



Independent producers in the revised AVMS Directive

Series Mania Forum, 31 August 2021

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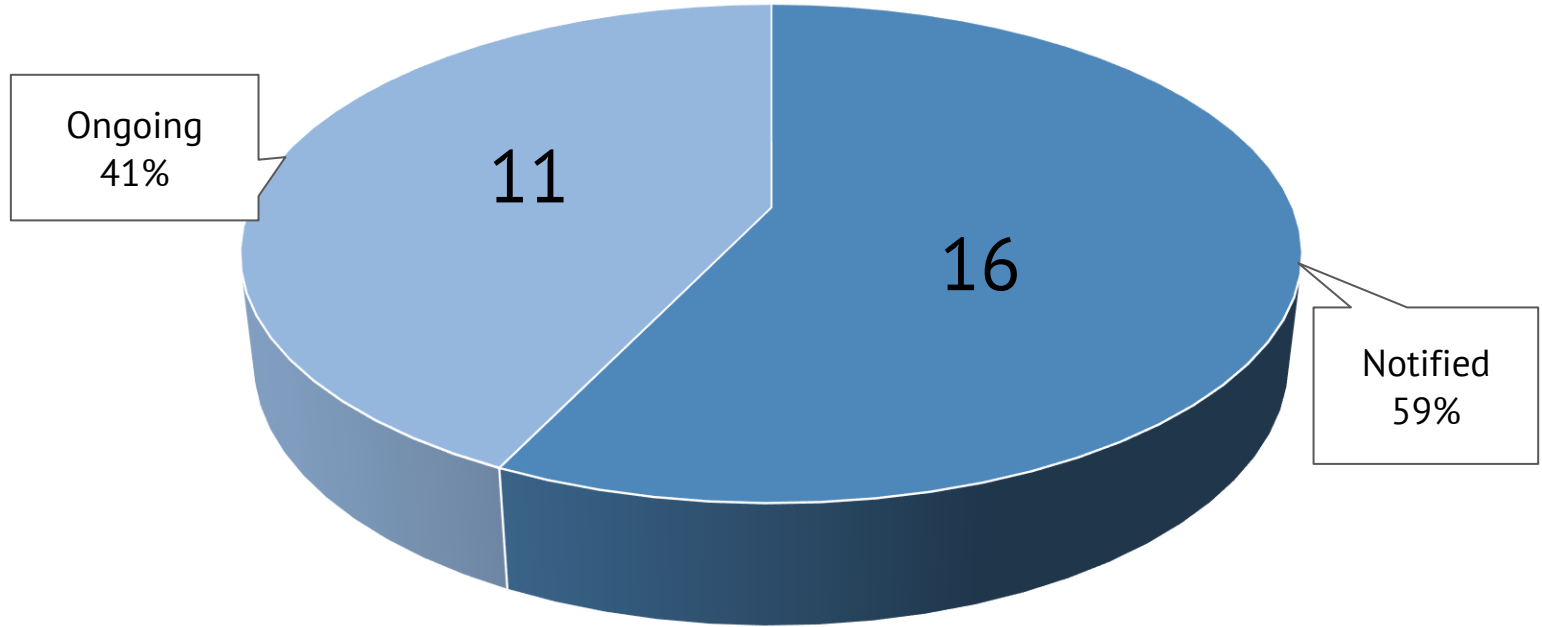
Head of Department for legal information
European Audiovisual Observatory



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



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**

Movement of SERVICES



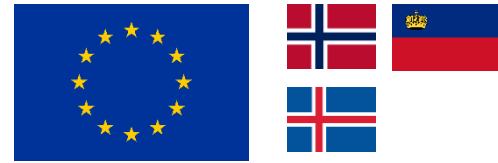
Audiovisual Media Services Directive (AVMSD)

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

Movement of SERVICES



Broadcasting



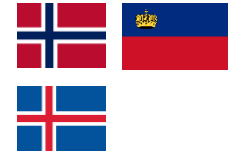
- **ONE Ofcom licence** for services receivable in the UK and in 22 EEA countries that have signed and ratified the European Convention on Transfrontier Television (ECTT)
- **SEVEN licences** from EEA countries not party to the ECTT.

- 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

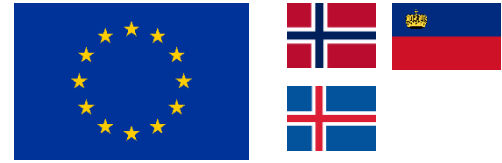


- **National licence** for services receivable in the UK from 22 EEA countries that have signed and ratified the European Convention on Transfrontier Television (ECTT)
- **Ofcom licence** for services from EEA countries not party to the ECTT.

- 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

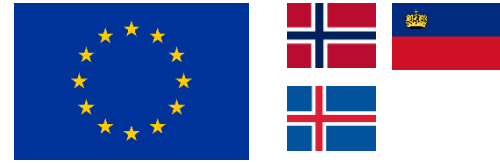


- **Video on demand (VOD) services are not covered by the scope of the ECTT**
- UK providers will need to **comply with AVMSD jurisdiction rules** as “third country” if they provide VOD services in an EEA country

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**

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)

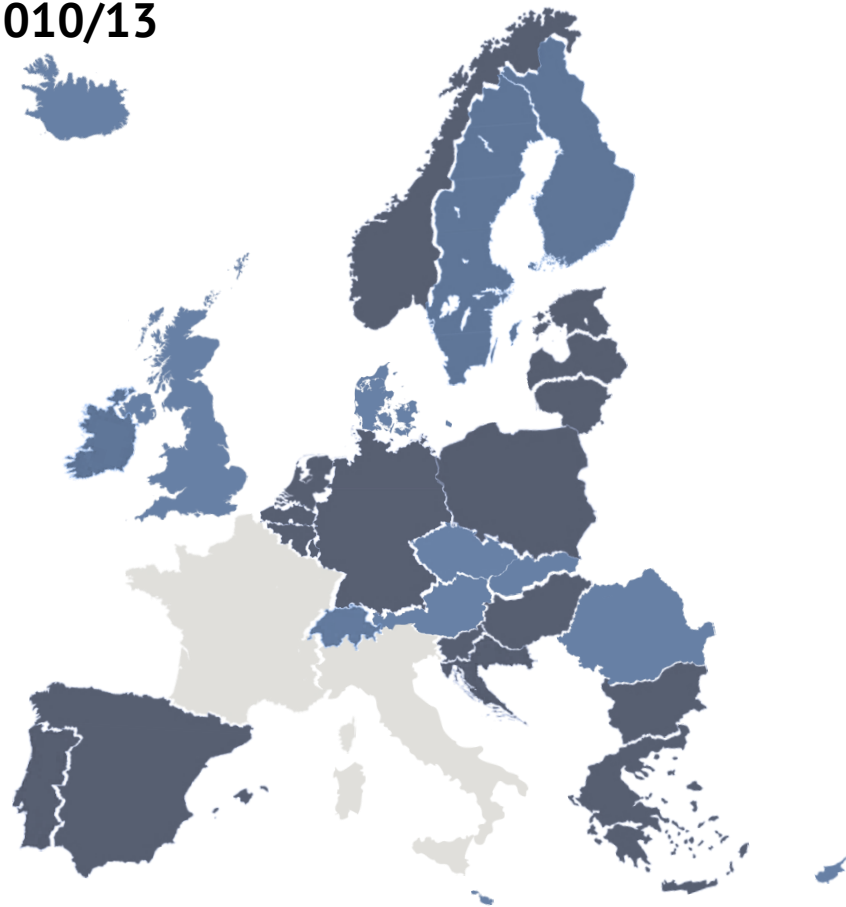
 60%



State of implementation of the AVMSD 2010/13




Quota of broadcasting time for independent European works

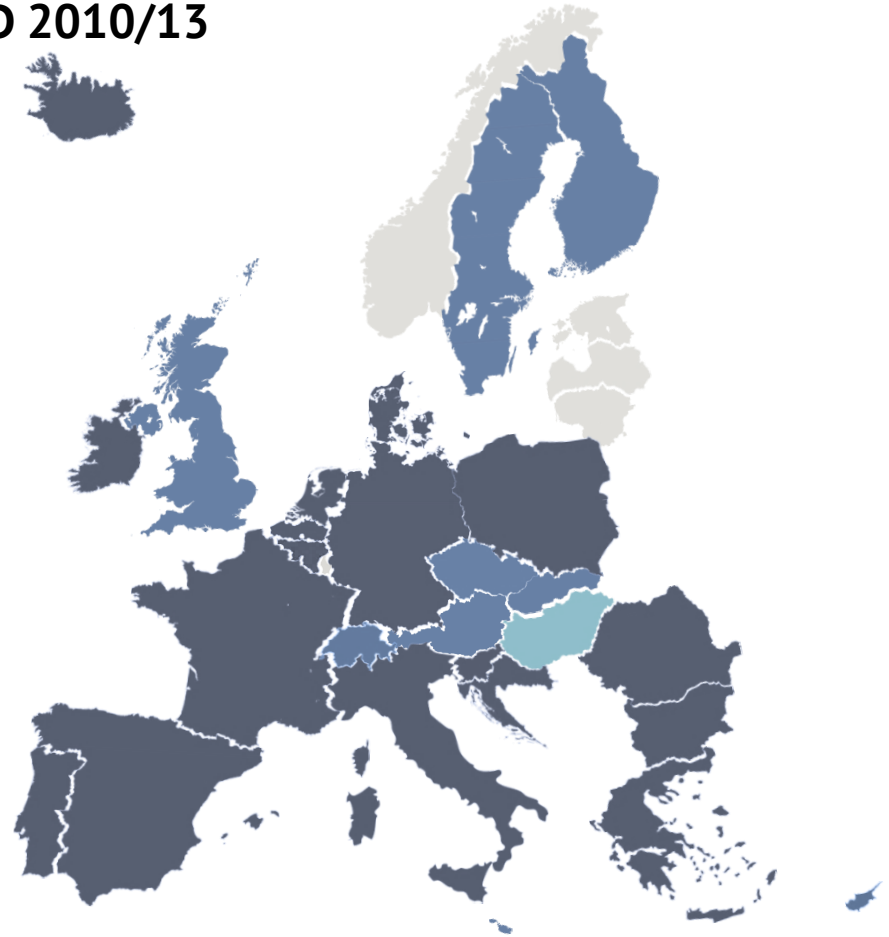
-  Mandatory
-  Optional
-  No obligation



State of implementation of the AVMSD 2010/13





Financial investment by PSB in independent European works

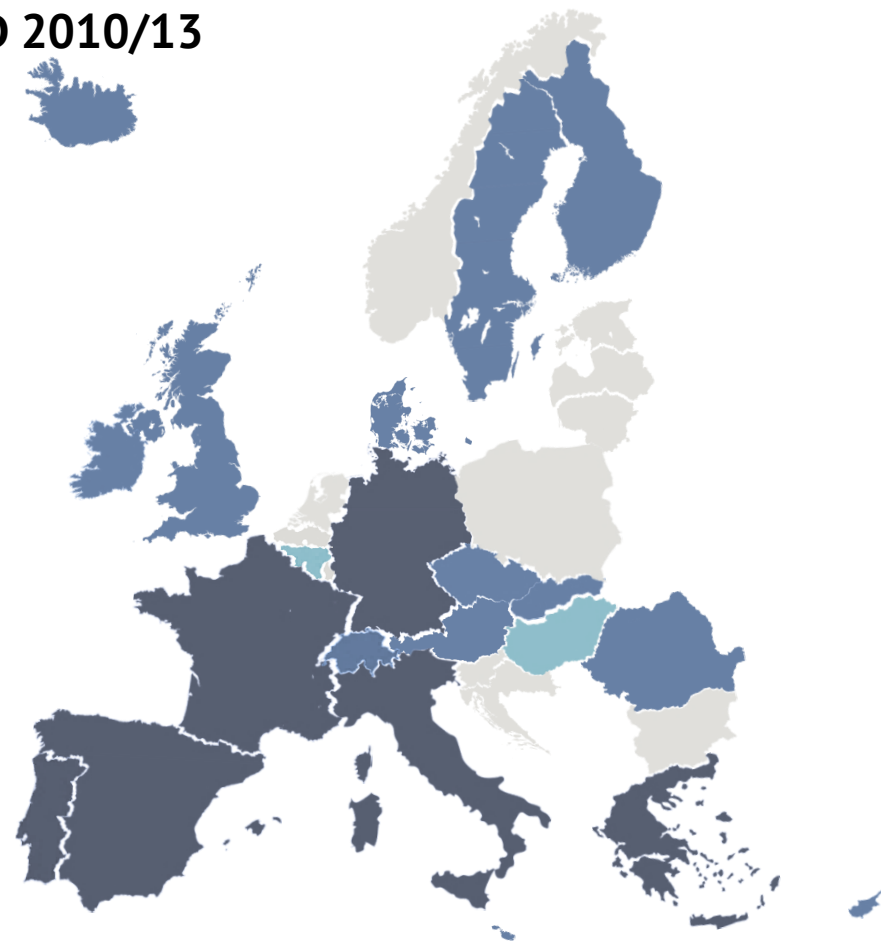
-  Mandatory
-  Optional (or quota)
-  Optional (or levy)
-  No obligation



State of implementation of the AVMSD 2010/13




Financial investment by private broadcasters in independent European works

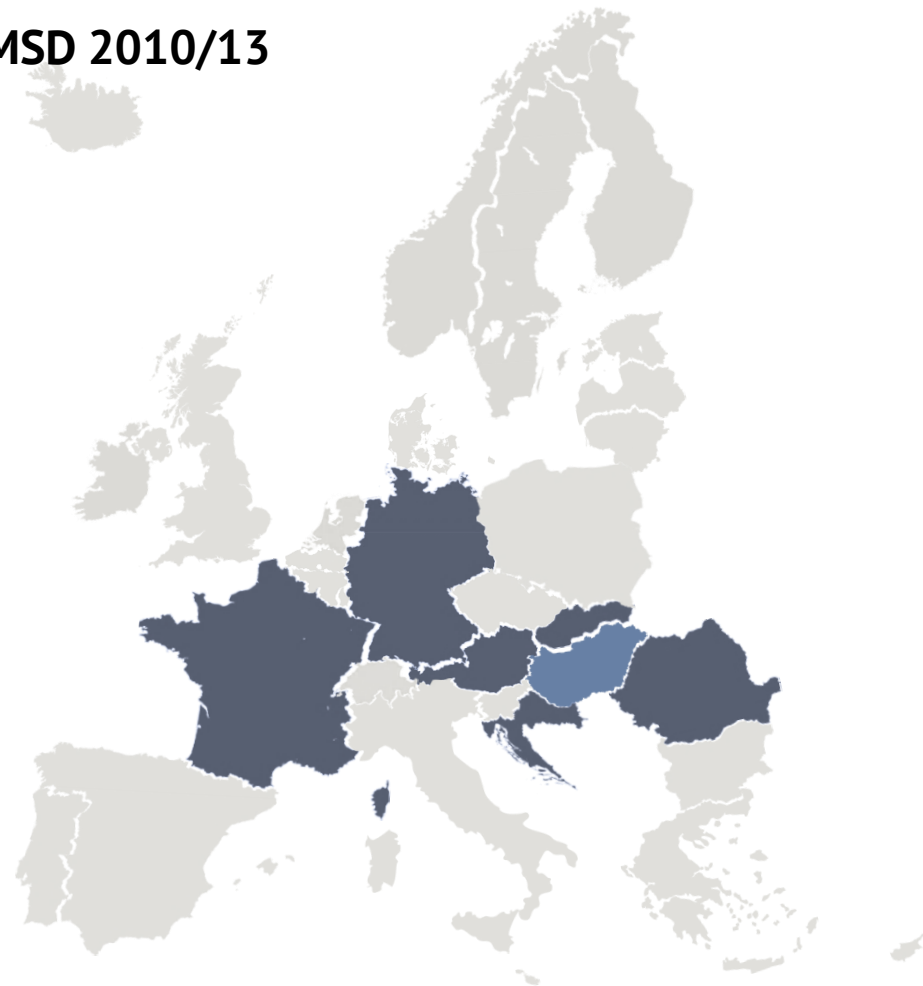
-  Mandatory
-  Optional (or quota)
-  Optional (or levy)
-  No obligation



State of implementation of the AVMSD 2010/13

Levies on public broadcasters

-  **Mandatory**
-  **Optional**
-  **No obligation**



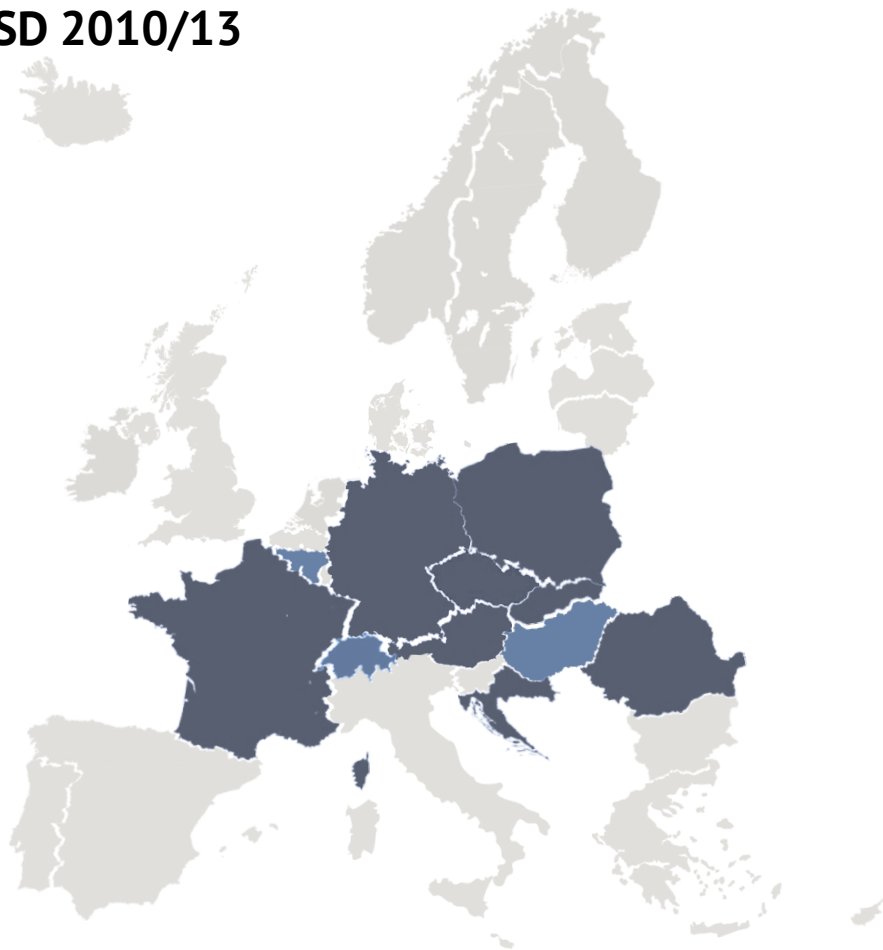
State of implementation of the AVMSD 2010/13

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

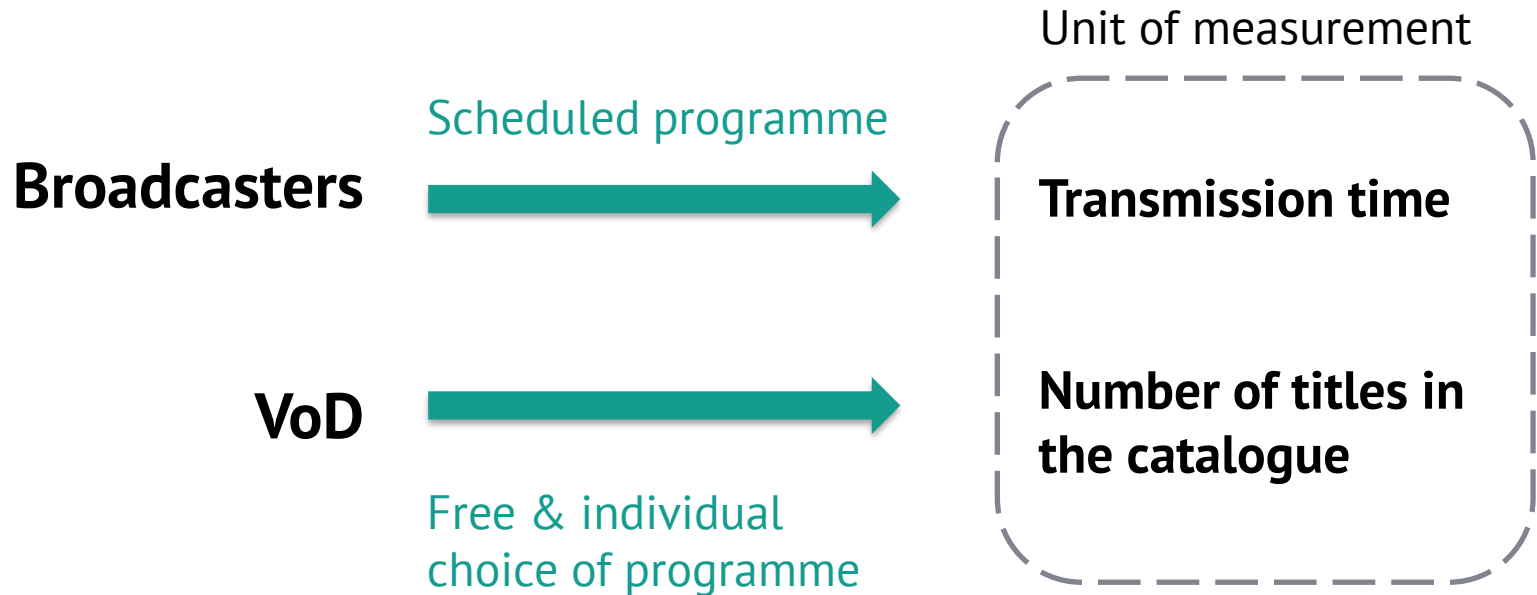
- Financial contribution to production/rights acquisition in European works
- Share of European works in VOD catalogues
- Prominence obligation

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

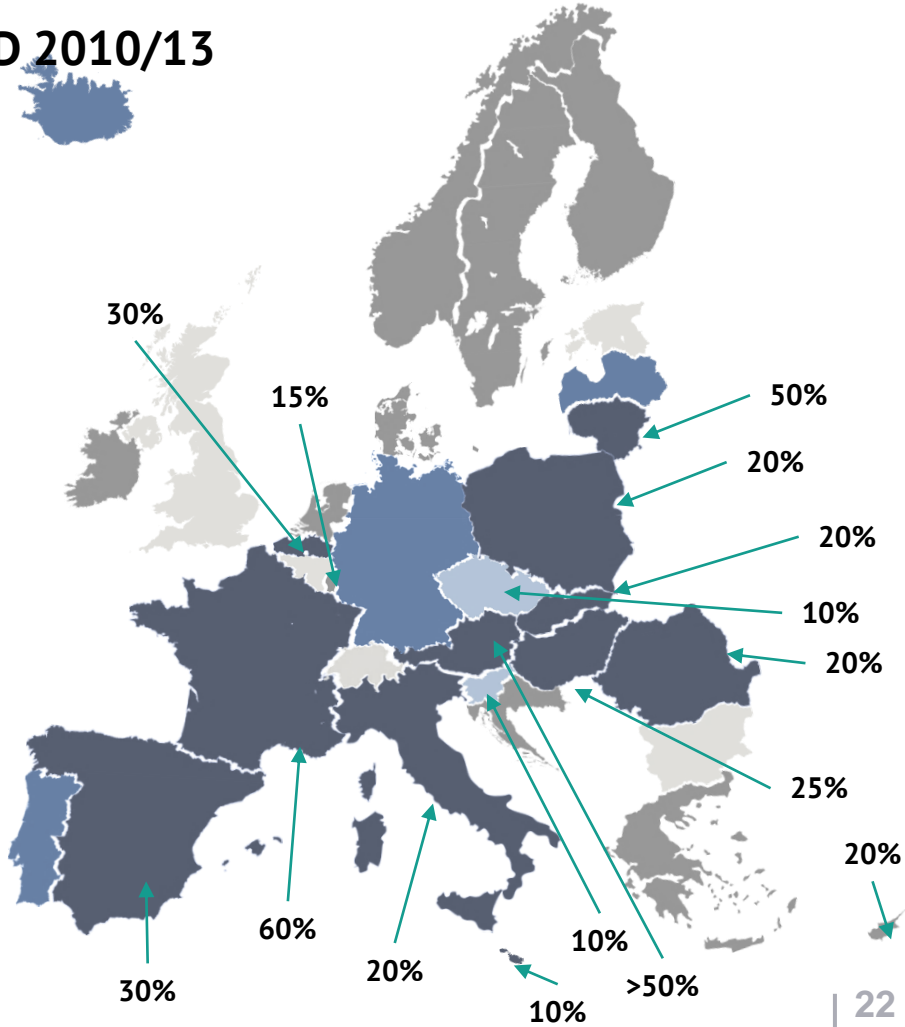
Share: $\text{Nbr of user} / \text{Total nbr of users of similar VOD services} \times 100$

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

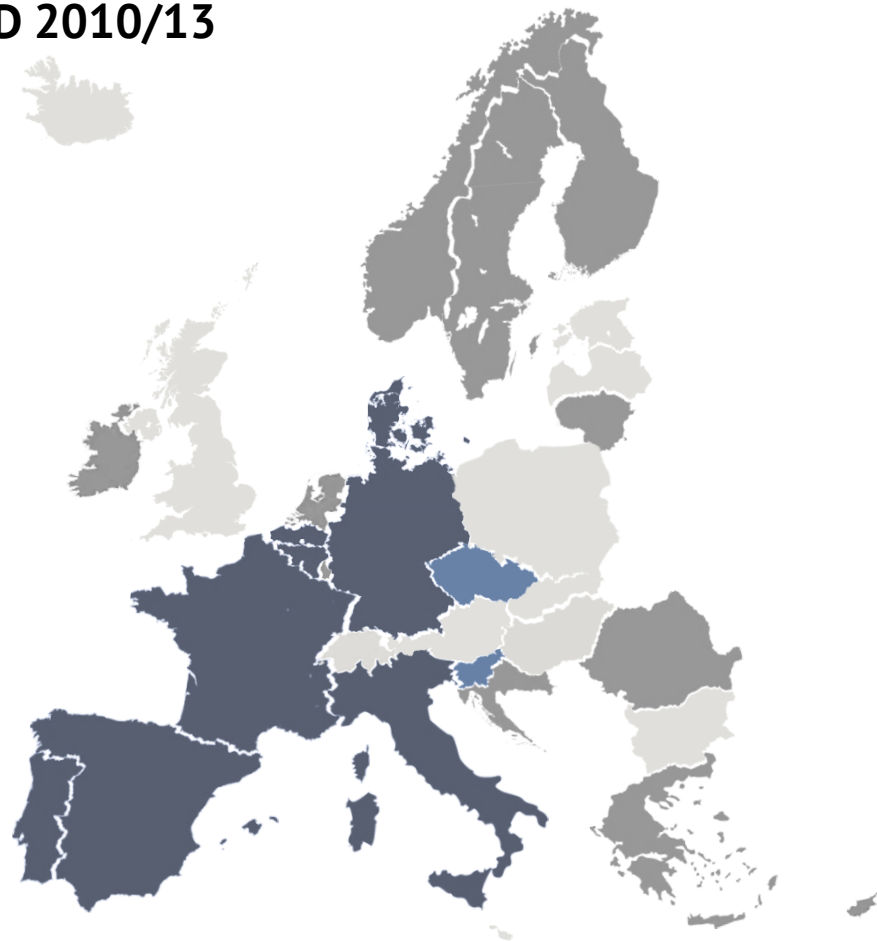


State of implementation of the AVMSD 2010/13

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**

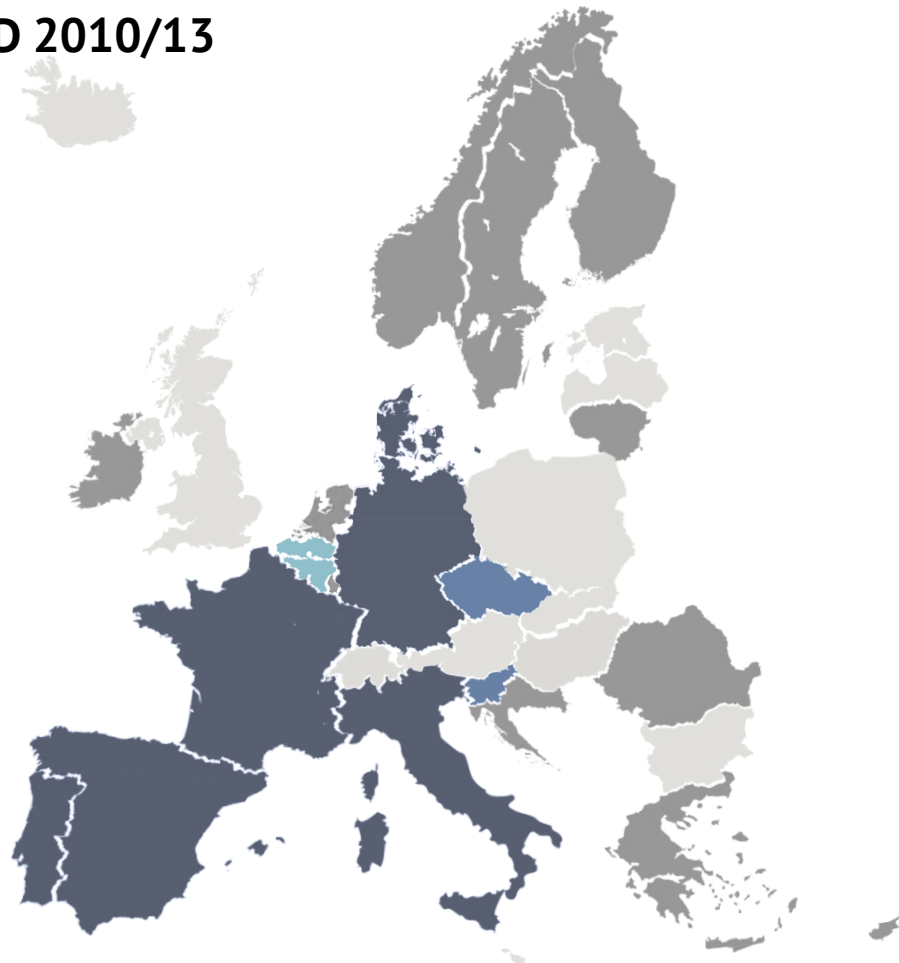


State of implementation of the AVMSD 2010/13

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**

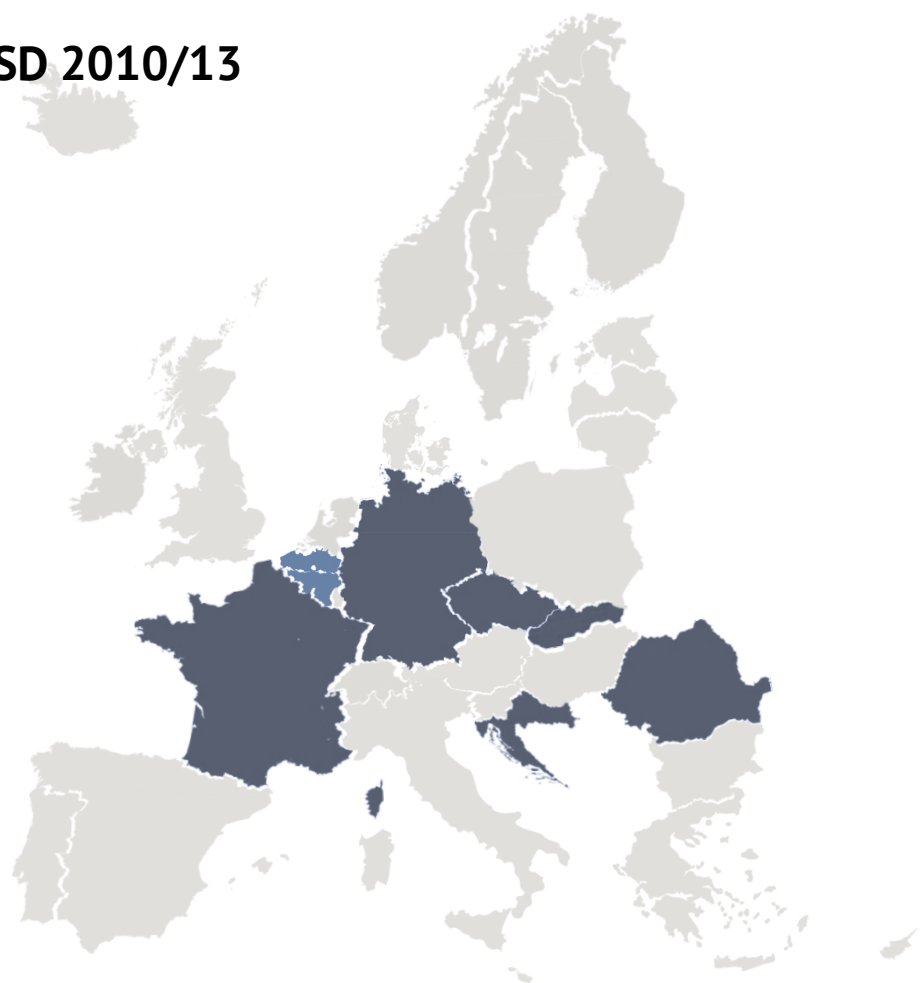


State of implementation of the AVMSD 2010/13

Levies on VOD services




*Indirect contribution to production
or acquisition of rights*

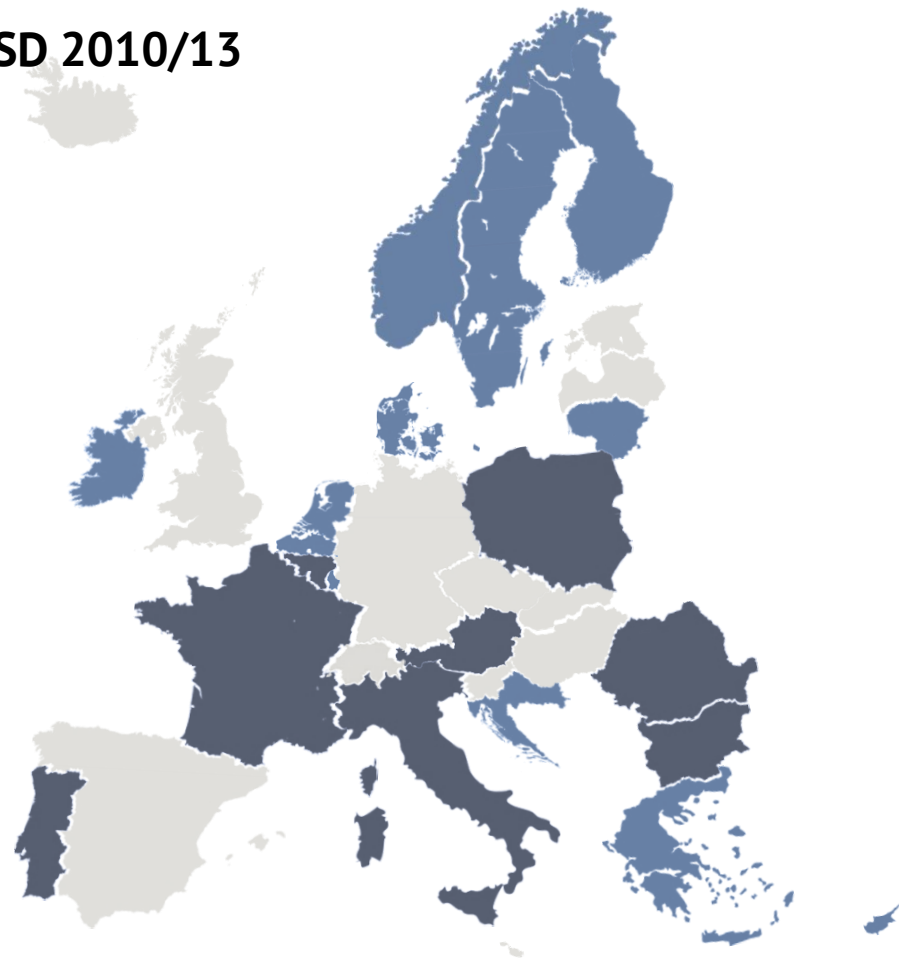
-  **Mandatory (both public and private)**
-  **Optional (or investment for private)**
-  **No obligation**



State of implementation of the AVMSD 2010/13

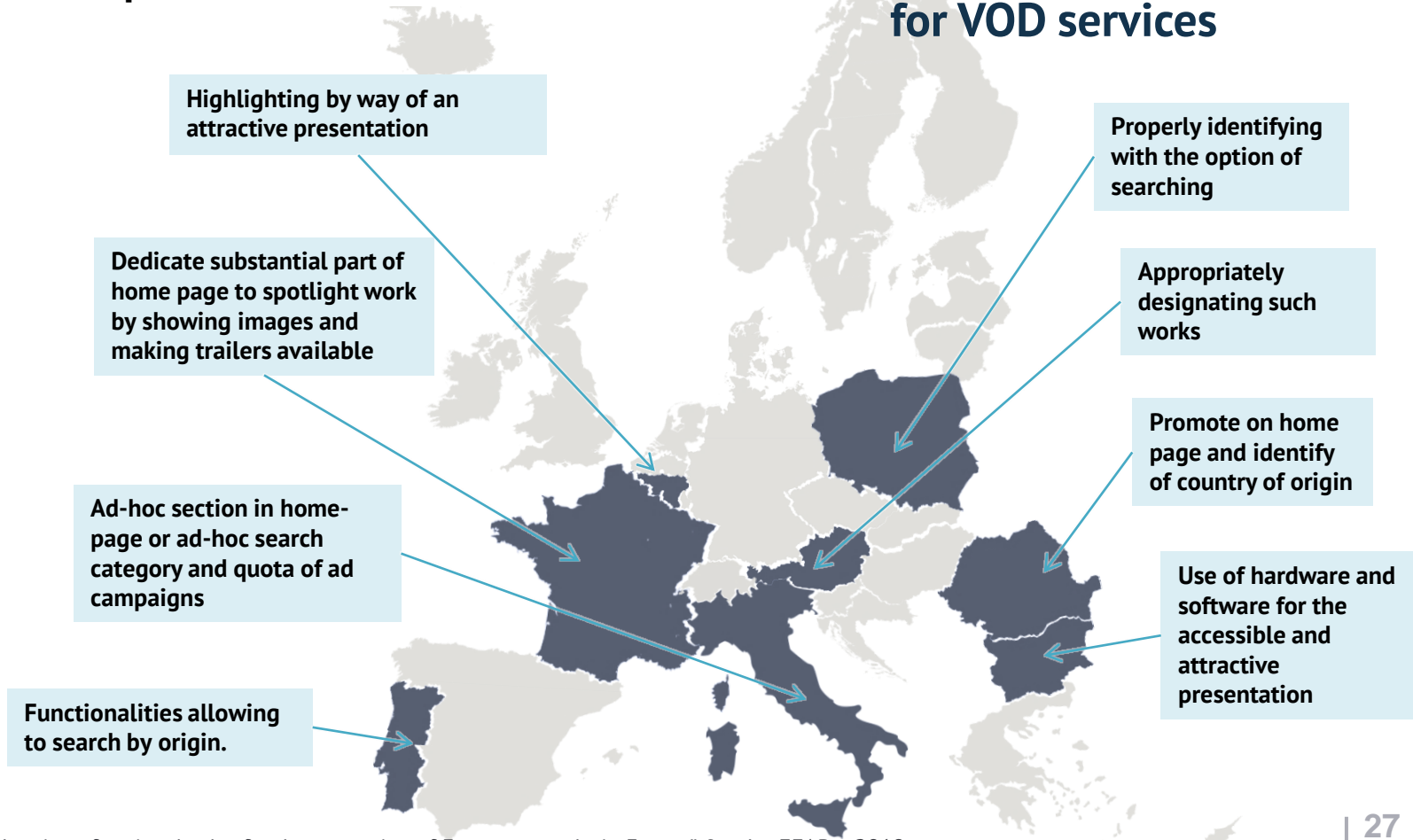
Prominence obligation on VOD services

-  Specific obligation
-  General obligation
-  No obligation



State of implementation of the AVMSD 2010/13

Prominence measures for VOD services

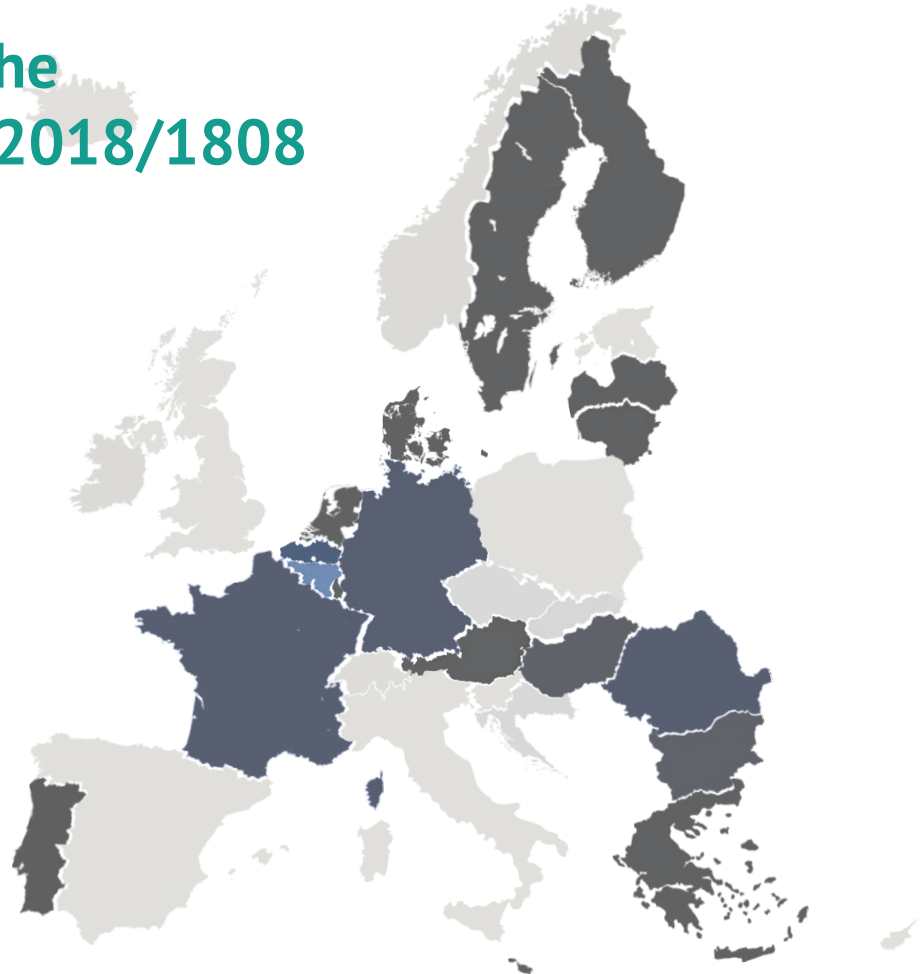


Current state of the art of the implementation of AVMSD 2018/1808

Quota obligation on VOD services

■ 30%

■ 30 – 40 %

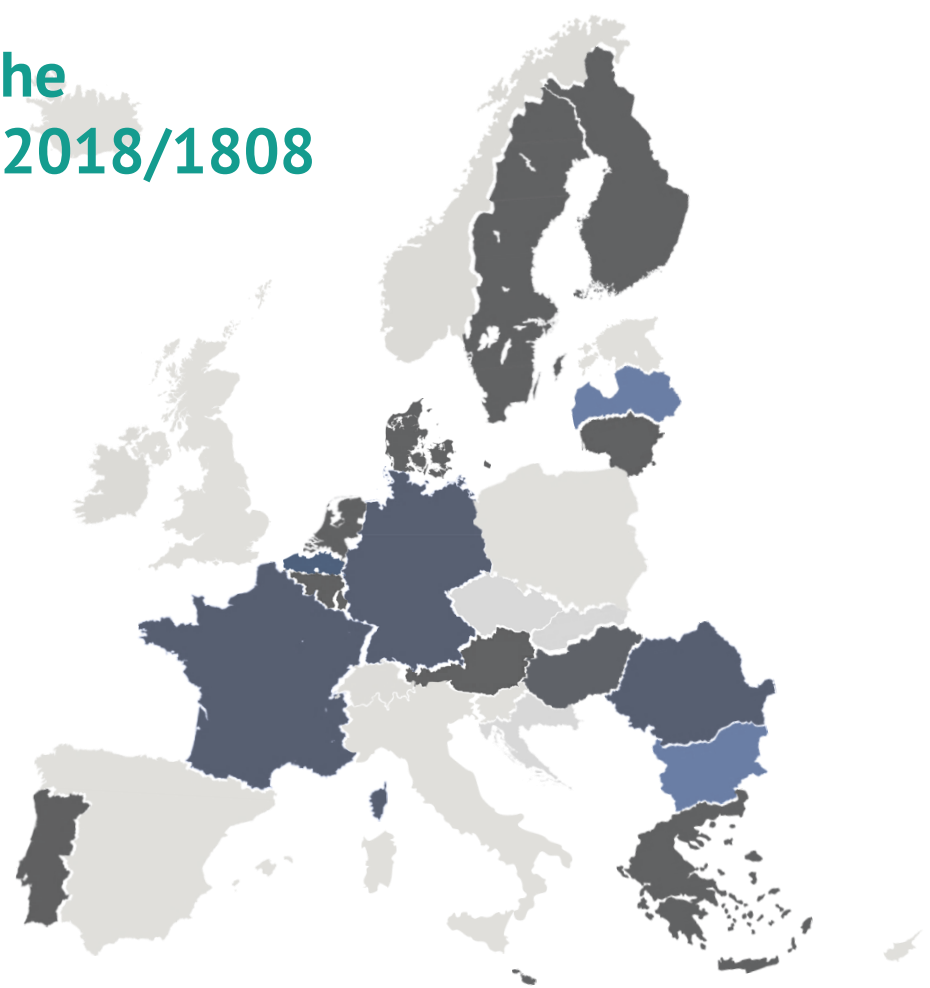


Current state of the art of the implementation of AVMSD 2018/1808

Prominence obligation on VOD services

■ General

■ Specific

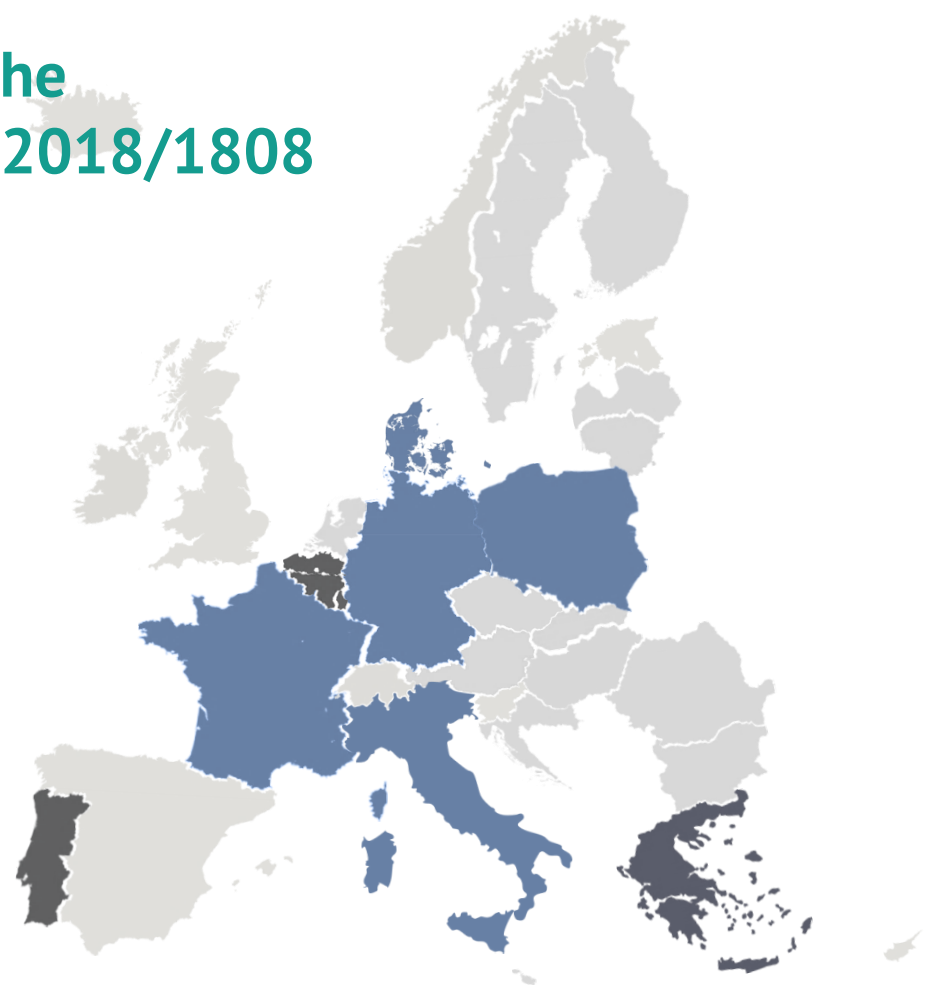


Current state of the art of the implementation of AVMSD 2018/1808

Financial investment obligation on VOD services

Including non-domestic targeted services

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



Next steps

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

Thank you!

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