



5 National legal summaries

5.1. AT – Austria – National legal summary²²

5.1.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.1.1.1 Audiovisual works

There is no such definition in the Austrian legislation.

Article 2 Z 3 of the Audiovisual Media Services Law (AMD-G) only defines the audiovisual media service, referring to the programme in its entirety and not to a single piece of work:

“Audiovisual media service: a service within the meaning of Articles 56 and 57 TFEU under the editorial responsibility of a media service provider whose main purpose is the provision of programmes for the information, entertainment or education of the general public via electronic communication networks (Article 3 Z 11 TKG 2003). These include television programmes and audiovisual media services on demand.”

A similar definition can be found for public service broadcasters in Article 1a, Z 1 ORF Act (ORF-G):

“For the purposes of this Act, “audiovisual media service” means a service offered under the editorial responsibility of the Austrian Broadcasting Corporation or one of its subsidiaries by means of communication networks (Article 3 Z 11 TKG 2003, BGBl. I Nr. 70) whose main purpose is to provide consignments for the information, entertainment or education of the general public.”

²² The factsheet on Austria incorporates the feedback received from Stefan Rauschenberger (RTR/KommAustria) during the checking round with the national regulatory authorities.

Additionally, Article 2 Z 16 of the AMD-G and Article 1a Z 2 of the ORF-G define the so-called “Fernsehprogramm”, which refers to a TV service, in terms of a channel as a whole, as follows:

“Television programme: an audiovisual broadcasting programme within the meaning of Article 1, paragraph 1, of the Federal Constitutional Law on Securing the Independence of Broadcasting, Federal Law Gazette No. 396/1974, or another audiovisual media service distributed over electronic communications networks by a media service provider for the simultaneous reception of broadcasts provided on the basis of a transmission schedule.”

“Television programme” means an audiovisual media service provided for the simultaneous reception of broadcasts on the basis of a transmission schedule.”

Finally, Article 2 Z 30 of the AMD-G and Article 1a Z 5 of the ORF-G define the term “Sendung” (programme), which means a film or TV show, as part of a programme.

“Broadcast: a single, self-contained part of a television programme or on-demand audiovisual media service consisting of a sequence of moving images with or without sound and forming part of a broadcast schedule or catalogue produced by a media service provider.”

“Broadcast (a) in television programmes and on-demand services, a single, self-contained and time-limited sequence of moving images, with or without sound, which, in the case of television programmes, form part of a transmission schedule or, in the case of on-demand services, of a catalogue.”

5.1.1.2 Cinematographic works

Article 4 of the Federal Law on copyright in literary and artistic works and related rights defines cinematographic works as follows:

“Works of cinematic art (cinematographic works) under this law are motion picture works whereby the events and actions that form the object of the work may be displayed either visually only or visually and audibly at the same time, irrespective of the nature of the process employed to create or perform the work.”

5.1.1.3 Domestic works

There is no such definition in the Austrian legislation.

5.1.1.4 European works

The definition of “European works” is found in Article 2 Abs Z 12, Z 13 and Z 14 of the AMD-G relating only to private-commercial media services, not to public ones:

“12. European works:

a) works originating in member states;



*b) works originating in European third countries party to the European Convention on Transnational Television of the Council of Europe and fulfilling the conditions of item 1m;
c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements.*

The application of the provisions of b) and c) shall be conditional on works originating in member states not being the subject of discriminatory measures in the third country concerned.

13. The works referred to in item 12 a) and b) are works mainly made with authors and workers residing in one or more of the countries referred to in item 11 a) and b) provided that they comply with one of the following three conditions:

a) they are made by one or more producers established in one or more of those countries, or

b) the production of the works is supervised and actually controlled by one or more producers established in one or more of those countries, or

c) the contribution of the co-producers of those countries to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those countries.

14. Works that are not European works within the meaning of item 12 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 European Community 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.”

5.1.1.5 Categories included in the calculation of the share of European works

According to Article 40 Abs 1 of the AMD-G, private commercial audiovisual non-linear media services are obliged to indicate and identify European works as part of their programmes in a specific way in order to underline and emphasise this for users. Article 40 Abs 2 of the AMD-G stipulates their obligation to report annually to the regulatory authority KommAustria on the fulfilment of this duty. For failure to comply with these obligations, a financial penalty of EUR 4 000 is prescribed. Article 40 of the AMD-G does not contain any further definitions, such as which categories of works it refers to or not (news, sports, documentaries, etc.).

Regarding linear media services, according to Articles 50-53 AMD-G:

“Channel Quotas

Article 50. In the framework of practical feasibilities and by applying reasonable means, television broadcasters shall see to it that the main portion of the transmission time of their television channels that does not consist of news, sports reports, games and shows, advertising, teletext and teleshopping is reserved to broadcasting European works.

Promoting Independent Channel Producers

Article 51. In the framework of practical feasibilities and by applying reasonable means, television broadcasters shall see to it that a minimum of 10 per cent of the transmission time of their television channels that does not consist of news, sports reports, games and shows or advertising and teletext, or alternatively a minimum of 10 per cent of their budget means, is reserved for programming channels to broadcast European works by producers who are independent of television broadcasters. This portion shall be reached gradually by means of suitable criteria in the areas of information, education, culture and entertainment. To this end, a reasonable share shall be reserved to more recent works, that is, works that are broadcast within a period of five years after their production.

Reporting Obligation

Article 52. Television broadcasters shall report in writing to the regulatory authority on the implementation of Article 50 and Article 51 before 30 May of every year. The regulatory authority shall communicate a summary report to the federal government before 30 June of every year.

Exemptions from the Quota Rule

Article 53. Article 50 to Article 52 shall not apply:

- 1. to the dissemination of channels if this dissemination does not exceed the boundaries of a federal province and the channels are not broadcast on a nationwide basis;*
- 2. to teleshopping, advertising, and self-promotional channels (Article 46)."*

For the public service media ORF, Article 11 of the ORF-G states that:

"(1) The Austrian Broadcasting Corporation shall ensure, as far as practicable and by appropriate means, that the major part of the transmission time of its television programmes, which does not consist of news, sports reports, game shows or advertising and teletext services, is broadcast by European works in accordance with Article 1, paragraph 1 lit. and paragraphs 2 to 4 of Directive 2010/13 / EU on the coordination of certain laws, regulations and administrative provisions of the member states relating to the provision of audiovisual media services (Audiovisual Media Services Directive); No. L 95 of 15.4.2010, S 1, remains reserved. This proportion should be achieved gradually in the fields of information, education, culture and entertainment on the basis of appropriate criteria."

Table 8. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	No
European works	Yes

Source: Austrian response to European Audiovisual Observatory standardised survey

5.1.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, KommAustria)²³ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of KommAustria in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by KommAustria, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which KommAustria cooperates on this issue with the national film fund (in this case, the Österreichisches Filminstitut).²⁴

5.1.2.1 Eligible nationality of European works)

In the Austrian context, there is no legal obligation related to KommAustria's assessment of works. Furthermore, there are no by-laws or secondary legislation addressing this matter. KommAustria only has to assess this question with regard to public service media. This is in fact done by the public service broadcaster's annual report, under the name: "Public Value Report",²⁵ which contains a self-assessment in relation to the fulfilment of these legal duties. Other than that, the assessment is an informal matter.

In relation to Article 1, paragraph 1, letter (n) (ii), that is, "works originating in European third states party to the European Convention on Transfrontier Television of the Council of Europe", KommAustria annually collects data on the share of European works in the programmes of Austrian broadcasters. The transmitted data are aggregated and transmitted to the federal government. According to Article 50ff of the AMD-G, a content assessment by KommAustria takes place only to a very limited extent, for example, where information in the lists does not seem plausible.

²³ www.rtr.at/en.

²⁴ www.filminstitut.at/en/.

²⁵ https://zukunft.orf.at/show_content.php?hid=43&language=en.

Within the context of the Austrian market, a particular issue has to be taken into account, namely, the fact that regional broadcasters and services (which are distributed or streamed via satellite) are also covered by the aforementioned rules. However, these services only produce regional content, in which European (non-Austrian) content does not play a role, as all content is self-produced.

On the matter pertaining to Article 1, paragraph 1, letter (n) (iii), that is, “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”, KommAustria considers this to be part of the above-mentioned content assessment. The authority does not recognise any enforcement problems. However, members of the authority admitted that it is seldom the case that such works occur at all.

Finally, when it comes to the determination of works from Article 1, paragraph 4, that is, “works that are produced within the framework of bilateral co-production agreements concluded between member states and third countries provided that the co-producers from the European 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”, KommAustria only evaluates the entire production and does not see any enforcement problems.

5.1.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.1.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.1.2.4 Other enforcement issues

N/A.

5.1.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is, when applicable, carried out by KommAustria, independently of the Österreichisches Filminstitut (ÖFI).



5.1.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which “*the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.*”

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.1.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.1.5 Applicable regulatory framework

Primary legislation:

- Audiovisual Media Services Law²⁶ (*Audiovisuelle Mediendienste-Gesetz*).²⁷
- ORF Act²⁸ (*ORF-Gesetz*).²⁹
- Federal Law on copyright in literary and artistic works and related rights (*Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (UrhG-Urheberrechtsgesetz)*).³⁰

5.1.6 Studies, reports and researches

N/A.

²⁶ In English: www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_84/ERV_2001_1_84.pdf (not consolidated).

²⁷ www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412.

²⁸ In English: www.ris.bka.gv.at/Dokumente/Erv/ERV_1984_379/ERV_1984_379.pdf (not consolidated).

²⁹ www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785.

³⁰ www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848.



5.1.7 Data compilation

This fact sheet was produced based on data compiled Josef Trappel, Professor of Media Policy and Media Economics, University of Salzburg, and Corinna Gerard-Wenzel, consultant in the field of media and law.