



Subgroup 1

**Consistent implementation and enforcement of the new Audiovisual
Media Services Directive framework**

Workstream 2

**Technical expertise: Interpreting and providing guidance on the most
complex new provisions**

**Report: Transposition and implementation of Article 13(1) of the new
AVMSD – Ensuring prominence of European works in the catalogues of
on-demand audiovisual media services**

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I. Context

1. AVMS Directive 2018/1808/EU

The AVMS Directive 2018/1808/EU¹ was adopted on 14 November 2018 and published in the EU Official Journal on 28 November 2018. Member States had to transpose it into their national legislation within a period of 21 months, by 19 September 2020.

Article 13 (1) of the AVMS Directive sets out a mandatory provision for media service providers of on-demand audiovisual media services in the context of promotion of European works. It states that:

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.

Recital 35 of the Directive provides some insights on the interpretation of the term “prominence” and sets out a list of possible measures through which prominence can be achieved:

Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum share of European works and that they are given sufficient prominence. 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. Prominence involves promoting European works through facilitating access to such works. Prominence can be ensured through various means such as a dedicated section for European works that is accessible from the service homepage, the possibility to search for European works in the search tool available as part of that service, the use of European works in campaigns of that service or a minimum percentage of European works promoted from that service's catalogue, for example by using banners or similar tools.

In July 2020, the European Commission published its **Guidelines pursuant to Article 13(7) of the Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover**². They provide insights on how to calculate the 30% share of European works, addressing the calculation per title, what constitutes a title and the temporal dimension of the compliance control. The document also provides insights on what constitutes a “significant presence on the market” and which on-demand audiovisual media service providers should not be subject to the requirements of Art. 13(1).

¹ Directive (EU) 2018/1808 of the European Parliament and of the Council of November 14, 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (the Audiovisual Media Services Directive).

² Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover (2020/C 223/03), in OJEU of July 7, 2020, pp. 10-16.



2. Background: 2020 report

In the context of 2020 Subgroup 3 on Findability, ERGA issued a report with the aim of identifying the various measures that Member States could adopt in the implementation of the new Article 13 (1) of the AVMSD. The main objective of the report was to enable the development of a best practices approach in order to strive for the highest possible degree of consistency when implementing such measures. In practical terms, the report brought together the views expressed by the National Regulatory Authorities (14 contributions) and the VOD providers (based in 20 Member States including two cross-border providers and one association).

From a general point of view, the report highlighted the need to enhance the common understanding of the meaning of “prominence”. The AVMSD does not provide a definition of prominence but sets out a non-exhaustive list of possible measures through which it can be achieved.

From a regulatory perspective, it was identified that the implementation of measures related to the prominence of European works in on-demand catalogues across EU Member States was fragmented. While for some regulators, prominence was already a mandatory obligation, some others had to change paradigm from a principle of non-binding nature to a mandatory obligation which caused important changes in the relevant laws.

Regarding the fulfilment of such obligation by VOD providers, most of the regulators declared collecting the information through self-declarations; while monitoring activities varied from case to case and were conducted either on a yearly or on a regular basis when applicable.

Overall, regulators seemed to prefer qualitative solutions rather than quantitative ones. The most used and appreciated qualitative tools include search means, the organization of a dedicated section for EU works, the labelling or any other tool to distinguish European and non-European works, favouring promotional initiatives instead of precise quotas.

From the industry perspective, contributors recommended to avoid one-size-fit-all solutions but a combination of all the measures which would be more effective to promote European contents. Among the solutions highlighted in the report, the adoption of a dedicated section or collections for European works within the catalogue has been considered valuable and fairly simple tool to implement. While few operators expressed some doubts concerning the visibility of European works on the homepage, some mentioned the possibility of labelling content.

The second category of solutions to promote European works was dedicated to marketing means. The possible or already in use tools identified were the use of video-aided promotional campaigns (such as clips, trailers, promos on YouTube), newsletters, banners on the website, the use of social media and the promotion of works through e.g. events.

Regarding the last category of measures dedicated to technical solutions related to the usage of algorithms and other similar tools, providers’ reactions were more polarised. On the one hand, it has been agreed that the adoption of algorithms both in respect of the advertising of European works in recommendations and in the functioning of search engines and other search tools, was considered as an appropriate solution. On the other hand, their monitoring could be hard and the use of algorithms could have a negative impact on users’ behaviours.



Other new initiatives have been suggested by providers. They notably included incentives such as subsidies to additional marketing campaigns aimed at promoting European works. It has also been proposed to foster promotional campaigns through weekly promotions of a given European work whereby providers would allow the viewing of such work free of charge for a 24-hour period, for instance. Another suggestion was fostering “bundling” initiatives whereby providers would grant the viewers the opportunity to watch a European work free of charge whenever they buy a given content. Some providers also proposed to benefit from a decrease on their financial contribution/investment obligation to the production of European works.

Regarding the implementation of those measures, several key challenges faced by providers have been presented. According to some providers, the AVMSD lacks providing a simple definition of what constitutes a European work. They also agreed that more difficulties could be expected for less resourceful providers compared to bigger and affluent ones.

The creation of specific areas devoted to European contents was also pointed out by some providers as a potential challenge, as users do not actively look for European content and therefore do not actively visit those sections.

Another key challenge shared by almost all providers was the significant cost and man-power labour to be dedicated to the development and launch of technical tools and/or marketing measures.

In addition to this economic challenge, technical solutions seemed also to be technically complex.

Moreover, missing data and the lack of recognized standards regarding metadata were main concerns for them. In this respect, difficulties have been expressed regarding ensuring, maintaining and labelling accurate content metadata. Given that data collection and treatment is essential, some providers proposed to normalize a standard European classification by universal identification codes for local works alongside support to implement such classification tracking.

Finally, providers emphasized the cost of buying a suitable quantity of attractive European works as well as the emerging danger for promotion of unpopular content affecting customers’ trust and harming the reputation of the service.

The last part of the report presented the most appropriate and easy-to-find means to assess the concrete implementation of measures and solutions adopted to secure prominence of European works in on-demand catalogues.

Some providers mentioned the need for distinguishing the type of VOD services (SVOD or FVOD or TVOD) and the size of the VOD content providers when setting up requirements on the prominence of the European works.

Furthermore, the comparison of sales or total views of European works to other works in a given period could be a useful KPI. Other possible KPIs could be the market research through customer feedback or monitoring whether viewers can search specifically for European works within catalogues.



Moreover, regular reporting solutions (by title and by marketing action/strategy/tool) based on the availability and collection of quality metadata could be explored.

3. 2021 Report

While the deadline for transposing the AVMSD into national legislation expired on 19 September 2020, this report aims to continue the work started last year by getting an updated overview of the transposition process, the monitoring procedures and compliance assessment. It also pays particular attention to the labelling in metadata of audiovisual content that qualifies as a European work which has been suggested in the conclusions of the 2020 report.

This Report is the result of the answers collected among Members of ERGA Subgroup 1 in September 2021. It includes the contributions of **21 NRAs**³ on their legal and regulatory framework concerning the implementation of prominence and quota measures.

The survey was divided into 4 sections, covering the following topics:

1. State of play of transposition ;
2. Compliance assessment and impact ;
3. Share of on-demand services compared to the global consumption of audiovisual media services⁴ ;
4. Labelling in metadata.

In total, 16 questions have been asked.

³ KommAustria (Austria), Conseil supérieur de l'audiovisuel (CSA belge) (French Speaking Belgium), Agency for Electronic Media (AEM) (Croatia), Rada pro Rozhlasové a Televizní Vysílání (Czech Republic), Estonian Consumer Protection and Technical Regulatory Authority (ECTRA) (Estonia), Die Medienanstalten (DLM) (Germany), National Council for Radio and Television (NCRTV) (Greece), Broadcasting Authority of Ireland (BAI) Ireland, Autorità per le Garanzie nelle Comunicazioni (AGCOM) Italy, National Electronic Mass Media Council (Latvia), Lietuvos Radijo ir Televizijos Komisija (Lithuania), Autorité luxembourgeoise indépendante de l'audiovisuel (ALIA) (Luxembourg), Broadcasting Authority Malta (Malta), Commissariaat voor de Media (the Netherlands), Norwegian Media Authority (Norway), Krajowa Rady Radiofonii i Telewizji (KRRiT) (Poland), Entidade Reguladora para a Comunicação Social (ERC) (Portugal), Rada pre vysielanie a retransmisiu (Slovakia), Agency for Communication Networks and Services (AKOS) (Slovenia), Comisión Nacional de los Mercados y la Competencia (CNMC) (Spain), The Swedish Press and Broadcasting Authority (Sweden).

⁴ However, while most of the respondents indicate not to have any data available about that subject, the answers of the others were very fragmented and did not permit to have a global view on the subject. This subject is therefore not addressed in this report.



II. Prominence of European works in national laws

1. Article 13 (1) transposition

a. State of play of transposition of Article 13 of the new AVMSD

Before focusing on Article 13(1) of the revised AVMSD, it seems relevant to present a general overview of the transposition of the Directive (EU) 2018/1808 across Member States. As previously mentioned, the deadline for transposing it into national legislation was 19 September 2020.

Based on the feedback provided by the respondents, twelve Member States already transposed it and only two did not. Other seven NRAs mentioned that the discussions on a near future transposition of the Directive into national legislation are still ongoing in their respective country.

Among Member States having transposed or being about to transpose the AVMSD, **Austria, Croatia, Czech Republic, Estonia, Germany, Luxembourg, Malta, the Netherlands, Poland and Portugal** transposed Article 13(1) literally without taking, emphasizing or prescribing any measure which would be distinct from the European provision which states as follows:

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.

With regard to the others having transposed or being about to transpose the Directive, their (draft) national legislation emphasized a specific measure or took a specific one:

Regarding **Italy**, the current draft law transposing Article 13 of the AVMSD provides that AGCOM is responsible for adopting a regulation defining the criteria for prominence. This regulation shall specify tools such as the provision of a dedicated section on the home page, a specific category for searching for works in the catalogue, the presence of European works in advertising campaigns promoting the VOD service. With regard to TVODs (transaction on-demand services), methods of fulfilling the obligations also include the recognition to the holder of the right of the remuneration linked to the commercial success of the work and the costs incurred for the digital distribution of the work itself on the digital platform.

The **Latvian** Electronic Mass Media Law states that '*an electronic mass medium which provides on-demand audiovisual services*' shall promote prominence of European audiovisual works in its catalogue, '*including tagging them, devoting a separate section or search tools thereto*'.

In Slovakia, the national legislation clearly states that in each on-demand audiovisual media service taken separately, a minimum share of 30% of the total number of programmes offered in the



programme catalogue of audiovisual media service providers shall be devoted to European works. Furthermore, they shall ensure their proper prominence. When calculating this share on a monthly basis, news, sporting events, entertainment games, advertising and teleshopping shall not be included in the total number of programmes.

In the **French Community of Belgium**, art. 4.2.2-1 of 2021 Decree on audiovisual media and video sharing services⁵ states that non-linear televisual services must secure a minimum share of 30% of European works, *'of which one third must be audiovisual works of French-speaking Belgian initiative. The minimum share of European works must increase every year gradually in order to reach 40% at the end of a transitional period of 5 years'*. §2 of the same article provides that on-demand services shall ensure that these works are given special prominence by *'highlighting them in their catalogue'*. Furthermore, §3 states that the Regulator, in collaboration with the audiovisual sector, will produce guidelines - to be submitted to the Government - governing the compliance and controlling procedures of these measures⁶. Finally, it foresees an exemption from the quotas and prominence obligation for providers of on-demand audiovisual media services with a low turnover as well as those offering exclusively or mainly⁷ non-European works.

Moreover, discussions on emphasizing or taking a specific measure are still ongoing in other Member States having transposed or being about to transpose the Directive:

As regards **Greece**, a specific committee within NCRTV has been established with the aim to coordinate the dialogue at national level. A consultation with audiovisual media service providers has been launched and meetings with stakeholders and governmental representatives are still ongoing. The main objective is to issue the implementing ministerial decision before the end of the year. In this context, ways to promote European works have been identified and include the possible obligation to use a symbol in the catalogue, having a separate section in the catalogue, the use of key words in order to find EU works as well as the use of marketing techniques to promote EU works.

In the General Scheme outlining the approach to new legislation transposing the AVMS Directive into **Irish** law published earlier in 2021, an exemption from the obligation to ensure that a minimum of 30% of the works in their catalogues qualify as European works is foreseen for providers of on-demand audiovisual media services with a low turnover or low audience. Furthermore, it provides that the Media Commission – a new regulator to be established under the law – will be responsible for preparing rules in relation to the prominence of European works on the on-demand audiovisual media services of media service providers.

In **Slovenia**, the legislative proposal provides that the share of European audiovisual works shall cover at least 30% of the total number of works in the catalogue of the on-demand audiovisual media service in the previous calendar year. The proposal also refers to the guidelines of the European Commission for the calculation of the mandatory share of European audiovisual works. Furthermore, it states that European audiovisual works must be placed in a prominent place and properly promoted. In this

⁵ Décret du 4 février 2021 relatif aux services de médias audiovisuels et aux services de partage de vidéos, M.B., 26/03/2021.

⁶ Although is not stated in the Art. 4.2.2-1, those guidelines will provide a list of measures aiming to ensure prominence.

⁷ According to the article, « mainly » means at least 80% of the catalogue.



respect, examples for providers of on-demand audiovisual media service are listed (see below). Despite Parliament veto on the AVMS law, no specific comment during public discussions has been raised against the legislative proposal as described.

b. Notion of prominence

Article 3i under Chapter IIB on provisions applicable only to on-demand audiovisual media services of the old AVMS Directive 2007/65/EU⁸ introduced the notion of prominence of European works. No major changes to this provision have been made under the AVMS Directive 2010/13/EU⁹ whose Article 13 states the following:

Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.

The AVMS Directive 2018/1808/EU as amended goes further and provides some elements to define the notion of prominence. Its Recital 35 reads as follows:

Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum share of European works and that they are given sufficient prominence. 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. Prominence involves promoting European works through facilitating access to such works. Prominence can be ensured through various means such as a dedicated section for European works that is accessible from the service homepage, the possibility to search for European works in the search tool available as part of that service, the use of European works in campaigns of that service or a minimum percentage of European works promoted from that service's catalogue, for example by using banners or similar tools.

Based on Recital 35 of the AVMS Directive 2018/1808/EU, five respondents confirmed that their (draft) national legislation provides for a definition:

⁸ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

⁹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)



The notion of prominence in the **Austrian** legislation refers to an appropriate emphasis of European works in the programme catalogues by means of distinctive labelling as compared to other works.

In the **French Community of Belgium**, the legislation states that on-demand media services shall give European works a special prominence “by highlighting them in their catalogue”.

In **Germany**, the notion of prominence is clarified as making the content easily accessible.

The **Slovakian** draft legislation proposes to define the notion of prominence as the promotion of audiovisual works by facilitating access to such works.

As regards **Ireland**, there is no definition in the General Scheme. Nevertheless, it is expected that the Media Commission will define the notion of prominence as part of the rules it is required to draft.

c. Enforcement of prominence of European works

Most of the respondents (17 out of 21) clearly mentioned that in their respective Member State, audiovisual media service providers are free to use any means they find appropriate in order to ensure prominence of European works. While eight of those seventeen respondents – **Czech Republic, Estonia, Luxemburg, Malta, Norway, Portugal, Spain** and **Sweden** - declared that their (draft) national legislation does not refer to criteria or means ensuring prominence, the others indicated that their (draft) national legislation does.

The **Austrian** national legislation clearly refers to distinctive labelling of European works in the programme catalogue.

In **Germany**, possible measures taken by audiovisual media service providers are outlined and take into account a special section of the main page of the VOD specifically dedicated to European works combined with either a possibility to explicitly search for such content in the search function or a presence of 30% of European works on the main page of the VOD in categories that are designed to contribute to users’ orientation. For the latter criterion, categories like “new”, “current highlights”, “the best films and series”, “recommendations” and “popular” are identified.

In **Latvia**, the national law identifies tagging, devoting a separate section or search tools when referring to the prominence of European works.

With regard to **Poland**, the national legislation is referring to the promotion of European works in particular by a proper identification of the origin of programmes available in the catalogue of programmes as well as the offer of the option to search for European works, and the placement of information and materials promoting European works.

The **Slovakian** draft legislation refers to the creation of a special section for European works in the programme catalogue or the ability to search for European works in a search engine. This list is not exhaustive and audiovisual media service providers may use other means.



The **Slovenian** draft national legislation provides some examples of the way prominence could be achieved: a special section for European works which can be accessed from the home page of the service, with the possibility to search for European works in the search engine available under this service, using European works in campaigns of this service, with at least 30% of the European works promoted in the catalogue of this service.

The **Croatian, Italian and the French Community of Belgium** NRAs presented specificities in their respective country in this respect:

Firstly, the **Croatian** draft legislation provides an obligation for audiovisual media service providers to promote European works on the catalogue cover page. Furthermore, the use of any other means of prominence by audiovisual media service providers is authorized.

Secondly, the **Italian** Regulation adopted in 2019 by AGCOM leaves the freedom to audiovisual media service providers to choose multiple criteria for prominence among a provided list while obliging them to secure a certain threshold to be reached after adding up the score related to each selected criterion. The list of criteria of prominence includes some quantitative ones regarding 'visible' - meaning providing information such as titles, icons, trailers concerning those works – European works: obligations to ensure a minimum share of 30% of 'visible' works or minimum share of 20% of 'visible' works in each of the main sections of the catalogue or a minimum share of 20% of 'visible' works featuring in a multiplatform promotional campaign. Other quantitative criteria are also proposed to audiovisual media service providers: a minimum share of 20% of European works promoted in multiplatform promotional campaigns (TV, radio, magazines...) or a minimum share of 20% of European works featuring in the recommendations or a minimum share of 30% of European works displayed in commercial communications sent to users. Other criteria refer to specific events promoting exclusively European works through social networks or a specific section, and or a banner providing a link to such section that includes all European works featuring in the catalogue. The list also includes the use of trailers or visuals promoting European works in the 'première' section of the catalogue or the highlighting of EU origin in the description of the main features of a work or 'theme operations' featuring both European and non-European works or the provision of possibilities to search for EU content or the use of reviews, articles or other information related to European works including ratings for reception (critical and audience response). A temporal criterion is also mentioned and concerns the fact to keep European works in the catalogue for not less than 7 days unless it goes against distribution rights.

Thirdly, in the **French Community of Belgium**, although the Decree does not mention any measure or criteria to ensure prominence, some insights can be found in the Parliamentary works. Indeed, the comment to article 4.2.2-1 states that the prominence of European works *also includes the promotion of these works*. It also refers to some criteria enshrined in Recital 35 of the AVMS Directive such as a dedicated section/area accessible from the homepage of the service, search tools, and promotional initiatives (mentioning European works in advertising campaigns of a given service, using banners or similar tools to promote a certain percentage of works). Furthermore, it provides that the prominence will be ensured by the reinforcement of the visibility of European works in the provider's catalogue by



using all possible promotion techniques¹⁰. Furthermore, Article 4.2.2-1 states that the national regulator shall produce guidelines governing the compliance and control process of prominence and quotas obligations. In practice, these guidelines will refer, inter alia, to the above-mentioned specific criteria and measures, with a focus on prominence measures based on user experience. Indeed, given the central role of algorithms in current on-demand services consumption, the CSA.be services highlight the direct incentive to consumption (such as recommendation algorithms, specific layout of the catalogues and preferential rates -for TVOD services-) as the prominence measures to which the on-demand AVMS providers should pay a special attention.

Finally, the **Lithuanian** regulator reported that the provision of the revised AVMSD on prominence of European works was not transposed in its national legislation.

d. 30% share of European works

Article 13(1) of the AVMSD states that Member States shall ensure that providers of on-demand audiovisual media services under their jurisdiction shall secure at least a 30% share of European works in their catalogue.

While most national legislations take over the exact obligation of a 30% share of European works, some others provide more detailed or stricter measures as permitted by Article 4(1) of the Directive which states as follows:

Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive, provided that such rules are in compliance with Union law.

- Higher quotas

In its 2021 Decree on audiovisual media and video sharing services, the **French Community of Belgium** provides a two-step obligation. On the one hand, on-demand audiovisual media services have to secure at least 30% of European works; on the other hand, this 30% quota has to increase each year gradually in order to reach 40% after a transitional period of five years. At the end of this period, the Government of the French Community of Belgium may set higher proportions based on a prior assessment made by CSA.be. The Parliamentary works on the Decree explain such stricter measure by showing that over the past few years, on-demand audiovisual media services have already achieved

¹⁰ A list of examples is provided: advertising inserts of European works contained in the provider's catalogue on the electronic program guide's homepage and the provider's internet site; creating a specific category dedicated to European works in the catalogue; offering information on European works in detailed articles in providers magazines / folders dedicated to clients; mentioning European works available in the catalogue of the provider in programs promoting on-demand services.



this quota and go even further. A reference to France having set a quota of 60% for European works for on-demand audiovisual media services has also been highlighted.

All other respondents mentioned that their (draft) national legislation sets a 30% quota.¹¹

- Sub-quotas

Some (draft) national legislations state that on-demand audiovisual media services shall secure, within the 30% share of European works, a minimum share dedicated to audiovisual works in a certain language or strengthening the links with a particular culture or community.

In **Portugal**, the on-demand catalogues should dedicate at least half of the 30% share of European works to creative works from European independent productions originally made in Portuguese language and produced in the last five years.

Similarly, in **Spain**, half of the 30% European works share shall be dedicated to audiovisual works originally made in Spanish or any other co-official language. As regards **Italy**, the same proportion shall be dedicated to works which are an expression of the Italian culture.

In the **French Community of Belgium**, the Decree states that a third of the European works quota shall be dedicated to audiovisual works based on a French Speaking Belgian initiative.

2. Monitoring and impact

The second section of the survey addressed the question of the assessment of on-demand audiovisual media service providers' compliance with their prominence and quota obligations.

Given that in most Member States, the prominence and quota obligations for on-demand audiovisual media service providers were recently added (or have not been added yet) into their national legislation, most of the NRAs did not have the occasion to carry out a full control or monitoring of these rules yet. In consequence, some of them mentioned measures described below that could evolve in the near future.

a. Frequency of the assessment

On-demand audiovisual media service providers shall report their quota and prominence obligations to the NRAs on a periodic basis. While most of the respondents assess (or plan to assess) the compliance with the prominence and quota obligations on a yearly basis - **Austria, Sweden, Croatia,**

¹¹ Austria, Croatia, Czech Republic, Estonia, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden.



Lithuania, Portugal, the French Community of Belgium, Slovenia, Czech Republic, Greece, Spain, Italy, Estonia and Poland¹² - others mentioned another periodic basis going from every 4 years in **Luxembourg and Norway**¹³ to every two years for **the Netherlands**¹⁴ or twice a year in the case of **Germany**. In **Malta** and **Slovakia**, compliance is not assessed on a periodic basis but rather on an ad hoc one when there is a suspicion that an on-demand audiovisual media service provider does not comply with obligations. As for **Latvia**, the NRA has not set specific timeline or frequency yet, but the time frame currently under discussion is a quarter of a year.

b. Monitoring and control procedures

While some respondents already developed a detailed monitoring procedure of prominence and quotas obligations, others still need to implement concrete processes.

The open-ended questions of the survey left a large margin of manoeuvre to respondents in answering which explains that some of them specified the list of information required to on-demand audiovisual media service providers while others focused their attention on the procedure or provided general answers.

From a general perspective, most of the regulators declare collecting the information through self-declarations. The extent of the control of on-demand audiovisual media services by national regulators varies from case to case and mostly depends on NRAs' size and resources. In most of the cases, NRAs assess the reports and investigate in case of incomplete or incorrect information. Regarding the nature of the information requested by national regulators from on-demand audiovisual media service providers, it varies from general information to more precise data. When precise data about prominence are already requested by NRAs, two approaches were observed : on the one hand, on-demand media services providers are requested to provide information about specific prominence measures listed by the NRA only. In the second approach, while some questions can refer to specific prominence measures, on-demand media services providers are globally free to report about any measures used to ensure prominence of European works.

In **Spain**, on-demand audiovisual media service providers shall communicate the following information to the national Regulator:

- Regarding prominence¹⁵ :
 - o The percentage of European works in the main page;
 - o The percentage of works where the country of origin is identified;

¹² In Poland, compliance is assessed on a quarter basis but on-demand audiovisual media service providers must submit their report on an annual basis.

¹³ As Norway did not transpose the Directive yet, this periodic basis is based on the 2010 AVMSD.

¹⁴ VoD service providers should report over their entire catalogue per each quarter of the year or, alternatively over the full year if they wish to do so. They should submit to national regulator their reports once every two years (every uneven year) about the two years before.

¹⁵ Although prominence of European works is not yet an obligation under the current Spanish Law, it is already monitored by CNMC (Spanish Regulator).



- The possibility, or not, to search for the country of origin;
 - The presence of specific tools to find European works;
 - The presence of sections in the catalogue for the European works ;
 - The percentage of trailers promoting European works;
 - The average time of European works in the catalogue;
 - The average time of European works in the main page.
- Regarding quotas of European works:
- The nature of the services (SVoD / TVoD, catch-up, geographical restrictions);
 - The percentage of European works actually consumed in terms of hours;
 - The percentage of European works in the catalogue in terms of titles and in terms of hours;
 - The split of European works included in the catalogue by type of work ;
 - The average time of European works in the catalogue.

In **Portugal**, ERC has a monitoring system regarding the percentage of European works. Each year, providers of audiovisual media services must communicate, through an online portal, the following information regarding their catalogues:

- Work title ;
- Year of production ;
- Country of production ;
- Country of co-production ;
- Genre ;
- Availability of content in catalog (Year).

Based on these data, ERC verifies the titles and determines the proportion of European works in the entire catalogue. Each short or feature film counts as a title. In the case of series, each season is considered as a title.

As regards the criteria for monitoring prominence, since the transposition of the Directive does not foresee any specific measure, national measures will address some trends already implemented in other countries, namely, the accessibility of searching for European titles and the application of marketing campaigns. Of course, these measures may be subject to change depending on the effectiveness of the return.

In the **French Community of Belgium**, where the prominence obligation already existed in national legislation before the transposition of the 2018 AVMS Directive into national law, on-demand audiovisual media service providers are currently asked to communicate to the Regulator a list of information which includes:

- Regarding prominence:
 - A description of the VOD service's strategy in terms of promotion of European works and a description of the mechanisms developed to ensure it;
 - A description of the promotional tools and direct incentives to consumption (recommendation algorithms, suggestions in the catalogue, preferential rates in case of TVOD services, etc) they find to be the most effective and the reasons behind;



- Examples of specific promotional campaigns for films from the “back catalogue” helping to increase its sales;
 - For a reference period of time (1 month): a range of information about each film of the catalogue including the number and type of prominence measures taken to promote it ; and the proportion of promoted or highlighted European works compared to the global promoted or highlighted works.
 - The number of views of each film in the catalogue for a reference period of one month, as well as a top 50 of most watched films in the last 6 months.
- Regarding quotas of European works:
- For a reference period of time (1 month): a range of information about each film of the catalogue : title, type of work, length, origin ; year of production ; time of inclusion and removal to/from the catalogue)
 - The proportion of European works compared to the whole catalogue.

Operators submit their self-declarations on an annual basis through a form provided by the national regulator. The latter will verify the data and request for more information if questions or doubts arise. CSA.be shall publish a report about each audiovisual media service under its jurisdiction on a yearly basis. Following the 2018 AVMSD transposition, the new Decree states that the Regulator shall produce guidelines governing the compliance and control process of prominence and quotas obligations. These guidelines will refer, inter alia, to the above-mentioned measures and will take into account the Commission’s guidelines. Given the central role of algorithms in on-demand media consumption, particular attention will be paid to consumption-related incentives including recommendation algorithms, specific layout of the catalogues and preferential rates (as regards TVOD Services).

In **Greece**¹⁶, audiovisual media service providers shall submit a list of the titles included in their catalogues over the past year. Titles will be calculated according to the Commission’s guidelines. Providers shall be obliged to declare if a work is European¹⁷. In relation to the promotion of European works, providers shall declare the ways used for the promotion of such works and their impact on the consumption of non-European works. The assessment procedure of these data is not finalized at this stage.

In **Slovakia**, the on-demand audiovisual media service providers shall provide to the Council, within 15 days of receipt of the Council's request, a list of data on European works that are part of its on-demand audiovisual media service, including the number and time range of European works, the identification of their producers and details of other measures aiming to promote European works.

In **Austria**, According to Art 40 §4 of the Austrian Audiovisual Media Act, audiovisual media service providers shall provide to the regulatory authority the list of data on the achievement of the minimum share and a description of the labelling measures taken pursuant to the obligation for every calendar year by March 31 of the subsequent year. Then, the regulatory authority shall submit to the Federal

¹⁶ Greek NRA specified that the information is still under discussion and study.

¹⁷ In case of absence of such information the Regulator will consult the EAO’s Lumiere database.



Chancellor, by no later than 30 June of every year, the data collected for the purpose of reporting to the European Commission.

In **Germany**, State Media Authorities have the right to access information of companies and business associations. Therefore, they ask directly VOD services or business associations to report their quotas as well as their measures to ensure prominence based on the provisions laid out in the statute. The assessment of the reports will be made by the competent authority who will decide on the need for more information.

In **Italy**, AGCOM collects the data through different channels. It can use and process the data regarding the monitoring of schedules and catalogues disseminated by audiovisual media service providers issued by specialized Institutes. The data can also be collected in the communications transmitted by AVMS providers and independent producers pursuant to AGCOM's Regulations as well as the results of the assessment conducted on a yearly basis following a very detailed request of information to all involved AVMS providers. AGCOM may also request to whatever subject the transmission of further documents, communications or documents deemed useful, including through requests for information addressed to independent production companies indicated in the templates submitted by the audiovisual media service providers. Additionally, AGCOM has a general power of inspection and therefore, can conduct regular inspection programs.

In **Poland**, on-demand audiovisual media service providers will submit annual reports to the National Broadcasting Council. They will contain a description of the manner of promoting European works, including works originally produced in Polish, applied by the provider. Such description should take into account the share of these programmes in the catalogue in terms of volume and time.

In **Norway**, the VoDs have an obligation to self-report to the Norwegian Media Authority every fourth year. The report must include statistics showing the share of European works in their catalogue, and a statement on the efforts made by the service in promoting the production of and access to European works.

In **Czech Republic**, the national regulator will collect the data from individual entities and proof checks them at random¹⁸. Any publicly available information is used in order to determine the origin of the work. As Czech Republic has not transposed the Directive yet, more details will follow in due course.

The **Lithuanian** regulator indicated that there is no special tool or methodology. On a regular basis, the NRA requests VOD service providers for providing information on the share of European works in their catalogues.

In **the Netherlands**, the monitoring is based on a self-declaratory system underpinned by a principle of high trust as is the case for linear media services. Nevertheless, in case of incomplete information or reasonable assumptions provided information is incorrect, investigations are launched. Furthermore, the CvdM has also the possibility to perform ad-random checks on the reports and any other data received.

¹⁸ The size and means of Czech Regulator do not allow them to proceed to a systematic control.



In **Estonia**, the regulator collects relevant data from the on-demand audiovisual media service providers, assesses it and doublechecks them where necessary and by asking providers for more information if needed.

In **Slovenia**, providers communicate to AKOS every year the achieved shares of European works. The regulator has the possibility to check their accuracy through reviewing the lists of works and determining whether the individual works are really European works.

In **Sweden**, on-demand audiovisual media service providers shall communicate to the Swedish Press and Broadcasting Authority their annual reports on the quota and prominence no later than the 1st of March of every year, regarding data of the previous year.

In **Luxembourg**, AVMS providers communicate to ALIA their reports on prominence that serve as a basis for its monitoring made every four years.

In **Croatia**, the Agency will have to bring a bylaw dealing with the monitoring and control processes.

Regarding the self-declaration process, three regulators mentioned having or working on the development of an online portal where audiovisual media service providers can declare their quotas and/or prominence data.

In **Greece**, the NCRTV has started procedures to develop an internet-based application for providers to submit all relevant information to the implementation of the AVMSD.

In **Sweden**, the Swedish Press and Broadcasting Authority is developing an online portal for the same purpose.

In **Portugal**, regarding quotas, a portal already exists where operators place files with the title, origin of production, year of production.

Regarding the possible exemption of VOD services with a low turnover or low audience¹⁹, **Broadcasting Authority Malta** declared that the two VOD services under Maltese jurisdiction are exempted from quota and prominence obligation due to their audience share.

c. Performance assessment and impact on consumption of European works

¹⁹ Art. 13(6) of the 2018 AVMS Directive states that: « *The obligation imposed pursuant to paragraph 1 (...) shall not apply to media service providers with a low turnover or a low audience. Member States may also waive such obligations or requirements where they would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services* ».



As the transposition period recently ended and some Member States have still not transposed AVMSD, most of the respondents have not yet been able to complete a performance assessment of Art. 13(1) measures²⁰. Therefore, it was not possible yet to get insights about which tools were the most efficient to ensure the prominence of European works in a “post-transposition” environment²¹.

However, some regulators already request or are planning to request that on-demand audiovisual media service providers communicate information about European works consumption in order to be able to estimate the impact of these measures.

In the **French Community of Belgium**, on-demand audiovisual media service providers shall communicate to the regulator the number of views/rentals of each work in the catalogue for a reference period of one month, with a top 50 of most watched works in the last six months.

Greece is going in the same direction when suggesting that in addition to the measures taken to promote European works, audiovisual media service providers shall declare the effects that such actions have on the consumption of non-European works, for example²².

Finally, in **Spain**, on-demand audiovisual media service providers shall declare the percentage of European works actually consumed.

²⁰3 NRAs declare that they conducted or are in the process of conducting an assessment: Maltese Regulator conducted an assessment but highlights that it is clear that the on-demand audiovisual media services are exempted from such obligations based on their audience share. Estonian Regulator conducted an assessment but does not provide information about its outcomes. As regards Italy, given that the transposition into national law of the provisions on European works of the Directive happened in 2019, the assessment by AGCOM for 2020, during which the new regime entered into force, is currently ongoing. The full performance assessment has therefore not been completed yet. In the French Community of Belgium, as a prominence obligation for on-demand audiovisual media services already existed before 2018 AVMSD transposition, assessments are already made on a yearly basis by the CSA.be, based on the previous legislation. These yearly assessments demonstrate a general respect of the prominence measures, and an average share of +40% of European works in the catalogues of on-demand AVMS providers.

²¹ Such insights however exist in some Member States, based on previous legislation: for example, following 2008 Directive, from 2010 to 2012 the CSA.be completed an analysis on the efficiency of prominence measures, in particular the ones focusing on the promotion of EU works in communication tools. The positive impact of such measures on EU works consumption was clearly identified.

²² Greek NRA specified that this suggestion is still under discussion and study.



3. Focus on labelling in metadata

The labelling in metadata of audiovisual content could increase the visibility of European works. Recital 35 of Directive 2018/1808/EU mentioned for the first time this option:

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.

The 2020 ERGA report on Article 13 (1) of the AVMSD pointed out first comments and questions raised by NRAs and audiovisual media service providers on this mean. While many stakeholders indicated the promising prospect of such technique in improving the prominence of European works, the industry raised the need to normalize a standard European classification by universal identification codes while taking into account the different size of audiovisual media service providers. They also identified the need to build a pan-European database providing reliable and harmonized information on the European audiovisual works. Nevertheless, some concerns regarding the maintenance of reliable and consistent content metadata, the standardization of the EU classification as well as the responsibility in doing so have been stressed by providers.

In this context, it seemed relevant to ask for NRAs' opinion on both concerns.

On the one hand, the standardization of the EU classification and the creation of the European database should be the responsibility of a European entity according to most of the respondents. The **Greek** NRA goes further in identifying the European Telecommunication Standards Institute (ETSI) and LUMIERE.

Except for the **Spanish** NRA suggesting that both a European entity and Member States' authorities should be in charge of the standardization and the creation of the European database, only one respondent - **Slovakia** - identified Member States' authorities as unique responsible bodies.

While the **Swedish** Regulator recognizes the need to standardize metadata and to encourage their use, it expresses reservations regarding the creation of a new database especially created by a public authority.

On the other hand, opinions on the way to fill the European database and its management are more divided. According to six NRAs – **Austria, Estonia, Greece, Malta, the Netherlands** and **Portugal** - a European entity should be responsible for doing so, while four other ones - **Croatia, Norway, Slovakia** and **Slovenia** - suggested rightsholders. A mixed option is proposed by **Czech Republic, Latvia, Luxemburg, French Community of Belgium** and **Spain**.

Furthermore, only two NRAs – **Lithuania** and **Slovakia** - considered that the European database and its management should be done by Member States' authorities.

Beyond the question on responsibility, the question arose as to what kind of metadata contained in audiovisual works would be useful for labelling of European works. All sixteen respondents agreed on the main country of production provided by the content providers (licensors). Among them, thirteen NRAs added the inclusion of the key talent such as director, scriptwriter, producer in accordance with the GDPR, and eleven suggested the share of participation of the co-producers of each participating



country. In parallel, two regulators – **Portugal** and the **French Community of Belgium**– shared another proposal being the year of production.



III. Conclusions

In 2020, Subgroup 3 collected the views of National Regulatory Authorities and VOD providers, and issued a first report aiming at identifying the various measures that Member States might prescribe in transposing Article 13(1) of the AVMSD.

While the deadline for transposing the AVMSD into national legislation expired on 19 September 2020, the goal of this report was to continue the work started last year and to get an updated overview of the transposition process, the monitoring procedures and compliance assessment in order to provide recommendations for the transposition of Article 13(1). The report also paid attention to the labelling in metadata of audiovisual content that qualifies as a European work.

Based on the contributions of 21 NRAs to the survey collected in September 2021, the following observations were made:

Most of the national legislations transposing the AVMSD do not define the notion of prominence and are not going further than Recital 35 of the AVMS Directive 2018/1808/EU.

With regard to the enforcement of prominence of European works, most of the Member States (17 out of 21) leave on-demand audiovisual media service providers free to use any mean they find appropriate. Among those 17 Member States, nine declared that their (draft) national legislation refers to criteria or means ensuring prominence that could be general or more detailed depending on the Member State. In this context, the criteria or means specified in this report could be used by some Member States that are drafting their national guidelines on prominence as well as on-demand audiovisual media service providers that are free to use any mean they find appropriate.

Regarding the minimum share of 30% of European works, almost all Member States transposed or are about to transpose the obligation without any modification. Few Member States provide more detailed measures such as higher quotas or sub quotas dedicated to audiovisual works in a certain language or strengthening the links with a particular culture or community.

Regarding the control of on-demand audiovisual media service providers' compliance with their obligations, given that in most Member States, the prominence and quota obligations for on-demand audiovisual media service providers were recently added into national legislation, most of the NRAs did not have the occasion to carry out a full control or monitoring of these rules yet. Furthermore, most of them still need to implement concrete processes, both regarding the type of information collected and/or its assessment. However, some NRAs already developed a control procedure of prominence and quotas obligations, which can serve as guidance for the Authorities still in the process of implementing the procedures. At this stage, given that no full control has been completed yet, it is too soon to evaluate the effectiveness of specific measures or procedures and therefore to provide clear recommendations about the control procedures of prominence and quotas obligations.

With regard to the self-declaration process and type of information collected, some NRAs already request very precise data from their national on-demand audiovisual media service providers regarding prominence. On that subject, two approaches were identified: on the one hand, providers are asked to submit information regarding specific measures listed by the NRA only (e.g. presence of



specific tools to find European works ; presence of specific sections devoted to European works in the catalogue ; etc). In the second approach, only a minority of the NRA questions refer to specific measures, leaving on-demand media services providers free to report about any measures used to ensure prominence of European works. Regarding the efficiency of the prominence measures, it was noted that some NRAs ask on-demand media service providers to communicate the actual consumption of European works, in order to evaluate the impact of the prominence measures.

As regards the control procedures, most of the regulators declare collecting the information on a yearly basis. Some of them are in the process of developing an online portal where providers can report on their quotas and prominence obligations. Based on the responses of the NRAs, the extent of the control of on-demand audiovisual media services obligations by national regulators will vary from a principle of high trust to a more systematic verification of the data.

As the transposition into national legislation is recent for most of the NRAs, most of them did not have the occasion to complete a full control of the obligations so far. It is therefore too soon to determinate which tools were the most efficient to ensure the prominence of European works in a post transposition environment. These questions will need further examination in the future when compliance assessments will have been completed.

As regards labelling in metadata, the standardization of the EU classification and the creation of the European database should be done by a European entity according to most of the respondents. Nevertheless, the opinions on the way to fill the European database and its management either by a European entity or by rightsholders are more divided. Moreover, on the type of metadata contained in audiovisual works to be used for the labelling of European works, most of the respondents agreed on the main country of production provided by the content providers (licensors). The inclusion of the key talent such as director, scriptwriter, producer, and the share of the co-producers of each participating country are valued on an equal footing.

Due to the recent transposition of the AVMS Directive into national legislation, some questions would still need further examination or update:

Regarding the control of on-demand audiovisual media service providers, it would be relevant to update the data since more NRAs will have the opportunity to duly complete the first control processes. This will help in getting an updated overview of the monitoring procedures, the compliance of on-demand AVMS and the impact of specific prominence measures on European works consumption.

Furthermore, some NRAs indicate that it would be relevant to receive detailed information on the share of national on-demand services compared to the global consumption of audiovisual media services in respective Member States market. Having in mind the size of major international SVOD and TVOD publishers, some regulators also identify the need to further analyze the impact of these international providers' prominence provisions on audiovisual European works consumption in their national catalogues.

Finally, it is noted that a reflection on labelling in metadata should be further discussed in order to ensure its concrete implementation.