

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

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 20 September 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.

Estonia has notified relevant measures to the Commission concerning the better implementation of some articles of AVMSD, included art 12.

Amendment Act to Estonian Media Services Act has been adopted in May 2013. Regarding the protection of minors in the context of AVMSD, the provisions concerning the measures taken to protect minors are now more specific providing that on-demand audiovisual media service that may cause substantial damage to the physical, mental or moral development of the minors, shall be made accessible by the on-demand audiovisual media service provider only in a manner that is not accessible to the minors under normal circumstances, using personal identification numbers (PIN codes) or other appropriate technical measures.

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.)

Estonian Media Services Act provides:

- (1) On-demand audiovisual media service shall promote production and accessibility of European works taking account of the specific nature and opportunities of the service. Promotion of the production and accessibility of European works means, among other things, for on-demand audiovisual media service provider:
 - 1) provision of financial support for the production of European works, ordering of the works or obtaining the right for transmission of the works;
 - 2) highlighting European works, including highlighting the works completed during the last five years in the programme catalogue, presenting the country of origin and the year of their completion;
 - 3) highlighting the works that are in correspondence with the features of own production and highlighting the year of their completion 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.).

The on-demand audiovisual media service provider shall submit the corresponding data to the regulatory body – the Estonian Technical Surveillance Authority (ETSA) by 15 February each year. ETSA analyses this data and if necessary, asks for more detailed information to get full picture about the compliance with such requirements.

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?

Such measures of monitoring may be considered relevant taking account our small audiovisual market where there are just two media services providers offering on-demand services so far.

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.

According to the data submitted by the service providers (currently there are two registered on-demand service providers in Estonia) the presence of European works is 35- 50%.

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

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?

We think there should be some flexibility in a system of choosing appropriate measures and probably it's not a very productive way to fix strictly obligatory shares in catalogues in the countries with smaller audiovisual markets.

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.)

Our Media Services Act provides as follows:

Promotion of the production and accessibility of European works means, among other things, for on-demand audiovisual media service provider:

- highlighting European works, including highlighting the works completed during the last five years in the programme catalogue, presenting the country of origin and the year of their completion;
- highlighting the works that are in correspondence with the features of own production and highlighting the year of their completion in the catalogue.

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?

Estonian Media Services Act offers certain options for promotion of European works:

- 1) provision of financial support
- 2) highlighting European works in catalogue.

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).

As for monitoring frequency – service providers must submit the data regarding European works once a year and the regulatory authority can ask for more information to get better overview of the compliance with such rules.

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

We consider these measures appropriate and flexible.

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?

As for prominence tools, in our view it should be for a service provider to decide the details in practice.

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.)

Provision of financial support for the production of European works, ordering of the works or obtaining the right for transmission of the works –

It's an option provided in our legislation for promotion of production and accessibility of European works by audiovisual on-demand media service providers.

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.

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).

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?

We think it depends on many circumstances, including capacity of the market of audiovisual services. We consider the prominence tools as most appropriate for countries with smaller audiovisual markets.

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

It seems to us that fixing certain obligatory shares (quotas) of European works in catalogues of on-demand services is quite strict and burdensome for operators and prominence tools are more flexible and impose the lightest burden for them.

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

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.

VoD service providers seem to prefer more flexible systems.

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

We agree to share our answers.