

**Questionnaire on the tools used in the application of Article 13
AVMSD**

(Promotion of European works in on-demand services)

**Best practices and experiences regarding the means used in application
of Article 13 AVMSD (Directive 2010/13/EU)**

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.

- There has not been any modification to the legislation or any other measures related to this matter.**

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 national rules regarding the audiovisual imposes the obligation to promote European works on on-demand services.

- **The Law n.º 8/2011, of April 11, introduces the first amendment to the Television Act, approved by Law n.º 27/2007, of July 30, transposing Directive 2007/65/EC of the European Parliament and of the Council of 11th December, and article 45.º, n.º 2, refers that «on demand audiovisual service shall contribute to the promotion of European works, particularly through financial contributions to their production or through their progressive incorporation into the respective catalogue» and n.º 3, «on demand audiovisual services shall give particular visibility to European works in their catalogue, implementing features which enable the public to search works by origin.**

The compliance with the rules on the promotion of European works is subject to annual review by Regulatory Authority for the Media (*Entidade Reguladora para a Comunicação Social*).

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 data related to article 13.º AVMS is collected from service providers on request of ERC, based on the number of titles of European works presented in their catalogs.**

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?

- **At the moment there isn't a monitoring related to this matter. Based on the indicators of the first report, the collected data are considered sufficient for the present purpose, due to the initial state of development of the market in question.**

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.

- **PT Comunicações has been sensitive to the need to promote the distribution and production of European works in Portugal and has assumed an important role in this context, while in on-demand audiovisual media services, but also as an operator of distribution (including television program services of European origin in its supply), and as the operator of electronic communications**

(invested in new generation networks that massify access also to European content). In this context, we highlight the availability of multiple PT by means of content distribution, promoting the emergence of innovative services and new distribution channels and, as well, contributing to the creation of new consumption habits, including European works.

Particularly in the context of its activity of operator while in on-demand audiovisual media services, PT has been concerned in progressively incorporate European works in its catalog (since 2012 about 20% of the works available are European production), a source of revenue to the industry of European works through licensing of content included in their services directly with the respective rights holders and also along the collecting societies for copyright and related rights.

CABOVISÃO - In compliance with Article 45 of Law no. 8/2011, of 11 April, which mandates 'progressive incorporation of European works' in VoD operators' catalogues, it currently has 36,9% of European movies in its VoD offer.

Please note that on 3 November 2011, Cabovisão responded to ERC informing that although the VoD offer had been launched on November 2010, it had, as of November 2011, 10.81% European works in its VoD catalogues and 12.36% of works co-produced by European and North American producers.

Cabovisão remains available to gather a list of the European works currently in catalogue if necessary. Note that the average time these films are present in the catalogue is 6 months.

VODAFONE - The catalog VOD Vodafone is currently presented as follows:

		<i>Universe of films: 2180*</i>
Country of Production	Number of films	
Portugal	74	
Portugal/Europe	10	
Portugal/USA/World	5	
Europe	516	
Europe/World (including EUA)	278	
Europe/World (excluding EUA)	70	

* Excludes catalog subscriptions series

OPTIMUS Clix TV platform offers to its customers a broad and diverse VOD catalogue, comprehending mainstream and niche content in a wide-ranging globe approach that includes European content.

The European content represents an average of 37% of all VOD catalogue, which Optimus Clix actively promotes and do use prominence tools boost visibility and sales, as it deeply believes in its value and in its capacity to add recognition to any VOD catalogue.

Operators	European works (%)			Average time presented in the catalogue
	2011	2012	2013	
CABOVISÃO	23,3	26,7	36,9	6 months
ZON	42,6	37,5	-	6 months-films 1 year-documentaries
PT Comunicações	17,4	17,3	20,0	-

VODAFONE	33,5	28,5	43,7	-
OPTIMUS	18,2	21,9	37,0	-

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

- **ZON - The agreements celebrated with content owners generally establish minimum guarantees that must be assured by VoD Operators. Considering that the platforms are limited in terms of the number of works that can be displayed, the obligation to display certain works based solely on their origin and without consideration for the receptiveness by the public would have a direct economic impact in the business and the fulfillment of commercial obligations, since the more profitable works would not be displayed/explored in order to arrange space for non-commercial works.**

CABOVISÃO needs to purchase VoD titles from ZON, one of its main competitors in the market, which is a vertically integrated company present in the entire chain of content production, distribution and exhibition, with exclusive long term contracts with majors and Portuguese producers. The most attractive titles market is closed to smaller operators such as Cabovisão.

VODAFONE - As an operator On Demand Audiovisual Services, they present a general answer on the subject, which limits itself to a brief description of the activity Vodafone in this area:

As part of its activity as Operator On Demand Audiovisual Services, Vodafone opted to centralize the provision of content

that are an integral part of its VoD catalog into a single entity - ZON TV LUSOMUNDO, SA (ZON).

So, the negotiation and acquisition of distribution rights on the contents that are part of the VoD catalog of Vodafone, is made in full by ZON directly from the holders of their rights (eg international majors).

The list of programs and content currently available on Vodafone in its audiovisual service request is thus dependent on negotiations by ZON, entity that Vodafone "subcontracted" to the selection of the titles available.

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?

- **ERC is working in order to implement a system of monitorization**

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.).

- **There are no obligations about this matter, unless those specified on article 45.º – the promotion of European works, specifically through financial contributions to their production or through their progressive incorporation into the respective catalogue and**

give particular visibility to European works in their catalogue, implementing features which enable the public to search for such works by origin.

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,

- ZON noted that consumers do not understand the distinction between European works and non-European works. Their decision process to purchase/rent a movie does not generally take into account the origin of the work. Therefore, the inclusion of an obligation to display works in such terms will have an impact on the overall perception of value of the platform.**

- 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,

- PT Comunicações has been giving special visibility to these European works in its catalog, through the realization and promotion of European cinema cycles, highlighting the works of various European nationalities, the campaigns dedicated and campaigns featured content, besides contributing (through sponsorship) to perform in Portugal, film festivals predominantly of European content.**

CABIVISÃO informs that in case of Premiers European works are displayed in the front page of the Catalogue.

VODAFONE - In terms of promotion of national cinematographic works and audiovisual, Vodafone stands permanently in their list of gender, the category "Portuguese Cinema" (which at this point is included in the "Tops" in order to give it more prominence)

- creation of specific sections dedicated to European works in the catalogue,
 - **VODAFONE - Regarding European productions, the offering VoD by Vodafone includes within its area "Special", permanently, a category related to "French Cinema".**
- **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),**
 - **CABOVISÃO promotes all premiers in its monthly flyers.**
- **Any other?**
 - **CABOVISÃO promotes all premiers in its website.**

VODAFONE's offer includes "Special" or "Tops" related to relevant events in the cinematographic field (at the time of its achievement), such as:

“Special Festival of Cannes”;

“Special Festival of Venice”.

Occasionally, there are other "specials", which promote and offer independent films, especially Italian, French and German films.

**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).

- **At the moment the monitoring is done once a year, regarding the initial state of development of this matter.**

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

- **At the moment we think it's sufficient, but the regulator is going to implement a system to monitoring such matter along the year.**

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

- **OPTIMUS - From all prominence tools Optimus Clix has implemented, the most relevant and efficient ones have shown to be:**
 - **Indication of the country of origin in the description of the works in the VOD catalogue;**
 - **Titles fundable on the basis of the origin of works in the catalogue;**
 - **Regularly displaying European works on the front page of the catalogue / in the start-up menu;**
 - **Use of trailers and short previews to promote European works;**
 - **Creation of specific sections dedicated to European works in the catalogue segmented by region, by country, by director, by actor, by cinema festivals, within other segmentation options;**
 - **Promotion of these actions in our barking channel, creation of specific emailing and SMS sent to customers to promote these actions;**
 - **In specific titles and promotions, specific selling prices in order to increase sales.**

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 the 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.

- **On-demand audiovisual media services provide data regarding the real presence of the European works on their catalogues, not regarding consumption of European work.**

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?

- **ERC is working in order to implement a system of monitorization.**

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).

- **The State ensures the financing of incentives and grants support for the development of the cinema and cinematographic activities, as well as the audiovisual production through collection of fees and the establishment of investment obligations :**

Law n.º 55/2012, September 6 (Cinematographic and Audiovisual Arts Act), establishes the principles the State shall apply within the framework of the promotion, development and protection of the arts concerning the cinema and cinematographic activities, as well as the audiovisual production.

The rules for financing the production of cinematographic and audiovisual works are established in the regulatory instrument to the present law - Decree (Decreto-Lei) n.º 9/2013, 24 January; Decree (Decreto-Lei) n.º 124/2013, 30 August.

Law n.º 55/2012, article 10.º, n.º 1, disposes that commercial advertisements exhibited in movie theatres, audiovisual commercial communication exhibited in television operators or by any means, conveyed by media service providers, audiovisual commercial communication included in on-demand audiovisual media services, as well as advertising included in electronic program guides (EPG's), whatever the display platform, dissemination or transmission, is subject to a fee, called display rate, which are charged to the advertiser, 4% on the price paid.

Article 10.º, n.º 2, refers that the operators of subscription television services are subject to the payment of an annual fee of three euros and fifty cents for each subscription access to television services, which is charged to the operators.

At the rate referred it is applied in each year, an increase of 10% over the applicable value in the previous year, up to a maximum of 5 euros.

The annual value of the expected rate due by each operator is calculated based on the average number of subscriptions presented in the previous year.

4.2. Please describe how the imposed financial compliance 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 compliance is re-attributed by ICA-Instituto do Cinema e do Audiovisual- (Law nº. 55/2012, Art. nº 13, 6 september):**
 - **3,2% income to Instituto do Cinema e do Audiovisua, I.P. ICA.**
 - **0,8% income to Cinemateca Portuguesa-Museu do Cinema, I.P. (Cinemateca, I.P.).**
 - **The product of the fee of 4% on commercial advertising revenue itself to ICA I.P..**
 - **ICA's revenue, less operating costs and commitments in any partnerships or agreements within the framework of its responsibilities, is allocated taking into account the following priorities:**
 - **80% intended to support the film art;**
 - **20% intended to support audiovisual and multimedia production, percentage that will be increased each**

year by 5% up to a maximum of 30%, by checking the degree of financial execution of the program to support the audiovisual and multimedia and the number of viewers of the works supported.

- 1. The participation of operators of on-demand audiovisual services in the cinematographic and audiovisual production is ensured through annual investment in national cinematographic works, in an amount to be determined annually, and a percentage not less than the equivalent of 1% of revenues activities of on-demand audiovisual services that they have. (Law n º. 55/2012- Art.16).**
- 2. The planned investment may take the following forms:**
 - a) Participation in the financing of the film, as co-financier, with no involvement in the production;**
 - b) Participation in the film production as co-producer;**
 - c) Advances to production, in the form of minimum guarantee;**
 - d) Acquisition of distribution rights of national cinematographic works.**
- 3. The participation of operators of on-demand audiovisual services is further ensured through the creation, in their respective technology platforms, of an area devoted to national works, which are available all supported works, as**

well as other works of national production, upon request of the respective distributors and rights holders, for the purpose of sale or rental of works in conditions that confer rights holders on them, a percentage not less than 50% of revenues.

- 4. The amounts provided in 1. that, in each calendar year, is not allocated to investment are delivered, by each operator, to ICA, IP, in January of the following year, being revenue of this entity.**

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).

- The law about financial obligations entry into force last august (Decreto-Lei nº 124/2013, 30 august).**

4.4. Could you provide data regarding the overall 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.

- (v.d. answer 3.6).**

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?

- **N/A**

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

- **It's important to consider the real consumption of European works.**

Operators VoD should dedicate a special space for European works; promote the European films festivals and send folders with this information to his clients.

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?

- **N/A**

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.

- **N/A**

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

- **It's very importante to relate consumption of European works and the proportion offered in the catalogues. VoD service providers should put a particular emphasis on European works and promote and offer independent films, especially Italian, French and German films.**

PT Comunicações - It should be noted that the introduction of specific features, including the collection of European works by origin, must take into account the limitations of the software platforms used. Thus, in this context, it is desirable that it be allowed greater flexibility to operators on-demand audiovisual services, so that they may perform activities to promote European production with the available resources.

ZON - We would like to point out that the metadata provided by content owners is very limited and does not provide all the information needed to classify the origin of all work. This situation can also limit the VoD operators' ability to comply with the proposed obligations.

CABOVISÃO considers that given the anticompetitive conditions in accessing content in Portugal, including content for VoD, the only obligation an operator such as Cabovisão (with a market share in Pay-TV of approximately 7%) may endure is the progressive incorporation of films in its catalogue or direct action upon the two operators in Portugal with more than 40% market share each (duopolistic market) in order for those operators to provide European Works to third-party operators in competitive conditions.

OPTIMUS - Financial contributions often lack a tight control and transparency procedures and accrue to all already extremely high administrative charges that VoD operators already pay for providing their electronic communications services. For that reason Optimus believes that in what regards the possibilities given to promote European works, the intensive use of prominence tools and specific search functionalities are the most efficient tools to promote and foster sales of European works as they offer freedom to adapt to each content and enable contextual promotions targeted for specific group of customers.

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

- **CABOVISÃO - Financial contributions, given the economic context in Portugal (recession) and the particular conditions in Cabovisão, where its market share has been falling every trimester.**

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

- **At the moment, there are no specific difficulties.**

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.

- **ZON - There are several issues that need to be taken into consideration regarding the definition of any type of obligations applicable to VoD operators. First of all, VoD operators do not have any control over works included in the catalogs available for exploration at each moment in time. Such catalogs are made solely by content suppliers and cannot be modified by operators. The establishment of the referred obligations can lead to a situation of non-compliance by VoD operators, which escapes their control.**

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

- **Yes, the answers to this questionnaire can be shared.**

Lisbon, 6th November 2013