

# Investment obligations for VOD providers to contribute to the production of European works: A 2022 update

---

September 2022

Ivana Kostovska

Prof. Dr. Tim Raats

Prof. Dr. Marlen Komorowski

Catalina Iordache

Nino Domazetovikj

Stephanie Tintel

## About imec-SMIT-VUB

SMIT (Studies on Media, Innovation and Technology) specialises in research on media industries and policies, innovation and digital transformation. SMIT combines user research, policy analysis and business modelling and has a track record of more than 30 years in fundamental and applied research, and of policy preparation and evaluation studies. This study is conducted within the Media Economics and Policy Unit of SMIT, which consists of researchers working on market, policy, and user research on audiovisual industries. Specifically with regard to research of streaming video-on-demand, SMIT's growing track record includes work on investment obligations and quota, VOD offerings and SVOD investments, and the study of recommender systems.

© 2022, imec-SMIT, Vrije Universiteit Brussel

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or made public in any form or by any means, electronic or mechanical, by photocopying, recording or any other means, without the prior written permission of the publisher.

## Reference

Kostovska, I., Raats, T., Iordache, C., Domazetovikj, N., Tintel, S. and Komorowski, M., (2022). Investment obligations for VOD providers to contribute to European works: A 2022 update. Brussels: imec-SMIT-VUB.

**Contact:** [ivana.kostovska@vub.be](mailto:ivana.kostovska@vub.be)

# Table of Contents

<i>List of Tables</i> .....	4
<i>About this study</i> .....	5
Design of the study.....	5
Key themes.....	6
1. <i>Background</i> .....	8
1.1. Rising complexity in the European audiovisual ecosystems .....	8
1.2. Background on the AVMSD .....	8
2. <i>Overview of the legislative landscape</i> .....	11
2.1. Types of investment obligations for VOD providers.....	11
2.2. Applicable procedures.....	14
2.3. Calculations .....	14
2.4. Criteria for exemptions and reductions .....	15
3. <i>Key findings and recommendations</i> .....	19
3.1. Investment obligations as factors in pulling VOD investments .....	19
3.2. What prevailing challenges are linked to investment obligations? .....	19
3.3. Recommendations .....	20
4. Stakeholders' perspectives on investment obligations .....	23
5. <i>Case-studies</i> .....	28
5.1. Cases with obligation for direct investment.....	28
5.1.1. Belgium (DE) .....	28
5.1.2. Italy (IT).....	30
5.2. Cases with levy payable to fund.....	34
5.2.1. Denmark (DK).....	34
5.2.2. Germany (DE).....	37
5.2.3. Poland (PL).....	40
5.2.4. Romania (RO).....	42
5.3. Cases with choice between direct investment and levy.....	44
5.3.1. Belgium (FL) .....	44
5.3.2. Belgium (FR).....	49
5.3.3. Greece (GR) .....	51
5.3.4. Spain (ES) .....	53
5.4. Cases with both levy and direct investment.....	57
5.4.1. Croatia (HR).....	57
5.4.2. Czech Republic (CZ) .....	59
5.4.3. France (FR) .....	62
5.4.4. Portugal (PT) .....	68
5.5. Cases outside of EU.....	72
5.5.1. Switzerland (CH).....	72
5.5.2. Australia (AU) .....	73
5.5.3. Canada (CA).....	75
<i>Appendix</i> .....	76
List of Experts.....	76

## List of Tables

<i>Table 1 Overview of investment obligations for VOD providers (Source: Authors)</i>	12
<i>Table 2: Overview of criteria to determine the scope of the investment obligation for VOD providers based on exemptions or reductions (Source: Authors)</i>	17

## About this study

This study provides a fresh look of the existing regulatory approaches that include requirements for VOD providers to invest in local content. The objective is to present insights on a range of policy approaches from EU Member States and other jurisdictions and their underpinning characteristics such as calculation methods, rates, thresholds for exemptions and enforcement procedures. To that end, we also highlight more recent legislative interventions coming up from the transposition of the EU's Audiovisual Media Services Directive (AVMSD).

The research presented was conducted during a period of rapid change in the audiovisual industries. Welcoming the analysis of prevailing challenges presented in recent reports, including the Film i Väst report 'Public Funders at a Crossroads' and the 2022 Nostradamus Report – 'Imagining a Sustainable Industry', our purpose is to contribute to the broader discussion by providing an in-depth look into the legal complexity of investment obligations for VOD providers.

This is the third edition of the Study on Investment Obligations for VOD providers, following the editions published in 2018 and 2021. As with the previous editions, the outcomes of this study are intended to provide valuable insights to policymakers and industries in Europe and beyond. Lessons from other jurisdictions that require VOD providers to contribute to local content might be helpful to those in a search of well-designed policy. Our ambition is also to provide a detailed view on Member States' regulatory requirements in order to help VOD providers comply with the investment obligations.

Alongside the comprehensive overview of legislative frameworks, in the current edition of the study we include perspectives on investment obligations collected from key European stakeholders. We believe that stakeholders' views on opportunities and challenges brought by investment obligations provide new perspectives to policymakers at national and EU level.

The research for this study was carried out between May and August 2022. Final checks for updates on national legislation were conducted in August 2022.

## Design of the study

The analysis and evidence presented in this study build on 1) mapping of the legislation in EU27 and in other countries and 2) expert consultations. Countries selected for the case studies include 14 Member States or regions with investment obligations and three other countries: Switzerland, Australia, and Canada.<sup>1</sup> The analysis of the existing regulatory approaches as part of the case studies is largely based on available legal documents that were checked with experts from the respective countries (the list of experts is available in the Appendix). The study is focused on the following questions:

- What types of investment obligations for VOD providers exist in the EU Member States and other countries?
- What are the merits of different regulatory interventions and key characteristics of the models that might be useful to those who want to introduce or refine investment obligations for VOD providers?
- What are the most important lessons learnt from the practice of implementing investment obligations, as seen from the perspective of different stakeholders, that could inform future policymaking at the EU and national levels?

---

<sup>1</sup> We include case-study on Denmark, where the investment obligation is included in draft-law.

## Key themes

1 The study presents models of investment obligations for VOD providers from 17 countries or regions. It highlights characteristics from both light-touch and stricter regimes, including variations in support for independent production and specific genres, as well as different forms of contribution.

2 The findings suggest that investment obligations have become factors that affect competition between Member States for attracting VOD investments. They are used as policy tools to bring in a more significant portion of the total VOD investments in European content. This means that some markets with light-touch regulation might be put in a disadvantageous position due to the fragmentation in the regulatory approaches.

3 The contributing views to this study by the independent producers' associations suggest that it is vital for investment obligations to be designed to provide independent production companies not only access to financing - but also rights retention. The European Film Agencies Directors association outlines that key factors for successful implementation are the effective exchange of information and collaboration between stakeholders, as well as a clear definition of 'independent producer' and 'independent production'.

4 Stakeholders that represent the VOD sector, such as the European VOD Coalition, outline that investment obligations might turn out to be a Pyrrhic victory, as significant internal resources are diverted into legal and compliance functions rather than content creation. A lesson learnt from the practice that might be useful for future policymaking, according to the European VOD Coalition, is to ensure that investment obligations are based on an objective, up-to-date market assessment and impact analysis.

5 The analysis in this study stresses the importance of modelling the investment obligation as part of a broader policy strategy for strengthening the audiovisual industry and adapting it to the realities of the global market. The findings also suggest that a robust evaluation of investment obligations' policy outcomes is key to avoid overstating its effects. Better access to reliable data from VOD providers is important to execute thorough policy assessments.

Part 1

**Background**

# 1. Background

## 1.1. Rising complexity in the European audiovisual ecosystems

With the transformation of the audiovisual landscape and audiences embracing on-demand viewing, the balance of power in audiovisual production and distribution in Europe has shifted towards global VOD players.<sup>2</sup> The new paradigm premised on the globalisation of the sector has brought opportunities and challenges to the European audiovisual ecosystems. In their pursuit of global reach, VOD providers invest in local content and create new opportunities for the European production sector. Netflix spent €4bn on European films and shows between 2018-2021.<sup>3</sup> Commissions and acquisitions by VOD providers open up routes for cross-border circulation of European content. At the same time, the positions of incumbents, mainly broadcasters, are undermined by the effects of escalated production costs paired with a decrease in traditional revenue sources. The entrance of the US studios on the streaming market, and their strategic ambition to keep exclusive content in their own catalogues, are putting traditional players in Europe under increased pressure.

Moreover, certain developments in the streaming market are expected to have implications on the global streamers' spending on European content. PwC predicts that between 2022 and 2026, the pace of OTT revenue growth will moderate.<sup>4</sup> In 2022, Netflix lost subscribers for the first time in a decade, while other VOD providers have shown signs of a subscriber growth slowdown. Some VOD players are becoming cost savvy and employ more prudent approaches to content spending by also halting the production of originals in some European markets. For example, Warner Bros. Discovery will no longer produce originals in the Nordics and Western Europe for HBO Max.<sup>5</sup> Given the downtrend in user growth, advertising video on-demand business models are being adopted at a faster rate in an effort to diversify revenue streams. These issues of focus have prompted policy and industry discussions on when the production boom will be over.

Given the rapid changes and the uncertainties on the horizon, the policymakers at EU and national levels have updated legislation to support the long-term resilience of the audiovisual industries. The transposition of the AVMSD has provided an opportunity for the Member States to rethink their national audiovisual policy frameworks. Along with the quota requirement to secure at least a 30% share of European works, some Member States introduced obligations for VOD providers to invest in local audiovisual production. The overarching objective is to reduce the regulatory imbalance between incumbents and VOD providers and to increase the level of investment in local content.

## 1.2. Background on the AVMSD

The AVMSD provides EU-wide media content standards for all audiovisual media, both traditional broadcasters and VOD services. The 2018 AVMSD sets out rules which give Member States the possibility to impose financial contributions (direct investments or levies

---

2 For an in-depth analysis of the context see: Eskilsson (2022). Public Film Funding at A Crossroads <https://analysis.filmivast.se/wp-content/uploads/2022/03/Public-Film-Financing-at-a-Crossroads-download.pdf>

3 [www.ft.com/content/bf70ada3-70fd-4fcb-b4e8-638bcc053025](http://www.ft.com/content/bf70ada3-70fd-4fcb-b4e8-638bcc053025)

4 [www.pwc.com/gx/en/industries/tmt/media/outlook/outlook-perspectives.html](http://www.pwc.com/gx/en/industries/tmt/media/outlook/outlook-perspectives.html)

5 [www.variety.com/2022/tv/global/hbo-max-europe-originals-development-1235308730/](http://www.variety.com/2022/tv/global/hbo-max-europe-originals-development-1235308730/)

payable to a fund) on media service providers, including those established in a different Member State that target their national audiences.

The rules are set forth in Article 13 of the AVMSD:

*"1. Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works. 2. Where Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory. 3. In the case referred to in paragraph 2, the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid rules."*

#### Snapshot of AVMSD rules

- **What form of financial obligation?** According to Recital 36 from the AVMSD, the financial obligations can take the form of direct contributions to the production and/or acquisition of rights in European works. The Member States could also impose levies payable to a fund.
- **Is this a mandatory or voluntary measure for the Member States?** This is not an obligation at the EU level but a voluntary measure for Member States. In this sense, Article 13(2) does not harmonise the obligations to contribute financially to the promotion of European works.
- **Member States have to avoid double imposition:** Investment obligations imposed by the targeted Member States have to be taken into account by the Member State having jurisdiction to avoid double imposition cases.
- **What are the requirements for broadcasters?** By way of background, AVMSD also sets out rules for promoting European works on TV. At least 50% of the broadcasting time must be dedicated to European works (Article 16, AVMSD). A minimum of 10% of broadcasting time, or, alternatively, at least 10% of the broadcaster's programming budget, has to be dedicated to works of independent European producers (Article 17, AVMSD).
- **The measures have to be non-discriminatory and proportionate:** The AVMSD rules include a mandatory exemption for companies with a low turnover or low audiences (Article 13(6)). This is to ensure that obligations relating to the promotion of European works do not undermine market development and to allow new players to enter the market (Recital 40, AVMSD). It is also deemed inappropriate to impose such requirements in cases where – given the nature or theme of the on-demand audiovisual media services – they are impracticable or unjustified (see also Section 2.4). In addition, VOD providers that are required to contribute to film funding schemes should be able to benefit in a non-discriminatory way from the aid available to media service providers (Recital 36, AVMSD).

Part 2

## **Overview of the legislative landscape**

## 2. Overview of the legislative landscape

### 2.1. Types of investment obligations for VOD providers

As presented in Table 1 below, 13 Member States or regions in the EU27 impose financial obligations on VOD providers to promote European works: Belgium (the three communities), Croatia, Czech Republic, France, Germany, Greece, Italy, Poland, Portugal, Romania, and Spain. We identified proposed legislation in three Member States: Denmark, Ireland and Netherlands, and in at least two other cases (Belgium (NL) and the Czech Republic), a revision of current investment obligation was taking place at the time of writing.

Compared to the 2021 edition of the study, we include additional case studies from three EU Member States: Denmark, Greece, and Romania and look into the legislative updates in four countries: Croatia, France, Italy, and Spain. At the time of publication, the Czech Republic was the only country whose investment obligations applied only to VOD providers under its jurisdiction. The rest of the Member States or regions introduce investment obligations both for VOD providers established in the country and those targeting their audiences from other EU countries.

There are four types of investment obligations introduced in Member States:

- **An obligation for direct investment in production:** Belgium (DE) and Italy;
- **A levy payable to a fund:** Denmark (legislative proposal), Germany, Poland and Romania;
- **A choice between direct investment or levy:** Belgium (FL), Belgium (FR), Spain and Greece;<sup>6</sup>
- **Both levy and direct investment obligation:** Croatia, Czech Republic, France and Portugal.

Some Member States decided to take more time to explore the options for introducing investment obligation to VOD providers. Sweden, for example, plans to revisit the question of investment obligation as part of the biennial reporting to the European Commission on the provisions concerning European works.<sup>7</sup> Finland is also exploring the option to introduce investment obligations based on a report commissioned by the Ministry of Culture.<sup>8</sup> Slovenia included a proposal for investment obligations in the draft proposal for amending the Audiovisual Media Services Act. The proposal for investment obligations was excluded from the law and put on hold because of the delay in transposition of the AVMSD and the infringement procedure launched by the European Commission against Slovenia, among others.

To strengthen the production and visibility of Dutch audiovisual content, the Government in the Netherlands proposed introduction of an investment obligation for VOD providers, after the transposition of the AVMSD. According to the proposed amendment to the Media Act published in July 2022, VOD providers would be required to invest 4.5% of their turnover in Dutch series,

---

6 VOD providers established in Greece have to make only direct contributions.

7 <https://www.filminstitutet.se/globalassets/2.-fa-kunskap-om-film/analys-och-statistik/publications/other-publications/examining-the-european-and-nordic-transposition-of-avmsd-article-132.pdf>

8 <https://www.lvm.fi/-/audiovisuaalisten-tuotantojen-rahoituksen-laajentamista-selvitetaan-1532104>

films, and documentaries.<sup>9</sup> According to the draft text, VOD providers would be able to choose to invest through a private fund.

Table 1 Overview of investment obligations for VOD providers<sup>10</sup> (Source: Authors)

	MS/ Community	Basis for Calculation	%	Investment in:
DIRECT INVESTMENT OBLIGATION	BE (DE)	Revenue	/	Production and rights acquisition of European works or the share and/or prominence of European works in the catalogue of programmes
	IT	Net revenues	17% until 31 Dec	European audiovisual works produced by independent producers (50% for works of original Italian expression)
			18% from 1 Jan 2023	
			20% from 1 Jan 2023	
LEVY	DK	Turnover	6%	Cultural contribution to DFI
	DE	Turnover from sales of cinema films	1.8-2.5%	Levy paid to FFA
	PL	Revenue obtained from fees for access to VOD services or revenue obtained from broadcasting commercial communications, if this revenue in a given settlement period is higher	1.5%	Levy paid to the National Film Institute
	RO	Levy: revenue from the price of audiovisual works downloaded for a cost Levy: Revenue from single transactions or in the form of subscription % of the levy may be direct investment	3%	Levy paid to the film fund
			4%	Levy paid to the film fund
			Option to contribute 40% of the levy as direct investment	Film production, including also projects declared winners in the project selection competition for direct financial credits for film production and film development
CHOICE BETWEEN DIRECT INVESTMENT OR LEVY	BE (FL)	Contribution scheme: Revenue	2%	(co-)production of (Flemish) television series (fiction, documentary or animation) or financial contribution to VAF
		Incentive scheme: Lump sum or per subscriber calculated on the basis of the most recent data	Lump sum of €3m or	
	BE (FR)	Turnover i.e. gross revenue derived from advertising and sponsorship and gross receipts from any distributor or third-party services	1.4-2.2%	Co-production or pre-purchase of audiovisual works or paying a levy to CSA
	GR	Turnover	1.5%	Production or acquisition of Greek audiovisual works or amount to be paid to a special account of the EKOME for support of Greek producers
ES	Annual income	5%	(Pre-)financing, rights acquisition, and/or a contribution to the Fund for the Protection of Cinematography or to the Fund for the promotion of cinematography and audiovisual in co-official languages other than Spanish (Castilian)	
BOTH LEVY AND DIRECT INVESTMENT OBLIGATION	HR	Direct investment obligation: Gross revenue	2%	Production or rights acquisition of Croatian audiovisual works by independent producers
		Levy: Annual gross income from VOD services	2%	Levy paid to HAVC
	CZ	Levy: price paid by end users	0.5%	Levy paid to the Czech Film Fund
		Direct: revenue	1%	Production or rights acquisition of European works (as option to meet the quota obligation)
	FR	Levy: Net turnover consisting of the sums collected by the exploitation of cinematographic or audiovisual works	5.15-15%	Levy paid to CNC
		Direct: Net turnover	20-25%	Acquisitions, production or co-production of European works (85% in works of original French expression)
	PT	Levy: Relevant income calculated based on audiovisual commercial communications and on subscriptions or occasional transactions or lump sum;	1% or lump sum of €1million	Levy paid to Portuguese Institute of Cinema and Audiovisual Media
		Direct: relevant income on the fee paid by the subscriber and based on commercial communications or fixed amount	0.5-4% or lump sum of €10,000 to €4million	Production of European cinematographic and audiovisual creative works of independent production, originally in Portuguese or prominence of European works and of works in Portuguese language
Exhibition fee: advertising charges based on number of subscriptions		4%		

<sup>9</sup> Bill on amendment of the 2008 Media Act in connection with the introduction of an investment obligation for the benefit of Dutch cultural audiovisual production

[www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2022Z15201&dossier=3617](http://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2022Z15201&dossier=3617)

<sup>10</sup> Note: Data correct up to 31st of August 2022.

---

## Light-touch vs stricter regulatory requirements

Whether a regulatory approach is stricter or lightweight can be understood based on:

- 1) the type of investment obligation,
- 2) the rates, and
- 3) the sub-requirements.

A type of investment obligation where VOD providers can choose between making a direct contribution or paying a levy allows for more flexibility than a regulatory approach that requires both payment of a levy and a direct contribution. As to the rates, most of the Member States with rates below 5% are on the other side of the continuum from France and Italy, which introduced investment obligations with rates above 15% of turnover (see Part 5). Countries such as Denmark and Spain have put forward investment obligations with rates above 5% of turnover. Finally, there are also variations in the level of flexibility between different regimes regarding the sub-requirements, including the design of compliance mechanisms.

The applicable rates also highlight disparities between regulatory approaches. Most Member States with rates below 5% are on the other side of the continuum from France and Italy, which introduced investment obligations with rates above 15% of turnover (see Part 5). Some countries, such as Denmark and Spain, have put forward investment obligations with rates above 5% of turnover. Variations in the level of flexibility between different regimes are highlighted by sub-requirements, including the design of compliance mechanisms.

---

## Investment in European or in national works?

While the investment obligations in some Member States or regions are required to be in European works, others set rules that the total investment has to be directed to national works. Examples of the latter are Croatia, Greece, Portugal (for SVOD services), and Belgium (FL).

Under the legislation of some Member States, such as Italy, France and Spain, a share of the investment obligation must be in national works. France has a tight definition of the nationality of works. According to the French regulation, work produced by a European subsidiary of a non-European group cannot be considered as European work (Article 6 of the Decree No. 90-66).

---

## Variations in support of independent production

In different policy settings, there are variations as to the requirement for VOD providers to contribute to independent production. The regulatory approaches in Italy and Croatia provide that the entire direct investment must be in works by independent producers. In Belgium (FL), the contribution has to be directed to Flemish, qualitative independent productions in series, in the form of a co-production with an independent producer. In some Member States, a portion of the direct investment must be directed to independent works (see Section 2.3).

---

## Investment in cinematographic or audiovisual works?

In most cases, VOD providers have to invest in audiovisual works, but some Member States impose requirements for investments in cinematographic works. Also, Member States have different definitions in terms of what categories of works are considered audiovisual or cinematographic works. Greece defines audiovisual works as an episode or parts of episodes of a television series, a made-for-TV or cinematographic film or any segment thereof, regardless of its duration. The content may be fiction, documentary, animation, and cultural and educational video-gaming, produced for user experience in a linear or non-linear format and destined to be distributed on multiple platforms. Under some regulatory frameworks, VOD

providers have to make a contribution in series (Belgium (FL)). France and Portugal have sub-quotas on cinematographic and audiovisual works.

---

## Collecting evidence from reporting before imposing investment obligation

The approaches to regulation outside of the EU (see Section 5.5) also provide insights that inform the debate on investment obligations for VOD providers and underpin examples to other jurisdictions. Australia, for instance, provides a model which considers non-regulatory options before introducing an investment obligation. The country had asked large SVOD providers to voluntarily report on their investments in Australian content from January 2021. After collecting evidence of the level of investment and possible implications, the Australian Government is considering to introduce an investment obligation based on mandatory reporting (see Subsection 5.5.2).

---

## 2.2. Applicable procedures

Member States deal with the applicable procedures for enforcement in different ways. In summary, we identified four types of procedures:

- **Reporting procedures:** Type of information required from VOD providers and its usage. In France, VOD providers have to report to Arcom on how the investment obligation is met and on the access for rights holders to exploitation data relating to their works. They also have to provide a statement certified by an auditor, including the cost accounting elements necessary to determine the turnover.
- **Monitoring procedures:** Which public body is responsible for regulatory oversight (e.g., the Flemish Regulator for Media in Flanders, Belgium or the National Commission of Markets and Competition in Spain). In Germany, FFA may commission third parties or legal entities to verify the information reported by VOD providers.
- **Procedures for enforcing compliance:** Measures include penalties (e.g., in Italy, if the violation is severe or repeated, AGCOM may decide to temporarily suspend or indefinitely revoke a service's authorisation).
- **Procedures for payment:** Information on the payment schedule and the recipient (whether the payment is made directly to the film fund, or the responsible ministry/public agency re-distributes the payment).

## 2.3. Calculations

As shown in Table 1, Member States most often calculate the investment obligations as a **percentage of revenue or turnover generated in the country/region**.<sup>11</sup> Under some regulatory regimes, there are more explicit definitions (e.g., turnover from sales of cinema films in Germany; in Poland - revenue obtained from fees for access to VOD services or revenue obtained from broadcasting commercial communications, if this revenue is higher in a given settlement period). In most cases, the VOD providers are required to make annual investments, but there are Member States that allow carrying forward in future (e.g., in Croatia). Such option is also put forward in the proposal for the investment obligation in the Netherlands, to stimulate productions with larger budgets. For example, if a VOD provider invests 6% of the turnover in one financial year, this results in a surplus of 1.5%. The provider may deduct this surplus from the investment to be made in the next financial year.<sup>12</sup>

---

<sup>11</sup> There are different elements used in the definition of the calculation base.

<sup>12</sup> For further information see the Explanatory Memorandum for the amendments to the Media Act: <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2022Z15201&dossier=36176>

---

## What kind of contributions are allowed?

Most cases of direct investment obligations require VOD providers to contribute **in the form of commissions, co-productions and acquisitions**. However, under some regulatory models, VOD providers can also contribute by financing the training of authors (e.g., in France), ensuring prominence of European works in their catalogues (e.g., in Portugal and the German-speaking Community of Belgium), or financing dubbing and subtitling or adapting works for the deaf or hard of hearing, blind or visually impaired people (e.g., in France). Romania allows VOD providers to meet the direct investment obligation by supporting projects declared winners in the project selection competition for direct financial credits for film production and film development.

When the investment obligation is in the form of a levy, the amounts are most often collected by film funds, in some cases stipulated in the tax legislation (e.g., in the Czech Republic). We found that only some Member States provide an explanation in the legislation on how the collected levy is administered. In Croatia, for example, the collected levy is used to implement the National Program for Promoting Audiovisual Works, while in Greece, it is paid to a special account for supporting Greek producers. According to the legislative proposal in Denmark, half of the collected levy is supposed to be used for subsidies, and the rest is to be distributed to a larger Public Service pool, supporting mainly series and documentaries.

---

## What types of sub-requirements exist in different jurisdictions?

Investment obligations in some regulatory settings go into more detail and set sub-requirements:

- **Independent productions:** In Spain, 70% of this investment must be dedicated to audiovisual works by independent producers; in France, three-quarters of the contribution must be spent on independent film production and two-thirds on audiovisual production; in Portugal, 30% of the investment has to be in cinematographic or audiovisual works by independent producers.
- **Genres:** In France, direct investment in audiovisual works must relate to works in fiction, animation, creative documentaries, including those inserted into a program other than a television news program or an entertainment program, music videos and recording or recreation of live performances. In the agreement with the guilds, Netflix agreed to allocate part of the investment in low-budget films and invest in the pre-financing stage.
- **Gender:** In Spain, specific sub-quotas must be reserved for audiovisual works directed or created exclusively by women.

---

## 2.4. Criteria for exemptions and reductions

As presented in Table 2, different measurable parameters for exemptions and reductions are used to define the scope and ensure that investment obligations allow the entry of new players, without undermining market development.<sup>13</sup> The exemptions from the investment obligations under the AVMSD are made on two bases: 1) Low audience and low turnover and 2) The nature or theme of the audiovisual media service.

---

<sup>13</sup> Exemptions are stipulated in Article 13(6) of the AVMSD with the aim to provide safeguards for cross-border providers. Member States are free to establish different thresholds at national level for VOD providers under their jurisdiction.

---

## Thresholds for low audience and low turnover

According to Recital 40 of the AVMSD, low audience can be determined, for example, on the basis of a viewing time or sales, depending on the nature of the service. The determination of low turnover should take into account the different sizes of audiovisual markets in Member States. Furthermore, terms for defining low audience and turnover can be found in the European Commission's Guidelines:<sup>14</sup>

- **Low turnover:** Turnover threshold used in the definition of micro-enterprise (enterprises with a total annual turnover not exceeding €2 million);
- **Low audience:** Share of less than 1% of active users within a given Member State; the audience of a VOD service would be the number of its users divided by the total number of users of (similar) VOD services available on the national market and multiplied by 100 to obtain a percentage.

Some Member States with larger audiovisual markets, such as Germany, have also set lower and more specific turnover thresholds (VOD providers with sales of films below €500.000 are exempted). Poland, among other countries, follows the Commission's thresholds for low audience (see Table 2).

---

## The nature or theme as a basis for exemption

The nature or subject matter of the audiovisual media service is also used in many regulatory settings as a basis for exemption from the investment obligation (e.g., Spain and France). Audiovisual services that mainly offer violent or pornographic content are not required to make a contribution. Catch-up services established in France are exempted from the investment obligation for audiovisual works. In Belgium (FL), non-linear television broadcasting organisations that already make contributions based on their linear television activities are not required to make investments under the Contribution Scheme.

---

## What thresholds can be determined by Member States with smaller markets?

According to the European Commission's Guidelines, Member States with smaller audiovisual markets could introduce investment obligations for VOD providers with a turnover lower than €2 million or with an audience share of less than 1%. The lower thresholds are recommended "in duly justified cases and in line with their [Member States] cultural policy objectives, including the objective to ensure the sustainability of national audiovisual and film funding systems". Such examples of lower thresholds can be found in the legislative frameworks of Belgium (FL), Belgium (FR), Croatia, and Portugal.

---

## Respecting the principle of non-discrimination

Countries that introduce investment obligations to VOD providers which target their audiences from other Member States have to respect the principle of non-discrimination. In practice, this means that if they have exemptions in place for VOD providers under their jurisdiction, the same exemptions must be applied to VOD providers established in another Member State.

The Commission also requires EU countries with larger audiovisual markets that introduce cross-border direct investment obligations to either exempt enterprises with turnover below €2 million or make them subject to less onerous investment obligations. In France, for example, VOD providers that offer less than ten cinematographic or audiovisual works are exempted from the investment obligation. For VOD providers whose net annual turnover is between €10 and €5 million, and for new services, there is a reduced rate of investment obligation.

---

<sup>14</sup> The Guidelines are not binding and apply only if a Member State has in place investment obligation to VOD providers established in other EU countries that target audiences in its territory.

**Method for determining the audience of VOD providers based on the sales of the services (according to the European Commission’s Guidelines):**

- For SVOD services: The number of paying subscribers;
- For TVOD services: The number of unique customers/unique accounts used for acquisition of works for Transactional Video on Demand;
- For AVOD services: The number of unique visitors for Advertising Video on Demand.

**Definitions of active users:**

- For TVOD services: Users that have acquired at least one title in the catalogue over a defined time period;
- For AVOD services: An average of active users for a defined time period;
- For bundled services which include a VOD account: Measurement based on users who have in fact accessed the video content of the service within a defined time period.

*Table 2: Overview of criteria to determine the scope of the investment obligation for VOD providers based on exemptions or reductions<sup>15</sup> (Source: Authors)*

MS/Region	Basis for exemption or reduction	Threshold for exemption of investment obligation
BE (DE)	Turnover or audience	No definition in law
BE (FR)	Gross revenue	Less than €300,000
BE (FL)	Revenues (excluding VAT)	Less than €500,000
	If already making contributions	Non-linear television broadcasting services that already make contributions on the basis of their linear television activities are exempted
CZ	Criteria established in the Commission’s guidelines	As established in the guidelines
DE	Sales of films	Sales of films below €500,000
	Comparable financial contribution in the MS where they are established	VOD providers targeting German audiences from other MS are exempted from paying the levy if they make a comparable financial contribution to the promotion of cinematographic works in the country where they are established
DK	Turnover	Less than DKK15 million (± 2.15 million)
ES	Income	Income lower than €10 million;
	Thematic nature of the services	The nature or subject matter of the audiovisual communication service (terms determined by regulation); Providers of local audiovisual services that are not part of a national network are exempted; The production or exploitation of works that are eligible to receive an X-rating, generally applied to violent or pornographic content, are exempted;
FR	Net turnover and audience	Net turnover below €5 million and audience below 0.5% of the total audience in France; For VOD providers whose net annual turnover is less than €10 million: the rate is reduced by a quarter;
	Number of cinematographic or audiovisual works	VOD providers that offer less than 10 cinematographic or audiovisual works are exempted;
	When the service started its operations	For new services: reduced rate by half in the 1st year of operation and by quarter in the 2nd year;
	Thematic nature of the services	Catch-up services established in France are exempted from the investment obligation for audiovisual works; Audiovisual services mainly devoted to pornography or violence are exempted
GR	Criteria established in the Commission’s guidelines	Criteria established in the Commission’s guidelines
HR	Gross revenue	Less than HRK3 million (± €396,000)
IT	Threshold criteria to be set in the Authority’s regulation	To be set in the Authority’s regulation
PL	Audience	Less than 1% market share
PR	Income	Annual income below €200,000
	Audience	Less than 1% market share
RO	Revenues	Revenues below €65,000
	Audience	Less than 1% market share

<sup>15</sup> Note: Data correct up to 31<sup>st</sup> of August 2022.

Part 3

**Key findings and recommendations**

## 3. Key findings and recommendations

### 3.1. Investment obligations as factors in pulling VOD investments

**Investment obligations are tailored to markets and policy traditions.** The existing regulatory approaches reflect Member States' policy traditions. In most cases, the investment obligations are modelled based on policy instruments already applied to other players. For example, the film subsidy system in Germany is built upon collecting levies and distributing them through public support schemes. In Flanders, the policy mechanism with an option to choose between direct investment obligation or levy, previously applied to distributors, was extended to VOD providers.<sup>16</sup>

**Discussions revolve around modalities of investment obligations that support cultural and economic policy outcomes.** In a period when the revised AVMSD is already transposed into national legislation by most of the Member States, discussions are increasingly focused on (re)defining the modalities of investment obligations. Sub-requirements may reach granularity in elements that set diversity criteria and target investments in underrepresented genres, secure access to intellectual property (IP) to independent producers and improve their bargaining position, promote co-production with national partners or support talent development. The merits of different models of investment obligations depend on whether the requirements are in line with the national policy objectives.

**Investment obligations have become factors that affect competition between Member States for attracting VOD investments.** As policy instruments, investment obligations may serve policymakers to bring in a more significant portion of the total VOD investments in European content. That said, some markets might be at a disadvantage because of fragmentation in the regulatory approaches. For example, a Member State with a larger audiovisual market requiring a significant share of the investments to be made in national works could encourage global VOD providers to redirect investments from other EU countries without such requirements. It should be highlighted that investment appeal is also shaped by other measures which underpin the national policy context, such as criteria used to define the independence of a producer.

### 3.2. What prevailing challenges are linked to investment obligations?

The research presented in this study has identified a range of potential challenges that ought to be considered by policymakers both at the EU and national levels:

- **Undesirable effects from intensive competition between policymakers to increase VOD providers' investments.** As pointed out in the previous subsection, the policy approaches may create competitive asymmetry between Member States in terms of attracting VOD investments in local content. In these circumstances, the regulatory interventions might steer VOD providers' acquisitions and productions of European works toward some Member States while leaving others in a disadvantaged position.

---

<sup>16</sup> See: Kostovska, I., Raats, T. and Donders, K., (2020). The rise of the 'Netflix tax' and what it means for the sustaining European audiovisual markets. <https://doi.org/10.1080/13511610.2020.1774354>

- Investment obligations have also increased concerns from producers on retaining the rights on 'originals' commissioned by VOD providers. The analysis has surfaced disparities in dealing with the question of independent producers' rights retention.
- **Lack of mechanisms for implementing the AVMSD rule on avoiding double-imposition.** Enforcement of some AVMSD requirements, such as the prohibition of 'double imposition', lacks clarification and requires joint action by Member States.<sup>17</sup> As outlined by some film funds, the control mechanisms to calculate the amount of the paid contribution by VOD providers in other countries are yet to be determined.
- **Risk of increased cost of production and pulling talent and production resources in some genres at the expense of others.** We found that in some jurisdictions, rising costs are considered as a potential risk. The rise of spending on film and TV production and licensing in some genres may fuel production costs and hold down broadcasters' ability to engage talent at high rates. Undesirable consequences may arise from industry's capacity constraints.
- **Difficulty in evaluating the effects of investment obligations.** Analysing the effects of a particular approach to regulation might be a complex endeavour that requires assessing the impact against desired policy outcomes.

### 3.3. Recommendations

Considering the above-mentioned challenges and lessons learnt from different jurisdictions, we put forward the following set of recommendations:

- We recognise that, at a national level, **an investment obligation should be modelled as part of a broader policy strategy for strengthening and growing the film and television sector.** This means that the regulatory design of investment obligation should be an integral part of a coherent audiovisual policy framework. **Emphasis on the question of independent producers' rights retention is critical to secure long-term viability to rights exploitation.**
- The regulatory requirements for VOD providers serve as a strategic tool for pulling more VOD investments in local content and facilitating the competitiveness of the domestic film and television sector on a global scale. Regulators and policymakers are recommended **to identify the best route not only by observing the domestic market, but also adapting it to the realities of the European and the global market.** In this sense, before choosing an appropriate regulatory intervention, policymakers must consider the broader regulatory landscape and how policy measures in other territories are evolving. A key question is whether and what type of investment obligation would support building a stronger competitive position internationally for the local film and television sectors.
- The strive to achieve balance between public and private financing of audiovisual production is often mentioned as a rationale for introducing investment obligations to VOD providers. However, **investment obligation is not supposed to be used as an excuse to significantly reduce public support.**

---

<sup>17</sup> See also the Analysis and Discussion Paper by ERGA : <http://erga-online.eu/wp-content/uploads/2018/11/ERGA-2018-08-SG3-Analysis-and-Discussion-Paper.pdf>

- We recommend **creating a transparent regulatory framework that will not impede the innovation and growth of the VOD sector**. A forward-looking regulation would create a stable and predictive regulatory environment without barriers for smaller innovative VOD providers to access the market. Introducing appropriate rules on exemptions or reductions, methods for determining audience and a clear mechanism for avoiding double-imposition is important to create proportionate and predictable regulation.
- We encourage regulators and policymakers **to anticipate that the shifts in business models would increase the complexity of monitoring compliance**. It is evident that some business models, such as the one of Amazon Prime, where Prime Video is offered as part of a subscription to other types of services, have confronted regulators with a difficult task when monitoring compliance with investment obligation requirements. Given that some global VOD providers, such as Netflix, announced an ad tier with lower-priced subscription, and also the variety of VOD offered, it might become more challenging for regulatory authorities to review the reported revenue streams. In this context, strengthening the collaboration between regulators and using lessons learnt from other countries would be helpful.
- **A robust evaluation of investment obligations' policy outcomes** is key to avoiding the possibility of overstating the effects. The key question here is how much has changed as a direct result from the policy. The analysis in this study stresses the importance of having better access and obtaining reliable data from VOD providers to execute well-built policy assessment that considers both cultural and economic policy outcomes.

Part 4

**Stakeholders' perspectives on  
investment obligations**

## 4. Stakeholders' perspectives on investment obligations

In carrying out this study, we considered views by key groups of stakeholders. Below we provide an overview of stakeholders' reflections.<sup>18</sup>

### CEPI, the European Audiovisual Production association

What are the key opportunities and challenges brought by investment obligations for VOD providers?

**CEPI:** The investment obligations for VOD providers are certainly a step forward both on the intention to strike a balance between the rules applicable to broadcasters and for increasing financial resources for production of European content. CEPI strongly supports the trend of investment obligations, considering the rapid growth of VOD services in Europe.

In general, there are more countries that introduce investment obligations. However, not all Member States have taken the opportunity to impose such obligations. We also observe differences between the rates of investment obligations across Member States. **In contrast to France and Italy which introduced the highest investment requirements in Europe, for smaller markets, especially in Eastern Europe, the priority of attracting foreign investments played a role in setting lower rates.**

The main challenge is related to how investments are allocated. Many countries have sub-quotas to support independent productions, but the 'degree of independence' varies depending on the country. The French implementation of the AVMSD goes further by defining key criteria for a production to qualify as independent. Other countries have not adopted rules for productions to meet such a strict set of criteria.

**Without a detailed set of legal requirements, investment from VOD services would not necessarily benefit independent productions.** Instead, it can be used to finance the VOD services' own commissioning production in a country. This work for hire approach, while offering some investment in the audiovisual sector, often will not lead to the IP staying with the producer nor generate long term revenues for the production company which could be reinvested in independent production. Thus, the objective of the Directive to promote media pluralism and cultural diversity is only partially reached. An example of this issue is well represented by the new audiovisual communication law in Spain, where subsidiaries of large media groups could also benefit from the investment obligations of VOD services.

What are the most important lessons learnt from the practice of implementing investment obligations for VOD providers that could inform future policymaking?

**CEPI:** Proportionate investment obligations should continue to be encouraged across Europe, either in the form of levies for film funds or direct investments in production. In some Member States, the investment obligations will take both forms, ensuring that some part of the investment is redistributed according to the criteria of the film fund, thus further benefiting independent production.

---

<sup>18</sup> We asked organisations to consider the questions from the perspective of stakeholders they represent.

In addition, **the use of levies allows for better enforcement as it adds an additional level of control through the administration of national film funds.** Investment obligations in the form of direct investment in production is also very important. However, it seems important to reflect on the question on what type of productions should such investments be directed to.

## European Film Agency Directors association (EFAD)

What are the key opportunities and challenges brought by investment obligations for VOD providers?

**EFAD:** Two types of financial obligations are implemented in European countries: levies/contribution to funds or direct investment obligations. **While levies/contributions to funds allow public funding authorities (film & audiovisual centres) to support a wide diversity of projects, direct investment obligations are more a market-driven instrument allowing the private provider to choose which European projects it would like to finance.** In addition, investment obligations can be accompanied by regulation, orienting the investments towards a certain type of content (i.e., independent productions, cinema works, works in certain languages etc.).

The need to establish a level playing field, i.e., making sure that cross-border services are subject to the same financial obligations as domestic ones, led countries to implement cross-border financial obligations on VoD services. This happened even before the adoption of the revised AVMS directive and this trend accelerated with the transposition of the new text. It also inspired non-EU countries (Switzerland) to do the same. We also observe that countries with no financial obligations before 2018 are introducing such instruments as a response to the new post-COVID challenges for financing independent European works. More countries are now combining both levies and direct investment obligations (France, Croatia, Portugal), others are considering doing the same or increasing the applicable rates to be closer to the market evolution. In certain countries, policy makers face strong lobbying against the introduction of financial obligations.

**Financial obligations contribute to the development of co-productions, investments in the development and writing stages and strengthening the relations between VOD providers and local producers.** They lead towards **offering to the customers of VOD providers a richer and more diversified content.** When it comes to possible challenges, it is important to outline that the **local production market must be able to absorb the investments to be made by offering sufficient audiovisual works and also to consider that independent producers are struggling to keep IP rights in their hands.** A high level of investments in certain countries may lead to an **increase in production costs and a shortage of skilled workers or talents.** On a creative point of view, producers need to adjust their creative approach so that audiovisual works fit the “editorial line” of VOD providers.

What are the most important lessons learnt from the practice of implementing investment obligations for VOD providers that could inform future policymaking?

**EFAD:** There is no one size fits all and each country should define its own recipe depending on the market players and its own cultural policy objectives. Financial obligations without measures to promote the European independent production sector can have negative consequences (loss of IP ownership). **In certain countries, direct investment obligations**

**do not benefit the local production ecosystem enough.** What is at stake is to preserve vibrant creative workplaces in the different European countries.

What is needed to ensure a successful implementation is: **1) An efficient exchange of information between public funding authorities and audiovisual regulators about the implementation of financial obligations; 2) Securing a good collaboration between streamers, the local industry players and public funds (avoid discontinuation of projects, increase of costs, shortages of skilled workers, etc.); 3) A clear and ambitious definition of independence.** Not all Member States interpret the two different terms 'independent producer' and the term 'independent production' the same way in the implementation of the legislation.

## European VOD Coalition

What are the key opportunities and challenges brought by investment obligations for VOD providers?

**European VOD Coalition:** European consumers are currently enjoying a golden age for European content production. Many EU markets are at risk of overheating as producers keep pace with booming demand from VOD providers and others. The AVMSD appears as an echo from another world, when there were political concerns that global on-demand providers would not invest in local content.

So the provision does not, and was not designed to, bring about any opportunities for VOD providers. **It has however diverted significant internal resources into legal and compliance functions rather than content creation. The country of destination approach means that a pan-European operator must comply with up to 27 different investment regimes, and Member States have frequently sought to gold-plate these with differing definitions of independent producer, requirements that all operators invest in “cultural” content, and other attempts to manage the commissioning process, including sub-quotas.** In order to understand and comply with these rules, the pan-European operator will have to spend significant sums on local legal advice. The open-ended invitation from AVMS to Member States (as opposed to an obligation with a deadline) also means that the process is never-ending, with interest groups constantly lobbying for government intervention.

The obligations are also ultimately counter-productive. To find the resources needed to pay the “tax”, on-demand providers will look to make cost savings, and funding original content is one of the most likely places to go for such savings. Hence **the tax may become a Pyrrhic victory – it is paid but the same amount of money (or possibly more) is taken out of the system leading to a reduction in production.**

What are the most important lessons learnt from the practice of implementing investment obligations for VOD providers that could inform future policymaking?

**European VOD Coalition:** Like any market intervention, **an investment obligation should be based on an objective, up to date market assessment and impact analysis.** This is something we have only rarely seen done. How is the market failure being addressed? Are the market failures in lesser-spoken languages more pronounced than those in the bigger European languages? What are the respective roles of on-demand providers, public and commercial broadcasters, and other players such as tech platforms in addressing this

market failure? Is the market data up to date? We have seen some governments considering new obligations based on data which is four years out of date. Are market failures temporary or structural? If an investment obligation coincides with a boom in local content production, is it still necessary? The VOD Coalition believes that **attractive tax incentive regimes for production are a better vehicle to incentivise production in Europe than investment obligations.**

## European Producers Club (EPC)

What are the key opportunities and challenges brought by investment obligations for VOD providers?

**EPC:** The advantage brought by the revision of the AVMSD is that Member States for the first time can introduce investment obligations to VOD providers based in targeting countries. Before that, we could see VOD providers being established in less demanding countries such as the Netherlands, Luxembourg and the UK.

There are numerous challenges as well. The first challenge is that the possibility of introducing investment obligation is left to the Member States and we had to convince many of them to use this opportunity. Secondly, we can see that there are different levels of investment obligations, so there is a lack of homogeneity. There is a big disparity and unequal treatment between Member States. **The key challenge is how the investment obligations are shaped and implemented at the national level and to what extent they support independent producers.** We need to remember that the aim of the AVMSD is to foster diversity. In this sense, what is lacking is stronger protection of the independent sector. In Spain, for example, we see a form of investment obligation which allows channelling the investments to streaming production companies. In other words, how the investment obligation is implemented is key. Investment obligations bring opportunities if they are directed towards the independent sector. Finally, **what is also important is to give opportunity to independent producers to retain rights. Because of the lack of bargaining power, independent producers are leaving all the rights.** Independent producers should have better bargaining power. In the French model of investment obligation, for example, there is a sub-quota for the independent sector. And this is a good example.

What are the most important lessons learnt from the practice of implementing investment obligations for VOD providers that could inform future policymaking?

**EPC:** The key question is what is at stake and the answer is - diversity. The independent producers are a guarantor of the diversity because they are taking the risk, while the streamers are usually guided by what their recommendation systems are asking. So, **protecting the independent sector is protecting cultural diversity.** I think it was not clear for regulators what is at stake and what are the challenges of the future. We are speaking about the next generations: what do we want our children to watch, what do we want them to learn? It is really important to have diversity as an objective in mind. **Great tool to push forward cultural diversity is to have investment obligations with sub-requirement for investments in certain genres such as children's content or documentaries.**

Part 5

**Case-studies**

## 5. Case-studies

### 5.1. Cases with obligation for direct investment

#### 5.1.1. Belgium (DE)

VOD providers in the German-speaking Community of Belgium can invest in production or rights acquisition of European works as an option to meet the quota and prominence obligations.

##### **Legal framework**

The German-speaking Community of Belgium introduced a light direct investment obligation for VOD providers, as a choice to meet the requirement for quota obligation and prominence of European works. Both VOD providers established in the German-speaking Community in Belgium and those who target its audiences from another Member State or another community, have to reserve a share of 30% of programmes in their catalogues and give prominence to these works. Such requirement for promotion can be also met by investing in production or rights acquisition of European works.

The legal basis is provided with the Decree of 1 March 2021 on Media Services and Cinema Screenings. The objectives are outlined in Article 5 of the law, which include among others the promotion of media pluralism, cultural and linguistic diversity, fair competition and development of the internal market.

##### **Calculation**

The law does not outline how the investment obligation is calculated. The financial contribution is based on revenue generated in the German-speaking Community. The Government can specify further rules and may stipulate other appropriate forms of promotion.

##### **Criteria on exemptions or reductions**

The law outlines that the obligation does not apply to media service providers with low turnover or small audience. The criteria on exemption are not described.

##### **Applicable procedures**

VOD providers registered in the German-speaking Community of Belgium are obliged to follow the applicable procedures for registered audiovisual media services. Furthermore, VOD providers must describe their activities of the previous year in a report, including information on the support of European works. There are fines in case of non-compliance with the legal requirements.

## Summary table

<b>Applicable legislation<sup>19</sup></b>
<a href="#">Decree 1 March 2021 - Decree on Media Services and Cinema Screenings</a>
<b>Calculation</b>
<p><u>Article 30, Decree on Media Services and Cinema Screenings:</u></p> <p>(1) Non-linear audiovisual media services provided by registered providers shall promote the production of and access to European works. They shall ensure that European works have a share of at least 30% in their catalogues and give prominence to these works. Such promotion may also relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or the share and/or prominence of European works in the catalogue of programmes offered by the non-linear audiovisual media service. The financial contribution is based solely on the revenue generated in the German-speaking Community and complies with EU law, in particular with the State aid rules. The Government shall specify further rules. It may stipulate other appropriate forms of promotion.</p> <p>(2) Non-linear audiovisual media services whose target groups are in the German-speaking Community, but which are established in another Member State or another community, may also be obliged to pay proportionate and non-discriminatory financial contributions in accordance with (1) The government determines the detailed modalities.</p> <p>(3) The obligations under (1) and (2) do not apply to media service providers with low turnover or small audience.</p>
<b>Exemptions/reductions</b>
<p><u>Article 30, Decree on Media Services and Cinema Screenings:</u></p> <p>(3) The obligations under (1) and (2) do not apply to media service providers with low turnover or small audience.</p>
<b>Applicable procedures</b>
<p><u>Article 9, Decree on Media Services and Cinema Screenings:</u></p> <p>(1) [...] Private providers of non-linear audiovisual and auditory media services must also indicate in their activity report: 1. Activities of the previous year; 2. Information on the support of European works in accordance with Article 30.</p> <p><u>Art. 138, Decree on Media Services and Cinema Screenings:</u></p> <p>Sanctions of the provisions of Title 2 In the event of violation of the provisions of Title 2 and its implementing regulations, as well as violation of the general legislation on media services, in particular failure to comply with agreements referred to in Article 11 or violation of the provisions relating to the public service remit of the BRF resulting from the decree of June 27 1986 via the Belgian Radio and Television Center of the German-speaking Community, the Media Council can impose the following sanctions on media service providers: 1. a warning; 2. the temporary cessation of the disputed broadcast; 3. the publication of an advertisement in the press or 4. the payment of an administrative fine of up to 25,000 euros. In the event of recurrence within a period of five years, the amount of the administrative fine is set at 5% of the annual turnover excluding taxes. The administrative fine may be ordered in addition to any other penalty provided for in this article.</p> <p>(Note: Art. 30 is part of Title 2)</p>

---

<sup>19</sup> Note: The information in the table is by no means exhaustive. For detailed account on legal provisions consult the legislation.

## 5.1.2. Italy (IT)

The Italian legislation foresees one of the direct investments with highest rates in Europe, which goes up to 20% of net revenues from 2024, to be invested in the purchase, pre-purchase, production, or co-production of European and Italian audiovisual works.

### Legal framework

Italy has recently adopted the Legislative Decree 208/2021 that transposes Article 13 of the AVMSD. The act imposes the obligation to invest in European audiovisual works on both VOD providers established in Italy and in other Member States. The investment must be made in independent productions and amounts to a percentage of the provider's annual net revenues in Italy. The decree establishes the percentages while the national regulatory authority, AGCOM, will set out the calculation criteria in a forthcoming regulatory document.

The obligation is not new, as previous legislation had already introduced direct investment obligations for VOD providers in 2017, through the pre-purchase, purchase, production, and co-production of European audiovisual works. Previous measures were found in the Consolidated Law for Audiovisual and Radio Media Services 177/2005 and its respective amending decrees, including Law 220/2016 and Decree Law 204/2017. The decree transposing the 2018 AVMSD went through a lengthy public consultation and legislative process, which resulted in the amendment of the previous investment percentages and further clarification of certain procedures. VOD providers such as Netflix publicly criticised the Italian legislators' plans to increase the investment in Italian and European content to 25% by 2025 and pointed to the investment they had already made in local and European content.<sup>20</sup>

### Calculation

The investment obligation is calculated based on a percentage of the VOD service's annual net revenues in Italy. The percentage is raised from the rate of 17%, which applies until 31 December 2022, to 18% from 1 January 2023, and 20% from 1 January 2024 onwards. The investment must be made in European audiovisual works produced by independent producers. A key change with previous draft legislation is that the investment obligation is no longer dependent on whether a VOD service establishes operational headquarters and has a minimum of 20 employees in Italy. In this scenario, previous investments started at 12.5% but this is no longer the case.

A minimum share of 50% of the percentages foreseen is reserved for works of original Italian expression, produced anywhere in the last five years, by independent producers. Elements of original Italian expression can include references to culture, history, identity, creativity, language, or places. A minimum 20% of this sub-quota is reserved for cinematographic works of Italian origin, produced anywhere within the last five years by independent producers. These can include works of fiction, animation, or original documentaries. The obligation can be reached through the purchase, pre-purchase, production, or co-production of said works.

### Criteria on exemptions or reductions

The obligation is not required of VOD providers that register low turnover or a small audience share or those that have not made a profit in any of the last two years of operation, in Italy. Eligibility for the exemptions will be calculated based on criteria decided in an upcoming AGCOM regulation. The derogation from investment obligation also applies in cases where

---

20 <https://advanced-television.com/2021/09/03/italy-netflix-concerned-over-investment-obligations/>; <https://www.euronews.com/culture/2022/04/01/how-european-countries-are-taxing-netflix-to-invest-in-cinema>

they are deemed impracticable or unjustified, due to the nature or subject matter of the VOD provider.

Audiovisual media service providers that generate at least 80% of their annual net revenues from linear broadcasting but also provide on-demand media services will have to abide by the provisions concerning investment obligations for broadcasters.

### Applicable procedures

The media regulator AGCOM must periodically prepare a report on the implementation of the legislation, which is to be presented to the European Commission by 31 December 2022 and every two years after that. AGCOM must also submit a report to Italian legislators on the fulfilment of the obligations, the measures adopted, and the sanctions imposed, by 31 March of each year.

If an audiovisual media service provider has not fully fulfilled its obligations during the year in question, any fluctuations of up to 15% of the amount due must be recovered in the following year, in addition to the obligations due for that year. In the event that the VOD provider has exceeded the annual share required, the excess can be counted for the following year. Fines are foreseen in case of failure to comply with the investment obligation. If the violation is particularly serious or repeated, AGCOM may decide to temporarily suspend or indefinitely revoke a service's authorisation.

The conditions for the purchase, pre-purchase, production and co-production of works must take into account existing agreements between the audiovisual media service providers, either individually or through an association, and the trade associations representing Italian film and audiovisual producers. These include specific methods of fulfilling the obligations of contractual and production structures, which must ensure that the role and contribution of independent producers are not merely executive. Italian regulation also establishes the criteria to determine the temporal limitation on the rights of use and exploitation of the works, and the methods for their exploitation on various platforms.

### Summary table

Applicable legislation <sup>21</sup>
<a href="#">Legislative Decree no. 208 of 8 November 2021</a> <a href="#">Law no. 220 of 14 November 2016</a> <a href="#">Law no. 689 of 24 November 1981</a> (sanctions)
Calculation
<u>Article 55, Legislative Decree 208/2021:</u> [...] (2) On-demand audiovisual media service providers under Italian jurisdiction must promote the production of European works and access to them by jointly respecting: a) the programming obligations of European audiovisual works produced within the last five years, consisting of no less than 30% of the titles in a catalogue, according to the provisions of the Authority's regulation. Service providers of audiovisual media on demand which require the payment of a fee for the use of individual programs have the obligation to program European audiovisual works made in the last five years; b) investment obligations in European audiovisual works produced by independent producers in an amount equal to a percentage of the service's annual net revenues in Italy, according to the Authority's regulation, defined as follows: 17% until December 31, 2022, 18% from January 1, 2023, 20% from 1 January 2024. [...] (3) The obligations referred to in paragraph 2, letter b) also apply to on-demand audiovisual media service providers with editorial responsibility over offers targeting consumers in Italy, even if operating in another Member State.

21 Note: The information in the table is by no means exhaustive. For detailed account on legal provisions consult the legislation.

[...] (8) A share of no less than 50% of the percentage provided for European works in paragraphs 1, 2 and 3 is reserved for works of original Italian expression, produced anywhere in the last five years, by independent producers. The regulation or regulations referred to in article 57 provide that a percentage equal to at least one fifth of the investment sub-quota referred to in this paragraph is reserved for cinematographic works of original Italian expression wherever produced in the last five years by independent producers.

Article 57, Legislative Decree 208/2021:

[...] (2) The regulation or regulations referred to in this article, taking into account the characteristics and contents of the schedules of the audiovisual media service providers, as well as levels of turnover achieved by them, may provide for further sub-quotas in favour of particular types of audiovisual works produced by independent producers, with specific reference to works produced within the last five years, to cinematographic and audiovisual works of fiction, animation or original documentaries or other types of audiovisual works, with a view to simplify the system.

## Exemptions/reductions

Article 55, Legislative Decree 208/2021:

[...] (5) The statute of limitations on media service providers that target consumers in Italy referred to in paragraphs 1, 2 and 3 does not apply to media service providers having low turnover or a small audience share, according to threshold criteria decided in the Authority's regulation. The derogation from these requirements also applies in cases where the obligations are impracticable or unjustified due to the nature or subject matter of the audiovisual media services.

Article 56, Legislative Decree 208/2021:

[...] (2) Audiovisual media service providers may ask the Authority for exceptions to the obligations referred to in this title, explaining the reasons and providing any useful information to support one or more of the following occurring circumstances:

- a) the thematic nature of the schedule or catalogue does not allow them to respect the quotas referred to in this title;
- b) the audiovisual media service provider has a market share or turnover below a certain threshold established by the Authority's regulation;
- c) the audiovisual media service provider has not made a profit in any of the last two years of operation;
- d) the obligations are impracticable or unjustified in light of the nature or object of the audiovisual media service provided by certain suppliers.

(9) Providers of linear audiovisual media services which generate no less than 80% of their annual net revenues from linear broadcasting but also provide media services on demand have to abide by the provisions referred to in articles 53 and 54.

## Applicable procedures

Article 55, Legislative Decree 208/2021:

[...] (4) The Authority periodically prepares a report on the implementation of paragraphs 1, 2 and 3 to be presented to the Commission of the European Union, by 31 December 2022 and, thereafter, every two years.

Article 56, Legislative Decree 208/2021:

(1) With one or more regulations of the Authority, issued in its function of independent regulatory authority, the following are also established:

[...] e) the procedures aimed at ensuring both the adoption of simple and transparent mechanisms in the relations between providers of audiovisual media services and Authorities, including through the preparation and online publication of the appropriate forms, is an effective monitoring and control system;

f) the modalities of the preliminary investigation procedure and the gradual formal reminders to be communicated before the imposition of sanctions, as well as the criteria for determining the sanctions themselves based on the principles of fairness, proportionality and adequacy, also taking into account the differentiation between planning obligations and investment obligations.

[...] (3) The obligations referred to in this title are verified on an annual basis by the Authority, according to the methods and criteria established by the Authority with its own regulation. In any case, if an audiovisual media service provider has not fully fulfilled its obligations during the year in question, any fluctuations in default, up to a maximum of 15% with respect to the amount due in the same year, must be recovered in the following year, in addition to the obligations due for that year. In the event that the audiovisual media service provider has exceeded the quota due annually, the excess quota can be counted in order to reach the quota due in the following year.

(4) For the purposes referred to in paragraph 3, the Authority annually communicates to each audiovisual media service provider the achievement of the annual quota or any fluctuation in default to be recovered in the following year or the eventual exceeding of the quota to be counted in the following year.

(5) The sanctions referred to in article 67 remain valid in the event of failure to recover the quota required in the following year or of an annual deviation of more than 15% of the quota due in the reference year.

(6) The Authority submits to the Chambers, by 31 March of each year, a report on the fulfilment of the obligations to promote European and Italian audiovisual works by the providers of linear and paid audiovisual media services on the measures adopted and on the sanctions imposed. The report must also provide the micro and macroeconomic data and industry indicators relevant to the promotion of European works, such as production volumes in terms of hours, the turnover of production companies, revenues from audiovisual media services, the share and the indication of European works and works of original Italian expression present in schedules and catalogues, the number of employees in the production of audiovisual media services, the international circulation of works, the number of waivers requested, accepted and rejected, with the respective reasons, as well as summary tables that indicate the percentages of investment obligations fulfilled by the various suppliers offering services to the Italian public, with the related European and original Italian works.

Article 57, Legislative Decree 208/2021:

[...] (3) In the case of cinematographic and audiovisual works of fiction, original Italian animation or documentaries produced by independent producers, the regulation or regulations referred to in this article provide that the obligations of investment referred to in Article 54 and Article 55 are fulfilled through the purchase, pre-purchase or co-production of works. The regulation or regulations, taking into account any specific agreements stipulated between the associations of service providers of audiovisual media or between individual audiovisual media service providers and trade associations representative of Italian film and audiovisual producers, also provide:

- a) specific procedures for fulfilling the obligations referred to in articles 53, 54, and 55, with particular reference to conditions of purchase, pre-purchase, production and co-production of the works. In particular, the formalities for acquiring the obligations and contractual and production structures relating to cinematographic and audiovisual works of fiction, animation or original documentaries, of original Italian expression produced anywhere, must ensure that the role and contribution of independent producers is not purely executive;
- b) the criteria for the temporal limitation of the rights of use and exploitation of the works and for the modalities of exploitation on the various platforms.

(4) The regulation or regulations referred to in this article are updated at least every three years on the basis of annual reports prepared by the Authority pursuant to of article 56, paragraph 6, and by the cinema and audiovisual directorate general of the Ministry of Culture, pursuant to article 12, paragraph 6, of Law no. 220 of 14 November 2016, as well as the results achieved by the works promoted through the fulfilment of the investment obligations and the effectiveness of the contractual conditions employed.

Article 67, Legislative Decree 208/2021:

[...] (2) The Authority, applying the rules contained in Chapter I, Sections I and II, of Law no. 689 of 24 November 1981, taking into account the gravity of the fact and of the consequences that arise from it, as well as the duration and possible reiteration of the violations, resolves the imposition of the administrative sanction of payment of a sum:

[...] d) from 100,000 euros to 5,000,000 euros, or up to 1% of annual turnover, when the value of this percentage is higher than 5,000,000 euros, in the event of violation of the rules referred to in paragraph 1, letter g) and letter r);

[...] (11) If the violation is particularly serious or repeated, the Authority can impose on the audiovisual service [...] the suspension of activity for a period not exceeding six months, or in the most serious cases of non-compliance with orders and warnings by the same Authority, the revocation of the concession or authorization

## 5.2. Cases with levy payable to fund

### 5.2.1. Denmark (DK)

Distinctive about the proposed investment obligation in Denmark is that half of the collected levy will be used to increase the subsidies for Danish films, whereas the other half will be distributed to a larger Public Service pool with funds available to broadcasters, streaming services, producers and providers of radio programmes and podcasts.

#### Legal framework

Denmark has proposed an investment obligation in a form of levy for VOD providers established in the country and those targeting Danish audiences from other Member States with the Media Agreement 2022-2025. The Agreement, which lays down the media policy framework, was concluded between the government and different political parties. The investment obligation is expected to be formally implemented with the Cultural Contribution Act which, at the time of publication, was still in legislative procedure. It is expected that 2023 will be the first full revenue year after the law comes into effect. According to estimates, the levy could bring in between DKK150 and 200 million per year (€20-27 million).

The VOD providers have strongly opposed the investment obligation. In response to the rights agreements reached between producers and filmmakers that guarantee better remuneration to artists, but also due to the introduced levy, Viaplay halted their production in Denmark. Viaplay reacted that the levy will ultimately lead to less investment in Danish TV content, increase consumer prices and redirect streamers' investments to more attractive markets.<sup>22</sup> Netflix also decided to stop production in response to the rights agreement.

#### Calculation

Initially, Denmark intended to introduce a direct investment obligation with a lower rate with the Media Agreement 2019-2023, but that was not implemented. The decision to introduce a levy instead of a direct investment obligation with the new Agreement is explained with the advantage of "strengthening the existing funding system that has proved to be a guarantee for quality and diversity in Danish stories."<sup>23</sup> According to the draft of the Cultural Contribution Act, VOD providers will be obliged to contribute 6% of their turnover raised in Denmark. The funds raised with the contribution will be administered by the Danish Film Institute and aimed at supporting Danish-language content.

Half of the collected levy will be used to increase the subsidy for Danish films. The other half of the levy will be directed to the Danish Film Institute's Public Service pool. Funds from the Public Service pool will be available to broadcasters, streaming services, producers and providers of radio programmes and podcasts. The Public Service pool re-distributes 65% of funds to TV drama, 30% for TV documentaries and cultural programmes and 5% to sound productions. 30% of the total funds are supposed to be used for programmes for children and young people. According to the projections in the Media Agreement, the Public Service Pool is expected to redistribute DKK66,2 million (± €8.8 million) in 2022. The future model for the administration of the Public Service pool is discussed with the parties to the Media Agreement. The Public Service pool is expected to be administered by the Danish Film Institute as is currently the case.

---

<sup>22</sup> <https://www.viaplaygroup.com/open-letter-dk>

<sup>23</sup> [nordiskfilmogtvfond.com/news/stories/the-danish-film-institutes-ceo-on-the-new-6-streaming-levy-in-denmark](https://nordiskfilmogtvfond.com/news/stories/the-danish-film-institutes-ceo-on-the-new-6-streaming-levy-in-denmark)

In 2021 the total budget of the Danish Film Institute for all support schemes (Public Service Pool and film support schemes) amounted to approximately DKK510 million (± €68 million). The levy imposed on VOD providers is estimated to add up approximately DKK150 to 200 million annually (€20-27 million). VOD providers captured by the cultural contribution will be eligible to apply for funding support for the production of new Danish-language audiovisual content, both from the Public Service pool and film support schemes.

### Criteria on exemptions or reductions

Specific criteria on exemptions or reductions with regards to the investment obligation are expected to be defined through secondary legislation. The draft of the Cultural Contribution Act foresees an annual income threshold of DKK15 million (± €2 million), meaning that companies generating less will be exempted from paying the levy. The threshold is set with reference to the European Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

### Applicable procedures

Recipients of support from the Public Service pool must report where the supported productions have been shown and how much audience they've attracted.

### Summary table

<b>Applicable legislation</b>
<p><a href="#">Media Agreement 2022-2025</a> (2022-2025)  <a href="#">Cultural Contribution Act</a> (draft version)</p>
<b>Calculation</b>
<p><u>Media Agreement 2022-2025:</u></p> <p>[...] The parties to the agreement agree that: A cultural contribution of 6 percent will be introduced for streaming services of the turnover of their services in Denmark. The proceeds (calculated according to reflux and behavioural effects) are distributed with 50 per cent to a larger Public Service pool as well as 50 per cent to increase the subsidy for Danish films. The parties to the agreement agree that the proceeds from the cultural contribution will be distributed by the parties behind this agreement. Reservations are made for the scheme's state aid approval. The administrative costs are borne with the cultural contribution.</p> <p><u>Article 4, Cultural Contribution Act:</u>  Media service providers, as defined in § 2, shall pay an annual contribution of 6 per cent of their turnover in Denmark. (2) The National Board of Culture shall collect the contribution annually on the basis of the media service providers' statements of turnover in Denmark for the last financial year. (3) If the contribution is not paid by the media service provider, it shall be recovered by the residual debt collection authority. (4) The Minister of Culture may, after consultation with the Minister of Finance, lay down detailed rules for the collection of the contribution, including rules on the procedure for payment, on interest and on the time limit for payment. The proceeds of the cultural contribution after repayment and conduct shall be distributed after deduction of the costs associated with the administration of the scheme with 50 per cent for a public service pool and 50 per cent for the support of Danish-language film.</p>
<b>Exemptions/reductions</b>
<p><u>Article 2(3), Cultural Contribution Act:</u>  Paragraphs (1) and (2) only apply to media service providers that have an annual turnover of more than DKK 15 million. DKK</p>
<b>Applicable procedures</b>
<p><u>Media Agreement 2022-2025:</u></p>

#### Modernised Public Service Pool

The Public Service pool is expanded to also support Danish-language content produced for radio and podcast. The pool is distributed with 65 percent for TV drama, 30 percent for TV documentaries and cultural programs and 5 percent for sound, where a minimum of 30 percent of the total funds are to be used for programs for children or young people.

In 2024, the parties to the agreement will receive an inventory of how many have applied for and received grants in 2023 in order to possibly adjust the distribution.

[...] The pool can be applied by TV stations, streaming services, producers and providers of radio and podcast.

[...] The future model for the administration of the Public Service pool is discussed with the parties to the agreement. Beneficiaries must live up to the collective wage and working conditions that apply in the area. Recipients of support from the Public Service pool must state where the supported productions have been shown and how many have seen the productions.

[...] recipients of media support and funds from the Public Service pool must prepare a gender declaration in connection with receiving of funds.

## 5.2.2. Germany (DE)

Germany imposed levy to VOD providers that exploit cinematographic works. The levy paid by VOD providers is added to the pool of levy collected from cinemas, broadcasters, video distributors, used to finance FFA's funding measures.

### Legal framework

In Germany, VOD providers are subject to a film levy that is paid to the German Federal Film Board (FFA). The FFA's funding measures are financed through a levy, which is collected from cinemas, broadcasters, video distributors and VOD providers. Both VOD providers established in Germany and those based in other Member States targeting German audiences have to pay the levy.

The legal basis is the Act on Measures to Promote German cinema (Cinema Promotion Act – FFG) - 23 December 2016 (last updated in August 2021). Germany extended the levy to VOD services, including providers established outside Germany in 2014.

According to the FFA, the levy collected from the video industry (which includes VOD providers and video distributors that rent or sell DVDs or Blu-ray Discs) reflected a drop in sales of 7.1% in 2021 compared to 2020.<sup>24</sup> Yet, the share of sales by VOD providers in the total sales of the video industry continued to rise to almost 79% (75% in 2020). The levy paid by the video industry in 2021 amounted to €16 million.

### Calculation

The tiered levy ranges between 1.8%-2.5%. It is based on the annual turnover from the net sales of cinema films in Germany.

VOD providers with up to €20 million turnover from sales of cinema films in Germany have to pay a levy of 1.8% of their turnover to FFA. Those whose turnover exceeds €20 million are required to pay a higher levy of 2.5%. The payment is calculated based on turnover from the previous year. When the VOD provider was active for less than 12 months, the turnover is calculated by multiplying the average monthly turnover of the previous year by twelve. If there was no activity the previous year, a comparable calculation will be made based on the monthly turnover in the year of issue.

### Criteria on exemptions or reductions

VOD providers that annually generate less than €500.000 with the exploitation of feature films are exempted from the levy. Only VOD providers that offer films are obliged to pay a levy, meaning that they provide and hold licenced rights to films and commercially exploit films (by paid or ad-supported services). VOD providers that are targeting German audiences from other Member States are exempted from paying the levy if they make a comparable financial contribution to the promotion of cinematographic works in the country where they are established.

### Applicable procedures

Broadcasters obliged to pay a levy for their broadcasting activities also need to pay the levy for their VOD services. This applies also to broadcasters based in another Member State, which provide VOD services to German audiences. The FFG further outlines several

---

<sup>24</sup> <https://www.ffa.de/download.php?f=bdb8965576db78f022ac7144d64e6f17&target=0>

applicable procedures for VOD providers, which include the monthly payment schedule and provision of information and proof upon request.

## Summary table

<b>Applicable legislation</b>
<a href="#">Act on measures to promote German cinema</a> (Cinema Promotion Act – FFG) - 23 December 2016
<b>Calculation</b>
<p><u>Article 153, Cinema Promotion Act:</u></p> <p>(1) Holders of licence rights having their registered office or a branch office in Germany who exploit cinematographic works made for commercial purposes by means of video-on-demand services provided in return for payment or financed by advertising shall pay a film tax on net turnover generated in Germany from the exploitation of cinematographic works if that net turnover exceeds €500 000 per year.</p> <p>(2) In the case of licence holders who do not have their registered office or a branch office in Germany, paragraph 1 shall apply mutatis mutandis to offerings of German-language video-on-demand services in respect of turnover generated in Germany. The tax obligation laid down in the first sentence shall not apply if the relevant turnover at the place where they have their registered office is used to make a comparable financial contribution to the promotion of cinematographic works by a film promotion institution.</p> <p>(3) The film tax shall amount: 1. in the event of an annual turnover of up to €20 000 000, to 1.8%; and 2. in the event of an annual turnover of more than €20 000 000, to 2.5%.</p> <p>(4) The turnover of the previous year shall be used to determine which of the annual turnover levels has been reached. If the turnover was generated during only part of the previous year, the annual turnover shall be calculated by multiplying the average monthly turnover of the previous year by the figure twelve. In the absence of turnover in the previous year, the turnover level may be determined on the basis of the monthly turnover in the year of the tax.</p>
<b>Exemptions/reductions</b>
<p><u>Article 153, Cinema Promotion Act:</u></p> <p>(1) Holders of licence rights having their registered office or a branch office in Germany who exploit cinematographic works made for commercial purposes by means of video-on-demand services provided in return for payment or financed by advertising shall pay a film tax on net turnover generated in Germany from the exploitation of cinematographic works if that net turnover exceeds €500.000 per year.</p>
<b>Applicable procedures</b>
<p><u>Article 164, Cinema Promotion Act:</u></p> <p>(1) Anyone who has to pay a film tax under this Act must provide the Film Promotion Agency with the information required for the implementation of this Act and submit the relevant documents. This also applies to persons who only do not have to pay a film fee because the provisions in Article 151 subsection 1, Article 152 subsection 1 sentence 2, Article 153, Article 155 subsection 1, Article 156 subsection 1 or Article 156a subsection 1 and 2 sales limits are not reached or because the theatrical film share is below the sales limits specified in Article 152 paragraph 1 sentence 2, Article 155 paragraph 1, Article 156 paragraph 3 sentence 2 or Article 156a paragraph 3 sentence 2, as well as for persons for whom the mentioned turnover limits, as well as for persons, for whom the existence of the other requirements for a duty to pay can only be checked if the corresponding information is provided. The obligation to provide information extends to 1. the company name and group affiliation as well as the place of business or residence of the taxpayer, 2. the construction, relocation and abandonment of the place of business or residence, 3. Names and place of business or residence of the persons to be contacted with regard to the collection of the tax as well as names and place of business or residence of the persons referred to in Article 166 (3), 4. the date of birth if the person liable to pay the fee is a natural person, 5. the turnover of the activities subject to the tax, whereby the turnover from this is to be shown separately from other turnover and according to the type of evaluation; [...]</p> <p><u>Article 165, Cinema Promotion Act:</u></p> <p>(1) The information from the cinemas and the video industry pursuant to Article 164 (1) numbers 5 to 10 must be provided monthly, by the tenth of the following month, separately according to the type of exploitation and free of charge. [...] The information about the proceeds according to Article 164 paragraph 2 sentence 2 number 2 is semi-annually, in each case for the first half of the calendar year by the end of August of the same calendar year and for the second half of the calendar year by the end of February of the following calendar year. [...]</p>

Article 166, Cinema Promotion Act:

(1) The film promotion agency is entitled to check the information provided pursuant to Article 164. It may commission third parties, who may also be natural persons or legal entities under private law, to carry out the verification. Those obliged to provide information are obliged to provide the film funding agency with documents to prove the correctness of the information pursuant to Article 164.

(2) The persons commissioned by the film promotion agency to monitor the operation are authorised to check the information provided pursuant to Article 164, to enter the property, operating facilities and business premises of the person obliged to provide information during operating or business hours, to carry out inspections and tests there and to inspect the business documents of the person obliged to provide information. The basic right to the inviolability of the home (Article 13 of the Basic Law) is restricted in this respect.

(3) In the case of legal persons and commercial partnerships, the persons authorised to represent them by law, articles of association or articles of association or their agents must fulfil the obligations under paragraph 1 sentence 2 and tolerate measures under paragraph 1.

(4) The person obliged to provide information may refuse to provide information on questions the answer to which would expose them or one of the relatives referred to in Article 383 (1) numbers 1 to 3 of the Code of Civil Procedure to the risk of criminal prosecution or proceedings under the Administrative Offenses Act. Article 167 Estimate If a person obliged to provide information refuses to provide information pursuant to Article 164 by the time specified in Article 165 (1) or to submit the relevant documents, the film promotion agency may also make the determinations required to determine the film tax by way of an estimate or grant aid reclaim.

Article 148, Cinema Promotion Act:

Collection of the film levy: The film levy is claimed on the basis of an official order. Objections and actions for annulment of the decision to collect the film levy have no suspensive effect.

### 5.2.3. Poland (PL)

Poland introduced a levy as part of the Covid-19 anti-crisis relief programme.

#### Legal framework

The investment obligation on VOD providers was introduced as part of the Covid-19 anti-crisis relief programme. Poland imposed a requirement for payment of a levy to the National Film Institute both to VOD providers established in the country and to those that target Polish audiences from another Member State. Broadcasters established in other EU countries also have an obligation to pay a levy. The legal requirements are set out in the Cinematography Act as of 2020.

With the increased uptake of VOD, the collected revenue has grown. In the first quarter of 2022, the National Film Institute collected PLN7.5 million ( $\pm$  €1.6 million), which is about PLN577,000 ( $\pm$  €125,800) more than the levy revenue collected in the previous quarter and PLN2.7 million ( $\pm$  €588,800) more compared to the same period last year.<sup>25</sup>

#### Calculation

The levy is set at 1.5% of the revenue obtained from fees for access to VOD services available to the public or revenue obtained from broadcasting commercial communications, if this revenue in a given settlement period is higher. Payments to the Polish Film Institute are made quarterly. The levy for VOD providers established in another Member State is based on the revenues in Poland.

#### Criteria on exemptions or reductions

Micro-enterprises and services whose number of users in the previous year was less than 1% market share are exempted from the investment obligation. The threshold for the market share is calculated according to the number of users having broadband access to the Internet. For e.g., in 2020, the number of people using internet services was 7.77 million which means that the threshold for the VOD levy was set to 77,700.

#### Applicable procedures

The payments constitute tax deductible costs, within the meaning of the provisions on income tax, on the date they are incurred. When making the payment, the company has to submit a statement on the amount of revenue on the basis of which the amount of the payment has been determined. The statement is submitted under pain of criminal liability for making false statements.

#### Summary table

##### Applicable legislation

[Cinematography Act](#)

##### Calculation

Article 15, Cinematography Act: The entity providing the on-demand audiovisual media service makes a payment to the Institute in the amount of 1.5% of the revenue obtained from fees for access to on-demand audiovisual media services available to the public or the revenue obtained from broadcasting commercial communications, if this revenue in a given settlement period is higher.

<sup>25</sup> <https://www.wirtualnemedi.pl/artykul/podatek-od-vod>

Article 19, 8., Cinematography Act: The payments referred to in paragraph 1. 1-5 and 6a, are provided on a quarterly basis within 30 days after the end of the quarter.

### Exemptions/reductions

Article 6c. Cinematography Act: [...] The obligation referred to in paragraph 1. 6a and 6b, shall not apply to the entity providing the on-demand audiovisual media service: 1) being a micro-entrepreneur within the meaning of Art. 7 sec. 1 point 1 of the Act of 6 March 2018 - Entrepreneurs' Law (Journal of Laws of 2019, items 1292 and 1495 and of 2020, item 424) or 2) whose number of users of all on-demand audiovisual media services made available to the public in the year preceding the year in which the obligation to pay the Institute is established did not exceed 1% of subscribers of data transmission services providing broadband access to the Internet; the number of users of data transmission services providing broadband Internet access is determined on the basis of data from the inventory referred to in Art. 29 of the Act of 7 May 2010 on supporting the development of telecommunications services and networks (Journal of Laws of 2019, item 2410 and of 2020, item 471).

### Applicable procedures

Article 8a. Cinematography Act: When making the payment referred to in para. 1-5 and 6a, the entity obliged to make it shall submit a statement on the amount of revenue on the basis of which the amount of the payment has been determined. The statement is submitted under pain of criminal liability for making false statements. The person submitting the declaration is obliged to include the following clause: "I am aware of the criminal liability for submitting a false declaration.". This clause replaces the instruction of the body authorised to collect the declaration of criminal liability for submitting a false declaration.

Article 8b. Cinematography Act: In case of doubts as to the correctness of the submitted declaration, the Director may request to provide, within the prescribed period, the necessary explanations or supplement the declaration, indicating the reasons for questioning the accuracy of the data contained therein.

Article 8c. Cinematography Act: The director may request the Chairman of the National Broadcasting Council to provide the information referred to in Art. 37a paragraph. 3 of the Act of December 29, 1992 on radio and television (Journal of Laws of 2020, item 805, of 2021, item 1676 and of 2022, item 857), if this information is necessary to establish the amount of the payment referred to in paragraph 3 and 3a and 6a and 6b.

Article 8d. Cinematography Act: The director shall provide the Chairman of the National Broadcasting Council with a report on the fulfilment of the obligation referred to in para. 3 and 3a and 6a and 6b, within 30 days before the expiry of the deadline for submitting the report referred to in Art. 6 sec. 3 point 3 of the Broadcasting Act of December 29, 1992.

## 5.2.4. Romania (RO)

After a lengthy legislative process, the Romanian Government has recently agreed on a 4% levy to be paid by VOD providers to the Film Fund. There is an option for VOD providers to make a direct contribution of 40% of the amount owed to the Fund in cinematographic production, at the request of film producers. A 3% contribution is also required for revenues obtained from audiovisual downloads.

### Legal framework

In June 2022, the Romanian Government voted for the law transposing the 2018 AVMSD, which includes a levy on VOD providers. The obligation also applies to services established in another EU Member State. The funds will be transferred to the Film Fund at the end of each trimester. VOD providers can also choose to directly finance a cinema production with part of the obligation due.

The legal framework for the levy on VOD providers is found in Law 430/2021 amending the Audiovisual Law 504/2002 and the Government Ordinance on Cinematography 39/2005. The 4% levy initially proposed by the Government was halved in the debate in the Chamber of Deputies, but MPs decided to go back to the 4% level as a 2% tax was deemed discriminatory compared to the one paid by operators of cinema halls, as VOD platforms are also considered content exhibitors.<sup>26</sup> The law also foresees a 3% monthly contribution, calculated from the price of audiovisual works downloaded for a fee through on-demand audiovisual media service providers.

### Calculation

The 4% levy is calculated based on the revenues obtained by VOD providers in the Romanian territory each trimester. VOD providers who opt for the direct financing of a cinema production must invest up to 40% of the amount due to the Film Fund, at the request of film producers and after notifying the National Cinematography Centre.

VOD providers established in another EU Member State will declare and calculate the levy based on the revenues they obtained on Romanian territory.

### Criteria on exemptions or reductions

The payment of the levy is not required of providers whose revenues did not exceed the Romanian equivalent of €65.000 in the last fiscal year or whose audience level is below 1% of the number of subscribers at national level, or data transmission services providing broadband Internet access

### Applicable procedures

VOD providers have to declare and transfer the required levy to the National Cinematography Centre, which administers the Film Fund. This has to be done within 30 days of the end of each trimester.

The National Audiovisual Council is the authority in charge of implementing and reporting on the investment obligation. The agency must file a report to the European Commission, by 19

---

<sup>26</sup> <https://www.profit.ro/povesti-cu-profit/media-advertising-csr/decizie-platformele-streaming-vor-plati-taxa-4-venituri-cablistii-vor-avea-obligatii-aranjarea-programelor-grila-conditii-must-carry-televizunea-publica-interrupe-filmele-reclame-20732740>

December 2022 and every two years after that, on the compliance with the obligation by VOD providers, including the contributions imposed on the services.

## Summary table

Applicable legislation
<p><a href="#">Law amending the Audiovisual Law and the Government Ordinance on Cinematography 430/2021</a> <a href="#">Audiovisual Law 504/2002</a> <a href="#">Government Ordinance 39/2005 on Cinematography</a></p>
Calculation
<p><u>Government Ordinance on Cinematography</u>: Article 13 (1) The Film Fund is funded through the following sources:</p> <p>h. The monthly collection of a contribution of 3% of the price of audiovisual works downloaded for a cost through data transmission services, including Internet and telephony, through audiovisual media services providers on demand, the obligation to present documents that certify the sums obtained, as well as the payment obligation falling to the legal entities that obtain these revenues;</p> <p>h<sup>1</sup>. 4% of revenues from single transactions or in the form of subscription by on-demand audiovisual media service providers, for the viewing of audiovisual works by means of broadcasting services via Internet-transmitted data or telephony.</p> <p>(1<sup>1</sup>) In the case of the suppliers provided in paragraph (1) h<sup>1</sup> established in another Member State of the European Union, the revenues on which the contribution is levied are those obtained on Romanian territory.</p> <p>Article 16 (2<sup>1</sup>) The suppliers referred to in article 13 (1) h and h<sup>1</sup> can also opt for direct financing of a film production, up to 40% of the amount due to the Film Fund, at the request of film producers and after prior notification addressed to the National Cinematography Centre.</p> <p>(2<sup>2</sup>) Projects declared winners in the project selection competition for direct financial credits for film production and film development can also be the object of the direct financing mentioned in paragraph (2<sup>1</sup>).</p>
Exemptions/reductions
<p><u>Government Ordinance on Cinematography</u>: Article 13 (1<sup>2</sup>) The provisions in paragraph (1) h and h<sup>1</sup> do not apply to suppliers whose revenues, for the last fiscal year, did not exceed the equivalent in lei, at the exchange rate communicated by the National Bank of Romania, of the amount of 65,000 euros or whose audience level is below 1%, relative to the number of subscribers at national level to data transmission services that provide broadband internet access.</p>
Applicable procedures
<p><u>Government Ordinance on Cinematography</u>: Article 14. Audiovisual media service providers on demand have the obligation to declare and transfer to the National Centre of Cinematography the amounts mentioned in article 13 (1) h and h<sup>1</sup> on a trimester basis, within 30 days of the end of each trimester.</p> <p>Article 2 (6) Audiovisual media service providers have an obligation to inform the National Audiovisual Council of any change that could affect the establishment of jurisdiction.</p> <p>Article 2 (1) The National Audiovisual Council manages the updated list of audiovisual media service providers under Romania jurisdiction, including the criteria on the basis of which the jurisdiction for each provider was established, ensuring its regular communication, including updating the European Commission and the public, through communication on the Council's website.</p> <p>(2) In the field of audiovisual media services, the National Audiovisual Council may impose, through regulatory decisions, the providers of audiovisual media services under Romanian jurisdiction stricter or more detailed measures in the general public interest, in compliance with applicable European law.</p>

## 5.3. Cases with choice between direct investment and levy

### 5.3.1. Belgium (FL)

Distinguishing characteristics of the Flemish model of investment obligation is that providers don't get rights in return for the investment and have to acquire rights separately against a 'fair price' negotiated with producers.

#### Legal framework

The Flemish Community of Belgium introduced an investment obligation to VOD providers with the Contribution Scheme in 2019. VOD providers established in Flanders and those targeting Flemish audiences from another Member State can make a choice between a direct investment in co-production of Flemish audiovisual works or paying an equivalent levy to the Flanders Audiovisual Fund (VAF).

The investment obligation introduced in 2019 complements the existing investment obligation for television distributors that provide both linear and non-linear services under the Stimulation Arrangement. As set out in the Implementation Decision of 21 March 2014, and similar to the investment obligation for VOD, service distributors can choose between a direct investment in co-production of Flemish audiovisual works or paying a levy to VAF. Service distributors that target the Flemish market from another Member State are only captured if they offer broadcasting bundles of Flemish broadcasters falling under the Flemish market (such as TV Vlaanderen which is based in Luxembourg).

In 2021, the Flemish government initiated a review of the current investment obligation under the Contribution Scheme and the Stimulation Arrangement with the objective to create a better level-playing field between different players and better align both investment obligations (the one for television service providers and the one for non-linear broadcasting organisations). At the time of writing, discussions between government and key industry players were ongoing.

#### Calculation

The investment obligation for VOD providers, which are defined as 'non-linear broadcasters' under the Contribution Scheme, is set at 2% of their annual revenue. The basis for the investment obligation is the revenue excluding VAT, obtained from the supply of non-linear television services to the end user, including but not limited to payment by the consumer, agreements with service providers, valorisation of data and audiovisual commercial communication.

The contribution has to be directed to Flemish, qualitative independent productions in series, in the form of a co-production with an independent producer, for a minimum of 20% of the total budget of the production and a maximum of 50% of the budget. In practice, most of these co-productions are realised in co-production with a Flemish broadcaster. Contrary to the regulatory designs in some other Member States, VOD providers do not get rights in return for their contribution in productions. VOD providers have to acquire rights separately against a 'fair price' negotiated with producers. Additionally, VOD providers must ensure prominence of co-productions for at least 12 months. An example of a production realised under the scheme is 'Diamond', an 8-part crime drama which Netflix produced together with the Flemish public service broadcaster VRT or 'Twee Zomers', a six-episode series produced by Panenka in co-production with VRT and Netflix.

Under the Stimulation Arrangement, television distributors, such as cable, IPTV, and internet players that provide television broadcasting programmes, can choose between making a direct investment of €3 million or a contribution of €1.3 per subscriber (indexed) in the “Dutch language area.” Similarly, to the investment obligation for non-linear broadcasters, service providers under the Stimulation Arrangement do not get rights in return for the investment and are limited in rights deals they can make. Moreover, the investment must be at least 20% of the total budget of a production. The implementation of the investment obligation for service distributors has unearthed certain challenges. With the launch of Streamz, a Flemish joint venture between Telenet and DPGMedia, the productions *Black-Out* and *De Bende van Jan de Lichte* were offered in preview on the platform, before being broadcasted on linear television. The Flemish Regulator for Media judged that this went against the legal provisions stipulated in the current Stimulation Arrangement which require co-production projects to be released on linear television first by a broadcaster. The difficulty occurred because Telenet as a television service provider falls under the Stimulation Arrangement, but also launched its own streaming service Streamz of which the business model precisely aims at offering Flemish drama to its subscribers exclusively in preview. With the review of the investment obligation, providers of VOD services will most probably be allowed to show a series in preview.

### **Criteria on exemptions or reductions**

VOD providers that are part of or subsidiaries of legal entities that already contribute to audiovisual productions in Flanders based on their linear television activities or their activities as service providers are exempted from the investment obligation under the Contribution Scheme. Also, VOD providers with annual revenues (excluding VAT) of less than €500.000 are not captured by the obligation.

### **Applicable procedures**

VOD providers have to inform the Flemish Regulator, VAF, and the Flemish Government of the chosen form of investment obligation (direct investment or payment of levy). If a provider does not submit such information, there is an obligation to contribute through payment of a fixed contribution of €3 million to VAF.

VOD providers must report to the Flemish Media Regulator each year on how they met the obligation. The Flemish Regulator for Media checks whether the amount of the contribution obligation is being met and notifies the VOD provider by registered letter of the check, and of the financial obligations that are required. If insufficient investments are made, a VOD provider will be required to pay a lump sum to VAF.

Providers that distribute television signals and provide VOD services also have certain reporting obligations. In particular, they have to submit a file with a list of investments in the form of co-productions of audiovisual works for the current year by registered letter to the Flemish Regulator. The regulator assesses the admissibility and recognition of the co-production projects on the advice of the assessment committee.

## Summary table

### Applicable legislation

[Decree amending the Media Decree of 27 March 2009 concerning Radio Broadcasting and Television](#)  
[2019 Decision of the Flemish Government regarding the participation of private non-linear television broadcasters in the production of Flemish audiovisual works](#)  
[21 March 2014-Decree of the Flemish Government concerning the incentive scheme for the audiovisual sector, mentioned in Article 184/1 of the Decree of 27 March 2009 on radio broadcasting and television](#)

### Calculation

#### Article 157(2), Media Decree:

Private non-linear television broadcasters shall participate in the production of Flemish audiovisual works, either in the form of a financial contribution to the production or co-production of Flemish audiovisual works, or in the form of an equivalent financial contribution to the Flanders Audiovisueel Fond, established by the Flemish Government Decree of 13 April 1999, authorising the Flemish Government to accede to and cooperate with the establishment of the non-profit association Vlaams Audiovisueel Fonds. This contribution will be spent by the Flanders Audiovisueel Fonds on Flemish high-quality independent co-productions in series form.

The private non-linear television broadcasters who participate in the production of Flemish audiovisual works by means of a financial contribution to the Flanders Audiovisual Fund, can acquire rights with regard to productions realised with this financial contribution. The Flemish Government shall determine the more detailed conditions and procedures for this.

The Flemish Government shall determine the criteria, conditions and procedures for the participation of private non-linear television broadcasters in the production of Flemish audiovisual works, including the basis, the rate or the amount and any exemptions or reductions of the financial contribution.

The decision of the Flemish Government implementing the second paragraph, and any subsequent decision of the Flemish Government amending the same decision, shall be repealed by operation of law with retroactive effect from the date of its entry into force if it is not submitted to the Flemish Parliament for ratification within one month from the date of its adoption by the Flemish Government. The Decree shall be ratified by a decree within six months of its adoption. These periods shall be suspended during the parliamentary recess and when the Parliament is dissolved.

#### Article 4, 2019 Decision of the Flemish Government:

In this article, turnover is understood to mean: the income, exclusive of VAT, acquired in the Dutch language area from:

- 1° the supply of non-linear television services that are based exclusively on non-linear television rights to the end user, including but not limited to payment by the consumer;
- 2° agreements with service providers;
- 3° valorisation of data;
- 4° audiovisual commercial communication.

#### Article 4, 2019 Decision of the Flemish Government:

[...] The amount of the participation, stated in Article 3, first paragraph, amounts to 2% of the turnover in the Dutch-language area of the second year preceding the year of the obligation to contribute. [...]

#### Article 17 (1), 2019 Decision of the Flemish Government:

The non-linear television broadcaster which, in accordance with Article 157, § 2, first paragraph, of the Decree of 27 March 2009 chooses to participate in the production of Flemish audiovisual works in the form of a contribution to the VAF, shall pay the amount of the chosen contribution on an account number of the Flanders Audiovisual Fund. The total amount due will be deposited into the VAF's account no later than April 30 of each year.

(2) The VAF publishes on its website an overview of the non-linear television broadcasters that, pursuant to this Decree, contribute to the production of Flemish audiovisual works in the form of a contribution to the VAF.

(3) The independent producer, who, by decision of the Board of Directors of the VAF, receives a commitment to support the production of audiovisual works from the contribution that the VAF receives through the application of this decision, shall contact by registered letter within fifteen days from that decision of the Board of Directors of the VAF, and before a contract is concluded with the VAF, all non-linear television broadcasters listed in paragraph 2. Those non-linear television broadcasters may, after payment of an additional financial contribution, acquire rights to productions realised with financial support from the VAF in implementation of this Decree [...]

#### Article 18. 2019 Decision of the Flemish Government:

This decision also applies to non-linear television broadcasters that are established in another Member State of the European Union and that offer non-linear television services aimed at the Dutch language area [...]

Article 2, 2014 Decree of the Flemish Government concerning the incentive scheme:

Every year before 15 February each service provider informs the VAF, the Flemish Regulator for the Media and the Flemish Government by registered letter of the chosen form of participation. In addition to the chosen form of participation, the service provider also communicates at the same time the chosen form of contribution, as stipulated in Article 184/1 § 3 of the Decree of 27 March 2009, in particular a flat-rate contribution or a contribution per subscriber. In the absence of such a registered letter, the service provider is deemed to have opted for participation by means of a financial contribution per subscriber to the VAF.

Article 3, 2014 Decree of the Flemish Government concerning the incentive scheme:

If the service provider opts for a contribution per subscriber, the amount is calculated on the basis of the number of subscribers, as notified to the Flemish Regulator for the Media on the basis of Article 182 of the Decree of 27 March 2009 prior to the year of the contribution obligation.

Art. 17 (1) 2014 Decree of the Flemish Government concerning the incentive scheme:

The service provider who, in accordance with Article 184/1, § 1, first paragraph, of the Decree of 27 March 2009 chooses to participate in the production of audiovisual works in the form of a contribution to the VAF and who, in accordance with Article 2 of this Decree has made the choice between a flat-rate contribution or a contribution per subscriber, transfer the amount of the chosen contribution to an account number of the Flemish Audiovisual Fund. The total amount due will be paid into the account of the VAF no later than April 30 of each calendar year. [...]

Article 17 (3):

The independent producer, who, by decision of the Board of Directors of the VAF, receives a commitment to support the production of audiovisual works from the contribution that the VAF receives by applying this decision, contacts by registered letter within 15 calendar days from this decision of the Board of Directors of the VAF, and prior to the conclusion of a contract with the VAF, all service providers mentioned in the overview referred to in § 2. These service providers have the option, subject to payment of an additional financial contribution to acquire rights to productions that will be realised with financial support from the VAF in implementation of this Decree:

- to be offered via its own platform prior to the first linear transmission in the open network, for a maximum period of six months,
- and/or after the first linear transmission in the open network, for a maximum period of twelve months, via its own platform.

Article 17 (4) Service providers wishing to acquire rights, as referred to in § 3, shall submit a proposal in this regard by registered letter to the independent producer and the broadcaster who have submitted a project application to the VAF in co-production, and shall notify this fact at the VAF. The independent producer and the broadcaster who have submitted a project application to the VAF in co-production can refuse the granting of the rights referred to in § 3.

## Exemptions/reductions

Article 2, 2019 Decision of the Flemish Government:

This Decree does not apply to non-linear television broadcasters whose annual turnover, referred to in Article 4, first paragraph, of this Decree is less than EUR 500,000. [...]

Article 3, 2019 Decision of the Flemish Government:

Each year before 15th of February every non-linear television broadcaster informs VAF, the Flemish Regulator for the Media and the Flemish Government by registered letter for the chosen form of participation in the production of Flemish audiovisual works, stated in Article 157, § 2, first paragraph, of the Decree of 27 March 2009, and of the amount of the participation stated in Article 4, second paragraph, or provide the VRM with the supporting documents to demonstrate that the non-linear television broadcaster, on the basis of the exceptions mentioned in Article 2, does not fall within the scope of the rules of this Decree. In the absence of a registered letter as referred to in the first paragraph, or the absence of the documents referred to in Article 4, third paragraph, the non-linear television broadcaster is deemed to have opted for participation via a fixed financial contribution to the VAF. The fixed contribution amounts to 3,000,000 euros per year. [...]

## Applicable procedures

Article 4, 2019 Decision of the Flemish Government: [...] The non-linear television broadcasters prove the turnover in the Dutch language area with documents that have been validated by a company auditor. The documents are attached in full as an appendix to the letter referred to in Article 3, first paragraph. The Flemish Regulator for the Media is authorised to request all relevant information and documents from the non-linear television broadcaster about the documents referred to in Article 4, third paragraph.

Article 12. 2019 Decision of the Flemish Government: Every year before 15th of June, the non-linear television broadcaster submits a file to the Flemish Regulator for the Media by registered letter with a list of investments in the form of co-productions of audiovisual works for the current year.

Article 12. 2019 Decision of the Flemish Government: The Flemish Regulator for the Media checks the list of investments referred to in Article 12 on the basis of the total amount of the contribution obligation by 15th of July at the latest. It verifies whether the amount of the contribution is met and informs the non-linear television broadcaster by registered letter of this check and of the obligations for the non-linear television broadcaster that may arise. A non-linear television broadcaster, which appears to have submitted insufficient investments in co-production projects to the Flemish Regulator for the Media for the period in question, pays the financial contribution referred to in Article 157, § 2, of the Decree of 27 March 2009 to the Flemish Audiovisual Fund for the full amount stated in Article 3, first paragraph.

Article 15, 2014 Decree of the Flemish Government concerning the Incentive scheme: Before 15 May of each calendar year, the service provider submits a file to the Flemish Regulator for the Media by registered letter with a list of investments in the form of co-productions of audiovisual works for the current year. [...]

Article 4, 2014 Decree of the Flemish Government concerning the Incentive scheme: The Flemish Regulator for the Media assesses the admissibility and recognition of the co-production projects, mentioned in this chapter, on the advice of the assessment committee or committees, mentioned in Article 9.

### 5.3.2. Belgium (FR)

Belgium (FR) gives an example of tiered investment obligation: there are lower rates for smaller providers and higher rates for VOD players with high revenue.

#### Legal framework

The French Community of Belgium has imposed an obligation to VOD providers established in or targeting the market to invest in the production of European audiovisual works. This investment obligation introduced in 2009 was modified with the revision of the Decree of February 4, 2021 on Audiovisual Media Services and Video Sharing Services. Until February 2021, only VOD providers established in the Wallonia-Brussels Federation were subject to investment obligation. With the Decree on Audiovisual Media Services and Video Sharing Services, the obligation was extended to VOD providers established in other Member States.

VOD providers can make a choice between paying a levy to the Cinema and audiovisual centre of the Wallonia-Brussels Federation or investing directly in co-production or pre-purchase of audiovisual works. The investment obligation is designed to support the whole ecosystem of audiovisual production, allowing contributions in different content forms such as series, documentaries and films.<sup>27</sup>

Since the beginning of 2022, the sector has initiated discussions on increasing the contribution rate, motivated by the reasoning that the investment obligation rate in the French Community of Belgium is low compared to the rates in the larger neighbouring country with the same language, France. As part of the debate, it was pointed out that as “the French audiovisual sector will receive a mountain of money from the platforms” and “given the cultural and economic porosity of the border between France and Belgium, there is a great risk that talent - directors, scriptwriters, etc. - will leave to work there”.

Yet, the exercise of changing the investment obligation rate is considered very delicate as it must be applied in an indiscriminate manner both to local and transnational providers. There are proposals for the investment obligation not to be capped at a maximum of 2.2% above €20 million in turnover, and to add additional levels, “with a maximum rate now set at 15% - not far from those in France - for providers with a turnover of over €120 million.” This way the local players would not be penalised and will not have to increase their contribution.<sup>28</sup>

#### Calculation

The direct investment obligation requires VOD providers to reserve between 1.4% and 2.2% of turnover for the co-production or pre-purchase of audiovisual works in Wallonia-Brussels Federation. There are different rates depending on the size of the provider’s revenue. VOD providers with revenue between €300,000 and €5 million have to invest 1.4% of their turnover in the Wallonia-Brussels Federation. The rate is increased to 1.6% for those with revenue between €5 and €10 million. VOD providers with revenue between €10 and €15 million are obliged to invest 1.8% and those between €15 and €20 million have to direct 2% in audiovisual production. The highest rate of 2.2% is required to be invested by VOD providers with turnover if exceeding €20 million.

---

<sup>27</sup>[https://www.culture.be/publications/index.php?eID=tx\\_nawsecuredl&u=0&g=0&hash=5b6176e2ad7a90405e43e940badd3980d00148&file=fileadmin/sites/culture/upload/culture\\_super\\_editor/culture\\_editor/images/Focus\\_2020/Focus\\_2020-Dossiers-8.pdf](https://www.culture.be/publications/index.php?eID=tx_nawsecuredl&u=0&g=0&hash=5b6176e2ad7a90405e43e940badd3980d00148&file=fileadmin/sites/culture/upload/culture_super_editor/culture_editor/images/Focus_2020/Focus_2020-Dossiers-8.pdf)

<sup>28</sup> <https://www.lesoir.be/art/d-20220130-GT8RJU>

The basis of the contribution is the turnover of the previous financial year, meaning the gross revenue derived from advertising and sponsorship (including teleshopping) and gross receipts from any distributor or third-party services (including the gross revenue generated by the programme content of these services).

### Criteria on exemptions or reductions

The French Community of Belgium has used the possibility offered in the European Commission' Guidelines to Member States with smaller audiovisual markets to introduce lower turnover thresholds for exemption (see section 2.4.). In particular, VOD providers that generated total gross revenue of less than €300,000 in the previous year are exempted from the direct investment obligation.

### Applicable procedures

VOD providers are required to inform the CCA and the CSA Belgium whether they will make a direct investment or pay a levy. No further deadlines for payment or other procedural steps are stipulated.

### Summary table

<b>Applicable legislation</b>
<a href="#">Decree on Audiovisual Media Services and Video Sharing Services</a>
<b>Calculation</b>
<p><u>Article 6.1.1-1, Decree on audiovisual media services and video sharing services:</u> (1) Without prejudice to the provisions applicable to RTBF, any television service publisher linear and non-linear must contribute to the production of audiovisual works. This contribution is made either under the form of co-production or pre-purchase of audiovisual works, either in the form of a payment to the Centre du Cinema and Audiovisual (CCA). [...]</p> <p>(3) The amount of the contribution of the television service provider referred to in paragraph 1 shall be at least: 0% of its turnover if it is between €0 and €300.000; 1,4% of its turnover if it is between €300.000 and €5 million; 1,6% of its turnover if it is between €5 and €10 million; 1,8% of its turnover if it is between €10 and €15 million; 2% of its turnover if it is between €15 and €20 million; 2,2% of its turnover if it is more than €20 million. [...]</p> <p><u>Article 6.1.1-1, Decree on audiovisual media services and video sharing services:</u> (4) Turnover shall mean the amount of gross receipts invoiced, without deduction of commissions and surcharges, by the service publisher's advertising department or, failing that, by the service publisher himself. Such gross revenues shall include revenues from the insertion of advertising and sponsorship in the publisher's television services and all other gross revenues, without any deductions, derived from the making available of the television services by the publisher in return for payment, including gross revenues derived from any service distributor or third party for the provision of the television services and gross revenues derived from the content of the programmes in those services. [...]</p>
<b>Exemptions/reductions</b>
<p><u>Article 6.1.1-1, Decree on audiovisual media services and video sharing services:</u> (3) The amount of the contribution of the television service provider referred to in paragraph 1 shall be at least : 0% of its turnover if it is between 0 and 300,000 euro [...]</p>
<b>Applicable procedures</b>
<p><u>Article 6.1.1-1, Decree on audiovisual media services and video sharing services:</u> (1) Without prejudice to the provisions applicable to the RTBF, any publisher of linear and non-linear television services must contribute to the production of audiovisual works. This contribution shall be made either in the form of co-production or pre-purchase of audiovisual works or in the form of a payment to the Centre du cinéma et de l'audiovisuel. Before 15 February of each contribution year, the service publisher shall inform the Centre du Cinéma et de l'Audiovisuel and the CSA by registered mail of the form of contribution it has chosen. For the first year of activity, the information is communicated within 30 days following the first day of the publishing activity. If this information is not provided within the set time limit, the contribution in the form of a payment to the Film and Audiovisual Centre shall apply to the service publisher. [...]</p>

### 5.3.3. Greece (GR)

VOD providers that target Greek audiences from other member states can choose to invest in fiction, documentary, animation, as well as cultural and educational video-games.

#### Legal framework

Greece introduced an investment obligation for VOD providers established in other Member States that target Greek audiences with the transposition of the AVMSD in 2021. VOD providers can choose between direct investment in Greek audiovisual works and paying a levy to the National Centre for Audiovisual Media and Communication (EKOME). VOD providers established in Greece, same as broadcasters and distributors, have to directly invest in production of Greek cinematographic works. The investment obligations are implemented with the Law 4779/2021 and Act 3905/2010.

#### Calculation

For the VOD providers that target Greek audiences from other Member States, the rate of the investment obligation is set at 1.5% of annual turnover raised from their activities in Greece. This amount should be either invested in production or purchase of Greek audiovisual works or to be paid to a special account of the EKOME for support of Greek producers. The concept of Greek audiovisual work includes independent works. VOD providers can choose to invest in fiction, documentary, animation, as well as cultural and educational video-games. VOD providers based in Greece have to spend 1.5% of their annual turnover from the provision of audiovisual media services to the production of Greek cinematographic works.

#### Criteria on exemptions or reductions

VOD providers with low turnover or low audience, as defined in the European Commission guidelines, are exempted from the investment obligation. The legal provisions clarify that VOD providers are considered to target the Greek audience if the main language of the service is Greek (even with subtitles) and if there are programmes or commercial communications directed to the Greek audience or related to it.

#### Applicable procedures

When calculating the contribution of VOD providers established in Greece, the amount of the contribution imposed on them by other Member States to which they direct their services is deducted. The VOD providers established in other Member States have to report their turnover to the National Council for Radio and Television. The National Council is obliged to collaborate with the authorities from other Member States to provide them with information on VOD providers established in Greece for the purpose of calculating contributions.

#### Summary table

<b>Applicable legislation</b>
<a href="#">Law 4779/2021</a> <a href="#">Act 3905/2010</a>
<b>Calculation</b>
<u>Article 17, Law 4779/2021</u> : (2). On-demand media service providers established in another Member State, if specifically target audience within Greece, must contribute an annual amount equal to one and a half percent (1.5%) of their turnover to their activity in Greece, either a) for the production of Greek audiovisual works, or b) for the purchase of rights to Greek audiovisual works that have not yet been released, or c) by paying this amount to a special account of the National Center for Audiovisual Media and Communication SA (E.K.O.M.E.), established by law 4339/2015 (A' 133) for the support of Greek producers. These providers are considered to

be specifically aimed at the Greek public, especially if they are advertised on it, if the main language of their service is Greek, even with subtitles, as well as whether the services provided contain programs or commercial announcements that are addressed to the Greek public or relate specifically to it. The concept of Greek audiovisual work includes the independent audiovisual works, according to par. 2 of article 20 of law 4487/2017 (AD 116). For the characterization of an audiovisual work as Greek, par. 1, 2 and 3 of article 3 of law 3905/2010 (AD219) are applied proportionally.

Article 8, Act 3905/2010: (6) Companies providing telecommunications services and new technologies are obliged to provide every year 1.5% of their annual turnover resulting from the provision of audiovisual media via internet or mobile phone (IPTV, VIDEO ON DEMAND) to produce cinematographic works that meet the requirements of Article 3. (7) The liable companies are obliged for any financial use to register on a special tax-free reserve in the annual balance sheet the amount they need to invest to produce cinematographic works (Film Production Investment). The liable entities are obliged allocating the total Film Production Investment within the next two years following the publication of their balance sheet. (8). The liable companies as they have invested their Film Production Investment submit to the Directorate of Cinema and Audiovisual Media of the Ministry of Culture and Tourism (DCOM) the Application for Certification of Film Production Investment within one month from the end of the period prescribed in Paragraph 7 of this Article.

### Exemptions/reductions

Article 17, Law 4779/2021: (5) The obligations imposed, pursuant to paragraphs 1 and 2, do not apply to media service providers with low turnover or low visibility, as defined in the European Commission guidelines.

### Applicable procedures

Article 17, Law 4779/2021: (3) When calculating the contribution of Article 8 of law 3905/2010 of the media service providers established in Greece, the amount of the respective contribution imposed on them by other Member States to which they direct their services is deducted.

(4) Audiovisual media service providers established in other Member States must notify the ESR. within the first half of each year the turnover realised in Greece in the previous year. In case of non-provision of the above data by the provider or non-payment of the financial contribution, the E.S.R. may order the restriction of the transmission of its services in Greece. Upon request, the E.S.R. must cooperate with the Authorities of other Member States by providing them with the necessary information in relation to an on-demand audiovisual service provider established in Greece, addressed to the public of those Member States, in order for those Member States to calculate the corresponding contribution.

(6) The General Secretariat for Communication and Information submits a report to the European Commission by 19 December 2021 and every two years thereafter on the implementation of the provisions of paragraphs 1 and 2, as well as the implementation of Article 8 of Law 3905/2010. [...]

Article 3 Act 3905/2010: (4) The Minister of Culture and Tourism adjusts the calculation of the contribution of the criteria of Paragraph 1 of Article 4 and specifies the process and the prerequisites for the issuance of the Certificate of Citizenship, the conditions under which may issue certificates of Greek Citizenship also for film works which does not meet the criteria of Paragraph 1, and any other matter relating to the application of this Article.

### 5.3.4. Spain (ES)

The new audiovisual law has created controversy among Spanish independent producers, as global streamers and Spain's large broadcast groups would be encouraged to produce together, thus pressuring true independents.

#### Legal framework

Spain approved the General Law on Audiovisual Communication in June 2022 which was officially published on 8 July 2022. The law foresees a direct investment in European audiovisual works through (pre-)financing, rights acquisition, and/or a contribution to the Fund for the Protection of Cinematography or to the Fund for the promotion of cinematography and audiovisual in co-official languages other than Castilian Spanish. The obligation captures both services legally based in Spain and those established in other Member States that target Spanish audiences. A public consultation has just been released to gather opinions about how exactly the obligation to promote European works is going to be implemented.<sup>29</sup>

The last-minute redefinition of 'independent producer' was one of the more controversial changes in the law that attracted complaints from several associations in the audiovisual sector<sup>30</sup> and split the vote in the Congress of Deputies<sup>31</sup>. According to the new law, independent producers are individuals or legal entities who are not linked to an audiovisual communication service provider. However, the law also considers independent producers to be those who make works available to such services. Thus, developing a project for a large provider would also recognise them as independent producers, even when they are linked to another large provider.<sup>32</sup> The independent production sector argues that the change encourages global streamers and Spain's highly dominant broadcast groups to produce with each other, putting pressure on 'true independents'.<sup>33</sup> Specific sub-quotas for the official language of the State or the language of the Autonomous Communities and works directed or produced by women were also added in the last step of the legislative process.

#### Calculation

VOD providers with annual income above €50 million, must spend 5% of their income on the (pre-)financing of European audiovisual works, purchase of exploitation rights of works that are already completed and/or in the form of a contribution to the Fund for the Protection of Cinematography or to the Fund for the promotion of cinematography and audiovisual in co-official languages other than Spanish (Castilian). A minimum 70% of this (pre-)financing obligation must be allocated to audiovisual works by independent producers in any of Spain's official languages, at the state or Autonomous Community level. Of this sub-quota, a minimum of 15% must be works in the official languages of the Autonomous Communities, taking into account their population weight and reserving at least 10% for each of them. Moreover, a minimum 30% must be reserved to audiovisual works directed or created exclusively by women. At least 40% of the total investment must be allocated to cinematographic films by independent producers, in any genre, in line with the same language requirements mentioned above.

---

<sup>29</sup>[https://portal.mineco.gob.es/en-us/ministerio/participacionpublica/consultapublica/Pages/consulta\\_publica\\_obligacion\\_promocion\\_obra\\_audiovisual\\_eur\\_opea.aspx](https://portal.mineco.gob.es/en-us/ministerio/participacionpublica/consultapublica/Pages/consulta_publica_obligacion_promocion_obra_audiovisual_eur_opea.aspx)

<sup>30</sup> <https://variety.com/2022/film/global/spain-independent-producers-communication-law-1235275054/>

<sup>31</sup> <https://then24.com/2022/05/26/what-is-the-figure-of-the-independent-producer-and-why-does-the-audiovisual-law-divide-the-government-and-pit-it-against-erc-and-bildu/>

<sup>32</sup> <https://merlin.obs.coe.int/article/9527>

<sup>33</sup> <https://unlimited-tech.com/2022/05/23/independent-producers-in-spain-blow-up-new-telecom-law/>

VOD providers who register an annual income between €10-50 million, must also allocate 5% of this income to the (pre-)financing of European audiovisual works, the purchase of exploitation rights of works that are already completed or in the form of a contribution to the Fund for the Protection of Cinematography. A minimum 70% of this investment is dedicated to audiovisual works by independent producers in any of Spain's official languages.

Public service VOD providers must invest 6% of their annual income on the (pre-)financing of European audiovisual works. A minimum 70% of this financing obligation must be allocated to audiovisual works by independent producers in the official language of Spain or in any of the state's Autonomous Communities. Of this sub-quota, a minimum of 15% must be works in the official languages of the Autonomous Communities, taking into account their population weight and reserving at least 10% for each of them, and a minimum 30% must be reserved to audiovisual works directed or created exclusively by women. At least 45% of the total investment must be allocated to cinematographic films by independent producers, in any genre, in line with the same language requirements mentioned above. Moreover, 12% must be allocated to animation and documentaries.

### **Criteria on exemptions or reductions**

The investment obligation does not apply to VOD providers with a low volume of business, a low audience, or in cases where it is deemed impracticable or unjustified due to the nature or subject matter of the audiovisual communication service. The definition of micro-, small- and medium-sized enterprises is formulated in accordance with the Recommendation of the European Commission of 6 May 2003. To this end, VOD providers with an annual income lower than €10 million are exempt from the investment obligation.

The production or exploitation of works that are eligible to receive an X-rating, generally applied to violent or pornographic content, are also exempt from the investment obligation. So are providers of local media services that are not part of a national network.

### **Applicable procedures**

The National Markets and Competition Commission (CNMC) is in charge of the control and monitoring of the investment obligation, following a mandatory opinion from the Film and Audiovisual Arts Institute (ICAA). The procedure, calculation, and information that may be collected from domestic VOD providers will be established through regulation. In the case of VOD services whose geographical coverage is limited to an Autonomous Community, the control and monitoring activities will be handled by the competent regional audiovisual authority.

### **Summary table**

<b>Applicable legislation</b>
<a href="#">Law 13/2022, of July 7, General Audiovisual Communication</a>
<b>Calculation</b>
<u>General Law on Audiovisual Communication:</u> Article 117. Obligation to pre-finance European audiovisual work. (1) Providers of audiovisual communication services through linear television or on demand established in Spain and who offer their services in Spain and providers of audiovisual communication services through linear television or on demand services established in another Member State of the European Union that direct their services to Spain are obliged to pre-finance European audiovisual works. (3) The amount of the obligation for pre-financing of European audiovisual works provided for in section 1 will be determined on the basis of the income accrued in the previous fiscal year, in accordance with their trading account, for the provision of television audiovisual communication services in the Spanish audiovisual market. (4) The obligation provided for in section 1 may be met through direct participation in the production of the works, through the acquisition of exploitation rights thereof and/or through the contribution to the Fund for the Protection

of Cinematography which is managed by the Film and Audiovisual Arts Institute in accordance with article 19.3 of Law 55/2007 of 28 December on Cinema or through the contribution to the Fund for the promotion of cinematography and audiovisual in co-official languages other than Spanish collected in article 36 of said Law.  
(5) In co-productions, the contribution of the independent producer is not taken into account for the purposes of fulfilling the obligation.

Article 118. Obligation to pre-finance European audiovisual works for providers of the public audiovisual communication service.

(1) The provider of the public audiovisual communication service will allocate six percent of its computable income to pre-finance European audiovisual works.

(2) The total financing obligation of the public television audiovisual communication services must respect the following conditions:

a) A minimum of seventy percent must be allocated to audiovisual works by independent producers in accordance with the provisions of article 112 in the official language of the State or in any of the official languages of the Autonomous Communities. Of this sub-quota, the provider of the public television audiovisual communication service at the state level will reserve, in any case:

1.º A minimum of fifteen percent to audiovisual works in the official languages of the Autonomous Communities, taking into account their population weight and reserving at least ten percent for each of them.

2.º A minimum of thirty percent to audiovisual works directed or created exclusively by women.

b) A minimum of forty-five percent must be allocated to cinematographic films produced by independent producers, on their own initiative or by commission, in accordance with the provisions of article 112, of any genre in the official language of the State or in any of the official languages of the Autonomous Communities.

c) A minimum of twelve percent must be allocated to animation and documentaries.

(3) The Autonomous Communities with official languages may regulate additional obligations for the providers of the public audiovisual communication service at the regional level. Likewise, by agreement between one or several providers of the audiovisual communication service in the autonomous community subject to the financing obligation established in this chapter and one or several associations that group the majority of film producers, the form of application of the financing obligations provided for in this article may be reached by agreement, respecting the proportions established therein.

Article 119. Obligation to pre-finance European audiovisual works for providers of linear and on-demand audiovisual communication services

[...](2) Providers of audiovisual communication services through linear television or on demand, whose computable income in accordance with the provisions of article 117.3 are equal to or larger than fifty million euros, will allocate five percent of said income annually to the financing of European audiovisual works, to the purchase of exploitation rights of European audiovisual works that have already been completed, and/or contribute to the Fund for the Protection of Cinematography or to the Fund for the promotion of cinematography and audiovisual in co-official languages other than Castilian. The total financing obligation of the provider must respect the following two conditions:

a) A minimum of seventy percent must be allocated to audiovisual works produced by independent producers, on their own initiative or by commission, in accordance with the provisions of article 112 in the official language of the State or in any of the official languages of the Autonomous Communities. Of this sub-quota, the linear or on-demand audiovisual communication service will reserve in any case:

1.º A minimum of fifteen percent to audiovisual works in the official languages of the Autonomous Communities, taking into account their population weight and reserving at least ten percent for each of them.

2.º A minimum of thirty percent to audiovisual works directed or created exclusively by women.

b) A minimum of forty percent must be allocated to cinematographic films produced by independent producers in accordance with the provisions of article 112, of any genre in the official language of the State or in any of the official languages of the Autonomous Communities.

(3) Providers of audiovisual communication services through linear television or on demand whose computable income in accordance with the provisions of article 117.3, are less than fifty million euros and larger than or equal to ten million euros, will allocate five percent of said income annually to the financing of European audiovisual works, to the purchase of exploitation rights of already finished European audiovisual work or contribute to the Fund for the Protection of Cinematography. The total financing obligation of the provider must respect a minimum of seventy percent intended for audiovisual works by independent producers, on their own initiative or by commission, in accordance with the provisions of article 112 in the official language of the State or in any of the official languages of the Autonomous Communities.

Article 112. Independent producer

(1) For the purposes of this chapter, an independent producer is considered to be an individual or legal entity who is not linked in an established way in a common business strategy to an audiovisual communication service provider obliged to comply with the provisions of articles 117 to 119 and who assumes the initiative, coordination and economic risk of the production of audiovisual programmes or contents, on their own initiative or by commission, and in exchange for a compensation makes them available to such audiovisual communication service provider.

(2) It is presumed that there is an established relationship between an independent producer and an audiovisual communication service provider when they are part of the same group of companies in accordance with Article

42 of the Commercial Code, or when there are established exclusivity agreements that limit the autonomy of the parties to contract with third parties.

## Exemptions/reductions

### General Law on Audiovisual Communication:

Article 117: [...] (2) The obligation established in the previous section will not be required of providers with a low volume of business, of audiovisual communication services with a low audience, nor in those cases when the obligation is impracticable or unjustified due to the nature or subject matter of the audiovisual communication service, in the terms determined by regulation.

[...] (7) The production or the purchase of film rights that are eligible to receive an X-rating in accordance with Law 55/2007 of 28 December on Cinema will not count for the purposes of compliance with the obligation to pre-finance European audiovisual works,

(8) Providers of local audiovisual communication services that are not part of a national network are exempt from complying with the European works financing obligation.

Article 119: (1) The obligation to pre-finance European audiovisual works will be modulated in accordance with the Recommendation of the European Commission, of 6 May 2003 concerning the definition of microenterprises, small- and medium-sized enterprises.

[...] (4) Providers of linear or on-demand audiovisual communication services, whose computable income in accordance with the provisions of article 117.3, are less than ten million euros will be exempt from the obligation.

## Applicable procedures

### General Law on Audiovisual Communication:

Article 117: [...] 6. The contribution to the Fund for the Protection of Cinematography by the obliged subjects will be computed first of all as financing made in the production of audiovisual work by independent producers, unless otherwise indicated or the amount exceeds the investment to be made for this reason.

Article 120. Control and monitoring of the obligation to promote European audiovisual works.

(1) The control and monitoring of the obligations contained in this chapter will correspond to the National Markets and Competition Commission in the case of service providers of audiovisual communication at state level and providers established in another Member State of the European Union directing their services to Spain, following a mandatory opinion from the Film and Audiovisual Arts Institute.

(2) Regulations will establish the procedure, the calculation mechanisms and the information that may be collected from the providers of audiovisual communication services at State level, subject to comply with the obligation.

(3) In the case of communication services with regional [autonomous] scope, said control and monitoring will correspond to the competent autonomous audiovisual authority.

## 5.4. Cases with both levy and direct investment

### 5.4.1. Croatia (HR)

The direct investment obligation in Croatia aims to encourage VOD spend on national works and the investment may be cumulated over a period of two years.

#### Legal framework

Croatia has introduced a direct investment obligation that requires VOD providers targeting Croatian audiences to invest a percentage of their Croatian revenue in local audiovisual works. VOD providers are also required to pay a levy to the Croatian Audiovisual Centre (HAVC) for implementation of the National Program for Promoting Audiovisual Works. The investment obligation is designed in line with the strategic policy objectives set out in the National Program. Global VOD providers are expected to make a direct contribution of HRK5 million ( $\pm$  €664.900) in local audiovisual works.<sup>34</sup>

The legal basis for the investment obligations on VOD providers in Croatia is found in the Electronic Media Act and the Law on Audiovisual Activities. With the amendments to the Electronic Media Act in 2021, VOD providers that target Croatian audiences from other Member States are required to invest in local content. The investment obligation for VOD providers established in Croatia was introduced in 2011.

#### Calculation

The obligation for direct investment requires VOD providers to reserve 2% of the total annual gross revenue raised in the country for production or rights acquisition of Croatian audiovisual works by independent producers. The investment may be cumulated over a period of two years. There are no sub-requirements in terms of genre.

The levy of 2% that VOD providers have to pay to the HAVC is calculated on the basis of the annual gross income from VOD services. In 2021, according to HAVC, VOD providers established in the country provided 0.4% of the total levy income of the agency.<sup>35</sup>

#### Criteria on exemptions or reductions

Croatia has used the possibility for Member States with smaller audiovisual markets outlined in the European Commission' Guidelines to introduce lower turnover thresholds (see Section 2.4). VOD providers that generate total gross revenue of less than HRK3 million ( $\pm$  €396,000) are exempted from the obligation for direct investment.

In the case when VOD providers established in Croatia target audiences in other Member States which also have investment obligation requirements, the amount of contribution paid in other countries should be taken into account in the calculation.

#### Applicable procedures

VOD providers are obliged to provide data on advertising and subscription revenues in the form of financial statements certified by independent audit firms. Fines are prescribed in case of non-compliance with the reporting requirements.

---

34 <https://variety.com/2022/film/global/croatian-audiovisual-center-animafest-zagreb-emilija-gasic-1235292327/>

35 <https://havic.hr/img/newsletter/files/biljeske%20-%20financ.izvj.%202021.pdf>

## Summary table

Applicable legislation
<p><a href="#">Electronic Media Act</a> <a href="#">Law on Audiovisual Activities</a> <a href="#">Rules on the criteria and manner of increasing the scope of the share of European works</a></p>
Calculation
<p><a href="#">Article 27, Electronic Media Act:</a> [...] (2) Providers of on-demand audiovisual media services shall invest 2% of their total annual gross revenue in the production of Croatian audiovisual works by independent producers or purchase Croatian audiovisual works produced by independent producers.</p> <p><a href="#">Article 28, Electronic Media Act:</a> (1) Providers of on-demand audiovisual media services that are targeting audiences in Croatia, but are established in other Member States of the EU, shall: – make a financial contribution for the implementation of the National Programme for the Promotion of Audiovisual Creativity for the production of European works in accordance with the act governing the audiovisual activity; – invest 2% of their total annual gross revenue in the production of Croatian audiovisual works by independent producers or purchase Croatian audiovisual works produced by independent producers.</p> <p>(2) The investment referred to in the second subparagraph of paragraph 1 of this article may be cumulated over a period of 2 years.</p> <p>(3) Obligations referred to in paragraph 1 of this Article shall relate to revenues generated by the provider of on-demand audiovisual media services by performing activities in the Republic of Croatia. Data on advertising and subscription revenues should be provided by providers of on-demand audiovisual media services in the form of financial statements certified by independent audit firms.</p> <p>(4) For providers of on-demand audiovisual media services established in the Republic of Croatia, which are aimed at audiences in other EU Member States that have introduced a financial contribution, the amount of the paid contribution in other countries shall be taken into account in the calculation.</p> <p><a href="#">Article 25, Law on Audiovisual Activities:</a>(1) Funds for the implementation of the National Programme shall be secured from the state budget and part of the total annual gross income gained from performing the activities pursuant to Article 3, item a) of this Law, namely: [...] - providers of on-demand audiovisual media services 2%.</p>
Exemptions/reductions
<p><a href="#">Article 5, Rules on the criteria and manner of increasing the scope of the share of European works:</a> The obligation shall not apply to providers of on-demand audiovisual media services who in the previous year generated total gross revenue of less than HRK3 million.</p> <p><a href="#">Article 27, Electronic Media Act:</a> (4) For on-demand media service providers established in the Republic of Croatia, which are aimed at audiences in other EU Member States that have introduced a financial contribution, the amount of the paid contribution in other countries shall be taken into account in the calculation.</p>
Applicable procedures
<p><a href="#">Article 27, Electronic Media Act:</a> [...] (5) The report on the implementation of the obligation referred to in paragraphs 1 and 3 of this Article shall be submitted by providers of on-demand audiovisual media services to the Council no later than 31 January for the previous year on forms determined by the Council.</p> <p><a href="#">Article 28, Electronic Media Act:</a> [...] (3) Obligations referred to in paragraph 1 of this Article shall relate to revenues generated by the provider of on-demand audiovisual media services by performing activities in the Republic of Croatia. Data on advertising and subscription revenues should be provided by providers of on-demand audiovisual media services in the form of financial statements certified by independent audit firms.</p> <p><a href="#">Article 98, Electronic Media Act:</a> [...] A fine in the amount of HRK 100.000 to 1.000.000 shall be imposed on a legal person who: 36. does not reach the extent of share of European works; 37. Fails to submit a report on the shares of European works by 31st of January at the latest.</p>

## 5.4.2. Czech Republic (CZ)

The levy for VOD providers established in the Czech Republic that include at least one cinematographic work is considered as a type of tax. The administration and collection of the fee are subject to the Tax Code.

### Legal framework

The VOD providers established in the Czech Republic are subject to a light-touch investment obligation that includes both direct contribution and levy. As an option to meet the quota obligations, VOD providers can make direct contributions in European works. Unlike other jurisdictions, the Czech Republic has chosen not to ask VOD providers to invest in Czech works. The legal requirement for them is to invest in European works. From 2019, the VOD providers established in the country also have to pay a levy with a low rate to the Czech Film Fund. The Fund estimates raising CZK 1 million ( $\pm$  €40.466) from the fee paid by VOD providers in 2022, which is significantly lower than the fee expected to be collected from broadcasters, cinemas and distributors.<sup>36</sup>

The legal basis for the investment obligations on VOD providers is found in the On-demand Audiovisual Media Services Act and the Act No. 496/2012. The legislators were considering the option of introducing investment obligation to VOD providers established in other Member States.<sup>37</sup> However, the amendment that was supposed to introduce the investment obligation was withdrawn from the draft Bill on video-sharing platforms and amendments to Act No. 231/2001 on Radio and Television Broadcasting and amendments to Act No. 132/2010 on On Demand Audiovisual Media Services. The reason for not incorporating the provision in the draft-law is that the Czech Republic was late with the transposition of the AVMSD. Further amendments to the Audiovisual Media Services Act are planned to bring about an obligation to VOD providers that target Czech audiences from other EU countries to pay levy to the Czech Film Fund and to make a direct investment.<sup>38</sup>

### Calculation

The quota obligation on VOD providers under the jurisdiction of the Czech Republic is considered to be met if they spend at least 1% of their revenue in the country on the production or rights acquisition of European works.

Furthermore, VOD providers that include at least one cinematographic work are required to pay a 0.5% levy, based on the price paid by the end users. VOD providers have to include the fee into the price paid by the users of their services. The registered payers are considered tax entities in connection with the fee and are subject to the Tax Code.

### Criteria on exemptions or reductions

The obligations for direct investment do not apply to VOD providers with a low turnover or small audiences, in line with the criteria established in the Commission's guidelines.

### Applicable procedures

The Czech legislative framework includes information gathering and reporting requirements for the VOD providers that have to pay the levy. According to the reporting arrangements, the VOD providers have to submit a fee declaration to the Film Fund and also keep records of the

---

36 [https://fondkinematografie.cz/assets/media/files/fond/Schvaleny\\_rozpocet\\_2022.pdf](https://fondkinematografie.cz/assets/media/files/fond/Schvaleny_rozpocet_2022.pdf)

37 <https://www.mediar.cz/netflix-ma-zacit-v-cesku-odvadet-poplatky-navrhuj-poslanci/>

38 <https://www.mediar.cz/stat-zastropuje-filmove-pobidky-poplatky-od-netflixu-ted-zavest-nestihne/>

number of users. The obligation for payment of the fee is also applicable to television broadcasters that provide VOD services.

## Summary table

Applicable legislation
<p><a href="#">On-demand Audiovisual Media Services Act of 13 April 2010</a> <a href="#">Act No. 496/2012</a> <a href="#">Draft Bill on video-sharing platforms and amendments to Act No. 231/2001 on Radio and Television Broadcasting and amendments to Act No. 132/2010 on On Demand Audiovisual Media Services</a> <a href="#">Methodical instruction on fees for the provision of on-demand audiovisual services in the context of the fee obligation of Act No. 496/2012</a></p>
Calculation
<p><u>Article 7, On-demand audiovisual media services Act of 13 April 2010:</u> (1) The on-demand audiovisual media service provider is obliged, where practicable, to reserve for European works at least 10% of the total number of programs offered in the program catalogue of its service for the observed period. The total number of programs from which the share of European works is determined does not include news programs, sports event records and competition programs.</p> <p>(2) The obligation pursuant to paragraph 1 shall be deemed fulfilled if the provider of the on-demand audiovisual media service, spends at least 1% of the total revenues from this service in the monitored period on</p> <p>(a) the production of European works, or</p> <p>(b) the acquisition, for remuneration, of rights to use European works through an on-demand audiovisual media service.</p> <p><u>Section 27, Act No. 496/2012:</u> (1) The on-demand audiovisual media service provider shall be a payer of fee for the provision of on-demand audiovisual media service.</p> <p>(2) The fee for on-demand audiovisual media service shall be charged on the price paid by the end user to the on-demand audiovisual media service provider.</p> <p>(3) The base for calculating the fee for the providers of on-demand audiovisual media service is the price (without the fee for the providers of on-demand audiovisual media service) paid by the end user to the on-demand audiovisual media service provider for one-time provision of the service, including the presentation of a cinematographic work, or for the on-demand audiovisual media service provided in a manner other than by one-time presentation of the work, irrespective of the technological nature of the service, including also all forms of prepayment, provided that the service includes the presentation of at least one cinematographic work. The payer of the fee for the on-demand audiovisual media service shall include the fee into the price to be paid by the end user for these services.</p> <p>(4) The rate of the fee for the provision of on-demand audiovisual media service shall be 0,5%.</p> <p>(5) The fee period shall be the calendar year.</p> <p><u>Section 29, Act No. 496/2012:</u> (1) The value added tax shall not be included in the base of the audiovisual fee.</p> <p>(2) The base of the audiovisual fee shall be rounded upwards to whole crowns.</p> <p>(3) The audiovisual fee shall be calculated as the product of the audiovisual charge base and the charge rate.</p> <p>[...] (7) Proceeds from the audiovisual charge shall be an income to the Fund. The Fund shall be the administrator of this fee.</p> <p><u>Methodical instruction on fees for the provision of on-demand audiovisual services in the context of the fee obligation of Act No. 496/2012:</u> The fee for the provision of on-demand audiovisual services is by law one of the audiovisual charges and is seen as a type of tax.</p> <p>The provisions of Act No. 280/2009 Coll., The Tax Code, apply to the administration and collection of fees.</p>
Exemptions/reductions
<p><u>Section 7 and footnote 17, Legislative proposal on video sharing platform services and (Act on video sharing platform services):</u> [...] (2) The obligations under subsection (1) shall not apply to on-demand audiovisual media service providers with a low turnover and to audiovisual on-demand media service with low viewing figures. The obligations under paragraph 1 shall also not apply to services or programmes which, because of their nature or thematic focus, would make their performance impracticable or unjustified. Compliance with the conditions of low turnover and low viewership shall be assessed according to guidelines issued by the European Commission, which the Council will publish on its website as published in the Official Journal of the European Union<sup>17</sup>).</p>

(3) An on-demand audiovisual media service provider shall, within 30 days after the end of the reporting period, submit a report to the Council on the fulfilment of the obligations under paragraph 1 and, if it fails to fulfil the obligations under paragraph 1 within the reporting period, shall also provide the Council with a justification for its failure to do so.

### Applicable procedures

Section 27, Act No. 496/2012: (6) The payer of the fee for the provision of on-demand audiovisual media service shall maintain records for purposes related to the fee. These records shall comprise any data concerning the obligation to pay the fee, including, but not limited to, the information about the number of persons to whom the on-demand audiovisual media service is provided and the amount of the price they have paid for the provision of the on-demand audiovisual media service.

Section 29, Act No. 496/2012: (4) The data to which the obligation to keep records applies shall be maintained by the payer until the expiry of the fee determination period to which the data are related.

(5) The audiovisual charge payer shall submit a fee declaration. The fee declaration period shall not be extended.

(6) The form and structure of the fee declaration, including any mandatory details, shall be made public by the Fund in a manner allowing for remote access.

Methodical instruction on fees for the provision of on-demand audiovisual services in the context of the fee obligation of Act No. 496/2012: Where the service provided is part of another service provided (e.g. a television broadcast) this 0.5% will be added to the fee already paid (1%) and the end user will ultimately pay a fee for both services of 1, 5%. In this case, it cannot be argued that the end user does not use the service and therefore why he should pay a fee for it. In this respect, it is possible to argue analogously with public television television fees, where it is not possible to be exempted from the obligation to pay a television fee by claiming that one only watches programs of other televisions and not CT, so why should pay the fee. The owner of the receiver has the opportunity to monitor CT, and the fact that he does not monitor it is his business, he pays for that possibility.

### 5.4.3. France (FR)

France has introduced one of the most ambitious investment obligations among the Member States, which includes diversity clauses, arrangements on rights retention, and different sub-requirements.

#### Legal framework

France is the frontrunner in regulating investments in content by global VOD providers. The country has imposed both a direct investment obligation and levy to VOD providers established in or targeting France. The legal basis for the direct investment obligation can be found in the Decree relating to on-demand audiovisual media services. With the legislative changes which came into force in June 2021, the contribution rates of the direct investment obligation have been increased.

The French model of investment obligation is often referenced by legislators in other countries because of the comprehensive set of rules that aim to ensure support of independent production, as well as to prevent concentration of the contribution on large-budget works and popular genres. In particular, three quarters of the contribution must be spent on independent film production and two thirds on audiovisual production. VOD providers are not allowed to own shares, income rights, distribution mandates and secondary rights in independent production companies and there is a limit on how long they may hold exclusive rights (see also Section 2.1). The motivation is to support independent producers to continue to build up their own assets and not just become service companies.<sup>39</sup> Additionally, the contribution rate is higher when a VOD provider wants to have a shorter window following a theatrical release.

Netflix, Amazon Prime Video SVOD (for the audiovisual contribution only), Disney Plus (for the audiovisual contribution only) have committed to invest 20% of their French revenue by signing an agreement (convention) with the French Regulatory Authority for Audiovisual and Digital Communication (Arcom).<sup>40</sup> Their cinema obligations were the subject of a notification decision of the Arcom in 2021 due to the lack of evolution of the media chronology in France at the time of the negotiations for the agreement. Amazon Prime Video (TVOD), Apple TV app-iTunes Store and Play Movies & YouTube Movies (Google) have received a decision of notification about their obligations (audiovisual and cinema) by the Arcom in the absence of a convention. The new regulation could bring up to €250-300 million on average per year to French production, of which €200 million by Netflix alone.<sup>41</sup>

VOD providers are also required to pay a levy (tax) to the National Centre for Cinema and the Moving Image (CNC). The text for the tax levy (tax) requirement can be found in the 'Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B)' of the General Tax Code. The levy has been collected from cinemas, broadcasters, distributors, and services that sell or rent VHS and DVD formats. In 2004, the obligation to pay levy was extended to VOD providers and providers of video-sharing services established in France. Since 2018, services targeting French audiences from another Member State, such as Netflix and YouTube, also have to pay the levy to the CNC.

---

39 <https://tbivision.com/2022/04/03/new-horizons-2/>

40 On 1 January 2022, the Conseil supérieur de l'audiovisuel (CSA) and the Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet (Hadopi) merged into Arcom.

41 <https://tbivision.com/2022/04/03/new-horizons-2/>

## **Calculation**

The direct investment obligation is tailored to several categories of services: SVOD services, catch-up services, TVOD services and free services. SVOD providers have to invest 25% of their net annual turnover if they offer at least one film less than 12 months after its theatrical release in France. Otherwise, the rate of the investment obligation is set to 20% of net annual turnover generated in France. TVOD services and free services have to devote at least 15% of the net annual turnover to the production of cinematographic works (of which at least 12% for works of French original expression), and 15% to audiovisual works (of which at least 12% for works of French original expression). The investment can be made in the form of acquisitions, production or co-production. Catch-up television services are required to follow the rate of the television service it originates from.

At least 85% of the direct investment has to be in works of original French expression. Furthermore, at least 20% of the total contribution has to be devoted to cinematographic works and at least 20% to audiovisual works. In the case of 25% contribution, 30% of the total contribution has to be in cinematographic works. The turnover on which the direct investment obligation is calculated relates to the net annual turnover, with the exception of the value added tax, the tax referred to in Article 1609 sexdecies B of the General Tax Code (this is the (ii) tax obligation), and the duly justified advertising management costs.

The elements of the investment obligation, including the diversity clauses are specified in the conventions with Arcom. VOD providers that target French audiences from other Member States have a right to choose whether to sign such a convention. Following the convention signed with Arcom, Netflix became the first large VOD provider to reach a deal with French cinema guilds on the investment obligation. As part of the three-year agreement, Netflix will invest at least 4% of its revenue in France to finance French and European films that will have a theatrical release before being released on Netflix. In particular, Netflix will invest €40 million in at least 10 French and European theatrical films. At least 17% of the pre-financing amounts will be in French works whose budgets are less than or equal to €4 million. In return, Netflix got a shorter window (from 36 months to 12 months).

The rate of the levy is set at 5.15% of net annual turnover and increased to 15% when the transactions relate to cinematographic or audiovisual works or documents of a pornographic nature or inciting violence. The calculation for the tax is based on the net annual turnover, consisting of the sums collected by the exploitation of cinematographic or audiovisual works, with deduction of value added tax.

## **Criteria on exemptions or reductions**

The French regulatory approach puts forward different thresholds based on turnover, audience and number of films and audiovisual works. VOD providers with net turnover under €5 million and audience below 0.5% of the total audience of the category of service to which the service belongs in France are exempted from the direct investment obligation. VOD providers that offer less than 10 cinematographic or 10 audiovisual works per year are also exempted. Catch-up services are not obliged to invest in audiovisual works.

The legislative framework includes reductions. For VOD providers whose net annual turnover is less than €10 million, the share is reduced by a quarter. New services are required to pay a reduced rate (by half the first year, and a quarter the second year of operation).

To avoid double imposition, an exemption from the levy is granted to VOD providers established in France who are already subject to a similar obligation in another Member State, other than value added tax. In addition, services are exempted if their offer of audiovisual content is secondary, if their principal purpose is to provide information, or whose principal purpose is to provide information about cinematographic and audiovisual works. The levy base is reduced by 65% for VOD providers that provide access to audiovisual content created by

private users for the purpose of sharing and exchanging within communities of interest. For this category of VOD providers, the levy is calculated after applying a reduction of €100.000 to the tax base.

### Applicable procedures

VOD providers have to meet certain reporting requirements. In particular, providers with net annual turnover above €5 million are obliged to report to the Arcom on their contribution to the development of the production of cinematographic and audiovisual works. The VOD providers also produce a statement certified by an auditor including the cost accounting elements necessary to determine the turnover.

The levy is payable under the same conditions as those applicable to the value added tax. Claims are presented and considered according to the rules applicable to this tax.

### Summary table

Decree No. 2021-793 of June 22, 2021 relating to on-demand audiovisual media services

#### Applicable legislation

[Decree No. 2021-793 of June 22, 2021 relating to on-demand audiovisual media services](#)

#### Calculation

Article 10, Decree No. 2021-793 of June 22, 2021 relating to on-demand audiovisual media services: The provisions of this chapter are applicable to on-demand audiovisual media services, including those that are not established in France and do not come under the jurisdiction of France within the meaning of article 43-2 of the law of 30 September 1986 referred to above but target French territory, which meet the following conditions: 1° Services allowing viewing, for a limited period, of programs broadcast on a television service, known as catch-up television services, mentioned in 14° bis of article 28 and the eleventh paragraph of I of article 33-1 of the law of September 30, 1986 referred to above and services of the same nature published, directly or through a subsidiary, by a company referred to in article 44 of the same law; 2° Other on-demand audiovisual media services provided that they achieve net annual turnover of more than 5 million euros and that their audience is greater than 0.5% of the total audience in France of the category of on-demand audiovisual media services to which they belong. For the assessment of the audience share, it is necessary to distinguish among the on-demand audiovisual media services referred to in 2° the following categories: subscription services, pay-per-view services, and others.

Article 14, Decree No. 2021-793: I. – Subscription services allocate each year a share of their net annual turnover for the previous financial year to expenditure contributing to the development of the production of cinematographic and audiovisual works, European or of original French expression, at the less equal to: 1° 25% when they annually offer at least one long-running cinematographic work within a period of less than twelve months after its theatrical release in France; 2° 20% in other cases. II. – The agreements and the specifications determine the shares of the contribution provided for in I respectively devoted to cinematographic works and audiovisual works, without one of these shares being less than 20% of the total contribution or that the part devoted cinematographic works of services subject to the contribution mentioned in 1° of I may be less than 30% of the total contribution, taking into account: 1° The proportion of these two types of works in downloading or viewing; 2° The proportion of these two kinds of works in the catalogue; 3° The promotion of these two types of works by the service provider. The Arcom shall assess at least every three years if the distribution determined by convention must be modified. The publisher informs him of any significant change in the situation of the service with regard to the criteria mentioned in 1° to 3°.

Article 15, Decree No. 2021-793: I. – For the part of the contribution devoted to cinematographic works, only the expenses incurred for the exploitation of these works in France are taken into account. These expenses are identified in the contracts and are taken into account within the limit of 75% of all expenses incurred when expenses are incurred for the exploitation of the work in other countries. For the part of the contribution devoted to audiovisual works, the expenses incurred for the exploitation of these works both in France and abroad are taken into account. II. – Expenditure on non-European works of original French expression are only taken into account if these works are produced and their production supervised and effectively controlled by one or more producers established on the territory of a Member State of the Union or of another State party to the Agreement on the European Economic Area or to the European Convention on Transfrontier Television.

Article 16, Decree No. 2021-793: Respectively for cinematographic works and for audiovisual works, at least 85% of the expenditure devoted to the contribution to the development of production is devoted to works of original French expression. Expenditure on audiovisual works must relate to works in the following genres: fiction, animation, creative documentaries, including those inserted into a program other than a television news program or an entertainment program, music videos and recording or recreation of live performances.

Article 17, Decree No. 2021-793: For services which achieve net annual turnover of more than 50 million euros, the expenses mentioned in 1°, 2° and 4° of I of Article 12 represent: 1° For the part of the contribution allocated to audiovisual works, at least three quarters; 2° For the part of the contribution devoted to cinematographic works, at least 80% for the services mentioned in 1° of I of Article 14 and at least 60% for the services mentioned in 2° of I of the same article.

Article 18, Decree No. 2021-793: Conventions and specifications determine the conditions under which the diversity of cinematographic and audiovisual works is ensured. In cinematographic matters, this diversity is ensured in particular by setting a minimum share of the expenses mentioned in 1° and 2° of I of Article 12 which must be devoted to works of original French expression whose production estimate is less than or equal to a specified amount. In audiovisual matters, this diversity is notably ensured by genre of work, in particular for the part of the contribution reserved for independent works.

Article 19, Decree No. 2021-793: Catch-up television services devote each year a share of their net annual turnover for the previous financial year to expenditure contributing to the development of the production of European cinematographic works, on the one hand, and of original French expression, on the other hand, the rate of which is identical to that to which the publisher of services is subject in respect of the operation of the television service from which the catch-up television service originates. The provisions of the preceding paragraph do not apply to catch-up television services whose receipts are included in the resources of the television service from which they originate by application of the decree of July 2, 2010 referred to above .

Article 20, Decree No. 2021-793: I. - Services other than those mentioned in sub-sections 1 and 2, in particular fee-for-service and free services, devote each year: 1° at least 15% of the net annual turnover of the previous financial year resulting from the exploitation of cinematographic works to expenses contributing to the development of the production of European cinematographic works, of which at least 12% to expenses contributing to the development of the production of cinematographic works of French original expression; 2° at least 15% of the net annual turnover of the previous financial year resulting from the exploitation of audiovisual works other than those mentioned in the first paragraph of V of the expenditure contributing to the development of the production of European audiovisual works, of which at least 12% is expenditure contributing to the development of the production of audiovisual works of French original expression. [...]

Article 21, Decree No. 2021-793: I. – At least three quarters of the expenditure provided for in 1° and 2° of Article 12 in cinematographic works shall be devoted to the development of the independent production of European works, according to criteria linked to the work and to the company that produces it. [...]

Article 22, Decree No. 2021-793: I. – At least two thirds of the expenditure provided for in Article 12 in audiovisual works shall be devoted to the development of the independent production of European works, according to criteria linked to the work and the company producing it. The agreements and the specifications determine the part devoted to the development of independent production for each type of audiovisual work present in a significant way in the service offer. [...]

## Exemptions/reductions

Article 2, Decree No. 2021-793: For the application of this decree, the following are not taken into account in the net annual turnover of a service: 1° Value added tax; 2° The tax provided for in article 1609 sexdecies B of the general tax code; 3° Duly justified advertising costs.

Article 11, Decree No. 2021-793: I. - The provisions of this chapter relating to the contribution to the development of the production of cinematographic works are not applicable to services which offer less than ten full-length cinematographic works annually. II. – The provisions of this chapter relating to the contribution to the development of the production of audiovisual works are not applicable: 1° To catch-up television services established in France; 2° To other on-demand audiovisual media services whose offer is mainly devoted to the programs mentioned in the first paragraph of V of Article 1609 sexdecies B of the General Tax Code or which annually offer less than 10 audiovisual works other than those mentioned in first paragraph of V of article 1609 sexdecies B of the general tax code. [...]

Article 23, Decree No. 2021-793: For service publishers whose net annual turnover is less than 10 million euros, the proportions set out in I of Article 14 and I of Article 20 are reduced by a quarter.

Article 24, Decree No. 2021-793: Without prejudice to the provisions of article 23, for the first application of the provisions of this chapter to a service publisher, the proportions appearing in I of article 14 and in I of article 20 are reduced by half the first year, and a quarter of a second. This derogation is not applicable to service publishers whose offer has been marketed in France for more than three years since the date that this decree came into force.

### Applicable procedures

Article 6, Decree No. 2021-793: The conventions mentioned in articles 8 and 9 specify in particular the methods according to which the elements necessary to the determination of the turnover of each service are brought to the attention of the Superior Audiovisual Council. Publishers produce a statement certified by an auditor including the cost accounting elements necessary to determine the turnover of each service according to its marketing method or its nature. This declaration can also be requested by the Superior council of audio-visual with any editor of services in order to check that it is not subjected to the provisions of chapter II.

Article 8, Decree No. 2021-793: the publishers of on-demand audiovisual media services established in France, mentioned in article 33-3 of the law of September 30, 1986 referred to above, whose net annual turnover is greater than 1 million euros, conclude with the Higher Audiovisual Council the agreement provided for in I of this article, the purpose of which is to specify their obligations in terms, in particular, of contributing to the development of the production of cinematographic and audiovisual works, of offering and actual value of these works and access for rights holders to exploitation data relating to their works.

Article 9, Decree No. 2021-793: Publishers of on-demand audiovisual media services that are not established in France and do not come under the jurisdiction of France within the meaning of article 43-2 of the aforementioned law of 30 September 1986 but target French territory may conclude with the Superior council of audio-visual the convention envisaged in III of article 43-7 of the same law. Failing this, the Arcom notifies them under the conditions envisaged with the IV of the same article the methods of their contribution to the development of the production of cinematographic and audio-visual works, the conditions of access of the having right to the data of exploitation relating to their works and the methods according to which the publishers of services justify compliance with their obligations and communicate the data relating to their activity in France. [...]

## Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B)

### Applicable legislation

[Tax on physical and online video distribution of audiovisual content \(Article 1609 sexdecies B\)](#)

### Calculation

Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B): (1) A tax on the distribution of physical and online video of audiovisual content is due for operations: 1° The sale and rental in France of videograms intended for the private use of the public; 2° Making available to the public in France services giving access to cinematographic or audiovisual works for a fee, upon individual request made by an electronic communication process; 3° Making available to the public in France services giving or allowing free access to audiovisual content, on individual request made by an electronic communication process.

Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B): (2) Persons, whether established in France or outside France, who: 1° sell or rent videograms in France to any person whose business is not the sale or rental of videograms; 2° Make available to the public in France the services mentioned in 2° of I; 3° Make available to the public in France the services mentioned in 3° of the same I, in particular those whose activity is to publish online communication services to the public or to provide for the provision of the public by online public communication services the storage of audiovisual content; 4° Collect the sums mentioned in 3° of III.

Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B): (3) The tax is based on the amount excluding value added tax: 1° The price paid in return for the sale and rental transactions mentioned in 1° of I; 2° The price paid in return for access to cinematographic and audiovisual works mentioned in 2° of the same I; 3° Sums paid by advertisers and sponsors, for the dissemination of their advertising and sponsorship messages on the services mentioned in 2° and 3° of said I, to the taxpayers concerned. The sums transferred by a person mentioned in 4° of II to a person mentioned in 3° of the same II are included in the tax base due by the latter and excluded from the tax base due by the person mentioned in 4° of said II. These sums are subject to a 66% reduction for services giving or allowing access to audiovisual content created by private users for the purpose of sharing and exchange within communities of interest.

Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B): (5) The tax rate is set at 5.15%. It is increased to 15% when the operations concern cinematographic or audiovisual works or documents of a pornographic nature or incitement to violence. The conditions under which the taxpayers identify these works and documents are set by decree.

### Exemptions/reductions

Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B): (4) Are not included in the tax base: 1° The amounts paid by advertisers and sponsors for the broadcast of their advertising and sponsorship messages on catch-up television services, which are already subject to the tax provided for in Articles L. 115-6 to L. 115-13 of the Cinema and Moving Image Code; 2° For taxpayers established in France, the amount paid in respect of tax due for the transactions mentioned in I of this article in another Member State of the European Union, other than value added tax.

Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B): (1) Exempt are services whose audiovisual content is secondary, services whose main purpose is devoted to information, as well as services whose main purpose is to provide information relating to cinematographic and audiovisual works and their distribution to of the public and to ensure its promotion, in particular by means of extracts or trailers (...)

Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B): (5) For the taxpayers mentioned in 1° of II, the tax is calculated after application of a reduction of 65% on the tax base. This reduction does not apply when the transactions mentioned in 1° of III concern cinematographic or audiovisual works or documents of a pornographic nature or inciting to violence. For the taxpayers mentioned in 3° and 4° of II, the tax is calculated after application of an allowance of €100,000 on the tax base. This deduction is distributed between the persons mentioned in 3° and 4° of I in proportion to the respective base established for each of them.

### Applicable procedures

Tax on physical and online video distribution of audiovisual content (Article 1609 sexdecies B): (5) The tax is payable under the same conditions as those applicable to value added tax. It is recorded, liquidated, recovered and controlled according to the same procedures and under the same sanctions, guarantees, sureties and privileges as the value added tax. Claims are presented, investigated and judged according to the rules applicable to this same tax.

#### 5.4.4. Portugal (PT)

In Portugal, VOD providers have to meet three different financial obligations, including payment of a tax to the Portuguese Institute of Cinema and Audiovisual, direct investments and payment of an exhibition fee.

##### Legal framework

In Portugal, VOD providers have to meet three different investment obligations, including payment of a tax to the Portuguese Institute of Cinema and Audiovisual (ICA), obligation for direct investment, and payment of an 'exhibition fee'. This obligation is extended to VOD providers targeting the Portuguese market from other Member States.

The investment obligations for VOD providers are determined with the Television Act, and a third amendment to Law no. 55/2012, also known as the Cinema Act. The ICA estimates collecting between €1-1.2 million from the tax.

##### Calculation

The payment of a tax (levy) to the film fund is based on 1% of the amount of the relevant income. If it is not possible to determine the value of the relevant income of these operators, the annual tax is set at €1 million.

The calculation of the direct investment obligation differs according to the type of service (TVOD, SVOD, AVOD). The basis for calculation ranges between 0.5% to 4% of relevant income, on the fee paid by the subscriber (with calculations €0.50 to €4), or by a fixed amount of €10,000 to €4 million. In case of generalist services where European works constitute less than 50% of the total hours of programming, the investment values are reduced by 50%. If it is not possible to determine the value of the relevant income of these operators, the annual investment amount is fixed at €4 million. The relevant income is calculated based on audiovisual commercial communications and on subscriptions or occasional transactions. This can be summarised as follows based on the annual income of the VOD provider:

- €200,000 to €1.999,999: 0,5% of the relevant income or €0.50 per subscriber or a flat rate of €10.000.
- €2.000,000 to €9.999,999: 1% of the relevant income or €1 per subscriber or a flat rate of €100,000.
- €10.000,000 to €24.999,999: 2% of the relevant income or €2 per subscriber or a flat rate of €500,000.
- €25.000,000 to €49.999,999: 3% of the relevant income or €3 per subscriber or a flat rate of €1.500,000.
- €50.000,000: 4% of the relevant income or €4 per subscriber or a flat rate of €4.000,000.

The Act further outlines that at least 30% of the investment must go to financing or participation in financing cinematographic and audiovisual work. The participation of VOD providers can also be ensured through prominence of European works and of works in Portuguese language. For SVOD providers, investment in own production or that of associated companies, purchase of works by orders or investment in other European creative works must be in the Portuguese language.

The "exhibition fee" is set at 4% of the advertising charges made and is settled and paid annually. The Act outlines that the calculation is based on the number of subscriptions existing in the previous calendar year, obtained by applying a set formula.

## Criteria on exemptions or reductions

For the payment of a tax to the film fund and for the direct investment obligation, the VOD providers with an annual income in the national market below €200.000 and those whose share in the respective market segment is less than 1% are exempted. Furthermore, VOD providers that offer works of pornographic nature are exempted.

## Applicable procedures

The Decree-laws determine how and when operators must provide certified accounts proving their relevant income to ICA, IP, and how the investments will be assessed, controlled, and supervised.

## Summary table

Applicable legislation
<p><a href="#">Cinema Act (Law 55/2012 The principles of State action in the framework of the promotion, development and protection of the art of cinema and cinematographic and audiovisual activities)</a> <a href="#">Television Act (Law 27/2007 Television and Audiovisual On-Demand Services Law)</a></p>
Calculation
<p><u>Article 10, Cinema Act:</u> (1) Commercial advertising shown in cinemas, audiovisual commercial communication broadcast or transmitted by television operators or, by any means, transmitted by distribution operators, audiovisual commercial communication included in on-demand audiovisual services or in sharing of videos, as well as advertising included in electronic program guides, regardless of the exhibition, broadcast or transmission platform, is subject to a fee, called the exhibition fee, which constitutes a charge for the advertiser, of 4% of the price paid out. [...] (5) Operators of subscription-based on-demand audiovisual services shall be subject to an annual fee equal to 1% of their relevant income.</p> <p><u>Article 14-A, Cinema Act:</u> (1) Television service operators, on-demand audiovisual service operators, distributors of cinematographic works and DVD distributors shall allocate a portion of their investment expenditure, as provided for in this Law and the legislation implementing it, to the development, production and promotion of European and Portuguese-language works and independently produced works. [...] (3) The investment obligation shall be exercised with full freedom of choice on the part of the obligated entity with respect to the works and activities that are the subject of the investment, provided that the general conditions governing them, laid down in this subsection and in legislation implementing the present Law, are met. [...] (5) The amounts to be invested by private operators [...] are defined according to the relevant income of these operators, according to the table in the annex to this law [...]. (6) Relevant income is considered to result from the following services rendered in the year prior to the exercise of the obligation: a) Audiovisual commercial communications, in the case of television operators and operators of audiovisual services on demand; [...] e) Subscriptions or occasional transactions for audiovisual services on-demand, in the case of operators of this type of services.</p> <p>(6) Relevant income shall be deemed to arise from the provision of the following services in the year preceding that in which the obligation is exercised: a) audiovisual commercial communications, in the case of broadcasters and on-demand audiovisual service operators; b) subscriptions, in the case of operators of pay-TV services; c) distribution of cinematographic works, in the case of distributors of cinematographic works; d) distribution of DVD, not including rental or exchange of DVD, in the case of DVD distributors; e) subscriptions or one-off transactions for on-demand audiovisual services, in the case of operators of such services.</p> <p>(7) Obligations laid down in this Article shall apply to broadcasters and on-demand audiovisual service operators under the jurisdiction of another Member State in cases where those operators target, or direct commercial offers at, audiences on Portuguese territory, but only to income generated on the Portuguese market.</p> <p>[...] (9) In the case of generalist services or where the types of content referred to in point (a) of the previous paragraph constitute less than 50% of the respective programming, measured in hours, the investment values set out in the Annex to this Law shall be reduced by 50%.</p> <p><u>Article 16, Cinema Act:</u> (1) (Revoked.) (2) On-demand investment by audiovisual service operators in the production of European cinematographic and audiovisual creative works of independent production, originally in Portuguese, may take the following forms:</p>

- (a) Financing of writing and project development work for European cinematographic and audiovisual creative works of independent production, originally in the Portuguese language, the Portuguese language requirement not applying in the case of co-productions with national participation under the applicable treaties, of any of the types referred to in Article 14a(8)(a);
- b) Participation in the financing of the production of cinematographic and audiovisual creative works of European independent production, originally in Portuguese, the Portuguese language requirement not applying in the case of co-productions with national participation under the applicable treaties, of any of the types referred to in point a) of no. 8 of Article 14.A, through: i) Acquisition of exploitation rights in the project phase; ii) Co-production; iii) Association to production, without co-ownership;
- c) Acquisition of exploitation rights of cinematographic and audiovisual creative works of European independent production, originally in Portuguese, the Portuguese language requirement not applying in the case of co-productions with national participation under the applicable treaties;
- d) Restoration and mastering of films of supported works and other European works in Portuguese, provided that two copies in accordance with the technical standards defined by this entity are delivered to the Cinemateca, I. P.;
- e) Promotion of European cinematographic and audiovisual works;
- f) In-house production or production by associated companies, the acquisition of commissioned works or investment in other European creative works.

(3) At least 30% of the compulsory investment is carried out in the modalities a) and b) of paragraph 2.

(4) In the case of on-demand audiovisual service operators in the subscription access modality, the works referred to in paragraph 2(f) must be works originally in Portuguese, and the Portuguese language requirement shall not apply in the case of co-productions with national participation under the applicable treaties.

(5) The participation of on-demand audiovisual service operators may also be ensured through the creation of an area in their respective catalogues dedicated to the promotion of European and Portuguese language works, under terms to be specified in the decree-law that regulates this law.

(6) The amounts of investment due that, at the end of each cycle of two consecutive years, are not allocated to direct investment under the terms of paragraph 1 are delivered by each television operator to the ICA, I.P., in January of the following year, constituting that body's own revenue.

Article 16-A, Cinema Act: (1) Where it is not possible to ascertain the value of the relevant proceeds of operators of on-demand audiovisual subscription services, for the purposes of applying the fee provided for in Article 10(4), the annual value of the fee shall be presumed to be €1,000,000.

(2) Where it is not possible to ascertain the value of the relevant income of operators, for the purposes of the investment obligations laid down in Articles 14-A to 16, the annual value of the investment is set at €4,000,000.

## Exemptions/reductions

### Article 153, Cinema Promotion Act:

(1) Holders of licence rights having their registered office or a branch office in Germany who exploit cinematographic works made for commercial purposes by means of video-on-demand services provided in return for payment or financed by advertising shall pay a film tax on net turnover generated in Germany from the exploitation of cinematographic works if that net turnover exceeds €500.000 per year.

## Applicable procedures

### Article 164, Cinema Promotion Act:

(1) Anyone who has to pay a film tax under this Act must provide the Film Promotion Agency with the information required for the implementation of this Act and submit the relevant documents. This also applies to persons who only do not have to pay a film fee because the provisions in Article 151 subsection 1, Article 152 subsection 1 sentence 2, Article 153, Article 155 subsection 1, Article 156 subsection 1 or Article 156a subsection 1 and 2 sales limits are not reached or because the theatrical film share is below the sales limits specified in Article 152 paragraph 1 sentence 2, Article 155 paragraph 1, Article 156 paragraph 3 sentence 2 or Article 156a paragraph 3 sentence 2, as well as for persons for whom the mentioned turnover limits, as well as for persons, for whom the existence of the other requirements for a duty to pay can only be checked if the corresponding information is provided. The obligation to provide information extends to

1. the company name and group affiliation as well as the place of business or residence of the taxpayer, 2. the construction, relocation and abandonment of the place of business or residence, 3. Names and place of business or residence of the persons to be contacted with regard to the collection of the tax as well as names and place of business or residence of the persons referred to in Article 166 (3), 4. the date of birth if the person liable to pay the fee is a natural person, 5. the turnover of the activities subject to the tax, whereby the turnover from this is to be shown separately from other turnover and according to the type of evaluation; [...]

Article 165, Cinema Promotion Act:

(1) The information from the cinemas and the video industry pursuant to Article 164 (1) numbers 5 to 10 must be provided monthly, by the tenth of the following month, separately according to the type of exploitation and free of charge. [...] The information about the proceeds according to Article 164 paragraph 2 sentence 2 number 2 is semi-annually, in each case for the first half of the calendar year by the end of August of the same calendar year and for the second half of the calendar year by the end of February of the following calendar year. [...]

Article 166, Cinema Promotion Act:

(1) The film promotion agency is entitled to check the information provided pursuant to Article 164. It may commission third parties, who may also be natural persons or legal entities under private law, to carry out the verification. Those obliged to provide information are obliged to provide the film funding agency with documents to prove the correctness of the information pursuant to Article 164.

(2) The persons commissioned by the film promotion agency to monitor the operation are authorised to check the information provided pursuant to Article 164, to enter the property, operating facilities and business premises of the person obliged to provide information during operating or business hours, to carry out inspections and tests there and to inspect the business documents of the person obliged to provide information. The basic right to the inviolability of the home (Article 13 of the Basic Law) is restricted in this respect.

(3) In the case of legal persons and commercial partnerships, the persons authorised to represent them by law, articles of association or articles of association or their agents must fulfil the obligations under paragraph 1 sentence 2 and tolerate measures under paragraph 1.

(4) The person obliged to provide information may refuse to provide information on questions the answer to which would expose them or one of the relatives referred to in Article 383 (1) numbers 1 to 3 of the Code of Civil Procedure to the risk of criminal prosecution or proceedings under the Administrative Offences Act. Article 167 Estimate If a person obliged to provide information refuses to provide information pursuant to Article 164 by the time specified in Article 165 (1) or to submit the relevant documents, the film promotion agency may also make the determinations required to determine the film tax by way of an estimate or grant aid reclaim.

Article 148, Cinema Promotion Act:

Collection of the film levy: The film levy is claimed on the basis of an official order. Objections and actions for annulment of the decision to collect the film levy have no suspensive effect.

## 5.5. Cases outside of EU

### 5.5.1. Switzerland (CH)

#### Legal framework

VOD providers that target Swiss audiences are obliged to invest directly in acquisition, production or co-production of Swiss films or to pay a substitute levy. The investment obligation applies to VOD providers established within the country and those based abroad. The Swiss voters backed the proposal for investment obligation in May 2022, on the occasion of a national referendum held under the Swiss system of direct democracy.<sup>42</sup>

Foreign television broadcasters that have Swiss advertising windows aimed at Swiss audiences and generate sales on the domestic advertising market, such as M6, are also captured by the investment obligation. The investment obligation will be effective from 2024. The Federal Office for Culture estimates that the VOD subscription prices will not rise because of the investment obligation.<sup>43</sup>

The primary aim of the investment obligation stipulated in the Federal Act on Film Production and Film Culture<sup>44</sup> is to eliminate Switzerland's existing competitive disadvantage compared to the European countries that have introduced such an investment obligation. As pointed out by the Federal Office for Culture, the new investments made in Switzerland are intended to strengthen audiovisual production in Switzerland and encourage the development of new and innovative formats.

#### Calculation

Under the act, VOD providers have to allocate 4% of their revenues in Switzerland. In case when a direct investment obligation is not achieved over a period of four years, a VOD provider is required to pay a substitute levy. Expenditure shall only be deemed to be cash payments made to independent third parties based or domiciled in Switzerland. Gross receipts is the income which the company earns from the films in connection with its programme or film offering: remuneration for the use or acquisition of the films offered, income from advertising and sponsorship and fees for the use of data.

#### Criteria on exemptions or reductions

VOD providers with low audience and turnover may be exempted from the investment obligation by the Federal Council. Any subsidies for culture and the film industry granted by the Confederation, the cantons or the municipalities as well as by institutions that are essentially dependent on them or financed by public fees must be deducted from the expenses.

#### Applicable procedures

The VOD providers are required to submit a report to the Federal Office for Culture in which they explain how the investment obligations are met and to report on their earnings. Companies that are exempted also have to report in case circumstances relevant to their exemptions have changed.

---

<sup>42</sup><https://www.euractiv.com/section/languages-culture/news/swiss-voters-approve-lex-netflix-tv-streaming-funding-law/>  
<https://www.admin.ch/gov/de/start/dokumentation/abstimmungen/20220515/aenderung-des-filmgesetzes.html>

<sup>43</sup> <https://www.bak.admin.ch/filmgesetz>

<sup>44</sup><https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/fga/2021/2326/de/pdf-a/fedlex-data-admin-ch-eli-fga-2021-2326-de-pdf-a.pdf>

## 5.5.2. Australia (AU)

### Legal framework

Australia proposed introducing a two-tier system of investment obligation that would require large SVOD providers to report to the Australian Communications and Media Authority (ACMA) on their investments in new Australian content and meet a minimum level of expenditure. Since 2021, large SVOD providers have voluntarily reported to ACMA on their expenditure on Australian programs and the availability of Australian programs on their services. With the proposed Streaming Services Reporting and Investment Scheme<sup>45</sup>, the providers are expected to become subject to mandatory reporting.

The purpose of the proposed provisions would be to support Australian audiences having access to Australian content, to guarantee a minimum level of investment by these services in new Australian content and provide a more equitable regulatory framework where Australian screen content obligations apply to the wider market, rather than only to traditional broadcasters.

Screen Producers Australia has criticised the proposed framework as being weak and required introduction of investment obligation amounted to 20%<sup>46</sup>. Expectedly, the investment scheme is strongly opposed by SVOD providers<sup>47</sup>.

### Calculation

The Scheme would be implemented as a two-tier framework that would enhance the transparency of the investment of large SVOD services in Australian content before consideration is given to the imposition of enforceable regulatory obligations. The Minister for Communications would have the power to designate large SVOD services in two tiers. The Tier 1 services would be required to report annually to ACMA on their investment in, and provision of, new Australian content, and the extent to which they are making Australian content discoverable to Australian audiences. If a SVOD provider invests less than 5% of their gross Australian revenue on new Australian content, the Scheme would enable the Minister for Communications to impose a formal investment requirement. This means that Tier 2 services would face a formal investment obligation of an amount to be determined in the designation instrument, in addition to reporting requirements. The 5% trigger rate, as explained, is also broadly consistent with regulatory arrangements in place in overseas markets.

The Investment by services in Australian content would be allowed in the form of commissions, co-productions and acquisitions. The Scheme only applies to new Australian commissions. 'New' would be defined as closely as possible to the definition in the New Eligible Drama Expenditure (NEDE) Scheme. Under the NEDE Scheme, a program is 'new' if expenditure is incurred before the program has been televised on a broadcasting or streaming service in Australia or New Zealand. This approach would allow for co-productions between SVOD services and broadcasters to be counted under the Scheme.

Australian legislators have put forward a distinctive way of carrying-forward the investment for Tier 2 services. Existing regulations governing the provision and production of Australian programming permit regulated services to carry forward additional expenditure or points, beyond their requirements in a given year, to a future period. It is therefore proposed that a

---

<sup>45</sup><https://www.infrastructure.gov.au/department/media/publications/discussion-paper-streaming-services-reporting-and-investment-scheme>

<sup>46</sup> <https://screenproducersassociationofaustralia.cmail19.com/t/i-i-cuytjhd-l-j/>

<sup>47</sup><https://www.smh.com.au/business/companies/streaming-services-warn-government-to-dump-production-quota-plan-20220609-p5asi5.html>

carry forward arrangement be used for Tier 2 services, based on the precedent set through the Standards. The Standards effectively provide for a 20% carry forward: 50 points from the previous year can be carried forward to the next in meeting the annual 250 point requirement. It is proposed that Tier 2 services be permitted to utilise investment expenditure from a preceding year to count toward a maximum of 20% of the investment obligation in a given year.

#### **Criteria on exemptions or reductions**

A threshold of \$100 million (± €68 million) per annum in Australian revenue would avoid the imposition of an unreasonable burden on start-ups and niche entrants to the market, and is expected to capture the larger and more popular SVODs and AVODs. A threshold of one million subscribers is proposed in order to capture services with a significant number of subscribers, including popular SVODs such as Netflix and Disney+.

In considering whether to designate a service as a Tier 1 service, the Minister would have to consider whether the service is a 'large' service based on eligibility criteria relating to the number of subscribers in Australia and/or revenue in Australia. The Minister would determine the eligibility criteria for what constitutes a large service. The Minister would have the capacity to determine whether a service is a Tier 2 service, noting that only Tier 1 services that had been designated as such for a full 12 month reporting cycle would be able to be designated under Tier 2 of the Scheme. In considering whether to determine that a service is a Tier 2 service, the Minister would be required to assess whether the Tier 1 service continues to be a large service and whether it failed to report within the deadline or failed to satisfactorily demonstrate investment in Australian content of 5% of its gross Australian revenue in any given financial year.

#### **Applicable procedures**

According to the proposal, a Tier 1 or Tier 2 designation instrument could be made at any time. Designation would commence from 1 July of the financial year following the making of the instrument, provided there was a period of at least 6 months between the making of the instrument and the commencement date. This is intended to provide services with sufficient lead time to prepare to meet the obligations. According to the proposal, the Minister will be asked to provide a service with 60 days' notice for a proposed designation. Again, this is intended to provide adequate notice to services of a proposed designation. Tier 1 and Tier 2 designation instruments would have a duration of 3 years, or another period specified in the instrument.

ACMA would have a power to determine, via legislative instrument, that a service, or a part of a service, falls within the definition of an SVOD service. This will be an important 'reserve power' given the complexity of businesses operating in the audio-visual media market. ACMA would be able to utilise its information gathering powers to inform any determination.

### 5.5.3. Canada (CA)

#### Legal framework

Canada is planning to introduce an investment obligation for VOD providers with Bill C-11, also known as the Online Streaming Act. Bill C-11 amends the Broadcasting Act which sets out Canada's broadcasting policy, its objectives and the legislative means to achieve them. In June 2022, the House of Commons of the Canadian parliament passed Bill C-11, which will become law once the Senate adopts it and it receives royal assent.<sup>48</sup>

This is the second attempt to bring foreign VOD providers within the scope of domestic policy, after a bid to modernise broadcasting legislation in 2021 ended unsuccessfully. Bill C-11 updates the definition of broadcasting to include scheduled and on-demand transmission of programs and introduces the notion of online undertakings, i.e., ventures that (re)transmit programs over the Internet, thereby circumscribing foreign VOD providers and other streaming platforms targeting Canadian audiences within Canada's broadcasting system. In line with the changes introduced by the bill, foreign VOD providers are to be considered part of Canada's broadcasting system and will be obligated to contribute to its objectives, which include providing more local content. Specifically, foreign VOD providers will be required to "make the greatest practicable use of Canadian creative and other human resources and contribute equitably to support the creation, production and presentation of Canadian programming" (Section 3/f.1). The Canadian Radio-Television and Communication Commission (CRTC) is tasked to carry through the objectives of the Broadcasting Act as amended by Bill C-11.

#### Calculation

CRTC's mandate centres on supervising and regulating Canada's broadcasting system for the purpose of implementing the national broadcasting policy. Whereas Bill C-11 provides an update of the general broadcasting regulatory framework, regulatory details will be further specified by the commission. In that regard, specific obligations for foreign VOD providers to support the production of Canadian programming and engage local resources will be developed by the CRTC through secondary legislation. Under Bill C-11, the CRTC can issue orders and impose conditions on all entities carrying on broadcasting activities, including online undertakings. With regards to foreign VOD providers, the commission will be able to introduce investment obligations for the development, financing, production or promotion of Canadian audio or audiovisual programs, and to impose conditions related to the proportion of programs to be broadcast that must be Canadian programs.

When CRTC introduces orders and regulations requiring broadcasting and online undertakings to provide expenditures, these should be calculated by reference to criteria such as the revenues of broadcasting undertakings, their performance in relation to objectives set by the CRTC and the market they serve.

#### Applicable procedures

The CRTC would be able to set requirements for persons carrying on broadcasting undertakings to provide certain information to the CRTC on matters such as governance, programming and finances.

---

48 <https://www.parl.ca/LegisInfo/en/bill/44-1/c-11>

## Appendix

### List of Experts

<b>Country</b>	<b>National expert</b>	<b>Position and organisation</b>
Belgium (FR)	Nele Smets	Deputy Director, CSA
Croatia	Anita Duvnjak	Head of Legal Affairs, HAVC
Czech Republic	Veronika Lengálová	Research Unit, Czech Film Fund
Denmark	Helene Hansen	Danish Film Institute
France (direct investment obligation)	Danielle Sartori	Head of Department of on-demand audiovisual media services, distribution and new services, Arcom
France (levy)	Alexis Viprey	VOD project manager (Digital Department / Physical and Online Video Department), CNC
Greece	Eleni Chandrinou	Freelance producer
Italy	Marco Cucco	Associate Professor, University of Bologna
Poland	Michał Głowacki	Professor, University of Warsaw
Slovenia	Tanja Kerševan Smokvina	Assistant Professor, University of Ljubljana
Spain	Maria Trinidad García Leiva	Associate Professor, University Carlos III of Madrid
Switzerland	Thomas Tribolet	Legal Counsel, Film Producers Associations