



# Audiovisual Media Services in the Digital Single Market: An update on the implementation of the AVMSD

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**The  
Audiovisual Media Services  
Directive**

# Audiovisual Media Services Directive (AVMSD)

a media framework for the 21<sup>st</sup> century

#AVMSD #DigitalSingleMarket

## Why?

For a better balance of rules



## Context

Before



Average TV viewing time is decreasing.

Young people's TV viewing time has **dropped by 7.5%** and is **half** that of the average viewer

Now



Videos on the Internet



Internet video share in consumer internet traffic is **expected to increase** from **64%** in 2014 to **80%** by 2019

TV channels target more and more **foreign markets**



In 2013, **±20%** of broadcasters revenues was invested in **original programming** vs **1%** for **on-demand services**.

Industry faces **fragmented rules** on the share of European content across the EU



On average **31%** of VoD services available in one EU Member State are **established in another Member State**

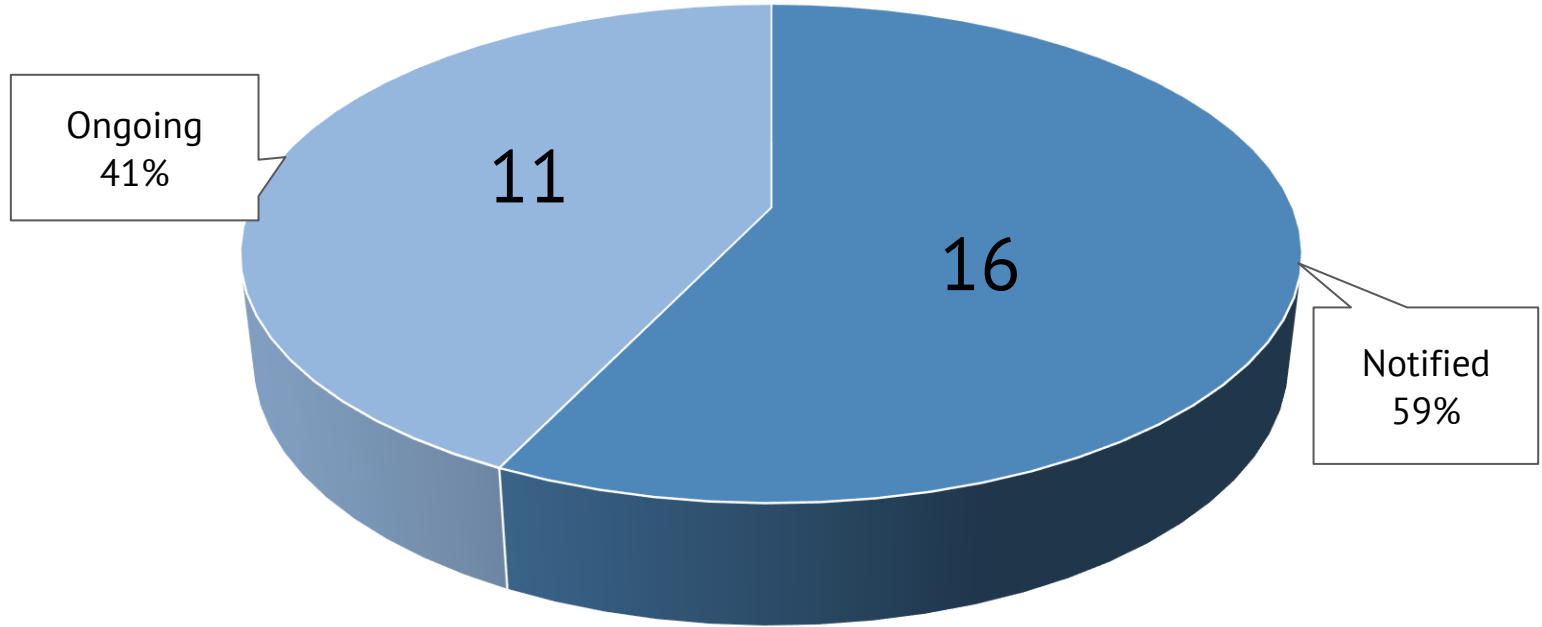


Need for **more independence of regulators** from government & industry

## Audiovisual Media: Commission opens infringement procedures against 23 Member States for failing to transpose the Directive on audiovisual content

- Deadline for transposition **19 September 2020**
- On 23th November 2020, the Commission launched infringement procedures **against 23 Member States** and the UK
- At this date, only **Denmark, Hungary, the Netherlands** and **Sweden** had notified transposition measures and declared their notification complete.

# State of play of the implementation of the directive



# State of play of the implementation of the directive

- **Status June 2021:**

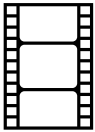
- **16 Member States have notified** (Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Sweden)

- **11 Member States are ongoing** (Czech Republic, Cyprus, Croatia, Estonia, Ireland, Italy, Poland, Romania, Slovakia, Slovenia, Spain)

# Key new features of the directive



- Update on establishment and jurisdiction



- Promotion of European works for VOD services



- Role and responsibilities of video-sharing platforms



- Media literacy measures

# 1. Update on establishment and jurisdiction





# Establishment of AVMS

An AVMS is under the jurisdiction of the Member State where it is:

- effectively **established** on its territory, **Art. 2(2)**, or
- deemed to be established, following the criteria outlined under **Art. 2(3)**:



Head office



Editorial decisions

Defined in the revision



workforce involved in  
programme-related  
activity

Added in the  
revision

No agreement → European Commission may ask ERGA to provide an opinion.

## Jurisdiction over an AVMS



AVMS shall inform regulators of changes potentially affecting the determination of jurisdiction, [Art. 2\(5a\)](#).

Member States shall keep an **updated list** of AVMS providers established on their territory, [Art. 2\(5b\)](#).



AVMS Providers have to **make accessible the information** on the member State of jurisdiction and regulatory authorities/supervisory bodies, [Art. 5](#).

# Right to lay down stricter or more detailed rules

Member States may lay down stricter or more detailed rules **Art. 4(1) for AVMS** and **Art. 28b(6) for VSPs**.

For AVMS, measures can be taken against the provider of the targeting AVMS established in another MS in order to circumvent the stricter or more detailed rules, if **Art. 4(4)**:



Measures were notified to Commission and Member State where the AVMS is established



**AVMS provider's right of defence were respected**



Measure assessed as compatible with EU law by Commission and ERGA

Added in the revision

**If needed, Commission may request further information within 1 month**

## To sum it up ...

- The Country of Origin principle is maintained.
- Assessment criteria for the determination of the Member State of establishment are clarified.
- Measures for transparency and follow-up over the question of jurisdiction are introduced.
- Assessment process of Member States' restrictive measures by the Commission is detailed.

# Movement of SERVICES



## **Audiovisual Media Services Directive (AVMSD)**

allows freedom of reception and retransmission  
of TV and on-demand services

# Movement of SERVICES



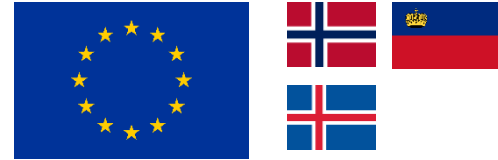
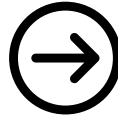
## Audiovisual Media Services Directive (AVMSD)

allows freedom of reception and retransmission  
of TV and on-demand services

# Movement of SERVICES



Broadcasting



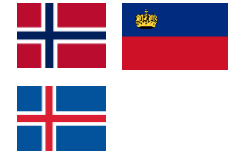
- **ONE Ofcom licence** for services receivable in the UK and in 22 EEA countries that have signed and ratified the European Convention on Transfrontier Television (ECTT)
- **SEVEN licences** from EEA countries not party to the ECTT.

- Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Norway, Poland, Portugal, Romania, Slovakia, Slovenia and Spain
- **Belgium, Denmark, Greece, Ireland, Luxembourg, the Netherlands and Sweden**

# Movement of SERVICES



Broadcasting



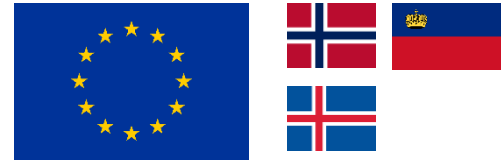
- **National licence** for services receivable in the UK from 22 EEA countries that have signed and ratified the European Convention on Transfrontier Television (ECTT)
- **Ofcom licence** for services from EEA countries not party to the ECTT.

- Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Norway, Poland, Portugal, Romania, Slovakia, Slovenia and Spain
- **Belgium, Denmark, Greece, Ireland, Luxembourg, the Netherlands and Sweden**



# Movement of SERVICES

VoD

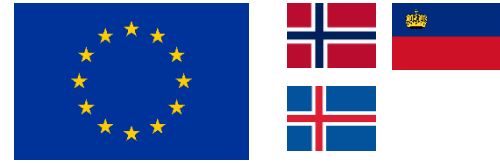


- **Video on demand (VOD) services are not covered by the scope of the ECTT**
- UK providers will need to **comply with AVMSD jurisdiction rules** as “third country” if they provide VOD services in an EEA country

# Movement of SERVICES

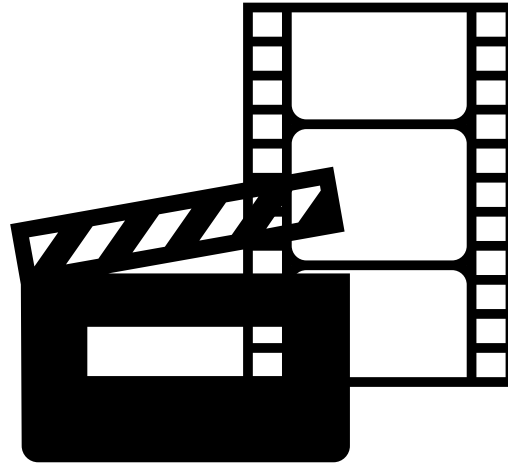


VoD



- If a VOD service's head office and **editorial decision-making capacity are based in the UK**, the provider must **notify this to Ofcom** before providing the service
- **VOD services not under UK jurisdiction** will continue to be **available to UK audiences**

## 2. Promotion of European works



# Promotion of European works – Linear services (Art. 16-17)

Obligations of broadcasters remain unchanged from the old Directive.



**of transmission time to European works**



**of transmission time/programming budget to independent European works**

# European WORKS



**Brexit**

## Audiovisual Media Services Directive (AVMSD)

### Article 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)(i) and (ii) 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:

## State of implementation of the AVMSD 2010/13

### Minimum proportion of broadcasting time of European audiovisual works




 >50% (as in AVMSD)

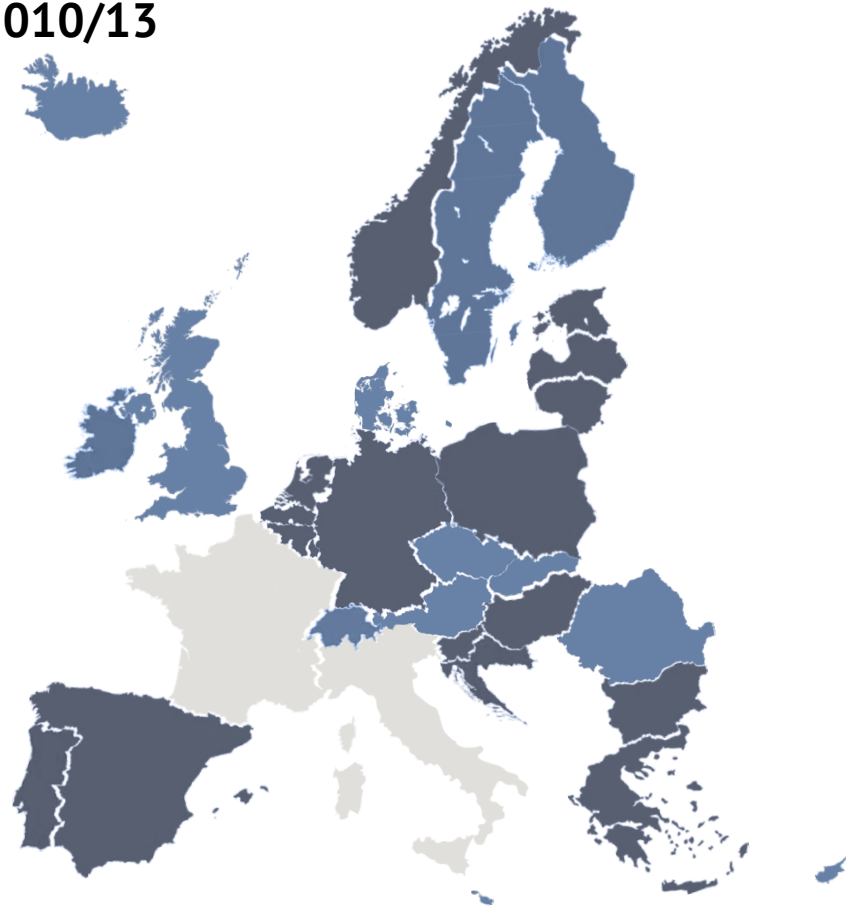
 60%



# State of implementation of the AVMSD 2010/13





## Quota of broadcasting time for independent European works

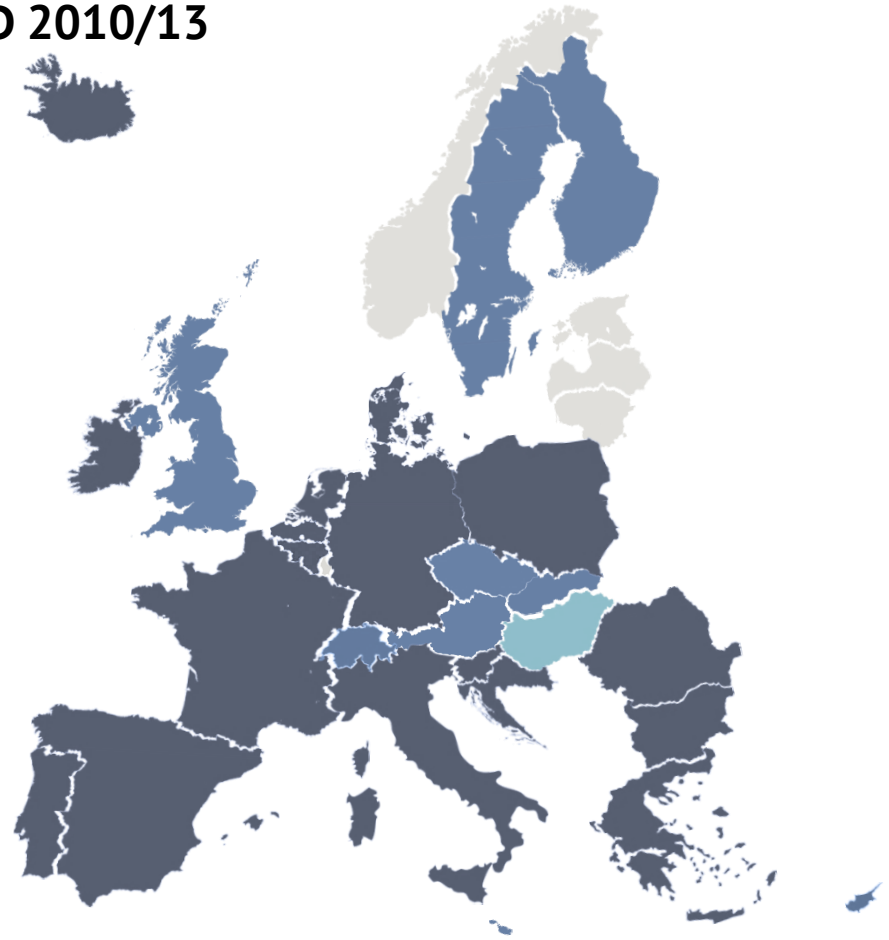
-  Mandatory
-  Optional
-  No obligation



# State of implementation of the AVMSD 2010/13

## Financial investment by PSB in independent European works





-  Mandatory
-  Optional (or quota)
-  Optional (or levy)
-  No obligation

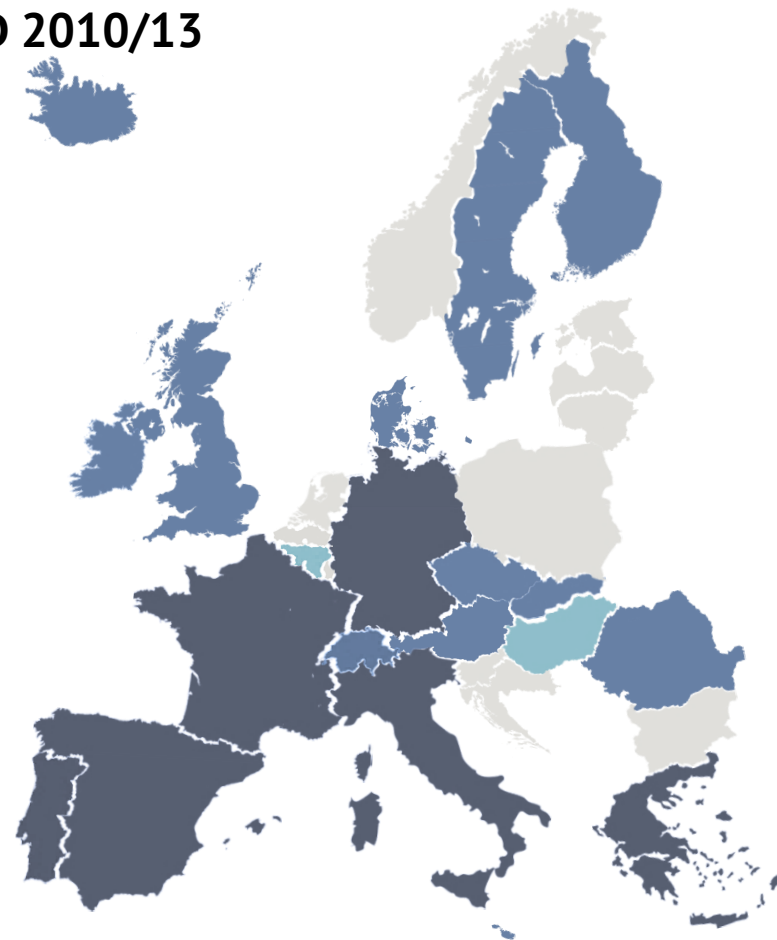




## State of implementation of the AVMSD 2010/13




### Financial investment by private broadcasters in independent European works

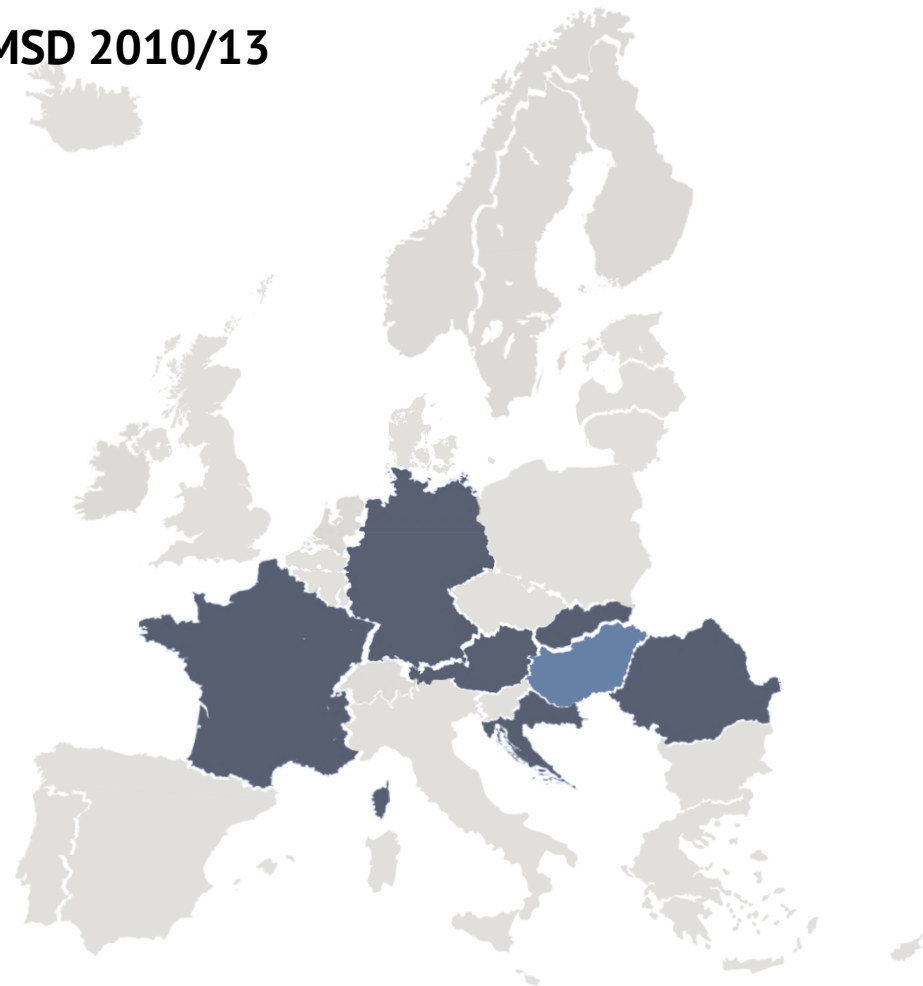
-  Mandatory
-  Optional (or quota)
-  Optional (or levy)
-  No obligation



# State of implementation of the AVMSD 2010/13

## Levies on public broadcasters

-  Mandatory
-  Optional
-  No obligation



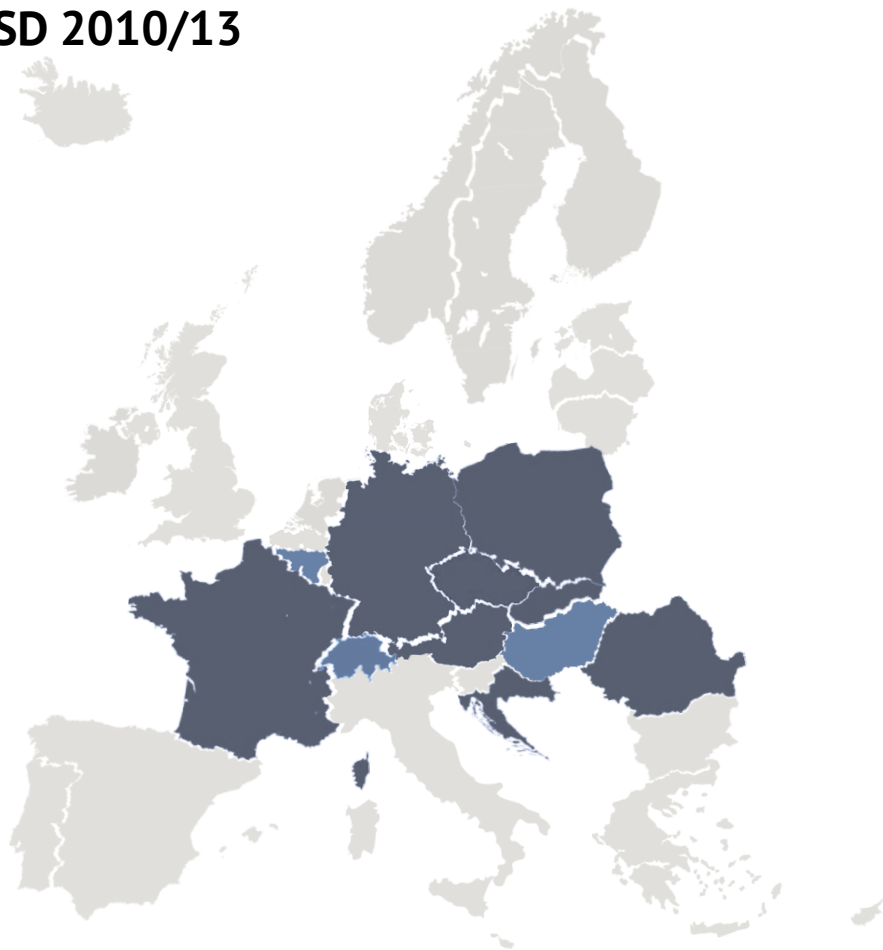
# State of implementation of the AVMSD 2010/13

## Levies on private broadcasters

 **Mandatory**

 **Optional**

 **No obligation**



# Promotion of European works – VoD (Art. 13)



Minimum  
share in  
catalogues

+

Prominence



Including targeting services

Financial contribution:

- Production
- Direct investments
- National funds

## Under the previous Directive of 2010

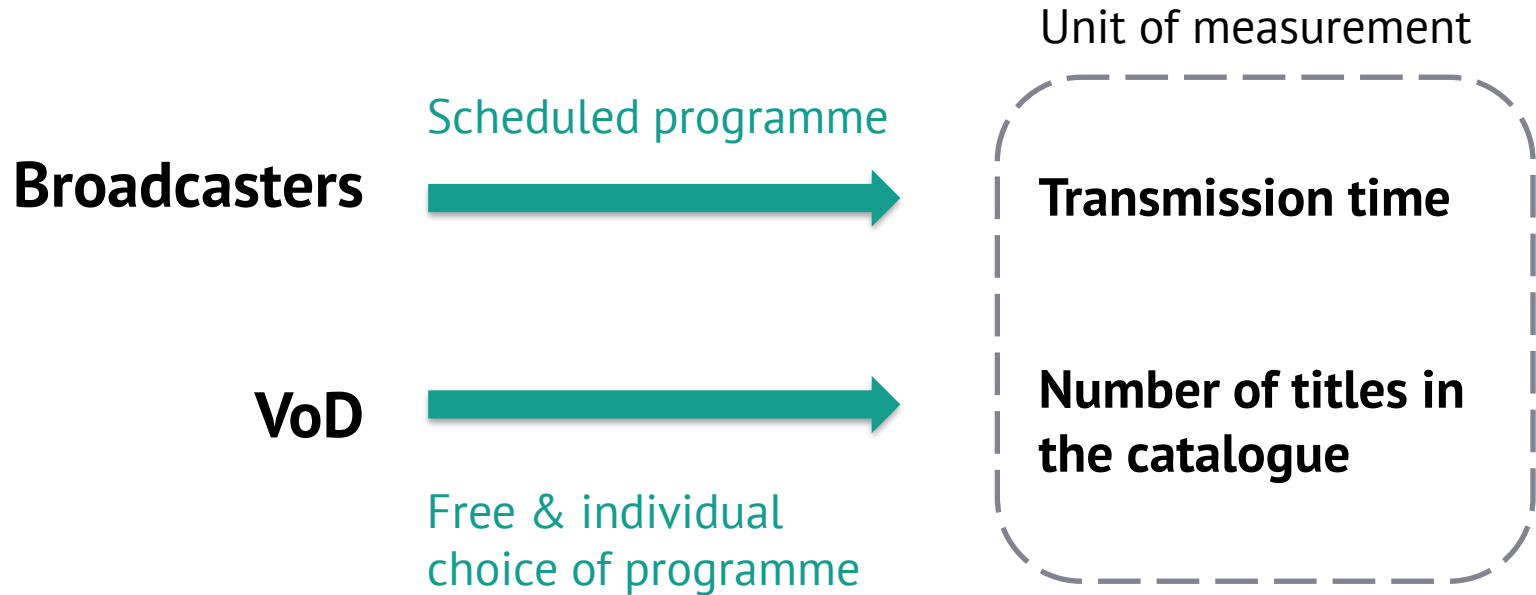
- Financial contribution to production/rights acquisition in European works
- Share of European works in VOD catalogues
- Prominence obligation

## Promotion of European works – VoD (Art. 13)

### **Commission's Guidelines on :**

- a) the calculation of the share of European works in the catalogues of on-demand providers
- b) the definition of 'low audience' and 'low turnover' for the purposes of exemptions to the obligations concerning the promotion of European works.

# Calculation of the share of European works (1/2)



# Calculation of the share of European works (2/2)

- What constitutes a **title** ?
  - Feature and TV films : **one film** = one title
  - Series: **one season** = one title
  
- Calculated on **what**?
  - **National catalogue**
  
- Calculated **when** ?
  - **At every point time or**
  - **On average over a pre-determined period**

# Exemption for low audience and low turnover (1/2)

## ■ Low turnover

**Threshold of annual turnover**

< EUR 2 million

**Determination of the turnover**

- Recommendation 2003/361/EC concerning the definition of micro, small and medium sized enterprises
- Size of the audiovisual market (< 1% of the overall revenue)



## Determination of low audience for VOD (2/2)

- SVOD ➤ active paying subscribers
- TVOD ➤ unique customers/unique accounts
- AVOD ➤ unique visitors

### Calculation

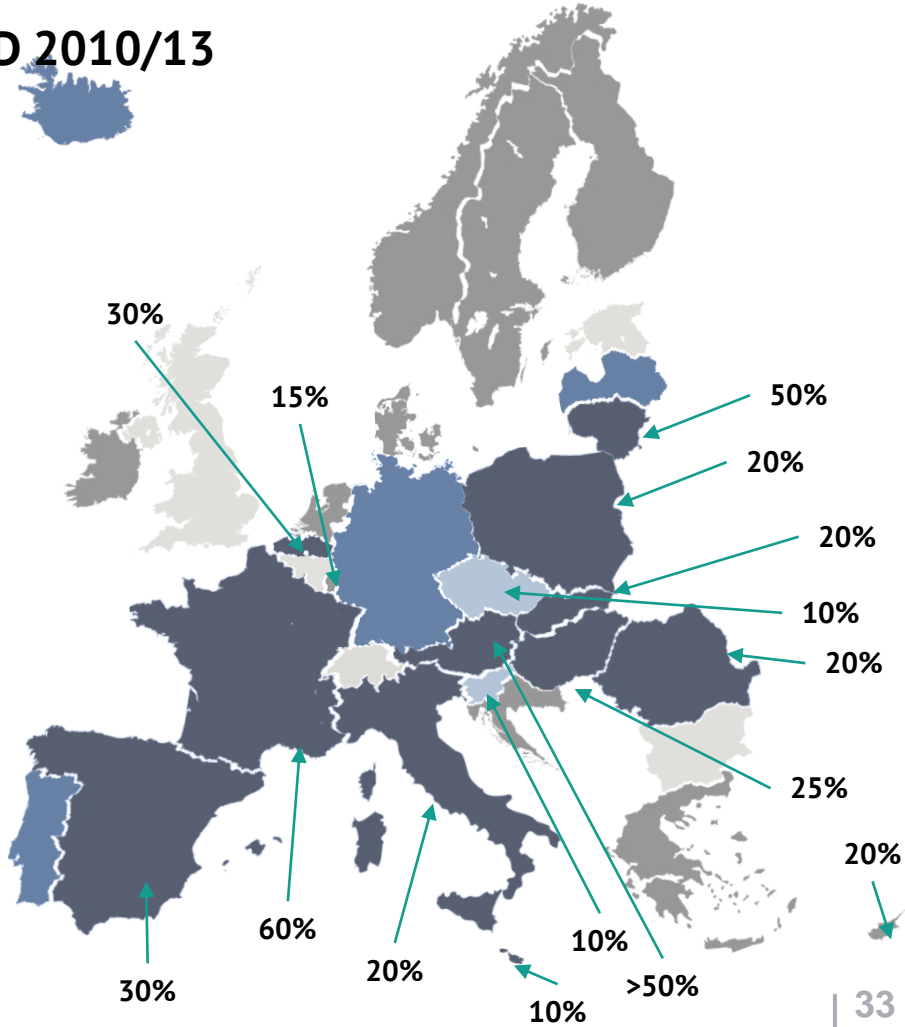
**Share:**  $\text{Nbr of user} / \text{Total nbr of users of similar VOD services} \times 100$

**Threshold:** Less than 1% in a given Member State

# State of implementation of the AVMSD 2010/13

## Quota obligation on VOD services





- Mandatory with a specified quota
- Mand. without a specified quota
- Optional (or investment)
- General obligation
- No obligation

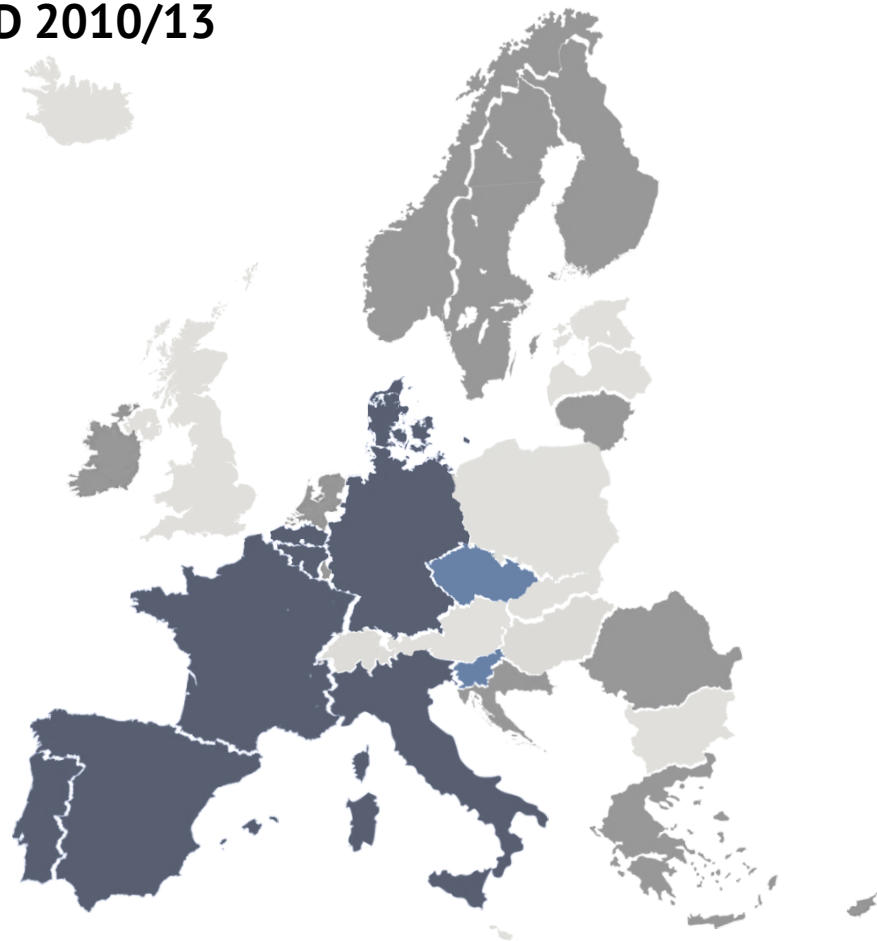


# State of implementation of the AVMSD 2010/13

## Level of financial investment by public VOD services in European works

*Direct contribution to production or acquisition of rights*

-  **Mandatory Investment**
-  **Optional (or quota)**
-  **General obligation**
-  **No obligation**

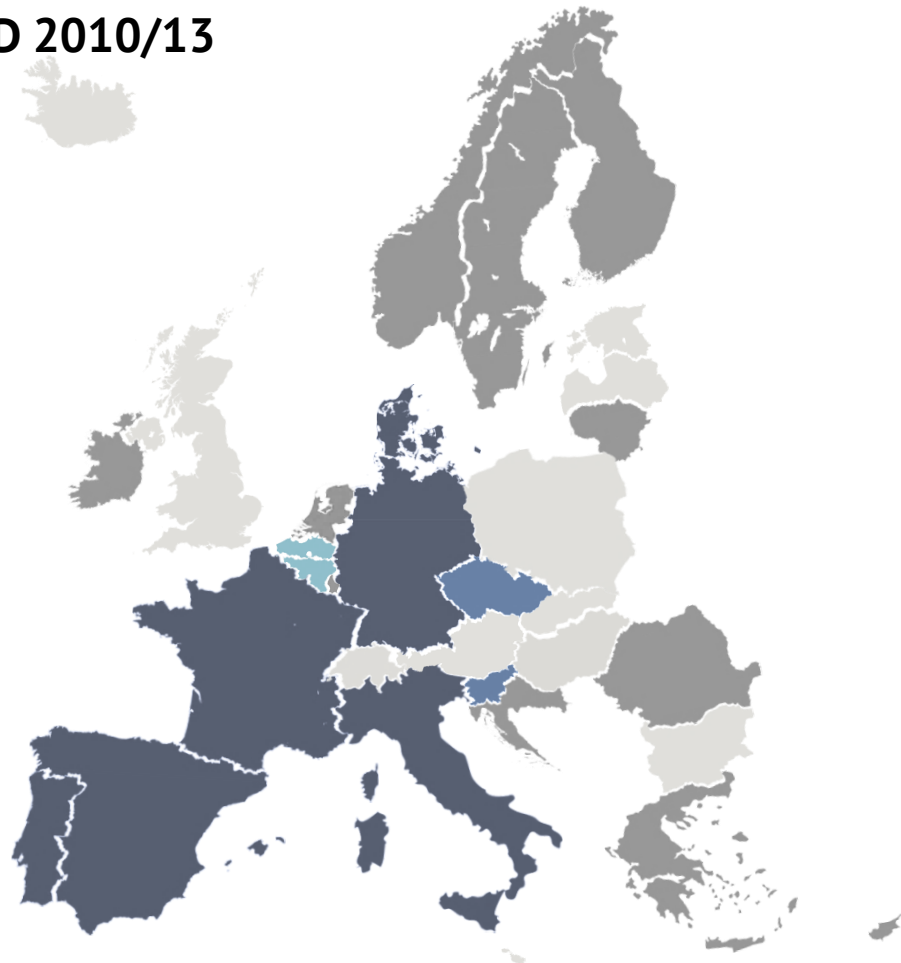


# State of implementation of the AVMSD 2010/13

## Level of financial investment by private VOD services in European works

*Direct contribution to production or acquisition of rights*




-  **Mandatory Investment**
-  **Optional (or quota)**
-  **Optional (or levy)**
-  **General obligation**
-  **No obligation**

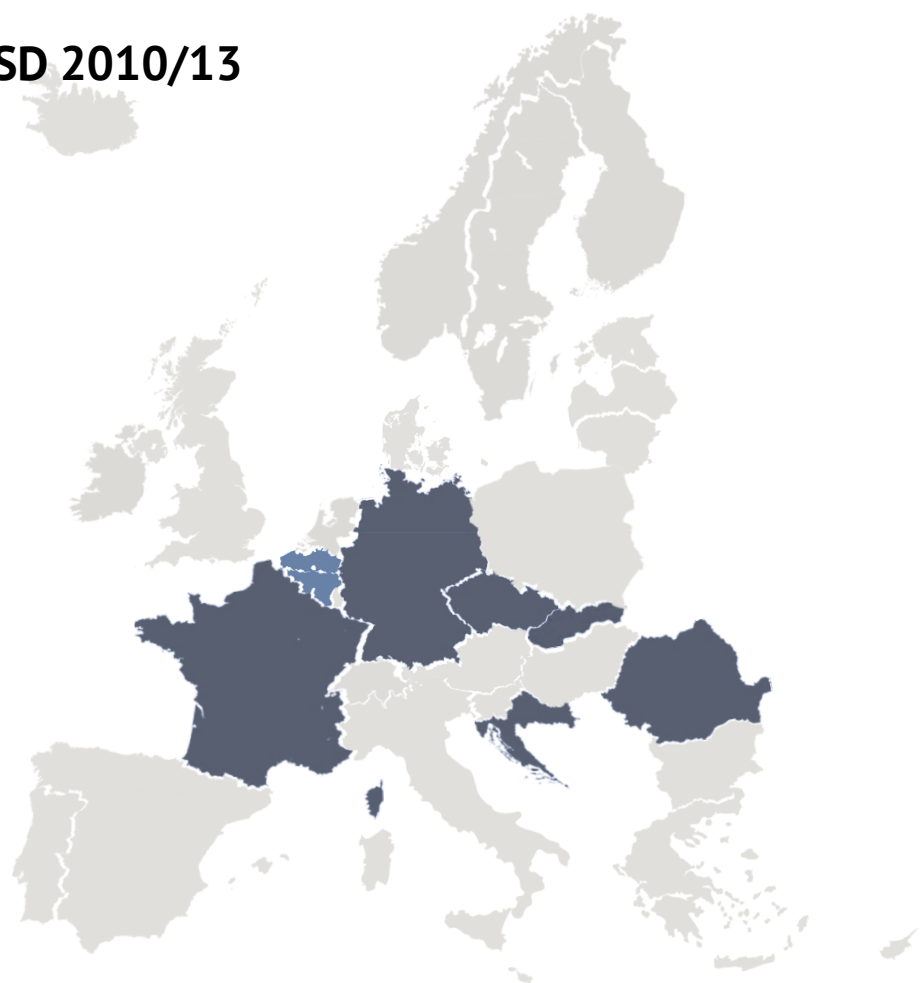


# State of implementation of the AVMSD 2010/13

## Levies on VOD services




*Indirect contribution to production  
or acquisition of rights*

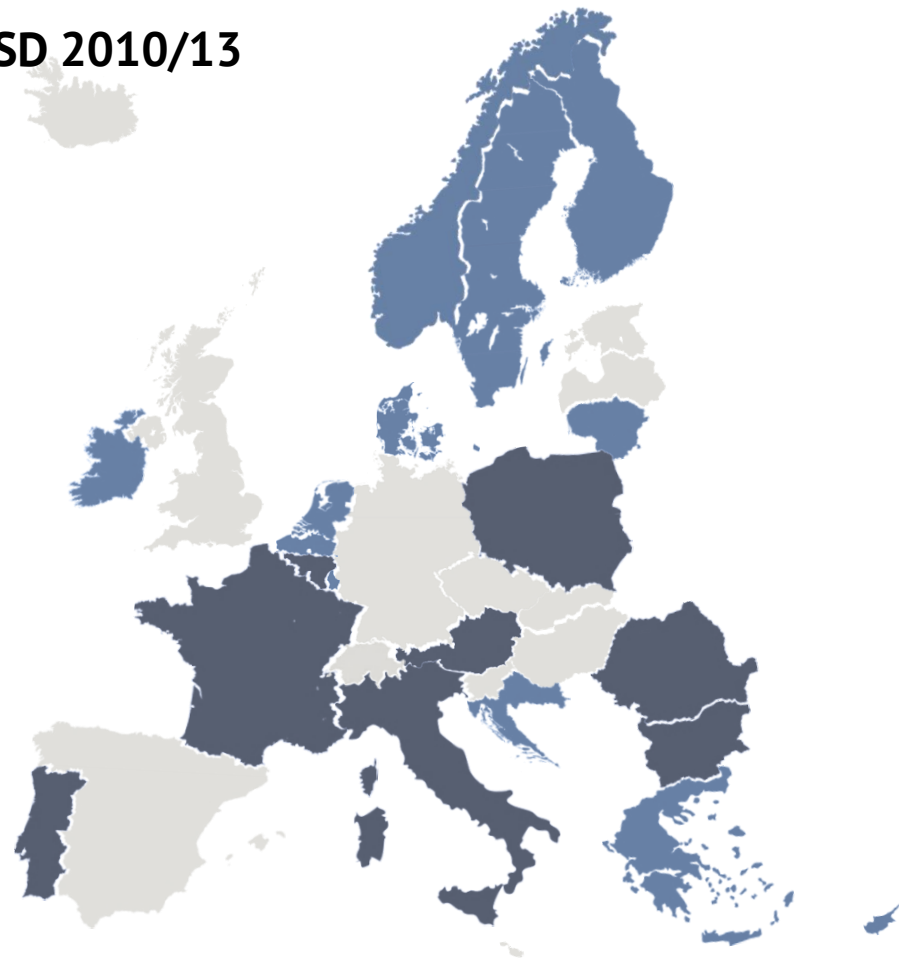
-  **Mandatory (both public and private)**
-  **Optional (or investment for private)**
-  **No obligation**



# State of implementation of the AVMSD 2010/13

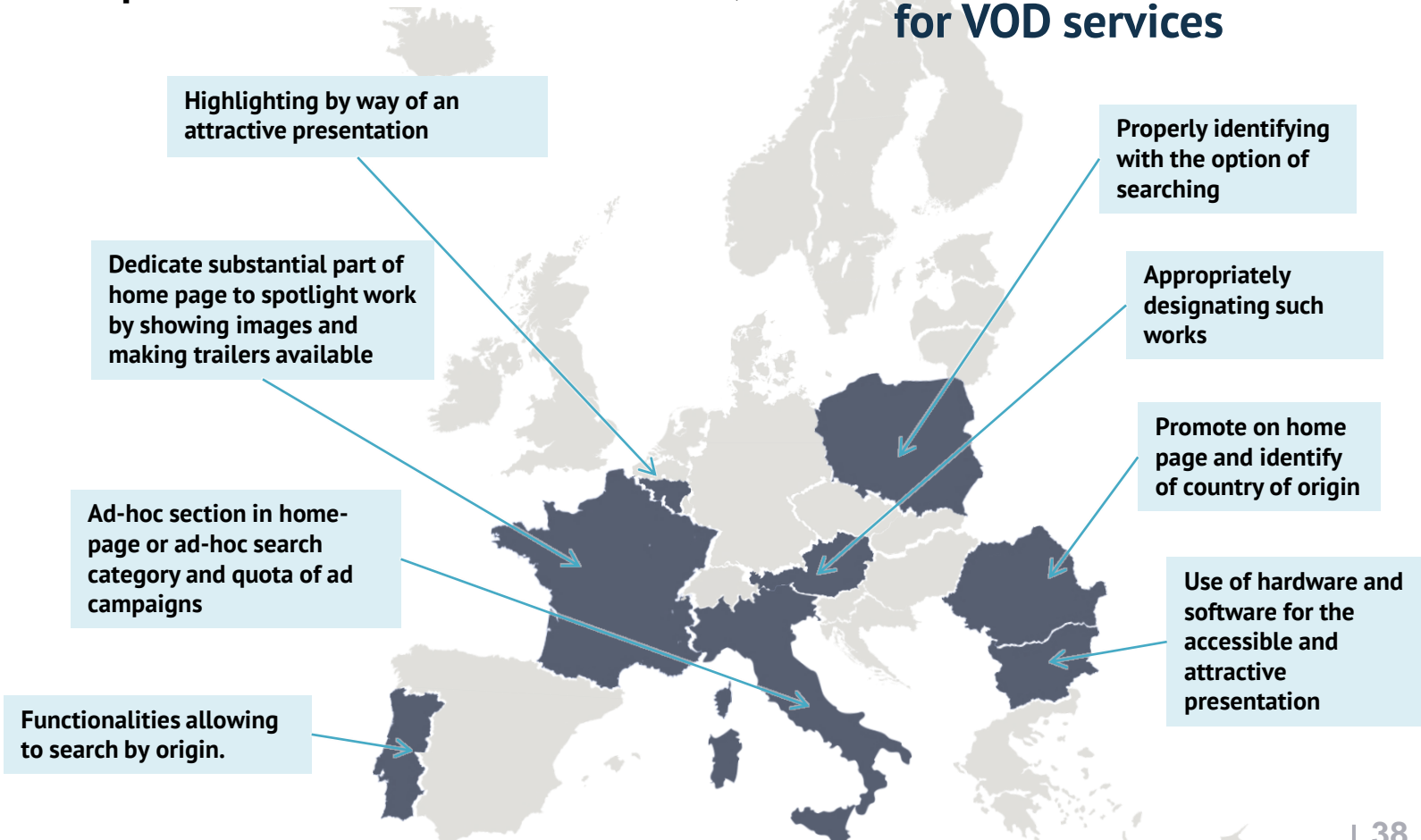
## Prominence obligation on VOD services

-  Specific obligation
-  General obligation
-  No obligation



# State of implementation of the AVMSD 2010/13

# Prominence measures for VOD services

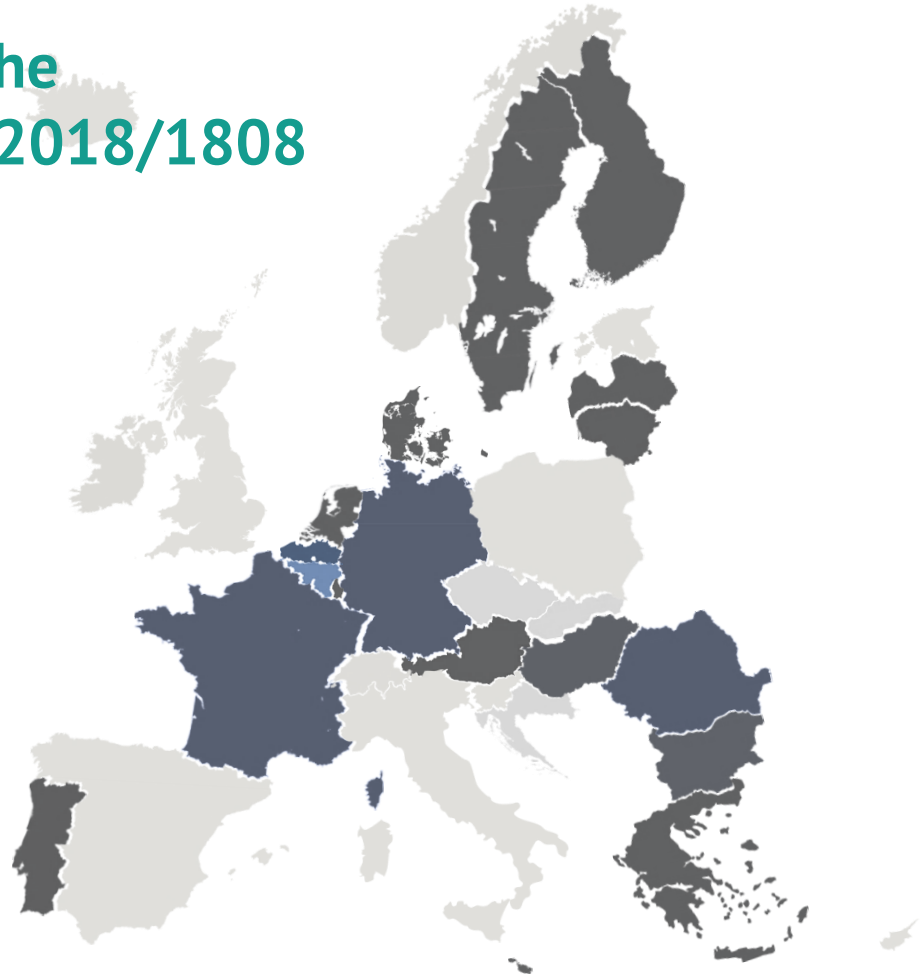


# Current state of the art of the implementation of AVMSD 2018/1808

## Quota obligation on VOD services

■ 30%

■ 30 – 40 %



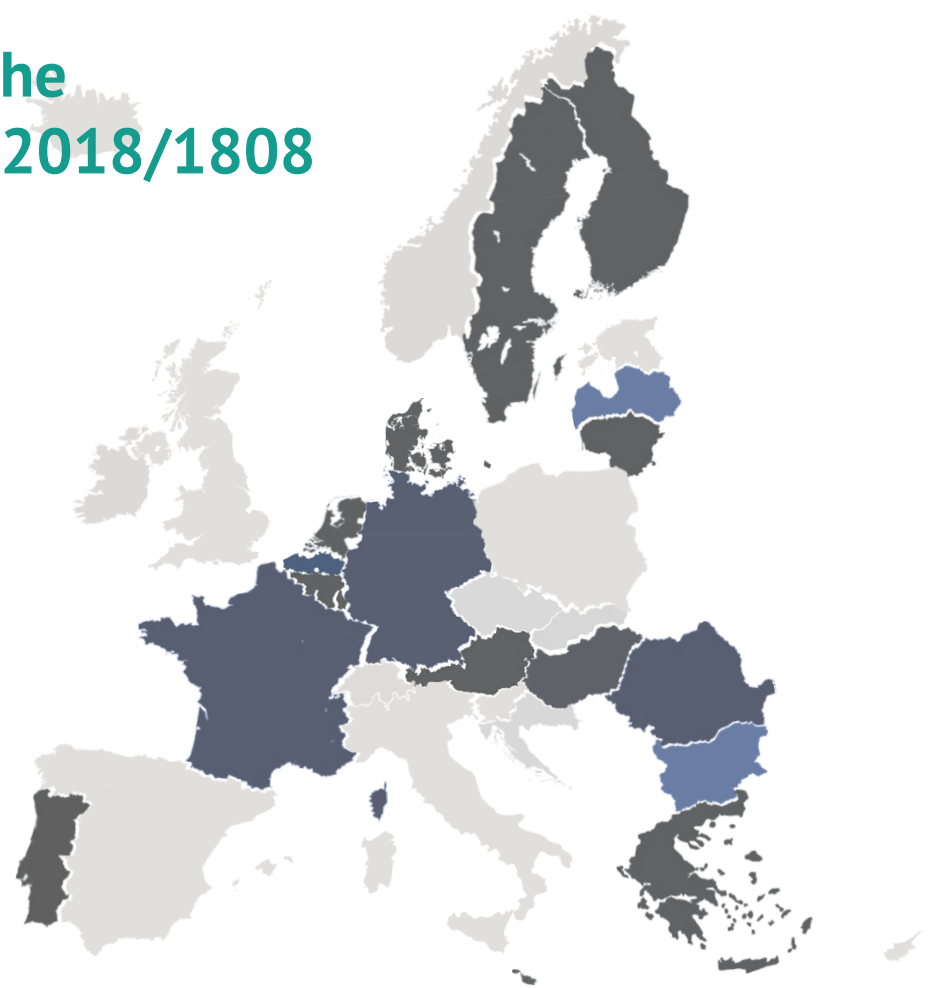


# Current state of the art of the implementation of AVMSD 2018/1808

## Prominence obligation on VOD services

■ General

■ Specific

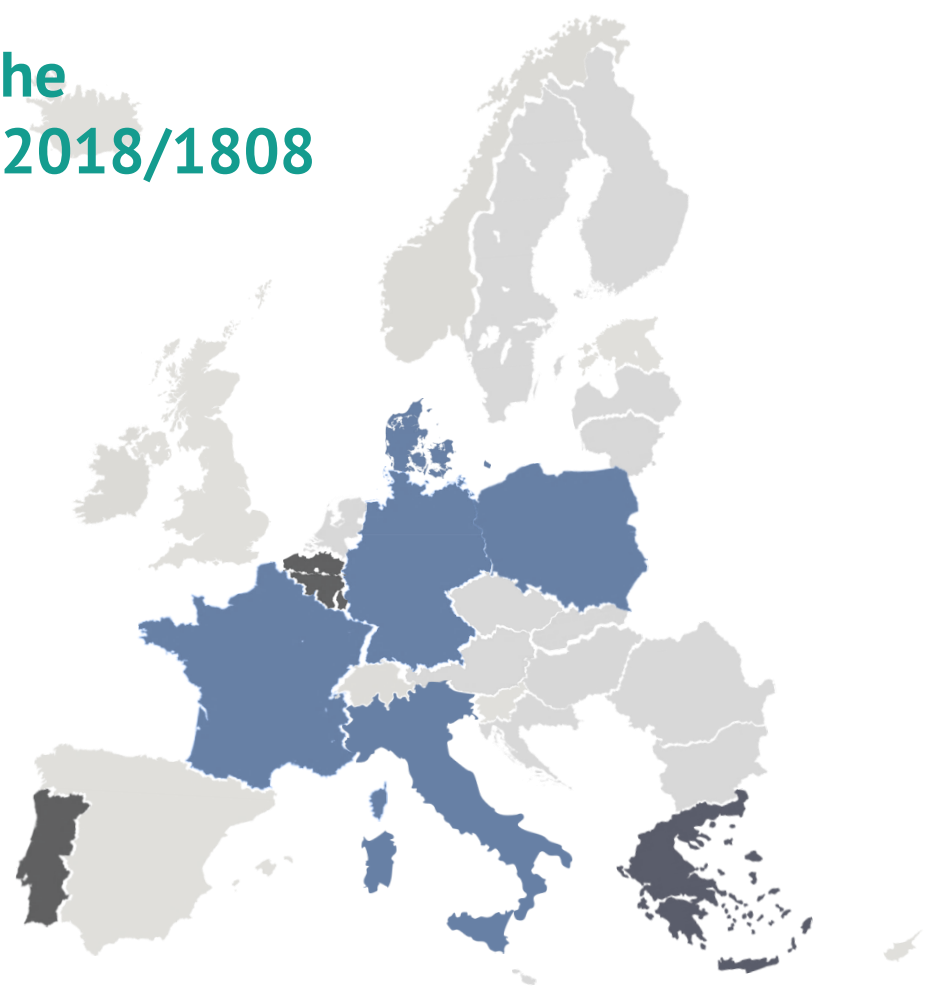


# Current state of the art of the implementation of AVMSD 2018/1808

## Financial investment obligation on VOD services

*Including non-domestic targeted services*

-  **Mandatory**
-  **Pre-existing obligation (prior to AVMSD 2018)**
-  **No specific obligation**



### 3. Role and responsibilities of video-sharing platforms



# Definition – what is a **video-sharing platform**?

- Content **created by users**
- **VSP** provider has **no editorial responsibility**
- the **organisation of the stored content** is determined by the provider of the service
- by **automatic means** or **algorithms**
- Including by **displaying, tagging** and **sequencing**

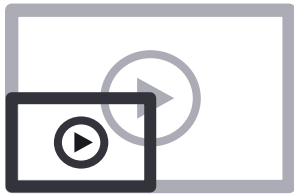


Video-sharing platforms

# Categories of video-sharing platforms

- (1) Services **whose principal purpose** is to provide programmes, user-generated videos, or both, to the general public;
- (2) Services of a **wider nature** offering, amongst other elements, a **dissociable section whose principal purpose** is to provide programmes, user-generated videos, or both, to the general public;
- (3) Services for which **an essential functionality** is devoted to the provision of programmes, user-generated videos, or both, to the general public.

# Definition – what is an essential functionality?



- From the **platform's** point of view: the **nature and specific role** that user-generated videos and programmes play in the service offered by the platform

- From the **users'** point of view: the **degree of exposure** to AV content



## Essential functionality – Categories of indicators

- 1 The relationship between the audiovisual content and the main economic activity or activities of the service;
- 2 Quantitative and qualitative relevance of the audiovisual content available on the service;
- 3 Monetisation of, or revenue generation from, the audiovisual content
- 4 The availability of tools aimed at enhancing the visibility or attractiveness of the audiovisual content.

# Establishment and jurisdiction over VSPs

A VSP is under the jurisdiction of the Member State where it is:



- effectively **established** on its territory, **Art. 28a(1)**, or
- deemed to be established, by having a **parent** or a **subsidiary** undertaking or **part of a group with an undertaking established** on its territory, **Art. 28a(2)**.

Member States shall keep a list of VSP providers established on their territory, **Art. 28a (6)**.



# Obligations of VSPs (1/2)

VSPs shall take appropriate measures for the protection of:



## Minors – Art. 28b(1)(a)

- Content which may impair their physical, mental or moral development



## The public – Art. 28b(1)(b)-(c)

- Content inciting to violence or hatred
- Content which constitutes a criminal offence under EU law

## Obligations of VSPs (2/2)



### VSPs and commercial communications – Art. 28b(2)

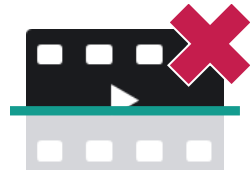
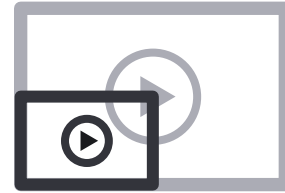
Commercial communications marketed, sold or arranged:

- by VSP providers → take appropriate measures to comply with Article 9(1)
- by users → take appropriate measures considering VSPs **limited control** over content

Fulfilling these obligation should be accomplished by using appropriate measures...

## VSPs **limited liability**

Such measures shall take into account the **size** of the VSP and the **nature** of the service, and ...



... “shall not lead to any **ex-ante control** measures or **upload-filtering** of content”...

... in accordance with Art. 15 of the **e-commerce Directive**.

# Appropriate measures to be implemented by VSPs include:



**Terms and conditions**



**Indication of commercial communications in UGC**



**Reporting or flagging content**



**Feedback and transparency**



**Age-verification systems**



**Content rating**



**Parental control**



**Complaint resolution**



**Media literacy**



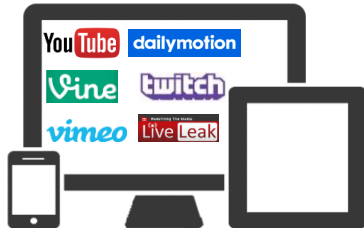
**Protection of minors' data**

## 4. Media Literacy Measures



# The AVMSD introduced legal obligations for:

- **Member states**, to promote and take measures for the development of media literacy skills **Art. 33a**



- **Video sharing platforms**, to put in place effective media literacy measures and tools and to raise users' awareness of those measures and tools **Art. 28b (3) (j)**

# General obligation to take and promote media literacy measures **Art. 33a**

*Entrusted to :*

- National regulatory authorities
- Governmental entities (Ministry of Culture, of Education, etc)
- Media service providers (Broadcasters and/or VSPs)
- Specific entity created for this purpose

# Next steps

- Reporting 2 years after the implementation and then every 3 years
- Evaluation 19 December 2026



# Thank you!

For any queries:  
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