

**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 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.

The Polish model of implementation of Article 13 of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 (Audiovisual Media Services Directive) is based on the statutory regulation. The Act of 27 November 2012 amending the Broadcasting Act, aimed at implementing the Directive (AVMSD) with regard to audiovisual media services on demand entered the Polish legal system on 28 February 2013.

The legislator imposed on entities providing audiovisual media services on demand *inter alia* the obligation to promote European works, including those produced originally in the Polish language, allocate an appropriate percentage share of the catalogue contents on European works, including those produced originally in the Polish language, and present those works appropriately in the catalogue.

Article 47f of the Broadcasting Act:

“1. Providers of on-demand audiovisual media services shall promote European works, including works produced originally in the Polish language, in particular by:

1) proper identification of origin of programmes available in the catalogue of programmes as well as providing the option to search for European works, including works produced originally in the Polish language, or

2) placement of information and materials promoting European works, including works produced originally in the Polish language.

2. Providers of on-demand audiovisual media services shall allocate at least 20% of the content in their catalogue for European works, including works produced originally in the Polish language, and shall provide adequate visibility to such programmes in the catalogue.

3. The percentage referred to in paragraph 2, shall be calculated based on the total duration of the programmes multiplied by the total broadcasting time of the programmes in the catalogue during a given calendar quarter.

4. Paragraph 2 shall not apply to the catalogues, in which only audiovisual programs other than European works are provided to the general public.”

## **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.)

Art. 47 f (2) of the Act on Radio and Television Broadcasting contains a binding norm ordering entities providing audiovisual media services on demand to allocate minimum 20% of the contents of the catalogue to European productions, including those developed originally in Polish. However, the legislator allowed an exception to the rule with regard to providers whose catalogues contain exclusively audiovisual programmes which are not European programmes. The basis for the calculation of the share in question is the total of programme duration times multiplied by the time for which the programme is available in the catalogue in the given calendar quarter. The Act provides for a fine imposed by the Chairman of the National Broadcasting Council if this obligation is not fulfilled.

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 obligation to submit an annual report to the National Broadcasting Council on the fulfilment of obligations concerning the promotion of European works has been imposed on entities providing audiovisual media services. The reports are to contain information about the method of promotion of European works and the share of European programmes in the catalogue in terms of quantity and duration. The deadline for the submission of reports lapses on 31 March of the year following the year to which the report refers. Due to the fact that in Poland legal regulations in the area of non-linear services came into effect at the end of February this year, the first data will be received by the National Broadcasting Council at the end of March 2014. Besides, there are plans to conduct independent monitoring still this year in order to check whether the suppliers are fulfilling the statutory obligations concerning the share of European production in services on demand, with particular analysis concerning Polish film and television production. At the same time, we are expressing our readiness to send data we will receive after the end of the check and the reports to the European Commission.

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 regards the effectiveness of regulations implemented in this respect, the Polish regulator will be able to take a stance after March next year which is the deadline for submission of reports containing information about the fulfilment of obligations related to the promotion of European works (see: 2.2) and after conducting detailed monitoring which is to take place in November 2013.

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.

At the moment we do not have any data concerning the presence of European works in catalogues. The conducting of this type of monitoring is planned for November this year. After this time we will be ready to send detailed data to the European Commission.

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

We have no experience in this matter because, as has been mentioned before, the National Broadcasting Council will receive detailed information in March 2014, and only then we will be able – if required – to think about the possible improvement of the functioning of this system.

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?

Not applicable.

### **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.)

Providers of media services on demand, subject to Polish jurisdiction, are obliged to promote European programmes in particular through:

- application of appropriate denotations of origin available in the programme catalogue,
- providing possibilities for searching for European programmes, including those developed originally in Polish,
- placing information and materials promoting European programmes, including those developed originally in Polish and appropriate presentation of those programmes 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, - YES
- titles searchable on the basis of the origin of works in the catalogue, - YES
- displaying European works on the front page of the catalogue / in the start-up menu, - YES
- creation of specific sections dedicated to European works in the catalogue, - NO
- specific marketing features / recommendation tools related to European works, - NO
- use of trailers to promote European works / giving special prominence to trailers of European works,  
- NO
- other means of giving special prominence to European works in catalogues, - NO
- promotion of European works in all media (not just in the VoD catalogue itself), - NO

- Any other? - NO

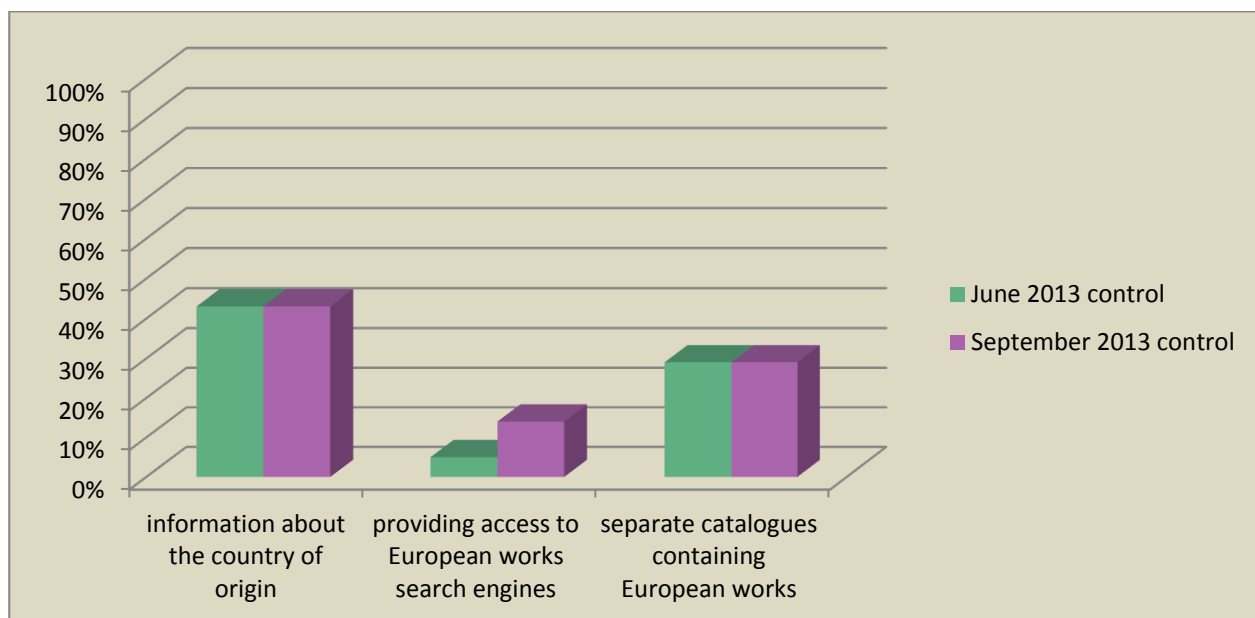
If yes, are such tools laid down by legislation / obligatory rules or in a different way (guidance, recommendations, self-regulative measures)? Could you provide a list of these specific tools?

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).

In 2013, the National Broadcasting Council conducted two monitoring of 21 most popular Internet providers of audiovisual media services on demand (in June and in September). The methodology of the monitoring was developed in the Office of the National Broadcasting Council. Each of the providers could receive maximum 3 points for the promotion of European works:

- for providing information about the country of production of the given work (1 point);
- for the presence of separate catalogues containing European works (1 point);
- for providing possibilities for searching for European works on the website (1 point).

**Audit results.** In the two monitoring conducted 21 providers were subject of control. These monitoring proved that 10 providers supplied data on the country of production of the works made available (48%), 6 providers (29%) the presence of separate catalogues containing exclusively European works was noted. As regards, method of promotion of European works through the provision of possibility of searching for them: the June monitoring proved that only 1 provider offered such tool, while the monitoring conducted in September showed progress in this respect – such tool has been offered by 3 providers.



As the above indicates, providers of services on demand who are subject to the Broadcasting Act, still promote European works to a limited extent. However, it is the intention of The National Broadcasting Council to undertake in the near future actions encouraging service providers to show more effective commitment to providing access to and

presenting European works. Moreover, further more detailed monitoring will be conducted in fall 2013.

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

The National Broadcasting Council will have the detailed information about the effectiveness of principles of the European works promotion through highlighting and presentation next year, after the reports containing methods of promotion of European production have been analysed.

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?

The Polish regulator will be able to take a stance on whether the method of promotion of European works in question requires improvements or modifications after the verification of reports in which the suppliers are to describe promotion methods they use.

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.

No research concerning the above subject has been conducted as yet.

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?

Not applicable.

#### **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.)

No obligations consisting in the financial participation of suppliers of services on demand in the production of European works and purchasing of rights to them have been introduced into the Polish legal system.

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.

Not applicable.

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).

Not applicable.

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.

Not applicable.

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?

Not applicable.

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

Not applicable.

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?

The National Broadcasting Council is a regulatory body holding control over the implementation of provisions of the Act, while the provisions in question has been established at the Act adopted by the Parliament. Still, it may be argued that solution chosen by the Polish legislator was to create a model that would be both effective and flexible, still not imposing too heavy financial and administrative burden on emerging national VoD market.

**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.

The Polish legislator imposes identical obligations concerning the methods of promotion of European works on all services providers, regardless of the method of provision of the service.

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

Not applicable.

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

It seems that the most burdensome method of promoting European works is the introduction of the obligation for suppliers of services on demand to participate financially in the production of European works and purchasing of rights to them. The Polish market of non-linear services is at the stage of development, that is why imposing additional financial burdens on providers of this type of services could halt their progress. The checks of suppliers of services on demand conducted by the National Broadcasting Council showed that the indication of the country of origin of the works available

in the catalogue is for them an easier form of promotion of European works. Such solution does not generate excessive costs.

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

Until now, the control covered only the methods of promotion of European works such as: determination of the origin of works available in the catalogue, provision of possibilities for searching for European works and displaying information and materials promoting those works. The National Broadcasting Council did not have problems with the monitoring of the above indicators. As regards the share of European works in catalogues, the regulator will have such data at the end of this year on the basis of the monitoring which is to be conducted in November and cover the most popular VoD providers.

**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.

According to our knowledge, it may be argued that in the opinion of VoD providers subject to Polish jurisdiction, regulations contained in Polish legal provisions with regard to the methods of promotion of European works do not raise any doubts or problems of legal or practical nature.

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

Yes, we express our consent to providing access to our answers to other Member States. At the same time, we would like to become acquainted with positions of other regulatory bodies with regard to the issue discussed.