

POLICY BRIEF #21

21 December 2018

The state of play of 'Netflix taxes' in European Member States

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Since the adoption of the new Audiovisual Media Services directive several European Member States have adopted investment obligations for over-the-top players like Netflix and Amazon. Other countries are actively exploring this. The Flemish Department of Culture, Youth and Media asked imec-SMIT to study the implementation of the so-called 'Netflix tax' in different EU Member States. The report has been finalised and can be downloaded [here](#). This policy brief provides an overview of existing approaches of European Member States with regard to the imposition of investment obligations for both domestic and foreign on-demand audiovisual media services providers. It illustrates that, despite the common objectives, the approaches followed differ significantly. The report and this policy brief reflect the opinions of the researchers only. Findings are based on document analysis and contacts with media law experts from various Member States. While the report does not claim to provide an exhaustive overview of what is essentially a moving target, it is the most recent and complete account of what is going on in this area of policy-making.

The Netflix tax: Europe wants it, small markets need it?

The European Commission, European Council and European Parliament reached a political agreement on the revision of the Audiovisual Media Services directive (AVMSd) at the beginning of June 2018. The revised AVMSd requires **on-demand audiovisual media services** providers to ensure at least **30% of European works** in their on-demand catalogues and clarifies the rules that already existed for **investment obligations**.

The new rules make explicit that Member States can impose an obligation for providers to invest directly or contribute to a media fund through the transfer of taxes or the payment of a levy. This investment obligation applies both **to domestic media services providers** and to **media services providers established in a different Member State**, but which target the audience of the Member State imposing the obligation. Importantly, this is a voluntary measure.

Several countries have already taken steps to implement or explore the possibility of encouraging or obliging non-domestic on-demand audiovisual services providers to contribute to original production. Despite the emerging consensus within the EU that companies that benefit from content should also contribute to content regardless of the market in which they are based, **practices in the EU Member States are highly diverse and complex** due to the context in each state.

What financial obligations exist across Europe?

There are three ways of promoting investment in European works by on-demand audiovisual media services:

1. Quota for carrying audiovisual works in catalogues (and additional obligations with regard to prominence of that content);
2. Direct investments in (co)production and/or rights acquisition;
3. Investment obligations in the form of a levy to be paid to an audio-visual fund.

Table 1: Overview of obligations to promote European or local work for on-demand audiovisual media services providers in all Member States' applicable laws, December 2018 (Source: authors)

Member State	Is there a legal obligation to promote and/or finance European works imposed on on-demand audio-visual players, but without concrete obligations?	Is there a specific quota for European works in VoD catalogues?	Is there an obligation for concrete financial investments or a levy/tax?	Is this obligation also applicable to foreign on-demand audiovisual media service providers?
Austria	✓			
Belgium (French Comm.)	✓		✓	
Belgium (Flemish Comm.)	✓		✓	✓*1
Belgium (German Comm.)	✓			
Bulgaria	✓			
Croatia	✓	✓	✓	
Cyprus	✓	✓		
Czech Republic	✓	✓	✓	
Denmark	✓			✓*
Estonia	✓			
Finland	✓			
France	✓	✓	✓	✓
Germany	✓		✓	✓
Greece	✓			
Hungary	✓	✓		
Ireland	✓			
Italy	✓	✓	✓	✓
Latvia	✓			
Lithuania	✓	✓	✓**	
Luxembourg	✓		✓**2	
Malta	✓	✓		
The Netherlands	✓			
Poland	✓	✓		
Portugal	✓		✓	
Romania	✓			
Slovakia	✓	✓		
Slovenia	✓	✓	✓**	
Spain	✓	✓	✓	
Sweden	✓			

¹ * = from 2019 onwards.

² ** = Luxembourg, Lithuania and Slovenia oblige on-demand audio-visual media services providers to contribute an administrative sum to the functioning of the media regulator.

In our study, we focused on the investment obligations (option 2 and 3). The following investment obligations apply:

- Nine EU Member States currently have **investment obligations for on-demand audiovisual media services**: France, Germany, Croatia, Slovenia, the Czech Republic, Belgium (both communities), Portugal, Italy and Spain.
- Five countries have taken concrete steps to include **non-domestic providers** of on-demand audio-visual media services: France, Germany, Italy, and, from 2019 onwards, also Denmark and the Flemish Community of Belgium.
- Germany foresees a **levy** to be paid by on-demand audio-visual media services providers to a film fund or a similar agency (domestic and non-domestic).
- Four countries set rules for providers of on-demand audio-visual media services to **invest directly** in European productions: Slovenia, Spain, Italy and Portugal. Spain and Italy also determine how much of the investment should be specifically allocated to local works or works of national cultural expression. Slovenia allows providers of on-demand audio-visual media services to choose between a quota of European works in their catalogue or making a direct financial investment.
- Two countries (Belgium and Croatia) allow a **choice between a levy or direct investment**. In Belgium, both communities have different investment obligations that apply to broadcasters, cable, and telecom service providers and on-demand audio-visual players providing television services. Flanders from 2019 onwards will have a new investment obligation scheme targeting 'non-linear broadcasters', which applies to players like Netflix.
- Two countries **have joint obligations**, thereby requiring liable companies to both contribute to a fund and to directly invest a percentage of their revenue in European works: France and the Czech Republic. The Czech Republic allows on-demand audiovisual media services providers to choose either to include a quota of European works in their catalogue or to make a direct financial investment, aside from the levy to the fund.

What are the applicable tariffs, amounts, percentages and variations?

Most countries calculate the financial obligation in terms of **a (sometimes variable) percentage of a monetary basis**. The percentages range from 0.5% to 26%. The financial obligation is based on four different money flows derived from on-demand audio-visual media services:

1. Revenue/income from the exploitation of on-demand audio-visual services
2. Turnover
3. Price paid by the end user
4. Number of subscribers

Existing legislation is rather vague on how these calculation bases are defined. Certain cases, such as the Belgian communities and Italy, are more explicit.

- In the Flemish Community of Belgium, providers of television signals (which also includes some on-demand audio-visual players) pay a contribution based on the number of subscribers. For foreign providers of on-demand audio-visual media services, a percentage of revenues in the Flemish market will have to be paid.³
- The price paid by the end user is used by the Czech Republic when calculating the levy or tax for the film fund.
- Germany, France, Slovenia and the French Community of Belgium apply variable percentages, depending on: (i) the level of turnover or revenues generated by the on-demand audio-visual media services provider, and (ii) the kind of content that is offered (for example, pornographic content, violent content, content that is offered soon after its theatrical release, or after a certain interval). This only applies in the case of France.

³ See: Gatz laat Netflixen mee investeren in Vlaanderen (online). URL: <https://svengatz.prezly.com/gatz-laat-netflixen-mee-investeren-in-vlaamse-producties>

What is the motivation to impose investment obligations?

Various motivations have been identified in either the law/regulatory document itself (often in the preamble that introduces the legislation by stating its objectives) or in accompanying documents (for example, the letter of mission by the Minister of Culture in France). However, not all laws include motivations that go beyond the intention of complying with the latest version of the AVMSd. Several categories of motivations have been identified: **economic reasons** (sustainability of independent production, broadcasting and content), **cultural reasons** (cultural diversity and identity), **legal coherence and levelling the playing field**, **internationalisation/cooperation** and **technological advancements**.

Recommendations

Given the immense fragmentation of legislative regimes in place, a certain level of harmonisation should be achieved, also with an eye on ensuring legal predictability for companies. In addition, several other EU Member States might consider introducing a financial investment obligation for on-demand audiovisual media services providers. In doing so, the following lessons learned may be of use:

- Requiring a **direct, levy-based financial contribution** to a film fund or other agency supporting the creation of audiovisual works seems the most straightforward way to ensure on-demand audiovisual media services providers are contributing to the production of European works.
- Imposing an investment obligation on on-demand audiovisual media services providers is **most sustainable when Member States stay within the scope of 'on-demand audiovisual media services' as defined by the AVMSd**. Adding further conditions or widening the scope can increase the risk of successful legal opposition against the national system.
- A system that takes **turnover as the calculation basis for domestic on-demand audiovisual media services providers** seems most convenient to use, since domestic companies are obliged to submit their financial statements to the national authorities every year. **For foreign on-demand audiovisual media services providers, a system based on revenues seems to be the only possible option**. A variation in percentages may be regarded as desirable from a redistribution point of view, but with a view on limiting the administrative burden of the system such variations are best kept to a minimum. **Definitions of key concepts should be kept as simple as possible** and include all possible types of income derived from activities in the country that is imposing the investment obligation. Member States should **demand that companies disclose all necessary information required to determine the calculation basis**.

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*The **Media unit** of SMIT, a research group at imec and VUB, consists of 45 junior and senior researchers. The researchers are specialists in various policy, market, and user research methods. Their work spans the fields of national and European media and competition policy, cultural diversity, public broadcasting, sustainability of creative industries, immersive media, data and valorisation, privacy, media literacy, and digital inclusion. The unit is headed by Prof. Dr. Karen Donders (Karen.Donders@vub.be). The unit is also in charge of **Mediahub Brussel**, that is investing in education, innovation and collaboration in the Flemish and Brussels media sectors. The Mediahub Brussel is supported by the Flemish Government. For questions or comments, contact Karen.Donders@vub.be, +32 474 82 50 03.*