

Examining the European and Nordic transposition of AVMSD Article 13(2)

**New opportunity for reinforcing the financial
foundation of Sweden's audio-visual content
production**

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Introduction

Background of the EU directive on Audio-visual Media Services

The amendment to the EU's directive on the provision of audio-visual media services (AVMS directive¹ was approved on 14 November 2018. The content of the directive should have been included in national legislation within 21 months of entry into force. Some countries have implemented the directive in the said time while others are still delayed.

Even after the transposition member states may take additional measures allowed in the directive. There is a reporting obligation back to the EU Commission every two years. Thus there is still time to make change, should consideration and discussion start soon.

Article 13(2) of the AVMS directive is the focus of this report. It is one measure that could be transposed even after the original implementation. It provides member states an opportunity to expand their foundation for financing independent European audio-visual production². Media service providers that have a presence in other member states, but whose target audiences are in the member state, can be compelled to contribute financially.

A few countries have already transposed this into the national legislation. More countries are considering the use of this article, with an aim to strengthen their own content producers and distributors' position.

Swedish Film Institute, Swedish Television and Swedish Regional Financiers wanted to review the situation in other EU Member States regarding this article of the directive, as well as to explore legal framework and market consequences of a possible implementation in Sweden.

This assignment was given to Petri Kemppinen, consultant and founder of P1 Kemppinen Oy. Petri Kemppinen has a vast experience in the audiovisual field, covering European policy and Nordic industry. He was the CEO of Nordisk Film & TV Fond between 2013 and 2019 and has been the Board of Management member of Eurimages between 2005 and 2013.³

In addition to the status report, the aim was to give an overview of the legal status of the transposition and investment requirements of Swedish stakeholders, and to give current data on the volume and market shares of SVOD platforms in Sweden, as this information is vital in the political considerations.

¹ <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

² According to Article 13(2) of the AVMS directive, Member States may require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds. If such a requirement is placed on national media service providers, the Member State may also require media service providers targeting audiences in their territories but established in other Member States to make such financial contributions. These financial contributions shall be proportionate and non-discriminatory.

³ For more information see www.p1kemppinen.com

Based on the report, its commissioners would then be able to decide on their next steps regarding the matter.

Goals and realisation of the report

This project was carried out in April-May 2021. The three goals for the report are titled by the author as follows:

Implementation of the Article 13 (2) in Nordic and European countries

Possible applications of Article 13(2) as well as related plans and preparations in other EU member states. What require review are the plans and preparations in other Nordic countries.

This was surveyed through public, written records and interviews.

Swedish status quo:

To research Swedish media landscape to find out the audio-visual operators' level of investment in Swedish and European content, as much as it is possible, and to map out data on SVOD subscriptions and the legal status of TV law and film law in relation to the implementation. The data was gathered through desk research and interviews.

Swedish implementations

To also analyse the possible implementations, effects, and benefits/drawbacks of the Article in Sweden, through foreign models that emerged, and the processes of some of the countries as described in this report.

The goal is that the commissioners of this report would be able to gain an understanding on how to identify next steps in their respective policies towards the possible execution of the Article 13(2).

The persons interviewed and sources are laid out in the appendices.

The situation in Nordics and Europe

The operating environment for audio-visual content production has changed significantly in recent years. The changes of digitalisation have introduced direct-to-consumer media services to the European market, who have challenged the existing business models and modes of operation.

These media services⁴ have taken their place alongside traditional linear TV, cable television and the cinema network. Global streaming services (such as Netflix, Amazon, HBO) have gained a significant share of the consumers' media usage, and new operators continue entering the field. Globally, video subscription services are estimated to have overgrown the number of a billion subscribers at the end of 2020.⁵

Local and regional operators have also gotten stronger. In the Nordic countries, these include Nordic Entertainment Group's NENT/Viaplay, Telia's C More, as well as Finnish- Estonian telco's Elisa Viihde, that has since December 2020 a joint platform with Viaplay. Viaplay has now operations throughout the Nordics, Baltic countries, and Poland, and five other territories should be announced later this year. Recent information states that their subscription number is over 3,1 million.⁶

Many of the newer media service providers have, in their own way, considered Europe's variety of cultures and languages. Most global, and especially local operators have made it their strategy to finance and purchase local content. Drama series, in particular, have become a competitive factor, due to which independent production companies have seen an upsurge in production orders. The amount of international co-financed productions in TV drama has also grown.

Traditionally, European audio-visual production has had its capacity and competitiveness be highly dependent on public support and the television networks' internal resources to produce and order

⁴ The directive refers to the term media service, which is a wider concept than the terms that are used actively in the field, streaming service or video subscription service. The English terminology separates into SVOD, subscription-based video on demand (wherein a subscription grants the user access to a large library of programming) and TVOD, transaction-based video on demand (one order provides access to a single work at a time).

⁵ <https://www.digitaltveurope.com/2020/03/27/pandemic-to-cause-svod-numbers-to-jump-up-by-5/>

⁶ <https://www.digitaltveurope.com/2021/04/22/viaplay-subs-jump-by-a-quarter-as-nent-group-targets-newmarkets/>

content. Member states have varying solutions on public support practices and investment duties, which is clear on the European Audio-visual Observatory's detailed 31-country report.⁷

The report states that support for culturally and linguistically unique national film production is generally channelled through governmental and regional funds or film institutes. These productions are financed in various ways, either directly from national budgets or through tax-like payments levied on various parties. In addition to public support, traditional broadcast television channels invest significant sums directly into film and drama production in particular.

According to the report, 26 countries have set an investment obligation on linear television service providers. How such a duty is implemented varies by country. 11 countries, including Sweden have implemented a duty to reserve a percentage of airtime to independently produced content.⁸ In Sweden, the Radio and TV Law states that at least 10% of yearly transmission time (excluding the time allotted to news, sports events, games, advertising, and teleshopping) or alternatively 10% of their programming budget, should be allotted for European works created by producers who are independent from broadcasters.

In Finland the levels are defined similarly as in Sweden, but the threshold is at 19%.

In Iceland the threshold is at 10%, but additionally the state broadcaster RÚV is obliged to spend 11% of their revenue to buy or co-produce movies, TV series and documentaries from independent producers.

The Danish model is the most detailed out of the Nordic countries. Their Media Agreement covers public service investments for a four-year period ending in 2023. In addition to the 10% transmission time quota for European works, DR and TV2 are obliged to invest substantial money into independent productions.

15 countries use a tax-like duty that is based on turnover or advertising revenue, either as direct investments into independent productions, or as payments to funds (often film institutes), from whom content producers can seek financing for their productions.⁹

On-demand video service providers have been given a similar duty in eight countries. None of these are Nordic. In four countries (Germany, France, Poland, and Belgium), this duty already applies to foreign on-demand video services with cross-border availability – precisely as the Article 13(2) of the directive allows.

The differences in sources of financing are eminent in that in addition to the aforementioned countries, under ten other countries have placed any duties on distributors and cinemas to divest a part of their profits into funds.

In transposing the AVMS directive, many countries have considered implementing an investment obligation for the media services specified in the directive. Many of these processes are still ongoing. The covid-19 pandemic has influenced scheduling priorities. The following is a country-by-country review of the situation in spring 2021 for the countries that have implemented solutions or announced

⁷ Mapping of national rules for the promotion of European works in Europe, European Audio-visual Observatory, 2019

⁸ Based on the AVMS directive's Article 17, which sets such a quota to a minimum of 10%. In Finland, this quota has been set to 19%.

⁹ Varies between 1.4 – 5.65 percent of turnover / advertising revenue

plans regarding the opportunity in Article 13(2). An online tracking of the formal legal processes can be found on the site of European Audio-visual Observatory.¹⁰

Nordic countries

Denmark

In 2018, the government approved a new media agreement, which included a 2% investment obligation on on-demand video service providers. This new duty was, however, not adapted before said government was dissolved.

A report¹¹ on the matter regarding operators and possible models was, however, completed in late 2019. Extending this duty to foreign on-demand video services has also come up and is seeing strong support from the local audio-visual industry. This was not transposed concurrently with the directive when Radio and Television Act and the Film Act were amended at the end of 2020. In spring 2021 the acting government has put the process on hold.

It is still interesting to look at the published report, as it provides a full picture of a rather similar neighbouring market.

According to the report, there are 41 media services on the Danish market that fall under the AVMS directive's jurisdiction. Their combined turnover in 2018 was roughly 4 billion DKK (~€570 million). Services that produce or commission content have an 80% share of that turnover.¹²

The report states that players with smaller turnovers or focuses can, according to the directive, be excluded, to remove a barrier for entry from new players. Additionally, the directive also provides for a possibility to exclude other players from these duties. Based on this, the report recommends three exceptions to the investment obligation.

- Public service channels DR and TV2, who already invest a significant portion of their funds (up to 50% with DR) into Danish productions
- TVOD operators and VOD distributors, whose business models are solely based on distributing third-party content (no programme commissions of their own)
- Operators, whose media service turnover falls under 75 million DKK (~€10 million, in accordance with the EU's small company limit), in order to focus the investment obligation on larger operators, for whom the impact on costs is not too heavy, and for the investment obligation to have true significance regarding Danish content production.

These limits would result in the investment obligation being focused on, based on 2018 figures, four operators, whose combined turnover in Denmark is estimated to be roughly 1.2 billion DKK (~€170 million).

Regarding a practical implementation, the report states that the obligation would generally be a portion of turnover, and alternatively as a share of subscription fees, when it is not possible to restrict

¹⁰ <https://www.obs.coe.int/en/web/observatoire/avmsd-tracking>

¹¹ Forpligtelse for streamingtjenester. Forslag til udmøntning af en forpligtelse for streamingtjenester til at bidrage til dansk indholdsproduktion, 2019.

https://kum.dk/fileadmin/KUM/Documents/Nyheder%20og%20Presse/Pressemeddelelser/2019/20191115_Udmoentning_af_forpligtigelse_for_streamingtjenester.pdf

¹² Includes DR TV, TV2 Play, Viaplay, Netflix, HBO Nordic among others. All these players already have investments in Danish content.

the turnover to only cover the service in question. Both direct subscription fees as well as indirect fees, relayed by other operators, shall be considered. The responsibility for producing the required data would lie with the operator and be verified by an accountant. The report states that tracking these figures is possible as the services are VAT liable.

The report states that the choice between a direct investment obligation and a fund payment (or a combination thereof) is a political matter. Operators are already making direct investments. A direct investment obligation is presumed to require fewer administrative measures and leaves the service provider with the freedom to choose their investment targets. A fund payment, on the other hand, is seen to be a better guarantee of meeting cultural-political objectives.

The report does not take a stance on how large such a duty should be, and states only that, based on its assumptions and a 2-5% range, it would be likely to generate 24–60 million DKK (€3.4–8.5 million) based on 2018 turnovers. The report states that the media services' turnovers are expected to grow in the coming years. It also states that new, global operators are entering the market in the near future.

The report also recommends carrying out an impact survey two years after implementation. It should be added that in Denmark the industry is strongly involved in lobbying for the proposal. The Producers' Association has calculated substantial growth in the streaming subscriptions for 2019 and 2020 and state that the total revenues could be at close to DKK 3 billion in 2020.

The Producers' Association have set 7% of the turnover as their goal and this is supported by the Danish Film Institute. The income could be channelled to either the Danish Film Institute or the Public Service Pool that supports TV Drama Series.

Finland

In Finland the AVMS directive is part of the Law on Electronic Communications Services and it was implemented into national legislation in time at the end of 2020. The law lies under the auspices of Ministry of Communication, as does the Broadcasting Law, and the possibility offered by Article 13 (2) was not taken into consideration during preparatory discussions, as the Finnish government initially was against such regulations.

However, the status of European models and the possible solutions and effects were presented in a report commissioned by Ministry of Culture, that was sent to public hearing in the autumn of 2020.¹³ The industry organisations and the Finnish Film Foundation reacted positively, and Ministry of Finance also encouraged further exploration on the matter, as the directive implicitly states an obligation of following up on the said matter after two years.

Information received from the Ministry of Culture in May 2021 states that the matter has been taken further and is set to be in the agenda of the relevant three ministries in months to come.

The Finnish report included a survey with the local broadcasters and platforms investing into Finnish and European film and drama content. The seemingly elaborate responses could be of interest in the Swedish context as well, hence they are summarised here.

¹³ <https://julkaisut.valtioneuvosto.fi/handle/10024/162337>

The stakeholders consider the situation very much through the context of foreign ondemand services – some of whom have already invested in Finnish production – having entered the market.

If the investment obligation is extended to the international players, the respondents state that it would have a direct, mainly positive impact on independent Finnish production companies. There are detailed explanations in the responses regarding production volume, quality, costs, and financial base.

The number of productions is expected to grow slightly. International comparison (incl. Germany, Denmark, Sweden) seems to show that the entry of new content investors has increased the number and quality of the content as well. Growing production costs are also visible.

The growth in the financial base of Finnish production is seen as a core component of increasing its quality, as production companies are not currently very capable of dealing with rising production costs. The responses refer particularly to drama series production, the demand, export potential, and financial needs for which are growing.

One consequence of greater international funding can be that IP rights to the productions may move from the production companies to larger players, further away from home, which can make the desired cultural-political outcomes uncertain. They additionally state that in most European countries' large media companies have founded production companies to make sure that they have better control over production costs and ownership.

Regarding the size of the Finnish market, Statistics Finland's latest official data on television operations are from 2019, when their total turnover was close to €1.3 billion, with paid ondemand service subscriptions accounting to €450 million, the Yle tax roughly over €470 million. Advertising generated €230 million, and cable TV basic subscriptions generated €128 million. According to Statistics Finland, in 2020 40 percent of Finnish households had an active SVOD service subscription.¹⁴

Norway

Norway is not an EU member state and does not impose any investment obligations into local content even to local broadcasters. Film and audio-visual policy are for the most part state financed. However, Norway follows many of the EU directives and they have commissioned a study on the impact of AVMS directive.¹⁵ The legislation amendments, should they happen, are still in progress, and even further delayed partly because of covid-19.

However, Norway's current government has clearly stated in its budget proposal for 2021 that it intends to draft a proposal, according to which audio-visual on-demand video services must invest a portion of their profits into Norwegian audio-visual production. Imposing a tax/duty on foreign players that operate in the Norwegian market has also come up, and the previous Minister for Culture has explicitly supported such a measure.

A concrete proposal (*høringsnotat*) is expected this year, but it has been delayed, and may not happen before the general elections of September. No exact numbers are given nor an indication whether the

¹⁴ https://pxhopea2.stat.fi/sahkoiset_julkaisut/joukkoviestintatilasto/html/suom0004.htm

¹⁵ https://www.regjeringen.no/contentassets/05155c9509874ca7b8e7aa76bd18aa92/analyse_av_amtdirektivet_nfi_2017.pdf

obligation will be a financial investment or a levy. The Norwegian Producers' Association and the Norwegian Film Institute have been involved in the political discussions.

Rest of Europe

France, Germany, Belgium, and Poland have levies or investment obligations for foreign operators in place at their current legislation. France is proposing a major amendment which is set to be accepted soon. In addition, the Netherlands is also in the verge of accepting a major change that affects foreign operators. Change has also been proposed in Italy.

The status of those countries that have investment obligations for local and/or international VOD platforms are explained below.

The Netherlands

In connection with implementing the directive, the Netherlands are creating a turnoverbased duty in a wide scope for both Dutch and foreign players that provide services for the Dutch viewers. Their legislative proposal has linear TV companies and on-demand video services invest 6% of their turnover; cinemas and TVOD services would invest 3%. Such a duty would not be imposed on cable operators.

In 2019, the Dutch public service channels' turnover was roughly €1 billion. Turnover for the cinemas was around €348 million, and on-demand services' turnover were roughly €394 million. On-demand services have surpassed cinemas already the year before.¹⁶

It is estimated that the model will be implemented during 2021 as a combination of levies to foundations and direct investment obligation. According to the proposal, operators with turnovers under one million euro are exempt of such a duty.

France

Now linear channels pay a fund tax of 5.65%. On-demand video services, both French and foreign, are already now imposed a 2% fund tax on their annual turnover.

When implementing the AVMS, the French transposition decree is proposing a 5,15% fund tax for foreign on-demand services, which is estimated to bring an additional 70 m€ for CNC and an additional investment obligation of up to 25%, that would generate around 100 m€ of investments.

This above setup has received remarks from the French television regulator (CSA) and from the European Commission, and at the time of writing this report the decree is estimated to be accepted in July.

The remarks have been twofold. Partly they are related to the higher scale of the investment obligation compared to the levels of investments in place for the traditional local broadcasters; these have been motivated by the facts that the traditional broadcasters have a majority of other type of programming (including sports, entertainment, news etc) than film and drama in their schedule. Partly the remarks are related to the relation of film and drama series in the platform's line-ups, and level of detail regarding the varied levy percentages planned for different cases.

¹⁶ <https://www.filmfonds.nl/page/8855/film-facts-figures-2020>

Belgium

Any on-demand service that operates in both the Flemish community and another EU member state, and that provides services to the audience in the Flemish community, must invest either €3 million in total or €1.3 per subscriber. The choice of a direct investment or the tax-style payment is left to the service provider's discretion. The latter is paid directly to the Flanders Audio-visual Fund.

In the French-speaking community, such a duty is imposed on both domestic and services that operate in another country and provide a service to a French-speaking audience. The service may choose from a direct investment (co-production, pre-buy) or a payment to the Film and Audio-visual Centre.

Sums imposed are based on turnover:

- 0%, if the turnover is under €300,000
- 1.4%, if the turnover is in the range of €0.3–5 million
- 1.6%, if the turnover is in the range of €5–10 million
- 1.8%, if the turnover is in the range of €10–15 million
- 2.0%, if the turnover is in the range of €15–20 million
- 2.2%, if the turnover is above €20 million

Poland

Polish and foreign on-demand video services were imposed a levy into the Polish Film Institute's fund in 2020. The levy amounts to either 1.5 percent user fee or ad revenue, whichever is higher for the individual business. During half a year of existence in 2020 this generated close to 2 million euros.¹⁷

Germany

On-demand video services based in Germany and abroad are imposed a duty of 1.8%, when their turnover for films is over €500,000 and a duty of 2.5% when their turnover exceeds €20 million. The streaming market in Germany in 2020 is estimated at 4,3 billion euros.

Croatia

Croatian on-demand video services are taxed a fund payment that is 2% of their turnover. A direct investment obligation or a fund tax on services that operate in another EU country and provide their service to Croatians will be a point of discussion when the AVMS directive is implemented.

Czech Republic

Czech on-demand video services are required to invest 0.5% of their profit, either as a direct investment or as a tax.

Romania

Local on-demand video services are subject to a fund duty of 3% of the price of the movie downloads (transfer fee that applies to Internet and mobile services).

¹⁷ <http://filmneweurope.com/news/poland-news/item/121347-poland-s-vod-levy-yields-almost-2-m-eur-in-2020>

Slovakia

Slovakian on-demand services are subject to a 0.5% fund tax of their profits. They are not currently considering a duty for foreign service operators that provide their service to Slovaks.

Italy

On-demand video services have been required, since July 2019, to invest 20% of their net profits directly into production. At least 10% of their profits must be directed to works that represent Italian original expression from independent creators.

Spain

On-demand video services are required to invest 5% of their profits directly into independent production.

Swedish status quo

Legislation

Sweden's AVMS regulations are a part of its law on Radio and TV operations (2010:696). A report on report on modernising the law proceeding the amendments was written in 2019.¹⁸ That report presented one change in the directive that strengthens the competitiveness of European audio-visual production and cultural diversity, which was that 30% of content by on-demand platforms should be European.

However, the report did not propose an implementation of a tax or monetary investment obligation taking into account the Article 13(2). It states that Sweden has 64 pay-tv services but does not include an evaluation of their financial or cultural impact. Instead, it refers to the European Regulators Group for Audio-visual Media Services (ERGA), and their perceived difficulties related to investment obligations.

Some stakeholders, notably the Swedish Joint Committee for Artistic and Literary Professionals (KLYS), Fackförbundet Scen & Film and the Swedish Film & TV Producers' Association (FTVP), took note of this lack in their respective comments to the government.

The Producers Association reminded the government on the Swedish tradition of regulation, for example in the Film Agreement that run between the years 1963 and 2016.¹⁹ KLYS was also in favour of exploring and mentioned that the level of an investment obligation or a levy could be 10%.²⁰

Both stakeholders also reminded of the active discussion around this matter in Norway and Denmark.

These comments were not considered by the authorities and at the end of 2020 the law was passed as presented in the above-mentioned report. Since then, neglected discussion around Article 13(2) and the possibilities it would provide for strengthening the financing has been taken up in by Swedish Joint Committee for Artistic and Literary Professionals (KLYS)²¹, and Swedish Film Directors²², among others.

¹⁸ <https://www.regeringen.se/4adae9/contentassets/705b556627d643d3983a823d008ac5dd/enmoderniserad-radio--och-tv-lag-sou-201939.pdf>

¹⁹ Remissvar "En moderniserad radio-och tv-lag" (Ku2019/01489/MD). E-mail of 6.12.2019

²⁰ <https://www.klys.se/wp-content/uploads/2015/11/KLYS-om-Moderniserad-radio-och-TV-lag-SOU-2019-39.pdf>

²¹ Beskrivning och förtydligande av AVMS-direktivet och dess möjligheter för återstart av svensk film. KLYS Till Återstartsutredningen I mars 2021

²² <https://www.povfilm.se/76/hur-garanterar-vi-svensk-films-framtid/>

Investment volume and VOD services

According to Statistics Sweden, the net turnover of companies operating in motion picture, video and television programme production, programming, and broadcasting activities in 2019 was 47,627 billion SEK.

Swedish Film & TV Producers Association (FTVP) report that their 113 member companies had a total turnover of 4,5 billion SEK in 2019. The main commissioners of film and TV drama content in Sweden are SVT, TV4 / C More and Viaplay.

A thorough research on the volume of investments was unfortunately not possible as for competition reasons companies are unwilling to publicly provide accurate numbers. Validating comparable data from public sources like yearly reports and press statements proved to be too complicated a task within the framework and resources of this report.

As it is in the neighbouring Nordic countries, the growth in television (including on demand services) revenues began to accelerate in the middle of 2010s. This growth can be attributed to the greatest part to paid subscriptions. Netflix was the first reason to growth, but also the localised services like HBO Nordic have paid a significant role. Launches of new foreign players have had varied successes; Disney+ opened strong in the families with children segment whereas Amazon Prime has received a more moderate reaction.

In the whole of Nordics Viaplay has spoken about a strong growth in subscriptions, and equally well C More has widened its Nordic scope. Interestingly, they both have announced expansion plans outside the Nordics as well.

Most of these services base their business logic mainly on a fixed monthly subscription fee. Usually they do not disclose country-specific subscriber figures. Market analyst company Mediavision states that the share of Swedish households (15–74-year-olds) that had a subscription to some media service was 60% at the end of 2020. This translates to about 2,6 million households. Their estimate is that on average every Swedish household spends around 120 SEK per month in streaming services.²³

According to reports, Netflix has the largest subscriber base in Sweden, with Viaplay, C More, HBO Nordic, Disney+ in tow. This corresponds to their weekly use as reported byMMS.²⁴

Local services have in two years grown their market share into 42 percent of the subscriber base. Netflix has come down to a share of 28 percent and Disney has gained a share of 10 percent. Other actors, including Amazon, Apple TV, HBO Nordic, Paramount, and some others add to the remaining 19 percent in first quarter of 2021.²⁵

These percentages should be considered indicative in nature. Even with a more moderate estimate of 110 SEK per about 4,8 million Swedish households, paid television and subscription services would have generated a profit of over 6 billion SEK in 2020, of which foreign services would account for over 3,5 billion SEK per year.

²³ <https://www.mediavision.se/2021/01/27/mediavision-svensk-streamingmarknad-trotsar-pandemin-nyttrekord-2020/>

²⁴ Trend & Tema 2020:4.

²⁵ <https://www.mediavision.se/2021/05/18/mediavision-lokala-tjanster-tar-marknadsandelar-nar-onlinevideo-vaxer/>

Swedish implementations

Change in political climate

In preparing this report, the responses and information received from Swedish stakeholders indicate clearly that the government has not taken an active role towards the investment obligation in accordance with the Directive's article 13(2). Equally, one could say that even the stakeholders have been slightly more passive than in the neighbouring countries. Even though Denmark, Finland and Norway differ, stakeholders in these countries seem to have been engaging into somewhat more vibrant debate around this matter than their Swedish counterparts.

One traditional background reason can be given. On EU level, Denmark, Finland, and Sweden were among the group of "Northern" governments that originally were very much for the free market and against more regulation in all policy fields. The possibility opened up in article 13(2) was considered to be a restriction, and these countries even voted against including this option in 2018. Despite that, the more favourable point of view of "Southern" countries' won.

But the change has been coming. The entrance of global players to the European market has probably been the first eye-opener to some. The general political climate has changed into less progressive and more local. More recent discussions regarding global corporate taxation have played towards the same direction, and as the FAANG directly includes two major SVOD players, the question is even more eminent.

Even before, the question had become more topical and resulted in the previously reported studies of Denmark and Finland as well as activism around the matter in Norway, which had for example witnessed the impact of local Netflix shows like Lilyhammer, co-produced with the public broadcaster NRK.

Based on the research around this report, it may be that in Sweden the focus on the termination of Film Agreement and new governmental Film Policy, as well as discussion on tax incentive, might have slightly overshadowed the simultaneous global transformation, which caused stronger reactions in the neighbouring countries.

Alternatives for Sweden

The published reports and the finalised amendments of some other member states clearly indicate some valid areas to discuss. Raising the topic on the agenda in Sweden now might be the moment as recovery from covid-19 will anyway boost discussion on the policy directions and initiatives such as

*Återstart för kulturen*²⁶ provide an option for a suitable framework. Another validation is the feeling of shared target within the stakeholders of the industry, which according to this research has very few differences in the detailed wishes.

Looking at the learnings from discussions around Europe, it should be understood that this issue is a question that concerns both economy and culture. Giving valuation to the possibilities of growth in the audio-visual industry as such should not pose a major problem in Sweden, which has been able to greatly nourish many other creative industries.

The question of having an opinion on a direct investment model, fund payments, or a combination thereof, is outside the scope of this report. All these options are being planned in Europe, and surveys regarding the operators' wishes are ongoing. A direct investment obligation can be presumed to require fewer administrative measures and leaves the service provider with the freedom to choose their investment targets.

In this alternative the notification on meeting the obligation could be based on a similar model as what is currently used to indicate the degree of European content.

Countries that are planning a fund payment or a combined model believe that they can better guarantee the achievement of cultural-political diversity goals. This is a goal that section 5 of the article refers to and is an option that might fit certain operators. Directing finances through a fund can be an opportunity to determine usage-related goals, such as to strengthen diversity.

Should this alternative be chosen, a question about the eligibility of the projects initiated (or owned) by the fund contributors has been raised, but no change in the demand of IP rights ownership by independent production companies has been in discussion.

The fact that, according to the last sentence of the directive, the financial contributions should be proportionate and non-discriminatory was debated in the Danish and Finnish reports, and both took the position that the existing broadcasters could be excluded from new obligations, as their investment levels into local and European production already are at a significant level.

France's model is to be accepted in this vein, and even more so, they seem to be taking into account the volume of programming that is at the heart of support mechanisms for production, namely film and TV drama series. It clearly sets a new obligation for foreign media service providers whose target audience is in France, which differs from the obligation of local broadcasters, who, rightly said, have a substantial number and other type of programming than film and TV drama as well.

In France's and other countries tentative plans, the payment is determined as a percentage of turnover or, alternatively, based on subscriber numbers in the country. Technically, it would not be a significant administrative burden to calculate these based on subscription fee VAT, for instance.

If calculated like the models presented in the Danish and Dutch plans, that are at a lower level compared to the French proposals, additional investments into Swedish audio-visual production would depend on the scope of the obligation and the services' turnover. Based on the earlier estimated turnover of the on-demand video services (6 billion SEK in 2020) and the duties being

²⁶ <https://www.svt.se/kultur/kulturens-aterstart-far-vanta>

planned by other European countries (2-6%), such a levy or investment obligation would generate roughly 120–360 million SEK yearly.

Conclusion

Sweden did not use the possibility of implementing article 13(2) of the directive in the local legislation, but nevertheless it is, as are other member states, required to provide updates at two-year intervals. This provides a chance of revisiting this neglected item and having a thorough discussion around it – even more so as it is apparent that the change within the industry is fast.

It should be clear that there are different opinions on the matter of regulation – firstly if it is considered at the moment to be fair or unfair between the traditional broadcasters and the new players, and secondly should they be allowed to decide on their investments themselves or channel them in a more indirect way.

It should become clear that a future model would make it possible to require investments from media service providers that have a presence in other EU member states whose target audience is in Sweden, as well as from possible new Swedish media service operators now without any formal obligation.

Equally well it should be understood that as some Swedish operators already now target audiences in other member states, they could be facing obligations there. This question related to a fair and level playing field for all platforms and broadcasters in a more globalised market has been raised for example in this year's Nostradamus report *Transforming Storytelling Together*.²⁷

An uncertainty regarding the competitive situation is having an effect into the local industry ecosystem. The strengthening of the foreign operators' position may cause the local owners losing distribution rights of their content, which has traditionally been considered as their asset. An argument for imposing the said investment obligation has been perceived an opportunity to increase funding for independent production and its development and thus reinforcing the financial base of the companies in small markets and regions.

There is some evidence on the already existing regulatory models and those in planning stage to look at when thinking about a possible Swedish model. For a Swedish regulatory model, it would be necessary to consider whether participation in AV production financing would be implemented as a direct investment obligation, as payments made to a fund, or a combination thereof.

In the European context the levies to a fund option are thought to reinforce cultural and linguistic diversity in the content, especially in small markets, and to strengthen the independent production companies' position. A direct invest obligation would not result in too much additional administrative work, and it would leave service providers the choice of target.

In creating a solution, the operators' opinions of the matter should indeed be a consideration. In the future debate that will certainly open, a better understanding on the already existing investment levels in Sweden would provide a firm and solid mutual base for discussion.

²⁷ <https://goteborgfilmfestival.se/en/bransch/nostradamus/>

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