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**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**

{SWD(2024) 149 final}

1. BACKGROUND AND CONTEXT

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 (also known as the Audiovisual Media Services Directive (AVMSD))¹. This report covers the years 2020-2021 for both linear and non-linear services. The geographic scope covers the Member States. The report is based on the national reports provided by Member States and on an independent study (the ‘study’), which also provides information² on Iceland, Liechtenstein and Norway (i.e. the European Free Trade Association (EFTA) countries that are members of the European Economic Area (EEA), or the ‘EEA EFTA countries’). The report also takes into account relevant data from the European Audiovisual Observatory and the Commission’s media outlook report³. It follows previous reports covering the application of the AVMSD provisions during the periods 2015-2019⁴ and 2011-2014⁵.

For the first time, this periodic reporting takes into account the new obligations introduced by Directive (EU) 2018/1808⁶, which amended Directive 2010/13/EU, by strengthening the rules on the promotion of European works by audiovisual media services. Its transposition deadline was in September 2020.

The new rules contained in Article 13 of the AVMSD oblige Member States to ensure that media service providers of on-demand audiovisual media services (video-on-demand (VOD) providers) under their jurisdiction secure at least a 30% share of European works in their

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) (OJ L 95, 15.4.2010, p. 1).

² The study provides a legal analysis of the audiovisual legal framework and its evolution in the Member States, Norway, Liechtenstein, and Iceland over the period of 2020-2021. The study also reports about the share of European works in linear services and in VOD services based on the data provided by the Member States and an independent analysis of content of linear services and VOD services. The definition of European works used in this study can be found in Article 1(1)(n) of the AVMSD, which includes works originating in the Member States, works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe (ECTT) and works co-produced within the framework of agreements related to the audiovisual sector concluded between the EU and third countries. Finally, the study provides an economic analysis of the audiovisual market in the Member States, covering issues such as business models in the audiovisual sector and stakeholder views on the development of the audiovisual market.

³ 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.

⁴ 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)*, SWD(2023) 152 final, 17.5.2023, available at: [Commission reports on the promotion of European works by audiovisual media services | Shaping Europe’s digital future \(europa.eu\)](#).

⁵ Staff working document *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, 13.10.2020, available at: [Report on the application of Articles 13, 16 and 17 of Directive 2010/13/EU | Shaping Europe’s digital future \(europa.eu\)](#).

⁶ 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).

catalogues and ensure prominence of those works⁷. The new rules also allow Member States to extend the financial contributions to the production of European works, including via direct investment in content and contribution to national funds, that they impose on media service providers under their jurisdiction, to cover media service providers targeting audiences in their territories, but established in other Member States⁸. Such obligations imposed on cross-border services must be proportionate, non-discriminatory and otherwise comply with EU law. Media service providers with a low turnover or a low audience are exempted from both the quota and prominence obligations and the financial investment obligations. Member States can also provide for further exemptions where such obligations would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services⁹. To ensure a consistent calculation of the share of European works in the catalogues of VOD providers, and to define low audience and low turnover, in July 2020 the Commission issued guidelines on these two issues, pursuant to the AVMSD¹⁰.

Directive (EU) 2018/1808 has left unchanged the obligations for the promotion of European works applicable to linear services in Articles 16 and 17 of the AVMSD. Broadcasters must reserve for European works a majority proportion of their transmission time, where practicable and by appropriate means, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping¹¹. They also need to reserve at least 10% of this transmission time or of their programming budget for independent European works¹².

According to the new rules in the AVMSD, Member States are to report on the implementation of Article 13 every 2 years¹³, in line with the existing reporting obligations concerning Articles 16 and 17. The preparation of the present report has been affected by delays in the transposition of Directive (EU) 2018/1808 by Member States and, subsequently, Member States' ability to provide relevant data in national reports.

For the detailed reporting, please refer to the accompanying staff working document. The first part of that document includes information on the application of Article 13 of the AVMSD on the promotion of European works by on-demand audiovisual media services over the period of 2020-2021, in accordance with Article 13(5) of the AVMSD and taking into account the market and technological developments and the objective of cultural diversity. The second part concerns the application of Articles 16 and 17 of the AVMSD on the promotion of European works and independent productions by broadcasters over the same period. Pursuant to Article 16(3) of the AVMSD, the purpose is to inform Member States and the European Parliament of the national reports on the application of Articles 16 and 17 that Member States must provide every 2 years, accompanied, where appropriate, by an opinion. The main findings and conclusions are presented below.

⁷ Article 13(1) of the AVMSD.

⁸ Article 13(2) of the AVMSD.

⁹ Article 13(6) of the AVMSD.

¹⁰ *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.

¹¹ Article 16 of the AVMSD.

¹² Article 17 of the AVMSD.

¹³ Article 13(4) of the AVMSD.

2. MAIN FINDINGS AND CONCLUSIONS

The period covered in this report (2020-2021) has been a transitional period, as the transposition deadline for Directive (EU) 2018/1808 was in September 2020 and not all Member States had fully transposed the Directive by the end of the reference period of this report.

The reference period also included the onset of the COVID-19 pandemic. The pandemic had a notable impact on the production of audiovisual content, but it nevertheless allowed VOD players to expand their audiences and particularly global SVOD services to continue to grow their revenues in the EU – up from EUR 6.7 billion in 2019 to EUR 11.7 billion in 2021. The overall number of VOD services operational in the EU and EEA EFTA countries' jurisdictions also grew from 1 030 in 2019 to 1 984 in 2021.

In the reference period, 17 Member States introduced national implementation measures to transpose the new rules in Article 13 into national law, while the rest have only introduced them after the reference period. In many cases where the transposition was completed in the reference period, the details of the application of the rules still had to be concretised in secondary law or by-laws. In addition, the obligation for service providers to comply with the rules often only started to apply after the end of the reference period. However, both transposition into national law during the reference period and transpositions after the reference period had a high level of alignment with the Commission guidelines and similarities in terms of calculation approaches and exemptions. Overall, the legal mapping sheets provided by the Member States show that during the reference period, national implementation measures to secure a 30% share of European works in catalogues of video-on-demand (VOD) services were in force in 17 Member States.

According to Member States' reporting, the average proportion of European works on VOD services varied between 63-64% in 2020-2021. It is slightly more compared to 42-63% reported in the previous study covering 2015-2019, but is important to note that data were not available for all VOD services that operate in the Member States.

The study included a sample of 1 062 VOD services operating in 21 Member States and Norway, based on a snapshot in 2023. The analysis provided in the study found a 35% average share of European works on VOD services, compared to 36% found previously in 2021, albeit based on a smaller sample. The most recent figure shows a substantially lower average share than that indicated in Member States' reports (63-64%). Several reasons may partially explain these differences: (i) the study only sampled VOD services from 21 Member States and Norway; (ii) the independent analysis and Member States' reporting covered different time periods; and (iii) it is difficult to compare definitions and methods used for measurement as there are limited data about the methodology used by Member States to monitor compliance¹⁴.

¹⁴ In this context, it can be noted that the AVMSD encourages the labelling in metadata of audiovisual content and European Regulators Group for Audiovisual Media Services has also reaffirmed its importance; see Recital 35 of Directive (EU) 2018/1808; ERGA Subgroup 3 – Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability) – Deliverable 2: Overview document in relation to Article 13(1) of the Audiovisual Media Services Directive (2020), https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.131_final.pdf; 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

Directive (EU) 2018/1808 also introduced the possibility for Member States to extend the financial contributions to the production of European works that they impose on media service providers under their jurisdiction, to cover media service providers targeting audiences in their territories, but established in other Member States. In the reference period (2020-2021), seven Member States reported having in place financial contribution obligations for cross-border VOD service providers and two Member States reported having such obligations for cross-border linear service providers.

Although this is the first time the new rules laid down in the AVMSD are reported on, some progress has already been made on monitoring. Nevertheless, more work is still needed to get a complete and comprehensive picture. Therefore, the Commission encourages all Member States to ensure monitoring and verification of the share of European works on VOD services and to provide detailed information on cases of non-compliance and the methodology used. The Commission also encourages Member States to provide complete information on the share of European works for all VOD services under their jurisdiction in their reporting. Additionally, the Commission encourages providing information on the reasons why some VOD services may not reach the minimum share of European works as well as on the assessment and follow-up by national regulatory authorities of such cases.

When it comes to linear channels, the pandemic had a momentary impact on the average viewing time and revenues generated through TV advertising. The overall trend anyway appears to reflect stagnating revenues. Although the data sets are not fully comparable, the total number of TV channels appears to have stayed similar or to have slightly decreased from 4 657 reported at the end of 2019 in the Member States including at that time the UK by the European Audiovisual Observatory¹⁵ to 4 483 in 2021 reported as being operational in their jurisdiction by Member States and the EEA EFTA countries.

Concerning Articles 16 and 17 of the AVMSD, which do not contain any new rules, all Member States require broadcasters to reserve a majority proportion of their transmission time for European works, with some Member States setting a higher proportion for public broadcasters or for all broadcasters. Four and five Member States, respectively, made changes to their national legislation in the reference period with regard to Articles 16 and 17. However, the changes were minor or of a technical nature. Member States' reporting shows that the average proportion of European works on linear services – 68% in 2020 and 69% in 2021 – was far above the obligatory majority proportion set out in Article 16 of the AVMSD. In general, this points to a sound application of this provision throughout the Union. However, Member States' reports indicate a decrease in the share of European works compared to the previous reporting period (72.6% in 2019). Moreover, the analysis in the study suggests that the share of European works (38%) is substantially below the share of European works reported on average by Member States (68-69%). Several reasons may partially explain the differences between the findings of the study and the data reported by Member States, e.g. the fact that the study only sampled channels from 15 Member States.

Overall, Member States also reported to have met the requirement regarding the share of independent productions set out in Article 17 of the AVMSD. The average share of European

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.

¹⁵ European Audiovisual Observatory, *Yearbook 2020/2021 – Key trends*, available at: <https://rm.coe.int/yearbook-key-trends-2020-2021-en/1680a26056>, p. 26.

works created by independent producers was 40.6% in 2020 and 41.4% in 2021, according to the data provided by the Member States. However, the average share of European independent productions calculated based on Member States' reports is substantially higher than that emerging from the study. The study indicates that the overall share of independent European works was fairly low across all Member States (less than 3%) and appears lower than the share calculated in the previous study. Nevertheless, noteworthy differences between channels could be observed sometimes linked to different definitions of independent productions. The average share of recent European works reported by Member States was 56.4% in 2020 and 59.0% in 2021, which is an increase compared to the previous reporting period (54.6% in 2019).

The total number of exempted channels remained constant over the reference period (2 236 in both 2020 and 2021), accounting for nearly half of all TV channels reported by the Member States. However, the figures indicate a decrease in the number of exempted channels compared to the previous reporting period (2 895 in 2019).

As in the previous report, the Commission invites Member States to provide detailed information on cases of non-compliance by linear service providers to secure the required share of European works, independent productions and recent productions, as well as on the assessment and follow-up by national regulatory authorities of such cases, to ensure alignment with Articles 16 and 17. Similarly to the VOD services, the Commission, moreover, encourages Member States to share information about their relevant calculation method and to increase the number of channels for which data is reported. This is recommended in order to allow for effective enforcement actions where needed and better comparison with results of future studies monitoring the fulfilment of the AVMSD obligations.