



## **ERGA Work Programme 2024 - Subgroup 1 Workstream 2**

**Consistent implementation and enforcement of the new AVMSD framework**

**Report on the transposition and implementation of Article 13 (1) (Prominence of European Works), Article 13(2) (Financial contribution to the production of European Works) and Article 13 (6) (concerning the low audience exemption)**

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# Introduction

## 1. Context

ERGA has been actively engaging in providing technical expertise to the European Commission to ensure a consistent implementation of the Audiovisual Media Services Directive (AVMSD), particularly in the area of the prominence of European works. This work has been a core focus for ERGA over the years and continues to be a priority in its 2024 work programme.

ERGA members have gained valuable experience in the field of the promotion of European works. Previous ERGA work underline that the aspect of prominence is crucial in making these works accessible to audiences. This focus ensures that the revised AVMSD is reported accurately, particularly in light of the new provisions that extend its scope to include VOD players.

The European Commission Impact Assessment accompanying the proposed revision of the 2010 AVMSD<sup>1</sup> stated that one of the objectives of the revised AVMSD is to establish more effective and fair rules on the promotion of European works. The adopted revised Directive and the European Commission guidelines<sup>2</sup> do not provide extensive details and leaves a certain latitude to Member States when transposing the AVMSD provisions on the promotion of European works.

This report aims to gather information from ERGA members on how they monitor the promotion and prominence of European works (article 13 (1)). It also assesses the implementation and enforcement of article 13 (2) on financial contributions to the production of European works. A special emphasis has been placed on article 13(6), which provides exemptions to article 13 (1) and (2).

With all but one<sup>3</sup> EU Member States having fully transposed the revised AVMSD, this report serves as a follow-up to previous reports on article 13(1) and last year's report on article 13(2). In addition, at the time of the survey, Norway has not incorporated the 2018 AVMSD. Ultimately, this report has been produced to consolidate findings, share best practices, and present recommendations for enhancing the promotion of European works in the audiovisual landscape.

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52016SC0168>

<sup>2</sup> Communication from the Commission, 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 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2020.223.01.0010.01.ENG&toc=OJ:C:2020:223:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.223.01.0010.01.ENG&toc=OJ:C:2020:223:TOC)

<sup>3</sup> The 2022 Irish Online Safety and Media Act has yet to be enacted.

This report has been written based on the responses of twenty-six<sup>4</sup> National Regulatory Authorities (NRAs), one of which is non-EU (Norway). The data presented in the report has been consolidated using the data provided the European Audiovisual Observatory<sup>5</sup>.

Lastly, the drafting of this report coincides with the publication of the European Commission latest report<sup>6</sup> on the implementation of articles 13, 16 and 17 of the revised AVMSD, covering the period 2020-2021, and its detailed reporting accompanying the document<sup>7</sup>. The Commission report highlighted some significant discrepancies between the data from the national reports provided by Member States and from a mandated independent study, and it proposes a few recommendations. This report gives a few response elements to points raised in the independent study.

## **2. Recent results of ERGA work on the AVMSD prominence measures and financial contribution provisions**

ERGA published four reports pertaining to the AVMSD prominence measures and financial contribution provisions from 2020 to 2023.

### **2.1. 2020 and 2021 reports**

The 2020 Report<sup>8</sup> on Article 13(1) of the AVMSD assessed the legal frameworks and data collection methods of VOD services across twenty Member States, highlighting the incomplete transposition of the directive in several countries and the absence of a single method to ensure prominence for European works. VOD providers identified various challenges, including technical and financial issues. They suggested that a combination of marketing strategies and dedicated sections within catalogues could enhance the visibility of European works, despite users often not actively seeking them out.

In 2021, an ERGA Report<sup>9</sup> carried on with the assessment of the transposition of article 13(1) of the new AVMSD among twenty-one NRAs revealing that most had the flexibility to ensure the prominence of European works, with some countries exceeding the

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<sup>4</sup> Austria, the Flemish Community of Belgium, the French Community of Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Norway, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

<sup>5</sup> Audiovisual Observatory, Rules on quotas, prominence and investment obligations (latest update 15/04/2024): <https://rm.coe.int/iris-plus-2022-2-tables/1680a6889d>

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2024%3A261%3AFIN&qid=1719495378301>

<sup>7</sup> [https://ec.europa.eu/newsroom/repository/document/2024-26/SWD\\_2024\\_149\\_F1\\_OTHER\\_STAFF\\_WORKING\\_PAPER\\_EN\\_V3\\_P1\\_3497175\\_M0t12glcDo7El0LQrAqvh8l9UXE\\_106642.PDF](https://ec.europa.eu/newsroom/repository/document/2024-26/SWD_2024_149_F1_OTHER_STAFF_WORKING_PAPER_EN_V3_P1_3497175_M0t12glcDo7El0LQrAqvh8l9UXE_106642.PDF)

<sup>8</sup> [https://erga-online.eu/wp-content/uploads/2021/01/ERGA\\_SG3\\_2020\\_Report\\_Art.131\\_final.pdf](https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.131_final.pdf)

<sup>9</sup> [https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Article-13\\_1.pdf](https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Article-13_1.pdf)

mandated 30% quota. It highlighted that while most NRAs conducted annual evaluations based on self-declarations from VOD providers, there was a lack of defined measures for prominence and no comprehensive assessment of VOD compliance had been completed. Additionally, the report discussed the potential creation of a Europe-wide database for classifying European works in metadata, although opinions varied on the responsibilities for database management. Moving forward, the report recommended enhancing VOD compliance monitoring and gathering detailed data on the consumption of national on-demand services.

## **2.2. 2022 report**

In the context of the 2022 report<sup>10</sup>, twenty-four out of twenty-nine respondents indicated that their Member State had transposed Article 13 (1). The quantitative aspect of the 30% quota was clearly established in national measures. However, the qualitative aspect of prominence lacked a clear determination, despite references to possible methods cited in Recital 35 and the ongoing draft of guidelines. NRAs generally elaborated on how media service providers were expected to meet the legal requirements and under which conditions they could be exempted. Some NRAs drafted codes clarifying how low audience and low turnover thresholds were calculated, as well as the grounds for exemption. Nevertheless, there was no harmonised measuring instrument for all categories of on-demand audiovisual media services in most countries, which made the notion of audience a contentious issue.

Most Member States completed their first monitoring cycle on the share of European works, with some concluding their initial monitoring processes. While it was the responsibility of media service providers to demonstrate the reasoning and appropriateness of specific measures related to prominence, some respondents noted that monitoring activities could focus more on how services ensured prominence in practice.

Regarding algorithms and recommendation systems that could help enhance the prominence of European works, the results were threefold. First, most respondents reported being unaware of any national regulations on this topic, with discussions within their NRAs still in the early stages. Second, many respondents emphasised that the regulation of algorithms and recommendation systems needed to be examined within a broader context involving platforms. Finally, NRAs agreed that both solutions would be beneficial for enhancing the findability of general interest content and European works, outlining aspects that could be considered in future work. This topic was further explored during an ERGA workshop with industry players and academics, where it was indicated

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<sup>10</sup> [https://erga-online.eu/wp-content/uploads/2022/12/2022-12-ERGA-SG1-Report-Prominence\\_Art.7a-and-Art.-13.pdf](https://erga-online.eu/wp-content/uploads/2022/12/2022-12-ERGA-SG1-Report-Prominence_Art.7a-and-Art.-13.pdf)

that more discussions would take place in light of the Digital Services Act (DSA), its entry into force, implementation, and potential national initiatives.

### **2.3. 2023 report**

The 2023 report<sup>11</sup> followed up on the work conducted on article 13 (1) and addressed the provisions of Article 13 (2) for the first time, highlighting that these provisions were not compulsory and allowed considerable flexibility for Member States.

The questionnaire aimed to investigate whether Member States had further specified the notion of prominence through guidelines and to gather information on how this was accomplished. Out of twenty-three respondents, five had either issued or were in the process of issuing guidelines, while eight had legislation that further specified prominence measures. Notably, all but three respondents monitored and collected data on prominence, with many expecting providers to report information on European works and provide evidence of their efforts. A limited number of NRAs requested that providers share their exact strategies for promoting European works, including examples of campaigns and scores related to prominence criteria.

Among the twenty-three NRAs, twelve did not conclude any assessment of the data received on prominence; some never conducted such assessments, while others did not do so systematically due to either general trust in the responses or a lack of resources. Out of the eleven NRAs who did assess the data, the evaluations were conducted either systematically, through random checks, upon request (such as in response to complaints), or on a case-by-case basis. Generally, most VOD providers used a limited number of tools across all surveyed Member States, with the most common being a dedicated section on the homepage, as well as campaigns and banners to highlight works in their catalogues.

The 2023 report marked a foundational step in mapping the transposition and implementation of Article 13 (2), revealing that approximately half of the respondents (eleven) had completed this process. Enforcement varied significantly across different Member States. While a majority indicated that their provisions affected both broadcasters and VOD providers, the remaining member states targeted only broadcasters. The calculation of financial obligations primarily relied on annual turnover, with exemptions adopted by Member States largely based on low turnover rather than low audience figures. Contributions mainly took the form of financial investments – both direct and through levies, and nearly half of the Member States that transposed the provision had already enforced the legislation. However, four out of the eleven Member

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<sup>11</sup> <https://erga-online.eu/wp-content/uploads/2023/12/ERGA-SG1-Report-2023-on-Article-131-and-132-final-version-for-publication.pdf>

States who transposed the measure faced challenges, including VOD providers contesting the obligations, difficulties in identifying or contacting providers, and issues related to revenue calculations.

In conclusion, the report indicated that there was no further specification of the notion of prominence through guidelines. Most Member States gathered data from providers to monitor Article 13 (1), but the control and assessment of prominence by NRAs remained difficult to map out, either due to a lack of responses or because they had not conducted any assessments thus far.

## Results of the 2024 questionnaire

### **Part I: Promotion and distribution of European works (article 13 (1))**

The first part of the survey focusses on the implementation of article 13 (1) on the promotion and distribution of European works with the objective to build on the work from the previous years' reports and continue to map out the transposition and implementation of this provision. ERGA members were asked questions relating to the definition of prominence within the context of European works, and its monitoring and supervision of the obligations by VOD providers.

#### **1.1. Prominence of European works**

##### **1.1.1. Definition of prominence in the context of European works**

Article 13 (1) of the revised AVMSD requires Member States to ensure that VOD providers under their jurisdiction secure at least a 30% share of European works in their catalogues and give prominence to those works. The Directive leaves it up to Member States to decide how to implement the prominence requirement while recital 35 of the AVMSD provides guidance. It suggests that prominence which involves facilitating access to European works, could be ensured through various means. These means include the offering of a specific section to European works that is accessible from the service homepage, giving the possibility to search for European works in the search tool available as part of the service, using European works in campaigns and promoting a minimum percentage of European works from that service's catalogue through a recommendation system (for example banners or similar tools).

The responses to the survey show that most national laws transposing the revised AVMSD do not give an explicit definition of the relevant notion of prominence. Some national legislation<sup>12</sup> used the terminology used in the AVMSD while others<sup>13</sup> indicated that there were concrete indications for its application notably via a limited selection of the means laid out in recital 35 of the AVMSD. Out of the twenty-six respondents, fourteen<sup>14</sup> said that legislators did not provide any interpretation in their transposing legislation all together.

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<sup>12</sup> Bulgaria, France, Hungary, Italy, Romania, and Slovenia.

<sup>13</sup> Austria, Croatia, Ireland, Poland, and Slovakia.

<sup>14</sup> The French Community of Belgium, the Flemish Community of Belgium, Cyprus, Estonia, Finland, Germany, Greece, Lithuania, Luxembourg, Malta, Norway, the Netherlands, Portugal, Spain, and Sweden.



This absence of definition is, however, often compensated for with non-legislative instruments. Five<sup>15</sup> NRAs noted that definitions and/or guidance are available or scheduled in guidelines. Four<sup>16</sup> other NRAs referenced various soft-law tools. These include a Statute on European Productions from the German media regulators, pre-legislative work in Finland, Agcom regulation in Italy, and citations in the Media Services Act and its explanatory note in Estonia. These instruments are generally perceived as helpful by NRAs, with 70% considering them efficient, relevant and/or flexible. It is worth mentioning that in Hungary, media service providers can select from predefined options on the data reporting interface to indicate which prominence tools were used.

Regardless of whether they may find a definition in their law or in guidelines, a significant majority of NRAs argued that issues encountered, if any, should not motivate an adjustment of the AVMSD with regards to prominence provisions. Two NRAs indicated that a revised AVMSD could focus on a more harmonised approach (Italy) or a more concrete and substantiated definition that would then incentivise Member States to adopt practices that are more in line with market practices (Portugal). Slovakia, while noting that they had not encountered any major issue, invited the reflection on non-binding guidance at a European level including in the form of European Commission guidelines.

### 1.1.2. Monitoring and supervision of the rules related to the prominence of European works

#### 1.1.2.1. *Methods used by NRAs*

Previous ERGA reports addressed the assessment of VOD providers' compliance with their prominence obligation, and the 2023 report was the first to lay out feedback from a fully completed monitoring exercise in some Member States.

VOD providers' compliance with the prominence measures is monitored via different ways by NRAs. More than half said they strictly rely on information sent by providers. It can take the form of a questionnaire sent via e-mail<sup>17</sup>, an online form on the NRA's website on which they report the relevant information<sup>18</sup> or various open-ended reporting<sup>19</sup>. A minority of respondents<sup>20</sup> solely carry out controls at their initiative. Finally, eight NRAs<sup>21</sup> conduct a mix of both passive and active methods for data gathering: they

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<sup>15</sup> The French Community of Belgium, the Netherlands, Norway, Portugal, and Spain.

<sup>16</sup> Estonia, Greece, Germany, Finland, and Italy. For Greece, a Ministerial decision is pending.

<sup>17</sup> The Flemish Community of Belgium, the French Community of Belgium, Finland, Luxembourg, Norway, Portugal, Slovakia, Slovenia, and Spain.

<sup>18</sup> Hungary and Sweden.

<sup>19</sup> Austria, Croatia, Greece, and Poland.

<sup>20</sup> Bulgaria and Malta.

<sup>21</sup> Cyprus, Estonia, Germany, France, Italy, Lithuania, the Netherlands, and Romania.

analyse and verify the reports they receive while cross-checking and investigating. As a unique trait to its authority, Italy also mandates an external company its monitoring exercise. It is important to note that none of the NRA surveyed gather quantitative data on programmes provided on VOD services at their own initiative or via third-party provider.

NRAs largely consider they have all legal instruments at their disposal to have the necessary information for the supervision and enforcement of the prominence obligations. The French Community of Belgium and Greece are, however, still expecting more guidance, either via guidelines or a Ministerial Decision. In addition, Lithuania and Portugal argued a general lack of specifications. Cyprus indicated it lacked sufficient tools for both the supervision and the enforcement. Conversely, Sweden was adequately equipped to supervise VOD providers' compliance with the prominence obligations but was short of enforcement powers.

France explained that its impact is limited. Indeed, only services established in France and above certain thresholds (revenue and audience share) are subject to the obligation. In addition, Arcom is provided limited information with that regard, and lack the necessary tools to carry out its own measurement of the VOD's audience.

#### *1.1.2.2. Best practices and recommendations*

While most NRAs found their respective monitoring method adapted to the assigned task, they pointed out some drawbacks. They made a few suggestions acting as guiding principles and shared best practices to evaluate the fulfilment of prominence measures in a more efficient manner. These suggestions are laid out to be considered at the discretion of each NRA:

- **Setting-up a special software** that would ideally perform on a real-time basis<sup>22</sup>, analyse VOD catalogues and find metadata on the visibility given to European works<sup>23</sup> developed jointly by pooling NRAs resources, at the ERGA/EBMS (European Board for Media Services) level, or in cooperation with the academic sector<sup>24</sup>
- **Cross-checking the information collected with the NRAs' investigation powers**<sup>25</sup>, including via random controls<sup>26</sup> or sample inspection<sup>27</sup>
- **Boost NRAs resources**, both in terms of financial means and staff capacity<sup>28</sup>

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<sup>22</sup> The Flemish Community of Belgium, Estonia, Lithuania, Luxembourg, Poland, and Portugal.

<sup>23</sup> Finland.

<sup>24</sup> Slovakia.

<sup>25</sup> France, Greece, Slovakia, and Slovenia.

<sup>26</sup> The Netherlands.

<sup>27</sup> Cyprus.

<sup>28</sup> The Flemish Community of Belgium, Estonia, and Sweden.

- **AI tools in combination with human oversight**<sup>29</sup>
- **Relying on specific lists or indicators**<sup>30</sup>
- **Require an increased amount of data** to facilitate the assessment of the legal compliance, notably when relying on providers' self-declarations<sup>31</sup>
- **Encourage more frequent reporting**<sup>32</sup>
- **Strengthen the collaboration with stakeholders**<sup>33</sup>
- **Standardised and easy to update questionnaires**<sup>34</sup> notably via an online form<sup>35</sup>
- **Guidelines from the European Commission**<sup>36</sup>
- **Evaluation of the impact of the VOD providers' prominence measures**<sup>37</sup>
- **Dedicated and pre-determined periods of time to promote EU works**, weekly or monthly<sup>38</sup>, a European festival for cinema<sup>39</sup>

Three NRAs<sup>40</sup> particularly commended their own systems. Arcom reported that the counter-expertise and cross-checking of the declarations allow for an assessment of the declarations, and the observation of the evolution of providers' practices on promotional methods. Agcom explained that their system is built on an established list of prominence measures (set up by Agcom Regulation) to which the Regulator associates a scoring system. VOD providers must use more than one prominence tool to meet a certain threshold and see their compliance efforts rewarded. Finally, the CNMC carries out a quality-based analysis thanks to the evaluation of the following specific indicators: European works on the home page, nationality-based search engine and the analysis of the on-demand services algorithms to evaluate whether it is taking into account the nationality of the works.

NRAs also reported best practices by on-demand media services. In Malta, they mentioned three practices used to ensure the prominence of European works: a dedicated section to local content, promotional campaigns even through the use of billboards and printed media, and direct links sent via mass mailing and social media posts. In Estonia, the VOD provider Elisa Teleteen used AS highlighted several European

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<sup>29</sup> Bulgaria and Estonia.

<sup>30</sup> Italy and Spain.

<sup>31</sup> The French Community of Belgium and Germany.

<sup>32</sup> Croatia.

<sup>33</sup> Luxembourg.

<sup>34</sup> Romania.

<sup>35</sup> The Netherlands and Sweden.

<sup>36</sup> Slovakia.

<sup>37</sup> Sweden.

<sup>38</sup> Croatia.

<sup>39</sup> Portugal.

<sup>40</sup> France, Italy, and Spain.

recent works, including domestic Estonian works, promoting these films in several forms, such as social media networks.

Lastly, a few ERGA members mentioned that any reflection on the impact of the methods used may be difficult to assess. First, the results of the monitoring were often not subject to questioning. Second, the measures while enforced, were too recent to properly review their effectiveness.

## **1.2. European works**

### **1.2.1. Definition and quotas of European works**

Unlike prominence, European legislators introduced a definition of European works in the AVMSD in article 1 (1) (n). It is complemented with an added opportunity in recital 32 according to which Member States may lay down a more detailed definition for media services providers under their jurisdiction. The AVMSD considers as European works (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, and (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.

Twenty-three<sup>41</sup> out of the twenty-six respondents said their national law includes a definition of European works identical to the one found in the AVMSD. The law in France bases its definition on the AVMSD's, but with additional information and has a stricter criterion for the production of European works. Article 6 of Decree No. 90-66 of January 17, 1990, establishing the general principles regarding the dissemination of cinematographic and audiovisual works by television service providers, considers as European cinematographic or audiovisual works those originating from EU member states or European third countries that are signatories to the Convention on Transfrontier Television, provided they are predominantly produced with professionals and technical resources from these countries. They must be produced by a company based and managed in these countries or primarily financed by European co-producers. Also included are works co-produced under agreements between the EU and third countries, as well as those arising from bilateral agreements between Member States and third countries, with a majority of funding from Europe. The French definition incorporates the three criteria set out in the AVMSD, relating respectively to the origin of the work (article

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<sup>41</sup> Austria, the Flemish Community of Belgium, the French Community of Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain.

6. I a) and b)), its production (article 6. I 1), and its execution (article 6. I 2). Regarding the criterion of production, Decree No. 90-66 establishes the following two alternative conditions:

- The production company acting as the lead producer must be established in a Member State or an equivalent state, with the stipulation that its directors and half of its board members must be nationals of one of these states (article 6. 2. a));
- In the case of a co-production, the contribution of co-producers established in these states must be the majority, and the co-production must not be controlled by a producer or multiple producers established outside of these states (article 6. 2. b)).

Unlike the AVMSD, which sets three alternative conditions for meeting the production criterion, the decree only retains two. Thus, French law requires either the status of lead producer (a) or majority co-producers (b) for production companies established in a Member State, whereas the AVMSD alternatively considers either the status of lead producer or executive producer. Furthermore, for each of the two conditions mentioned above, the delegated production company, referenced in article 6. I 2. a), or one of the co-producers referenced in article 6. I 2. b) must not be controlled, within the meaning of Article L. 233-3 of the French Commercial Code, by one or more producers established outside of these states. Otherwise, the production criterion is not met, and the work cannot, therefore, qualify as a European work under the decree. Finally, a points-based system must be met<sup>42</sup> to fulfil the criterion related to the execution of the work (article 6. I 1).

Two Member States<sup>43</sup> indicated that their law does not foster any definition. In Sweden, providers can rely on the AVMSD and the revised guidelines from the European Commission for the application of articles 16 and 17 while the Dutch Media Act refers directly to the notions from the AVMSD.

Article 16 (1) excludes certain types of content from the time to be allocated to European works when it comes to broadcasters, namely “news, sports events, games, advertising, teletext services and teleshopping”. In contrast, article 13 (1) does not operate a similar exclusion and this approach was followed by thirteen<sup>44</sup> of the twenty-six ERGA members

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<sup>42</sup> See Arcom’s application form for the European qualification of a work:  
[https://www.arcom.fr/sites/default/files/2024-06/Arcom\\_formulaire\\_de\\_demande\\_qualification\\_oeuvre\\_europeenne.pdf](https://www.arcom.fr/sites/default/files/2024-06/Arcom_formulaire_de_demande_qualification_oeuvre_europeenne.pdf)

<sup>43</sup> Sweden and the Netherlands.

<sup>44</sup> The Flemish Community of Belgium, Bulgaria, Estonia, Finland, Hungary, Ireland, Italy, Lithuania, Norway, the Netherlands, Poland, Slovakia, and Spain.

surveyed. Thirteen<sup>45</sup> national laws, however, apply the same exemptions<sup>46</sup>, in whole or in part, to both broadcasters and VOD providers.

### 1.2.2. Sub-quotas applying to VOD providers and their comparison to sub-quotas applying to broadcasters

Article 4 (1) of the AVMSD allows Member States to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by the Directive. This is notably reflected in the context of European works with the adoption of sub-quotas to the 30% obligation of European works for VOD providers. It must be noted that article 17 of the AVMSD requires broadcasters to reserve at least 10% of their transmission time or budget for European works created by independent producers. The sub-quotas applying to VOD providers are considered optional provisions; it is up to Member States to decide to go for more detailed or stricter rules in their law transposing the AVMSD.

This section of this report touches upon sub-quotas that are the result of the transposition of article 4 (1), thereby optional under the AVMSD but compulsory under national law.

ERGA members' responses, complemented by the data of the Audiovisual Observatory, demonstrate that national and regional legislation that have decided to impose sub-quotas for broadcasters that go beyond article 17 of the AVMSD, generally did for VOD providers too. Thus, out of the twenty-six surveyed members, nine<sup>47</sup> NRAS say they compose with laws imposing sub-quotas for VOD providers and sub-quotas for broadcasters.

In comparison, **Croatia** and **Sweden** are the only respondents whose laws include sub-quotas for broadcasters but none for VOD providers. In Sweden, a significant part of European works in broadcast should be in the Swedish language, from artists and producers active in Sweden. There are however no specific quotas for this.

The nature of these sub-quotas voluntarily<sup>48</sup> transposed by Member States differs from one country to another and usually serve as an inspiration for the rules that apply to broadcasters, which often involves sub-quotas on content of (national) original

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<sup>45</sup> Austria, Croatia, the French Community of Belgium, Cyprus, France, Germany, Greece, Luxembourg, Malta, Portugal, Romania, Slovenia, and Sweden.

<sup>46</sup> In the French Community of Belgium, the transposing Decree is silent on the exclusion, but the CSA operates it in practice.

<sup>47</sup> The Flemish Community of Belgium, the French Community of Belgium, France, Hungary, Italy, Poland, Portugal, Slovenia, and Spain.

<sup>48</sup> To be understood as voluntarily transposed in the sense that it is not an obligation stemming from the AVMSD.

expression, meaning in a specific language, or strengthening the links with a particular culture or community.

In the context of sub-quotas on content of original expression, three<sup>49</sup> markets apply equivalent rules to linear and non-linear actors, four<sup>50</sup> impose more obligations to broadcasters than VOD players, and two<sup>51</sup> opted for the opposite approach. This analysis however requires a case-by-case evaluation. In Italy notably, linear services providers have a consolidated position on the market while Italian based VOD providers generate, in comparison, a lesser income, thus, linear quotas and sub-quotas may seem lower if compared to those for VOD providers, but nonetheless technically results in a higher volume of investments.

The **Flemish Community of Belgium** expects both broadcasters and VOD players to dedicate a significant proportion of the general quotas to Dutch-language European works. Similarly, **French** law impose a 40% share for original French-language works on linear and non-linear providers. Agreements concluded between media service providers and Arcom, and between non-hertzian broadcasters and Arcom, may set lower proportions of exposure of audiovisual works. However, this can apply under the conditions that the proportion provided for European works remain above 50% and in return of the provider's commitment to invest in the production of original French-language audiovisual works produced by independent production companies. Publishers of cinema services of first broadcasts may choose another possibility for cinematographic works<sup>52</sup>.

In **Spain**, at least 50% of the respective European works quotas (30% for VOD and 51% for broadcasters) are reserved for works in the official language of the state or in one of the official languages of the Autonomous Communities. Further requirements apply to the public service broadcaster.

Alternatively in the **French Community of Belgium**, a majority proportion of broadcasting time must be devoted to works of French-speaking Belgian origin on linear, whereas 1/3 of the share of European works is reserved for French-speaking Belgian audiovisual works on VOD providers.

In **Hungary**, at least 10% of the aggregated total length of programmes made available in a given calendar year in the programme schedule of on-demand audiovisual media services should be composed of Hungarian works. Sub-quotas on broadcasters differ

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<sup>49</sup> The Flemish Community of Belgium, France, and Spain.

<sup>50</sup> The French Community of Belgium, Hungary, Poland, and Slovenia.

<sup>51</sup> Italy and Portugal.

<sup>52</sup> The ratios have to be respected on the annual number of broadcasts and rebroadcasts. But, quotas may be respected annually title by title under two conditions: 1/ European cinematographic works must not represent less than 50% of the total annual number of broadcasts and rebroadcasts; 2/ Cinematographic works of original French-language must not represent less than 35% of the total annual number of broadcasts and rebroadcasts and during prime time.

according to the nature of the provider. For private broadcasters, over one-third of the transmission time to broadcasting must be allocated to Hungarian works. Public media service broadcasters on the other hand must allocate over half of their annual transmission time of linear audiovisual media services to broadcasting Hungarian works.

The notion of **Hungarian works** is defined in Section 203 of Act CLXXXV on Media Services and on the Mass Media, which outlines a range of works considered to be Hungarian. This definition encompasses works that are produced in Hungarian in their entirety, as well as those created in multiple languages where the parts originally produced in Hungarian predominates in terms of duration. Moreover, it includes works originally produced in the languages of the nationalities recognised by Hungary, provided they focus on the life or culture of these nationalities within Hungary. The definition extends to any musical programme performed in Hungarian or in the language of any of the nationalities recognised by Hungary, provided that its subject matter concerns the culture of the given nationality in relation to Hungary. Additionally, any instrumental musical programme that form part of Hungarian cultural heritage or the culture in relation to Hungary of any of the nationalities recognised by Hungary are also included. Furthermore, any musical work with at least one Hungarian composer, or any musical programme produced in collaboration with Hungarian performers, falls under this definition. Lastly, the Act recognises cinematographic works as Hungarian works if they are classified as such according to the MPA.

In **Poland**, broadcasters devote 33% of their transmission time to programme originally produced in the Polish language against 30% of their catalogue for VOD providers. In **Slovenia**, at least 5% of the works in the catalogue of a (public or private) VOD provider should be Slovenian audiovisual works. On the other hand, the two first channels of the PSB are required to comprise 25% of their annual broadcasting time to Slovenian audiovisual works, a quarter of which is produced by independent producers. All other (private) TV channels, a share of 5% of Slovenian works is imposed.

The definition of **Slovenian audiovisual works** is defined in the first paragraph of Article 68 of the Media Act, with more specific criteria and conditions detailed in the Regulation on Criteria and Conditions for Determining Slovenian Audiovisual Works. Slovenian audiovisual works thus include three main types of works. Firstly, audiovisual works originally produced in the Slovenian language, where the original version uses exclusively or predominantly Slovenian, either in spoken or written form. Secondly, audiovisual works produced in Hungarian or Italian if intended for the Hungarian or Italian national minorities residing within Slovenia. These works must directly relate to the life of these minorities, be primarily filmed in areas where they reside, involve residents from these minorities in the production, or be commissioned by or produced on behalf of a media broadcaster located in the area where the minority resides. Thirdly, audiovisual works of Slovenian cultural origin from other artistic fields, if expressed as individual intellectual



creations in the fields of literature, science, or the arts, and constitute an original audiovisual work. The content of such audiovisual works should be based on literary works, scientific findings, artistic practices, or directly derived from proposals for the production of an audiovisual work, such as an original screenplay, choreography, or musical score.

The regulation also specifies exclusions from the definition of Slovenian audiovisual works. Works that only indirectly relate to literature, science, and/or the arts, such as those that inform the public about activities in these fields or provide commentary on them, are not considered Slovenian audiovisual works. Similarly, works that merely record or broadcast literary, scientific, or artistic events, like recordings of cultural events, theatre performances, concerts, exhibitions, or studio performances, are also excluded. The exception to this exclusion is when these recordings are expressed as individual intellectual creations by the audiovisual authors, involving an adaptation of an original work that significantly exceeds mere documentation of the event for audiovisual media.

Provisions in the **Portuguese** law instruct VOD providers to allocate at least half of the 30% European works quota to creative works originally in Portuguese, while broadcasters must allocate at least 20% of their transmission time to works originally produced in Portuguese. The Portuguese sub-quotas for VOD refer to European creative works originally in Portuguese that are independently produced less than five years ago.

In **Italy**, since an amendment to the AVMS Code which entered into force in May 2024, VOD providers must reserve a sub-quota of 70% of their whole European works quotas (30% programming quota and 16% of their annual incomes) for Italian original expression works produced by independent producers within the last five years. Within this, 27% must specifically be allocated to Italian original expression cinematographic works that meet the same criteria. Comparatively, linear audiovisual media service providers (excluding the public service media) must allocate at least 6,25% of their annual net revenue for Italian original expression audiovisual works-language films produced by independent producers, and at least 3% of their annual net revenue for Italian original expression cinematographic works by independent producers, of which 75% is reserved for works created in the last five years. The Italian Public service media provider is required to set aside at least 17% of their total annual revenue for European works by independent producers, including a 50% sub-quota for Italian original expression works from the last five years. Additionally, they must reserve 4.2% of their total net revenues for Italian original films and 85% of this for co-productions. They should also allocate at least 7% of the European works quota for works aimed at minors, with 65% of that for animated content

### 1.2.3. Verification of the qualification of European works

#### 1.2.3.1. *Systems used by NRAs*

ERGA members who participated in the survey were requested to explain how they verify the qualification of European work by VOD providers. Five options were proposed the NRAs to choose from: receiving a declaration by providers without data sets or samples, verification of samples/ data sets provided by media service providers, verification of certificates of origin of the work, extraction and analysis of data by the NRA, and contacting one's national film agency/institute.

A majority of NRAs<sup>53</sup> indicated they verify the qualification of European works by receiving a **declaration by VOD providers without data sets or samples**. Twelve<sup>54</sup> of these eighteen markets do not rely on any other method than the one just declared.

Ten NRAs **verify the samples or data sets provided by media services providers**, sometimes as a stand-alone system<sup>55</sup> and often in combination with another method<sup>56</sup>. Croatia, Estonia, France, Italy, and Spain **extract and analyse the data**, while France and Spain are the only two markets who verify the certificates of origin of the works and contact their national film agencies.

This verification process sometimes includes certain specific characteristics. These include, for instance in Romania, the insertion of the providers' declaration on the qualification of European works as part of the audiovisual license application procedure. This ensures that the providers formally acknowledge and commit to the compliance requirements from the outset. On the other hand, Slovakia is entitled to ask for the proportions of European works and detailed data for all individual titles. However, due to resources constraints, they tend to first request overall proportions and where needed ask and check the underlying data as well.

Most NRAs<sup>57</sup> use the same way to verify the qualification of European works for VOD providers and broadcasters. France indicated that for terrestrial television, the qualification is done on a program-by-program basis, while for VOD and non-terrestrial television, the qualification is done by sampling considering the large number of programs available.

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<sup>53</sup> Austria, the Flemish Community of Belgium, Bulgaria, Estonia, Finland, France, Germany, Greece, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, and Sweden.

<sup>54</sup> Austria, the Flemish Community of Belgium, Bulgaria, Finland, Greece, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovenia, and Sweden.

<sup>55</sup> The French Community of Belgium, Cyprus, Hungary, and the Netherlands.

<sup>56</sup> Estonia, France, Germany, Italy, Slovakia, and Spain,

<sup>57</sup> Austria, the French Community of Belgium, the Flemish community of Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Italy, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, and Sweden.

It should be noted that efforts pertaining to the verification of the qualification of European works is still work in progress in three Member States. In Greece, the Ministerial Decision that shall be issued will provide for a more detailed monitoring system, the selected system in Ireland has yet to be confirmed while the NMA in Norway will develop a new methodology for the supervision of VOD players when implementing the revised AVMSD.

#### 1.2.3.2. *Best practices and recommendations*

Most<sup>58</sup> NRAs believe they do not have sufficient tools to verify the veracity of the information transmitted by VOD providers while eight<sup>59</sup> declared being adequately empowered in the exercise of this task. France weighted its answer according to the type of provider. According to Arcom, its tools are efficient in view of verification relating to broadcasters but is too limited on the VODs as solutions are under consideration or development (for example based on the ISAN number).

Several constraints have been identified as limiting the availability of sufficient tools for NRAs in enforcing obligations related to Article 13 (1) of the AVMSD. These constraints include a lack of human resources reported by Belgium (both Flemish and French Communities), Luxembourg, and Romania. Additionally, the absence of specific tools for verifying information has been highlighted by the French community in Belgium, Luxembourg, and Romania. Cyprus pointed out the challenge of unreliable information sources for cross-checking data provided by VOD providers and Spain noted the complexity arising from the European characteristics of series and documentaries as an additional obstacle<sup>60</sup>.

In response to these challenges, some NRAs have proposed potential solutions. Portugal suggested the creation of a common database among Member States to validate information, while Romania called for more resources and improved tools to enhance enforcement capabilities. Hungary noted that public film databases can be used to check the data on cinematographic works.

Finally, several NRAs shared best practices based on their experiences. For instance, the Flemish Community of Belgium requires VOD providers to support their submissions with a signed declaration of honour regarding the accuracy of the data shared. Croatia and Estonia emphasised the importance of having the power to demand additional evidence from providers. The Netherlands mentioned the need for instruments to

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<sup>58</sup> Austria, the Flemish Community of Belgium, the French Community of Belgium, Bulgaria, Cyprus, Germany, Greece, Luxembourg, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

<sup>59</sup> Croatia, Estonia, Finland, Hungary, Italy, Lithuania, Malta, and the Netherlands.

<sup>60</sup> In Spain, as the National Films Institute does not analyse the qualification of a series or a documentary as European, as it actually does with films, the CNMC is accepting a declaration of honour from producers to consider a series or a documentary as a European work.

retrieve and collect information effectively. Lithuania advocated for cross-checking information to ensure its reliability, while Malta mentioned language-based assessments to facilitate evaluations.

#### 1.2.4. Comments to the European Commission Report on the application of articles 13, 16 and 17 of the AVMSD

As mentioned in the introduction, at the time of the drafting of this ERGA report, the European Commission published a report on the application of articles 13, 16 and 17 of the AVMSD. This report is based on the information provided by the Member States and in an independent study commissioned by the Commission, as required by the AVMSD. The independent study found a lower average share of European work on VOD services than what had been reported by Member States. A similar gap was observed for European works on linear channels. To address these data inconsistencies, the Commission encourages Member States to enhance their monitoring and verification of European works on VOD services. The Commission added that Member States should provide detailed information on non-compliance cases, the methodologies used, and complete data for all VOD services under their jurisdiction. This will allow for better comparison with future studies and more effective enforcement actions where needed. The Commission also recommends that Member States report on the reasons why some VOD services may not reach the minimum share of European works and on the follow-up by NRAs.

Certain limitations of the methodology used by the independent contractors in the study mandated by the European Commission were raised in the European Commission Report. In preparation of this present report on the consistent implementation and enforcement of the AVMSD, ERGA members equally noted methodological elements warranting specific attention.

For instance, contactors were unable to find information on the country-of-origin in some Member States for the qualification of European works and programmes. Then, while the definition of independent production differs from one market to another – as partially identified in part 2 subsection 2.1.2. of this present study – the study base itself on the European database for independent producers. Finally, the shares of European works for catalogues in certain Member States were sometimes reported by cross-border VOD providers who do not have their establishment in all these markets and are therefore not verified by these given NRAs. The last comment also applies to linear service providers, but they are not the subject of this present ERGA report.

In order to offer a joint ERGA reply to the points raised in the European Commission report, a complementary set of questions were sent to ERGA members with the aim to provide technical expertise to the European Commission concerning the national

reporting and methodology used by NRAs. Twenty-two<sup>61</sup> answers from NRAs were collected, including from one non-EU country, Norway.

#### *1.2.4.1. Methodology used for the verification of the share of European works*

Respondents were asked what methodology was employed by their NRA for the verification of the share of European works and whether it was any different from the one used for the verification of the prominence of European Works.

Fifteen<sup>62</sup> NRAs reported that they use the same methodology for both verifying the share and the prominence of European works. It must be noted that **Romania** is still developing secondary legislation to clarify provisions outlined in Article 23(1) of its Audiovisual Law. Consequently, a complete reporting exercise from on-demand audiovisual media service providers under Romanian jurisdiction has not been completed. Once this secondary legislation is completed, a more comprehensive and structured reporting process is expected to enhance monitoring capabilities and ensure effective compliance.

Five<sup>63</sup> NRAs indicated that their methodologies differ. In **Czechia**, there are no significant differences in methodologies overall but the fact that the total shares are reliant on data from service providers. The media regulator conducts random checks to monitor how European works are highlighted within services or catalogues. This process allows for straightforward verification of whether providers emphasise sections such as "European film." The methodology involves data collection from providers and includes direct and random monitoring for verifying the highlighting of European works.

Similarly, in **Slovakia**, both methodologies rely on the self-declaration by the providers. However, in the case of the methodology used for the verification of share of European works, Slovak law specifically foresees that the NRA can ask for more detailed data for both the proportions of European works and for all individual titles. In comparison, the methodology used for the verification of the prominence of European works, the declaration from providers must include justifications and measures implemented with regards to comply with the rules. The NRA can ask for more information or justifications where any doubt exists in either of the verification methodologies. In practice, the NRA

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<sup>61</sup> Austria, the Flemish Community of Belgium, the French Community of Belgium, Bulgaria, Cyprus, Czechia, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Luxembourg, Norway, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

<sup>62</sup> Austria, the Flemish Community of Belgium, the French Community of Belgium, Bulgaria, Cyprus, Estonia, Finland, Germany, Latvia, Luxembourg, the Netherlands, Poland, Romania, Slovenia, and Sweden.

<sup>63</sup> Czechia, Hungary, Portugal, Slovakia, and Spain.

checks the fulfilment of the prominence measures via ad hoc monitoring of the services in question.

In **Hungary**, the verification of the quotas is based on self-declaration by the media service provider. Linear media service providers should report on a monthly basis while non-linear service providers on an annual basis using an excel sheet or the Authority's dedicated website. The Authority compares the data provided by the media service providers with the data available from other sources. Although a similar procedure applies to prominence, the Hungarian Media Act does not provide for an express obligation for media service providers to report on their compliance with prominence obligations.

In **Portugal**, compliance with the share of European works is verified through a quarterly file that on-demand audiovisual media service providers must submit on a dedicated website. This file adheres to a model established by the ERC and includes essential information such as titles, production dates, origin of production, and availability dates in catalogues. In contrast, the verification of prominence within catalogues is conducted by requesting information from providers about specific measures taken to ensure visibility and collecting evidence such as screenshots of marketing campaigns and banners in their catalogues.

In **Spain**, data concerning the fulfilment of the quota of European works is quantitative; the CNMC mandates a percentage derived from both the number of works and their duration on VOD services. However, the assessment of prominence is qualitative; for instance, it examines whether VOD services engage in dedicated marketing for European works through trailers and banners.

Furthermore, in **Norway**, the Norwegian Media Authority indicated that the AVMSD has yet to be implemented. This directive is likely to enter into force on the 1<sup>st</sup> of January 2025 and the NMA is currently finalising preparations related to the implementation, which includes establishing methodologies for verifying both the share and prominence of European works. Finally, the **Irish** Coimisiún na Méan answered that the NRA is currently developing a methodology around the verification of the share and prominence of European works. Accordingly, it felt it was too early to input on this particular issue.

#### *1.2.4.2. Best practices and recommendations for the verification of the share of European works*

ERGA members then provided indications as to what would be, in their opinion, the most efficient methods for evaluating compliance with the obligations related to quotas under Article 13(1) of the AVMSD. These methods are not necessarily currently implemented by the NRAs but are rather quoted as being on their "wish list".

The regulator from the **Flemish Community of Belgium**, the VRM, emphasised that the effectiveness of evaluation methods largely depends on the size and resources available to an NRA. Due to the limited financial and staffing capabilities of the VRM, they concluded that sending questionnaires via email is the most efficient option for their context. The CMS in **Slovakia** pleaded for their existing system of self-declarations with the possibility of asking for more detailed data for further verification by the authority in case of non-compliance or doubt. This is particularly efficient when considering the available resources of the NRA, administrative burden for the provider and proportionality of the regulatory intervention.

CPTRA in **Estonia** said that several combinations of means to evaluate the fulfilment of the obligations could work. One of the combined models could offer greater flexibility and alleviate the burden on smaller NRAs while suggesting that specialised software or independent evaluations could be effective but may require significant additional resources. The **Luxembourgish** ALIA equally noted the potential benefits of using third-party software to automate and standardise evaluations, although they acknowledged a lack of specific market solutions designed for this purpose. It cautioned that while such tools could reduce administrative burdens and enhance data accuracy, smaller NRAs might face financial limitations in acquiring them.

The CRTA in **Cyprus** highlighted that, given its unique local context, recurrent reporting from VOD providers would be an efficient means of assessing compliance with quota obligations. The **Swedish** Agency for the Media added that recurrent reporting from VOD providers is currently regarded as the most cost-effective method for evaluating compliance. The **Dutch** NRA CvdM also answered that recurrent reporting from providers is optimal, especially given the complexity and time-consuming nature of evaluating numerous European works across different catalogues. It also noted that NRAs should be able to verify data from the reports and carry out sampling. **Slovenia's** AKOS recommended a dual approach involving recurrent reporting from VOD providers along with precise monitoring by NRAs to verify specific claims made in reports.

The NMA in **Norway** expressed a preference for reporting from VOD providers as the most efficient evaluation method, suggesting that AI tools might be considered in the future. Similar, ERC in Portugal proposed a combination of regular reports from VOD providers alongside efficient third-party software, emphasising the need to verify this software's effectiveness in providing necessary compliance data. The **Romanian** CNA advocated for straightforward recurrent reporting from VOD providers, which would involve annual submissions detailing the percentage of European works in their catalogues and measures taken to promote these works. They suggested that implementing third-party software could significantly enhance automation in evaluation processes, allowing for more accurate analysis and reducing reliance on manual reporting.

The **French Community of Belgium** media regulator CSA suggested that establishing a comprehensive database categorising works as European or non-European, in accordance with the directive's criteria, would be key. The CSA further recommended developing a software that could link this database with data provided by publishers, to enhance efficiency. Additionally, tools that could monitor the effectiveness of prominence measures to ensure compliance with regulatory requirements would be of added value. **Bulgaria's** CEM advocated for a hybrid approach that combines third-party software with evaluations conducted by independent contractors. The **Latvian** NEPLP said that it relies on information provided by VOD providers, however the information is not sufficient and cannot be verified. If the verification were made by independent researcher, the data would be more reliable, while IT/AI tools for the verification process would support the work of electronic media regulators.

The DLM in **Germany** concurred that recurrent reporting from providers suffices for determining compliance, although they acknowledged that NRAs should have the option to request more detailed data if necessary. The **Hungarian** NMHH indicated that an efficient evaluation process would involve specialised software and guidelines from the European Commission. Finally, the KRRiT in **Poland** stressed the importance of having a simple and unequivocal definition of European works for effective evaluation and suggested that well-functioning third-party software could streamline this process.

#### 1.2.4.3. *Setbacks and potential improvements*

Thirteen<sup>64</sup> ERGA members reported that they possess all necessary legal instruments to effectively supervise and enforce obligations related to European works quotas. In contrast, five<sup>65</sup> NRAs expressed concerns regarding the adequacy of their legal frameworks and identified specific upgrades that would be necessary for improved enforcement.

The **French Community of Belgium** indicated that the CSA has yet to adopt essential guidelines. **Bulgaria** noted a lack of specific legal instruments for supervising and enforcing obligations on on-demand services as their current approach is limited to requesting data from providers. Additionally, they highlighted that the relatively small market size in Bulgaria means that many providers are exempt from these obligations. NEPLP in Latvia has the right to request any information from VOD providers related this topic, however, access to the services is not provided, therefore the data cannot be verified. **Poland's** KRRiT pointed out the absence of unequivocal and easily verifiable definitional criteria. The ANC in **Romania** also acknowledged that it does not yet have all

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<sup>64</sup> Austria, the Flemish Community of Belgium, Cyprus, Estonia, Finland, Germany, Hungary, Ireland, Luxembourg, Norway, the Netherlands, Slovenia, and Sweden

<sup>65</sup> The French Community of Belgium, Bulgaria, Latvia, Poland, and Romania.



the legal instruments in place as the secondary legislation needed to provide a comprehensive legal framework under article 23(1) is still under development.

Three<sup>66</sup> NRAs conveyed balanced responses regarding their legal tools. The **ERC** believes it has the necessary legal instruments to ensure compliance with national rules concerning the promotion of European works. However, they emphasised that in order to know whether they have all the necessary legal instruments, clarifying the definition of European work, such as the common methodologies for measuring low audience figures as outlined in the guidelines for Article 13 of the AVMSD, would be helpful. The **CNMC** stated that while they possess a robust legal framework to fulfil its responsibilities, it lacks updated regulations essential for detailing specific aspects of prominence obligations. They noted that such regulations are currently being prepared by the relevant Ministry. The **CMS** said that it has sufficient competence at national level and, outside of the overall issues of capacity and resources that do not allow for a proactive monitoring or in-depth analysis by their NRA, no major issues were encountered. However, further European level detail and guidance on the practical application of the relevant concepts, for instance in the form of European Commission guidelines in a similar fashion as the ones published on European works quotas calculation, or EBMS guidance, would be desirable. Furthermore, this would ensure flexibility (no prescribed concepts in the AVMSD but rather detailed guidance for regulatory practice) and coherence on a pan-European basis. Finally, the CMS argued that there was a lack of verified sources, databases, or single identifier to check whether a work is considered European.

#### *1.2.4.4. Sanctions for non-compliance with the measures set out in article 13 (1) of the AVMSD*

Eighteen<sup>67</sup> NRAs reported that their national include sanction measures, while three indicated that they do not have any such measures in place. Typically, these sanctions are outlined in the decrees or laws transposing the AVMSD<sup>68</sup>.

The nature of the sanctions varies significantly across these countries. In **Austria**, non-compliance with established quotas is not subject to penal provisions under administrative law as stipulated in the Federal Act on Audiovisual Media Services. However, according to § 62 Abs. 1 AMD-G, KommAustria is mandated to issue a formal decision regarding any violation of § 40 Abs. 4 AMD-G. This decision entails determining

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<sup>66</sup> Portugal, Slovakia, and Spain.

<sup>67</sup> Austria, the Flemish Community of Belgium, the French Community of Belgium, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain.

<sup>68</sup> Including, but are not limited to, jurisdictions such as the Flemish Community of Belgium, the French Community of Belgium, Estonia, Hungary, Ireland, Latvia, Norway, Poland, and Romania.

whether a provision of the AMD-G has been breached based on factual evidence. **Estonia's** Media Service Act specifies that in cases of noncompliance, a law enforcement agency (CPTRA) may impose coercive measures as per the procedures outlined in the Substitutive Enforcement and Penalty Payment Act. The maximum fine for noncompliance is set at €15,000; if violations are repeated, this amount can increase to €30,000.

The **Finnish** NRA indicated that there are no specific sanctions outlined in its national legislation regarding this issue. Nonetheless, authorities may issue supervisory decisions under the Electronic Communications Services Act and impose conditional fines as a means of enforcement. The DLM in **Germany** stated that the ultimate sanction for non-compliance is the blocking of services. However, media authorities typically provide service providers with an opportunity to rectify their offerings before implementing sanctions.

**Hungary's** NMHH possesses oversight authority to ensure compliance with quota obligations during regulatory inspections or administrative proceedings. The authority is empowered to impose sanctions in accordance with the Media Act. These sanctions include the order to publish a notice or the decision on the home page of its website or in a designated program in the manner and for the period of time specified in the decision, the exclusion of the infringer from participating in the tender procedures published by the Sponsorship Fund for a fixed period of time, the imposition of a fine or, the suspension of the exercise of the right to provide media services for a specific period of time.

NEPLP in **Latvia** has the right to sanction a VOD provider. Article 23 (5) of Electronic Mass Media Law states: “An electronic mass medium which provides on-demand audiovisual services shall, at least in the amount of 30 per cent, include European audiovisual works in its catalogue and promote the accessibility and prominence of those works, including tagging them, devoting a separate section or search tools thereto.” And Article 80 (1) states “For violating the prohibitions and restrictions or failing to comply with the obligations in respect of creation of electronic mass media programmes or provision of on-demand services laid down in this Law, a warning or fine from ten to one hundred units of fine shall be imposed on a natural person, but a fine from one hundred to two thousand units of fine - on a legal person.” It should be noted that one unit of fine is €5 and the maximum fine is €10 000.

ALIA in **Luxembourg** noted that if an audiovisual media service provider fails to comply with regulations concerning the promotion of European works, the Authority may request explanations from the provider. Should it determine that there has been a serious violation, it may impose one of several disciplinary penalties based on the severity of the infraction: a reprimand, a reprimand with the obligation to read a press release during the airtime, fines ranging between 250 and 25,000 euros. If non-compliance persists

after a fine has been issued or if there is a subsequent violation within six months, fines may be doubled, or the Authority can report this to the minister in charge and propose the temporary suspension or the withdrawal of the licence or permission of the service.

**Norway's** sanctions framework includes warnings, financial penalties, and coercive fines. **Dutch** law does not have specific national measures for quota obligations. However, VOD providers may receive warnings or fines, with broadcasting licenses being revoked only in exceptional cases. In Portugal, failure to comply with obligations outlined in Article 13(1) incurs penalties classified as minor infractions, resulting in fines ranging from €7,500 to €37,500.

**Romanian** law has detailed various sanctions within its legal framework. Non-compliance with Article 23(1) constitutes an administrative offense (a contravention) for VOD providers. Upon identifying non-compliance, the NAC issues public warnings specifying conditions and deadlines for compliance. If these conditions are not met within the specified timeframe or if violations recur, NAC is authorised to impose fines ranging from 5,000 lei to 100,000 lei (approximately €1,000 to €20,000).

Sanctions set out in §143 of the **Slovak** MSA for cases of non-suppliance of data requested by the CMS range from €30 to €1,000, while those for the breach of the quota itself range from €100 to €10,000. However, Slovakian administrative law sanctions are applied in stages, meaning that the notification of the breach of the law is always the first sanction, and it is only then followed by sanctions of monetary nature in cases of repeated offences. Case law on the application of these sanctions in the situations of non-compliance of prominence of European works exists.

**Slovenia's** AKOS can identify irregularities during inspections and order compliance while also prescribing financial penalties for non-compliance. In Spain, sanctions can reach up to €300,000 for services generating less than €10 million in revenue and can escalate to 1.5 million euros for services exceeding that threshold.

Three<sup>69</sup> NRAs answer that their national laws do not provide for any sanctions concerning these matters.

#### *1.2.4.5. Suggestions for the update of the template used for the reporting on the implementation of Article 13 (1) and (2) of the AVMSD*

In the context of reporting on the implementation of article 13 (1) and (2) of the AVMSD, several NRAs have proposed means to improve the template used for communicating data from their Member States to the European Commission, as stipulated in Article 13 (4).

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<sup>69</sup> Bulgaria, Cyprus, and Sweden.

**Austria** suggested the development of a new template due to several formatting and usability issues present in the current version. Specifically, they recommend that rows should no longer be merged and centred, so that content can be automatically sorted in an alphabetical order within the spreadsheet. Additionally, they noted that the document's large size makes scrolling cumbersome once data is entered. Furthermore, Austria emphasised the need to revise the placement and usability of all checkboxes, particularly in the "Art. 13 (1) - Promotion VOD" section.

The **French Community of Belgium** expressed that while the template is generally comprehensive, there are areas for improvement. Within the quota section, they suggested adding a column to specify the types of works that are not eligible under either the directive's criteria or alternative criteria. This addition would enhance clarity regarding how quotas are calculated. They also pointed out that since the Commission's guidelines do not address non-fiction programs, variations in calculation methods across countries may occur without notice.

Regarding prominence, they highlighted potential discrepancies in data collection among countries due to the directive's broad definitions, which lack specific thresholds or indicators. The "dedicated section" can be perceived as limited. Indeed, the sections operated by VOD providers, that are usually more specific than "European Works" and rather gather, for example, "French films", are impacted by the use of algorithms. Further clarification is needed on what sections of VOD catalogues qualify as dedicated sections according to the European Commission template.

**Cyprus** noted that as long as there is clear guidance on how to use the template and what information is expected, it remains practical. They emphasised the necessity of a "How to use" sheet to minimise misconceptions.

**Estonia** proposed a broader perspective on data communication obligations, suggesting that considerations should extend beyond Article 13 templates to include data collection under Articles 16 and 17 of the AVMSD. They stressed that consistent methodologies are crucial for evaluating compliance with these articles and for ensuring reliable conclusions in studies mandated by the Commission.

The **Netherlands** indicated that their national law allows for partial exemptions from quota obligations under specific circumstances, such as when a VOD service is newly established. They proposed including a column for notes to clarify such exemptions. However, they also expressed concerns about confidentiality regarding turnover information requested in the template, suggesting the removal of this particular column.

**Portugal** recommended redesigning selection fields within the template to facilitate easier data entry. **Sweden** highlighted challenges related to audience share assessments for smaller providers and noted missing columns in reporting on promotion under Articles 16 and 17. They suggested renaming certain tabs to reflect their focus on

quotas rather than promotion and advocated for adding comment columns across all sheets.

## **Part II: Financial contribution to the production of European works (article 13 (2))**

The second part of this report focusses on the provisions relating to the financial contribution to European works. Work on this topic started with the 2023 report and ERGA members agreed in the 2024 Terms of Reference of Subgroup 1 of the necessity to investigate this aspect in more detail. ERGA members were asked to answer questions pertaining to the transposition of article 13 (2) of the revised AVMSD, the monitoring of the relevant national/regional measures and their enforcement.

### **2.1. Transposition of article 13 (2)**

Article 13 (2) of the revised AVMSD offers Member States the possibility to extend their national law and impact media service providers that are not under their jurisdiction. Thus, Member States who require media service providers under their jurisdiction to contribute to the production of European works may also require media service providers targeting audiences in their territories but established in another Member State to contribute financially.

Whenever they decide to make use of this possibility, they are free to determine the level of the contribution and the form thereof, including via direct investment in content and contribution to national funds. Recital 36 further lists the different forms the financial obligations can take and reiterates<sup>70</sup> that these rules should only be charged on the revenues generated through the audience in the targeted Member State.

The Commission Staff working document for the detailed reporting on the application of Articles 13, 16 and 17 of the AVMSD for 2020-2021<sup>71</sup> found that, at the time of the study, seven Member States required financial contributions from cross-border VOD providers, while two Member States imposed similar obligations on cross-border linear providers. Some Member States only had financial obligations for domestic VOD or linear services. In the previous report (where the modified sections in the AVMSD were not yet relevant), nine Member States reported financial contributions from VOD providers, either under their jurisdiction or across borders. The use of different calculation methods serves as a further justification for ERGA to examine this issue in the current report and propose recommendations and best practices.

The state of play outlined in the 2023 report demonstrated that eleven out of the twenty NRAs surveyed indicated that their Member States had transposed, or were considering to transpose, the measures in article 13 (2). This number slightly increased in 2024, and

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<sup>70</sup> The provision is also in article 13 (3) of the AVMSD.

<sup>71</sup> [https://ec.europa.eu/newsroom/repository/document/2024-26/SWD\\_2024\\_149\\_F1\\_OTHER\\_STAFF\\_WORKING\\_PAPER\\_EN\\_V3\\_P1\\_3497175\\_M0t12glcDo7EI0LQrAqvh8I9UXE\\_106642.PDF](https://ec.europa.eu/newsroom/repository/document/2024-26/SWD_2024_149_F1_OTHER_STAFF_WORKING_PAPER_EN_V3_P1_3497175_M0t12glcDo7EI0LQrAqvh8I9UXE_106642.PDF)

three additional NRAs indicated national or regional legislation transposing this provision, to amount to a total of fourteen<sup>72</sup> NRAs.

Some NRAs indicated interesting developments in their Member State in relation to the financial contribution to the production of European works. Cyprus signalled that their transposition law allows CRTA to require VOD providers to financially contribute to the production of European work, but the Cypriot NRA has not enforced the provision so far. While Slovakia has not transposed article 13 (2) of the AVMSD, investment obligations exist for their domestic broadcasters and VOD providers. Finally, the Finnish Government has been investigating since 2021 different models with the view to set an investment obligation but has so far not imposed any financial contribution.

### 2.1.1. Target and format

The survey responses indicate that Member States impose investment obligations on different media services providers that are not based in their jurisdiction. In eleven<sup>73</sup> markets, obligations apply to broadcasters and VOD providers, while measures only impact VOD players in the Flemish Community of Belgium and in the Netherlands. In addition, one NRA shared that provisions in their transposition laws apply to video-sharing platforms. This is the case for the Flemish Community of Belgium where a new law is scheduled to apply as of the 1<sup>st</sup> of January 2025.

The financial contribution required from VOD cross-border providers takes two different forms in the surveyed NRAs' Member States. In ten<sup>74</sup> countries, NRAs indicated that providers should make direct contributions to the production of and acquisition of rights while levies must be paid to a fund in eight<sup>75</sup>. Finally, in six<sup>76</sup> markets, the contribution may take both or either of the above-mentioned forms. More detailed information can be found in annex II to this report.

### 2.1.2. Contribution obligations dedicated to independent producers

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<sup>72</sup> All three Communities of Belgium, Croatia, France, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, Romania, and Spain.

<sup>73</sup> The French Community of Belgium, Germany, Spain, France, Greece, Croatia, Ireland, Italy, Poland, Portugal, and Romania.

<sup>74</sup> The Flemish Community of Belgium, the French Community of Belgium, Croatia, France, Greece, Italy, the Netherlands, Portugal, Romania, and Spain.

<sup>75</sup> The Flemish Community of Belgium, the French Community of Belgium, Croatia, Germany, Greece, Poland, Portugal, Romania, and Spain.

<sup>76</sup> The Flemish Community of Belgium, the French Community of Belgium, Greece, Portugal, Romania, Spain, Croatia, and France.

Seven<sup>77</sup> out of fourteen NRAs indicated that investment obligations dedicated to independent productions have been established, with differing definitions and requirements across countries.

In the **Flemish Community of Belgium**, new legislation set to take effect on the 1<sup>st</sup> of January 2025, mandates that 100% of the investment obligation must be spent on the production of Flemish audiovisual works created by independent producers. The Media Decree provides a detailed and extensive definition of an independent producer, specifying that it is a producer with a distinct legal identity from a television broadcaster, who does not hold or is not held by more than 25% of voting or property rights by a television broadcaster or related entities. Alternatively, a producer can still be considered independent if they meet the affiliation criteria but demonstrate that their average annual turnover from audiovisual productions with dependent television broadcasters is less than 25% based on the last three approved annual accounts or a good faith estimate.

Similarly, the **French Community of Belgium** requires investments to be fully dedicated to independent producers. An independent producer is defined as an entity with a distinct legal personality from a service publisher, which does not hold more than 15% of the capital of a service publisher, nor derives more than 90% of its revenue from sales to a single service publisher over three years. Additionally, the producer's capital must not be more than 15% owned directly or indirectly by a service publisher or by a company that holds more than 15% of a service publisher's capital.

In **Croatia**, media service providers are required to invest 2% of their annual gross income in independent productions. The Croatian Electronic Act states that an independent producer must not be owned or dependent on a television broadcaster or audiovisual media service provider, cannot derive more than 90% of its income from a single broadcaster over a period of three years, and must hold secondary rights to its audiovisual works.

In **France**, regulation stresses that at least three-quarters of expenditures on cinematographic works<sup>78</sup> and at least two-thirds on audiovisual works<sup>79</sup> must be allocated to the production of independent European works. The Decree No. 2021-793 provides that a production company is deemed independent from the service provider publisher if it has no capital or voting rights shared with the publisher, and no controlling

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<sup>77</sup> The Flemish Community of Belgium, the French Community of Belgium, Croatia, France, Italy, the Netherlands, and Spain.

<sup>78</sup> For SVOD services that do not offer a feature film within 12 months of its theatrical release, it represents 3% of annual turnover in France.

<sup>79</sup> For SVOD services that do not offer a feature film within 12 months of its theatrical release, it represents 10,67% of annual turnover in France.



shareholder influences the publisher, while also adhering to additional expenditure criteria related to rights and revenue.

**Italy** instructs commercial linear providers to invest 12.5% and public service broadcasters 17% of their revenues in independent productions. For VOD services providers, the investment obligation is set at 17% until December 31, 2022, increasing to 18% in 2023 and 20% in 2024, rectified to 16% earlier this year, by decision set in Decree. An independent producer in Italy is defined as a European communication operator who carries out audiovisual production activities and who is not controlled by, or connected to, providers of audiovisual media services subject to Italian jurisdiction. Alternatively, it is defined as a producer that does not allocate more than 90% of its production to a single media service provider, or it owns the secondary rights to its works. Agcom Regulation confirms this definition and specifies that the 90% of their production allocation is calculated within the last three consecutive years.

In the **Netherlands**, 60% of the investments must be dedicated to independent productions. Independent production in Dutch law refers to program content created without involvement from public media institutions, commercial media institutions, foreign broadcasting organisations, or entities where these institutions hold significant ownership stakes (over 25% or more than 50% jointly). It also excludes companies where these institutions are fully liable partners for debts.

Finally, in **Spain**, public audiovisual media service providers shall earmark 6% of its eligible revenue for pre-financing European audiovisual works, and of this 6%, at least 70% must be earmarked for audiovisual works produced by independent producers. Commercial audiovisual media service providers with revenues over €50 million shall earmark 5% of this revenue each year to fund European audiovisual works. And of this 5%, at least 70% must be earmarked for audiovisual works produced by independent producers, while those earning between €10 million and €50 million must allocate 5% of this income annually to fund European audiovisual works. And of this 5%, at least 70% must be earmarked for audiovisual works produced by independent producers. An independent producer in Spain is defined as a natural or legal person who is not linked on a stable basis through a common business strategy with an audiovisual media service provider obliged to comply with the contribution obligation and who assumes the initiative, coordination and economic risk of producing audiovisual programmes or content, either on their own initiative or on commission, and makes these available to said audiovisual media services provider in return for payment.

### 2.1.3. Setbacks and potential revision

Responses regarding the considerations prompting changes to the financial contribution provisions of the AVMSD were mixed. Five<sup>80</sup> countries reported facing challenges, while another five<sup>81</sup> did not encounter any issues.

Notably, the **French Community of Belgium** pointed out specific difficulties related to audience measurement for low-revenue services, a requirement set by the European Commission during a recent review of the Decree transposing the AVMSD. At the time of the transposition of the AVMSD and due to inexisting tools, **France** indicated that applying audience criteria for on-demand audiovisual services could be challenging. **Greece**, however, attributed their lack of reported issues to the pending release of ministerial decisions. Additionally, **Italy**, while not having anything to specifically report, mentioned the potential arising of challenges in working with providers based in other Member States, particularly concerning revenue identification, data sharing, and enforcement.

## 2.2. Monitoring of compliance with article 13 (2)

Eleven<sup>82</sup> NRAs indicated that they were the competent authorities in charge of the enforcement of article 13 (2). Three<sup>83</sup> mentioned their national film or cinema institute as overtaking this role. In the French Community of Belgium and Portugal, while the CSA and ERC are respectively competent, the film institutes are also involved in some aspects of the monitoring, including the verification of the validity of the investments.

### 2.2.1. Monitoring strategies

The monitoring strategy to verify the compliance with article 13 (2) of the AVMSD of NRAs is primarily governed by specific decrees that outline the obligations for both domestic and foreign service providers.

In the **French Community of Belgium**, the monitoring strategy is based on the relevant Decree, ensuring compliance with the adopted provisions. Similarly, in **Croatia**, providers are required to fulfil certain forms annually and the Agency for Electronic Media keeps this information confidential.

Since 2021 in **France**, foreign on-demand audiovisual media services targeting the French market are subject to obligations under Decree No. 2021-793, which became effective on July 1, 2021. This decree instructs foreign VOD providers to comply with the

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<sup>80</sup> The French Community of Belgium, France, Italy, the Netherlands, and Spain.

<sup>81</sup> The Flemish Community of Belgium, Croatia, Germany, Greece, and Romania.

<sup>82</sup> The Flemish Community of Belgium, the French Community of Belgium, Croatia, Cyprus, France, Greece, Ireland, Italy, the Netherlands, Portugal, and Spain.

<sup>83</sup> Germany, Poland, and Romania.

same financial contribution rules as French services, provided they all meet specific liability criteria<sup>84</sup>. Furthermore, in 2022, foreign linear services were also included in the support framework for creative works through Decree No. 2021-1924, subject to the same obligations as French services, provided they all meet specific liability criteria<sup>85</sup>. The obligations of these services are monitored annually, similar to French services, with declarations of investments examined by Arcom.

In **Greece**, the situation is currently pending, as they await ministerial regulation to clarify their monitoring strategy. Likewise, in **Ireland**, confirmation of the monitoring approach is still pending the enacting of their transposition law.

**Italy's** monitoring strategy aligns with that of national providers, involving requests for information, external monitoring, and data cross-referencing with information already held by Agcom. The MAVISE database has been frequently used to support these efforts. Data verification is conducted by an independent third party mandated by Agcom. If any discrepancies or unclear information arise, Agcom can request additional data from providers before initiating sanction proceedings. No sanctions have been imposed in recent years, as providers typically meet these obligations. Agcom also has general inspection authority within Italy, supported by the Financial Police. When coordinating with foreign authorities under the country-of-origin principle, Agcom first contacts another authority, who provides the contact details of the relevant personnel for each AVMS service. Agcom then reaches out to these contacts while keeping the original authority informed.

In the **Netherlands**, the authorities are in the process of preparing supervision and enforcement policies related to these new provisions. They are actively consulting with key stakeholders to gather their perspectives and concerns.

**Spain** has established a comprehensive monitoring strategy consisting of three filters. The first filter is conducted by an external consultant who analyses specific aspects of the provider and its investments. Following this, the technical services of the CNMC perform a thorough analysis of both the providers and their investments. The Spanish national film institute is consulted in relation to films and whether their producers have received public aid.

In **Portugal**, the ERC is in the process of developing its coordination with the country-of-origin of platforms with Portugal as a country of destination. In Romania, the MAVISE database is used and, when necessary, the ERGA Memorandum of Understanding to

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<sup>84</sup> It is required that VOD providers must generate in France over €5 million in annual turnover and hold more than 0,5% of the total audience share in their category of on-demand audiovisual media services.

<sup>85</sup> Same liability criteria as VOD services to cable and satellite TV and their catch-up services and similar services targeting the French territory, even if not established in France or under French jurisdiction, including those operated directly or through subsidiaries by companies as defined in in French Law.

identify foreign players and obtain the necessary contact details. The identification of international players requires more efforts than for domestic players.

### 2.2.2. Constraints and potential useful tools

Six<sup>86</sup> NRAs reported encountering issues related to the monitoring of compliance with Article 13(2) of the AVMSD. In contrast, three<sup>87</sup> countries, indicated that they had not faced such issues. Additionally, four<sup>88</sup> NRAs noted that they were not fully competent to address the matter.

In **Belgium's Flemish community**, the identification of providers is facilitated through the Audiovisual Observatory Mavise Database. Coordination with the Member State of establishment is conducted via the use of Memorandum of Understanding. Declaration of the same works across multiple Member States can also be an issue, although no setback has yet occurred. Meanwhile, the **French community in Belgium** identified the identification of potential contributors as being an issue which has been solved by examining data provided by sales houses and their operations in relevant markets.

**France** faces challenges in identifying providers, particularly concerning the audience threshold criterion, which needs the development of audience measurements tools and takes into account the specific characteristics of on-demand services.

**Ireland** and **Spain** emphasised the identification of providers, the coordination with the Member State of jurisdiction and the declaration of the same works across multiple Member States being of concern but have not proposed any used case.

**Italy** indicated the identification of potential contributors, while the **Netherlands** has not reported significant issues yet, indicating that it may be premature to raise concerns. Some service providers in the Netherlands believe they are adequately investing in compliance and view the obligations as an unnecessary administrative burden. They anticipate that the effects of their investments will manifest over time, given the lengthy production cycles involved. The Ministry hopes for improved insights into the performance of streaming services, although confidentiality regarding business information remains a barrier.

## 2.3. **Enforcement of article 13 (2)**

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<sup>86</sup> The Flemish Community of Belgium, the French Community of Belgium, France, Ireland, Italy, and Spain.

<sup>87</sup> Croatia, Greece, and the Netherlands.

<sup>88</sup> Germany, Poland, Portugal, and Romania.

Eight<sup>89</sup> NRAs consider that they have all the necessary legal instruments at their disposal to enforce the obligations under Article 13(2) of the AVMSD. Two<sup>90</sup> NRAs believe they lack the appropriate legal tools for effective enforcement.

The **French community in Belgium** acknowledges that while it is empowered to enforce the obligations, it sometimes faces challenges in obtaining sensitive information, such as subscriber numbers from services that are unable to segregate data at the country level.

In **Greece**, the enforcement of Article 13(2) is contingent upon the issuance of Ministerial Decisions that have not yet been published. They should outline the implementation modalities. Ireland considers it too early to determine the adequacy of its legal instruments for enforcement as their law has not been enacted yet.

**Italy** relies on existing legal tools to enforce the obligation of responding to information requests from Agcom and complying with financial obligations. However, in cases where a foreign-based provider refuses to cooperate, the NRA faces uncertainty regarding the process for imposing fines. Agcom argued that legal certainty would help address this issue. When asked whether the information on the level of contribution by providers was made publicly available, a majority<sup>91</sup> of NRAs gave negative answers. Aggregated data is made public in Italy, as prescribed by law (Article 56 para 6 of the AVMS Code), in Agcom's annual report presented to the Parliament<sup>92</sup>.

In **Spain**, most providers make use of the Spanish Royal Decree 988/2015 that allow providers to request the CNMC to identify some of the data as confidential. The Spanish NRA therefore generally only makes public the aggregated amount that is finally admitted as the contribution.

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<sup>89</sup> The Flemish Community of Belgium, the French Community of Belgium, Croatia, France, Greece, the Netherlands, Slovenia, and Spain.

<sup>90</sup> Italy and Portugal.

<sup>91</sup> The Flemish Community of Belgium, the French Community of Belgium, Croatia, France, Greece, Ireland, the Netherlands, and Portugal.

<sup>92</sup> Example of such report:

[https://www.agcom.it/sites/default/files/documenti/relazione\\_annuale/RELAZIONE%20ANNUALE\\_2024.pdf](https://www.agcom.it/sites/default/files/documenti/relazione_annuale/RELAZIONE%20ANNUALE_2024.pdf)

### **Part III: Exceptions set in article 13 (6): audience measurement methodologies**

The third and final part of this report focusses on the exceptions to the obligations laid out in article 13 (1) and 13 (2). Article 13 (6) of the AVMSD grants exemptions to the rules pertaining to the prominence of European works and Member States' capacity to impose financial contribution on providers targeting audiences in other jurisdictions. Media service providers with a low turnover or a low audience are not required to abide by these obligations. This exemption is only applicable with respect to targeting services and does not include service providers to whom financial contributions are imposed by their Member State of establishment. 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.

In 2020, the European Commission published guidelines<sup>93</sup> pursuant to article 13 (7) of the AVMSD on the calculation of share of European works in on-demand catalogues and on the definition of low audience and low turnover.

At the time of the preparation of the questionnaire that would lead to the drafting of this report, a Memorandum of Understanding (MoU) on the transposition of article 13 (6) was disseminated to ERGA members. In particular, the MoU sent by the Belgian CSA asked NRAs to provide further guidance on the **methodologies and tools used at national level to calculate low audience in the non-linear environment**. As it led up to interesting insights, it was decided at the Contact Network Meeting of the 13<sup>th</sup> of June 2024 to integrate these results to the present report.

Five questions with accompanying sub-questions were sent out. Twenty-three<sup>94</sup> NRAs participated in the survey, five<sup>95</sup> of which indicated being in the process of putting in place a methodology. Those who have implemented a model fall into four main categories: reliance on low turnover instead of low audiences<sup>96</sup>, third-party model<sup>97</sup>, internal models<sup>98</sup>, and comparison to a threshold<sup>99</sup>.

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<sup>93</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2020.223.01.0010.01.ENG&toc=OJ:C:2020:223:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.223.01.0010.01.ENG&toc=OJ:C:2020:223:TOC)

<sup>94</sup> The Flemish Community of Belgium, the French Community of Belgium, Croatia, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, and Sweden.

<sup>95</sup> Greece, Croatia, Ireland, Luxembourg, and Norway.

<sup>96</sup> Croatia, Italy, Portugal, and Slovenia.

<sup>97</sup> France, Malta, and Sweden.

<sup>98</sup> Latvia, Lithuania, and Slovakia.

<sup>99</sup> The Flemish Community of Belgium, Estonia, Finland, the Netherlands, Poland, Spain, and the French Community of Belgium.

### 3.1. NRAs relying on the low turnover criteria as an alternative to the low audience exemption

Four NRAs rely on the low turnover criteria as an alternative to the low audience exemption, namely Italy, Slovenia, Croatia, and Portugal.

The **Italian** transposition law includes both low turnover and low audience possibilities, with Agcom regulations defining the thresholds. Nevertheless, as requested by close to 100% stakeholders participating to a public consultation issued for this purpose by Agcom in 2022, the low audience criterion is currently not operative, while nothing precludes its concrete inclusion in the near future. Stakeholders considered turnover to indicate the ability of the provider to contribute to investments or payments in a sustainable manner. Additionally, turnover is typically easier for service providers to calculate and communicate compared to audience share. Consequently, the Agcom regulation considers solely a turnover lower than €5 million to fit into the exemption. However, nothing precludes the concrete inclusion of the low audience criterion in the future.

**Slovenia** employs a derogatory audience measurement system that uses turnover as the sole metric to calculate low audience. VOD providers with turnover above €200,000 and who do not meet the 30% share of European works and 5% of Slovenian works are obliged to report their contribution to the production and acquisition of rights in European works.

**In Croatia**, the Agency for Electronic Media relies on data provided by service providers, such as their statement about the number of users. It does not have any specific tools prescribed for this purpose. Thus far, they have not encountered any issues, partially because they can also grant exceptions based on low turnover (€400,000).

Under **Portuguese** law, broadcasters, cinematographic distributors, video publishers, and on-demand audiovisual service operators may be exempt from certain obligations if they meet specific low turnover or low audience thresholds. The law specifies that entities with an annual revenue below €200,000 on the Portuguese market qualify for this exemption. Additionally, operators whose market share is less than 1% in their relevant segment are also eligible for this exemption.

### 3.2. NRAs using systems based on a third-party model

Sweden, Malta, and France rely on third-party measurement companies to monitor video consumption and base their low audience methodology on.

In **Sweden**, the Swedish Agency for the Media relies on the audience measurement methodologies developed by the Mediamätning i Skandinavien (MMS) for television and VOD viewing. Panels are asked whether their household has access to different types of

VOD services (e.g. SVOD) and the video consumption is measured taking into consideration several metrics, for instance, the weekly and daily reach and the daily viewing time. Overall, this provides a comprehensive overview of the market and reliance on MMS data allows the Swedish NRA to know which VOD services are the most popular amongst viewers.

In contrast, **Malta** relies on an internal audience survey conducted by a local company through weighted random sampling phone interviews. The methodology focusses on the percentage average audience share by weekday and channel. As video-on-demand services in Malta are not as popular and primarily serve as a complement to linear television offerings, no distinction is operated between broadcasters and VOD providers. The Broadcasting Authority of Malta does not collect data directly from service providers but rather conducts its own audience surveys.

**France**, on the other hand, uses a third-party measurement company, Médiamétrie, which segments the market into three categories and employs three methodologies tailored to fit the needs of Arcom. Médiamétrie conducts monthly phone surveys of up to 37,000 people per year for SVOD services and pay-per-view, as well as specific methodologies for catch-up services. The metric used is the time spent on each site.

### 3.3. NRAs relying on internal models

Lithuania, Latvia, and Slovakia have established their own model, with sometimes clear methodologies and practices for gathering data, to reflect their market conditions and regulatory needs.

In **Lithuania**, there is no specific methodology outlined in laws. The relevant legal provisions for linear audiovisual media service providers, a "low audience" is defined as a situation where the audience share falls below 2 % in Lithuania. For VOD providers, the threshold is set at an audience share below 1%. The Radio and Television Commission of Lithuania developed a general practice wherein service providers are required to submit data during inspections, and the regulator places trust in the information provided. Nonetheless, if the regulator suspects that the data is inaccurate, including in cases of "low audience" leading to non-compliance with the European works requirement, the regulator reserves the right to conduct its own evaluation.

In **Latvia**, the National Electronic Mass Media Council (NEPLP) has developed guidelines<sup>100</sup> addressing small audiences and low turnover. These guidelines state that NEPLP may use audience research to gather necessary data. NEPLP has only recently conducted its first audience study specifically focusing on VOD services. While the

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<sup>100</sup> <https://www.neplp.lv/lv/media/5601/download?attachment>



guidelines require VOD providers to submit audience data, compliance is not always feasible.

The data collection employs various sources, including:

- For Subscription Video on Demand (SVOD) or similar audiovisual services, the number of active users calculated is the average number of subscribers per month over the entire year.
- For Transactional Video on Demand (TVOD) or similar services, active users are defined as unique purchasers or user accounts that have made at least one purchase from the service's catalogue during a specified timeframe, typically once a month on average.
- For Free on Demand (FOD) or Advertising Video on Demand (AVOD) services, the total number of active users is determined by averaging the real number of users per month throughout the year, which includes evaluating the audience on each service distribution platform. Data from audience research companies may also be used to determine the audience.

Despite these guidelines, challenges persist in Latvia, as not all service providers collect audience data, and some are reluctant to share this information. However, the Electronic Mass Media Law says that if the quota for European audiovisual works does not apply to an electronic mass medium providing an on-demand audiovisual service, it must submit information to the National Electronic Mass Media Council to substantiate this claim. Consequently, providers wishing to be exempt from obligations must provide the requisite information.

In **Slovakia**, the approach to data gathering relies on internal processes. According to Article 28(6) of the Media Services Act (MSA), providers of on-demand audiovisual media services are obligated to notify the regulator of the current data regarding the number of end-users of their services in aggregate form once a year, specifically by the 31<sup>st</sup> of January, reflecting the status as of the 1<sup>st</sup> of January of the given calendar year. This data is subsequently aggregated and used to assess eligibility for the low audience exemption, alongside other qualitative indicators, such as cases where the service is merely ancillary to the primary service without the aim or potential to target larger portions of the market.

CMS receives this data based on the obligations established in § 28, paragraph 6 of the MSA. Consequently, CMS possesses data on monitoring similar services from the preceding year, which is used to calculate the aggregate average of VOD service usage per user. This figure includes services with the highest user numbers in Slovakia, although there remain gaps in coverage due to the recent implementation of this obligation. Following this, the data provided by individual providers seeking exemption is compared to the aggregate figure in accordance with European Commission guidelines,

which classify providers with a viewership share of less than 1% in Slovakia as having low viewership.

### **3.4. NRAs using a methodology relying on a threshold to qualify low audience**

Seven<sup>101</sup> NRAs indicated that their methodology relies on a threshold to qualify low audience.

In **Finland**, Traficom has received only one request for an exemption from a service provider thus far. The agency has not developed sophisticated models to assess whether a provider may potentially have a low audience in this context. However, Traficom has benchmarked several studies examining the use of on-demand services in Finland, which were used to estimate the size of the national market. This estimation aimed to determine the "total audience" against which the user numbers of the service provider in question could be compared.

The benchmarking exercise yielded a rough estimate characterised by significant uncertainties. Nonetheless, given the very low audience of the service provider requesting the exemption, Traficom was able to confirm that the audience share would fall below the established threshold of 1%.

The studies referenced were conducted by Finnpanel Oy, a well-established audience measurement company in Finland. Traficom has previously relied on their statistics for various purposes, including monitoring overall market trends in the television sector. Although Finnpanel does not publish data that provides precise information on the specific subject, their TotalTV measurement includes statistics that were instrumental in estimating the total size of the Video on Demand (VOD) viewing market in Finland. While the resulting figures are estimations, Traficom deemed them sufficient for making a decision regarding the case at hand. In scenarios involving more borderline cases, additional and more precise information might be necessary, although such data may not always be readily available.

In the **Flemish Community of Belgium**, a VOD service is considered to have low audience if it reaches less than 0.5% of all residents with their offering of non-linear television services of the Dutch language area. The VRM explained that the audience can be determined based on the number of active users of a particular service such as the number of SVOD subscribers.

Double counting of active users of multiple private broadcasters offering non-linear TV services is avoided as the maximum possible number is selected i.e. the number of the

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<sup>101</sup> Finland, the Flemish Community of Belgium, the Netherlands, Spain, Estonia, Poland, and the French Community of Belgium.

inhabitant of the Flemish Community. The total number of active users of SVOD services in Flanders cannot be calculated by adding the number of active users of the various SVOD services as this may result in a number that is larger than the number of inhabitants of Flanders. Consumers can indeed subscribe to multiple SVOD services.

Based on the European Commission's methodology, the paying subscriber can be assumed to be the head of the household. In 2023 there will be 2,926,471 private households in the Dutch-speaking area, representing therefore 43% of the number of inhabitants of the Dutch language area in the same year (6,774,807) – assuming all Flemings are active users. The 0.5% is ultimately stricter than the European Commission 1%

This methodology has been established bearing in mind the European Commission guidelines that indicates that VOD environment the number of users/viewers of a particular service is a measure of its sales. It also mimics the rationale in the DSA as it uses fixed thresholds for classifying, for example, VLOPs, instead of thresholds based on percentages of total active users. Finally, it ensures legal certainty for providers and investors. The VRM did not encounter any issues as the provision enters into force on the 1<sup>st</sup> of January 2025.

Similarly in the **French Community of Belgium**, the CSA explains that the method adopted is that of a comparison with a threshold for VOD services. The method compares the number of users of a service to a threshold that is equivalent to 1% of audiences. Three different business models are distinguished: subscription-based services, pay per view and free services (ad-based model).

Taking into account the European Commission's guidelines, a standardised threshold of 0.5% applied to the total number of inhabitants of the French-speaking area will be used to determine the total number of active users of private broadcasters offering non-linear television services. This avoids the double counting of people who are active users of several private broadcasters offering non-linear television services, since the maximum number of possible active users is used, namely the number of inhabitants of the French-language area.

The audience can be determined on the basis of the number of active users of a particular service, for example the number of paying SVOD subscribers. The total number of active users of SVOD services in French-speaking Belgium cannot be calculated by adding up the number of active users of the different SVOD services. The result could be higher than the number of inhabitants of French-speaking Belgium. Indeed, consumers can subscribe to several SVOD services. According to the European Commission's methodology, it can be assumed that the paying subscriber is the head of the household. In 2023, there are 2,198,090 private households in the Wallonia-Brussels Federation area. This represents only 48% of the number of inhabitants of the French-speaking area in 2023 (4,584,515), assuming that all are active users (and without deduction of non-

French-speakers). The chosen threshold of 0.5% of the number of inhabitants of the Wallonia Brussels Federation is therefore probably higher than the threshold of 1% of the total number of active users of SVOD services according to the European Commission's methodology.

In the **Netherlands**, low audience is established in the CvdM 2023 Commercial Media Institutions Quotas Policy Rules (article 8)<sup>102</sup>. The calculation of the share of users of the relevant on-demand commercial media service is based on the total share of users in a representative week of the year, that is designated by the media service. The share of users of an on-demand commercial media service will, in principle, be understood as the number of paying subscribers, the number of unique accounts or the number of unique visitors, depending on the specific on-demand commercial media service. It is up to the private VOD provider that is submitting the request for an exemption to identify and substantiate the number of users and the chosen week. The selected week is supposed to be a representative image of the number of users of the media service.

The share of users of the relevant on-demand commercial media service is subsequently calculated as a percentage of the assumed number of potential users of on-demand commercial media services in the Member State targeted by the said provider. Based on research and insights, the CvdM has set the number of assumed potential users at 80% of the total population of the Member State targeted by the provider of the on-demand commercial media service. If the share of users of the relevant on-demand commercial media service remains below 1% of the share of assumed potential users, the audience will be deemed to be “low”, and this exemption possibility may be invoked.

Finally, it should be noted that this method of calculation is only used to determine low audience for an exemption from European works. This does not apply to the investment obligation, which has currently no method to calculate low audience. It is highly unlikely an exemption for low audience for the investment obligation is possible, due to a relatively high threshold of revenue.

In **Spain**, the CNMC has a different approach depending on the nature of the service. While they rely on annual data published by the audience measurement company Kantar Media, S.A.U. for linear service providers, the situation is less straightforward for VOD providers.

The indicator of "equivalent user" proposed by the 2020 European Commission guidelines is actually being used in Spain to calculate the audience of TVOD and AVOD services by comparing the average income per subscriber in SVOD subscription from the main providers with the earnings of those TVOD and AVOD services.

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<sup>102</sup> <https://www.cvdM.nl/wp-content/uploads/2023/08/2023-Commercial-Media-Institutions-Quota-Policy-Rule.pdf>

The CNMC inquired other NRAs to identify services with audience above 2% in their respective countries in an effort to compare audience data for services that are provided in other Member States. To date, no service has been identified under the supervision of another NRA that should involve the CNMC.

In **Estonia**, the relevant provisions are set in paragraph 24(3) of the Media Services Act<sup>103</sup> which provides one of two conditions to be met for the rules relating to the promotion of European works to not apply to a VOD provider. Thus, if the average number of users of the on-demand audiovisual media services per year remains lower than one per cent of all users of the on-demand audiovisual media services of the country of destination of the service, they are exempted from the obligations.

European Commission guidelines and recommendations were used by the CPTRA/TTJA as the basis for their work. While there are no detailed rules in place, the assessment carried out show that the current legal framework is sufficient. As Estonia's market for audiovisual media services, which includes VOD services, is relatively small and functions well, the Estonian NRAs believes that there is no need for more detailed rules at this point in time.

In **Poland**, two categories of VOD providers are exempted from the 30% quota obligation. First, VOD providers that are micro-entrepreneurs within the meaning of the Entrepreneurs' Law, and second, those whose number of users of all on-demand media services made available to the public in the previous calendar year did not exceed 1% of subscribers to data transmission services providing broadband Internet access.

KRRiT currently does not use tools to verify the number of users of VOD services. Instead, it relies on annual reports from VOD providers where they declare whether they meet any of the above conditions that exempt them from the obligation in question.

## Conclusion

- **On the prominence of European works**

The findings indicate that most national laws transposing the revised AVMSD do not provide a clear definition of prominence of European works, with fourteen out of twenty-six respondents noting a lack of legislative interpretation. To address this gap, many NRAs rely on non-legislative instruments and soft-law tools for guidance. Despite this absence of a formal definition, a significant majority of NRAs believe that encountered issues should not prompt adjustments to the AVMSD. Compliance with prominence measures by VOD providers is monitored through various methods, with more than half

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<sup>103</sup> <https://www.riigiteataja.ee/en/eli/ee/514062022001/consolide/current>

of the NRAs primarily depending on information submitted by the providers, such as questionnaires and dedicated reporting websites.

While most NRAs feel equipped with the necessary legal tools for the supervision of the prominence measures, they have identified some drawbacks in their monitoring methods and suggested possible improvements, including the use of specialised software, enhanced resource allocation, and increased data requirements from VOD providers.

- **On the definition and quotas of European works**

Out of twenty-six respondents, twenty-three indicated that their national laws define European works as it is originally foreseen in the AVMSD. One Member State provides a similar definition with additional details, one does not offer any definition, and another makes a direct reference to the AVMSD. Article 16 (1) excludes certain content types from the allocation of European works for broadcasters, a distinction not made in Article 13(1), which thirteen NRAs followed, while thirteen did not.

Additionally, nine markets have laws that introduce sub-quotas for VOD providers alongside rules for broadcasters. These markets take different approaches: they either apply equivalent rules to both linear and non-linear actors, impose more obligations on broadcasters compared to VOD players, or opted for the opposite, placing technically more stringent requirements on VOD providers than broadcasters. While some quotas and sub-quotas on a given provider may seem lower compared to another, the volume of investments may technically be higher due to the income generated.

To verify the qualification of European works, sixteen NRAs rely primarily on declarations from VOD providers, with twelve using this method exclusively, while ten NRAs also verify data sets or samples.

Most NRAs feel they lack sufficient tools to confirm the accuracy of the information provided, although seven believe they are adequately empowered for this task. In light of these challenges, some NRAs have suggested creating a common database among Member States and enhancing resources and tools for enforcement. Several NRAs also shared best practices, such as requiring signed declarations from VOD providers regarding data accuracy and the ability to request additional evidence to ensure reliable information collection.

- **On the financial contribution to the production of European works**

As of 2024, fourteen NRAs surveyed indicated that they their national law had transposed the measures in article 13 (2) AVMSD. The findings show that investment obligations vary significantly across Member States, with some imposing requirements on both broadcasters and VOD providers, while others focus solely on VOD services. The financial contribution required from VOD cross-border providers takes two different

forms. In ten countries, NRAs indicated that providers should make direct contributions to the production of and acquisition of rights while levies must be paid to a fund in eight. Finally, in six markets, the contribution may take both or either of the above-mentioned forms

Furthermore, the survey revealed that seven NRAs have established specific investment obligations for independent productions. These obligations differ in definition and requirements among countries.

Monitoring compliance with Article 13 (2) is primarily done by NRAs, with some relying on national film or cinema institutes for oversight. The strategies for compliance verification are governed by specific decrees that outline obligations for both domestic and foreign service providers.

- **On the low audience exception**

Out of the twenty-one participants to the MoU, five NRAs indicated they were in the process of putting in place a methodology. Those who have implemented a model have done so via three different ways: reliance on low turnover instead of audiences, third-party model, internal models, and comparison to a threshold.

## Annexes

### Legend

	Name of the country or region code						
<b>Code</b>	AT	BE (VL)	BE (FR)	BG	HR	CY	EE
<b>Name</b>	Austria	Flemish Community of Belgium	French Community of Belgium	Bulgaria	Croatia	Cyprus	Estonia
	Name of the country or region code						
<b>Code</b>	FI	FR	DE	EL	HU	IE	IT
<b>Name</b>	Finland	France	Germany	Greece	Hungary	Ireland	Italy
	Name of the country or region code						
<b>Code</b>	LT	LU	MT	NL	PL	PT	RO
<b>Name</b>	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania
	Name of the country or region code						
<b>Code</b>	SK	SI	ES	SE	NO		
<b>Name</b>	Slovakia	Slovenia	Spain	Sweden	Norway		

## Annex I

Table 1: Definition of prominence

	Countries/Regions
Criteria set in legislation	AT <sup>104</sup> , BG, HR <sup>105</sup> , FR, IE, IT, PL, RO, SK, SI
Guidelines	BE (FR) <sup>106</sup> , NL, NO <sup>107</sup> , PT, ES <sup>108</sup>
Other non-legislative instruments	EE, DE <sup>109</sup> , EL <sup>110</sup> , IT <sup>111</sup> , FI, HU
None of the above	BE (VL), CY, LT, MT, SE

<sup>104</sup> The Austrian legislator used the AVMSD provisions and chose to add the addendum “as compared to other works.”

<sup>105</sup> The Croatian Electronic Media Act specified the AVMSD provisions by adding the mention of “and ensure their prominence also on the front page of the catalogue.”

<sup>106</sup> Work on guidelines is ongoing.

<sup>107</sup> The draft law suggests that the Norwegian Media Authority issues guidelines.

<sup>108</sup> Obligation set in law but none of the elements of the recital in the law.

<sup>109</sup> The Statute on European Productions.

<sup>110</sup> Pending a Ministerial Decision.

<sup>111</sup> Some elements pertaining to prominence of the Agcom regulation have been transposed into law.



Table 2. Definition of European works

	Countries/Regions
Definition based on the AVMS Directive	AT, BE (FR and VL), BG, CY, EE, ES, FI, FR, DE <sup>112</sup> , EL, HR, HU, IE, IT, LT, LU, MT, NL <sup>113</sup> , NO, PL, PT, RO, SI and SK
No definition	SE <sup>114</sup>

## Annex II

Table 1: Transposition of article 13(2)

	Countries
No investment obligation	AT, BG, CY <sup>115</sup> , EE, FI, HU, LT, LU, MT, NO, SK, SI, SE
Investment obligation	BE (FR and VL), HR, FR, DE, EL, IE <sup>116</sup> , IT, NL, PL, PT, RO, ES <sup>117</sup>

Table 2: Type of service covered by article 13(2)

Type of AV service	Countries
Investment obligation for non-linear services	BE (VL), NL
Investment obligation for non-linear and linear services	BE (FR), DE, ES, FR, EL, HR, IE, IT, PL, PT, RO
Investment obligation for other services (VSPs, distributors etc.)	BE (FR <sup>118</sup> and VL <sup>119</sup> ), PL <sup>120</sup>

Table 3: Form of contribution

<sup>112</sup> Definition part of the provisions of the Statute on European Productions between the fourteen media regulators in Germany (“under-law”).

<sup>113</sup> Article 2.115 of the Media Act 2008 refers directly to article 1 of the AVMS Directive.

<sup>114</sup> Swedish legislation uses the notion of “works of European origin. If any questions should arise from providers, they are referred to the AVMSD and the revised guidelines from the European Commission for monitoring the application of articles 16 and 17.

<sup>115</sup> The Cyprus law did a verbatim transposition of article 13 (2) AVMSD but the obligations are not enforced at the moment.

<sup>116</sup> The Irish Online safety and Media Regulation Act of 2022 foresees the creation of a funding scheme which has not yet been drafted, for both VOD services and broadcasters.

<sup>117</sup> A new regulation developing this provision furthermore is being prepared by the relevant Ministry.

<sup>118</sup> Distributors must follow an investment obligation.

<sup>119</sup> Distributors also have an investment obligation. As of 01/01/2025 the obligation will be extended to also include VSP’s

<sup>120</sup> Distributors must follow an investment obligation.

Form of contribution	Countries
Direct contributions to the production of and acquisition of rights	BE (VL and FR), HR, FR, EL, IT, NL, PT, RO, ES
Levies payable to a fund	BE (VL and FR), HR, FR, DE, EL, PL, PT, RO, ES

Table 4: Level of investment obligation for VOD providers

	Investment obligation for VOD providers (direct investment)
<b>Belgium Flemish Community</b>	<p>2% of the turnover from the 2 previous years</p> <p>From 2025 onwards:</p> <p>a) 2% of their turnover if it is between €0 and €15 million;  b),3% of their turnover if it is between €15 million and €30 million;  c),4% of their turnover if it exceeds €30 million.</p> <p>Of the turnover of the second year preceding the year of participation in the production of audiovisual works.</p>
<b>Belgium French Community</b>	<p>Applying to audiovisual media service providers (linear and non-linear) as of 1/01/2027:</p> <ul style="list-style-type: none"> <li>• 0% of its turnover if it is below € 700,000;</li> <li>• 2% of its turnover if it is between € 700,000 and € 10,000,000</li> <li>• 2.5% of its turnover if it is between € 10,000,000 and € 20,000,000</li> <li>• 3% of its turnover if it is between € 20,000,000 and € 30,000,000</li> <li>• 3.5% of its turnover if it is between € 30,000,000 and € 45,000,000</li> <li>• 4.25% of its turnover if it is between € 45,000,000 and € 60,000,000</li> <li>• 5% of its turnover if it is between € 60,000,000 and € 75,000,000</li> <li>• 5.75% of its turnover if it is between € 75,000,000 and € 90,000,000</li> <li>• 6.5% of its turnover if it is between € 90,000,000 and € 105,000,000</li> <li>• 7.25% of its turnover if it is between € 105,000,000 and € 120,000,000</li> <li>• 8% of its turnover if it is between € 120,000,000 and € 135,000,000</li> <li>• 8.75% of its turnover if it is between € 135,000,000 and € 150,000,000</li> <li>• 9.5% of its turnover if it is above € 150,000,000</li> </ul> <p>On top of these obligations and starting as of 1/01/2027, distributors of audiovisual media services must at least annually contribute to the following amount:</p> <ul style="list-style-type: none"> <li>• € 3,875 per user (based on the previous year). This amount is adapted every second year on the basis of the September 2022 consumer price index</li> <li>• 3,125% of the provider's turnover from the previous year.</li> </ul>

	<ul style="list-style-type: none"> <li>• Before 1/01/2027, intermediary amounts apply in both cases (see Decree: <a href="https://www.csa.be/document/decret-relatif-aux-services-de-medias-audiovisuels-et-aux-services-de-partage-de-videos-version-consolidee/">https://www.csa.be/document/decret-relatif-aux-services-de-medias-audiovisuels-et-aux-services-de-partage-de-videos-version-consolidee/</a>)</li> </ul>
<b>Croatia</b>	<ul style="list-style-type: none"> <li>• 2% of the total annual gross income,</li> <li>• 0% of total annual gross income if total annual gross income is between €0 and €999.999,99</li> </ul>
<b>France</b>	<p>These obligations apply to VOD providers that generate in France over €5 million in annual turnover and hold more than 0,5% of the total audience share in their category of on-demand audiovisual media services.</p> <p>SVOD:</p> <ul style="list-style-type: none"> <li>• 25 % of the previous year's turnover if the provider releases at least one feature film within 12 months of its theatrical release;</li> <li>• 20 % in all other cases.</li> </ul> <p>Arcom determines the distribution of the direct contribution between the production of audiovisual and cinematographic works, taking into account different criteria.</p> <p>Other VOD services: 15% of the previous year turnover resulting from the exploitation of cinematographic/audiovisual works.</p>
<b>Germany</b>	Varies according to the provider's net annual turnover.
<b>Greece</b>	1.5 % of the turnover of the provider associated with their operations in Greece.
<b>Italy</b>	<p>Equal to the percentage of the net income in Italy:</p> <ul style="list-style-type: none"> <li>• 17 % until 31 December 2022</li> <li>• 18 % as of 1 January 2023</li> <li>• 16 % as of 1 January 2024 (reduced from 20 to 16% in April 2024 by decree no 50)</li> </ul>
<b>Poland</b>	1,5% of the revenue derived from the fees for accessing VOD made available to the public or of the revenue derived from the broadcasting of commercial communications (whichever is higher) to be paid to the Polish Film Institute (PISF).
<b>Portugal</b>	<p>Varies according to relevant income:</p> <ul style="list-style-type: none"> <li>• &lt; €199,999: free</li> <li>• €200,000 -€1,999,999: 0.5% of relevant income or €0.50 per subscriber or fixed amount of €10,000</li> <li>• €2,000,000 -€9,999,999: 1% of relevant income or €1 per subscriber or fixed amount of €100,000.</li> </ul>

	<ul style="list-style-type: none"> <li>• €10,000,000 -€24,999,999: 2% of relevant income or €2 per subscriber or fixed amount of €500,000</li> <li>• €25,000,000 -€49,999,999: 3% of relevant income or €3 per subscriber or fixed amount of €1,500,000</li> <li>• &gt; €50,000,000: 4% of relevant income or €4 per subscriber or fixed amount of €4,000,000.</li> </ul>
<b>Netherlands</b>	5% of the relevant turnover per financial year. The relevant turnover per financial year consists of the total turnover generated in the NL that it related to the offering of the relevant commercial media service on demand. Providers whose relevant turnover per financial year is below €10 million are exempted.
<b>Romania</b>	<p>Direct financial contribution (article 13 of the Government Ordinance no. 39/2005 on cinematography):</p> <ul style="list-style-type: none"> <li>• (1) (h) Monthly contribution of 3% of the price of the audiovisual works download for remuneration by means of data transmission services, including internet or telephone data transmission services, via on-demand audiovisual media services</li> <li>• (1) (h') Contribution of 4% of their revenues obtained from single transaction or in the form of subscription</li> </ul> <p>Levies payable to a fund (article 16 of the Government Ordinance no. 39/2005 on cinematography): suppliers referred to in article 13 (1) (h') may opt for direct financing of a film production, up to 40% of the amount due to the Film Fund, at the request of the film producers and after prior notification to the National Film Centre.</p>
<b>Spain</b>	Determined on the basis of the revenue accrued in the previous financial year, according to their operating accounts.