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COMMISSION STAFF WORKING DOCUMENT

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)

I. INTRODUCTION

This report forms part of the regular monitoring of the implementation of the measures relating to the promotion of European works by audiovisual media services, as laid down in Directive 2010/13/EU, the Audiovisual Media Services Directive ('the 2010 AVMSD')¹. It follows the previous report, which focused on the period 2011-2014². This report covers the years 2015–2019 for both linear and non-linear services. The geographic scope covers the 27 EU Member States. The report is based on the national reports provided by Member States on the application of Articles 13, 16 and 17, and on an independent study, which also provides information regarding the United Kingdom, Iceland and Norway.

It is important to note that this Report refers to the obligations under Directive 2010/13/EU ('the 2010 AVMSD') before they were modified by Directive (EU) 2018/1808³. The 2018 Directive ('the revised AVMSD') introduced new rules to strengthen the promotion of European works. The new rules, which have been clarified in Commission guidelines⁴, 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 and ensure prominence of those works⁵. The possibility of Member States to request financial contributions from media service providers targeting audiences in their territories, but established in other Member States, to the production of European works was also established⁶. Media service providers with a low turnover or a low audience are exempted⁷. Additionally, the periodic reporting by Member States on this provision (Article 13) has been changed from every four to every two years⁸, and therefore aligned with the reporting obligations concerning Articles 16 and 17 (also every two years).

Since the new rules introduced in 2018 had not yet entered into force at national level in 2019, this final evaluation report also covers the year 2019⁹. This report was drawn up in accordance with Article 13(3) and Article 16(3) of the 2010 AVMSD. The implementation of the obligations pursuant to Articles 13, 16 and 17 under Directive (EU)2018/1808, and covering the years 2020-2021, will be subject to another report, which will be published shortly.

¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive). This codified version replaced Directive 89/552/EEC as amended by Directive 97/36/EC and Directive 2007/65/EC.

² Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU: for the period 2011-2014 as regards non-linear services (Article 13) and 2013-2014 as regards linear services (Articles 16 and 17), SWD(2020) 227 final.

³ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 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 (Audiovisual Media Services Directive) in view of changing market realities, OJ L 303, 28.11.2018, p. 69-92.

⁴ 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.

⁵ Article 13(1) of the revised AVMSD.

⁶ Article 13(2) of the revised AVMSD.

⁷ Article 13(6) of the revised AVMSD.

⁸ Article 13(4) of the revised AVMSD.

⁹ Directive (EU) 2018/1808 was due to be transposed by 19 September 2020.

The first part of this report is the Commission’s report to the European Parliament and the Council on the application of Article 13 of the 2010 AVMSD, concerning the promotion of European works by on-demand audiovisual media services over the period 2015-2019. In accordance with Article 13, the report is based both on the data provided by the Member States (EU-27¹⁰) every four years and on an independent study (‘the Study’).

The second part of this report concerns the application of Articles 16 and 17 of the AVMSD on the promotion of European works and independent productions in broadcasting services for the period 2015-2019. The purpose of this report, pursuant to Article 16(3) of the 2010 AVMSD, is to inform Member States and the European Parliament of the national reports that Member States need to provide every two years on the application of this Article and Article 17, accompanied, where appropriate, by an opinion.

II. REPORTS

1. APPLICATION OF ARTICLE 13 (NON-LINEAR SERVICES)

1.1. Overview of the European on-demand services market

During the period under review, the video-on-demand (VOD) service market in the EU grew in terms of revenue and number of service providers. The revenues of the audiovisual market in EU-27 grew by a yearly average of 3.4% and the VOD services increased 44% between 2015 and 2019. At the same time, VOD service markets in individual Member States developed at different rates.

Member States reported data on the number of VOD services between 2015 and 2019. According to the information available¹¹, the Study estimated that the number of VOD services stood at 713 in 2015, 847 in 2016, 945 in 2017, 999 in 2018 and 1 030 in 2019.

Figure 1. Number of VOD services in the EU (2015–2019).

Source: the Study, based on Member States’ reporting

Most Member States reported the same number of VOD services available over the current period, except Austria and Poland. Austria reported on an average of 181 VOD services, over the 2016-2019 period. Poland reported on an average of 142 VOD services over the period 2015-2019 period.

Austria had the highest number of VOD services available in the period 2016-2019 (162 services in 2016, 170 in 2017, 213 in 2018, and 258 in 2019), followed by Poland (134 in 2016, 143 in 2017, 154 in 2018, and 138 in 2019), Spain (133 every year during the period), the Netherlands (92 every year during the period), Czechia (77 every year during the period),

¹⁰ The national reports were provided by the EU-27 (as they were requested after 1 February 2020), while the independent study covered the EU-27, the United Kingdom, Norway and Iceland.

¹¹ Data available from 25 Member States in 2015 and from 26 Member States in 2016-2019. Note that Belgium was counted twice since the Flemish and the French communities reported data separately.

and France (75 every year during the period). Over half of the Member States¹² stated that the number of on-demand services was above 10 in 2019. The lowest numbers of on-demand services were to be found in Malta (2 every year during the period), Greece (5 every year during the period), Slovakia (7 every year during the period), Luxembourg (8 every year during the period) and Belgium (3 services in the French Community and 7 services in the Flemish Community every year during the period).

Since the previous monitoring exercise (2011-2014), there have been fluctuations in the number of VOD services reported. The four biggest increases were seen in Austria (from 135 in 2014 to 201 on average in 2015-2019), followed by Poland (from 35 in 2014 to 142 on average in 2015-2019), Spain (from 15 in 2014 to 133 in 2019) and the Netherlands (from 22 in 2014 to 92 in 2019). There were reductions in the number of VOD services in Czechia reported 167 services in 2014, but only 77 in 2019. France also saw a reduction in the number of VOD services, from 114 in 2014 to 75 in 2019.

For 63% of the VOD services reported, Member States also indicated the type of VOD service. The types listed were transaction-based ('TVOD', such as Apple iTunes), subscription-based ('SVOD', such as Netflix and Amazon Prime) and advertising-based ('AVOD', such as Rakuten TV) services. Based on the data available, the most common type of VOD service in the Member States during the period 2015-2019 was SVOD (47%), followed by AVOD (27%) and TVOD (26%).

1.2. European works in video-on-demand services – national reports

There was significant divergence in terms of both legislation and practices between Member States including, in some cases, an absence of specific obligations. The legal mapping sheets (31 in total)¹³ show that, between 2015 and 2019, 13 countries made legislative changes in respect of Article 13 (see Section 1.1.4(a)). Substantive reforms took place in only four countries. In three countries, changes in relation to financial obligations were introduced.

The high degree of divergence between countries is a result of the flexibility offered by the provisions of Article 13 of the 2010 AVMSD, which do not impose a minimum mandatory proportion of European works and which offer Member States the freedom to choose the manner in which the promotion of the production of and access to European works is to be achieved (e.g. via the share or prominence of European works in the VOD service's catalogue or the financial contributions made by the service to the production of and rights acquisition for European works).

Based on the national reports, the average proportion of European works on VOD services rose from 45% in 2015 to 54% in 2019¹⁴. This increase was not linear, however. For example, in 2016, the proportion of European works available on VOD services reached 63%, but fell to 42% in 2017.

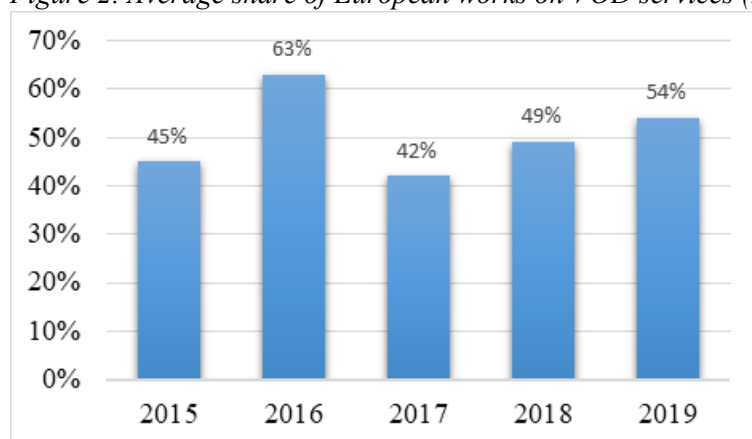
¹² Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Hungary, Italy, Latvia, Lithuania, Portugal, Romania, Slovenia and Sweden.

¹³ Information was provided by all the Member States, while the independent study covered the EU-27, the United Kingdom, Norway and Iceland. In addition, in Belgium there are different measures in the French and Flemish Communities transposing Article 13 of the 2010 AVMSD.

¹⁴ As a percentage of total titles for a given year.

The Commission notes that the data on average shares are based on the VOD services that were included in the national reports. Many countries did not report on the shares of European works on VOD services. For example, for 2019, data on the proportion of European works were only provided for 560 VOD services (56%) out of a total of 1 030 services that countries reported as operating in their territory. Furthermore, some countries reported data only for certain years, whereas others reported data for the entire reference period. Such variations may distort any findings based on the data. In addition, for over half of the services covered in the reporting, the countries reported that over 90% of the VOD services' catalogues were dedicated to European works. These data represent a very large share of all the VOD services reported and, therefore, skew the EU average. Finally, some countries did not carry out monitoring activities during the reference period. Thus, data for many VOD services are not available.

Figure 2. Average share of European works on VOD services (2015– 2019).



Source: the Study, based on national reporting.

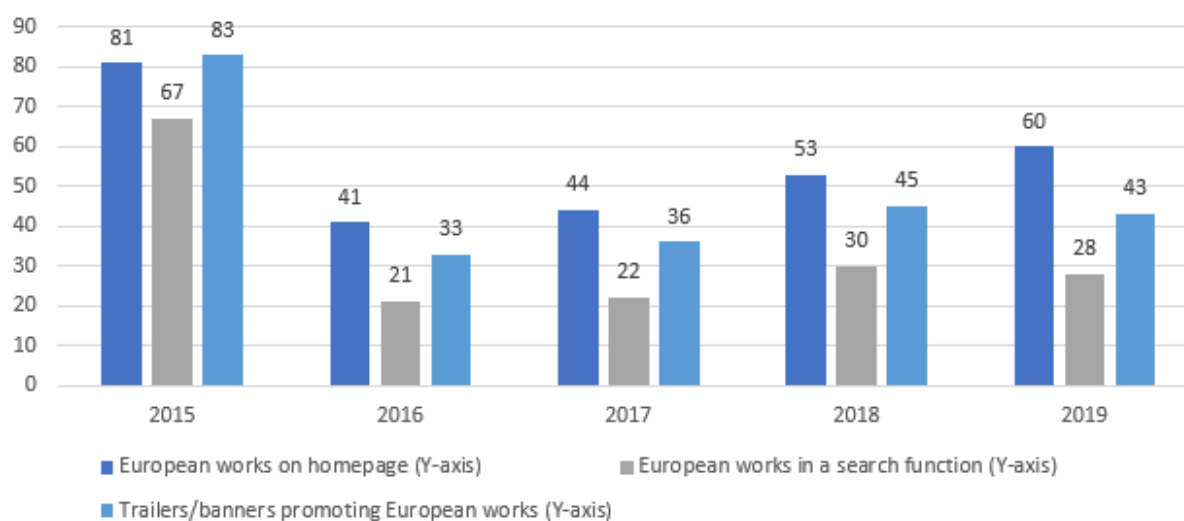
In total, 14 Member States (Belgium¹⁵, Bulgaria, Denmark, Estonia, Finland, Greece, Italy, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Spain and Sweden) reported data on the measures used by some of the VOD services under their jurisdiction to promote the prominence of European works in their catalogues. However, three Member States did not report data for all of the VOD services under their jurisdiction, so robust data analysis of the prominence promotion methods used was not possible. The display of European works on the service's homepage was the most widespread method, with 60 VOD services using this tool in 2019¹⁶. Based on the data provided by Member States, in 2019, on average 74% of works displayed on the homepage of VOD services were European works. The second most common tool to promote European works was the use of trailers and banners. In 2018, 45 VOD services in the Member States that reported data on the prominence of European works used trailers and banners, whereas in 2019, that number fell to 43. Another tool to promote European works was displaying them in the search function by including a specific search category referring to such type of works. In 2019, 28 VOD services used the search function as a prominence promotion tool. Other, less frequently used, ways to promote European works included highlighting domestic works (Finland), promoting works on social media (Denmark and Italy) and the use of search engine optimisation¹⁷ and search engine marketing¹⁸ (Denmark).

¹⁵ The French Community.

¹⁶ In particular for 2018 and 2019.

¹⁷ Search engine optimisation refers to the process of increasing the visibility on a search engine results page.

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



Source: the Study, based on national reporting.

Nine Member States (Belgium¹⁹, Bulgaria, Denmark, Estonia, Greece, Spain, Luxembourg, the Netherlands and Sweden) reported on the financial contributions made by the VOD service providers²⁰. During the period covered, the reported average contribution (expressed as a share of the VOD service's revenue) varied across Member States from 0.99% in Belgium to 82% in Denmark. The average contribution share was relatively consistent over the period 2015-2019 in all the aforementioned Member States, except for Bulgaria where the average share increased from 18% (2018) to 29% (2019). The Commission notes that the large variation in the reporting indicates that Member States may have interpreted and calculated the average share of contribution differently²¹.

1.3. Findings of the Study based on a sample of VOD catalogues.

The Study includes data relevant to the implementation of Article 13 of the 2010 AVMSD, based on the catalogues of a sample of 751 VOD services (including over 1.3 million

¹⁸ Search engine marketing helps getting discovered on a search engine results page by increasing the ranking.

¹⁹ The French Community.

²⁰ This relatively low reporting rate may be either due to lack of data or because some Member States do not require such financial contributions from VOD services.

²¹ There are important differences between VOD services in Member States. These differences may raise questions about the quality of the data reported. Member States were asked to report financial contributions made as a share of the VOD service's total revenue. For a number of services, the data indicate a financial contribution of 100%. However, that would suggest that the service's entire revenue was invested in production, which is not credible. It is therefore probable that the way in which this indicator is interpreted and calculated varies greatly across the Member States that apply it.

productions) available in 21 Member States²² and in Norway, extracted from multiple sources²³.

The data presented in the Study capture the situation of VOD catalogues in May 2021, as it was not possible to collect catalogue data retrospectively for the period 2015 to 2019. While technically outside the period covered, the data, however, provide an important snapshot of VOD catalogues relevant to the application of Article 13 of the 2010 AVMSD and complement the data transmitted by Member States.

The main conclusions of the analysis are as follows:

- European works represent 36% of the catalogue content analysed across all the 751 services listed. The proportion of European works ranges from 25% (Greece) to 48% (France).
- The same VOD services can have varying proportions of European works in their catalogue, depending on the target country²⁴.
- There were no major differences between the proportion of European works in VOD catalogues that are transaction-based (TVOD) or subscription-based (SVOD) across Member States.
- Productions with US involvement are the most frequent in all the VOD services' catalogues of the countries covered. Depending on the target country, between 42% and 55% of productions have US participation in the production.
- The European countries with the largest share of productions or co-productions are the UK (with approximately 9% of all productions analysed), France (with 7%) and Germany (with 5.5%). The other two countries that frequently feature in the top 10 countries with the highest proportions of productions or co-production are Spain and Italy.
- A large proportion of the European works in VOD catalogues are recent productions (released in 2016 or later). For example, for Netflix catalogues, over 40% of European works are recent productions in Italy, Belgium, Austria and Bulgaria. The actual figure is likely to be even higher, as a large proportion of the productions in the sample were not dated. In addition, the share of recent works is even higher in HBO (specific VOD service) catalogues.

1.4. Methods of implementation and monitoring by the Member States.

a) Amendments in national legislation

Legislative amendments undertaken by Member States during the reporting period (where no amendments were introduced in the AVMSD) in relation to the implementation of Article 13 of the 2010 AVMSD were identified in 13 Member States (Belgium²⁵, Cyprus, Croatia, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Italy, the Netherlands and

²² Austria, Belgium, Bulgaria, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Spain and Sweden.

²³ The 22 countries selected were those available in the JustWatch dataset; no criteria other than the availability of data were used for the selection.

²⁴ The data presented in this Section are analysed by target country, i.e. the country where the catalogue is being made available, and not by country of jurisdiction.

²⁵ The Flemish Community.

Slovakia) between 2015 and 2019. Substantive reforms took place in Belgium, Croatia, Hungary and Italy. All four of these Member States introduced new requirements regarding the prominence of European works. For example, in Italy, VOD providers are required to give prominence to European works by establishing a dedicated section on the main access page to the catalogue, or a dedicated category for European works, and they shall reserve a quota for European works in their advertisement campaigns. In relation to the promotion of independent productions, only Belgium and Italy introduced new requirements. Regarding the promotion of recent European works, only Italy introduced new requirements, including investment obligations for European works with particular attention to works from the last five years. With regard to financial contributions to the production of or the acquisition of the rights for of European works, new requirements or changes in the requirements already in place were noted in Belgium, Germany and Italy.

Denmark and Germany introduced relevant changes regarding the requirements applicable to VOD services. In Denmark, the new rules state that the promotion of European programmes can be undertaken by offering a high or rising percentage of European programmes in the directory of the service offered by the provider. In Germany, public service broadcasters are now allowed to provide licensed feature films and television series on demand in their online catalogues for 30 days, as long as they are European works.

Furthermore, significant changes to the monitoring system were made in Slovakia and the Netherlands, and minor changes were identified in Cyprus, Estonia, Finland and Greece (see Section 1.1.4.(b) below, ‘Monitoring by national authorities’).

b) Monitoring by national authorities

Eight Member States (Belgium²⁶, Cyprus, Croatia, Estonia, Hungary, Italy, the Netherlands and Slovakia) have introduced legislative changes during the reporting period (where no amendments were introduced in the AVMSD) with regard to the monitoring system in place to ensure compliance with the obligations of Article 13, including reporting obligations. Significant changes were made in the Netherlands and Slovakia, requiring providers to report on the share of European works. In Slovakia, a reporting obligation for VOD providers was introduced. Specifically, VOD service providers must provide statistics on the share of European works. Similarly, the Netherlands introduced the obligation on the providers of on-demand commercial media services to report regularly to the Dutch media authority. Italy has also introduced mandatory reporting for VOD providers. Although not substantive, in Cyprus, further details regarding the reporting obligations were introduced and in Estonia, a new monitoring authority was established due to the merger of two authorities.

In Finland and Greece, the text of the relevant measures was slightly modified, but no actual changes in relation to the requirements for VOD providers, the relevant definitions, or the monitoring system in place were introduced.

Denmark and Germany explicitly stated in their national reports that they do not monitor whether VOD service providers fulfil their obligations under Article 13. VOD service providers under Maltese jurisdiction are exempt from the obligations to promote European

²⁶ The Flemish Community.

works in line with Article 13 based on VOD service providers' audience share and market relevance.

Most Member States (15) carry out the monitoring exercise on a yearly basis²⁷. Eight Member States do not mention the frequency of checks. This could either be because the Member States in question do not have a monitoring system in place or because the monitoring exercise is carried out at random. Cyprus, Italy, Spain and Sweden carry out in-house monitoring through their national regulatory authorities. The rest of the Member States run the monitoring process solely relying on the reports provided by VOD service providers under national jurisdiction. Regarding verification, most national regulatory authorities carry out checks internally. Italy and Spain conduct in-house checks and make use of external providers to conduct parallel verifications.

Of the Member States that reported data, Belgium²⁸ is the only example where the national regulatory authority declared that it carries out checks on whether European works are effectively offered prominently in the on-demand media service catalogues and whether the providers follow the recommendations published by the authority in 2010.

The majority of Member States that provided data regarding the application of Article 13 declared that they had not identify any instances of non-compliance²⁹. Only Czechia, Luxembourg and Romania reported having taken measures to address cases of non-compliance.

1. APPLICATION OF ARTICLES 16 AND 17 (LINEAR SERVICES)

1.1. General remarks

1.1.1. Overview of the European linear audiovisual services landscape

In most Member States, the audiovisual market remained stable over the period 2015-2019 in terms of the number of TV channels available, with the exception of Austria, where the number of channels rose by 56%, from 27 in 2015 to 42 in 2019.

Figures from the European Audiovisual Observatory, however, show a decrease in the number of available channels between the previous monitoring exercise and the current reference period: in December 2013, there were 8 817 TV channels available in the EU-28³⁰, while at the end of 2019, this number had fallen to 4 657³¹.

²⁷ Austria, Belgium (the Flemish Community), Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Ireland, Italy, Lithuania, Poland, Romania, Slovenia and Spain.

²⁸ The French Community.

²⁹ Most countries' monitoring processes are dependent on the reports provided by VOD service providers.

³⁰ European Audiovisual Observatory, Yearbook 2014. Television, cinema, video and on-demand audiovisual services – the pan-European picture, European Audiovisual Observatory, Strasbourg, 2014.

³¹ European Audiovisual Observatory, Yearbook 2020/2021. Television, cinema, video and on-demand audiovisual services – the pan-European picture, European Audiovisual Observatory, Strasbourg, 2021.

During the reporting period 2015-2019, the total number of channels covered³² increased marginally from 2 362 in 2015 to 2 377 in 2019. Spain had the highest number of channels covered in the period 2015-2019 (454 channels), followed by Hungary (413 channels), Germany (275 channels) and Czechia (153 channels). The lowest numbers of channels were found in Malta (3 channels), Ireland (7 channels), Croatia (11 channels) and Belgium³³ (12 channels).

1.1.2. Methods of implementation and monitoring by the Member States

Overall, legislative changes during the reporting period (and not triggered by any modification of the AVMSD) in relation to the implementation of Articles 16 and 17 of the 2010 AVMSD took place in 16 Member States (Cyprus, Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Latvia, Iceland, Italy, the Netherlands, Poland, Romania and Slovakia) between 2015 and 2019. Substantive reforms were introduced in seven of those Member States (Croatia, France, Hungary, Italy, the Netherlands, Poland and Romania). Poland, Italy and Iceland modified provisions related to the share of European works.

2.1.2.1. Possible exemption from the reporting obligation of channels with a very low audience share and numbers of channels covered

In 2011, the Commission, in its ‘Revised Guidelines for Monitoring the Application of Articles 16 and 17 of the AVMSD’ of July 2011³⁴ permitted channels with a very low audience share (below 0.3%) the possibility to request an individual exemption from their reporting obligation under Articles 16 and 17. The underlying reasons for this exemption were the flexible wording of the provisions (‘where practicable’) and the emergence of new and small channels. This exemption concerned only the reporting obligation and not the obligation to ensure the share of European works, as set out in the Directive. It was for the competent national authorities to grant it. The Revised Guidelines’ set out the detailed conditions for granting such an exemption. Additionally, under the 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’ 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 by the public in a Member State with standard consumer equipment.

Several national regulatory authorities reported that they had granted exemptions from the reporting obligation during the reporting period 2015-2019. Different reasons were given for these exemptions, listed below:

³² Channels covered: total number of channels identified minus the number of non-operational channels and the number of channels exempted from their reporting obligation (due to the nature of their programmes) or excluded channels (due to legal exceptions).

³³ The French Community.

³⁴ <https://digital-strategy.ec.europa.eu/en/library/revised-guidelines-monitoring-application-articles-16-and-17-audiovisual-media-services-avms>

- Local and regional channels (e.g. Austria, Belgium and Sweden)
- Sports or news channels (e.g. Austria, Italy and Latvia)
- Below 0.3% audience channels (e.g. Austria, Germany and Poland)
- Erotic channels (e.g. Estonia)
- Religious content channels (e.g. Estonia)
- Channels where programming decisions are made abroad (e.g. Finland)
- Teleshopping channels (e.g. France, Malta and Spain)
- Channels with international coverage for countries outside Europe (e.g. Portugal).

During the reporting period, the total number of exempted channels increased marginally from 2 887 in 2015 to 2 895 in 2019. Spain had the highest number of exempted channels in the period 2015-2019 (479 channels), followed by Germany (475 channels), Italy (358 channels) and France (279 channels). The lowest number of exempted channels was found in Hungary (23 channels), Portugal (22 channels), Cyprus (13 channels) and Estonia (2 channels). In addition, Latvia and Belgium³⁵ reported that no channels were given an individual exemption, whereas Bulgaria did not provide information on the number of exempted channels.

2.1.2.2. *Monitoring*

In the previous report on the application of Articles 13, 16 and 17 of Directive 2010/13/EU, the Commission noted that 16 Member States had set up verification mechanisms during the period 2013-2014. In addition, the Commission recommended in the same report that all Member States provide for national monitoring mechanisms, which include appropriate, systematic and specific verification of the data provided by broadcasters in order to contribute to an accurate picture of the application of Articles 16 and 17.

In the current reporting period, all Member States reported having a monitoring system which ensures compliance with Articles 16 and 17 of the 2010 AVMSD. Most Member States send a direct request to broadcasters to report on the quota obligations.

In Finland and Sweden, linear service providers are required to report the data by completing a survey. Similarly, in Austria, broadcasters are required to report the data in writing on a yearly basis. In Croatia, linear service providers report data by filling out the pre-defined Excel template circulated by the regulatory authority. Some Member States rely on service providers' self-declaration. This is the case in Hungary where the quota for European works is established through this method, followed by a verification of data by the authority. Similarly, in Estonia, service providers self-declare the data but a deadline for the reporting is provided by the authorities. Other Member States do not rely solely on the data reported by the broadcasters, but run data checks in parallel. For instance, regulatory authorities in Cyprus randomly select two weeks in a year for verification purposes and compare their results with those reported by the providers.

³⁵ The Flemish Community.

Most Member States (13)³⁶ collect data on a yearly basis, while six Member States did not provide data on the frequency of their reporting. In Finland, Ireland and the Netherlands, data are reported every two years, while in Poland, Portugal, Slovakia and Romania, data are reported every four to six months.

Regarding the verification of the data provided by broadcasters, various methods were identified in the Member States' reports. Most national regulatory authorities carry out verification activities in-house. However, in Spain and Italy, the verification process is carried out both in-house and by external providers.

2.2. Application of Article 16 – Majority proportion of European works

This section provides an analysis of compliance with the obligation to broadcast, where practicable, a majority of European works as set out in Article 16 of the 2010 AVMSD³⁷. According to the data reported by Member States, 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 and 72.6% in 2019.

This indicates in general a stable level of reported European works with a slight increase in 2019 compared to 2015. However, these figures rose in comparison with the years prior to the reference period. The average transmission time dedicated to European works was 64.25% in 2013 and 63.72% in 2014. Moreover, on average, most Member States met the required proportion of European works over the reference period 2015-2019.

On average, over the period 2015-2019, Hungary displayed the highest percentage of European works as a proportion of total qualifying broadcast time (94.4%), whereas Czechia (52.1%), Lithuania (57.8%) and Finland (58.7%) exhibited the lowest percentages.

Average EU compliance rates³⁸ regarding European works also increased over the reporting period, from 50% in 2015 to 56% in 2016, 58% in 2017, 59% in 2018, and 57% in 2019. These rates do not, however, accurately reflect whether or not the channels reserved a majority of their transmission time for European works, as set out in Article 16, because many Member States reported channels for which they provided no accompanying data. For example, Spain reported percentage data for only 10% of the number of the channels it reported.

Although, at a national and European level, the average time dedicated to European works exceeded the majority proportion required under Article 16, certain individual channels did not reach this quota. According to the data reported by Member States, a total of 219 channels

³⁶ Austria, Belgium (French and Flemish Communities), Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Italy, Latvia, Lithuania, Slovenia, Spain.

³⁷ Under Article 16, broadcasters must reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. This is referred to as “qualifying broadcast time” in this report. All Member States require broadcasters to reserve a majority proportion of their transmission time for European works, with some Member States establishing a higher proportion (at 60%) for public broadcasters (Hungary) or for all broadcasters (France).

³⁸ The compliance rate is obtained by determining the number of channels achieving the required proportions under Articles 16 and 17 and comparing these figures with the number of channels falling under the obligations of Articles 16 and 17. The channels for which no data were communicated are considered non-compliant for the purposes of this indicator.

did not fulfil the 50% quota in 2015. This number fell to 210 in 2019, which corresponds to 9% of all channels covered in the reporting. In most Member States, the number of channels that did not meet the quota was very low (5% or less). However, in the following Member States a substantial share of channels did not reach the quota: Czechia (40%), Lithuania (38%), Portugal (30%), Bulgaria (29%) and Italy (24%).

According to the independent analysis included in the Study, the share of European works as a proportion of qualifying time was 39%. This is substantially below the average share of European works reported by the Member States. The Study's analysis is based on a sample of 467 channels in 11 Member States³⁹. For all Member States included in the sample – except for Czechia – the number of channels deemed eligible under the Study was higher than the number of channels identified based solely on the data reported by Member States.

As reported in the Study, only in the case of Germany was the share of European works as a proportion of qualifying time above 50%. For Poland, Spain and France the share of European works was between 40 and 50%. In the case of Italy, Austria and Czechia, the share of European works was between 30% and 40%. In the case of the remaining four Member States included in the sample (Hungary, Sweden, the Netherlands and Romania), the share of European works as a proportion of qualifying time was between 20% and 30%.

There are several reasons that can partially explain the differences between the findings of the Study and the data provided in Member States' reports. First, the Commission notes that the findings of the Study in this regard are based on a sample of 11 Member States⁴⁰. Furthermore, there are certain differences between the definitions used in the analysis performed by the Study and those used in Member States' own reports. Additionally, the 39% share of European works as a proportion of qualifying time is also below the average reported in the previous two monitoring studies. In this regard, the Commission notes that both the previous monitoring reports were based on a substantially smaller sample of channels⁴¹.

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

According to Article 17 of the 2010 AVMSD, Member States should 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 the programming budget, for European works created by producers who are independent of broadcasters. Article 17 furthermore requires that the share is achieved by earmarking an adequate proportion for recent works, namely works that are transmitted within five years of their production.

This section looks at the implementation of Article 17 in the Member States, comparing the average proportion reserved for independent productions, including recent works⁴². Three

³⁹ Austria, Czechia, Germany, Spain, France, Hungary, Italy, Netherlands, Poland, Romania and Sweden.

⁴⁰ 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.

⁴¹ Only 55 channels were covered in the monitoring study covering the period 2011-2014 and 54 channels in the study covering the preceding period.

⁴² i.e. works broadcast within five years of their production.

Member States failed to report on the percentages of independent productions (Ireland in 2019, Latvia in 2015, and Lithuania in every year of the reference period). Furthermore, three Member States did not report on the percentages of recent independent productions during the period 2015-2019 (Estonia, Finland and Lithuania). In addition, Ireland did not report on the percentages of recent independent productions in 2019 and Latvia failed to report on the percentages of recent independent productions in 2015.

The reported average transmission time dedicated to independent productions by all reported channels in the EU was 42.2% in 2015, 37.7% in 2016, 38.5% in 2017, 38.6% in 2018 and 40.8% in 2019, well above the threshold set in the Directive. These shares indicate that the transmission time dedicated to independent productions fell between 2015 and 2016, but then partially recovered over the period from 2017 to 2019. Overall, the transmission time dedicated to independent productions was still lower in 2019 than it had been in 2015, but the upward trend may predict an increase in the future that restores the figure to 2015 levels. Compared with the previous reporting period, however, the transmission time dedicated to independent productions has increased, with 35.28% in 2013 and 35.11% in 2014 respectively.

Average EU compliance rates⁴³ regarding independent productions increased slightly over the reporting period and stood at 53% in 2015, 56% in 2016, 58% in 2017, 60% in 2018, and 55% in 2019. These rates do not, however accurately reflect whether or not the channels met the requirement to reserve at least 10% of their transmission time to independent productions in accordance with Article 17 because many Member States reported channels for which they provided no accompanying data. For example, Spain reported data in this regard for only 10% of the number of the channels it reported.

The Commission notes that the average share of European independent productions calculated based on the Member States' reports is substantially higher than the share emerging from the findings of the Study, namely between 2.2-10% in 2019, depending on how independent productions were defined⁴⁴. The analysis provided in the Study is based on a sample of 467 channels in the 11 aforementioned Member States⁴⁵.

The reported average transmission time dedicated to recent independent productions by all reported channels in the EU-27⁴⁶ was 54.0% in 2015, 52.7% in 2016, 53.7% in 2017, 54.5% in 2018 and 54.6% in 2019.

This indicates that the average transmission time dedicated to recent independent productions decreased from 2015 to 2016, but then recovered and went on to exceed 2015 levels in the period 2016-2019. In addition, the average transmission time rose slightly compared with the level recorded in the previous reporting period (53.2% in 2014).

⁴³ See footnote 3842.

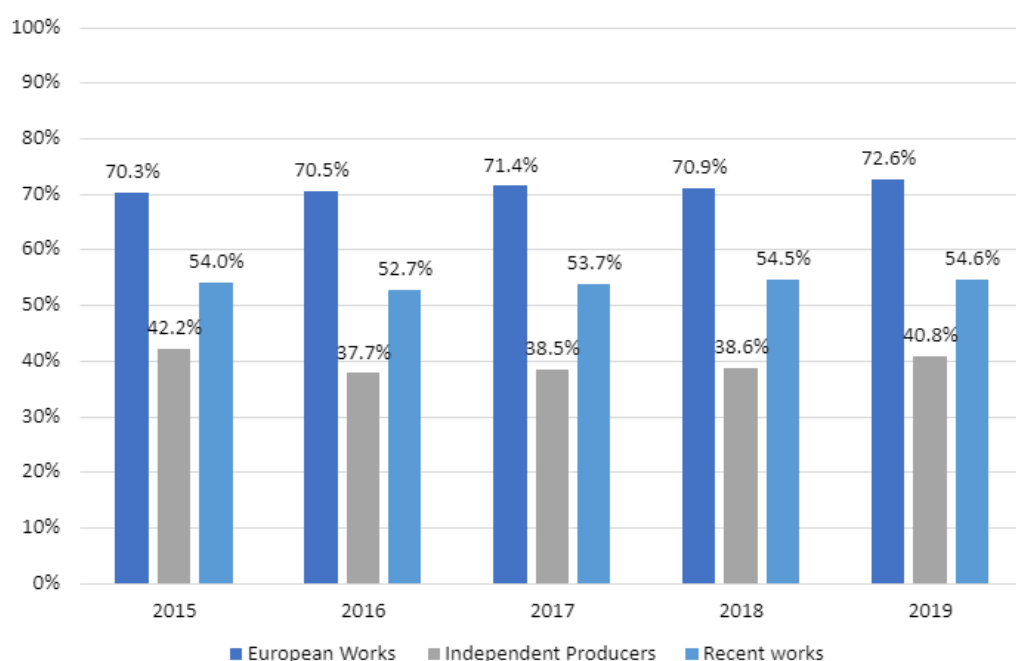
⁴⁴ The Study team applied two different definitions of independent productions: when using a narrow definition of 'independent' (meaning that every production company involved in a given co-production could be categorised as independent), the share of European productions in the sample was very low, at 2.2%. When, however, a production was instead defined as 'quasi-independent' (meaning that at least one of the production companies involved in a co-production could be categorised as independent), this share rose to nearly 10%.

⁴⁵ See footnotes 43 and 44.

⁴⁶ The national reports were provided by the EU-27 (as they were requested after 1 February 2020), while the independent study covered the EU-27, the United Kingdom, Norway and Iceland.

Based on the assessment performed by the Study, the share of qualifying time scheduled for broadcasting recent European works created by independent producers, on a country-by-country basis, ranged from 0.9% (the Netherlands) and 2.2% (Hungary) to 28.2% (Spain), 28.2% (Poland) and 29.1% (Germany). The share of recent European works as a proportion of total qualifying time shows significant variations both by Member State and by channel. For example, in Austria, the proportion of total qualifying time covered by recent European works ranges from 70.7% (ZDF) to close to 0% (ARD). In addition, in Poland, all channels have a proportion of qualifying time for recent European works of over 20%, whereas in the Netherlands, the share of recent European works as a proportion of total qualifying time is, on average, around 1-2% across all channels examined.

Figure 3. Trends in the transmission time reserved for European works, including independent productions and recent works (EU average).



Source: the Study, based on Member State reports

In addition, in terms of circulation of national works and co-productions, according to the European Audiovisual Observatory's Yearbook 2020/2021⁴⁷, of all European feature films produced in 2019, 81% were entirely national films, compared to 19% for majority co-productions. Between 2015 and 2019, the number of entirely national films grew by 16%, while the number of majority co-productions remained comparatively stable over the same period, in contrast to the first half of the decade, during which majority co-productions grew rapidly (+94% between 2010 and 2014). In 2019, Italy had the highest number of national film productions (312 films, 192 of them fiction), followed by Germany (237 films), Spain (238 films) and France (240 films).

⁴⁷ European Audiovisual Observatory, Yearbook 2020/2021. Television, cinema, video and on-demand audiovisual services – the pan-European picture, European Audiovisual Observatory, Strasbourg, 2021.

2.4. Reasons for non-compliance

The majority of Member States identified cases of non-compliance with the obligatory proportions set out in Articles 16 and 17 of the 2010 AVMSD. The reasons for non-compliance most frequently cited by Member States are summarised below.

- **Small channels**

As set out in Article 18 of the 2010 AVMSD, the obligations established by Articles 16 and 17 do not apply to television broadcasts that are intended for local audiences and do not form part of a national network.

A commonly cited reason for non-compliance identified across different national reports is the relatively small size of certain channels (e.g. regional channels), which had difficulty meeting the quotas because of their low audience share and smaller target audience.

- **Thematic content reasons**

Many national linear service providers reported a clear lack of European programming dedicated to audiences interested in specialised channels focusing on cultural, sporting and children's content. The channels that do not fulfil the majority proportion of European works do so mainly for format reasons. This is the case for those channels, for example, which mainly broadcast African or African American music and which seem to have more difficulty in acquiring works produced or co-produced in Europe that are intended for an African or African American audience or for someone with an interest in African or African American music.

In addition, some other channels whose thematic content was related to a niche topic (e.g. religion or Japanese manga cartoons) could not find enough European content to reach the quotas set.

- **Competition with US productions**

Several national linear service providers reported that they had difficulty competing with the huge volume of US programmes on the market, especially in the areas of entertainment and music.

- **Cheaper content outside of the EU**

Various Member States reported that they had difficulty acquiring European produced or co-produced works because of their high prices, especially in comparison with non-European productions.

Another reason invoked for non-compliance by some newly established channels was a lack of awareness of the requirements of the 2010 AVMSD.

2.5. Measures adopted or planned to remedy cases of non-compliance

In the period 2015-2019, the majority of Member States identified cases of non-compliance with the obligatory shares set by the 2010 AVMSD. The Study estimates, based on the Member States' reports, that two thirds of Member States have reported non-compliance with

Article 16 for at least some channels, while over half reported such issues regarding Article 17.

The Study shows that there are different approaches to addressing cases of non-compliance in the Member States. The majority of Member States have monitoring procedures in place, and these differ slightly between Member States, including as regards the issuing of reminders (e.g. Finland and Estonia), investigation procedures which entail explanation of reasons for non-compliance (e.g. Belgium (French Community) and Slovenia) and, in some cases, the possibility to apply economic sanctions. For instance, Italy and Romania report that they automatically instigate sanctioning procedures in cases of non-compliance.

Portugal takes a different approach, which consists of providing constant guidance to operators and taking account of the difficulties they may have in applying the rules.

It is also worth mentioning the approach adopted by Greece, in particular regarding its regional channels. Their low revenues, low audience share and limited impact on a significant proportion of the general public have been reported as the main reasons that render them unable to respond to the reporting obligations. For these reasons, Greece reported that the possibility to add those channels to the list of exempted channels was under consideration.

3. CONCLUSION

Concerning the implementation of Article 13 of the 2010 AVMSD, Member States reported data on an increasing number of VOD services between 2015 and 2019. While in 2015 Member States' reporting covered 713 services, the number of services had risen to 1 030 in 2019. In addition, Member States reported variable average shares of European works on VOD services. During the reference period, the highest average share of European works on VOD services was recorded in 2016 (63.4%), whereas the lowest was in 2017 (41.8%). In 2019, the average share rose to 54.2%. At the same time, it is important to note that data was not available for all the VOD services that operate within the Member States for different reasons (e.g. data on the share of European works were only provided for 56% of the VOD services reported in 2019). Thus, the robustness of the data is limited.

The Study included a sample of 751 VOD services operating in 21 Member States and in Norway, based on a snapshot in 2021. The analysis provided in the Study on these VOD services shows a substantially lower average share of European works on VOD services (36%) than the share indicated in the reports by Member States⁴⁸. The analysis also shows that a large proportion of European works in VOD catalogues are recent productions (released in 2016 or later).

The way Article 13 of the 2010 AVMSD was transposed differs from one Member State to another. During the reference period, some Member States introduced new requirements regarding the prominence of European works whereas others made significant changes to their monitoring system. In addition, some Member States made only minor changes and most

⁴⁸ Several reasons are indicated in the Study to explain these differences. Among them, it has to be noted that, for technical reasons, the VOD data presented in the Study analysis were extracted in 2021, when this assessment took place. This is almost two years after the end of the covered period. Therefore, this data set and the one provided by the Member States in their reports are not directly comparable.

Member States did not specify any concrete measures to be applied by on-demand service providers.

The revised 2018 AVMSD introduced a clear obligation for VOD services to ensure a minimum share of 30% of European works, which should be calculated according to guidelines issued by the Commission⁴⁹. The direct obligations laid down in the 2018 AVMSD will likely lead to an improvement in the collection and comparability of the data to be provided by Member States after the transposition of the new rules.

Keeping the new rules laid down in the 2018 AVMSD in mind, the Commission services encourage all Member States to ensure the monitoring as well as the verification of the share of European works on VOD services and to provide detailed information on cases of non-compliance. The Commission services encourage Member States to provide complete information regarding the share of European works for all the VOD services in their biannual reporting. Additionally, they also encourage providing information on the reasons for which VOD services may not reach the share of European works, as well as on the assessment and follow-up by national regulatory authorities of such cases.

Regarding Article 16 of the 2010 AVMSD, the data provided by the Member States indicated relative stability in the level of European works during the reference period. The average proportions of European works achieved of 70.3% (in 2015) and 72.6% (in 2016) are far above the obligatory majority proportion set out in Article 16 of the 2010 AVMSD. In general terms, this points to a generally sound application of this provision throughout the EU. The reports by Member States indicate an increase in the shares of European works compared to the previous reporting period. However, the analysis in the Study suggests that the share of European works (39%) is substantially below the share of European works that is reported on average by Member States. Several reasons may partially explain the differences between the findings of the Study and the data reported by Member States. Among them is the fact that the Study only sampled channels from 11 Member States, that the independent analysis of content and the Member States reporting covered a different time-period and that the comparability of definitions and methods used for measurement is difficult, as there is limited data about the methodology used by Member States for the compliance monitoring.

Similarly to the share of European works, Member States overall also met the requirement regarding the share of independent productions set out in Article 17 of the 2010 AVMSD. The average share of European works created by independent producers was 42.2% in 2015 and 40.8% in 2019. These figures also indicate an upward trend compared to the previous reporting period. It has to be noted, however, that, as in the cases of Article 13 and Article 16, the average share of European independent productions calculated based on the Member States' reports is substantially higher than that emerging from the Study (2.2-10%, depending on the definition of an 'independent production').

The EU average share of recent European independent productions was 54.0% in 2015 and 54.6% in 2019. These figures show that the average share of recent independent productions

⁴⁹ Communication from the Commission, Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover, C/2020/4291, OJ C 223, 7.7.2020, p. 10-16.

has slightly increased since the years prior to the period covered in this report. At the same time, according to the assessment performed by the Study, the share of qualifying time scheduled for broadcasting recent European works created by independent producers, on a country-by-country basis, ranges from 0.9% (the Netherlands) to 29.1% (Germany). The share of recent European works as a proportion of total qualifying time varies significantly, both by Member State and by channel.

The total number of exempted channels remained constant over the period covered (2 895 in 2019). The reported number of exempted channels was higher overall than the reported number of covered channels. The Commission services remind the competent national authorities of Member States of the Commission's guidelines that set out the detailed conditions for granting exemptions for channels. In addition, the Commission services note that the possible exemptions apply only to the reporting obligations under Articles 16 and 17, and not to other requirements laid down in the Directive, in particular the obligation to ensure the share of European works.

This report shows that, while certain difficulties exist in specific cases, the provisions of Articles 16 and 17 are, in general, being implemented well by the Member States. The rules on the promotion of European works laid down in the 2010 AVMSD have continued to raise the overall shares of European works, independent productions and recent independent productions being broadcast across the EU.

The EU average compliance rates regarding Articles 16 and 17 of the 2010 AVMSD improved only slightly. Therefore, as in the previous report, the Commission services invite the Member States to examine the reasons behind the difficulties experienced by some providers in reaching the required share and to look into methods to address the situation. This is particularly important in the Member States where a substantial share of channels fail to reach quotas set out in Articles 16 and 17.

Furthermore, the Commission services encourage all Member States to provide detailed information on cases of non-compliance, in particular on the reasons for which broadcasters do not reach the share of European works as well as on the assessment and follow-up by national regulatory authorities in such cases.