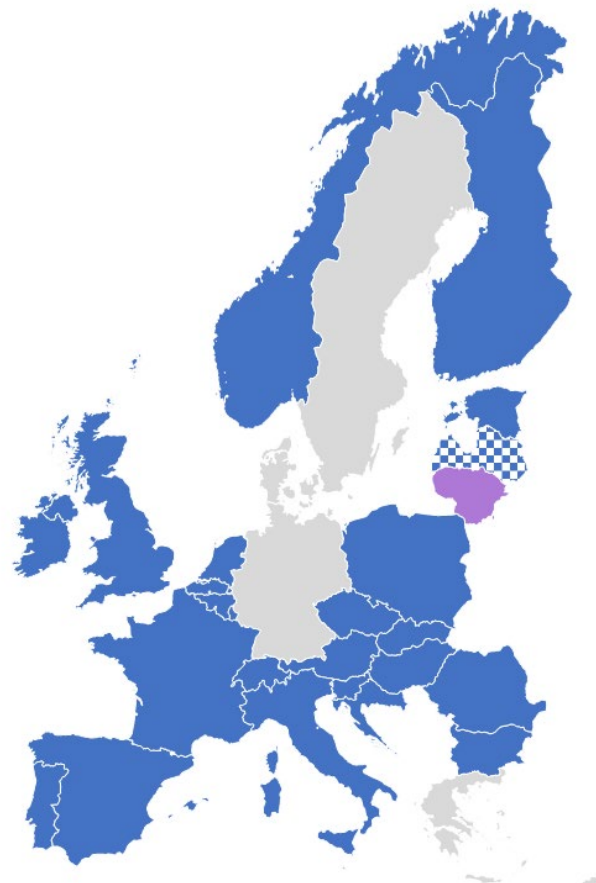
Ability to retain
IPR

Holding/retaining
the economic rights
from copyright



Majority use of the ownership criterion

-  Use of ownership
-  Operational criterion only
-  “No relation with an electronic mass medium”
-  Absence of definition of independence in the context of AVMSD



23 countries with
ownership



Prominent use of cumulative criteria

3-criteria approach

Other
combinations

The combinations of criteria

Used by 9 countries (AT, BE(FR), CH, CZ, FR, IE, NO, SI, SK)

6 countries: ownership, content supply and operational criteria (BE(FR), CH, CZ, NO, SI, SK)

2 countries: ownership, operational and IPR criteria (AT, FR)

1 country: ownership, content supply and IPR criteria (IE)



Access to events of major importance (Art. 14 AVMSD)

VOLUNTARY

CHAPTER V

PROVISIONS CONCERNING EXCLUSIVE RIGHTS AND SHORT NEWS REPORTS IN TELEVISION BROADCASTING

Article 14

1. Each Member State may take measures in accordance with Union law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.



Access to events of major importance (Art. 14 AVMSD)

2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of 3 months from the notification, the Commission shall verify that such measures are compatible with Union law and communicate them to the other Member States. It shall seek the opinion of the contact committee established pursuant to Article 29. It shall forthwith publish the measures taken in the *Official Journal of the European Union* and at least once a year the consolidated list of the measures taken by Member States.



Notified lists

Austria

Belgium

Denmark

Finland

France

Germany

Hungary

Ireland

Italy

Poland



Dominant notified events

Summer Olympics

Winter Olympics

Football

Athletics

Basketball

Volleyball

Handball

Cycling

Motor sports

Rugby

Swimming

Tennis

Local events (opera, musical contests, dance and musical festivals, official ceremonies etc)



Thank you

