

Audiovisual Media Services: coordination of certain provisions of the Member States. Codification

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In accordance with the requirements of Directive 2010/13/EU ('the AVMS Directive'), the Commission presents its first report on the Application of Articles 13, 16 and 17 of the Directive for the period 2009-2010.

Application of Article 13: this Article concerns the promotion of European works in EU on-demand services and is designed to meet both an economic and cultural objective, aiming at strengthening the European audiovisual industry. Member States are required to ensure that on-demand services falling under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Given the nascent and specific nature of on-demand services, Article 13 is flexible as to the methods to be used for promoting European works. Article 13(1) provides examples of means of such promotion: financial contribution to the production and rights acquisition of European works, or the share

and/or prominence of European works in the catalogues offered by the service providers. **During the reference period the state of development of the on-demand service market was very uneven in the EU.** The number of on-demand services was estimated at 435 in 2009. Over a quarter of them were catch-up TV services and the predominant delivery system was internet, followed by IPTV. France had the highest number of on-demand services available in 2009 (73 services), followed by the UK (66) and Germany (47). In the majority of Member States the number of on-demand services was between 10 and 20. Most were freely available, without any subscription. They were generally funded by advertising or financed through public funding.

This first report **does not provide sufficient data to draw any conclusions** on the promotion of European works by on-demand service providers. **Belated transposition** of the Directive in Member States and very **uneven development** of the on-demand service markets make any analysis and comparisons difficult. The way Article 13 has been transposed also differs from one Member State to another. At the end of 2010, 14 Member States had reproduced the wording of the AVMS Directive without imposing concrete obligations concerning on-demand service providers. In certain cases, it is left to the national regulatory authorities to specify later the appropriate methods for promoting European works. Amongst Member States that had implemented the Directive, (i.e. imposed the obligation to promote European works in on-demand services), **only six reports indicated that their legislation specifies concrete measures.** These measures vary from one Member State to another: in some Member States on-demand services are subject to the obligation to reserve a proportion of their catalogues for European works whereas others have introduced an obligation to contribute to the financing of European works or to give prominence to European works in catalogues.

In spite of the lack of specific obligations set out in the national legislation of some countries, 14 national reports provided some data on the **modalities of European works promotion** put into practice by on-demand service providers. These reports indicated quite a high share of European works in catalogues. Averages ranged from 40 % (Spain) to 88.9 % (Denmark) in 2009 and from 36.4 % (Portugal) to 100 % (Austria) in 2010. Due to the limited number of reports and the very low number of on-demand services (two or three) reported in some Member States, any calculation of EU averages would be meaningless. Comparison between the reported percentages of European works consumption and of European works

offered does not allow reliable conclusions to be drawn either. Five Member States also reported financial contributions to European productions and six national reports indicated the use of some prominence tools.

The Commission states that it can only welcome the presence of a relatively high share of European works in on-demand services.

In accordance with Article 13(3), the Commission will take technological developments into account, and will analyse these matters in the context of the emergence of connected devices and the convergence phenomenon. It will engage soon in discussions with Member States on the appropriate ways to implement Article 13.

Application of Article 16: the report notes that the European audiovisual market continued to grow steadily over the period 2009-2010. Figures show a trend of accelerated increase of channels, showing a According to the European Audiovisual Observatory, in December 2010 there were 7, 622 television channels a 25.6 % increase since 2008, higher than the one registered between 2006 and 2008.

The data provided by the Member States showed that overall performance improved during the reference period. The average transmission time dedicated to European works by all reported channels in the EU-27 was 63.8 % in 2009 and 64.3 % in 2010. This is well above the proportion set out in Article 16, and reflects generally sound application of this provision throughout the EU. **However, the great majority of European works consist of domestic works.** Member States are invited to monitor closely the achievements of all the channels falling within their jurisdiction and encourage failing channels to reach the required proportion of European works. It is of key importance to have European works that appeal to audiences across borders. This can be achieved for example by means of co-productions that have an appeal for a wide European audience.

Application of Article 17: the EU-average proportion reserved for independent productions broadcast by all reported channels in all Member States was 34.1% in 2009 and 33.8% in 2010, having slightly decreased during the reporting period. This downward trend was already detected in the ninth report. Member States are therefore invited to reflect upon ways of reversing this trend. The results showed a declining trend with respect to the level achieved in 2007 for both independent and recent works. Although the EU-12 posted better performance regarding independent productions than the EU-15, all Member States are called upon to monitor the application of Article 17 by the broadcasters and encourage efforts aiming at the transmission of a higher proportion of European independent productions and recent works. An increase in their ratio will help to support and strengthen the EU independent production industry as well as boost employment in that sector.

The Commission calls on Member States to take account of the low circulation of nondomestic European works and address this issue where possible.