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COMMISSION STAFF WORKING DOCUMENT

**Detailed reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU
as amended by Directive (EU) 2018/1808 for 2020-2021**

Accompanying the document

**Report from the Commission to the European Parliament and the Council
on the application of Articles 13, 16 and 17 of Directive 2010/13/EU as amended by
Directive (EU) 2018/1808 for 2020-2021**

{COM(2024) 261 final}

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1. APPLICATION OF ARTICLE 13 OF THE AVMSD

1.1. Overview of the European on-demand services market

The reference period (2020-2021) coincided with the COVID-19 pandemic, which had a notable impact on the EU audiovisual industry. While the production of content and cinemas were hit hard, video-on-demand (VOD) players managed to expand their audiences during this period, potentially accelerating the shift away from traditional broadcasting¹. Revenues of VOD services in the EU were around EUR 9.2 billion in 2020 and EUR 11.7 billion in 2021, representing about 13% of the overall EU audiovisual market². Also in the years before the pandemic, revenues of VOD services were steadily increasing: they amounted to EUR 3.5 billion in 2017, EUR 4.8 billion in 2018 and EUR 6.7 billion in 2019.

Growth was primarily driven by subscription-based VOD (SVOD) services, which represented the main VOD business model. This subsector was concentrated in the hands of a few, mainly US-based, global players, the three being Netflix, Amazon Prime and Disney+. The value of the SVOD model in the EU was five times higher than the value of transaction-based VOD (TVOD) services (also called pay-per-view services). Advertising-based VOD (AVOD) services³, including ad-supported free streaming television services, represented an emerging third business model, being usually offered as an alternative to users of SVOD services⁴.

According to the information provided by the Member States and the European Free Trade Association (EFTA) countries that are members of the European Economic Area (EEA) ('EEA EFTA countries')⁵, a total of 1 950 VOD services were operational in their jurisdictions in 2020 and 1 984 in 2021⁶. The figure below illustrates the overall situation in 2020 and 2021, including also the VOD services that are exempted from the obligations under the Article 13(1) and (2) of the Audiovisual Media Services Directive (AVMSD) (for further information about exemptions, please see section 1.5). For comparison, the previous study estimated that the number of VOD services stood at 1 030 in 2019 in 25 Member States for which data was available⁷. The highest number of VOD services was reported for France, with 409 and 410 services in 2020 and 2021, respectively, followed by Hungary (306 services in both years). No VOD services were reported for Liechtenstein or Norway during the reference period.

¹ Commission staff working document, *European Media Industry Outlook*, SWD(2023) 150 final, 17.5.2023. While technically outside the reference period, it offers historical data and general findings applicable to this report, p. 18.

² Ibid, p. 13-14.

³ For instance, Netflix's ad-supported subscription plan, or Rakuten TV, which combines SVOD, TVOD and AVOD.

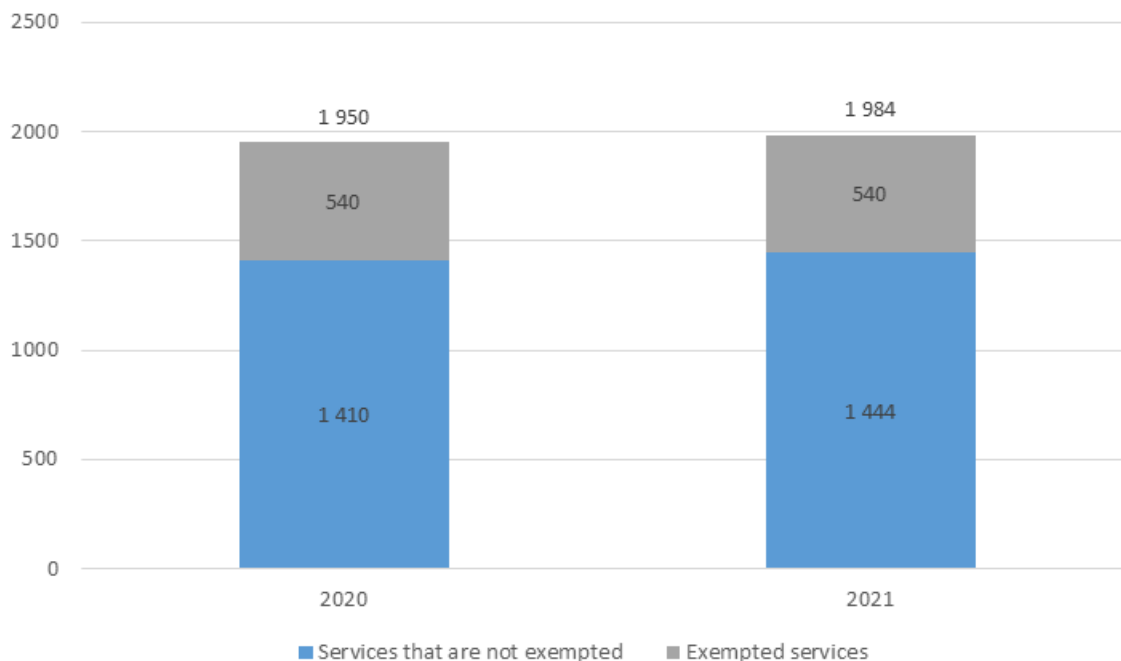
⁴ Ibid, p. 13-14.

⁵ Data was provided by all the Member States and Iceland.

⁶ These figures include different national catalogues of cross-border VOD services. When excluding VOD services exempted from obligations under Article 13(1) of the AVMSD for the whole reference period (2020-2021), as reported by Member States, the numbers were slightly lower: 1 410 and 1 444, respectively.

⁷ *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 2, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe's digital future \(europa.eu\). Data for Germany, Ireland and the EEA EFTA countries was not reported.](https://european-council.europa.eu/media/en/press-room/item/31773?lang=en)

Figure 1: Number of VOD services in the EU and EEA EFTA countries, 2020-2021



Source: the study, based on Member States' reporting

Driven by the success of US-based SVOD platforms and encouraged by the generally increased use of VOD services, many European broadcasters and independent players have launched their own on-demand services. Over time, the distinction between traditional linear and non-linear services has become more blurred, as broadcasters make their content available on demand online and create content tailor-made for their streaming services, including some premium content⁸.

1.2. Quota for European works on VOD services (Article 13(1) of the AVMSD)

The new rules in Article 13(1) of the AVMSD oblige Member States to ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30% share of European works in their catalogues. The Commission guidelines⁹ clarified that the calculation should be done based on the number of titles. In the case of feature and TV films, this means that every film should be understood as constituting a title in a catalogue. On television series, the Commission has taken the view that one season of a series should correspond to one title. However, national authorities could take into account higher production costs in weighting works where relevant, in particular in relation to high-end fiction. The guidelines also explain that if VOD providers operate in the EU with multiple national catalogues, calculation should be done for each of their national catalogues.

⁸ Commission staff working document, *European Media Industry Outlook*, SWD(2023) 150 final, 17.5.2023, p. 18.

⁹ *Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover*, OJ C 223, 7.7.2020.

Overall, the legal mapping sheets provided by the Member States¹⁰ show that during the reference period, national implementation measures to secure a 30% share of European works in catalogues of VOD services were in force in 17 Member States¹¹.

Several Member States explicitly mentioned the Commission guidelines in their legislation transposing Directive (EU) 2018/1808 or in other secondary law. Most Member States, in addition to Iceland and Norway, reported having a title-based calculation method, or that they were likely to follow this approach¹². However, during the reference period, adherence to the guidelines was not entirely clear in some cases, either because the new rules had not been transposed, or because the calculation method had not been specified at national level. These guidelines aim to foster a consistent implementation of the new rules across the EU.

During the reference period, two Member States¹³ reported having in place quotas higher than the 30% stated in Article 13(1) of the AVMSD. Furthermore, seven Member States had adopted specific sub-quotas for works of original expression¹⁴. For example:

- In the French Community of Belgium, there was an obligation of 30% of European works, of which one third must be French-speaking Belgian audiovisual works. In the first 5 years after entry into force, the quota for European works should gradually increase from 30% to 40%.
- In France, there was an obligation of a 60% share of European works and 40% for works of original French expression. Agreements with the national media regulatory authority could be made to lower these proportions if the audiovisual media service provider would make a commitment to invest in the production of unpublished audiovisual works of original French expression by independent production companies.
- In Portugal, a quota of 30% applied, but 50% of this proportion must be dedicated to creative works by independent European producers produced in Portuguese language and in the 5 preceding years.

Based on the national reports, the average proportion of European works on VOD services was 63% in 2020 and 64% in 2021¹⁵. In comparison, the figures were fluctuating between 42% and 63% in 2015-2019, according to the national reports and the previous study¹⁶. However, the Commission notes that these average shares are based on the VOD services for which data was included in the national reports. In 2020, seven Member States did not report on the shares of European works on VOD services at all, and six did not report in 2021. Furthermore, similarly to the previous report, most Member States that did report on the shares of European works on VOD services did not do so for all services listed. For 2020, data on the proportion of European

¹⁰ The independent study covered the EU-27 and the EEA EFTA countries (Norway, Liechtenstein and Iceland). Please note that in Belgium, there are different measures in the French and Flemish Communities transposing the new rules in Article 13.

¹¹ Austria, Belgium (Flemish and French Communities), Bulgaria, Germany, Denmark, Greece, Finland, France, Croatia, Hungary, Italy, Lithuania, Latvia, Luxembourg, Malta, the Netherlands and Portugal.

¹² Austria, Belgium (French Community), Bulgaria, Cyprus, Czechia, Germany, Denmark, Estonia, France, Croatia, Malta, the Netherlands, Portugal, Romania, Slovakia and Sweden.

¹³ Belgium (French Community) and France.

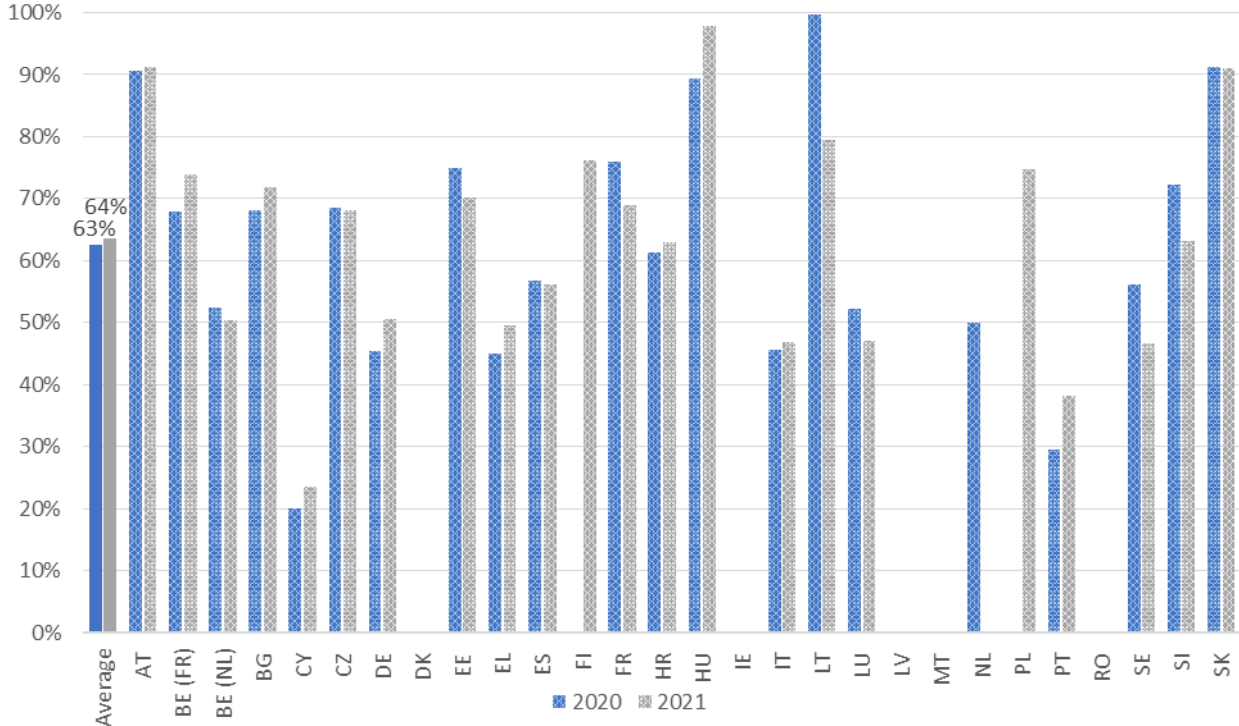
¹⁴ French and Flemish Communities of Belgium, Spain, France, Hungary, Italy, Portugal and Slovenia.

¹⁵ Member States were asked to report the share as a percentage of total titles for a given year. Note that Belgium was counted twice since the Flemish and French Communities reported data separately.

¹⁶ *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 4. The lowest figure (42%) was reported in 2017 and the highest (63%) in 2016.

works was only provided for 581 VOD services (41%) out of a total of 1 410 services that Member States reported as operating in their territory in 2020 and not being subject to an exemption from the AVMSD obligations during the whole reference period. In 2021, the figure was 533 VOD services (37%) out of a total of 1 444 services. Finally, it is worth pointing out that the data reported by Member States tended to include only smaller local VOD services, which could have implications on the results. The shares of European works in the catalogues of larger international services like Netflix and Amazon Prime were reported by the Member State that had jurisdiction over them regarding all the different national catalogues¹⁷.

Figure 2: Share of European works on VOD services, 2020-2021



Source: the Study, based on Member States’ reporting

According to an analysis conducted as part of the study, European works¹⁸ represented on average 35% of catalogues in a selection of 21 Member States¹⁹ and Norway. The calculation included data based on the catalogues of a sample of 1 062 VOD services (including over 1.9 million productions)²⁰. The data presented in the study captured the situation of VOD catalogues in February 2023, as it was not possible to collect catalogue data retrospectively for 2020-2021. The data were analysed by target country (i.e. the country where the different national catalogues were aimed to be visible) and not by country of jurisdiction (i.e. the country

¹⁷ The share of European works in the different national catalogues of the cross-border VOD services is included in the figures for the Member State which has the jurisdiction over them. For example, the average share of European works in the Netherlands as seen in Figure 2 includes the share of European works in the different national catalogues of Netflix. In the Annex of the accompanying study, the respective shares can be seen for each national catalogue.

¹⁸ European productions and European co-productions, where European co-productions were defined as any production where there are at least two production companies and at least one of them is European.

¹⁹ Austria, Belgium, Bulgaria, Czechia, Germany, Denmark, Estonia, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, the Netherlands, Poland, Portugal, Romania and Sweden.

²⁰ The 22 countries selected were those available in the JustWatch dataset. The aim was to keep in the analysis those countries that were analysed in the previous study in order to enable comparison.

where the VOD service provider in question was established). While technically outside the reference period, the data provide an important snapshot of VOD catalogues relevant to the application of Article 13(1) of the AVMSD, and supplement the data transmitted by Member States²¹. According to the 2021 analysis conducted as part of the previous study, the average share of European works was 36% based on the catalogues of a smaller sample of 751 VOD services²².

The study showed that the share of European works varied between 27% in Hungary (the lowest figure in the sample) and 48% in France (the highest figure in the sample)²³. Hence, the lowest share of European works seems to have slightly increased from the last report, where the proportion of European works ranged from 25% (Greece) to 48% (France)²⁴. According to the data available, all countries apart from Romania (-1%) had increased their share of European works, or the share had remained the same compared to the previous study²⁵.

According to the study, Mubi was the VOD service provider with the greatest share of European works present in multiple countries (for example, 64% in Italy and 63% in Ireland). Disney+ and Apple TV+, on the contrary, had the lowest average share of European works in the dataset examined (12% in Italy and Ireland and 14% in Italy and Ireland, respectively). However, the share of European works in the catalogue of a single VOD service provider can vary depending on the targeted markets. For example, Amazon Prime Video had over 53% of European works present in its Italian catalogue but only 28% in the Irish one.

The study additionally showed that there were no major differences between the share of European works in TVOD and SVOD catalogues across Member States and that 11.6% of works in the sample of productions were recent European films or series at the time of measuring (released in 2017 or later).

The study found that productions with US involvement were the most frequent co-productions in all VOD catalogues in the sample²⁶, in line with the findings of the previous study and report²⁷. Between 35% and 53% of productions in all catalogues had a US company

²¹ In parallel, another recent study conducted by the European Audiovisual Observatory has found that there was an average share of 32% of European works in VOD catalogues in September 2022 (<https://rm.coe.int/avmsdigest-the-promotion-of-european-works/1680ad9231>).

²² *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 6, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe's digital future \(europa.eu\)](https://commission.europa.eu/press-materials/press-releases/2023/05/commission-reports-on-the-promotion-of-european-works-by-audiovisual-media-services-shaping-europes-digital-future_en)

²³ All Member States in the sample except for Hungary, Greece, Estonia and Bulgaria measured at 30% or higher.

²⁴ *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 6, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe's digital future \(europa.eu\)](https://commission.europa.eu/press-materials/press-releases/2023/05/commission-reports-on-the-promotion-of-european-works-by-audiovisual-media-services-shaping-europes-digital-future_en)

²⁵ European Commission, Directorate-General for Communications Networks, Content and Technology, Mosoreanu, M., Podobea, V., Ulicna, D., et al., *Study on the practical implementation of the provisions of the audiovisual media services directive concerning the promotion of European works in audiovisual media services – Final report*, Publications Office of the European Union, 2023 (<https://data.europa.eu/doi/10.2759/211481>).

²⁶ Austria, Belgium (French and Flemish Communities), Czechia, Germany, Denmark, Estonia, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Latvia, the Netherlands, Norway, Poland, Portugal, Romania and Sweden.

²⁷ European Commission, Directorate-General for Communications Networks, Content and Technology, Mosoreanu, M., Podobea, V., Ulicna, D., et al., *Study on the practical implementation of the provisions of the audiovisual media services directive concerning the promotion of European works in audiovisual media services*

participating in the production in 2023, depending on the target market country. US companies also accounted for a substantial share of EU market revenues and their share has been rising particularly in the SVOD subsector²⁸. Other prominent non-European countries of co-production were India, Canada and Japan, accounting for approximately 11%, 4% and 3% of all productions analysed, respectively.

1.3. Prominence of European works on VOD services (Article 13(1) of the AVMSD)

Article 13(1) of the AVMSD requires Member States to ensure that VOD service providers ensure prominence of European works in their catalogues. National implementation measures to this end were introduced in 17 Member States during the reference period²⁹. Several Member States that have transposed Directive (EU) 2018/1808 have further elaborated on the notion of prominence in the catalogues of VOD services and the measures needed to implement the requirement.

For example, Austrian legislation states that European works must be appropriately distinguished from other works by means of a clear identification³⁰, while Finnish law talks about ensuring their visibility³¹. In the Netherlands, there is a requirement for European works to be brought to the attention of the public by the channel provider³². The laws of some Member States go into greater detail in this regard. For instance, in Bulgaria, the law states that prominence involves: (a) presenting European works in an attractive and accessible manner, for example through a dedicated section for European works that is accessible from the service's homepage; (b) offering the possibility to search for European works in the search tool available as part of the service; and (c) using European works in the service's campaigns or promoting a minimum percentage of European works in the service's catalogue, for example by using banners or similar tools³³. In Germany, the law specifies that prominence may be ensured by creating a special area for European works that is easily recognisable, directly accessible and permanently available from the service's main page³⁴.

In total, 17 Member States³⁵ reported data on the measures used by some of the VOD services under their jurisdiction to ensure prominence of European works in their catalogues. However, as not many Member States reported such data for all VOD services under their jurisdiction, robust data analysis of the prominence methods used was not possible. The most often cited prominence method in 2020 was a dedicated section for European works accessible from the homepage of the service, followed by highlighting European works through, for example, banners or similar tools. The most used method in 2021 was a possibility to search for European works in the search tool available as part of the service, followed by a dedicated section for

– *Final report*, Publications Office of the European Union, 2023 (<https://op.europa.eu/en/publication-detail/-/publication/41f4a695-f465-11ed-a05c-01aa75ed71a1/language-en/format-PDF/source-287430951>).

²⁸ Commission staff working document, *European Media Industry Outlook*, SWD(2023) 150 final, 17.5.2023, p. 14.

²⁹ Austria, Belgium (Flemish and French Communities), Bulgaria, Germany, Denmark, Greece, Finland, France, Croatia, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands and Portugal. Lithuania adopted legislation to this end on 15 December 2021, but it only entered into force in January 2022.

³⁰ Section 40(1) of the Audiovisual Media Services Act.

³¹ Law amending the Act on Electronic Communications Services 917/2014.

³² Article 2.115 of the Media Act 2008.

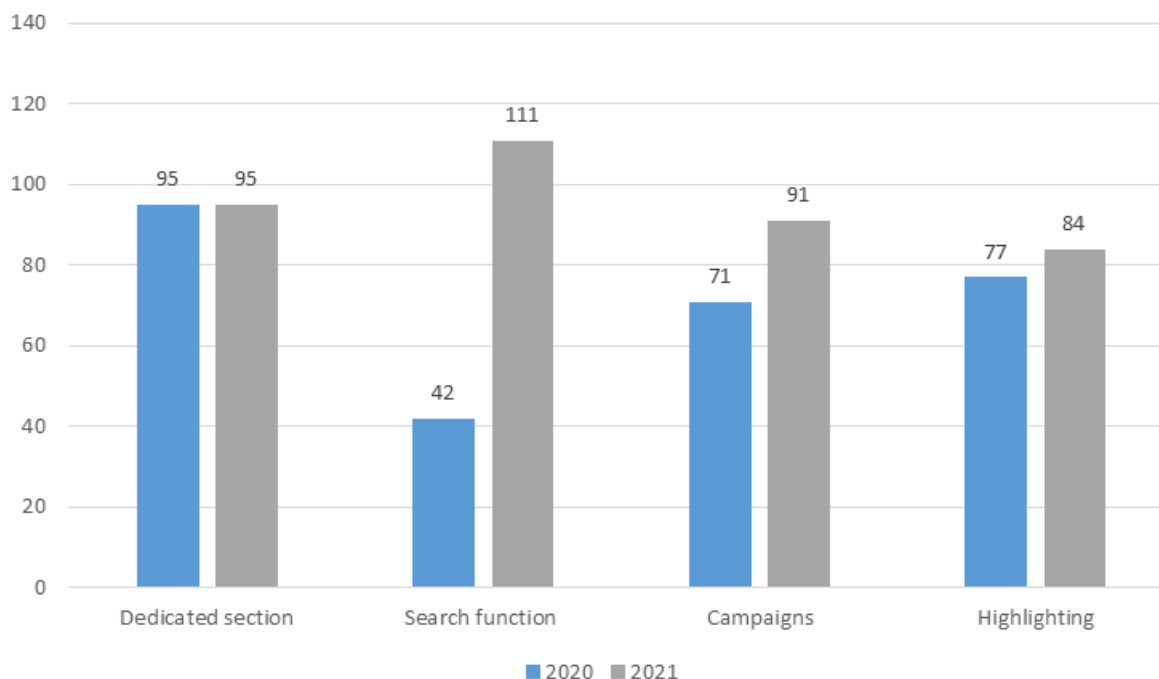
³³ Article 19 of the Radio and Television Act.

³⁴ Article 77 of the Interstate Media Treaty.

³⁵ Austria, Belgium (French and Flemish Communities), Germany, Estonia, Greece, Spain, Finland, Croatia, Hungary, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Sweden and Slovakia.

European works accessible from the homepage of the service³⁶. Other, less frequently used ways to promote European works included promotion in newsletters and social media, displaying the production country in the programme description.

Figure 3: Number of services using prominence promotion tools in Member States that reported data on prominence of European works in the catalogues of VOD services under their jurisdiction



Source: Member States' reporting

A mystery shopping test was carried out in the context of the study, focusing on a sample of SVOD services³⁷. It found that, on average, 40% of services included dedicated sections on their homepages for European works or works from the targeted country. Moreover, 49% of the services analysed offered the option to filter the works present in their catalogue by country or region. These shares varied across Member States and VOD service providers³⁸.

1.4. Financial contributions to the production of European works (Article 13(2) of the AVMSD)

Article 13(2) of the AVMSD explicitly recognises the possibility for Member States to extend the financial contributions, including via direct investment in content and contribution to national funds (levies), to the production of European works to cover media service providers targeting audiences in their territories, but established in other Member States, based on the

³⁶ Mentioned regarding 111 and 95 non-linear services, respectively, by Member States.

³⁷ The most popular four or five SVODs were selected for 15 Member States (Austria, Czechia, Germany, Spain, France, Hungary, Italy, the Netherlands, Poland, Sweden, Romania, Belgium (French and Flemish Communities), Slovakia, Denmark and Estonia).

³⁸ For example, 0% of the services analysed in Hungary included dedicated sections on the homepage for European works or Hungarian works, whereas the figure was 75% for Austria. At VOD level, 90% of the Amazon Prime and 86% of Netflix home pages included a European section whereas this was never present for Voyo, Disney+, or Mubi.

revenues these providers earn in the targeted territories. In this respect, seven Member States³⁹ reported having in place financial contribution obligations for cross-border VOD service providers and two Member States⁴⁰ reported having in place such obligations for cross-border linear service providers during the reference period. In the EEA EFTA countries, no direct or indirect cross-border financial contributions were in force in the reference period. Some Member States only had financial obligations for domestic VOD or linear services.

In comparison, in the previous report (where the modified sections in the AVMSD were not yet relevant), nine Member States reported on having in place financial contributions made by VOD service providers either under their jurisdiction or across borders⁴¹.

Examples of obligations for cross-border VOD services

- In Germany and Poland, cross-border VOD service providers must pay a levy/tax. The rate to be paid varied between 1.5% of the revenue generated in Poland through advertising or user fees from subscribers, whichever is higher, and 1.8-2.5% of net annual turnover in Germany, depending on the size of the VOD service.
- Both a levy and an obligation to invest directly existed in France and Croatia.
 - o In France, the obligations varied depending on the type of VOD service. SVOD services must devote 20-25% of their annual net turnover generated in France to the funding of European or French cinematographic and audiovisual productions; it is 15% for other VOD services, subject to certain reductions. In addition, there was a 5.15-15% levy on the yearly turnover.
 - o In Croatia, VOD services were required to invest 2% of their annual gross revenue in the production or purchase of Croatian audiovisual works by independent producers. In addition, VOD services must pay a levy of 2% of their annual gross income.
- In Italy, there was an obligation to invest directly in European works. 17-20% of net annual revenue, increasing gradually over time, should be reserved for the production of European works by independent producers or the purchase or pre-purchase of rights on such works⁴².
- In Belgium (all Communities), there was a choice between a levy or an obligation to invest directly. In the French Community of Belgium, the amount of the contribution varied between 1.4% and 2.2% of the turnover, depending on the size of the service.
- Where non-domestic VOD service providers specifically targeted with the audience in Greece, they are obliged to pay a yearly contribution of 1.5% of the turnover generated by their operations in Greece, either for the production of Greek audiovisual works or for the acquisition of rights on Greek audiovisual works that have not yet been released, or to a specific national fund.

Examples of obligations for cross-border linear services

³⁹ Belgium, Croatia, France, Germany, Greece, Italy, and Poland. Portugal adopted measures for cross-border VOD service providers in 2020 but they only entered into force in 2022.

⁴⁰ Belgium (French Community) and France. Poland and Portugal adopted measures for cross-border linear services during the reference period but they only entered into force in 2022.

⁴¹ *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 5, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe's digital future \(europa.eu\)](https://commission.europa.eu/press-communications/2023/05/17-05-2023-reporting-on-the-application-of-articles-13-16-and-17-of-directive-2010-13-eu-for-the-period-2015-2019-as-regards-non-linear-services-article-13-and-linear-services-articles-16-and-17_en).

⁴² The national law entered into force on 25 December 2021.

- In the French Community of Belgium, there was a choice between making a direct investment in the form of either co-production or pre-purchase of audiovisual works and paying a levy to a film fund. The amount of the contribution depended on the size of the turnover of the linear service.
- In France, there was an obligation to invest at least 12.5-15% of yearly turnover in the production of European audiovisual works or works the original language of which is French.

1.5. Exempted VOD services

According to Article 13(6) of the AVMSD, the obligations contained in Article 13(1) and (2) do not apply to media service providers with a low turnover or a low audience. Member States may also waive such obligations or requirements where they would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services. These provisions have been clarified in Commission guidelines⁴³. To determine ‘low turnover’, the guidelines rely on the EUR 2 million annual turnover threshold mentioned in Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises⁴⁴. Nevertheless, Member States with smaller national audiovisual markets can determine lower turnover thresholds. For ‘low audience’, the threshold according to the guidelines is an audience share of less than 1% in a given targeted Member State for non-linear services and of 2% for linear services. Member States may apply lower thresholds to take account of their national markets’ size and structure, in duly justified cases, in line with their cultural policy objectives, including the objective to ensure the sustainability of national audiovisual and film funding systems.

The national data sheets showed that a total of 540 VOD services were reported to have been exempted during the whole reference period. An exemption that had been implemented and applied the most was an exemption resulting from the nature of the services concerned, which would make it impracticable or unjustified to apply the obligations. In Austria, for instance, several VOD services were exempted because they were sport-focused VOD services. Where Member States had rules in place during the reference period, the Commission guidelines’ turnover threshold was generally applied. Regarding the audience share exemption, there were some variations in terms of the exact threshold or the way it was assessed. For example, in Croatia, the audience share to be used is 0.3% or less of the total audience, while in Sweden, the 1% threshold is based on the viewing time of the catalogues.

1.6. Methods of implementation and monitoring by the Member States

Under Article 13(4) of the AVMSD, Member States are obliged to report to the Commission on the implementation of Article 13(1) and (2). Various monitoring and verification systems can help to ensure accuracy of this data and ensure compliance with Article 13. Most Member States⁴⁵ and Iceland reported to have identical or similar monitoring and verification systems

⁴³ *Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover*, OJ C 223, 7.7.2020.

⁴⁴ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422) (OJ L 124, 20.5.2003, p. 36).

⁴⁵ Austria, Belgium (Flemish Community), Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Croatia, Hungary, Italy, Lithuania, Luxembourg, Poland, Portugal, Slovenia, Slovakia and Sweden.

for both VOD (Article 13) and linear services (Articles 16 and 17). For instance, in Italy and Iceland, both VOD and linear services had to report annually to the competent authority, while the competent authority could also conduct random checks. Please refer to Section 2.3 of this report for monitoring of linear services.

In contrast, in notably five Member States⁴⁶, the monitoring systems for VOD service providers differed from the systems applied to linear service providers.

- In the French Community of Belgium, VOD service providers were required to report the number of views and rentals of each work in their catalogues for a 1-month reference period, also indicating the 50 most watched works in the last 6 months.
- In Germany, monitoring of VOD service providers was introduced in 2021 to be carried out on a case-by-case basis by the Commission on Licensing and Supervision (ZAK), which is the central body of state media authorities. Before that, monitoring only existed in the form of checks on the fulfilment of the financial obligations of VOD service providers (which included on-site checks carried out by third parties commissioned by the competent authority).
- In Spain, no monitoring system for VOD service providers is foreseen in law. Nevertheless, the Spanish National Markets and Competition Commission (CNMC) has established an administrative practice, including systematic information requests on an annual basis to VOD service providers established in Spain. In case of need, on-site inspections were also conducted to verify information.
- In the Netherlands, in contrast with the monitoring of linear audiovisual service providers, the competent authority not only required data to be reported annually, but also conducts additional random checks on VOD service providers throughout the year.
- In Romania, VOD service providers are required to provide data quarterly (the competent authority examines the fulfilment of the year's obligations annually, on the basis of aggregated data). Furthermore, VOD service providers are required to submit to the national regulatory authority a statistical report regarding the percentage and visibility of European works in their programme catalogue. This report must be submitted annually.

Moreover, in the reference period, four Member States⁴⁷ and two EEA EFTA countries (Liechtenstein and Norway) did not have any monitoring system in place for VOD service providers.

Similarly to monitoring, the most widely applied penalties (warnings, fines and licence withdrawals) for VOD service providers were identical to those for linear service providers. However, in six Member States⁴⁸, the penalties for VOD service providers were slightly different from those for broadcasters. More specifically, Czechia and Malta had lower fines for

⁴⁶ Belgium (French Community), Germany, Spain, the Netherlands and Romania.

⁴⁷ Greece, Ireland, Latvia and Malta.

⁴⁸ Bulgaria, Czechia, Estonia, Malta, the Netherlands and Slovakia.

non-compliance for VOD service providers⁴⁹, while Slovakia applied higher fines⁵⁰. Furthermore, Estonia and the Netherlands had a narrower set of penalties for VOD service providers (for example, the Netherlands did not give warnings, only fines). In Bulgaria, there were no sanctions for VOD service providers in relation to Article 13 of the AVMSD whereas sanctions were in place in relation to Articles 16 and 17 of the AVMSD⁵¹.

2. APPLICATION OF ARTICLES 16 AND 17 OF THE AVMSD

2.1. Overview of the European linear audiovisual services market

As a result of the pandemic, the average television viewing time per person increased in Europe with revenues generated through TV advertising simultaneously dropping in 2020. However, a year later, in 2021, the viewing time returned to a more usual level with advertising expenditure generally increasing again, including TV advertising⁵². The three main sources of revenues were pay TV subscriptions, TV advertising and public funding. Together, they accounted for 80% of all revenues, which have stagnated in the last few years⁵³.

Linear channels have been more divided along national borders compared to VOD services. Overall, 56% of TV viewing time was divided between the top 20 broadcasters in Europe⁵⁴. Linear channels were, however, also influenced by large US-based companies: according to the European Audiovisual Observatory, in the Netherlands, Spain and Germany, more than 100 private TV channels had a US parent company⁵⁵.

According to the information provided by the Member States and the EEA EFTA countries, a total of 4 397 TV channels were operational in their jurisdiction in 2020 and 4 483 in 2021. The figure below illustrates the overall situation in 2020 and 2021, including also the channels that are exempted from the obligations under the Articles 16 and 17 of the AVMSD (for further information about exemptions, please see the next section 2.2). For comparison, at the end of 2019, the European Audiovisual Observatory reported that 4 657 TV channels were available

⁴⁹ Czechia had a maximum EUR 200 000 fine for broadcasters and EUR 40 000 for VOD service providers. Malta had a maximum EUR 300 000 fine for broadcasters and EUR 34 940 for VOD service providers.

⁵⁰ Slovakia had a maximum fine of EUR 6 638 for broadcasters and of EUR 10 000 for VOD service providers.

⁵¹ For more information about monitoring and control procedures of prominence of European works in national laws, please see: ERGA Subgroup 1 Consistent implementation and enforcement of the new Audiovisual Media Services Directive framework, Workstream 2 Technical expertise: Interpreting and providing guidance on the most complex new provisions, Report: Transposition and implementation of Article 13(1) of the new AVMSD – Ensuring prominence of European works in the catalogues of on-demand audiovisual media services (2021), https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Article-13_1.pdf.

⁵² European Audiovisual Observatory, *Yearbook 2022/2023 – Key trends*, available at: <https://rm.coe.int/yearbook-key-trends-2022-2023-en/1680aa9ff02>, p. 30, 47.

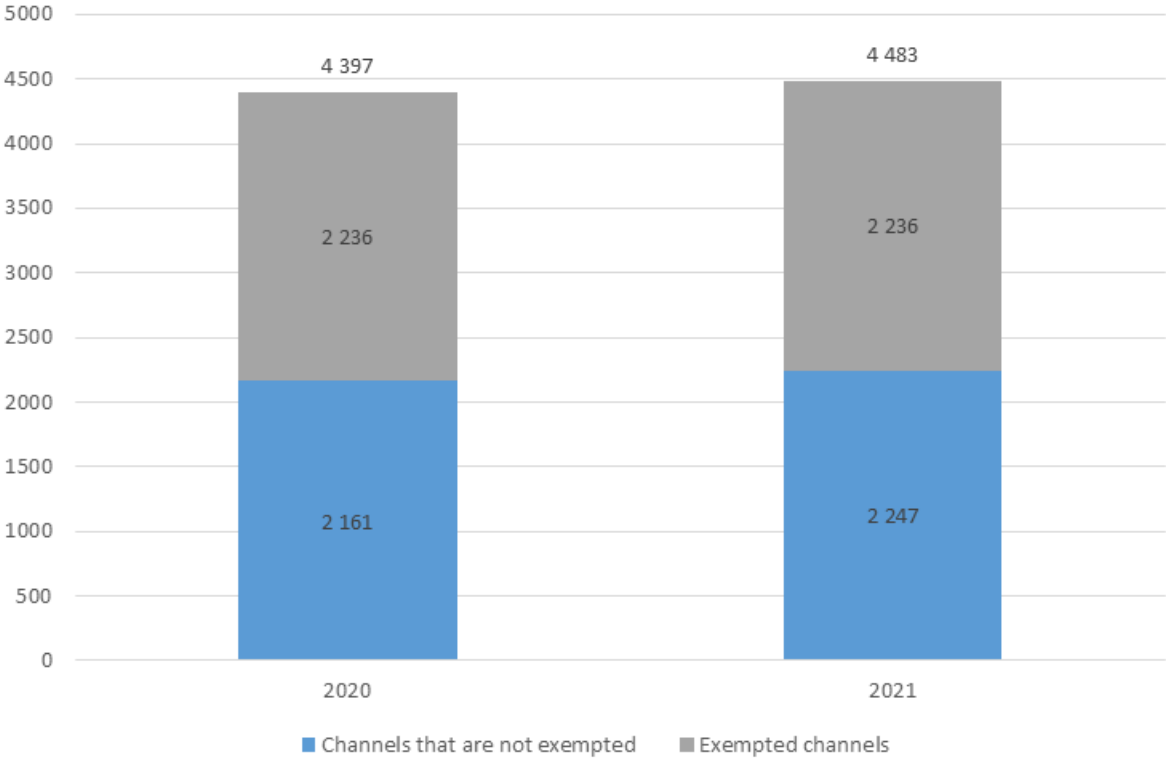
⁵³ Commission staff working document, *European Media Industry Outlook*, SWD(2023) 150 final, 17.5.2023, p. 13.

⁵⁴ Ene, Laura, European Audiovisual Observatory, *Top players in the European AV industry – Ownership and concentration – 2022 Edition*, slide 16, January 2023, available at: <https://rm.coe.int/top-players-in-the-european-av-industry-2022-edition-l-ene/1680a9cb32>.

⁵⁵ Schneeberger, Agnes, European Audiovisual Observatory, *Audiovisual media services in Europe – 2022 edition*, January 2023, available at: <https://rm.coe.int/audiovisual-media-services-in-europe-2022-edition-a-schneeberger/1680a99e7d>.

in the Member States including at that time the UK⁵⁶. The highest number of TV channels was reported for Germany, with 573 and 577 channels in 2020 and 2021, respectively, followed by the Netherlands (499 in both years). The smallest number of channels was reported for Liechtenstein (1 in both years) and Belgium (French Community, with 20 and 19 in 2020 and 2021, respectively).

Figure 4: Number of TV channels in the EU and EEA EFTA countries, 2020-2021



Source: the study, Member States’ reporting

2.2. Possible exemption of channels with a very low audience share and number of channels covered

Article 16(3) of the AVMSD requires Member States to provide the Commission every 2 years with a report on the application of Articles 16 and 17. In addition to exemptions from the reporting obligation, Article 16(1) and Article 17 of the AVMSD state that the obligation to promote European works (including independent works) does not extend to the time allotted to news, sports events, games, advertising, teletext services and teleshopping. Furthermore, Article 17 states that the promotion must be practicable and appropriate, and Article 18 states that the obligation to promote European works does not apply to television broadcasts that are intended for local audiences and do not form part of a national network. This makes it possible to exempt services from obligations based on their specific genre, among other things.

⁵⁶ European Audiovisual Observatory, *Yearbook 2020/2021 – Key trends*, available at: <https://rm.coe.int/yearbook-key-trends-2020-2021-en/1680a26056>, p. 26.

In its *Revised Guidelines for Monitoring the Application of Articles 16 and 17 of the Audiovisual and Media Services (AVMS) Directive* of July 2011 (the ‘Revised Guidelines’)⁵⁷, the Commission detailed the possibility for channels with a very low audience share (below 0.3%) to request an individual exemption from the reporting obligation. The underlying reasons for this exemption are the flexible wording of the provisions (‘where practicable’) and the emergence of new and small channels. This exemption concerns only the reporting obligation and not the obligation to ensure the share of European works set out in the Directive. It is for the competent national authorities to grant such an exemption, and the Revised Guidelines set out the detailed conditions for granting it. Additionally, under the Revised Guidelines, it is not necessary for national reports to include data on:

- channels broadcasting exclusively news, sporting events, games, advertising, teletext services and teleshopping;
- broadcasts ‘intended for local audiences’ that do not ‘form part of a national network’ (as stated in Article 18 of the AVMSD);
- channels broadcasting entirely in a language that has no official status as one of the languages of one or more Member States; and
- broadcasts exclusively intended for reception in non-EU countries and not receivable by the public in a Member State with standard consumer equipment.

Almost all national regulatory authorities reported that they had granted exemptions from the reporting obligation during the reference period (2020-2021). The most cited reason for granting an exemption from the reporting obligation was an audience share below 0.3%⁵⁸. Other reasons mentioned were the channel’s local or regional nature⁵⁹, channels broadcasting exclusively sports or news⁶⁰, teleshopping⁶¹, a relaxing burning fireplace⁶², parliamentary proceedings⁶³ or religious⁶⁴ or adult⁶⁵ content or a channel broadcasting entirely in a language that has no official status as one of the languages of one or more Member States⁶⁶.

As reported in the national data sheets, during the whole reference period, the total number of channels in the EU subject to either or both types of exemption amounted to 2 236, compared to 2 895 in 2019⁶⁷. The Netherlands had the highest number of exempted channels (410), followed by Hungary (228) and Luxembourg (219). Three Member States (Estonia, Latvia and Malta) and Liechtenstein reported not having any exempted channels. Belgium⁶⁸, Bulgaria, Cyprus, Czechia, Finland and Iceland reported fewer than ten exempted channels in total.

⁵⁷ <https://digital-strategy.ec.europa.eu/en/library/revised-guidelines-monitoring-application-articles-16-and-17-audiovisual-media-services-avms>

⁵⁸ E.g. Germany, Greece, Spain, Finland, Croatia, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Sweden and Slovenia.

⁵⁹ E.g. Austria, Denmark, Greece, Hungary, Luxembourg, Slovakia and Slovenia.

⁶⁰ E.g. Belgium (French and Flemish Communities), Bulgaria, Cyprus, Czechia, Germany, Denmark, Greece, Finland, France, Croatia, Ireland, Poland, Romania, Sweden and Slovenia.

⁶¹ E.g. Czechia, Germany, Poland, Romania, Sweden and Slovenia.

⁶² E.g. Hungary and Slovakia.

⁶³ Ireland.

⁶⁴ France.

⁶⁵ Greece.

⁶⁶ Sweden.

⁶⁷ *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 10, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe’s digital future \(europa.eu\)](https://commission-reports-on-the-promotion-of-european-works-by-audiovisual-media-services-shaping-europe-s-digital-future.europa.eu).

⁶⁸ Flemish Community.

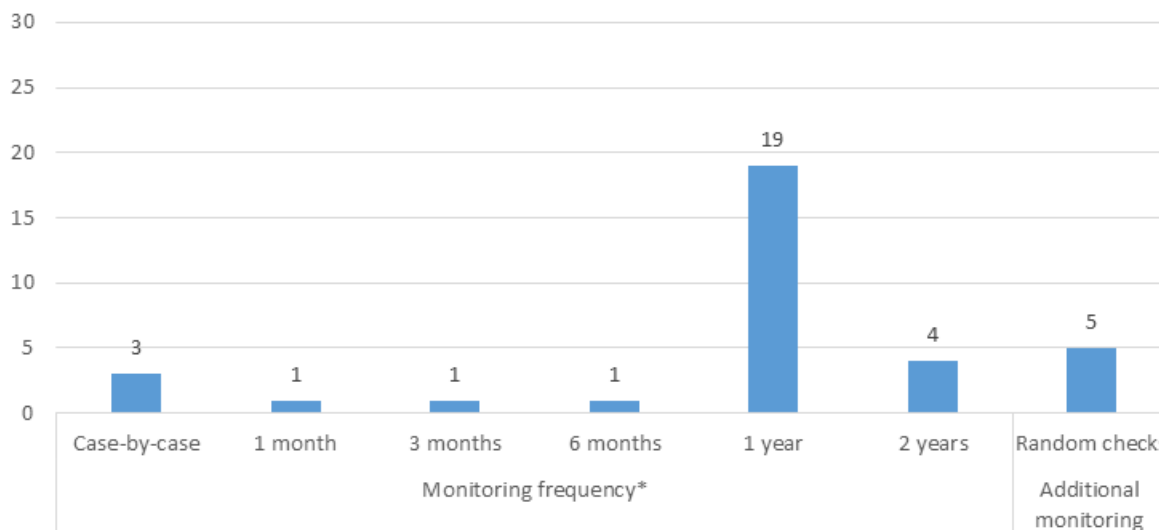
2.3. Monitoring

During the reference period, five Member States⁶⁹ introduced legislative changes to strengthen their monitoring or verification systems. A further three Member States⁷⁰ made legislative changes, requiring their competent authorities to provide the Commission every 2 years with a report outlining the performance of broadcasters in fulfilling their obligations pursuant to Articles 16 and 17 of the AVMSD.

During the reference period, most Member States required broadcasters to submit an annual report to the competent authorities on the fulfilment of their obligations under Articles 16 and 17 of the AVMSD⁷¹. Five Member States⁷² also carried out random checks throughout the year to gain up-to-date information on compliance with obligations at more regular intervals. Some Member States had more relaxed rules regarding the periodicity of monitoring: four Member States⁷³ required reports on relevant data every 2 years and three Member States⁷⁴ requested information on a case-by-case basis, without any particular periodicity. Three Member States had stricter rules than other Member States:

- Hungary required broadcasters to send data monthly (the competent authority examines the fulfilment of the obligations annually, on the basis of aggregated data for the whole year);
- Portugal required broadcasters to report every 3 months (the competent authority examines the fulfilment of the obligations annually); and
- Romania requested reports twice a year.

Figure 5: Number of Member States using different monitoring frequencies, 2021



Source: the study, Member States' reporting

*Some Member States have different monitoring frequencies for public broadcasters and commercial broadcasters, and are therefore included in multiple categories.

⁶⁹ Austria, Cyprus, Greece, Croatia and Sweden.

⁷⁰ Lithuania, Poland and Portugal.

⁷¹ Austria, Belgium, Cyprus, Czechia, Estonia, Greece, Spain, France, Croatia, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, the Netherlands (for public broadcasters), Poland, Sweden and Slovenia.

⁷² Belgium, Croatia, Italy, Latvia and Poland.

⁷³ Germany (for public broadcasters), Denmark, Finland and the Netherlands (for commercial broadcasters).

⁷⁴ Bulgaria, Germany (for commercial broadcasters) and Slovakia.

20 Member States⁷⁵ had a verification system in place, without specific procedural rules on verification. In four Member States⁷⁶, data was verified by way of sample-based checks. Accordingly, in these Member States, the competent authority would randomly select samples of data from a certain period to verify data included in reports (for example, Cyprus would randomly select 2-week samples). Moreover, the authorities in three Member States⁷⁷ used external services to assist with the verification process (for example, the competent authority in Spain was assisted by a law firm, selected through a public procurement process). In addition, the Flemish Community in Belgium carried out a risk analysis as part of its verification procedure and conducted a detailed verification if there were discrepancies in the data submitted.

In terms of the number of employees allocated to the verification of data provided by broadcasters, 17 Member States⁷⁸ did not have dedicated human resources allocated to the verification process. The remaining 10 Member States had between 1⁷⁹ and 10⁸⁰ dedicated employees.

Regarding the EEA EFTA countries, Liechtenstein had neither a monitoring system nor a verification system. Norwegian legislation concerning monitoring and verification required an annual report and the incoming information was checked. Iceland also conducted random checks on broadcasters throughout the year and involved professional accredited certification bodies in its verification system. The EEA EFTA countries did not have dedicated human resources allocated to their verification systems.

2.4. Application of Article 16 of the AVMSD – Majority proportion of European works

Article 16(1) of the AVMSD requires Member States to ensure, where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping⁸¹. Directive (EU) 2018/1808 did not introduce any changes to this Article.

During the reference period, legislative changes in relation to the implementation of Article 16 of the AVMSD took place in four Member States (Austria, French Community of Belgium, Greece and Croatia). These changes included Croatia imposing an obligatory quota of more than 50% on private broadcasters instead of the earlier minimum initial proportion of 20% with the aim of progressively increasing this proportion every year. The changes in other Member States were minor. In the EEA EFTA countries, there were no legislative changes related to Article 16 during the reference period.

⁷⁵ Austria, Bulgaria, Germany, Denmark, Estonia, Greece, Spain, Finland, Croatia, Hungary, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Sweden, Slovenia and Slovakia.

⁷⁶ Cyprus, Czechia, Ireland and Latvia.

⁷⁷ Spain, France and Italy.

⁷⁸ Austria, Belgium, Bulgaria, Cyprus, Germany, Denmark, Greece, Finland, Hungary, Ireland, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Slovenia and Slovakia.

⁷⁹ Czechia, Poland and Portugal.

⁸⁰ Estonia, Spain, France, Croatia, Italy, Romania and Sweden.

⁸¹ This is referred to as ‘qualifying time’ in this report.

All Member States required broadcasters to reserve a majority proportion of their transmission time for European works, with some Member States setting a higher proportion (60%) for public broadcasters (Hungary and Belgium⁸²) or for all broadcasters (France and Italy). Furthermore, during the reference period, nine Member States had specific quotas for works produced in their official languages⁸³.

According to the data reported by Member States, the average share across linear audiovisual media services in all Member States appeared to reach the quota laid down in Article 16 of the AVMSD in the reference period, except for Cyprus, where most linear audiovisual media service providers did not appear to meet the obligatory minimum. However, the amount of data reported on compliance with the quota varied a lot between Member States. For instance, Estonia reported data on almost all its linear audiovisual media service providers, while the Netherlands only reported data on 7 providers in 2021 compared to 87 in 2020 due to the national reporting obligations being primarily of biannual nature⁸⁴.

Based on the national reports, the average proportion of European works on linear services was 68% in 2020 and 69% in 2021⁸⁵, compared to 72.6% reported in 2019⁸⁶. However, similarly to the average proportion of European works on VOD services (see Section 1.3) and the findings in the previous report, the data were based on the information provided by the Member States, which was not complete in some cases. For example, Malta did not report on the share of European works on linear services in the reference period at all and Ireland did not report in 2021. Furthermore, those that did report on the share of European works on linear services did not do so for all services listed. For 2020, data on the proportion of European works was only provided for 1 267 linear services (59%) out of a total of 2 161 services that Member States reported as operating in their territory in 2020 and not being subject to exemptions during the whole reference period. In 2021, the corresponding figures were 1 276 linear services (57%) out of a total of 2 247 services.

⁸² French and Flemish Communities.

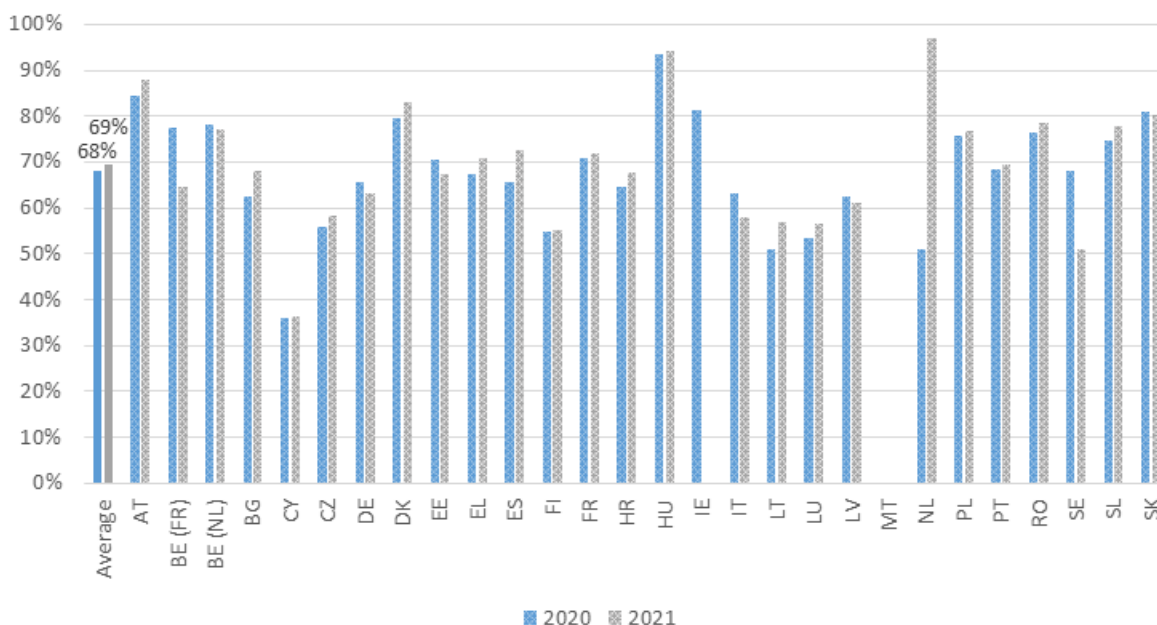
⁸³ Greece, Spain, France, Croatia, Hungary, Italy, Latvia, Poland and Portugal.

⁸⁴ This is due to the fact that there are different reporting obligations in the Netherlands depending on the type of provider. Public broadcasters are required to report annually, while commercial broadcasters should report biennial.

⁸⁵ Member States were asked to report the share as a percentage of total qualifying time for a given year. Note that Belgium was counted twice since the Flemish and French Communities reported data separately.

⁸⁶ *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 11, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe's digital future \(europa.eu\)](https://commission.europa.eu/press-room/news/commission-reports-on-the-promotion-of-european-works-by-audiovisual-media-services-shaping-europes-digital-future-europa.eu), where it was further noted that the EU average transmission time dedicated to European works by all reported channels in the EU was 70.3% in 2015, 70.5% in 2016, 71.4% in 2017, 70.9% in 2018, thus consistently varying slightly above 70%.

Figure 6: Share of European works on TV channels, 2020-2021



Source: the study, based on Member States' reporting

According to the independent analysis included in the study, which was based on a sample of 15 Member States⁸⁷ and over 900 eligible channels, the average share of European works as a proportion of qualifying time was 38%. The data presented in the study captured the situation between November 2022 and January 2023, as it was not possible to collect catalogue data retrospectively for 2020-2021. This is substantially below the average share of European works reported by the Member States (68% in 2020 and 69% in 2021)⁸⁸. According to the 2021 analysis conducted as part of the previous study, the average share of European works was 39% based on the catalogues of a smaller sample of 467 eligible channels in 11 Member States⁸⁹.

Based on the sample, Germany, Belgium, Spain and Poland stood out with over 30 channels dedicating more than 50% of their transmission time to European works. Across all Member States included in the sample, a total of 263 channels (out of 900) dedicated over 50% of their transmission time to European works, while 131 channels dedicated less than 11%. Compared to the previous study, conducted by the same study team⁹⁰, the data from the current study

⁸⁷ The independent analysis of electronic programme guide data included the following Member States: Austria, Belgium, Czechia, Germany, Denmark, Estonia, Spain, France, Hungary, Italy, the Netherlands, Poland, Romania, Sweden and Slovakia.

⁸⁸ While not directly comparable due to different definitions, scopes and calculation methods, a recent study conducted by the European Audiovisual Observatory has found that European works accounted for 43% of first-run works broadcast in the EU in 2022 on European TV channels. The study specifies that it does not intend to measure the quotas foreseen in the AVMS directive. Notably, the calculation of shares has been done on the basis of the number of titles and not their duration and therefore do not match the AVMSD criteria for assessment of quotas for linear services: <https://rm.coe.int/works-on-television-in-europe-2023-edition-july-2023-g-fontaine/1680ae68d3>

⁸⁹ *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 12, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe's digital future \(europa.eu\)](https://commission.europa.eu/press-releases/2023/05/17-05-2023-reporting-on-the-application-of-articles-13-16-and-17-of-directive-2010-13-eu-for-the-period-2015-2019-as-regards-non-linear-services-and-linear-services).

⁹⁰ European Commission, Directorate-General for Communications Networks, Content and Technology, Mosoreanu, M., Podobeia, V., Ulicna, D., et al., *Study on the practical implementation of the provisions of the*

demonstrate progress, and significantly more channels dedicate over 50% of their transmission time to European works, covering more Member States than before. At the same time, the most recent sample showed that the average share of European works was less than 50% in linear services in 11 Member States⁹¹.

Several reasons can partially explain the differences between the findings of the study and the data provided in Member States' reports. Firstly, the findings of the study are based on a limited sample of 15 Member States instead of covering all Member States⁹². Secondly, there are certain differences between the methodologies used in the analysis included in the study and those used in the Member States' own reports. Thirdly, the study did not take account of various national rules and bilateral agreements on co-productions and the acquisition of copyright. Fourthly, the study analysed compliance at the level of individual channels and not at group level – it could be that certain channels broadcast more European works compared to others belonging to the same group. Finally, a significant caveat associated with this analysis is that the country of origin could only be determined for approximately 30-50% of the total number of qualifying works analysed in the study. Interestingly, the current figure of 38% remains steady when compared to the previous study, where a sample of 11 Member States was analysed⁹³.

2.5. Application of Article 17 of the AVMSD – European works created by independent producers (independent productions) and recent works

Article 17 of the AVMSD requires Member States to ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or of their programming budget, for European works created by producers who are independent of broadcasters. Furthermore, Article 17 requires that this share is achieved by earmarking an adequate proportion for recent works, namely works that are transmitted within 5 years of their production. Directive (EU) 2018/1808 did not introduce any changes to this Article.

During the reference period, legislative changes in relation to Article 17 took place in five Member States (Austria, Germany, France, Croatia and Italy). These changes included Italy raising the proportion of the programming budget to be reserved for independent productions from 10% to 12.5% for commercial linear services, and from 15% to 17% for public media service providers as of 2021. In the EEA EFTA countries, there were no legislative changes related to Article 17 during the reference period.

audiovisual media services directive concerning the promotion of European works in audiovisual media services – Final report, Publications Office of the European Union, 2023 (<https://data.europa.eu/doi/10.2759/211481>).

⁹¹ Sweden, Belgium, France, Austria, Slovakia, Hungary, the Netherlands, Czechia, Denmark, Estonia and Romania.

⁹² These Member States were selected as representing: (1) the largest audiovisual markets in the EU while also covering diversity between medium-sized and large markets; (2) diversity in terms of regions of the EU; and (3) diversity in terms of market fragmentation. They consist of 11 Member States covered in the previous study and four new Member States.

⁹³ European Commission, Directorate-General for Communications Networks, Content and Technology, Mosoreanu, M., Podobea, V., Ulicna, D., et al., *Study on the practical implementation of the provisions of the audiovisual media services directive concerning the promotion of European works in audiovisual media services – Final report*, Publications Office of the European Union, 2023 (<https://data.europa.eu/doi/10.2759/211481>).

During the reference period, six Member States⁹⁴ had rules in place on the transmission time and/or programming budgets that set quotas higher than 10%. 12 Member States⁹⁵ had specific sub-quotas for recent works. Three Member States⁹⁶ had specific rules for national works, in the form of a sub-quota for works of original expression of independent producers. Two Member States and one EEA EFTA country⁹⁷ had language sub-quotas for independent works.

On compliance in the reference period, based on data reports from Member States, most linear audiovisual media service providers in all Member States and EEA EFTA countries adhered to the obligation laid down in Article 17 on independent productions. The ability of broadcasters to reach the target appeared to be particularly high in 15 Member States⁹⁸ and in Norway throughout the reference period. Nevertheless, similarly to the European works quota, the data reported on the fulfilment of obligations showed notable differences between Member States.

Based on the national reports, the average proportion of independent productions on linear services in the Member States during the reference period was well above the threshold: 40.6% in 2020 and 41.4% in 2021⁹⁹, compared to 40.8% reported in 2019¹⁰⁰. However, as explained in the previous section, the data is based on the linear services included in the national reports, and was not complete in some cases. Lithuania and Malta did not report on the shares of independent productions on linear services at all in the reference period and Ireland did not report in 2021. Furthermore, those Member States that did report on the shares of independent productions on linear services did not do so for all services listed. As a result, the robustness of the data is limited. For 2020, data on the proportion of independent productions was provided for 1 185 linear services (55%) out of a total of 2 161 services that Member States reported as operating in their territory in 2020 and not being subject to exemptions during the whole reference period. In 2021, the corresponding figures were 1 176 linear services (52%) out of a total of 2 247 services.

The average transmission time dedicated to recent European works as a percentage of total European works made by independent producers was 56.4% in 2020 and 59.0% in 2021 as reported by the Member States¹⁰¹ compared to 54.6% in 2019¹⁰².

⁹⁴ Bulgaria, Finland, Croatia, Hungary, Italy and Slovakia.

⁹⁵ Belgium (French Community), Czechia, Spain, Finland, Croatia, Hungary, Italy (although implementing legislation was adopted after the reference period in 2022), the Netherlands, Poland, Portugal, Slovenia and Slovakia.

⁹⁶ Estonia, Croatia and Hungary.

⁹⁷ Belgium (French Community), the Netherlands and Norway.

⁹⁸ Austria, Belgium (French and Flemish Communities), Cyprus, Germany, Estonia, Greece, Spain, Finland, Croatia, Hungary, Italy, Malta, Poland, Romania and Slovenia.

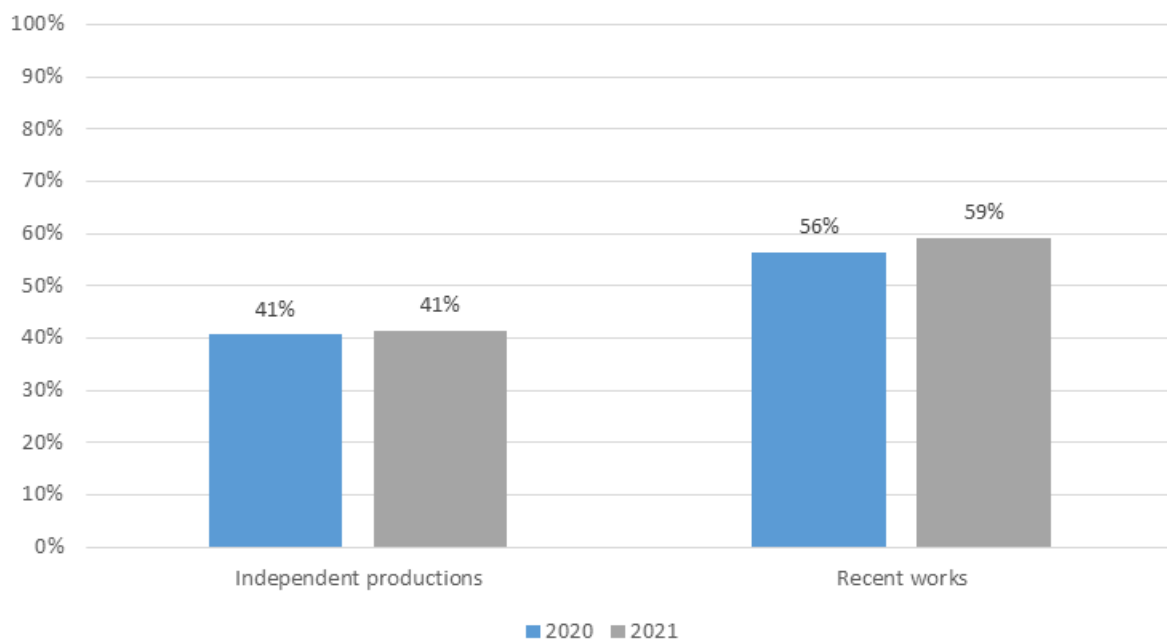
⁹⁹ Member States were asked to report the share as a percentage of total qualifying time for a given year. Note that Belgium was counted twice since the Flemish and French Communities reported data separately.

¹⁰⁰ *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 13, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe's digital future \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic-commission-reports-on-the-promotion-of-european-works-by-audiovisual-media-services-shaping-europe-s-digital-future-2023-05-17-1752023-13).

¹⁰¹ Ibid.

¹⁰² *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17)*, SWD(2023) 152 final, 17.5.2023, p. 13, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe's digital future \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic-commission-reports-on-the-promotion-of-european-works-by-audiovisual-media-services-shaping-europe-s-digital-future-2023-05-17-1752023-13).

Figure 7: Average share of independent productions and average transmission time dedicated to recent works as a percentage of independent productions across Member States, 2020-2021



Source: the study, Member States' reporting

According to the study, the share of recent European works was the highest in Belgium with 10.5% and the lowest in Hungary with 2.4%, whereas the range was much larger from highest 29.1% in Germany to lowest 0.9% the Netherlands in the previous report¹⁰³. The independent analysis included in the study calculated figures based on an automated matching procedure with a list of independent European production companies¹⁰⁴. According to its findings, the average share of time allotted to European independent production ranged from 3% in Belgium and France to 1% in Slovakia. The overall share of independent European works was fairly low across all Member States (less than 3%) and appears lower than the shares calculated in the previous study. Nevertheless, noteworthy disparities between channels could be observed and depended on how independent productions were defined¹⁰⁵.

As with the calculation of the share of European works on linear channels, there are several reasons that can partially explain the differences in the calculation of the share of independent and recent productions between the findings of the study and the data provided in Member States' reports. Firstly, the study constructed the list of European independent producers based on previous studies and desk research of publicly available information on membership of certain European-level associations, which may not have included all independent producers. Secondly, the names of some European independent production companies might have been spelled so differently in the databases that the automated matching procedure could not make a connection between them. Lastly, there is no definition of 'independent productions' in the

¹⁰³ *Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17), SWD(2023) 152 final, 17.5.2023, p. 14, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe's digital future \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic-reporting-on-the-application-of-articles-13-16-and-17-of-directive-2010-13-eu-for-the-period-2015-2019-as-regards-non-linear-services-and-linear-services-swd2023-152-final-17-5-2023.pdf).*

¹⁰⁴ The study team used existing and third-party lists to identify independent productions as a proxy.

¹⁰⁵ The study team applied the definition of a 'quasi-independent' production, meaning that if at least one of the production companies involved in a co-production could be categorised as independent, the work was classified as an independent co-production.

AVMSD and Member States may have construed the term differently. This could have been reflected in their figures.

3. GLOSSARY

AVMSD means Directive 2010/13/EU as amended by Directive (EU) 2018/1808.

EEA EFTA means the European Free Trade Association (EFTA) countries that are members of the European Economic Area (EEA): Iceland, Liechtenstein and Norway.

Guidelines means *Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover*, OJ C 223, 7.7.2020.

Revised Guidelines means *Revised Guidelines for Monitoring the Application of Articles 16 and 17 of the Audiovisual and Media Services (AVMS) Directive* of July 2011.

VOD service means a video-on-demand service (a non-linear audiovisual media service), i.e., an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider, as defined in Article 1(1)(g) of the AVMSD.

AVOD service means advertising-based video-on-demand service.

SVOD service means subscription-based video-on-demand service.

TVOD service means transaction-based video-on-demand service.