

Questionnaire on the tools used in the application of Article 13 AVMSD
(Promotion of European works in on-demand services)

Answers of APEK (the Slovenian NRA), October 2013

The European Commission Services would like to ask your input for a reflection about best practices and experiences regarding the means used in application of Article 13 AVMSD (Directive 2010/13/EU). We would therefore be grateful if you could provide us with your comments on the following issues **by 10 October 2013** the latest.

1. Since your Member State notified its measures to the Commission related to the implementation of Article 13 AVMSD, has there been any modification to the legislation or the other notified measures? In the case you have not yet notified such measures to us, please indicate if you have adopted any such (implementing) measures in the meantime? Please indicate also any additional co- or self-regulatory initiatives in this field and any other similar measures that have not been notified. Please provide specific details about the form and content of such measures.

Since the adoption of the Act on Audiovisual Media Services in 2011 (which transposed the AVMS Directive) and the Regulation on Notification of the Non-linear AVMS (statutory instrument), there weren't any changes to the legal framework applying to the AVMS, and therefore also no changes to the provisions related to implementation of Article 13 AVMSD.

2. In case you are applying a certain obligatory share of European works in catalogues:

2.1 Please describe any detailed rules in your national system regarding such a share (including any type of rules (legislative or non-legislative) but also recommendations, guidance, self-regulative measures etc.)

The providers of non-linear AVMS are free to opt for a minimum 10 % share of the European works in the catalogue of programmes in a given calendar year or for investment of at least 1 % of its annual revenue in the production or acquisition of the European works. The requirement is stipulated in Art. 16/3 of the Act on AVMS and there are no statutory instruments providing more guidance envisaged. The regulator prepared, though, a set of recommendations on how to self-monitor and report the share of European works in the catalogue.

2.2 How do you monitor and enforce compliance with such requirements (please provide details regarding method/monitoring frequency/sanctions etc.) Beyond compliance, do you monitor and measure the efficiency of the measures (obligatory share in catalogues)? Please provide data about the findings of any such monitoring (see also question 2.4.).

Due to the late transposition of AVMSD, the above mentioned obligation for VOD providers arose only in 2012. We are currently monitoring the implementation of Article 13 AVMSD for the first time. The monitoring of the share of the European works includes a detailed examination of the data submitted to us by the liable providers, in order to:

- verify whether the reported share of European audiovisual works is justified by the information provided in a detailed report on all the works in the catalogue of 2012, in other words: whether the proportion of European works in the catalogue that can be calculated on the basis of these data is equivalent to the reported share;

- verify whether the audiovisual programmes they reported as European works meet the legal criteria for such works;
- check the compliance of the share with the required share.

The 2 liable providers of 3 services reported 20%, 51% and 32% of European works in their yearly catalogues respectively. If the shares are correct, they are therefore compliant with the legal requirement (minimum 10%). The monitoring of validity of the reported shares followed an extensive examination of the TV broadcasters' shares for 2011 and 2012 that occupied most of our available human resources for programme monitoring in the last year and a half. At the moment of answering the Questionnaire the monitoring of compliance of VOD providers with provisions arising from the Article 13 AVMSD is still ongoing.

2.3 On the basis of your experience in that field, do you consider such measures efficient? What are its advantages/disadvantages in your view?

As explained above, we don't have acquired a rich experience with implementation of measures aimed at promotion of European works in VOD services so far. When trying to monitor the compliance of the Slovenian services with the requirements, we encountered a number of problems, originating in non-existent or vague definitions of some key terms (e.g. the vagueness of the concept of the catalogue, when applied on the year basis; or of the concept of duration of programmes in relation with the logic of VOD services). It appears to us that many other Member States have similar concerns and we are noticing many differences in implementation of the Article 13 AVMSD. The methodology used for calculation of the shares varies substantially and hence the shares are most probably not comparable between the Member States, as some use the method of total duration (with variations depending on whether the duration of availability of the programmes in the catalogue is also taken into account or not), while others rely on the number of the titles only.

2.4 If possible, please provide data regarding the real presence of European works in the catalogues (e.g. in percentages, but if you have such data also regarding the time that the works remain in the catalogues, please share also that data), and if available, data regarding consumption of European works.

Our attempt to acquire the data regarding consumption of European works ended without any success, since there's no legal basis for requesting this data. We did, however, collected the data on the time the European works remain in the catalogue and we found out that this times vary a lot, e.g. from 1 day to several weeks and months. Therefore we think that these figures don't allow us to draw general conclusions about the duration of availability of the European works in the catalogues of the VOD services, as also when compared with the duration of availability of non-European works, they show similar patterns.

2.5 How could such a system be improved in your view, based also on your experience?

The system could be improved with more guidance, developed on the basis of best practices, identified in the Member States. Specialised database(s) with data on European works, established on the supra-national level would also help to ease and shorten the process of verification of data needed for a conclusion whether a certain work is a European work (which is especially difficult in case of coproduction). In past we used the Lumiere database (one of the CoE's Audiovisual Observatory databases), but due to a limited number of works covered by it, we needed to complement it with the

IMDb Pro database. Despite that, we still find it difficult in some cases to establish whether a work is European or not with sufficient certainty.

2.6 If you are not using such a measure in your national system, do you have a view about such a system, including reasons why you opted against the introduction of such rules?

3. In case you are applying obligations related to the use of prominence tools:

3.1 Please describe any detailed rules in your national system in that regard (including any type of rules (legislative/non legislative) but also recommendations, guidance, self-regulative measures etc.)

3.2 In particular, do you have elaborated any specific prominence tools in your system, such as for example:

- indication of the country of origin in the description of the works in the VoD catalogue,
- titles searchable on the basis of the origin of works in the catalogue,
- displaying European works on the front page of the catalogue / in the start-up menu,
- creation of specific sections dedicated to European works in the catalogue,
- specific marketing features / recommendation tools related to European works,
- use of trailers to promote European works / giving special prominence to trailers of European works,
- other means of giving special prominence to European works in catalogues,
- promotion of European works in all media (not just in the VoD catalogue itself),
- Any other?

If yes, are such tools laid down by legislation / obligatory rules or in a different way (guidance, recommendations, self-regulative measures)? Could you provide a list of these specific tools?

3.3 How do you monitor and enforce the compliance with such rules? (please provide details regarding method/monitoring frequency/sanctions etc.) Do you measure and monitor the efficiency of these rules? Please provide data about the findings of any such monitoring (see also question 3.6).

3.4 On the basis of your experience, do you consider such measures efficient? What are their advantages/disadvantages in your view?

3.5 How could such a system be improved in your view, based also on your experience? Do you have specific recommendations for particular prominence tools?

3.6 Could you provide data regarding the effect of such prominence tools in terms of their influence on consumption? Give examples regarding the particular ways to measure efficiency: increase of number of views after the use of a particular measure/prominence tool (e.g. the effect of appearance of the work / the trailer on the front page in terms of increased viewing figures). Please provide data in general regarding the consumption of European works in the catalogues in relation to the prominence tools applied.

3.7 If you are not using such measures in your national system, do you have view about such a system, including reasons why you opted against the introduction of such rules?

4. In case you are applying obligations related to a financial contribution:

4.1 Please describe the detailed rules regarding a financial contribution in your national system. (e.g. on which players is it imposed, how is the required contribution defined/calculated including the basis of the imposition, how does it have to be fulfilled.)

As mentioned above (2.1), the providers of non-linear AVMS are free to opt for a minimum 10 % share of the European works in the catalogue of programmes in a given calendar year or for investment of at least 1 % of its annual revenue in the production or acquisition of the European works. Thus far all the providers chose the first option (the share of the European works).

4.2 Please describe how the imposed financial contribution is re-attributed if the system includes such reattribution (by which organism etc.) or how the financial contribution otherwise reaches the sector. In particular please describe who can benefit from this financial contribution, on which basis and how is it (re)attributed to them.

The financial contribution refers to the funds spent on production of the VOD provider's own works (in-house or ordered production) or on acquisition of suitable works, in order to be offered in the catalogue of their VOD services in the given calendar year.

4.3 How do you monitor and enforce compliance with that obligation (please provide details regarding method/monitoring frequency/sanctions etc.) Do you measure and monitor the efficiency / effects of the financial obligations? Please provide data about the findings of any such monitoring (see also question 4.6).

So far, not a single VOD provider decided for this option, therefore we cannot provide any findings related to that.

4.4 Could you provide data regarding the overall effect of the financial contribution (how much was collected / invested by such players in production overall per year)? If you did not do so already above, if possible, please provide data regarding the consumption of European works in the catalogues.

4.5 On the basis of your experience in that field, do you consider this system efficient? What are its advantages/disadvantages in your view?

4.6 How could such a system be improved in your view, based also on your experience?

4.7 If you are not imposing such an obligation in your national system, do you have view about such a system, including reasons why you opted against the introduction of such rules?

5. If you use a different method for the promotion of European works in on-line services in the framework of Article 13 apart from the methods listed (financial contribution/share in the catalogue/prominence tools), please provide more detailed information regarding that method.

6. Regarding the different methods mentioned above, which of them do you consider as most efficient?

Due to the lack of experience with different methods, we are unfortunately not able to provide a very articulated opinion on that. However, we have the impression that a combination of the method of share of the works in catalogue and of the prominence tools could be a good way to go.

7. Which one of the listed three methods do you consider as most burdensome for operators / which one imposes the lightest burden?

Due to the lack of experience with different methods, we are not able to comment on that.

8. According to your experience in monitoring the fulfilment of such obligations, are there special difficulties regarding monitoring?

Yes. As already mentioned above (2.3., 2.5). In our endeavour to establish a precise and reliable system of monitoring, we faced many difficulties, arising mostly from the lack of clarity of terms and lack of the data needed for verification of the data provided from the providers of the AVMS, as well as from the fact that there are big amounts of data that need to be examined.

9. Please provide information regarding the view of VoD providers regarding such obligations. (What are their experiences in that regard / which do they consider as most efficient in their practice / which do they favour / do they have specific practical problems in implementing them?) Please do not hesitate to forward this questionnaire also to VoD providers and integrate their potential views in your answers to the questionnaire.

Our VOD providers find it very time consuming to monitor their output and provide the data we require from them and they are reluctant to reveal the data regarding the consumption of the works from their services, since this information have a business value for them and therefore belong in the domain of business secrets. Some of them also think the provisions are limiting their commercial freedom.

10. Please indicate whether you agree to share your answers to this questionnaire with other Members of the Regulators Group.

Yes, we agree.