



AVMSDigest

The promotion of European works



European
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Observatory

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

AVMSDigest**The promotion of European works**

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AVMSDigest

The promotion of European works

Amélie Lacourt, Eric Munch, Justine Radel-Cormann

A publication
of the European Audiovisual Observatory



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Foreword

Launching a new publication series always fills an editor and publisher with a mixture of excitement and dread. We are presenting the world with something new. But will the world like it?

Today I am delighted to introduce to you our new publication series, which we have decided to call AVMSDigest.

The underlying idea, as the name suggests, is to provide an easily digestible comparative overview of European and national legislation on a given topic deriving from the Audiovisual Media Services Directive (AVMSD), using text and explanatory graphics. It provides snapshots of the regulatory framework and combines it with the state of the markets to help draw autonomous conclusions about the impact of the various policy choices.

The AVMSDigest aims to be very visual, very immediate, and to provide useful information without overwhelming the reader. It is therefore shorter and smaller than our usual publications.

This first edition of the AVMSDigest contains a compilation of our findings on the implementation of the rules on European works contained in Articles 13, 16 and 17 of the AVMSD, as well as relevant market figures. It covers EU member states, EEA (European Economic Area) and EFTA (European Free Trade Association) countries, and the UK. The information is based on publicly available data as of 31 July 2023. Subsequent developments are not taken into account in this publication.

We are very excited about our new AVMSDigest and hope you will enjoy it!

Strasbourg, November 2023

Maja Cappello

*Head of the Department for Legal Information
European Audiovisual Observatory*



*Nice to meet you,
my name is Obsy!
Want to discover the
world of European
works? Follow me!*

What are European works?

The AVMSD defines European works as follows:

Article 1(1)(n): “European works’ means the following:

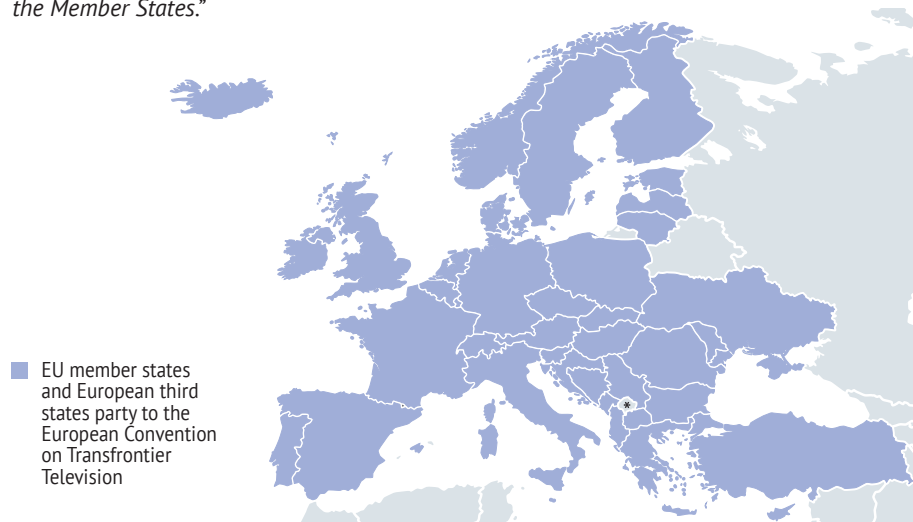
- (i) works originating in Member States;
- (ii) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3;
- (iii) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements.

(2) The application of the provisions of points (n)(ii) and (iii) of paragraph 1 shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned.

(3) The works referred to in points (n)(i) and (ii) of paragraph 1 are works mainly made with authors and workers residing in one or more of the States referred to in those provisions provided that they comply with one of the following three conditions:

- (i) they are made by one or more producers established in one or more of those States;
- (ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States;
- (iii) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

(4) Works that are not European works within the meaning of point (n) of paragraph 1 but that are produced within the framework of bilateral co-production agreements concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.”



* All references to Kosovo, whether the territory, institutions or population, in this publication shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.



Legislation snapshot

VIDEO-ON-DEMAND – ARTICLE 13(1) AVMSD



- 1) Minimum 30% share of European works in catalogues
- 2) Ensure the prominence of those works



Detailed sub-quotas for specific types of content (eg: cinematographic, independent, original expression works)

UNDER ARTICLE 4(1)

BROADCASTING – ARTICLES 16 & 17 AVMSD

European works here exclude: news, sports events, games, advertising, teletext services and teleshopping



EUROPEAN WORKS

Majority proportion of transmission time



INDEPENDENT EUROPEAN WORKS

Minimum 10% of transmission time or of programming budget
The AVMSD also calls for an “adequate” proportion of recent independent works



UNDER ARTICLE 4(1)

Detailed sub-quotas for specific types of content

FINANCIAL OBLIGATIONS – ARTICLE 13(2)

Member states can choose to impose financial obligations on VOD services and/or broadcasters through: direct investment in content and/or contribution to national funds

IF introduced for **domestic services**



THEN can be extended to **targeting services**
(exception to the country of origin principle)

Targeting services are AVMS providers established in a member state and targeting the audience of another member state.



The option to require media service providers to comply with more detailed or stricter rules derives from Article 4(1) AVMSD (hence the implementation of sub-quotas by some countries. The Directive however does not call for sub-quotas for specific types of content).

State of the art

The transposition of the revised rules under Articles 13, 16 and 17 of the AVMSD is now complete for all EU member states and several non-EU European countries have also aligned their national legal framework with the Directive. While the transposition process is over, different approaches can be observed in many areas where the AVMSD gave member states leeway in terms of the degree of transposition.

In transposing Article 13(1), most member states have chosen to implement the general quota of “at least 30%”, with only France raising that threshold to 60% and adding a sub-quota for production in the original language. Regarding the latter, a handful of countries have done the same, such as Italy and Portugal who have also added other types of sub-quotas.

The obligation to ensure the prominence of European works on VOD (video-on-demand) services has been transposed verbatim in many countries, with no particular obligation regarding the means to do so. Some have however chosen to further specify how such prominence should be achieved, be it through the use of an attractive visual presentation – appearing on the platforms’ homepages directly or being highlighted from other content in dedicated sections – or through search tools or promotional campaigns.

Article 13(2), applicable to both VOD and broadcasting services, has been transposed in a variety of ways, due in part to its optional nature. 14 countries have opted to impose financial obligations, either through direct or indirect contributions on domestic VOD services. With two exceptions, the Czech Republic and Slovakia, those countries have done the same for targeting VOD services. 8 countries have introduced financial obligations on both domestic and targeting broadcasting services, and 6 countries have introduced financial obligations for domestic broadcasters only.

As was the case with Article 13(1), only France has gone further than the AVMSD’s threshold in its transposition of Article 16. The “majority” quota from the Directive has been widely transposed – if not verbatim – into terms corresponding to the same proportion. France, on the other hand, has gone further than the AVMSD’s threshold by imposing a general quota of 60%, and additional sub-quotas for cinematographic works and original language content.

In 15 cases (14 EU countries and 1 EEA country), the obligations regarding independent European works set by Article 17 take the form of a minimum transmission time of 10%. France and Italy are the only two countries where there is no transmission time requirement, but there is a 10% programming budget obligation. The remaining member states allow a choice between transmission time and programming budget.

1

VIDEO ON DEMAND



1.1 Share of European works in VOD catalogues

“ Article 13 (1): Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction **secure at least a 30% share of European works** in their catalogues and ensure prominence of those works. ”

Article 13 (1)



30%

Minimum share in catalogues



Are you familiar with quotas? This might make it easier, take a look!

Under Article 4(1)



Detailed national sub-quotas

- Cinematographic works
- Original language works
- Content created by independent producers

KEY FACTS

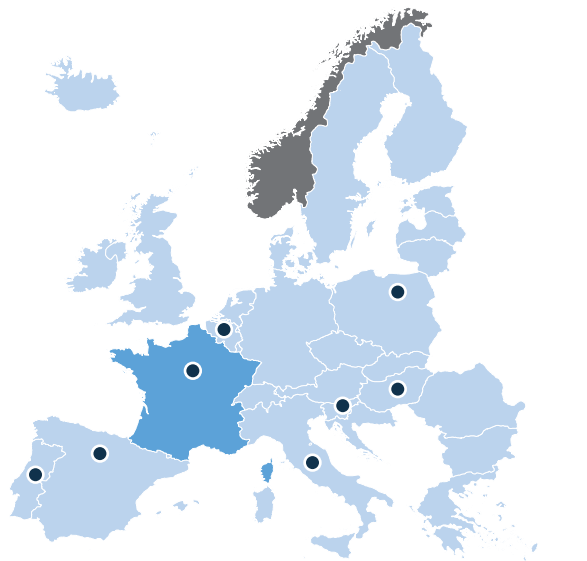
- ▶ **26** EU countries (AT, BE (DE, VL and FR), BG, CY, CZ, DE, DK, EE, ES, FI, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK), **2** EEA countries (LI, IS*), **1** EFTA country (CH), and the UK introduced a 30% quota for European works in VOD catalogues. **1** EU country (FR) goes beyond and **1** EEA country (NO) has not transposed the 2018 Directive yet.
- ▶ **8** EU countries (BE (VL and FR), ES, FR, HU, IT, PL, PT, SI) apply sub-quotas to promote content created by independent producers, cinematographic works or original language works.
- ▶ Of these, **1** EU country (IT) requires VOD services to meet all sub-quotas above, **2** others (FR, PT) require VOD services to meet two sub-quotas and the remaining **5** (BE (VL and FR), ES, HU, PL, SI) merely impose a sub-quota for original language content.

* LI, IS: According to current draft legislations.



1.1.1 Implementation of quotas at EU level

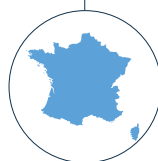
Implementation of the 30% quota



■ 60% quota ■ 30% quota ■ No specific quota ● Sub-quotas

FOCUS

FR Of the total number of feature films on the one hand and audiovisual works on the other made available to the public, a share of at least 60% shall be reserved for European works.



BE(FR) The proportion must increase gradually and each year from the entry into force of the decree (2021) to reach 40% at the end of a transitional period of five years.



Implementation of sub-quotas

COUNTRY	SUB-QUOTAS
BE(FR)	10% for French-speaking Belgian audiovisual works
BE(VL)	A significant proportion of Dutch language content
ES	15% of official language content
FR	40% of audiovisual works on the one hand and 40% of the total number of feature films on the other shall be original French-language works. Service providers may sign agreements with the French media regulator (Arcom) to set proportions of exposure of audiovisual works lower than 60% (but no lower than 50%), in return for the provider's commitment to invest in the production of brand new original French-language audiovisual works produced by independent production companies
HU	10% of Hungarian works
IT	No less than 50% of the 30% quota (15%) reserved for works of Italian-language expression produced by independent producers in the last five years. One fifth of the 15% sub-quota (3%) should be dedicated to original Italian-language cinematographic works by independent producers
PL	The 30% quota should include works produced originally in the Polish language
PT	At least 15% to independently produced European creative works originally in Portuguese and produced less than five years ago
SI	At least 5% of Slovenian works

A lot of promotion for original language content around!



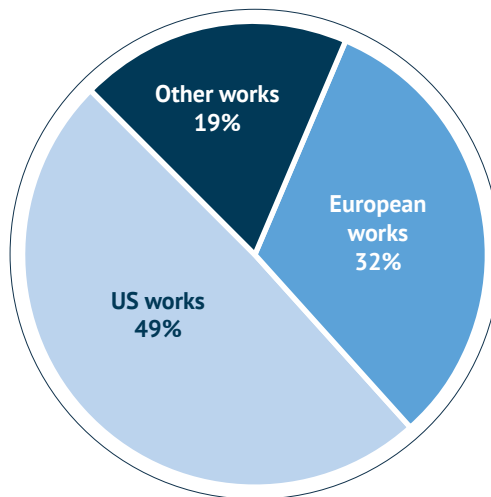
1.1.2 Market data

As of September 2022, European films and TV content represented a 32% share of 1 023 VOD catalogues from 25 European Union countries. Of this 32%, 21% was originating from the European Union, and 11% from other European countries parties to the European Convention on Transfrontier Television.

The 32% average share of European works varies by category of service: for films, for instance, the share was higher on Subscription VOD, and lower on Free VOD. It also varies according to the presence and origin of services: national and EU-owned services tend to have a higher share of European works than multi-country and non-EU services.

The high share of European works in VOD catalogues largely builds on non-national works: EU non-national works represented 79% of EU works on Subscription VOD, 63% on Transactional VOD and 61% on Free VOD. One of the drivers for this dominance of EU non-national works can be the presence of several VOD services in a high number of EU countries, therefore fostering the availability of works in different markets.

Origin of films and TV seasons on VOD – September 2022



Source: EAO analysis of JustWatch data

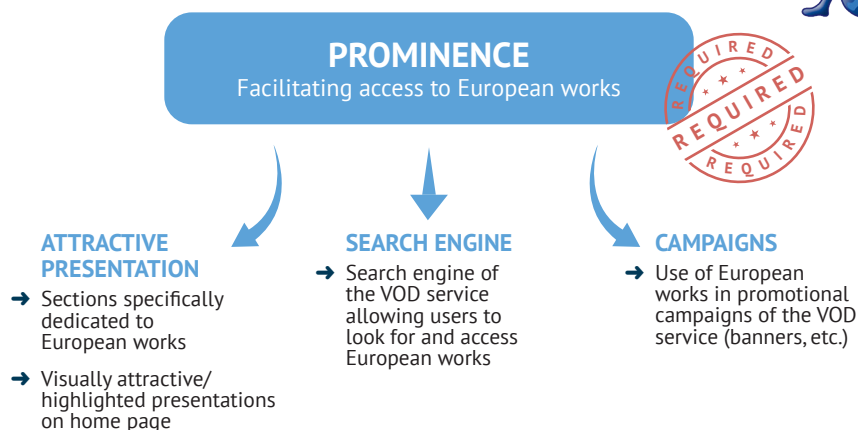


1.2 Prominence obligations

“ Article 13(1): Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30% share of European works in their catalogues and **ensure prominence of those works.** ”

Prominence of European works in VOD catalogues involves promoting European works through facilitating access to such works.

Take a look at how prominence of European works can be ensured!

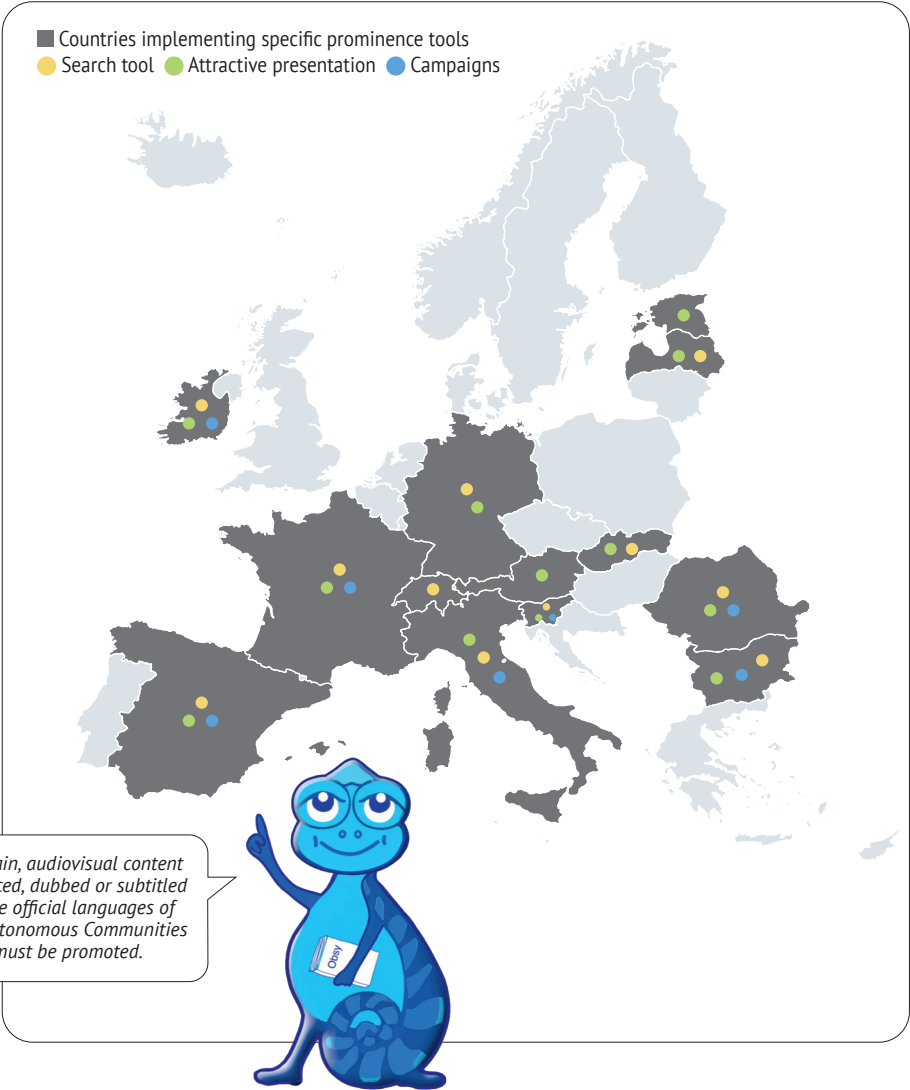


KEY FACTS

- ▶ **12** EU countries (AT, BG, DE, EE, ES, FR, IE, IT, LV, RO, SI and SK) and **1** EFTA country (CH) implemented specific prominence tools.
- ▶ **11** EU countries require an attractive presentation for European works (AT, BG, DE, EE, FR, IE, IT, LV, RO, SI, SK).
- ▶ **10** EU countries (BG, DE, ES, FR, IE, IT, LV, RO, SI, SK) and **1** EFTA country (CH) require a search tool.
- ▶ **7** EU countries require the use of European works in the service's campaigns (BG, ES, FR, IE, IT, RO, SI).
- ▶ Only **2** of the EU countries (AT, EE) and **1** EFTA country (CH) impose the use of one tool only, while the other **10** EU countries require two or more tools (BG, DE, ES, FR, IE, IT, LV, RO, SI, SK).

1.2.1 Implementation of specific tools at EU level

Countries specifying types of measures in their transposition of the AVMSD





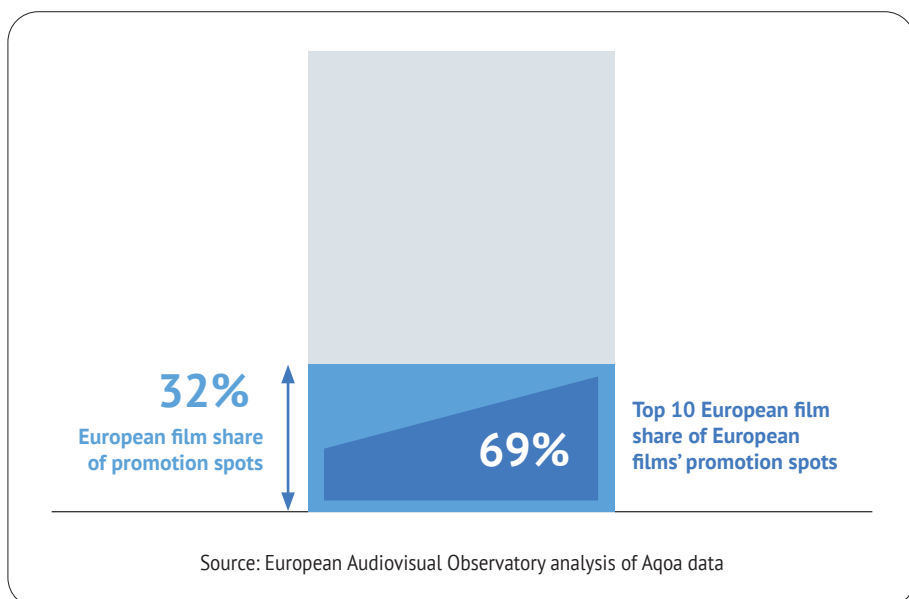
1.2.2 Market data

Data on prominence is only available for Transactional VOD services, as the visibility of works on subscription services is largely determined by the user's past consumption; tracking it would therefore require the creation of a very large number of individual Subscription VOD subscriber profiles.

Prominence on Transactional VOD services reflects the very nature of its business model: the sale and rental of a limited number of recent high potential films, supplemented by a “long tail” offering of older films and TV shows, which are hardly promoted. High potential films are pushed towards consumers through intensive promotion, whereas other programmes are made available for consumers looking for specific titles. In this context, only a very small share of a catalogue (about 1% of titles) is promoted each month. Moreover, promotion is not distributed evenly between titles: out of about 2100 films promoted in October 2021, the 10 most heavily promoted ones accounted for about 37% of all promotion efforts.

The data does not show any significant gap between the share of European works in catalogues and their share of promotion: European works accounted for 32% of promotion spots, respectively. However, the promotion of European films was highly concentrated with the top 10 most promoted European films in the sample representing 69% of all promotion spots dedicated to European films.

European films' share of promotion spots on Transactional VOD and share of the top 10 (October 2021)



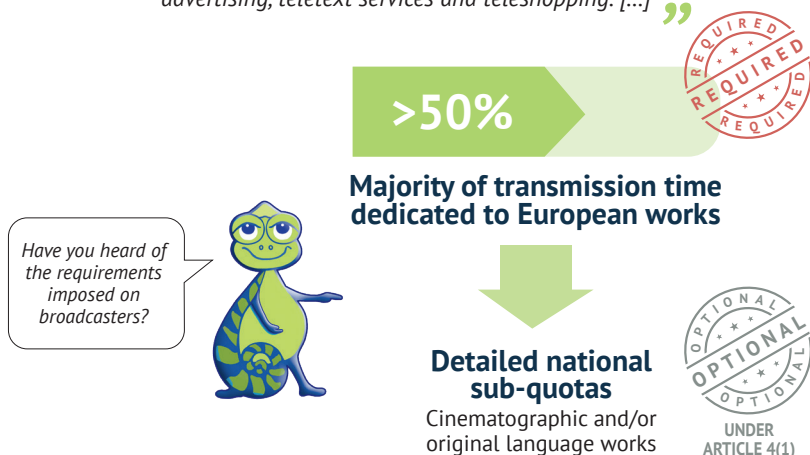
2

BROADCASTERS



2.1 Majority proportion of transmission time for European works

“ Article 16 (1): Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works a **majority proportion of their transmission time**, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. [...] ”



KEY FACTS

- ▶ All EU member states* implemented at least a majority proportion (>50%) of European works in broadcasters' transmission time, as well as IS, NO and UK. CH implemented a substantial proportion dedicated to Swiss and European works.
- ▶ Among those countries, **3** EU countries (EE, ES, LV) require broadcasters to dedicate at least 51% of their transmission time to European works and **1** EU country (FR) requires 60%.
- ▶ **9** EU countries (BE (FR and VL), ES, FR, HR, HU, IT, LV, PL, PT), **1** EEA country (IS) and **1** EFTA country (CH) impose sub-quotas on broadcasters for cinematographic or original expression works. While **8** EU countries (ES, FR, HR, HU, IT, LV, PL, PT) apply numeral sub-quotas, BE (FR and VL) require broadcasters to include original works in their transmission time without detailing a numeral proportion. It shall be substantial in BE (VL), and in BE (FR) the majority proportion should include audiovisual works of French-speaking Belgian origin. Iceland requires that the majority of broadcasters' time is spent on both Icelandic and European works. Switzerland requires a "substantial proportion" for Swiss and European works.
- ▶ **1** EU country (FR) requires broadcasters, for each of their programmes, including during prime time, to:
 - reserve, within the total annual number of broadcasts and repeats of feature films, at least: 1. 60% to the broadcasting of European works; and 2. 40% to the broadcasting of original French-language works.
 - set aside, in the total annual time devoted to the broadcasting of audiovisual works, at least: 1. 60% to the broadcasting of European works; 2. 40% for the broadcasting of original French-language works.

*IE: in the absence of new media service codes by the Irish regulator at the moment of writing, the publication refers to the Statute 258/2010 transposing Articles 16 and 17.

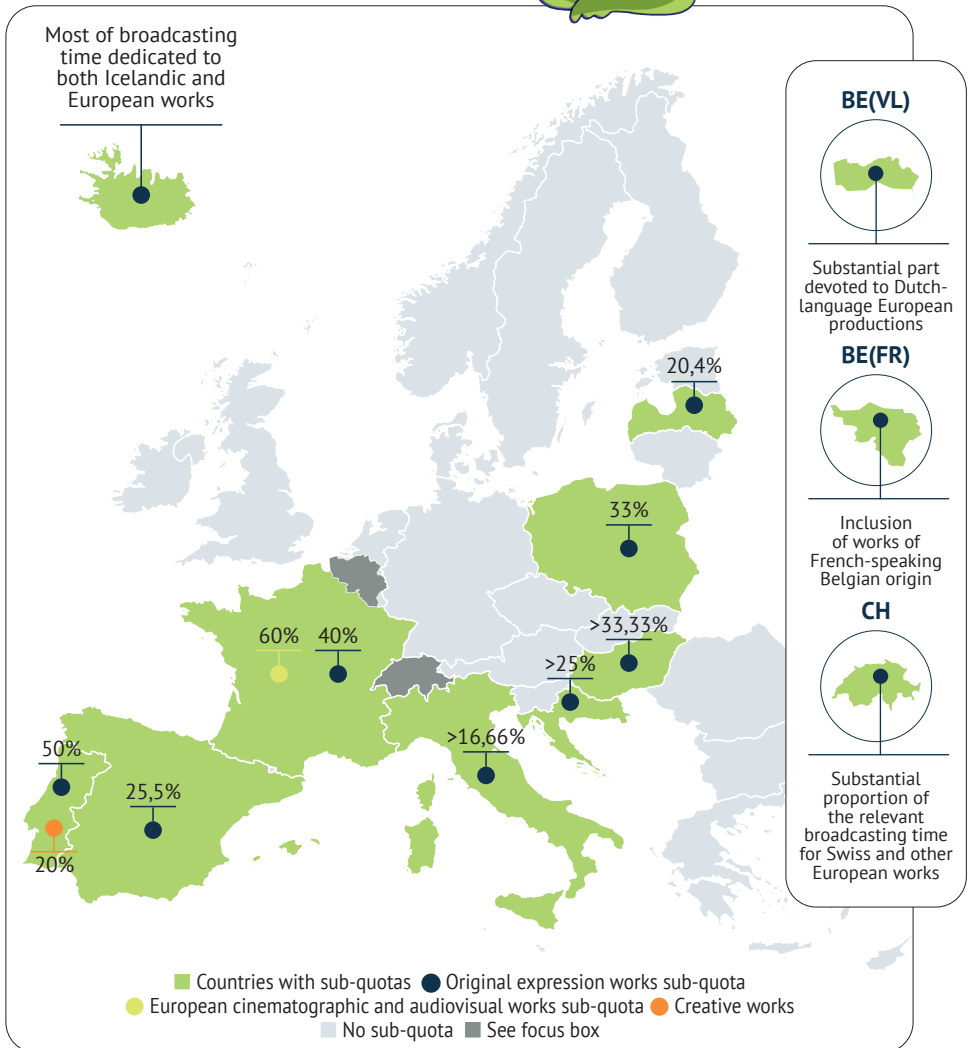


2.1.1. Implementation of sub-quotas at EU level

A table summarising the national provisions follows the map. It helps understand the sub-quota calculation methods. France and Portugal are more complex cases, and are therefore presented later in this chapter.

The map below will show you which detailed sub-quotas were introduced.

Transmission time sub-quotas



In France, as mentioned in the key facts, the sub-quotas for AV works apply to broadcasting time, and the sub-quotas for feature films apply to the number of broadcasts and repeats.

2.1.2. Sample of national provisions detailing sub-quotas



Here are the national legislations. Numbers in bold correspond to the sub-quotas for original language works.

COUNTRY CODE	% OF TOTAL TRANSMISSION TIME	TEXT OF THE RULES
BE (FR)		"In their linear television services, service providers must ensure that a majority proportion of their broadcasting time, excluding the time devoted to news, sports events, games, advertising, self-promotion or teleshopping, is devoted to European works, including audiovisual works of French-speaking Belgian origin "
BE (VL)		"The television broadcasting organisation of the Flemish Community and the private linear television broadcasters shall strive to reserve a majority of their transmission time, other than for information, sports, games, advertising, teletext and teleshopping, for European productions. A substantial part of it shall be devoted to Dutch-language European productions. "
CH		The Federal Council may require television broadcasters, within a framework of practical feasibility and with appropriate resources: a. to reserve a substantial proportion of the relevant broadcasting time for Swiss and other European works ; b. to reserve an appropriate amount of broadcasting time or programme costs in their television programme services for the broadcasting of Swiss and European works by independent producers.
ES	25,5%	"Providers of linear television audiovisual media services shall reserve at least 51% of their annual programming time for European audiovisual works. At least 50% of the quota provided for in the previous paragraph shall be reserved for works in the official language of the state or in one of the official languages of the Autonomous Communities". → Half of 51%
HR	>25%	"Television broadcasters shall reserve more than 50% of their annual broadcasting time for European works, at least half of which shall be Croatian audiovisual works " → Half of > 50%
HU	>33,33%	"A media service provider shall allocate over half of its annual total transmission time of linear audiovisual media services to broadcasting European works and over one-third of its transmission time to broadcasting Hungarian works." → Over one-third of transmission time
IS		"Media service provider that disseminates images in a linear program shall strive to ensure that the majority of the broadcast time is spent on Icelandic program material and other program material from Europe. Broadcasting time in this context refers to the total broadcasting time less the time spent on news, sporting events, games, advertisements, teletext services and teleshopping. [...]"
IT	>16,66%	"Linear audiovisual media service providers shall reserve for European works the majority of their broadcasting time, excluding the time allotted to news, sports events, games shows, advertising, teletext and teleshopping. A sub-quota of the quota for European works referred to in paragraph 1 shall be reserved for original Italian-language works , wherever they are produced, up to at least one third for private linear audiovisual media service providers. " → One third of 50%
LV	20,4%	"Electronic mass media providers shall ensure that in the programme produced by them at least 51 per cent of the weekly transmission time, except for the news, sports events, games, advertising, teleshopping and teleshopping windows, is reserved for European audiovisual works. National and regional electronic mass media shall ensure that in the television programme produced by them at least 40 per cent of the transmission time of European audiovisual works, except for the news, sports events, games, advertising, teleshopping and teleshopping windows, is reserved for audiovisual works in the official language. " → 40% of 51%
PL	33%	"Television broadcasters shall devote at least 33% of their quarterly transmission time to programmes originally produced in the Polish language, excluding news services, advertisements, telesales, sports broadcasts, text broadcasts and tele-tournaments."



2.1.3. Zoom on the highly detailed French and Portuguese provisions

FRANCE

Article 16 AVMSD is transposed in Articles 7 and 13 of Decree No.90-66 of 17 January 1990 taken for the application of Law No. 86-1067 of 30 September 1986 and fixing the general principles concerning the broadcasting of cinematographic and audiovisual works by television service providers.

- For each of their programmes, television service providers shall reserve, within the total annual number of broadcasts and repeats of feature films, at least: 1. 60% to the broadcasting of European works; and 2. 40% for the broadcasting of original French-language works.
- For each of their programmes, television service publishers shall set aside, in the total annual time devoted to the broadcasting of audiovisual works, at least: 1. 60% to the broadcasting of European works; 2. 40% for the broadcasting of original French-language works.
- These obligations must be respected during prime time too.
- For AV works: The agreement concluded with the publishers of television services distributed by networks not using frequencies assigned by the French media regulator Arcom may set proportions for the broadcasting of audiovisual works that are lower than those provided for, without the proportion provided for European works being lower than 50%, in return for a commitment by the service publisher to invest in the production of original French-language audiovisual works produced by independent production companies.
- For feature films: 1. European feature films shall not represent less than 50% of the total number of annual broadcasts and repeats; 2. Original French-language feature films must not account for less than 35% of the total number of annual broadcasts and repeats, including during prime time.

PORTUGAL

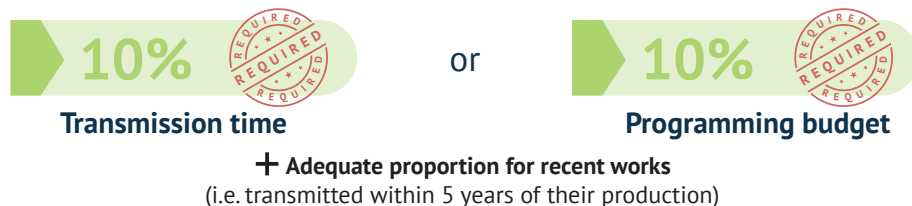
Article 17 AVMSD is transposed in Articles 44 and 45 of the Broadcasting Law No. 27/2007.

- Broadcasters must reserve a majority proportion of European works in their transmission time.
- At least 50% of broadcasts should be dedicated to programmes originally broadcast in Portuguese language, with the exclusion of time dedicated to advertising, teleshopping and teletext only.
- Broadcasters must dedicate 20% of their transmission time to the broadcasting of creative works originally produced in Portuguese.
 - Creative works are cinematographic or audiovisual productions based on structured elements of creation (feature and short fiction and animation films, documentaries, telefilms and television series and also, for the same purposes, television reports, educational, musical, artistic and cultural programmes) provided they are subject to copyright protection.

2.2. Share of independent productions

“ 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

KEY FACTS

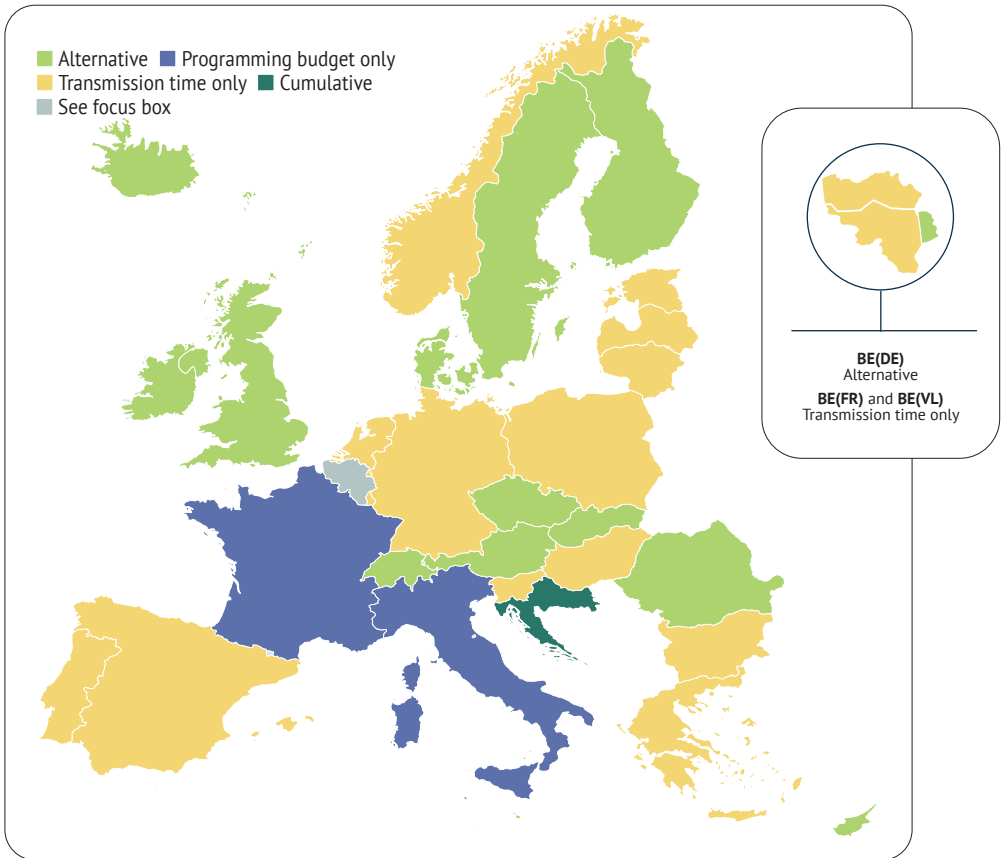
- ▶ **14** EU countries (BE (VL and FR), BG, DE, EE, ES, GR, HU, LT, LU, LV, NL, PL, PT, and SI) and **1** EEA country (NO) only require broadcasters to reserve 10% of their transmission time to works created by independent producers.
- ▶ **11** EU countries (AT, BE(DE), CY, CZ, DK, FI, IE*, MT, RO, SE, and SK), **2** EEA countries (IS and LI) and **1** EFTA country (CH) and the UK give broadcasters the alternative between the latter and the financing of independently produced works.
- ▶ **2** EU countries (FR and IT) require broadcasters to reserve at least 10% of their programming budget to independent productions.
- ▶ **1** EU country (HR) imposed a cumulative obligation: 10% of transmission time and at least 5% of the previous year's total annual gross income for the acquisition of works by Croatian independent producers.
- ▶ **3** EU countries (BG, FI, and IT) imposed higher quotas than the 10% required by the EU and **1** (FR) applied different requirements as to the type of work (audiovisual or cinematographic). France requires broadcasters to spend certain shares of their turnover in the production of cinematographic works and in the development of audiovisual works. Details are presented on page 31.
- ▶ **26** countries introduced sub-quotas for recent works.
- ▶ In doing so, **12** EU countries (AT, BE(DE and VL), BG, CY, DK, EE, IE*, LU, LV, MT, RO, and SE), **1** EEA country (LI) and the UK used general terms such as “adequate proportion”.
- ▶ **13** EU countries used specific percentages (BE(FR), CZ, ES, FI, HR, HU, IT, LT, NL, PL, PT, SI, and SK).

*IE: in the absence of new media service codes by the Irish regulator at the moment of writing, the publication refers to the Statute 258/2010 transposing Articles 16 and 17.

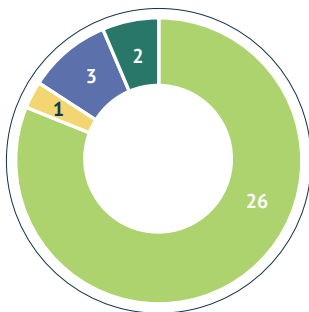


2.2.1. Various implementations at EU level

Implementation of a minimum transmission time or programming budget for European works created by independent producers



The national implementation of quotas on independent productions



National application of independent production quotas imposed on broadcasters:

- 26 countries imposed a minimum 10% quota,
- 3 countries implemented higher than 10% quotas,
- 1 country implemented additional requirements,
- 2 countries: Germany indicated "significant proportion" and Switzerland "appropriate."

- AT, BE (DE, VL, FR), CY, CZ, DK, EE, ES, GR, HR, HU, IE, IS, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK
- FR
- BG, FI, IT
- CH, DE

2.2.2. Sample of national provisions regarding the sub-quota on recent works

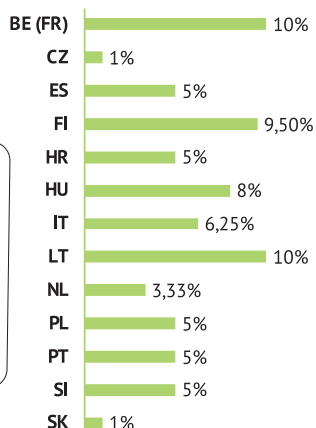
While Article 17 AVMSD is broad in requiring broadcasters to attribute an “adequate proportion” of transmission time/programming budget to recent works, some countries set up a numerical quota that broadcasters are required to meet. Most of the countries transposed the “adequate proportion” requirement verbatim, and 13 added a specific sub-quota to ensure that parts of the 10% of independent productions are recent works. All percentages below are presented as part of the general broadcasting time.*

*The Croatian sub-quota only applies to the transmission time obligation. The Croatian secondary legislation did not detail a sub-quota for recent works when related to the programming budget obligation.

Countries implementing sub-quotas for recent works



The following table summarises the national legislations. It helps to understand the sub-quota calculation methods. Finland and France are more complex cases; they are therefore presented separately later in this publication.



COUNTRY CODE	% OF TRANSMISSION TIME OR PROGRAMMING BUDGET	NATIONAL PROVISIONS
BE (FR)	10%	<p>“Service providers shall in their linear television services: 5° ensure that 10% of broadcasting time, excluding time devoted to news, sports events, games, advertising, self-promotion or teleshopping, is devoted to European works by independent producers, including independent producers from the French Community. The production of these works cannot be earlier than five years before their broadcast.”</p>
CZ	1%	<p>“A broadcaster shall, where practicable, reserve for European works produced by independent producers at least 10% of the total transmission time of each of its programmes. The total broadcasting time of a programme, from which the proportion of broadcasting time reserved for European works produced by independent producers is determined, shall not include time devoted to the broadcasting of news programmes, sporting events, competitions, teletext, advertising and teleshopping.</p>



BROADCASTERS

COUNTRY CODE	% OF TRANSMISSION TIME OR PROGRAMMING BUDGET	NATIONAL PROVISIONS
CZ		<p>The obligation under paragraph 1 shall be deemed to be fulfilled if the broadcaster spends at least 10% of its programming budget on the production or purchase of European works produced by independent producers.</p> <p>A broadcaster shall, where practicable, ensure that, within the broadcasting time reserved for the broadcasting of European works produced by independent producers, the broadcasting of works not more than five years after their first publication accounts for at least 10%.</p> <p>A broadcaster which fulfils its obligation to support European independent production in accordance with the provisions of section 43(2) by spending at least 10% of its programming budget on the production or purchase of European works produced by independent producers shall be obliged to spend at least 10% of the amount so determined on works whose first publication is less than five years old.”</p> <p>→ For broadcasting time/budget: 10% of 10%</p>
ES	5%	<p>“At least 10% of the total broadcasting time shall be reserved for European works by producers independent of the service provider, and half of this 10% must have been produced within the last five years.”</p> <p>→ Half of 10%</p>
FI	9,50%	<p>“A television broadcaster shall reserve for programmes produced by independent European producers 19% of its broadcasting time referred to in section 209(1), or alternatively 19% of his or her programming budget. Half of the programmes included in said share of the independent producers referred to above have to have been produced within the past five years.”</p> <p>→ Half of 19%</p>
HR	5%	<p>“Television broadcasters shall reserve at least 10% of their annual audiovisual programming time for European works made by independent producers.</p> <p>At least half of the works referred to in this Article shall have been produced within the previous five years.”</p> <p>→ Half of 10%</p>
HU	8%	<p>“The media service provider shall allocate:</p> <p>b) at least 10% of its annual transmission time of linear audiovisual media services to broadcasting European works, and at least 8% of its transmission time to broadcasting Hungarian works made to order by independent producers or purchased from such producers within five years of production.”</p>
IT	6,25%	<p>“Linear audiovisual media service providers, other than the concessionaire of the public radio, television and multimedia service, and including linear audiovisual media service providers who have editorial responsibility for offers aimed at consumers in Italy, even if established in another member state, reserve each year for the pre-purchase or purchase or production of European works produced by independent producers, a portion of their annual net income in Italy, as defined in paragraph 3, of not less than 12.5%. 2. A percentage equal to at least half of the quotas referred to in paragraph 1 is reserved for works of original Italian expression wherever produced by independent producers in the last five years, according to the further specifications contained in the regulations referred to in Article 57, paragraph 3, of the Consolidated Law.”</p> <p>→ Half of 12,5%</p>

COUNTRY CODE	% OF TRANSMISSION TIME OR PROGRAMMING BUDGET	NATIONAL PROVISIONS
LT	10%	<p>“Television broadcasters shall, where possible, reserve more than half of television programme time, after deduction of the time allocated for news, sporting events, game shows, programme advertising, teletext services and teleshopping, for European works, and not less than 10% of television programme time, after deduction of the time allocated for news, sporting events, game shows, programme advertising, teletext services and teleshopping, for European works created by independent producers no earlier than within the last five years. The requirements of this paragraph shall not apply to local television programmes.”</p>
NL	3,33%	<p>“On a television programme channel, the programme offer shall consist of at least 10% of the duration of productions as referred to in Article 3.20, first paragraph, which can be regarded as independent productions. At least one third of the productions referred to in the first paragraph shall not be older than five years.”</p> <p>→ One third of 10%</p>
PL	5%	<p>“Television broadcasters shall allot at least 10% of quarterly transmission time to European programmes made by independent producers, excluding news broadcasts, advertising, teleshopping, sports broadcasts, textual displays and game shows. Television broadcasters shall allot at least 5% of their quarterly broadcasting time to European programmes produced by independent producers in the five years prior to broadcast, excluding news, advertising, teleshopping, sports broadcasts, textual displays and game shows.”</p>
PT	5%	<p>“Broadcasters operating television programme services nationwide shall ensure that at least 10% of their programming, excluding the time devoted to news, sporting events, competitions, advertising, teleshopping and teletext, is made up of broadcasts of independently produced European creative works originally in Portuguese and produced less than five years ago. The television programme services referred to in the preceding paragraph classified as generalist shall devote at least half of that share to broadcasting independent European creative works originally in Portuguese produced less than five years ago.”</p> <p>→ Half of 10%</p>
SI	5%	<p>“The share of European audiovisual works by independent producers in each television programme shall be at least 10% of the annual broadcasting time. At least half of the works referred to in the preceding paragraph must have been produced within the last five years.”</p> <p>→ Half of 10%</p>
SK	1%	<p>“The authorised broadcaster shall be obliged to reserve at least 10% of the total broadcasting time per calendar quarter for European works created by producers independent of broadcasters; for the purposes of calculating this proportion, the airtime devoted to news, sporting events, entertainment, telex and supplementary broadcasting, including advertising and teleshopping, shall not be included in the total broadcasting time. The broadcaster shall ensure that, within the transmission time allocated to European works by independent producers, at least 10% of the transmission time is devoted to new works; a new work shall be considered to be a work broadcast within five years of its production. The condition laid down in paragraph (1) shall also be deemed to be fulfilled if, during a calendar quarter, the qualifying broadcaster has devoted at least 10% of its programming budget for television broadcasting, which includes the costs of the purchase and production of programmes, to European works created by independent producers.”</p> <p>→ 10% of 10%</p>



2.2.3. Zoom on the highly detailed French and Finnish provisions

FRANCE

Article 17 AVMSD is transposed in Articles 13 and 21 of Decree No. 2021-1926 of 30 December 2021 on the contribution to the production of cinematographic and audiovisual works by television services broadcast via terrestrial television stations. The text differentiates between cinematographic and audiovisual works and provides for independence criteria:

- For cinematographic works:
 - Service providers must dedicate at least three quarters of expenditure (purchase of broadcasting or exploitation rights or investment in the producer's shares) to the development of independent production, according to criteria linked to the cinematographic work and the company.
- For audiovisual works:
 - Service providers must dedicate annually at least two thirds of 15% of the annual turnover to the development of independent production, according to criteria linked to the work and the company producing it.

FINLAND

Article 17 AVMSD is transposed in Article 210 of the Electronic Communications Services Act (917/2014). It sets the quota for independent production and elaborates on independence criteria:

- Service providers must reserve 19% of transmission time or alternatively 19% of their programming budget to programmes produced by independent European producers.
- Half of it has to have been produced within the past five years.

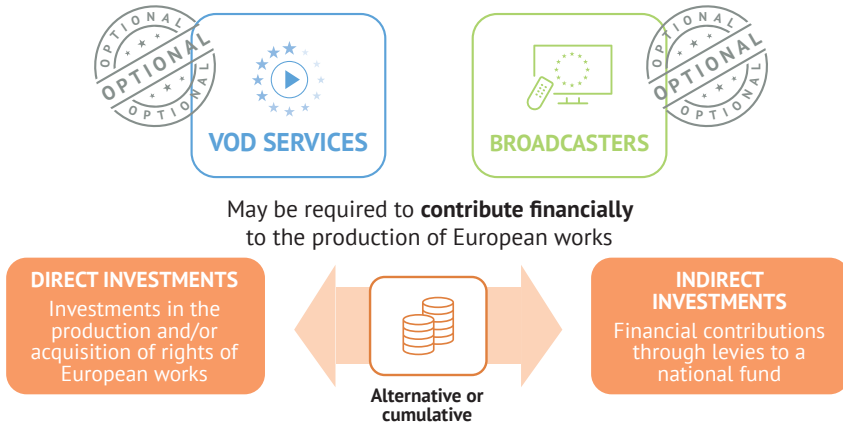
3

FINANCIAL OBLIGATIONS



3.1. A first look at financial obligations

“ Article 13(2): *Where Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory.* ”



KEY FACTS

- ▶ **12** EU countries (BE (FR), DE, ES, FR, GR, HR, IE*, IT, PL, PT, RO, SK) and **1** EFTA country (CH) impose investment obligations on both broadcasters and VOD services.
- ▶ Hungary is the only country where investment obligations are imposed on broadcasters.
- ▶ **3** EU countries (BE (DE and VL**), CZ, DK) impose investment obligations on VOD services only.
- ▶ **12** EU countries (AT, BG, CY, EE, FI, LT, LU, LV, MT, NL***, SE, SI), **3** EEA countries (IS, LI, NO) and the UK do not require any financial contributions.
- ▶ VOD services: **12** EU countries (BE (DE, FR and VL), DE, DK, ES, FR, GR, HR, IE, IT, PL, PT, RO) and **1** EFTA country (CH) impose financial obligations on both domestic and targeting services and **2** EU countries (CZ and SK) on domestic services only.
- ▶ Broadcasters: **6** EU countries (DE, GR, HR, HU, RO, SK) impose financial obligations on domestic services only, while **7** EU countries (BE (FR), ES, FR, IE, IT, PL, PT) and **1** EFTA country (CH) impose financial obligations on both domestic and targeting services.

*IE: The Irish Online Safety and Media Regulation Act of 2022 foresees the creation of a funding scheme which has not yet been drafted, for both VOD services and broadcasters.

** BE (VL): A draft Decree amending the Decree of 27 March 2009 on radio and television broadcasting, as regards the promotion of the audiovisual sector with financial contributions to the production of audiovisual works, has been the subject of a TRIS notification to the Commission on 27/03/2023.

*** NL: A Bill has been presented in 2022 by the State Secretary of Culture and Media (Staatssecretaris Cultuur en Media). In June 2023, the House of Representatives welcomed the Bill that has now been sent to the Senate (Eerste Kamer) for approval. If the Bill is approved, it would amend the Media Act (Mediawet) 2008, and require major streaming platforms with an annual turnover in the Netherlands of more than EUR 10 million to invest 5% of that turnover in Dutch productions.

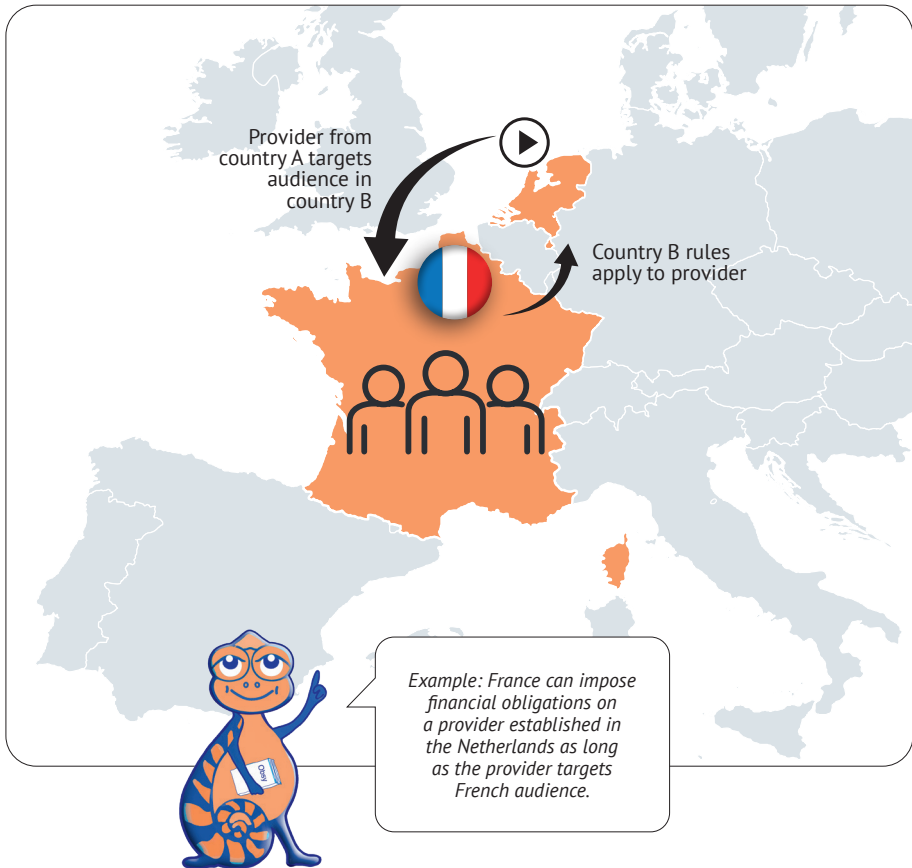


FINANCIAL OBLIGATIONS



Exception to the country of origin principle:

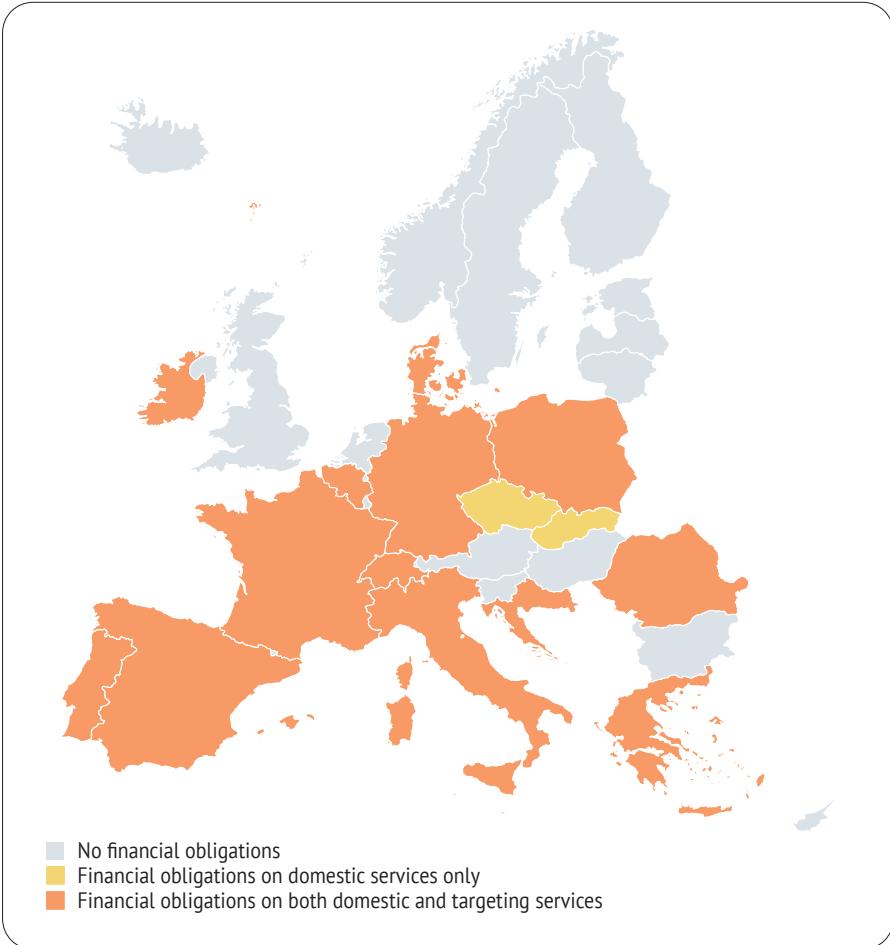
- While the general rule is that AVMS providers are subject to the jurisdiction of the member state in which they are established, Article 13(2) allows member states to impose financial obligations on AVMS providers established in other member states and targeting its territory (see also recital 36, AVMSD 2018/1808).
- In such a case, financial obligations should only be charged on the revenues generated through the audience in the targeted EU member state. Media service providers that are required to contribute to film funding schemes in a targeted EU member state should be able to benefit in a non-discriminatory way from the aid available under respective film funding schemes to media service providers.



3.2. Financial obligations on VOD services

3.2.1. Implementation of financial obligations at EU level

Implementation of financial obligations on VOD services (domestic and targeting services)



In total, 15 countries impose financial obligations on VOD services.

Of these, 13 impose financial obligations on both domestic and targeting services, leaving the Czech Republic and Slovakia as the exceptions. In these countries, the obligation to contribute to funds imposed on VOD services applies to domestic services only.

The Irish Online Safety and Media Regulation Act of 2022 foresees the creation of a funding scheme which has not yet been drafted for both VOD services and broadcasters.

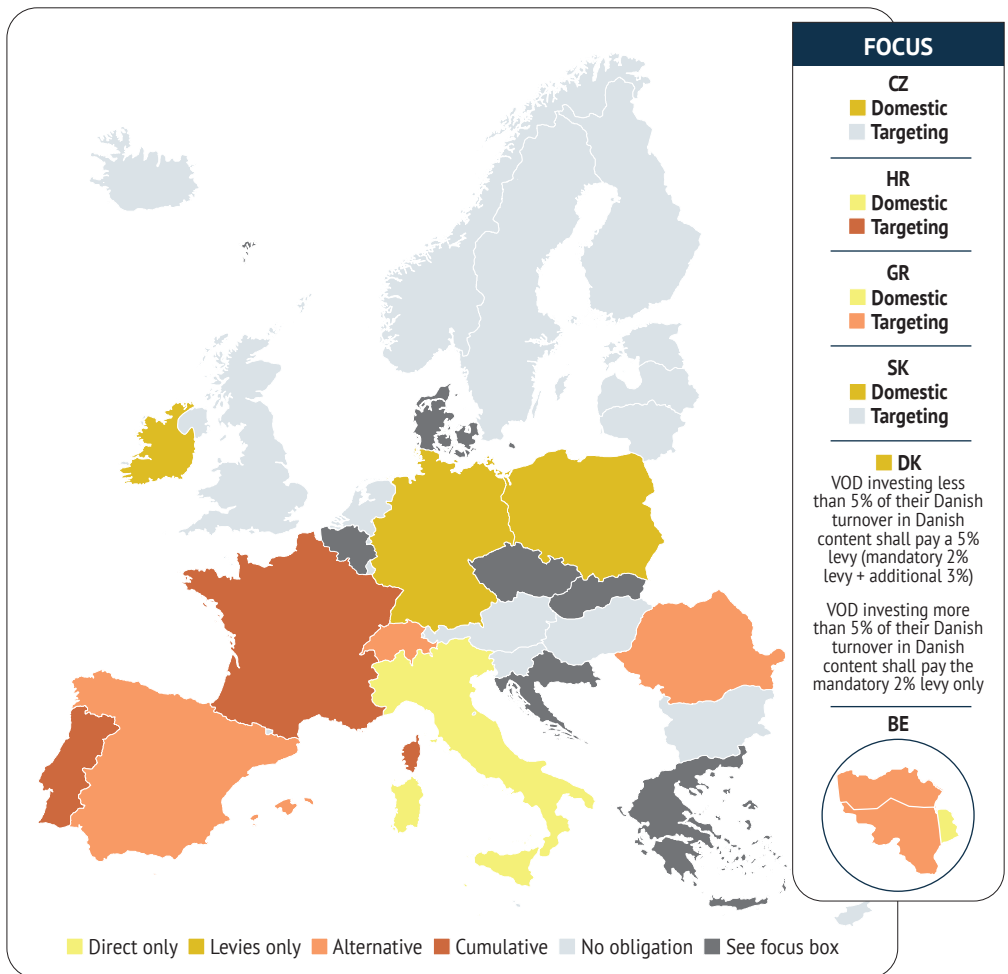


FINANCIAL OBLIGATIONS

Implementation of direct and/or indirect financial obligations on VOD services (domestic and targeting services)



Let's focus on the types of contributions that each country has decided to implement!
 All countries require the same kind of contribution from domestic and targeting services except: Croatia and Greece. Only the Czech Republic and Slovakia impose an indirect contribution solely on domestic services.
 By the way, had you noticed? It seems that only three countries have decided to cumulate both direct and indirect obligations!



The Irish Online Safety and Media Regulation Act of 2022 foresees the creation of a funding scheme which has not yet been drafted, for both VOD services and broadcasters.

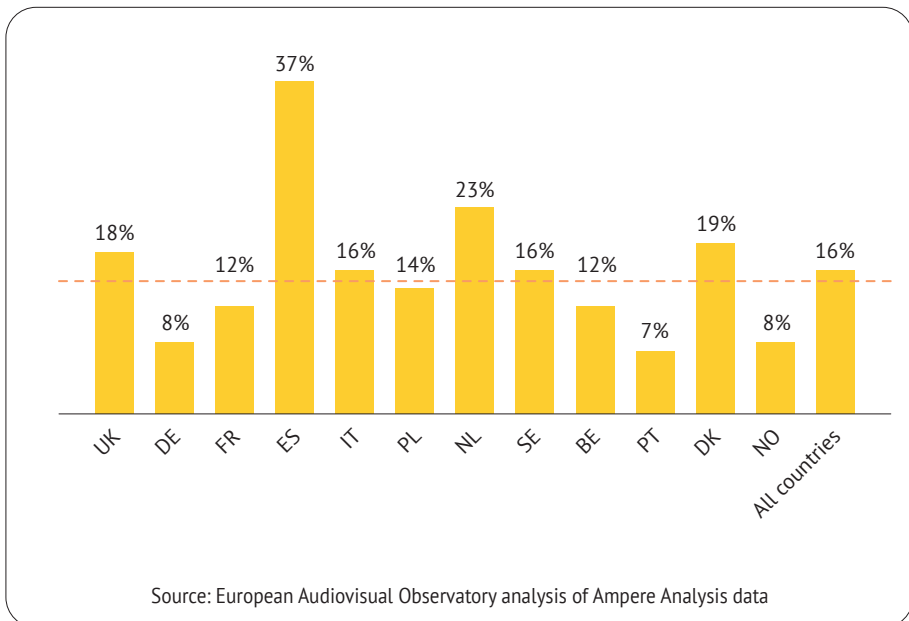
3.2.2. Market data

The investments of VOD services in European original content can only be approximated for the leading Subscription VOD services. The investments of the “global streamers” can be estimated at around EUR 2.8 billion in 2021, including both scripted and unscripted works. Spending has increased sharply since their entry into the European market in 2015, but still only represents 16% of all financing of European content (excluding sports and news).

The growth was driven in particular by a change in the mix between acquisitions and financing of original content with a view to developing exclusive and recent works tailored to the needs of the European national markets.

The global streamers’ investments were more geared towards certain countries: Spain has captured a comparatively higher share (in part due to its ability to also serve the Latin America market) and the United Kingdom has been confirmed as the main production country in Europe. Germany and France, however, appear to be lagging behind in terms of their ability to capture the streamers’ investments.

Share of global streamers in total investments in original European content (excluding sports and news) in the top 10 countries (2021)





3.2.3. Sneak peek: direct contributions

Remember!
 Financial obligations remain the responsibility of member states. Countries are free to decide not only if AVMS must contribute to the promotion of European works but also the amount of such contributions.



FRANCE*	
Rate	Subscription VOD services 25% when they offer at least one feature film/year within a period of less than 12 months after its theatrical release in France. 20% in other cases (for pay-per-view services and free-of-charge services: see Article 20 of 22 June 2021 Decree).
	Other VOD services 15%
	Catch-up TV (cinematographic contribution) Identical rate to that to which the service publisher is subject in respect of the operation of the television service from which the catch-up television service originates.
Base	Subscription VOD services and catch-up TV Net annual turnover of the previous financial year.
	Other VOD services The annual turnover arising from the exploitation of cinematographic works.

* Additional French provisions require VOD services to financially contribute to independent productions (original expression, audiovisual and cinematographic works) by spending parts of their expenditures to the development of independent AV works and cinematographic works.

BELGIUM (FR)		
Base & Rate	Turnover above EUR 20 million	2.2%
	Turnover between EUR 15 and 20 million	2%
	Turnover between EUR 10 and 15 million	1.8%
	Turnover between EUR 5 and 10 million	1.6%
	Turnover between EUR 300 000 and 5 million	1.4%
	Turnover between EUR 0 and 300 000	0%

3.2.4. Sneak peek: indirect contributions

Several systems take various parameters into account to determine financial contributions. In Germany for instance, both the rates and bases vary depending on the nature of the service.



GERMANY		
Base & Rate	Annual turnover over EUR 20 000 000	2.5%
	Annual turnover between EUR 500 000 and EUR 20 000 000	1.8%
	The turnover of the previous year is used to determine which of the annual turnover levels has been reached. If the turnover was generated during only part of the previous year, the annual turnover shall be calculated by multiplying the average monthly turnover of the previous year by 12. In the absence of turnover in the previous year, the latter may be determined on the basis of the monthly turnover in the year of the levy.	
POLAND		
Rate	1.5%	
Base	Revenue generated by the fees for access to VOD services made available to the public or revenue generated by the broadcast of commercial communications, if that revenue is higher in the relevant accounting period.	
DENMARK		
Base & Rate	General rule: all VOD services pay a levy based on their Danish turnover	2%
	VOD services investing less than 5% of their Danish turnover in Danish content shall pay an additional 3% levy (5% in total)	5%
	VOD services investing more than 5% of their Danish turnover in Danish content shall pay the mandatory 2% levy only.	2%



3.3. Financial obligations on broadcasters

3.3.1. Implementation of financial obligations at EU level

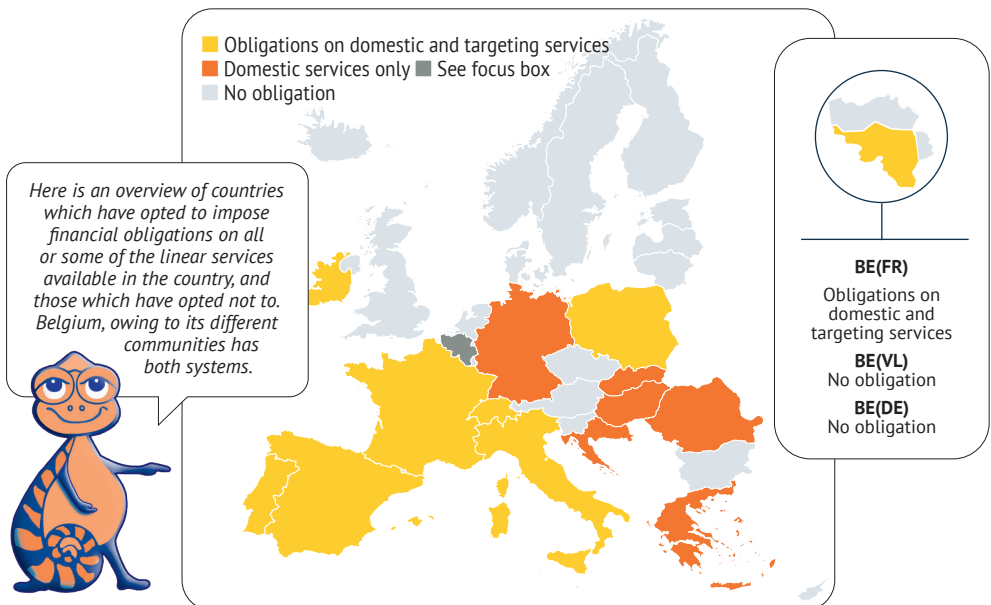
Not all countries that impose obligations on VOD services also impose them on broadcasters.

While 13 countries imposed financial obligations on both domestic and targeting VOD services (BE, CH, DE, DK, ES, FR, GR, HR, IE, IT, PL, PT and RO), only 8 countries imposed financial obligations on both domestic and targeting broadcasters (BE(FR), CH, ES, FR, IE, IT, PL and PT).

In the case of Belgium, only the French-speaking Belgian community has introduced financial obligations on both domestic and targeting broadcasters, while the Flemish and German-speaking communities did not impose any obligation on broadcasters.

The Czech Republic and Denmark do not impose obligations on broadcasters, whereas they do for VOD services.

Implementation of financial obligations on broadcasting services (domestic and targeting services)



The Irish Online Safety and Media Regulation Act of 2022 foresees the creation of a funding scheme which has not yet been drafted, for both VOD services and broadcasters.

3.3.2. Market data

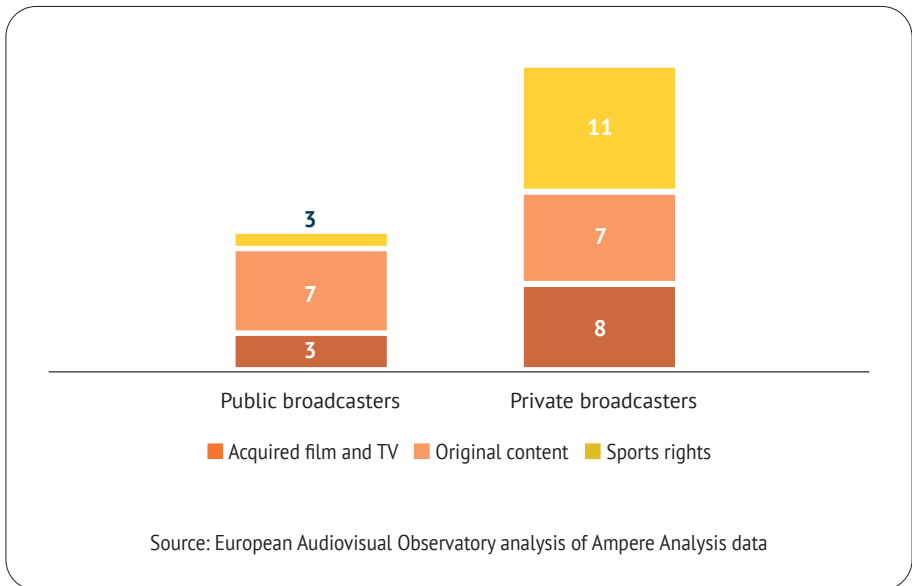
The investments of broadcasters in European original content can be estimated at around EUR 14.6 billion in 2021, excluding sports and news, but including both scripted and unscripted works. In 2021, broadcasters accounted for 84% of total investments versus 16% for global streamers.

Since the entry of global streamers into the European market, broadcasters have increased their spending to react to the new competitive environment. This growth has mainly been driven by private broadcasters (even though sports rights costs were increasing significantly at the same time). In turn, public broadcasters' investments are likely to have been limited by stagnating resources.

Overall, private and public broadcasters invest almost at a par in European original content (excluding sports and news), but their respective weights vary significantly across countries. Public broadcasters are, for instance, particularly invested in original content in Denmark, Germany and the Netherlands.

The largest European countries account for the bulk of broadcasters' investments in original European works, with the United Kingdom in the lead, followed by Germany and France and then, to a lesser extent, by Italy and Spain.

Content investment (excluding news) by public and private broadcasters (2021 – EUR billion)





FINANCIAL OBLIGATIONS

3.3.3. Sneak peek: direct contributions

FRANCE		
Rate	Cinema	3.2% for the development of European cinematographic works, including 2.5% towards developing the production of original French-language works
	Audiovisual	15% (reduced to 12.5% when the expenditure is entirely devoted to heritage works)
Base	Net annual turnover for the previous financial year	

SWITZERLAND*	
Rate	4%
Base	Gross revenues

* A substitute levy shall be due if the investment obligation is not achieved on average over a period of four years.

3.3.4. Sneak peek: indirect contributions

GERMANY		
Rate & Base	Free to air television programmes: at least 2%	Based on advertising turnover in the year before last if above EUR 750 000 in yearly advertising revenue.
	Pay-TV services: 0.45%	Based on net subscription revenues in the penultimate year if above EUR 750 000 in yearly advertising revenue.

ROMANIA	
Rate	4%
Base	Value of the advertising minutes contracted by public and private television stations.



In Romania, the 4% is added to the price and directly collected from the advertiser, the intermediary company buying the advertising minutes or the economic operator buying the advertising minutes, which is obliged to send the National Cinematography Centre a list of the contracts concluded, including their value and the names of the selling agents.



Thanks for staying with us to the end. We hope that you found the content of this report interesting.

Readers may want to draw their own conclusions from this publication. A key takeaway may perhaps be that no system is right or wrong, and that there are as many approaches as there are countries, each with their own audiovisual industry, needs and realities.

If you would like to know more about the financial obligations on VOD providers, have a look at our IRIS Plus report on this topic “Investing in European works: the obligations on VOD providers”:

<https://rm.coe.int/iris-plus-2022-en2-financial-obligations-for-vod-services/1680a6889c>

You will also find all of the data contained in this report, legislations and more, in our European works table, available online:

<https://rm.coe.int/iris-plus-2022-2-tables/1680a6889d>

If you want to find all national transpositions of the AVMSD’s key articles on European works, check our overview table on the promotion of European works:

<https://rm.coe.int/iris-plus-2022-2-tables/1680a6889d>

If you want to know more about the general transposition of the AVMSD by each country, take a look at our AVMSD database:

<https://avmsd.obs.coe.int/>

And if we have managed to capture your interest, perhaps you would like to dig deeper into some of our other reports:

<https://www.obs.coe.int/en/home>

A publication
of the European Audiovisual Observatory

