



Study on the Promotion of European Works in Audiovisual Media Services

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Study on the Promotion of European Works in Audiovisual Media Services

SMART 2016/0061

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1 Abstract

[EN] The study provides the European Commission (Directorate General for Communications Networks, Content & Technology) with the tools and information required for the monitoring and evaluation of the impact of Union and national level measures for the promotion, distribution and production of European works and independent productions in television programmes and the production of and access to European works in on-demand services.

The study updates a 2011 report by capturing changes in the legislative and economic audiovisual landscape between 2011 and 2016. Furthermore, the study brings together the data collected from Member States fulfilling their reporting obligation on the application of Article 13 of the AVMS Directive for the period 2011-2014, and on the application of Articles 16 and 17 of the AVMS Directive for the period 2013-2014.

The study covers the legislative measures which have been adopted by Member States in respect of linear broadcasting and on-demand audiovisual media services examining the methods and periodicity for the collection of data by competent authorities in order to monitor the application of the Art. 13, 16 & 17 of the AVMS Directive. It provides examples of methods to ensure the prominence of European works in on-demand service catalogues and evidence of correlation between prominent works and audience demand.

The study includes a description and analysis of the market for audiovisual works in the European Union, analysing the production and the distribution side in terms of number of businesses, employment and potential drivers of change. It also includes an analysis of the content offer on both linear broadcasting and on-demand services. For the year 2016, the study analyses the content broadcast by 54 channels in 11 Member States and the catalogues of 50 non-linear service providers in 6 Member States.

Finally, the study provides a set of performance indicators in view of carrying out future monitoring and assessment activities at periodical intervals and it assesses how the performance indicators and operational procedures shall evolve in the context of the new AVMSD legislative proposal adopted by the European Commission on 25 May 2016.

[FR] Cette étude vise à fournir à la Commission Européenne (Direction générale des réseaux de communication, du contenu et des technologies) les outils et informations nécessaires pour la surveillance et l'évaluation des impacts des mesures nationales et de l'Union Européenne pour la promotion, la distribution et la production des œuvres européennes et des productions indépendantes dans les programmes télévisés et la production et la disponibilité des œuvres européennes dans les services à la demande.

L'étude est aussi une mise à jour d'un rapport de 2011 et prend en compte les changements législatifs et économiques intervenus dans le paysage audiovisuel entre 2011 et 2016. De plus, l'étude prend en compte les données transmises par les États Membres en vertu de leurs obligations de rapports en application de l'article 13 de la Directive Services de Médias Audiovisuels -SMA- pour la période 2011-2014, et en application des articles 16 et 17 de la Directive Services de Médias Audiovisuels -SMA- pour la période 2013-2014.

L'étude couvre les mesures législatives adoptées par les États Membres pour les services audiovisuels linéaires et à la demande examinant les méthodes et la

périodicité de la collecte des données par les autorités compétentes dans le but d'examiner l'application des articles 13,16 & 17 de la Directive SMA. Elle fournit aussi des exemples de méthodes pour s'assurer de la prééminence des œuvres européennes dans les catalogues des services à la demande et des indications sur le lien entre la prééminence de ces œuvres et la demande du public.

L'étude inclut une description et analyse du marché des œuvres européennes dans l'Union Européenne, en analysant les aspects de la production et de la distribution en termes de nombres d'entreprises, d'emplois et les potentiels facteurs de changement. Une analyse des programmes proposés par les services audiovisuels linéaires et à la demande est aussi fournie. Pour 2016, l'étude analyse les programmes diffusés par 54 chaînes dans 11 États Membres et le catalogue des programmes de 50 fournisseurs de service non-linéaires dans 6 États Membres.

Enfin, cette étude fournit un ensemble d'indicateurs de performance afin de faciliter les futures activités de surveillance et d'évaluation à des intervalles périodiques et détaille comment ces indicateurs de performance et procédures devraient évoluer dans le contexte de la nouvelle proposition législative pour une Directive des Services de Médias Audiovisuels -SMA- adoptée par la Commission Européenne le 25 Mai 2016.

2 Executive Summary

2.1 Legal analysis

Articles 13, 16 and 17 of the Directive were designed to foster cultural diversity in the European audio-visual media landscape, for both linear (art. 16, 17) and non-linear services (art. 13). Indeed, the free circulation of audio-visual media services as facilitated by the Directive has been instrumental to permeate what were previously national domains, thus contributing to the diversity of private television and audio-visual formats.¹

The measures of the AVMSD intended to serve cultural goals involve requirements for the promotion of European works. For linear services, such requirements are designed “to recover necessary investments not only by establishing common rules opening up national markets, but also by envisaging for European productions a majority proportion in television broadcasts of all Member States”.^[1] According to the AVMSD, on-demand audio-visual media services should also actively contribute to the promotion of cultural diversity and consequently promote the production and distribution of European works, where it is practicable. The rationale underlying the promotion of cultural goals has however required an adaptation to take into account the fast-changing environment of on-demand services. The provisions for the promotion of European Works for on-demand services were thus introduced with a much higher level of flexibility.

Generally speaking, for **linear services, Member States impose higher levels of implementation** and/or additional measures to promote European works. These additional measures are of linguistic nature, meaning that broadcasters need to reserve a certain amount of time to works created in a national language.

The requirements for **non-linear services are less detailed** than for linear services:

- There is no quota mechanism;
- The promotion of European works can be achieved via financial contribution or via the share /prominence of European works;
- There are **no requirements for recent works in VOD services**. However, European recent works are distributed more extensively on VOD than older productions.

The in-depth analysis of the monitoring and reporting systems developed by each Member State for both linear and non-linear services including an overview of the main characteristics of monitoring systems, the reporting standards set up at national level, additional measures for reporting (if any) and possible sanctions and/or verification mechanisms developed for the statistical reports provided by broadcasters shows that **linear services are clearly better monitored than non-linear services** at EU level, partly because reporting obligations for non-linear services were introduced much later. Also, the still emerging nature of on-demand services and the highly dynamic technology that governs them make it more difficult to implement viable monitoring systems. The flexibility of article 13 and variations across national implementing measures make the development of pan-European guidelines and exchange of experiences between NRAs more challenging.

Another impediment to relevant monitoring of the proportion of European works in on-demand services is the current **less specific definition of on-demand audio-visual**

¹ Kristina Irion, Peggy Valcke, ‘Cultural diversity in the digital age: EU competences, policies and regulations for diverse audiovisual and online content’, in Cultural Governance and the European Union, Palgrave MacMillan (ed), 2014

^[1] AVMSD, recital 65

services provided by the Directive. Particularly, the unclear level of editorial responsibility of an on-demand service provider in the context of increasing convergence of services, makes it difficult to monitor on-demand catalogues in different geographical areas and from different broadcasters or studios.

2.2 Economic analysis

The study provides an overview and analysis of the market for audio-visual works in Europe both via linear and non-linear channels. This includes the entire production, distribution and broadcasting chain. Wherever possible the results include data for 2015 and 2016. However the majority of data needed for the study is currently only available for the period 2009-2014.

Overall size of the AV sector

In 2014, the size of the **European AV market amounted to slightly more than EUR 105 billion** (EAO, 2015a). Of particular significance was the expansion of non-linear service providers in the period 2010-2014.

The **economic contribution** of the sector in this study is defined by **businesses operating in the production and distribution of AV content:**

- **France, the United Kingdom and the Netherlands have the highest concentration of enterprises**, with respectively 19%, 16% and 10% of all EU businesses (Eurostat, 2014). While France and the Netherlands have a particularly large number of enterprises on the production side, Italy, Spain and the United Kingdom have high shares of companies operating in audio-visual distribution;
- One common feature in many countries is the **small size of the enterprises involved in the AV sector**, with 95.95% of production companies and 84.96% of distribution companies in 2014 having less than 10 employees (Eurostat, 2014);
- In total, in 2015, the AV sector accounted for approximately **824,200 persons employed**² across the EU28, with 55% on the production side and 45% on the distribution side. This overall employment figure in 2015 represents an additional 35,000 jobs between 2011 and 2015;

Drivers of change in production and distribution of AV works

Most of the data for this analysis are drawn from the Yearbook of European Audiovisual Observatory, as it represents the main source of information that allows for a level of comparison of trend developments across Member States.

1) Production:

- **Investments in original programming** by the main TV groups in 15 countries (i.e. Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Poland, Portugal, Spain, Sweden and the UK) from 2009 to 2013 **remained stable** at a rate of more than €15 billion and a **significant proportion** of investment in original programming continues to be **made by public broadcasters;**

² The number of people employed in Eurostat is defined as the total number of persons working in the observation unit (inclusive of working proprietors, partners working regularly in the unit and unpaid family workers), as well as persons who work outside the unit who belong to it and are paid by it (e.g. sales representatives, delivery personnel, repair and maintenance teams). It excludes manpower supplied to the unit by other enterprises, persons carrying out repair and maintenance work in the enquiry unit on behalf of other enterprises, as well as those on compulsory military service.

- Compared to the 2011 report, the latest trends in **“channel management” show an increase in the activities of non-linear service providers.** Indeed, **more and more Video-On-Demand players invest in original content to differentiate themselves** from the competition and to attract new audiences;
- **Public service broadcasters are important to favour the circulation of European works.** Indeed, public channels schedule more than 50% of European fiction content, while private channels schedule less than 20%. At the same time, there are some exceptions of countries where levels of European content on private channels are much higher than the average, such as in France and the United Kingdom (EAO, 2015c);
- Only 27% of films in VOD catalogues come from one of the 28 EU Member States, while films produced in the US have a share of 59% (EAO, 2015d);
- In terms of exports, **French and UK films cumulatively accounted for almost 87% of total admissions to European films outside Europe in 2015.** North America is the most important “overseas” market for European films (in terms of cinema admissions).

2) Distribution:

- The biggest change in TV distribution in the past years has been the passage to the digital television system. **Digital terrestrial television was the most common means of receiving TV in 2014** (43%), while 25% receive television through satellite. Nonetheless, there are sizable variations between Member States;
- Digitalisation has brought a **rapid expansion in the number of channels available to consumers**, and a resulting **loss of share of historic terrestrial services** which dominated analogue distribution;
- **Revenues for linear service providers** grew during the 2010-2011 period, decreased between 2012 and 2013, only to rise again in 2014. Looking at the different components of revenue, it is noticeable that **subscription revenues are rapidly increasing** while revenues generated from **public funding are falling**;
- In terms of market size, **the global VOD** market amounted to approximately **USD 16.3 billion in 2016** and it accounted for 16% of the Digital Media market. In **Europe**, VOD has a volume of **USD 3.5 billion** out of which **61.6%** is represented by **SVOD**;
- From 2010 to 2014, **on-demand consumer revenues increased by 272%** in Europe (EAO, 2015a).

2.3 Linear content analysis

The research methodology was designed to provide data relevant to Articles 16 and 17 of the Directive. It is based on an analysis of schedules for a sample of top 5 leading channels from 11 Member States (i.e. Finland, France, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Slovenia, Spain, UK). These schedules were encoded by genre, qualifying type, European origin, independence of production and recency for the total broadcast time during 2 weeks of 2016 (Week 8 in February 2016 and Week 49 in November 2016);³

The main conclusions of the analysis are:

- The proportions of **qualifying works are relatively similar across different channel and country types.** The lowest percentage of qualifying works in

³ Note: in the 2011 study, the sample of Member States included: Belgium, Czech Republic, Estonia, France, Germany, Italy, Netherlands, Poland, Spain, Sweden & United Kingdom.

total transmission hours was found in Romania (51.10%), whereas the highest percentage was found in Germany (80.25%);

- **Most European broadcasters met the 50% requirement of Article 16.** European works also make up an average of 69.85% of the total viewer hours (vs. 69% in 2010 and 74% in 2007) across all studied channels in 2016 which confirms the strong appeal of European works to European audiences. European works are relatively less attractive to younger viewers who tend to watch more non-EU content than their older counterparts;
- Across our sample, **non-domestic European works** make up **16.88%** of the total qualifying European transmission hours in 2016. This picture is different from the 2011 study, where the percentage of non-domestic European works made up 8.1% of the total qualifying transmission hours in 2010 (8.2% in 2007). There is thus evidence of **greater circulation of European works**, although domestic productions still represent the majority;
- **Independent European works** make up **27.85%** of total qualifying transmission hours in 2016 (29.4% in 2010 and 31% in 2007);
- Across our sample, **recent independent European works** make up an average of **71.60%** of the total independent European hours in 2016 (85.2% in 2010, 84.4% in 2007). The proportions are **higher in primetime**: 86.32% of total independent transmission hours (90.6% in 2010 and 92.4% in 2007). This result confirms that mainstream and free linear television are basically about fresh production.

2.4 Non-linear content analysis

The study provides data relevant to Article 13 of the Directive based on the catalogues of a sample of 50 non-linear media services from 6 Member States (France, Germany, Italy, Poland, Spain and the UK). Services were coded by key types: content (video-on-demand or catch-up), market destination (Multi-country, country), business model (TVOD, SVOD, Electronic Sell Through, free-advertising, free-government). As non-linear audience measurement is not as centralized and consistent as linear viewing, a separate analysis of nonlinear consumption was developed based on *JustWatch app users*.

The main conclusions of the analysis are:

- **99.41% of total hours and 99.85% of titles on video-on-demand services are qualifying works** including mostly cinema, TV fiction and documentary. **90.44% of total hours and 91.49% of titles on catch-up services are qualifying works**;
- Catch-up catalogues closely reflect the linear schedules of their broadcasters, while video-on-demand services, which generally focus their editorial resources on content acquisition, distribution and promotion, have little, or no news or light entertainment;
- **European works are significantly less present in the catalogues of VOD service providers than on catch-up services.** Indeed, 89.06% of total catch-up hours and 90.28% of total titles on catch-up services are European works compared with only 28.86% of total VOD hours and 29.75% of total titles on VOD services across our sample;
- Non-linear service providers having just **one country as market destination** display **higher percentages of European works** in titles and hours (44.87% and 45.91%) **than multi-country** non-linear service providers;
- Analysing clicks on specific titles as a proxy for AV consumption by providers in 5 Member States, it emerges that **non-European audio-visual works dominate audience demand**. However, some non-linear service providers display higher “consumption” shares of European works (such as: BBC, ITV, All4, Now TV) which appears to be driven by investment in original productions by these players or by domestic audio-visual productions.

2.5 Prospective analysis

The main results of the legal and economic analysis were brought together into a monitoring framework that consists of **twelve performance indicators**. Where possible, the framework is designed to be consistent with the foreseeable changes introduced by the review of AVMSD.

The strategic objectives of this indicator framework should be to:

- Promote and enhance cultural diversity (access & actual consumption), as set out in the AVMSD and Article 167 of TFEU;
- Avoid placing unnecessary burdens on Member States and the audio-visual industry;
- Monitor the implementation of articles 13, 16 and 17 of AVMSD in light of the above.

To address the significant challenges associated with the monitoring of article 13 and any future legislation relating to non-linear services, the study explores three potentially significant initiatives to alleviate the burden on both regulators and service providers:

- **Stakeholder dialogue and mutual involvement in reporting obligations** could significantly ease reporting processes and establish trust. Cooperation may indeed become increasingly important between Member States in the context of the reviewed AVMSD, with the possibility of introducing a levy on on-demand services established outside Member States;
- While **differences in implementation models** across Member States do not allow for the development of a one-size-fits-all monitoring and reporting approach, some of the basic tasks for monitoring and reporting could be pooled to the benefit of all Member States and AV service providers;
- **“Big Data”** about audience behaviour may help circumvent difficulties related to traditional data collection tools. At the same time, there are costs regarding the techniques and the instruments to process this data since big data often consists of unstructured variables (e.g. text) or of complex idiosyncratic structures.

3 Résumé

3.1 Analyse Juridique

Les articles 13, 16 et 17 de la directive 2010/13/UE Services de Médias Audiovisuels - SMA- avaient pour but d'encourager la diversité culturelle dans le paysage audiovisuel européen que ce soit pour les services linéaires (art. 16, 17) ou non-linéaires (art.13). En effet, la libre circulation des services des médias audiovisuels telle qu'encouragée par la directive a été déterminante pour pénétrer ce qui était auparavant un domaine réservé aux États Membres. Cela a permis de varier le contenu des télévisions privées et des autres médias audiovisuels⁴.

Le premier type de mesure à but culturel impose certaines exigences pour les œuvres européennes afin « d'amortir les investissements nécessaires, non seulement en établissant des règles communes ouvrant les marchés nationaux les uns aux autres, mais aussi, chaque fois que cela est réalisable, en œuvrant par les moyens appropriés pour que les productions européennes soient majoritaires dans les émissions de télévision des États membres ⁵». La directive SMA prévoit aussi que les services audiovisuels à la demande participent à la promotion de la diversité culturelle et donc promeuvent la production et distribution des œuvres européennes. La logique sous-jacente à la promotion de ces buts culturels a néanmoins nécessité une adaptation pour suivre la mutation rapide des services à la demande. Les dispositions visant à promouvoir les œuvres européennes pour les services à la demande sont donc plus flexibles que pour les services linéaires.

En général, **les États Membres sont plus exigeants concernant les services linéaires** et imposent parfois des mesures supplémentaires pour promouvoir les œuvres européennes. Ces mesures additionnelles sont d'ordre linguistiques, en d'autres termes les organismes de radiodiffusion télévisuelle -diffuseurs- doivent réserver une certaine part de leur programme à la diffusion de contenu créé dans la langue nationale.

Les exigences pour les services non-linéaires sont moins strictes que celles pour les services linéaires :

- Il n'y a pas de quota ;
- La promotion de contenu européen peut se faire financièrement ou en termes de proportion/part des œuvres européennes ;
- **Il n'y a pas d'exigences particulières pour les programmes récents** dans les services de vidéo à la demande alors que sur ce type de service, les productions sont généralement récentes.

Une analyse approfondie des mécanismes de surveillance et des systèmes de rapport dans chaque États Membres pour les services linéaires et non linéaires incluant une vue d'ensemble des principales caractéristiques des mécanismes de surveillance, des standards pour les rapports au niveau national ou toutes autres mesures additionnelles en termes de rapport (si il y'en a) ainsi que des possibles sanctions et/ou des mécanismes de vérification développés pour les rapports statistiques

⁴ Kristina Irion, Peggy Valcke, *op.cit.*

⁵ DSMA, Alinéa 65.

produits par les diffuseurs a montré **qu'en général en Europe les services linéaires sont mieux surveillés que les services non-linéaires** en partie parce que les obligations de rapports pour les services non-linéaires ont été introduites beaucoup plus tard que pour les services linéaires. De plus, le fait que les services à la demande soient encore récents et qu'ils utilisent une technologie en pleine évolution rend d'autant plus difficile la mise en place de mécanisme de surveillance. La flexibilité de l'article 13 ainsi que les différences entre les mesures nationales rendent encore plus compliqué le développement de lignes directrices pan-européennes et l'échange de bonnes pratiques entre les Autorités de Régulations Nationales.

Un autre frein à la mise en place d'un système efficace de surveillance de la proportion des contenus européens dans les programmes des services à la demande est le fait que **la directive définit moins précisément ce qu'est un service audiovisuel à la demande**. En particulier, le degré de responsabilité éditoriale d'un service de média audiovisuel non-linéaire n'est pas clair, ce qui rend le contrôle d'un tel catalogue difficile surtout lorsqu'il est disponible dans différentes aires géographiques et lorsqu'il vient de différents diffuseurs.

3.2 Analyse économique

Nous avons réalisé un bilan et une analyse du marché européen des œuvres audiovisuelles pour les chaînes linéaires et non linéaires. Cette analyse prend en compte toutes les étapes de mise sur le marché : la production, la distribution et la diffusion. Lorsque cela était possible, nous avons analysé la situation en 2015 et en 2016. Néanmoins, la plupart des données nécessaires pour cette étude concernaient la période de 2009 à 2014.

Vue d'ensemble de la taille du secteur audiovisuel.

En 2014, **le marché européen de l'audiovisuel représentait un peu plus de 105 milliard d'euros** (EAO,2015). Le développement des services non-linéaires sur la période 2010-2014 a eu un impact important sur le marché de l'audiovisuel en général.

Dans le cadre de cette étude, **la participation économique au secteur est entendue comme toute entreprise produisant ou distribuant du contenu audiovisuel :**

- **La France, le Royaume-Uni et les Pays-Bas ont la plus grosse concentration d'entreprises** actives dans le secteur avec respectivement 19%, 16% et 10% du total des entreprises européennes de l'audiovisuel (Eurostat, 2014). Tandis que la **France et les Pays-Bas** ont un grand nombre d'entreprise de **production**, **l'Italie, l'Espagne et le Royaume-Uni** sont les pays avec la part la plus importante d'entreprises de **distribution**.
- Un point commun dans plusieurs pays est la **petite taille des entreprises actives dans le secteur de l'audiovisuel** avec **95,95%** des entreprises de **production et 84.96%** des entreprises de **distribution** qui avaient moins de 10 employés en 2014 (Eurostat, 2014).

- Au total, en 2015 dans les 28 États Membres, il y'avait environ **824 200 personnes** employées dans le secteur de l'audio-visuel⁶, **55%** d'entre elles travaillaient dans la **production** et **45% dans la distribution**. Cela représente, une **hausse de 35 000 emplois** entre 2011 et 2015.

Facteurs de changement dans la production et la distribution des œuvres audiovisuelles.

La plupart des données prise en compte pour cette analyse proviennent du Bilan statistique annuel de l'Observatoire Audiovisuel Européen car il s'agit de la source d'information la plus pertinente pour comparer les différentes tendances entre les États Membres.

1) Production:

- **L'investissement dans les œuvres européennes** par les principaux groupes de télévision dans 15 pays (Allemagne, Autriche, Belgique, Danemark, Espagne, Finlande, France, Irlande, Italie, Pays-Bas, Pologne, Portugal, République Tchèque, Royaume-Uni, Suède) de 2009 à 2013 est **resté stable** avec un peu plus de 15 milliards d'euros. **Une part importante de cet investissement provient des diffuseurs publics.**
- Par rapport à l'étude de 2011, il y a un **développement des activités des fournisseurs de services non-linéaires**. En effet, comme analysé dans les sections suivantes, **de plus en plus de fournisseurs de vidéo à la demande investissent dans les œuvres européennes** pour se démarquer des concurrents et pour attirer un nouveau public.
- **Les chaînes du service public sont importantes dans la promotion des œuvres européennes.** D'après l'Observatoire Européen de l'Audiovisuel, les chaînes publiques programment plus de 50% d'œuvres européennes contre moins de 20% pour les chaînes privées. Pour autant il y'a des exceptions où le nombre d'œuvres européennes est au-dessus de la moyenne dans les chaînes privées comme par exemple en France et au Royaume-Uni (EAO, 2015) ;
- Seulement 27% des films dans les catalogues de vidéo à la demande viennent d'un des 28 États Membres tandis que 59% des films sont produits aux États-Unis.
- En termes d'exportation, en 2015, les **films français et britanniques représentaient environ 87% de l'ensemble des films européens exportés hors d'Europe**. L'Amérique du Nord est le marché « étranger » le plus important pour l'accueil de ces films européens (en termes d'admission).

2) Distribution:

- Ces dernières années, le principal changement dans le secteur de la distribution a été le passage à la télévision numérique. **La télévision**

⁶ Le nombre de personnes employées dans la définition d'Eurostat se comprend comme le nombre de personnes travaillant dans l'unité d'observation (comprend les propriétaires travaillants, les partenaires travaillant régulièrement et les membres de la famille travaillant gratuitement), ainsi que les personnes qui travaillent hors de l'unité d'observation mais qui y appartiennent et sont payées par elle (ex : représentant de vente, personnel de livraison, les équipes de maintenance). Le décompte exclut les travailleurs qui sont détachés par d'autres entreprises, ceux qui réalisent des opérations de maintenance de la part d'autres entreprises ainsi les personnes effectuant leur service militaire.

terrestre était le principal système pour recevoir la télévision en 2014 (43%) tandis que 25% recevait la télévision via satellite. En revanche, il y'a d'importantes différences entre les États Membres.

- La digitalisation a entraîné une **croissance du nombre de chaîne disponible pour le consommateur**, ce qui a résulté en une **perte de marché pour les leaders historiques qui dominaient le marché de la télévision terrestre**.
- **Les revenus des entreprises de télévision linéaires ont augmenté de 2010 à 2011**, puis ont diminué de 2012 à 2013 pour augmenter de nouveau en 2014. En ce qui concerne les différentes sources de revenus, **les recettes venant des abonnements ont augmenté** alors que celles issues du financement public ont baissées.
- En termes de part de marché, **le marché de la vidéo à la demande était d'environ 16,3 milliard de dollars américain en 2016** ce qui représentait 16% du marché des médias numériques. **En Europe**, le marché de la vidéo à la demande a un volume de **3,5 milliard de dollar américain** pour **61,6% de VàDA**.
- De 2010 à 2014, **les revenus des consommateurs de vidéo à la demande ont augmenté de 272% en Europe** (EAO,2015).

3.3 Analyse du contenu des services linéaires

Pour notre recherche nous avons utilisé une méthodologie nous permettant de collecter des données concernant les articles 16 et 17 de la Directive. Celle-ci se base sur une analyse **des grilles de programme** des cinq principales chaînes de 11 des États Membres (Allemagne, Espagne, Finlande, France, Hongrie, Italie, Pays-Bas, Pologne, Roumanie, Slovaquie et Royaume-Uni). Ces programmes ont été encodé par genre, type, origine européenne, production indépendante et date de création en prenant en compte l'ensemble des contenus diffusés durant deux semaines de 2016 (Semaine 8 en Février 2016 et semaine 49 en Novembre 2016)⁷ ;

Les principales conclusions sont les suivantes :

- **La proportion des œuvres éligibles est relativement identique pour les différentes chaînes et pays**. Le plus bas pourcentage d'œuvres éligibles par rapport au total des heures de diffusion est en Roumanie (51,10%) et le plus haut en Allemagne (80,25%).
- **La plupart des chaînes européennes respectent l'exigence de 50% de l'article 16**. Les productions européennes représentent 69,85% du total des heures de visionnage (pour 69% en 2010 et 74% en 2007) pour l'ensemble des chaînes en 2016. Cela confirme la forte attractivité des œuvres européennes pour le public européen. Les jeunes populations sont en général moins attirées par les œuvres européennes et ont tendance à davantage regarder des programmes non-européens en comparaison avec un public plus âgé.
- Sur l'ensemble de notre échantillon, les **œuvres non-européennes représentent 16,88%** du total des heures de diffusion concernées en 2016. Les résultats sont différents comparés à ceux de l'étude de 2011. Les œuvres non européennes représentaient 8,1% de l'ensemble du temps de

⁷ Dans l'étude de 2011, les Etats Membres sélectionnés étaient : Allemagne, Belgique, Espagne, Estonie, France, Italie, Pays-Bas, Pologne, Royaume-Uni, République Tchèque et Suède.

retransmission (8,2% en 2007). Il y'a une **plus grande représentation des œuvres européennes** même si les productions nationales représentent la part la plus importante des programmes.

- **Les œuvres européennes indépendantes** représentent **27,85%** de l'ensemble du total des heures de diffusion concernées en 2016 (29,4% en 2010 et 31% en 2007).
- Sur l'ensemble de notre échantillon, les **œuvres indépendantes européennes les plus récentes** représentaient **71,60%** de l'ensemble des œuvre indépendantes diffusées en 2016 (85,2% en 2010, 84,4% en 2007). Cette **proportion est encore plus importante lors des heures de grande audience** : 86,32% de l'ensemble des heures de diffusion des programmes indépendants (90,6% en 2010 et 92,4% en 2007). Cela tend à confirmer que les chaînes de télévision linéaires gratuites et les plus importantes favorisent la nouveauté.

3.4 Analyse du contenu des services non-linéaires

L'étude fournit des données importantes pour l'article 13 de la Directive en se basant sur un échantillon des programmes de 50 chaînes non-linéaires de 6 États Membres (Allemagne, Espagne, France, Italie, Pologne et Royaume-Uni). Les programmes ont été encodés par catégorie : contenu (vidéo à la demande ou service de rattrapage), les marchés de destination (plusieurs pays, un seul), les modèles économiques (Télévision à la Demande, VàD, « Electronic Sell Through » -contenu pouvant être acheté sur une chaîne puis stocké-, sans publicité, service de rattrapage des chaînes gouvernementales). Comme le recensement de l'audience pour les services non-linéaires n'est pas aussi centralisé et uniforme que pour les services linéaires, nous avons fait une analyse séparée basée sur le nombre d'utilisateurs de l'application JustWatch.

Les principales conclusions sont :

- **99,41% du total des heures de diffusion et 99,85% des titres des services de vidéo à la demande sont des œuvres éligibles** incluant principalement du cinéma, des fictions télévisées et des documentaires. **90,44% du total des heures de diffusion et 91,49% des titres des services de rattrapages des programmes sont des œuvres éligibles.**
- Les catalogues de rattrapages des programmes sont proches de la programmation de leurs chaînes linéaires. En revanche, les services de vidéo à la demande qui se concentrent davantage sur l'acquisition, la distribution et la promotion ont peu de programme d'information ou de divertissement.
- **Les productions européennes sont beaucoup moins présentes dans les catalogues de vidéo à la demande que dans ceux des services de rattrapages de programme.** En effet, 89,06% du total d'heure des catalogues de rattrapage de programme et 90,28% de l'ensemble des titres disponibles sont des œuvres européennes en comparaison avec 28,86% du nombre total d'heure de la programmation et 29,75% de l'ensemble des titres la vidéo pour la demande.
- Les fournisseurs de service non-linéaires ayant seulement **un seul pays comme marché de diffusion** ont un **pourcentage d'œuvres européennes plus important** en termes de titre et d'heure (44,87% et 45,91%) que ceux diffusant **dans plusieurs pays.**

- En analysant le nombre de cliques sur certains titres pour représenter la consommation audiovisuelle dans 5 États Membre **il apparaît que la préférence du public va davantage vers les œuvres audiovisuelles non européennes**. Néanmoins, certains fournisseurs de services non-linéaires ont un plus grand ratio «de consommation» d'œuvres européennes (tels que : BBC, ITV, All4, Now TV) ce qui semble être le résultat **d'investissement de la part de ces acteurs dans des productions originales** ou d'une **production audiovisuelle nationale plus importante**.

3.5 Analyse prospective

Les principaux résultats de l'analyse légale et économique ont permis d'élaborer un processus de contrôle basé sur 12 indicateurs de performance. Dans la mesure du possible, ces indicateurs de performance ont été conçus afin de pouvoir s'adapter aux changements prévisibles qui vont être introduits par la révision de la directive SMA.

Les objectifs stratégiques du cadre proposé pour les indicateurs de performance devraient être :

- De promouvoir et de développer la diversité culturelle (l'accès et la consommation actuelle), telle que prévue dans la directive et l'article 167 du TFUE;
- Éviter les fardeaux inutiles pour les États Membres et l'industrie audiovisuelle ;
- Contrôler la mise en œuvre des articles 13, 16 et 17 de la directive à la lumière des développements précédents.

Dans le but de parer aux difficultés liées au contrôle de l'article 13 ou à toutes futures législations concernant les services non-linéaires, trois initiatives visant à aider les législateurs et les fournisseurs de service ont été considérées :

- **Un dialogue renforcé entre les acteurs concernés et une plus grande participation par rapport aux obligations de rapport** pourraient faciliter le processus de rapport et renforcer la confiance mutuelle. Avec la révision de la directive SMA, la coopération entre les États Membres pourrait devenir plus importante, notamment avec la possibilité d'introduire un prélèvement sur les fournisseurs de service à la demande établis hors des États Membres ;
- Tandis que les différentes mises en œuvre dans les États Membres ne permettent pas de développer une approche unique en termes de contrôle et de rapport, **certaines tâches en termes de contrôle et de rapport pourraient être mutualisées** au bénéfice des États Membres et des fournisseurs de service audiovisuel.
- Un « **Big Data** » concernant le comportement du public pourrait permettre de contourner les difficultés rencontrées par les moyens classiques de collecte de données. Pour autant, il y'a des coûts relatifs aux techniques et moyens pour procéder à la mise en place de ce « Big data » comme cela s'appuie souvent sur des structures complexes.

4 Introduction: Cultural Diversity in the European Audiovisual Media Policy Landscape

The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions defined “**cultural diversity**” as “the manifold ways in which the cultures of groups and societies find expression whatever the means and technologies used”⁸. Parties which ratify this convention may adopt *measures aimed at promoting the diversity of cultural expressions within their territory, including measures aimed at enhancing the diversity of the media* (i.e. through public service broadcasting)⁹.

The founding principles of the EU are based on the values of pluralism, cultural and linguistic diversity, as specified in the Treaty on European Union (TEU)¹⁰. As such, in May 2006, the EU, along with UN Member States, ratified the Convention, paving the way for enhanced cultural cooperation notably through exchanges of views and best practices in public policies to promote cultural diversity.

As stated by the UNESCO Convention, the media, particularly the audiovisual media, is instrumental in disseminating Member States’ socio-cultural background, thus contributing to expressing and acknowledging Europe’s cultural diversity. Media policy therefore should be designed as an enabling mechanism, with a view to enhancing the media’s capacity to play a positive role in relation to cultural diversity.¹¹

The EU’s commitment to the promotion of cultural expressions in the audiovisual sector has been shaped in relation to its marginal cultural competences and those arising from the freedom to provide services in the internal market. The 1974 judgment of the Court of Justice of the European Union on the Sacchi case stated that “a television signal must, by reason of its nature, be regarded as provision of services. [...] It follows that the transmission of television signals [...] comes within the rules of the Treaty relating to services. [...] Trade in material, sound recordings, films, apparatus and other products used for the diffusion of television signals are subject to rules relating to freedom of movement for goods.”¹²

This marked the beginning of considering audiovisual products as standing at the **crossroads between cultural and economic services**.

The EU’s freedom to provide services has been instrumental in removing restrictions imposed by Member States against broadcasting foreign television programmes, which explains the EU’s gradually accumulated regulatory influence in the audiovisual field, over national cultural policies. An important milestone in the development of EU audiovisual media policy was the adoption of the Television Without Frontiers Directive (TVWF) in 1989, a liberalisation measure aimed at ensuring the conditions for the

⁸ UNESCO, *Convention on the protection and promotion of the diversity of cultural expressions*, 2005, Art.4 <http://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf>

⁹ Ibidem, art 6

¹⁰ Treaty on the European Union, Art. 2 and 3 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT>

¹¹ Kristina Irion, Peggy Valcke, ‘Cultural diversity in the digital age: EU competences, policies and regulations for diverse audiovisual and online content’, in *Cultural Governance and the European Union*, Palgrave MacMillan (ed), 2014

¹² Judgment of CJEU, Sacchi, Case 155/73, 1974.

consolidation of the Single Market for media services.¹³ The TVWF regulated four major areas: i) the promotion of European works and works by independent producers; ii) advertising, teleshopping and sponsoring; iii) the protection of minors and public order; and iv) the right of reply. The first area already reflected the EU's interest towards the promotion of cultural diversity through audiovisual media.

The need to amend the TVWF came from reasons endogenous to the audiovisual media landscape, which changed dramatically with the sudden development of digital technologies. The development and increased popularity of new digital behaviours and services like pay-per-view solutions, non-linear services, peer-to-peer exchanges of audiovisual content or new advertising methods demanded a relevant modernisation of the existing legal framework for European broadcasting.

The Audiovisual Media Services Directive (AVMSD) – the successor of the TVWF – currently forms the central piece of EU regulation in the audiovisual sector. To mark the transformations in media production, format and distribution, the AVMS Directive introduces the notion of “**audiovisual media services**” – an umbrella term which regroups classic television formats (**linear services**) with on-demand offers in virtual content libraries (**non-linear services**), thus extending the scope of the new EU audiovisual regulation.

The core aspect of the AVMSD is that it aims to maintain the internal market for audiovisual media services previously established by the TVWF, through the “**country of origin**” **principle**, which states that a provider of audiovisual media services is only subject to regulation of the Member State from where it is located. A receiving Member State cannot impose additional restrictions, except under special derogations. This is accompanied by the “**positive harmonisation**” **principle**, which ensures the transposition of a minimal harmonised regulation into Member States' national law that regulates the audiovisual media services. This gives flexibility to Member States to impose additional requirements to the minimal AVMSD's regulation to media service providers under their jurisdiction – for instance, in order to pursue cultural diversity.

4.1 Study Objectives

The aim of the study is to provide the European Commission with the tools and information required for the monitoring and evaluation of the impact of the measures, taken at both EU and national level. It will thus help promote the distribution and production of European and independent television productions along with the production of and access to European works listed in on-demand services.

The introduction above discussed how the EU legislation in the audiovisual sector is underpinned by economic integration and internal market objectives pertaining to the EU's core competencies, together with the promotion of cultural diversity that is enshrined in EU treaties¹⁴. Given the dual nature of audiovisual media (equally considered as an economic and a cultural product), to what extent is the EU

¹³Mira Burri-Nenova, 'Cultural Diversity and the EC Audiovisual Media Service Directive: Beyond the Handsome Rhetoric' in *Cultural Diversity and the AVMS*, Tillburg University (Ed), 2010. pp.1-27

¹⁴Treaty on the Functioning of the European Union, Art. 167 http://eur-lex.europa.eu/resource.html?uri=cellar:41f89a28-1fc6-4c92-b1c8-03327d1b1ecc.0007.02/DOC_1&format=PDF

audiovisual legislation emphasising positive synergies for cultural diversity in the Single Market?

The paper investigates this question from two perspectives:

- 1. EU level:** the extent to which a balance between the free circulation of audiovisual media and the preservation of values of cultural identity and diversity is achieved through the implementation of the AVMSD at EU level;
- 2. National level:** the extent to which the flexibility of the AVMSD implementation across Member States benefits the expression of cultural diversity and allows Member States to tailor their national policies by including **additional measures** (or higher requirements) in their implementation of the AVMSD as a way of promoting European works.

In addition, the study will provide an analysis of the content offer on both linear broadcasting and on-demand services covering the following aspects (please refer to section 12 & 13):

- a) Programming with details on number of titles, genres, duration and related audience for linear broadcasting of audiovisual works;
- b) Composition of catalogues and related consumer demand for on-demand services;
- c) Methods to ensure prominence of European works in on-demand service catalogues and their potential effects on audience demand for such works;
- d) Investment by TV broadcasters and on-demand services in European works;
- e) Availability on Member State rights markets (both on linear TV and on-demand services) of audiovisual works; and
- f) Impact on cultural diversity of the abovementioned elements.

This research will build on the previous monitoring studies on the AVMS Directive to ensure compatibility, the first report on the Application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2009-2010 and the Second Report on the implementation of Articles 16 and 17, which was published as part of the REFIT Evaluation and Impact Assessment of the EU Audiovisual Media Services Directive in May 2016¹⁵. At the same time, the current study focuses more closely on the issue of the expression of cultural diversity in the context of the extremely dynamic audiovisual marketplace.

4.2 Study Scope

The research will focus on the articles 13, 16 and 17 of the Directive, which pertain to the promotion of distribution and production of European works and independent productions of television programmes and the production of and access to European works for on-demand services.¹⁶

The study will provide a thorough analysis of the implementation measures of articles 13, 16 and 17 in all EU Member States. For the market analysis, the scope includes

¹⁵ <https://ec.europa.eu/digital-single-market/en/news/impact-assessment-accompanying-proposal-updated-audiovisual-media-services-directive>

¹⁶See Articles 13, 16 and 17 of Directive 2010/13/EU, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0013>

all Member States and EEA Contracting Parties as of 1 January, 2013, to 31 December, 2015, for linear services and as of 1 January, 2011, to 31 December, 2015, for non-linear services.

4.3 Data collection tools

4.3.1 [Interviews](#)

Face-to-face or telephone interviews were conducted with the different categories of stakeholders involved in or impacted by the AVMSD, including European and national associations of audiovisual producers, European and national associations of audiovisual distributors, individual linear service providers, individual non-linear service providers and individual audiovisual producers. The complete list of stakeholders interviewed can be found in the Annexes.

To take into consideration the specificity and relevance of information collected during the interviews, different sets of questions were asked, according to the profile, the specific area of competence or activity of the stakeholders.

The study team faced some limitations during the interview phase, as interviews do not cover all Member States and were based on the willingness of stakeholders to participate in this study.

4.3.2 [Document review](#)

A document review was conducted to identify the legal requirements under art. 13, 16 and 17 of the AVMS Directive.

For the assessment, a review was made of reporting and monitoring documents from the European Audiovisual Observatory, Ofcom, CNC, the European Commission, the European Parliament and the European Investment Bank as well as statistics from Eurostat.

To assess the perception of stakeholders regarding the promotion and distribution of European works, the evaluator has analysed media and the results of position papers of external stakeholders (e.g. EBU, ACT, Cable Europe, SAA).

The complete list of literature can be found in Section 5 of the Annexes.

4.3.3 [Online survey](#)

The study team launched four online surveys: national regulatory authorities, linear service providers, non-linear service providers and audiovisual producers.

Due to data privacy, VVA cannot provide any information related to the identity of the respondent, if disclosure is not legally authorised. The link to the online survey was created with the SurveyGizmo survey tool and sent to the selected stakeholders by VVA.

The survey questionnaires were drafted on the basis of the “2011 Study on the Promotion of European Works in Audiovisual Media Services” online survey and was approved by the European Commission (DG CONNECT).

The main limitations of the online survey was the very low response rate among industry players, and given the diversity of profiles not all questions were answered to the same extent, as respondents are often more involved in certain areas of the AVMSD than others.

4.3.4 [Case studies](#)

The case studies developed on the basis of the desk research and the survey responses are meant to underline especially interesting measures for the promotion of European works via Articles 13, 16 and 17 of the Directive. They support the conclusions of this paper by identifying transferable solutions already implemented in some Member States with a view to improving the implementation and enforcement of the aforementioned articles of the Directive. We carried out the following case studies, with a view to better understanding how to strengthen future monitoring of article 13:

- Monitoring system for on-demand services promoted by the CSA in France;
- Prominence measures promoted by the CSA in Belgium on the promotion of EU works in the on-demand services; and
- Analysis of data reported for article 13 and options for EU guidelines.

4.3.5 [Workshop](#)

The study team organised a peer review workshop in Brussels on 29 September, 2017. The purpose of this workshop was to present the preliminary results of the study to industry representatives, representatives of the countries covered by the study and stakeholders in general. It was designed to stimulate a discussion among interested parties in order to validate the findings of the study contained in the preliminary final study report.

5 Legal analysis – central concepts and definitions

In order to better understand the AVMS Directive, its implications and how its implementation varies across Member States, the report provides a short definition of key concepts, as outlined in the Directive. Where no definition is provided in the AVMS Directive, we provide a more detailed analysis per Member State (e.g. for independent producers in section 5.7). At the same time, the application of general definitions of key concepts such as audiovisual media service or European works reveals different challenges in the promotion of European works at EU level or the monitoring of the implementation by Member States, as will be further explained in this report (see especially section 7.3).

5.1 Audiovisual media services

The most important element of the reform in the EU audiovisual legal landscape was the readjustment of the scope of the AVMS Directive, as compared to the previous TVWF. The Commission's argument was that, given the impact that audiovisual media services have on economy and society, the audiovisual regulation should apply to all content services, no matter the technology that creates them – as opposed to previous regulation in which different media received different treatment and therefore caused regulatory asymmetries. In short, it aims to create a level playing field for the different services.

To reflect this new situation, a broader definition of **audiovisual media services** was proposed, which also implies a larger scope of the application of the AVMSD. According to the Article 1 (1) (a)¹⁷ of the Directive, an audiovisual media service is described through six different elements:

1. A *service* as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union;
2. Provided under *editorial responsibility* of a media service provider;
3. Which principal purpose is *the provision of programmes* consisting of moving images with or without sound;
4. In order to *inform, educate or entertain*;
5. To the *general public*; and
6. By *electronic communications networks*.

5.2 Media-service providers

According to Article 1 (1) (d) of AVMS Directive, the **media service provider** is the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised.

5.3 Difference between online press and audiovisual media services

In *New Media Online*, ECJ draws a line between the press (excluded from the scope of

¹⁷See Article 1 of Directive 2010/13/EU, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0013>

AVMSD) and an audiovisual media service. The Court ruled that “if the service offered in the video subdomain has form and content which is independent of that of the written press articles of the publisher of the online newspaper, that service falls within the scope of Directive 2010/13”.¹⁸

5.4 Television broadcasting (linear service)

Television broadcasting is an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.¹⁹ “Television broadcasting currently includes, in particular, analogue and digital television, live streaming, webcasting and near-video on demand, whereas video-on-demand (VOD), for example, is an on-demand, audiovisual media service”²⁰.

5.5 On-demand audiovisual media service (non-linear service)

An **On-demand, audiovisual media service** refers to an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at their individual request on the basis of a catalogue of programmes selected by the media service provider.²¹

5.6 European works

Another term that is central to Articles 13, 16 and 17 of the Directive is **European works**. Its definition will prove useful in the discussion about the expression of cultural diversity across Europe.

The term **European works** is defined in Article 1 (1) (n) of the AVMSD as follows:

- (i) Works originating in Member States;
- (ii) Works originating in European third countries party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3; and
- (iii) Works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements. Latter provisions are conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned.

The works referred to in points (i) and (ii) of paragraph 1 are works mainly made with authors and workers residing in one or more of the states referred to in those provisions provided that they comply with one of the following three conditions:

- (i) They are made by one or more producers established in one or more of those states;
- (ii) The production of the works is supervised and actually controlled by one or more producers established in one or more of those states; and
- (iii) The contribution of co-producers of those states to the total co-production costs is preponderant and the co-production is not controlled by one or

¹⁸ CJEU, *New Media Online v Bundeskommunikationssenat*, Case C-517/09

¹⁹ AVMSD, art 1(1)(e)

²⁰ AVMSD, para 27

²¹ AVMSD, Article 1(g)

more producers established outside those states.

Works that are not European within the meaning of point (n) of paragraph 1, but that are produced within the framework of bilateral co-production agreements concluded between Member States and third countries, shall be deemed to be European works provided that the co-producers from the Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.

5.7 Independent producers

For the purpose of the implementation of Article 17 of the Directive, which was designed to promote European works created by independent producers, criteria are needed to deem a producer independent of a broadcaster.

The AVMS Directive has no definition of independent producers and thus no exact criteria to delimit independent producers from broadcasters. But recital 71 states that, when defining “**producers who are independent of broadcasters**” as referred to in Article 17, Member States should take appropriate account notably of criteria such as the ownership of the production company, the number of programmes supplied to the same broadcaster and the ownership of secondary rights.

Therefore, it is left to the Member States to define what is meant by “independent producer”.

Very few countries have adapted their definitions of an independent producer since the previous study on the implementation of the AVMS Directive. Currently, five **countries** remain without any definition of an independent producer: Austria, Denmark, Germany, Liechtenstein and Sweden. Cyprus introduced a simple definition in its Radio and Television Broadcasters Law of 2016.²²

All other countries use a combination of four main elements to define an independent producer, as summed up in the following table. Changes to the previous study are shown in bold (for Cyprus, Spain and Croatia). Cyprus and Croatia introduced a definition in their national law, and Spain added a specification on the limit on supply of programmes to a single broadcaster.²³

Table 1 : Criteria for definition of independent producer

Member State	Criteria for definition of an independent producer			
	Ownership	Programme supply	Secondary rights	Autonomy
Belgium (French)	Yes	Yes		
Belgium (Flemish)	Yes			
Bulgaria	Yes	Yes		
Cyprus	Yes			
Czech Republic	Yes	Yes		Yes

²² Based on results from the survey to NRAs

²³ Based on results from the survey to NRAs

Member State	Criteria for definition of an independent producer			
	Ownership	Programme supply	Secondary rights	Autonomy
Estonia	Yes	Yes	Yes	
Spain	Yes	Yes		Yes
Greece				Yes
Finland	Yes	Yes		
France	Yes	Yes	Yes	Yes
Croatia	Yes	Yes		Yes
Hungary	Yes			Yes
Ireland	Yes			
Italy	Yes	Yes		
Lithuania	Yes			Yes
Luxembourg	Yes			
Latvia	Yes	Yes		Yes
Malta	Yes			Yes
Netherlands	Yes	Yes		Yes
Norway	Yes	Yes	Yes	
Poland	Yes			Yes
Portugal	Yes	Yes	Yes	Yes
Romania	Yes			Yes
Slovenia	Yes	Yes		Yes
Slovakia	Yes	Yes		Yes
United Kingdom	Yes			

Ownership is the most commonly used criterion for defining whether or not a producer is independent. Independence is defined by placing a cap on the number of shares a broadcaster can hold in a production company, or that a production company can hold in a broadcaster, or both.

The *programme supply* criterion captures the extent to which a producer's independent status may be compromised if too great a proportion of its output is supplied to one broadcaster.

The *secondary rights* criterion relates to the extent to which an independent producer retains secondary rights when transferring rights to a broadcaster.

The *autonomy* criterion is not mentioned in the Directive. This criterion has been created to include other elements in the national definitions of an independent

producer which are relevant for determining the extent to which an independent producer may in fact conduct his business without a broadcaster's intervention.²⁴ For example, In Ireland and Slovakia an *independent producer* is defined by its capacity to exercise control over the actors, production staff, equipment and facilities used in the production. Similarly, in France the broadcaster cannot assume direct or indirect financial, technical or artistic initiative or responsibility for the production of an audiovisual work or guarantee the completion of the production.²⁵ Some Member States require the producer to not hold positions within the broadcaster's organisation (employee, board member, etc.). This requirement is found in Greece, Lithuania, Malta, Poland, Slovenia and the United Kingdom²⁶.

6 Implementing measures of the AVMSD

Articles 13, 16 and 17 of the Directive were designed with the view to fostering cultural diversity in the European audiovisual media landscape, for both linear (art. 16, 17) and non-linear services (art 13). On a general note, the free circulation of audiovisual media services as facilitated by the Directive has been instrumental to permeating what were previously national domains, thus contributing to the diversity of private television and audiovisual formats.²⁷

The measures of AVMSD intended to serve cultural goals involve the requirements for European works whose purpose are "to recover necessary investments not only by establishing common rules opening up national markets, but also by envisaging for European productions a majority proportion in television broadcasts of all Member States".²⁸

The rationale underlying the majority proportion requirement for linear services has necessitated an adaptation with regard to the ever-dynamic on-demand services. The on-demand providers are required to promote European works by:

- **Financial contribution to the production and rights acquisition of European works** or
- **Share** and/or
- **Prominence of European works in their online catalogue of programmes.**

This allows Member States to enjoy an important margin of manoeuvre when implementing the Directive, with a view to facilitating the development of the emerging market of non-linear services across Europe.

This chapter analyses in detail how Member States have implemented the provisions of Articles 13 (section 6.2), 16 and 17 (section 6.1). The information on this was collected and cross-checked through i) Survey to the national authorities (NRA and relevant ministries); ii) the AVMS database of the European Audiovisual Observatory; and iii) double-checking national implementing measures directly. Each section of the chapter follows the same structure:

²⁴ Attentional (2011), Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services, p.28.

²⁵ Broadcasting Authority (Amendment) Act, 1993, Article 5 (amending Broadcasting Authority Act, 1960).

²⁶ Attentional (2011), Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services, p.30.

²⁷ Kristina Irion, Peggy Valcke, *op.cit.*

²⁸ AVMSD, recital 65

- *Flexibility*: the three articles leave room for some degree of interpretation on how Member States shall achieve the objectives set out by the Directive. Each section discusses how Member States are actually interpreting these 'flexibility' clauses.
- *Level of requirements*: whenever specific requirements (e.g. majority proportion of European works in total transmission time, percentage reserved in programming for recent European works) are set in the AVMS Directive, this section assesses how Member States have interpreted these requirements (neutral interpretation, lower level of requirements or higher level of requirements);
- *Additional requirements*: additional provisions adopted by Member States that are not explicitly mentioned in the Directive.

6.1 Promotion of European works within linear services

According to Article 16 (1) of the AVMS Directive, broadcasters in Europe are required to **reserve a majority of their transmission time to European works**. This majority proportion should be achieved progressively, on the basis of suitable criteria and in relation to the broadcaster's informational, educational, cultural and entertainment responsibilities toward its viewers.

In addition, Article 17 of the AVMSD puts forward a set of measures with the purpose of stimulating independent producers and, subsequently, "the creation of small and medium-sized enterprises and to offer new opportunities and marketing outlets to creative talents to cultural professions and to employees in the cultural field".²⁹ In this sense Member States are required to progressively implement a 10% quota in favour of independent European producers, either in terms of the broadcasters' transmission time or their programming budget. Special focus will be put on promoting recent works – i.e. works transmitted within five years of their production.

Programme transmission time, within the meaning of Articles 16 (1) and 17 of the AVMSD, refers to a broadcaster's total transmission time, excluding the test card and the time reserved for news, sports events, games, advertising, teletext services and teleshopping. As far as transmission time devoted to broadcasters' self-promotion is concerned, only trailers consisting of extracts from programmes should be considered as programmes, as clarified in Recital 96. Similarly, trailers of programmes qualifying for the calculation of the European and/or independent works should also be taken into consideration for reporting purposes and count towards the requirements set out in AVMSD and implementing measures.³⁰

6.1.1 Flexibility of implementation of Articles 16 and 17

The wording of Articles 16 and 17 leaves room for some degree of flexibility in their implementation. Such terms as "where practicable", "appropriate means", "progressively" are not strictly defined and thus allow Member States the possibility to establish more precise conditions or to simply adopt the minimal conditions of the Directive.

²⁹ AVMSD, recital 68

³⁰ European Commission, *Audiovisual and media policies. Revised Guidelines for monitoring application of articles 16 and 17 of the AVMS Directive*, 2011

- Article 16

The "**where practicable**" clause in Articles 16 opens the door for exemptions and a flexible approach to the rules.³¹ Six Member States adopted the "where practicable" clause (see Table 2) in their national law, although they did not add any further specification to this clause.

The clause "**this proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria**" (also called a "non-slip back clause") allows broadcasters to comply with the requirements gradually, but it does not permit broadcasters to reduce the number of European works that they showed in a previous year. In total 11 Member States or EEA countries (Austria, Croatia, Cyprus, Iceland, Ireland, Liechtenstein, Luxemburg, Malta, the Netherlands, Romania and the UK) included a non-slip back clause (see Table 2). Some of these Member States include potential exemptions, in addition to the non-slip back clause. For example, in the Netherlands and in Croatia, exemptions are possible (showing a lower proportion of the European works than what is normally foreseen in law) yet subject to a 10% and 20% minimum threshold respectively. The non-slip back clause also applies to those exemptions. Also national legislation can directly foresee cases where lower requirements apply – e.g. in the UK new channels can progressively reach the required proportions within the five year period.

Fifteen countries did not adopt any of the clauses but rather implemented requirements of the AVMSD without introducing exceptions for Article 16. These countries include *inter alia* Estonia, Finland, France, Germany, Greece, Hungary, Poland and Portugal (see Table 2).

Table 2: Flexibility in implementation of Article 16 in the EU Member States³²

Country	Where practicable	Having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public	Should be achieved progressively
Austria	v	v	
Belgium (Fl)	v		
Belgium (Fr)			
Bulgaria	v		
Croatia		v	v (minimum initial proportion 20%)
Cyprus		v	v
Czech Republic	v		
Denmark	v		
Estonia			
Finland			

³¹ European Commission, Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services, 2011, p 24

³² Information provided in the table was retrieved from the European Audiovisual Observatory AVMS Database and from the European Commission "Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services" (Appendix) of 2011. Information has been completed by the results of the survey addressed to the NRAs conducted by KEA European Affairs.

Country	Where practicable	Having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public	Should be achieved progressively
France			
Germany			
Greece			
Hungary			
Iceland			v (make every effort)
Ireland	v	v	v
Italy			
Latvia			
Liechtenstein	v	v	v
Lithuania	v		
Luxemburg	v	v	v
Malta		v	v
Netherlands			v (exemption may be granted, subjected to a 10% minimum)
Norway			
Poland			
Portugal			
Romania		v (but only in the case of the original Romanian works requirement)	v (but only in the case of the original Romanian works requirement)
Slovakia	v	v	
Slovenia			
Spain			
Sweden	v (unless there are special grounds not to do so)		
UK	v		v

- Article 17

In relation to the implementation of Article 17, a few Member States have adopted a slightly different definition of the scope of **programme transmission time** from the Directive. As such, the Danish national legislation does not exclude teleshopping from the total transmission time. In Belgium (French-speaking community), teletext services are not excluded, but instead self-promotion material is not covered in the scope of Article 17³³.

The "**where practicable**" clause of Article 17 is present in the legislation of nine countries. In the other 19 Member State legislations, which are available in the Audiovisual Observatory Database, this clause is absent (see Table 3). Similarly to Article 16, no further specification has been provided in national law.

³³ European Audiovisual Observatory AVMS Database

The clause “**shall be achieved progressively**” is included in Austria, Belgium (Flemish community), Bulgaria, Croatia, Cyprus, Ireland and Malta³⁴. In Croatia, Cyprus, Ireland, Malta and Slovakia the law also takes into account the “**informational, organisational, educational and other responsibilities of the broadcaster to its viewers**”. Germany also applies this specification in relation to thematic channels.

Table 3: Flexibility in implementation of Article 17 in the EU Member States³⁵

Country	Where practicable	Having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public	Shall be achieved progressively
Austria	v		v
Belgium (French speaking community)			
Belgium (Flemish community)			
Bulgaria			v
Cyprus	v	v	v
Czech Republic	v		
Denmark			
Estonia			
Germany		v (for thematic channels)	
Spain			
Finland			
France			
UK	v		
Greece			
Croatia		v	v

³⁴ According to Flemish community - Act on Radio and Television Broadcasting - Consolidated 12 August 2014 - Art. 155, The television broadcaster of the Flemish Community and the private linear television broadcasters aim to reserve at least 10% of the transmission time excluding time reserved for sports, games, advertising, teletext and teleshopping for European productions that have been created by independent producers, which have no ties with television broadcasters.

³⁵ Information provided in the table was retrieved from the Audiovisual Observatory Database and has been completed with the results of the survey addressed to the NRAs conducted by KEA in the scope of this study.

Country	Where practicable	Having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public	Shall be achieved progressively
Hungary			
Ireland	v	v	v
Italy	v		
Lithuania	v		
Latvia			
Malta		v	v
Netherlands			
Poland			
Portugal			
Romania			
Sweden	v (unless there are special grounds not to do so)		
Slovenia			
Slovakia	v	v	

6.1.2 Level of requirements of Articles 16 and 17 adopted by Member States

In accordance with Article 16, all Member States require TV broadcasters to reserve a majority proportion of the transmission time to European works. In some cases, such requirements differ between public and private broadcasters. Some Member States also establish a more specific threshold in terms of share of European works in total transmission time.

For example, in Austria only public broadcasters are obliged to reserve a share of European works for the independent productions, while private broadcaster are required to do that "in the framework of practical feasibilities". Also in Italy and Slovakia requirements for the public broadcasters are higher than for private broadcasters.

In France, the minimum required proportion is 60% for the European works for the private broadcasters and 70% for French public television channels³⁶. In Hungary, public broadcasters must reserve 60% for European works while for private

³⁶ French public national television broadcaster, formed from the integration of several public television channels.

broadcasters it must simply be the majority proportion. Bulgaria, Netherlands, Norway and Slovenia used a marginally lower minimum threshold than the Directive, requiring at least 50% of the transmission time to be reserved for European works.

France has the highest required proportion of European works in total qualifying transmission time (at least 60%). Hungary requests the same quota, but only for public broadcasters (see Table 4).

Table 4: Proportion of European works in transmission time across EU Member States or EEA and CH (Article 16) ³⁷

Country	Majority proportion
Austria	V
Belgium (Fl)	V
Belgium (Fr)	V
Bulgaria	At least 50%
Croatia	V
Cyprus	V
Czech Republic	V
Denmark	V
Estonia	V
Finland	V
France	60%
Germany	V
Greece	V
Hungary	v (60% of European works for a public broadcaster)
Iceland	V
Ireland	V
Italy	V
Latvia	v (teletext not excluded from transmission time)
Liechtenstein	V
Lithuania	V
Luxemburg	V
Malta	V
Netherlands	At least 50%
Norway	At least 50%
Poland	V
Portugal	v (television operators who operate television programme services with national coverage)
Romania	v
Slovakia	v (ancillary broadcasting is excluded from transmission time)
Slovenia	at least 50%
Spain	v
Sweden	V
Switzerland	substantial proportion
UK	V

Independent productions

In relation to Article 17, national approaches differ in the choice of the measure.

³⁷ Information provided in the table was retrieved from the Audiovisual Observatory Database and from the European Commission "Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services" (Appendix) of 2011. Information has been completed by the results of the survey addressed to the NRAs conducted by KEA European Affairs

A majority of the countries chose only one option: either to require 10% of the transmission time to be reserved for the independent productions or 10% of the budget to be allocated for the production³⁸ of such works. Thirteen countries provided both options, as in the AVMSD. In several countries the quota is higher: in Bulgaria, broadcasters must reserve 12% of the transmission time to independent productions; in Finland, it is 19%; and in Italy and Slovakia the required proportion is higher only for the public broadcasters, 15% and 20% respectively (see Table 5).

In France, there is no provision in law that addresses separately independent productions. Instead, independent productions are included in the list of works (European works and original French works) whose development broadcasters must contribute towards (in general it is 15% of the net annual revenue of the previous financial year).³⁹

Table 5: Requirements for independent producers in the EU Member States or EEA and CH (Article 17)⁴⁰

Exact text of the Directive (at least 10% of the transmission time or 10% of the budget)	At least 10% of the transmission time	At least 10% of the budget	Other
Austria	Belgium (Flemish community)	Italy (15% for public broadcasters ⁴⁴)	Bulgaria (12% of the transmission time)
Cyprus	Belgium (French-speaking community)		Finland (19% of the transmission time or 19% of the budget)
Czech Republic	Estonia		France (15% of the annual revenues for the European works, including independent works)
Denmark	Greece		Germany (general television channels should comprise a significant proportion of own productions as well as commissioned and joint productions originating in German language regions and Europe as a whole. The same relates to thematic channels as far as this is feasible regarding their focus in terms of
Iceland	Hungary		
Ireland	Latvia		
Liechtenstein	Lithuania		
Malta	Norway		
Netherlands (16.5% of budget for public broadcasters ⁴¹)	Poland		
Romania ⁴²	Portugal		
Slovakia (15% for public broadcaster ⁴³)	Romania		
	Slovenia		

³⁸ Note: unless specified otherwise, production covers pre-production or acquisition of rights.

³⁹ European Audiovisual Observatory Database.

⁴⁰ Information provided in the table was retrieved from the Audiovisual Observatory Database and from the European Commission "Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services" (Appendix) of 2011. It has been completed with the results of the survey addressed to the NRAs conducted by KEA in the scope of this study.

⁴¹ Media Act 2008, section 2.116, para 1 and Media Decree 2008, article 14b

⁴² Law no 504/2002, 2002 (The Audiovisual Law), published by Official Gazette of Romania, PART I, November 19th 2009, article 22

⁴³ Act no 308/2000 Coll. On Broadcasting and Retransmission

⁴⁴ In the survey conducted by KEA, Italian NRA points that reserving net annual revenues instead of programming budget represents a more restrictive criterion.

Exact text of the Directive (at least 10% of the transmission time or 10% of the budget)	At least 10% of the transmission time	At least 10% of the budget	Other
<p>Sweden</p> <p>UK</p>	<p>Spain</p>		<p>content)</p> <p>Switzerland (an appropriate amount of broadcasting time or programme costs for the broadcasting of Swiss and European works by independent producers)</p>

In Austria, only public broadcasters are obliged to fulfil quota requirements for the independent productions while private broadcaster must do that “in the framework of practical feasibilities”. Also in Italy and Slovakia, the requirements for public broadcasters are higher.

In Germany, general television channels should comprise a significant proportion of their own productions as well as commissioned and joint productions originating in German language regions and Europe as a whole. The same requirement relates to thematic channels as far as this is feasible regarding their focus in terms of content⁴⁵ (see Table 3).

Recent works

All Member States apply the same definition of “**recent works**” as in the AVMSD except Czech Republic, whose legislation defines recent works as those which are transmitted within five years since they were made public.⁴⁶

Twenty-six national legislations (Flemish- and French-speaking parts of Belgium are counted as two) include provisions on recent works. In France, Greece, Norway and Switzerland legislation doesn’t mention recent works (see Table 6):

- In nine Member States, an adequate proportion of transmission time or an adequate proportion of funding has to be reserved to recent works.
- Eight countries require that a majority or half of the time allocated to independent productions are reserved for recent works.
- In Belgium (French-speaking community), Lithuania and Portugal *all* of the independent works for which transmission time or funding is reserved have to be recent.
- Six countries have adopted other solutions, often by specifying a specific share of recent independent works. In Czech Republic, at least 10% of the broadcasting time or funding for the independent works have to be recent works. In Estonia, recent works “shall be included” but no proportions are

⁴⁵ Interstate Broadcasting Treaty, art 6(3)

⁴⁶ European Audiovisual Observatory AVMS Database

provided by law. In Hungary, 8% of the transmission time is allocated to recent Hungarian works.

Table 6: Requirements for recent works in the EU Member States (Article 17) ⁴⁷

Adequate share/significant proportion of transmission time or funding for recent works	All works made by independent producers should be recent	Majority/half of the time allocated for recent independent productions	Other
<p>Austria</p> <p>Belgium (Flemish-speaking Community)</p> <p>Bulgaria</p> <p>Cyprus</p> <p>Denmark</p> <p>Iceland</p> <p>Luxemburg</p> <p>Malta</p> <p>Romania⁴⁸</p>	<p>Belgium (French-speaking Community)</p> <p>Lithuania</p> <p>Portugal</p>	<p>Croatia</p> <p>Finland</p> <p>Latvia (major proportion)</p> <p>Poland</p> <p>Slovenia</p> <p>Spain</p> <p>Sweden (as large proportion as possible)</p> <p>UK</p>	<p>Czech Republic (at least 10% of the broadcasting time or funding for the independent works has to be for recent works)</p> <p>Estonia (shall be included)</p> <p>Hungary (at least 8% of its transmission time to broadcasting Hungarian works made to order by independent producers or purchased from such producers within five years of production)</p> <p>Czech Republic (at least 10% of the broadcasting time or funding for the independent works has to be recent works)</p> <p>Estonia (shall be included)</p> <p>Italy (at least 10% of the transmission time for recent works and 20% for public broadcasters and adequate proportion of annual net revenues)⁴⁹</p> <p>The Netherlands (a third of the independent productions have to be recent)</p> <p>Slovakia (10% of the transmission time)</p>

⁴⁷ Information provided in the table was retrieved from the Audiovisual Observatory and has been completed with the results of the survey addressed to the NRAs conducted by KEA in the scope of this study.

⁴⁸ Law no 504/2002, 2002 (The Audiovisual Law), published by Official Gazzette of Romania, PART I, November 19th 2009, article 22

⁴⁹ Decision 66/09/CONS, Decision 186/13/CONS, issued pursuant to Article 44 of "Testo Unico" (Dlgs 31 July 2005 no 177)

Adequate share/significant proportion of transmission time or funding for recent works	All works made by independent producers should be recent	Majority/half of the time allocated for recent independent productions	Other
			reserved for independent productions has to be for recent works)

6.1.3 Additional measures to Articles 16 and 17 adopted by Member States

Some countries have introduced **additional measures** to TV broadcasters to promote European works. These can be measures related to film funding or to the proportions of the European works in the broadcasting programmes. Sometimes requirements for the private broadcasters are slightly lower or absent but in most of the countries presented in Table 7 additional requirements are the same for public and private broadcasters. Additional measures are mostly aimed at promoting national language productions. In certain countries, there are no additional obligations provided by law, but there are financial and other incentives for promoting the production of European works.

Additional measures in relation to Article 16

In Estonia, France, Hungary, Italy, Latvia, the Netherlands, Poland, Romania, Spain and Sweden, broadcasters are required to reserve a certain amount of time to works originally made in a national language. Swedish law puts such requirements not only in relation to the works in the national language, but also requires a significant proportion to be reserved for programmes including artists active in Sweden and the works of writers active in Sweden. In Hungary, the proportion reserved for Hungarian works is higher for public broadcasters. In Latvia the proportion requirements for audiovisual media works in Latvian are only for the national and regional broadcasters (see Table 7).

Additional measures in relation to Article 17

The desk research and the survey did not reveal many **additional requirements** to Article 17 adopted by Member States. For instance, in Italy public broadcasters have to reserve 3.6% of annual net revenues (3.2% for private broadcasters) to direct investment in national cinematographic works by independent producers and 2.24% of their annual net revenue to recent national cinematographic works by independent producers.⁵⁰ In the French-speaking part of Belgium, independent works, for which transmission time is allocated, should include works by the independent producers from the French-speaking Community of Belgium. In the Flemish-speaking Community of Belgium, a sufficient amount of recent works must be Dutch-language productions.

⁵⁰ Decision 66/09/CONS, Decision 186/13/CONS, issued pursuant to Article 44 of "Testo Unico" (Dlgs 31 July 2005 no 177). Note: as from 2018, these percentages were raised by decree (Legislative Decree no. 204 of 7 December 2017) as follows:

- For private broadcasters: 3.5% of net annual revenue in 2018. This percentage is raised to 4% for 2019 and 4.5% from 2020, (today it is 3.2%).
- For public broadcasters: 4% of total net revenues in 2018. This percentage is raised to 4.5% for 2019 and 5% from 2020 (today it is 3.6%).

France has also implemented a specific mechanism for broadcasters to support direct investment in film production. French film funding is based on annual financial resources, with different percentages according to the channels. A distinction is made between pay and free TV, and those which are specialised in movies broadcasting. Channels specialised in movies broadcasting have to spend between 12.5% and 27% of their annual financial resources on European films. Other channels (free and pay TV that are not specialised in movie broadcasting) have to spend between 3.2% and 3.5% of their annual financial resources on European films.

In Norway, public institutions provide economic support for the production of Norwegian films from Nordic countries and produce guidelines on how to promote European works.

In Finland, an association of independent producers seeks to raise the quality and appreciation for the production of audiovisual content; the association also negotiates IP rights of members and influences legislation.⁵¹ A similar association exists in Portugal.

Table 7: Additional requirements to Articles 16 and 17 in EU Member States⁵²

Country	Additional measures aimed to support...	For public broadcasters	For private broadcasters
Belgium	Works made in regional languages	FR: independent works, for which transmission time is allocated, should include works by the independent producers from the French-speaking Community of Belgium NL: a sufficient amount of recent works must be Dutch-language productions.	Same
Denmark	Danish films	DR is obligated to annually fund direct investment in production of Danish films by 65 million Danish kroner. TV 2 Denmark A/S is obligated to annually fund the production of Danish films by 65 million Danish kroner. (2015-2018). 80% of the funds must be used for funding feature films. 20% must be used for funding short and documentary films. 25% of the total sum must be used towards funding films for children and youth	No such obligations
Estonia	Estonian works	TV broadcasters are obliged to show a certain amount of audiovisual works by Estonian authors each month. Those works	TV broadcasters are obliged to show a certain amount of audiovisual works by Estonian authors each month. Those works

⁵¹ Data obtained from the survey addressed to the NRAs in the scope of the study.

⁵² Information provided in the table was retrieved from the European Audiovisual Observatory AVMS Database. Information has been completed by the results of the survey addressed to the NRAs conducted by KEA European Affairs

Country	Additional measures aimed to support...	For public broadcasters	For private broadcasters
		should not be older than 10 years	should not be older than 10 years
France	<p>Cinematographic and audiovisual works originally made in the French language</p> <p>Production of European Audiovisual Works (for film financing)</p>	<p>At least 40% of the transmission time</p> <p>Film financing for channels specialised in movie broadcasting: - European films: Obligations: between 12.5% and 27% of the annual financial resources spent for direct investment in European films</p> <p>For the other channels (free and pay TV which are not specialised in movie broadcasting): - European films: Obligations: between 3.2% and 3.5% of the annual financial resources spent on direct investment in European films</p>	<p>At least 40% of the transmission time</p> <p>Same film financing obligations as public broadcasters</p>
Germany	Films for theatrical release	3% of costs for broadcasting	If films with theatrical release represent at least 2% of the programme and if the turnover is more than €750 000, they pay a percentage (from 0.15 to 0.75) of their advertising turnover for direct investment in European film production
Greece	Films produced for theatrical release	Is required to contribute to direct investment in film production by 1.5% of its annual turnover (including licence fees revenues)	Are required to contribute to direct investment in film production by 1.5% of their annual advertising revenues
Hungary	Hungarian works	Over 50% of its annual transmission time	Over one-third of its transmission time (around 33%)
Poland	original Polish works	33% of the transmission time	33% of the transmission time
Spain	<p>1) European works in any of the Spanish languages</p> <p>2) Audiovisual Works</p>	half of the time reserved for the European works (which is around 25% of total transmission time); and A global obligation of funding, by earmarking 6% of the revenues raised the previous exercise for the up-front financing of European Works for public broadcasters,	half of the time reserved for the European works (which is around 25% of total transmission time); and A global obligation of funding, by earmarking 5% of the revenues raised the previous exercise for the up-front financing of European Works for private broadcasters,
Latvia	AV works in Latvian (only for national and regional broadcasters)	40% of the transmission time reserved for European works (around 20% of the total transmission	40% of the transmission time reserved for European works (around 20% of the total transmission

Country	Additional measures aimed to support...	For public broadcasters	For private broadcasters
		time) ⁵³	time) ⁵⁴
The Netherlands	Audiovisual works (films) in Dutch language	Public broadcasters: support to a minimum of 18 Dutch features is annually required in order to reach a domestic audience	N/A
Italy	National cinematographic works	1.3% of the transmission time (no thematic channels) 4% of the transmission time (movie channels) Public broadcasters have to reserve 3.6% of Annual net revenues to direct investment in national cinematographic works by independent producers and 2.24% of their annual net revenue to recent national cinematographic works by independent producers	Over 1% of the transmission time (no thematic channels); Over 3% of the transmission time (movie channels); Private broadcasters have to reserve 3.2% of Annual net revenues to direct investment in national cinematographic works by independent producers.
Romania	Romanian audiovisual works	Significant proportion of the transmission time	Significant proportion
Sweden	Programmes in Swedish language, programmes including artists active in Sweden and the works of writers active in Sweden	Significant proportion of the transmission time	Significant proportion of the transmission time

Other contributions to film funding

Based on the survey to NRAs and additional desk research⁵⁵, we found that in 10 countries linear services provide indirect contributions to film funding. These 10 countries are: Belgium (French Speaking Community), Croatia, Czech Republic, France, Germany, Poland, Portugal, Romania, Slovenia and Slovakia.⁵⁶

Some National Regulatory Authorities (NRAs) have also provided some additional information about the functioning of their film funding schemes. Additional desk research provided basic information for the other countries:

Belgium (French Speaking Community):

The private broadcasters are under the obligation defined by the Decret coordonné sur les services des médias audiovisuels to contribute to the production of audiovisual works in the Federation Wallonie Bruxelles. Two options are possible for the contribution:

- Contribution to the Centre du Cinema et de l'Audiovisuel (CCA) – indirect contribution: The contribution received by the CCA is reinvested in film

⁵⁵ Ibid, article 10(2) and Electronic mass media law, Article 32. A foreign television program dubbed or that has a voice on in the official language, shall also be deemed to be a broadcast in a foreign language

⁵⁴ Ibid

⁵⁵ Desk research was based on EAO (2016) ...Public financing for film and television content: the state of soft money in Europe, July 2016; as well as additional research at country level to complement information retrieved from the survey to NRAs.

⁵⁶ Sweden also had such a mechanism until 2016 (see details below).

production according to CCA procedures (funding is allocated based on applications).

- Coproduction of European works (direct investment). Two conditions: the broadcaster must entrust a third-party company the entirety or a part of the contribution amount and the contribution amount and the coproduction commitment must generate financial benefits equivalent to the commitment in the French-speaking region or Brussels capital region.

Czech Republic: Private broadcasters who disseminate their broadcast via air are obliged to pay the contribution from broadcasting on television advertising (2%) to the State Cinematography Fund. This generated 125.594.000 Czech crowns in 2013 and 107.484.000 Czech crowns in 2014.

France: The French film funding is based on the annual financial resources, with different percentages according to the channels. There is no distinction between public and private broadcasters regarding percentages for film funding mechanisms. In addition to direct investment obligations outlined in Table 7 above, linear services also contribute to the budget of the CNC (French film fund) through a 5.5% tax on advertising revenues (5.7% for HD services).⁵⁷ This tax is currently under revision following a recent ruling from the Conseil Constitutionnel.⁵⁸

Germany: Pursuant to the German Film Law (FFG), companies exploiting feature films must pay a legally binding proportion of their revenues to the FFA. This so-called "film levy" finances all of the FFA's funding measures and must be paid by the exhibitors, the video industry, the broadcasters as well as the programme providers. The film levy for the public broadcasters is based on their expenditure for the airing of feature films. From 2017 it is 3% of these costs. The ARD raises this sum to an annual financial contribution of 5,5 Mio. €.

Portugal: The State ensure the financing of incentives and grant support for the development of the cinema and cinematographic activities, as well as the audio-visual production through collection of fees and the establishment of investment obligations: Law n.º. 55/2012, September 6, Law of Cinematographic and Audiovisual Arts – establishes the principles the State shall apply within the framework of the promotion, development and protection of the arts concerning the cinema and cinematographic activities, as well as the audio-visual production. The rules for financing the production of cinematographic and audio-visual works are established in the regulatory instrument to the present law - Decree (Decreto-Lei) n.º 9/2013, 24 January; Decree (Decreto-Lei) n.º 124/2013, 30 August. Law n.º. 55/2012- Art. n.º.10, n.º 1, disposes that commercial advertisements exhibited in movie theatres, audio-visual commercial communication exhibited in television operators or by any means, conveyed by media service providers, audio-visual commercial communication included in on-demand audio-visual media services, as well as advertising included in electronic programme guides, whatever the display platform, dissemination or transmission, is subject to a fee, called display rate, which are charged to the advertiser, 4% on the price paid. Art.º n.º 10, n.º 2 refers that the operators of subscription television services are subject to the payment of an annual fee of three euros and fifty cents for each subscription access to television services, which is charged to the operators. At the rate referred it is applied in each year, an increase of 10% over the applicable value in the previous year, up to a maximum of 5 euros. The annual value of the expected rate due by each operator is calculated based on the average number of subscriptions presented in the previous year.

⁵⁷ [CNC \(2016\) Guide Juridique des redevables de la Taxe sur les Services de Television http://www.cnc-tst.fr/Resources/Textes_et_Guide_TST_juridiques_2016.pdf](http://www.cnc-tst.fr/Resources/Textes_et_Guide_TST_juridiques_2016.pdf) It should be noted that additional revenues are also subject to the tax (paid subscriptions or services), with different exemptions or rebates.

⁵⁸ <https://strategies.fr/actualites/medias/4000791W/le-gouvernement-va-modifier-la-taxe-financiant-le-cnc.html>

This funding supports films produced for theatrical release and promoting film-related activities via ICA-Instituto do Cinema e do Audiovisual. It is allocated taking into account the following priorities:

- 80% intended to support the film art;
- 20% intended to support audiovisual and multimedia production

In **Sweden**, Sveriges Television AB (SVT), the Swedish public service-broadcaster, TV 4 AB, C More Entertainment AB, Modern Times Group MTG AB and SBS TV AB were until 2016 parties of the film agreement that concerned the financing or support for Swedish films.

They were thus obliged to contribute at least SEK 62.5 million per calendar year. In addition to this amount, the companies were obliged to use on average at least SEK 66.6 million per year for co-production, co-financing and licence fees for new Swedish feature films and new Swedish short and documentary films. The amount goes up by 2% ever year.

Since 2016, film policy and funding are managed directly at Governmental level.

In **Croatia, Romania, Poland** and **Slovenia**, the contributions of all services using audiovisual works, such as broadcasters, digital, cable and satellite operators, Internet providers, telecoms, etc... are subject to a levy. The film funds then channel the funding collected towards AV productions.

In **Poland**, the level of this fee is set at 1.5% of the advertising turnover for all linear services. In Croatia, this ranges between 0.5% and 0.8% for private broadcasters, and 2% for public broadcasters. In Romania a 4% tax on advertising applies equally to public and private broadcasters.⁵⁹

In **Slovakia**, a tax on advertising revenues is in place, with different rates for public service TV (5 % of the total advertising revenues), and private TV channels (2 % of the total advertising revenues).⁶⁰

6.1.4 Conclusions for implementing measures of articles 16 and 17

All Member States implemented Article 16 of the AVMSD that requires to reserve a majority proportion of the transmission time for the European works. The approach from the different Member States can be classified as follows:

- **Neutral interpretation**, where four countries implemented the text of the Directive as it is, with no further modifications.
- **More specific interpretation**, with 15 Member States choosing not to include clauses permitting exemptions to Article 16. Two of these Member States (France and Hungary) also adopted requirements setting a higher proportion of European works in transmission time.
- All other countries included slight variations on the clauses permitting exemption to article 16 (as discussed in section 6.1.1).
- **Additional requirements** of linguistic nature were adopted by nine countries in relation to linear services.

⁵⁹See for Romania: <http://legislatie.just.ro/Public/DetaliuDocument/63969> and for Poland: http://en.pisf.pl/files/dokumenty/act_of_30_june_2005_on_cinematography.pdf

⁶⁰ <http://www.avf.sk/english.aspx>

In relation to the implementation of Article 17 on **independent productions**, 13 countries have opted for a **neutral transposition** of the Directive (at least 10% transmission time or budget), and 13 have adopted a **more specific requirement** : 12 opted for a 10% transmission time clause only, and Italy opted for the budget requirement only (set at 15% for public broadcasters). **Other requirements** were set by four countries: Bulgaria (transmission time), Finland (budget or transmission time) and France (budget) have implemented similar options with higher requirement thresholds, while Germany does not include a specific threshold.

Regarding **recent works**, broadcasters in 26 Member States are required to reserve transmission time or funding particularly to recent works. Requirements vary among Member States:

- **Neutral interpretation**, where eight Member States opted for the majority/half of the time allocated for independent productions;
- **Less specific interpretation**, as nine countries chose for an adequate/significant share of time or funding;
- **More specific interpretation**, since three Member States require all independent works to be recent;
- And six countries chose other options.

Additional requirements for investment in the production of European works were adopted by six countries in relation to linear services. In addition, in 10 Member States, broadcasters are obliged to contribute financially to national film funds.

In the implementation of Articles 16 and 17, Member States have the flexibility to make use of the mechanisms promoting European works in the way they consider appropriate for their own cultural and audiovisual policy objectives. This first analysis tends to show so far that quite different models coexist across the EU, though few Member States implemented measures promoting non-national European works.

6.2 Promotion of European works within non-linear services

According to the AVMS Directive, on-demand audiovisual media services have the potential to partially replace television broadcasting and should actively contribute to the promotion of cultural diversity and consequently promote the production and distribution of European works, where it is practicable⁶¹.

Compared to the provisions for linear services (Articles 16, 17), the regulation to promote production of and access to European works in on-demand services is more flexible. Article 13 (1) requires that on-demand service providers either:

- **Contribute financially to the production and rights acquisition of European works** or
- **Share** and/or
- **Give prominence to European works in their online catalogue of programmes.**

⁶¹ AVMSD, recital 69

The different approach is explained by the different characters that such services have, compared to television broadcasting, “with regard to the choice and control the user can exercise, and with regards to the impact they have on society”.⁶² Instead, giving prominence to European works in online catalogues reflects the fact that the diversity and abundance of online audiovisual content may require new regulatory approaches, which take into consideration the relation between supply and demand on the market⁶³.

Another difference with the linear services’ regulation is the absence of any requirement for on-demand services providers to promote European works created by independent producers.

The Directive also covers “television-like” on-demand services (i.e. they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of the Directive).⁶⁴

It is important to note that, in general, when broadcasting programmes are also offered on-demand by the same media service provider, the latter should comply with the rules for linear services and not for the on-demand services, unless the two services which are offered in parallel are clearly separate services. In this case, the Directive applies to each of the services concerned.⁶⁵

A 2016 report by the European Audiovisual Observatory shows that the average share of **EU films** in on-demand catalogues in the EU was 23% in 2016 while US films make up 61%⁶⁶, a significant difference. Moreover, feature films and animation are the European genres with the lowest presence in on-demand catalogues. TV series and films have the highest proportion of works of European origin in the catalogues⁶⁷.

6.2.1 Flexibility of implementation of Article 13

As in the case of linear services regulation (Articles 16 and 17), the requirements of Article 13 (1) have to be met only “**where practicable and by appropriate means**”. Therefore, a wide flexibility of implementation is given to Member States. National provisions to promote European works on non-linear services thus vary in terms of exemptions, level of details, and sometimes in terms of definition of on-demand services.

In total 16 countries adopted the “where practicable” clause and thus have a flexible approach. Two out of those Member States use a different wording – Estonia: “taking account of the specific nature and opportunities of the service” and Italy: “taking market conditions into account” (see Table 8).

⁶² Case C-89/04 Mediakabel BV v Commissariaat voor de Media [2005] ECR I-4891

⁶³ Kristina Irion, Peggy Valcke, *op.cit.*

⁶⁴ AVMSD, para 24

⁶⁵ *Ibid.*, para 27

⁶⁶ Gilles Fontaine and Christian Grece, *op.cit.*
http://ec.europa.eu/newsroom/document.cfm?doc_id=43865

⁶⁷ Christian Grece, André Lange, Agnes Schneeberger and Sophie Valais, *The development of the European market for on-demand audiovisual services*, European Audiovisual Observatory 2015, p 184

Table 8: Flexibility in implementation of Article 13⁶⁸

Country	Where practicable
Austria	no
Belgium (French-speaking Community)	no
Belgium (Flemish-speaking Community)	yes
Bulgaria	yes
Cyprus	yes
Czech Republic	yes
Denmark	yes
Estonia	yes
Germany	N/A
Finland	no
France	no
Greece	yes
Croatia	yes
Hungary	no
Ireland	yes
Iceland	N/A
Italy	v (taking into account market conditions)
Latvia	no
Lithuania	yes
Liechtenstein	N/A
Luxemburg	yes
Malta	yes
Poland	no
Portugal	no
Romania	yes
Slovakia	no
Slovenia	no

⁶⁸ Information provided in the table was retrieved from the Audiovisual Observatory and has been completed with the results of the survey addressed to the NRAs conducted by KEA in the scope of this study.

Country	Where practicable
Spain	no
Sweden	yes
UK	yes

6.2.2 Level of requirements for Article 13 adopted by Member States

Share, prominence and/or financial contributions

- Share

Most Member States established **concrete percentage requirements for the share** of the European works in the catalogues: in Cyprus 20% of the titles in a catalogue have to be European titles; and in Czech Republic 10% of the total number of programmes or at least 1% of the revenues that should be reserved for the European works' promotion (same option is also provided in Slovenian law). Certain legislations are more demanding in terms of the share of European works in the catalogue: France at least 60%; Lithuania at least 50%; and Spain at least 30% (see Table 11).

In Denmark, Latvia, Netherlands, Sweden and the UK, legislation is not clear about the requirements, saying just that European works shall be promoted on the on-demand services.

- Prominence

In two countries (Austria and Bulgaria), only the **prominence of the European works** in the catalogue is required. In order to promote European works, on-demand services have to use attractive and accessible presentation of the European works in the catalogue. In Austria, European works have to be given due prominence in the presentation of the catalogue or be appropriately designated. In Estonia on-demand services can choose between prominence and financial contribution (see Table 11).

Among the means of insuring **prominence** for European works by the on-demand services, **presence of European film trailers** and **promotion on homepage** are the most commonly used means.⁶⁹ A total of 11 out of the 23 Member States that replied to the survey addressed to NRAs indicated that **prominence** is the most efficient (and less burdensome) way to promote European works on non-linear services. However, only a few studies have been carried out to assess the efficiency of such measure for the promotion of European works (see section 6.3 of this study).

Member States should also take into account the different business models of on-demand services, which have different policies in relation to the promotion of works. For example, TVOD services⁷⁰ in contrast to SVOD services⁷¹ don't make a selection in their catalogues and may increase consumption of films and television content by

⁶⁹ Ibidem, p 221

⁷⁰ Transactional Video on Demand: users can sign up for free to benefit from the service. However, they will pay an amount based on the content they watch. E.g. Apple iTunes

⁷¹ Subscription Video on Demand: functions based on a subscription agreement which grant users access to the service; most services operate with monthly subscriptions. E.g. Netflix

actively promoting them on their homepages⁷². Thus, in such cases share in the catalogue is less important than the promotion of the film that may lead to its better circulation online.⁷³

- Financial contributions

Ten countries impose **financial contributions** on on-demand operators: Belgium (French-speaking Community), Croatia, Czech Republic, France, Germany, Greece⁷⁴, Italy, Portugal, Slovenia and Spain.⁷⁵ It should be noted that throughout our research, more countries reported financial contributions from VoD services, even if not legally binding (see Annex 3 for more details on this).

Contributions can be made through:

- **Taxes or levies** that are intended to feed into film funds budget to the benefit of the development, production, distribution and exhibition of European films;
- **Investment obligations** i.e. a percentage of the company's turnover or fixed obligation based on revenue that needs to be dedicated to production of European works (acquisition of rights, co-productions shares...).

6 Member States have systems whereby VoD operators have to contribute to film funds through a levy/tax based on their national turnover.

Table 9 : Financial obligations for non-linear service providers to the production and rights acquisition of EU works – taxes & levies, country overview

Countries	Rate of the levy (on the turnover)
Croatia	2% ⁷⁶
Czech Republic	0.5% ⁷⁷
Germany	1,8% to 2,5% ⁷⁸ 0% if turnover below €500.000
France	2% ⁷⁹
Portugal	1% (choice between contribution to a fund or investment in production) ⁸⁰
Belgium (French-Community)	1,4% to 2,2% (choice between contribution to a fund or investment in production) ⁸¹

⁷² Christian Grece, André Lange, Agnes Schneeberger and Sophie.Valais. *op.cit*

⁷³ Ibid

⁷⁴ According to the results of the survey addressed to the EFADs conducted in the scope of this study, in Greece, VoD services are required to contribute to film production by 1,5% of their annual turnover.

⁷⁵ AVMS Directive FAQ-country of Origin principle and financial contribution. <http://www.efads.eu/news/avms-directive-faq-country-of-origin-principle-and-financial-contributions.html>

⁷⁶ Art. 36 of Law on Audiovisual Activities Official Gazette Nr. 76/07 and 90/11

⁷⁷ Article 27 of Act 496/2012 on Audiovisual Works and Support for Cinematography and on Amendment to Certain Acts (Audio/Video Act) <http://www.fondkinematografie.cz/assets/media/files/legislativa/act-on-audiovisual-works-and-support-for-cinematography.pdf>

⁷⁸ Article 153 of Gesetz über Maßnahmen zur Förderung des deutschen Films (Filmförderungsgesetz – FFG) <http://www.ffa.de/ffg-2017.html>

⁷⁹ Art. 1609 sexdecies B, French General Tax Code <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000022202043&cidTexte=LEGI TEXT000006069577&dateTexte=20120101&oldAction=rechCodeArticle>

⁸⁰ Article 45(2) of the Television and Audiovisual Services On Demand Act <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheDiplomaAProvado.aspx?BID=16310>

Countries	Rate of the levy (on the turnover)
	0% if turnover below €300.000

Source: EFADS

8 Member States implemented investment obligations whereby a percentage of the company's turnover needs to be dedicated to the production of European works.

Table 10 : Financial obligations for non-linear service providers to the production and rights acquisition of EU works – investments obligations, country overview

Countries	% of turnover to invest in European production
Spain	5% of revenues ⁸²
France	Between 15-26% of net turnover ⁸³
Greece	Pay-TV and VoD services are required to contribute to film production by investing 1,5% of their annual turnover ⁸⁴
Italy	5% of revenues (applies if quota obligation is not met) ⁸⁵
Slovenia	1% (applies if quota obligation is not met) ⁸⁶
Czech Republic	1% (applies if quota obligation is not met) ⁸⁷
Portugal	1% (choice between contribution to a fund or investment in production) ⁸⁸
Belgium (French-Community)	1,4% to 2,2% (choice between contribution to a fund or investment in production) 0% if turnover below €300.000 ⁸⁹

Source: EFADS & online survey

The provisions of the revised AVMS Directive allow for an exemption for small

⁸¹ Article 41 French Community Decree 26 Mars 2009 on Audiovisual Media Services. Article 41 does not specify whether the audiovisual works should be European works or not. http://www.audiovisuel.cfwb.be/index.php?id=avm_req1_radiodif

⁸² Art. 5.2 and 5.3 Law 7/2010 of 31 March of Audiovisual Communication <http://www.boe.es/buscar/act.php?id=BOE-A-2010-5292>; the Cinema Act of 28 December Ley 55/2007 http://noticias.juridicas.com/base_datos/Admin/I55-2007.html

⁸³ Articles 3-5, On-demand Audiovisual Services Decree No.2010-1379 of 12 November 2010 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023038244&dateTexte=20160922>

⁸⁴ Article 8 par. 4 of Law 3905/2010, as currently in force, and in Articles 2 and 4 of implementing Ministerial Decision 82204/3885/54/20-8-2012

⁸⁵ Article 4(2) of Regulation 66/09/CONS <https://www.agcom.it/documents/10179/539397/Allegato+13-02-2009+2/ac8fe5a2-940d-485f-9c8a-0212e67eb2fc?version=1.0> The investment obligation does not apply if the on-demand media service provider meets the quota obligation on European works.

⁸⁶ Article 16(3) of the Act on Audiovisual Media Services Directive http://www.sze.hu/~smuk/Nyilvanossag_torvenyek_CEE/Mediatorvenyek/Slovenia_audiovis%20media%20services%202011.pdf The investment obligation does not apply if the on-demand media service provider meets the 10% quota obligation on European works.

⁸⁷ Section 7(2) of the On-Demand Audiovisual Media Services Act http://www.eni.lu/content/download/31258/371382/file/Czech_Republic_translation.pdf The investment obligation is deemed to be fulfilled if the on-demand audiovisual media service allocates at least 10% of the total number of programmes in their catalogue to European works.

⁸⁸ Article 45(2) of the Television and Audiovisual Services On Demand Act <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheDiplomaAprovado.aspx?BID=16310>; Article 16 of the Cinema Act which rules that on-demand services have to spend at least 1% of their revenues on national cinematographic works

⁸⁹ Article 41 French Community Decree 26 Mars 2009 on Audiovisual Media Services http://www.audiovisuel.cfwb.be/index.php?id=avm_req1_radiodif

operators. In Germany, companies with a turnover below €50 000 are not subject to the levy.⁹⁰ The same applies in Belgium (French-speaking Community) for companies with a turnover below €300 000.⁹¹

On 1 September 2016, the European Commission found that the amendment to the German film funding scheme, which included the possibility for the FFA to apply levies to on-demand services providers established in other Member States and targeting German audiences, was compatible with the EU internal market rules. According to that scheme, on-demand services paying a levy regardless of their place of establishment are also entitled to receive German funding for the distribution of films⁹².

Table 11: Level of requirements for Article 13 in the EU Member States⁹³

Prominence	Share	Contribution OR share / prominence	Contribution AND share / prominence	Prominence or contribution	Same wording as art 13(1)	Prominence and share	Not clear (e.g. just shall be promoted)
Austria	Cyprus - 20%	Slovenia - 10% share or 1% of turnover	France - 60% share and contribution of 15-26% of net turnover (+2% levy for film fund)	Estonia	Finland	Poland - 20% share	Denmark
Bulgaria	Hungary - 15%	Czech Republic - 10% share or 1% of turnover (+0.5% levy for film fund)	Belgium (Fr) 1,4% to 2.2% (choice between contribution to a fund or investment in production)		Belgium (Fl)		Latvia
	Lithuania - 50%	Italy - 20% share or 5% of revenue	Spain -30% share and 5% investment obligation in production).		Ireland		The Netherlands
	Slovakia - 20%	Portugal - 20% share or 1% of turnover (choice between contribution to a fund or investment in	Greece -		Malta		Sweden
					Romania		UK
					Croatia (+2% levy for film fund)		Germany (+1.8 to 2.5% levy for film fund)
							Luxembourg

⁹⁰ Article 66a of Gesetz über Maßnahmen zur Förderung des deutschen Films (Filmförderungsgesetz – FFG) <http://www.ffa.de/ffa.html>

⁹¹ AVMS Directive FAQ-country of Origin principle and financial contribution. <http://www.efads.eu/news/avms-directive-faq-country-of-origin-principle-and-financial-contributions.html>

⁹² SA.38418 German film fund: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38418

⁹³ Information provided in the table was retrieved from the Audiovisual Observatory and has been completed with the results of the survey addressed to the NRAs conducted by KEA

Prominence	Share	Contribution OR share / prominence	Contribution AND share / prominence	Prominence or contribution	Same wording as art 13(1)	Prominence and share	Not clear (e.g. just shall be promoted)
		production)	20% share and 1,5% of turnover				

The French law is very detailed and puts the highest standards, combining financial contribution and share requirements. The French law distinguishes between different on-demand services: catch-up television services, subscription-based services (SVOD) and other services; it also distinguishes cinematographic, audiovisual works and original French-language works. It takes into account number and date of release in France of the films provided by SVOD services while determining the proportion of the revenues to be devoted to the production (direct investment) of the European works (only SVOD that provide at least 10 full-length cinematographic or audiovisual works a year have to invest a proportion of their revenues into production of European works; the more recent works SVOD provides, the bigger is the proportion to invest. In addition to the required financing, all on-demand media providers have to reserve a proportion of at least 60% of the content for European works.⁹⁴

6.2.3 Additional measures to Article 13 adopted by Member States

Additional measures to promote European works are mostly of a linguistic order. Compared to implementing measures for Articles 16 and 17, very few Member States have applied such provisions for on-demand services yet. One notable exception is Portugal, where additional measure to promote the development of audiovisual activities (including but not limited to audiovisual production: it can also include promotional actions, skills development, etc...) through a 4% tax on online commercial communication and advertising.⁹⁵

In Belgium (Flemish-speaking Community), in addition to the requirements of Article 13 (1), on-demand service providers should use a considerable share of the promotional resources for Dutch-language European productions. Belgium (French-speaking Community) has a similar approach: it requires prominence for European works in online catalogues, including original works by the authors from the French-speaking Community. In Estonia, they include recent works in the scope of the relevant article by putting a requirement to highlight European works in the catalogue including recent works and works "with the features of own production"⁹⁶. In Hungary, at least 10% of the catalogue must be reserved for Hungarian works. In France,

⁹⁴ European Audiovisual Observatory AVMS Database

⁹⁵ This feeds in the budget of ICA-Instituto do Cinema e do Audiovisual, which redistributes these amounts according to the following principle:

- 80% intended to support film activities;
- 20% intended to support audiovisual and multimedia production, percentage that will be increased each year by 5% up to a maximum of 30%, by checking the degree of financial execution of the program to support the audiovisual and multimedia and the number of viewers of the works supported.

⁹⁶ European Audiovisual Observatory AVMS Database

original French works were specifically included in the scope of required investments into European productions (see Table 12).⁹⁷

Table 12: Additional measures to Article 13 adopted by the EU Member States⁹⁸

Country	Additional measures aimed to support....	Additional measures
Belgium (Flemish-speaking)	Dutch language works	considerable share for Dutch language works
Belgium (French speaking)	works including original works by authors from the French-speaking Community	Prominence given to works including original works by authors from the French-speaking Community
Estonia	works 'which are on compliance with the features of own production'	prominence given to the works 'which are in compliance with the features of own production'
Hungary	Hungarian works	10% share for Hungarian works
Portugal	development of cinema and cinematographic activities, as well as audiovisual production	audiovisual commercial communication included in on-demand audiovisual media services, as well as advertising included in electronic programme guides, whatever the display platform, dissemination or transmission, is subject to a fee, called display rate, which are charged to the advertiser, 4% on the price paid ⁹⁹

6.2.4 Conclusions for implementing measures of article 13

Most Member States implemented Article 13 of the AVMSD with the requirement that on-demand service providers **reserve a specific share of European works in their catalogue**. This constitutes either a stand-alone obligation (e.g. Cyprus, Hungary, Lithuania or Spain) or in combination with other requirements like **prominence** or **financial contribution** (e.g. Belgium, Czech Republic, France, Italy and Slovenia). The required shares vary considerably between Member States (between 10% and 60%).

In total, ten countries impose **financial contributions** on on-demand operators (levies or investments obligations): Belgium (French-speaking Community) Czech Republic, France, Germany, Greece, Italy, Croatia, Portugal, Slovenia and Spain¹⁰⁰.

France is the country with the highest requirements for on-demand services: a combination of 60% share of European works in the catalogues and a financial contribution is required, depending on the type of services and other conditions. The French approach on Article 13 is also more specific since it doesn't include a "where

⁹⁷ Ibidem

⁹⁸ Information provided in the table was retrieved from the Audiovisual Observatory and has been completed with the results of the survey addressed to the NRAs conducted by KEA European Affairs

⁹⁹ Law n°. 55/2012, September 6, Law of Cinematographic and Audiovisual Arts, article 10 (2)

¹⁰⁰ AVMS Directive FAQ-country of Origin principle and financial contribution. <http://www.efads.eu/news/avms-directive-faq-country-of-origin-principle-and-financial-contributions.html>

practicable” clause. Consequently, France is the country with the highest proportion of European works in on-demand services among all Member States¹⁰¹.

The number of on-demand services increases, replacing traditional physical home entertainment and video stores, making it easier for consumers to use. The sector is evolving towards a subscription-based business model. Revenues remain marginal and the industry has yet to find ways to make the most of this new window of exploitation.¹⁰² “As long as the gap between the losses incurred in the physical market are not outweighed by the gains in the digital market, this evolution could cause problems for the financing and production of smaller budget films.”¹⁰³

6.3 General conclusions and remarks on the promotion of European works through the implementation of Articles 13, 16 and 17

The Articles 13, 16 and 17 of the AVMS Directive aim to ensure the freedom to provide audiovisual services in the internal market with a minimum harmonisation of regulation. The implementation of these articles can contribute to cultural diversity by facilitating the circulation of audiovisual content, and by promoting European works created by broadcasters, VOD services and independent producers both in linear and non-linear services.

In relation to linear services, the research shows that Member States not only comply with the AVMSD requirements to promote European works, but the majority of them impose higher levels of implementation and/or additional measures for the share of European works. These additional measures, however, are mostly of a linguistic nature, which means broadcasters need to reserve a certain amount of time to works created in a national language. Promoting national works is surely within the requirements of the Directive, as they are considered as European works. This could arguably diminish the potential for circulation of non-national works at EU level, given the fact that Member States are inclined to promote their own culture and national language(s) to meet the requirements, rather than promoting other national cultures and/or languages.

The Directive addresses this challenge by encouraging countries to promote co-produced European works or European works of non-domestic origin¹⁰⁴. However, this is neither regulated nor incentivised by AVMSD itself, though support programmes (Creative Europe especially) provide financial support towards this objective.¹⁰⁵

Most of the Member States require the promotion of recent independent works, either via transmission time or funding.

The AVMSD requirements for non-linear services are less specific than the ones for linear services: there is no mandatory quota mechanism and the promotion of

¹⁰¹ Gilles Fontaine and Christian Grece, *Origin of films and TV content in VOD catalogues in the EU*, ed. European Audiovisual Observatory 2016

¹⁰² IDEA, KEA & IMEC (2017) Mapping the Creative Value Chains : A study on the economy of culture in the digital age. A report prepared for the European Commission, DG Education and Culture.

¹⁰³ Francisco Blázquez, Maja Capello, Christian Grece, Sophie Valais, *VOD, platforms and OTT : which promotion obligations for European works?*. European Audiovisual Observatory, 2016, p. 18

¹⁰⁴ AVMSD, recital 70

¹⁰⁵ IDEA, KEA & IMEC (2017) Mapping the Creative Value Chains : A study on the economy of culture in the digital age. A report prepared for the European Commission, DG Education and Culture.

European works can be achieved either via a financial contribution to the production and rights acquisition or via the share and/or prominence of European works. Consequently, these provisions leave room for more flexibility in their implementation by Member States, which is confirmed in the research for this study. Few Member States have implemented Article 13 in a very detailed way.

As such, even though a reserved share of European works in on-demand catalogues seems to be the dominant measure of promotion that Member States opted for in the implementation of the Directive, this measure often comes with other requirements such as financial contributions or prominence in amounts that vary considerably among national legislations. However, results of the survey addressed to the NRAs showed that the financial contributions and higher shares set up by some Member States are deemed as more difficult to implement for VOD services (and more difficult to monitor for NRAs).

Eleven respondents (from the survey to NRAs) indicated that prominence is the most efficient tool for promoting European works on non-linear services, it is also important to keep in mind that prominence measures by on-demand services cannot have an impact without the sufficient availability of European works in their catalogues.

Among the means of insuring prominence for European works by on-demand services, the presence **of European film trailers** and **promotion on homepage** are the most commonly used tools.

In addition, there are no requirements for recent works in on-demand services, even though these proved to be instrumental in the circulation of European works. According to a study of the European Audiovisual Observatory, EU films are better distributed on on-demand services if they are recent. The data indicates that the older a film is, the less it will be available in EU countries. Interestingly, the same does not apply for US films.¹⁰⁶ Thus, support for recent productions in on-demand catalogues is extremely important, as this is the major category of European works that circulates online.

On-demand service providers' online catalogues have as many different versions as specific geolocations available on their front pages. The fact that the offering is not the same in all geographical areas is the result of copyright limitations and also due to the fact that the means of ensuring prominence employed are developed for national rather than European works. As noted above, the additional measures of linguistic nature (the promotion of works in national language) also tend to promote national rather than non-national European Works also contribute to limiting the availability of non-national European Works.

Lastly, the research showed that in most Member States, provisions of the Directive are implemented into a primary legislation, but in others the implementation is by secondary legislation. For instance, in Greece AVMS provisions take the shape of a decree and decision of the deputy minister of culture and tourism; in Malta it's broadcasting regulations, while in the UK it's guidance of the NRA (Ofcom).¹⁰⁷ The

¹⁰⁶ Christian Grece, 'How do films circulate on VOD services and in cinemas in the European Union? A comparative analysis', in *European Audiovisual Observatory*, 2016

¹⁰⁷ European Audiovisual Observatory AVMS Database and survey to national regulators carried out as part of this study.

research did not reveal any correlation between the type of implementing measure (primary or secondary legislation) and the effectiveness of this measure.

7 Monitoring and evaluation processes of the implementation of the AVMSD

This chapter provides an in-depth analysis of the monitoring and reporting systems developed by each Member State for both linear and non-linear services. This includes an overview of the main characteristics of monitoring systems, the reporting standards set up at national level and additional measures for reporting (if any). A look into possible sanctions and/or verification mechanisms developed for the statistical reports provided by broadcasters is also provided.

The main conclusions of the analysis are:

- Overall, **linear services are clearly better monitored than non-linear services** at EU level, partly because reporting obligations for non-linear services were introduced much later than for linear ones. Also, the still emerging markets for on-demand services and the highly dynamic technology that governs them make it more difficult to implement viable monitoring systems;
- The flexibility of article 13 and the variations across national implementing measures makes the development of pan-European guidelines very difficult. Similarly the exchange of experiences between NRAs is more challenging due to these divergences.
- Another impediment to relevant monitoring of the proportion of European works in on-demand services is the current **less specific definition of on-demand audiovisual services provided by the Directive**. Particularly, the unclear level of editorial responsibility of an on-demand service provider, in the context of an increasing convergence of services, makes it difficult to monitor on-demand catalogues in different geographical areas and from different broadcasters or studios.

7.1 Monitoring requirements for linear services

According to art 16 (3) of the AVMS Directive, Member States have to provide the European Commission every two years with a report on the implementation of Articles 16 and 17. Specifically, the Commission is interested in the achievement of proportions established through national legislations, the reasons, in each case, for the failure to attain that proportion and the measures adopted to achieve them in each Member State.

According to EC Guidance on the implementation of Articles 16 and 17¹⁰⁸, statistics, expressed in hours and percentages, must cover the relevant output of all broadcasters under the jurisdiction of the Member State during the reporting period, irrespective of whether they are new or special-interest broadcasters.¹⁰⁹

¹⁰⁸ European Commission, *Audiovisual and media policies. Revised Guidelines for monitoring application of Articles 16 and 17 of the AVMS Directive*, 2011

¹⁰⁹ *Ibidem*

According to EC Guidelines for monitoring application of Articles 16 and 17 of the AVMS Directive, (DOC CC AVMSD (2011)2), it is not necessary for national reports to include data on¹¹⁰:

- Channels broadcasting exclusively news, sport events, games, advertising, teletext services and teleshopping.
- Broadcasts "intended for local audiences" which do not "form part of a national network".
- Channels broadcasting entirely in a language that has no official status as one of the languages of one or more Member States.
- Broadcasts exclusively intended for reception in third countries and not receivable in a Member State with standard consumer equipment.¹¹¹
- In addition to the derogations expressly provided by the Directive, national reports should also not include data relating to channels which have been exempted from their reporting obligation because they fall below the "tolerance threshold" of an audience share of 0.3%, or data relating to other small channels which are above the "tolerance threshold" but which have been also granted individual exemptions by the national authorities on a case-by-case basis, with ad hoc justifications.

However, Member States have to indicate the reasons for non-compliance for each channel even in the abovementioned cases.

7.1.1 Main characteristics of monitoring systems for linear services

Most Member States require **broadcasters or National Regulatory Authorities (NRAs)** to provide the relevant state bodies with an annual report on the fulfilment of the requirements on Article 16 (3). In Denmark and Ireland relevant information should be provided by broadcasters or NRAs upon request. In Croatia, Cyprus and Greece, NRAs are required to send reports directly to the European Commission and not to relevant state bodies.

In Slovakia broadcasters are obliged to provide NRA with the relevant information within 15 days upon request (the same obligation may exist in other countries on the basis of access to information acts). In Belgium and Bulgaria, NRAs have to publish the annual report. In Cyprus, NRA has to notify the Ministerial Council and the House of Representatives about the report submitted to the European Commission.

According to the results of the survey, each of the 28 Member States has a system for monitoring the application of Articles 16 and 17 of the AVMSD. Monitoring is conducted by NRAs annually; in-house, an average of 2-3 staff members are needed to conduct the monitoring. From the survey, it appears that in Germany the monitoring process is managed by the regulator, and compliance with the reporting obligation is ensured by requesting data from linear and non-linear services. Most of the countries except Denmark and the Flemish-speaking Community of Belgium provide the same monitoring system for public and private broadcasters. In Denmark, private broadcasters are excluded from the monitoring of channel broadcast

¹¹⁰ Ibidem

¹¹¹ AVMSD, Art 2 (6)

schedules. Ten Member States monitor how channel broadcast schedules comply with the obligations provided by Articles 16 and 17 (see Table 13).

Table 13: Main characteristics of monitoring systems for linear services ¹¹²

Country	Monitoring system foreseen?	Same for private and public broadcasters?	Monitoring of channel broadcast schedules
Austria	yes	yes	no
Belgium (Fl)	yes	no	no
Belgium (Fr)	yes	yes	8 sample days recorded per year + 4 weeks of cue sheets; in-house; 2 staff
Bulgaria	yes	yes	Annual; in-house; no additional budget
Croatia	yes	yes	Annual; in-house
Cyprus	yes	yes	every 2 years; in-house
Czech Republic	yes	yes	annual; in-house
Denmark	yes	no	yes (only public broadcasters)
Estonia	yes	yes	annual; in-house
Finland	yes	yes	no
France	yes	yes	Daily and annual ¹¹³ ; in-house; 12 part-time staff
Germany	no	no	no
Greece	yes	yes	no
Hungary	yes	yes	no
Ireland	yes	yes	annual; in-house; 2 staff
Italy	yes	yes	annual; in-house; 3 staff
Latvia	yes	yes	Annual; in-house; 2 staff
Lithuania	yes	yes	no
Luxemburg	N/A	N/A	N/A

¹¹² Information provided in the table was retrieved from the Audiovisual Observatory and has been completed with the results of the survey addressed to the NRAs conducted by KEA European Affairs.

¹¹³ The CSA (French NRA) has a database to be able to verify the percentage of European works broadcasted by the different free channels on a daily basis. As regards the other channels, they send the list of all the programmes they have broadcasted during the year and declare the percentage of European works they have shown so that the CSA can check annually if the obligations have been respected. According to the Survey results, in France three channels are monitored daily.

Country	Monitoring system foreseen?	Same for private and public broadcasters?	Monitoring of channel broadcast schedules
Malta	yes	yes	no
Netherlands	yes	yes	random checks; in-house or outsourced
Norway	yes	yes	no
Poland	yes	yes	no
Portugal	yes	yes	no
Romania	yes	yes	every 6 months; in-house
Slovakia	yes	yes	no
Slovenia	yes	yes	annual, independent, 3 staff
Spain	yes	yes	monthly and annually; in-house
Sweden	yes	yes	no
UK	yes	yes	yes

7.1.2 Reporting standards

According to the information retrieved, Cyprus, Greece, Lithuania and Malta directly implemented the text of the Directive requesting the provision of the following information: **a statistical statement on the achievement of the proportion** referred to in Article 16 and Article 17; **the reasons, in each case, for the failure to attain that; and the measures** adopted or envisaged in order to achieve it.

The Portuguese law doesn't require information from broadcasters on compliance with Article 17 (independent productions); and in Sweden only statistical information is required (no reasons for non compliance and measures taken are required). It should, however, be noted that MS may also obtain this information through different channels, without requesting it to broadcasters.

Additional measures to ensure efficiency of monitoring and reporting

Some Member States impose **additional monitoring requirements** for reporting. In Malta, the proportion of programmes originally produced in the Maltese language should be shown separately in a report. In Slovenia, information on the proportion of own production, Slovenian audiovisual works, and information on the proportion of new audiovisual works must also to be provided in addition to the information requested in Article 16 (3) of the Directive. In the UK, broadcasters also have to provide grounds for any exemption they are claiming for any channel.¹¹⁴

Verification mechanisms

¹¹⁴ Ibid

Monitoring and reporting are not necessarily cross-checked by Member States. Sixteen Member States have set up **verification mechanisms** of statistical reports submitted by broadcasters. In the survey, NRAs replied that resources required for the verification of statistical reports as well as frequency are the same as for the monitoring (see Table 14).

Sanctions

Most of the countries implemented **sanctions** for the non-compliance with the requirements of Articles 16 and 17 of AVMSD. According to the respondents to the survey, warnings are considered to be the most effective, along with other sanctions such as fines or restriction of license (see Table 14). The French NRA, in addition to other available sanctions, can demand that those broadcasters that did not respect the obligation make a public statement on this topic, or apply a sanction (fines, restrictions on license) after repeated warnings and a legal proceeding.¹¹⁵

Table 14: Monitoring of fulfilment of the requirements of Articles 16 and 17 in the EU Member States¹¹⁶

Country	Verification mechanism of statistical reports (frequency, responsible body, staff required)	Available sanctions
Austria	no	fines
Belgium (Fl)	yes	warning; fines; restriction on license
Belgium (Fr)	no	warning; fine; restriction on license
Bulgaria	no	Warning; fines; restriction of license
Croatia	yes	Warning; fines
Cyprus	no	no
Czech Republic	yes	warning; fines
Denmark	yes	warning; restriction on license; deliver plan of improvement
Estonia	no	fine; restriction on license; precepts
Finland	yes	no
France	yes	warning; fines; restriction of license
Germany	no	yes
Greece	no	no
Hungary	no	no

¹¹⁵ Survey to NRAs. It should be noted that such sanction mechanisms apply to all breaches of regulations (not only implementing measures of art. 13, 16 and 17).

¹¹⁶ Information provided in the table was retrieved from the Audiovisual Observatory and has been completed with the results of the survey addressed to the NRAs conducted by KEA European Affairs

Country	Verification mechanism of statistical reports (frequency, responsible body, staff required)	Available sanctions
Ireland	yes	yes
Italy	yes	fine
Latvia	yes	warning; fines
Lithuania	yes	warning; fines
Luxemburg	N/A	N/A
Malta	no	yes
Netherlands	yes	warning; fine; cease and desist order; open and permanent communication
Norway	yes	warning; fine; withdrawal of license
Poland	yes	yes
Portugal	yes	warning; fine
Romania	no	warning; fine
Slovakia	no	warning; fine
Slovenia	yes	warning; fine; restriction on license
Spain	yes	fine; restriction of license
Sweden	no	no
UK	no	no

7.1.3 Conclusions

The desk research and the survey revealed that there is a rather well-implemented monitoring system for audiovisual linear services in all Member States. The most common monitoring system involves an annual report on the implementation of Articles 16 and 17 conducted by broadcasters or NRAs and submitted to relevant public bodies. Some Member State legislations require that this report be conducted upon request, while others require that NRAs send the report directly to the European Commission. In most Member States, there is also a verification mechanism of statistical reports.

Five Member States implemented the requirements of Article 16 (3) of the Directive *mot-à-mot*; nine countries have a reporting obligation provided in their legislation but don't mention statistical and other data to be provided; two Member States have less requirements for broadcasters in the legislation; and another three have implemented additional measures, mostly concerning the monitoring of national works.

7.2 Monitoring requirements for non-linear services

According to Art 13 (2) of the AVMSD, Member States must report to the Commission about the implementation of Article 13 (1) every four years.

The European Commission has the obligation to further report to the European Parliament and to the Council of Europe on the application of Article 13 (1), in relation to the market and technological developments and according to the objective of promoting cultural diversity.

So the AVMSD doesn't say anything about the content of the report that should be provided by the Member States in contrast to the reporting requirements for the linear services. Ad hoc guidelines are provided for each reporting period and are prepared with the AVMS Contact Committee.

According to the 2015 report on the developing market for on-demand services by the European Audiovisual Observatory, a comprehensive analysis of catalogues is very rarely made in the Member States. Only the French public film agency (CNC) published data resulting from the comprehensive monitoring of on-demand services by private consultants, namely GfK and NPA Conseil.¹¹⁷

7.2.1 Main characteristics of monitoring systems for non-linear services

According to the survey results, in 18 Member States a monitoring system is foreseen. In most of the states monitoring is annual, in-house and requires 2-3 staff to conduct it. According to the Norwegian NRA, as far as on-demand services are reporting themselves, based on a given method, such monitoring doesn't require any resources. Slovenian law adds an "if necessary" clause to the requirement of conducting the annual monitoring¹¹⁸. The survey also shows that such monitoring has not been conducted yet in Slovenia. The French-speaking Community of Belgium conducts monitoring once a month. In the Netherlands monitoring is conducted by random checks. In Cyprus monitoring is conducted every four years (see Table 15).

Table 15: Monitoring of fulfilment of requirements of Article 13 (2) in the EU Member States¹¹⁹

Country	Monitoring system foreseen
Austria	every 4 years
Belgium (Fl)	Annual; in-house; no particular budget
Belgium (Fr)	once per month; in house; 2 staff
Bulgaria	annual; in-house
Croatia	annual; in-house
Cyprus	every 4 years; in-house
Czech Republic	annual; in-house
Denmark	no
Estonia	annual, in-house

¹¹⁷ Christian Grece, André Lange, Agnes Schneeberger and Sophie.Valais – *op.cit.* p. 193

¹¹⁸ Audiovisual media Service Act of Slovenia, article 16

¹¹⁹ Information provided in the table was retrieved from the Audiovisual Observatory and has been completed with the results of the survey addressed to the NRAs conducted by KEA European Affairs.

Country	Monitoring system foreseen
Finland	no
France	annual; in-house; 3 staff and 1.5 managers
Germany	no
Greece	no
Hungary	no
Ireland	annual ¹²⁰
Italy	annual; in-house; 3 staff
Latvia	no
Lithuania	no
Luxemburg	N/A
Malta	no
Netherlands	random checks; in house but if necessary outsource and hire external assistance; 2 weeks per year
Norway ¹²¹	on demand services report based on given method, no resources required
Poland	yes
Portugal	annual; in-house
Romania	Annual; in house
Slovakia	yes
Slovenia	annual (if necessary); independent; 3 persons
Spain	annual; in house
Sweden	no
UK	annual; in-house

¹²⁰ The Broadcasting Authority of Ireland (a body corporate established by the Broadcasting Act 2009) is The Statutory Regulator in relation to broadcast or linear services and does not regulate on-demand services. This is the role of a voluntary organisation (the On-demand AV Group). Responsibilities regarding on-demand and European works are set out in their Code of Practice. In the Code there is nothing said about the monitoring but there is an annual reporting obligation provided.

¹²¹ EEA countries do not have an obligation to report on the implementation of AVMSD but Norway voluntarily provided information.

7.2.2 Additional measures to ensure efficiency of monitoring and reporting

Fifteen countries have not foreseen any **verification mechanism of statistical reports** for on-demand services.

Nine countries do not provide for any **sanctions** for the non-fulfilment of the requirements of article 13 of AVMSD. Most of the countries that provide for sanctions have yet to enforce them on a specific case. The survey responses suggest that warnings, as well as open and permanent communication with the relevant stakeholders (content providers and on-demand services) are the most effective way to influence the latter.

Table 16: Additional measures to Article 13(2) adopted by the EU Member States ¹²²

Country	Verification mechanism of statistical reports (VOD)	Available sanctions
Austria	no	fines
Belgium (Fl)	no ¹²³	warning; fines; restriction of license
Belgium (Fr)	yes	warning, fines; restrictions on license
Bulgaria	no	warning; fines
Croatia	yes	warning; fines
Cyprus	no	no
Czech Republic	yes	warning; fines
Denmark	no	warning; restrictions on license; deliver plan for improvement
Estonia	yes	fines; restrictions on licence
Finland	no	no
France	yes	warning; fines; suspension of providing for maximum one month of a category of programmes, a part of the service or one or more advertising sequences.

¹²² Information provided in the table was retrieved from the Audiovisual Observatory and has been completed with the results of the survey addressed to the NRAs conducted by KEA European Affairs

¹²³ It should be noted that in April 2018, the Flemish minister for media proposed including in the Flemish Media Act a reporting obligation for the non-linear service providers (only applying to linear services under the current legislation). This provision is expected to be approved on a short-term basis.

Country	Verification mechanism of statistical reports (VOD)	Available sanctions
Germany	no	no
Greece	no	no
Hungary	no	no
Iceland	N/A – not communicated	N/A – not communicated
Ireland	N/A ¹²⁴	no
Italy	yes	fines
Latvia	no	warning, fines
Liechtenstein	N/A – not communicated	N/A – not communicated
Lithuania	no	warning, fines
Luxemburg	N/A	N/A
Malta	no	no
Netherlands	yes	warning; fines; cease and desist order; open and permanent communication with the stakeholders
Norway ¹²⁵	Yes	warning; fines; withdrawal of license
Poland	no	no
Portugal	yes	warning; fines
Romania	no	warning
Slovakia	no	warning; fines
Slovenia	yes	warning; fines
Spain	yes	fines; restrictions on license (so far only fines have been used)
Sweden	no	no
UK	N/A	N/A

¹²⁴ From the survey, Irish NRA does not regulate on-demand services. This is the role of a voluntary organisation (the On-demand AV Group).

¹²⁵ EEA countries do not have an obligation to report on the implementation of AVMSD but Norway voluntarily provided information.

In Belgium (French-speaking Community), a detailed analysis of the catalogues of the on-demand services has been conducted. However, the scope of the analysis was very limited: only two on-demand services have been analysed. The lack of a database of European works arguably complicates the monitoring process. Currently, information on the producers and co-producers of every works has to be collected from different sources.

7.2.3 Conclusions

The research indicates that the monitoring obligations imposed by Article 13 (2) require important resources for operators and NRAs, especially in relation to the share and/or promotion of European works in on-demand catalogues. The lack of data¹²⁶ (the fast evolution of VOD catalogues, combined with the absence of European databases make it difficult to track data on European works online) seems to be the main impediment in conducting monitoring activities, and thus presents a general concern and challenge in this area. This is the reason why a significant number of Member States did not implement a monitoring system for the implementation of Article 13 (1) nor a verification mechanism for the data provided by operators.

As such, most Member States that do run monitoring activities rely solely on data provided by on-demand operators, without further control of these reports or additional investigations conducted by third parties. The frequency of requesting such data also differs across Member States. Many adopted yearly reporting obligations, even though under the Directive they only need to report once every four years. However, France is the only country that conducted a comprehensive analysis of on-demand catalogues.¹²⁷

7.3 Monitoring system of the implementation of Articles 13, 16 and 17: key conclusions and analysis

The general and most important observation that came out of the research is that linear services are better monitored than non-linear services across Member States, in relation to the implementation of the concerned articles of the Directive. This could arguably lead to the perception that there is more salient information on the circulation of European works and the promotion of cultural diversity across linear services than across non-linear services, due to the latter's dynamics, diversity and, reportedly, lack of data.

It should be noted that provisions on linear services have existed since 1989, since the adoption of the TVWF Directive and the application of these provisions has been monitored by the Commission through biennial reports, which explains the consistent implementation of monitoring mechanisms for broadcasting services. This is not the case of the newer introduction of reporting obligations for non-linear services and their still emerging markets. Additionally, the greater flexibility of Article 13 is logically more difficult to support through EU-wide reporting guidelines.

However, comprehensive analyses of catalogues are possible, provided that concrete and efficient methodologies and resources are employed, on the basis of reliable information on on-demand services (see Case Studies - section 8).

¹²⁶ Survey to NRAs

¹²⁷ Results of the survey addressed to the NRAs

One first impediment to the production of relevant information on the proportion of European works in on-demand catalogues is the **legal definition of on-demand audiovisual services provided by the AVMSD**. In order to strike a balance between innovation in on-demand services and to take into account potential future developments of new types of services, the definition (see also section 5.5) doesn't specify what constitutes a catalogue or what is meant by 'at the moment chosen by the user and at his individual request', or what is the extent of the editorial responsibility of the on-demand service. Member States do not provide a more specific definition in their implementation measures, but a report by ERGA¹²⁸ further specifies the relevant criteria:

The AVMSD currently applies to editorially responsible providers based in EU Member States, which offer linear or on-demand services that are deemed to offer content comparable to broadcast TV programmes (or "TV like"¹²⁹). According to recitals 21-28 and Article 1 (Definitions) of the AVMSD, an audiovisual media service has the following characteristics:

- **A service**
- Under the **editorial responsibility** of the service provider
- which is **mass media**
- and the **principal purpose**
- is to **inform, entertain and educate**
- through the provision of **audiovisual programmes**

In a context of an increasing convergence of services, it is more difficult to make the distinction between on-demand services that are subject to editorial responsibility of an audiovisual media service provider (which are thus under the scope of the AVMSD definition) and on-demand content provided on Internet-based services (e.g. branded channels on user-generated content platforms, or video tab on a website). As a result, some non-linear services are not aware of their obligations under AVMSD. This was exemplified by the French CSA in a comprehensive report on the application of the AVMSD by non-linear services, where the distinction between the online service offering audiovisual content and the editor was difficult to establish in many cases (for example, in the case of some services developing a new platform with another service, e.g. Filmonline with Orange created LiveboxStar).¹³⁰

The current scope of the Directive partially explains the general large discrepancies between the number of on-demand audiovisual services identified by NRAs and the ones in the MAVISE database¹³¹.

- 1. Editorial responsibility versus geographical copyright limitations.** An on-demand service active in several countries is considered as a single service by Member States, even though its offering is not the same in all geographical

¹²⁸ ERGA (2015) ERGA report on material jurisdiction in a converged environment. ERGA 2015 (12), Brussels

¹²⁹ TV-like (rec. 24, art. 1 (1)(b)) meaning "that they compete for the same audiences as television broadcasts and the nature and the means of access to the service would lead the user to reasonably expect regulatory protection within the scope of the Directive".

¹³⁰ CSA (2013) Rapport au Gouvernement sur l'application du décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande (SMAD). Paris, 23 December 2013.

¹³¹ Christian Grece, *On-demand audiovisual markets in the European Union*, European Audiovisual Observatory, 2015

areas where it is active. This is due to the fact that territorial licensing makes it unlikely to provide the same catalogue in all countries, and thus it is not part of the editorial strategy of the provider. For example, iTunes is considered as a single service and not a collection of 28 different services. Aside from the offering being *de facto* different in various countries, the layout and the means of ensuring promotion used in each national catalogue are also designed for national rather than European works. That said, the editorial choice is visible beyond the copyright limitations in the way that ensures prominence.

The MAVISE database seeks to address this by including the national variations of the same on-demand service, in relation to the means of prominence of works. This is why a comparison between data provided by NRAs and listings from the MAVISE database shows discrepancies in relation to the numbers of available on-demand services.

In practice, this has had little impact so far since Member States have to monitor non-linear services legally established in their country only. This may have a broader impact if Member States can request a financial contribution from on-demand services that are targeting their country, as put forward in the proposal for a review of the AVMS Directive.

2. Editorial responsibility in the case of 'branded channels'. The latter exclusively contain works from different broadcasters of studios but are presented within an on-demand service (i.e. BBC channel presented on iTunes service). According to iTunes, the company has full editorial control over the choice of works presented in a branded channel. However, broadcasters indicated that the uploading of works had been carried out directly from their facilities.¹³²

This is the reason why in MAVISE database it was considered that each individual branded channel is an individual on-demand service operated by the provider and not by iTunes. For reporting purposes, branded channels should be included as part of the service with editorial responsibility (e.g. BBC in the above example).

Maintaining such regulatory distinction between on-demand audiovisual media services is challenging for the NRAs, and reflects the difficulty of monitoring the share and prominence of European works in catalogues.

8 Case studies

The case studies developed on the basis of the desk research and the survey responses are meant to underline particularly interesting measures for the promotion of European works via Articles 13, 16 and 17 of the Directive. They support the conclusions of this paper by identifying transferable solutions already implemented in some Member States with a view to improving the implementation and enforcement of the aforementioned Articles of the Directive.

Main findings:

¹³² Christian Grece, André Lange, Agnes Schneeberger, Sophie Valais, 'The development of the European market for on-demand audiovisual services', in the *European Audiovisual Observatory*, 2015, p. 190

- In France, CSA established a comprehensive monitoring system for on-demand services through the **outsourced services** of two consultancies, GfK and NPA Conseil, which monthly **collect all the titles available on the main on-demand platforms in France**;
- In Belgium, the CSA established a comprehensive methodology to **determine the impact prominence measures have on the promotion of EU works in the on-demand services**, using a combination of quantitative and qualitative data collection tools. The research shows that:
 - Prominence measures and consumption can be quantified, but the process requires cooperation with non-linear services to gather the necessary data; and
 - While retaining a certain degree of flexibility, it is possible to embed additional specifications in implementing measures regarding prominence at EU level.

8.1 Efficient monitoring systems of on-demand services - France

Most Member States do not account for a monitoring system of the implementation of the provisions relating to the proportion of European works in on-demand catalogues. Most NRAs stated that data in this matter is mostly unavailable or that they simply don't have an efficient methodology for establishing a monitoring system.

France set up a comprehensive monitoring system for the audiovisual on-demand national market through the CSA¹³³ reports.

The French public film agency (CNC) also publishes monthly data resulting from the monitoring conducted by private consultants, namely [GfK](#) and [NPA Conseil](#). While not as comprehensive as the extensive work conducted by the NRA, such market data could provide a "light" method to keep track of the share of European works on on-demand catalogues for countries with limited resources for undertaking a robust monitoring process.

8.1.1 Approach and main findings

The method used to monitor the on-demand market was published by the CNC in their monthly reports.¹³⁴ GfK identifies each month the total number of titles sold or rented by the most representative generalist platforms on the paid on-demand market in France. The estimation on the VoD market is calculated based on an estimated covering rate of 2.2%, starting from October 2015.

The titles available on the VoD market are collected each month by NPA Conseil via the concerned services' websites. Ten platforms are analysed: CanalPlay, Club Vidéo SFR Pass Cinéma, Club Vidéo SFR Pass Kids, Filmo TV, GulliMax, La Box VideoFutur, Netflix, Pass M6, TFouMax and Zive. The services established abroad, however, are excluded (i.e. iTunes, Google Play, Xbox Live). The data collection is carried out during a week from the analysed month.

¹³³ CSA (2013) Rapport au Gouvernement sur l'application du décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande (SMAD). Paris, 23 December 2013.

¹³⁴ Les synthèses du CNC, no. 2, *La vidéo à la demande par abonnement*, Juin 2016, p. 2 <http://www.cnc.fr/web/fr/syntheses/-/ressources/9655292>

The “Film” section gathers cinematographic works shown in cinema halls in France and the films that were commercialised directly online. The ‘TV series’ section is structured by the titles, regardless of the number of seasons or episodes. The ‘Others’ section gathers all audiovisual works which cannot be integrated in any of the above-mentioned categories.

The VOD market in France is in full expansion. In 2015, it reached €82.5m, with 182.3% more than in 2014. The SVOD market reached 26% of the total VOD market, 15% higher than in 2014. In 2015, 6 965 programmes were available on the VoD market: 4 432 films out of which 3 130 cinematographic works, 500 TV series, 521 series for young people and 1 512 other programmes.

According to the same CNC report, in 2015, in term of nationality, the catalogue structure of the 10 analysed platforms was, on average, represented by: **42.01% French works, 35.9% US works, 18.9% non-national European works and 3.1% other works.** Netflix and Zive offer the largest proportion of US works: 53.7% and 87.2% respectively.

The offer of older films is rather important. A total of **1 155 films were produced more than 19 years ago, 906 between 10 and 19 years ago, 705 between 5 and 9 years ago and 364 between 3 and 4 years ago.** The percentage of recent films (produced less than 10 years ago – according to the definition of the French NRA) rose from 2014 to 2015 by 3.4, peaking at 34.2 in 2015. The Netflix catalogue features the most recent film works, with 17.3% produced less than four years ago.

8.2 Assessing the impact of prominence of works in on-demand catalogues - Belgium

As mentioned in section 6.3, while 11 Member States indicated in the survey responses that prominence is the most efficient tool to promote European works on non-linear services, few comprehensive evaluations have been carried out to assess the efficiency of such measures in terms of promotion of European cultural diversity.

The main arguments for implementing prominence measures for regulators and national authorities are linked to efficiency and enabling AV policy-makers to work more closely with service providers. Conversely, this is of interest to non-linear service providers as it does not involve any commitment in terms of programming or financial contribution to productions. Prominence of specific films (European works in that case) is also in line with their operating methods and can be embedded in their communication and promotion strategies, and thus generate positive effects on their revenues to some extent.

The Belgian CSA set up a dedicated mechanism for assessing the impact prominence measures undertaken by on-demand services for the promotion of European works.¹³⁵

¹³⁵ CSA (2012) ,Evaluation du dispositif de mise en valeur des œuvres européennes et de la Fédération Wallonie-Bruxelles dans les services de vidéo à la demande (VOD) – art.46 du décret SMA. Avis n°11/2012, 2012 Full report available at : <http://www.csa.be/documents/1779>

8.2.1 Approach and main findings

The methodology used included a combination of quantitative and qualitative data collection tools:

- Quantitative data collection on 1) the share of European works in catalogues; 2) the number (and types) of prominence measures used; and 3) consumption of European works. Relevant prominence measures can include a dedicated tab or catalogue category for European works, thematic programmes, online and offline advertising featuring reference to European works, including events and festivals; and promotional announcements or advertising on non-linear services.
- Qualitative data collection was used in order to differentiate the types of prominence measures (including a dedicated scoring system) and to isolate their impact on consumption.

The evaluation shows that some degree of correlation can be established between promotion and consumption of European works when analysing year-on-year data. All data is expressed as a percentage of total promotional measures (or total consumption of audiovisual works)¹³⁶.

	Data 2013	Data 2014	Data 2015
Proximus: EW promotional measures	54%	65%	54%
Proximus: consumption of EW	32 %	50%	42%
VOO: EW promotional measures	43%	59%	51%
VOO: consumption of EW	33%	56%	30%

It should be noted that case studies of large-scale promotional actions for European Works also demonstrate a positive correlation on consumption of European works (e.g. the films *Magdalena Sisters* and *Skirt Day* were specifically promoted via dedicated promotional tabs: “coin des cinéphiles” and “women’s rights day”, which led to a 550% and 300% increase of views, respectively). Although further assessments and regular checks should be carried out to test the robustness of these correlations, the methodology allow the following to be concluded:

- Prominence measures, catalogue and consumption can be quantified, though it requires active cooperation with non-linear services to gather the necessary data.
- While retaining some degree of flexibility, it is possible to embed additional details and further specification in implementing measures related to prominence. Softer instruments and specific guidelines and policy toolkits to implement the prominence requirement for non-linear services could be helpful tools as well (both for policy-makers, NRAs and on-demand services), according to the Belgian evaluation.

¹³⁶ CSA, *Promotion of European Works on VOD services: The Belgian CSA experience*. Presentation at the European Regulators Group for Audiovisual Media Services. , 2016

8.2.2 Transferability

The methodology developed is arguably rather heavy in terms of human resources (or financial resources if externalised), as it implied a weekly monitoring of each on-demand services' promotional channels. In order to address this issue and apply the methodology more easily in other contexts, the following possibilities could be envisioned:

- Develop partnerships with on-demand services in which they would report on promotional campaigns, with few ad hoc verifications. Such partnerships could take the form of co-regulation agreements or structured dialogues between NRAs, EFADs and service providers.
- Use web-scraping tools to scan the websites and other web-based communication channels of service providers. However, this requires matching the information retrieved from online services with data on European works. The development of a database of European works could also ease the process in that respect.
- Developing a database of European works could be done via the Media Programme, for example by supporting the extension of the LUMIERE database¹³⁷, which currently covers all films released in European cinemas. A feasibility study or a pilot project could test the possibilities to cover 1) other types of European works covered by the AVMSD; and 2) European works directly released on linear and non-linear services without a cinema release.

8.3 Analysis of data reported for Article 13 and options for EU guidelines

This last case study analyses the information reported by Member States in relation to Article 13, and draw some preliminary conclusions on how future reporting could be inspired by the information reported by some countries. Since the implementation of Article 13 is highly fragmented across Member States (see section 6 above), it is very challenging to develop "one size fits all" guidelines to ensure comparable reporting across all Member States. However, some trends identified in a few Member States can inform the development of more harmonised pan-EU guidelines and minimum standards for all countries.

8.3.1 Approach and main findings

As part of the data collection process, we noted that some Member States have reported interesting datasets in relation to the promotion of European works on non-linear services. In particular, quantitative reporting from Bulgaria, Spain and Sweden included detailed data on the following indicators:

Basic information:

- Type of on-demand service
- Revenue model
- Geo-restrictions

Share (and consumption) of European works:

¹³⁷ <http://lumiere.obs.coe.int/web/search/>

- Percentage of European works (hours of consumption)
- Share of European works in catalogue

Information related to prominence of European works:

- Percentage of European works on home page
- Percentage of works where country of origin is specified
- Possibility to search works per country (yes/no)
- Dedicated sections for European works
- Percentage of trailers promoting European works
- Percentage of other promotions for European works (user interface and other marketing channels)
- Average time during which European works are available online

The capacity of these Member States to obtain information related to prominence measures is particularly interesting, since results from the survey on implementing measures show that a majority of Member States find that prominence is the most relevant measure for promoting European Works online. However, it is also the one which is the most difficult to monitor adequately, as shown in the above case study on Belgium.

The analysis of Member States reporting on Article 13 shows there is room for providing detailed data reporting with few resources. In Spain and Bulgaria, the verification of the information provided is carried out in-house with scarce human resources, while in Sweden the data provided is not verified. This means these detailed data are obtained at little to no cost directly from non-linear services.

While the reliability of the data provided is difficult to ascertain, obtaining such level of details in the data reported means that non-linear services are actually willing to share information on their activities to promote European works in these three countries.

Another important aspect is that all three countries are using a very similar approach in terms of indicators used, while they do not have a particularly similar implementing measure of Article 13.

8.3.2 Transferability

This type of monitoring could inspire the establishment of a European framework for art.13 reporting, as well as guidelines for providing quantitative information on how non-linear services are actually complying with their promotion requirements.

This framework could pick up some of the main indicators from the three countries analysed above to propose a relatively simple set of data to be collected:

- Type of on-demand service
- Revenue model
- Geo-restrictions
- Share of European works in catalogue (percentage of total hours in catalogue)

Information related to prominence of European works:

- Percentage of European works on home page
- Possibility to search works per country (yes/no)
- Dedicated sections for European works

- Percentage of promotions for European works (trailers and/or other marketing channels)

It should be noted that the three countries providing these more detailed datasets rely on 1) strong cooperation and continuous dialogue with the sector (e.g. in Sweden via a film agreement agreed by all key stakeholders, which provides a strong discussion and cooperation platform) to ensure they provide reliable data; 2) in the case of Spain, legal obligations on investment in production for non-linear services ensures that the Ministry of Culture and Audiovisual policy is in frequent interaction with the sector. This type of obligation also requires more transparency from non-linear services, as they need to provide information on their turnover to meet the requirement to invest in European audiovisual productions.

9 Conclusions and future perspectives

The above chapters revealed several key aspects and challenges for the regulation of the European audiovisual media services market:

- **The considerable divergences of national regulatory practices due to the flexibility of the AVMS Directive**
- **The development of new business models and the emergence of new services due to advancing digital and internet technologies**
- **The growing convergence of audiovisual policies with other policy fields, such as e-commerce or copyright**

In order to address the above challenges, several legislative proposals are currently discussed at EU level:

- **A draft proposal to amend the AVMSD**
- **A proposal for a regulation of the exercise of copyright in relation to online transmissions of broadcasting organisations**
- **A regulation on the cross-border portability of online content services**

These aspects are discussed in detail in the current chapter.

Firstly, **the divergences of national regulatory practices are considerable at EU level** and they are mostly attributed to the flexibility of the AVMS Directive. The Directive is meant to cover some minimal requirements which can be applied in different ways by EU Member States in accordance to their own economic and cultural policy objectives.

From this mapping of implementing measures, a couple of key points can be highlighted:

- In terms of monitoring, many Member States have set up some form of verification mechanism (often through existing internal resources) for linear services. Very few countries have implemented a verification mechanism to check how on-demand services comply with the requirements of national measures implementing art.13 of AVMSD. Results from the survey generally

point out that Member States lack the resources needed for investing in more robust monitoring and reporting processes.

Additionally, setting up more advanced guidelines for improving reporting on those obligations requires looking at the different possible combinations of requirements to address the different possibilities offered to Member States.

- Beyond the different requirements set out in national laws, Member States are adopting two main approaches to ensure they achieve their cultural diversity objectives:
 - 1) **Self- and co-regulation, or partnerships** with audiovisual media services and establishing a constant dialogue with the sector to raise awareness on the role of Articles 13, 16 and 17, instead of applying sanctions or fines. The actual impact of such approaches, however, needs to be confronted with the mandatory reporting and market analysis, which will be further analysed as part of the study.
 - 2) **Public funding** for the audiovisual sector (at local, national and European levels), including support to audiovisual production in most Member States, but also in some cases (e.g. in Denmark) investment in on-demand services, with higher requirements to promote European works. A few countries also highlighted the importance of supporting networks and associations in the audiovisual sectors at EU level to promote co-productions and circulation of European works on audiovisual media services.

Those different approaches are enabled by the AVMSD and its minimal requirements model.

Convergence across different types of audiovisual media services is increasing, characterised by the merging of traditional broadcast services' format and purpose with developing internet technology, leads to the development of new business models and the emergence of new services. As a result, the regulation of the audiovisual market tends to intersect with other policy fields, such as e-commerce or copyright, which prevents Member States from easily assessing the impact and scale of the non-linear media service market and, implicitly, the circulation of European works in the audiovisual media. The application of the AVMS Directive in relation to those aspects is challenging and requires adapted tools to allow 1) a level playing field across the different types of services and 2) enable and encourage the promotion of cultural diversity.

Several legislative proposals are currently discussed at EU level which will address this issue:

- The European Commission put forward on 25 May 2016 a first draft proposal to amend the Directive. The current proposal amends the AVMSD by removing the principle of TV likeness (para 24 of the Directive 2010/13), and by reinforcing the obligations of on-demand services regarding European works, while maintaining requirements for the broadcasters in Article 16 and 17.¹³⁸

¹³⁸ Francisco Blázquez, Maja Capello, Christian Grece, Sophie Valais, *On-demand services and the material scope of the AVMSD*, IRIS Plus 2016-1. European Audiovisual Observatory, 2016, p 63

Additionally, a regulation on the cross-border portability of online content services in the internal market entered into force in 2018.¹³⁹ It guarantees access for consumers to their domestic (paid) subscription for online music, film or sporting events when travelling to another Member State.

The proposal for a regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and re-transmissions of television and radio programmes is under negotiation between the co-legislators.¹⁴⁰ The main objective of the proposal is to provide wider online access to TV and radio programmes for citizens across the EU.

All these different policy proposals may have an impact on the promotion of European works and on cultural diversity in the Digital Single Market. As such, the subsequent reports of this assignment shall take into account both the current implementation of the AVMSD and the evolving policy environment, while putting forward realistic and achievable processes for monitoring the implementation of current and future cultural diversity provisions under the AVMSD.

¹³⁹ Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market. [OJ L 168](#), 30.6.2017.

¹⁴⁰ European Commission (2016) Proposal for a regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and re-transmissions of television and radio programmes. COM(2016) 594 final. Brussels, 14.9.2016.

10 Economic contribution of the Audiovisual sector in the EU

This chapter provides an overview and analysis of the market for audiovisual works in Europe both via linear and non-linear channels. This includes the entire production, distribution and broadcasting chain. It uses a combination of well-known industry sources, such as the OBS, IHS, the EBU and the TVI Yearbook; and some of the bespoke channel survey and interview programme data obtained as part of the study. These are combined to create as accurate a picture as possible of the whole sector and its two main component parts – content creation and distribution. Where individual sources are used, these are detailed in the respective charts.

The chapter updates similar studies completed for the EC in 2008 (“the 2008 study”) and in 2011 (“the 2011 study”). Where possible, comparisons are made to the 2011 study. Wherever possible we have looked at the situation in 2015 and 2016, but the majority of data needed for the study is only currently available for the period 2009-2014.

The section provides an overview of business demography and employment in the audiovisual sector and it explores drivers of change in the industry. This section builds on results of the ESSnet-Culture project¹⁴¹ and the latest publicly available industry reports.

The main conclusions of our analysis follow:

- In 2014, the size of the **European audiovisual market amounted to slightly more than €105 billion** (EAO, 2015a). Of particular significance was the expansion of non-linear service providers in the period 2010-2014;
- The **economic contribution** of the sector in this study is defined by the **businesses operating in the production and distribution of audiovisual content**:
 - **France, the UK and the Netherlands have the highest concentration of enterprises** operating with respectively 19%, 16% and 10% of the total EU businesses;
 - If these numbers are broken down by the two main elements of the supply chain (i.e. production and distribution), it becomes clear that the concentration in **France and the Netherlands** is driven by the number of **production** companies. In turn, **Italy, Spain and the UK** are the countries with high percentages of companies operating in audiovisual **distribution**;
 - One common feature in many countries is the **small size of the enterprises involved in the audiovisual sector**:
 - **95.95%** of the active enterprises in the **production** of audiovisual in 2014 fall into the category of “**From 0 to 9 persons employed**”;
 - **84.96%** of the active enterprises in the **distribution** of audiovisual in 2014 fall in the category “**From 0 to 9 persons employed**”.
- Another indicator used to estimate the economic contribution of the audiovisual sector in this study is the **level of employment**:

¹⁴¹ ESSnet-CULTURE (2012), European Statistical System Network on Culture, Final Report. http://ec.europa.eu/culture/library/reports/ess-net-report_en.pdf

- In 2015, according to the EU LFS, the audiovisual sector accounted for around **824 200 persons employed**¹⁴² from 15 to 64 years across the EU28, **55%** of them worked in **production** and **45%** worked in **distribution**;
- **From 2011 to 2015**, the audiovisual sector was characterised by **increasing employment trends**, with an additional 35 000 workers between 2011 and 2015;
- This growth was mainly in the broadcasting sector which saw an average annual growth rate of 2% between 2011 and 2015 (additional 28 200 workers);
- However, Eurostat data does not cover public administration and non-market services. The only data which are comparable across countries were provided by EBU Media Intelligence Service (MIS) and refer to the Public Service Media (PSM). According to the latest EBU MIS, in 2015 across all 28 EU countries **PSM generate 158 900 direct jobs**. However, the 10 countries analysed¹⁴³ show a **decreasing employment trend** in the **2012-2014 period**.

10.1 Definition of the audiovisual sector – Economic perspective

For the purpose of the collection of EU level statistics, previous literature has classified the audiovisual sector under the following NACE Codes:

- J59 Motion picture, video and television programme production, sound recording and music publishing activities; and
- J60 Programming and broadcasting activities (the programming of video-on-demand channels is also included here).

However, these delimitations used by Eurostat do not reflect the complexity of the sector either in Europe or in national contexts¹⁴⁴. At national level, different definitions co-exist which come directly and indirectly from different sources (ICF, 2016a)¹⁴⁵. Despite these limitations, Eurostat data still constitute the only available source of information that allows for meaningful comparisons across EU Member States.

The table below provides an overview of the NACE codes that correspond to the audiovisual sector.

¹⁴² The number of people employed in Eurostat is defined as the total number of persons working in the observation unit (inclusive of working proprietors, partners working regularly in the unit and unpaid family workers), as well as persons who work outside the unit who belong to it and are paid by it (e.g. sales representatives, delivery personnel, repair and maintenance teams). It excludes manpower supplied to the unit by other enterprises, persons carrying out repair and maintenance work in the enquiry unit on behalf of other enterprises, as well as those on compulsory military service.

¹⁴³ Czech Republic, Denmark, Germany, France, Italy, Netherlands, Poland, Romania, Spain and UK.

¹⁴⁴ One reason explaining the encountered complexity resides in the fact that radio and audiovisual are organised differently, also due to the nature of the media (with or without moving images) (ICF, 2016a).

¹⁴⁵ For instance, the Czech Republic, France, Germany and the Netherlands have largely aligned their national definitions with the European NACE classification. Others, such as Spain (Article 2 of the 2010 Law on Audiovisual Communication) or UK (2003 Communications Act), contain definitions encompassing activities relevant to the AV sector. Others, like Romania (Audiovisual Law 504/2002 and The Regulation Code of the Audiovisual Content of the NCA 2006), have no clear or precise definition of the AV sector (ICF, 2016).

Table 17: NACE codes comprising the audiovisual sector

2-Digit	3-Digit	4-Digit
J59 - Motion picture, video and television programme production, sound recording and music publishing activities	J59.1 - Motion picture, video and television programme activities	J59.11 - Motion picture, video and television programme production activities
		J59.12 - Motion picture, video and television programme post-production activities
		J59.13 - Motion picture, video and television programme distribution activities
		J59.14 - Motion picture projection activities
	J59.2 - Sound recording and music publishing activities	J59.20 - Sound recording and music publishing activities
J60 - Programming and broadcasting activities	J60.1 - Radio broadcasting	J60.10 - Radio broadcasting
	J60.2 - Television programming and broadcasting activities	J60.20 - Television programming and broadcasting activities

Source: Eurostat

European data on the number of businesses operating in the audiovisual sector are available from the SBS (Structural Business Statistics) survey and follow the NACE classification at two and three-digit level. Similarly employment data in the audiovisual sector are available from the EU LFS (Labour Force Survey) at two-digit level of the NACE classification. Therefore, the analysis of Eurostat data does not allow any distinction to be made between the subsectors.

To ensure consistency with the latest industry study about employment in the audiovisual sector¹⁴⁶, we adopt the same nomenclature and categorise the NACE codes as follows: J59: production and J60: broadcasting.

10.2 The size of the European audiovisual sector

In 2014, the size of the European audiovisual market amounts to slightly more than €105 billion (EAO, 2015). Revenues from audiovisual service providers (both linear and non-linear) accounted for around 89% of total revenues. Of particular significance was the expansion of non-linear service providers in the period 2010-2014:

- Pay-TV revenues experienced a compound annual growth rate (CAGR) of about 4.3%; and
- On-demand pay-revenues experienced a compound annual growth rate of about 28.4%.

Between 2012 and 2013 there was a decline in all sub-sectors, except for VOD and Pay-TV revenues.

Overall, from 2010 to 2014 in the European audiovisual market there was a slight increase of about 0.9% in revenues.

¹⁴⁶ ICF (2016a) "Analysis of the EU audiovisual sector labour market and of changing forms of employment and work arrangements". Available at: https://www.fim-musicians.org/wp-content/uploads/AV_EU_labour_market_analysis_report_EN.pdf

Table 18 : Audiovisual sector revenues in EUR million (2010-2014)

	2010	2011	2012	2013	2014	Changes in % from 2013 to 2014	Changes in % from 2010 to 2014 (CAGR)
Audiovisual services	87,559	89,291	89,744	90,577	94,123	3.9%	1.8%
Public funding	25,733	25,666	25,572	25,260	25,571	1.2%	-0.2%
Advertising TV	29,196	29,340	28,054	28,036	29,416	4.9%	0.2%
Advertising Radio ¹⁴⁷	4,813	4,798	4,741	4,676	4,828	3.2%	0.1%
Pay-TV revenues	26,898	28,449	29,970	30,623	31,807	3.9%	4.3%
On-demand pay-revenues	919	1,038	1,406	1,981	2,501	26.2%	28.4%
Cinema gross box-office	6,377	6,446	6,571	6,276	6,324	0.8%	-0.2%
Physical video (incl. taxes)	8,032	7,422	6,810	6,054	5,343	-11.7%	-9.7%
Total	101,968	103,159	103,125	102,907	105,789.9	2.8%	0.9%

Source: EAO, 2015a

The contribution of the audiovisual industry varies considerably among Member States. Based on desk research, we found evidence of the impacts of the AV industry on national economies in the following countries:

- According to recent estimates released by the ministry of culture¹⁴⁸, the **French audiovisual market** total production (including radio, cinema, TV, video and recording industries) amounted to €28.4 billion in 2013. It contributed €12.5 billion of added value, or 0.66% of added value generated by the French economy (up from 0.57% in 1995).
- On a turnover of €4.3 billion, the direct contribution of the **Dutch film and audiovisual industry** to the Dutch economy is estimated to have been over €1.7 billion in 2011. This represented around 0.3% of the total Dutch Gross Value Added in 2011¹⁴⁹.
- According to the data provided by **Spain's** ministry of education, culture and sport, audiovisual and multimedia (cinema, video, music recordings and

¹⁴⁷ The AVMS Directive doesn't cover activities developed by radio.

¹⁴⁸ Ministère de la Culture et de la Communication (2013). Département des études, de la prospective et des statistiques (2014-2015), Le poids économique direct de la culture en 2013.

¹⁴⁹ Oxford Economics (2013) Economic contribution of the Dutch film and audiovisual industry

television) account for 24.2% of all cultural industries¹⁵⁰ in Spain and are estimated to account for around 0.8%-1% of the national GDP.¹⁵¹

- According to recent data¹⁵², the **UK's creative industries** – which include advertising, film and TV, architecture, publishing, music, design, games, museums and galleries, fashion, crafts, and the creative use of technology – contributed a record £91.8bn to the UK economy in 2016. Since 2010, the Gross Value Added of the subsector Film, TV, Radio & Photography has increased by 20.1%, contributing 0.9% of the total UK Gross Value Added.

10.3 Businesses operating in the audiovisual sector and employment trends

The economic contribution of the sector in this study is defined by the businesses operating in the production and distribution of audiovisual content. The level of employment is another key indicator of the importance of this sector across Europe. Information is drawn from Eurostat, as data from European sources allow for a level of comparison of trend developments across Member States. The absence of a centralised European system for audiovisual statistics means that data collected at EU and national level cannot be compared¹⁵³.

10.3.1 SBS data on businesses operating in the audiovisual sector

According to the EU SBS¹⁵⁴, in the EU in 2014 almost 138 000 companies were active in audiovisual production and around 11 700 companies were active in broadcasting.

However, the SBS dataset do not include public companies, as they cover the business economy, and not public administration and non-market services. Therefore, the following figures underestimate the number of companies operating in the sector, since public broadcasting services would not be included in several countries, depending on their legal status.

As shown in Figure 1, France, the UK and the Netherlands have the highest concentration of enterprises operating with 19%, 16% and 10% of businesses, respectively.

Figure 1: Percentage of enterprises in the audiovisual sector in EU28 – TOP 10 EU28

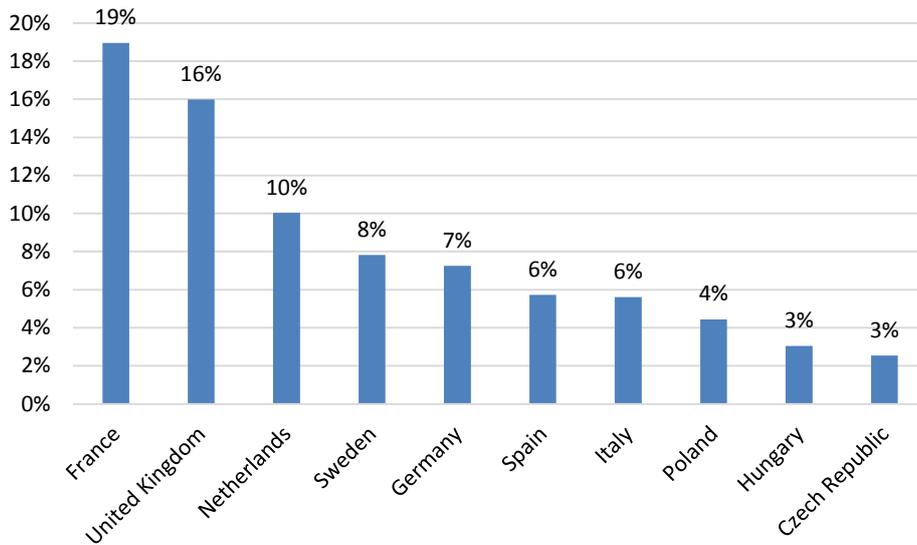
¹⁵⁰ MECD (2014), Anuario de Estadísticas Culturales 2014, Subdirección General de Documentación y Publicaciones. <http://www.mecd.gob.es/cultura-mecd/areas-cultura/libro/mc/observatoriolect/redirige/destacados/mundo-libro/Anuario-Estadisticas-Culturales-2014.html>

¹⁵¹ ICF (2016a) "Analysis of the EU audiovisual sector labour market and of changing forms of employment and work arrangements". https://www.fim-musicians.org/wp-content/uploads/AV_EU_labour_market_analysis_report_EN.pdf

¹⁵² <http://www.thecreativeindustries.co.uk/uk-creative-overview/news-and-views/news-creative-industries-earn-uk-almost-%C2%A392bn> .

¹⁵³ Following the recommendations of the ESSnet-Culture project, Eurostat started a four-year work plan in 2014 which aims to develop EU common statistical concepts and methods in order to produce and disseminate harmonised statistics that accurately depict business and employment trends in the cultural sector. ESSnet-CULTURE (2012), European Statistical System Network on Culture, Final Report. http://ec.europa.eu/culture/library/reports/ess-net-report_en.pdf

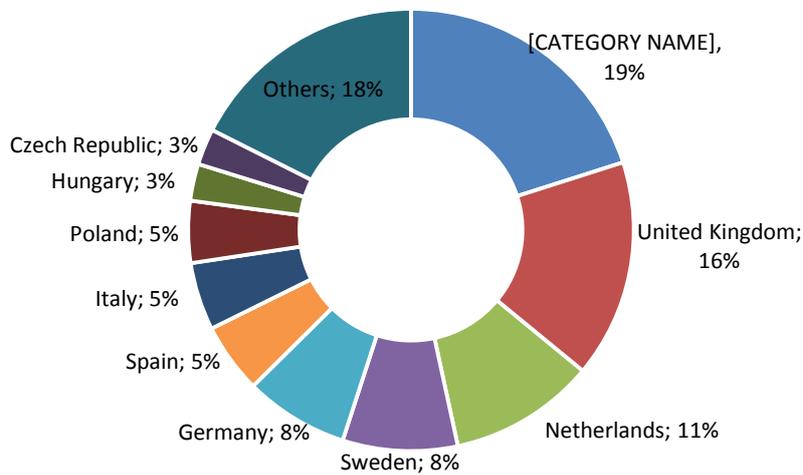
¹⁵⁴ Data for Ireland stops in 2012.



Source: SBS, Eurostat

However, if these numbers are broken down by the two main elements of the supply chain (i.e. production and distribution), it becomes clear that the concentration in France and in the Netherlands is driven by the number of production companies.

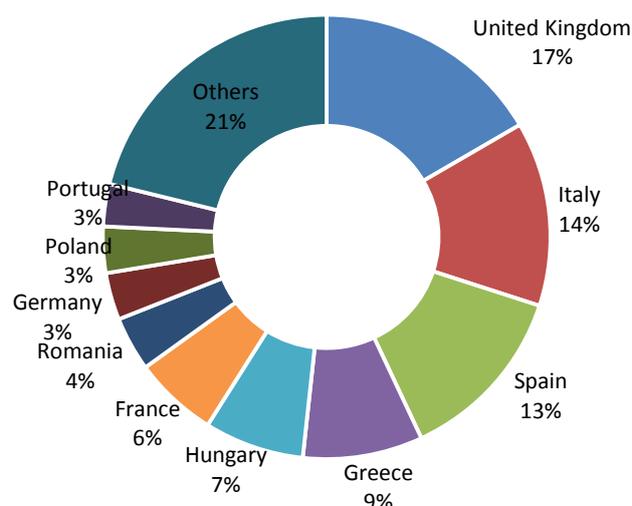
Figure 2: Number of enterprises in J59 - Motion picture, video and television programme production, sound recording and music publishing in 2014 breakdown in percentage – TOP 10 EU28



Source: SBS, Eurostat

In turn, Italy, Spain and the UK are the countries with high percentages of companies operating in audiovisual distribution, 17% in the UK, 14% in Italy and 13% in Spain.

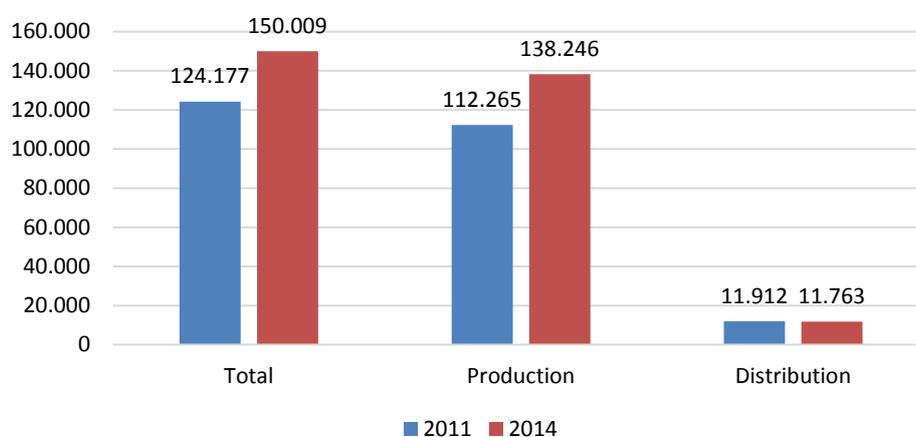
Figure 3: Number of enterprises in J60 Programming and broadcasting activities in 2014 breakdown in percentage – TOP 10 EU28



Source: SBS, Eurostat

The total number of businesses in the audiovisual sector across Europe increased by 20.8% between 2011 and 2014 (Figure 4), experiencing an average annual growth rate of 6.5%, which mainly reflects growth in the number of producers (with an additional 25 981 enterprises launched in three years), while the number of companies operating in the distribution slightly declined.

Figure 4: Number of enterprises in the audiovisual sector in EU28 in 2011 and in 2014



Source: SBS, Eurostat and VVA calculations based on Eurostat

10.3.1.1 Size of the enterprises

This section provides an overview of the audiovisual sector across countries on the basis of the business demography statistics available on Eurostat.¹⁵⁵ The reason behind the use of Eurostat instead of national statistics is the diversity of sources and different sector definitions. Additionally, national data are not comparable with European statistics.

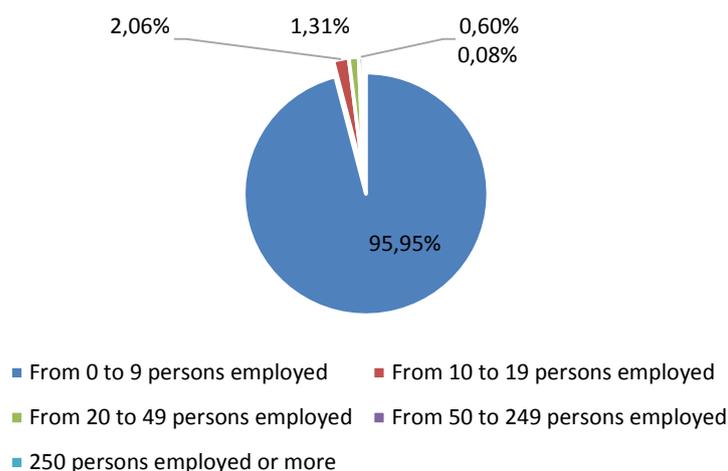
¹⁵⁵http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Business_demography_statistics&oldid=323321

The following section provides a breakdown of the size of active enterprises¹⁵⁶ in EU28 and in the top 10 Member States in terms of the number of companies both in production and distribution.

10.3.1.1.1 Production

One common feature in many countries is the small size of the enterprises involved in the audiovisual sector. In fact, as shown in Figure 5, 95.95% of the active enterprises in EU28 in 2014 fall into the category of "From 0 to 9 persons employed". Applying the European Commission's definition of an SME¹⁵⁷, 99.31% of the total active enterprises can be considered a small business.

Figure 5: Production EU28 – breakdown by company size



Source: SBS, Eurostat and VVA calculations based on Eurostat

The EU picture reflects what is happening at national level. As shown in Table 19, in all 10 countries under analysis, the percentage of microbusiness is above 85%. For example, in France, there were about 700 enterprises in the technical industry in 2014, supporting the production of motion picture, video and television programmes, and most of them were SMEs¹⁵⁸. Only in Germany did medium and large size enterprises have relatively more weight in the AV production industry, even though they represented just 2.1% of the total headcount.

Table 19: Production top 10 EU 28¹⁵⁹

	From 0 to 9 persons employed	From 10 to 19 persons employed	From 20 to 49 persons employed	From 50 to 249 persons employed	250 persons employed or more
France	96.7%	1.7%	1.1%	0.4%	0.0%
United Kingdom	95.1%	2.6%	1.3%	0.8%	0.2%
Netherlands	98.8%	0.6%	0.3%	0.1%	0.0%
Sweden*	98.6%	0.7%	0.4%	0.2%	0.0%

¹⁵⁶ http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Active_enterprise

¹⁵⁷ http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_it

¹⁵⁸ FICAM (2014), SYNPASE Rapport de la branche des Entreprises Techniques au service de la Création et de l'Évènement- Livre I Entreprises Techniques au service de la Création et de l'Évènement Secteur de l'AV et du cinéma

¹⁵⁹ Data as of 2014, for Sweden the category "From 10 to 19 persons employed" and "250 persons employed or more" refer to the 2013 data.

	From 0 to 9 persons employed	From 10 to 19 persons employed	From 20 to 49 persons employed	From 50 to 249 persons employed	250 persons employed or more
Germany	89.2%	4.8%	3.9%	1.9%	0.2%
Spain	93.1%	3.4%	2.4%	1.0%	0.1%
Italy	93.9%	3.4%	1.7%	1.0%	0.1%
Poland	98.9%	0.6%	0.3%	0.1%	0.1%
Hungary	98.0%	1.3%	0.5%	0.2%	0.0%
Czech Republic	99.2%	0.4%	0.3%	0.1%	0.0%

Source: SBS, Eurostat and VVA calculations based on Eurostat

The interviews conducted for this study found that the predominance of micro-enterprises is due to the strong fragmentation of production and the presence of independent producers in Europe, compared with the USA. For example, in France, the existence of independent producers in the sector has been helped by the fact that public authorities favour a separation of TV broadcasting and production of TV programmes (ICF, 2016a).

In Denmark, there is also a strong presence of independent producers, as a key feature of the national market (ICF, 2016a). The sector, in fact, has experienced a positive development in the years 2009-2014 both in terms of turnover and employment, benefitting from, among other things, the high levels of popularity of Danish audiovisual content, both nationally and internationally (ICF, 2016a). This positive development was reported to be linked to independent producers, as their turnover increased by almost 80% while employment increased by 38% (ICF, 2016a).

According to the latest data available on Eurostat (2013), Denmark indeed ranks among the top 10 countries in the EU that has experienced a boom in the founding¹⁶⁰ of enterprises in audiovisual production (+17.61%). The other countries are Slovenia (+18.61%), the UK (+17.54%), Latvia (+16.41%), Bulgaria (+15.87%), Slovakia (+15.56%), Poland (+15.25%), Portugal (+15.15%), Romania (+13.92%) and Estonia (+12.33%).

The birth of new enterprises is often seen as an indication of the dynamism of an economy, as newly founded enterprises are considered drivers of job creation and economic growth (Eurostat). In addition, new enterprises are generally considered to increase competition in the economy and thus stimulate innovation, improve productivity and overall competitiveness (Eurostat).

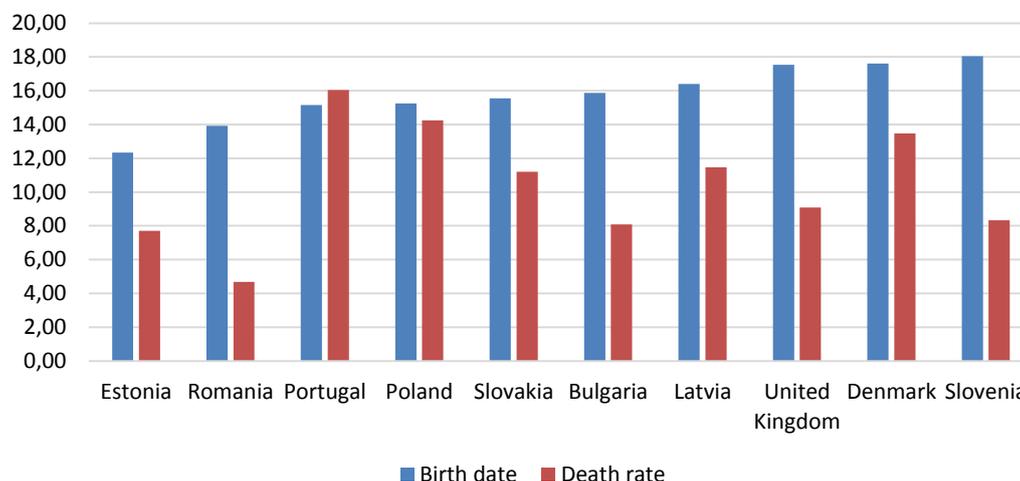
That being said, to have a proper indication of the magnitude of this boom in entrepreneurship and whether it will have a significant impact on the stock of enterprises within the AV production sector of a country, the enterprises launch rate must be compared to the enterprises termination rate¹⁶¹ and the survival rates¹⁶².

¹⁶⁰ The enterprise launch rate of a given reference period (usually one calendar year) is the number of launches as a percentage of the population of active enterprises. Eurostat's enterprise foundings do not include: dormant enterprises being reactivated within two years. New corporate entities being created from mergers, break-ups, spin-offs/split-offs or the restructuring of enterprises or a set of enterprises. The entry into a sub-population resulting only from a change of activity.

¹⁶¹ The enterprise termination rate of a given reference period (usually one calendar year) is the number of enterprise ends as a percentage of the population of active enterprises.

Enterprises generally fold due to a lack of economic success (Eurostat, 2014). Figure 6 shows that in most countries under analysis, the launch rate is significantly higher than the end rate, meaning that the net growth rate (birth rate – death rate) of enterprises in the audiovisual production sector is positive. The only exception is Portugal, where there is a negative evolution.

Figure 6: comparison of launch rate and termination rate in top 10 EU28¹⁶³



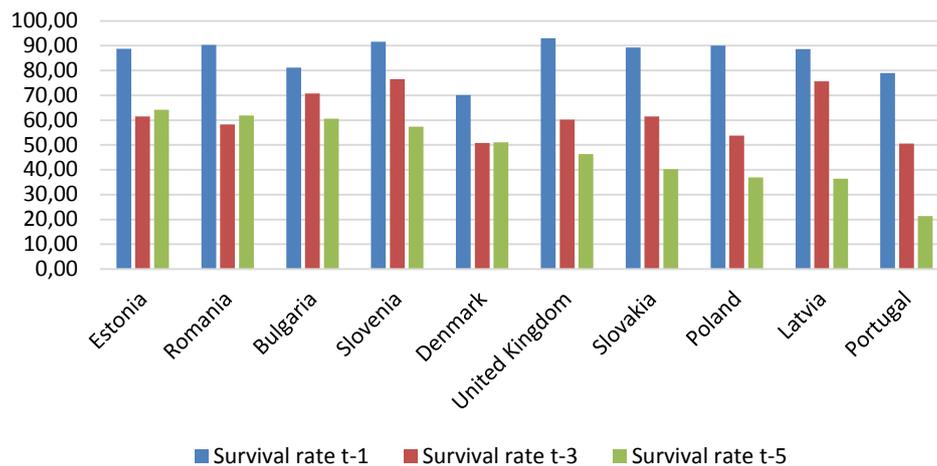
Source: SBS, Eurostat

A critical element of the potential of newly formed enterprises to stimulate economic growth and employment is their ability to survive (Eurostat, 2014). Eurostat's business demography statistics focus on the survival rate of newly founded enterprises up to five years after their creation, tracing how many have survived during that period (Eurostat, 2014). Figure 7 presents the data released in 2014 for the one-, three- to five-year survival rates.

Figure 7: one-, three- to five-year survival rates top 10 EU28

¹⁶² Enterprise survival rate of newly founded enterprises in a given reference period is the number of enterprises that were formed in year xx-n and survived to year xx as a percentage of all enterprises launched in year xx-n. Enterprise survival occurs when an enterprise is active and identifiable both before and after a specific (business) demographic event. The enterprise may be changed in some way, e.g. in terms of economic activity, size, ownership or location, but there should be continuity of the enterprise reference number in the statistical business register.

¹⁶³ Data as of 2013.



Source: SBS, Eurostat

The figure shows that survival rates fall gradually over the five years following the launch of the enterprise, but the decrease in the survival rates slows down over that period. The decrease in survival rates is sharpest from one-year survival to three-year survival, indicating that if enterprises survive the first years after their founding, they have a better chance of surviving in the long term. However, this is not the case for Portugal and Latvia, where the sharpest decreases happen from year three to year five.

Among the 10 countries under analysis, Estonia (64.15%) and Romania (61.83%) had the highest average five-year survival rates of enterprises (see Figure 7) with the lowest average five-year survival rates recorded in Portugal (21.41%) and Latvia (36.36%). Note that in contrast with the “high long-term” survival rates, Denmark has the lowest one-year survival rate among the 10 countries.

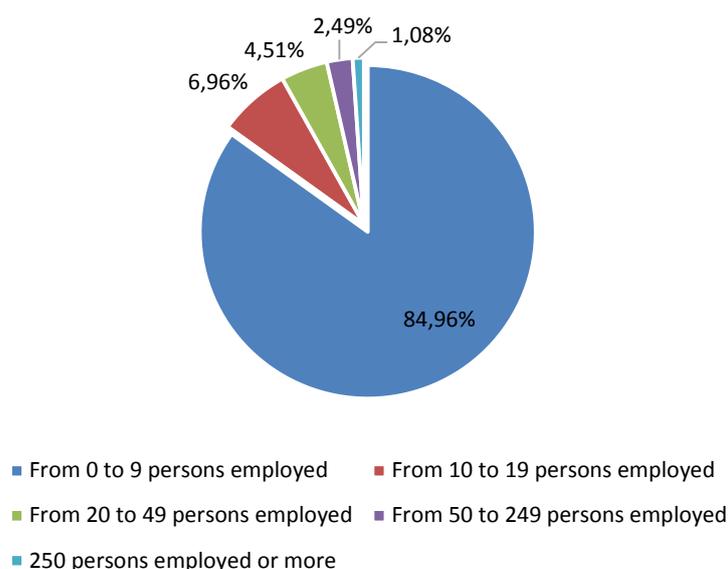
10.3.1.1.2 Distribution

Similar to the production side, one common feature in many countries is the small size of the enterprises involved in audiovisual distribution. In fact, as shown in

Figure 8, 84.96% of the active enterprises in EU28 in 2014 fall in the category “From 0 to 9 persons employed”.

Applying the European Commission’s definition of an SME¹⁶⁴, 96.43% of the total active enterprises are considered small businesses.

¹⁶⁴ http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_it

Figure 8: Distribution EU28 – breakdown by company size

Source: SBS, Eurostat

Table 20 shows the top 10 countries in terms of number of enterprises. Most countries have more than 84% micro-enterprises (in terms of headcount). Similar to the audiovisual production side, in Germany medium and large enterprises have relatively more weight.

Table 20: Distribution top10 EU 28¹⁶⁵

	From 0 to 9 persons employed	From 10 to 19 persons employed	From 20 to 49 persons employed	From 50 to 249 persons employed	250 persons employed or more
United Kingdom	91.1%	4.1%	2.3%	2.0%	0.6%
Italy	86.4%	7.8%	4.3%	1.1%	0.4%
Spain	85.1%	7.4%	4.3%	2.0%	1.2%
Greece*	86.7%	5.7%	1.9%	5.3%	0.4%
Hungary	95.9%	1.4%	1.8%	0.6%	0.4%
France	84.0%	6.8%	4.6%	3.2%	1.4%
Romania	82.5%	8.8%	5.2%	1.9%	1.5%
Germany*	41.7%	24.7%	21.7%	8.1%	3.7%
Poland	74.3%	10.8%	5.0%	7.6%	2.3%
Portugal	91.7%	4.1%	1.7%	1.9%	0.6%

Source: SBS, Eurostat and VVA calculations based on Eurostat

It should be pointed out that NACE J60 includes both "NACE J601-Radio broadcasting" and "J602-Television programming and broadcasting activities". A distinction between

¹⁶⁵ For Greece the categories "From 50 to 249 persons employed" and "250 persons employed or more" refer to 2011 data; for Germany the category "From 0 to 9 persons employed" refers to 2013 data.

the two forms of broadcasters can be made some extent. Table 21 shows the total number of companies operating in the two NACE categories. A further breakdown at NACE-3 level by company size is not always possible due to missing data for some Member States.

Table 21: Number of enterprises in AV distribution in 2014- NACE 3 level breakdown¹⁶⁶

	J602 - Television programming and broadcasting activities	J601 - Radio broadcasting
European Union 28	5,159*	6,396
Austria	44	46
Belgium	107	144
Bulgaria	144	76
Croatia	50	166
Cyprus	12	32
Czech Republic	104	57
Denmark	83	53
Estonia	9	12
Finland	23	45
France	164	552
Greece	279	741
Germany	147	256
Hungary	521	328
Italy	801	779
Latvia	67	44
Lithuania	36	25
Luxembourg	14	9
Netherlands	73	284
Poland	279	118
Portugal	81	282
Romania	288	176
Slovakia	27	21
Slovenia	207	153
Spain	603	930
United Kingdom	1,061	889

Source: Eurostat, SBS

As can be seen, in the EU28, there were more companies in the field of "Radio broadcasting" compared to "Television programming and broadcasting activities", and in some countries, this difference is more pronounced (such as France, Greece, Spain, Netherlands and Portugal). Others, instead, show the opposite trend (such as in UK, Romania, Poland and Hungary).

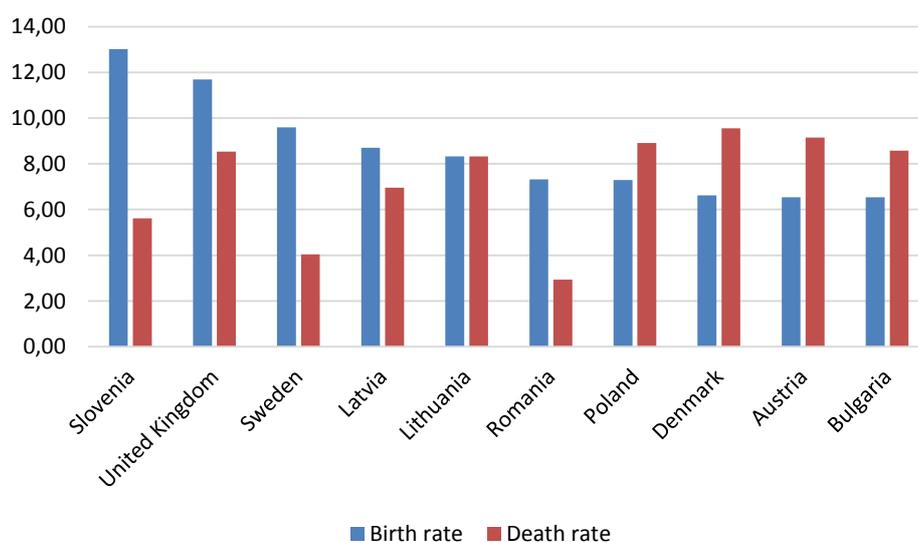
According to the latest Eurostat data (2013), the top 10 countries in the EU which have experienced a boom in the founding rate in audiovisual distribution are Slovenia (+13.02%), United Kingdom (+11.69%), Sweden (+9.60%), Latvia (+8.70%), Lithuania (+8.33%), Romania (+7.32%), Poland (+7.29%), Denmark (+6.62), Austria (6.54%) and Bulgaria (+6.53%).

¹⁶⁶Data about Malta and Sweden are missing, NACE J601 - Radio broadcasting data about Ireland is missing. NACE J602 - Television programming and broadcasting activities about EU28 refers to 2013.

As for audiovisual production, to have a proper indication of the magnitude of this entrepreneurial activity in the future and whether it will have significant impacts on the stock of enterprises within the audiovisual distribution sector, the enterprise launch rate must be compared to the enterprises end rate and survival rate.

Figure 9 shows that, among the 10 selected countries, only five (Latvia, Romania, Slovenia, Sweden and the United Kingdom) experienced a positive net growth rate in the stock of enterprises in 2013. At the same time, four countries (Austria, Bulgaria, Denmark and Poland) actually experienced negative growth: the number of enterprises which stopped their activities in the given year was greater than the number of newly founded enterprises.

Figure 9: Comparison birth rate vs death rate in top10 EU28¹⁶⁷

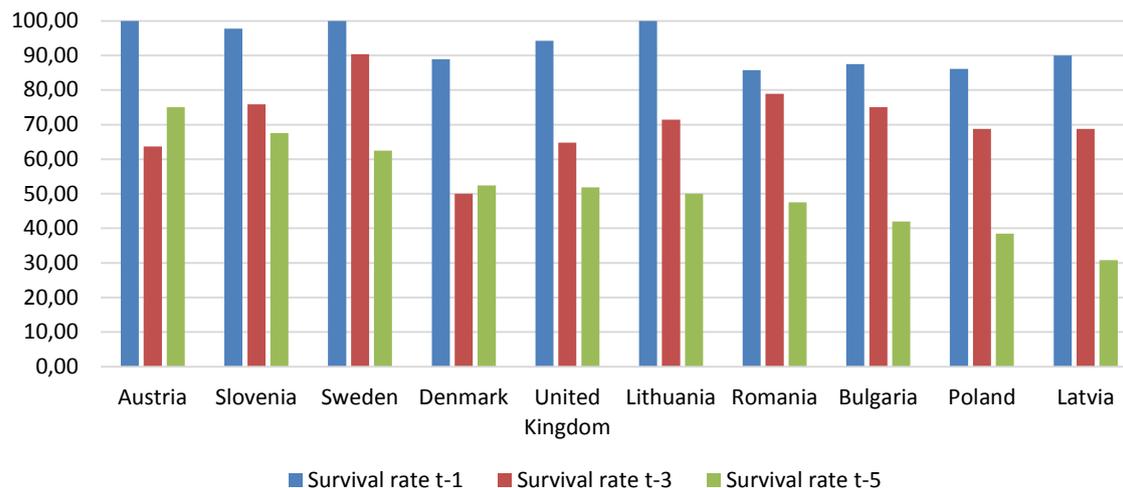


Source: SBS, Eurostat

As for audiovisual production, the survival rate of newly founded enterprises is an indicator of the potential of newly launched enterprises to stimulate economic growth and employment. Figure 10 presents data released in 2014 for the one-, three- to five-year survival rates (Eurostat, 2014).

Figure 10: one-, three- to five-year survival rates top10 EU28

¹⁶⁷ Data as of 2013



Source: SBS, Eurostat

The decrease in survival rates is sharpest from one-year survival to three-year survival, especially in Denmark and in Austria.

In the 10 countries under analysis, Austria (75.00%), Slovenia (67.57%) and Sweden (62.50%) had the highest average five-year survival rates of enterprises, while the lowest average five-year survival rates were recorded in Latvia, Poland, Bulgaria and Romania, indicating that despite a boom in entrepreneurship, the newly founded companies in these countries have shown a lower ability to survive in the long-term.

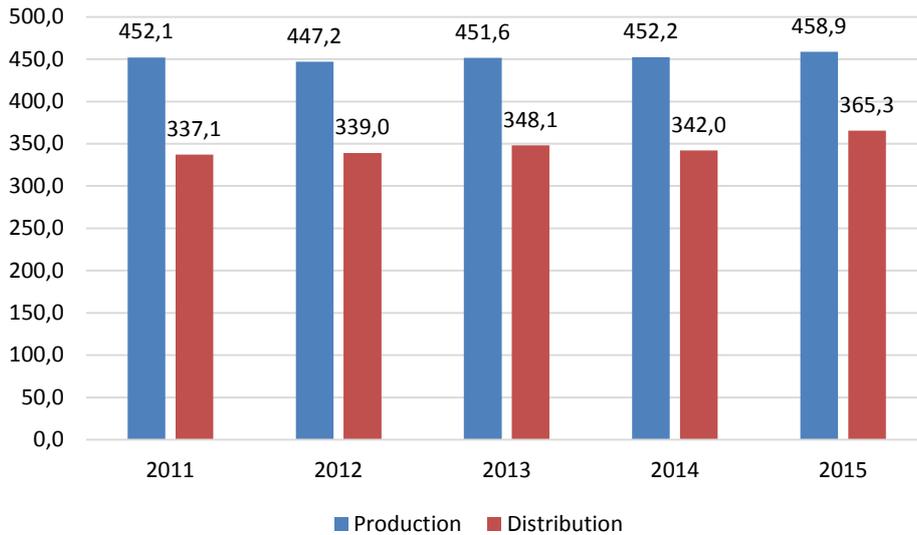
10.3.2 LFS data on the employment levels

In 2015, according to the EU LFS, the audiovisual sector (J59 and J60) accounted for around 824 200 persons employed¹⁶⁸ aged from 15 to 64 across the EU28; 55% worked in production and 45% worked in distribution.

From 2011 to 2015, the audiovisual sector was characterised by increasing employment trends, with an additional 35 000 workers between 2011 and 2015. This growth was mainly in the broadcasting sector which saw an average annual growth rate of 2% between 2011 and 2015 (additional 28 200 workers). On the production side, the growth was much more contained with an average annual growth rate of 0.4% (6 800 additional workers).

Figure 11: Number of workers in the AV sector (J59 and J60) in the EU-28 (thousands)

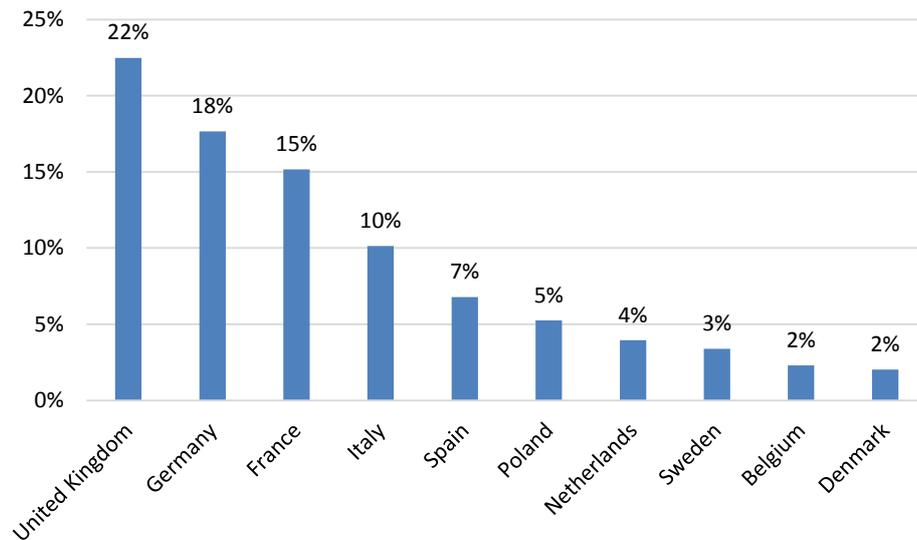
¹⁶⁸ the number of people employed in Eurostat is defined as the total number of persons working in the observation unit (inclusive of working proprietors, partners working regularly in the unit and unpaid family workers), as well as persons who work outside the unit who belong to it and are paid by it (e.g. sales representatives, delivery personnel, repair and maintenance teams). It excludes manpower supplied to the unit by other enterprises, persons carrying out repair and maintenance work in the enquiry unit on behalf of other enterprises, as well as those on compulsory military service.



Source: LFS, Eurostat

In 2015, the UK accounted for more than 20% of the workforce both in production and in distribution (Figure 12 and Figure 13) followed by Germany and France.

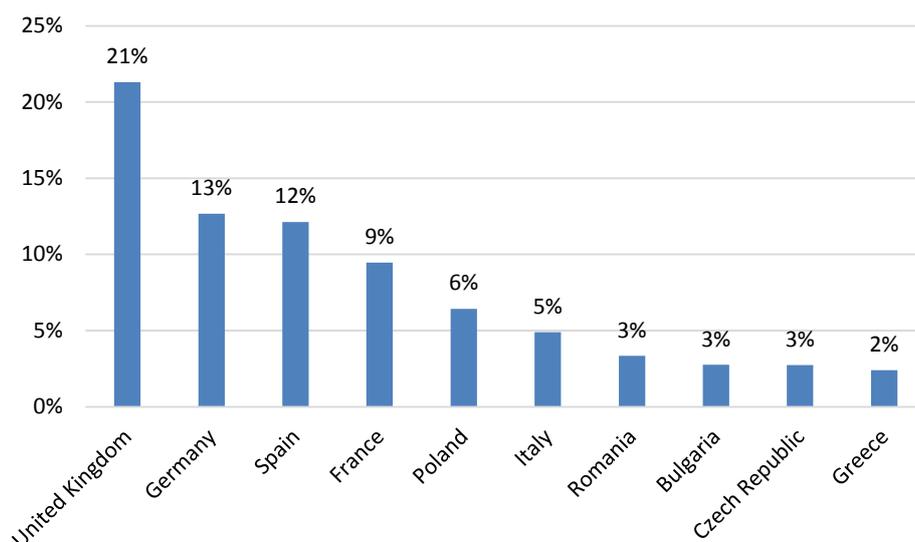
Figure 12: Percentage of EU-28 workers in the audiovisual production top 10 EU28



Source: LFS, Eurostat

The six largest EU countries in terms of population (Germany, France, UK, Italy, Spain and Poland) represent also the six largest countries in terms of employment, with the UK and Germany in first and second position respectively.

Figure 13: Percentage of EU-28 workers in the AV distribution top10 EU28



Source: LFS, Eurostat

Employment trends by country (Table 22 and Table 23) show that the audiovisual sector has experienced strong growth both in production and distribution in Poland (up 9 800 employees in five years). Also France experienced growth in employment on both sides of the supply chain, but it is less pronounced on the distribution side.

Table 22: Number of workers in the audiovisual production (J59) in top 10 EU28 (in thousands)

	2011	2012	2013	2014	2015
United Kingdom	103.2	102.3	115.0	103.2	103.2
Germany	68.1	68.5	77.8	81.5	81.0
France	61.4	68.6	60.6	57.0	69.6
Italy	47.7	49.3	34.9	40.7	46.5
Spain	40.4	41.0	39.7	37.2	31.1
Poland	18.1	16.4	17.2	20.6	24.1
Netherlands	28.0	24.7	17.4	17.8	18.1
Sweden	13.3	14.3	14.3	14.3	15.5
Belgium	9.1	10.1	11.6	12.0	10.5
Denmark	7.4	6.1	7.2	8.5	9.3

Source: LFS, Eurostat

At the same time, other countries have experienced a strong growth only on one side of the supply chain. For example, the UK audiovisual distribution sector expanded by around 17 400 workers but the employment level in 2015 in production is the same as in 2011. Germany has experienced strong growth in production (up 12 900 employees in five years) but at the same time national distribution has shown a decrease in employment.

Table 23: Number of workers in the audiovisual distribution (J60) in top10 EU28 (in thousands)

	2011	2012	2013	2014	2015
United Kingdom	60.4	65.6	78.1	63.8	77.8
Germany	51.7	56.2	37.7	42.9	46.3
Spain	43.2	36.6	31.4	38.0	44.3
France	33.6	28.9	36.1	35.4	34.6
Poland	19.7	21.3	21.6	22.9	23.5
Italy	13.5	13.7	15.5	15.7	17.9
Romania	18.4	15.9	13.6	16.8	12.2
Bulgaria	11.8	11.1	10.2	8.7	10.1
Czech Republic	6.9	5.0	10.8	10.6	10.0
Greece	8.9	6.6	8.3	10.1	8.8

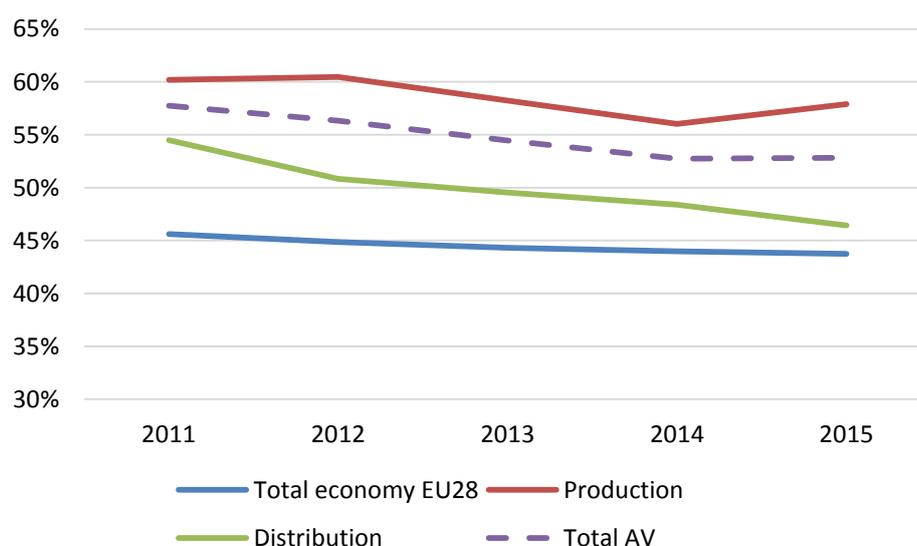
Source: LFS, Eurostat

The number of people employed in AV production has decreased both in Italy and Spain (in the latter more significantly), whereas employment in AV distribution in these two countries has slightly increased.

10.3.2.1 Age profile of the workforce in the AV sector

According to data from Eurostat LFS, the audio-visual sector has a younger workforce than the EU28 average. In 2015, individuals aged between 15 and 39 accounted for 53% of workers in the audiovisual sector against 44% of the whole economy in Europe. In addition, the production subsector has a younger workforce than broadcasting.

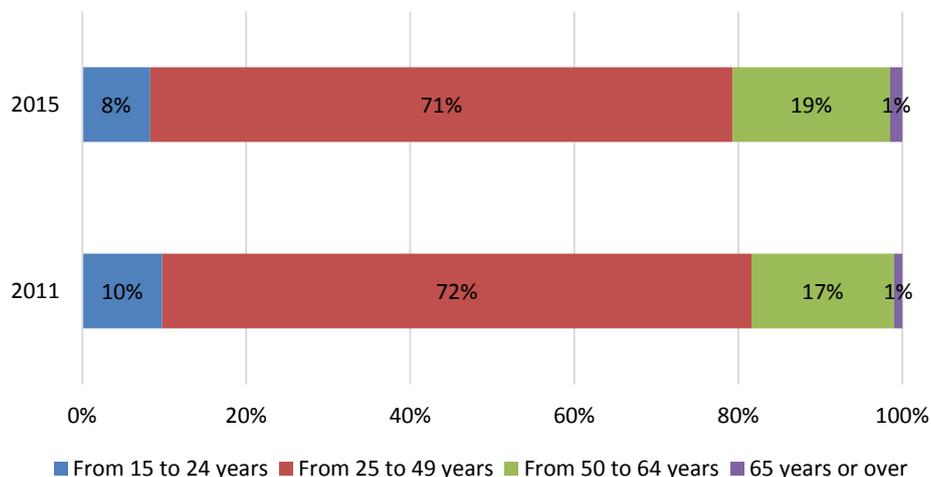
Figure 14: Trends of share of young people (15-39 years) working in the AV sector (J59 and J60) and the whole economy, EU-28



Source: LFS, Eurostat

However, Figure 15 shows that the sector is experiencing an ageing trend: in 2015 only 8% of workers were aged 15-24 compared with 10% in 2011, while the category of workers aged from 50 to 64 years increased by 2% in 4 years.

Figure 15: Composition of the workforce by age groups in the AV sector (J59 and J60) years 2015 and 2011



Source: LFS, Eurostat

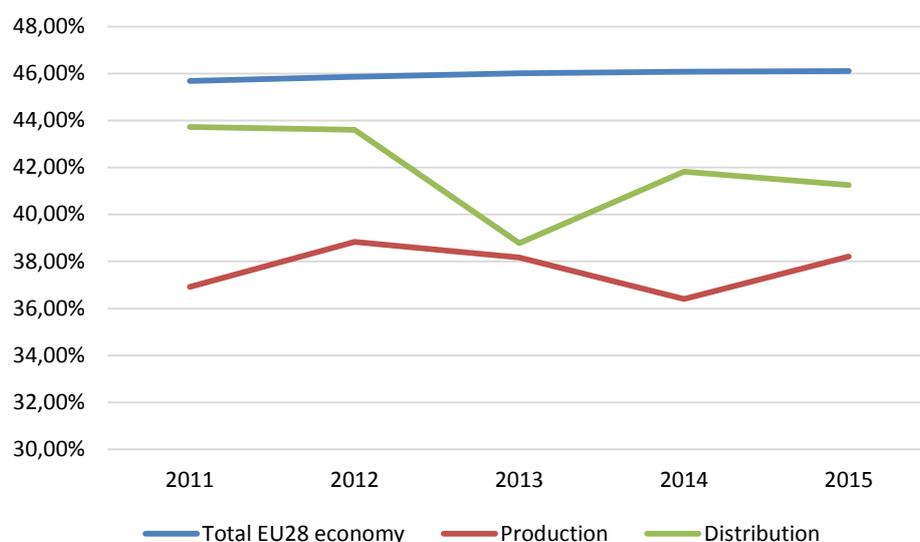
The decrease in the younger workforce in the audiovisual sector could be related to the fact that young people are more likely to work in non-standard work arrangements and hold more often atypical work contracts compared with older workers (ICF, 2016a) and project-based work arrangements are common in the audiovisual sector (ICF, 2016a). According to the OECD¹⁶⁹: “as youth are more likely to be on temporary contracts than on permanent ones, they have been disproportionately hit by the latest economic crisis”. To sustain this hypothesis the OECD presented the case of Spain, where the rise in unemployment was primarily related to dismissal of young workers in temporary employment. The report also highlights that even in situations where young people hold a permanent contract they are more likely to be dismissed than older workers (OECD, 2015). This is because the former group is generally more protected by employment protection legislation (e.g. “last-in-first-out” rule) (OECD, 2015). However, considering that the audiovisual sector is likely to attract young highly skilled workers due to the need for new digital skills (ICF, 2016a), it is not possible to establish clear causation between the economic crisis and the decrease in young people employed in the audiovisual sector.

10.3.2.2 Gender profile of the workforce in the AV sector

According to data from Eurostat LFS, the audiovisual sector appears to be male-dominated. In 2015 the sector employed only about 40% women compared with 46% across the entire European economy.

Between 2011 and 2015, female employment in the audiovisual distribution sector decreased by 3% (from approximately 44% to 41%), while in the audiovisual production sector there was a 1% increase in female employment.

¹⁶⁹OECD (2015), OECD Skills Outlook 2015: Youth, Skills and Employability, OECD Publishing. <http://dx.doi.org/10.1787/9789264234178-en>

Figure 16: Trends of share of women working in the AV sector (J59 and J60) and the whole economy, EU-28

Source: LFS, Eurostat

In 2015, Germany and Czech Republic had a higher share of women working in the audiovisual sector than the EU28 average (Table 24). It is interesting to note that in most of the other countries, namely Spain, Italy, France, Poland and Sweden the percentage of women working in the AV sector has decreased since 2011, while in the UK female employment remained stable.

Table 24: Share of women in the workforce of the AV sector (J59 and J60) in selected Member States and in the EU-28 (2011 and 2015)¹⁷⁰

	2011	2012	2013	2014	2015
European Union 28	40%	41%	38%	39%	40%
Czech Republic	35%	40%	30%	32%	51%
Germany	43%	42%	43%	44%	47%
Spain	40%	44%	41%	41%	38%
France	39%	44%	39%	39%	36%
Italy	37%	34%	41%	36%	35%
Poland	44%	44%	42%	42%	40%
Sweden	41%	40%	38%	40%	37%
United Kingdom	38%	39%	37%	36%	38%

Source: LFS, Eurostat

10.3.2.3 Public Service Media data on the employment levels

As mentioned in the beginning of the chapter, Eurostat data does not cover public administration and non-market services. The only data which are comparable across

¹⁷⁰ The Member States presented are the ones whose employment time series data for NACE J59 and NACE J60 is fully available for the period 2011-2015.

countries were provided by EBU Media Intelligence Service (MIS) and refer to the Public Service Media (PSM). According to the latest EBU MIS, in 2015 across all 28 EU countries PSM generated 158,900 direct jobs¹⁷¹.

The table below provides an overview of the number of employees in PSM and trends from 2012 to 2014 in the 10 selected countries¹⁷².

Table 25: Number of employees in Public Service Media

Country	2012	2013	2014	Change (2012-2014)
CZ	4,498	4,709	4,782	284
DE	37,728	37,257	35,285	-2,443
DK*	3,061	3,184	3,371	310
ES	6,319	6,321	6,302	-17
IT	11,849	11,661	11,630	-218
FR	17,340	16,975	17,093	-247
NL	3,529	3,443	3,338	-191
PL	9,491	9,606	7,961	-1,530
RO	9,751	7,488	7,334	-2,417
UK**	21,408	20,863	21,174	-234

Source: EBU MIS (Media Intelligence Service): *DR only (TV2 not included); ** Channel 4 not included

Among the countries under consideration, the German PSM market is the largest one in terms of number of employees, followed by France and the UK. However, looking at trends over time, overall from 2012 to 2014, there has been a contraction of 6,088 employees in the 10 countries under analysis. The decrease trends have affected mainly the Romanian market (-2,417), followed by Germany (-1,828) and Poland (-1,530). At the same time, the PSM markets in the Czech Republic and Denmark experienced a growth of approximately 300 employees.

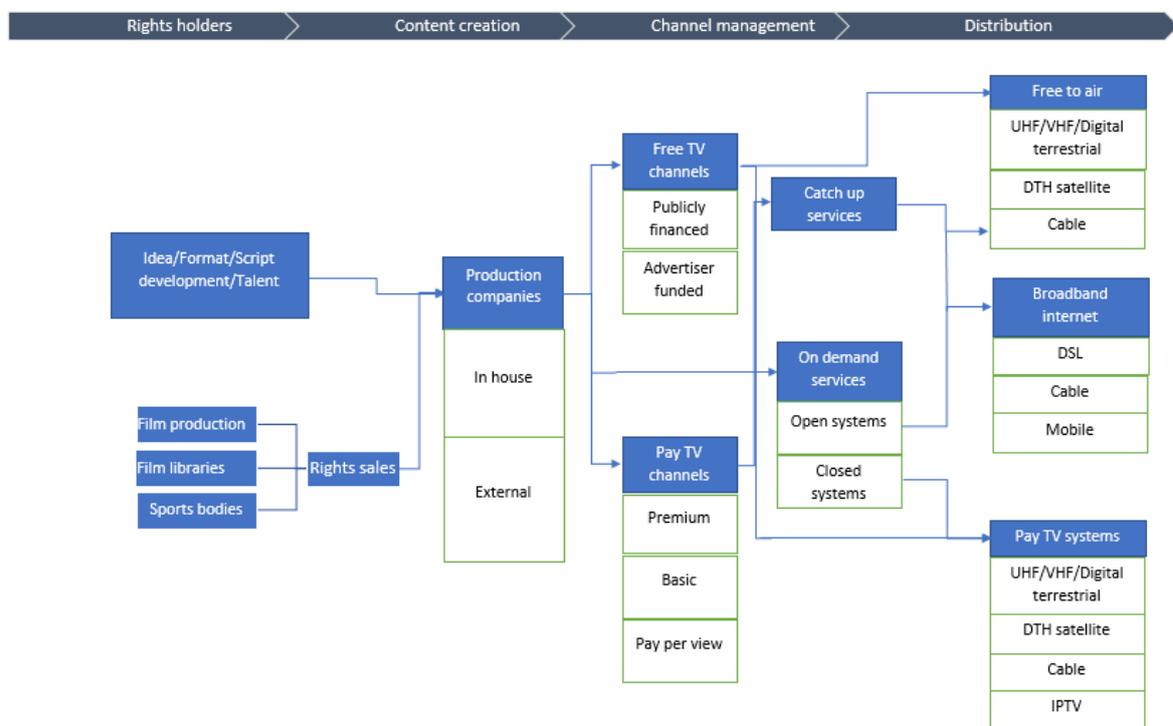
¹⁷¹ 2015 data for all organisations, except for ORF in Austria, and DLR in Germany (2014 data)

¹⁷²Data as reported in ICF (2016a) "Analysis of the EU audiovisual sector labour market and of changing forms of employment and work arrangements". https://www.fim-musicians.org/wp-content/uploads/AV_EU_labour_market_analysis_report_EN.pdf

11 Market trends and the Value Chain Framework

As highlighted in the 2011 report, the supply of audiovisual content to viewers is made up of four broad and interrelated functions (Figure 17). Firstly, rights holders who license or sell the rights to create content, in the form of scripts, formats, talent, sports rights etc. Secondly the creation of new content, such as news, documentaries, gameshows, dramas and entertainment programmes (Attentional, 2011). Thirdly is the management of individual linear and non-linear service providers (made up of a mixture of: commissions of new programmes, acquired rights to ready-made feature films or existing libraries of ready-made TV programmes, and various promotional and interstitial material, such as programme trails, station idents and advertising breaks). Finally, the distribution of a channel, or group of channels, to viewing households by either terrestrial, satellite, cable or Internet delivery systems (Attentional, 2011).

Figure 17: supply chain by function



Source: Attentional, 2011

Sources of value added along the supply chain vary considerably.

Original content creation can range from a continuous studio-based programme with a handful of contributors, to a full action drama made on multiple locations, with a large cast and crew and significant investment in script development (Attentional, 2011).

Channel management can involve the large-scale commissioning of new programming and the acquisition of ready-made programming from a large number of sources, the heavy promotion and marketing of the channel to viewers, and significant investment in a station's brand image through TV and other media promotions (Attentional, 2011). Alternatively, it can involve the use of a limited number of already available programme libraries or the commissioning of a single continuous studio-based programme strand (Attentional, 2011).

Similarly, the distribution may be simply a technical transmission service, while pay-TV distribution can involve the packaging, retailing and marketing of a group of TV channels in encrypted form (Attentional, 2011).

The following subchapters present an analysis of the latest market trends divided into production and distribution (to be consistent with the definition in the previous chapter). Most of the data are drawn from the Yearbook of European Audiovisual Observatory, as it represents the main source of information that allows for a level of comparison of trend developments across Member States.

Where available, national level data are presented in the form of “*standalone example*” to sustain the argument behind it.

The main conclusions of our analysis are:

1) **Production:**

- The **investments in original programming** for the main TV groups in 15 countries from 2009 to 2013 **remained stable** at a rate of more than €15 billion and a **significant proportion** of investment in original programming is **made by public broadcasters**;
- Compared to the 2011 report, the latest trends in “**channel management**” **show an increase in the activities of non-linear service providers** (i.e. systems which allow users to select and watch/listen to video or audio content when they choose to, rather than having to watch at a specific broadcast time). Indeed, as analysed in the following subchapters, **more and more Video-On-Demand players invest in original contents to differentiate themselves** from the competition and to attract new audience;
- **Public service broadcasters are important to favour the circulation of European works.** According to data from the European Audiovisual Observatory, public channels schedule more than 50% of European fiction content, while private channels schedule less than 20%. However, there are some exceptions where the levels of European content have been found much higher than the average on private channels, for example in France and the UK (EAO, 2015c);
- In terms of circulation of **European works on VOD**, a study from the EAO shows that only 27% of films in VOD catalogues are coming from one of the 28 EU Member States, while films produced in the US have a share of 59% (EAO, 2015d);
- In terms of export, **French and UK films cumulatively accounted for almost 87% of total admissions to European films outside Europe in 2015.** The North American market is the most important “overseas” market for European films (in terms of cinema admissions).

2) **Distribution:**

- The biggest change in TV distribution in recent years has been the switch to the digital television system. **Digital terrestrial television was the most common means of receiving TV in 2014** (43%), while 25% receive television through satellite. Nonetheless, there are sizeable variations between Member States in the methods used;
- The digitalisation brought a **rapid expansion in the number of channels available to consumers**, and a resulting **loss of share of historic terrestrial services** which dominated analogue distribution;
- The **revenues for linear service providers** grew during the 2010-2011 period, but decreased in the period 2012-2013, to rise again in 2014. Looking at the different components of revenue, it is possible to notice that

subscription revenues are rapidly increasing while revenues generated from **public funding are falling**;

- In terms of market size, **the global VOD** market amounted to approximately **USD 16.3 billion in 2016** and accounts for 16% of the Digital Media market. In **Europe**, VOD has a volume of **USD 3.5 billion** out of which **61.6%** is represented by **SVOD**;
- From 2010 to 2014, **on-demand consumer revenues** have **increased by 272%** in Europe (EAO,2015a).

11.1 Production

Creating new audiovisual content usually involves a four-stage process:

1. *Idea generation stage*: where the outline programme concept is developed;
2. *Pre-production stage*: the initial planning and development;
3. *Production stage*: the recording of the programmes; and
4. *Post production stage*: the editing of the material into its final form.

Once made, an original commissioned programme can be shown a number of times on TV – through both the initial broadcaster, and other broadcasters purchasing rights for broadcast in later “windows” or other various on-demand services (such as “catch-up” services) (Attentional, 2011). Lastly, it can be exploited on physical or electronic formats to rent or purchase.

In general, those programmes with the most effort put into their creation (both in terms of financing and creation) are the ones that can be exploited again and again. Programmes with high initial production effort are referred to as “stock” programmes. On the other hand, programmes that use less initial production effort and which are less repeatable are sometimes termed “flow” programmes. For example, drama, narrative comedy and well-researched and filmed documentaries are good examples of stock programmes, while game shows, chat shows and quiz shows are good examples of flow programmes. Some programme types or genres have elements of both stock and flow programmes. For instance, a reality show often has high production values but limited repeat potential (Attentional, 2011).

11.1.1 [Business models for content creation](#)

There are various models for content creation. All have in common the problems of financing an expensive single artefact whose future performance is hard to predict and cannot easily be tested. That prompted one media economist to describe every new content production as a new piece of research and development.¹⁷³ Moreover, most production is developed and executed in small units unable to finance the necessary risks. As data above shows, the large majority of production companies have less than 9 staff. Although some may operate in the shelter of larger organisations, high risks and small size mean that bank lending for production is not usually available. As a result, a variety of other models have been developed to address the funding of content.

11.1.2 [Types of production company](#)

Production units operate in different contexts.

¹⁷³ Vogel, Harold (2004) “*Entertainment Industry Economics*”, New York: Cambridge University Press. p 111

11.1.2.1 In-house Production

This is the traditional model, set by the first generation of broadcasters. Production takes place in “departments”, for example a drama, or news or current affairs department, working under a department head. The broadcaster almost always provides all the necessary technical support, such as films crews and studios. This model is still widespread, particularly in the case of public broadcasters. However, since this model was established, it has evolved. The first evolution was to set up distribution departments to exploit Intellectual Property (IP) rights on broadcasters’ content via international sales and licensing agreements. This led to specialised commercial operations which acquired rights to the broadcasters’ content and became a secondary source of production finance. In further developments, broadcaster distributors became more active in selecting specific content for investment, began to acquire rights in non-broadcaster content and, in some cases, became the overseas commercial arms of public broadcasters. All these developments led to more transparency in production costs and to more “commercial” business models for in-house production. With the rise of independent production, in particular, broadcasters adopted a more transparent, commercial approach for their own production units because management wished to ensure they were competitive.

11.1.2.2 Independent Production

Independent production came to Europe in the late 1970s. It arrived earlier in the US because of the Fin-Syn (Financial Syndication) rules which pre-empted in-house production by the leading US channels on the basis that it was anti-competitive. In the UK, Channel 4 was launched in 1982 as a “publisher broadcaster” specifically to support independent production. There followed requirements on other public broadcasters to commission a proportion of independent content. Over time, statutory requirements for a proportion of independent production became common across Europe and a requirement for independent production was incorporated into the Television Without Frontiers Directive. As noted above (please refer to section 10.3.1.1), producers in the sector have been further helped by the fact that some public authorities favour the separation between TV broadcasting and production of TV programmes (ICF, 2016a).

The typical production company remains small, as above, and will tend to specialise. It will generally be run and managed by a creative founder who has built up a track record with a broadcaster. If secondary¹⁷⁴ sales in the home market are permitted¹⁷⁵, both domestic and overseas sales can be important to producers and some have their own distribution operations, while others assign rights to distributors. Over time many successful independents have been acquired or merged into “super-indies”, usually retaining their original brand and identity, but sharing back-office services, distribution and financial support. As will be seen from the models that follow, much independent production requires deficit finance, which in turn needs business affairs skills that the founders may lack.

The term “true independent” is sometimes used for production companies that have not been acquired by broadcasters or become part of super-indies. However, there is no precise definition of this term. The legal definition of “independent” varies widely from one Member State to another. In practice, even when independent companies have been acquired or invested in by others, they have usually been left to operate as semi-independent units. For the purposes of this section we define “independent” as any production unit not controlled by a broadcaster and operating under its own brand.

¹⁷⁴ “Secondary” defined here as sales to channels or platforms in the same territory as the commissioning broadcasters.

¹⁷⁵ By no means all EU Member State broadcasters permit, or are obliged to permit, sales to secondary players in the home market. This is enabled by law in France and the UK.

A survey conducted for this Study found that, on average, over 80% of sales by independent producers go to the home market, with 14% going to other European markets and 6% outside Europe. In terms of genres, fiction, in both film and TV, is very important, as are documentaries. Independent production is less likely to play a role in longer running genres such as entertainment shows and factual magazines, and is almost absent from games, sport and news. The primary broadcaster remains the most important source of funding, with co-production and distribution advances next, and a significant role for public funding, mainly for cinematic films and documentaries.

11.1.2.3 The rise of Studios

The development of studios signaled a complete turnaround from the time when the broadcasting function was the profit centre and production was a cost, since content was needed to maintain the revenues derived from advertising or public funds. However, it is now widely accepted that content drives profits. The reasons are complex but include the increase in platforms, leading to more competition for content, the arrival of pay-TV with less, or zero, reliance on advertising, and access to global content via the Internet.

The term “studio” refers to an entity whose prime business is creating content and licensing it. However, it differs from independent production in that it has the scale and resources to finance its productions and retain all rights. Film studios had already established this model when TV came on the scene and it has now been adopted by TV. In many cases the historic broadcasting function becomes merely an option for the production unit: in the US, NBC and other studios own cable and other channels, but their production may go elsewhere.

In the UK, broadcaster ITV now derives 50% of its revenues from content, having acquired a stable of production companies and set up production subsidiaries in the US and elsewhere. In the production of content some broadcasters, like the BBC in the UK and RTL in Germany, have set up their commercial production operations and are able to produce content for rival broadcasters.

11.1.3 Funding and Revenue models for production

11.1.3.1 Fully Funded

This model applies when a production is fully funded by a third-party external investors, usually a broadcaster. As above, this was common practice in the early days of broadcasting and is implicit in the in-house model. In the early years of broadcasting the broadcaster took total ownership of the programme, and still does so in many instances. However, in some Member States, broadcast regulations require that secondary rights are left with the producers, if they are independent of the broadcaster, and secondary revenues are shared.

The model for fully funded content by an independent producer usually requires a fully costed budget agreed by the broadcaster or channel head and a “production fee” which provides the producer with a profit margin.

The fully funded model is still widely used for news, documentaries, “public service” content, current affairs, educational content, etc.

Importantly, this model has been adopted by new players such as Netflix and Amazon for their original content, since a major part of their business model is to acquire unique high-value content, available to subscribers in all territories.

Much broadcaster content remains fully funded because broadcasters need it to meet regulatory content requirements and it has little or no secondary value.

Over time, broadcasters or channels governed by rules preventing the total ownership of independent content have begun to offer “tariffs” for genre categories that fall short of total production costs where there are potential secondary revenues available. Hence the development of the more complex models below.

11.1.3.2 Co-production

This model enables producers to build budgets by meeting the needs of more than one channel. Usually a producer with a provisional commitment from one channel goes in search of additional funds from another broadcaster. The second or subsequent co-producers contribute money and executive production to ensure the fit with their own channel/s. Sometimes there is a contribution in kind – film crews, talent and other resources. Co-producers usually acquire all rights in their own territories and thus secondary revenues for the lead producer are diluted.

This model is used for mid-tier drama, documentaries, cinematic films and TV movies.

11.1.3.3 Distributor Advances

Where a tariff does not meet total production costs, distribution advances may be secured to help to meet cash flow. This leaves the producer in control, but advances will only be secured where there is a very good perceived potential for international sales. Under the model, the upside from international sales and licensing in certain territories is given away to the distributor, reducing potential secondary revenues.

This model is used for high-end documentaries and mid-tier drama.

11.1.3.4 Advertiser Supported

In the very early days of television, a “barter” model was quite common. Channels received free content but surrendered any advertising revenues: instead, spots were inserted by an advertiser. This model was abandoned in major markets but continued to be used by smaller cash-poor channels around the world.

Advertiser supported is now a limited category. A broadcaster gets free content but loses all or most of its ad revenue in return because all or most slots are pre-sold. Ad-supported models can also take full advantage of the product placement and sponsorship rules in given markets.

This model is now mainly used for quiz shows and magazine programmes.

This model should be distinguished from a recent development bringing large advertising agencies into content production, the most prominent of which is GroupM, a subsidiary of the advertising multinational, WPP. This model funds prime content, in GroupM’s own words, to provide a “contextually safe environments for advertisers”. This step appears to be driven by an awareness that the traditional advertisement-funded channel model is in decline, with the risk that prime advertisers may get locked out of the link with content that has been historically important to them. By owning prime content an advertising agency can negotiate advertiser-friendly deals with key players.

11.1.3.5 Gap Financing

This basically covers all instances in which a production unit borrows to finance a gap in its budget. Such borrowing almost invariably takes place after a broadcaster or channel has provisionally committed to a production. Gap financing for prime content benefits from tax schemes aimed at high-worth individuals who may be willing to take risks because losses can be offset against tax.

Gap financing may be combined with any of the models above. A broadcaster may part-fund or a distributor provide an advance (but these will dilute profits). As a result, pure gap financing is reserved for high-quality drama with perceived international potential. Studios, of course, finance their own productions in the main .

We may include in this category loans from the many public bodies that support film and TV content production around Europe. They are specifically designed to support the production of independent TV series and films and are in effect “soft loans”, only repaid when content is exceptionally successful.

11.1.3.6 Children’s Content

Children’s content is different from other genres for several reasons. The most important reasons are: (1) much of it is based on animation, which “travels” more easily, (2) it has a much longer shelf life than most other genres, and (3) it has marketing spin-offs unavailable to other genres in the form of toys, games, home entertainment, etc.

The net result is not to make it more profitable. On the contrary, there is some evidence that children’s production operates on lower margins than other genres. Broadcasters offer lower tariffs relative to production cost with the result that deals can be very complex and may combine presales, distribution advances, and co-production. The long-term return will also rely more heavily on home entertainment sales, and licensing of the title for merchandising.

As we have already seen in this section, while the market for DVDs, and other home entertainment to own, remains substantial, on-demand is rapidly replacing rental, and on-demand platforms are becoming an important commissioner and licensor of children’s content.

11.2 Channel and Catalogue management: linear service providers vs. non-linear service providers

Channel management involves the commissioning of new programming, either from external producers or in-house departments, the acquisition of readymade programmes and feature films, the commissioning of station idents and promotions and, in the case of commercially funded channels, access to relevant advertising tapes (Attentional, 2011).

The channel is then run from a centre that mixes together all the different forms of output – commissions, acquisitions, promotions and adverts – and then transmits a broadcast stream to the relevant delivery platform or platforms (Attentional, 2011). Added value is generated in channel management in three main ways (Attentional, 2011):

1. *Commissioning and acquiring* the best mix of programmes for its target audience, and then scheduling these programmes optimally;
2. *Secondly, creating a brand image* for the channel, or selecting a specific niche audience that creates viewer loyalty to the channel over and above the appeal of the individual programmes; and
3. *Thirdly, gaining access to relevant distribution systems* – especially unique or privileged access to distribution.

Compared to the 2011 report, the latest trends in “channel management” show an increase in the activities of non-linear service providers (i.e. systems which allow users to select and watch/listen to video or audio content when they choose to, rather than having to watch at a specific broadcast time – please refer to chapter 11.6.3). Indeed, as analysed in the following subchapters, more and more Video-On-Demand

players invest in original contents to differentiate themselves from the competition and to attract new audience.

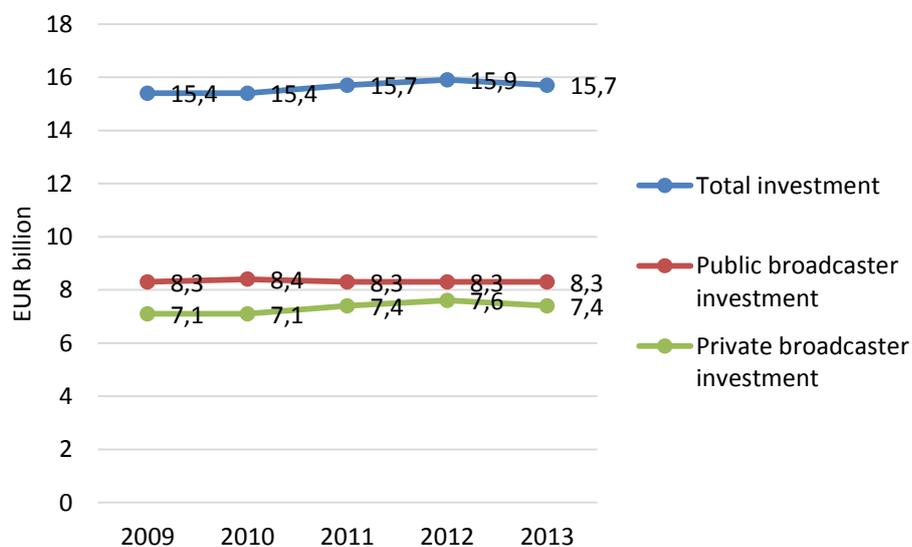
Another important trend that occurred in the last five years and had relevant impacts in channel management activities is the switch-off of the analogue terrestrial transmission and the full transition to the digital terrestrial system (DTS). This enabled Europe to experience a channel growth boom, with a proliferation of thematic channels. According to estimates of the European Audiovisual Observatory, there are around 7,200 channels in Europe at present (please refer to Chapter 10 for more details about the DTS).

11.2.1 Linear service providers investing in original programming

According to data of the European Audiovisual Observatory¹⁷⁶, the investments in original programming for the main TV groups in 15 countries¹⁷⁷ from 2009 to 2013 remained stable at a rate of more than €15 billion.

This stability of investment may reflect the needs of broadcasters for programming to fill fixed schedules on their channels, while slight increases may indicate rises in inflation or production costs (EAO, 2015b). In addition, this analysis shows that a significant proportion of investment in original programming is made by public broadcasters. In fact, even though the public service broadcasters represented only 25% of the TV groups¹⁷⁸ under analysis, they contributed 53% of the total investments in original programming (Figure 18).

Figure 18: Investment in original programming: total, public broadcasters, and private broadcasters (2009-2013) – in EUR billion



Source: EAO, 2015b

Data from EBU¹⁷⁹ that until 2015 shows that the public service media (PSM) invested 18.2 million per year in content. Moreover, it appears that PSMs are strongly committed to generate European contents as 83% of PSM investment in 2015 is allocated to original content production, comprising in-house production, commissions,

¹⁷⁶ Report by the European Audiovisual Observatory, Yearbook 2015, Key trends.

¹⁷⁷ The countries are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Poland, Portugal, Spain, Sweden and the United Kingdom.

¹⁷⁸ 86 TV groups were analysed by the European Audiovisual Observatory and 22 of these groups were public service broadcasters.

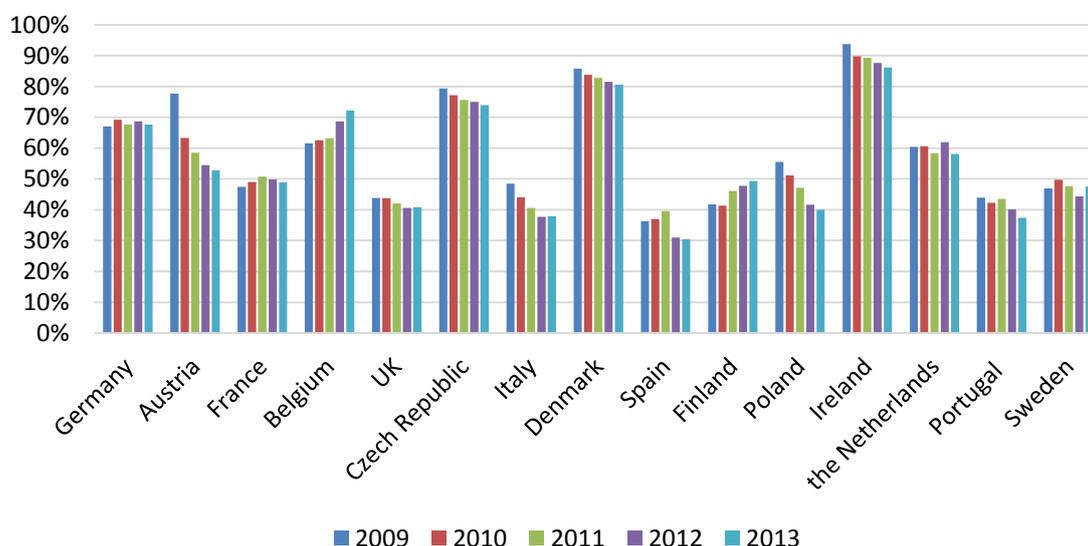
¹⁷⁹ EBU's brochure, 2017. Note: all data are from 2015.

and co-productions. PSMs also showed a proportion of 45% of European films, while the commercial broadcasters showed 21% of European films.

In the period 2015-2016, public broadcasters also produced the vast majority of TV fiction, in terms of titles (EAO, 2017).¹⁸⁰ In terms of total hours, the European Audiovisual Observatory, however, estimated that private audiovisual groups tend to focus their investments on a more limited number of long-running projects: an average TV fiction programme originated by a private broadcaster represents more than 25 hours produced each year vs. seven hours for a programme originated by a public broadcaster (EAO, 2017). Private broadcasters therefore account for 56% of the number of hours produced, vs. 44% for public broadcasters (EAO, 2017).

Breaking down the analysis at country-by-country level¹⁸¹, it can be seen that the proportion of public service investment is high, especially in Czech Republic, Denmark, , Germany and Ireland.

Figure 19: Public broadcasters' investments as % of the total investments in selected Member States for the 2009-2013 period

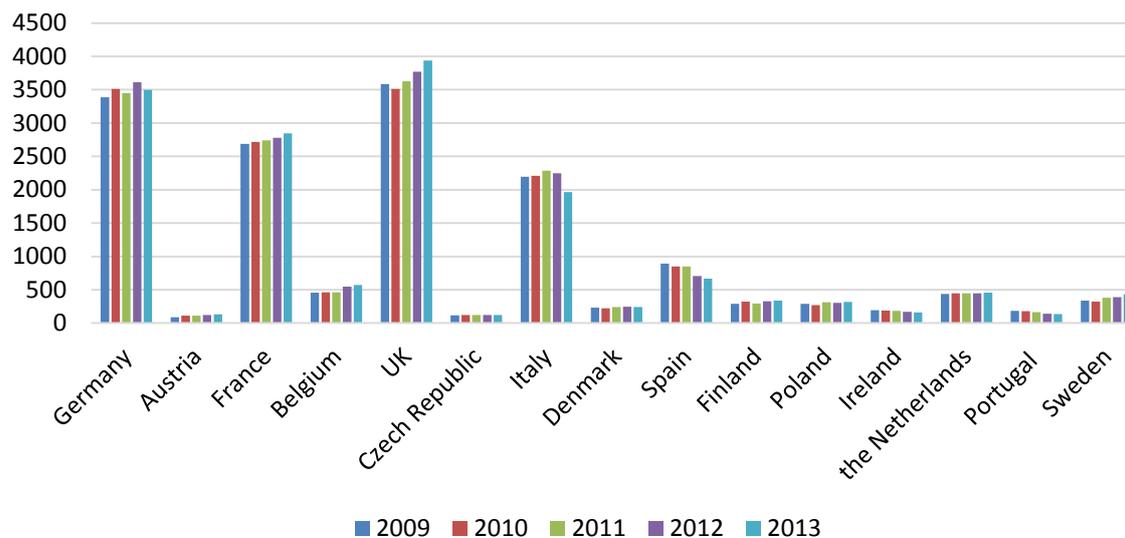


Source: EAO, 2015b

The level of investment in original programming in Europe seems relatively stable. In France and the UK, there has been a continuous growth in the level of investment in original programming.

¹⁸⁰ According to the study "TV fiction production in the European Union" released by the EAO in July 2017, the yearly production of TV fiction in the European Union (EU) amounts to about 920 different titles, representing over 16 400 episodes and more than 11 000 hours. According to the estimate of the Observatory, 45 public channels produced 73% of the titles in the period 2015-2016.

¹⁸¹ The total investments in original programming are the sum of the total expenditure on original programming by: 1) top 5 German TV Groups, 2) top 5 Austrian TV Groups, 3) top 6 French TV Groups, 4) top 6 Belgian TV Groups, 4) top 9 UK TV Groups, 5) top 3 Czech TV Groups, 6) top 6 Italian TV Groups, 7) top 6 Danish Groups, 8) top 4 Spanish TV Groups, 9) top 6 Finnish Groups, 10) top 6 Polish TV Groups, 11) top 4 Irish TV Groups, 12) top 6 Dutch TV Groups, 13) top 4 Portuguese TV Groups, 14) top 7 Swedish TV Groups. Data is gathered from the EAO's study 'Investments in original content by audiovisual services' (2015), available at: <http://www.obs.coe.int/documents/205595/264625/OBS+-+REFIT+-+Note+B.3+Investment+in+original+programming.pdf/137f3dd6-fc0c-4634-a5c1-1b3037ab46d8>

Figure 20: Total investments in original programming by 86 TV groups from 15 EU countries for the 2009-2013 period – million Euro

Source: EAO, 2015b

However, in some countries, the analysis showed that the investments decreased. In Germany for example, since 2012, the level of investment has slightly decreased. More significantly, the level of investment in original programming also decreased in Portugal (-26%), Spain (-25%), Ireland (-17%) and Italy (-16%) between 2009 and 2013. The drops in investment concern both the public and private funding sectors (EAO, 2015a).

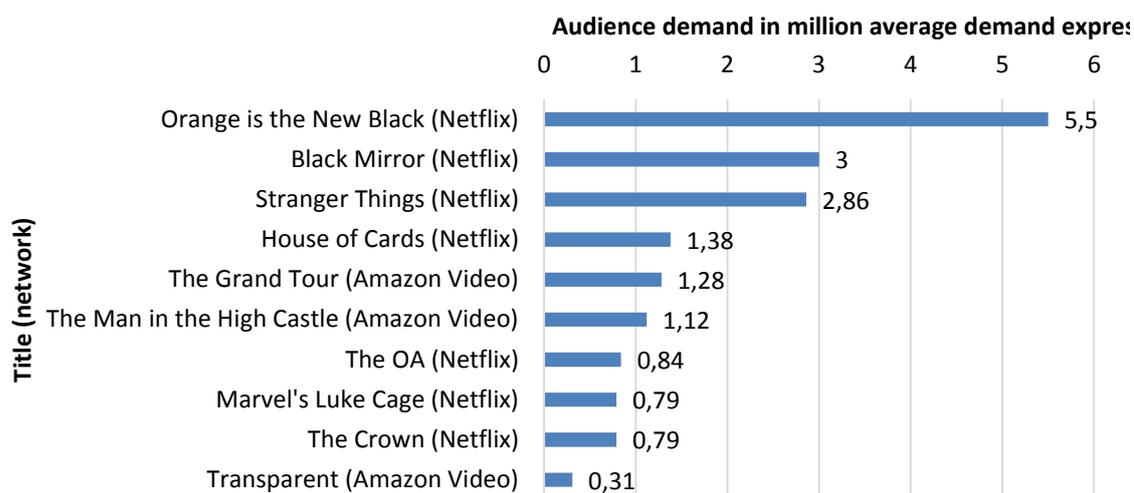
This could result from the financial crisis and the cuts in the public sector, which had a long-term impact on investment in original programming (EAO, 2015a).

11.2.2 Non-linear service providers' investing in original programming

While the investments realised by the linear service providers in original content appear to remain stable over the period of 2009 to 2013, the investments of VOD service providers in original programming are expanding since a few years.

In 2016, Netflix, the leader of non-linear service providers on the global audiovisual market, spent USD 5 billion on original programming¹⁸². Five of the 10 shows people searched for most often last year are Netflix originals, company officials said, citing Google data (see Table 26 as example).

¹⁸² Wired.com, Netflix Is Killing It—Big Time—After Pouring Cash Into Original Shows, January 2017. Available at: <https://www.wired.com/2017/01/netflix-investing-original-shows-finally-pays-off/>

Table 26 : Most popular digital original television shows based on audience demand in France in 1st quarter 2017 (in million average demand expressions¹⁸³)

Source: Statista, 2017

Eager to build on that, Netflix plans to spend USD 6 billion creating 1,000 hours of new content 2017, more than doubling its 2016 line-up, and USD 2 billion in European content, building on its strong history in Europe (e.g. the TV series "*Lilyhammer*" is a Netflix co-production with Norwegian public broadcaster NRK1).¹⁸⁴ According to a recent Netflix news release¹⁸⁵, European content is watched by more than 93 million Netflix subscribers globally and is experiencing a huge wave of momentum considering the success of TV series such as *Borgen* and *Black Mirror*.

It appears that, for consumers, Netflix is becoming more a television than a streaming service and the exponential growth of Netflix is definitely linked to these enormous investments in original content. As for the future, the company has a long-term goal of ensuring that 50% of the content streamed on its platform is original¹⁸⁶.

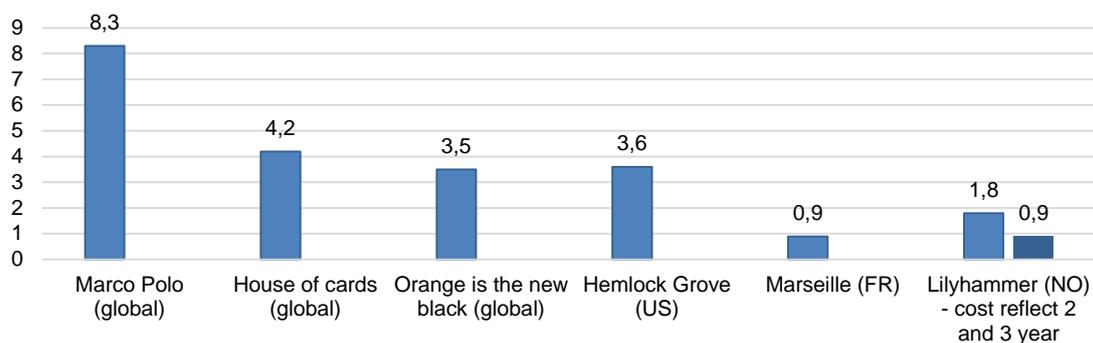
Table 27: Average cost per episode Netflix series €M - latest year of production, geographical target in brackets

¹⁸³ Statista defined demand expressions as follows: "The total audience demand being expressed for a title, within a market. Audience demand reflects the desire, engagement and viewership, weighted by importance; so a stream/download is a higher expression of demand than a 'like'/comment."

¹⁸⁴ <http://mediaconsummit.com/2017/03/netflix-invest-2-billion-european-content/>

¹⁸⁵ <http://mediaconsummit.com/2017/03/netflix-invest-2-billion-european-content/>

¹⁸⁶ Forbes, Original programming can be Netflix's key competitive edge in 2017, December 2016. Available at: <https://www.forbes.com/sites/greatspeculations/2016/12/29/can-original-programming-be-netflixs-key-competitive-edge-in-2017/#30a5bde65cc7>



Sources: IMDb and <http://variety.com>; <http://cineuropa.org> & [bfmbusiness](http://bfmbusiness.com)

Media reported¹⁸⁷ that Amazon Video, which is considered as the closest competitor to Netflix, said that it would spend about USD 1 billion producing several original series (Fierce Cable, 2014).

Hulu, another VOD platform which is next after Netflix and Amazon on the non-linear service market in the US, drastically increased its original content budget in 2016 to serve the US market.¹⁸⁸ At its upfront presentation¹⁸⁹ in May 2014, the Hulu CEO said the OTT service would triple its investment in original content. With its triple-sized bet on original content, the OTT provider's budget is jumping as well.

Microsoft and Yahoo! are also making pushes into original television content in an attempt to compete with Netflix and Amazon's online video services. According to media, the two US technology giants are due to fund exclusive programming to answer the growth of on-demand Internet services¹⁹⁰ (Telegraph, 2014). Microsoft has for example struck a deal with Channel 4 to re-make the Swedish sci-fi hit "*Real Humans*", which will be filmed and produced in the UK.¹⁹¹

As regards European players, telecom operators appear to be the most active in the field. For instance, Deutsche Telekom is planning to invest in original scripted content from 2018 and has set funds aside for the project.¹⁹² Media reported that Deutsche Telekom's upping of its investment in local content comes as pay-TV rival in the German market (Sky) is also ramping up its activity in scripted drama, including the forthcoming launch of the crime drama *Babylon Berlin*.

In France, Orange has had its own in-house studio - Orange Studio - since 2007, which co-produces French and European programmes¹⁹³. More than 130 movies have been co-financed, among them the French Oscar winner *The Artist*. Its telecom rival SFR-Numericable has also started to invest in series and movies. In 2016, SFR set-up its own studio - Altice Studio - to co-finance content and the brand CEO announced the same year¹⁹⁴ his wish to focus more especially on the co-production of French

¹⁸⁷ Fierce Cable, A closer look at the billions of dollars Netflix, Amazon and Hulu are spending on original content, 2014.

¹⁸⁸ Note : Hulu services are not available in Europe.

¹⁸⁹ Hulu website, Upfront presentation, May 2014. Available at: <http://blog.hulu.com/2014/04/30/today-at-the-hulu-upfront/>

¹⁹⁰ Telegraph, Microsoft and Yahoo! to invest in original TV content, April 2014. Available at: <http://www.telegraph.co.uk/technology/microsoft/10750249/Microsoft-and-Yahoo-to-invest-in-original-TV-content.html>

¹⁹¹ <http://www.telegraph.co.uk/technology/microsoft/10750249/Microsoft-and-Yahoo-to-invest-in-original-TV-content.html>

¹⁹² <http://www.digitaltveurope.net/701811/deutsche-telekom-promises-investment-in-original-content/>

¹⁹³ Orange, Happy birthday Orange studio: 10 years already!, May 2017. Available at: <https://www.orange.com/en/news/2017/mai/Happy-birthday-Orange-Studio-10-years-already>

¹⁹⁴ Variety, Altice's SFR, Vivendi's Canal plus set to ramp up investment in French, European films, series, October 2016. Available at: <http://variety.com/2016/tv/news/sfr-canal-plus-french-european-movies-shows-1201898182/>

movies and series. With a €160 million annual budget, the studio will co-finance with the UK-based Sky Atlantic the series *Riviera*¹⁹⁵.

Proximus, a leader of the Belgian telecom operators market, also co-financed Belgian police dramas *La Trêve*¹⁹⁶ and *Unit 42*¹⁹⁷. Media have reported that in 2015, telecom operators have invested €7 million in the production of Belgian movies/series with 22% solely by Proximus¹⁹⁸.

In Spain, Movistar Plus the pay-TV service of Telefónica has co-financed *Velvet Colección*, *La Zona*, and *The Plague*¹⁹⁹. Movistar Plus aims to benefit from the success of Spanish series to continue to invest in local production²⁰⁰.

In November 2017, the leading Italian telecom company Tim set up a joint venture with Canal+ with the objective to compete with Netflix on the European market. The future entity will launch a video-on-demand platform with programming gathering from among other Italian productions and original ones from Canal+²⁰¹.

Besides telecom operators, three media industry “giants” have also planned to invest in European content: Vivendi (FR), Liberty Global (US) and ProSiebenSat (DE). The former owns Canal+ and its studio – Studiocanal - which produces French and European movies and series. In 2016, Studiocanal invested €138.1 million in French cinema production and €135 million in European content²⁰². In 2016, the Vivendi group produced the movie *Briget Jones’s Baby*, which ranked first in the UK box-office in 2017, and is funding the creation of series such as *The Young Pope* or *Jour Polaire*²⁰³.

As for Liberty Global, the group is present in Europe through different operators: Telenet in Belgium²⁰⁴, Virgin Media in the UK, and UPC in Austria, the Czech Republic, Hungary, Romania, Slovenia, and Switzerland. Telenet has started the production of two Flemish series: *De Haag* and *Chausée d’Amour*. Besides, the Belgian operator has set up a special fund in 2016 through which it plans to invest €30 million over four years in the Flemish audiovisual market²⁰⁵.

¹⁹⁵ Le Parisien, Altice Studio et Sky vont coproduire la nouvelle série « Riviera », March 2017. Available at : <http://www.leparisien.fr/flash-actualite-culture/altice-studios-et-sky-vont-coproduire-la-nouvelle-serie-riviera-08-03-2017-6744333.php>

¹⁹⁶ Proximus, La trêve se hisse au sommet des séries policières. Et c’est belge, december 2015. Available at : <https://www.proximus.be/fr/info/photo/1614366/la-treve-se-hisse-au-sommet-des-series-policieres-et-c-est-belge/1614366/la-treve-la-passionnante-serie-belge-tant-attendue>.

¹⁹⁷ Proximus, Unité 42 nouvelle série belge sur Proximus TV, 2017. Available at : <https://www.proximus.be/fr/info/photo/1800106/unite-42-nouvelle-serie-belge-sur-proximus-tv/1800120/une-production-rtbf-et-proximus>

¹⁹⁸ Lalibre, L’audiovisuel belge dépend aussi de Voo, BeTV & Co, 2017. Available at : <http://www.lalibre.be/economie/libre-entreprise/l-audiovisuel-belge-depend-aussi-de-voo-betv-co-58a4a1cecd703b98153e4f93>

¹⁹⁹ Variety, Movistar Plus rides tide of Spanish TV renaissance, October 2017. Available at: <http://variety.com/2017/tv/festivals/movistar-plus-boosts-spanish-tv-1202588501/>

²⁰⁰ Ibid.

²⁰¹ Club Italie-France, Telecom Italia and Canal plus s’allient pour créer le netflix européen, November 2017. Available at : <http://www.clubif.com/fr/telecom-italia-et-canal-plus-sallient-pour-cree-le-netflix-europeen/>

²⁰² Vivendi, Rapport annuel, 2016. Available at : https://www.vivendi.com/wp-content/uploads/2017/03/20170314-VIV_Vivendi-Rapport-annuel-Document-de-reference-2016.pdf

²⁰³ Ibid.

²⁰⁴ Liberty Global owns 57.5% of Telenet. See: <http://www.libertyglobal.com/oc-belgium.html>

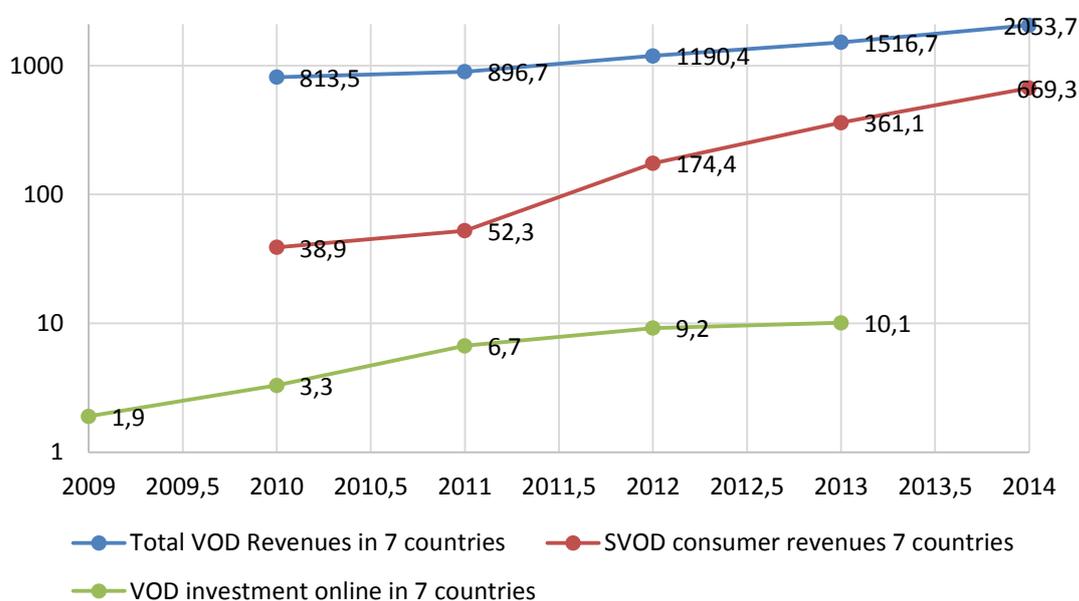
²⁰⁵ Telenet, Telenet presents De Dag in cooperation with VIER -an exciting drama series by Jonas Gerinaert and Julie Mahieu, a production of FBO and Woestijnvis and with support of VAF/Mediafonds, October 2016. Available at: <https://press.telenet.be/telenet-presents-de-dag-in-cooperation-with-vier-an-exciting-drama-series-by-jonas-geirnaert-and-julie-mahieu-a-production-of-fbo-and-woestijnvis-and-with-support-of-vafmediafonds>

The German group ProSiebenSat, which owns the VOD platform Maxdome, has also begun to invest in German production with the series *Jerks* launched in 2016²⁰⁶.

A 2015 EAO study investigated the investment in original online programming for 2009-2013 period in seven countries in Europe²⁰⁷. For the purposes of comparison this data is presented (see Figure 21 - please note that the data here is displayed in a logarithmic scale) with data for the seven countries on "total VOD revenues" (including: online TV consumer revenues, online film consumer revenues, SVOD consumer revenues and TV VOD consumer revenues) and on "SVOD revenues" in the seven countries (more information about the definitions of these services are outlined in chapter 11.6.3).

Figure 21 places the investment in original online programming in the context of other trends in the on-demand services markets. For example, the total revenues for on demand services in 2013 was €1.5 billion, for SVOD revenues €361 million (one third of the total) while investment in original content was €10.1 million (EAO, 2015b).

Figure 21: Total VOD revenues, SVOD revenues, and investment in exclusive online content in seven EU countries 2009-2013 – million Euro



Source: EAO, 2015b

It is possible to notice that the investment represents less than 1% of the total revenues, and just under 3% of the SVOD revenues (2013). The provision of original content for the online world is a relatively new development, which appears to be growing exponentially, alongside the other market indicators (EAO, 2015b). New content is of particular value for competing SVOD operators in order to create new brands of programming and distinguish them from other services. Hence the SVOD revenue figures were singled out as a potential benchmark (EAO, 2015b).

²⁰⁶ ProSiebenSat, Quarterly Statement for the Third Quarter and the first Nine Months of 2016, 2016. Available at: http://www.prosiebensat1.com/uploads/2016/11/03/P7S1_Q3_2016_EN.pdf

²⁰⁷ Under the methodological section, the EAO noted that it was very difficult to access data on investments in original online programming. The method of gathering the data involved the creation of a database of all content identified via desk research with estimates of programming costs aggregated for each country. Hence the data here should be treated with caution. EAO (2015), study available at: <http://www.obs.coe.int/documents/205595/264625/OBS++REFIT++Note+B.3+Investment+in+original+programming.pdf/137f3dd6-fc0c-4634-a5c1-1b3037ab46d8>

However, during the panel discussion at 2017 ANGA COM²⁰⁸, some Telco providers argued to be “sceptical of the value of investing in exclusive content” and to be “more interested in other ways of differentiating (their) offering, including: providing Internet of Things and smart home products, rather than a strategy of investing in exclusive original content. (As) limiting content to a specific channel means that prices will keep going up. This is not a very wise strategy” and therefore “exclusivity is not good for the end consumer”.²⁰⁹

11.3 The European cinematic film production

Despite the very significant presence of Hollywood majors, the European film industry is quite dynamic and reaped some €60 billion in revenue in 2010. Within the EU, the “Big Five” – France, Germany, Italy, Spain and the UK – account for around 80% of releases, industry turnover, and persons employed (please refer to Chapter 10).

The European Commission identified a number of structural weaknesses which prevent the EU film industry from reaching potential audiences in the EU and globally²¹⁰, namely:

- The fragmentation of production;
- Issues related to financing;
- The emphasis on production, with limited attention on distribution; and
- Insufficient opportunities for international projects.

11.3.1 Film: Budgets and public funding in Europe

The Commission recalls in its Communication of 2014 that the EU can only complement national support mechanisms and, in that sense, its overall objective is to maximise complementarity between existing instruments and policies, without increasing the level of public aid.

The small or micro-enterprises making up the European film industry frequently face difficulties in raising the budgets required to compete on a global scale, due mainly to the high risk associated with the industry and its perceived lack of profitability (please refer to chapter 11.3.3).

A quick comparison between the EU and the US shows a stark contrast. While the average EU production budget ranges from some €11 million in the UK, €5 million in Germany and France, to €300,000 in Hungary and Estonia, the average budget for US-produced films amounts to €12 million and exceeds €85 million for films produced by majors and their affiliates.

Total investment in EU film production has more than doubled between 2001 and 2008²¹¹ (from €2.4 billion to €5.6 billion), but it appears to be used in making more films instead of following a more selective approach. It has also been argued that the distribution of public funds inflates the earnings of a few stars irrespective of economic realities.

The European Audiovisual Observatory²¹² demonstrated that in terms of film budgets, European countries do not share common trends (EAO, 2015a). Of the 36 European

²⁰⁸ The ANGA COM is an Exhibition and Congress for Broadband, Cable & Satellite and it has been Europe’s leading business platform for broadband operators and content providers for more than 15 years.

²⁰⁹ <http://www.digitaltveurope.net/701811/deutsche-telekom-promises-investment-in-original-content/>

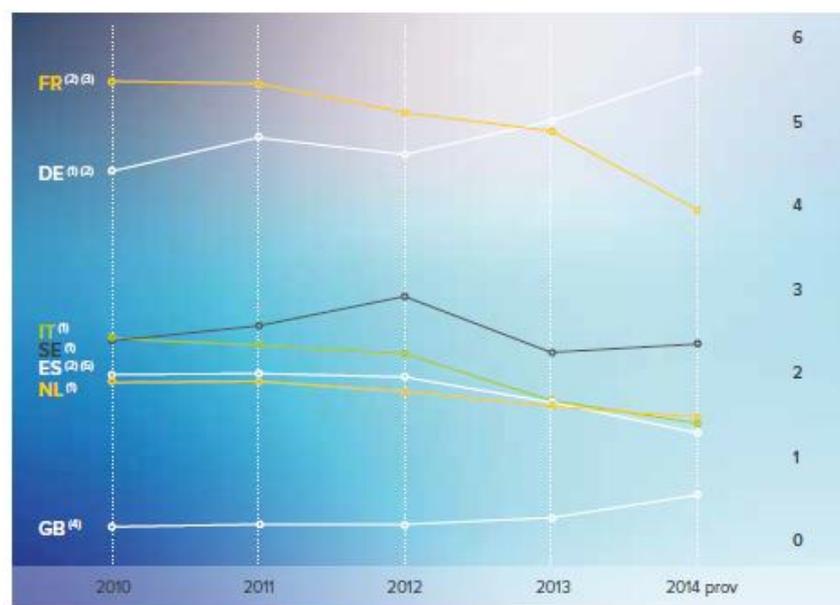
²¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, European film in the digital era Bridging cultural diversity and competitiveness, COM (2014) 272 final.

²¹¹ European Parliament, Briefing, An overview of Europe’s film industry, December 2014.

²¹² Report by the European Audiovisual Observatory, Yearbook 2015, Key trends.

countries covered in the EAO's report, only 14 could share figures. However, the analysis showed that five of the 14 countries for which figures were available experienced a year-on-year drop in their average budgets in 2014; namely Portugal (-48.2%), Spain (-22.5%), France (-19.3%), Italy (-16.3%) and the Netherlands (-7.75%). This decreasing trend started in 2012 and it is suggested that it may be linked to the financial difficulties in those countries (EAO, 2015a).

Figure 22: Average feature film production budgets in selected countries (2010-2014) in EUR million

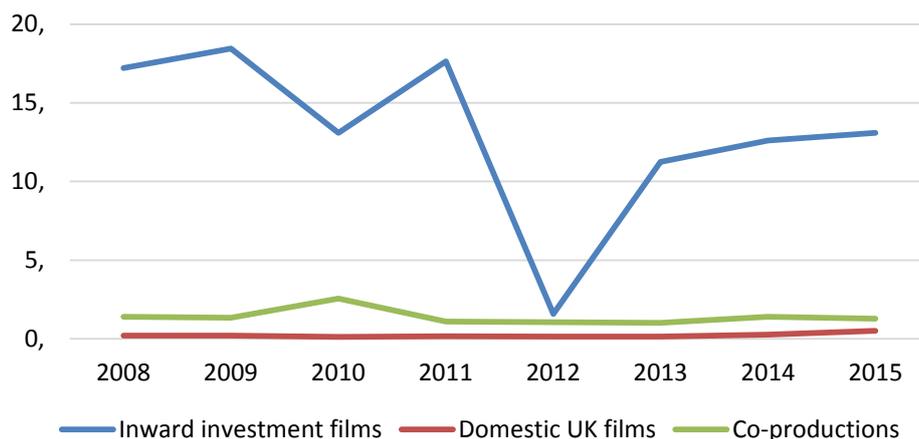


(1) Fiction films only. (2) Minority co-productions included. (3) French Initiative films only. (4) Median (instead of average) UK domestic production budget. Includes films with budgets under GBP 500,000. (5) Restated series.
Source: European Audiovisual Observatory

Source: EAO, 2015a

The decrease in the overall financing available tended to reduce the budget of the productions, but not the overall number of productions, as the number of productions in those countries either decreased or decreased slightly. The trends show that, for example, in the UK, median budgets both for entirely domestic productions (up to €0.5 million) and inward investment films increased dramatically (peak of €21.3 million).

Figure 23: Median feature film budget in the United Kingdom (UK) from 2008 to 2015, by production type (in million GBP)*



Source: British Film Institute, 2015

Furthermore, Germany's average budget continued its upward trend, reaching a figure of €56 million in 2014, the highest in Europe for the second consecutive year.

The EAO raised the concern that a growing share of the national investment is ending up in the hands of a few high-budget projects, and this would be at the expense of medium-size budget projects, which would have no choice but to become low-budget in a time of less overall investment (EAO, 2015a).

Concerning the number of funds for creation in Europe, it remains steady; there were 235 national, regional and local funds operating in Europe²¹³ by the end of 2014, while in 2010 there were 236 funds (EAO, 2015a). Even if the number of funds is steady, 15 new funds were created while 16 shut down over this period, showing an intense activity in the film funding sector (EAO, 2015a). However, no relevant changes occurred in the geographical distribution of funds, with national institutions representing approximately one fourth of the funding bodies, accounting for 82% of the total spend in 2014, compared to 85% in 2010.

On the trends on income and spend in film production in Europe, the income returned to 2010 levels by the end of 2014 (around €2.35 billion a year), while spend grew slightly, from €2.25 billion in 2010 to €2.45 billion in 2014 (EAO, 2015a). Moreover, the report stated that the main sources of income were and continue to be the broadcasters (through levies or negotiated contributions), followed by the national and regional governments.

Feature film production continues to obtain the main part of the spend (average of 42% of the total between 2010 and 2014), then TV production obtains a big part also, and finally there is the support to the organisation of events and exhibition activities. Digitalisation support has dropped drastically as the expansion of digital is now almost complete (EAO, 2015a).

The analysis of the budgets and public funding for content creation in the EU shows that there is a relative drop in films' budgets, from the period of 2010 to 2014. These concerns were confirmed by the interviews conducted, in which the interviewees stressed that the main weaknesses of the European players in the audiovisual sector are the lack of capital and of funds. Industry stakeholders mentioned that it would be important to be able to raise bigger budgets for the original stories, in order to compete with the budget which is raised for cinema and other platforms.

²¹³ Here we refer to all EU members, Albania, Bosnia and Herzegovina, "the Former Yugoslav Republic of Macedonia, Iceland, Norway, the Russian Federation, Switzerland and Turkey.

11.3.2 Film: Trends in co-production

Most the stakeholders interviewed affirmed that the co-production of film is a great opportunity for the film industry as it allows to combine talents from various countries, to mix creativity, to decrease risks in terms of financing and to build on diversity.

Interviewees considered three key factors influenced co-productions:

- The pooling of resources (financial, human and material);
- The allocation of risks; and
- The director's background.

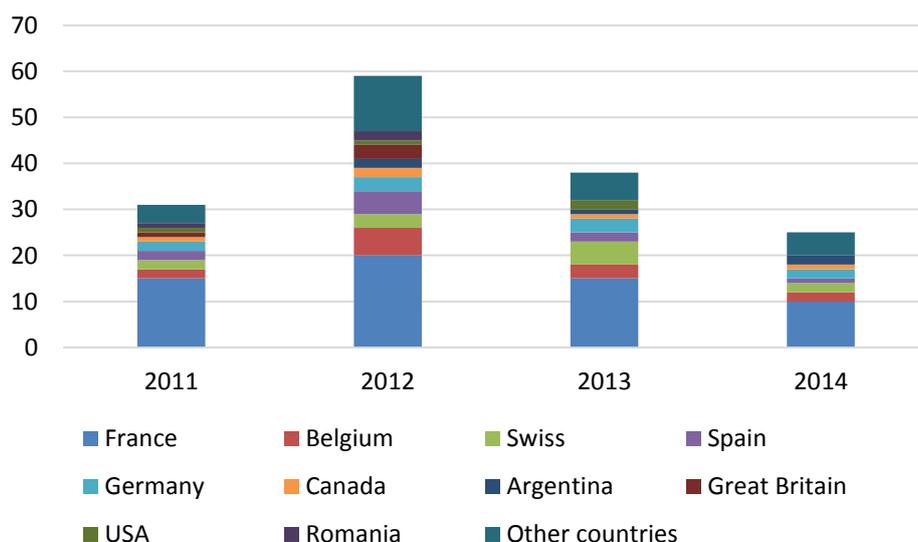
Although, some of them stressed that before all those factors, the most important is the will to work together on a common creative project.

International film co-production has been more and more used since the 1990s to create programmes for a global market. The projects are governed by official treaties²¹⁴, allowing the collaboration between two or more producers from different nations. This provides access to various public funding mechanisms and increased production budgets. To qualify for a treaty of co-production, co-producers have to commit to at least a 30% financial participation in a project.

As industry studies report²¹⁵, after the global financial crisis of 2008, the growth trend in co-productions slowed due to reductions in national cultural budgets and political changes in various treaty countries, with institutions reducing their funding for the arts (Cineuropa, 2014). However, greater state subsidies for European co-productions, multimedia projects and film distribution across Europe have been favoured by the European Commission and its regulations.

The Italian Society of Authors and Publishers provided statistics on the total number of film co-production in Italy from 2011 to 2014 (Figure 24), by country of the co-production's partner. In 2014, the country with the greatest number of film co-productions with Italy was France with 10 movies.

Figure 24: Total number of film co-productions in Italy from 2011 to 2014, by country of the co-production's partner



²¹⁴ An overview of the treaties in place can be found at: <https://www.olffi.com/coproduction-treaty/list-2.html>

²¹⁵ Industry report: market trends, Current trends in international film co-production, Cineuropa, 2014. Available at: <http://cineuropa.org/dd.aspx?t=dossier&l=en&tid=1967&did=259811>.

Source: Italian Society of Authors and Publishers, 2014

In total, European governments spent approximately €2.8 billion in various forms of direct cash support for European products and an additional €1 billion in the form of targeted tax incentives in 2013.

Additional factors contributing to a recent increase in global co-productions include the growth in number, visibility and importance of international performing arts festivals and markets, the increased membership of European and other cultural networks focusing on international collaboration and exchange, and a heightened awareness of our global society, where international citizens have shared concerns.

Table 28: Top feature film co-producing countries, 2012 and 2013²¹⁶

Country	Nr. of coproduction	Nr. of feature films produced	Presence of coproduction
2012			
1. France	129	279	46.2%
2. USA	115	738*	15.6%
3. UK	84	326	25.8%
4. Germany	82	220	37.3%
5. Spain	56	182	30.8%
6. Belgium	48**	55**	87.3%
7. Netherlands	39	79	49.4%
8. Switzerland	39	93	41.9%
9. Italy	37	166	22.3%
10. Ireland	26	38	68.4%
2013			
1. France	116	270	43.0%
2. USA	94	738	12.7%

²¹⁶ Prepared with data from 44 countries for 2012 and 46 countries for 2013. Total co-production can be lower than the sum of feature films co-produced by a country. A feature film co-production may involve more than two foreign countries. *Partial data. **UIS estimate. http://uis.unesco.org/sites/default/files/documents/diversity-and-the-film-industry-an-analysis-of-the-2014-uis-survey-on-feature-film-statistics-2016-en_0.pdf

Country	Nr. of coproduction	Nr. of feature films produced	Presence of coproduction
3. Germany	88	223	39.5%
4. UK	74	241	30.7%
5. Spain	57	231	24.7%
6. Belgium	53**	70**	75.7%
7. Switzerland	42	103	40.8%
8. Netherlands	34	68	50.0%
9. Italy	29	167	17.4%
10. Ireland	21	34	61.8%

Source: UIS database, November 2015

11.3.3 Film: Box office profitability

The film industry is defined as a “prototype” industry, with fluctuating demand, high fixed production costs and relatively low reproduction costs (European Parliament, 2014). In addition to this “prototype” characteristic, films have other features identified in the literature (EIB, 2001):

- Films enter and exit the market on a continuing basis;
- Films compete against a changing cast of competitors;
- Films have a short period of time to capture the audience’s imagination, earning in general their maximum box-office revenues in the first week of release while the point of widest release for most films is the second week;
- Few films have “legs”, gaining positive word-of-mouth and enjoying long runs;
- There is a weak relation between the quality of a film and the price of a ticket (which remains stable regardless of production costs or demand); and
- Films need to achieve critical mass to be profitable (so-called “blockbusters”) and to offset the costs of less lucrative productions.

This fragile balance between cultural and industrial components of the film industry is the source of significant tension between creative and market considerations (European Parliament, 2014).

As noted in the EIB report on the film industry²¹⁷, most films lose money. On a sample of ten films, seven lose money, two break-even and one generates a very high return, making the average film box-office dependent almost entirely on a few extreme revenue outcomes whose probability of occurrence is low (EIB, 2001).

Also according to an analysis conducted by the BFI, which looked at 613 British films produced or co-produced in the UK from 2003-2010, just 7% of UK films have made a profit²¹⁸. Similarly, in television, analysis of UK drama shows that only 31% of series that were first aired between 2006 and 2010 were commissioned for a second season, with only one in 20 making it to five seasons or more.

²¹⁷ http://www.eib.org/attachments/pj/pjaudio_en.pdf

²¹⁸ <http://www.screendaily.com/news/only-7-of-uk-films-make-profit/5064187.article>

BFI's statistics also show that the percentage of profitable films is even lower for films with budgets under £500,000, just 3.1%. According to the BFI, the numbers increase as budgets rise:

- £0.5m-£2m: 4.1%;
- £2m-£5m: 4.6%;
- £5m-£10m: 12.1%;
- £10m+: 17.4%.

The sector is therefore characterised by extreme events, with most of the industry's revenue generated by a few huge successes. Research in 2004 described universal and durable features of the film industry and stated that less than 20% of movies earn 80% of gross revenues.²¹⁹ To make content production financially viable, producers must generate a sufficient return on a portfolio basis, where profitable content balances the unprofitable content (Oxera and O&O, 2016). In Europe, an additional complexity of commercialising audiovisual content is that every national audience values content differently based on cultural and linguistic factors or local tastes (Oxera and O&O, 2016).

In addition, responses provided by some stakeholders to the public consultation on the AVMSD suggest that the relatively high acquisition cost of European content (as compared to non-European/US content) potentially acts as a barrier for new market entrants and may make it commercially unattractive for audiovisual service providers to invest in European content (ICF, 2015b).²²⁰

A recent report of the Commission compared EU and US production budgets of selected works (drama series or films)²²¹. It was found that US costs are on average significantly higher than for comparable EU series or films (ICF, 2016b). Higher US production budgets reflect the fact that the potential audiences for US productions are much larger (national as well as international audiences). In other words, US productions have a bigger market compared to EU productions. However, when European production costs were considered in relative terms, in the light of potential likely audiences, a different pattern emerges: *Cost per viewer of European content is, on average, higher than cost per viewer of US content*, reflecting that European produced content often travels poorly across Member States (i.e. viewing largely takes place within the country of production with few or no works acquired abroad, primarily due to language and cultural barriers). Consequently, for the European broadcasters, producing their own content is usually much more expensive than acquiring rights for content of a similar nature (ICF, 2016b).

Table 29 shows the "top 20 most successful films at the international level for 2015" and it comprises a majority of films produced in the United States (15 of 20 feature films) or co-produced by U.S. companies (4 of 20 feature films): the productions and co-productions from the United States account for all the films with the highest theatrical attendance levels that year. Only one UK-France co-production bears witness to the minority consumption of feature films produced by companies from other countries. Regarding the production budget, nine films cost above USD 150 million – the most expensive film is "Avengers: Age of Ultron" – while other films had

²¹⁹De Vany, A. (2004), *Hollywood Economics: How extreme uncertainty shapes the film industry*, Routledge: Taylor & Francis Group, p. 261.

²²⁰ ICF (2016b) "Survey and data gathering to support the Impact Assessment of a possible new legislative proposal concerning Directive 2010/13/EU (AVMSD) and in particular the provisions on cultural diversity"

²²¹ An accurate and reliable comparison between absolute production costs of EU and non EU content is however, not possible for two main reasons:

- There is a lack of comprehensive and comparable data, especially as regards production costs of broadcasters' own production.
- There is significant variation in production costs across main fiction and non-fiction groups (motion pictures, TV film/drama, TV series, sitcoms; documentary, reality TV, magazines, lifestyle TV etc.).

budgets between USD 100 million and USD 149 million. That is, 60% of feature films cost USD 100 million or more. Only three films had budgets below USD 50 million.

Table 29: The 20 most successful movies of 2015²²² - in USD million

Movie	Global box office sales	Production budget	Box office profit	Country of production
1. Fast & Furious 7	1,520	190	1,330	USA
2. Jurassic World	1,670	150	1,520	USA
3. Avengers: Age of Ultron	1,410	250	1,160	USA
4. Inside Out	851.6	175	676.6	USA
5. Minions	1,160	74	1,080	USA
6. The Martian	593.8	108	485.8	USA
7. Mission: Impossible – Rogue Nation	682.3	150	532.3	USA, CN, HK
8. Spectre	836.1	245	591.1	UK, USA
9. Star Wars: The Force Awakens	529	200	329	USA
10. Cinderella	542.7	95	447.7	USA
11. The Hunger Games: Mockingjay – Part 2	595.5	160	435.5	USA
12. Ant-Man	518.6	130	388.6	USA
13. Mad Max: Fury Road	375.8	150	225.8	AU, USA
14. Kingsman: The Secret Service	414.4	81	333.4	UK, USA
15. Hotel Transylvania 2	449.1	80	369.1	USA
16. Paddington	259.5	55	204.5	FR, UK
17. Pitch Perfect 2	287.1	29	258.1	USA
18. Straight Outta Compton	200.4	28	172.4	USA
19. Fifty Shades of Grey	570.5	40	530.5	USA
20. San Andreas	473.8	110	363.8	USA

Source: Business Insider

In addition, looking at the languages used in the top 20 most popular films of 2015 reveals that there is a clear and almost undisputed predominance of the English language.

²²²<http://uk.businessinsider.com/ranked-the-50-most-successful-movies-of-2015-2015-12?r=US&IR=T/#1-furious-7-50>

11.3.4 Rights trading: territoriality, release windows and bundling

The nature of the audiovisual production and the practices of the industry are such that the development stage involves significant costs, and a writer of a feature film will only be paid if and when a producer buys the right to exploit it (SAA, 2014).

The director will then work on the development of a production, making decisions on style, locations, and casting to create an attractive package for potential investors – without any guarantee of payment for the time invested.

Audiovisual authors' income can be from two sources:

- The fee for writing the script and/or for directing the audiovisual work; and
- Income based on their intellectual property rights.

A typical programme contains a large number of rights including, but not limited to (Attentional, 2011):

- Rights to the first few transmissions;
- Rights to subsequent repeats on specific channels for a nominated period of time;
- Rights to sell on to other broadcasters in the same national market (often with a hold-back to allow the original broadcaster a unique period of use);
- Rights to use the programme on an on-demand service – potentially in a number of windows;
- Rights to sell the programme on video;
- Rights to sell the programme internationally;
- Rights to exploit the format of the programme (its basic structure and script) in the domestic market and overseas;
- Rights to exploit the programme brand and characters in merchandising and licensing deals; and
- Rights to use the programme name and excerpts for Internet and mobile clip services.

The current situation for audiovisual authors in terms of their rights and remuneration varies considerably from one country to another. It depends on the national legislative framework, on the contract signed with the producer, and on the individual and collective capacity to enforce rights (SAA, 2014). In most European countries audiovisual authors transfer their economic rights to the producer (SAA, 2014). Fees are individually negotiated in the contract between the author and the producer resulting in many audiovisual authors receiving a lump sum payment for the writing and/or directing of the film (SAA, 2014). This situation reflects the weakness of the position of individual authors and the dominant position of producers and broadcasters in individual contractual negotiations (SAA, 2014). However, a small number of states (typically those with the most developed independent production sectors) allow the producer to retain some rights and for those rights to revert to the producer after a certain period of time. The UK and France are the markets where producers have most rights retention.

Table 30: The rights and revenues of producers in France and UK

	France	UK
Ownership of rights (FR)/ copyright (UK)	Ownership of rights ("parts de co-production") reserved for producers ²²³	Intellectual property rights reserved for producers ²²⁴

²²³ Décret Tasca (2001) in France;

	France	UK
Sharing of revenues (for the producer) – <i>illustrative</i>	Minimum of 40% of national and international revenues	<ul style="list-style-type: none"> • 50% of national revenues • 85% of international revenues

Source: *Analysys Mason, 2015*

Indications from industry interviewees show that type of rights sought are increasing: new media rights are becoming as much the norm as traditional broadcast rights and associated ancillary rights. A “full spectrum” offering around programmes is prominent: additional services and sales are often planned around a programme, such as online micro-sites, catch-up/on-demand. Higher rights retention by the producer offers up potential for more revenue sources and investment costs recoupment (Attentional, 2011). Some interviewees suggested that it is not the length of agreement which is important but the number of rights traded, to make the most of the licence.

In addition, some interviewees stressed that the producers would like an acceleration in selling the works and there should be shorter agreements and it should be proportionated to the risks they are investing on.

Given the risk associated with content creation, rights holders also seek to spread the risk they control through a combination of market segmentation practices that involve different sale/distribution of rights through time or geographical areas (Oxera and O&O, 2016):

- Release windows;
- Territoriality and exclusivity;
- Content bundling.

11.3.4.1 Release window

Film producers/rights owners can seek to recoup their upfront investments by commercialising rights through a segmented set of global release windows (Oxera and O&O, 2016).

Release windowing is a way of applying differential pricing to consumers willing to pay for the content at different times, in different formats or settings, and/or to distinguish between the value of ownership and access.

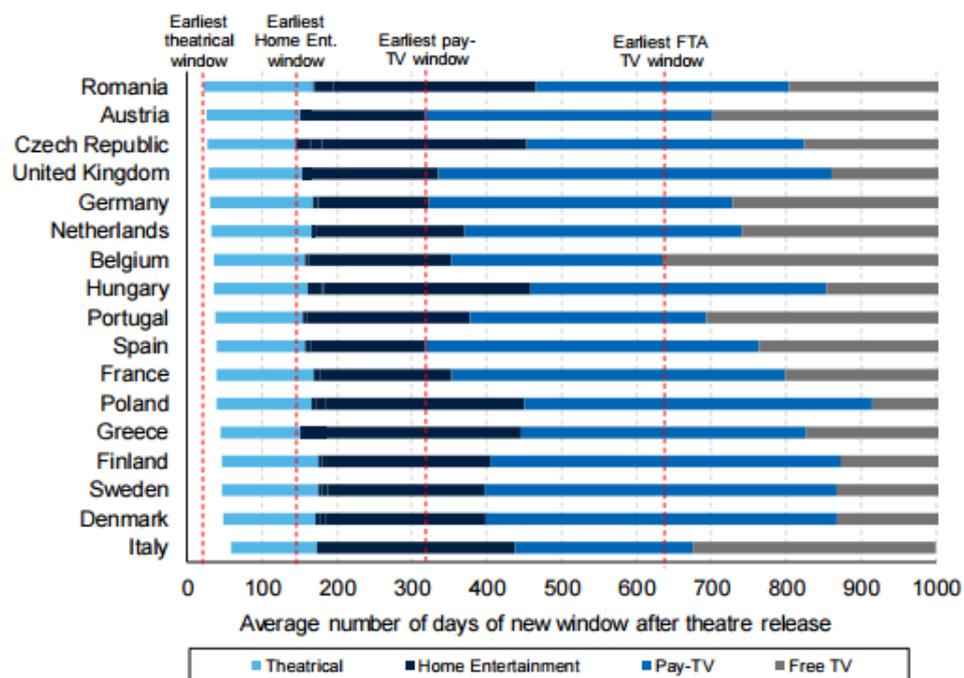
Release windowing is considered an effective means of recoupment of investment by charging different prices and maximising access to customers (Oxera and O&O, 2016). Film prices are:

- Highest for cinema release or DVD/Blu-ray/DTO – *download-to-own*;
- Next highest for first pay-TV; and
- Lowest for free-to-air and archive TV.

This roughly matches the release order in each territory, i.e. one pays more the earlier you want to see the film.

Figure 25 shows the average time between windows based on a sample of 250 films first released between 2011 and 2014. The home entertainment window includes physical, EST and TVOD, as these windows tend to start almost simultaneously (Oxera and O&O, 2016).

²²⁴ Communication Act 2003: “Codes of practice” and “Terms of Trade” protect the rights of independent producers in UK;

Figure 25: Average time between windows, by EU country (days)

Source: Adaptation from O&O and Oxera, 2016

According to the industry report, for European-originated TV content the majority of revenue is generated within the primary broadcast window. This varies by genre: news, sport and entertainment are typically immediate, whereas fiction has a longer-term revenue stream and some children's productions have a lifespan measured in decades (many films become profitable long after their theatrical release). The first window increasingly has an associated VOD element, enabling broadcaster catch-up services (Oxera and O&O, 2016).

11.3.4.2 Territoriality and exclusivity

Cultural tastes and local languages play an important part in the content sectors. Most European content in the original language version travels predominantly in related geographical language and cultural clusters., Different countries and regions also have different preferences for the way that foreign content is presented (Oxera and O&O, 2016).

Most film and TV content is licensed on a territory-by-territory basis in each exploitation window: distribution and showcase of film and TV content is largely carried out by local operators, which seek to license content on a territory-by-territory basis and within each territory, the approach can vary between TV and film content (Oxera and O&O, 2016).

Approaches to exploitation of TV content can vary. Generally, the first window can be pay-TV, SVOD, or FTA (free television air)²²⁵, depending on the specific content in question (Oxera and O&O, 2016). This first window tends to be on an exclusive basis, within a territory, across all media. Subsequent release windows may also be exclusive, but this will often be limited to a particular media (for example an FTA service may have exclusivity against other FTA services, but not against SVOD). In home entertainment, TVOD content licensing tends to be done on a non-exclusive basis within each territory (Oxera and O&O, 2016). DVD and Blu-ray distribution tends to be on an exclusive basis with a specified distributor in a given territory, but on a nonexclusive basis between retailers (Oxera and O&O, 2016). Certain territorial

²²⁵ please refer to chapter 11.6 for more information about the different type of distribution players.

limitations exist from a retail perspective due to the different national legislation, for example different classification systems related to the protection of minors.

For film, the major difference across Europe is the initial theatrical release where deals are still done on a national territory-by-territory basis with cinema chains but are rarely exclusive to a given chain of cinemas within a territory (Oxera and O&O, 2016).

Pay-TV or SVOD tends to be the first broadcast window, though this can vary depending on the relative strength of different media in a given market (Oxera and O&O, 2016). On this regard, interviewees raised the issue that the rights tend to be concentrated towards one or two big platforms, and that this is considered dangerous because it blocks free negotiations and makes it more difficult for the film distributors to exploit their rights in the most efficient way.

Similar to the TV content, DVD/Blu-ray and TVOD releases may be exclusive to a distributor but not to any given retailer, and in the case of DVD and Blu-ray, territorialisation across Europe is often limited to language or marketing rights (Oxera and O&O, 2016).

11.3.4.3 Content bundling

Content providers and platform owners often bundle services into broader packages of content or together with levels of TV and digital connectivity (Oxera and O&O, 2016). This allows potential market segmentation, with those buying individual access to content such as live sport or recent film releases in a given territory often paying more than those buying them together (Oxera and O&O, 2016).

However, this method of price differentiation is under increasing competitive pressure due to the increase of IP-based content aggregators in recent years, offering stand-alone OTT web-based TV services (SVOD and TVOD). In fact, the availability of these new digital services allows subscribers to effectively unbundle what it is offered in cable and satellite pay-TV content, in favour of a mix-and-match approach through web-based delivery (Oxera and O&O, 2016).

11.4 Circulation: US vs European audiovisual works

The European Audiovisual Observatory conducted²²⁶ an analysis on the origin of fiction on 96 TV channels in 14 European markets in 2015. The findings show that:

- Non-European fiction content represents 62% of the fiction on the main European channels;
- More than 50% of fiction content is from the US, the rest comes from other non-European countries;
- Just over 30% of the fiction tends to be European and of this, 55% is national production broadcast;
- Around 45% of European content is non-national, and this fact shows that European fiction works are circulating across Europe; and
- A further 7% of TV fiction originates from mixed co-productions (with European and a non-European country).

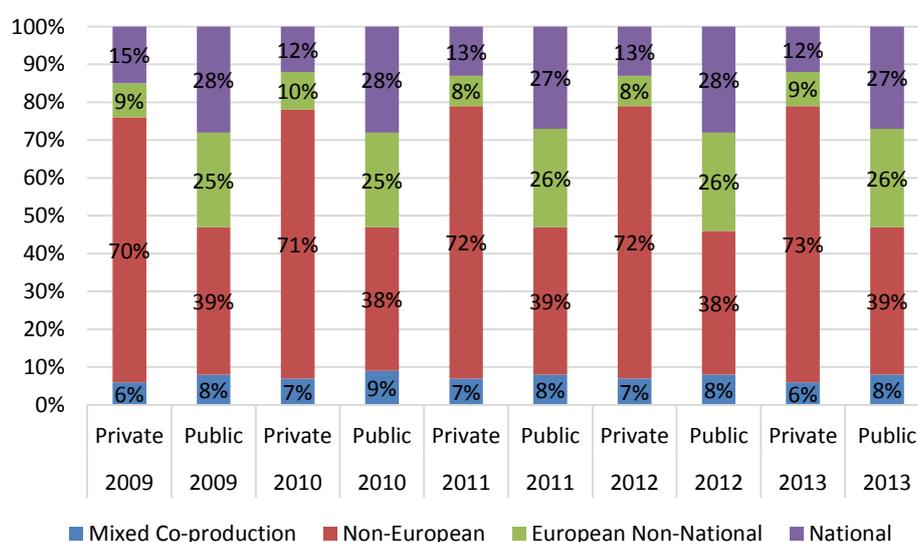
According to some interviewees, the proportion of US products is very high due to historical reasons. For example, 70% of the audiovisual content in the Netherlands is from the US because the Dutch economy and culture are very Anglo-Saxon. Also, a lot of independent distributors are buying US independent film, and some believe that this trend will remain the same in the future.

²²⁶ Report by the European Audiovisual Observatory, Yearbook 2015, Key trends.

Similar to the investment in original programming (please refer to Chapter 11.2.1), public service broadcasters are important to favour the circulation of European works. According to data from the European Audiovisual Observatory, public channels schedule more than 50% of European fiction content, while private channels schedule less than 20%.

However, there are some exceptions, where the levels of European content were found to be much higher than the average on private channels, for example in France and the UK (EAO, 2015c). On the other hand, the levels of European content were much lower than the average on the German, Dutch, Swedish and Danish private channels (EAO, 2015c).

Figure 26: Public and private channels: origin of fiction in 14 European markets²²⁷ (2009-2013)



Source: EAO, 2015c

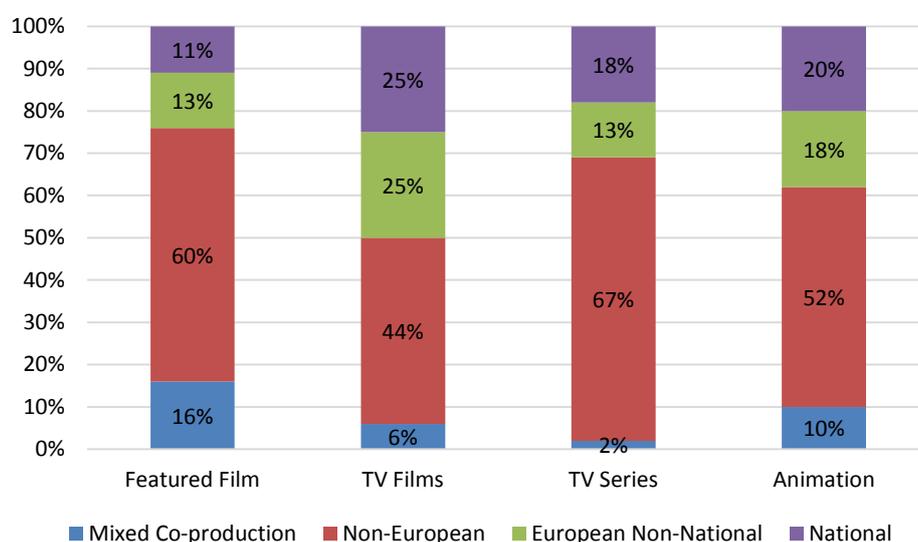
The levels of European content will be different depending of the European country. For example, there is much more European content shown on all the channels in France, Finland,, Poland, Portugal and the UK than in the other countries. In the case of the Poland, Portugal and the UK, "European content" is almost entirely "national" content. Other countries have a much lower level than the average one of national TV fiction content on their channels: Austria, the Belgian French Community, Denmark, Ireland, Luxembourg and Sweden.

²²⁷ The 14 markets include: AT, BE (CFB), BE (VLG), DE, DK, ES, FI, FR, GB, IE, IT, LU, NL and SE.

The European Audiovisual Observatory also conducted an analysis of the European fiction genres to establish the proportion of non-European content in each genre. The findings first showed that the strongest European fiction genres are animation and TV films. TV series tend to have the strongest proportions of non-European content and it appears to be growing, as it reached 67% non-European content in 2013. In the meantime, the non-European proportion of feature films broadcast on the channels remains very stable at 60% over five years. For feature films, the number of mixed co-productions (co-productions with a non-European partner country) is also higher than average, reaching 16%. This implies a European involvement in the production of at least 40% of the feature films on the main channels. To conclude, genres that are strongest in terms of European content are TV films (50% European, and 10% mixed co-productions).

Below is a graphic representing the proportion of European, non-European content, national or mixed co-productions in each genre on TV.

Figure 27: Snapshot of main fiction genres (and their origin) on TV in 14 European markets²²⁸ (2013) – In %



Source: EAO, 2015c

The interviewees gave their opinion on the differences between the US audiovisual market and works and the European ones.

On the European market, some interviewees noted that the most important weakness is the reality of having 28 different cultures which can create an economic barrier for the circulation of audiovisual works. It also creates a cultural barrier as people are mostly interested in their national production, meaning that the market for European

²²⁸ The 14 markets include: AT, BE (CFB), BE (VLG), DE, DK, ES, FI, FR, GB, IE, IT, LU, NL and SE.

films is fragmented along linguistic and cultural lines. These differences of cultures are not present on the US market, which is one single audiovisual market. It appears difficult to implement a big European movie industry.

Moreover, audiovisual European work seems to be less well promoted than US content. Some interviewees noted that there is no real European aggregator for this and the European market players are predominantly SMEs (European Commission, 2014).

The interviewees also noted that the European players are acting more on specific original content, like with the Nordic TV series. The US content is here to stay and it offers products that are scalable, but it does not address cultural diversity. All the interviewees recognised that the cultural diversity of the EU is more fragile than the US content, but it can also represent a strength for the EU audiovisual market.

The opportunities to develop for the EU audiovisual market are to stand out by being even more original, to take more risks in what is shown, to have niches and to have more unusual content. This would allow the EU to transform its specificities into a strength.

11.4.1 European films access to on-demand services

The on-demand services are described as “non-linear” as there is no broadcast schedule to follow (the “non-linear” service provides are discussed in details in Chapter 11.6.3).

The idea that digital technology allows for a greater diversity of the content offer, and therefore of consumption, has been argued for in Anderson's *Long Tail* theory (Anderson, 2008).²²⁹ He states that, through online delivery channels:

- A scattered audience can be reached and connected, thus overcoming the limits of space and time that exist in traditional audiovisual markets;
- Hence, audiences can choose among audiovisual works that are not generating enough revenues to cover the costs of making; and
- Thus, the aggregation of niche markets may add up to a market of significant size.

Therefore, VOD services greatly differ in terms of catalogue. This not only relates to the diversity of genres but also – and of particular importance in a European context – to the geographical origin of the content.

The European Audiovisual Observatory identified the country of origin of films in Video On-Demand (VOD) catalogues across the EU, in order to evaluate the presence of European films on on-demand platforms²³⁰. The Study analysis 75 TVOD and 16 Subscription Video on Demand (SVOD) services across the EU for a total sample of 29,869 unique film titles. The analysis makes a distinction between “catalogue offer”, where all films are counted on every VOD service, and “film pool”, where films are only counted once for all VOD services to represent the diversity of the potential film offering.

The results of the study show that only 27% of films in VOD catalogues are coming from one of the 28 EU Member States. The share of EU films in the catalogues is below 30%, while films produced in the US have a share of 59% (EAO, 2015d).

²²⁹ <https://www.wired.com/2004/10/tail/>

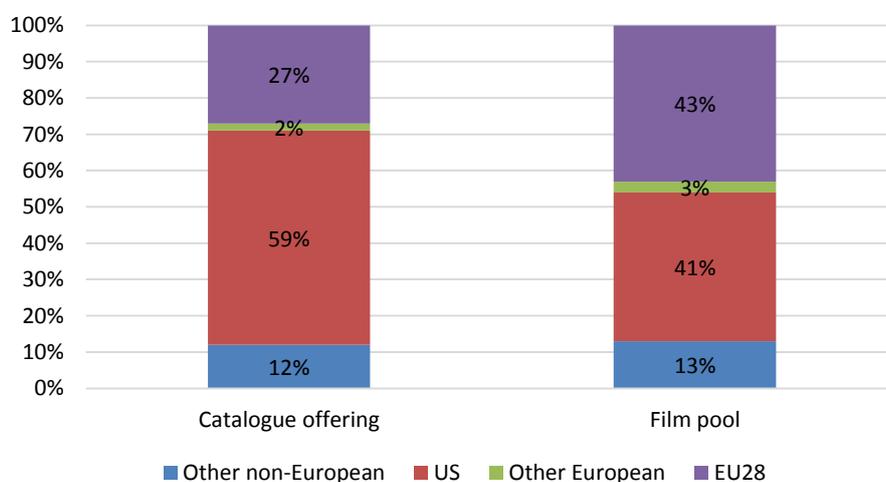
²³⁰ European Audiovisual Observatory (2015d) “Origin Of Films In VOD Catalogues In The EU”. Available at: <http://www.obs.coe.int/documents/205595/264625/DG+CNECT+-+Note+4-2015+-+Origin+Of+Films+In+VOD+Catalogues+In+The+EU28.pdf/> ”

Moreover, only 8% of the films in catalogues are national films on average, and countries that produce a high number of films per year tend to have a higher share of national films in the catalogues of VOD services.

Based on those findings, the European Audiovisual Observatory concluded that non-national EU films are key to raising the share of EU films in VOD catalogues in countries which have less important domestic film production industry.

As regards the film pool, the European Audiovisual Observatory found in its report of 2015 that 43% of films available are of EU origin, while 41% are from the US. This means that EU films tend to be distributed in their home markets, while the US films will in general be made available on several VOD services across the EU. The EU films thus suffers from a weaker distribution in other EU countries.

Figure 28: Share of EU films in 75 VOD services across the EU - Catalogue offering and Film pool (October 2015)



Source: EAO, 2015d

Another table produced by the European Audiovisual Observatory provides statistics on the origin of feature films available on a sample of European VOD catalogues as of October 2014 (Table 31).

Table 31: Origin of TV films in the catalogues of selected European VOD services in 2014

Origin of TV films available in the catalogues of selected European video on-demand services as of October 2014							
	Blinkobox	Maxdome	SF Anytime	Telecom Italia	VideoFutur	Viewster	Wuaki

Origin of TV films available in the catalogues of selected European video on-demand services as of October 2014							
	Blinkobox	Maxdome	SF Anytime	Telecom Italia	VideoFutur	Viewster	Wuaki
Germany	6	441	5	2	4	2	-
Spain	-	4	3	-	1	1	3
France	1	24	-	6	-	-	-
United Kingdom	176	14	16	4	-	1	8
Italy	6	3	1	8	-	-	-
Other European	28	35	45	-	-	1	2
European co-productions	7	55	20	3	-	1	1
European and non-European co-productions	38	69	27	1	-	8	4
Non-European co-productions	8	43	25	4	-	10	
United States	201	188	66	33	9	51	43
Canada	9	11	9	3	-	3	1
Australia and New Zealand	-	2	-	-	-	-	-
Japan	-	-	-	-	-	-	-
Other	2	8	-	-	1	8	-

Source: EAO, 2015d

The statistics show that an important number of films present on the European on-demand services comes from the US. Indeed, on all the European VOD platforms selected for the study, the number of films coming from the US is always the highest, except for the platform "Maxdome" (German platform) on which German films are the most present. This shows the significant presence of the US film industry in the EU on-demand services.

In a world of infinite choice, guiding signs become increasingly important. Social media, personalised recommendation and search technologies in this sense have a crucial impact on the discovery and selection of audiovisual works by the audience (iMinds, 2007). For European content, the key question is whether this potentially better fit between content supply and audience preferences will result in the increased circulation and consumption of European audiovisual works.

Indeed, as highlighted by the European Audiovisual Observatory, in the on-demand sector, the number of European films included in the catalogues cannot be the only

indicator of the prominence of European works, the promotion of films in the services' home pages is also very important.

To better assess European films in on-demand services, the European Audiovisual Observatory tracked the home pages of selected VOD service providers in the United Kingdom, France and Germany for one month²³¹.

The findings of the study showed that, on average, the services promote 270 films per month, with the 10 most promoted film taking 40% of all promotional spots and 8 films out of those were of US origin. 90% of the promotional spots were given to recent films, released in 2014 or later.

In the three countries, the statistics show that the share of US films among films promoted on the selected VOD services was in the range of 55%. On the other hand, the share of European films among those films was in the range of 33%.

Table 32: Overview of films promoted in Germany, France and the UK

	DE	FR	UK
Nr of unique titles promoted	348	221	231
<i>Of which share of 2011-2015 titles</i>	65%	71%	80%
Origin of films promoted			
National	9%	20%	18%
European non-national	24%	15%	12%
Sub-total: European	33%	35%	30%
USA	57%	55%	55%
Others	9%	9%	14%
N/A	1%	1%	1%

Source: EAO, 2015e

Another part of the statistics studied the share of promotional spots by origin of films on the VOD services. The statistics show that a more important share of promotional spots was allocated to the US films compared to the European ones. As an example, in Germany 61% of the promotional spots were allocated to the US, while only 29% were allocated to European films. Below is a table representing the overview of promotional spots in Germany, France and the UK.

Table 33: Overview of promotional spots in Germany, France and the UK

	DE	FR	UK
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²³¹ European Audiovisual Observatory (2015e) "Note 5 - The Visibility Of Film On On-Demand Platforms: Germany, France & The United Kingdom". The total sample includes the following players: Amazon Instant Video, Google Play, iTunes, Maxdome, PS Store, Sky, Unity media, Videobuster, Videociety, Videoload (Germany), Canal Play, Google Play, iTunes, myTF1VOD, Orange, Pluzz, SFR, Sony PS, XBOX Live (France), Amazon Instant Video, BT Box Office, Google Play, iTunes, PS Store, Sky, Virgin Media, XBOX Live (United Kingdom).

	DE	FR	UK
Nr. of promotional spots	8316	6671	10024
Share of promotional spots allocated to the most 10 promoted films	37%	43%	40%
Share of promotional spots allocated to 2014-2015 titles	86%	92%	96%
Share of promotional spots by origin of film:			
National	15%	22%	15%
European non-national	14%	11%	6%
Sub-total: European	29%	33%	21%
USA	61%	55%	65%
Others	10%	12%	14%

Source: EAO, 2015e

It appears from all the statistics studied that EU films are less visible to consumers and less “discoverable” than US films.

11.5 Export of European audiovisual works outside Europe

11.5.1 Export of European films outside Europe

A study of European Audiovisual Observatory measured the export of European films outside Europe in 2014²³².

The findings of the analysis showed that European films sold at least 458 million tickets cumulatively in cinemas around the world. On a cumulative level, about 40% of total admissions to European films were generated on non-national and 60% on national markets (EAO, 2015a). The analysis also observed that the theatrical exploitation of European films outside of European markets accounts for almost half of these non-national admissions (EAO, 2015a).

A total of 589 European films were screened in cinemas outside of Europe²³³ in 2014. Cumulatively, these films generated almost €500 million in gross box office and sold about 82 million tickets, accounting for 18% of worldwide admissions to European films. Table 34 represents the number of European films on theatrical release for the period of 2010 to 2014.

Table 34: Number of European films on theatrical release (2010-2014) – Estimated

	2010	2011	2012	2013	2014
Total world	4474	4469	4730	4916	6188
<i>In Europe</i>	4385	4384	4622	4762	6061
<i>Outside Europe</i>	448	427	509	566	589

²³² Report by the European Audiovisual Observatory, Yearbook 2015, Key trends.

²³³ Data available for the following 12 non-European markets: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, Mexico, New Zealand, South Korea, USA and Venezuela .

	2010	2011	2012	2013	2014
US & CA	172	221	277	273	218
Latin America	270	205	216	226	318
AU & NZ	113	88	101	102	126
CN & KR	-	-	-	-	155
CA	-	98	149	133	94
US	-	183	217	202	188
AR	93	59	74	58	87
BR	97	79	93	111	144
CL	36	35	31	30	40
CO	63	44	61	63	94
MX	117	71	87	75	130
VE	16	21	34	24	23
AU	86	65	87	75	110
NZ	76	60	61	63	94
CN	-	-	-	-	22
KR	69	63	114	180	142

Source: EAO, 2015a/Lumiere, Rentrack

The analysis also showed that the North American market is the most important “overseas” market for European films in terms of admissions, with 27.4 million and 3.4 million tickets sold for European films in the US and Canada respectively in 2014. The US market represents the largest market for European films, screening 188 European films and accounting for 33% of total admissions to European films outside Europe. In 2014, China became the second largest non-European export market in terms of admissions, with 15.5 million tickets sold and accounting for 19% of total admissions, followed by Mexico (12%), South Korea (9%) and Brazil (8%).

Concerning the degree of concentration between EU countries of the admissions to European films outside of Europe, the EAO demonstrated that 90% of the cumulative admissions were generated by 54 films. The most successful European film export in 2014 was “Lucy”²³⁴. It sold 31.9 million admissions and accounted on its own for 38% of total admissions outside Europe.

French and UK films cumulatively accounted for almost 87% of total admissions to European films outside Europe in 2015. France took first rank with French films cumulatively selling 51.5 million tickets accounting for 48% of total admissions while UK films, which are traditionally strong in non-European markets, came in second place, with 42.3 million admissions (39% of total admissions to European films). German films followed at a distance, cumulatively selling 4.2 million tickets outside

²³⁴ <http://www.imdb.com/title/tt2872732/>

Europe in 2015 (4%) ahead of Spanish films (3.3 million), Belgian films (2.5 million) and Russian films (1.1 million).

11.5.2 Export of TV programmes outside Europe

With respect to TV programmes, the European programming export market has strengthened with a number of programmes being traded both intra-Europe and elsewhere (EUOBSEVER, 2007).²³⁵ According to Eurodata, on a world scale, the US and the UK remain dominant, followed by the Netherlands and France. Australia, however, had replaced Germany as the country with the fifth highest number of TV exports.²³⁶

Over the last ten years, the UK TV market has grown to become an important part of a USD 400 billion global TV content industry (Ofcom, 2015). Sales of UK programmes to the US were worth GBP 475 million in 2012, a year-on-year increase of 11%. The biggest independent TV producer of unscripted shows in the US is now ITV Studios, following its acquisition of the US company Leftfield Entertainment Group. UK television exports were estimated to be worth GBP 1.224 billion in 2012 (up from GBP 1.178 billion in 2011), with sales to America up 11% to GBP 475 million and sales to the fledgling Chinese market up 90% to GBP 12 million²³⁷. The reasons for this success expand beyond the English language as an important factor and the mere sale of formats that have proved successful in the home market, the high production values mean that there is great scope for co-produced projects intended for multiple territories.²³⁸ The virtuous circle of strong domestic originations and growing international demand has helped the UK TV sector to become one of the UK's export success stories in recent years, a trend that still has strong momentum (Ofcom, 2015).

Aside from the US, UK's biggest international competitors are the Netherlands and Israel, which have both built reputations in the global market, especially in developing game-show and reality formats (in the case of Dutch TV²³⁹). Globally successful formats such as *The Voice*, *Deal or No Deal* and *Big Brother* were first hits in the Netherlands.

In 2013, the sales of French audiovisual works abroad increased by 8.0% from 2012 amounting to € 137.1 million, the highest level of sales ever recorded (CNC, 2014). The total export, sum of sales and pre-sales, amounted to €179.5 million, the highest level since 2001, when it was reach the peak of €203 million.

Table 35: Total export (sales and pre-sales) of the French audiovisual works by genre, € million, period 2009-2013

Genre	2009	2010	2011	2012	2013
Fiction	26.7	27.8	38.8	37.2	31.3
Documentary	30.9	35.3	32.9	34.2	40.2

²³⁵ "Reality shows biggest EU TV export", Elitsa Vucheva, 2007 <https://euobserver.com/economic/28206>

²³⁶ "U.S., U.K. Are World's Top TV Exporters, Australia Shows Improvement", Steve Clarke, Feb 2016 <http://variety.com/2016/tv/global/u-s-u-k-tv-exporters-australia-1201713741/>

²³⁷ But in China, the state television regulator has pushed back against what is seen as an excess of game shows, imposing strict limits which should be considered an opportunity for British producers in lifestyle programmes. "Why British TV rules the world", Ian Burrell, Jul 2014 <http://www.independent.co.uk/arts-entertainment/tv/features/why-british-tv-rules-the-world-9590481.html>

²³⁸ "Why British TV rules the world", Ian Burrell, Jul 2014 <http://www.independent.co.uk/arts-entertainment/tv/features/why-british-tv-rules-the-world-9590481.html>

²³⁹ "Going Dutch: Are you ready for new cheese and sleaze reality TV from the Netherlands?"m Victoria Gooch, Jan 2013 <http://www.independent.co.uk/arts-entertainment/tv/features/going-dutch-are-you-ready-for-new-cheese-and-sleaze-reality-tv-from-the-netherlands-8461725.html>

Genre	2009	2010	2011	2012	2013
Animation	52.5	46.1	52.7	62.7	73.3
Music & Live Performance	6.5	5.6	5.2	5.9	6.2
Format (e.g. Games, Fiction, Entertainment)	16.4	17.2	19.8	21.4	22.1
Others (e.g. News)	2.9	3.8	4.1	4.4	6.4

Source: CNC, 2014

According to data from the Centre national du cinéma et de l'image animée²⁴⁰, the first destination market in 2013 was West Europe that imported 57% of the French audiovisual export (with Germany, Belgium and Italy in the first three positions). The other destination markets are the following: North America (11.7%), Eastern Europe (10.1%), Asia/Oceania (9.6%), Middle-East (4.7%), Latin America (4.2%) and Africa (2.7%).

TV drama series from Denmark have also experienced a significant increase in international export in the last few years. In spite of Denmark's small TV market with content in a minority language, Danish TV series have sold worldwide with increasing sale numbers over the last 10 years. Danish content has travelled beyond the Anglo-Saxon/European geo-linguistic region, and especially outside their Scandinavian sub region. Danish series have been sold in Belgium, Finland, France, Germany, Italy, Spain, Switzerland, and the UK, as well as Canada and the US.²⁴¹

As for emerging markets, Eurodata identified Turkey as a territory to watch for scripted shows, surpassing markets like China, Egypt, India and Mexico²⁴². The popularity of Turkish television series has skyrocketed over the last decade, particularly in Middle Eastern and southern European countries. In 2012, Turkish soap opera exports were worth around USD 200 million, up from just USD 10,000 in 2004. In 2014 Turkey was a world's second highest TV series exporter after US with over USD 200 million annual exports to over 100 nations, planning to reach USD 2 billion from exporting cultural products by 2023.²⁴³ Such statistics, undoubtedly create future challenges for the main players on the European market.

11.6 Distribution

There are two distinct value-added activities in distribution (Attentional, 2011):

1. The first is simply the successful delivery of TV signals to the viewer, of a sufficient quality and standard and with minimal interruption. In the case of pay TV this also includes the prevention of unauthorised reception, which requires an effective encryption and authorisation system;

²⁴⁰ CNC (2014) "L'exportation des programmes audiovisuels français en 2013"

²⁴¹ "When Danish TV drama series goes international – One nation's treasure is another nation's niche?", Maria Mørch Brinkmann Skytte and Katrine Duedahl Johansen, Nov 2015 <https://smallnationstv.org/2015/11/13/when-danish-tv-drama-series-goes-international-one-nations-treasure-is-another-nations-niche-by-maria-morch-brinkmann-skytte-katrine-duedahl-johansen/>

²⁴² Turkey world's second highest TV series exporter after US", Daily News, Oct 2014 <http://www.hurriyetdailynews.com/turkey-worlds-second-highest-tv-series-exporter-after-us.aspx?pageID=238&nID=73478&NewsCatID=345>

²⁴³ "Turkey world's second highest TV series exporter after US", Daily News, Oct 2014 <http://www.hurriyetdailynews.com/turkey-worlds-second-highest-tv-series-exporter-after-us.aspx?pageID=238&nID=73478&NewsCatID=345>

2. The second only applies when a delivery system is also the retailer of a combination of channels or packages. Added value is being created by the mix of channels, the branding and image of the channel package, the pricing of the packages and customer support services such as billing and call centres. These services are often collectively referred to as an aggregation.

11.6.1 TV distribution

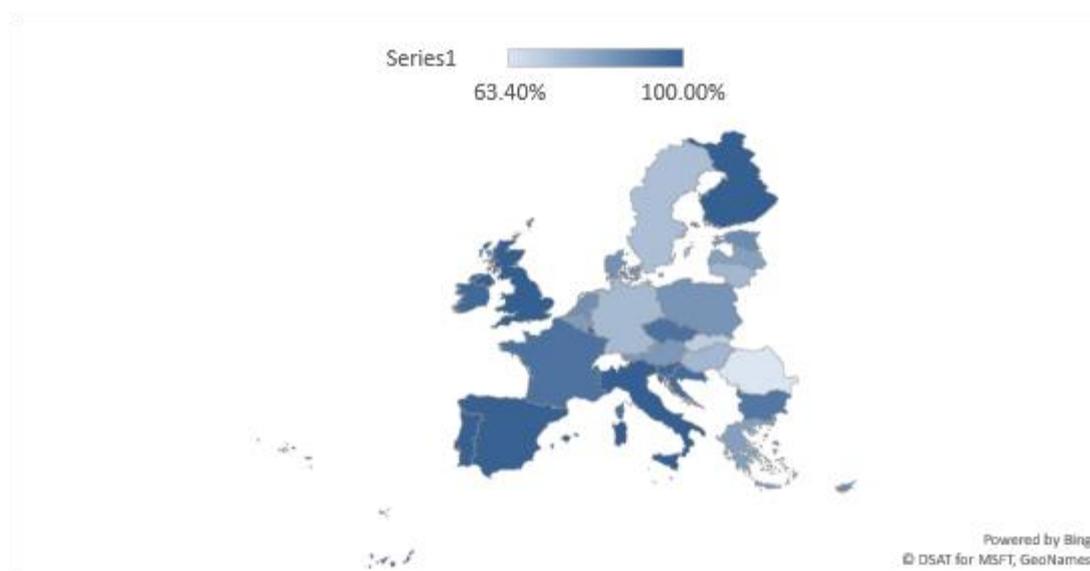
Across Europe, TV is delivered to the home through a complex combination of different systems (i.e. broadcasting technology). Each system in turn varies in the degree to which it provides free delivery or extracts a monthly charge.

The biggest change in the TV distribution in the past years has been the switch to the digital television system. Digital television (DTV) represents a broadcasting technology which has been promptly replacing the traditional analogue type. Whereas in traditional analogue broadcasting the signal takes the form of a continuous wave, the digital signal is in the form of discrete bits of information.

There are various advantages brought by the usage of DTV of digital broadcasting, such as: more TV services thus broader programme choice, enhanced picture quality and interactive television.²⁴⁴

Nevertheless, the situation is not harmonised across the EU Member States where the penetration of DTV varies. The graph below provides an overview of the penetration of DTV in 27 of the EU Member States in 2014:

Figure 29: Digital TV reception in Europe as of 31/12/2014 - Total digital TV households / Total TV households



Source: VVA elaboration based on EAO, 2015a

The figure above illustrates that the penetration can reach 100% in some countries (i.e. Finland, Italy, Luxembourg and UK), whereas some countries have a much lower penetration rate (i.e. Slovakia with 70% and Romania with 63.4%). According to data of EAO, the analogue switch-off should have been completed in 2017.

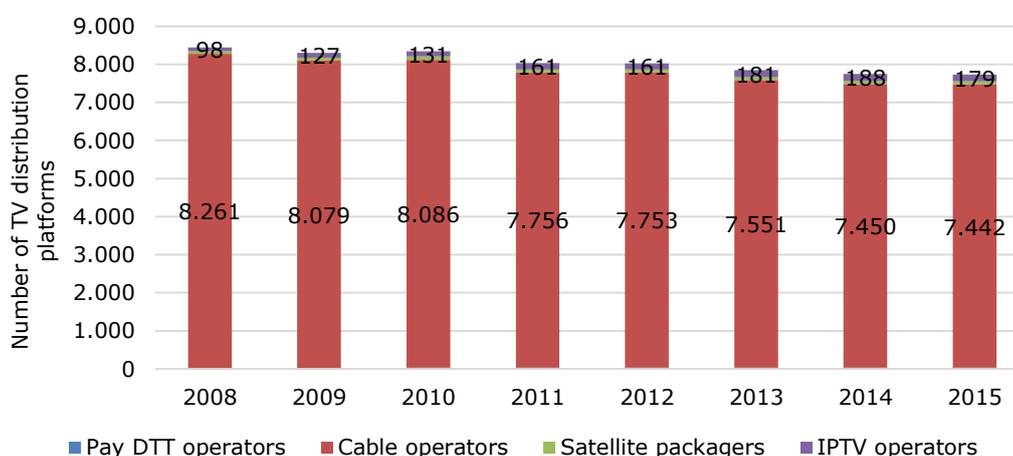
There are four main ways in which digital television can be transmitted:

²⁴⁴ The European Commission's Approach to Digital Interactive Television (2006). Available at: http://europa.eu/rapid/press-release_MEMO-06-60_en.htm

1. Online (Internet-based technology and IPTV using signals based on logical Internet Protocol (IP));
2. Digital Satellite Television;
3. Digital Cable Television; and
4. Through an on-the-air transmission television set (Digital Terrestrial Television).

Thus, TV is delivered across Europe through a combination of different systems; it can be noticed that between 2008 and 2015 cable represented the most numerous, with a slow increase over the years. Only in 2015, there were 7,442 cable operators in 37 European countries. As for IPTV operators, there were 179 in 2015.

Figure 30: Number of TV distribution platforms in 37 European countries (2008-2015)



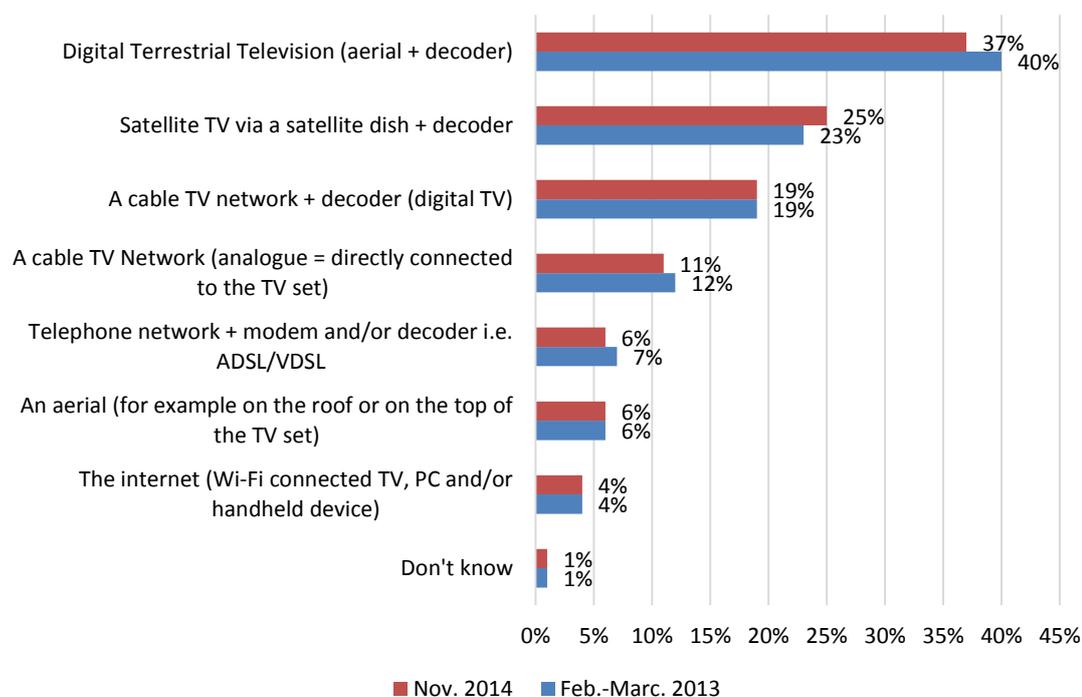
Source: EAO, 2015a

The EU Barometer on “*E-communications and telecom single market household survey*”²⁴⁵ found that digital terrestrial television was the most common means of receiving TV in 2014 (43%), while 25% receive television through satellite. Nonetheless, there are sizeable variations between Member States in the methods used.

²⁴⁵ EC (2014), Special Eurobarometer 414. E-communications and telecom single market household survey. Available at: http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_414_en.pdf

Digital Terrestrial Television is most used in nine countries, particularly in Spain (89%), Italy (70%) and France (65%), and least used in Belgium and Germany (4% and 5%, respectively). In Austria, the access to television is made mainly through satellite (53%). This method is widely used also in Germany (48%) and Ireland (45%). Digital Cable TV is widely used in Belgium (56%), Finland (51%) and the Netherlands (50%), in contrast with Italy where this method is not used. Analogue cable TV is still extensively used in Romania (56%) and other Eastern European countries (i.e. Hungary with 35%, Lithuania with 31% and Latvia with 31%).

Figure 31: Methods of receiving television (QB5: does your household receive TV via...?)

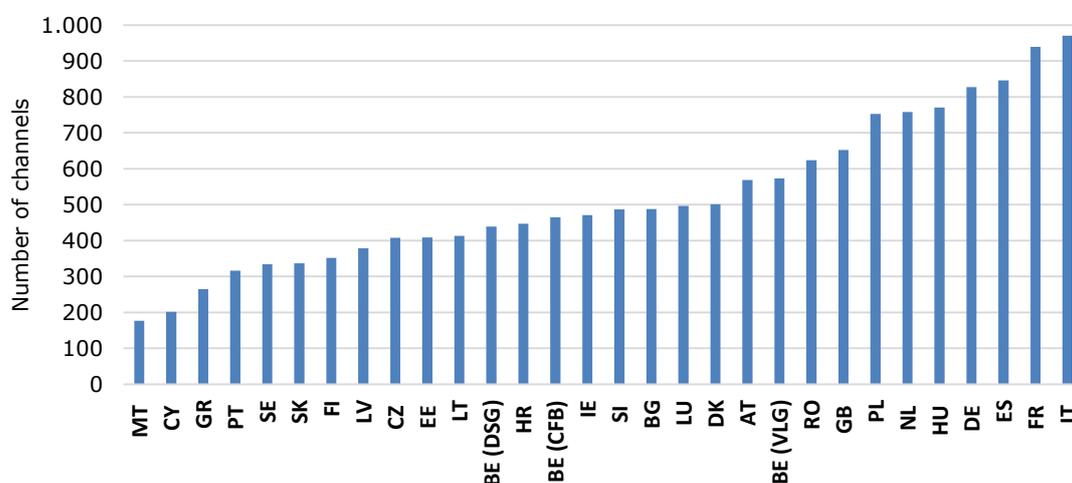


Source: Special Eurobarometer 414. E-communications and telecom single market household survey

Digitalisation brought a rapid expansion in the number of channels available to consumers, and a resulting loss of share for historic terrestrial services which dominated analogue distribution.

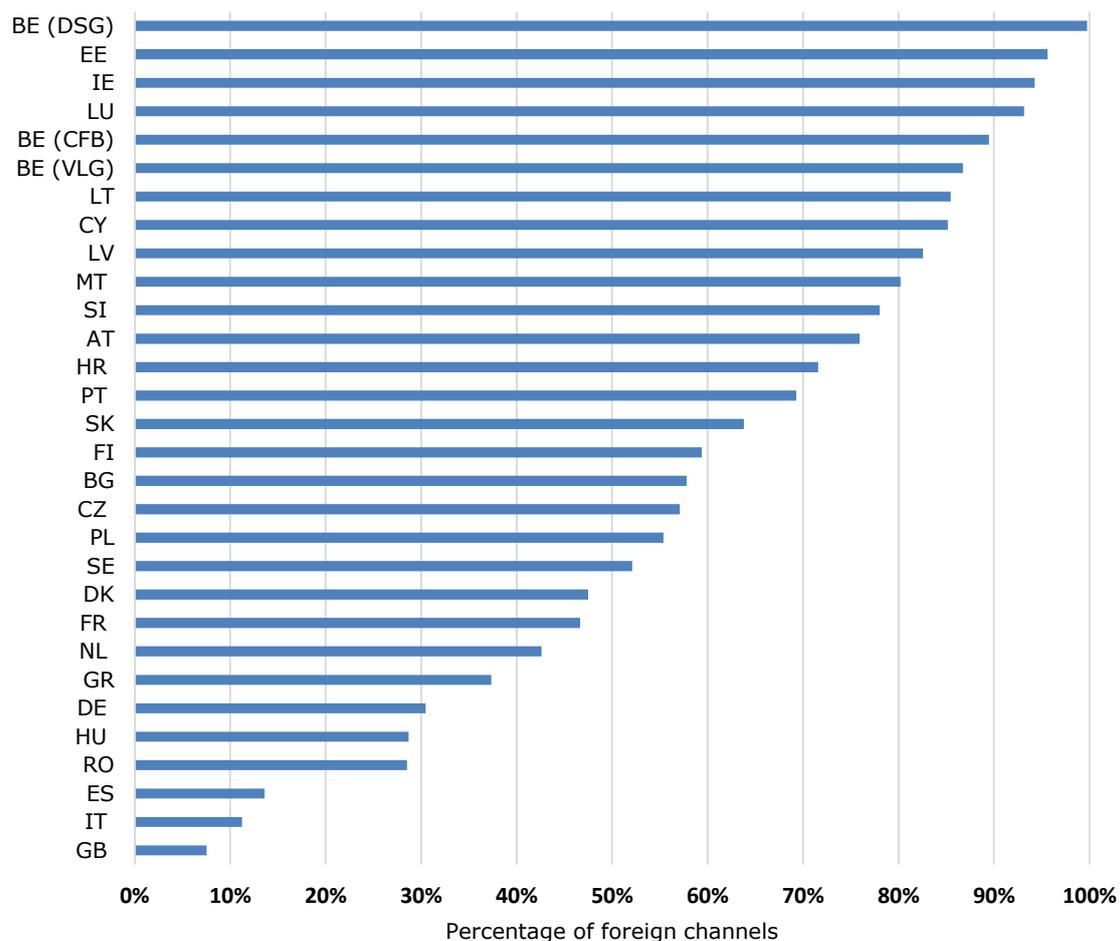
At EU level, the highest number of channels available was recorded in Italy with 970 channels. Second was France, with a total number of 939 channels. Other EU countries also offer a large number of television channels, namely Spain (846 channels) and Germany (827 channels). Although most of the countries offering a wide variety of channels are EU countries with large population, there are also smaller countries with such trends (i.e. Hungary or Netherlands). By contrast, a smaller number of channels is available in Malta (177 channels), Cyprus (202 channels) and Greece (265 channels). The graph below provides a country-by-country breakdown of the total number of channels available at national level:

Figure 32: TV channels established by country as of December 2015



Source: EAO, 2015a

Figure 33 shows the share of foreign channels for each country: high percentages of foreign channels are present in Belgium, Estonia, Ireland, Luxembourg, Lithuania, Cyprus and Latvia, with over 80% share of foreign channels. By contrast, the United Kingdom, Italy, Spain, Romania and Hungary have less than 30% share of foreign channels. The low percentage of foreign channels in the United Kingdom could be explained by the fact that there is a predilection for national content among British viewers. This has also been emphasised by the BBC representative interviewed, who mentioned that there is a growing demand for original content in the UK that reflects people's life and culture.

Figure 33: Share of foreign channels by country²⁴⁶

Source: EAO, 2015a

11.6.2 TV revenue

Linear audiovisual services are funded through three main sources:

- Advertising on television channels, both public and commercial;
- Subscription to pay-television services, either directly to a service, or through a commercial packager; and
- Public funding of Public Service Broadcasters.

Overall, the revenues for linear service providers have grown during the 2010-2011 period, but have decreased in the period 2012-2013, to rise again in 2014. TV advertising registered a decrease in 2012 and 2013 but increased back in 2014. Revenues for linear service providers have experienced a compound annual growth rate (CAGR) of 0.7% in the 2010-2014 period. Looking at the different components of revenue, it is possible to notice that subscription revenues are rapidly increasing while revenues generated from public funding are falling.

²⁴⁶ This graph has been produced based on data retrieved from the EAO, 2015a

Table 36: Evolution of the European Union linear audiovisual market – 2010 – 2014 - € million

	2010	2011	2012	2013	2014	CAGR 2010-2014
Broadcasters revenues	64,783	65,245	64,316	63,907	66,525	0.7%
<i>Public Funding</i>	25,733	25,666	25,572	25,260	25,571	-0.2%
<i>Advertising TV</i>	29,196	29,340	28,054	28,036	29,416	0.2%
<i>TV channels share of pay-revenues (est.)</i>	9,854	10,239	10,690	10,611	11,538	4.0%

Source: EAO, 2015a

Revenue developments in Member States differ significantly, with decreasing revenues in several southern Member States and increasing revenues in most of the newer Member States²⁴⁷. In this respect, different trends may be observed across the EU territory.

Table 37: the linear television market in the EU by country - 2013

Country	Linear television market (bln EUR)	Revenues per TV household (EUR)	Market breakdown		
			Advertising	Subscription	Public funding
AT	1 805,6	499,8	45%	20%	34%
BE	2 439,5	521,4	37%	41%	22%
BG	548,3	190,9	64%	25%	11%
CY	82,4	272,7	34%	32%	33%
CZ	892,1	201,1	37%	26%	37%
DE	16 768,6	433,9	27%	27%	46%
DK	1 692,7	724,9	18%	53%	29%
EE	98,0	178,2	25%	46%	29%
ES	4 884,1	279,3	35%	32%	34%
FI	1 239,9	513,2	25%	39%	37%
FR	11 546,9	425,1	31%	37%	31%
GR	703,2	159,6	N/A	N/A	N/A
HR	345,7	211,2	28%	25%	47%
HU	908,2	245,4	26%	46%	28%
IE	1 023,0	631,1	26%	53%	21%

²⁴⁷EAO (2015f) "Refit exercise: contribution of data and information by the European Audiovisual Observatory. Note B.1: market revenues and investments - linear revenues".

Country	Linear television market (bln EUR)	Revenues per TV household (EUR)	Market breakdown		
IT	8 090,2	321,6	44%	35%	21%
LT	155,4	116,6	30%	38%	32%
LU	48,9	230,9	32%	67%	1%
LV	115,9	140,7	28%	61%	11%
MT	31,9	224,7	N/A	N/A	N/A
NL	3 085,2	418,0	27%	52%	21%
PL	2 792,4	207,6	36%	59%	5%
PT	2 537,4	652,8	58%	35%	8%
RO	769,4	107,4	21%	51%	28%
SE	2 616,3	576,7	29%	42%	29%
SI	286,3	347,5	38%	29%	34%
SK	1 085,7	604,2	72%	19%	9%
UK	17 039,3	604,6	31%	41%	28%
EU28	83 632,6	396,8	34%	37%	30%

Source: EAO, 2015f

11.6.2.1 Public Funding

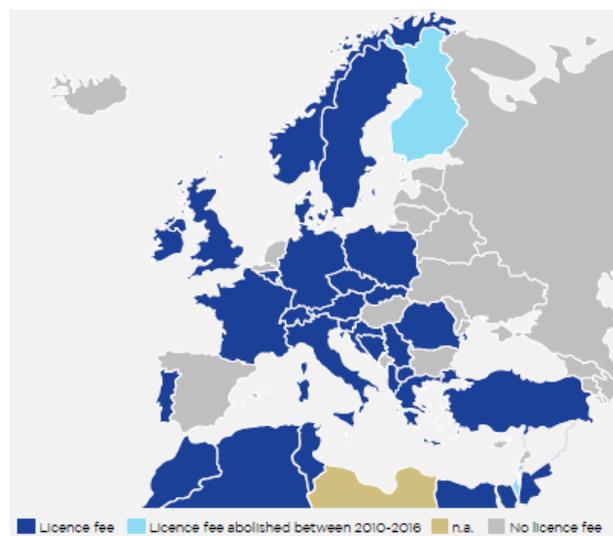
The licence fee remains the core source of funding for Public Service Media (PSM) in Europe and, according to the EBU report, a stable mechanism in the circumstance of an adverse economic situation and less subject to political influences compared to other public income schemes.²⁴⁸

According to the representative of the European Broadcasting Union (EBU), 29 out of their 56 country members collect a licence fee. Out of the 28 EU Member States, 17 collect a licence fee, the trend being more widespread in Western and Central Europe.²⁴⁹

The figure below provides a breakdown of the countries with a licence fee:

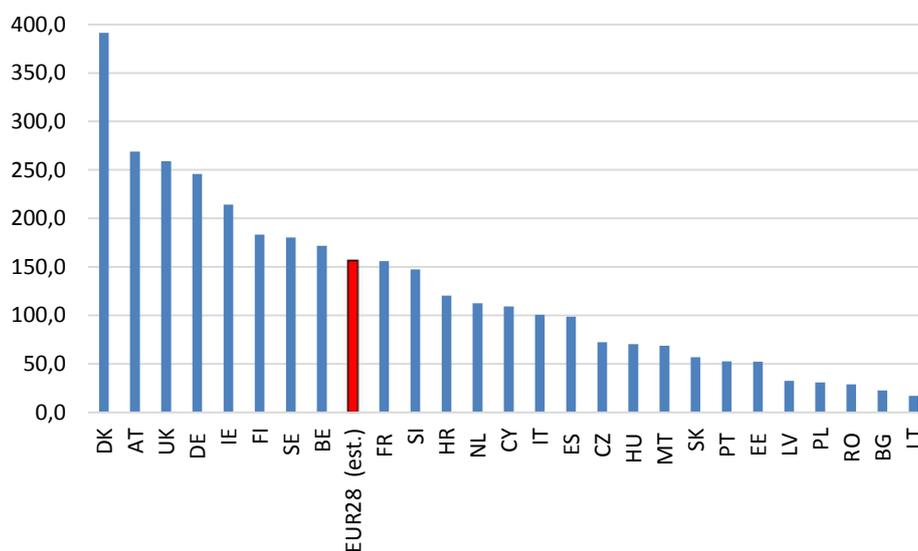
²⁴⁸ Ibid.

²⁴⁹ Noteworthy exceptions are Spain (collection stopped in 1966), the Netherlands (2000) and Finland (2013).

Figure 34: Countries with a licence fee, as of 1st of January 2016

Source: EBU (2016), Licence Fee 2016. Public Version.

However, the amount collected from the licence fee varies between countries, where fee can be shared between several beneficiaries. For example, ORF in Austria receives only 68.8% of the total fee. Similarly, in countries where PSM does not rely exclusively on the licence fee income, there are additional sources of funding (i.e. state grants or advertising).²⁵⁰ According to EBU, redistribution of the licence fee represents a worrying issue for the PSM organisations. This is due to the fact that the licence fee is connected to the funding of public broadcasters and the use of these funds for other reasons appears to many citizens that less value for money is provided.²⁵¹

Figure 35: Revenues of public radio-television companies in the European Union by households in 2014 - EUR

Source: EAO, 2015a

²⁵⁰ EBU (2016), Licence Fee 2016. Public Version. p. 7

²⁵¹ EBU (2016), Licence Fee 2016. Public Version. p. 8

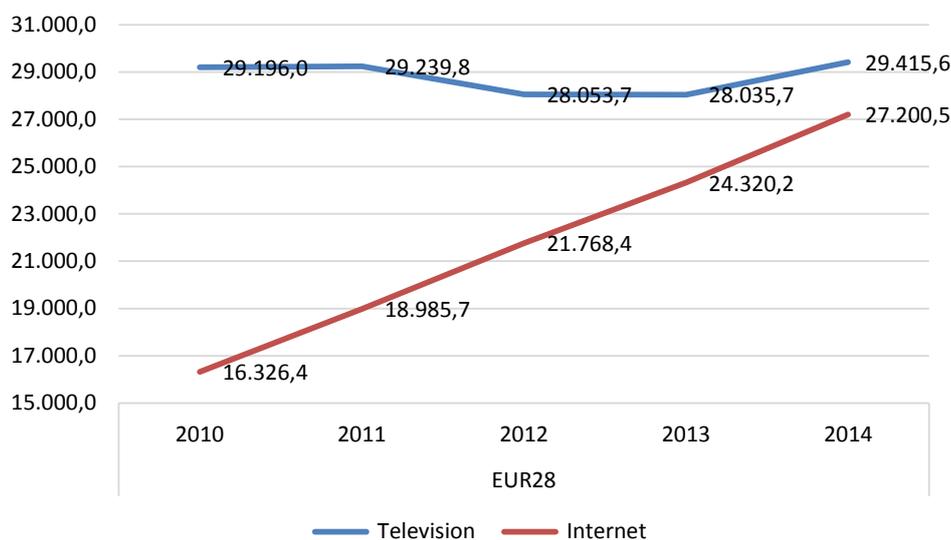
11.6.2.2 Advertising TV

Advertising experienced a crisis in the 2008-2009 period, in 2009 revenue from advertising amounted to €26,606 million²⁵² (the lowest value in the last 5 years). Advertising revenue started recovering since 2010 but the level of 2013 was 10% down from 2008 and it experience an average annual growth rate around 0.2% in the 2010-2014 period. According to a EAO study²⁵³, several factors may account for this crisis:

- Advertising expenses tend to be correlated to the global economic situation;
- The multiplication of television channels has increased the level of competition and has therefore translated into pressure on advertising tariffs; and
- Internet as an advertising media has gained credibility and has become the second support for advertising after television (Figure 36).

Nevertheless, it should be noted here that television has better resisted this new competition than other supports such as magazine and newspapers, and that its market share of the global advertising spending has remained relatively stable at about 32% (EAO, 2015g).

Figure 36: Advertising expenditures by media in the European Union - EUR million



Source: EAO, 2015g

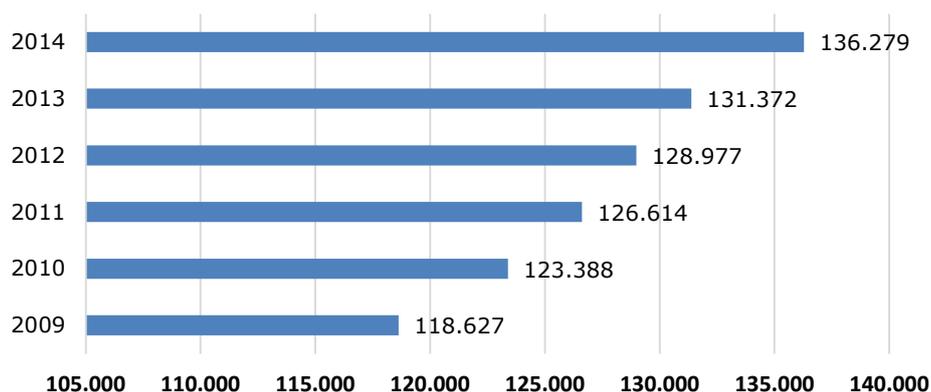
11.6.2.3 The Pay TV

Pay TV refers to subscription-based television services and, as showed in Table 37, is the industry revenue component that experienced the highest growth rate in the 2010-2014 period. Latest forecasts suggest that in the next years, pay TV penetration was expected to reach 50% by 2017.

Data from European Audiovisual Observatory shows that the number of subscribers to pay TV in Europe has had a small increase between 2009 and 2014 (between 2013 and 2014 the number of subscribers increased by 3.7%).

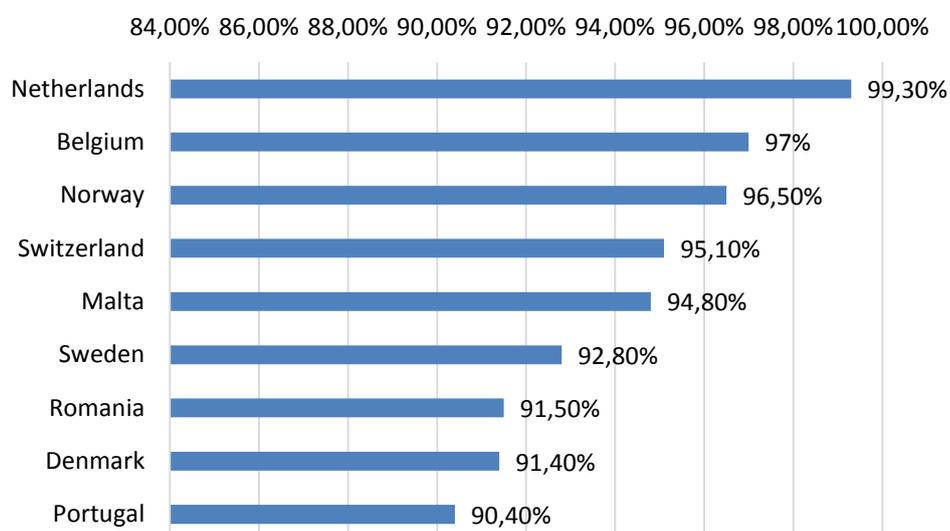
²⁵² EAO (2015g), Trends in linear television revenues, p.9

²⁵³ EAO (2015g), Trends in linear television revenues, p.10

Figure 37: Number of subscribers to pay TV in EU 28 - Number of subscribers (in thousands)

Source: EAO, 2015a

A country-by-country breakdown shows the countries that had the highest penetration of pay TV rate in 2015 were Netherlands, Belgium, Norway, Switzerland and Malta. In the Netherlands, 99.3% of households were subscribed to pay TV services in 2015. Similar penetration rates were achieved in Belgium (97%), Norway (96.5%), Switzerland (95.1%), and Malta (94.8%).²⁵⁴ Compared to previous years, the penetration rate has increased considerably: the 2009 data showed that the pay TV penetration rate in the Netherlands was 60%, 46% in Belgium, 80% in Norway and 65% in Malta.²⁵⁵

Figure 38: Countries with the highest pay TV penetration rate in Europe in 2015

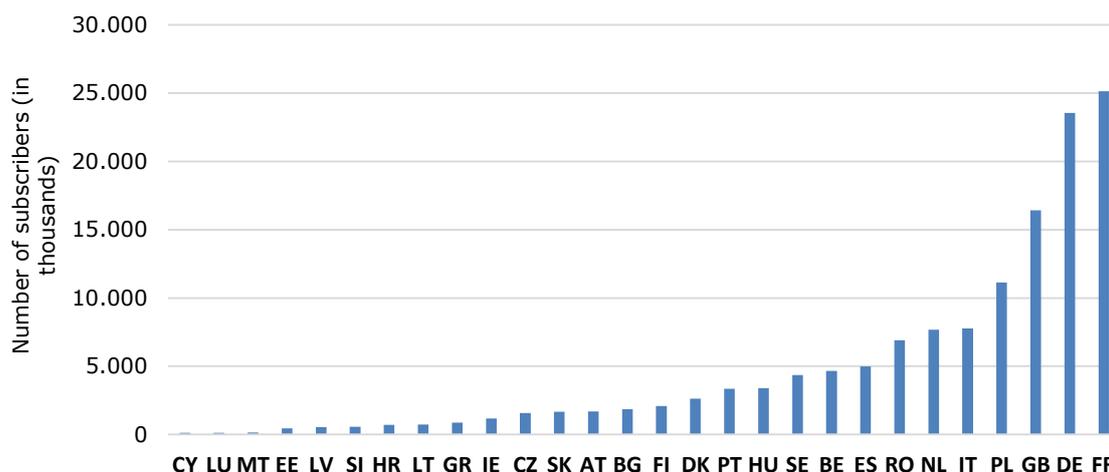
Source: Statista (2015)

Countries with large population tend to have also the highest number of subscribers to pay TV (i.e. France, Germany or the UK). On the other hand, small countries (i.e. Cyprus, Luxembourg, Malta, Estonia) record small numbers of pay TV subscribers.

²⁵⁴ Statista (2015), Countries with the highest pay TV penetration rate in Europe in 2015

²⁵⁵ Attentional (2011), Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services. p. 88

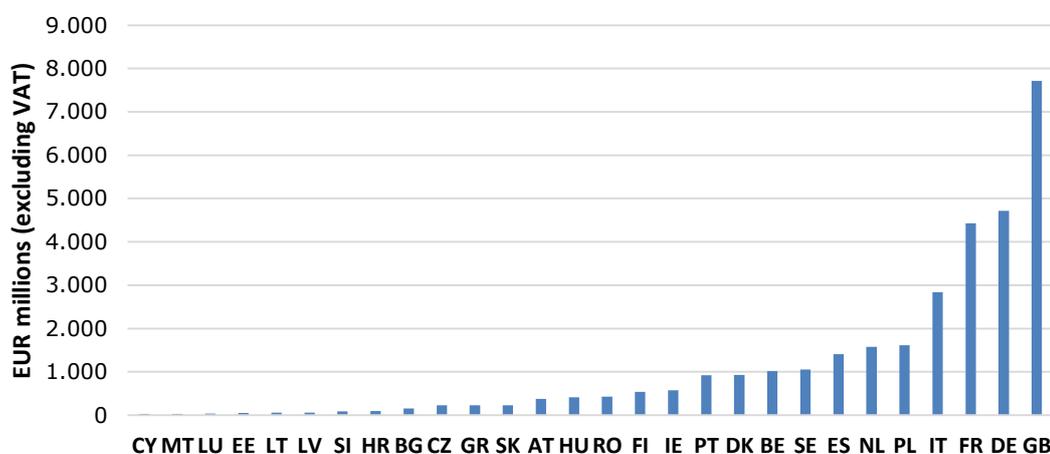
Figure 39: Number of subscribers to pay TV in Europe as of 2014



Source: EAO, 2015a

At EU level, high pay TV revenues in 2014 were recorded in the UK, Germany, France and Italy, with the UK having by far the biggest revenue (over €7,000 million). Low revenues were recorded in smaller European countries such as Cyprus, Malta, Luxembourg, Estonia, Lithuania and Latvia. Overall, pay TV revenues have increased considerably over the last years in Europe, from €20,991.6 million in 2006 to €31,807.1 million in 2014.

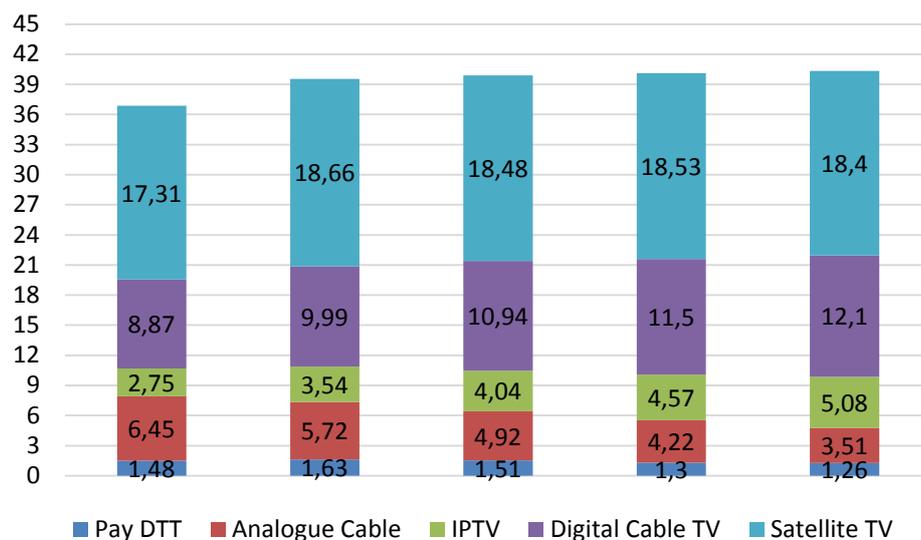
Figure 40: Pay TV revenues in EU28 in 2014



Source: EAO, 2015a

In terms of revenues per distribution ways, pay satellite TV has generated the highest revenue, amounting to USD 18.4 billion in 2014.

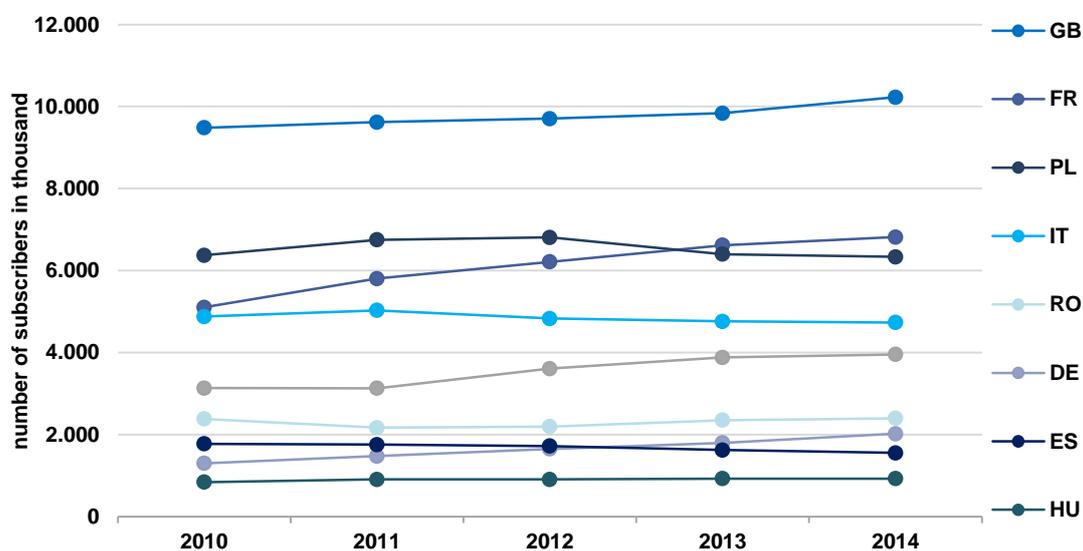
Figure 41: Pay TV revenue in Europe between 2010 and 2014 in billion USD – breakdown by distribution way



Source: Statista (2015)

Satellite pay-TV is a television service which delivers programming to customers through a communications satellite orbiting the Earth directly to the citizen's location. In the EU28, there were 41,174 thousand subscribers as of 2014 out of which 25% were only in the UK (10,227 thousand subscribers). The figure below provides an overview of the evolution of satellite pay-TV subscription in selected European countries:

Figure 42: Number of satellite pay-tv subscribers in Europe (2010-2014)

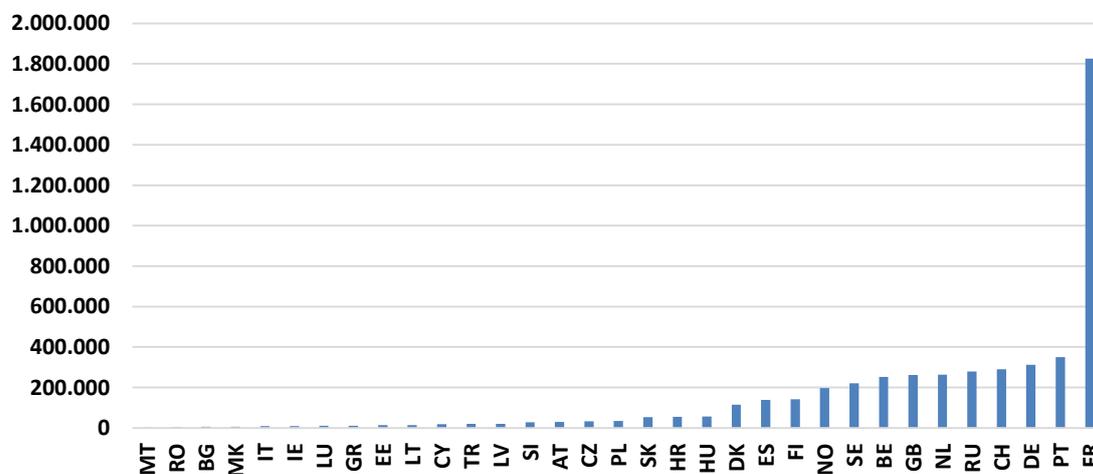


Source: EAO, 2015a

However, the service that experienced the highest growth rate in the 2010-2014 period is *Internet Protocol Television (IPTV)*. IPTV represents the delivery of television content using signals based on logical Internet Protocol (IP). In the EU28, the total revenues generated by IPTV platforms amounted to €4,288,399 thousand in 2014. France generates by far the highest revenues in Europe, amounting to €1,825,300

million.²⁵⁶ At EU28 level, the total number of IPTV households totalled 28,320 thousand in 2014, out of which only in France the number of households totalled 11,907 thousand.

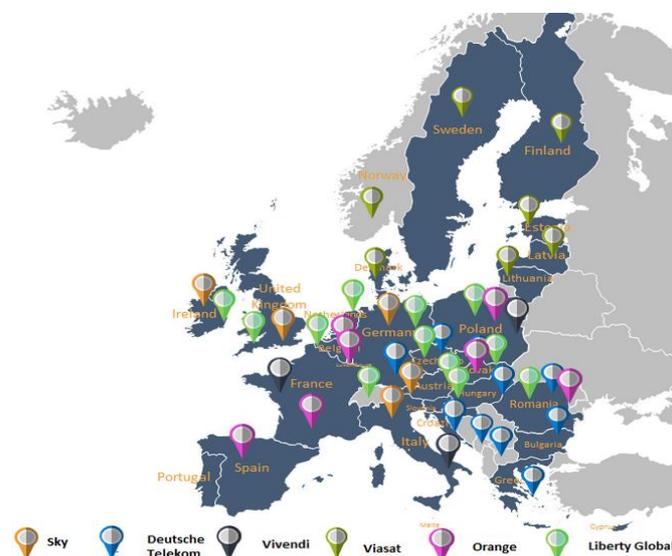
Figure 43: IPTV revenues in Europe in 2014 - EUR thousand



Source: EAO, 2015a

In terms of concentration of the pay-TV service, a recent industry report²⁵⁷ found that 15 media big market players within the EU account for 70% of the total pay TV homes. This is due to the fact that ownership is consolidating among these 15 big players, as they expand beyond their national bases.²⁵⁸ The figure below provides an overview of main European players that expanded beyond their national bases:

Figure 44: Big media players that expanded beyond their national bases



Source: Digital TV Europe (2016)

²⁵⁶ According to the European Audiovisual Observatory (2015), the main IPTV companies in France are Bouygues Telecom, France Télécom, Free and SFR.

²⁵⁷ Digital TV Europe (2016), Media giants dominate European TV, US influence growing. Available at: <http://www.digitaltveurope.net/562472/media-giants-dominate-european-tv-us-influence-growing/>

²⁵⁸ Digital TV Europe (2016), Media giants dominate European TV, US influence growing. Available at: <http://www.digitaltveurope.net/562472/media-giants-dominate-european-tv-us-influence-growing/>

Nonetheless, despite the recent growing rates (Table 37), Pay-TV is entering a phase of disruption with the fast development of global over-the-top content (OTT TV) players.²⁵⁹ An industry survey conducted by Digital TV Europe found that 41% of the respondents think that pay TV is set to continue having a moderate growth with limited negative impact of competitive pressure (i.e. OTT and price erosion). 13% of respondents deem that the business will continue its strong growth and 15% are of the view that pay TV is set to have a negative growth due to challenges faced by OTT and price competition. The remaining 31% consider that pay TV will have a very modest or zero growth over the next two years.²⁶⁰

11.6.3 The Rise of VOD

Video-On-Demand (VOD) is defined as a premium digital video content circulated over the Internet. A broad definition of the VOD platforms was provided by the International Telecommunication Union (ITU) in 2009, stating that video-on-demand represents: "a service in which the end-user can, on demand, select and view a video content and where the end-user can control the temporal order in which the video content is viewed."²⁶¹

VOD can be categorised in three main business models:²⁶²

1. *TVOD – transaction VOD* (pay-per-view) represents rentals as a single transaction which has time-limited access to premium video content (i.e. movies, TV shows, series).²⁶³ TVOD services replace DVD and Blu-ray content sold in specialised physical stores and act rather as a digital store where consumers can pay for their purchase or rental fees. TVOD services are widely used by many pay TV operators, broadcasters, telecom operators, retail chains, online retailers, etc. to sell film or television content.²⁶⁴
2. *Subscription VOD – SVOD* (Video Streaming) services offer unlimited access to a broad selection of different genres and titles on a subscription-fee basis. Through this method, movies and TV series can be streamed on various devices. The most popular video streaming services are Netflix and Amazon Prime Instant Video.²⁶⁵ This type of service competes directly with traditional pay TV services and the physical home entertainment market. SVOD subscription grants access to a catalogue of films and television content in exchange for a monthly fee (on average €10).²⁶⁶ The table below provides a list of main SVOD platforms at both global and European level:

Table 38: Main international and European SVOD players

Main international SVOD players	Main European SVOD players
<ul style="list-style-type: none"> • Netflix (with 81.5 million subscribers in over 190 countries worldwide in the first quarter of 	<ul style="list-style-type: none"> • Modern Times Group's Viaplay in the Nordic countries and the Baltics;

²⁵⁹ Digital TV Europe (2017), Industry Survey 2017. Available at: <http://www.digitaltveurope.net/wp-content/uploads/2017/02/dtvesurvey17.pdf>

²⁶⁰ Digital TV Europe (2017), Industry Survey 2017. p. 3

²⁶¹ ITU (2009), Requirements for the support of IPTV services. Available at: <https://www.itu.int/rec/T-REC-Y.1901-200901-I>

²⁶² Statista (2016), Digital Media: Video-on-Demand

²⁶³ Ibid.

²⁶⁴ European Audiovisual Observatory (2016d) "VOD, platforms and OTT: which promotion obligations for European works?". pp. 17-18. Available at: <http://www.obs.coe.int/documents/205595/8351541/IRIS+plus+2016-3+VOD%2C%20platforms+and+OTT+which+promotion+obligations+for+European+works.pdf/417220bb-eeed3-4d82-94ce-da818a447ae7>

²⁶⁵ Statista (2016), Digital Media: Video-on-Demand

²⁶⁶ European Audiovisual Observatory (2016d) "VOD, platforms and OTT: which promotion obligations for European works?". p. 14.

Main international SVOD players	Main European SVOD players
<p>2016, present throughout Europe), which acted as a trailblazer in most countries to popularise SVOD services;</p> <ul style="list-style-type: none"> • Amazon's Prime Instant Video is, as of December 2016, available in every EU country and in 200 countries and territories worldwide. Amazon uses Prime Instant Video as an addition to its Prime one day delivery service, with additional music, gaming, and e-book services included in the subscription; • HBO (owned by TimeWarner) has the HBO Now service in the US but a strong presence of its linear channels in Europe and a stand-alone SVOD in the Nordic countries; • Hulu (owned by Comcast's NBC Universal, 21st Century Fox and The Walt Disney Company), only active in the US as of 2016 but with strong shareholders in the audiovisual sector; • Showmax, launched in Africa by the South African Naspers group (presence in 36 African countries); • iFlix, the leading Asian SVOD service with a presence in 6 Asian countries and further expansion planned (pay-tv operator Sky invested in iFlix). 	<ul style="list-style-type: none"> • Bonnier's and TV4 Group C More for the Nordic region; • Vivendi with CanalPlay in France and until the end of 2016 Watchever in Germany; • Sky Group's Sky Now TV and Sky Online/Ticket in the United Kingdom, Germany, Italy and Austria; • Altice's (Numéricable and SFR in France, Portugal Telecom with presence in Belgium, Luxembourg, Switzerland, Israel, USA and the Dominican Republic); • ProSiebenSat.1 Media SE's Maxdome in Germany and Austria, with a dual SVOD and TVOD offer.

Source: EAO, 2016d

3. *Electronic-Sell-Through (EST) or Download to own* allows users to purchase unlimited usage rights to a specific video file, accessible through both cloud-based or offline storage. Through EST, the video content can be purchased in a one-time transaction and remains permanently accessible after the purchase.²⁶⁷

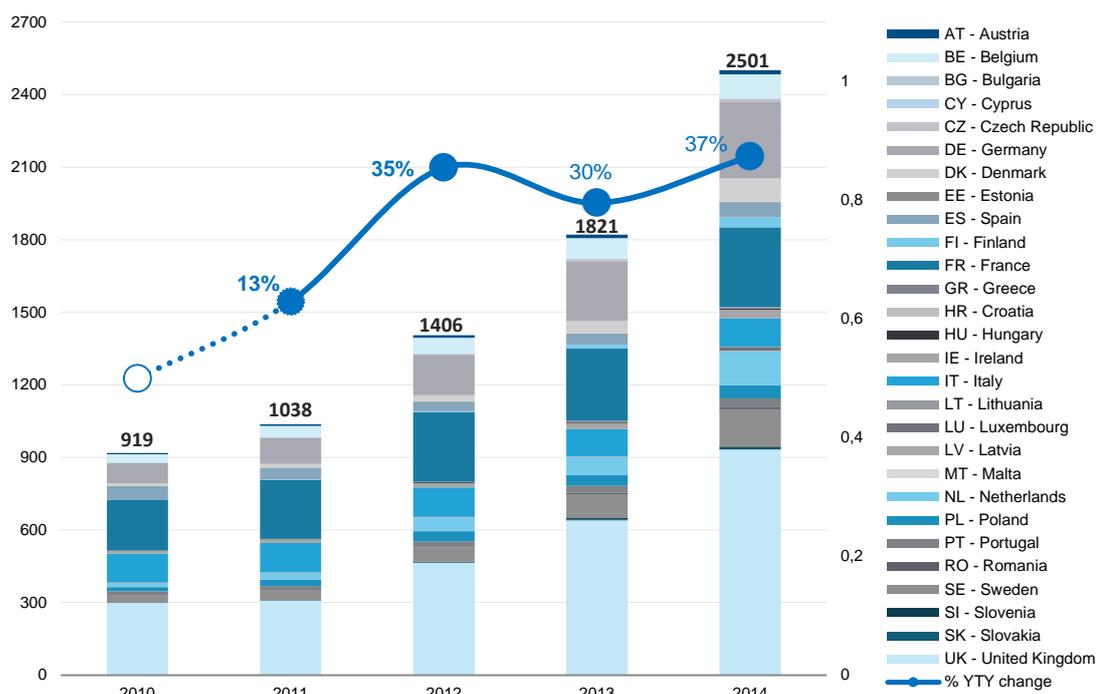
In terms of market size, the global VOD market amounted to approximatively USD 16.3 billion in 2016 and accounts for 16% of the Digital Media market (Statista, 2016). At global level, 85.6% of the global VOD market is encompassed by the US, Europe and China. Only the US on its own accounts for 58.5% of the total market on its own, where SVOD represents the biggest segment. As for Europe, VOD has a volume of USD 3.5 billion out of which 61.6% is represented by SVOD which is even higher than in the US.²⁶⁸

From 2010 to 2014, the on-demand consumer revenues have increased by 272% in Europe (EAO, 2015a). There has been a significant acceleration since 2012, the year of debut of prominent transaction video-on-demand (TVOD) and subscription video-on-demand (SVOD) services in several European countries. Revenues accelerated again in 2014 while the major platforms were expanding across Europe and EU broadcasters were developing online offers and growth in TV VOD. Below is a graphic representing the evolution of on-demand consumer revenues per Member States for the period of 2010 to 2014.

Figure 45: Total on-demand Consumer Revenues – € million by year and country – 2010-2014

²⁶⁷ Statista (2016)

²⁶⁸ Statista (2016), Digital Media: Video-on-Demand

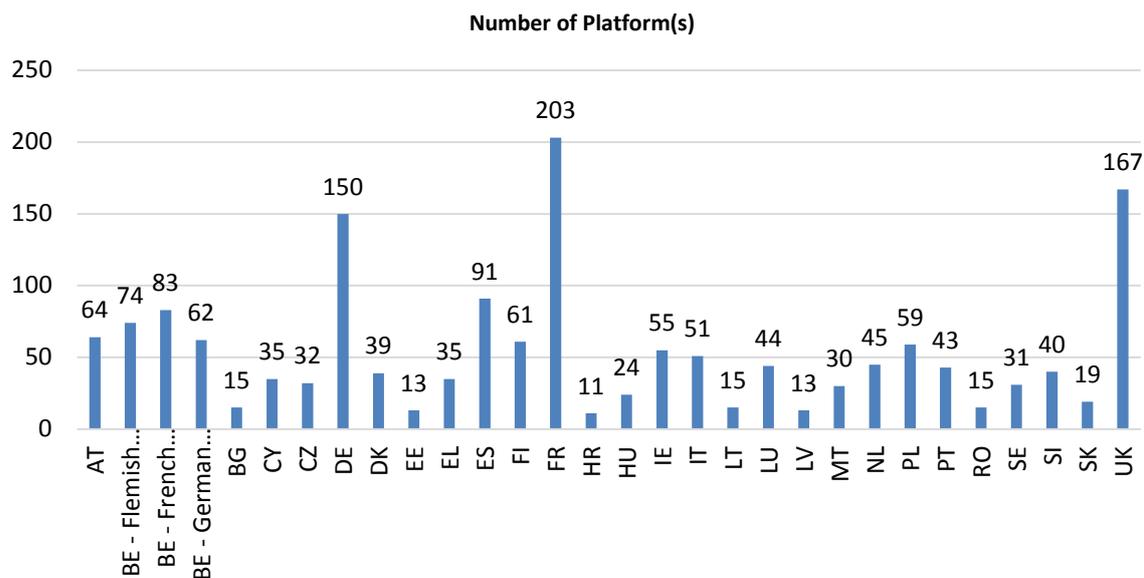


Source: EAO, 2015h

The graphic above also shows that the VOD revenue distribution and growth varies a lot across the different EU markets. It appears that the UK alone accounted for 34% of the industry's revenues during 2010-2014 (€7.6 billion - 37% in 2014), followed by France (18% of revenues) and Germany (12%). The five largest audiovisual markets (UK, Germany, France, Spain and Italy) generated 70% of the total on-demand revenue in 2014.

According to the European Audiovisual Observatory, in 2015 there were 1,619 VOD services available in the EU28. The EU country with the biggest number of VOD services is France, with a total number of 203 VOD services (out of which, 114 are national and 49 established in the US). The figure below provides a country-by-country breakdown on the total available VOD services in Europe, as of 2015:

Figure 46: Total of available VOD services in Europe (2015)



Source: EAO, 2015a

Out of these 1,619 VOD services available in the EU28, 38% are national platforms, 27% are platforms established in another EU country, 29% are established in the US, and 7% are established in another country.

Table 39: Number of VOD services available by country in Europe and by country of establishment (December 2015)²⁶⁹

Country	Total of available VoD services	National	Established in another EU country	Established in the US	Established in another country
AT	64	9	27	23	5
BE - Flemish Community	74	24	25	22	3
BE - French Community	83	17	37	24	5
BE - German-speaking Community	62	0	38	22	2
BG	15	10	4	1	0
CY	35	8	5	20	2
CZ	32	27	4	1	0
DE	150	93	25	26	6
DK	39	14	20	3	2
EE	13	3	6	1	3
ES	91	18	15	40	18

²⁶⁹ VOD services for Belgium (Flemish, French and German) can be counted twice or three times due to availability in the whole of Belgium

Country	Total of available VoD services	National	Established in another EU country	Established in the US	Established in another country
FI	61	16	20	23	2
FR	203	114	31	49	9
GB	167	95	12	50	10
GR	35	6	6	21	2
HR	11	7	2	0	2
HU	24	7	15	0	2
IE	55	6	19	25	5
IT	51	11	13	23	4
LT	15	5	7	0	3
LU	44	5	14	21	4
LV	13	3	7	0	3
MT	30	3	5	20	2
NL	45	26	14	2	3
PL	59	37	18	1	3
PT	43	9	11	21	2
RO	15	7	5	1	2
SE	31	17	9	2	3
SI	40	9	8	21	2
SK	19	8	8	1	2

Source: EAO, 2015a

However, with few large-scale European providers active on the market, the industry is quite concentrated and the links between market entry of major US players (such as Netflix and Amazon Prime) and VOD revenues are linked to the European countries where these players operate.

11.6.4 Integration along the value chain: latest trends

The competitive arena of the AV industry is driven by three main elements (Pereira, 2003):

- *Content*, which is what is ultimately sold to customers: access to content produced by third parties or the establishment of production facilities is a sine qua non condition for entering or staying in business;
- *The best way to deliver* such content to customers: access to delivery channels owned by third parties or the possibility to establish their own paths to the customer is what allows media companies to distribute their output; and
- *Customers*.

In particular, in recent years the growing competition induced by the proliferation of TV channels has inflated production costs (Ofcom, 2015). This could potentially lead to a scenario where only large companies are able to afford the costs of audiovisual production, pushing the market for more integration along the supply chain.

Market integration happens in two forms:

- Vertical integration (a company expands its business operations into different level of the production line, such as when a manufacturer owns its supplier and/or distributor); and
- Horizontal integration (where a company owns several players in the same segment of the value chain. For example, where one company can own many media outlets showing the same content, a DVD label, a TV channel, and a website where films can be downloaded).

However, the ultimate objective is the same: a company seeks to earn more margins integrating key elements of the supply chain.²⁷⁰

Already back in 2011, 54% of non-news programming was made by in-house departments within broadcasters, with the remaining 46% split between independent producers and some third-party producers owned by broadcasters (Attentional, 2011). Numerous horizontal (among telecommunications, audiovisual, and Internet firms) and vertical (between content provider and telecommunications, audiovisual, and Internet firms) mergers and alliances have been observed over the last years²⁷¹: the 2013 – 2015 period has seen a wave of deals concerning audiovisual production companies in Europe but, also, some acquisitions of US producers by European television groups.²⁷²

Considering that this industry is still significantly fragmented, the several mergers and acquisitions that took place had reflected partial consolidation. It became evident that during this period, large media groups were increasingly seeing value in getting involved in production.²⁷³

Especially visible are the processes in the UK: since 2008, major US media groups such as NBC Universal and Warner Brothers have been acquiring a number of UK production companies. TV production had been one of the fastest growing segments of the global media market, and hence was an attractive area for US broadcasters to expand into as they sought to diversify. UK producers proved particularly attractive due to the volume and quality of their programming ideas. In the UK, ITV has also recently started to increase the scale of its production division, purchasing both large and small producers in the US and UK (in 2015 it bought *The Voice* and the production company Talpa Media). Today, seven of the ten largest UK producers are owned by large foreign media corporations (Ofcom, 2016). Overall, consolidation has led to a reduction in the number of UK television production companies: the number of UK television production companies has nearly halved from around 500 in 2001, to around 450 in 2006, and around 250 in 2014. On the other hand, the UK's largest producers started to acquire overseas production companies, typically in the US, but also in Australia and in Europe. The strategy behind this expansion was to be able to generate a wide breadth of new ideas that could then be exploited by production arms they also owned around the world. Today, the global revenues of the likes of

²⁷⁰ "Re-defining the Independent Film Value Chain", Peter Bloore, Feb 2009 <http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/redefining-the-independent-film-value-chain.pdf>

²⁷¹ "The European Audiovisual Industry: An Overview", EIB Sector Papers, Sep 2001 http://www.eib.org/attachments/pj/pjaudio_en.pdf

²⁷² "Yearbook 2015 Key Trends", European Audiovisual Observatory and Council of Europe

²⁷³ "Improved prospects for European TV production from market growth and increase in M&A activity", Frank Proud, Jun 2014 <https://www.apex-insight.com/new-apex-insight-study-on-the-european-tv-production-market-finds-improved-prospects-from-market-growth-and-increased-ma-activity/>

Fremantle and Endemol-Shine Group are in excess of £0.5bn 2014.²⁷⁴ Another company active the field of mergers and acquisitions was FremantleMedia (RTL group), which took stakes in Man Alive, Naked Entertainment, Corona Pictures, No Pictures Please, Fontaram, Kwai, Full Fat TV and Wildside.²⁷⁵ The described merger and acquisitions activity over the past two years resulted in Cineflix Rights becoming the UK's largest independent distributor by revenue and providing opportunities for retaining rights of the other independents. That leads to strong, robust companies able to retain talent and spend a lot on development ("super-indies").

Similarly to the UK case, the French audiovisual industry has also experienced a rapid consolidation in 2015 and 2016. The biggest deal effective from early 2016 was the merger of Banijay Group and Zodiak Media, and the French media giant Vivendi bought a 26% chunk of this new entity in a €290 million (USD 314 million) deal. The 2015 was characterised also with the enormous fallout from the TF1-Newen Group deal.²⁷⁶ Meanwhile, Lagardere Entertainment refocused on activity outside France having a more international outlook in 2016.

According to the EAO, there are three main factors that could explain this consolidation moment:

- US-based media groups, already strong exporters of programmes to the European market, seek to diversify their activities by directly funding European works or facilitating US-Europe co-productions;
- Broadcasters, facing the slow-down of the linear television market intend to develop their TV production segment to secure the rights and exploit them on any platform; and
- Independent producers look for scale, to invest in new projects, to better balance their activities between different genres of programming, to better pre-finance TV shows thanks to a worldwide presence, and to get market power in their negotiations with broadcasters.

Vertical integration between production and television channels is already the dominant model in the US (Ofcom, 2016). The integration process there has resulted in strong synergies between production and broadcasting, but also some level of competition between the studios to supply TV shows to all broadcasters (Ofcom, 2016). The European production landscape is a combination of broadcasters' in-house production and small independent producers, in varying proportions depending on the country. Many of the traditional (often publicly funded) main networks began their activities as vertically integrated producers and broadcasters out of necessity. This distinction has become more irrelevant recently as independent producers working for broadcasters have been increasingly backed by powerful international groups and as commercial broadcasters tend to increase their activities in the field of TV production, not only to serve their own needs but also to deliver programming to their competitors (Ofcom, 2016). Despite the incomparable weight of Hollywood studios, the European market structure could therefore increasingly mirror the US one in the future.²⁷⁷

The renewed interest in TV production, as shown by the high level of mergers and acquisitions, is the consequence of a shift of market power in the audiovisual value chain: as noted by the EAO (EAO, 2015a), in a phase of uncertainty regarding the

²⁷⁴ "Review of the operation of the television production sector", A report for the Secretary of State for Culture, Media & Sport, https://www.ofcom.org.uk/data/assets/pdf_file/0028/82684/tv_production_sector_review.pdf

²⁷⁵ "TV's Big Questions: has the wave of M&A been positive for the industry?", Jesse Whittock and Stewart Clarke, Jan 2016 <http://tbivision.com/highlight/2016/01/tvs-big-questions-wave-ma-positive-industry/531162/>

²⁷⁶ <http://tbivision.com/news/2015/11/controversial-tf1-newen-deal-agreed/507932/>

²⁷⁷ "Yearbook 2015 Key Trends", European Audiovisual Observatory and Council of Europe

future of audiovisual services, in the context of a possible disintermediation of both distributors and broadcasters, and as TV programmes target a worldwide market, the production and exploitation of audiovisual content appear to be more than ever the key assets and expertise of media groups.²⁷⁸

12 Linear Content Analysis

Building on the methodology of the 2011 report, we analysed the content broadcasted by 54 channels in 11 Member States, in order to provide data relevant to Articles 16 and 17 of the Directive.

The main conclusions of our analysis are:

- These proportions of **qualifying works are similar across channel and country types**. The lowest percentage of qualifying works of the total transmission hours was found in Romania (51.10%), whereas the highest percentage was found in Germany (80.25%);
- **Most European broadcasters met the 50% requirement of Article 16**. European works also make up an average of 69.85% of the total viewer hours (vs. 69% in 2010 and 74% in 2007) across all studied channels in 2016, this confirms the strong appeal of European works to European audiences. European works are relatively less attractive to younger viewers who tend to watch more non-EU content than their elder counterpart;
- Across our sample, **non-domestic European works** make up **16.88%** of the total qualifying European transmission hours in 2016. This picture is different from the 2011 study, where the percentage of non-domestic European works make up 8.1% of the total qualifying transmission hours in 2010 (8.2% in 2007). There is a **greater circulation of European works**, although domestic productions still represent the majority;
- **Independent European works** make up **27.85%** of the total qualifying transmission hours in 2016 (29.4% in 2010 and 31% in 2007);
- Across our sample, **recent independent European works** make up an average of **71.60%** of the total independent European hours in 2016 (85.2% in 2010, 84.4% in 2007). The proportions are **higher in primetime**: 86.32% of total independent transmission hours (90.6% in 2010 and 92.4% in 2007). This confirms that mainstream and free linear television are basically about fresh production.

12.1 Methodology

The research methodology was designed to provide data relevant to Articles 16 and 17 of the Directive. It is based on the following approach:

- **Schedules** for a sample of top 5 leading channels from 11 Member States are encoded by genre, qualifying type, European origin, independence of production and recency for the total broadcast time during 2 weeks of 2016 (Week 8 in February 2016 and Week 49 in November 2016);
- **Channels** have been codified by key types: ownership (private or public), revenue model (advertising, government or pay) and audience leadership (leader or non-leader in their respective markets); and
- **Member States** have been codified by key types: size (large or small), geography (North or South) and EU membership (old or recent).

Statistics are created to estimate key indicators for each channel, channel type and country type. Indicators include the proportion of:

²⁷⁸ "Yearbook 2015 Key Trends", European Audiovisual Observatory and Council of Europe

- Qualifying works in total schedules;
- European works in total qualifying schedules;
- European independent productions in total qualifying schedules; and
- Recent independent productions in total European independent qualifying productions.

Statistics are provided for 2 different types of measures: transmission hours represent the proportion of broadcast time or, in other words, the duration of analysed programmes, while viewer hours represent the proportion of time spent by viewers from two target groups, all individuals and young adults.

Data were sourced from **Eurodata TV**: this company brings together ratings information from official sources in each market (e.g. AGF in Germany, Médiametrie in France, Auditel in Italy, BARB in the UK, etc.).

The methodology is practically identical to that used in past studies as this enables us to compare 2016 estimates to past findings, ensuring consistency of analysis. It helps that the broadcast market in Europe, despite the introduction of highly disruptive technologies and players, continues to be structured around the key historic groups and channels on which the study sample focuses.

The most notable change in the methodology compared to the previous study is the selection of countries. The motivation for this selection was to:

- Cover a variety of Member States from different geographies;
- Ensure coverage of some smaller Member States;
- Cover a large share of the national market (i.e. 5 main channels in each selected country); and
- Ensure availability of high quality data.

12.1.1 Sampling Member States and channels

Member States have been selected to represent a mix of countries large or small (population/GDP), of old or new EU membership (before or after 2004), from the North or South of Europe. Channels have been selected to represent a mix of broadcasters under private or public control, earning their revenue from advertising, government funds or consumer payments, being or not being audience leaders in their respective markets.

Table 40: Sample of 11 Member States, 2016

Member States	Size		Geography		Recency	
	Large	Small	North	South	Old	New
Finland		x	x		x	
France	x			x	x	
Germany	x		x		x	
Hungary		x	x			x
Italy	x			x	x	
Netherlands		x	x		x	
Poland	x		x			x

Member States	Size		Geography		Recency	
	Large	Small	North	South	Old	New
Romania		x		x		x
Slovenia		x		x		x
Spain	x			x	x	
UK	x		x		x	

Source: VVA calculations based on Attentional, 2011

Table 41 shows how selected channels split by channel and country types is a mix of Member States (30 from large countries vs. 25 from small, 30 from North vs. 25 from South, 35 from old vs. 20 from new).

Table 41: Linear Content Analysis - list of channels and countries

Member States	Channels
Finland	1. YLE TV1
	2. MTV 3
	3. YLE TV2
	4. Nelonen
	5. Sub
France	6. TF1
	7. France2
	8. M6
	9. France3
	10. D8
Germany	11. ZDF
	12. ARD Das Erste
	13. RTL
	14. Sat1
	15. Prosieben
Hungary	16. RTL Klub
	17. TV2
	18. Duna TV
	19. Cool
	20. Film+
Italy	21. Rai1
	22. Canale5
	23. Rai2
	24. Rai3
	25. Italia1
Netherlands	26. NPO 1
	27. RTL 4
	28. SBS 6
	29. NPO 2
	30. NPO 3
Poland	31. TVP1
	32. Polsat
	33. TVN
	34. TVP2
	35. TVP Info
Romania	36. Pro TV
	37. Antena 1
	38. Kanal D
	39. Antena 3
	40. Romania TV
Spain	41. Telecinco
	42. Antena 3
	43. La 1
	44. La Sexta
	45. Cuatro
Slovenia	46. Pop TV

Member States	Channels
	47. RTV Slovenija 1
	48. Kanal A
	49. Planet TV
	50. RTV Slovenija 2
	51. BBC1
UK	52. ITV
	53. BBC2
	54. Channel4
	55. Channel5

Source: VVA /Eurodata TV

Table 42 shows the list of selected channels and their key characteristics.

Channels have been selected according to their country of destination to ensure the best representativeness of total TV viewing. The sample of 55 European channels covered in 2016 provides a balance of ownership (34 private, 21 public) and revenue model (34 advertising, 21 government).

Table 42: list of selected channels and their key characteristics

Member States	Channels	Ownership	Revenue Model	Group	Audience share ²⁷⁹
Finland	YLE TV1	Public	Government	YLE	35.55%
	MTV 3	Private	Advertising	Bonnier	16.12%
	YLE TV2	Public	Government	YLE	9.09%
	Nelonen	Private	Advertising	Sanoma	6.99%
	Sub	Private	Advertising	Bonnier	3.68%
France	TF1	Private	Advertising	Groupe TF1	15.68%
	France2	Public	Government	France Télévisions	18.05%
	M6	Private	Advertising	RTL	7.51%
	France3	Public	Government	France Télévisions	5.58%
	C8	Private	Advertising	Canal+ Group	3.81%
Germany	ZDF	Public	Government	ZDF	10.56%
	ARD Das Erste	Public	Government	ARD	8.53%
	RTL	Private	Advertising	RTL	9.70%
	Sat1	Private	Advertising	P7S1	8.52%
	Prosieben	Private	Advertising	P7S1	5.15%
Hungary	RTL Klub	Private	Advertising	RTL	10.16%
	TV2	Private	Advertising	P7S1	10.26%

²⁷⁹ The "audience share" is calculated as the average audience on week 8 and on week 49 based on Eurodata TV.

Member States	Channels	Ownership	Revenue Model	Group	Audience share²⁷⁹
	Duna TV	Public	Government	Duna	4.83%
	Cool	Private	Advertising	RTL	4.17%
	Film+	Private	Advertising	RTL	4.04%
Italy	Rai1	Public	Government	Rai	14.69%
	Canale5	Private	Advertising	Mediaset	15.54%
	Rai2	Public	Government	Rai	5.37%
	Rai3	Public	Government	Rai	6.31%
	Italia1	Private	Advertising	Mediaset	4.36%
Netherlands	NPO 1	Public	Government	NPO	14.74%
	RTL 4	Private	Advertising	RTL	16.52%
	SBS 6	Private	Advertising	P7S1	6.81%
	NPO 2	Public	Government	NPO	4.29%
	NPO 3	Public	Government	NPO	4.31%
Poland	TVP1	Public	Government	TVP	10.37%
	Polsat	Private	Advertising	Polsat	11.60%
	TVN	Private	Advertising	TVN	9.13%
	TVP2	Public	Government	TVP	7.15%
	TV 4	Private	Advertising	Polsat	3.05%
Romania	Pro TV	Private	Advertising	CME	17.06%
	Antena 1	Private	Advertising	Intact Media Group	13.37%
	Kanal D	Private	Advertising		8.55%
	National TV	Private	Advertising	Europe Drinks	1.96%
	TVR1	Public	Government	Televiziunea Română	2.19%
Spain	Telecinco	Private	Advertising	Mediaset	10.75%
	Antena 3	Private	Advertising	RTL	10.39%
	La 1	Public	Government	RTVE	8.13%
	La Sexta	Private	Advertising	RTL	5.67%
	Cuatro	Private	Advertising	Mediaset	4.98%
Slovenia	Pop TV	Private	Advertising	CME	14.58%

Member States	Channels	Ownership	Revenue Model	Group	Audience share ²⁷⁹
	RTV Slovenija 1	Public	Government	RTV	16.34%
	Kanal A	Private	Advertising	CME	6.36%
	Planet TV	Private	Advertising	Planet	7.22%
	RTV Slovenija 2	Public	Government	RTV	7.99%
UK	BBC1	Public	Government	BBC	19.85%
	ITV	Private	Advertising	ITV	12.07%
	BBC2	Public	Government	BBC	4.22%
	Channel4	Public	Government	Channel4	3.92%
	Channel5	Private	Advertising	Viacom	3.37%

Source: VVA calculations based on Eurodata TV

One important objective of the sampling is to ensure representativeness both of the channels with the greatest economic and cultural impact in Europe, and of the diversity of channel sizes and models. For this reason, large European Member States (based on population size/GDP) are all included and within each market, leading channels (based on audience share) are also favoured. The definition of revenue model has been simplified to design clearer categories of channel and to be consistent with the 2011 study.²⁸⁰

Compared to the 2011 study, the sample includes Finland, Hungary, Romania and Slovenia, instead of Belgium, Czech Republic, Estonia and Sweden.

Table 43: Channel sample size by channel and country type, comparison 2011 - 2016

Type	Sub-type		# of channels in linear sample 2011	# of channels in linear sample 2016
Channel	Leader	Yes	31	53
		No	23	2
	Ownership	Public	34	21
		Private	20	34
	Revenue Model	Adv	31	34
		Gvt	19	21
		Pay	4	0
Country	Geography	North	32	30
		South	22	25

²⁸⁰ All public channels, including those earning part of their revenue from advertising or other commercial sources, have been codified as "government" and all private channels have been codified to earn their revenues from "advertising" to ensure consistency with the 2011 study.

Type	Sub-type		# of channels in linear sample 2011	# of channels in linear sample 2016
	Recency	Old	13	35
		New	41	20
	Size	Large	36	25
		Small	18	30
Total sample (counts)			54	55

Source: VVA /Eurodata TV

12.1.2 Sampling schedules and titles

In order to best represent the results for 2016, we built a set of data based on two non-consecutive weeks in the Spring and Fall periods, where broadcasters' schedules are more stable.

It is common practice for statistical modelling to select weeks in the Spring and Fall as was done for past studies covering 1993 to 2011. We investigated any special events likely to impact on television scheduling or viewing, for example elections, holidays or major sporting events.²⁸¹

Primary data for analysing the offering of linear audiovisual services have been sourced from the companies and organisations responsible for the Television Audience Measurement (TAM) data in their respective countries.²⁸² TAM services provide information about content (title, genre), scheduling (channel, date, time, duration) and the audiences on each broadcasting day.

In this report, the demographics "all individuals" and "young adults" have been used based on national definitions. A database of 63,276 transmissions on 55 channels over 2 weeks of 2016 has been built:

- 100% of the 63,276 transmissions have been codified by genre in order to estimate the proportions of Qualifying works;
- 100% of the 31,435 Qualifying transmissions have been codified according to origin in order to estimate the proportions of European works;
- 91.6% of the 20,995 European transmissions have been codified according to independence of production to estimate the proportion of Independent works;
- 100% of the 5,345 Independent transmissions have been codified according to production year to estimate the proportion of Recent works.

All other methodological areas (classifications of genres, channels and countries, encoding process and statistical choices) have been kept identical to the 2011 study.

²⁸¹ Disclaimer: the weeks selected are week 8 in February and week 49 in November, to the best of our knowledge, nothing happened to have disruptively changed the broadcasting schedule in the countries under analysis.

²⁸² TAM providers produce their data in a very consistent way across markets. Most of them are part of international research companies such as Nielsen-AGB, GfK or TNS, and tend to use the same technologies. Even when belonging to separate groups, TAM services in practice apply very similar methodologies, algorithms and statistical models. For this project, data have been sourced mainly through Eurodata TV (which gathers information from CIM - GfK Audimetrie, ATO / Mediaresearch, TNS Emor, Médiamétrie, Auditel - AGB NMR, Stichting KijkOnderzoek, Nielsen TV Audience Measurement Poland, Kantar Media, MMS, etc.).

12.1.3 Encoding titles and processing data

The first step in the process of coding linear data was to determine the genre of each individual programme to identify “qualifying programmes” – the proportion of the transmission schedule to which Articles 16 and 17 of the Directive apply, that is, all programmes “excluding sport events, news and games” (non-qualifying programmes) as well as “advertising, teletext services and teleshopping” (non-programme material). The same genre classification as in past studies was used and is shown in Table 44.

Table 44: Pan-European genre classification

Genre	Qualifying/ Non- Qualifying	Stock/Flow	Definition
Entertainment	Qualifying	Stock/Flow	This includes talk shows and studio-based comedies, but not sitcoms (which are included under fiction) or quiz shows/game shows, which are included under “Games”. Entertainment programs can be either stock or flow programs depending on their repeat value
Fiction	Qualifying	Stock	This includes soaps, drama series/serials, single dramas, situation comedies, TV movies and animation created for TV.
Cinema Film	Qualifying	Stock	All films that have had a cinematic release (not TV movies, which should be included under Fiction). Animation for cinematic release is also included in this genre.
Documentary	Qualifying	Stock	Programmes consisting mainly (i.e. more than 50%) of documentary footage
Factual magazine	Qualifying	Flow	Factual programmes containing less than 50% documentary footage. The remaining time may be studio-based links, discussion etc. Most Current Affairs programmes fall in this category. These are ‘flow’ programmes with no or little repeat value.
News	Non-Qualifying	N/A	Separate programmes containing reports of the most important recent events in summary form. Feature programmes, Current Affairs programmes and even News magazines, which look at stories “behind the news” should not be included
Sports Events	Non-Qualifying	N/A	Live or recorded sporting events or significant parts of such events, but not magazine programmes about sports, even though such a programme may well contain excerpts of live events.
Games	Non-Qualifying	N/A	TV shows focusing primarily on participants competing for a prize (<i>Big Brother, Who Wants To Be A Millionaire?, Pop Idol</i>)
Children’s	N/A	N/A	Children’s programmes are to be included in the genres above according to their relevant sub genres.

The second step was to identify the geographic origin of productions. Most of the origins are relatively easy to identify. Additional desk research was needed to cover gaps in the data. Missing information were retrieved exploring database such as *Lumiere*²⁸³ and/or *IMDB*²⁸⁴ (regarding the programmes). Regarding the list of third

²⁸³ <http://lumiere.obs.coe.int/web/search/>

²⁸⁴ <http://www.imdb.com/>

states which have concluded co-production agreements with the EU, this list was retrieved in the *Olfli*²⁸⁵ database.

The third step was to identify whether producers were independent or not of broadcasters. The identification was based on the same definition and methodology of the previous study: independence is defined as “*capital being or not being controlled by a broadcast group in their own market or by their level of business reliance on one or more channels*”. The identification process involved researching information on each programme individually, from the websites of broadcasters and those of producers and distributors.

As pointed out in the 2011 report, in most markets, the number of significant producers and distributors is below 40 companies, most of which publish information on their activities, including which programmes they produce.

When the ownership structure was not fully available, we generalised and applied Ofcom’s rules for qualifying a producer as independent: “*a producer cannot be more than 25% owned by any company which also owns a UK broadcaster*”.²⁸⁶

The last step was to identify whether productions were younger or older than 5 years at the time of their airing in the weeks of our sample.

Putting all this information together enables us to build a good picture of who is producing what in each market, as well as who is linked to whom²⁸⁷.

Table 45: Key methodological criteria to coding of linear data

	Reference
Qualifying programmes	<i>Determining the genre of the program</i>
	<ul style="list-style-type: none"> Entertainment, Fiction, Cinema film, Documentary and Factual magazine are qualifying; News, Sports Events and Games are not qualifying; Advertising, Teletext services and Teleshopping are non-programme material
European works	<i>Geographical requirement</i>
	Works originating from: <ul style="list-style-type: none"> One of the 28 EU Member States European third states which have ratified the European Convention on Transfrontier Television of the Council of Europe and co-production agreements with the EU European third states which

²⁸⁵ <https://www.olffi.com/>

²⁸⁶ Today, seven of the ten largest UK producers are owned by large foreign media corporations and four of these seven producers no longer meet the definition of a qualifying ‘independent producer’.

Source: https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2015/tv_production_sector_review

²⁸⁷ Disclaimer: matching errors might have occurred. Once film titles are retrieved, they need to be matched to their correct film titles in databases (e.g. IMDb, LUMIERE and The Movie Database) to identify the country and region of production. This process was carried out manually, where reference were missing in the meta data.

		Reference
	have concluded co-production agreements with the EU	
	<i>Workforce requirement</i>	
	Works must comply with one of the following three conditions: <ul style="list-style-type: none"> • they are made by one or more producers established in one or more of those States; • the production of the works is supervised and actually controlled by one or more producers established in one or more of those States; • the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States. 	Article 1 (3) of the AVMS Directive
Independent productions	<i>Producer capitalistic and commercial independence from broadcasters</i>	
	<ul style="list-style-type: none"> • The production company must be free from a controlling interest by a broadcaster (a broadcaster owns less than 50% of the shares of the production company). • The programme must have been made by a production company that produces a majority of its programmes outside the broadcaster's own management structure. • The production company must provide programmes for different broadcasters (not just one). 	(71) of the AVMS Directive
	Producer independence across borders	2008 and 2010 study report
Recent productions	<i>Definition</i>	
	Works must be transmitted "within 5 years of their production"	Article 17 of the AVMS Directive

12.2 Overview of findings

12.2.1 Qualifying works in 2016

Across our sample, **qualifying programmes make up 66.02% of the total transmission hours**, 60.93% of the total viewer hours of all individuals and 66.74% of the total viewer hours of young adults on all channels studied in 2016 (see Table 46). Almost a third of linear programming falls outside the scope of Articles 16 and 17

of the Directive. This content includes news and sports, games, and advertising and promotion. Most of this content is European national programming using press agency material or live coverage (news and sports), sometimes international formats (games) or advertising agency material (advertising).

These proportions of qualifying works are similar across channel and country types:

- 66.60% in “Northern” Member States and 65.32% in “Southern” Member States;
- 63.39% in “New” Member States and 68.77% in “Old” Member States;
- 71.11% in “Large” Member States and 61.27% in “Small” Member States;
- 67.70% in “Private” channels and 62.58% in “Public” channels.

The lowest percentage of qualifying works of the total transmission hours was found in Romania (51.10%), whereas the highest percentage was found in Germany (80.25%).

Table 46: Ratio of Qualifying to Total Transmission Hours and Viewer Hours by Channels and by Country types, 2016

Type	Sub-type		Qualifying Transmission Hours (%)	Qualifying Viewer Hours (%) All Individuals	Qualifying Viewer Hours (%) Young Adults
Channel	Ownership	Private	67.70%	63.50%	68.96%
		Public	62.58%	56.39%	58.89%
	Revenue Model	Adv	67.70%	63.50%	68.96%
		Gvt	62.58%	56.39%	58.89%
Country	Geography	North	66.60%	64.56%	71.89%
		South	65.32%	57.11%	61.39%
	Recency	Old	68.77%	63.55%	69.29%
		New	63.39%	58.00%	64.15%
	Size	Large	71.11%	64.55%	70.40%
		Small	61.27%	57.52%	62.92%

Source: VVA/ Eurodata TV

Qualifying programmes represent a slightly lower proportion of total channel grids in 2016 compared to 2010 (66.02% vs. 67.6%). Interestingly, younger viewers spend a higher proportion of their total TV viewing time with qualifying genres than the total population (66.74% vs. 60.93% across our sample in 2016).

Other points worth noticing:

- **Qualifying programmes are more prominent on the television schedules of private channels** (67.70%) compared to public (62.58%);
- **Qualifying programmes are relatively less successful with the audiences of public channels** (56.39% of total viewer hours vs. 62.58% of

total transmission hours) compared with private channels (67.70% vs. 63.50%).

Table 47: Ratio of Qualifying to Total Transmission and Viewer Hours by Channel, 2016

Member States	Channels	Qualifying Transmission Hours (%)	Qualifying Hours (%) All Individuals	Viewer Hours (%) All Young Adults
Finland	MTV3	75.53%	79.09%	84.88%
	NELONEN	79.95%	85.09%	88.35%
	SUBTV	67.29%	88.51%	96.40%
	YLE1	62.87%	70.78%	75.94%
	YLE2	57.16%	49.04%	65.20%
France	C8	88.79%	91.58%	89.86%
	France 2	50.69%	33.65%	31.15%
	France 3	65.57%	54.79%	71.89%
	M6	75.36%	73.92%	72.44%
	TF1	70.95%	64.45%	67.07%
Germany	ARD	71.92%	69.98%	72.50%
	PRO 7	96.52%	96.96%	96.60%
	RTL	85.33%	81.34%	86.78%
	SAT.1	85.30%	80.93%	77.54%
	ZDF	67.03%	64.75%	64.64%
Hungary	Cool	63.21%	67.31%	67.53%
	DUNA TV	41.67%	39.91%	41.24%
	Film +	64.65%	69.51%	64.85%
	RTL KLUB	50.49%	46.81%	49.93%
	TV2	45.31%	37.42%	40.33%
Italy	Canale 5	63.21%	41.98%	45.16%
	Italia 1	41.67%	67.88%	74.86%
	Rai 1	64.65%	62.93%	59.25%
	Rai 2	50.49%	75.71%	74.70%
	Rai 3	45.31%	51.47%	50.54%
Netherlands	NPO1	39.87%	40.37%	35.54%
	NPO2	82.82%	87.32%	86.89%

Member States	Channels	Qualifying Transmission Hours (%)	Qualifying Hours (%) All Individuals	Viewer All	Qualifying Hours (%) Young Adults	Viewer Young
	NPO3	87.46%		88.64%		90.04%
	RTL4	57.74%		67.62%		66.49%
	SBS6	48.51%		77.34%		73.88%
Poland	Polsat	83.87%		83.44%		87.38%
	TV4	77.01%		86.77%		84.59%
	TVN	70.31%		74.96%		75.74%
	TVP1	62.25%		48.10%		47.53%
	TVP2	82.63%		78.10%		81.72%
Romania	Antena 1	49.62%		48.50%		49.78%
	Kanal D	56.51%		66.43%		63.71%
	National TV	59.78%		68.23%		69.95%
	Pro TV	46.35%		36.39%		39.78%
	TVR1	41.63%		41.48%		45.93%
Slovenia	Kanal A	79.34%		67.33%		72.40%
	Planet TV	76.32%		67.53%		73.79%
	POP TV	80.10%		68.80%		74.79%
	Slovenija 1	53.69%		54.37%		53.31%
	Slovenija 2	67.04%		30.79%		23.48%
Spain	Antena 3	55.97%		44.32%		45.57%
	CUATRO	76.08%		74.61%		74.55%
	La 1	61.44%		54.19%		51.01%
	LA SEXTA	57.15%		56.05%		59.01%
	Tele 5	55.91%		58.43%		48.79%
UK	BBC1	52.55%		50.16%		49.34%
	BBC2	85.93%		82.14%		81.07%
	Channel 4	77.94%		75.57%		82.42%
	Channel 5	93.29%		96.04%		95.95%
	ITV (SD+HD)	74.60%		74.73%		79.61%

Source: VVA/ Eurodata TV

Channels in “Large” Member States generally offer higher proportions of qualifying genres compared to “Small” Member States. Nonetheless, some channels

from larger markets offer significantly lower proportions of qualifying genres especially in Italy (e.g. Italia 1 and Rai 3).

The proportion of qualifying genres in “Old” Member States is higher compared to “New” Member States and this is especially true in Hungary (e.g. TV2 and Duna TV) and Romania (e.g. Antena 1, Pro TV and TVR1).

Interestingly, qualifying programmes are significantly higher for “Young Individuals” viewer hours (this is the case for 30 out of 55 channels) as they represent a majority of total time spent watching linear TV for these channels by this audience category.

12.2.2 European works in 2016

Across our sample, **European works make up 62.41% of the total qualifying transmission hours in 2016** (vs. 66.4% in 2010 and 62.4% in 2007).

Most European broadcasters met the 50% requirement of Article 16.

European works also make up an average of 69.85% of the total viewer hours (vs. 69% in 2010 and 74% in 2007) across all studied channels in 2016, this confirms the strong appeal of European works to European audiences. As in 2010, the figures are even higher when looking at primetime only (Table 48).

European works are relatively less attractive to younger viewers who tend to watch more non-EU content than their elder counterparts. For them, European works make up an average of 61.99% of total viewer hours in 2016 (vs. 66.5% in 2010). Proportions are very similar in primetime²⁸⁸ (58.88% of European hours, 70.96% of viewer hours all individuals and 65.01% young adults).

Compared to the 2011 study, European transmission hours in primetime have decreased (67.5% of European hours in 2010) and also European young adults’ viewer hours have decreased (67.9% in 2010). At the same time, overall European viewer hours have instead slightly increased (70.96% vs. 70.4% in 2010), indicating that European works attract an older audience.

Table 48: Ratio of Qualifying European to Qualifying Hours and Viewer Hours by Channel and Country types, 2016

Type	Sub-type		European Hours (%)	European Viewer Hours (%) All Individuals	European Viewer Hours (%) Young Adults
Avg. - total sample			62.41%	69.58%	61.99%
Primetime avg. – total sample			58.88%	70.96%	65.01%
Channel	Ownership	Private	51.53%	59.55%	56.64%
		Public	86.47%	90.35%	87.08%
	Revenue Model	Adv	51.53%	59.55%	56.64%
		Gvt	86.47%	90.35%	87.08%
Country	Geography	North	58.41%	69.12%	61.93%

²⁸⁸ As in the 2011 study, “prime time” is between 18:30-22:30.

Type	Sub-type		European Hours (%)	European Viewer Hours (%) All Individuals	European Viewer Hours (%) Young Adults
		South	67.26%	70.73%	62.05%
	Recency	Old	73.47%	78.60%	67.26%
		New	50.93%	59.13%	56.22%
	Size	Large	70.72%	75.81%	66.12%
		Small	53.42%	63.54%	57.17%

Source: VVA/ Eurodata TV

Other points worth noticing:

- **European programmes are significantly more prominent on the television schedules of public channels** (86.47% in 2016, 83.5% in 2010 and 78% in 2007) compared to private channels (51.53% in 2016, 56.3% in 2010 and 54.1% in 2007). As highlighted in the 2011 study, the “public service” status makes them natural flagships for the promotion of national culture and more open to European works in general. Also, many public broadcasters have important internal production resources and tend to limit their acquisitions and favour commissions to national producers or European co-productions;
- **European programmes are significantly more prominent on the television schedules of “Old” and “Large” Member States** (73.47% and 70.72% of the total qualifying hours) compared with “New” and “Small” Member States (50.93% and 53.42% of the total qualifying hours);
- Differences in European viewer hours between “All Individuals” and “Young Adults” are much more pronounced in “Old” and “Large” Member States compared with “New” and “Small” Member States, indicating that **the link between European works and elder audience is stronger in “Old” and “Large” Member States;**

Table 49: Ratio of Qualifying European to Qualifying Hours and Viewer Hours by Channel, 2016

Member States	Channels	European Hours (%)	European Viewer Hours (%) All Individuals	European Viewer Hours (%) Young Adults
Finland	MTV3	66.29%	71.12%	74.44%
	NELONEN	51.71%	56.48%	51.08%
	SUBTV	24.48%	24.03%	17.42%
	YLE1	87.90%	88.56%	87.57%
	YLE2	82.98%	84.04%	80.58%
France	C8	84.35%	86.96%	88.80%
	France 2	94.46%	94.24%	93.89%
	France 3	90.96%	89.86%	82.82%

Member States	Channels	European Hours (%)	European Viewer Hours (%) All Individuals	European Viewer Hours (%) Young Adults
	M6	56.43%	51.00%	54.63%
	TF1	54.15%	50.07%	51.73%
Germany	ARD	91.38%	94.49%	97.14%
	PRO 7	15.43%	15.31%	14.01%
	RTL	89.42%	90.79%	92.25%
	SAT.1	76.23%	80.40%	78.57%
	ZDF	91.72%	95.04%	90.29%
Hungary	Cool	13.77%	15.19%	22.11%
	DUNA TV	69.64%	70.20%	58.22%
	Film +	6.74%	7.47%	8.70%
	RTL KLUB	40.53%	46.72%	48.37%
	TV2	32.80%	29.83%	26.01%
Italy	Canale 5	78.40%	84.36%	85.08%
	Italia 1	12.15%	14.80%	12.58%
	Rai 1	98.11%	99.15%	99.24%
	Rai 2	63.76%	69.26%	64.72%
	Rai 3	94.22%	96.19%	95.51%
Netherlands	NPO1	100.00%	100.00%	100.00%
	NPO2	96.57%	96.49%	97.05%
	NPO3	88.78%	91.45%	88.47%
	RTL4	89.67%	91.27%	92.65%
	SBS6	86.07%	88.67%	87.81%
Poland	Polsat	58.48%	64.88%	61.40%
	TV4	47.22%	54.44%	57.93%
	TVN	78.32%	79.00%	77.98%
	TVP1	73.68%	77.60%	74.80%
	TVP2	83.69%	88.09%	89.81%
Romania	Antena 1	78.04%	83.46%	82.68%
	Kanal D	97.39%	98.39%	98.66%

Member States	Channels	European Hours (%)	European Viewer Hours (%) All Individuals	European Viewer Hours (%) Young Adults
	National TV	43.79%	39.67%	33.56%
	Pro TV	67.53%	67.51%	66.36%
	TVR1	93.20%	93.79%	94.74%
Slovenia	Kanal A	43.79%	42.90%	50.20%
	Planet TV	46.07%	51.13%	49.98%
	POP TV	46.08%	51.50%	43.80%
	Slovenija 1	93.47%	97.04%	96.86%
	Slovenija 2	90.87%	91.33%	94.71%
Spain	Antena 3	67.65%	61.89%	59.26%
	CUATRO	59.79%	57.90%	52.81%
	La 1	93.88%	93.79%	89.86%
	LA SEXTA	79.67%	80.30%	77.04%
	Tele 5	93.10%	94.68%	93.16%
UK	BBC1	92.66%	96.18%	94.39%
	BBC2	86.75%	85.76%	87.09%
	Channel 4	63.75%	70.75%	66.89%
	Channel 5	60.62%	49.92%	48.33%
	ITV (SD+HD)	90.48%	97.03%	97.39%

Source: VVA/ Eurodata TV

The public channels offer 85-95% of European works, resulting in generally even higher proportions of European viewing (YLE1, YLEI2, France 2, France 3, ARD, ZDF, Rai 1, Rai 3, NPO1, NPO2, NPO3, TVP2, TVR1, Slovenija 1, Slovenija 2 and BBC1).

The lowest public channels in our sample are Rai 2 (63.76%), Channel 4 (63.75%) (same results as in the 2011 study) and Duna TV (69.64%).

Some private players offer up to 85-95% of European works, too (C8, RTL, RTL4, SB6, Kanal D, Tele 5 and ITV) and most others are around 50-60%. Some private channels fall below 50% according to our sample, including SubTV (24.48%), PRO7 (15.43%), Cool (13.77%), Film+ (6.74%), RTL Klub (40.53%), TV2 (32.80%), Italia 1 (12.15%), TV4 (47.22%), National TV (43.79%), Kanal A (43.79%), Planet TV (46.07%), POP TV (46.08%).

European works appear to be relatively more successful than non-European works among the "all individuals" audience compared to "young adults" audience.

10 channels (Film +, Italia 1, Cool, PRO 7, SUBTV, TV2, National TV, Kanal A, RTL KLUB, Channel 5) have total viewing time significantly below 50% of total qualifying

viewing time. 9 out of these 10 channels have also European transmission hours that fall below 50%. The only channel where viewer hours fall below 50%, despite offering 60.62% of European Hours, is Channel 5 in the UK (49.92% viewer hours vs. 60.62% transmission hours – same result as in the 2011 study).

12.2.3 Non-domestic European works in 2016

Across our sample, non-domestic European works make up 16.88% of the total qualifying European transmission hours in 2016, compared to 15.13% of viewer hours (Table 50).

The proportions are similar, but slightly lower, when looking specifically at primetime: 16.53% of the total qualifying European transmission hours and 13.39% of viewer hours.

This picture is different from the 2011 study, where the percentage of non-domestic European works make up 8.1% of the total qualifying transmission hours in 2010 (8.2% in 2007), and where there is a greater circulation of European works (other than domestic works) although domestic productions still represent the majority of European works broadcast.

Table 50: Ratio of Non-Domestic Qualifying European to Qualifying European Hours and Viewer Hours by Channel and Country types, 2016

Type	Sub-type		Non-domestic European Hours (%)	Non-domestic European Viewer Hours (%) All Individuals	Non-domestic European Viewer Hours (%) Young Adults
Avg. - total sample			16.88%	15.13%	13.69%
Peak time avg. – total sample			16.53%	13.39%	9.47%
Channel	Ownership	Private	17.75%	15.73%	13.45%
		Public	15.73%	14.33%	14.44%
	Revenue Model	Adv	17.75%	15.73%	13.45%
		Gvt	15.73%	14.33%	14.44%
Country	Geography	North	14.94%	13.69%	11.36%
		South	18.92%	16.80%	16.53%
	Recency	Old	13.72%	13.48%	12.29%
		New	22.28%	17.81%	15.54%
	Size	Large	10.39%	9.78%	7.82%
		Small	26.16%	21.88%	21.62%

Source: VVA/ Eurodata TV

Some points worth noticing:

- **Non-domestic European programmes are significantly more prominent on the television schedules of “Small” countries**, 26.16% of Qualifying European Hours in 2016 (14% in 2010 and 14.7% in 2007), compared with “Large” countries, 10.39% in 2016 (4.9% in 2010 and 5.1% in 2007). The same relationship holds for **“New” Member States**, 22.28% of Qualifying

European Hours (13.5% in 2010 and 11.1% in 2007), compared with “Old” Member States, 13.72% in 2016 (6.4% in 2010 and 7.3% in 2007). As stated in the 2011 study, channels from smaller markets and from recent Member States are generally more open to the production from their neighbouring countries, which are sometimes produced in the same language or in foreign languages which the population is widely able and used to understand;

- **Non-domestic European programmes are more prominent on the television schedules of private channels**, 17.75% of Qualifying European Hours in 2016 (7.3% in 2010 and 6.8% in 2007) compared to publicly funded channels, 15.73% in 2016 (9.5% in 2010 and 10.7% in 2007). This result shows an opposite trend compared with the previous study, but it can be explained by the fact that public broadcaster has been the major investors in original programming in the 2009-2013 period, and therefore to purchase less content and transmit their domestic productions;
- **Non-domestic European works are less successful** than domestic works among the “all individuals” audience, as total viewing time is significantly below the transmission time.

The European channels which most rely on non-domestic European works include a broad variety of cases. Film+ and Cool TV in Hungary are the ones with the highest proportion of non-domestic European works (100% and 95.11% of transmission hours); SUB TV in Finland has dedicated 56.39% of its European transmission hours to non-domestic productions.

Non-domestic European programmes have diverse origins, generally coming from the largest markets and linked to cultural and business ties between countries (Attentional, 2011).

Table 51: Ratio of Non-Domestic Qualifying European to Qualifying European Hours and Viewer Hours by Channel, 2016

Member States	Channels	Non-domestic Qualifying European Hours (%)	Non-domestic Qualifying European Viewer Hours (%) All Individuals	Non-domestic Qualifying European Viewer Hours (%) Young Adults
Finland	MTV3	26.65%	27.15%	24.70%
	NELONEN	13.78%	8.93%	14.05%
	SUBTV	56.39%	68.18%	52.42%
	YLE1	34.48%	27.26%	20.35%
	YLE2	39.51%	42.40%	39.61%
France	C8	20.44%	22.72%	7.31%
	France 2	8.00%	8.97%	9.30%
	France 3	17.77%	22.39%	12.29%
	M6	12.27%	16.23%	12.68%
	TF1	8.58%	11.94%	10.12%
Germany	ARD	8.67%	6.25%	3.09%
	PRO 7	18.38%	23.29%	15.94%

Member States	Channels	Non-domestic Qualifying European Hours (%)	Non-domestic Qualifying European Viewer Hours (%) All Individuals	Non-domestic Qualifying European Viewer Hours (%) Young Adults
	RTL	0.00%	0.00%	0.00%
	SAT.1	5.10%	4.97%	6.16%
	ZDF	7.98%	6.57%	4.98%
Hungary	Cool	95.11%	92.95%	97.17%
	DUNA TV	38.81%	39.60%	62.50%
	Film +	100.00%	100.00%	100.00%
	RTL KLUB	18.74%	18.81%	13.93%
	TV2	32.10%	51.35%	36.76%
Italy	Canale 5	19.65%	23.90%	20.30%
	Italia 1	24.22%	16.70%	17.28%
	Rai 1	3.85%	2.30%	5.41%
	Rai 2	21.60%	16.60%	13.62%
	Rai 3	6.70%	2.82%	3.12%
Netherlands	NPO1	4.89%	5.46%	5.21%
	NPO2	7.44%	5.69%	4.20%
	NPO3	21.70%	17.63%	20.82%
	RTL4	2.69%	2.16%	1.93%
	SBS6	20.28%	14.80%	17.45%
Poland	Polsat	0.00%	0.00%	0.00%
	TV4	12.18%	9.78%	12.34%
	TVN	0.00%	0.00%	0.00%
	TVP1	44.14%	48.31%	36.60%
	TVP2	10.72%	8.16%	6.32%
Romania	Antena 1	0.96%	0.67%	0.44%
	Kanal D	42.54%	38.63%	33.88%
	National TV	20.94%	23.42%	21.89%
	Pro TV	1.62%	0.77%	0.63%
	TVR1	9.39%	7.01%	4.83%
Slovenia	Kanal A	41.34%	50.56%	35.48%

Member States	Channels	Non-domestic Qualifying European Hours (%)	Non-domestic Qualifying European Viewer Hours (%) All Individuals	Non-domestic Qualifying European Viewer Hours (%) Young Adults
	Planet TV	38.12%	27.27%	33.21%
	POP TV	18.21%	17.27%	12.56%
	Slovenija 1	17.39%	8.34%	12.61%
	Slovenija 2	21.87%	17.89%	26.32%
Spain	Antena 3	12.60%	16.51%	15.38%
	CUATRO	26.27%	35.52%	40.74%
	La 1	25.61%	29.69%	30.37%
	LA SEXTA	14.60%	13.79%	17.92%
	Tele 5	17.02%	20.71%	17.16%
UK	BBC1	0.87%	0.22%	0.24%
	BBC2	0.83%	0.66%	0.17%
	Channel 4	1.70%	1.89%	2.01%
	Channel 5	1.32%	1.60%	0.91%
	ITV (SD+HD)	0.34%	0.04%	0.09%

Source: VVA/ Eurodata TV

One point worth noting is that the lowest proportions in transmission hours of non-domestic European works are to be found among UK channels; all of them well below 2%. This result is also confirmed by a 2015 EAO study²⁸⁹ where it was found that European programming is extremely low and more inclined to be based on mixed co-productions (which essentially could also include British/ non-European co-productions). The study concludes that *"if it is European, then it must be British"* (EAO, 2015c).

The EAO study found similar results for Germany and Poland (that can explain the extreme low values recorded on RTL and on Polsat). According to the EAO, the national TV series in Germany are by far the most significant in terms of hours, making up two thirds of the national content and when German channels broadcast other European content it is most likely to be mixed co-productions, European co-productions, British content or French content (EAO, 2015c).

In Poland, the EAO found that both public and private channels broadcast a significant amount of national content and this national content consists mainly of TV series (more than 80% in terms of broadcast hours). The most important other European content on Polish TV is British (EAO, 2015c).

²⁸⁹EAO (2015c) "European fiction works on TV channels". Available at: <http://www.obs.coe.int/documents/205595/264625/OBS+-+REFIT+-+Note+A.3+Origin+of+programming.pdf/70d5ac88-4a59-460f-a7ab-157f50594e7c>

12.2.4 Independent European works in 2016

Across our sample, Independent European works make up 27.85% of the total qualifying transmission hours in 2016 (29.4% in 2010 and 31% in 2007) compared to 26.24% of total qualifying viewer hours (vs. 33% in 2010 and 33.4% in 2007).

The proportions are higher when looking specifically at primetime: 30.09% in 2016 of the total qualifying transmission hours (32.6% in 2010 and 34.6% in 2007) and 27.41% in 2016 of the total viewer hours (36.2% in 2010 and 36.9% in 2007). This confirms the vitality of independent production, even though slightly declining over time.

As the 2011 study has shown, relying on independent production makes sense for broadcasters when they are public, with missions to foster a diversity of viewpoints and provide an economic basis for production companies, or private, with a goal to outsource part of the creativity and to limit the financial impact of the production business, which derives profits from a few large projects with a high risk of audience and profit failure, and which is more unstable by nature than the selling of advertising airtime or subscriptions based on habits and relationships created over a long time (Attentional, 2011).

Table 52: Ratio of Qualifying Independent European to Total Qualifying Hours and Viewer Hours by Channel and Country types, 2016

Type	Sub-type		Independent European Hours (%)	Independent European Viewer Hours (%) All Individuals	Independent European Viewer Hours (%) Young Adults
Avg. - total sample			27.85%	26.24%	28.31%
Peak time avg. – total sample			30.09%	27.41%	27.40%
Channel	Ownership	Public	22.65%	20.09%	30.24%
		Private	31.79%	30.93%	22.42%
	Revenue Model	Adv	31.79%	30.93%	22.42%
		Gvt	22.65%	20.09%	30.24%
Country	Geography	North	30.35%	27.37%	29.32%
		South	25.22%	24.92%	27.09%
	Recency	Old	28.80%	27.25%	29.32%
		New	26.42%	24.60%	27.00%
	Size	Large	31.40%	30.23%	31.85%
		Small	22.77%	21.20%	23.54%

Source: VVA/ Eurodata TV

At country and channel type level, a few points are worth noticing:

- **Independent European programmes are relatively more prominent on the television schedules of channels from “Old” Member States**, 28.80% of total European hours in 2016 (30.9% in 2010 and 32.3% in 2007) **compared with “New” Member States**, 26.42% in 2016 (24.7% in 2010 and 26.7% in 2007) **and from “Large” Member States**, 31.40% in 2016

(31% in 2010 and 32.4% in 2007) **compared with “Small” Member States**, 22.77% in 2016 (26.6% in 2010 and 28% in 2007). Indeed, only large countries have large-enough markets to sustain an independent production sector.

- Independent productions make up a **higher proportion of total viewing on advertising funded channels**, 31.79% in 2016 (35% in 2010) compared with **publicly funded channels**, 22.65% in 2016 (30.8% in 2010).

Table 53: Ratio of Qualifying Independent European to Qualifying Hours and Viewer Hours by Channel, 2016

Member States	Channels	Independent European Hours (%)	Independent European Hours (%) Viewer All Individuals	Independent European Viewer Hours (%) Young Adults
Finland	MTV3	16.37%	16.16%	12.41%
	NELONEN	52.90%	59.33%	53.20%
	SUBTV	26.77%	24.94%	29.35%
	YLE1	22.16%	21.37%	15.16%
	YLE2	14.88%	13.71%	14.28%
France	C8	34.20%	35.32%	21.21%
	France 2	42.72%	37.22%	25.42%
	France 3	38.82%	38.48%	30.51%
	M6	25.37%	32.46%	22.59%
	TF1	50.73%	58.38%	49.90%
Germany	ARD	16.13%	13.86%	8.49%
	PRO7	40.63%	40.27%	49.55%
	RTL	26.06%	25.57%	20.04%
	SAT.1	80.63%	83.87%	77.68%
	ZDF	15.94%	17.40%	13.76%
Hungary	Cool	95.11%	92.95%	97.18%
	DUNA TV	13.71%	9.87%	15.57%
	Film +	56.70%	64.83%	48.42%
	RTL KLUB	11.82%	12.89%	7.62%
	TV2	31.86%	51.12%	28.15%
Italy	Canale 5	23.97%	27.66%	23.90%
	Italia 1	37.44%	26.06%	24.62%
	Rai 1	5.76%	3.13%	4.43%
	Rai 2	30.01%	26.04%	18.97%

Member States	Channels	Independent European Hours (%)	Independent European Hours (%) Viewer All Individuals	Independent European Viewer Hours (%) Young Adults
	Rai 3	25.41%	30.97%	25.58%
Netherlands	NPO1	10.43%	10.94%	11.29%
	NPO2	6.14%	8.49%	11.60%
	NPO3	28.08%	28.64%	29.37%
	RTL4	20.31%	17.93%	12.46%
	SBS6	41.81%	38.00%	36.57%
Poland	Polsat	50.11%	45.72%	43.40%
	TV4	45.03%	36.22%	34.20%
	TVN	16.60%	21.30%	18.26%
	TVP1	49.43%	50.27%	40.76%
	TVP2	14.78%	11.06%	10.36%
Romania	Antena 1	0.00%	0.00%	0.00%
	Kanal D	20.62%	15.17%	14.27%
	National TV	14.43%	13.20%	14.35%
	Pro TV	2.83%	3.70%	2.95%
	TVR1	8.20%	5.10%	5.72%
Slovenia	Kanal A	37.38%	43.14%	34.10%
	Planet TV	33.18%	48.94%	30.55%
	POP TV	28.11%	23.92%	17.29%
	Slovenija 1	11.74%	9.18%	17.36%
	Slovenija 2	14.29%	14.02%	26.08%
Spain	Antena 3	23.36%	7.84%	33.33%
	CUATRO	16.35%	15.06%	7.45%
	La 1	27.30%	16.14%	29.35%
	LA SEXTA	3.15%	1.96%	2.13%
	Tele 5	43.47%	11.79%	44.48%
UK	BBC1	29.92%	26.25%	29.42%
	BBC2	23.94%	29.73%	24.85%
	Channel 4	65.94%	68.81%	67.41%

Member States	Channels	Independent European Hours (%)	Independent European Hours (%) Viewer All Individuals	Independent European Viewer Hours (%) Young Adults
	Channel 5	43.35%	42.54%	51.52%
	ITV (SD+HD)	19.95%	15.92%	12.61%

Source: VVA/ Eurodata TV

At channel level, the situation of European broadcasters with regards to Independent works is very varied across markets though. Most of the European broadcasters are comfortably above the 10% requirement of Article 17, except:

- Rai 1 (Italy);
- NPO 2 (the Netherlands);
- La Sexta (Spain); and
- The Romanian channels Antena 1, Pro Tv and TVR1.

Private channels sometimes rely heavily on independent production: Cool TV (95.11% of the total Qualifying European Hours) and Film + (56.70%) in Hungary, Sat.1 in Germany (80.63%), Nelonen in Finland (52.90%), TF1 in France (50.73%) and Polsat (50.11%) in Poland. Others are relatively lower but still allocate a larger than required proportion of their grid to independent production, like: TV4 in Poland (45.03%), Tele 5 in Spain (43.47%), Channel 5 in the UK (43.35%), SBS6 in the Netherlands (41.81%) and PRO7 (ProSieben) in Germany (40.63%).

Except for Channel 4 in the UK which relies heavily on independent production (65.94% of the total Qualifying European Hours), public channels offer relatively lower independent production compared with private channels, but still some of them allocate a large proportion of their grid: TVP1 in Poland (49.43% of the total Qualifying European Hours), France 2 and France 3 in France (42.72% and 38.82% respectively), Rai 2 in Italy (30.01%) and BBC1 in the UK (29.92%).

12.2.5 Recent independent European works in 2016

Across our sample, recent independent European works make up an average of 71.60% of the total independent European hours in 2016 (85.2% in 2010, 84.4% in 2007), compared to 71.49% of total independent viewer hours (89.3% in 2010 and 91.7% in 2007). The proportions are higher in primetime: 86.32% of total independent transmission hours (90.6% in 2010 and 92.4% in 2007) and 82.37% of total independent viewer hours (91.9% in 2010 and 95.5% in 2007).

This confirms that mainstream and free linear television are basically about fresh production.

In addition, as broadcasters favour recent works in primetime, audience levels automatically increase. There are very few differences between country and channel types although broadcasters from "Old" and "Larger" Member States tend to show fewer recent independent works (69.51% for "Old" Member States and 69.22% for "Large" Member States). As in the 2011 study, recent independent works continue to be more prominent on private channels compared to public (73.22% vs. 68.61%).

Table 54: Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours and Viewer Hours by Channel and Country types, 2016

Type	Sub-type	Recent Independent Hours (%)	Recent Independent Hours (%) All Individuals	Recent Independent Hours (%) Young Adults
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Type	Sub-type		Recent Independent Hours (%)	Recent Independent Hours (%) All Individuals	Recent Independent Hours (%) Young Adults
Avg. - total sample			71.60%	71.49%	74.22%
Primetime avg. – total sample			86.32%	82.37%	86.75%
Channel	Ownership	Public	68.61%	67.93%	75.84%
		Private	73.22%	74.76%	73.83%
	Revenue Model	Adv	73.22%	74.76%	73.83%
		Gvt	68.61%	67.93%	75.84%
Country	Geography	North	76.96%	75.20%	77.81%
		South	64.89%	69.06%	69.56%
	Recency	Old	69.51%	69.57%	73.86%
		New	74.98%	77.72%	74.74%
	Size	Large	69.22%	70.04%	70.88%
		Small	76.39%	76.97%	80.41%

Source: VVA/ Eurodata TV

Table 55: Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours and Viewer Hours by Channel, 2016

Member States	Channels	Recent Independent Hours (%)	Recent Independent Hours (%) All Individuals	Recent Independent Hours (%) Young Adults
Finland	MTV3	83.80%	86.04%	84.54%
	NELONEN	93.79%	95.02%	95.37%
	SUBTV	100.00%	100.00%	100.00%
	YLE1	47.40%	33.22%	37.99%
	YLE2	83.29%	84.82%	79.17%
France	C8	39.91%	31.44%	41.82%
	France 2	63.50%	60.27%	61.96%
	France 3	59.88%	65.71%	67.57%
	M6	42.74%	44.57%	55.07%
	TF1	52.89%	59.49%	50.98%
Germany	ARD	70.32%	73.56%	76.57%
	PRO7	100.00%	100.00%	100.00%
	RTL	86.90%	87.72%	87.90%

Member States	Channels	Recent Independent Hours(%)	Recent Hours Independent Individuals (%)	Recent Hours All Adults (%)	Recent Hours Independent (%) Young
	SAT.1	87.27%	84.22%		88.89%
	ZDF	69.57%	63.34%		65.35%
Hungary	Cool	48.05%	53.05%		47.79%
	DUNA TV	5.41%	4.15%		5.93%
	Film +	37.10%	34.31%		31.44%
	RTL KLUB	62.52%	61.40%		43.53%
	TV2	87.44%	94.64%		91.85%
Italy	Canale 5	65.99%	73.17%		75.36%
	Italia 1	10.45%	10.10%		9.92%
	Rai 1	52.28%	73.78%		79.23%
	Rai 2	28.46%	39.32%		40.32%
	Rai 3	76.68%	91.72%		88.44%
Netherlands	NPO1	100.00%	100.00%		100.00%
	NPO2	100.00%	100.00%		100.00%
	NPO3	75.83%	74.38%		76.24%
	RTL4	100.00%	100.00%		100.00%
	SBS6	95.23%	95.85%		93.22%
Poland	Polsat	96.70%	97.55%		96.70%
	TV4	94.93%	94.88%		94.39%
	TVN	12.79%	16.39%		13.41%
	TVP1	72.95%	68.04%		73.24%
	TVP2	68.35%	73.28%		74.99%
Romania	Antena 1	0.00%	0.00%		0.00%
	Kanal D	47.25%	62.42%		51.94%
	National TV	51.00%	42.40%		23.70%
	Pro TV	43.45%	29.18%		18.24%
	TVR1	74.36%	66.86%		69.92%
Slovenia	Kanal A	83.21%	85.00%		73.11%
	Planet TV	100.00%	100.00%		100.00%
	POP TV	94.00%	94.35%		98.20%

Member States	Channels	Recent Independent Hours (%)	Recent Hours Individuals Independent (%)	All	Recent Hours Adults Independent (%)	Young
	Slovenija 1	90.85%		95.02%		90.40%
	Slovenija 2	80.27%		81.50%		88.30%
Spain	Antena 3	74.02%		81.90%		84.33%
	CUATRO	91.57%		81.17%		82.16%
	La 1	63.59%		65.22%		66.48%
	LA SEXTA	100.00%		100.00%		100.00%
	Tele 5	68.41%		58.38%		68.63%
UK	BBC1	87.47%		87.84%		89.54%
	BBC2	66.08%		72.02%		80.64%
	Channel 4	93.03%		91.27%		90.17%
	Channel 5	63.61%		68.13%		68.27%
	ITV (SD+HD)	79.03%		83.43%		87.46%

Source: VVA/ Eurodata TV

13 Non-Linear Content Analysis

Building on the methodology of the 2011 report, we analysed the catalogues of 50 non-linear service providers channels in 6 Member States, in order to provide data relevant to Articles 13 of the Directive. The main conclusions of our analysis are:

- **99.41% of total hours and 99.85% of titles on video-on-demand services are qualifying works** including mostly cinema, TV fiction and documentary. **90.44% of total hours and 91.49% of titles on catch-up services are qualifying works;**
- Catch-up catalogues closely reflect the linear schedules of their broadcasters, while video-on-demand services, which generally focus their editorial resources on content acquisitions, distribution and promotion, have little, or no news or light entertainment policy;
- 89.06% of total catch-up hours and 90.28% of total titles are European works and 28.86% of total VOD hours and 29.75% of total titles are European works across our sample. **European works are significantly less present in the catalogues of VOD service providers than catch-up;**
- Non-linear service providers having just **one country as market destination** display **higher percentages of European works** in titles and hours (44.87% and 45.91%) higher **than multi-country** non-linear service providers;
- Analysing a proxy for the audiovisual consumption by provider in 5 Member States, it emerges that **non-European audiovisual works dominate the preference of the audience;**
- However, there are **few exceptions**: some non-linear service providers display higher percentages of “consumption” of European works (such as: BBC, ITV, All4, Now TV) and this greater demand appears to be mainly **driven by the investment in original productions** of these players of by **domestic audiovisual productions.**

13.1 Methodology

13.1.1 Overall objective and approach

The research methodology aimed to provide data relevant to Article 13 of the Directive based on the following approach:

- The catalogues of a sample of 50 non-linear media services from 6 Member States (France, Germany, Italy, Poland, Spain and the UK) were encoded by genre, qualifying type and European origin. Compared to the 2011 study, the focus was shifted on the different types of services rather than geographical coverage;
- Catalogues include from 50 to 3,000 titles, and even above 50,000 titles. We sampled 350 titles²⁹⁰ per service building up a database of 17,350 titles. The catalogues were retrieved thanks to the support of the European Audiovisual Observatory, JustWatch or collected manually (for catch-up catalogues only);
- Services were coded by key types: content (video-on-demand or catch-up), market destination (Multi-country, country), business model (TVOD, SVOD, Electronic Sell Through, free-advertising, free-government);
- Member States were coded by the same key types as the linear analysis: geography (North or South) and EU membership (old or recent);
- Statistics were created to estimate key indicators for each service, service type and country type²⁹¹, proportions:
 - of qualifying works in total catalogues;
 - of European works in total catalogues; and
 - of European works in total qualifying catalogues.
- Statistics are provided for 2 different types of measures:
 - Hours: represent the total duration of analysed programmes from the catalogues;
 - Titles: represent the total number of different titles in the catalogues;
- As non-linear audience measurement is not as centralised and consistent as linear viewing, we made a separate analysis of non-linear consumption.

13.1.2 Encoding titles and processing non-linear data

The main objective of coding non-linear data was to determine the geographic origin of each individual programme in order to identify European works, which is the only quantitative editorial requirement of Article 13. In addition, we coded the genre of each individual programme in order to provide results for qualifying programmes.

The genre classification was the same as that used for linear content in the linear methodology. The key criteria to encode non-linear programmes are summarised in Table 56.

Table 56: Key criteria for encoding non-linear programmes

		Reference
Qualifying programmes	<i>Determining the genre of the programme</i>	
	• Entertainment, Fiction,	Articles 16 and 17 of the AVMS

²⁹⁰ The titles in the catalogues were assigned a "random number" (Excel function) and ranked from the largest to the smallest. The first 350 titles were chosen to be part of the final database.

²⁹¹ Article 13 does not feature exactly the same requirements as Article 16 and 17. In particular, the requirements only concern the proportion of European works, but not that of independent or of recent independent works.

		Reference
	Cinema film, Documentary and Factual magazine are qualifying; <ul style="list-style-type: none"> • News, Sports, Events and Games are not qualifying; • Advertising, Teletext services and Teleshopping are non-programme material. 	Directive
European Works	<i>Geographical requirement</i>	
	Works originating from: <ul style="list-style-type: none"> • One of the 28 EU Member States; • European third states which have ratified the European Convention on Transfrontier Television of the Council of Europe and co-production agreements with the EU; • European third states which have concluded co-production agreements with the EU. 	Article 1 (1) (n) of the AVMS Directive
	<i>Workforce requirement</i>	
	Works must comply with one of the following three conditions: <ul style="list-style-type: none"> • They are made by one or more producers established in one or more of those States; • The production of the works is supervised and actually controlled by one or more producers established in one or more of those States; • The contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States. 	Article 1 (3) of the AVMS Directive

13.1.3 Sampling Member States, services and programmes

In terms of the sample of services, the following types of non-linear providers were investigated:

- **Video-on-demand:** Paid or free access to a catalogue of audiovisual works;
- **Branded channels:** Channels of broadcasters on open platforms such as YouTube, Dailymotion, Snack TV; and
- **Catch-up TV services:** Provision of recent programmes by a broadcaster after their initial broadcasting and during a limited period of time.

However, branded channels were excluded from the final sample selection as by definition they are "marketing channels" and what is shown does not qualify according

to the methodology highlighted in Table 56. This is confirmed by a study conducted by the European Audiovisual Observatory in 2016²⁹² that investigated a sample of broadcasters in 5 EU countries: the main purpose of videos uploaded by broadcasters of all business models onto their YouTube and Dailymotion channels seems to be branding, promotional, marketing and communication rather than providing full catch-up services for viewers (EAO, 2016c).

The European Audiovisual Observatory (EAO, 2016c) also concluded that the videos posted on YouTube and Dailymotion channels can be categorised according to six main uses²⁹³:

1. **Promotional videos for TV programme, best ofs:** This format of videos can be promotional videos for channels, corporate communication or upcoming events. Best-ofs are often short video clips showing a special moment of a TV broadcast or summarising a TV show with its best moments, for promotional purposes;
2. **Trailers of TV programmes to come:** These are mostly video clips announcing the future broadcast of a TV show, film or special programme;
3. **Extracts of TV programmes (often for social sharing purposes):** These short video clips, the most common type of video posted on YouTube by broadcasters, are extracts of TV shows and programmes, mostly under 5 minutes and often even under 1 minute. Their main purpose seems to be to entertain viewers with special parts of a TV programme and to encourage sharing on social networks in order to attract audiences;
4. **Catch-up of short format videos (under 20 minutes):** These video clips are mostly under 5 minutes (with a limited number in the 5 to 20 minutes bracket) of special segments of a TV programme (comedians, sketch, musical performance, interviews, exhibition of a dance or song contest...), short TV programmes (under 5 minutes) or news broadcast;
5. **Catch-up of full length videos (more than 20 minutes):** These are video clips exceeding 20 minutes and allow a true catch-up of a given TV programme. The EAO commented that this is the rarest format of video clips on the YouTube channel pages of broadcasters. When broadcasters make such long format catch-up videos available it is most of the time only for a limited number of TV programmes (not films or TV series), mostly produced by the broadcaster (TV talk shows, reality TV, news broadcast, documentaries);
6. **Original digital content (e.g. content not broadcasted on linear channels):** When there is exclusive original digital content it is most of the time additional content for broadcasted TV programmes (behind the scenes, making ofs, additional questions in interviews) and rarely true independent digital content (web series, YouTube comedians);

Therefore, taking into account the key criteria for encoding (Table 56) and the results of the EAO study, it was decided to exclude branded channels as their inclusion in the sample would negatively skew the results towards higher percentages of “non-qualifying” audiovisual materials.

²⁹² EAO (2016c) “The presence of broadcasters on video sharing platforms”.

²⁹³ EAO (2016d) “The presence of broadcasters on video sharing platforms”, pp. 6-7

In addition, compared to the 2011 study, it is important to take into account that in the last few years, country of origin has been of diminishing importance. There are many more multi-country services than before and many more business models. For example, Netflix has its European headquarters in the Netherlands. If we took the same approach as the last study, we would be ignoring Netflix if the Netherlands was not a sample country. A further change is that the same service is available in different versions (e.g. the catalogue offered by Netflix in Hungary is different from that offered in France). We are therefore led to look at where services are receivable rather than where the European headquarters of the providers are located.

The sample of 50 European non-linear services developed for this Study provides a mix of type of service (37 Video-on-demand, 13 Catch-up TV services), market coverage (25 Country, 25 Multi-country) and business model (16 TVOD, 7 EST, 15 SVOD, 7 Free-Gvt, 6 Free-Adv).

Table 57: List of the 50 non-linear services, 2016

Country	Type of service	Non-linear service provider	Market	Business Model
France	Video-on-demand	Univers Ciné VOD	Country	TVOD
		Wuaki.TV	Multi-country	TVOD
		iTunes	Multi-country	EST
		Netflix	Multi-country	SVOD
		La VoD d'Orange	Country	TVOD
		CanalPlay	Country	SVOD
		MyTF1VoD	Country	TVOD
	Catch-up services TV	Pluzz	Country	Free-Gvt
		TF1 videos	Country	Free-Adv
Germany	Video-on-demand	iTunes	Multi-country	EST
		Netflix	Multi-country	SVOD
		Wuaki.TV	Multi-country	TVOD
		Maxdome	Country	TVOD
		Chili TV	Multi-country	TVOD
		Amazon Prime Video	Multi-country	SVOD
	Catch-up services TV	TV Now ("Nur Free")	Country	Free-Adv
		ARD	Country	Free-Gvt

Country	Type of service	Non-linear service provider	Market	Business Model	
		ZDF	Country	Free-Gvt	
Italy	Video-on-demand	iTunes	Multi-country	EST	
		Netflix	Multi-country	SVOD	
		Premium Play	Country	SVOD	
		Timvision	Country	SVOD	
		Chili TV	Multi-country	TVOD	
		Wuaki.TV	Multi-country	TVOD	
		Now TV	Multi-country	SVOD	
	Catch-up services	TV	Rai Replay	Country	Free-Gvt
			Video Mediaset	Country	Free-Adv
Poland	Video-on-demand	Chili.TV	Multi-country	TVOD	
		Ipla.tv	Country	SVOD	
		iTunes	Multi-country	EST	
		Netflix	Multi-country	SVOD	
	Catch-up services	TV	Playpuls	Country	Free-Adv
			TVPpl	Country	Free-Gvt
Spain	Video-on-demand	iTunes	Multi-country	EST	
		Netflix	Multi-country	SVOD	
		Atresplayer	Country	TVOD	
		Mubistar+	Country	SVOD	
		Wuaki.TV	Multi-country	TVOD	
	Catch-up services	TV	Atresmedia	Country	Free-Adv
			Canal Sur A la carta	Country	Free-Gvt
United Kingdom	Video-on-demand	iTunes	Multi-country	EST	

Country	Type of service	Non-linear service provider	Market	Business Model
		Netflix	Multi-country	SVOD
		MSN Video Player	Country	TVOD
		Shudder	Country	TVOD
		Chili TV	Multi-country	TVOD
		Wuaki.tv	Multi-country	TVOD
		Now TV	Multi-country	SVOD
		Sky Go	Multi-country	SVOD
	Catch-up TV services	BBC iPlayer	Country	Free-Gvt
		ITV Player	Country	Free-Adv

Source: VVA/EAO/JustWatch

In the absence of official market share figures, it is difficult to know which services are the most used. However, by having Netflix and Apple's iTunes, we think that two of the major providers of subscription-based and transactional VOD services in the European Union have been integrated in the note. Also, several multi-country VOD services such as Wuaki.TV and Chili TV have been looked at in this study. Despite this fact, it is however clear that the VOD services analysed in this note do not reflect the full VOD offer in each country.

In addition, catalogues might not have been retrieved fully for some services. Retrieving a VOD catalogue without an existing database (such as unogs.com, the unofficial Netflix online Global Search 2016 database, which was used for Netflix) can be difficult and services such as Microsoft's Movies or Apple's iTunes do not give the total number of titles in their catalogues (EAO, 2016a). For this reason, it might be that some catalogues were not retrieved fully. Despite this fact, the high number of titles retrieved ensure enough representatively of the figures obtained.

The retrieval of titles took place in October 2016 for the catalogues provided by EAO, whereas the retrieval of titles through JustWatch took place in May 2017.²⁹⁴

As regards catch-up TV services, each catalogue was researched over typically 2-3 days in April 2017.

Catalogues change quickly, even on a week-to-week or day-to-day basis. Thus, all figures given in the note are only a snapshot and could be different at the time of publication of this study.

²⁹⁴ The EAO provided to the consortium the catalogues of the non-linear service providers investigated in the study EAO (2016a) "Origin of films in Transactional and Subscription VOD catalogues in the EU" This sample was integrated with additional catalogues retrieved through the support of JustWatch in May 2017.

The final product is a database of 17,313 titles on 50 services: 100% of these titles were coded according to genre, 97.80% of them meet the definition of “qualifying” transmissions and were consequently coded according to European origin²⁹⁵.

Table 58 shows the ratio of encoded titles compared to the available total titles in each catalogue. On average, we encoded the 21.88% of each catalogue, however this percentage varies considerably. The catalogues of Playpuls (PL) and Shudder (UK) were fully encoded because their total catalogues count less than 350 titles.

Table 58: Ratio of encoded titles to total available titles in catalogues

Country	Non-linear service provider	Coded Titles (%)
France	Univers Ciné VOD	12.2%
	Wuaki.TV	11.1%
	iTunes	5.0%
	Netflix	21.7%
	La VoD d'Orange	4.8%
	CanalPlay	34.0%
	MyTF1VoD	5.8%
	Pluzz	46.1%
	TF1 videos	8.6%
Germany	iTunes	4.3%
	Netflix	23.9%
	Wuaki.TV	10.9%
	Maxdome	8.8%
	Chili TV	10.7%
	Amazon Prime Video	2.8%
	TV Now	58.3%
	ARD Mediatheck	35.0%
	ZDF Mediatheck	0.7%
Italy	iTunes	19.5%
	Netflix	21.6%
	Premium Play	18.2%

²⁹⁵ Matching errors of film titles with a wrong country of production might have occurred. Once film titles are retrieved, they need to be matched to their correct film titles in databases (we used IMDb, LUMIERE and The Movie Database) in order to identify the country and region of production and this process was carried out manually.

Country	Non-linear service provider	Coded Titles (%)
	Timvision	11.7%
	Chili TV	5.2%
	Wuaki.TV	12.5%
	Now TV	44.5%
	Rai Replay	28.9%
	Video Mediaset	66.5%
Poland	Chili.TV	17.6%
	Ipla.tv	25.5%
	iTunes	9.4%
	Netflix	29.9%
	Playpuls	100%
	TVPpl	1.9%
Spain	iTunes	7.8%
	Netflix	21.4%
	Atresplayer	16.9%
	Mubistar+	19.1%
	Wuaki.TV	7.9%
	Atresmedia	8.2%
	Canal Sur A la carta	58.3%
United Kingdom	iTunes	3.3%
	Netflix	14.0%
	MSN Video Player	10.1%
	Shudder	100%
	Chili TV	11.1%
	Wuaki.tv	8.4%
	Now TV	26.5%
	Sky Go	25.7%
	BBC iPlayer	6.0%
	ITV Player	31.8%

Country	Non-linear service provider	Coded Titles (%)
Total sample average: 21.88%		

Source: VVA/EAO/JustWatch

13.2 Overview of findings

Results for the proportions of European works and qualifying works are provided both as a percentage of titles and of the cumulative durations of titles.

We then look at the proportion of European works by channel and channel/Member State types. We analyse European works as a proportion of both total catalogues (corresponding strictly to the requirement of Article 13), and qualifying catalogues (after exclusion of non-qualifying genres as defined in Article 16).

For titles with multiple episodes, typically content other than cinema and TV movies or long-form documentaries, we considered all episodes available at the time of the research. Extracts, trailers and promotional content were excluded from our sampling as they fall outside the scope of the Directive.

13.2.1 Qualifying works in 2016

There is no requirement in Article 13 regarding qualifying works. We reviewed this indicator in order to compare linear and non-linear offers in terms of genres, as was done in the previous study.

Key findings from our analysis of qualifying programmes in the catalogues of the non-linear services of our sample are presented in Table 59, Table 60 and Table 61 and include:

- **99.41% of total hours and 99.85% of titles on video-on-demand services are qualifying works** including mostly cinema, TV fiction and documentary (98.3% of total hours and 98.8% of titles in 2010);
- **90.44% of total hours and 91.49% of titles on catch-up services are qualifying works** (75.6% of total hours and 67.7% of titles in 2010).

Catch-up offers audiovisual works originally made for television, including large volumes of news and games. In other words, catch-up catalogues closely reflect the linear schedules of their broadcasters, while video-on-demand services, which generally focus their editorial resources on content acquisitions, distribution and promotion, have little, or no news or light entertainment policy (Attentional, 2011). Four further points are worth noting:

- **Qualifying hours are less prominent in the catalogues of public compared with private services** (91.29% vs. 99.12%). This illustrates the policy of public broadcasters, with more information content than private players, to make them widely available to on-demand users;
- **Results for qualifying titles are generally very similar to qualifying hours.** The greatest differences are registered in the category private catch-up service providers (Free-Adv 89.47% in hours vs. 91.08% in titles) and public catch-up service providers (Free-Gvt 91.84% in titles vs. 91.84% in hours), explained by the higher proportion of sport events, news, reality show and games content in their nonlinear catalogues;
- The sum of **catch-up catalogues from "Old" countries display lower percentages of qualifying hours** and titles than "New" countries; and
- The sum of **catch-up catalogues from "Northern" countries display significantly lower percentages of qualifying hours** and titles than "Southern" countries.

Table 59: Ratio of Qualifying Hours and Qualifying Titles to Total Hours and Titles by service and country types, 2016

Type	Sub-type		Qualifying works in % hours		Qualifying works in % titles	
			Catch-up	VOD	Catch-up	VOD
Non-linear service provider	Type	VOD	99.41%	99.85%		
		Catch-up	90.44%	91.49%		
	Ownership	Private	99.12%	98.71%		
		Public	91.29%	91.84%		
	Revenue Model	SVOD	99.54%	99.67%		
		TVOD	99.98%	99.96%		
		EST	100%	100%		
		Free-Adv	89.47%	91.08%		
		Free-Gvt	91.29%	91.84%		
	Market destination	Country	96.69%	95.54%		
Multi-country		99.73%	99.79%			
Country	Geography	North	97.92%	97.29%		
		South	99.15%	98.31%		
	Recency	Old	98.44%	97.61%		
		New	99.53%	99.28%		

Source: VVA/EAO/JustWatch

Table 60: Ratio of Qualifying Hours and Qualifying Titles to Total Hours and Titles for catch-up and VOD services by service and country types, 2016

Type	Sub-type		Qualifying works in % hours		Qualifying works in % titles	
			Catch-up	VOD	Catch-up	VOD
Non-linear service provider	Ownership	Private	89.74%	99.81%	91.08%	99.85%
		Public	91.29%	-	91.84%	-
	Revenue Model	SVOD	-	99.54%	-	99.67%
		TVOD	-	99.98%	-	99.96%
		EST	-	100%	-	100%
		Free-Adv	89.47%	-	91.08%	-
		Free-Gvt	91.29%	-	91.84%	-
	Market destination	Country	90.44%	100%	91.49%	100%
		Multi-country	-	99.73%	-	99.79%

Type	Sub-type		Qualifying works in % hours		Qualifying works in % titles	
			Catch-up	VOD	Catch-up	VOD
Country	Geography	North	87.18%	99.62%	90.64%	99.71%
		South	93.61%	99.99%	92.52%	99.98%
	Recency	Old	89.96%	99.79%	90.64%	99.83%
		New	95.66%	100%	97.38%	100%

Source: VVA/EAO/JustWatch

A provider-by-provider breakdown (Table 61) shows that the catch-up services of public broadcasters sometimes show a rather low proportion of qualifying works in their catalogues. The most striking examples are those of Pluzz in France (87.26% in hours and 84.20% in titles) and BBC iPlayer (75.42% and 81.48%).

This phenomenon can also affect private services, as is the case of TF1 Video Replay in France (81.10% and 90.23%) and ITV Hub in the UK (76.12% and 81.20%).

Table 61: Ratio of Qualifying Hours and Qualifying Titles to Total Hours and Titles by services, 2016

Country	Non-linear service provider	Qualifying Hours (%)	Qualifying Titles (%)
DE	Amazon Prime	89.76%	95.43%
	ARD	91.46%	92.57%
	Chili	100.00%	100.00%
	iTunes	100.00%	100.00%
	Maxdome	100.00%	100.00%
	Netflix	100.00%	100.00%
	TV Now	95.89%	94.57%
	Wuaki	100.00%	100.00%
	ZDF	93.81%	93.14%
ES	Atresmedia	94.9%	93.14%
	Atresplayer	100.0%	100.00%
	Canal Sur	96.5%	97.11%
	iTunes	100.0%	100.00%
	Movistar+	100.0%	100.00%
	Netflix	100.0%	100.00%
	Wuaki	100.0%	100.00%
FR	Canalplay	100.00%	100.00%
	iTunes	100.00%	100.00%

Country	Non-linear service provider	Qualifying Hours (%)	Qualifying Titles (%)
	MyTF1VOD	100.00%	100.00%
	Netflix	99.82%	99.71%
	Orange VOD	100.00%	100.00%
	Pluzz	87.26%	84.20%
	TF1 Video Replay	81.10%	90.23%
	Univercine	100.00%	100.00%
	Wuaki	100.00%	100.00%
IT	Chili	100.00%	100.00%
	iTunes	100.00%	100.00%
	Mediaset Premium	100.00%	100.00%
	Netflix	100.00%	100.00%
	NowTV	100.00%	100.00%
	Rai Replay	98.13%	97.97%
	Timvision	100.00%	100.00%
	Video Mediaset	95.52%	94.83%
	Wuaki	100.00%	100.00%
PL	Chili	100.00%	100.00%
	Ipla	100.00%	100.00%
	iTunes	100.00%	100.00%
	Netflix	100.00%	100.00%
	Playpuls	89.13%	93.96%
	TVNPL	98.77%	99.15%
UK	BBC iPlayer	75.42%	81.48%
	Chili	100.00%	100.00%
	iTunes	100.00%	100.00%
	ITV Hub	76.12%	81.20%
	Microsoft	99.71%	99.43%
	Netflix	100.00%	100.00%
	NowTV	100.00%	100.00%
	Shudder	100.00%	100.00%
	SkyGo	100.00%	100.00%

Country	Non-linear service provider	Qualifying Hours (%)	Qualifying Titles (%)
	Wuaki	100.00%	100.00%

Source: VVA/EAO/JustWatch

13.2.2 European works in total catalogues in 2016

Key findings from our analysis of European programmes in the catalogues of the non-linear services of our sample are presented in Table 62, Table 63 and Table 64 and include:

- **89.06% of total catch-up hours and 90.28% of total titles are European works** across our sample as catch-up services mostly retain the non-linear rights to their national programmes (96.2% of total hours and 99.0% of titles in 2010);
- The sum of **catch-up catalogues from "Old" countries display lower percentages** of European hours and titles than **"New" countries**;
- The sum of **catch-up catalogues from "Northern" countries display higher percentages** of European hours and titles than **"Southern" countries**;
- **28.86% of total VOD hours and 29.75% of total titles are European works** across our sample (45.1% of total hours and 48.7% of titles in 2010);
- Non-linear service providers having just **one country as market destination** display **higher percentages** of European works in titles and hours (44.87% and 45.91%), higher **than multi-country** non-linear service providers (22.24% and 23%);
- The sum of **VOD catalogues from "Old" countries display higher percentages** of European hours and titles than **"New" countries**;
- The sum of **VOD catalogues from "Northern" countries display lower percentages** of European hours and titles than **"Southern" countries**.

These findings confirm the results obtained in the 2011 study:

- Catch-up catalogues are closely linked to linear content for which broadcasters retain rights, which are predominantly national and thus European; and
- Video-on-demand services feed their catalogues with a majority of non-European works, and this is especially true for multi-country non-linear service providers, as many distributors of large film catalogues are not European.

Table 62: Ratio of European Hours and Titles to Total Hours and Titles by service and country types, 2016

Type	Sub-type		European works in % hours	European works in % titles
Non-linear service provider	Type	VOD	28.86%	29.75%
		Catch-up	89.06%	90.28%
	Ownership	Private	32.73%	36.95%
		Public	88.72%	92.82%
	Revenue Model	SVOD	24.33%	25.11%
		TVOD	32.81%	34.07%
		EST	28.83%	29.88%
		Free-Adv	89.44%	87.40%
		Free-Gvt	88.72%	92.82%

Type	Sub-type		European works in % hours	European works in % titles
	Market destination	Country	59.46%	68.46%
		Multi-country	22.24%	23.00%
Country	Geography	North	30.42%	40.20%
		South	42.12%	47.57%
	Recency	Old	37.04%	44.38%
		New	31.55%	43.82%

Source: VVA/EAO/JustWatch

Table 63: Ratio of European Hours and Titles to Total Hours and Titles for catch-up and VOD services by service and country types, 2016

Type	Sub-type		European works in % hours		European works in % titles	
			Catch-up	VOD	Catch-up	VOD
Non-linear service provider	Ownership	Private	89.44%	28.86%	87.40%	29.75%
		Public	88.72%	-	92.82%	-
	Revenue Model	SVOD	-	24.33%	-	25.11%
		TVOD	-	32.81%	-	34.04%
		EST	-	28.83%	-	29.08%
		Free-Adv	89.44%	-	87.40%	-
		Free-Gvt	88.72%	-	92.42%	-
	Market destination	Country	89.07%	44.87%	90.28%	45.91%
		Multi-country	-	22.24%	-	23.00%
	Country	Geography	North	94.44%	21.12%	94.33%
South			83.95%	36.12%	85.37%	37.44%
Recency		Old	88.20%	29.47%	89.00%	30.42%
		New	98.08%	23.88%	98.56%	24.21%

Source: VVA/EAO/JustWatch

A few further points are worth noting:

- Results for **European titles are generally very similar to European hours**;
- **European works are significantly less present in the catalogues of VOD service providers than catch-up.** The catalogues of SVOD providers display the lowest percentages of European works in hours and titles among the three revenue models for VOD;
- **European works are significantly more present in the catalogues of public services in terms of titles** (92.82%) than private services (87.40%).

Public services tend to focus on national production and a broad range of news content.²⁹⁶ Instead, private services are more likely to include some key foreign acquisitions in their catalogues.

Table 64: Ratio of European Hours and Titles to total Hours and Titles by service, 2016

Country	Non-linear service provider	European Hours (%)	European Titles (%)
DE	Amazon Prime	13.54%	15.86%
	ARD	100.00%	100.00%
	Chili	15.67%	15.23%
	iTunes	41.03%	39.67%
	Maxdome	46.29%	43.97%
	Netflix	17.95%	17.61%
	TV Now	98.55%	98.51%
	Wuaki	31.14%	30.18%
	ZDF	98.47%	99.53%
ES	Atresmedia	88.45%	89.44%
	Atresplayer	36.14%	34.49%
	Canal Sur	96.53%	96.72%
	iTunes	23.14%	22.05%
	Movistar+	41.71%	39.52%
	Netflix	20.57%	20.45%
	Wuaki	28.00%	27.31%
FR	Canalplay	48.86%	48.91%
	iTunes	42.57%	42.34%
	MyTF1VOD	42.00%	40.63%
	Netflix	25.71%	23.59%
	Orange VOD	64.57%	62.75%
	Pluzz	89.08%	88.08%
	TF1 Video Replay	74.92%	73.46%
	Univercine	73.14%	72.15%
	Wuaki	32.86%	32.39%

²⁹⁶ While news are not qualifying European works, factual magazine programmes based on news are included in the methodology. Please refer to chapter 10.1 for a full overview of the methodology used.

Country	Non-linear service provider	European Hours (%)	European Titles (%)
IT	Chili	38.29%	36.74%
	iTunes	34.00%	32.28%
	Mediaset Premium	51.14%	47.05%
	Netflix	19.20%	19.20%
	NowTV	38.46%	33.97%
	Rai Replay	70.03%	64.95%
	Timvision	25.43%	25.39%
	Video Mediaset	98.79%	99.26%
	Wuaki	25.43%	24.91%
PL	Chili	18.00%	17.12%
	Ipla	48.29%	49.65%
	iTunes	14.86%	13.87%
	Netflix	15.71%	15.62%
	Playpuls	97.66%	96.40%
	TVNPL	99.14%	98.81%
UK	BBC iPlayer	98.95%	98.07%
	Chili	7.14%	7.00%
	iTunes	23.14%	22.29%
	ITV Hub	70.94%	77.38%
	Microsoft	15.43%	15.51%
	Netflix	14.29%	13.96%
	NowTV	10.29%	10.00%
	Shudder	25.08%	26.28%
	SkyGo	8.57%	8.19%
	Wuaki	22.86%	22.28%

Source: VVA/EAO/JustWatch

A number of services show results that are different from the typical situations found across our sample, reflecting the diversity of models and players in the non-linear market today. The services with the **lowest proportions of European works** are generally **found in the catalogues of multinational players**, such as Netflix, Amazon, Chili TV and Sky (both Now TV and Sky Go).

The very same operators display higher percentages of European works in their catalogues available in “Southern” European countries (France, Italy and

Spain) compared to the catalogues available in “Northern” European countries (Germany, Poland and UK).

Some services offer among the highest proportions of European works in their total catalogues, above 45%, these include: Universciné, an independent service originated from the production business in France, Canalplay (Videndi), Orange VOD (Orange), Maxdome (P7S1), Mediaset Premium (Mediaset) and Ipla (Cyfrowy Polsat).

With the exclusion of the catch-up service providers (BBC iPlayer and ITV Hub), **the lowest percentage of European works are found among the VOD catalogues available in the UK.**

13.2.3 European works in qualifying catalogues in 2016

In order to refine comparisons between linear and non-linear data, we provide the proportions of European works in catalogues after excluding non-qualifying works.

Key findings from our analysis are presented in Table 65, Table 66 and Table 67 and they include:

- **89.35% of qualifying hours and 90.52% of qualifying titles on catch-up services are European works** (95.4% of qualifying hours and 98% of qualifying titles in 2010);
- The sum of **catch-up** catalogues from “**Old**” countries display **lower percentages** of European qualifying hours and titles than “**New**” countries;
- The sum of **catch-up catalogues** from “**Northern**” countries display significantly **higher percentages** of European qualifying hours and titles than “**Southern**” countries.
- **28.91% of qualifying hours and 29.79% of qualifying titles on video-on-demand services are European works** (44.6% of qualifying hours and 48% of qualifying titles in 2010);
- Non-linear service providers having just **one country** as market destination display percentages of **European qualifying works** in hours and titles (44.87% and 45.81%) **higher than multi-country** non-linear service providers (22.29% and 23.04%);
- The sum of **VOD catalogues** from “**Old**” countries display **lower percentages** of European qualifying hours than “**New**” countries **but higher percentage in titles**;
- The sum of **VOD catalogues** from “**Northern**” countries display **lower percentages** of **European qualifying hours and titles** than “**Southern**” countries;

These findings are nearly identical to the results based on total catalogues (refer to sub-chapter 13.2.2). European hours and titles are slightly more prominent when looking at total qualifying catalogues compared to the total catalogues, reflecting the fact that catch-up services mostly retain the non-linear rights to their national programmes whatever genres, while video-on-demand services feature hardly any non-qualifying content anyway.

Table 65: Ratio of Qualifying European Hours and Titles to Qualifying Hours and Titles by service and country types, 2016

Type	Sub-type		Qualifying European works in % hours	Qualifying European works in % titles
Non-linear service provider	Type	VOD	28.91%	29.79%
		Catch-up	89.35%	90.52%

Type	Sub-type		Qualifying European works	
			in % hours	in % titles
	Ownership	Private	32.62%	36.75%
		Public	88.68%	92.80%
	Revenue Model	SVOD	24.43%	25.18%
		TVOD	32.82%	34.08%
		EST	28.93%	29.80%
		Free-Adv	90.14%	87.82%
		Free-Gvt	88.68%	92.80%
	Market destination	Country	59.27%	68.33%
		Multi-country	22.29%	23.04%
	Country	Geography	North	30.19%
South			42.08%	47.52%
Recency		Old	31.55%	44.38%
		New	36.93%	43.65%

Source: VVA/EAO/JustWatch

Table 66: Ratio of Qualifying European Hours and Titles to Qualifying Hours and Titles for catch-up and VOD services by service and country types, 2011

Type	Sub-type		Qualifying European works in % hours		Qualifying European works in % titles	
			Catch-up	VOD	Catch-up	VOD
Non-linear service provider	Ownership	Private	90.14%	28.85%	87.82%	29.78%
		Public	88.68%	-	92.80%	-
	Revenue Model	SVOD	-	24.43%	-	25.10%
		TVOD	-	32.82%	-	34.07%
		EST	-	28.83%	-	29.80%
		Free-Adv	90.14%	-	87.82%	-
		Free-Gvt	88.68%	-	92.80%	-
	Market destination	Country	89.34%	44.87%	90.52%	45.91%
		Multi-country	-	22.23%	-	23.04%
	Country	Geography	North	95.43%	21.19%	94.98%
South			83.85%	36.13%	85.29%	37.45%
Recency		Old	88.49%	23.88%	89.25%	30.47%
		New				

Type	Sub-type		Qualifying European works in % hours		Qualifying European works in % titles	
			Catch-up	VOD	Catch-up	VOD
		New	98.08%	29.47%	98.65%	24.21%

Source: VVA/EAO/JustWatch

Table 67: Ratio of Qualifying European Hours and Titles to Qualifying Hours and Titles by service, 2016

Country	Non-linear service provider	Qualifying European works in % hours	Qualifying European works in % titles
DE	Amazon Prime	17.40%	14.07%
	ARD	100.00%	100.00%
	Chili	15.23%	15.67%
	iTunes	39.67%	41.03%
	Maxdome	43.97%	46.29%
	Netflix	17.61%	17.95%
	TV Now	98.47%	98.49%
	Wuaki	30.18%	31.14%
	ZDF	99.53%	98.47%
ES	Atresmedia	89.34%	88.34%
	Atresplayer	34.49%	36.14%
	Canal Sur	96.60%	96.43%
	iTunes	22.05%	23.14%
	Movistar+	39.52%	41.71%
	Netflix	20.45%	20.57%
	Wuaki	27.31%	28.00%
FR	Canalplay	48.91%	48.86%
	iTunes	42.34%	42.57%
	MyTF1VOD	40.63%	42.00%
	Netflix	23.64%	25.79%
	Orange VOD	62.75%	64.57%
	Pluzz	88.08%	89.08%
	TF1 Video Replay	73.32%	74.84%
	Univercine	72.15%	73.14%
	Wuaki	32.39%	32.86%

Country	Non-linear service provider	Qualifying European works in % hours	Qualifying European works in % titles
IT	Chili	36.74%	38.29%
	iTunes	32.28%	34.00%
	Mediaset Premium	47.05%	51.14%
	Netflix	19.20%	19.20%
	NowTV	33.97%	38.46%
	Rai Replay	64.95%	70.03%
	Timvision	25.39%	25.43%
	Video Mediaset	99.26%	98.79%
	Wuaki	24.91%	25.43%
PL	Chili	17.12%	18.00%
	Ipla	49.65%	48.29%
	iTunes	13.87%	14.86%
	Netflix	15.62%	15.71%
	Playpuls	96.40%	97.66%
	TVNPL	98.81%	99.14%
UK	BBC iPlayer	98.07%	98.95%
	Chili	7.00%	7.14%
	iTunes	22.29%	23.14%
	ITV Hub	78.27%	70.53%
	Microsoft	15.56%	15.52%
	Netflix	13.96%	14.29%
	NowTV	10.00%	10.29%
	Shudder	26.28%	25.08%
	SkyGo	8.19%	8.57%
	Wuaki	22.28%	22.86%

Source: VVA/EAO/JustWatch

A few further points are worth noting:

- **European programmes are significantly more prominent in the Qualifying catalogues of catch-up services than video-on-demand (90.52% vs. 29.79% in titles);**
- **European programmes are significantly more prominent in the Qualifying catalogues of public services (88.68% of hours and 92.80% of titles) than private services (32.62% of hours and 36.75% of titles);**

- **Multi-country non-linear service providers display the lowest percentage of European qualifying works.** Besides, the catalogues shown by the same operators in “Southern” European countries (France, Italy and Spain) display higher percentages of European qualifying works compared to the catalogues available in “Northern” European countries (Germany, Poland and UK).

13.2.4 Non-linear consumption in 2016

This section provides insights about what is viewed on on-demand services and the percentage of European works amongst the most viewed audiovisual works.

This will enable the Commission to assess the relative importance of non-linear services for the cultural and economic objectives of the Directive.

Data were retrieved thanks to the support of *JustWatch*²⁹⁷ on five Member States (i.e. France, Germany, Italy, Spain and the UK) covering the period April 2016-April 2017. Compared to the previous study, where the total Internet video viewing in the UK was presented as a case study, we expanded the analysis in terms of geographical coverage. However, statistics can only be provided in terms of number of titles and not in terms of viewer hours.

The following database is based on the most popular audiovisual works “searched” by JustWatch users through its website and apps in the catalogues that the company monitors – hereinafter referred as “*audience usage*”.

We interpreted the “*audience usage*” as a good proxy of audience behaviour.

The “*audience usage split*” is the variable that counts the number of “clicks” that each title received over the April 2016-April 2017 period. The sample of “clicks” is not homogenous among the four Member States and it varies significantly ranging from 500,000 “clicks” in Germany and the UK, to 250,000 “clicks” in France, 100,000 in Spain and 50,000 in Italy.

In terms of non-linear service provider coverage, JustWatch does not include all the players available in each country (Table 68) but the major providers of VOD services in the European Union are included. Hence, we believe that the explanatory power of the sample can be considered sufficient enough to provide meaningful insights.

Table 68: Population coverage

Country	VOD services covered by JustWatch / total number of available VOD services per country (data from EAO)
DE	16%
FR	7.88%
GB	13.77%
IT	29.41%
ES	14.28%

²⁹⁷JustWatch’s business model is based on helping movie studios advertise their content to the right audience, collecting anonymised user data on movie taste and purchase behaviour through its website justwatch.com and apps in many countries worldwide. The corresponding anonymous user profiles are used to run highly-targeted and efficient video advertising campaigns on mainly YouTube and Facebook for movie releases in cinemas, home entertainment and VOD. The apps has reached almost 5,000,000 downloads worldwide.

Source: VVA calculations based on JustWatch and EAO, 2015a

The *audience usage split* can also be used to inform about the potential “market shares” of each VOD provider in the four countries under analysis (based on the sample of JustWatch app users). The following Tables provide an overview of the top 10 market players by JustWatch’s *audience usage split*:

Table 69: Germany – VOD services rank based on audience usage split

Top Providers	Audience usage split
1. Amazon Prime Instant Video	17.285%
2. Netflix	16.837%
3. Amazon Instant Video	13.510%
4. Maxdome	10.080%
5. Apple iTunes	10.032%
6. Maxdome Store	5.461%
7. Google Play Movies	4.900%
8. Sky Go	4.787%
9. Sky Ticket	4.426%
10. Microsoft Store	1.805%
Total	89.12%

Source: VVA/JustWatch

Table 70: Spain - VOD services rank based on audience usage split

Top Providers	Audience usage split
1. Netflix	43.243%
2. Filmin	17.484%
3. HBO	10.604%
4. Filmin Plus	6.560%
5. Google Play Movies	4.771%
6. Apple iTunes	4.277%
7. Wuaki	3.199%
8. Movistar Plus	2.457%
9. Atres Player	2.282%
10. Microsoft Store	2.222%

Top Providers	Audience usage split
Total	97.10%

Source: VVA/JustWatch

Table 71: France - VOD services rank based on audience usage split

Top Providers	Audience usage split
1. Netflix	28.591%
2. OCS Go	26.745%
3. Google Play Movies	9.773%
4. Apple iTunes	7.410%
5. Bbox VOD	5.727%
6. Canal Play VOD	4.573%
7. Microsoft Store	4.085%
8. Orange VOD	3.141%
9. Canal Play	2.886%
10. Wuaki	2.724%
Total	95.66%

Source: VVA/JustWatch

Table 72: Italy - VOD services rank based on audience usage split

Top Providers	Audience usage split
1. Netflix	24.099%
2. Now TV	15.018%
3. Timvision	10.848%
4. Mediaset Premium Play	10.084%
5. Infinity	7.743%
6. Sky Go	5.870%
7. Chili	5.299%
8. Google Play Movies	4.777%
9. Wuaki	3.843%
10. Microsoft Store	3.827%
Total	91.41%

Source: VVA/ JustWatch

Table 73: UK - VOD services rank based on audience usage split

Top Providers	Audience usage split
1. Netflix	19.066%
2. Now TV	17.978%
3. Amazon Instant Video	12.430%
4. Sky Go	8.718%
5. Apple iTunes	8.562%
6. Amazon Prime Instant Video	7.957%
7. Google Play Movies	6.903%
8. BBC iPlayer	3.430%
9. All 4	2.729%
10. ITV Player	2.608%
Total	90.38%

Source: VVA/JustWatch

As the Tables show, the first ten VOD service providers represent almost the entire "audience usage split". Assuming a good representativeness of JustWatch's users of the audience behaviour in each country, it is possible to state that in the five Member States the distribution of VODs is concentrated among just 10 players: Netflix is the leader in four out of the five. Only in Germany, Amazon seems to have overcome the leadership position of Netflix.

In France, Spain and Italy national service providers keep relevant market shares (OCS Go in France, Filmin in Spain, Timvision and Mediaset Premium Play in Italy), whereas in the UK and Germany, there is a dominance of major international groups.

Table 74 shows the "top 10 titles by audience usage split" in the total sample of the 5 countries under analysis. As it can be seen, this top 10 list comprises 9 TV series and one major blockbuster movie, all produced in the USA.

Table 74: top 10 titles by audience usage split in the 5 countries

Title	Country of Production	% of the total audience usage split in the 5 countries
1. The Walking Dead	USA	4.14%
2. Game of Thrones	USA	3.75%
3. Grey's Anatomy	USA	3.35%
4. The Blacklist	USA	2.76%
5. The Vampire Diaries	USA	2.76%
6. Westworld	USA	2.76%
7. The Big Bang Theory	USA	2.37%
8. Arrow	USA	2.17%

9. Pretty Little Liars	USA	1.78%
10. Star Wars: The Force Awakens	USA	1.58%

Source: VVA/JustWatch

Analysing the top 10 titles by audience usage split by country and by provider, it emerges that **non-European audiovisual works dominate the preference of the audience in all five Member States:**

Table 75: Germany - % of European works among the Top10 titles by audience usage split

Non-linear service provider	% non-European works	% European works	Top10 as % of the total audience usage split per provider
Amazon Instant Video	90%	10%	11.4%
Amazon Prime Instant Video	90%	10%	9.4%
Apple iTunes	70%	30%	14.5%
Google Play Movies	80%	20%	15.9%
Maxdome	50%	50%	16%
Maxdome Store	80%	20%	16.4%
Microsoft Store	100%		27.1%
Netflix	70%	30%	12.5%
Sky Go	90%	10%	45.2%
Sky Ticket	100%		52.2%
Total	82%	18%	

Source: VVA calculations based on JustWatch

Table 76: Spain - % of European works among the Top10 titles by audience usage split

Non-linear service provider	% non-European works	% European works	Top10 as % of the total audience usage split per provider
Apple iTunes	70%	30%	20.6%
Atres Player	70%	30%	32.8%
Filmin	10%	90%	15.6%
Filmin Plus	60%	40%	68.5%
Google Play Movies	70%	30%	25.9%
HBO	90%	10%	54.6%
Microsoft Store	100%		24.3%
Movistar Plus	100%		46.8%
Netflix	90%	10%	27%

Non-linear service provider	% non-European works	% European works	Top10 as % of the total audience usage split per provider
Wuaki	70%	30%	14.8%
Total	73%	27%	

Source: VVA calculations based on JustWatch

Table 77: France - % of European works among the Top10 titles by audience usage split

Non-linear service provider	% non-European works	% European works	Top10 as % of the total audience usage split per provider
Apple iTunes	70%	30%	14.7%
Bbox VOD	90%	10%	66.1%
Canal Play	90%	10%	26.1%
Canal Play VOD	70%	30%	40%
Google Play Movies	90%	10%	24.5%
Microsoft Store	100%		21.5%
Netflix	90%	10%	24.6%
OCS Go	90%	10%	92.7%
Orange VOD	60%	40%	19.9%
Wuaki	90%	10%	31.2%
Total	84%	16%	

Source: VVA calculations based on JustWatch

Table 78: Italy - % of European works among the Top10 titles by audience usage split

Non-linear service provider	% non-European works	% European works	Top10 as % of the total audience usage split per provider
Chili	90%	10%	33.4%
Google Play Movies	90%	10%	16.5%
Infinity	100%		50.4%
Mediaset Premium Play	90%	10%	39.6%
Microsoft Store	100%		55.4%
Netflix	90%	10%	27.4%
Now TV	60%	40%	58.5%
Sky Go	80%	20%	50.4%
Timvision	90%	10%	40.2%
Wuaki	100%		43%

Non-linear service provider	% non-European works	% European works	Top10 as % of the total audience usage split per provider
Total	89%	11%	

Source: VVA calculations based on JustWatch

Table 79: UK - % of European works among the Top10 titles by audience usage split

Non-linear service provider	% non-European works	% European works	Top10 as % of the total audience usage split per provider
All 4	50%	50%	69.8%
Amazon Instant Video	70%	30%	10.2%
Amazon Prime Instant Video	80%	20%	28%
Apple iTunes	80%	20%	19%
BBC iPlayer	20%	80%	47.9%
Google Play Movies	70%	30%	14.3%
ITV Player	40%	60%	46.3%
Netflix	100%		30.9%
Now TV	70%	30%	45.8%
Sky Go	80%	20%	33%
Total	68%	32%	

Source: VVA calculations based on JustWatch

However, there are few exceptions that display higher percentages of European works, and among these exceptions six out of seven players are national non-linear service providers (except Now TV that belongs to Sky group), namely:

- Spain: Filmin (90%);
- UK: BBC iPlayer (80%);
- UK: ITV Player (60%);
- UK: All4 (50%);
- Germany: Maxdome (50%);
- France: Orange VoD (40%);
- Italy: Now TV (40%).

An in-depth analysis of this trend showed that:

- The greater demand of European audiovisual works in BBC, ITV, All4, Now TV appears to be mainly driven by the investment in original productions of these players (Table 80):

Table 80: Top European works in BBC, All4, ITV and NowTV by audience usage split

Non-linear service provider	Title	Producer	Audience usage split (in %)
BBC iPlayer	EastEnders	BBC	10.395%

Non-linear provider	service	Title	Producer	Audience usage split (in %)
BBC iPlayer		The Dumping Ground	BBC	2.218%
BBC iPlayer		Casualty	BBC	2.059%
BBC iPlayer		The Great British Bake Off	BBC	1.847%
BBC iPlayer		Don't Tell the Bride	BBC	1.768%
BBC iPlayer		Dad's Army	BBC	1.371%
BBC iPlayer		Peter Kay's Car Share	BBC	1.106%
BBC iPlayer		Apple Tree Yard	BBC	1.059%
All 4		Trainspotting	Channle4	17.067%
All 4		Made in Chelsea	Channle4	7.080%
All 4		Hollyoaks	Channle4	3.773%
All 4		SAS: Who Dares Wins	Channle4	2.296%
All 4		This Is England '88	Channel4	2.196%
ITV Player		The Real Housewives of Cheshire	ITV	6.015%
ITV Player		The Royal	ITV	4.288%
ITV Player		The Durrells	Sid Gentle Films Masterpiece	3.933%
ITV Player		Inspector Lewis	ITV	3.877%
ITV Player		Appropriate Adult	ITV	2.778%
Now TV		Romanzo Criminale – La serie	Sky	12.362%
Now TV		I delitti del BarLume	Sky	3.383%
Now TV		The Young Pope	Sky	1.987%
Now TV		The Fall	BBC	1.953%

Source: VVA calculations based on JustWatch

- The greater demand of European audiovisual works in Maxdome, Filmin and Orange VoD seems to be driven by the demand for domestic audiovisual productions (Table 81):

Table 81: Top European works in Maxdome, Filmin and VOD Orange by audience usage split

Non-linear service provider	Title	Country of production	Audience usage split (in %)
Maxdome	Verbotenes Verlangen - Ich liebe meinen Schüler	DE	2.378%
Maxdome	Die Wanderhure	DE	1.807%
Maxdome	Hallo, Onkel Doc!	DE	1.166%
Maxdome	Charlie & Louise - Das doppelte Lottchen	DE	1.140%
Maxdome	Bibi Blocksberg	DE	1.066%
Filmin	Martín (Hache)	ES, AR	3.207%
Filmin	Vis a vis	ES	2.297%
Filmin	Julieta	ES	1.505%
Filmin	Den brysomme mannen	NO	1.312%
Filmin	Io e lei	IT	1.205%
Filmin	The Acid House	UK	1.296%
Filmin	Gran Hotel	ES	1.199%
Filmin	Nagore	ES	1.124%
Filmin	Kika	ES	0.916%
Orange VOD	Frantz	FR	2.448%
Orange VOD	La folle histoire de Max et Léon	FR	1.204%
Orange VOD	Radin!	FR	1.445%
Orange VOD	Solange et les vivants	FR	0.803%

Source: VVA calculations based on JustWatch

14 Performance indicators and operational procedures

14.1 Introduction

The previous chapters have identified a set of data and information regarding the implementation of the AVMSD and its role in promoting European Works:

- What should be measured (as per the requirements in the AVMSD);
- What is actually measured and how in the Member States; and
- What additional indicators can be constructed on the basis of available data to complement and cross-check the information provided through Member State monitoring.

This chapter brings this information together into a monitoring framework that is logically coherent, comprehensive and practically feasible given existing data

limitations. It sets out the operational procedures to successfully deploy this framework for the purpose of monitoring the application of Articles 13, 16 and 17 of the AVMSD.

The study so far has also brought forward some tools and processes to facilitate monitoring procedures and future reporting, including:

- For the survey of implementing measures of Articles 13, 16 and 17 of the Directive: simplification of the data collection process by making use of existing sources and data, and a review of the data collection tools for reporting purposes.
- For the description and analysis of the market for audiovisual works: development of alternative data sources and analysis.

The work in the first two tasks has also enabled us to assess the practicability of some data collection tools and to propose a refined monitoring process.

14.2 Foreseeable trends and challenges

This performance indicator framework takes into account some key challenges and foreseeable trends identified throughout the research process. Those include inter alia:

- **Difficulty to access market data and transparency**

The performance indicator framework takes into account the fact that data in the audiovisual sector can be costly to access and/or confidential. In particular, information about catalogues, investment in content and right acquisitions or consumption of European works has been difficult to obtain when not required by reporting obligations.

While this may be due to the particular policy context where several regulations affecting the audiovisual sector are under review as part of the overarching Digital Single Market Strategy, stakeholders interviewed also made clear that this type of information is commercially sensitive. Such in-depth market data collection in the audiovisual sector is likely to remain challenging in the coming years, especially as the online market grows and attracts competition from established industry players (pay-TV services especially).²⁹⁸ It should be noted that in comparison, broadcasters are used to provide data through the mandatory reporting process.²⁹⁹

- **Evolution of the regulatory framework**

The legal analysis shows there have been few changes and updates in the implementation of AVMSD since the latest data collection period. However, the adoption of a new Directive

will entail several changes to national legislations in the future. The potential inclusion of a levy on non-linear services targeting a given Member State but established in another would pose additional challenges in terms of reporting. The administrative costs for regulators and on-demand services as a result of such obligations were

²⁹⁸ IDEA, KEA & IMEC (2017) Mapping the Creative Value Chains: A study on the economy of culture in the digital age. A report prepared for the European Commission, DG Education and Culture.

²⁹⁹ ATTENTIONAL (2011) Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services. Brussels, 2011

estimated to range between €400.000 and €600.000 in a study prepared for the Impact Assessment of the Commission proposal³⁰⁰.

Another key potential regulatory evolution is the introduction of a 30% compulsory share of European Works in catalogues of on-demand service providers, as put forward in the proposal of the European Commission: "Member States shall ensure that providers of on-demand audiovisual media services under their jurisdiction secure at least a 20% share of European works in their catalogue and ensure prominence of these works."³⁰¹ The ongoing negotiations might increase this 20% share (e.g. the European Parliament is advocating for a minimum of 30%). The proposal also provides that Member States would have to report on the implementation of the promotion of European Works every two years (instead of every four years under the current rules).

- **Prominence and technological evolution of on-demand services**

Monitoring and reporting as regards prominence tools has not fully matured yet, though systematised methodologies are implemented in a few countries to track and analyse how on-demand services are actually promoting European Works. Compared to previous analyses³⁰², the case studies developed in section 8 of the Legal Analysis show that such methodologies are effective but still rather costly/time-consuming.

On-demand services may promote European Works via two main means:

- **Active promotion:** where services may use information and materials promoting European works in their marketing campaigns, placing European works in customisation algorithms, trailers and ads, or visibility of European works on home pages of the app/website;
- **Passive promotion:** where services show the country of origin in the catalogue, add a thematic tab highlighting European works or give a search option to find European content;

The rapid evolution of technologies and data-driven user customisation challenges this distinction, as the user interface is shaped according to user preferences. This type of customisation is already in place for some operators and this trend is likely to further develop in the short to mid-term. This means that methodologies assessing prominence should be flexible enough to factor in this foreseeable trend.

14.3 Performance indicator framework: overview

We put forward an indicator framework which factors in the approaches tested in the study, while taking into account the foreseeable trends and challenges. It seeks to further simplify the process in the future, while providing a level of detail which meets the quality standards set out by the EC. The aim of the performance indicator system is to be "future proof" to the extent possible to new legislative and market developments. As such, the framework proposed also takes into account the ongoing

³⁰⁰ ICF International (2016b) Survey and data gathering to support the Impact Assessment of a possible new legislative proposal concerning Directive 2010/13/EU (AVMSD) and in particular the provisions on cultural diversity. European Commission, DG CONNECT.

³⁰¹ European Commission (2016) Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities. COM/2016/0287 final - 2016/0151 (COD). Brussels, 25.5.2016.

³⁰² ATTENTIONAL (2011) Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services. Brussels, 2011

legislative proposals affecting the audiovisual sector and chiefly the proposed review of AVMSD.

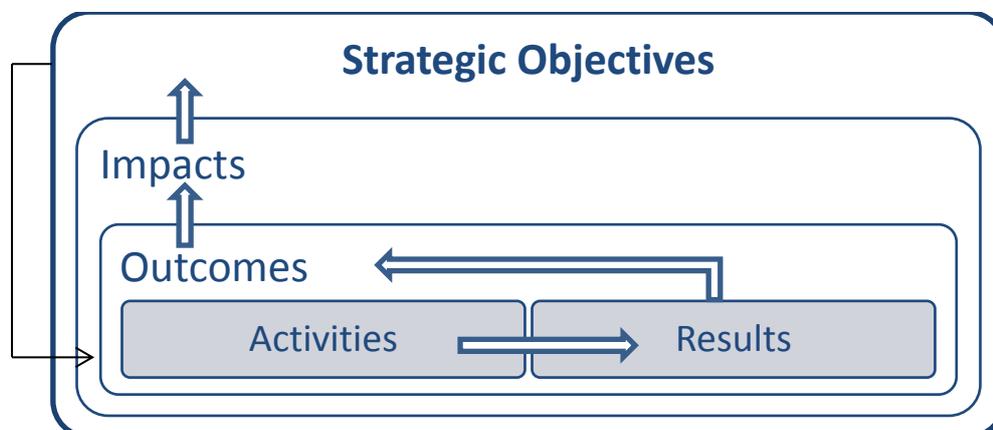
In this context, we suggest the following logical framework:

Table 82: Logframe for the monitoring of AVMSD provisions to promote European Works

Level of the logframe	Indicators
Objectives	<ul style="list-style-type: none"> Monitoring of Articles 13,16 and 17 of the AVMSD
Activities	<ul style="list-style-type: none"> Analysing Member State transposition, enforcement and monitoring activities Assessing National level methods to ensure prominence of European works Reporting on actual compliance of promotion requirement by linear and non-linear services Analysing the availability and actual use of sanctions for services which do not meet the set requirements. Data collection and analysis for key data of the audiovisual markets in Europe
Results	<ul style="list-style-type: none"> Overview of implementing measures and monitoring tools for each Member State Availability on Member State rights markets of different types of content, by linear/non-linear, by origin of the content Level and evolution of investment in content by type of origin of the content, by Member State by linear and non-linear and by type of investment (direct, indirect) Audiovisual market dynamics by Member State and by sector
Outcomes	<ul style="list-style-type: none"> Share of European content in linear and non-linear Audiovisual media, by Member State, by genre and by origin of the production Demand / audience Audiovisual media consumption patterns Methods to ensure prominence of European works by linear and non-linear providers
Impacts	<ul style="list-style-type: none"> Competitiveness of the European Audiovisual and IT Industry. Supplied cultural diversity Consumed cultural diversity Circulation and availability of European Works

The different levels of the logframe are interconnected and feed into one another in the following way:

Figure 47: levels of the logframe



We discuss the aspects of this logframe below, and provide a longlist detailing the indicators which populate this framework. For each indicator, we provide the following information:

- The definition of each indicator and its rationale, including how it contributes to the overall performance indicator framework;
- Possible data sources to populate the indicator, together with examples drawn from the present study to illustrate the type and level of information that can be gathered;
- Any limitations related to the indicator including changes to its relevance in response to changes in the market such as increasing prominence of on demand services or changes in data coverage;
- Data sources and the periodicity of data collection.

14.3.1 Strategic objectives

The strategic objectives are clearly defined in the AVMSD, and more generally across European policies towards the AV sector and the AVMSD seeks to 'ensure optimal conditions of competitiveness and legal certainty for Europe's information technologies and its media industries and services, as well as respect for cultural and linguistic diversity'³⁰³.

As a result, the strategic objectives of this indicator framework should be to:

- **Promote and enhance cultural diversity (access & actual consumption), as set out in the Directive and the TFEU**

This includes the promotion of the circulation of audiovisual works across borders, as well as investment into content production by broadcasters and on-demand services. The study notes that few countries have placed obligations on non-linear services to invest in content production. Investment in production and rights acquisition by these services is growing, albeit relatively slowly³⁰⁴. The uptake of digital distribution has been relatively slow in the audiovisual sector but is foreseen to grow in the coming years³⁰⁵. Hence, particular attention should be paid to cultural diversity online rather than on linear services in the coming years.

- **Avoid placing unnecessary burdens on Member States and the audiovisual industry**

The AVMSD promotes a flexible approach, where the level of requirements for the promotion of European Works can vary quite strongly to meet with Member States' own audiovisual and cultural policies. This is also the case in terms of reporting standards: the study has shown that many Member States have implemented relatively light monitoring processes, especially for non-linear services where the processes chiefly rely on self-reporting across most Member States.

³⁰³ Council Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [2010] OJ L 95/1 (Audiovisual Media Services Directive)

³⁰⁴ IDEA, KEA & IMEC (2017) Mapping the Creative Value Chains: A study on the economy of culture in the digital age. A report prepared for the European Commission, DG Education and Culture.

³⁰⁵ ICF International (2016b) Survey and data gathering to support the Impact Assessment of a possible new legislative proposal concerning Directive 2010/13/EU (AVMSD) and in particular the provisions on cultural diversity. European Commission, DG CONNECT.

- **Monitor the implementation of articles 13, 16 and 17 of AVMSD in light of the above**

14.3.2 Set of performance indicators

The aim is to develop a set of specific performance indicators, related to the relevant articles in the AVMSD, which capture their impact as comprehensively as possible and at the same time do not impose unnecessary burdens on the Member States or the Commission in terms of data collection. All indicators in the performance indicator framework need to correspond to SMART criteria i.e. they need to be Specific, Measurable, Achievable, Relevant and Time-bound. We indicate which of the articles of AVMSD the performance indicators relate to or if they deal with contextual information relevant to the abovementioned strategic objectives.

When relevant, we present possible adaptations due to the foreseeable changes introduced by the review of AVMSD:

- For non-linear services, increased share of European Works in catalogues to reach 30%.
- Reporting obligations in relation to Article 13 provisions on promotion of European Works may shift from every four years to every two years.
- Possibility to introduce a levy for non-linear services active in a given country but established in another.

Table 83: Performance Indicator 1

Performance Indicator 1	Applicable definition of European Works
Definition	National definition (or lack of) of what can be considered as a European Work.
Rationale and brief description	<p>How European Works are defined in European and national legislations can affect the way in which audiovisual content can contribute to European cultural diversity. Most Member States include national works as part of European Works (which is allowed under the AVMSD requirements). A definition including specific provisions to promote non-national European works could however contribute to a greater circulation of European works across borders.</p> <p>The value of the indicator can be established as follows:</p> <p>0: No definition of European Works</p> <p>1: Applicable definition of European Works meeting the requirements set out in AVMSD</p>
Scope & frequency	Every two years;
Source(s) and data availability	National legislation; AVMS database;
Strengths and limitations	<p>This indicator alone does not provide a strong basis for analysis and most Member States have adopted a definition close to the wording of AVMSD. However, it can be helpful to identify some key regulatory barriers or incentives to the promotion of European Works when analysed in conjunction with other regulations.</p> <p>For example, a more refined indicator framework could include:</p> <p>0: Standard definition of European Works, but other provisions facilitate</p>

Performance Indicator 1	Applicable definition of European Works
	<p>the promotion of non-European Works</p> <p>1: Standard value, as set out in AVMSD:</p> <ul style="list-style-type: none"> works originating in Member States; works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the three conditions detailed in paragraph 3; works co-produced within the framework of agreements concluded between the EU and third countries and fulfilling the conditions defined in those agreements. <p>2: The standard value definition is augmented with provisions promoting non-national European Works.</p>
Relevance in logframe	<p>Activities: Analysing Member State transposition, enforcement and monitoring activities</p> <p>Impacts: Cultural Diversity; Circulation of works</p>
Priority level (highest 1-4 lowest)	2
Relevant for	All AVMSD articles

Table 84: Performance Indicator 2

Performance Indicator 2	Level of requirements for the promotion of European Works for linear services
Definition	Requirements set out in national legislation to promote European Works on linear services
Rationale and brief description	<p>This indicator aggregates qualitative information about the different requirements set out by national laws for linear services:</p> <ul style="list-style-type: none"> Majority proportion of Total Qualifying Time At least 10% of European Works made by Independent Producers as a percentage of Total Qualifying Time Adequate share of recent Works as a percentage of total European Works made by Independent Producers. <p>The indicator could include a quantitative component scaling from 0 to 3, with 1 point allocated to measures proposing a higher level of requirements than the level set out in AVMSD;</p>
Scope & frequency	Every two years;
Source(s) and data availability	National legislation; AVMS database;
Strengths and limitations	This indicator allows for a quick overview of the requirements set out in national law to promote European Works on linear services and identify countries promoting higher standards by law.
Relevance in logframe	<p>Activities: Analysing Member State transposition, enforcement and monitoring activities</p> <p>Results: Overview of implementing measures</p> <p>Outcomes: Share of European content in linear media</p> <p>Impacts: Supplied cultural Diversity; Circulation and availability of EU works.</p>

Performance Indicator 2	Level of requirements for the promotion of European Works for linear services
Priority level (highest 1-4 lowest)	1
Relevant for	Articles 16 and 17

Table 85: Performance Indicator 3

Performance Indicator 3	Level of requirements for the promotion of European Works for non-linear services
Definition	Requirements set out in national legislations to promote European Works on non-linear services
Rationale and brief description	<p>This indicator aggregates qualitative information about the different requirements set out by national laws for on-demand services. Member States can apply this provision either by:</p> <ul style="list-style-type: none"> - contributing financially to the production and rights acquisition of European works or - share and/or - prominence of European works in their online catalogue of programmes <p>It should be noted that under the AVMSD review, this indicator should be adapted. We propose an alternative indicator as 4.</p>
Scope & frequency	Every two years;
Source(s) and data availability	National legislations; AVMS database;
Strengths and limitations	This indicator is a quick overview of the requirements set out in national law to promote European Works on non-linear services.
Relevance in logframe	<p>Activities: Analysing Member State transposition, enforcement and monitoring activities;</p> <p>Results: Overview of implementing measures;</p> <p>Outcomes: Share of European content in non-linear media;</p> <p>Impacts: Supplied cultural Diversity; Circulation and availability of EU works.</p>
Priority level (highest 1-4 lowest)	1
Relevant for	Article 13

Table 86: Performance Indicator 4

Performance Indicator 4	Level of requirements for the promotion of European Works for non-linear services after AVMSD review
Definition	Requirements set out in national legislations to promote European Works on non-linear services
Rationale and brief description	<p>This indicator aggregates qualitative information about the different requirements set out by national laws for on-demand services, by requiring on-demand services:</p> <ul style="list-style-type: none"> - at least a 30% share of European Works in their catalogue and ensure prominence of these works - contributing financially to the production and rights acquisition of European works (optional and can apply to the market share of on-demand services in a given Member State even if the service

	is established in another).
Scope & frequency	Every two years;
Source(s) and data availability	National legislations; AVMS database;
Strengths and limitations	This indicator is a quick overview of the requirements set out in national law to promote European Works on non-linear services.
Relevance in logframe	Activities: Analysing Member State transposition, enforcement and monitoring activities; Results: Overview of implementing measures; Outcomes: Share of European content in non-linear media; Impacts: Supplied cultural Diversity; Circulation and availability of EU works.
Priority level (highest 1-4 lowest)	1
Relevant for	Article 13

Table 87: Performance Indicator 5

Performance Indicator 5	Level of flexibility in implementation of AVMSD by MS
Definition	Inclusion in national laws of 'flexibility clauses' allowed under AVMSD
Rationale and brief description	<p>The AVMSD provides possibilities in Articles 13, 16 and 17 to establish more precise conditions to meet the promotion obligations or to simply adopt the minimal conditions of the Directive.</p> <p>In Articles 16 & 17, three types of flexibility clauses exist:</p> <ul style="list-style-type: none"> - takes into account the 'informational, organisational, educational and other responsibilities of the broadcaster to its viewers' - "shall be achieved progressively" - "where practicable" <p>In Article 13, the directive includes the following work "where practicable and by appropriate means".</p> <p>The value of the indicator should scale between 0 & 7, with one point per flexibility clause introduced in National law.</p>
Scope & frequency	Every two years;
Source(s) and data availability	National legislations; AVMS database;
Strengths and limitations	This indicator allows for a first assessment of the level of flexibility Member States allow for audiovisual services. This indicator should be matched with the actual level of compliance of Audiovisual services with the promotion requirements to better link this indicator with the 'impact' level of the logframe.
Relevance in logframe	Activities: Analysing Member State transposition, enforcement and monitoring activities
Priority level (highest 1-4 lowest)	3

Performance Indicator 5	Level of flexibility in implementation of AVMSD by MS
Relevant for	All AVMSD articles

Table 88: Performance Indicator 6

Performance Indicator 6	Resources dedicated to monitoring and reporting
Definition	Human resources and/or budget dedicated to monitor how AV services actually comply with the promotion requirements.
Rationale and brief description	<p>Monitoring how linear and non-linear services comply with the European Works promotion requirements has long relied on self-reporting (which is still the case in most Member States for on-demand services).</p> <p>The use of internal or external verification mechanisms (and resources allocated to them) allows for a more robust assessment of the reliability of compliance levels reported by AV services.</p> <p>The value of the indicator is:</p> <ul style="list-style-type: none"> - Human resources allocated to monitoring & reporting (FTE equivalent/year) - Budget allocated to external evaluations in €
Scope & frequency	Every two years;
Source(s) and data availability	National regulators and/or Ministries of Culture
Strengths and limitations	<p>This indicator requires 'manual' data collection via a survey towards National regulators.</p> <p>It can be modulated to reflect the economic disparities across Member States by applying quotient based on GDP/capita.</p>
Relevance in logframe	<p>Activities: Analysing Member State transposition, enforcement and monitoring activities</p> <p>Results: Overview of Implementing measures and Monitoring tools for each Member State</p>
Priority level (highest 1-4 lowest)	1
Relevant for	All AVMSD articles

Table 89: Performance Indicator 7

Performance Indicator 7	Applied sanctions
Definition	Number of sanctions applied to Audiovisual services and qualitative description
Rationale and brief description	<p>The indicator seeks to identify any compliance issues for not meeting the promotion requirements and allow for early-warning to Member States and the EC.</p> <p>The qualitative description should include a summary of the case, reasons for not meeting the requirement, the sanction applied, and any corrective measure taken by the Audiovisual service.</p>
Scope & frequency	Every two years or on ad hoc basis.
Source(s) and data availability	National regulators;

Performance Indicator 7	Applied sanctions
Strengths and limitations	<p>Sanctions against AV services not meeting the promotion requirements are very seldom used in practice, and softer approaches are privileged.</p> <p>As a result, we suggest a more qualitative approach to the few cases which actually take place, to ensure any trend or key implementation challenge can be identified in due time.</p> <p>Due to the few number of cases, ad hoc reporting on each case once settled seems feasible with little administrative burden.</p>
Relevance in logframe	<p>Activities: Analysing Member State transposition, enforcement and monitoring activities</p> <p>Results: Overview of Implementing measures and Monitoring tools for each Member State</p>
Priority level (highest 1-4 lowest)	3
Relevant for	All AVMSD articles

Table 90: Performance Indicator 8

Performance Indicator 8	Analysis of the budgets and public funding for the content creation in the EU
Definition	Number and size of national, regional and local funds in Europe.
Rationale and brief description	One of the main weaknesses of the European players in the audiovisual sector is the lack of capital and funds. Especially, the small or micro-enterprises making up the European audiovisual industry frequently face difficulties in raising the budgets required to compete on a global scale. The indicator seeks to identify the public support given to them.
Scope & frequency	Every year or on ad hoc basis.
Source(s) and data availability	EAO, National Regulators
Strengths and limitations	<p>It provides an overview of the support given for the production of European audiovisual content and the information needed to feed into this indicator are fairly simple to be collected.</p> <p>However, it does not provide a full picture about the use of such funds and the success rates of these investments.</p>
Relevance in logframe	<p>Activities: Analysing Member State support to the European Audiovisual industry;</p> <p>Results: Overview of public financial measures available at national, regional and local level.</p>
Priority level (highest 1-4 lowest)	1
Relevant for	All AVMSD articles

Table 91: Performance Indicator 9

Performance Indicator 9	Number of companies in production and distribution segments
Definition	Number of companies in production and distribution segments and number of SMEs.
Rationale and brief description	The economic contribution of the sector is defined by the businesses operating in the production and distribution of AV content.
Scope & frequency	Every year or on ad hoc basis.
Source(s) and data availability	Eurostat
Strengths and limitations	<p>It gives an overview of the business demography of the total companies operating in the EU, broken down by size in order to have an overview of the number of SMEs.</p> <p>The information needed to feed into this indicator can be simply collected in Eurostat.</p> <p>However, the level of granularity of the data does not allow any distinction to be made among the different types of services (e.g. no possibilities to distinguish between linear and non-linear service providers).</p>
Relevance in logframe	<p>Activities: Analysing the businesses operating in the production and distribution of Audiovisual content;</p> <p>Results: The economic contribution of the sector in terms of business demography.</p>
Priority level (highest 1-4 lowest)	2
Relevant for	All AVMSD articles

Table 92: Performance Indicator 10

Performance Indicator 10	The level of employment in production and distribution segments
Definition	Number of persons employed in the production and distribution of Audiovisual content in EU.
Rationale and brief description	The economic contribution of the sector is defined by the businesses operating in the production and distribution of Audiovisual content.
Scope & frequency	Every year or on ad hoc basis.
Source(s) and data availability	Eurostat
Strengths and limitations	<p>The level of employment is another key indicator of the importance of this sector across Europe.</p> <p>The information needed to feed into this indicator can be simply collected</p>

Performance Indicator 10	The level of employment in production and distribution segments
	<p>in Eurostat.</p> <p>However, the level of granularity of the data does not allow any distinction to be among the different types of services (e.g. no possibilities to distinguish between linear and non-linear service providers).</p>
Relevance in logframe	<p>Activities: Analysing the employment level in the production and distribution of Audiovisual content;</p> <p>Results: The economic contribution of the sector in terms of employment.</p>
Priority level (highest 1-4 lowest)	2
Relevant for	All AVMSD articles

Table 93: Performance Indicator 11

Performance Indicator 11	Availability of European works according to the market destination
Definition	Number of titles, Genres and Duration of European works as percentages of the total catalogues distributed by non-linear service providers according to their market destination (multi-country vs. country).
Rationale and brief description	As per results of the analysis conducted in Chapter 4, multi-country non-linear service providers displayed lower percentages of European works compared to national players. The very same multi-country providers show different percentages of European works in different Member States.
Scope & frequency	Every year or on ad hoc basis.
Source(s) and data availability	National Regulators, external ad-hoc data service provider
Strengths and limitations	<p>It provides an overview about the European films access to on-demand services.</p> <p>However, there are relevant costs associated to gathering the necessary data and analysing it.</p>
Relevance in logframe	<p>Activities: Analysing the circulation of European films access to on-demand services;</p> <p>Results: Overview of the catalogue management in Europe.</p>
Priority level (highest 1-4 lowest)	3

Performance Indicator 11	Availability of European works according to the market destination
Relevant for	Article 13

Table 94: Performance Indicator 12

Performance Indicator 12	Consumption of European Works
Definition	Total viewer hours (for linear service providers) and Audience usage (for non-linear service providers) can inform about the demand of European works and their success compared to other non-European works.
Rationale and brief description	The demand influences the supply and consequently the percentage of European works aired by linear broadcaster and the percentage of European works in on demand catalogues.
Scope & frequency	Ad hoc basis.
Source(s) and data availability	Audience measurement data providers.
Strengths and limitations	Studying the audience behaviour (the demand) can inform about future trends in the Audiovisual industry and inform about trends in the supply side. However, there are relevant costs associated to gathering the necessary data and analysing it.
Relevance in logframe	Activities: Analysing the consumption patterns of the European citizens; Results: Overview of the consumption choices of the European citizens.
Priority level (highest 1-4 lowest)	3
Relevant for	Articles 13, 16 and 17

14.4 Operational procedures and suggestions for future use

14.4.1 Make use of implementation notification to collect relevant data for future updates

Member States are required to notify the European Commission upon passing national law implementing a European Directive. We suggest making use of this opportunity to update the following indicators:

- Applicable definition of European Works (PI1);
- Level of requirements for the promotion of European Works for linear services (PI2);
- Level of requirements for the promotion of European Works for non-linear services (PI4);

- Level of flexibility in implementation of AVMSD by Member States (PI5).

This work may also be undertaken in cooperation with the European Audiovisual Observatory to update their AVMS Database, and/or by sharing the data sets of the study as open-source material.

15 Practicability procedures and indicators

This section completes and discusses the performance indicators framework from a practicability point of view: how key stakeholders are likely to react to the different indicators proposed, and why some this is likely to evolve for the next reporting period. It was elaborated on the basis of our own experience in data collection in previous phases of this study, and especially through ample consultation with audiovisual stakeholders and regulators.

1) Data collected as part of the reporting obligation for Articles 13, 16 and 17 of AVMSD

One of the objectives of the study was to collect data on behalf of the European Commission for Member States to report on their obligations to promote European Works, with a view to facilitate future reporting.

From the data collection and analysis process undertaken as part of this study it results that discrepancies can still be observed in terms of data provided for linear and non-linear services. Some answers to our surveys (especially from NRAs, which are directly dealing with the data collection process at Member State level) show that there is a 'learning curve' in the industry: while broadcasters are used to the data collection process, on-demand services have much less experience in the exercise and awareness-raising campaigns and/or dialogue with the sector needs to be implemented for all players to understand their obligations in terms of promotion of European works. Overall, public broadcasters have demonstrated a higher level of compliance and willingness to take part in the reporting exercise. Additionally, the four-year reporting period for non-linear services, compared to two for linear services, reduces the relevance for operators to embed the reporting exercise in their management plans. The foreseeable change to the reporting period to two years instead of four as part of the AVMSD review may have some positive aspect in this regard. Additionally, this does not necessarily mean that promotion of European Works is not part of their general content acquisition/production strategies.

The different national interpretations of Article 13 of AVMSD outlined in section 6 of the study generally allow for a wider flexibility on how to promote European Works for on-demand services. As such, the development of guidelines, advice and mutualisation of tools at European level has proven much more challenging than for linear services. An interesting trend can however be observed: compared to previous implementation reports: several Member States³⁰⁶ opted for the provision of quantitative data to report on Article 13 of the AVMSD, while they could also opt for a questionnaire requesting qualitative information. As outlined in Chapter 11 of the study, the on-demand services market is also growing and maturing. As such, representatives from this segment of the audiovisual industry are much more involved in policy discussions regarding the promotion of European works, which in turn contributes to raising

³⁰⁶ 13/23 Member States on 23 August 2017, as some data is still missing.

awareness about their role and discussing challenges for meeting the current objectives for non-linear services.³⁰⁷

In terms of procedures, the formal notification process³⁰⁸ to trigger the reporting exercise is an important step in some Member States and should be the starting point in the next exercise. Adding extra layers of data collection in parallel to this exercise is not advisable as it can create confusion. This is especially the case for the AVMSD reporting obligation, which requires strong coordination between European affairs departments, as well as market information and often the legal department of the relevant national authorities.

2) In relation to data collected as part of the market trends section

The methodology used for the study involved a combination of primary and secondary sources, including direct data collection from relevant stakeholders. This enabled us to observe several trends that will have practical implications for future reporting:

- The difficulty to obtain data directly from industry stakeholders is very high, due to several factors. First, there is little willingness to share information as it is very quickly considered as commercially-sensitive data. Second, there are no particular incentives for industry stakeholders to take part in the exercise. In that regard, switching towards a rewards-based approach may prove more appealing to the industry (e.g. in cooperation with film funds and/or agencies).
- This raises questions about the level playing field between the different types of operators: linear services are already providing data related to their content investment strategies (investment in European Works and independent works), whereas non-linear services seem to consider this type of information as commercially-sensitive.
- Contextual data is however much easier to come by, and to cooperate on with representatives from the sector (e.g. employment, gross added value, turnover, and sometimes sector data on production and investment in content). Individualized data can sometimes be provided, but the AVMSD reporting obligation is often a way to 'force' the operators' hand to provide data they would not share on a voluntary basis.
- Another possibility to facilitate the data collection process is to shift the focus towards the demand side (consumer perspective), thereby alleviating issues linked to market opacity. In practice, this meant collecting data on end-users' online search trends linked to audiovisual works, for example.

3) Conclusion

The indicators proposed have a relatively high level of practicability and reflect on the challenges faced during the overall data collection process, which are reflected in the stakeholders' position on the promotion of European Works under the AVMSD. Private broadcasters³⁰⁹ advocate for more flexibility in programming and thus lower requirements, whereas right holders are generally supportive of higher levels of requirements, and also for broader exceptions for smaller and newly-created channels. Public broadcasters do not share these policy preferences and have no difficulties to meet the current requirements. For linear services, the level of requirements set out in

³⁰⁷ See for example the recent consultation on the future of AVMSD launched by the European Commission.

³⁰⁸ European Commission notifies the permanent representation of Member States of their obligation to report, which in turn liaise with ministries and national regulators

³⁰⁹ See ACT position paper on the AVMS review, as well as their answer to the 2015 public consultation.

the AVMSD is seen as appropriate by organisations representing rights holders, whereas they argue for higher levels of requirements for on-demand services³¹⁰. Broadcasters chiefly call for a more level playing field, although this is nuanced by the fact they are often owning on-demand services themselves.

The reporting process remains challenging due to:

- Overall lack of market transparency and a low level of incentives for market players to adapt their behaviours.
- Fragmentation of interpretations of Article 13 in national implementations (and the actual level of details provided by operators). Facilitating peer-learning and knowledge-sharing may be a more effective solution to improve reporting in the future than pan-European guidelines.
- The adaptation of audiovisual services to reporting obligations (as witnessed across linear services, as well as gradually for online services), combined with a more level playing field between non-linear and linear services may help to facilitate the process in the future.

16 Prospective Analysis

The 2011 Study was prepared at a time when non-linear services were in their infancy. In this Study, we see the emergence of a rapidly maturing sector based on wide access to the Internet. The last “step-change” was driven by the switch from analogue to digital, leading to the proliferation of channels and the growth of Pay-TV. The new development is likely to have an even greater impact.

16.1 Changes in the Audiovisual Media

The first part of this section summarises findings from parts above in so far as they reflect on the objectives of the AVMSD.

The present Study follows the 2011 Study in its categorisation of linear TV services, enabling the opportunity to capture relevant trends in the economics of the European media industries.

The data in sections 10 and 11 tell us that that there is currently zero or negative growth in the traditional sectors of public and advertiser-supported TV, while growth in Pay-TV and on-demand services is driven by a growth in both advertising (Figure 36) and subscriptions (Figure 37). Figure 36 shows that Internet advertising revenues are rapidly approaching those of television.

The majority of viewing still goes to traditional services. However, although they still make the major contribution in achieving the aims of the AVMSD, a significant transfer of viewing to non-linear services is taking place.³¹¹

³¹⁰ See for example position papers on AVMSD review from SAA, FERA or EBU.

³¹¹ Because Internet services provide no viewing figures we cannot be more precise. However, in one instance, the UK, the audience measurement provider, BARB, provides data on “unidentified viewing” on TV. This data includes unrecognised content of various types from sources such as DVDs, games consoles, and minor channels. It also includes viewing of streaming services such as Amazon and Netflix. Because unidentified viewing is growing rapidly, and such growth is unlikely elsewhere in the group, we assume the growth is largely driven by streaming services. Unidentified viewing amounts to about 30 minutes per day,

The present Study found that traditional linear services continue to be relatively less attractive to young adults.

The 2011 Study also pointed to the potential role of “non-national” works in achieving cultural diversity at EU level via a wider circulation of European content in the European Union. This present Study revisits this issue, pointing out that “that Member States are inclined to promote their own culture and national language(s) to meet the requirements, rather than promoting other national cultures and/or languages”. This tendency thus contends with the parallel objective of a single market in media services including, among other commonalities, a significant proportion of content shared by different Member States.

The present Study notes that though the Directive aims to work around this challenge by encouraging countries to promote co-produced works or works of non-domestic origin, this is neither regulated nor incentivised by the AVMSD itself.

The analysis of selected linear channels for this Study shows some increase in non-domestic works (Table 49) especially in new Member States and smaller countries. They are more prominent on private than public channels, a reversal of the previous trend. Table 51 shows that the share of non-domestic works is very variable, and negligible in the UK.

Given the contribution of films broadcast on TV to the quantum of European works, the low profitability of European films, their low budgets, and the fragmentation of the European film industry leading to the dominance of US films both on TV and in the cinema, remain grave concerns (see 11.5).

The present Study also shows that the proportion of independent works is static or in decline, mainly in old Member States (Table 52), giving some concern over the policy of encouraging Small and Medium Enterprises (SMEs).

As for non-linear works, while the majority of investment in original content still goes to traditional linear services (see Figure 18 and Figure 21), significant global players and new business models are now well-established. Proposed changes in the AVMSD reflect a recognition of the need to align the monitoring of non-linear content more closely with linear.

It became clear that the traditional mode by which Member States only monitor services in their own countries was inadequate, since a company like Netflix, with a European base in the Netherlands, provides a different service to each Member State.

The basic results from the content analysis of non-linear channels in the present Study were as follows: the proportion of European hours to qualifying hours is high for catch-up but about 30% for private VOD services in general and 23% for multi-country services (Table 62). The dominant content on these services is US content. This preference is extreme for Top 10 titles (Table 74 and following).

on average, out of a total of 3.5 hours per day across all demographics, significantly higher for young adults. Figure 45 tells us that the UK accounts for significantly more Internet revenue than any other Member State. This suggests that 30 minutes per day is probably a current European maximum.

The findings confirm the results obtained in the 2011 study though multi-country services were then in their infancy: catch-up catalogues are closely linked to linear content for which broadcasters retain rights, which are predominantly national and thus European, while VOD services feed their catalogues with a majority of non-European works (Table 62).

Article 13 makes no requirement for recent productions. This is potentially important, because they are likely to be the major category of European works that circulate online (see section 7.3).

The consequences of this are plain: on present trends, a transfer of viewing from linear to private non-linear services will mean that viewers are likely to be selecting from catalogues with a lower proportion of European works.

16.2 Monitoring of Articles 13, 16 and 17

In the review of monitoring implementation at Section 7, it was found that “the desk research and the survey revealed that there is a well implemented monitoring system for audiovisual linear services in all Member States”. In most Member States there is a verification system for statistical reports.

The present Study notes that few Member States have implemented Article 13 in a very detailed way. There is a high degree of divergence in both the legislation and practice of the Member States.

Many issues and problems emerged in capturing non-linear data.

First, the monitoring obligations require important resources for operators and NRAs. Lack of accessible catalogue and other data was the main reason why a number of Member States did not implement a monitoring system for Article 13. The majority of Member States, which do run monitoring activities, relied solely on data provided by operators with no verification of the data provided. France is the only country to have conducted a comprehensive independent analysis of on-demand catalogues. Further the frequency of data requests differed across Member States. There was no consistent approach to recording and monitoring of promotional activity though systematic approaches have been implemented in a few Member States (see section 14.2).

While flexibility of implementation by Member States in the interest of cultural diversity is recognised, the interest of achieving the aims of the AVMSD requires new forms of co-operation and technology and some harmonisation of procedures. 14.3 and 14.4 of the present Study propose a structured package of monitoring templates, encouraging “mutualisation” via more dialogue, skill sharing and exchange of good practice.

The ideal solution would be the full disclosure of a catalogue, over a specific period, by a service provider, from which an independent monitor could select a random sample. The proportion of European works would then be calculated by the coding of qualifying and European works. Disclosure of specific content data could be confidential, and only aggregate statistics need to be published. That is, in effect, what happens in the case of the Member States that use verification in reports on linear channels, whether the content is disclosed or captured in other ways, for instance, from published schedules or from the audience measurement bodies, as used in this Study.

There is no current visible solution to efficient data accessibility for monitoring non-linear channels. In the longer term, web-scraping tools might be available to scan the contents of service providers. The parallel existence of a database of European Works with which the contents could be matched would hugely reduce the demand on resources required for independent monitoring. These longer-term developments could be encouraged by a significant enhancement of investment and cooperation between stakeholders as outlined in 16.3 through to 16.5 below.

In summary, national transpositions of AVMSD have not evolved drastically since previous reports, and the level of requirements for the promotion of European Works has not undergone any major development. The most notable change is likely to be a need for the development of tools and criteria to assess prominence. Verification is a problem, especially when not linked to public policy objectives and the higher level of transparency required for public funding.

Thus, there will remain significant challenges associated, especially, with the monitoring of Article 13 and any future legislation relating to non-linear services. This speaks for a significant initiative aiming to alleviate the burden on both regulators and service providers.

16.3 Cooperation and dialogue

Stakeholder dialogue and mutual involvement in reporting obligations could significantly ease reporting processes and establish trust.

Cooperation may indeed become increasingly important between Member States in the context of the reviewed AVMSD, with the possibility of introducing a levy on on-demand services established outside Member States.

We therefore suggest facilitating such cooperation and dialogue through existing structures, such as ERGA or the AVMS Contact Committee, to include:

- A contact committee;
- A discussion platform with audiovisual stakeholders; and
- Facilitation of peer-learning activities such as work-shadowing, in particular between Member States with a relatively similar level of obligations.

The potential added value would come from, first, facilitating the sharing of information with Audiovisual stakeholders, especially on-demand services, and, second, exchanging good practices in terms of monitoring and reporting between Member States and national regulatory Authorities.

16.4 Mutualisation of tools and databases for future data collection

Previous tasks and analysis have shown that the differences in terms of implementation models across Member States do not allow for the development of a one-size-fits-all monitoring and reporting approach.

However, some of the basic tasks for monitoring and reporting could certainly be mutualised (i.e. pooled) to the benefit of all Member States and audio-visual service providers. The participation of the European Commission and the European Audiovisual Observatory is a good example of the potential added value for data collection in the sector. Other tools could include:

- Development of a reliable database of European Works to facilitate their identification. This would facilitate the reporting process for both linear and non-linear services, as well as for NRAs. The support of the MEDIA programme over the development of licensing hubs to facilitate the licensing of works for on-demand services, and the promotion of a larger use of standard identifiers of audiovisual works, could contribute to the development and frequent update of such a database.

Developing a database of European Works could be done via the Media Programme, for example by supporting the extension of the LUMIERE database³¹², which currently covers all films released in European cinemas. A feasibility study or a pilot project (or simply an increased contribution to the European Audiovisual Observatory) could test the possibilities to cover: 1) other types of European Works covered by the AVMSD; and 2) European Works directly released on linear and non-linear services without a cinema release.

- Testing the feasibility of a tracker to automate the process of monitoring prominence and available titles on online services. Such a tool could be trialled by making use of web-scraping software solutions, for example.

16.5 Alternative data sources

As part of the content analysis for non-linear service providers, we teamed up with an innovative start-up which offered an effective alternative providing “Big Data” about its audience behaviour and allowed circumvention of the difficulty related to the traditional data collection tools (surveys, interviews) or datasets more widely used across the Audiovisual industry (European Audiovisual Observatory, IHS or Nielsen).

Making a more systematic use of Big Data could bring the following benefits:

- With coverage of the full population of interest or large “N sample”, subgroups can be analysed too;
- Technically unlimited number of variables;
- Observation of actual behaviour;
- Data generated in real-time or near real-time;
- Data generated at lower costs, often already available.

At the same time, there are costs regarding the techniques and the instruments to process this data, since big data often consists of unstructured variables (e.g. text) or of complex idiosyncratic structures (e.g. data logs). Following the recommendations of the ESSnet-Culture project, Eurostat in 2014 started a four-year work plan which aims to develop EU common statistical concepts and methods to produce and disseminate harmonised statistics that accurately depict business and employment trends in the cultural sector. Once available, Eurostat data could definitely become the primary source of information in order to produce analysis about business demographics in the cultural industries.

³¹² <http://lumiere.obs.coe.int/web/search/>

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