

AVMSD Implementation Signals Necessary Policy Shift

By: Petri Kempainen

- ❖ As of 2020, streaming services operating in EU markets are required by its Audiovisual Media Services directive (AVMSD) to show at least 30% European content.
- ❖ Not all national implementations of the directive are yet fully completed. The tendency is for EU member states to also implement the optional clause permitting them to impose levies on local and global streaming services to support local production economies.
- ❖ European film policy might be shifting towards a wider audiovisual policy to take into account the growth and quality of tv drama production.

The Audiovisual Media Services Directive (AVMSD) governs the European Union's coordination of national legislation of traditional broadcasting and on-demand services. It is a key tool enabling governments to provide public funding for the production, distribution and promotion of audiovisual productions, for instance by imposing levies on the different players in the audiovisual industry towards the local film funds. In short, the directive establishes common rules and regulates variations allowed in the EU countries' national policies.

The previous AVMSD dates back to 2007, and considering the rapid technological developments since, a new level playing field was needed. The EU approved the revised AVMSD in November 2018. It should have been transposed into national legislations before the end of 2020, but in many European countries the details are still being negotiated.

The AVMSD sets an obligation for streaming services operating in EU

markets to show at least 30% European content. This is somewhat lower than the earlier obligation of broadcasters, and it has largely been accepted as a not too difficult threshold. Some of the increase in international investment in European content in the last two years is already due to this new obligation on the streamers.

Many European countries, alarmed by the growing impact of global SVOD players (at the time the directive was being negotiated, notably Netflix) did not find this 30% rule sufficient. Only specifying “European content” was read as likely to be disproportionately beneficial to large EU countries with significant production capacity, and languages spoken outside their borders, in particular Spain and pre-Brexit UK.

To address demands that streaming services contribute financially to each national production ecosystem, a small detail—the directive’s article 13, paragraph 2—was added. It is not compulsory, but makes it possible for national governments to impose financing obligations on “providers of on-demand audiovisual media services, targeting audiences in their territories, but established in other Member States.” These obligations should be in line with the regulations imposed on local VOD players in the respective countries. In addition, the EU has set up a mandatory follow-up procedure, obligating governments to report on their efforts regarding Article 13 every two years.

What does the implementation of that article look like as of the time of writing, January 2021? Belgium, Germany and Italy have already imposed the additional financial obligation. In Belgium the platforms can choose between a levy to the film fund or direct investment in productions. In Germany there is a levy, and Italy wants to see an investment obligation of 20%. The French case is still under negotiation but could involve two changes. There has been mention of raising the rate to be paid to the CNC²⁴ by streamers, including global players, to 5.15%. In addition, an investment obligation similar to Italy’s may be introduced.

The French negotiations have been closely monitored by prominent figures in the European film landscape. In October 2020, more than 500

24. France’s national film fund.

industry professionals including Pedro Almodóvar, Agnieszka Holland and Pawel Pawlikowski signed an open letter calling for an ambitious implementation, suggesting that at least 25% of the global platforms' local turnovers should be invested back into European productions. The impact of the global health crisis further highlights the need for a strong regulation, the letter stated²⁵.

The Netherlands, Denmark, Sweden and Finland have typically been opposed to this type of regulation and voted on the EU level against adding the second paragraph to the article. Since losing that vote, at least some of them have changed their thinking. The member states can select to add the regulation later, and the Netherlands is now advancing a plan in their Parliament to implement a combination of a levy and investment obligation. In Denmark the government has also signalled a principal approval, and Norway, a non-EU member, may be following suit. The Finnish and Swedish governments have kept a very low profile so far.

In the meantime it has become obvious that for most global players, regional and local content are of strategic importance. Netflix was initially strongly against the reform, but realised already during the process the significant opportunity in entering local production sectors. Policy negotiations combined with opening local production hubs are now part of their strategy in France and Spain. The most recent news comes from the UK, where Netflix as of 2021 have agreed to start declaring taxes on the revenue from their local subscriber base (estimated at 13 million households), and viewing their UK-based shows as deductible local investment.

The changed positions of the Netherlands, Denmark and Norway mentioned above are signs of actual policy change, and may reflect a trend where a refusal to introduce levies on global players becomes politically difficult. Local industries that are struggling, whether under pressure from the changing marketplace, or because public funding in their countries has clearly peaked, may view the influx of extra investment as necessary.

On the other hand, the passivity of Swedish and Finnish governments on the issue may be a result of the market moving in the intended direction

25. Goodfellow, 2020

without regulatory intervention. The Nordics have already seen growing international investment towards scripted content. And while global players are performing well, regional streaming providers NENT Group and C More, as well as Elisa in Finland, are also strengthening their positions and have announced plans of geographical expansion outside their core territories. Finland and Norway have also introduced tax incentives that benefit both incoming and local productions.

On a European level, it feels like a shift is happening: from only narrowly looking at film, towards a more comprehensive audiovisual policy which takes tv drama production (which in the past was at the hands of broadcasters) into account as well. Governments may also be struggling with understanding the issues. The production industry in the Nordics has neglected its own data collection, and lacks comprehensive information on production and investment levels. The traditional film industry has had the ear of the policymakers, while the tv drama producers have been financially reliant on the duopoly of linear public service and commercial broadcasting, which was dominant before the arrival of streaming services.

But the landscape is changing regardless. Soon enough, the local legacy broadcasters have completed their transformations into streaming services. Aligning the regulatory obligations between the broadcasters and the international services will be a necessary step to ensure fair competition. To complement the change, a re-evaluation of film funding policies is needed to account both for the place of tv drama production in the audiovisual landscape, and of tv/streaming's expanding role in feature film financing and distribution.

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