

Mapping of the regulation and assessment of the nationality of European audiovisual works

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In this report, 'EU28' refers to the 28 member states of the European Union before the withdrawal of the United Kingdom from the EU. The United Kingdom data is included in the report as the reference period is prior to the withdrawal.

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Foreword

An aphorism usually attributed to the Greek philosopher Socrates states that “*the beginning of wisdom is the definition of terms.*” Every lawyer, and probably every philosopher too, may agree with this statement. Before we can begin to know anything in detail, first we need to know exactly what we are talking about. We must agree on a common concept that includes certain facts while excluding others. A *square* is a *rectangle with four sides equal*,¹ whereas a *circle* is a *closed plane curve every point of which is equidistant from a fixed point within the curve*.² And not the other way round or something in between. Assessing the nationality of audiovisual works, that is, knowing when such a work is to be considered ‘national’ or ‘European’ according to relevant legislation, is paramount for producers, public film funds, regulators and service providers. With the revised Audiovisual Media Services Directive (AVMSD) and the extension of share obligations to video-on-demand (VOD) services, the assessment of the nationality of European AV works is becoming even more crucial.

In practice, many difficulties arise, some of which were highlighted during the conception and implementation phases of the European Audiovisual Observatory’s new database, LUMIERE VOD.³ This has unveiled the need for comparative data and analysis in this field, especially when it comes to entering the correct information in the search field called “country” of the abovementioned database.

For example, even before starting to talk about the nationality of a work, we have to agree on the definition of “work” itself; this differs among member states and may refer to different categories of AV works in some cases. Furthermore, differences appear among countries as to the practical implementation of this concept, for example, with regard to the assessment of the nationality of co-productions. Differences can also be found at national level among stakeholders, such as public film/audiovisual funds and regulators.

In addition, the information on the nationality of works is disseminated among many – mostly national – sources, even if some European databases, to a certain extent, collect this kind of information (for example, the MEDIA Programme, the Film Database of Europa Cinemas, the EACEA database or the LUMIERE database of the European Audiovisual Observatory).

In this context, the need for comparative data and analysis of the legal definitions and current practices that are in place in the European Union concerning the nationality of European AV works has become crucial in order to determine if further steps are

¹ <https://www.merriam-webster.com/dictionary/square>.

² <https://www.merriam-webster.com/dictionary/circle>.

³ LUMIERE VOD is a directory of European films available on on-demand services in Europe. It allows us to find the services and countries where a film has been released on VOD, and to combine search criteria in order to create lists of available films by director, country or year of production. This project, managed by the European Audiovisual Observatory, is supported by the CREATIVE EUROPE programme of the European Union. It is freely accessible at: <http://lumierevod.obs.coe.int/>.

needed to clarify the definition of European works and to make the information on their nationality widely available.

It is against this general background that the European Commission has requested the European Audiovisual Observatory to prepare a mapping report of the legal frameworks and current practices in the European Union to define the nationality of AV works.

With this in mind, the European Audiovisual Observatory undertook the preparation of this mapping, with the objective of comparing the different concepts of the nationality of audiovisual works, including cinematographic works, to understand the purposes for which the nationality of works should be assessed; to identify the relevant sources of information on the nationality of AV works; and to help determine the needs of the actors in the sector (producers, distributors, audiovisual services) and of the institutions concerned (film funds, regulators) regarding the assessment of the nationality of AV works. Ultimately, this mapping provides an assessment of the feasibility and key characteristics of a tool providing data on the nationality of AV works.

Such a large amount of work, the complexity of which resembled the squaring of a circle, could not have been done without the invaluable contribution of our national experts, who helped us gather the relevant information, and of the media regulators across the European member states, who assisted us in checking the correctness of the information.

Strasbourg, April 2020

Maja Cappello

Head of the Department for Legal Information
European Audiovisual Observatory

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The report and the national factsheets were drafted by an international expert, Mr. Jean-François Furnémont, Founder and CEO of Wagner-Hatfield.

Pool of national experts for the collection of data

AT	The Austrian submission was provided by Prof. Dr. Josef Trappel, professor of Media policy and Media economics, University of Salzburg, and Corinna Gerard-Wenzel, consultant in the field of media and law.
BE	The Belgian submissions were provided by Emmanuel Roland, Head of Production, Film and Audiovisual Center of Wallonia Brussels Federation (Centre du Cinéma et de l'Audiovisuel – CCA) and Sevara Irgacheva, Media Policy Advisor, Cultural diversity and content production CSA (French Community) and by An Jacobs, attorney-at-law and Managing Director of the Association of Flemish Independent Film & Television Producers (Flemish Community).
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CZ	The Czech Republic submission was provided by Veronika Lengálová, from the Czech Film Fund, in collaboration with the Ministry of Culture of the Czech Republic and the Council for Radio and Television Broadcasting.
DE	The German submission was provided by Bérénice Honold, Advisor to CEO/International affairs & Julia Piaseczny, Advisor European Affairs (Filmförderungsanstalt – FFA) and Peter Matzneller, Consultant Legal and European Affairs, Joint Management Office of the Media Authorities (die Medienanstalten).

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NL	The Dutch submission was provided by Annemarie Bergman, lawyer at the Netherlands Film Fund and Louise Doorman, independent legal advisor and consultant on media.
PL	The Polish submission was provided by Aleksandra Suwala, Attorney-at-law.
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RO	The Romanian submission was provided by Alex Trăilă, AV policy expert and consultant, PhD. Researcher.
SE	The Swedish submission was provided by Jonas Vilhelmsson, Legal Advisor at the Swedish Film Institute.
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1. Executive summary

The analyses of national practices in application of Article 1, paragraph 1, point (n) and Article 1, paragraphs 2 to 4 of the AVMSD commenced by comparative analyses of the definitions applied, the categories included in the scope, and the assessment or verification methods and mechanisms used by the relevant bodies, together with the identification of the bodies in charge of assessments and the cooperation between these bodies and the national film agencies in charge of allocating film funds. While it shows different practices used and applied, some common emerging trends can be noted. For example, when it comes to the definitions of European works, these are more or less the same, with a varying degree of inclusion of all four categories (audiovisual works, cinematographic works, domestic works and European works). As for the categories included in the scope of AV works, the national practices, to a large extent, follow the provisions of the AVMSD, with some noted exceptions which mostly make reference to placing more emphasis on national productions. One of the most relevant pieces of information relates to the difficulties faced by both the industry and national bodies in charge of the assessment of eligible nationality of European works, for the entire industry. This is where notable issues surface in terms of the level of difficulty in this endeavour due to massive amounts of data and no fully reliable source of information on these works. Cooperation between national regulatory authorities (in the vast majority of cases in charge of applying these rules) and film agencies does exist sometimes, formally or informally, but remains rather weak.

1.1 Definitions

Definitions of European works are found in 28 cases (including direct reference to the AVMSD definition in the relevant national legislations), with the exception of one case.

Thirty-one per cent of cases include definitions for all four categories identified in this mapping, followed by 24 per cent of cases which provide for one out of four definitions. Twenty per cent of cases include definitions for two out of the four categories, with the same percentage of cases including definitions for three out of the four categories. The details regarding the definitions are elaborated in Chapter 3.

1.2 Categories included in the calculation of the share of European works

Article 16 of the AVMSD stipulates the obligation on the part of member states to ensure that, where practicable and by appropriate means, broadcasters reserve a majority proportion of their transmission time for European works.⁴ Article 16 provides categories of AV works which are to be excluded from this calculation, that is, news, sports events, games, advertising, teletext services and teleshopping.

The vast majority of cases (24) stipulate this obligation in their respective national legislation in the same way as in AVMSD.

In one case, the list of categories of audiovisual works which are included in the scope are provided instead of those that are to be excluded.

Overall, the provisions of the AVMSD have been found to sufficiently encompass the categories included in the scope of audiovisual works, except in rare instances where national specifics have dictated an extension of the categories.

1.3 Assessment of the eligible nationality of AV works

Member states are obliged to report biannually to the European Commission (EC) on the application of Article 13, 16 and Article 17 of the AVMSD. Without exception, this is done first and foremost by providing a reporting obligation, at regular time intervals, for the audiovisual media service providers within each respective jurisdiction.

Generally, it appears that the regulatory authorities rely on information provided by the AVMS providers, with reports indicating a high level of trust in the data submitted. The EC guidelines are used as guiding principles in this respect. Reports show that assessment is performed to a limited extent, on a case-by-case basis, predominantly when the information received does not seem reliable.

The reported sources used in cases where verifications are necessary include the relevant national film institutions, information-sharing between regulatory bodies and film institutions, open online searches, programme monitoring, the Lumiere database, etc.

As indicated in the factsheets, the predominant problems encountered in the execution of these obligations include the volume of data to be processed, coupled with a lack of resources on the part of the regulatory authorities, followed by the lack of centralised databases of audiovisual works with homogeneous indicators.

⁴ Article 13 does not expressly exclude specific categories of audiovisual works from the calculation of the share of European works. Member States, however, may in principle enact more detailed or stricter rules in this respect, in line with Article 4(1) AVMSD, provided that they comply with EU law, including the principles of necessity and proportionality.

1.4 Nationality of AV works and discriminatory measures

There appear to be rare instances in terms of national practices when it comes to the discriminatory measures of works originating in EU member states by other states. The issues in this regard seldom appear and are considered marginal (BE FR), and when they do, the regular procedure envisaged within the assessment obligations on a case by case basis apply (EE) and reliance of the Revised Guidelines for Monitoring the Application of Articles 16 and 17 of the AVMSD (IE).

1.5 Nationality of AV works and co-productions

Co-production schemes are predominantly assessed by the relevant bodies (usually film institutes and alike) for the purpose of determining the eligibility of works for the allocation of national film funds. In this respect, varying criteria have been established based on the European Convention on Cinematographic Co-production, as well as on bi- and multilateral and international treaties.

In comparison to the AVMSD, the ECCC concerns the European cinematographic works according to European elements, such as the creative group (director, screen writer, etc.), the performing group (actors) and the technical group (editor, art director, etc.) and allocates points to each of these elements, with the threshold of minimum of 15 points (out of 19). The exception is when the competent authority decides to grant a co-production status for works which achieve a lesser number of points but do reflect the European identity.

The complementarity between the ECCC and the AVMSD relies in the goals of promoting European cultural values and diversity with promotion and distribution of European works: while the AVMSD provides for eligibility criteria for works which are not only co-productions, this co-production element is the principal purpose of the ECCC. Also, as stipulated in Recital 70 of the AVMSD from 2010, member states are to encourage broadcasters to include an adequate share of co-produced European works or of European works of non-domestic origin in their programming, purpose which is covered by the ECCC. From reports, it appears visible that the countries do encourage adequate inclusion of co-produced European works or of European works of non-domestic origin, as stipulated by the AVMSD.

1.6 Labelling in metadata

In line with efforts to promote cultural diversity, users of on-demand audiovisual media services should be enabled to easily find European works. For that to happen, the revised AVMSD from 2018 encourages in Recital 35 that labelling should be used in metadata of audiovisual content that qualifies as a European work and be made available to media service providers.

Being in its infancy, at this point in time not many countries have reported on measures to use the labelling in metadata of the European works to be made available to media service providers.

Some good practices have been reported on the part of the industry in regard, which are not necessarily only related to the implementation of shares obligations arising from the AVMSD, but also for the purpose and benefits of the works themselves. In one case (GB), availability of labelling for all AVMS providers is helpful in general, but also for the appropriate categorization of works and fulfilment of their reporting obligations (GB). In some instances, information on the country of origin or the language is indicated, with very few examples of “European works” tags used in a separate, structured section (BE NL). There are instances in which the non-digital data (provided by film distributors) is kept (in case of Cyprus, it is the Film Classification Committee, under the Press and Information Office of the Ministry of Interior). In France, on the other hand, the International Standard Audiovisual Number (ISAN) is requested for all works seeking financial support from the national film fund (similar practice also reported in the Netherlands), in addition to works that have been restored or digitalised with the support of the film fund containing all the necessary metadata for their broadcast on any digital support.

1.7 Cooperation between national regulatory authorities and film agencies

In all but one case, the national bodies in charge of ensuring compliance with the AVMSD and of assessing the eligibility of AV works as European works for the purpose of share of European works obligations are the national regulatory authorities. In the majority of cases, the assessments are done solely by regulators or the relevant ministry (as in one case), independently of the relevant film fund institutions. However, a certain level of cooperation is reported to exist between these institutions, especially when the works are subject to national film funding, or, for example, in cases where a particular work's eligibility has to be determined.

2. Methodology and structure of the mapping report

The methodology adopted by the Observatory can be summed up as follows:

- the choice of an international expert to provide assistance throughout the mapping and the elaboration of a comparative analysis;
- the choice of a pool of national experts from relevant film fund institutions to respond to a standardised questionnaire; the elaboration of a standardised questionnaire to be filled in by each national expert; one questionnaire per country was completed, with the exception of Belgium, where a questionnaire was completed for both the French and the Flemish Communities;
- the gathering of the collected information in national factsheets to be checked by the national expert;
- the cross-checking of the factsheets by national regulatory bodies;
- the elaboration of a standardised questionnaire on specific practical implementation issues to be circulated among stakeholders.

The questionnaire sent to the national experts aimed at identifying:

- the legal definitions of AV works, including audiovisual, cinematographic, national and European works;
- the categories included in the scope of AV works;
- the list of the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive;
- the practices and relevant sources of information used to determine the eligible nationality of AV works;
- the feasibility and key characteristics of tools providing data on the nationality of AV works;
- the labelling in metadata of AV content.

Based on these elements, the Observatory, with the assistance of an international expert, elaborated a national legal summary for each member state. These summaries have been checked by the national experts of each country and cross-checked by experts from the competent national regulatory authorities.

The summaries are structured around seven sections:

Section 1 – Definitions: It provides an analysis of the national legal definitions of the key concepts for the present study, which are:

- “Audiovisual works”
- “Cinematographic works”
- “National works”
- “European works”;

Section 2 – *Categories included in the calculation of the share of European works*: It deals with the analyses of national legislations in terms of the comparison of the scope of these provisions at national level with the provisions of the AVMSD and the identification of such cases;

Section 3 – *Assessment of the eligible nationality of EU works*: It provides an overview of national practices in relation to the assessment and sources used for determining whether AV works are European and, if present, any other enforcement measures applied by the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMSD, pursuant to Article 1, paragraph 1 (n) of the AVMSD. In particular, this section will highlight:

- the sources used by the relevant national body;
- the specific difficulties encountered in implementing Article 1, paragraph 1 (n) of the AVMSD;

Section 4 – *Nationality of AV works and discriminatory measures*: this section deals with the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMSD oversees compliance with discriminatory measures, pursuant to Article 1, paragraph 2 of the AVMSD, and the tools it uses for this purpose;

Section 5 – *Nationality of AV works and co-productions*: this section deals with the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMSD oversees compliance regarding the co-production of AV works, pursuant to Article 1, paragraphs 3 and 4 of the AVMSD, and the tools it uses for this purpose;

Section 6 – *Labelling in metadata of AV content*: this section provides information on the practice of making available the labelling in metadata of audiovisual content that qualifies as a European work;

Section 7 – *Cooperation of relevant institutions*: this section provides for the identification of the relevant national body in charge of monitoring compliance with the AVMSD, as well as providing information on whether this body cooperates on these issues with the national/regional film/audiovisual funds, and if so, in what way.

The comparative legal analysis mirrors the structure of the national legal summaries and, for the issues detailed in the aforementioned sections 1 to 7, provides an analysis aimed at highlighting the common trends and patterns which exist between the 28 EU member states, as well as the relevant specificities of some individual cases.⁵ The

⁵ In the case of Belgium, separate factsheets and analysis will be provided for the two linguistic Communities (BE FR and BE NL).

data on the United Kingdom were collected while it was still a member of the European Union, so they are included in this report.

National legal summaries have, in addition, sections dedicated to information, if available, about the ongoing transposition process of the new AVMSD text; relevant studies, reports and researches published in the last 5 years on issues related to the present mapping (for example, the enforcement of and compliance with the obligations or impact assessments); as well as all links to the relevant national primary and secondary legislation, in the national language and, where available, in English. When provided, the English translations shall not be considered official translations.

3. Comparative legal analysis

3.1 Setting the scene

The obligations stemming from the AVMSD in relation to securing a share of European works, both in its 2010 version and in the reviewed 2018 version which is currently being transposed by the member states (unchanged in this regard), include requirements for broadcasters to reserve a majority proportion of their transmission time (except for news, sports events, games, advertising, teletext services and teleshopping) for European works. This obligation is detailed in Article 16 of the AVMSD.

This obligation is complemented in Article 17 of the AVMSD (also unchanged) by an additional rule in terms of share of European works, i.e. that 10% of the transmission time (or alternatively 10% of the programming budget) shall be reserved to European works created by producers who are independent of broadcasters.

These shares in terms in transmission time (applicable in a linear environment) cannot be used in a non-linear environment where there is no such thing as “transmission time”, which is why the AVMSD, when its scope was extended to non-linear services in 2010, created specific rules for these services. In the 2010 version of the AVMSD, the obligations were limited to a general obligation of promotion of and access to European works for on-demand audiovisual media service providers. This obligation has been strengthened in the reviewed version of the AVMSD from 2018 by a new obligation for these services in terms of share: as transmission time cannot be applied for those services which are not “pushed” to the viewer but “pulled” by the viewer at any time, VOD services have now the obligation to secure at least 30% of European works in their catalogues. This obligation is detailed in Article 13 of the AVMSD.

As we know, the intention behind the provisions of the AVMSD in relation to European works is to strengthen the competitiveness of the European audiovisual industry for the purpose of promoting and developing European heritage and cultural diversity; improving the distribution and circulation of European works within the internal market; and strengthening the European production sector as a whole (service providers, producers, authors, etc.).

The way in which Articles 13, 16, and 17 of the AVMSD are implemented and enforced by member states has been studied thoroughly by the European Audiovisual

Observatory in a previous mapping, published in 2019.⁶ That mapping aimed at identifying the financial investment obligations applicable to broadcasters, VOD providers and distributors, and the levies to film funds that are imposed on the different players in the audiovisual industry (broadcasters, VOD providers, distributors, theatres, the video industry,...), as well as identifying the promotion obligations (shares and/or prominence) imposed on broadcasters and VOD providers. It also aimed at providing a comprehensive comparative analysis of the functioning of these various support mechanisms. This study covered EU-28, but also Iceland, Norway and Switzerland.

The question of the promotion of European works brings quite naturally another one to the surface, to which the present mapping will try to provide some answers: what is a European work? Article 1 of the AVMS provides of course for a definition of what it to be considered as an European work, but, since the AVMSD is a minimum harmonisation Directive, 1) this definition can be transposed by each member state with some modifications as long as this transposition respects European law and 2) this obligation has to be enforced by the competent national authority in each member state, according not only to the transposed definition, but also to their own practices, their own priorities, their own working forces, their available data about the situation of the market etc. In other words, the assessment of the European status of a work is, first and foremost, the assessment by national authorities of the national character of such a work with respect to one or more member states.

Against this background, it is clear that the issue of the assessment of the nationality of audiovisual works is crucial for the competent national authorities' appropriate enforcement of the compliance of AVMS providers with the AVMSD. Although not related to AVMSD compliance (which is the main focus of this mapping, even though the information is provided and presented in order to allow the reader to understand the overall audiovisual policy context), this issue is also important for the implementation of the rules regarding film funding notably with regard to the eligibility of the works under the specific schemes. The nationality of a work will determine, in the media regulation environment, if such a work can qualify for the aforementioned shares, therefore influencing the decisions of media service providers in terms of the funding, acquisition, broadcasting, "cataloguing" and development of prominence initiatives in catalogues of audiovisual works. The nationality of a work will also determine, in the film funding environment, for which support scheme a work is eligible and to what extent. Together, these issues (and their proper enforcement) are fundamental to the development and the thriving of the audiovisual sector, based on clear legal framework and efficient compliance environment, both of which creates incentives for investment in production and distribution of European works.

For the vast majority of countries, the assessment of works in terms of their nationality under AVMSD criteria lies, as this study will show, with the national media regulatory authorities, notably for the purpose of evaluating and reporting on audiovisual

⁶ *Mapping of national rules for the promotion of European works in Europe*, European Audiovisual Observatory, Strasbourg, 2019, www.obs.coe.int/en/web/observatoire/mapping-reports/-/asset_publisher/DWKuMIYY56sl/content/mapping-of-national-rules-for-the-promotion-of-european-works-in-euro-1.

media service providers' abidance by share of European works requirements. This task presents many difficulties, such as the lack of reliable and uniform databases of works, coupled with the administrative burden due to the sheer volume of data to be processed compared to the very often low human and technical resources which the institutions in charge of enforcement have at their disposal.

On the other hand, national film fund institutions also evaluate the works and their nationality for the purpose of assessing their eligibility for production funding schemes. They also face, more than media regulators who are not at the forefront of this issue, all the questions related to the various types of co-productions between EU countries as well as between EU and non-EU countries, especially in terms of the level and division of funding between different states.

While some cooperation has been noted between these institutions, it is not organised nor executed in a unified matter, which, in turn, may lead to many practical difficulties. For example, while a national regulatory authority may assess a certain work to satisfy the necessary share of European works, criteria, the film fund may have a completely different approach, resulting in the same work being assessed and determined differently by these respective bodies.

While the definitions of applicable categories of work exist in most countries (see details in the sections below), they tend to differ somewhat, making the job of assessing them even harder and creating potential contradictions between the assessments made in one country and those made in another.

3.2 Definitions

This mapping attempts to examine the nationality of audiovisual works based on the consideration of national legal definitions (or lack thereof) examined in this mapping and detailed in the national factsheets include the definitions of audiovisual, cinematographic, domestic and European works, as they serve as the basis for determination of practices encompassed by this mapping. As stipulated above, nationality of audiovisual works is important from the perspective of the entire creative industry in Europe, and not only for the purpose of fulfilments of share obligations stemming from the AVMSD.

Definitions from the AVMSD, referring to the origin of the work, are important from the perspective of assessment of obligations in relation to provision of European content shares.

Article 1, paragraph 1, point (n) of the AVMSD states:

“‘European works’ means the following:

- (i) works originating in Member States;*
- (ii) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3;*

(iii) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements.”

Furthermore, Article 1, paragraphs 2 to 4 of the AVMS Directive add:

“2. The application of the provisions of points (n)(ii) and (iii) of paragraph 1 shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned.

3. The works referred to in points (n)(i) and (ii) of paragraph 1 are works mainly made with authors and workers residing in one or more of the States referred to in those provisions provided that they comply with one of the following three conditions:

(i) they are made by one or more producers established in one or more of those States;

(ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States;

(iii) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

4. Works that are not European works within the meaning of point (n) of paragraph 1 but that are produced within the framework of bilateral co-production agreements concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.”

However, on the national level, the types of works are also important, such as the definition of a programme, as stipulated by Article 1 (b) of the AVMSD, which states that programme *“means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children’s programmes and original drama”*. This is because the definitions on the national level serve multiple purposes, such as for the funding of audiovisual works and not solely the purpose of satisfying the obligations stemming from the AVMSD.

This definition is found in almost all cases (inclusive of either the definition itself or a direct reference to the AVMSD definition in the relevant national legislations). In three cases (GB, NL, SE) there is a lack of definition of the European works, but the legislation provides for direct reference to the definition from the AVMSD. In one case (DE) there is no definition of European works or reference to the AVMSD. Instead, the legislation stipulates that, in order to present the plurality of the German-language regions and of Europe as a whole and to promote European film and television productions, television broadcasters should reserve the majority proportion of the time devoted to the transmission of feature films, films made for television, series, documentaries and comparable productions overall for European works in accordance with European law.

The definitions of the four categories of works identified in this mapping (audiovisual, cinematographic, domestic and European works) are provided for in national legislations in various forms:

- 9 out of 29, or 31% of cases show the presence of definitions of all four categories (CZ, ES, FR, GR, IT, LT, PT, RO and SK);
- 24% (7 cases in CY, GB, IE, LU, FI, NL, SI) provide for 1 out of 4 definitions, out of which 6 of them include the definition or a direct reference to the definition of European works provided by the AVMSD provided, with 1 case where the only definition provided is that of domestic works (NL);
- 20% of cases include 3 out of 4 categories (AT, BE FR, HR, HU, MT, PT), same as those who have 2 out of 4 categories (BE NL, BG, DK, LV, SE).

In 18 cases (BE NL, BG, CZ, ES, FR, GB, GR, HR, HU, IT, LT, LV, NL, PL, PT, RO, SE and SK), there exists a definition of the origin of the work, as domestic or national. The definitions of the types of work, i.e. audiovisual or cinematographic, are found in approximately 50% of cases. In particular, while the ratio of having the definition of audiovisual works is 15:14 in favour of the existence of the definition, the exact opposite (14:15) is true for the definition of cinematographic works.

Table 1. Overview of existence of relevant definitions

	Audiovisual work	Cinematographic work	Domestic work	European work
AT	Yes	Yes	No	Yes
BE FR	Yes	Yes	No	Yes
BE NL	No	No	Yes	Yes
BG	No	No	Yes	Yes
CY	No	No	No	Yes
CZ	Yes	Yes	Yes	Yes
DE	No	No	No	No
DK	No	Yes	No	Yes
EE	Yes	No	No	Yes
ES	Yes	Yes	Yes	Yes
FI	No	No	No	Yes
FR	Yes	Yes	Yes	Yes
GB	No	No	Yes	No
GR	Yes	Yes	Yes	Yes
HR	Yes	No	Yes	Yes
HU	No	Yes	Yes	Yes
IE	No	No	No	Yes
IT	Yes	Yes	Yes	Yes
LT	Yes	Yes	Yes	Yes
LU	No	No	No	Yes
LV	No	No	Yes	Yes
MT	Yes	No	No	Yes

	Audiovisual work	Cinematographic work	Domestic work	European work
NL	No	No	Yes	No
PL	Yes	No	Yes	Yes
PT	Yes	Yes	Yes	Yes
RO	Yes	Yes	Yes	Yes
SE	No	Yes	Yes	No
SI	No	No	No	Yes
SK	Yes	Yes	Yes	Yes

Source: Response to European Audiovisual Observatory standardised questionnaire

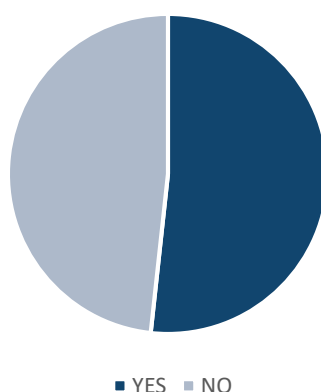
3.2.1 Audiovisual works

A definition of the term ‘audiovisual works’ is provided in 15 cases (BE FR, CZ, EE, ES, FR, GR, HR, IT, LV, MT, PL, PT, RO and SK), inclusive of the definition of audiovisual media services and/or programmes.

Where a definition is not provided for (BE NL, BG, CY, DE, DK, FI, GB, HU, IE, LU, LV, NL, SE and SI), in some rare cases reference is made to the existence of certain guiding principles (BE NL), or the definition of film works (DK) or film (LV) is applied.

For the purposes of the AVMSD, the term ‘audiovisual’ should refer to moving images with or without sound, as detailed in article 1(b) of the AVMSD, thus including silent films but not covering audio transmission or radio services. While the principal purpose of an audiovisual media service is the provision of programmes, the definition of such a service should also cover text-based content which accompanies programmes, such as subtitling services and electronic programme guides. Stand-alone text-based services should not fall within the scope of this Directive, which should not affect the freedom of the member states to regulate such services at national level in accordance with the Treaty on the Functioning of the European Union.

Figure 1. Definition of “Audiovisual works”



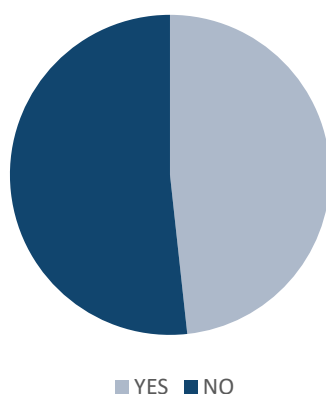
Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

3.2.2 Cinematographic works

Fourteen cases provide for a specific definition (AT, BE FR, CZ, DK, ES, FR, GR, HU, IT, LV, PT, RO, SE and SK), and 8 cases are inclusive of the definition of audiovisual works, (CZ, DK, ES, HU, IT, LV, SE and SK) pertaining to works of cinematic art (cinematographic works), motion pictures, creations of imagination including fiction, documentaries, etc.

In the 15 cases where a definition is not present (BE NL, BG, CY, DE, EE, FI, GB, HR, IE, LU, LV, MT, NL, PL and SI), some countries make reference to the European Convention on Cinematographic Co-Production (BE NL, EE), film (BG, CY, DE, GB, LV, NL, PL, SI), and works (MT).

Figure 2. Definition of “cinematographic works”



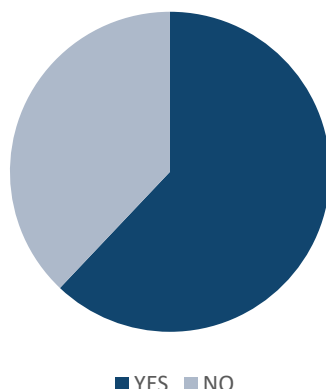
Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

3.2.3 Domestic works

The majority of cases (18) provide for a definition of domestic and/or national work (BE NL, BG, CZ, ES, FR, GB, GR, HR, HU, IT, LT, LV, NL, PL, PT, RO, SE and SK), predominantly relating to the national originality of works for the purpose of share obligations and the provision of financial support for audiovisual creations.

Of the remaining countries (11) that provide no definitions (AT, BE FR, CY, DE, DK, EE, FI, IE, LU, MT and SI), some rely upon certifications needed for the provision of funding (DE), film and producers (DK), and audiovisual works (SI).

Figure 3. Definition of “Domestic works”

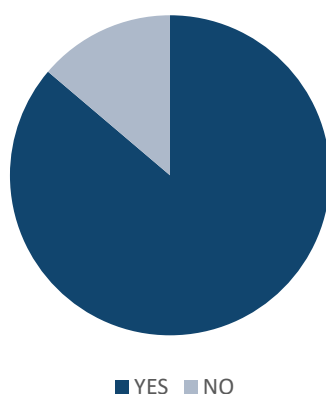


Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

3.2.4 European works

The vast majority of cases (25: AT, BE FR, BE NL, BG, CY, CZ, DK, EE, ES, FI, FR, GR, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO, SI and SK) include a definition of the term ‘European works’ stemming from the AVMSD, while only 4 cases (DE, GB, NL and SE) do not provide a definition. In the majority of these cases, the relevant national legislation contains direct references to the definitions provided for in the AVMSD (GB, NL and SE).

Figure 4. Definition of “European works”



Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

3.3 Categories included in the calculation of the share of European works

Article 16, paragraph 1 of the AVMSD stipulates:

“1. Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping...”⁷

Identified categories are found in 24 national legislative frameworks (AT, BE NL, BG, CY, CZ, DK, EE, ES, FI, GB, GR, HR, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SI and SK). This does not include the specific reference to categories for VoD services, as the majority of cases does not have such specific obligations for these services, except in one case (RO) where the exception of information programmes, sports broadcasts and teleshopping is made for VoD. These include a case where the category “games” from the AVMSD is elaborated on by referencing it as “competitive entertainment programmes” (FI); a case which specifies “entertainment programmes and ancillary broadcasting, including advertising and teleshopping” (SK); and a case where the regulatory framework does not provide for any reference, just the obligation to reserve the majority of transmitting time for European works (NL), but in practice, the categories of exclusion provided for in the AVMSD are considered.

In four cases (BE FR, FR, HU and SE), the categories are more detailed than provided for in the AVMSD, as the member states are free to apply more detailed or stricter rules in the fields coordinated by the AVMSD to providers under their jurisdiction, as long as those rules are consistent with the general principles of European Union law. All such instances further specify the categories of AV works already included in the AVMSD, as follows:

- self-promotion (BE FR)
- long-duration cinematographic works, variety shows, non-fiction broadcasts mostly produced on set, reality programmes if containing elements subsidiary to excluded works (FR)
- political advertisements, public service announcements, sponsorship announcements, public service advertisements and non-interactive teletext (HU)
- transmissions consisting purely of text (SE).

⁷ Article 13 does not expressly exclude specific categories of audiovisual works from the calculation of the share of European works. Member States, however, may in principle enact more detailed or stricter rules in this respect, in line with Article 4(1) AVMSD, provided that they comply with EU law, including the principles of necessity and proportionality.

In the case of France, the mention of long-duration cinematographic works does not mean that this category is excluded from the share calculation stemming from the AVMSD, but that these works are subject to specific national sub-quotas as detailed in the relevant Decree.

In one instance, instead of specifying the categories which are to be excluded from the calculation of the share under Article 16 of AVMSD, the national legislation adopts the opposite approach by providing for categories that are included in the share calculation, namely: feature films, films made for television, series, documentaries and comparable productions (DE).

Table 2. Overview of the scope of national legislations in comparison to the AVMSD provisions

	Scope more (or less) restrictive than or identical to the AVMSD	Category of work added (or removed) compared to the AVMSD
AT	Identical to AVMSD	
BE FR	More	Self-promotion
BE NL	Identical to AVMSD	
BG	Identical to AVMSD	
CY	Identical to AVMSD	
CZ	Identical to AVMSD	
DE	Providing for categories included, rather than excluded	Categories included: feature films, films made for television, series, documentaries and comparable productions
DK	Identical to AVMSD	
EE	Identical to AVMSD	
ES	Identical to AVMSD	
FI	Identical, with more explanatory wording	Competitive entertainment programmes for games
FR	More	Long-duration cinematographic works, variety shows, non-fiction broadcasts mostly produced on set, reality programmes if containing elements subsidiary to excluded works
GB	Identical to AVMSD	
GR	Identical to AVMSD	
HR	Identical to scope and categories of works, as provided by AVMSD	
HU	More	Political advertisements, public service announcements, sponsorship announcements, public service advertisements and non- interactive teletext
IE	Identical to AVMSD	
IT	Identical to AVMSD	
LT	Identical to AVMSD	
LU	Identical to AVMSD	

	Scope more (or less) restrictive than or identical to the AVMSD	Category of work added (or removed) compared to the AVMSD
LV	Identical to AVMSD	
MT	Identical to AVMSD	
NL	Identical to AVMSD	
PL	Identical to AVMSD	
PT	Identical to AVMSD	
RO	Identical to AVMSD	
SE	Identical to AVMSD	
SI	Identical to AVMSD	
SK	Identical to AVMSD, with more explanatory wording for the scope	

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

3.4 Reporting on compliance with obligations related to European works

While reporting obligations stem from both Article 13 and 16 of the AVMSD, a closer look is provided for those arising from Article 16, paragraph 3, which states:

“3. Member States shall provide the Commission every 2 years, starting from 3 October 1991, with a report on the application of this Article and Article 17. That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 17 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it...”

The obligation to reserve time for European works is accompanied by the obligation on the part of member states to submit reports biannually to the European Commission on the application of this Article and Article 17 (referring to the obligation of reserving transmitting time for European works of independent producers). These reports have to include a statistical statement on the achievement of these obligations for each of the television programmes falling within the jurisdiction of the member state concerned, the reasons, in each case, for the failure to attain that proportion, and the measures adopted or envisaged in order to achieve it.

For this purpose, in 28 cases, the national measures in place for ensuring respect for these obligations include the obligation on the part of AVMS providers to submit relevant reports to the national regulatory authorities in relation to the implementation of quota obligations. In one case (LU), this obligation is entrusted to the relevant ministry. It appears from the responses to the standardised questionnaire that in the vast majority of cases reporting is done on an annual basis, but it should be noted that this information has not been specified in all national legal summaries, and that there were references to the period using terms such as “on a regular basis” (DE, PL). In exceptional cases, reports are submitted monthly (HU and SK for broadcasters), quarterly (PT) or on a six-months

basis (RO), with one case where VOD providers are obliged to submit reports only upon request (SK).

The member states' obligations are, without exception, fulfilled first and foremost by providing a reporting obligation, at regular time periods, for the audiovisual media service industry within each respective jurisdiction.

Regulatory authorities report a high level of trust in the data submitted and no solid basis for questioning their authenticity. It has been reported that EC guidelines in relation to this provision are used as guiding principles (IE, PT, SE). Reports show that information is verified to a limited extent, on a need-be basis, when the information received seems questionable. In such cases, additional information, clarifications and/or corrections are requested from the AVMS providers. There are cases where, for instance, the regulator carries out sample, random checks (BE FR, HU, IE, NL), sometimes including the services of independent experts (BG).

The reported sources used in cases where verifications are necessary include the relevant national film institutions for the determination of domestic works; cooperation between regulatory bodies and film institutions throughout Europe; audience measurement and research agencies (CY); open online searches (CY, CZ, SI, NL); IRIS (CY); data from programme supervision (DE); IMDb (ES); the Lumiere database (LV, SI); and the British Board of Film Classification (RO). The most complex situation reported was in determining distinction between works originating from third countries and European works.⁸

In one case (AT), verification obligations refer only to information provided by public service broadcasters. In some instances, decisions on certain types of works are made by the regulatory authority on a case-by-case basis (FR).

In two instances, no particular practices are reported, as the regulatory authorities' relevant department are being set up (GR and LT).

The examination of potential problems in relation to reporting obligations, the mapping identified the problems reported by the broadcasters, concerning the exceptions provided in the AVMSD regarding the calculation of the share and the geographical area covered by the broadcast or the thematic profile of the service. Furthermore, the sheer volume of data and the lack of resources on the part of regulatory authorities in processing them is an indicated factor. In addition, it appears that the task of determining the eligibility of works can be very challenging, as there are no specific or detailed guidelines and no reliable general database.

⁸ In particular, as mentioned in the factsheet from Spain, an AVMS provider located that had produced a certain audiovisual work argued that it was Irish (therefore European), according to the national definitions related to co-productions. The regulatory authority put this into question and requested the AVMS provider to obtain a formal declaration from the competent authority (Screen Ireland). Once confirmed that the work was indeed Irish, the AVMS provider's declaration was accepted.

Table 3. Overview of national practices in the assessment of AV works

	Description of the national practice	Sources used for the assessment
AT	KommAustria is obliged to make an assessment for public service media, done by way of an annual self-assessment report submitted by the public service broadcaster. Other AVMS providers submit annual reports. Content assessment takes place only to a very limited extent, for example, when information in the lists does not seem plausible.	No specific sources reported.
BE FR	AVMS providers submit annual reports. The CSA carries out sample verification, and when in doubt, it questions the AVMS provider regarding the qualification. The CSA conducts sample-based researches on the production company responsible for the work in question.	The CSA refers to the CCA's qualification and/or to the nationality (country of establishment) of the executive producer.
BE NL	The VRM collects the reports from AVMS providers.	No specific sources reported.
BG	The CEM collects annual data from providers, the verification of which has been carried out over a period of time, with the assistance of independent external experts.	No legal or practical mechanisms and tools to double check and verify information are reported, but there are also no grounds to mistrust the reported information from providers.
CY	Annual reports from providers are collected by the CRTA. In the case of unclear/missing data, the CRTA communicates with broadcasters for supplementary data.	The CRTA verifies percentages through a list provided by AGB Nielsen Media Research (Cyprus). Also, the CRTA occasionally conducts online searches and, failing that, resorts to its IRIS (checking the opening and/or closing credits of the title in question).
CZ	Annual reports from providers are collected by the RRTV. When in doubt, the RRTV requests information from the audiovisual media service provider responsible for verification	The verification of data is very difficult. Usually open sources are used, but these are not entirely reliable.
DE	Reports from commercial AVMS are submitted on a regular basis, usually via the German Media Association VAUNET.	Media Authorities assess the figures, based on information available from programme supervision.
DK	AVMS providers report to the Danish Radio and Television Board, no problems have been identified.	If needed, legislation provides for further elaborations to be requested from AVMS providers, however this has not been deemed necessary.
EE	AVMS providers submit reports to the	In assessing Estonian works on a case-by-



	Description of the national practice	Sources used for the assessment
	ECTRA. No specific difficulties have been reported but it should be noted that the Estonian market is small.	case basis, the criteria include works which are considered as such by the Estonian Film Institute, works which are self-evidently Estonian or works which meet the criteria of “in-house production.”
ES	AVMS providers submit reports to the CNMC. The most complex situation reported was in determining the distinction between American and British or Irish works.	In order to determine whether or not a work is Spanish, the CNMC sends a formal question to the ICAA, which owns this type of information. Likewise, in order to determine whether or not a work is European, the CNMC sends a formal question to the member state to which the AVMS provider who declares the AV work belongs. Specifically, the CNMC sends the formal question to the organisation which is equivalent to the Spanish ICAA. Apart from the aforementioned sources, the CNMC reports that it has sporadically used the IMDB database in determinations.
FI	No practice reported	No specific sources reported.
FR	AVMS providers submit reports, subject to an assessment done by the CSA in application of national legislation, supplemented by sub-legislation which establishes additional criteria based on a points system. When the work is subject to support from the CNC, a joint assessment is done by the CSA and the CNC. In some instances, the CSA decides if a TV show is an audiovisual work on a case-by-case basis, and in this framework, it uses its own guidelines which can be the result of a consultation involving the broadcasting sector (for example, the consultation regarding scripted reality).	A database is available for audiovisual media service providers in which they can consult which works have been qualified as European works.
GB	AVMS providers submit reports to Ofcom via an online portal; Ofcom reports no implementation difficulties. There are guidelines available for all AVMS providers in relation to all relevant information and obligations.	Ofcom relies on data submissions from its licensed broadcasters to confirm that the AVMS share obligations have been met. It does not rely, in so far as it has been possible to establish, on other sources of information.
GR	The NCRTV is in the process of setting up a department that will deal with these issues. Hence, there are no relevant practices in this regard at present.	No specific sources reported.
HR	The AEM collects annual reports from AVMS providers and, as far as possible, verifies	

	Description of the national practice	Sources used for the assessment
	the data in relation to the origin of the work, the headquarters of producers, as well as the total net time devoted to European works.	
HU	AVMS providers submit monthly reports to the NMHH. The NMHH does not modify the submissions, however, if necessary, the media service provider may modify previous reporting. The NMHH uses a random check approach, and, should any issue arise from this, it further investigates it.	Available data for the NMHH or according to the IMDb.
IE	AVMS providers submit reports to the BAI, who considers the EC guidelines in this regard as well as its own operational processes on this issue. This includes self-declarations by broadcasters on "works", with spot-checking by the BAI.	When necessary, the BAI checks the information from AVMS providers against information in the public domain.
IT	AVMS providers submit reports to AGCOM via a certified e-mail address. In case of non-fulfilment of the European share obligations, service providers are obliged to submit to AGCOM appropriate justifications.	No specific sources reported.
LT	There is no permanent system of reporting and supervision. The RTCL carries out surveys showing the trends in the implementation of European share obligations in Lithuania, the results of which are published in its annual reports; these show that the obligations are largely respected.	No specific sources reported.
LU	AVMS providers must submit reports to the Department of Media, Telecommunications and Digital Policy of the Ministry of State (SMC), indicating, where appropriate, the reasons why it has not been possible to achieve those proportions, and the measures adopted or envisaged to achieve them. Additionally, VODs are to report on the promotion of European works every four years.	No specific sources reported.
LV	AVMS providers submit annual reports to the NEMC. Data collection is based on the principle of self-declaration by the AVMS providers. In the past, the NEMC conducted ad hoc sample analyses to check the validity of declarations.	In the past, the NEMC used information from the national film database, and the Lumiere database was also used.
MT	AVMS providers submit annual reports to the Broadcasting Authority.	No specific sources reported.

	Description of the national practice	Sources used for the assessment
	The Broadcasting Authority considers such data as final.	
NL	AVMS providers submit annual reports to the CvdM. The regulator's assessment is limited to the random sampling of these reports. If justified by the findings on the basis of these samples, the CvdM will further examine the issue. This examination may consist in requesting information from the media service provider involved or consulting other data.	When needed, information is looked for on the IMDb (in cases where the country and producer are known) or through public sources like Google.
PL	AVMS providers submit, on a regular basis, reports to the KRRiT, who examines them.	The Polish Film Institute keeps a public registry on financial support for audiovisual production.
PT	AVMS providers submit quarterly reports to the ERC. For the purpose of verifying the European nature of the works considered, the ERC uses an internal document, the ERC Classification Manual, as well as the EC implementing Guidelines. When some issues are unclear, the ERC asks AVMS providers for clarification, which can include the ERC requesting the AVMS provider to make corrections	No specific sources reported.
RO	Broadcasters submit half-yearly reports to the CNA. Providers of on-demand audiovisual media services who have notified their activities to the CNA submit annual reports. It is reported that these activities are done within the context of a collaborative relationship between the CNA and AVMS providers and that no challenging or difficult situations have been encountered. In general, the problems reported by the broadcasters concerned the exceptions provided in the AVMSD regarding the calculation of the share obligations and the geographical area covered by the broadcast or the thematic profile of the service.	If needed, broadcasters and the CNA consult film catalogues such as, for example, the British Board of Film Classification.
SE	AVMS providers submit reports to the Swedish Press and Broadcasting Authority, which applies the EC Implementing Guidelines in this respect.	The Swedish Film Institute database on Swedish film holds information on all Swedish films made since 1897. It is not used for monitoring or verification

	Description of the national practice	Sources used for the assessment
	It is reported that there have been no difficulties in assessing any of the types of works. The Swedish Press and Broadcasting Authority does not carry out checks on the information provided by the AVMS providers.	purposes.
SI	AVMS providers submit annual reports to the AKOS. It is reported that the task of determining the eligibility of works can be very challenging as there are no specific or detailed guidelines, there is a large volume of data to be processed, as well as other issues.	The AKOS can use all available information in this respect. This information can be obtained either from data in the IMDBpro (to obtain information on which country an individual producer comes from) and the Lumiere database (to obtain information on EU film production), or from the Slovenian Film Centre's database (to obtain information on films co-financed by the Slovenian Film Centre). Additionally, the AKOS may use information from providers, producers, movie credits, etc.
SK	Broadcasters submit monthly reports to the CBR, while VOD providers do so only at the request of the CBR. The application of the definition of European works is exercised by AVMS providers. The CBR can request more detailed information if needed. In practice, the monitoring of compliance currently takes place on the basis of the data on the shares of European works and not on the individual works. The difficulties reported concern the burden of administrative data and the lack of a centralised database.	No specific sources reported.

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

3.5 European works and discriminatory measures

Article 1, paragraph 2 of the AVMSD stipulates:

"2. The application of the provisions of...shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned."

A predominantly large number of cases (25) report no relevant practices in this regard. Some rare cases report a negligible number of such instances (BE FR), the application of

the relevant rules on a case-by-case basis (EE), and the application of the same procedure as for the rest of the assessment obligations and reliance on EC Revised Guidelines for monitoring the application of Articles 16 and 17 of the Audiovisual and Media Services (AVMS) Directive from 2011, which were elaborated in order to clarify potential difficulties in enforcement of obligations stemming from the AVMSD (IE).

Table 4. Overview of national practices in relation to works subject to discriminatory measures

	Description of national practice
AT	N/A
BE FR	No legal provisions or relevant practices in this regard, except for the CSA's report indicating that the share of works which could be concerned by these measures is marginal.
BE NL	N/A
BG	N/A
CY	N/A
CZ	N/A
DE	N/A
DK	N/A
EE	Application of the relevant provisions on a case-by-case basis.
ES	N/A
FI	N/A
FR	N/A
GB	N/A
GR	N/A
HR	N/A
HU	N/A
IE	The BAI takes into account the EC Revised guidelines for monitoring the application of Articles 16 and 17 of the Audiovisual and Media Services Directive and its operational processes.
IT	N/A
LT	N/A
LU	N/A
LV	The relevant legislation specifies: "audiovisual works complying with the provisions of paragraph three of this section, which have been produced in those European Convention on Transfrontier Television member states which are not European Union member states

	Description of national practice
	and do not apply discriminating regulations in relation to audiovisual works produced in Latvia and other European Union member states.”
MT	N/A
NL	N/A
PL	N/A
PT	N/A
RO	N/A
SE	N/A
SI	N/A
SK	N/A

Source: Response to European Audiovisual Observatory standardised questionnaire

3.6 Co-production and European works

Article 1, paragraphs 3 and 4 of the AVMSD includes the works which are co-produced, and states:

“3. The works referred to...are works mainly made with authors and workers residing in one or more of the States referred to in those provisions provided that they comply with one of the following three conditions:

- (i) they are made by one or more producers established in one or more of those States;*
- (ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States;*
- (iii) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.*

4. Works that are not European works within the meaning of point (n) of paragraph 1 but that are produced within the framework of bilateral co-production agreements concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.”

While all the relevant national legislation stipulates criteria based on the European Convention on Cinematographic Co-production, as well as bi- and multi-lateral and international treaties, these works are incorporated in the share obligations from the AVMSD. The assessments of co-produced works are predominantly made by the film agencies, for the purpose of determination of eligibility of cinematographic works that

benefit from allocation of funds, and not from the perspective of satisfying the share obligations from the AVMSD. However, when the verification on the part of national regulatory authorities does not differ when it comes to co-production works from that used for all eligible works.

Table 5. Overview of national practices in relation to AV co-productions

	Description of the national practice
AT	KommAustria makes an assessment of the public service media; this is done by way of an annual self-assessment report submitted by the public service broadcaster. Other AVMS providers submit annual reports. As co-production works seldom occur, no enforcement problems have been reported. KommAustria evaluates the entire production and has reported no enforcement problems.
BE FR	The following procedure is applicable to all co-productions: the Centre du Cinéma et de l'Audiovisuel (CCA) bases its assessment on the budget, which includes the expenses by country, the financing plan and the co-production agreement; it can thus check the share of European expenses compared with that of other ones, etc. In the framework of the European Convention on Cinematographic Co-production or bilateral treaties, the CCA will also check the share of expenses and financing, etc. in compliance with the requirements of the treaty, the list of which is found in the national legal summary.
BE NL	The Flanders Audiovisual Fund (VAF) grants co-production status to all co-productions, based on the European Convention on Cinematographic Co-Production. The matter is established in bilateral agreements and dealt with by the VAF, the list of which is found in the national legal summary.
BG	The mission and functioning of the National Film Centre (NFC) is detailed in the relevant legislation. The matter is fixed in bilateral agreements and dealt with by the NFC, the list of which is found in the national legal summary.
CY	The Cyprus Radio-Television Authority (CRTA) collects annual reports from service providers, and when data is missing/unclear, further communicates with them. The Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth may attribute a "Country of Origin Certificate", as well as a "Certificate of Co-production Status" to cinematographic works. The works assessed are mostly co-productions with European or third countries, regardless of having received support from the ministry in the context of the European Convention on Cinematographic Co-productions and the European Commission's Communication on State Aid to Film and other Audiovisual Works. When it comes to funding for cinematographic works (which does not currently cover TV works), this is provided by the Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth, based on criteria from the relevant regulation. Information on bilateral agreements can be found in the national legal summary.
CZ	An eligible co-production is one in which a Czech co-producer (with residence in the Czech Republic) has contributed at least 10% of the financial costs, or where the Czech co-producer participates in the film and the co-production meets the conditions set by the European Convention on Cinematographic Co-production.
DE	Work that receives the Federal Office for Economic Affairs and Export Control (BAFA) certificate (considered "German") is eligible for national funding, based on criteria stipulated by the relevant legislation. In relation to co-productions, works produced

	Description of the national practice
	under European or bilateral co-production agreements are eligible for funding; those produced without agreements are eligible on certain conditions, as listed under the national legal summary.
DK	The Danish Film Institute considers all categories of audiovisual production as works, irrespective of the nationality of origin, under the condition that the works have an artistic and/or cultural meaning within the frames of the complete set of rules that describes and regulates the aims and handling of assignments of The Danish film Institute. Reference is also made to the European Convention on Cinematographic Co-production (approved by Denmark).
EE	The Ministry of Culture's sub-legislation provides guidance for support, while the film funding schemes are within the competencies of the Estonian Film Institute (EFI). Co-production treaties are found in the national legal summary.
ES	Determining whether a film is eligible for funding is based on co-production agreements; a link to the relevant list can be found in the national legal summary.
FI	When it comes to film funding, every case is evaluated individually. The Finnish Film Foundation can write out a letter of origin if any party asks for it and determine the nationality of Finnish films for statistical purposes. In practice, an evaluation is done only for the categories that are supported, for example, cinematographic works, TV fiction, documentaries and animation. The National Audiovisual Institute keeps a national database of Finnish cinematographic works and cooperates with the Ministry of Education and Culture in this respect. Information on bilateral agreements is provided in the national legal summary.
FR	AVMS providers submit reports which are subject to an assessment by the Conseil supérieur de l'audiovisuel (CSA) in application of national legislation and supplemented by sub-legislation which establishes additional criteria based on a points system. This matter is established in bilateral agreements and dealt with by the Centre National de la Cinématographie (CNC), the list of which is found in the national legal summary.
GB	Relevant sub-legislation provides guidance in respect of co-productions and original productions.
GR	No practice reported
HR	In accordance with the provisions of the European Convention on Cinematographic Co-Production and bilateral, multilateral and international cooperation treaties, with certain exceptions, based on legal criteria applied by the Croatian Audiovisual Centre (HAVC) in funding schemes.
HU	Eligibility is assessed according to the IMDb. The definitions and conditions in the European Convention on Cinematographic Co-Production apply. In addition, eligibility applies to works created under bilateral treaties, the list of which is provided in the national legal summary.
IE	AVMS providers submit reports to the Broadcasting Authority of Ireland (BAI), who considers the EC guidelines in relation to this, as well as its own operational processes, including self-declarations by broadcasters on "works", with spot-checking by the BAI. Regarding co-productions, Screen Ireland is responsible for certifying official co-productions under the European Convention on Cinematographic Co-production and under bilateral treaties, the list of which is provided in the national legal summary.
IT	Regarding film funding, the Ministry of Culture makes assessments in relation to co-productions based on the conditions laid down in agreements and treaties; in cases where there are no co-production agreements, the conditions stipulated by the relevant legislation apply.

	Description of the national practice
	<p>The most common problem is the different intended uses of the works, as, what can be intended for theatrical release in Italy, could be intended as a TV work in the other co-producing countries. In the Italian system, the destination of the work must coincide in all the issuing countries. If the destination is different, the Ministry of Culture will reject the recognition of nationality.</p> <p>The Ministry of Culture keeps an official database of AV works on the DGCOL Platform, where all the works are registered and monitored.</p>
LT	Regarding film funding, the conditions laid down in the European Convention on Cinematographic Co-Production and/or in other international agreements apply. Information on bilateral treaties is provided in the national legal summary.
LU	Beneficiaries of selective financial assistance are required, at the request of the Film Fund, to remit, free of charge, a copy of the finished written, cinematographic or audiovisual product that has received the aid, as well as, in the case of cinematographic and audiovisual works, a copy of any available promotional material and an extract of at least 30 seconds of the work, free of rights, all on material supports to be defined by the Fund.
LV	Criteria for funding is set out in the relevant legislation. The National Film Centre of Latvia (NFC) applies these principles for the purpose of allocating funding; it also relies on the provisions of the European Convention on Cinematographic Co-Production.
MT	AVMS providers submit annual reports to the Broadcasting Authority, who considers them as final. Regarding co-productions which are eligible for funding, the Malta Film Commission applies rules in accordance with the European Convention on Cinematographic Co-Production and treaties and agreements.
NL	Regarding film funding, criteria are set out in the relevant legislation. A list of bilateral agreements is found in the national legal summary.
PL	Relevant legal provisions are provided for in the national legal summary.
PT	<p>Co-production is considered by the Regulatory Authority for the Media (ERC) whenever a European country participates with means of production, capital or creativity, and even if it is a minority relative to a third country.</p> <p>Regarding film funding, any co-production with the participation of at least one Portuguese producer (including minority participations) under bilateral or multilateral treaties in force in Portugal is eligible for support.</p> <p>A list of bilateral treaties is provided for in the national legal summary.</p>
RO	<p>Regarding film funding, the Romanian Film Centre National Commission for Strategy and Prognosis supports productions based on the relevant regulations.</p> <p>A list of bilateral treaties is provided for in the national legal summary.</p>
SE	<p>Regarding film funding, eligibility is determined in accordance with the European Convention on Cinematographic Co-production.</p> <p>A list of bilateral treaties is provided for in the national legal summary.</p>
SI	The Slovenian Film Centre's applicable rules on selecting projects and programmes define the procedure and criteria.
SK	<p>Relevant legislation stipulates the conditions for funding schemes.</p> <p>A number of databases are available in this respect.</p>

Source: Response to European Audiovisual Observatory standardised questionnaire

3.7 Labelling in metadata of AV content

In its recital 35, the AVMSD refers to the encouragement of the labelling of European works, as follows:

“The labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”

Providers of on-demand audiovisual media services are encouraged to promote the production and distribution of European works by providing that their catalogues contain European works and are accompanied by means to ensure their prominence, with tools, including, as Recital 35 states: *“a dedicated section for European works that is accessible from the service homepage, the possibility to search for European works in the search tool available as part of that service, the use of European works in campaigns of that service or a minimum percentage of European works promoted from that service’s catalogue, for example by using banners or similar tools.”*

No specific measures are reported in this regard, but some good practices do surface, like in the United Kingdom, where all UK-licensed broadcasters have a means of labelling programming so that it can be appropriately categorised for the purposes of AVMS.

Table 6. National practices in relation to labelling in metadata

	Description of national practice
AT	-
BE FR	-
BE NL	-
BG	There are no measures in terms of legislation. The practice of labelling is in its infancy, with most of it including an indication of the country of origin. In some cases, the language is indicated. In a few cases, the providers use the tag “European work” and a separate section is structured for European films.
CY	There are no measures in terms of legislation or practice. Certain data (non-digital, provided by film distributors) on films broadcast in cinema theatres are kept by the Film Classification Committee (under the Press and Information Office – Ministry of the Interior).
CZ	-
DE	-
DK	-
EE	-
ES	-
FI	-
FR	There are no measures in terms of legislation or practice. It should be noted that the International Standard Audiovisual Number is asked of every work seeking financial support from the CNC; works that have been restored or digitalised with the support of the CNC shall contain all the necessary metadata for their broadcast on any digital support.

	Description of national practice
GB	Based on the compliance data that Ofcom publishes for public service broadcasters and the information that the United Kingdom submits to the European Commission, all UK-licensed broadcasters have a means of labelling programming so that it can be appropriately categorised for the purposes of AVMS.
GR	There are no measures in terms of legislation or practice. However, sub-legislation provides for, in the data that providers of on-demand media services must provide in respect of the prominence of European works, information regarding the means of searching for and announcing European works which may contain metadata.
HR	-
HU	-
IE	-
IT	-
LT	-
LU	-
LV	-
MT	-
NL	There are no measures in terms of legislation or practice, except for the Film Fund's requirement that there should be a mandatory ISAN number identifying each work with its underlying metadata.
PL	Relevant legislation requires providers of on-demand audiovisual media services to promote European works by identifying them in their catalogues and by either providing a search option or by appropriately placing information and materials promoting them. No details on practical implementation are provided.
PT	-
RO	-
SE	-
SI	-
SK	-

Source: Response to European Audiovisual Observatory standardised questionnaire

3.8 Cooperation of relevant institutions

In all cases, it is the national regulatory authority who is the national body in charge of monitoring compliance with the AVMSD and assessing the eligibility of AV works as European works.

In 11 cases, cooperation on these matters exists between the regulatory authorities and the national film funds and/or other relevant stakeholders and can take various forms: legally established cooperation (cooperation recognized by legal framework with exchanges of information between the regulatory agency and the the film institute before approval, ES, PT); informal and on a need-be basis cooperation (BE FR – the regulatory authority, when needed, makes an assessment based on the film fund assessment; BE NL, FR – a joint assessment is carried out by both the regulatory authority and the film institute; GB, HR, LV, NL – a joint assessment when the work is financed by

the film institute); on a regular basis (EE); and by organising annual events in relation to quota requirements (HU).

In 18 cases (AT, BG, CY, CZ, DE, DK, FI, GR, IE, IT, LT, LU, MT, PL, RO, SE, SI and SK), the national body in charge of monitoring compliance with the AVMSD and assessing the eligibility of AV works as European works does not cooperate with the national film fund or any other institution. It makes the assessment individually, in accordance with the practices stipulated above.

Table 7. Identification of the national body in charge of compliance and cooperation mechanisms

	National body in charge of monitoring compliance with the AVMSD	National film fund
AT	KommAustria	Österreichisches Filminstitut
BE FR	Conseil supérieur de l'audiovisuel – CSA	Centre du Cinéma et de l'Audiovisuel – CCA
BE NL	Vlaamse Regulator voor de Media – VRM	Flanders Audiovisual Fund – VAF
BG	Council for Electronic Media – CEM	National Film Centre – NFC
CY	Cyprus Radio-Television Authority – CRTA	Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth
CZ	Council for Radio and TV Broadcasting – RRTV	Czech Film Fund
DE	The Media Authorities ⁹	German Federal Film Board
DK	Danish Radio and Television Board	Danish Film Institute
EE	Consumer Protection and Technical Regulatory Authority – ECTRA	Estonian Film Institute – EFI
ES	National Authority for Markets and Competition – CNMC	Institute of Cinematography and Audiovisual Arts – ICAA
FI	Finnish Ministry of Transportation and Communication	Finnish Film Foundation
FR	Conseil supérieur de l'audiovisuel – CSA	Centre National de la Cinématographie – CNC
GB	Office of Communications – Ofcom	British Film Institute – BFI
GR	National Council for Radio and Television – NCRTV	Hellenic Film Commission
HR	Council of the Agency of Electronic Media – AEM	Croatian Audiovisual Centre – HAVC
HU	National Media and Infocommunications Authority – NMHH	National Film Institute – NFI
IE	Broadcasting Authority of Ireland – BAI	Screen Ireland
IT	Communications Authority (Autorità per	Directorate General for Cinema and

⁹ Umbrella brand of the 14 regional regulatory authorities, www.die-medienanstalten.de/en/about-the-media-authorities.

	National body in charge of monitoring compliance with the AVMSD	National film fund
	le Garanzie nelle Comunicazioni – AGCOM)	Audiovisual of the Italian Ministry of Cultural Heritage and Activities and Tourism – DGCA
LT	Radio and Television Commission of Lithuania – RTCL	Lithuanian Film Centre
LU	The Department of Media, Telecommunications and Digital Policy of the Ministry of State – Service des médias et des communications du Ministère d'Etat – SMC	Film Fund Luxembourg
LV	National Electronic Media Council – NEMC	National Film Centre of Latvia – NFC
MT	Broadcasting Authority	Malta Film Commission
NL	Commissariaat voor de Media – CvdM	Netherlands Film Fund
PL	National Broadcasting Council – KRRiT	Polish Film Institute
PT	Regulatory Authority for the Media – ERC	Institute of Cinema and Audiovisual – ICA
RO	National Audiovisual Council – CNA	Romanian Film Centre – CNC
SE	Swedish Press and Broadcasting Authority	Swedish Film Institute
SI	Agency for Communications Networks and Services – AKOS	Slovenian Film Centre
SK	Council for Broadcasting and Retransmission – CBR	Slovak Audiovisual Fund

Source: Response to European Audiovisual Observatory standardised questionnaire

4. Stakeholders, identifiers and databases

4.1 Experiences from the industry

As part of the data and information gathering for this mapping, several film and audiovisual industry associations, as well as public and private companies (broadcasters, VOD providers, etc.) were approached to provide input on their experience related to the assessing, reporting or labelling of the nationality of film and audiovisual works. Although the replies to this request were limited and do not constitute a full picture of the situation throughout the different industries and countries, they offer a valuable firsthand insight into how public and private companies in the sector tackle the issue, what some of the most common practices are, as well as their suggestions on the way ahead.

4.1.1 Main difficulties and common practices

Companies were asked what their experiences and main difficulties were in determining whether the works contained in their catalogues qualified as European works, as well as which common practices they had developed to help them make that determination (for example, a licensing agreement specifying the country of origin of the work, etc.)

Most respondents agreed that there were no homogeneous data from different national sources, which made it particularly difficult to determine the nationality of co-productions (notably in the case of co-productions between EU and non-EU countries).

Some companies look directly at the definition of European works provided by the directive, but assessing its requirements is not always easy; for instance, one public service broadcaster indicated that they sometimes had difficulty in identifying the nationality of the authors or in finding out who the majority co-producer was. As a pay-TV platform and another public service broadcaster indicated, it is usually for the rightsholders of works licensed to them to declare the nationality of the work and submit this information to the licensed service provider; moreover, in some countries such as France, a theatrical film's nationality as well as its qualification as a European work is certified by a public body – in this case, the CSA upon the advice of the CNC.

Licensing agreements may establish the requirements regarding the national/European qualification of a film or work; for instance, when acquiring exploitation rights, some channels may request a contractual guarantee from the licensor

regarding the European character of the work, or even include a clause in the licensing agreement whereby failing to qualify as a European work may lead to the termination of the contract.

According to a public service broadcaster, whenever a programme is made for a broadcaster by a non-national-based independent producer, they would in the first instance seek to classify the work based on the place of establishment of that independent producer (the place of establishment of the producer who controls the production in the case of multinational productions). In addition, the broadcaster possesses a wide range of information related to each work, as producers are contractually obliged to supply certain deliverables, including information regarding contributors, music, copyright, diversity, etc.

Similarly, another public service broadcaster declared that information is taken from what is declared by the distributor/licensor or acquired works and, in the absence of this information, they rely on available online databases such as the IMDB. In addition, archive material has proven to be specially challenging when it comes to identifying nationality, as there is a lack of information. An on-demand provider declared this was particularly challenging when licensing entire libraries.

Several companies use EACEA's¹⁰ MEDIA Film Database to assess the nationality of a film, and if it is not indexed there, they apply the point system used by EACEA's guidelines (see below); but in some cases, the nationality of some of the talent and crew members may prove difficult to find.

Moreover, several respondents indicated that they use standard identifiers such as ISAN¹¹ or EIDR¹² (see 4.2.1.1 and 4.2.1.2); the databases of national film centres; EU-funded databases (such as those provided by Cineuropa¹³ or Europa Cinemas¹⁴); or even private databases (such as IMDB,¹⁵ Allocine,¹⁶ etc.) to assess the nationality of works.

Lastly, some VOD providers declared that they had not yet developed practices with regard to the labelling of European works, as before the revision of the AVMSD, which is still in the process of transposition, they were not necessarily obliged to comply with quotas or visibility requirements regarding European works whose fulfillment is more complicated to assess than that of the already existing investment obligations (investment obligations can be fulfilled with a number of productions, whereas compliance with share and visibility rules requires the assessment of all declared European works).

¹⁰ The Education, Audiovisual and Culture Executive Agency (EACEA) manages EU funding for education, culture, audiovisual, sport, citizenship and volunteering; among others, it manages funding related to Creative Europe, <https://eacea.ec.europa.eu>.

¹¹ www.isan.org.

¹² <https://eidr.org>.

¹³ <https://cineuropa.org/en/filmshome>.

¹⁴ www.europa-cinemas.org/en/search-film.

¹⁵ www.imdb.com/.

¹⁶ www.allocine.fr/.

4.1.2 The use of metadata in the labelling of AV content

Another question put to industry stakeholders was related to Recital 35 of the AVMSD, which indicates that the “labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”

In this regard, industry respondents were asked about the type of metadata contained in film and audiovisual works that would be useful for the labelling of works as European works. Some respondents indicated that making mandatory the inclusion of the key talent (director, scriptwriter, producer) in the metadata could help with assessing the nationality of the work at hand. A respondent indicated that the nationality test based on EACEA’s granting requirements could make up part of the metadata. Other respondents would go even further, suggesting that content providers (licensors) should be obliged to provide the main country of production, as well as the quality of European work as defined by the AVMSD in the metadata of film and audiovisual works (or at least the information necessary to assess it).

Moreover, industry stakeholders were asked to suggest the best way to gather this information, as well as to identify current industry practices which already address the labelling in metadata of the nationality of European works. Some media service providers suggested the setting up of a pan-European database to be filled in by the rightsholders. Some indicated that it would be better for a reference European entity to grant a standardised “European work label”; information that should be made available by way of a comprehensive, centralised database. According to one film production and distribution company, the qualification of “European work” should be included in the ISAN number.

According to a public service broadcaster, in order to avoid any misinterpretation of the definition of “European work”, it could be useful to invest member states’ authorities or an independent European institution with the duty to verify and certify each audiovisual work produced and/or distributed in its territory. Another public service broadcaster suggested that producers should label their productions in terms of nationality according to Europe-wide standard definitions.

The main existing industry practices regarding labelling, as indicated by our respondents, were the standard identifiers ISAN and EIDR.

4.2 Ways of assessing the nationality of film and audiovisual works

There is an array of options to determine the nationality of audiovisual works, including of course films, which are the works that benefit from the most complete qualification procedures. Although there is no standard process throughout the industry, the following list includes the main sources as declared by some key stakeholders:

- A certificate of nationality issued by official institutions.

- If the stakeholder has participated in the production, they will know firsthand the shares of involvement and participation by producers/co-producers and, therefore, the nationality of the film or work.
- Information declared by the producer, distributor, etc. (in some cases, a certificate of nationality issued by the competent authority in the applicable country makes up part of the deliverables to be submitted by the licensor to the licensee; the licensee may even include a termination clause in case the film or work does not eventually qualify as European).
- Nationality is assessed based on a series of elements such as the country of establishment of the production companies, the nationality of the director, etc.
- Information from the EACEA database (see below), although this is only available for films with MEDIA support.
- Assessment based on the conditions established by EACEA's distribution support for European films.
- Information provided by identifiers, such as ISAN or EIDR.
- Information provided by databases such as IMDB, Cineuropa, Lumiere, Allocine or those from national institutions (such as German Films or Swiss Films).

4.2.1 Standard identifiers and databases

The goal of standard identifiers in the audiovisual sector is to generate a univocal code for each individual work, facilitating its identification and the exchange of basic information throughout the value chain (production, post-production, distribution, exhibition and other forms of consumption, as well as archiving), notably in the licensing of rights and the monitoring of audiences, revenues or other results.

The two main existing identifiers (ISAN and EIDR, described below) announced their interoperability as of April 2019.¹⁷

4.2.1.1 ISAN

ISAN (International Standard Audiovisual Number)¹⁸ is a voluntary numbering system and metadata schema for the unique and persistent identification of any audiovisual works and versions thereof including films, short works, documentaries, television programmes, sports events, advertising, etc. Launched in the year 2000, ISAN is an ISO intellectual property managed by the ISAN International Agency (ISAN-IA), a not-for-profit Swiss association, contractually mandated by ISO.

¹⁷ www.isan.org/docs/news/Dual_Registration_PR.pdf.

¹⁸ www.isan.org.

According to ISAN-IA, the information gathered, including the nationality (country of production), is based on declarations made by the producer of the content, without further verification by the institution; moreover, although many producers fill in the information for this indicator, it remains an optional field.

The metadata collected is minimal and primarily intended to identify unique intellectual creations, that is, to distinguish different works with similar characteristics. In that respect, the nationality is not the most determining information used to assess the uniqueness of the work, and the ISO group who standardised the ISAN had initially defined the production country as optional information. However, many producers provide this information and ISAN is currently considering making this information mandatory.

4.2.1.2 EIDR

EIDR (Entertainment Identifier Registry Association)¹⁹ is a not-for-profit industry association which was launched in the United States in 2010. It manages the EIDR identifier, a unique universal identifier system and metadata schema for film and television content. The EIDR Registry is built on the ISO's industry standard Digital Object Identifier (DOI), which is used for identifying content objects in the digital environment.

When it comes to the nationality of films and audiovisual works, the closest indicator collected by EIDR is the country of origin. Although the nationality of the director or talent is a clue, the assessment is, based on the home territory of the production companies, not where the work was shot (or pre- or post-produced) or who provided financing (unless they were also credited as a production company). It is for the registrants to provide this indicator; however, there is a certain amount of records for which that field is unknown. EIDR presently has more than 200 third-party ID types and other sources that can be used in the assessment. Each EIDR number can be link with other IDs.

In addition, EIDR continuously reviews the records and makes improvements, such as additions and corrections. Moreover, although EIDR allows up to 32 values for countries of origin, they are not necessarily listed in a deterministic order.

4.2.1.3 EACEA and the MEDIA Film Database

The MEDIA film database²⁰ is a repository of data on films that applied for any distribution support scheme within the framework of the MEDIA programme, administered by the Executive Agency for Culture, Education and Audiovisual (EACEA). Titles can be searched by name of the film, director, film ID (assigned by the Agency), year of copyright and nationality. The database's coverage comprises films produced from 2006 until the present day.

¹⁹ <https://eidr.org>.

²⁰ <https://eacea.ec.europa.eu/MediaPgm/>.

The information contained in the database regarding the nationality of a film reflects the classification carried out during the assessment of applications. According to the application guidelines,²¹ in order to be eligible, a film must be produced mainly by companies in countries that are part of the MEDIA Programme (all of them European countries) with the significant participation of professionals who are nationals/residents of countries participating in the programme. The film nationality is determined according to the highest number of points obtained for a given nationality. In addition, applicants must obtain an interoperable standard identifier, such as an ISAN or an EIDR number to be eligible.

“6.2 Eligible activities

The film must comply with the following eligibility criteria:

[...]

- it must be majority produced by a producer or producers established in the countries participating in the MEDIA Sub-programme (see section 6.1). To be considered as the actual producers, the production companies must be credited as such. Elements such as opening credits, copyright appearing on the rolling credits, creative control, ownership of exploitation rights and share of profits may also be taken into account to determine who the actual producer is.

- it must be produced with the significant participation (as per the credits) of professionals who are nationals/residents of countries participating in the MEDIA Sub-programme and credited as such (see section 6.1). ‘Significant participation’ is defined as having more than 50% of the points on the basis of the table below. The total can vary depending on the type of work (animation, documentary, etc). When roles are shared, points are shared accordingly. In the event of a tie (that is, where the points are equal for a given nationality) the nationality of the director (or the following talent in the list below) shall be decisive.”

Position	Points
Director	3
Scriptwriter	3
Composer	1
Actor 1	2
Actor 2	2
Actor 3	2
Production Design	1
Director of Photography	1
Editor	1
Sound	1

²¹ https://eacea.ec.europa.eu/file/17174/download_en?token=V6xydl4g.

Shooting location	1
Post-Production location	1
Total	19

In the event of a draw (that is, where the points are equal for several nationalities), the nationality of the director (or the following talent in the list) shall be decisive. According to the most recent practice, once all data have been made available and verified, there has never been a case where it was difficult to determine the nationality.

4.3 Conclusions

The mapping identified practices and issues related to the qualification of works as European under AVMSD relating to compliance with the share obligation and visibility requirements, and as national works, which is usually linked to access to public funding.

From the analysis of the respondents' input, it can be inferred that the main problem regarding the definition of the nationality of film and audiovisual works seems to be the heterogeneity of existing standards at national level for access to film funds. Although many respondents indicated that a solution could be to create a database putting together the data on nationality from the different official institutions throughout Europe, the problem remains that the assessment of nationality is not univocal (the same work can have several nationalities depending on the national shares in the co-production).

Furthermore, it should be noted that identifying the nationality would not solve the issue of determining whether a work is European or not, as the fact that a film or audiovisual work is considered as national by an EU country does not automatically mean that the film counts as a European work in the sense of the AVMSD: for instance, a majority of non-EU co-production with an EU country produced within the framework of a bilateral agreement may be considered as a national work in the EU co-producing country but not as a European work for the purpose of quotas (as it would be an EU minority co-production, hence non-eligible for quotas according to the definition of "European works" provided by the AVMSD).

Although some stakeholders declared that they use different methods to assess the European character of a work (most commonly, the nationality test in EACEA's guidelines for applicants), it is important to note that these do not match the definition provided by the Audiovisual Media Services Directive (AVMSD). For instance, in either case it is required that the work be a majority production by producers from the qualifying countries, but according to EACEA guidelines, these are producers established in the countries participating in the MEDIA Sub-programme, while the Directive takes into consideration: works originating in EU member states; works originating in European third states party to the European Convention on Transfrontier Television of the Council of Europe; works co-produced within the framework of agreements related to the audiovisual sector concluded between the EU and third countries; and majority EU co-

productions within the framework of bilateral co-production agreements concluded between member states and third countries.

When it comes to assessing the nationality of works, it should be noted that the standardised, systematic assessment of theatrical films is more frequent than that of audiovisual works, as most national film centres carry out this task either (at least for films receiving public support) to issue an official certificate of nationality or to compile the information for statistical purposes. Nevertheless, many countries do not issue certificates of nationality.

Besides, indicators such as the country of origin or the country of establishment of the producers or co-producers does not suffice to establish whether a work can be considered European, as the share of involvement by each co-producer matters, and these figures do not always seem to be available. In addition, some qualification systems are based on indicators such as the nationality of talent and cast and this information is not always available.

As to metadata and labelling, most respondents suggested establishing homogeneous standards to assess the nationality (or the qualification as European works) of a film or audiovisual work; several respondents were inclined to favour the setting up of a unified database in order to overcome the most prevailing problem of diverseness and huge conglomeration of applied criteria, and for it to gather and make available this information – either accessible to the rightsholders or managed by national or European authorities. In a few cases, the respondents suggested making mandatory labelling according to homogeneous standards or making available information that would allow the media service provider to carry out the assessment itself. For the purpose of assessing compliance with the share of European works and visibility requirements established by the AVMSD, the usefulness of these suggested practices would be dependent on only indexing metadata based on the definition of “European works” provided therein. In turn, in order for metadata on nationality to be most useful, the share of participation of the co-producers of each participating country should be included.



5. National legal summaries

5.1. AT – Austria – National legal summary²²

5.1.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.1.1.1 Audiovisual works

There is no such definition in the Austrian legislation.

Article 2 Z 3 of the Audiovisual Media Services Law (AMD-G) only defines the audiovisual media service, referring to the programme in its entirety and not to a single piece of work:

“Audiovisual media service: a service within the meaning of Articles 56 and 57 TFEU under the editorial responsibility of a media service provider whose main purpose is the provision of programmes for the information, entertainment or education of the general public via electronic communication networks (Article 3 Z 11 TKG 2003). These include television programmes and audiovisual media services on demand.”

A similar definition can be found for public service broadcasters in Article 1a, Z 1 ORF Act (ORF-G):

“For the purposes of this Act, “audiovisual media service” means a service offered under the editorial responsibility of the Austrian Broadcasting Corporation or one of its subsidiaries by means of communication networks (Article 3 Z 11 TKG 2003, BGBl. I Nr. 70) whose main purpose is to provide consignments for the information, entertainment or education of the general public.”

²² The factsheet on Austria incorporates the feedback received from Stefan Rauschenberger (RTR/KommAustria) during the checking round with the national regulatory authorities.



Additionally, Article 2 Z 16 of the AMD-G and Article 1a Z 2 of the ORF-G define the so-called “Fernsehprogramm”, which refers to a TV service, in terms of a channel as a whole, as follows:

“Television programme: an audiovisual broadcasting programme within the meaning of Article I, paragraph 1, of the Federal Constitutional Law on Securing the Independence of Broadcasting, Federal Law Gazette No. 396/1974, or another audiovisual media service distributed over electronic communications networks by a media service provider for the simultaneous reception of broadcasts provided on the basis of a transmission schedule.”

“Television programme” means an audiovisual media service provided for the simultaneous reception of broadcasts on the basis of a transmission schedule.”

Finally, Article 2 Z 30 of the AMD-G and Article 1a Z 5 of the ORF-G define the term “Sendung” (programme), which means a film or TV show, as part of a programme.

“Broadcast: a single, self-contained part of a television programme or on-demand audiovisual media service consisting of a sequence of moving images with or without sound and forming part of a broadcast schedule or catalogue produced by a media service provider.”

“Broadcast (a) in television programmes and on-demand services, a single, self-contained and time-limited sequence of moving images, with or without sound, which, in the case of television programmes, form part of a transmission schedule or, in the case of on-demand services, of a catalogue.”

5.1.1.2 Cinematographic works

Article 4 of the Federal Law on copyright in literary and artistic works and related rights defines cinematographic works as follows:

“Works of cinematic art (cinematographic works) under this law are motion picture works whereby the events and actions that form the object of the work may be displayed either visually only or visually and audibly at the same time, irrespective of the nature of the process employed to create or perform the work.”

5.1.1.3 Domestic works

There is no such definition in the Austrian legislation.

5.1.1.4 European works

The definition of “European works” is found in Article 2 Abs Z 12, Z 13 and Z 14 of the AMD-G relating only to private-commercial media services, not to public ones:

“12. European works:

a) works originating in member states;



*b) works originating in European third countries party to the European Convention on Transnational Television of the Council of Europe and fulfilling the conditions of item 1m;
c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements.*

The application of the provisions of b) and c) shall be conditional on works originating in member states not being the subject of discriminatory measures in the third country concerned.

13. The works referred to in item 12 a) and b) are works mainly made with authors and workers residing in one or more of the countries referred to in item 11 a) and b) provided that they comply with one of the following three conditions:

a) they are made by one or more producers established in one or more of those countries, or

b) the production of the works is supervised and actually controlled by one or more producers established in one or more of those countries, or

c) the contribution of the co-producers of those countries to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those countries.

14. Works that are not European works within the meaning of item 12 but that are produced within the framework of bilateral co-production agreements concluded between member states and third countries shall be deemed to be European works provided that the co-producers from the European Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the member states.”

5.1.1.5 Categories included in the calculation of the share of European works

According to Article 40 Abs 1 of the AMD-G, private commercial audiovisual non-linear media services are obliged to indicate and identify European works as part of their programmes in a specific way in order to underline and emphasise this for users. Article 40 Abs 2 of the AMD-G stipulates their obligation to report annually to the regulatory authority KommAustria on the fulfilment of this duty. For failure to comply with these obligations, a financial penalty of EUR 4 000 is prescribed. Article 40 of the AMD-G does not contain any further definitions, such as which categories of works it refers to or not (news, sports, documentaries, etc.).

Regarding linear media services, according to Articles 50-53 AMD-G:

“Channel Quotas

Article 50. In the framework of practical feasibilities and by applying reasonable means, television broadcasters shall see to it that the main portion of the transmission time of their television channels that does not consist of news, sports reports, games and shows, advertising, teletext and teleshopping is reserved to broadcasting European works.

Promoting Independent Channel Producers



Article 51. In the framework of practical feasibilities and by applying reasonable means, television broadcasters shall see to it that a minimum of 10 per cent of the transmission time of their television channels that does not consist of news, sports reports, games and shows or advertising and teletext, or alternatively a minimum of 10 per cent of their budget means, is reserved for programming channels to broadcast European works by producers who are independent of television broadcasters. This portion shall be reached gradually by means of suitable criteria in the areas of information, education, culture and entertainment. To this end, a reasonable share shall be reserved to more recent works, that is, works that are broadcast within a period of five years after their production.

Reporting Obligation

Article 52. Television broadcasters shall report in writing to the regulatory authority on the implementation of Article 50 and Article 51 before 30 May of every year. The regulatory authority shall communicate a summary report to the federal government before 30 June of every year.

Exemptions from the Quota Rule

Article 53. Article 50 to Article 52 shall not apply:

- 1. to the dissemination of channels if this dissemination does not exceed the boundaries of a federal province and the channels are not broadcast on a nationwide basis;*
- 2. to teleshopping, advertising, and self-promotional channels (Article 46)."*

For the public service media ORF, Article 11 of the ORF-G states that:

"(1) The Austrian Broadcasting Corporation shall ensure, as far as practicable and by appropriate means, that the major part of the transmission time of its television programmes, which does not consist of news, sports reports, game shows or advertising and teletext services, is broadcast by European works in accordance with Article 1, paragraph 1 lit. and paragraphs 2 to 4 of Directive 2010/13 / EU on the coordination of certain laws, regulations and administrative provisions of the member states relating to the provision of audiovisual media services (Audiovisual Media Services Directive); No. L 95 of 15.4.2010, S 1, remains reserved. This proportion should be achieved gradually in the fields of information, education, culture and entertainment on the basis of appropriate criteria."

Table 8. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	No
European works	Yes

Source: Austrian response to European Audiovisual Observatory standardised survey



5.1.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, KommAustria)²³ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of KommAustria in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by KommAustria, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which KommAustria cooperates on this issue with the national film fund (in this case, the Österreichisches Filminstitut).²⁴

5.1.2.1 Eligible nationality of European works)

In the Austrian context, there is no legal obligation related to KommAustria's assessment of works. Furthermore, there are no by-laws or secondary legislation addressing this matter. KommAustria only has to assess this question with regard to public service media. This is in fact done by the public service broadcaster's annual report, under the name: "Public Value Report",²⁵ which contains a self-assessment in relation to the fulfilment of these legal duties. Other than that, the assessment is an informal matter.

In relation to Article 1, paragraph 1, letter (n) (ii), that is, "works originating in European third states party to the European Convention on Transfrontier Television of the Council of Europe", KommAustria annually collects data on the share of European works in the programmes of Austrian broadcasters. The transmitted data are aggregated and transmitted to the federal government. According to Article 50ff of the AMD-G, a content assessment by KommAustria takes place only to a very limited extent, for example, where information in the lists does not seem plausible.

²³ www.rtr.at/en.

²⁴ www.filminstitut.at/en/.

²⁵ https://zukunft.orf.at/show_content.php?hid=43&language=en.



Within the context of the Austrian market, a particular issue has to be taken into account, namely, the fact that regional broadcasters and services (which are distributed or streamed via satellite) are also covered by the aforementioned rules. However, these services only produce regional content, in which European (non-Austrian) content does not play a role, as all content is self-produced.

On the matter pertaining to Article 1, paragraph 1, letter (n) (iii), that is, “works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements”, KommAustria considers this to be part of the above-mentioned content assessment. The authority does not recognise any enforcement problems. However, members of the authority admitted that it is seldom the case that such works occur at all.

Finally, when it comes to the determination of works from Article 1, paragraph 4, that is, “works that are produced within the framework of bilateral co-production agreements concluded between member states and third countries provided that the co-producers from the European Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the member states”, KommAustria only evaluates the entire production and does not see any enforcement problems.

5.1.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.1.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.1.2.4 Other enforcement issues

N/A.

5.1.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is, when applicable, carried out by KommAustria, independently of the Österreichisches Filminstitut (ÖFI).



5.1.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.1.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.1.5 Applicable regulatory framework

Primary legislation:

- Audiovisual Media Services Law²⁶ (*Audiovisuelle Mediendienste-Gesetz*).²⁷
- ORF Act²⁸ (*ORF-Gesetz*).²⁹
- Federal Law on copyright in literary and artistic works and related rights (*Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (UrhG-Urheberrechtsgesetz)*).³⁰

5.1.6 Studies, reports and researches

N/A.

²⁶ In English: www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_84/ERV_2001_1_84.pdf (not consolidated).

²⁷ www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412.

²⁸ In English: www.ris.bka.gv.at/Dokumente/Erv/ERV_1984_379/ERV_1984_379.pdf (not consolidated).

²⁹ www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785.

³⁰ www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848.



5.1.7 Data compilation

This fact sheet was produced based on data compiled Josef Trappel, Professor of Media Policy and Media Economics, University of Salzburg, and Corinna Gerard-Wenzel, consultant in the field of media and law.

5.2 BE– Belgium (Flemish speaking Community) – National legal summary³¹

5.2.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.2.1.1 Audiovisual works

There is no such definition in the legislation of the Flemish Community of Belgium.

The preparatory works of the Copyright Act³² explicitly state that the legislator did not want to adopt this definition for fear that a definition would stand in the way of technological evolution. However, it did provide for two definitions, which are used as guiding principles.

The first definition can be found in Article 1(2) of the Proposition Act (*Lallement*):³³

“A cinematographic work or work expressed through a process related to cinematography which uses images or the combination of images and sounds.”

The second definition is found in the Report “De Clerck” (*Gedr.St. Kamer, BS 1991-1992, nr. 473/33*):³⁴

“A set of sounds and moving images that, once edited, are intended to be shown to an audience.”

Additionally, a definition provided by the Court of Appeal in Brussels,³⁵ which, although it has no legal foundation, can be used for interpretation, states that an audiovisual work is:

³¹ The factsheet on Belgium (Flemish speaking Community) incorporates the feedback received from Dirk Peereman (VRM) during the checking round with the national regulatory authorities.

³² Adopted in 1994 and currently part of the official Codex of Economic Law.

³³ www.dekamer.be/FLWB/PDF/48/0473/48K0473001.pdf.

³⁴ www.dekamer.be/digidoc/DPS/K2333/K23331801/K23331801.pdf.

³⁵ Brussels, 25 June 1998, *AM* 1999, 212, *IRDI* 1998, 332.

“Any work in motion or consisting of a set of successive images, whether or not accompanied by sound.”

5.2.1.2 Cinematographic works

There is no such definition in the legislation of the Flemish community of Belgium.

The Flemish community uses the definitions of “cinematographic work” and “qualifying cinematographic work” from the European Convention on Cinematographic Co-Production.

5.2.1.3 Domestic works

Article 6(1) of the Implementing Decision for Service Providers and Article 7(1) of the Implementing Decision for non-linear Service Providers state that:

“An audiovisual creation is considered Flemish on the basis of the following criteria: the original Dutch version, the Dutch text, the underlying Dutch language work, the cultural connection with Flanders, the creative input from the Flemish cultural community or a subject that expresses Flemish culture.”

5.2.1.4 European works

Article 2(11) of the Radio and Television Broadcasting Act defines European works as follows:

“European productions means:

a) the following productions:

- 1) productions created in the member states of the European Union;*
- 2) productions from third-party European states that have signed the Council of Europe’s Treaty as regards cross-border television and which comply with the conditions, as set out in item b);*

3) co-productions produced within the scope of the agreements between the European Union and third-party countries concerning the audiovisual sector and which comply with the conditions of the aforementioned agreements. A condition for the application of items 2) and 3) is that productions made in member states are not affected by discriminatory measures in the third-party countries concerned;

b) the productions referred to in items a), 1), and a), 2) are productions that were mainly produced with the help of authors and collaborators who reside in one or more of the member states mentioned in items a), 1), and a), 2), and meet one of the following three conditions:

- 1) the productions were created by one or more producers, established in one or more of these member states;*
- 2) their creation came about under the supervision and effective control of one or more producers established in these member states;*

3) the contribution of the co-producers of these states to the total cost of the co-production is significant and the co-production is not controlled by one or more producers established outside of these member states;

c) productions that are not European productions as referred to under item a), but which are created within the framework of co-production agreements concluded between the member states and third-party countries, are considered to be European products as long as the European Union co-producers hold a majority share in the total product costs and the production is not controlled by one or more producers established outside of the member states.”

5.2.1.5 Categories included in the calculation of the share of European works

Article 154 of the Radio and Television Broadcasting Act of the Executive Order imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“The television broadcaster of the Flemish Community and the private linear television broadcasters aim to reserve the major share of the time that is not reserved for information, sports, games, advertising, teletext and teleshopping for European productions.”

A significant proportion of this must be devoted to European Dutch-language productions, but the percentage is not defined.

Table 9. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No, but guiding principles are provided
Cinematographic works	No, but definitions from the European Convention on Cinematographic Co-Production are applied
Domestic works	Yes
European works	Yes

Source: Flemish Community of Belgium's response to European Audiovisual Observatory standardised survey

5.2.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance AVMS providers with the AVMS Directive (in this case, the *Vlaamse Regulator voor de Media* – VRM³⁶ in cooperation with the Flanders Audiovisual Fund – VAF³⁷ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the VRM and VAF in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the VRM, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the VRM cooperates on this issue with the national film fund (in this case, the VAF).

5.2.2.1 Eligible nationality of European works

The VRM is the body responsible for collecting data on the percentage of European works. There is no further legislation or information as to the practical application of this task.

5.2.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.2.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

The *Vlaams Audiovisueel Fond* (VAF)³⁸ grants co-production status based on a number of elements/criteria listed in Appendix II of the European Convention on Cinematographic Co-Production. These are mainly based on the identity of the artistic crew, the link of the work's content with the Flemish cultural community and the main producer/largest part of the financing being Flemish. In addition, it is worth mentioning that the Flemish Community has co-production agreements with France, Germany, Israel,

³⁶ www.vlaamseregulatormedia.be/nl.

³⁷ www.vaf.be/flanders-audiovisual-fund.

³⁸ www.vaf.be/.

Tunisia and Canada.³⁹ Draft co-production agreements with Jordan and Morocco are in the process of being finalised.

5.2.2.4 Other enforcement issues

N/A.

5.2.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the VRM, independently of the VAF.

5.2.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.2.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.2.5 Applicable regulatory framework

Primary legislation:

- Radio and Television Broadcasting Act⁴⁰ (*Decreet betreffende Radio-omroep en Televisie van 27 maart 2009*)⁴¹

³⁹ <https://cjsm.be/cultuur/themas/film/coproductieakkoorden>.

⁴⁰ www.vlaamseregulatormedia.be/sites/default/files/act_on_radio_and_television_broadcasting.pdf.

Secondary legislation:

- Implementing Decision for Service Providers (21 maart 2014 – *Besluit van de Vlaamse Regering betreffende de stimuleringsregeling voor de audiovisuele sector, vermeld in artikel 184/1 van het decreet van 27 maart 2009 betreffende radio-omroep en televisie*)⁴²
- Implementing Decision for non-linear Service Providers (1 februari 2019 – *Besluit van de Vlaamse Regering betreffende de deelname van de particuliere niet-lineaire televisieomroeporganisaties aan de productie van Vlaamse audiovisuele werken*)⁴³

5.2.6 Studies, reports and researches

N/A.

5.2.7 Data compilation

This factsheet was produced based on data compiled by An Jacobs, attorney-at-law and Managing Director of the Association of Flemish Independent Film & Television Producers.

⁴¹

www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2009032749 and www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_27_maart_2009_11.pdf.

⁴² www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2018062913&table_name=wet

⁴³ www.vlaamseregulatormedia.be/sites/default/files/stimuleringsregeling.pdf.

⁴⁴ <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2019/03/18/140890.pdf>.



5.3 BE – Belgium (French speaking Community) – National legal summary⁴⁴

5.3.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.3.1.1 Audiovisual works

Article 1(23) of the Coordinated Act on Audiovisual Media Services defines an audiovisual work as follows:

“any programme that cumulatively meets the following criteria:

a) the program meets the definition of a cinematographic or television fiction work within the meaning of Article 1(24) or of a documentary work within the meaning of Article 1, 25 °;

(b) the programme is not one of the following programmes:

television programmes on sets, including those presenting documentary or fiction sequences;

television programmes for entertainment, including those containing elements of a scenario, a staging or a montage or which presents a certain form of reality;

television programme designed to reproduce set programmes in a fictitious manner;

news reporting;

information magazines;

simple recordings, without modification of the scenography or editing of a live performance, provided that this performance exists independently of the television programme.”

Similarly, Article 1(12) of the Act on support to cinema and audiovisual creation defines it as follows:

“A set of moving images, whether or not combined with sound, with the exception of the following categories:

⁴⁴ The factsheet on Belgium (French speaking Community) incorporates the feedback received from Bernardo Herman, Director of European Affairs at CSA.Be during the checking round with the national regulatory authorities.



- television programmes on sets, including those presenting documentary or fiction sequences;
- television programmes for entertainment, including those containing elements of a scenario, a staging or a montage or which presents a certain form of reality;
- television programmes designed to reproduce set programmes in a fictitious manner;
- news reporting;
- information magazines;
- simple recordings, without modification of the scenography or editing of a live performance, provided that this performance exists independently of the television programme.”

5.3.1.2 Cinematographic works

Article 1(24) of the Coordinated Act on Audiovisual Media Services defines a “cinematographic or television fiction work” as follows:

“any programme that cumulatively meets the following criteria:

- a) it is a creation of the imagination, even if it aims to retransmit a reality;*
- b) it is a staged work whose production uses a scenario, including for filming that leaves room for improvisation, and whose production, with the exception of animation works, is based on the performance of artists for most of its duration.”*

Similarly, Article 1(8) of the Act on support to cinema and audiovisual creation defines “fiction” as follows:

“audiovisual work that cumulatively meets the following criteria:

- it is creation of the imagination even if it aims to retransmit a reality;*
- it is staged work whose production uses a scenario, including for filming that leaves room for improvisation and whose production is based on the performance of artist for most of its duration.”*

Article 1(1) of the Act on support to cinema and audiovisual creation defines “animation” as follows:

“audiovisual work that cumulatively meets the following criteria:

- it is creation of the imagination even if it aims to retransmit a reality;*
- it is staged work whose production uses a story-board, including for filming that leaves room for improvisation;*
- it is work that predominantly integrates frame by frame shooting, while aiming at creating motion. Usual processes are: cartoons, 2D objects manipulation, volume animation, image synthesis (2D, 3D).”*

Article 1(5) of the Act on support to cinema and audiovisual creation defines “*creative documentaries*” as follows:

“audiovisual work that cumulatively meets the following criteria:

- it is a creation which aims to present a given aspect of reality, independently of its format, which can pertain to animation;
- it is a work that presents an author’s point of view, which is characterised by in-depth reflexion, a maturing of the subject matter, an element of research and personalised writing;
- it enables knowledge acquisition;
- it deals with the subject while differing substantially from a purely informative programme;
- it is potentially interesting in the long term and for purposes other than archiving.”

Article 1(9) of the Act on support to cinema and audiovisual creation defines a “school film” as follows:

“audiovisual work produced by one or more students enrolled in an institution of higher education for art or in a technical college for visual studies”

Article 1(10) of the Act on support to cinema and audiovisual creation defines “film lab” as follows:

“an audiovisual work that, by its form or content, proposes an approach that includes the renewal or expansion of film and audiovisual expression and which departs from traditional narrative patterns to produce an out-of-the-ordinary, individual or artisanal piece of work.”

Article 1(11) of the Act on support to cinema and audiovisual creation defines a “feature film” as follows:

“fiction or animation whose destined primarily to be distributed in the cinema circuit and whose duration is greater than sixty minutes.”

Article 1(2) of the Act on support to cinema and audiovisual creation defines a “short film” as follows:

“fiction or animation destined primarily to be distributed in the cinema circuit and whose duration is less than or equal to sixty minutes.”

Article 1(17) of the Act on support to cinema and audiovisual creation defines “TV series” as follows:

“fiction, animation or documentary created in the form of several episodes and destined primary to be broadcast by an audiovisual media service provider.”

Article 1 19° of the Act on support to cinema and audiovisual creation defines a “telefilm” as follows:

“fiction or animation destined primarily to be by an audiovisual media service provider.”

5.3.1.3 Domestic works

The concept of a national or domestic work is not strictly defined as such in the legislation of the French-speaking Community of Belgium. The only connecting factors to some Belgian features related to the audiovisual works can be found in the French-speaking Community Government Decree of 29 March 2012 which is wholly aimed at supporting the financing of audiovisual creation showing some links with the French-speaking Community of Belgium. The combined reading of Article 1 §2 of the Government Decree and its annexes shows that only films matching specific criteria will be eligible for benefiting from the financial support.

These criteria aim at anchoring the audiovisual works in the Belgian and French-speaking context but they do not require a fully Belgian integration. The objective is to ensure that the contracts signed with a number of participants contributing to the film-making project are governed by and subject to Belgian law. The cultural, artistic and technical conditions to be matched are listed in the Decree annex under the heading “Cultural criteria” (p.38) as follows:

- the audiovisual work is made entirely or mainly in an original French-language version unless derogated;
- the film director holds a European nationality and his or her contract is governed by and subject to Belgian law;
- either the screenwriter – distinct from the film director – and one secondary actor or one lead actor or two secondary actors hold a European nationality and have signed a contract which is governed by and subject to Belgian law;
- one of the executive technicians holds a European nationality and has signed a contract which is governed by and subject to Belgian law.

These criteria do not prevent non-Belgian candidates from obtaining this financial support provided that they hold a European nationality and sign a Belgian contract. Given these limited connection criteria, it cannot be concluded that these provisions would constitute a legal definition of a domestic work; they rather help strengthening the links with the Belgian French-speaking Community.

5.3.1.4 European works

Article 1(26) of the Coordinated Act on Audiovisual Media Services defines a European work as follows:

“A European work is:



- (a) *works originating in member states which are carried out essentially with the assistance of authors and workers residing in one or more of these States and which meet one of the following three conditions: they are carried out by one or more producers established in one or more of these States; the production of the work is supervised and actually controlled by one or more producers established in one or more of these States; the contribution of the co-producers of these States to the total cost of the co-production is preponderant, and this co-production is not controlled by one or more producers established outside those States;*
- (b) *works originating in European third States party to the Council of Europe Convention on Transfrontier Television which are carried out essentially with the assistance of authors and workers residing in one or more of those States and which meet one of the following three conditions: they are carried out by one or more producers established in one or more of these States; the production of this work is supervised and actually controlled by one or more producers established in one or more of these States; the contribution of the co-producers of these States to the total cost of the co-production is preponderant and the co-production is not controlled by one or more producers established outside these States. Works originating in European third States party to the Council of Europe's European Convention on Transfrontier Television are, however, only deemed European works if the works originating from the member states of the European Union are not the subject of discriminatory measures in the third States concerned;*
- (c) *works co-produced in the framework of agreements concerning the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions laid down in each of those agreements, provided that works originating in the member states of the Union are not the subject of discriminatory measures in the third country concerned;*
- (d) *works produced in the framework of bilateral co-production agreements concluded between member states of and third countries, provided that the co-producers from the member states of supply a majority share of the total cost of production and that production is not controlled by one or more producers established outside the territory of the member states."*

5.3.1.5 Categories included in the calculation of the share of European works

Article 44 §1 of the Coordinated Act on Audiovisual Media Services imposes the following obligation on broadcasters and therefore excludes from the scope of the term "work" the following genres:

"RTBF and audiovisual media service providers shall reserve a majority proportion of their broadcasting time, excluding the time allotted to news, sports events, games, advertising, self-promotion, or teleshopping, to European works, including original works by authors from the French-speaking Community."

Table 10. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	No
European works	Yes

Source: French speaking Community of Belgium response to European Audiovisual Observatory standardised survey

5.3.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1 paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Conseil supérieur de l'audiovisuel – CSA)⁴⁵ assesses whether or not a work falls under one of the situations covered by Article 1 paragraph 1 letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the CSA in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the CSA, the specific difficulties encountered in implementing Article 1 paragraph 1 letter (n) and the way in which the CSA cooperates on this issue with the national film fund (in this case, the Centre du Cinéma et de l'Audiovisuel – CCA).⁴⁶

5.3.2.1 Eligible nationality of European works

The CSA refers to the qualification of the CCA and/or to the nationality (country of establishment) of the executive producer. In practice, broadcasters submit listings with their annual programming and the nationality of the works, amongst other information. The CSA carries out a sample verification and if in doubt, questions the media service provider regarding the qualification. Moreover, it conducts research on the production

⁴⁵ <http://csa.be/>.

⁴⁶ <https://audiovisuel.cfwb.be/>.

company responsible for the work in question. Considering that the CSA does not have a lot of resources, this research is sample-based and is not carried out for all programmes.

5.3.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard. The share of works potentially concerned is however considered by the CSA to be marginal.

5.3.2.3 Nationality and co-productions

The CSA refers to the assessment of the CCA or considers the nationality of the executive producer, as it does not have access to detailed information. In practice, while controlling the share of European works, the CSA refers to the declaration of the service provider and conducts random sample verifications.

Regarding film funding, the CCA bases its assessment on the budget, with expenses by country, financing plan and the coproduction agreement; it can check the share of European expenses compared to other countries, whether the rights and property of the work are European or not, and also the different contributions to the financing plan. In the framework of the European Convention on Cinematographic Co-production or bilateral treaties, the CCA will also check the share of expenses and financing, and the fact that the cast and crew are shared between producers in compliance with the requirements of the treaty.⁴⁷

5.3.2.4 Other enforcement issues

Beside its cooperation with the CCA and its own possible additional enquiries mentioned above, the CSA consults the LUMIERE database.

5.3.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the CSA, if need be based on a qualification and assessment procedure carried out by the CCA.

⁴⁷ Relevant treaties available at <https://audiovisuel.cfwb.be/missions/centre-cinema-audiovisuel/activites-internationales/>.

5.3.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers”*.

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.3.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review.

Apart from the CSA proposals as regards notably the labelling in metadata of European works, there is, at this stage, no further information available in this regard.

5.3.5 Applicable regulatory framework

Primary legislation:

- Coordinated Act on Audiovisual Media Services (*Décret coordonné sur les Services de Médias Audiovisuels*).⁴⁸
- Act on support to cinema and audiovisual creation (*Décret relatif au soutien au cinéma et à la création audiovisuelle*).⁴⁹
- Government order on support to cinema (*Arrêté du Gouvernement de la Communauté française du 17 mai 2017 modifiant l'arrêté du Gouvernement de la Communauté française du 29 mars 2012 relatif aux aides à la création*).⁵⁰
- Programme Law of 2 August 2002 as amended (*Loi programme du 2 août 2002*).⁵¹

⁴⁸ www.gallilex.cfwb.be/document/pdf/34341_017.pdf.

⁴⁹ www.gallilex.cfwb.be/document/pdf/37248_004.pdf.

⁵⁰ www.gallilex.cfwb.be/document/pdf/43820_000.pdf.

⁵¹ www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002080245&table_name=loi.

5.3.6 Studies, reports and researches

Each year, the CSA publishes several reports which analyse how the regulated actors are complying with their obligations. Each of these reports includes a section about the respect of quota obligations as regards European works. For the year 2018, the reports for the various actors are available following these links:

- Annual report regarding the public service broadcaster,⁵²
- Annual report regarding private broadcasters,⁵³
- Annual report regarding web TVs.⁵⁴

In addition to these reports, the CSA has published a report on the Public Service Broadcaster's compliance covering the entire duration of its management contract period (2012-2017).⁵⁵

5.3.7 Data compilation

This factsheet was produced based on data compiled by Emmanuel Roland, Head of Production, Film and Audiovisual Center of the Wallonia Brussels Federation (*Centre du Cinéma et de l'Audiovisuel*, CCA) and Sevara Irgacheva, Media Policy Advisor, Cultural Diversity and Content Production, National Audiovisual Council (*Conseil Supérieur de l'Audiovisuel*, CSA).

⁵² www.csa.be/document/bilan-rtbf-2018/.

⁵³ www.csa.be/document/bilan-tv-privees-2018/.

⁵⁴ www.csa.be/document/bilan-2017-webtv/.

⁵⁵ www.csa.be/document/bilan-rtbf-sur-le-contrat-de-gestion-2012-2017/.

5.4 BG – Bulgaria – National legal summary⁵⁶

5.4.1 Definitions

This section aims at Identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.4.1.1 Audiovisual works

There is no such definition in the Bulgarian legislation.

5.4.1.2 Cinematographic works

Article1 p.1 of the Film Industry Act defines “film” as follows:

“Article1. For the purposes of this act: 1. ‘Film’ shall be defined as connected images fixed in any way on a material carrier, of any length, with or without a sound track, perceivable as a moving picture, in the shape of feature, animation, or documentary cinema works for distribution and showing.”

5.4.1.3 Domestic works

There are two definitions in this regard, the first one stemming from Article1 p.6 of the Radio and Television Act in relation to Bulgarian audio and audiovisual works and the other from Article1 p.2 of the Film Industry Act in relation to Bulgarian film.

Radio and Television Act:

“Article1 p.6. ‘Bulgarian audio and audiovisual works’ shall be works created or realized exclusively or in partnership by Bulgarian citizens, based on works by Bulgarian citizens. Any works created on the basis of bilateral contracts between Bulgarian and foreign producers shall also be considered to be Bulgarian works provided that the Bulgarian producers have made a preponderant financial

⁵⁶ The factsheet on Bulgaria incorporates the feedback received from the Council for Electronic Media (CEM) during the checking round with the national regulatory authorities.



contribution to the total production costs and the said production is controlled by one or more Bulgarian producers.”

Film Industry Act:

“Article1 p.2. For the purposes of this act: ‘Bulgarian film’ shall be defined as a film that meets at least one of the following conditions: a) collects at least 15 points under Annex 1; b) has an original version in Bulgarian and at least two of the authors are Bulgarian citizens, one of whom is the script writer or the director; c) the financial participation of the Bulgarian producer is no less than 20 per cent of the budget of the film in case of co-productions between two countries and no less than 10 per cent in case of co-productions between three and more countries, and the Bulgarian elements total at least 10 points under Annex 1.”

Annex 1:

Bulgarian Elements	Points
Rightsholders	-
Scriptwriter	3
Director	3
Composer	1
Cameraman	1
Total	8

For animation films

Scriptwriter	2
Director	2
Composer	1
Art Director	3
Subtotal	8

Actor's group

Leading role	3
Supporting role	2
Role	1
Subtotal	6

Technical and Camera Team

Sound and mixing	1
Editing	1
Set and costumes	1
Studio or place of filming	1
Place of post-production operations	1
Subtotal	5
Total	19

It should be emphasised that the definition of “Bulgarian audio and audiovisual works” was not adopted in the context of the regulation of the European works quotas, but in the context of specific financial investment obligations imposed on public broadcasters to fund Bulgarian works.

5.4.1.4 European works

There are two definitions in this regard, the first one stemming from Article 1 p.7 of the Radio and Television Act in relation to Bulgarian audio and audiovisual works and the other from Article 1 p.3 of the Film Industry Act in relation to Bulgarian film.

Radio and Television Act:

“Article 1 p.7. ‘European works’ shall be:

(a) works originating in member states of the European Union, mainly created with authors and workers residing in one or more of those States, provided that they comply with at least one of the following three conditions:

(aa) they are created by one or more producers established in one or more of those States, or

(bb) the creation of the works is supervised and actually controlled by one or more producers established in one or more of those States;

(cc) the contribution of co-producers of those States to the total co-production costs is preponderant and the said co-production is not controlled by one or more producers established outside those States;

(b) works originating in third European countries, which are States Party to the European Convention on Transfrontier Television, compiled in Strasbourg on 5 May 1989 (ratified by an Act [promulgated in the] State Gazette No. 117 of 1997) ([Convention promulgated in the] State Gazette No. 32 of 1999), mainly created by authors and workers residing in one or more of those States, provided that they comply with at least one of the following three conditions:

(aa) they are created by one or more producers established in one or more of those countries, or

(bb) creation of the works is supervised and actually controlled by one or more producers established in one or more of these countries;

(cc) the contribution of co-producers of those countries to the total co-production costs is preponderant and the said co-production is not controlled by one or more producers established outside those countries, provided that works originating in member states of the European Union are not the subject of discriminatory measures in the third countries concerned;

(c) works co-produced within the framework of agreements related to the audiovisual sector, concluded between the European Union and third countries and fulfilling the conditions defined in each of these agreements, provided that works originating in member states are not the subject of discriminatory measures in the third countries concerned.

Works that are not European works within the meaning given by (a), (b) or (c) but are produced within the framework of bilateral co-production treaties concluded between member states of the European Union and third countries shall be deemed to be European works, provided that the co-producers from the European Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the member states.”

Film Industry Act:

“Article1 p.3 For the purposes of this law: ‘European film’ shall be defined as a film that meets the following requirements: a) the European elements in the film total no less than 15 points under Annex 2; b) the film has been produced in its larger part by one or more producers from countries which are parties under the European Convention on Cinematographic co-production.”

Annex 2:

European Elements	Points
Scriptwriter	3
Director	3
Composer	1
Cameraman	1
First role	3
Second role	2
Third role	1
Sound and mixing	1
Editing	1
Set and costumes	1
Studio or place of filming	1
Place of post-production operations	1
Total	19

5.4.1.5 Categories included in the calculation of the share of European works

Article 19a.1 of the Radio and Television Act Executive Order imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“At least 50 per cent of the total annual transmission time of the television programme services, excluding the time appointed for news and sports programmes and television games, advertising, teletext and teleshopping, must be reserved for European works, where practicable.”

There are no additional orders, decisions or explicit guidelines as to which categories of works should be subject to assessment.

For non-linear services, no guidelines, bylaws or recommendations have been issued by the media regulator for the categories of works which are subject to assessment.

Table 11. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	No, but there is a definition of “film”.
Domestic works	Yes
European works	Yes

Source: Bulgarian response to European Audiovisual Observatory standardised survey

5.4.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Council for Electronic Media – CEM)⁵⁷ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the CEM in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the CEM, the specific difficulties encountered in implementing Article 1, paragraph 1 letter (n) and the way in which the CEM cooperates on this issue with the national film fund (in this case, the National Film Centre – NFC).⁵⁸

⁵⁷ <https://cem.bg>.

⁵⁸ www.nfc.bg.

5.4.2.1 Eligible nationality of European works

The practice of the CEM regarding the requirement to provide information to the European Commission on European works is based on the collection of data by audiovisual media service providers. The providers have annual reporting obligations, as envisaged in Article 19a of the Radio and Television Act, and at the beginning of each year, the CEM publishes a communication pursuant to this article on its website. The providers submit certain data in two different forms, namely, for linear and non-linear services, which are published on the CEM website. The data is collected separately for each service.

The CEM annually appoints experts to answer any questions submitted by the providers regarding the completion of the forms. It prepares annual reports, including the information on European works in linear and non-linear audiovisual media services. The reports include information on the financial contribution of these services to the production and the acquisition of rights in respect of European works, the share of European works in the catalogue of audiovisual media services and the actual consumption of European works offered through these services.

The verification of this information, with the assistance of independent external experts, has been carried out over a period of time. The CEM has emphasised repeatedly that there are no legal or practical mechanisms or tools to double check and verify the information contained in the data received from media service providers. The CEM considers that there are no grounds for mistrust, as the statistical data the media service providers generate and deliver to the authority annually are trustworthy.

The CEM is considering developing an automated monitoring system, not only for the purpose of verifying the quotas for European works, but also for their supervision mission in general. Furthermore, the CEM would welcome more guidance on the implementation of the new AVMS Directive, including methodological assistance from authorities at supranational level. While legislation adequately reflects changes in EU law, the CEM's capacity to implement the law needs to be steadily increased.

From a technological point of view, the introduction of an automated monitoring system is a task that can no longer be postponed; but underfunding overall in the public administration has not allowed for the funding of this project. Specifically, in the case of *ex-post* verification by the CEM, it is important to note that most of the verification methods are hindered by a lack of financial resources (outsourcing, additional expert monitoring, development of automated systems, etc.). Difficulties also arise from the fact that some providers still do not provide data, despite the provisions of the law. According to a report by the CEM for 2018, data was provided by 43 broadcasters for 72 nationally televised broadcasters, while 17 broadcasters did not provide the required data. Only 10 out of the 24 non-linear service providers provided data for 2018.

5.4.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices of the CEM in this regard.

5.4.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any legal provisions or relevant practices of the CEM in this regard.

In relation to film funding, the missions and functioning of the NFC are detailed in Article 28 of the Film Industry Act.

Bulgaria is party to the European Convention on Cinematographic Co-productions, and has bilateral agreements with France, Israel, Italy, Turkey, Russia and Canada. Some of these countries are also parties to the European Convention on Cinematographic Co-productions – in that case the terms of the bilateral agreements apply. The co-productions involving natural and legal persons from Israel and Canada are governed solely by bilateral agreements. A co-operation agreement has also been signed with the Romanian Film Centre; the parties are obliged to promote co-productions, organise festivals, exchange information etc.

5.4.2.4 Other enforcement issues

N/A.

5.4.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the CEM, independently of the NFC.

5.4.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There is no legal framework at national level for providers to use labelling in metadata of audiovisual content. Neither are there guidelines on how the labelling is to be implemented.

A closer look at media services in terms of metadata shows that this practice is in its infancy. In most cases, the country of origin has been indicated. In some cases, the language has also been indicated. Only in a few cases do the providers use the tag “European work” with a separate, structured section for European films.⁵⁹

5.4.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.4.5 Applicable regulatory framework

Primary legislation:

- Film Industry Act⁶⁰ (*Закон за филмовата индустрия*).⁶¹
- Radio and Television Act⁶² (*Закон за радиото и телевизията, Допълнителна разпоредба*).⁶³

5.4.6 Studies, reports and researches

N/A.

5.4.7 Data compilation

This factsheet was produced based on data compiled by Nelly Ognyanova, Professor in Media Law at Sofia University.

⁵⁹ Sources:

BTC Videoteka: www.vivacom.bg/bg/tv/interesno/videoteka

VOIO – European films <https://voyo.bg/films/#/Evropeiski/DESC/1/box>.

⁶⁰ www.nfc.bg/en/legal-acts/.

⁶¹ www.lex.bg/laws/ldoc/2135474936.

⁶² www.mtitc.government.bg/en/category/168/radio-and-television-act.

⁶³ <https://lex.bg/laws/ldoc/2134447616>.

5.5 CY – Cyprus – National legal summary⁶⁴

5.5.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.5.1.1 Audiovisual works

There is no such definition in the Cypriot legislation.

5.5.1.2 Cinematographic works

There is no such definition in the Cypriot legislation.

However, the Funding Programmes Regulation for the Support of Cinematographic Films 2017 of the Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth provides for the definition of “film” (Definitions, page 61, paragraph 2 of the Regulations):

“Film’ means an audiovisual film, for the production of which the process of chemical or electronic recording of images has been used for the purpose of presenting the film to the public.”

5.5.1.3 Domestic works

There is no such definition in the Cypriot legislation.

5.5.1.4 European works

A definition of European works is provided for in Article 28 of the Radio and Television Broadcasters Law of 1998 to 2019, as follows:

“(1) For the purposes of this PART, the term “European works” shall mean:

⁶⁴ The factsheet on Cyprus incorporates the feedback received from Marios Kontakis (Cyprus Radiotelevision Authority) during the checking round with the national regulatory authorities.

(a) works originating in member states;

(b) works originating in European third countries which are parties to the European Convention on Transfrontier Television of the Council of Europe and fulfil the conditions of subsection (2) of this section.

(c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Community and third countries which fulfil the conditions defined in each of those agreements: provided that the application of the provisions of paragraphs (b) and (c) shall be conditional on works originating in member states which are not subject to discriminatory measures in the third countries concerned.

(2) The works referred to in paragraphs (a) and (b) are works mainly made with creators and workers residing in one or more of the states referred to in paragraphs (a) and (b) of subsection (1), provided that they comply with one of the following three conditions:

(i) they are made by one or more producers established in one or more of those states; or

(ii) production of the works is supervised and actually controlled by one or more producers established in one or more of those states;

(iii) the contribution of co-producers of those states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those states.

(3) Works that are not European works within the meaning of subsection (1) but are produced within the framework of bilateral co-production treaties concluded between member states and third countries shall be deemed to be European works, provided that the co-producers from the European Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the member states.”

5.5.1.5 Categories included in the calculation of the share of European works

Article 27(1) of the Radio and Television Broadcasters Law imposes the obligation on broadcasters to reserve a majority proportion of their transmission time (excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping) for European works.

There are no additional orders, decisions or explicit guidelines as to which categories of works will be subject to assessment.

Article 31 A(2) of the Radio and Television Broadcasters Law provides for the obligation for non-linear services to promote European works. In order to comply with this obligation, VOD services must reserve at least 20 per cent of their list of works accessible to consumers for European works. This percentage may be reviewed

periodically by the regulatory authority (Cyprus Radio-Television Authority – CRTA) after consultations with the VOD providers.

Table 12. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	No, but there is a definition of “film”.
Domestic works	No.
European works	Yes

Source: Cypriot response to European Audiovisual Observatory standardised survey

5.5.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Cyprus Radio-Television Authority – CRTA,⁶⁵ but partly also the Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth)⁶⁶ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the CRTA in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the CRTA, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way in which the CRTA cooperates on this issue with the relevant body (in this case the Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth).

⁶⁵ www.crtat.org.cy/default.asp?id=24.

⁶⁶ www.moec.gov.cy/en/cultural_services.html.

5.5.2.1 Eligible nationality of European works

The assessment of the origin of works as European works is, in practice, carried out by two bodies: the Cyprus Radio-Television Authority (CRTA) and the Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth.

More specifically, the CRTA, being a body in charge of the implementation of the AVMS Directive, assesses works that have been broadcast on TV (cinematographic works, TV fictions, documentaries, reality shows, etc.), solely for the purpose of preparing biennial reports which are submitted to the European Commission. Reports are also submitted to the House of Representatives and the Council of Ministers of the Republic of Cyprus, in accordance with the Radio and Television Broadcasters Law of 1998 to 2019.

The Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth, on the other hand, may attribute a “Country of Origin Certificate”, as well as a “Certificate of Co-production Status” to cinematographic works (certificates are often submitted to Eurimages). The works assessed are mostly co-productions with European or third countries, regardless of whether they have received support from the Ministry, in the context of the European Convention on Cinematographic Co-productions and the European Commission’s Communication on State Aid to Film and other Audiovisual Works.

The CRTA reports no specific difficulties in gathering data for reporting. The procedure includes CRTA requesting television broadcasters to submit a percentage breakdown (that is, European works, recent works, independent productions, etc.) on audiovisual works broadcast. In case of unclear or missing data, the CRTA communicates with broadcasters requesting supplementary data. Furthermore, the CRTA verifies the percentages through a complete list of all broadcast works provided by AGB Nielsen Media Research (Cyprus).

In cases where the data on the origin/nationality of an audiovisual work is unclear or inconclusive, the CRTA conducts an online search and, failing that, resorts to its IRIS system, which records all television programming aired. In this case, the opening and/or closing credits of the title in question are checked in order to gather more information. The CRTA reports that they have had to resort to online and monitoring system searches only once in the past.

On only a very few occasions has the CRTA had difficulty in assessing not the nationality, but rather whether TV fiction series were created by independent producers. In these cases, the process described above helped resolve the ambiguity.

5.5.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.5.2.3 Nationality and co-productions

The CRTA uses the same assessment procedure as provided for under 5.5.2.1.

When it comes to funding for cinematographic works (which does not currently cover TV works), the assessment is carried out by the Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth.

In cases of a) Cyprus-initiated film productions (that is, by Cyprus-registered production companies), and b) European film productions (that is, EU-registered production companies), the eligibility for financial support of productions depends on those productions satisfying specific selection criteria such as the General Pre-Selection Criteria for films (Cultural Test), as well as spending requirements, all in accordance with the Funding Programmes Regulation for the Support of Cinematographic Films 2017, which is currently the sole legal framework for the state support of cinematographic works in Cyprus.

Additionally, in this context, it should be noted that there is a bilateral agreement between Cyprus and Israel dating from 5 May 2018, which has been signed and is expected to be ratified by the end of 2019.

5.5.2.4 Other enforcement issues

N/A.

5.5.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of European works for the purpose of compliance with the AVMS Directive is carried out by the CRTA, independently of the Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth.

5.5.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

It should only be noted that certain data (non-digital, provided by film distributors) on films broadcast in film theatres is kept by the Film Classification Committee (under the Press and Information Office – Ministry of Interior).

5.5.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.5.5 Applicable regulatory framework

Primary legislation:

- Radio and Television Broadcasters Law (*Ο περί Ραδιοφωνικών και Τηλεοπτικών Οργανισμών Νόμος*).⁶⁷

Secondary legislation:

- Funding Programmes Regulation for the Support of Cinematographic Films 2017 of the Cultural Services/Cinema Section of the Ministry of Education, Culture, Sports and Youth⁶⁸

5.5.6 Studies, reports and researches

N/A.

5.5.7 Data compilation

This factsheet was produced based on data compiled by Diomedes Koufteros, Independent Expert, on behalf of the Cultural Services of the Ministry of Education, Culture, Sports and Youth.

⁶⁷ [www.crt.a.org.cy/images/users/1/Enopiemenos%20nomos%20mexri%2092\(I\).2019%20\(10.7.2019\).pdf](http://www.crt.a.org.cy/images/users/1/Enopiemenos%20nomos%20mexri%2092(I).2019%20(10.7.2019).pdf) (in Greek); www.crt.a.org.cy/default.asp?id=344&ItemID=852&rcid=83&pcid=82&cid=83 (in English).

⁶⁸ <http://filmingincyprus.gov.cy/wp-content/uploads/2016/04/%CE%9D%CE%95%CE%9F%CE%A3-%CE%9A%CE%91%CE%9D%CE%9F%CE%9D%CE%99%CE%A3%CE%9C%CE%9F%CE%A3-2017-2020-BOOKLET-GR.pdf> (in Greek); <http://filmingincyprus.gov.cy/wp-content/uploads/2016/04/NEW-PROGRAMMES-REGULATION-2017-2020-BOOKLET-ENG.pdf> (in English).



5.6 CZ – Czech Republic – National legal summary⁶⁹

5.6.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.6.1.1 Audiovisual works

Article 62 (1) of the Copyright Act defines an audiovisual work as follows:

“An audiovisual work shall mean a work created by the arrangement of works used audiovisually, adapted or unadapted, consisting of a number of recorded, interlinked images giving the impression of motion, either accompanied by sound or mute, susceptible to being made visible and, if accompanied by sound, also susceptible to being made audible.”

5.6.1.2 Cinematographic works

Section 2, Article (1) b) of the Act on Audiovisual Works and Support for Cinematography defines a cinematographic work as follows:

“A cinematographic work shall mean an audiovisual work intended for public performances; audiovisual works having the nature of advertising shall not be considered cinematographic works.”

5.6.1.3 Domestic works

Section 2, Article (1) e) of the Act on Audiovisual Works and Support for Cinematography defines a Czech audiovisual work as follows:

“A Czech audiovisual work shall mean an audiovisual work:

⁶⁹ The factsheet on the Czech Republic incorporates the feedback received from the Office of the Council for Radio and TV Broadcasting of the Czech Republic (RRTV).

1. *produced with the contribution of a producer or co-producer who has his or her principal place of business, permanent residence or registered office in the Czech Republic, such a contribution covering at least 10% of the total production costs, or*
2. *produced with the contribution of a co-producer who has his or her principal place of business, permanent residence or registered office in the Czech Republic, combined with the contribution of a co-producer not having his principal place of business, permanent residence or registered office in the Czech Republic, provided that such an audiovisual work meets the conditions of the European Convention on Cinematographic Co-production (hereinafter referred to as the “Convention”) or of any other international agreement binding on the Czech Republic (hereinafter referred to as the “international cinematographic co-production agreement”), irrespective of how such a co-producer contributed to the financing of the production costs.”*

5.6.1.4 European works

Section 46 of the Radio and Television Broadcasting Act defines European works as follows:

“(1) Treated as European works shall be:

a) works originating from the member states of the European Union,

b) works originating from states which are not member states of the European Union but are parties to the European Convention on Transfrontier Television, and that meet the conditions specified in paragraph 3 below, or

c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Communities and third countries and fulfilling the conditions defined in each of those agreements.

(2) The provisions of points b) and c) of paragraph 1 above shall only be applied if works originating in the member states of the European Union are not the subject of discriminatory measures in the third countries concerned.

(3) The works referred to in points a) and b) of paragraph 1 above are works mainly made with authors and workers residing in one or more of the States referred to in those provisions, provided that:

a) such works are made by one or more producers established in one or more of those States,

b) the production of such works is supervised and actually controlled by one or more producers established in one or more of those States, or

c) the contribution of the co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

(4) Works that are not European works within the meaning of paragraph (1) above but that are produced within the framework of bilateral co-production agreements concluded between Member States and third countries shall be deemed to be European works, provided that the co-producers from the Member States of the European Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States of the European Union.”

5.6.1.5 Categories included in the calculation of the share of European works

Section 42 of the Radio and Television Broadcasting Act imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“The television broadcaster shall, where practicable, allocate more than half of the total broadcasting time of each programme for European production. The total broadcasting time on the basis of which the proportion of European works is determined shall not be deemed to include the time of broadcasting news and reporting programme units, sports events, games, teletext, advertising and teleshopping.”

Table 13. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	Yes
European works	Yes

Source: Czech response to European Audiovisual Observatory standardised survey

5.6.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this

case, the Council for Radio and TV Broadcasting – RRTV)⁷⁰ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the RRTV in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the RRTV, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the RRTV cooperates on this issue with the national film fund (in this case, the Czech Film Fund).⁷¹

5.6.2.1 Eligible nationality of European works

The RRTV requests data from audiovisual media service providers on an annual basis. Given the limited resources of the RRTV, these data are only checked randomly.

Data verification is reported to be very difficult. In cases where the available information (usually from open sources) raises doubts as to whether a work declared as European (national) actually meets the definition of a European work, the RRTV will enter into communication with the audiovisual media service provider for verification. The provider then has to prove that the work has been evaluated and classified correctly. Should it be found that the data was erroneous or manipulated, the RRTV may start a procedure for breach of relevant legislation and respectively impose sanctions.

However, it should be pointed out that the possibilities for the RRTV to verify data or to demonstrate errors are considerably limited. The RRTV's possibilities/tools to determine whether these conditions are met are scarce. The RRTV has limited personnel and financial capacities, which do not allow it to deal with the issue in a detailed and consistent manner: it has a relatively small office, and there are a wide range of statutory duties that this office has to manage, with hundreds of broadcasters licensed in the Czech Republic. Supervision in a given area is also limited by the unavailability of relevant, demonstrable data that the RRTV could undoubtedly rely on in any administrative proceedings.

5.6.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

⁷⁰ www.rrtv.cz/en/.

⁷¹ <https://fondkinematografie.cz/english/>.

5.6.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices of the RRTV in this regard.

Regarding film funding, an eligible co-production is one in which a Czech co-producer (with residence in the Czech Republic) has contributed at least 10% of the financial costs, or a Czech co-producer participates in the film and the co-production meets the conditions set by the Council of Europe Convention on Film Co-productions.

5.6.2.4 Other enforcement issues

N/A.

5.6.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the RRTV, independently of the Czech Film Fund.

5.6.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.6.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.6.5 Applicable regulatory framework

Primary legislation:



- Act on Copyright⁷² (*Zákon č. 121/2000 Sb., o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů – Autorský zákon*).⁷³
- Act on Audiovisual Works and Support for Cinematography⁷⁴ (*Zákon č. 496/2012 Sb., o audiovizuálních dílech a podpoře kinematografie a o změně některých zákonů – Zákon o audiovizí*).⁷⁵
- Radio and Television Broadcasting Act⁷⁶ (*Zákon o provozování rozhlasového a televizního vysílání a o změně dalších zákonů*).⁷⁷
- On-demand Audiovisual Media Services Act⁷⁸ (*Zákon o audiovizuálních mediálních službách na vyžádání a o změně některých zákonů*).⁷⁹

5.6.6 Studies, reports and researches

N/A.

5.6.7 Data compilation

This factsheet was produced based on data compiled by Veronika Lengálová, from the Czech Film Fund, in collaboration with the Ministry of Culture of the Czech Republic and the Council for Radio and Television Broadcasting.

⁷² www.mkcr.cz/doc/cms_library/12-az_2006_v_aj-2005.pdf.

⁷³ www.mkcr.cz/doc/cms_library/07-1212000-2001.pdf.

⁷⁴ https://fondkinematografie.cz/assets/media/files/legislativa/Audiovisual_Act_No4962012_amendment.pdf.

⁷⁵ <https://fondkinematografie.cz/assets/media/files/Honza/Zákon%20o%20audiovizí%20-%20platné%20znění%20AD.pdf>.

⁷⁶ www.rrtv.cz/en/static/documents/act-231-2001/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf.

⁷⁷ www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/231-2001.pdf.

⁷⁸ www.rrtv.cz/en/static/documents/act-231-2001/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf.

⁷⁹ www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/132-2010.pdf.

5.7 DE – Germany – National legal summary⁸⁰

5.7.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.7.1.1 Audiovisual works

There is no such definition in the German legislation.

5.7.1.2 Cinematographic works

The following definitions are provided in the German Film Law (Filmförderungsgesetz – FFG):

Article 40 Abs. 1:

“Feature length: 79 minutes (59 for children’s films).”

Article 40 Abs. 7:

“Regular cinematic exploitation means that a film is shown in a theatre under normal market conditions for at least 7 days in a row.”

Article 150 (concerning levy-relevant content):

“Cinematic film is a film that has been released in a cinema for consideration in Germany or its home country.”

5.7.1.3 Domestic works

There is no such definition in the German legislation.

⁸⁰ The factsheet on Germany incorporates the feedback received from Karsten Meyer (Joint Management Office of the Media Authorities) during the checking round with the national regulatory authorities.

However, in order for international co-productions to obtain funding from the Federal Film Board (FFA), a film needs a certificate (“BAFA-Bescheinigung”) from the Federal Office for Economic Affairs and Export Control (BAFA),⁸¹ ensuring that the film complies with international co-production agreements and the general funding provisions, in line with the criteria established in the FFG. For the purpose of exporting films abroad, a German film would need a certificate of origin (“Ursprungszertifikat”), which is also granted by BAFA, based on the same criteria as the certificate (“Bescheinigung”) (further elaborated under 5.7.2.3.).

5.7.1.4 European works

There is no such definition in the German legislation.

5.7.1.5 Categories included in the calculation of the share of European works

Article 6(2) of the Interstate Treaty on Broadcasting and Telemedia states that:

“In order to present the plurality of the German-language regions and of Europe as a whole and to promote European film and television productions, television broadcasters should reserve a majority proportion of the time devoted to the transmission of feature films, films made for television, series, documentaries and comparable productions overall for European works, in accordance with European law.”

There are no obligations for non-linear services.

Table 14. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	No, but there is a definition for “cinematic film”, “feature length” and “regular cinematic exploitation”
Domestic works	No, but certificates are issued in the case of co-productions
European works	No

Source: German response to European Audiovisual Observatory standardised survey

⁸¹ www.bafa.de/EN/Foreign_Trade/Export_Control/export_control_node.html.

5.7.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the 14 German Media Authorities)⁸² assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the German Media Authorities in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the German Media Authorities, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the German Media Authorities cooperate on this issue with the national film fund (in this case, the German Federal Film Fund,⁸³ administered by the German Federal Film Board).⁸⁴

5.7.2.1 Eligible nationality of European works

It should be noted that the German Media Authorities do not conduct *ex officio* monitoring regarding compliance with the quotas for European works; instead, they request commercial broadcasters to provide the figures on a regular basis. Usually, this is done via the German Media Association VAUNET.⁸⁵ The German Media Authorities then assess those figures from the perspective of correctness and plausibility and on the basis of the information available from programme supervision. In recent years, this assessment has not revealed any non-compliance of commercial broadcasters with the requirements.

5.7.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

⁸² www.die-medienanstalten.de/en/about-the-media-authorities/.

⁸³ <https://dfff-ffa.de/en.html>.

⁸⁴ www.ffa.de/wir-ueber-uns.html.

⁸⁵ www.vau.net/taxonomy/term/3480.

5.7.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices of the German Media Authorities in this regard.

With regard to film funding, work that receives the BAFA certificate (referred to under 1.1.1.3.) is considered “German” and therefore eligible for national funding. Article 41 of the FFG provides a list of criteria such as: the requirements for a registered office in Germany; the final version of work needing to be either in the original German version or in a version which has been dubbed into German; the requirement for a work to be premiered either in Germany in the German language or as a German contribution at a festival (with the shooting or post-production having taken place in Germany, an EU-member state, an EEA country or Switzerland); the requirement for the director of the work to be a German citizen or a citizen of another EU member state or an EEA-party or a citizen of Switzerland, etc.⁸⁶

Article 42 of the German Film Law relates to situations whereby co-productions are split between a producer with a registered office in Germany and a producer from a different country:

- under the European co-production agreement;
- under bi- or multilateral agreements;
- without any agreement (if the producer is registered in Germany and at least 30% of the technical and cultural contributions are German, from an EU member state, EEA-party or Swiss).

5.7.2.4 Other enforcement issues

N/A.

5.7.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the German Media Authorities, independently of the German Federal Film Fund.

⁸⁶ In this context, relevant web sites include:

- www.bafa.de/DE/Wirtschafts_Mittelstandsfoerderung/Film_Technik/Filmfoerderung/filmfoerderung_node.html
- List of co-productions agreements: www.bundesregierung.de/breg-de/aktuelles/filmabkommen-415264.

5.7.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.7.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.7.5 Applicable regulatory framework

Primary legislation:

- German Film Law 2017 (*Filmförderungsgesetz 2017*).⁸⁷
- Interstate Treaty on Broadcasting and Telemedia⁸⁸ (*Staatsvertrag für Rundfunk und Telemedien*).⁸⁹

5.7.6 Studies, reports and researches

N/A.

⁸⁷ www.ffa.de/ffg-2017.htm.

⁸⁸ www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/RStV_22_english_version_clean.pdf.

⁸⁹ www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Rundfunkstaatsvertrag_RStV.pdf



5.7.7 Data compilation

This factsheet was produced based on data compiled by Bérénice Honold (Advisor to CEO/International affairs) & Julia Piaseczny (Advisor European Affairs) FFA and Peter Matzneller, Consultant Legal and European Affairs, Joint Management Office of the Media Authorities.



5.8 DK – Denmark – National legal summary⁹⁰

5.8.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.8.1.1 Audiovisual works

The term "audiovisual works" is included in the definitions stemming from the Copyright Act (please see under 1.1.1.2.).

5.8.1.2 Cinematographic works

The concept of "work" is determined in Article 1 of the Copyright Act (*Ophavsretsloven*). In order to obtain protection as a work, the work must have "originality" (*Værkshøjde*) and there must be a creative contribution behind the work, meaning the originality, under the protection of this legislation.

Furthermore, the concept of a work also includes film works. Film works are equivalent to cinematographic works and relate to "*works being manifested by a procedure analogous to cinematography, as can be found in the Berne Convention.*"⁹¹ This concept includes all kinds of film production, as well as television programmes, videograms, etc.

Pursuant to Article 1, paragraph 1 of the Copyright Act:

"The person creating a literary or artistic work shall have copyright therein, be it expressed in writing or in speech as a fictional or a descriptive representation, or whether it be a musical or dramatic work, cinematographic or photographic work, or a work of fine art, architecture, applied art, or expressed in some other manner."

⁹⁰ The factsheet on Denmark incorporates the feedback received from Marie Frank-Nielsen and Soeren F. Jensen, The Danish Agency for Culture and Palaces and Secretariat for the Radio- and Television Board during the checking round with the national regulatory authorities.

⁹¹ www.law.cornell.edu/treaties/berne/2.html.



It should be noted that the Copyright Act does not explicitly include audiovisual works, but “work” corresponds to a film work. The decisive factor for determining whether a work is considered as a film work is that the work is composed of moving pictures.

In addition, the Film Act includes a definition of the concept of “film”. The Film Act states that moving pictures include any kind of filming and presentation, including photographic films and videograms, except for television programmes and television broadcasts. According to the Film Act, the concept of “film” can, relative to the preparatory work, also be extended to include multiple platform productions according to a definition as per the regulations of the statutes defined by the Minister of Culture.

Pursuant to Article 1, paragraph 2 of the Film Act:

“1. (2) “Film” in this Act shall mean motion pictures of any kind, irrespective of their mode of creation or showing, including photographic films and videograms, with the exception of television broadcasts.”

Furthermore, the Film Act recognises the definition on the understanding of a cinematographic work, in accordance with the European Convention on Cinematographic Co-production:⁹²

“For the purpose of this Convention:

The Term “cinematographic work” shall mean a work of any length or medium, in particular cinematographic works of fiction, cartoons and documentaries, which complies with the provisions governing the industry in force in each of the Parties concerned and is intended to be shown in cinemas.”

5.8.1.3 Domestic works

The term “national work” is defined in the Film Act and in the conditions for support of the Danish Film Institute which apply to all support schemes, in accordance with the Communication of the European Commission on State Aid for films and other audiovisual works (2013/C 332/01) which replaces and supplements the definitions of the Film Act. The funding/support conditions have been approved by the European Commission.

Pursuant to Article 17 of the Film Act:

“(1) “Danish Film” in this Act shall mean a film of which the producer is Danish. Furthermore, the original language of the film shall be Danish, or the film shall have special artistic or technical features which contribute to the promotion of film art and film culture in Denmark.

(2) A “Danish producer” is understood to mean:

⁹² www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007bd2d.



- 1) any person holding Danish citizenship or resident in Denmark,
- 2) any limited liability company or private company registered in Denmark,
- 3) any central or local government institution,
- 4) any other company with limited liability domiciled in Denmark, including foundations and societies, if the management and the majority of the members of the Board of Directors hold Danish citizenship or are resident in Denmark, or
- 5) any foreign limited liability company or private company which has registered a branch office in Denmark with the Danish Commerce and Companies Agency, or any other foreign company with limited liability in so far as the branch manager holds Danish citizenship or is resident in Denmark.

(3) Any film made in cooperation with one or more foreign producers and at least one Danish producer (a co-production) may be regarded as Danish, provided that the Danish and foreign financial contributions and influence on the production, as well as the artistic or technical contributions by each party, are in reasonable proportion to each other.”

(4) The requirements regarding residence, citizenship, registered office, etc., in Denmark according to subsection (2) shall lapse if required under international agreements, including the Treaty on the European Union, the agreement establishing the European Economic Area and the Agreement on a Joint Nordic Labor Market.”

The conditions of the aforementioned Danish Film Institute as regards support schemes relate to:

“Terms for support for feature films valid from 1 January 2019:

6.2 The DFI's requirements on applicants' and subsidy recipients' nationality affiliation

In order to achieve funding from the DFI, applicants must meet the following requirements:

- The applicant must be a producer or a production company who, at the time of application and according to existing law, is domiciled in Denmark, an EU or EEA member state or in Switzerland, and who has documented experience with film production and has film production as their main occupation.*
- The applicant must be an independent producer. An independent producer is understood to mean a production company or a producer who is not under the majority control of a TV station or a VOD service, either in terms of ownership or in business terms; cf. item 6.8.3, second section.*
- The applicant is legally represented by a producer who can document being qualified for or has documented experience with film production.*
- The production company/producer who submits the application must, at the time the DFI awards the subsidy, run a business through*



Denmark by establishing a fixed place of business or similar in Denmark in accordance with existing law.

In order to achieve screenplay subsidies as a screenwriter or director under the Commissioner Scheme, the following prerequisites must be met:

- Regardless of their nationality and ethnic origin, the applicant must be resident or live permanently in Denmark or in some other way have a fundamental and significant association with and/or importance to Danish cinematic art or film culture.

6.3 The DFI's requirements on the film production's artistic and cultural association with Denmark

6.3.1 In order to be awarded funding from the DFI, the film production must contain a special artistic and/or technical aspect that contributes to promoting cinematic art and film culture in Denmark.

In order to meet this requirement, the film production must be recorded in Danish or in a Danish version, and/or the film production's main creative forces and/or technical functions must, regardless of their nationality and ethnic origin, be resident or live permanently in Denmark or in some other way have a fundamental and significant association with and/or importance to Danish cinematic art or film culture.

6.4 The DFI's requirements on subsidies for international co-productions

6.4.1 International co-productions are to be understood as film productions that meet the criteria in the European Co-production Convention or in the international co-production agreements and conventions that have been made between Denmark and the country/countries with whom the Danish producer collaborates on the co-production.

6.4.2 It is a prerequisite for achieving subsidies for international co-productions that the application is submitted by the film production's majority producer who must meet the nationality affiliation requirements mentioned in item 6.2, and that the film production meets the artistic and cultural association requirements mentioned in item 6.3, however, it is not considered a requirement that the film production be recorded in Danish.

It is furthermore a requirement that the Danish co-producer, as a minimum, holds the distribution rights to the film production in Denmark, in accordance with the co-production agreement."

5.8.1.4 European works

The definition stems from the Executive Order on programme production based on registration and on-demand audiovisual programme services (Executive Order).

Annex 1 of the Executive Order defines European works as follows:



“1. In this Executive Order, European works shall mean:

- 1) works originating in EU Member States,*
- 2) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of point 3, and*
- 3) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements.*

2. The application of the provisions of point 1(2) and (3), shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned.

3. The works referred to in point 1(1) and (2), are works mainly made with authors and workers residing in one or more of the States referred to in point 1(1) and (2), provided that they comply with one of the following three conditions:

- 1) They are made by one or more producers established in one or more of those States.*
- 2) The production of the works is supervised and actually controlled by one or more producers established in one or more of those States.*
- 3) The contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.*

4. Furthermore, in this Executive Order, works that are not European works as defined in point 1, cf. points 2 and 3, but produced within the framework of bilateral co-production agreements concluded between Member States and third countries shall be deemed to be European works, provided that the co-producers from the Union supply a majority share of the total cost of production and production is not controlled by one or more producers established outside the territory of the Member States.”

5.8.1.5 Categories included in the calculation of the share of European works

Article 7 of the Executive Order imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“Broadcasters shall endeavour to ensure that more than half of their transmission time (excluding the time allotted to news, sports events, competitions and teletext services) is reserved for European works.”

The Danish Film Institute considers all categories of audiovisual production as works, as stipulated by the Film Act (as referred to under 1.1.1.2), irrespective of nationality or origin. This is on the condition that the works have an artistic and/or cultural meaning

from the perspective of applicable rules (Film Act, but also Film Agreements, Public Service Fund, Legal Deposit Act, approved conventions and EU legislation, etc.)

Reference is also made to the European Convention on Cinematographic Co-production (approved by Denmark), which also includes a definition of what is to be considered a European cinematographic work.

Table 15. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No but it corresponds to the definition of a “film work”
Cinematographic works	Yes
Domestic works	No, but there is a definition of “Danish film”, “producer”, and other criteria
European works	Yes

Source: Danish response to European Audiovisual Observatory standardised survey

5.8.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Danish Radio and Television Board)⁹³ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the Danish Radio and Television Board in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the Danish Radio and Television Board, the specific difficulties encountered in implementing Article 1, paragraph 1, letter

⁹³ <https://slks.dk/omraader/medier/>.



(n) and the way, if any, in which the Danish Radio and Television Board cooperates on this issue with the national film fund (in this case, the Danish Film Institute).⁹⁴

5.8.2.1 Eligible nationality of European works

The Danish Radio and Television Board has previously successfully conducted the task of reporting European Works to the Commission, and there have not been any issues with regard to the assessment of whether or not an audiovisual work can be considered as European. The Danish legislation in this area provides the Board with powers to ask service providers for further elaborations on their reported European Works, but this has not been deemed necessary.

5.8.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.8.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.8.2.4 Other enforcement issues

N/A.

5.8.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the Danish Radio and Television Board, independently of the Danish Film Institute.

5.8.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that*

⁹⁴ www.dfi.dk/en.



qualifies as a European work should be encouraged so that such metadata are available to media service providers.”

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.8.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.8.5 Applicable regulatory framework

Primary legislation:

- Consolidated Act on Copyright⁹⁵ (*Bekendtgørelse af lov om ophavsret n°1144 af 23/10/2014*).⁹⁶
- Film Act⁹⁷ (*Lov om film n°186 af 12/03/1997*).⁹⁸

Secondary legislation:

- Conditions of the Danish Film Institute to all support schemes in accordance with communication from the Commission on State Aid for films and other audiovisual works – 2013/C 332/01 (*Filminstituttets ”Vilkår for støtte til spillefilm” gældende pr. 1. januar 2019*).⁹⁹
- Executive Order on programme production based on registration and on-demand audiovisual programme services (*Bekendtgørelse om programvirksomhed på grundlag af registrering samt on-demand audiovisuel programvirksomhed*).¹⁰⁰

⁹⁵https://english.kum.dk/fileadmin/KUM/Documents/English%20website/Copyright/Act_on_Copyright_2014_Lo_vbekendtgørelse_nr_1144_ophavsretsloven_2014_engelsk.pdf.

⁹⁶ www.retsinformation.dk/forms/r0710.aspx?id=164796.

⁹⁷ <https://english.kum.dk/services/legislation/film/the-film-act>.

⁹⁸ www.retsinformation.dk/forms/r0710.aspx?id=83975.

⁹⁹ www.dfi.dk/files/docs/2019-01/Vilk%C3%A5r_SPILLEFILM_JAN_2019.pdf.

¹⁰⁰ www.eni.uni.lu/content/download/31259/371386/file/Denmark_translation.pdf.



5.8.6 Studies, reports and researches

N/A.

5.8.7 Data compilation

This factsheet was produced based on data compiled by Tina Berg, Special legal Adviser, and Palle Dam Leegaard, Chief Advisor, Danish Film Institute.

5.9 EE – Estonia – National legal summary¹⁰¹

5.9.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.9.1.1 Audiovisual works

Article 33 (1) of the Copyright Act defines audiovisual works as follows:

“(1) Audiovisual works are all works which consist of a series of related images, whether or not accompanied by sound, and which are intended to be demonstrated using corresponding technical means (cinematographic films, television films, video films, etc.).”

5.9.1.2 Cinematographic works

There is no such definition in the Estonian legislation.

Estonia uses the definitions of “cinematographic work” and “qualifying cinematographic work” from the European Convention on Cinematographic Co-Production.¹⁰²

5.9.1.3 Domestic works

There is no such definition in the Estonian legislation.

5.9.1.4 European works

Article 11 of the Media Services Act defines European works as follows:

“(1) An audiovisual work of European origin (hereinafter European work) is:

¹⁰¹ The factsheet on Estonia incorporates the feedback received from Tais Vagrõõm, Chief Specialist of the Communications and Media Services Division, Consumer Protection and Technical Regulatory Authority during the checking round with the national regulatory authorities.

¹⁰² www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168069309e.

- 1) *a work originating in a Member State of the European Union;*
 - 2) *a work originating in a European third State Party to the European Convention on Transfrontier Television;*
 - 3) *a work which is co-produced within the framework of an agreement of cooperation concluded between a Member State of the European Union and a third state and fulfils the conditions specified in the agreement.*
- (2) *A work originating in a Member State of the European Union or a third State party to the European Convention on Transfrontier Television that has been mainly made in cooperation with the authors and workers residing in one or more of the States referred to is a European work, provided that the work complies with one of the following conditions:*
- 1) *the work has been made by at least one producer established in at least one of the States referred to;*
 - 2) *the production of the work is organised and controlled by one or more producers established in one or more of the States referred to;*
 - 3) *the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by any of the producers established outside those States.*
- (3) *The application of clauses 1) 2) and 3) of this section shall be conditional on works originating in Member States of the European Union not being subject to discriminatory measures in the third country concerned.*
- (4) *Works that are not European works within the meaning of subsection (1) of this section but are produced within the framework of a bilateral co-production agreement concluded between a Member State of the European Union and a third State shall be deemed to be European works provided that the co-producers from a Member State of the European Union supply a majority share of the total cost of the production and the production is not controlled by any of the producers established outside the territory of the Member States of the European Union."*

5.9.1.5 Categories included in the calculation of the share of European works

Article 8.3 of the Media Services Act imposes the following obligation on broadcasters and therefore excludes from the scope of the term "work" the following genres:

"A television service provider shall reserve at least 51 per cent of the annual capacity of the television programme service for the transmission of audiovisual works of European origin, deducting the transmission time allocated for the news, sports events and games programmes, as well as for advertising, teleshopping and teletext services."

There are no specific quotas for national works or works in a national language, but broadcasters have legal obligations in terms of own production (10% of the monthly transmission time, half of which must be transmitted during prime time, which is from 7 p.m. to 11 p.m.). Article 10 of the Media Services Act defines "own production" as *"a programme or programme service that is produced by an audiovisual media service provider"*

itself or in co-operation with a producer from a Member State of the European Union or is ordered from an independent European producer that concerns the present of Estonia or the cultural heritage thereof.”

There are no additional orders, decisions or explicit guidelines as to which categories of works are to be subject to assessment.

Table 16. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Application of definitions from the European Convention on Cinematographic Co-Production and included in the definition of audiovisual works.
Domestic works	No, but there is a definition of “own production”
European works	Yes

Source: Estonian response to European Audiovisual Observatory standardised survey

5.9.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Consumer Protection and Technical Regulatory Authority – ECTRA)¹⁰³ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the ECTRA, in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the ECTRA, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if

¹⁰³ www.ttja.ee/et.

any, in which the ECTRA cooperates on this issue with the national film fund (in this case, the Estonian Film Institute – EFI).¹⁰⁴

5.9.2.1 Eligible nationality of European works

The ECTRA assesses the work on a case-by-case basis, guided by section 11 of the Media Services Act, which contains the same provisions as the AVMSD, with no additional criteria. The categories that are assessed include works such as feature films, documentaries, TV-drama development, short and long animations, reality shows, series, etc.

The criteria used to assess Estonian works include works which are considered as such by the Estonian Film Institute, works which are self-evidently Estonian or works which meet the criteria of “in-house production.”

There are no specific difficulties reported in applying the criteria, but it is reported that the Estonian market is simply too small to develop comprehensive case law on this.

5.9.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions in this regard. It is reported that practices include the application of relevant provisions on a case-by-case basis.

5.9.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices in this regard. In terms of legal provisions, the following ones are worth mentioning.

The Ministry of Culture’s Conditions and procedures for supporting the development, production and distribution of films provide guidance for support to: “enable the creation of high-quality works of Estonian cinematography that speak to the audience and to facilitate the appreciation, development and distribution of Estonian cinematography.”

All film funding schemes are within the competencies of the EFI. The result of granting support should be that Estonian cinematography is viable, original, and internationally successful, that it takes the audience into account, and that it represents the past and present in a diverse and engaging manner. Estonian film culture, including film studies, film education, film heritage and film history, should be fostered, easily accessible to the public, evolving and contemporary.

¹⁰⁴ www.filmi.ee/en/estonian-film-institute-2/documents/regulations-for-aid-support.

It should be noted that Estonia has two regional funds: the Tartu Film Fund¹⁰⁵ and the Viru Film Fund,¹⁰⁶ while on 17 September 2019, the Estonian islands introduced a separate film fund.¹⁰⁷

Finally, Estonia has also signed a number of co-production treaties with countries including China, South Korea, Israel, Canada, the Baltic States, France and Russia.

5.9.2.4 Other enforcement issues

N/A.

5.9.2.5 Cooperation between national regulatory authorities and film agencies

It is reported that all stakeholders in this area, including the EFI, the ECTRA and the Ministry of Culture exchange relevant information regularly.

5.9.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.9.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

¹⁰⁵ <http://filmestonia.eu/index.php/tartu-film-fund/>.

¹⁰⁶ <http://filmestonia.eu/index.php/viru-film-fund/>.

¹⁰⁷ <https://minusaaremaa.ee/en/film-fund-of-estonian-islands/>.

5.9.5 Applicable regulatory framework

Primary legislation:

- Media Services Act¹⁰⁸ (*Meediateenuste seadus*).¹⁰⁹
- Copyright Act¹¹⁰ (*Autoriõiguse seadus*).¹¹¹

Secondary legislation:

- Conditions and procedures for supporting the development, production and distribution of films In Estonian¹¹² (*Filmikunsti arendamise, tootmise ja levitamise toetamise tingimused ja kord, Vastu võetud 31.12.2018, jõustunud 07.01.2019*).¹¹³

5.9.6 Studies, reports and researches

N/A.

5.9.7 Data compilation

This factsheet was produced based on data compiled by Edith Sepp, CEO, & Piret Tibbo-Hudgins, Estonian Film Institute, Mati Kaalep Estonian Ministry of Culture and Peeter Sookruus, Consumer Protection and Technical Regulatory Authority.

¹⁰⁸ www.riigiteataja.ee/en/eli/511012019003/consolide

¹⁰⁹ www.riigiteataja.ee/akt/112122018055

¹¹⁰ www.riigiteataja.ee/en/eli/504042019001/consolide.

¹¹¹ www.riigiteataja.ee/akt/119032019055.

¹¹² http://filmi.ee/wordpress/wp-content/uploads/2019/05/Filmikunsti-m%C3%A4%C3%A4rus-ENG_09.05.2019.pdf.

¹¹³ <http://filmi.ee/wordpress/wp-content/uploads/2019/01/Filmikunsti-M%C3%A4%C3%A4rus-07.01.2019.pdf>.

5.10 ES – Spain – National legal summary¹¹⁴

5.10.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.10.1.1 Audiovisual works

Article 4 b) of the Film Act provides for the definition of “other audiovisual works” in connection with the definition of “cinematographic works” (see 5.10.1.2.):

“Other audiovisual works: those that, fulfilling the requirements of letter a), are not intended to be exhibited in cinemas, but reach the audience through other media.”

5.10.1.2 Cinematographic works

Article 4 a) of the Film Act defines cinematographic film as follows:

“Cinematographic film: all audiovisual work, fixed in any medium or format, in whose elaboration the work of creation, production, edition and post-production is defined and that is destined, in the first place, for commercial exploitation in cinemas. Mere reproductions of events or representations of any kind are excluded from this definition.”

5.10.1.3 Domestic works

A definition is provided for in Article 5 of the Film Act, as follows:

“1. Spanish nationality will be granted to all cinematographic films and audiovisual works executed by a Spanish production company, or belonging to another European Union member state and established in Spain, to which a Spanish nationality certificate is issued, after confirming that the following requirements are met:

¹¹⁴ The factsheet on Spain incorporates the feedback received from Juan José Lillo López, Technical consultant for the European Works (CNMC) during the checking round with the national regulatory authorities.

a) The range of authors of the cinematographic film or other audiovisual work (that is, the director, screenwriter, director of photography and music composer) consists of at least 75 per cent of persons with Spanish nationality or who come from another European Union member state or a member state of the European Economic Area Agreement, or who hold a valid residence card or permit in Spain or in any of the aforementioned states. In all cases, the director must always meet this requirement.

b) At least 75 per cent of the actors and other artists participating in the production of a cinematographic film or audiovisual work are represented by persons meeting the nationality or residence requirements established above.

c) At least 75 per cent of all technical creative staff and other technical staff participating in the production of a cinematographic film or audiovisual work are represented by persons meeting the nationality or residence requirements established in paragraph a) above.

d) The cinematographic film or other audiovisual work is preferably produced in its original version in any official language of the Spanish State.

e) The shooting, unless otherwise required by the script, studio post-production and laboratory tasks, is entirely completed in Spain or in other European Union Member States. For animation works, production processes must also be completed in these territories.

2. Furthermore, those made in the framework of a co-production regime with foreign companies, in accordance with the conditions required for this purpose by the specific regulations on the subject or by the corresponding international agreements and those concerning the Ibero-American Community of Nations.

3. A European work shall be understood as one that has a nationality certificate issued by one of the Member States of the European Union.”

5.10.1.4 European works

Article 2.12 of the Law on Audiovisual Communication defines European works as follows:

“a) Works originating in Member States and works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe, provided that the works of the Member States are not the subject of discriminatory measures in the third country in question. Original works means works which are mainly made with authors and workers residing in one or more of the States referred to in the previous subparagraph, provided that, in addition, they comply with one of the following three conditions: the works are made by one or more producers established in one or more of those States, or production of the works is supervised and actually controlled by one or more producers established in one or more of those States, or the contribution of co-producers of those States to the total co-production

costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

b) Works co-produced in the framework of agreements related to the audiovisual sector concluded between the EU and third countries and fulfilling the conditions defined within each of these agreements, provided that Member States' works are not under discriminatory measures in the third countries concerned.

c) Works that are not European works within the meaning of paragraph a) but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries, provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States."

5.10.1.5 Categories included in the calculation of the share of European works

Article 5.2 of the Law on Audiovisual Communication imposes the following obligation on broadcasters and therefore excludes from the scope of the term "work" the following genres:

"Television media service providers shall reserve 51 per cent of the annual broadcasting time allocated to each channel or set of channels belonging to the same provider for European works, excluding the time dedicated to news, sports events, games, advertising, teletext services and teleshopping."

Table 17. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	Yes
European works	Yes

Source: Spanish response to European Audiovisual Observatory standardised survey

5.10.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the National Authority for Markets and Competition – CNMC),¹¹⁵ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the CNMC, in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the CNMC, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the CNMC cooperates on this issue with the national film fund (in this case, the Institute of Cinematography and Audiovisual Arts – ICAA).¹¹⁶

5.10.2.1 Eligible nationality of European works

Works which are subject to assessment include cinematographic films, short and long feature films, other audiovisual works, Spanish films (according to Article 4 of the Film Act), TV films, TV series (according to Article 2 of the Law on Audiovisual Communication), and TV documentaries (according to Article 2 of Royal Decree 988/2015 regulating the legal system applicable to the obligation to provide advance financing for certain European audiovisual works).

In order to determine whether or not a film is Spanish, the CNMC sends a formal request to the ICAA.

Likewise, in order to determine whether or not a work is from another EU state, the CNMC sends a formal request to the member state presumably holding jurisdiction over the concerned AVMS provider. Specifically, the CNMC sends the formal questionnaire to the organisation equivalent to the Spanish ICAA.

As for national audiovisual works, the CNMC assesses whether the production companies have a registered office in Spain and if they comply with Article 2.12 of the Law on Audiovisual Communication (LGCA), on European works and whether there is a Spanish majority contribution to the production. In case of doubt, an *affidavit* can be requested to the producer. When it comes to non-national European audiovisual works, the CNMC requests the provider to submit proof of nationality from the appropriate authorities in the country or an *affidavit* from the production company in the country.

Apart from the aforementioned procedure, the CNMC reports to have sporadically used the IMDB database for determining the nationality of film and AV works.

¹¹⁵ www.cnmc.es.

¹¹⁶ www.culturaydeporte.gob.es/cultura-mecd/areas-cultura/cine/inicio.html.

The most complex situation reported is in determining a distinction between American and British or Irish works. For example, an AVMS provider located in New York that had produced a certain audiovisual work argued that it was European (in fact, Irish, according to an article of the national legal framework similar to Article 1, paragraph 3, point ii) of the AVMS Directive). The CNMC questioned this and requested the AVMS provider to obtain a formal declaration from the Irish equivalent of ICAA. Once this organisation confirmed that the AVMS work was Irish, the AVMS provider's argument was accepted.

5.10.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.10.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices of the CNMC in this regard.

In relation to film funding, Article 9 of Royal Decree 1084/2015 implementing Film Act 55/2007 states the following:

“1. Cinematographic films and other audiovisual works that are made under a co-production regime with foreign companies shall be governed by the corresponding international agreements of a multilateral or bilateral scope and, failing that or in the absence of express provision therein, as established in this section.

2. The co-production projects approved by the Institute of Cinematography and Audiovisual Arts or by the corresponding body of the autonomous community with competence in the field, will be considered Spanish cinematographic films and other audiovisual works and may access public aid financed by public administrations proportionally to the participation of the Spanish co-producer or with permanent domicile or establishment in Spain under the terms of Article 2.”

Co-production agreements can all be found on the ICAA website.¹¹⁷

5.10.2.4 Other enforcement issues

N/A.

¹¹⁷ www.culturaydeporte.gob.es/cultura/areas/cine/industria-cine/convenios-coproduccion.html.

5.10.2.5 Cooperation between national regulatory authorities and film agencies

Cooperation has been recognised by the Spanish national legal framework, whereby the CNMC must send every AVMS provider's resolution proposal to the ICAA before approval in order to facilitate a convergent and coordinated approach for theatrical films and some audiovisual works.

Furthermore, the CNMC cooperates with the Secretary of State for Digital Advancement in the field of the elaboration of legislation and regulation.

Finally, Spain, through the ICAA, cooperates with other national film funds and other public bodies in charge of officially recognising theatrical co-productions, as well as with organisations and multilateral entities such as Eurimages, Ibermedia and others.

5.10.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.10.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.10.5 Applicable regulatory framework

Primary legislation:

- Film Act (*Ley 55/2007, de 28 de diciembre, del Cine*).¹¹⁸
- Law on Audiovisual Communication¹¹⁹ (*Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual*).¹²⁰

¹¹⁸ www.boe.es/eli/es/l/2007/12/28/55/con.

- Royal Decree 988/2015 regulating the legal system applicable to the obligation to provide advance financing to certain European audiovisual works (*Real Decreto 988/2015, de 30 de octubre, por el que se regula el régimen jurídico de la obligación de financiación anticipada de determinadas obras audiovisuales europeas*).¹²¹
- Royal Decree 1084/2015 implementing Film Act 55/2007 (*Real Decreto 1084/2015 por el que se desarrolla la Ley 55/2007 del Cine*).¹²²

5.10.6 Studies, reports and researches

The only report related to obligations or impact assessments is the one the CNMC publishes every year. All the latest reports are available on the CNMC website.¹²³

5.10.7 Data compilation

This factsheet was produced based on data compiled by Pablo Pérez de Lema Sáenz de Viguera, Head of Service, ICAA.

¹¹⁹

www.eni.uni.lu/research/fdef/media_law/audiovisual_media_services_directive/national_execution_measures/spain.

¹²⁰ www.boe.es/buscar/act.php?id=BOE-A-2010-5292&p=20150501&tn=2.

www.eni.uni.lu/research/fdef/media_law/audiovisual_media_services_directive/national_execution_measures/spain.

¹²¹ www.boe.es/eli/es/rd/2015/10/30/988.

¹²² www.boe.es/eli/es/rd/2015/12/04/1084/con.

¹²³ www.cnmec.es/buscadord?t=Informe%20anual%20foe.

5.11 FI – Finland – National legal summary¹²⁴

5.11.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.11.1.1 Audiovisual works

Section 3 1) of the Act on Services of Electronic Communications 917/2014 defines an audiovisual work as follows:

“audiovisual programme’ means a film, television programme, communication of an event to an audience, or any other comparable unit comprised primarily of moving images and related sounds.”

5.11.1.2 Cinematographic works

There is no such definition in the Finnish legislation.¹²⁵

5.11.1.3 Domestic works

There is no such definition in the Finnish legislation.

5.11.1.4 European works

Articles 3 to 5 of Government Decree 1245/2014 on radio and television broadcasting defines a European work as follows:

“An audiovisual work is considered to be European when the majority of workers that have taken part in the production live in European countries and 1) at least one of the

¹²⁴ The factsheet on Finland incorporates the feedback received from Sari Tujunen (Finnish Transport and Communications Agency Traficom) during the checking round with the national regulatory authorities.

¹²⁵ Please note that the explanatory text of the draft Film Law states that *“An eligible production for selective state aid could be a fiction, animation, documentary or children’s film in short, feature length or serialised form, or any combination of these, based on an artistic plan.”*

producers is situated in Europe or 2) the producer situated in Europe has controlled the production or 3) in a co-production, the largest share of the production costs comes from European co-producers. In cooperations with third European countries, the work is considered European if it has been produced according to the relevant treaties on European audiovisual productions.”

5.11.1.5 Categories included in the calculation of the share of European works

Section 209 of the Act on Services of Electronic Communications imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“A broadcaster shall reserve a major part of its annual broadcasting time for European works. The broadcasting time referred to above does not include time reserved for: 1) news; 2) sports events; 3) competitive entertainment programmes; 4) advertising; 5) teletext services; 6) teleshopping.”

Table 18. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	No
Domestic works	No
European works	Yes

Source: Finnish response to European Audiovisual Observatory standardised survey

5.11.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Finnish Ministry of Transportation and Communication)¹²⁶ assesses whether or

¹²⁶ www.lvm.fi/en/home.

not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the Finnish Ministry of Transportation and Communication in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the Finnish Ministry of Transportation and Communication, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the Finnish Ministry of Transportation and Communication cooperates on this issue with the national film fund (in this case, the Finnish Film Foundation).¹²⁷

5.11.2.1 Eligible nationality of European works

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.11.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.11.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices of the Finnish Ministry of Transportation and Communication in this regard.

Regarding film funding, the Finnish Film Foundation has no exact written rules concerning co-productions, except that the funding of co-productions is allowed. In principle, all productions involving other countries are eligible for funding. A distinction is made between majority Finnish co-production and minority Finnish co-production based on the share of financing from co-producing countries and the share of artistic input in the co-production.

In majority co-productions, most or at least a significant part of the production should remain in Finland. Every case is evaluated individually. The Finnish Film Foundation can write the letter of origin if any party asks for it and determine the nationality of Finnish films for statistical purposes. In practice, an evaluation is done only for the categories that are supported, for example, cinematographic works, TV fiction, documentaries and animation. Evaluations are carried out on a case-by-case basis and

¹²⁷ <https://ses.fi/en/>.

there are no exact rules written in this regard. The National Audiovisual Institute also keeps a national database of Finnish cinematographic works.¹²⁸ In this respect, it cooperates with the Ministry of Education and Culture.

Finland has bilateral agreements with France and Canada.

5.11.2.4 Other enforcement issues

N/A.

5.11.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the Finnish Ministry of Transportation and Communication, independently of the Finnish Film Foundation.

5.11.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.11.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.11.5 Applicable regulatory framework

Primary legislation:

¹²⁸ www.elonet.fi/fi.

- Act on Services of Electronic Communications 917/2014¹²⁹
(*Laki sähköisen viestinnän palveluista*).¹³⁰

Secondary legislation:

- Government Decree 1245/2014 on radio and television broadcasting
(*Valtioneuvoston asetus televisio- ja radiotoiminnasta*).¹³¹

5.11.6 Studies, reports and researches

N/A.

5.11.7 Data compilation

This factsheet was produced based on data compiled by Lasse Saarinen, CEO of the Finnish Film Foundation.

¹²⁹ www.finlex.fi/fi/laki/kaannokset/2014/en20140917.pdf.

¹³⁰ www.finlex.fi/fi/laki/ajantasa/2014/20140917.

¹³¹ www.finlex.fi/fi/laki/alkup/2014/20141245.

5.12 FR – France – National legal summary¹³²

5.12.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.12.1.1 Audiovisual works

Article 4 of of Decree No. 90-66 defines audiovisual works as follows:

“Audiovisual works are programmes that do not fall into one of the following genres: feature-length cinematographic works; news and current affairs programmes; variety shows; games; non-fiction broadcasts mostly produced on set; sport events; advertising; teleshopping; self-promotion; and teletext services.”

Article L. 112-2(6) of the Intellectual Property Code also gives a definition of audiovisual works by stating that they:

“Are considered especially as works of the spirit within the meaning of the present code: [...] (6) Cinematographic works and other works consisting of animated sequences of images, with or without sound, called together audiovisual works.”

5.12.1.2 Cinematographic works

Article 2 of Decree No. 90-66 defines cinematographic works as follows:

“1. Works that have obtained an exploitation visa within the meaning of Article 19 of the above-mentioned cinematographic industry code, with the exception of documentary works that have been the subject of an initial broadcast on television in France;

2. Foreign works that have not obtained this visa but have been the subject of a commercial cinematographic exploitation in their country of origin.”

Article 3 adds that:

¹³² The factsheet on France incorporates the feedback received from Marianne Jacob and Raphaël Honoré (Conseil supérieur de l'audiovisuel, CSA) during the checking round with the national regulatory authorities.

“feature-length cinematographic works are those whose duration is greater than one hour.”

Article 211-5 of The Cinema Code also gives a definition of cinematographic works in the context of economic public support:

“Feature-length cinematographic works eligible for financial support for production and preparation are works intended for first exploitation in cinemas.”

5.12.1.3 Domestic works

Article 5 of Decree No. 90-66 defines works of French original expression as follows:

“Cinematographic or audiovisual works of French original expression are works made entirely or mainly in an original version in French or in a regional language used in France. Cinematographic works having received before the date of application of this Decree the investment approval within the meaning of Article 19-I of Decree No. 59-1512 of 30 December 1959, are assimilated to cinematographic works of French original expression.”

Article 211-7-1 of The Cinema Code also gives a definition of cinematographic works of French initiative:

“I. – A cinematographic work “of French initiative” means:

1° A work produced solely by one or more production companies established in France;

2° A work produced in the framework of an international co-production in which the French participation in the financing is preponderant and for which the exploitation rights of the original work or the scenario have been acquired by one or more executive production companies established in France.

II. – A cinematographic work “of foreign initiative” means a work that does not meet the conditions laid down under point I.”

5.12.1.4 European works

Article 6 of Decree No. 90-66 defines European works as follows:

“I. European cinematographic or audiovisual works are:

(a) Works originating in Member States of the European Community;

(b) Works of European third States party to the European Convention on Transfrontier Television of the Council of Europe,

that meet the following conditions:

1. On the one hand, they must be done essentially with the participation of authors, performers and creative collaborating technicians residing in one or more

of those States and with the assistance of technical services provided in studios for shooting or sound studios located in those same States. The level of participation and assistance cannot be lower than a proportion fixed by order of the Minister of Culture and Communication;

2. On the other hand, they must:

(a) be produced by an enterprise whose registered office is in one of the above-mentioned States and whose chairman, director or manager and the majority of the directors are nationals of one of those States, provided that such an enterprise actually supervises and controls the production of these works by taking personally or by sharing jointly the initiative and the financial, technical and artistic responsibility for the realisation of the works considered, and guarantees that the work is successfully completed;

(b) be financed in the majority by the contributions of co-producers established in the above-mentioned States, provided that the co-production is not controlled by one or more producers established outside those States.

The companies and co-producers referred to above shall not be controlled, within the meaning of Article L. 233-3 of the Commercial Code, by one or more producers established outside those States.

II. In addition, European cinematographic or audiovisual works are works co-produced in the framework of agreements concluded between the European Community and third States and fulfilling the conditions defined in these agreements.

III. European cinematographic or audiovisual works are works which are produced in the framework of bilateral co-production agreements concluded between Member States of the European Community and third States where works are financed mainly by contributions from co-producers established in Member States, provided that the co-production is not controlled by one or more producers established outside those States.”

Article 6-1, in the context of economic public support, adds that:

“For works produced or co-produced by a producer established in France and for which financial support from the State for the film industry and the audiovisual industry has been requested, the qualification of “European work” and of “work of French original expression” are awarded by the CSA after consulting the Director General of the CNC.”

5.12.1.5 Categories included in the calculation of the share of European works

Article 4 of Decree No. 90-66 defines audiovisual works as follows and therefore excludes from the scope of the term “work” the following genres:

“Audiovisual works are programmes that do not fall into one of the following genres: feature-length cinematographic works; news and current affairs programmes; variety

shows; games; non-fiction broadcasts mostly produced on set; sports events; advertising; teleshopping; self-promotion; and teletext services.”

In a decision about reality shows, the Conseil d’État ruled that programmes whose main object is not listed in Article 4 of Decree No. 9-66¹³³ must be considered as audiovisual works. They may include some elements which characterise programmes listed in article 4, but these elements are subsidiary.

The Conseil supérieur de l’audiovisuel (CSA)¹³⁴ decides if a TV show is an audiovisual work on a case-by-case basis, and in this framework it uses its own guidelines, which are the result of consultations involving the broadcasting sector (for example, the consultation concerning scripted reality).¹³⁵

Table 19. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	Yes
European works	Yes

Source: French response to European Audiovisual Observatory standardised survey

5.12.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the CSA assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the CSA in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

¹³³ www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000008198442.

¹³⁴ www.csa.fr.

¹³⁵ www.csa.fr/Informer/Collections-du-CSA/Travaux-Autres-publications/Divers/Concertation-sur-les-programmes-dits-de-realite-scenarisee.

Finally, it also details, if any, the sources used by the CSA, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way in which the CSA cooperates on this issue with the national film fund (in this case, the Centre National de la Cinématographie – CNC).¹³⁶

5.12.2.1 Eligible nationality of European works

The assessment that a work falls under Article 1, paragraph 1, letter (n) (i) of the AVMS Directive (that is, qualifies as a “work originating in Member States”) is made by applying the provisions of the aforementioned Articles 6 and 6-1 of Decree No. 90-66, and in particular Article 6-I-A.¹³⁷ This Decree is supplemented by additional criteria established by an Order of 21 May 1992 according to which a number of points are granted for each of the various contributions to the work (for example: European director 3 points, European scriptwriter 2 points, European leading role 3 points, European second role 2 points, sound 1 point...). In practice, when the work is subject to the support of the CNC, the assessment is made jointly by the CSA and the CNC, whereas in the other cases the assessment is made by the CSA alone. A database is available for the audiovisual media service providers in which they can consult which works have been qualified as European works.

The assessment that a work falls under Article 1, paragraph 1, letter (n) (ii) of the AVMS Directive (that is, qualifies as a “work originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe”) is made by applying the same provisions, and in particular Article 6-I-B.

The assessment that a work falls under Article 1, paragraph 1, letter (n) (iii) of the AVMS Directive (that is, qualifies as a “work co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements”) is made by applying the same provisions, and in particular Article 6-II.

The assessment that a work falls under Article 1, paragraph 1, letter (n) (iii) of the AVMS Directive (that is, qualifies as a “work co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements”) is made by applying the same provisions, and in particular Article 6-III.

¹³⁶ www.cnc.fr.

¹³⁷ Article 5 of Decree No. 90-66 is also applied to further determine if the work is of French original expression (works made entirely or mainly in an original version in French or in a regional language used in France). In this regard, the Conseil d’État has ruled that a work in English is not a work of French original expression because English is not a regional language, although this language is spoken by some inhabitants of the French Antilles. See www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000021468369&fastReqId=1540847362&fastPos=10.

Beyond these four situations, it should be noted that, pursuant to Article 16 of Decree No. 90-66, the two following situations also have to be taken into consideration in order to qualify a work as European:

“I. Audiovisual works which, before 31 March 1992, received financial support from the State for the audiovisual programme industry provided for by Decree No. 86-175 of 6 February 1986, are assimilated to audiovisual works of French original expression.

II. Cinematographic works which, before 31 March 1992, were classified as works of reinvestment within the meaning of Article 13 of Decree No. 59-1512 of 30 December 1959, are assimilated to cinematographic works of French original expression.”

5.12.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices of the CSA in this regard.

5.12.2.3 Nationality and co-productions

Pursuant to Article 6-II and 6-III of Decree No. 90-66:

“[...] II. In addition, European cinematographic or audiovisual works are works co-produced in the framework of agreements concluded between the European Community and third States and fulfilling the conditions defined in these agreements.

III. European cinematographic or audiovisual works are works which are produced in the framework of bilateral co-production agreements concluded between Member States of the European Community and third States where works are financed mainly by contributions from co-producers established in Member States, provided that the co-production is not controlled by one or more producers established outside those States.”

The survey carried out for this mapping did not identify any relevant practices of the CSA in this regard.

Regarding co-productions which are eligible for funding, this matter is fixed in bilateral agreements and dealt with by the CNC. The list of all the bilateral agreements between France and EU Member States is available on the CNC website.¹³⁸

5.12.2.4 Other enforcement issues

Regarding the sources which can be used to identify the nationality of audiovisual works, the following should be noted:

¹³⁸ www.cnc.fr/professionnels/reglementation/accords-internationaux.

- The ISAN (International Standard Audiovisual Number) is an identification number which can be assigned to an audiovisual or cinematographic work only upon request by the producer. It allows the proper identification of the work. Pursuant to Article L. 122-26-1 of the Cinema Code, the ISAN is requested for every work seeking financial support from the CNC.¹³⁹
- The CNC has had a RCA (registre du cinéma et de l’audiovisuel – cinematographic and audiovisual register) since 1944. Pursuant to Articles L121-1 to L. 126-3 of the Cinema Code, the RCA secures the disclosure of documents, contracts and judgments for production, distribution and film exhibition. The RCA is not mandatory, except for works which benefit from SOFICA (a tax shelter system).

5.12.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the CSA, independently of the CNC. This means that a work can be qualified as an audiovisual work by the CSA for broadcasting and investment quotas and not by the CNC for public funding (the CSA tending to be more flexible than the CNC). For example, scripted reality can be considered as an audiovisual work by the CSA while the CNC considers that scripted reality is not eligible for financial support.

The other way round (that is, for public funding) and in some instances, cooperation between the CSA and the CNC is required. As detailed under section 1.1.2.1, Article 6-1 of Decree No. 90-66, in the context of economic public support, states that:

“For works produced or co-produced by a producer established in France and for which the financial support of the State for the film industry and the audiovisual programme industry has been requested, the qualification of European work and of work of French original expression are awarded by the CSA after consulting the Director General of the CNC.”

5.12.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

However, it should be noted that:

¹³⁹ www.france-isan.org.

- as detailed under section 1.1.3.4, the International Standard Audiovisual Number (ISAN) is requested for all works seeking financial support from the CNC;
- pursuant to Article 511-8 of the Cinema Code, works that have been restored or digitalised with the support of the CNC shall contain all the necessary metadata for their broadcast on any digital support.

5.12.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the Law on Freedom of Communication is currently under review and will imply the modification of several Decrees related to the application of the law.

5.12.5 Applicable regulatory framework

Primary legislation:

- Law on Freedom of Communication (*Loi n°86-1067 du 30 septembre 1986 relative à la liberté de communication*).¹⁴⁰
- Cinema Code (*Code du cinéma et de l'image animée*).¹⁴¹
- Intellectual Property Code (*Code de la propriété intellectuelle*).¹⁴²

Secondary legislation:

- Decree No. 90-66 of 17 January 1990 adopted for the application of Law No. 86-1067 of 30 September 1986 laying down the general principles for the transmission of cinematographic and audiovisual works by audiovisual media services (*Décret n°90-66 du 17 janvier 1990 pris pour l'application de la loi n°86-1067 du 30 septembre 1986 et fixant les principes généraux concernant la diffusion des œuvres cinématographiques et audiovisuelles par les éditeurs de services de télévision*).¹⁴³
- Order of 21 May 1992 adopted for the application of Article 6 of Decree No. 90-66 of 17 January 1990 adopted for the application of Law No. 86-1067 of 30 September 1986 laying down the general principles for the transmission of cinematographic and audiovisual works by audiovisual media services (*Arrêté du 21 mai 1992 pris pour l'application de l'article 6 du*

¹⁴⁰ www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000512205&dateTexte=20190927.

¹⁴¹ www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000020908868&dateTexte=20190927.

¹⁴² www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069414&dateTexte=20190927.

¹⁴³ www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006075275&dateTexte=20190927.

*décret n° 90-66 du 17 janvier 1990 modifié fixant les principes généraux concernant la diffusion des œuvres cinématographiques et audiovisuelles).*¹⁴⁴

5.12.6 Studies, reports and researches

- CNC - *Observatoire de la vidéo à la demande (2018), Quelle valeur de marché ?*¹⁴⁵
- CNC & CSA (2018), *La vidéo à la demande par abonnement en France : marché et stratégie des acteurs.*¹⁴⁶

5.12.7 Data compilation

This factsheet was produced based on data compiled by Marc Le Roy, PHD in law.

¹⁴⁴ www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000540134&dateTexte=20190927.

¹⁴⁵

www.cnc.fr/documents/36995/167074/Observatoire+de+la+vid%C3%A9o+%C3%A0+la+demande+2018.pdf/b3b2719e-24e8-d1d1-0c26-f3cbce30748b.

¹⁴⁶

www.cnc.fr/professionnels/etudes-et-rapports/etudes-prospectives/la-video-a-la-demande-par-abonnement-en-france--marche-et-strategies-des-acteurs_555777.

5.13 GB – United Kingdom – National legal summary¹⁴⁷

5.13.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.13.1.1 Audiovisual works

While there is no single definition in the British legislation of audiovisual works, there are provisions in the Communications Act (2003) and associated Statutory Instruments Act that collectively indicate the expectation of what an audiovisual work represents – these are referred to elsewhere in this section. The Communications Act (2003) refers to a ‘signal’ as being defined (among other things) as ‘visual images’; the Act regularly refers to ‘programmes’ and ‘television programmes’.

5.13.1.2 Cinematographic works

While there is no such definition in the British legislation, the British Film Institute (BFI), as part of its Collections Policy,¹⁴⁸ defines “film” as follows:

“a moving image work crafted to express an idea or tell a story – fictional, factual or artistic – regardless of production process, recording medium or distribution channel.”

Ofcom, in published guidance, makes references to cinematographic works, for example in its Broadcasting Code and in guidance on television advertising.

5.13.1.3 Domestic works

Section 278 (6) of the Communications Act (2003), which relates to programming quotas for licensed public service channels,¹⁴⁹ cites “original productions” and states that “original

¹⁴⁷ The factsheet on the United Kingdom incorporates the feedback received from Ofcom during the checking round with the national regulatory authorities.

¹⁴⁸ The British Film Institute (BFI) made a 2012 submission to the European Commission on Film Heritage where it indicated this definition as part of its Collections Policy: www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-european-commission-film-heritage-questionnaire-2012-01.pdf.

productions are references to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be original productions for the purposes of this section.” In turn, a Statutory Instrument laid before the UK Parliament in 2004 defines an origination as set out below.

Moreover, Section 286 refers to regional programming productions (which apply to Channel 3 and 5), which can be taken to mean domestically-produced programmes (made outside of the Greater London region). Finally, Section 287(1)a refers to “regional programmes” (for Channel 3) which are programmes “of particular interest to persons living within the area for which the service is provided.”

Furthermore, there are more detailed definitions which are provided by Ofcom and the BFI and which have relevance for the present mapping.

5.13.1.3.1 Ofcom

The audiovisual media regulatory authority Ofcom has a number of regulatory obligations that provide guidance on the definition of this term.

In that respect, “national work” is taken to mean programmes that are commissioned by UK broadcasters from in-house production resources or independent producers for the purposes of serving either audiences across the whole of the United Kingdom (England, Scotland, Wales and Northern Ireland), or serving an audience that comprises part of the United Kingdom.

The relevant concept in this regard can be found in Section 278 of the Communications Act (2003),¹⁵⁰ which requires all licensed public service channels in the United Kingdom to broadcast a minimum quota of “originations” each year.¹⁵¹

It should also be noted that “original production” is defined in a Ministerial Order for commercial public service channels:

“In section 278 of the Communications Act 2003 (programming quotas for original productions), references, in relation to a licensed public service channel, to “original productions” are references to programmes of the following description, namely, programmes which:

- (a) are commissioned by or for a licensed public service channel with a view to their first showing on television in the United Kingdom being either*
- (i) on that channel, or*

¹⁴⁹ The public service broadcasters in the United Kingdom are Channel 3, Channel 4, Channel 5, S4C and the BBC.

¹⁵⁰ It should be noted that Ofcom also provides definitions of “regional programming” and “local television”.

¹⁵¹ For the BBC, reference is made to this Order in the BBC Agreement. Schedule 2 paragraph 5(4).

- (ii) in the case of a Channel 3 service, on that service or on another Channel 3 service; and
- (b) are European programmes.”

5.13.1.3.2 British Film Institute

The BFI provides a definition of “British” works in its Collections Policy, as follows:

“A professionally produced cinematographic work is defined as British if it is:

- *Produced wholly or in part by a company registered in the UK at Companies House; or*
- *Capable of passing the Cultural Test administered by the BFI Film Certification Unit, even if there is no UK production involvement.*

A television programme is defined as British if it is:

- *Made in-house by a British broadcasting organisation for transmission anywhere in the world; or*
- *Commissioned from a British-based independent production company for transmission anywhere in the world; or*
- *Co-commissioned by a British broadcasting organisation for transmission in Britain and contains significant British contributions or subject matter*

For an amateur production to be classed as British it should be made by a UK citizen and available for viewing in the UK.

Non-moving image materials including stills, posters, designs, ephemera, and documents need not be defined as British in themselves. What matters is a known relationship between the item and a moving image work that qualifies as British, or wider relevance to British film culture on the basis of its content, talent or impact.”

5.13.1.4 European works

There is no such definition in the British legislation.

However, Section 368(c) comes closest to defining a European Work when it refers to such works as ‘within the meaning given in Article 1(n) of the Audiovisual Media Services Directive’.

Ofcom broadcasting licences, which are legal instruments, include references to European works, and directly reproduce the definitions set out in the AVMS Directive.

Also, Ofcom Guidance on compliance with Articles 16 and 17 of the AVMS Directive¹⁵² includes a definition of European Works as follows:

"'European programming' has the meaning attributed to 'European works' in Article 1 of the AVMS Directive. This includes:

- a) works originating in European Union Member States;*
- b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe; and*
- c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements."*

In an additional note, the Guidance adds the following:

"The works referred to in paragraphs (a) and (b) above are works mainly made with authors and workers residing in one or more States referred to in those paragraphs provided that they comply with one of the following three conditions:

- i) they are made by one or more producers established in one or more of those States; or*
- ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or*
- iii) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.*

The works referred to in paragraph (c) are works made exclusively or in co-production with producers established in one or more Member States or by producers established in one or more European third countries with which the Community has concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States.

It should be noted that application of the provisions of (b) and (c) is conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.

Moreover, works that are not European works within the meaning of the above provisions but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of

¹⁵² www.ofcom.org.uk/_data/assets/pdf_file/0018/12942/av-media-services.pdf.

The definition is also given in the ATVOD Guidance on European Works in On-Demand Programme Services: www.ofcom.org.uk/_data/assets/pdf_file/0032/58487/european_works_guidance.pdf ATVOD was the co-regulator with Ofcom for editorial content on UK VOD services until 1 January 2016.

the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the Member States.”

5.13.1.5 Categories included in the calculation of the share of European works

Article 1 of Ofcom's Guidance on compliance with Articles 16 and 17 of the AVMS Directive states that:

“In accordance with the Audio Visual Media Services Directive, television broadcasters shall ensure that, where practicable, and subject to paragraphs 2 and 3: a) a majority of their Transmission Time is devoted to European programming.”

No further reference beyond the AVMS Directive is provided regarding the works which are included or not in this transmission time, but the guidance provides information on channels that are exempt from the requirements in Articles 16 and 17 of the AVMS Directive.

No specific obligations are provided for non-linear services.

Table 20. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	No, but there is a definition of “film” given by the BFI.
Domestic works	The Communications Act (2003) and related Statutory Instruments Act stipulate what a ‘national’ work is (‘origination’ is the term used in the UK).
European works	No, but direct reference to the AVMSD definition is found in the Communications Act (2003).

Source: British response to European Audiovisual Observatory standardised survey

5.13.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this

case, Ofcom)¹⁵³ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of Ofcom in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by Ofcom, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which Ofcom cooperates on this issue with the national film fund (in this case, the British Film Institute – BFI).¹⁵⁴

5.13.2.1 Eligible nationality of European works

For broadcast-based content, Ofcom issues guidance to its licensees, and relies on self-certification by public service channels and other licensable services.

It is a condition of all relevant licences that they should “furnish to Ofcom in such a manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act or the Communications Act.” Failure to provide the data requested can result in fines or other sanctions (including licence revocation).

Ofcom’s guidance to broadcast licensees requesting AVMS compliance data provides licensees with guidance on which audiovisual media services must make an AVMS return, and how to submit their data to Ofcom through an online portal.¹⁵⁵

As previously mentioned, Ofcom also provides the licensees with guidance to enable linear broadcasters and on-demand service providers to supply Ofcom with the relevant information. Moreover, it is a condition of all broadcasting licences that the licensee should furnish Ofcom with information that it should reasonably request in order to fulfil its regulatory duties. Ofcom relies on data submissions from its licensed broadcasters to confirm that the AVMS quotas have been met. It does not rely, in so far as it has been possible to establish, on other sources of information.

There are no direct difficulties that have been raised by Ofcom in relation to this.

¹⁵³ www.ofcom.org.uk.

¹⁵⁴ www.bfi.org.uk.

¹⁵⁵ www.ofcom.org.uk/data/assets/pdf_file/0025/107737/Ofcom-Online-Services-User-Guide-TV-TR-and-AVMS>Returns.pdf

5.13.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.13.2.3 Nationality and co-productions

The Broadcasting (Original Productions) Order (2004)¹⁵⁶ provides guidance in respect to co-productions and whether they qualify as original productions:

“Meaning of “European programmes”

5.(1) For the purposes of articles 3 and 4, “European programmes” are programmes which are European works.

(2) To the extent specified in paragraph (4), programmes which are not European works may also be treated as “European programmes” by OFCOM for the purposes of articles 3 and 4, provided they are part-qualifying works.

(3) A part-qualifying work is a programme of the following description, namely a programme in the case of which a Community producer has, or Community producers have, contributed to its total production costs and either:

(a) a Community producer has, or Community producers have, made what appears to OFCOM to be a significant contribution to the production of the programme, having regard in particular to:

(i) the contribution of that producer or those producers to the total production costs; and

(ii) the degree of editorial control that producer has, or those producers have, exercised over the programme; or

(b) the programme has been made mainly with authors and workers residing in one or more member States.

(4) The proportion of a part-qualifying work which can be treated as a European programme by OFCOM shall be calculated by reference to the duration of the work, being the same proportion as the proportion of the contribution of a Community producer or the combined contribution of Community producers (as the case may be) in relation to the total production costs of the part-qualifying work.

(5) In this article “Community producer” means a producer:

(a) who is an individual who is a national of a member State; or

¹⁵⁶ www.legislation.gov.uk/uksi/2004/1652/made.

(b) which is a body corporate formed under the law of a member State and having its registered or head office in a member State and in the case of which the central management and control of the business is exercised in a member State.”

5.13.2.4 Other enforcement issues

N/A.

5.13.2.5 Cooperation between national regulatory authorities and film agencies

Ofcom cooperates informally with the BFI.

5.13.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

Based on the compliance data that Ofcom publishes for public service broadcasters¹⁵⁷ and the information that the United Kingdom submits to the European Commission in relation to AVMS compliance, all UK-licensed broadcasters have a means of labelling programming so that it can be appropriately categorised for the purposes of AVMS. This enables those broadcasters to report to Ofcom on their fulfilment of the relevant quotas under the AVMS Directive.

5.13.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review.

The DCMS (Department for Digital, Culture, Media & Sport) was consulted on the revised AVMS Directive during the summer of 2019 and is currently considering responses.

¹⁵⁷ See annual compliance reports at www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/public-service-broadcasting.

5.13.5 Applicable regulatory framework

Primary legislation:

- Communications Act.¹⁵⁸

Secondary legislation:

- Broadcasting (Original Productions) Order 2004.¹⁵⁹
- Guidance on the Order.¹⁶⁰
- Guidance on compliance with Articles 16 and 17 of the Audio-Visual Media Services Directive.¹⁶¹
- British Film Institute's Collections policy 2011.¹⁶²

5.13.6 Studies, reports and researches

N/A.

5.13.7 Data compilation

This factsheet was produced based on data compiled by Steve Gettings, independent consultant.

¹⁵⁸ www.legislation.gov.uk/ukpga/2003/21/section/278.

¹⁵⁹ www.legislation.gov.uk/uksi/2004/1652/pdfs/uksi_20041652_en.pdf.

¹⁶⁰ www.legislation.gov.uk/uksi/2004/1652/note/made.

¹⁶¹ www.ofcom.org.uk/_data/assets/pdf_file/0018/12942/av-media-services.pdf.

¹⁶² www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-collection-policy-2014-07-02.pdf.

5.14 GR – Greece – National legal summary¹⁶³

5.14.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.14.1.1 Audiovisual works

Article 20, section 2 of Law 4487/2017 on the electronic system of TV advertising disposal and other provisions defines an audiovisual work as follows:

“Self-contained audiovisual work: an episode or parts of episodes of a television series, a made-for-TV or cinematographic film or any segment thereof, regardless of its duration.

The content of the above may be fiction, documentary, animation, as well as cultural and educational video-gaming, produced for user experience in a linear or non-linear format, with or without interactive applications, destined to be distributed on multiple platforms, such as free terrestrial TV broadcasting, cable TV, web TV, provision of on-demand services, film, projections rooms, websites for the distribution and display of TV and film works, social media, in total or as a part of computer applications and software game machines and mobile phones.”

5.14.1.2 Cinematographic works

Article 2m of Law 3905/2010 on Cinematographic Art and other provisions provides the following definitions:

“a) A cinematographic work is a work that is imprinted in a material of image or image and sound of any duration for cinema screening, whatever the content, methods, means and materials used for production, reproduction or projection, which is either already known or will be invented in the future.

b) A feature film is defined as a work of fiction, documentary or animation with a minimum duration of 60 minutes.

¹⁶³ The factsheet on Greece incorporates the feedback received from Olga Garoufalia (National Council for Radio and Television) during the checking round with the national regulatory authorities.

c) A short film is any work of fiction, documentary or animation with a duration of less than 60 minutes.”

5.14.1.3 Domestic works

The criteria for Greek works are defined in Articles 3 and 4 of Law 3905/2010 and Law 4487/2017. For a work to be defined as Greek, it must satisfy at least 2 out of the following 3 criteria:

- a. at least 51% of the film is in the Greek language;
- b. at least 51% of the shooting has taken place in Greece;
- c. at least 51% of the budget is spent in Greece.

A number of other point-based criteria are set out in Article 3 of Law 3905/2010 for different categories such as fiction, documentaries, animation, etc.

5.14.1.4 European works

Article 2, paragraph 1, point 14 of Presidential Decree 109/2010 on the Harmonization of the Greek broadcasting legislation with the provisions of Directive 2010/13/EU defines European works as follows:

“(1) European works:

- (i) works originating in European Union Member States;*
- (ii) works originating in European third States parties to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3;*
- (iii) works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements.*

(2) The application of the provisions of points (ii) and (iii) of paragraph 1 shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned.

(3) The works referred to in points (i) and (ii) of paragraph 1 are works mainly created by authors and employees residing in one or more of the States referred to in those provisions provided that they comply with one of the following three conditions:

- (a) they are made by one or more producers established in one or more of those States;*
- (b) the production of these works is supervised and actually controlled by one or more producers established in one or more of those States;*

(c) the co-producers of those States cover the majority share of the total co-production costs and the co-production is not controlled by one or more producers established outside those States.

(4) Works that are not European works within the meaning of points (i), (ii), (iii) of paragraph 1 that are produced within the framework of bilateral co-production agreements concluded between EU Member States and third countries shall be deemed to be European works provided that the co-producers from the European Union contribute a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.”

5.14.1.5 Categories included in the calculation of the share of European works

Article 17 of Presidential Decree 109/2010 on the Harmonization of the Greek broadcasting legislation with the provisions of Directive 2010/13/EU imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“Broadcasters shall reserve for European works at least 51% of their total transmission time, calculated on an annual basis. The calculation of the total transmission time shall not include the time allotted to news, sports events, games, advertising, teletext services and teleshopping.”

Pursuant to Law 2328/1995 in relation to the legal status of private television and local radio and the regulation of broadcasting issues and other provisions, broadcasters are to reserve at least 25% of their transmission time for programmes in the Greek language, implying that these programmes must be produced by Greek companies. Moreover, Article 6 paragraph 13 of Law 3592/2007 for the concentration and the licensing of Media Enterprises and Article 8, paragraph 1 of Law 4339/2015 for the Licensing of digital TV and other provisions provide that the basic language for the transmission of programmes or of subtitles is the Greek language.

Table 21. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	Yes
European works	Yes

Source: Greek response to European Audiovisual Observatory standardised survey

5.14.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the National Council for Radio and Television – NCRTV)¹⁶⁴ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the NCRTV in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the NCRTV, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way in which the NCRTV cooperates on this issue with the national film fund (in this case, the Hellenic Film Commission).¹⁶⁵

5.14.2.1 Eligible nationality of European works

The NCRTV is currently in the process of setting up a department that will deal with these issues. Hence, there are no relevant practices in this regard at present.

5.14.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices of the NCRTV in this regard.

5.14.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any legal provisions or relevant practices of the NCRTV in this regard.

¹⁶⁴ www.esr.gr.

¹⁶⁵ www.gfc.gr/el.

5.14.2.4 Other enforcement issues

N/A.

5.14.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the NCRTV, independently of the Hellenic Film Commission.

5.14.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

However, Ministerial Decision No. 812/2012 (points 8.11, 8.12 and 8.14) includes, in the data that providers of on-demand media services must provide in respect of the prominence of European works, information on how to search for and classify European works whose labelling may contain metadata.

5.14.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.14.5 Applicable regulatory framework

Primary legislation:

- Law 3905/2010 (Cinematographic art and other provisions).¹⁶⁶
- Law 4487/2017 (Electronic system of TV advertising disposal and other provisions).¹⁶⁷

¹⁶⁶ www.kodiko.gr/nomologia/document_navigation/129347/nomos-3905-2010 (in Greek).

- Law 2328/1995 (Legal status of private television and local radio. Regulation of broadcasting issues and other provisions).¹⁶⁸

Secondary legislation

- Presidential Decree 109/2010 (Harmonization of the Greek broadcasting legislation with the provisions of Directive 2010/13/EU).¹⁶⁹
- Ministerial Decision 812/2012 regarding the determination of data for the prominence of European works by providers of on-demand media services.¹⁷⁰
- Ministerial Decision 813/2012 regarding the determination of data for the prominence of European works by Broadcasters.¹⁷¹

5.14.6 Studies, reports and researches

N/A.

5.14.7 Data compilation

This factsheet was produced based on data compiled by Eleni Chandrinou, consultant and producer in Brussels and Athens.

¹⁶⁷ www.ekome.media/el/to-elliniko-cash-rebate (in Greek).

¹⁶⁸ www.e-nomothesia.gr/enemerose-tupos-radiophono-teleorase/n-2328-1995.html (in Greek).

¹⁶⁹ <https://media.gov.gr/nomothesia/%CE%92%CE%B9%CE%B2%CE%BB%CE%B9%CC%81%CE%BF%202%CE%BF/2.1.5.pdf> (in Greek).

¹⁷⁰ www.et.gr/ids-nph/search/pdfViewerForm.html?args=5C7OrtC22wEbA_BZxkczbHdtvSoClrL8L0XCZRk17YV5MXD0LzOTLf7MGgcO23N88knBzLCmTXKaO6fpVZ6Lx9hLsUUqeiOmer7x_XDjF98RCFblkg1grTcdvYp5nenObG-OV0ss (in Greek).

¹⁷¹ www.et.gr/ids-nph/search/pdfViewerForm.html?args=5C7OrtC22wEbA_BZxkczbHdtvSoClrL8L0XCZRk17YV5MXD0LzOTLf7MGgcO23N88knBzLCmTXKaO6fpVZ6Lx9hLsUUqeiOmer7x_XDjF98RCFblkg1grTcdvYp5nenObG-OV0ss (in Greek).



5.15 HR – Croatia – National legal summary¹⁷²

5.15.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.15.1.1 Audiovisual works

Article 3, paragraph 1 of the Audiovisual Activities Act defines audiovisual works as follows:

“b) audiovisual works are feature and documentary films, animated films, experimental films, multimedia and transmedia projects, television series and films, video games and any other audiovisual works which are the artistic or author’s expression regardless of the technology used to make them, the medium they are fixed on, and the way they are presented.”

5.15.1.2 Cinematographic works

Article 5, paragraph 2 of the Copyright and Related Rights Act provides for the following definition:

“(2) Copyright works are in particular: [...] audiovisual works (cinematographic works and works created in the manner similar to cinematographic creation).”

5.15.1.3 Domestic works

Article 3, paragraph 1 of the Audiovisual Activities Act defines a Croatian film as follows:

“h) A Croatian film is:

- a film whose director and/or producer are citizens of the Republic of Croatia, or whose producer is a legal entity established in the Republic of Croatia, and where

¹⁷² The factsheet on Croatia incorporates the feedback received from Agency for Electronic Media (AEM) during the checking round with the national regulatory authorities.



the participation of Croatian authors, actors and other Croatian artists or workers and/or the Croatian capital is of greater significance;

– a film produced by one or more Croatian producers, with at least one Croatian author and a majority of Croatian film workers, and a film produced in cooperation with a foreign producer in accordance with international treaties governing film and cinematographic production, to which the Republic of Croatia is a party.”

The Rules on Croatian audiovisual works further stipulate detailed criteria for determining Croatian audiovisual works, such as those produced in the Croatian language or works intended for national minorities in their relevant languages; works of Croatian cultural heritage; cinematographic or television feature, documentary, animated, advertising or other films as well as other audiovisual works of Croatian cultural and artistic production; works which originate from Croatia, etc. Criteria further include provisions in relation to workers and (co-) production schemes.

5.15.1.4 European works

Article 41 of the Electronic Media Act defines European works as follows:

- “1) - works originating in Member States of the European Union,*
- works originating in European states party to the European Convention on Transfrontier Television and fulfilling the conditions of paragraph 3 of this Article,
- works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements.
- (2) Application of the provisions of paragraph 1, subparagraphs 2 and 3 of this Article shall be conditional only on works originating in Member States of the European Union not being the subject of discriminatory measures in the countries concerned.*
- (3) The works referred to in paragraph 1, subparagraphs 1 and 2 of this Article are works mainly made with authors and workers residing in states referred to in paragraph 1, subparagraphs 1 and 2 of this Article, provided that they comply with one of the following conditions:*
- they are made by producers established in one or more of the mentioned states, or*
 - production of an individual work is supervised and actually controlled by one or more producers established in one or more of the mentioned states, or*
 - the contribution of co-producers of the mentioned states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside the mentioned states.*
- (4) Works that are not considered European works within the meaning of paragraph 1 of this Article, but that are produced within the framework of bilateral co-production treaties concluded between Member States of the European Union and third countries shall be deemed to be European works, provided that the co-producers from the European Union supply a majority share of the total cost of the production and that*

the production is not controlled by one or more producers established outside the territory of the Member States of the European Union.”

5.15.1.5 Categories included in the calculation of the share of European works

Article 42 of the Electronic Media Act obliges private broadcasters to use their best efforts to reserve a majority proportion of their annual transmission time for European works. Broadcasters who cannot attain this proportion shall progressively increase the proportion every year, but the minimum initial proportion shall be 20%. As for Croatian PSM (HRT), Article 10 of the Public Broadcasting Act obliges it to reserve at least 51% of its transmission time for European works, and 40% of this proportion shall be dedicated, on each channel, to Croatian works.

The usual exclusion of the time allotted to news, sports events, games, advertising, teletext services and teleshopping, applicable for European works and deriving from Articles 16 and 17 of the AVMS Directive, does not apply.

Table 22. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	No, it is covered by the definition of “copyright (audiovisual) work”
Domestic works	Yes
European works	Yes

Source: Croatian response to European Audiovisual Observatory standardised survey

5.15.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Council of the Agency of Electronic Media – AEM)¹⁷³ assess whether or not a

¹⁷³ <http://emediji.inspirium.hr/#>.



work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the AEM in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the AEM, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the AEM cooperates on this issue with the national film fund (in this case, the Croatian Audiovisual Center – HAVC).¹⁷⁴

5.15.2.1 Eligible nationality of European works

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.15.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.15.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify relevant practices of the AEM in this regard.

Regarding film funding, the HAVC provides funding for fiction, documentary and animation films, both feature length and in short format, originating outside Croatia in which a Croatian producer is involved as a creative collaborator and provider of a minority of the finance needed; and where the film is structured as an official co-production. Films supported by the HAVC Minority Co-Production scheme must be approved as official co-productions under a bilateral treaty or the European Convention on Cinematographic Co-Production. Where in exceptional cases the HAVC agrees to waive this requirement, the film must still be structured as a bona fide co-production in which ownership, rights and revenues are shared among the co-producers.

Minority Croatian co-productions are considered to be those co-productions in which the Croatian producer's financing share comprises at least 5% of the total production budget (including subsidies received from the HAVC, the producer's own investment, deferrals, investment from television, television broadcasting rights, distribution deals, in-kind investments, etc.) and which can eventually qualify as an

¹⁷⁴ www.havc.hr/eng.



official co-production under the European Convention on Cinematographic Co-production and/or any bilateral co-production treaties in force between Croatia and other countries. A minority co-production, subject to the financial contribution of each co-producing partner, shall include the effective technical and artistic participation of Croatian personnel. Additionally, a minimum of 60% of the approved support must be spent in the Republic of Croatia. TV works are not eligible for the HAVC Minority Co-Production scheme.

5.15.2.4 Other enforcement issues

N/A.

5.15.2.5 Cooperation between national regulatory authorities and film agencies

The AEM cooperates with the Croatian Audiovisual Centre. Improvements to this cooperation are being prepared under the activities of the transposition of the new AVMSD.

5.15.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.15.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.15.5 Applicable regulatory framework

Primary legislation:



- Copyright and Related Rights Act¹⁷⁵ (*Zakon o autorskom pravu i srodnim pravima*).¹⁷⁶
- Audiovisual Activities Act (*Zakon o audiovizualnim djelatnostima*).¹⁷⁷
- Electronic Media Act¹⁷⁸ (*Zakon o elektroničkim medijima*).¹⁷⁹
- Law on Croatian Radio and Television (*Zakon o Hrvatskoj Radioteleviziji*).¹⁸⁰

Secondary legislation:

- Rules on Croatian audiovisual works¹⁸¹ (*Pravilnik o Hrvatskim audiovizualnim djelima*).¹⁸²

5.15.6 Studies, reports and researches

N/A.

5.15.7 Data compilation

This factsheet was produced based on data compiled by Anita Duvnjak, Head of Legal Department, HAVC.

¹⁷⁵ www.dziv.hr/files/File/eng/Zakon_autor_ENG.pdf.

¹⁷⁶ www.dziv.hr/files/File/zastita/zakon_autorsko_HR.pdf.

¹⁷⁷ www.havc.hr/img/newsletter/files/Zakon%20o%20audiovizualnim%20djelatnostima%202018.pdf.

¹⁷⁸ www.e-mediji.hr/preview/en/news/the-electronic-media-act.

¹⁷⁹ www.zakon.hr/z/196/Zakon-o-elektroni%C4%8Dkim-medijima.

¹⁸⁰ www.zakon.hr/z/392/Zakon-o-Hrvatskoj-radioteleviziji.

¹⁸¹ www.aem.hr/wp-content/uploads/2019/03/Pravilnik_hrvatska_audiovizualna_djela_270.pdf.

¹⁸² www.aem.hr/wp-content/uploads/2019/03/Pravilnik_hrvatska_audiovizualna_djela_270.pdf.

5.16 HU – Hungary – National legal summary¹⁸³

5.16.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.16.1.1 Audiovisual works

There is no such definition in the Hungarian legislation.

5.16.1.2 Cinematographic works

Article 64 (1) of the Copyright Act defines cinematographic works as follows:

“A cinematographic creation shall be taken to mean a work which is expressed by a series of motion pictures arranged in a predetermined order, whether or not accompanied by sound, irrespective of the type of carrier the work has been fixed on. Feature films produced for film projection, television films, advertising and documentary films as well as animations and educational films shall in particular be regarded as cinematographic creations.”

Article 203(11) of the Act on Media Services and Mass Communication defines cinematographic works as follows:

“Cinematographic works shall mean cinematographic works as defined in the Copyright Act, excluding, amongst others, news and political programmes, programmes on current affairs and services, sports programmes or programmes broadcasting other events, game shows and quiz shows and commercial communications. Feature films, television films, television series, animation films and documentaries are in particular regarded as cinematographic works.”

¹⁸³ The factsheet on Hungary incorporates the feedback received from György Ocskó (National Media and Infocommunications Authority) during the checking round with the national regulatory authorities.

5.16.1.3 Domestic works

Article 203(37) of the Act on Media Services and Mass Communication defines Hungarian works as follows:

“Hungarian works shall mean:

- a) works originally produced in Hungarian in their entirety;*
- b) works originally produced in several languages, however, in terms of time, the parts originally produced in Hungarian are longer than any other parts produced in any other language;*
- c) works originally produced in the languages of any of the nationalities recognised by Hungary, provided that their subject matter concerns the life or culture of the given nationality in Hungary;*
- d) any music programme performed in Hungarian or performed in the language of any of the nationalities recognised by Hungary, provided that its subject matter concerns the culture of the given nationality in relation to Hungary;*
- e) any instrumental music programme which forms part of Hungarian cultural heritage or the culture, in relation to Hungary, of any of the nationalities recognised by Hungary;*
- f) any musical works of which one of the composers is Hungarian;*
- g) any music programme which was produced in cooperation with Hungarian performers;*
- h) any cinematographic work which is treated as Hungarian, in accordance with the Motion Picture Act.”*

5.16.1.4 European works

Article 203(9) of the Act on Media Services and Mass Communication defines European works as follows:

“European work shall mean:

- (a) any Hungarian work;*
- (b) any work originating in a member state of the European Union;*
- (c) any work originating in a European state which is a party to the European Convention on Transfrontier Television, adopted in Strasbourg on 5 May 1989, promulgated by Act XLIX of 1998;*
- (d) any work produced under the co-production of the production companies of a member state of the European Union and a state outside the European Union, provided that the majority of the total co-production costs is provided by the co-producers from a EU member state, and the production is not controlled by one or more producers who are established in a country other than an EU member state; or*

(e) any work produced in co-production, within the framework of an agreement concluded between the European Union and third countries concerning the audiovisual sector, and which complies with the conditions of the applicable agreements.

The works mentioned in Points (b)-(c) are works which were produced by authors and with the contribution of professionals having their addresses in one or more states defined under points (b)-(c), provided that the given work meets one of the following three conditions:

- 1. it is the work of one or more producers established in one or more of the above-mentioned states;*
- 2. its production is supervised and actually controlled by one or more producers established in one or more of the above-mentioned states;*
- 3. the contribution of co-producers from the above-mentioned states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside the above-mentioned states.*

The works defined under Points (c) and (e) can qualify as European works if no discriminatory measures apply to the works originating from the members states in the given affected state outside the European Union.”

5.16.1.5 Categories included in the calculation of the share of European works

Article 20(1) of the Act on Media Services and Mass Communication obliges private broadcasters to reserve over 50% of their annual transmission time for European works and over one third for Hungarian works. Furthermore, Article 20(3) of the Act obliges the public service media to reserve over 60% of its transmission time for European works and over 50% for Hungarian works.

As for non-linear services, Article 20(2) of the Act obliges VOD providers to reserve over 30% of the total length of the programmes made available in a given calendar year for European works, and at least 10% shall be for Hungarian works.

Pursuant to Article 22(7) of the Act, “transmission time devoted to news programmes, sports programmes, games, advertisements, teleshopping, political advertisements, public service announcements, sponsorship announcements, public service advertisements and the non- interactive teletext shall not be considered in the course of determining the total transmission time.”

Table 23. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	Yes

Domestic works	Yes
European works	Yes

Source: Hungarian response to European Audiovisual Observatory standardised survey

5.16.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the National Media and Infocommunications Authority – NMHH),¹⁸⁴ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the NMHH, in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the NMHH, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the NMHH cooperates on this issue with the national film fund (in this case, the National Film Institute – NFI).¹⁸⁵

5.16.2.1 Eligible nationality of European works

Compliance with the annual quotas is assessed on a monthly basis by audiovisual media service providers. The NMHH does not modify the submissions, however, if necessary, the media service provider may modify its previous reporting.

One of the issues reported is the volume of reports submitted, which makes detailed examination difficult. Hence, the NMHH uses a random-check approach, and, should an issue arise from it, it conducts further investigations and takes decisions on the basis of available data or according to IMDb data.

¹⁸⁴ <http://english.nmhh.hu>.

¹⁸⁵ <https://nfi.hu/en/>

5.16.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.16.2.3 Nationality and co-productions

Eligibility is assessed according to the information available on IMDb. It should be noted that Hungary also applies the definitions and conditions prescribed in the Council of Europe Convention on Cinematographic Co-Production. In addition, eligibility applies to works created under bilateral treaties. Hungary has signed such treaties with Israel, France, Italy and Canada.

5.16.2.4 Other enforcement issues

N/A.

5.16.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the NMHH, independently of the NFI.

However, it should be noted that the NMHH annually organises the Quota Forum. The purpose of the event is to promote the ability of audiovisual media service providers to meet the quota requirements of the Media Act.

5.16.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.16.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.16.5 Applicable regulatory framework

Primary legislation:

- Act on Media Services and Mass Communication¹⁸⁶
(2010. évi CLXXXV. törvény a médiaszolgáltatásokról és
a tömegkommunikációról).¹⁸⁷

5.16.6 Studies, reports and researches

N/A.

5.16.7 Data compilation

This factsheet was produced based on data compiled by Gergely Kalocsay, Senior legal counsel of the National Film Institute - Hungary.

¹⁸⁶ http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf (not consolidated).

¹⁸⁷ <https://net.jogtar.hu/jogszabaly?docid=A1000185.TV#lby0id9dc0>.

5.17 IE – Ireland – National legal summary¹⁸⁸

5.17.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.17.1.1 Audiovisual works

There is no such definition in the Irish legislation.

5.17.1.2 Cinematographic works

There is no such definition in the Irish legislation.

5.17.1.3 Domestic works

There is no such definition in the Irish legislation.

5.17.1.4 European works

Article 2 of the Statutory Instrument No. 258 of 2010 defines European works as follows:

“European works means the following:

- (a) works originating in the state or another member state,*
- (b) works originating in European third states party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of Regulation 2(2),*
- (c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements.”*

¹⁸⁸ The factsheet on IRELAND incorporates the feedback received from Declan McLoughlin (Údarás Craolacháin na hÉireann /Broadcasting Authority of Ireland) during the checking round with the national regulatory authorities.

5.17.1.5 Categories included in the calculation of the share of European works

The relevant national body in charge of monitoring the compliance of broadcasters with the AVMS Directive (Broadcasting Authority of Ireland – BAI) has regard to the Revised guidelines for monitoring of the application of Articles 16 and 17 of the Audiovisual and Media Services Directive adopted in July 2011 by the European Commission.¹⁸⁹ It also applies its own operational processes on the same issue. This includes self-declarations by broadcasters on “works”, with spot-checking by the regulator against information in the public domain. It therefore excludes from the scope of the term “work” the types of works that are listed as excluded in Articles 16 and 17 of the AVMS Directive.

The body which regulates VOD services is ODAS, a voluntary body under the Irish Business and Employers Federation (IBEC).

Table 24. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	No
Domestic works	No
European Domestic works	Yes

Source: Irish response to European Audiovisual Observatory standardised survey

5.17.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Broadcasting Authority of Ireland – BAI)¹⁹⁰ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

¹⁸⁹ <https://ec.europa.eu/digital-single-market/en/news/revised-guidelines-monitoring-application-articles-16-and-17-audiovisual-media-services-avms>.

¹⁹⁰ www.bai.ie/en.

This section also details, if any, the practice of the BAI in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the BAI, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way in which the BAI cooperates on this issue with the national film fund (in this case, Screen Ireland – former Irish Film Board).¹⁹¹

5.17.2.1 Eligible nationality of European works

The BAI has regard to the aforementioned Revised guidelines for monitoring of the application of Articles 16 and 17 of the Audiovisual and Media Services Directive adopted in July 2011 by the European Commission and its own aforementioned operational processes on the same issue.

No further details regarding how this applies in practice have been provided.

5.17.2.2 Nationality and discriminatory measures

The BAI has regard to the aforementioned Revised guidelines for monitoring of the application of Articles 16 and 17 of the Audiovisual and Media Services Directive adopted in July 2011 by the European Commission and its own aforementioned operational processes on the same issue.

No further details regarding how this applies in practice have been provided.

5.17.2.3 Nationality and co-productions

The BAI has regard to the aforementioned Revised guidelines for monitoring of the application of Articles 16 and 17 of the Audiovisual and Media Services Directive adopted in July 2011 by the European Commission and its own operational processes on the same issue.

No further details regarding how this applies in practice have been provided.

Regarding co-productions which are eligible for funding, this matter is dealt with by Screen Ireland. Screen Ireland is responsible for certifying official co-productions under the European Convention on Cinematographic Co-production and under the bilateral treaties Ireland has with Australia, Canada, New Zealand, South Africa and Luxembourg.

¹⁹¹ www.screenireland.ie.

5.17.2.4 Other enforcement issues

Regarding the sources which can be used to identify the nationality of audiovisual works, it should be noted that Screen Ireland issues European Certificates of Irish Nationality under a provision of the 1963 EC First Films Directive (63/607/EEC).¹⁹² The purpose of such a certificate is to assist filmmakers when seeking distribution in certain European Union or European Economic Area countries where there may be a quota on the number of non-EU films exhibited in their country. The European Certificate is evidence that the film is a film of Irish nationality in order to qualify for the benefit of any screen quota in such countries.

The Certificate of Irish Nationality cannot be used for the purposes of Irish film tax relief or for co-production status.

5.17.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance of broadcasters with the AVMS Directive is carried out by the BAI, independently of Screen Ireland.

5.17.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice. Consideration will be given to this in the context of the transposition of the new AVMS Directive.

5.17.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the Broadcasting Act and other relevant legislation is currently under review.

There has already been a public consultation set up by the Department of Communications in relation to the implementation of the new AVMS Directive 2018.

¹⁹² www.screenireland.ie/filming/state-aid.

There were many responses to the consultation and the Department has published these responses.¹⁹³

5.17.5 Applicable regulatory framework

Primary legislation:

- Broadcasting Act 2009.¹⁹⁴

Secondary legislation:

- Statutory Instrument n°258 of 2010.¹⁹⁵

5.17.6 Studies, reports and researches

N/A.

5.17.7 Data compilation

This factsheet was produced based on data compiled by James Hickey, former CEO of Fís Éireann/Screen Ireland and currently working as a producer with Copper Alley Productions Limited.

¹⁹³ www.dccae.gov.ie/en-ie/communications/consultations/Pages/Regulation-of-Harmful-Online-Content-and-the-Implementation-of-the-revised-Audiovisual-Media-Services-Directive.aspx.

¹⁹⁴ www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print.

¹⁹⁵ www.irishstatutebook.ie/eli/2010/si/258/made/en/print.

5.18 IT – Italy – National legal summary¹⁹⁶

5.18.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.18.1.1 Audiovisual works

Article 2, subparagraph 1 a) of Law No. 220/2016 of 14 November 2016 defines an audiovisual work as follows:

“An audiovisual work is a work consisting of a sequence of related images, with or without accompanying sound, which is intended to be made visible as a moving image through the use of devices, regardless of the medium of initial or subsequent fixation, with a narrative, documentary or videogame content as long as an intellectual work and protected by current legislation on copyright and intended for the public by the owner of the exploitation rights.”

5.18.1.2 Cinematographic works

Article 2, subparagraph 1 b) of Law No. 220/2016 of 14 November 2016, as well as Article 1, letters a, b and c of the Ministerial Decree “Identification of exclusion cases of audiovisual works from the benefits provided for by Law 220/2016 of 14 November 2016, as well as parameters and requisites to define the cinematographic destination of audiovisual works” define a cinematographic work as follows:

“A cinematographic work is an audiovisual work intended primarily for theatrical release; the parameters and requirements that define this specific destination are established by decree of the Minister of Cultural Heritage and Activities issued in accordance with Article 2, subparagraph 1, letter b) of Law No. 220/2016.

A cinematographic work can be a feature film (at least 52 minutes long) or a short film (less than 52 minutes long), according to its duration.

¹⁹⁶ The factsheet on Italy incorporates the feedback received from Claudia Angrisani and Giovanni Gangemi (AGCOM) during the checking round with the national regulatory authorities.

The screening of a cinematographic work must comply with the following requirements: it has to be programmed in cinema theatres for at least sixty projections over a three-month period, starting from the date of the first screening; the film is intended as a screening activity for its entire duration, including the opening and closing credits, against a paid admission ticket. In the case of documentaries and short films, the minimum number of screenings within the period previously mentioned is reduced to fifteen.

The theatrical consumption of a cinematographic work is the principal way of disseminating it to the public and, for a period of one hundred and five days, starting from the date of the first screening to the public, the cinematographic work must not be distributed to the public through linear and non-linear AVMS providers or through home entertainment publishers.

The term of one hundred and five days is reduced to:

- *ten days if the film is scheduled for a number of days different from Friday, Saturday, Sunday and public holidays, equal to or less than three;*
- *sixty days if the film is scheduled for less than eighty cinema screens and if, after the first twenty-one days of film programming, it has obtained this number.”*

5.18.1.3 Domestic works

Article 1, subparagraphs 1 and 2 of the Decree of 22 February 2013 of the Ministry of Economic Development and the Ministry of Cultural Heritage and Activities and the Decree of 11 July 2017 of the Ministry of Cultural Heritage and Activities defines an Italian work as follows:

“Work recognised as Italian, wherever produced, whose original version is mainly in the Italian language or Italian dialects. In the case of a film that takes place, even in part, in Italian regions where linguistic minorities reside or in which there are characters from the same regions, the relative languages – for the purposes of this decree – are equated with the Italian language, provided that the use of the language of the linguistic minority is strictly functional to the narrative needs of the film work concerned.” For the purposes of the definition listed above, in the case of the original version of the film work, *“there is considered to be a predominance of the Italian language or of the Italian dialects wherever the proportion of the time it is spoken exceeds 50 per cent of the total speaking time.”*

5.18.1.4 European works

Article 2, paragraph 1 cc) of Legislative Decree No. 177 of 31 July 2005 defines European works as follows:

- *works originating in member states;*

- works originating in European third states party to the European Convention on Transfrontier Television of the Council of Europe as ratified by Law No. 327/1991;
- works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements.

The works referred to in points 1) and 2) are works mainly made with authors and workers residing in one or more of the states referred to in those provisions, provided that they comply with one of the following three conditions:

- (i) they are made by one or more producers established in one or more of those states;
- (ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those states;
- (iii) the contribution of co-producers of those states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those states.”.

5.18.1.5 Categories included in the calculation of the share of European works

Article 44bis, paragraph 1 of Legislative Decree No. 177 of 31 July 2005 imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“Broadcasters shall reserve for European works the majority proportion of their broadcasting time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping.”

The Italian Parliament has adopted a Law (8 August 2019, No. 81) that modifies some parts of Legislative Decree No. 177/2005 concerning European quotas, with reference to the programme and investment quota obligations of media service providers (both linear and non linear), but without any modification to the aforementioned categories.

The new legislation will come into force on 1 January 2020, while the regulatory authority AGCOM is currently in the process of conducting public consultations related to the further regulation of this issue.

Table 25. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	Yes

European works	Yes
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Source: Italian response to European Audiovisual Observatory standardised survey

5.18.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Italian Communications Authority – AGCOM)¹⁹⁷ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of AGCOM in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by AGCOM, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which AGCOM cooperates on this issue with the national film fund (in this case, the Directorate General for Cinema and Audiovisual of the Italian Ministry of Cultural Heritage and Activities and Tourism – DGCA).¹⁹⁸

5.18.2.1 Eligible nationality of European works

Audiovisual media service providers, both linear and non-linear, are obliged to fill in a specially prepared model, called "Model Q", available on the AGCOM website, and to submit it via a certified e-mail address. AGCOM does not receive any information related to the specific nationality of works. In the case of European works, AGCOM verifies that such works comply with the requirements provided for under 1.1.1.4. As regards cinematographic works "of Italian original expression", such a qualification is granted by the Ministry of Cultural Heritage and Activities: in this case, AGCOM only verifies that these works have the Ministry's certification.

This model contains, in summary, information regarding the qualification of works as EU works and cinematographic works "of Italian original expression", as well as:

¹⁹⁷ www.agcom.it.

¹⁹⁸ www.cinema.beniculturali.it/direzionegenerale/2/obiettivi.

- a) the annual programming of the linear and non-linear media service providers, detailed according to the eligible hours and the types of audiovisual works;
- b) the weekly schedule of the works broadcast between 6 p.m. and 11 p.m.;
- c) the revenue from advertising, teleshopping, sponsorships, contracts and agreements with public and private entities, public subsidies and paid television offers of non-sports programmes for which the audiovisual media service provider is responsible, and editorial content, including the programming schedules;
- d) the annual net revenues in Italy for non-linear media service providers;
- e) the investments made by audiovisual media service providers in audiovisual works.

In the case of non-fulfillment of the European quotas, service providers are obliged to submit appropriate justifications to AGCOM.

A new model of reporting is expected to be put in place shortly.

5.18.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.18.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices of AGCOM in this regard.

Regarding film funding, the DGCA assesses whether a work is national and may therefore access all the benefits provided by the Cinema Law.

In relation to co-productions, Italian nationality is granted to works of Italian and foreign companies according to the existing co-production agreements and when the contracts stipulated between foreign companies and Italian companies are consistent with the provisions contained in the respective co-production agreements. In this case, the works must be realised using human resources and tools belonging to all the countries involved in the co-production, with proportionality between technical, artistic and financial contribution and according to the provisions contained in each co-production agreement.

There is also a specific case whereby works are realised in co-production (between Italy and other countries) with no co-production agreements. These co-productions are realised in “co-partnership”, namely, Italian nationality can also be granted to single cinematographic works and audiovisual works that present particular elements of artistic, cultural, industrial and commercial interest for each country involved. In this particular situation, and in order to approve the status of Italian nationality, the co-production share of the Italian company cannot be less than 20 per cent and must include, in all cases, the

rights of economic exploitation of the audiovisual work on Italian territory. Meeting these requirements constitutes a presumption of the particular industrial and commercial interest of the audiovisual work. The co-production share of the Italian companies must not be less than 20 per cent as a whole and must, in all cases, include the exploitation rights on Italian territory; the percentage relating to expenses actually and directly incurred by Italian companies must be at least equal to the percentage of the property rights. In this case, recognition is granted by the Ministry of Culture, after having heard the opinion of the experts' commission (the body that evaluates the projects that have applied for the national selective schemes).

Regarding the works realised in co-production, the most common problem encountered is the different intended uses of the works, as, what may be intended for a theatrical release in Italy, could be intended as a TV work in the other co-producing countries. In the Italian system, the destination of the work must coincide in all the issuing countries. If it occurs that the destination is different, the DGCA will reject the recognition of nationality.

The DGCA keeps an official database of audiovisual works on the DGCOL Platform, where all the works are registered and monitored.

5.18.2.4 Other enforcement issues

N/A.

5.18.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by AGCOM, independently of the DGCA.

5.18.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.18.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.18.5 Applicable regulatory framework

Primary legislation:

- Law n°220/2016 of 14 November 2016 (*Legge 14 novembre 2016, n°220*).¹⁹⁹
- Legislative Decree n°177 of 31 July 2005 (*Decreto Legislativo 31 luglio 2005, n°177 (TUSMAR), e successive modifiche - Articolo 44-ter*).²⁰⁰
- Law of 8 August 2019, n°81 (*Legge 8 agosto 2019, n°81*).²⁰¹

Secondary legislation:

- Decree of 22 February 2013 of the Ministry of Economic Development and the Ministry of Cultural Heritage and Activities (*Decreto del 22 febbraio 2013 firmato dal Ministro dello Sviluppo economico e dal Ministro per i Beni e le Attività culturali sulle opere cinematografiche di espressione originale italiana*).²⁰²
- Ministerial decree “Identification of exclusion cases of audiovisual works from the benefits provided for by the law of 14 November 2016, num. 220, as well as parameters and requisites to define the cinematographic destination of audiovisual works” (*Decreto direttoriale “Individuazione dei casi di esclusione delle opere audiovisive dai benefici previsti dalla legge 14 novembre 2016, num. 220, nonché dei parametri e requisiti per definire la destinazione cinematografica delle opere audiovisive*).²⁰³
- Decree of 11 July 2017 of the Ministry of Cultural Heritage and Activities (*Decreto del 11 luglio 2017*).²⁰⁴
- AGCOM regulation adopted by Decision No. 24/19/CONS (*Delibera Agcom 24/19/CONS*).²⁰⁵

¹⁹⁹ www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016-11-14;220!vig.

²⁰⁰ www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig.

²⁰¹ www.gazzettaufficiale.it/eli/id/2019/08/12/19G00090/sq.

²⁰² www.mise.gov.it/images/stories/documenti/Definizione_opere_cinematografiche.pdf.

²⁰³ www.cinema.beniculturali.it/uploads/DCA/2017/individuazionecasiesclusioneopereaudiovisivebeneficileggeparametrirequisiti.pdf.

²⁰⁴ www.cinema.beniculturali.it/uploads/DCA/2017/dpcm11luglio2017nazionalitaitaliana.pdf.

²⁰⁵ www.agcom.it/visualizza-documento/84d554e6-0d1c-43e5-b0ce-01fc304ad894.

5.18.6 Studies, reports and researches

A relevant study is the *Impact Assessment of the new Cinema Law*, published in September 2018.²⁰⁶

5.18.7 Data compilation

This factsheet was produced based on data compiled by Chiara Fortuna, International Affairs / Directorate General Cinema and Audiovisual, Ministry of Cultural Heritage, Activities and Tourism.

²⁰⁶www.italyformovies.it/media/documenti/public/5/Relazione%20sulla%20metodologia%20valutazione%20d'impatto_2017_DEF.pdf.

5.19 LT – Lithuania – National legal summary²⁰⁷

5.19.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.19.1.1 Audiovisual works

Article 2 of the Law on the Provision of Information to the Public defines audiovisual works as follows:

“Audiovisual work’ means a cinematographic work or any other work expressed by cinematographic means which is comprised of interrelated moving images, with or without sound, recorded (fixed) in a material visual recording medium.”

5.19.1.2 Cinematographic works

Besides the definition of an audiovisual work (under 5.19.1.1. above), which refers to cinematographic works as well, Article 2 of the Film Law defines a film as follows:

“A ‘film’ is an audiovisual work consisting of a series of subject-matter-related images recorded in sequence on a tape or on any other medium and intended for reproduction by any technical means and for display.”

5.19.1.3 Domestic works

Article 3 of the Film Law defines a national film as follows:

“1. A film shall be considered a national film if it fulfils all the following conditions:

- 1) the film producer who has made the highest financial contribution to the film is a Lithuanian film producer;*
- 2) the director of the film or the author of the script or the adapted literary work is a citizen of the Republic of Lithuania;*

²⁰⁷ The factsheet on Lithuania incorporates the feedback received from Andrius Katinas, Head of Supervision Division (Radio and Television Commission of Lithuania) during the checking round with the national regulatory authorities.

3) the film is in Lithuanian or dubbed/subtitled in Lithuanian if the film is spoken in a foreign language.

2. A film shall be considered a national film if it meets the conditions laid down in the Council of Europe Convention on Cinematographic Co-Production and/or in other international agreements of the Republic of Lithuania.”

5.19.1.4 European works

Article 37 of the Law on the Provision of Information to the Public defines European works as follows:

“1. The following shall be considered European audiovisual works (hereinafter: ‘European works’):

1) works produced in the Republic of Lithuania or in other EU member states and states of the European Economic Area and other states which have ratified the Council of Europe Convention on Transfrontier Television, if the producers of such works are established in these states or the production of such works is controlled by one or more producers established in these states, or the contribution of the producers established in the aforementioned states to the costs of the co-production (production) is larger than the contribution of the producers established in other (third) countries and the total co-production (production) is not controlled by one or more producers established outside the Republic of Lithuania, the EU member states, the states of the European Economic Area or the other states which have ratified the Council of Europe Convention on Transfrontier Television;

2) works produced in third countries, that is, outside the EU member states, states of the European Economic Area or other states which have ratified the Council of Europe Convention on Transfrontier Television, if they are produced by producers established in one or several third countries or by such producers in cooperation with producers established in one or several EU member states and in the Republic of Lithuania, provided that the European Union and the Republic of Lithuania have concluded agreements with these third countries on cooperation in the audiovisual field and provided that such works are largely produced by authors and producers residing in one or several European states.

2. Points 1 and 2 of paragraph 1 of this Article shall apply in the event that works produced in the Republic of Lithuania or the EU member states are not subject to discriminatory measures in the countries referred to in points 1 and 2 of paragraph 1 of this Article.

3. Works which within the meaning of paragraph 1 of this Article should not be considered as European works, but which have been produced within the framework of bilateral co-production (production) contracts between the EU member states or the Republic of Lithuania and third countries, shall be treated as European works if the contribution of the

producers from the European Union or the Republic of Lithuania comprises the major part of the costs of co-production (production) and if the creation (production) thereof is not controlled by producers established in a state other than an EU member state.

4. Works which within the meaning of paragraphs 1 and 2 of this Article should not be considered as European works, but which have been largely produced in cooperation with authors and producers residing in one or several EU member states shall be treated as European works to the extent proportionate to the contribution of producers established in the EU member states to the costs of the total co-production (production)."

5.19.1.5 Categories included in the calculation of the share of European works

Article 38.8 of the Law on the Provision of Information to the Public imposes the following obligation on broadcasters and therefore excludes from the scope of the term "work" the following genres:

"Broadcasters of television programmes must, where possible, reserve more than half of the television programme time remaining after deducting the time allocated for news, sports events, games and advertising programmes, teletext services and teleshopping for European works."

Table 26. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	Yes
European works	Yes

Source: Lithuanian response to European Audiovisual Observatory standardised survey

5.19.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this

case, the Radio and Television Commission of Lithuania – RTCL)²⁰⁸ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the RTCL in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the RTCL, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the RTCL cooperates on this issue with the national film fund (in this case, the Lithuanian Film Centre).²⁰⁹

5.19.2.1 Eligible nationality of European works

The RTCL monitors the implementation of quotas for European works and provides the information pertaining to this in its annual reports. In an attempt to ensure that TV broadcasters and providers of on-demand audiovisual media services under the jurisdiction of Lithuania comply with the requirements of the Law on the Provision of Information to the Public relating to European quotas, the RTCL carries out surveys showing the trends of European quotas implementation in Lithuania, the results of which are published in its annual reports. In most cases, service providers meet the quotas, but due to the fact that the legal provisions provide for leeway (with the wording “where possible”), there is no permanent system of reporting and supervision.

5.19.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.19.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

Regarding film funding, the aforementioned Article 3 of the Film Law 3 (see under 5.19.1.3.) defines film co-productions which are eligible for support, that is, those that are considered national and meet the conditions laid down in the Council of Europe Convention on the Cinematographic Co-Production and/or in other international

²⁰⁸ www.rtk.lt/en.

²⁰⁹ www.lkc.lt/en.

agreements of the Republic of Lithuania. Lithuania has signed a bilateral co-production treaty with France.

5.19.2.4 Other enforcement issues

N/A.

5.19.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the RTCL, independently of the Lithuanian Film Centre.

5.19.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.19.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.19.5 Applicable regulatory framework

Primary legislation:

- Law on the Provision of Information to the Public²¹⁰
(*Lietuvos Respublikos visuomenės informavimo įstatymas*).²¹¹
- The Film Law (*Lietuvos Respublikos kino įstatymas*).²¹²

²¹⁰ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/13fd4df178a711e99ceae2890faa4193?jfwid=-l1o1b4v9z>.

²¹¹ www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/asr.

5.19.6 Studies, reports and researches

In 2019, the RTCL published a report on “The Development of Services of Public Information by Audiovisual Media and their Regulation in Lithuania 2017-2018.” One chapter of this report is dedicated to the RTCL analysis of European works quotas in national TV programmes (pp. 47-51).²¹³

5.19.7 Data compilation

This factsheet was produced based on data compiled by Rolandas Kvietkauskas, Director of the Lithuanian Film Centre.

²¹² www.e-tar.lt/portal/lt/legalAct/TAR.C828E20E430B/asr.

²¹³ www.rtk.lt/content/uploads/2019/05/Analitine-apzvalga-2017_2018.pdf (in Lithuanian).

5.20 LU – Luxembourg – National legal summary²¹⁴

5.20.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.20.1.1 Audiovisual works

There is no such definition in the Luxembourg legislation.

5.20.1.2 Cinematographic works

There is no such definition in the Luxembourg legislation.

5.20.1.3 Domestic works

There is no such definition in the Luxembourg legislation.

5.20.1.4 European works

Article 2 of the Grand-ducal regulation setting the rules applicable to European works pursuant the AVMS Directive defines European works as follows:

“(1) For the purposes of this Regulation, European works means the following works:

- a) works originating from Member States of the European Economic Area;*
- b) works originating in third countries party to the Council of Europe Convention on Transfrontier Television and fulfilling the conditions of paragraph (2) below; and*
- c) works co-produced in the framework of agreements concerning the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of the agreements.*

²¹⁴ The factsheet on Luxembourg incorporates the feedback received from the Autorité luxembourgeoise indépendante de l’audiovisuel (ALIA) during the checking round with the national regulatory authorities.

The works referred to in (b) and (c) above shall be considered as European works only if the works of the Member States of the European Economic Area are not the subject of discriminatory measures in the countries concerned.

(2) The works referred to in paragraph (1) letters (a) and (b) are works which are carried out essentially with the assistance of authors and workers residing in one or more of the States referred to in the respective letters and responding to one of the following three conditions:

(a) they are carried out by one or more producers established in one or more of those States; or

(b) the production of such works is supervised and effectively controlled by one or more producers established in one or more of those States; or

(c) the contribution of the co-producers of those States represents the majority of the total cost of the co-production, and that co-production is not controlled by one or more producers established outside those States.

(3) (repealed).

(4) Works which are not European works within the meaning of paragraph (1) but which are produced in the framework of bilateral or multilateral co-production agreements concluded between Member States and third countries shall be deemed to be works if the co-producers established in those Member States predominantly participate in the total cost of production and provided that the production is not controlled by one or more producers established outside the territory of those Member States.

(5) (repealed)."

5.20.1.5 Categories included in the calculation of the share of European works

Article 3 of the Grand-ducal regulation setting the rules applicable to European and independent works pursuant the AVMS Directive imposes the following obligation on broadcasters and therefore excludes from the scope of the term "work" the following genres:

"(1) Where practicable, any television service shall reserve for European works, within the meaning of Article 2 above, a majority proportion of its transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping."

Table 27. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No

Concept	Existence of a definition
Cinematographic works	No
Domestic works	No
European works	Yes

Source: Luxembourgish response to European Audiovisual Observatory standardised survey

5.20.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1 paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the of AVMS providers with the AVMS Directive (in this case, The Department of Media, Telecommunications and Digital Policy of the Ministry of State – Service des médias et des communications du Ministère d’Etat - SMC)²¹⁵ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1 paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the SMC in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the SMC, the specific difficulties encountered in implementing Article 1 paragraph 1 letter (n) and the way in which the SMC cooperates on this issue with the national film fund (Film Fund Luxembourg).²¹⁶

5.20.2.1 Eligible nationality of European works

There is no comprehensive catalogue of the works that are subject to an assessment of whether they are of European origin in practice, nor have there been decisions taken in this regard by the SMC.

The Grand-ducal regulation setting the rules applicable to European and independent works pursuant to the AVMS Directive, which stipulates the reporting procedure to the relevant institution, provides for service providers, should it be the case,

²¹⁵ <https://smc.gouvernement.lu/en.html>.

²¹⁶ www.filmfund.lu/film-fund-luxembourg/about-us/mission.

to indicate the reasons why it has not been possible to achieve the obligatory quotas, and the measures adopted or envisaged to achieve those quotas.

5.20.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.20.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify relevant practices of the SMC in this regard.

Regarding film funding, eligibility for a funding scheme depends on the applicant's status. Article 2 of the Grand-Ducal Regulation of 4 November 2014 refers to Luxembourg production companies, requiring that grants for writing and development support be provided only to works *"which are the subject of an interest shown by a Luxembourg production company considering their subsequent cinematographic or audiovisual production, or which are or have been funded by public funds"* whereas for production and coproduction, assistance may only be given for works *"to be produced or co-produced by a Luxembourg production company."*

Cinematographic or audiovisual works must, in order to be eligible for assistance, fulfil the following cumulative conditions in particular: the recipient company's share of financing may not be less than ten percent (10%) of the total cost of production of the work concerned, and that of a possible foreign minority co-producer may not, in principle, be less than the same percentage; the ownership of the original negative image and sound of the co-produced work or the original fixing support of the co-produced work, allowing copies to be reproduced for exploitation, must be the undivided ownership of the co-producers; the rights belonging to the beneficiary company in the distribution of the exploitation rights of the work must be at least proportional to its contribution to the financing of the work concerned; when the co-produced work is produced, the recipient company's artistic and technical participation must be actual.

Also, Article 10 of the Law of 22 September 2014 on the National Audiovisual Production Support Fund states that:

"(1) Audiovisual works eligible for selective financial support must:

- 1. contribute to the development of the European and, in particular, Luxembourg audiovisual production sector, taking into account a reasonable proportionality between the benefits granted and the long-term cultural, economic and social benefits of the production of these works;*
- 2. be designed to be carried out mainly in one or more Member States of the European Union, the countries of the European Economic Area and Switzerland and in particular in the territory of the Grand Duchy of Luxembourg;*

3. be exploited or co-exploited by the beneficiary production company, in particular through the effective and sustainable ownership of a significant proportion of film or audiovisual exploitation rights.”

5.20.2.4 Other enforcement issues

There is a requirement that service providers must provide the SMC with a statistical summary of the achievement of the proportions of the broadcasting time dedicated to European works, indicating, where appropriate, the reasons why it has not been possible to achieve those proportions, and the measures adopted or envisaged to achieve them. Additionally, providers of on-demand audiovisual media services shall promote, where practicable and by appropriate means, the production of and access to European works, and shall submit to the SMC on or before September 30, 2011, and every four years thereafter, a report on the implementation of such promotion measures.

Moreover, the beneficiaries of selective financial assistance are required to remit on the request of the Film Fund, free of charge, a copy of the finished written or cinematographic or audiovisual product that has received the aid, as well as, for cinematographic and audiovisual works, a copy of any available promotional material and an extract of at least 30 seconds of the work, free of rights, all on material supports to be defined by the Fund.

No other register or database is foreseen in the law to specifically address the issue of the nationality of audiovisual works.

5.20.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of European work for the purpose of compliance with the AVMS Directive is carried out by the SMC, independently of the Film Fund Luxembourg.

5.20.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which “the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers”.

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.20.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard, as only the new rules regarding the volume of commercial communications have been transposed.

5.20.5 Applicable regulatory framework

Primary legislation:

- Act on the National Audiovisual Production Support Fund (*Loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle et modifiant 1) la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat 2) la loi modifiée du 13 décembre 1988 instaurant un régime fiscal temporaire spécial pour les certificats d'investissement audiovisuel*).²¹⁷
- Law on Electronic Media²¹⁸ (*Loi du 27 juillet 1991 sur les médias électroniques*).²¹⁹

Secondary legislation:

- Grand-Ducal Regulation of 5 April 2001 laying down the rules applicable to the content of European works and works by independent producers of television programs deemed to fall within the competence of Luxembourg in accordance with the European Television Without Frontiers Directive (*Règlement grand-ducal du 5 avril 2001 fixant les règles applicables en matière de contenu en œuvres européennes et en œuvres de producteurs indépendants des programmes de télévision réputés relever de la compétence du Luxembourg conformément à la directive européenne Télévision sans frontières*).²²⁰
- Grand-Ducal Regulation of 4 November 2014 implementing the Act of 22 September 2014 on the National Audiovisual Production Support Fund and amending (1) the amended Law of 22 June 1963 establishing the State employees' salary system 2) the amended law of 13 December 1988 introducing a special temporary tax regime for audiovisual investment

²¹⁷ <http://legilux.public.lu/eli/etat/leg/loi/2014/09/22/n1/jo>.

²¹⁸ www.en.uni.lu/content/download/65349/830145/file/Luxembourg_ALIA_translation_consolidated.pdf.

²¹⁹ www.alia.lu/assets/upload/files/2017-09-20Presse-et-mdias-lectroniques-2017-textes-coordonnes-20-09-17.pdf.

²²⁰ <http://legilux.public.lu/eli/etat/leg/rgd/2001/04/05/n1/jo> (primary) and <http://legilux.public.lu/eli/etat/leg/rgd/2010/12/17/n11/jo> (amending) - no coordinated version available.

certificates, setting the compensation for members of the board of directors and the selection committee of the National Fund for Audiovisual Production Support (*Règlement grand-ducal du 4 novembre 2014 portant exécution de la loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle et modifiant 1) la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat 2) la loi modifiée du 13 décembre 1988 instaurant un régime fiscal temporaire spécial pour les certificats d'investissement audiovisuel, et portant fixation des indemnités revenant aux membres du conseil d'administration et du comité de sélection du Fonds national de soutien à la production audiovisuelle*).²²¹

- Grand-Ducal Regulation of 17 December 2010 amending the Grand-Ducal Regulation of 5 April 2001 laying down the rules applicable to the content of European works and the works of independent producers of television programmes deemed to fall within the jurisdiction of Luxembourg in accordance with the European directive "Television without frontiers" (*Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal du 5 avril 2001 fixant les règles applicables en matière de contenu en œuvres européennes et en œuvres de producteurs indépendants des programmes de télévision réputés relever de la compétence du Luxembourg conformément à la directive européenne « Télévision sans frontières »*).²²²

5.20.6 Studies, reports and researches

N/A.

5.20.7 Data compilation

This factsheet was produced based on data compiled by Aleksandra Suwala, Attorney-at-law.

²²¹ <http://legilux.public.lu/eli/etat/leg/rgd/2014/11/04/n1/jo>.

²²² <http://legilux.public.lu/eli/etat/leg/rgd/2010/12/17/n11/jo>.

5.21 LV – Latvia – National legal summary²²³

5.21.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.21.1.1 Audiovisual works

There is no specific definition of the term “audiovisual work”, but the definition of audiovisual work is covered under the definitions of film (see under 5.21.1.2.).

5.21.1.2 Cinematographic works

Section 1, paragraph 2 of the Film Law provides for various definitions related to film production and distribution, encompassing cinematographic works, as follows:

“1) film – a completed audiovisual or cinematographic work which is formed by mutually connected images that create an illusion of movement, whether or not accompanied by sound, and destined to be made public;

2) film industry – a branch of culture which includes the creation of Latvian films, the distribution of Latvian and foreign films, and the preservation, protection, accessibility and popularisation of the heritage of Latvian films;

3) film industry project – a project the aim of which is the creation, preservation, protection, popularisation and distribution of Latvian films; the raising of awareness and the education of the public in the field of film art; the training of film industry specialists; international collaboration in the field of films, etc.;

4) film creation – the process of implementing creative ideas, through which a film is created;

5) co-produced film – a film which has been created with the collaboration of producers from Latvia or producers from Latvia and foreign countries;

²²³ The factsheet on Latvia incorporates the feedback received from the National Electronic Mass Media Council during the checking round with the national regulatory authorities.

6) *film distribution – an activity performed concurrently or after the making public of a work, whereby the film is made available to the public (including trade, lease, public showings, television and Internet broadcasts and other types of broadcast)."*

Furthermore, the Film Law recognises the definition on the understanding of a cinematographic work, in accordance with the European Convention on Cinematographic Co-productions.

5.21.1.3 Domestic works

Section 3 of the Film Law provides for the definition of national film as follows:

"The following shall be regarded as a Latvian film:

- 1) a film which is produced by a Latvian film producer registered in the National Film Centre, in accordance with the procedures specified in regulatory enactments, and whose main creative team includes at least one member (director, scriptwriter, composer, film artist, animation artist or camera operator) who is a citizen of Latvia or a non-citizen of Latvia, or a person who has received a permanent residence permit in Latvia;*
- 2) until the day of the coming into force of this law, a completed film which, as a significant part of the cultural heritage of Latvia, has artistic, historical, scientific or other cultural value."*

5.21.1.4 European works

Article 31 of the Electronic Mass Media Law defines European works as follows:

"(1) European audiovisual works are:

- 1) literary dramatic works, serials, films, documentary, art, education and similar creative works produced in Latvia and other European Union member states; and*
- 2) audiovisual works complying with the provisions of paragraph three of this section, which have been produced in those member states party to the European Convention on Transfrontier Television which are not European Union member states and do not apply discriminating regulations in relation to audiovisual works produced in Latvia and other European Union member states.*

(2) In accordance with agreements entered into between the European Union and states other than European Union member states which do not apply discriminating regulations in relation to audiovisual works produced in Latvia and other European Union member states; co-production audiovisual works which comply with the conditions of the agreements referred to shall also be considered as European audiovisual works.

(3) *The European audiovisual works specified in paragraph one, clauses 1 and 2 of this section are works which have been produced primarily by authors and technical employees from one or more of the states referred to in paragraph one, clauses 1 and 2, and which comply with at least one of the following conditions:*

- 1) they have been produced by one producer or several producers whose permanent place of residence is in one of those states;*
- 2) the production of the works is supervised and actually controlled by one producer or several producers whose permanent place of residence is in one those states; or*
- 3) the investment of producers from those states covers the larger share of co-production costs, and the co-production is not controlled by one producer or several producers residing permanently outside those states.*

(4) European audiovisual works shall also be deemed to be works which are not European audiovisual works within the meaning of paragraph one of this section, but which have been produced within the scope of bilateral co-production agreements between Latvia and other European Union member states or a state other than a European Union Member State, if the Latvian producers or producers of the European Union member states cover the larger share of co-production costs, and the co-production is not controlled by one or more producers permanently residing outside the territory of Latvia or the European Union member states.”

5.21.1.5 Categories included in the calculation of the share of European works

Article 32 of the Electronic Mass Media Law imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“(1) Electronic mass media shall ensure that, in the programmes produced by them, at least 51 per cent of the weekly transmission time, except for the news, sports events, games, advertising, teleshopping and teleshopping windows, is reserved for European audiovisual works.

As for non-linear service providers, Article 23, section 5 of the Electronic Mass Media Law obliges VOD providers to include European works in their catalogue, without specifying the percentage and without giving any specification concerning eligible works.

Table 28. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No, but it is covered under the definition of “film”.

Concept	Existence of a definition
Cinematographic works	No, but it is covered under the definition of “film” and “film industry project”.
Domestic works	Yes
European works	Yes

Source: Latvian response to European Audiovisual Observatory standardised survey

5.21.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the National Electronic Media Council – NEMC)²²⁴ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the NEMC in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the NEMC, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the NEMC cooperates on this issue with the national film fund (in this case, the National Film Centre of Latvia – NFC).²²⁵

5.21.2.1 Eligible nationality of European works

The NEMC monitors the percentage of European works by collecting data provided by the electronic mass media in the form of an annual report on service providers, based on a form prescribed by the NEMC containing information about the percentage of European audiovisual works, the percentage of works in the state language among the European works, etc. over a period of five years.

²²⁴ www.neplpadome.lv/.

²²⁵ <http://nkc.gov.lv/en/>.

Data collection is based on the principle of self-declaration by the media service providers. The NEMC has no resources to conduct a comprehensive analysis of the providers' declarations. In the past, the NEMC has conducted *ad hoc* sample analyses to check the validity of providers' declarations using information from the national film database²²⁶ and the Lumiere database.²²⁷

In practice, media service providers use information on the acquisition of rights for the audiovisual work for broadcasting which is included in the agreement with the rightsholders of the film. For example, Latvian TV (public service media) enters this information in a special database for programme planning, which also contains all the information about European audiovisual works. In cases where an audiovisual work has several countries of origin, the main country of production is indicated in the database as the primary one, while the other co-producing countries appear in a different field.

Section 31, paragraph 4 of the Electronic Mass Media Law states that European audiovisual works shall also be deemed to be works which are not European audiovisual works within the meaning of paragraph one of this section, but which have been produced within the scope of bilateral co-production agreements between Latvia and other European Union member states and a state other than a European Union member state, if the Latvian producers or producers of the European Union member states cover the larger share of co-production costs, and the co-production is not controlled by one or more producers permanently residing outside the territory of Latvia or the European Union member states.

5.21.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.21.2.3 Nationality and co-productions

Section 31, paragraph 3 of the Electronic Mass Media Law states that the European audiovisual works specified in paragraph one, clauses 1 and 2 of this section are works which have been produced primarily by authors and technical employees from one or more of the states referred to in paragraph one, clauses 1 and 2, and which comply with at least one of the following conditions:

- 1) they have been produced by one producer or several producers whose permanent place of residence is in one of those states;

²²⁶ <http://filmas.lv>.

²²⁷ <http://lumiere.obs.coe.int/web/search>.

2) the production of the works is supervised and actually controlled by one producer or several producers whose permanent place of residence is in one of those states;

3) the investment of producers from those states covers the larger share of co-production costs, and the co-production is not controlled by one producer or several producers residing permanently outside those states.

Section 8 of the Film Law stipulates the following principles for the eligibility of films (national production or co-production) for a funding scheme managed by the NFC:

“(1) Public financing may be granted for the creation of a Latvian film regardless of the administrator of the financing, if it conforms to at least three of the following conditions:

1) the action of the film mainly takes place in Latvia or another European Union member state, or in a member state of the European Economic Area, or in Switzerland;

2) at least one of the main characters is connected to the culture of Latvia or a territory where Latvian is spoken;

3) the film producer or the scriptwriter is a citizen of Latvia or a non-citizen of Latvia who has received a permanent residence permit in Latvia, or if the scriptwriter is a person who speaks Latvian;

4) the main theme of the film centres on issues of culture, society, politics or history relating to the Latvian community and is important thereto;

5) at least one of the original final versions of the film is in Latvian;

6) the film script is based on an original literary work of Latvia.

(2) A co-produced film may apply to obtain public financing if it conforms to the conditions specified in paragraph one of this section or if it is provided for by international agreements regulating the film industry and the creation of co-produced films which are binding to the Republic of Latvia.

(3) Public financing shall be granted for the creation of a Latvian film to a film producer – a merchant, association or foundation – registered in the Register of Film Producers.

(4) If the funds granted are not used in accordance with the conditions of the financial agreement, the grantor of the public financing shall collect the funds granted and used inappropriately from the recipient of the financing.”

The NFC applies these principles for the purpose of allocating the state budget intended for the film industry. The NFC also cooperates with other European film institutions and film funds to gather information about the projects co-produced by numerous countries. The NFC also issues the certificate attesting that a particular project meets the requirements for obtaining co-production status under the terms of the European Convention on Cinematographic Co-Production and can therefore be acknowledged as a Latvian film and, as such, be eligible for funding in Latvia.

5.21.2.4 Other enforcement issues

N/A.

5.21.2.5 Cooperation between national regulatory authorities and film agencies fund

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the NEMC, independently of the NFC. Where necessary, the NEMC cooperates with all relevant stakeholders.

5.21.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.21.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.21.5 Applicable regulatory framework

Primary legislation:

- Film Law²²⁸ (*Filmu likums*).²²⁹
- Electronic Mass Media Law²³⁰ (*Elektronisko plašsaziņas līdzekļu likums*).²³¹

²²⁸ <http://nkc.gov.lv/en/wp-content/uploads/sites/2/2014/10/Filmu-likums-ENG-2019-jun-E1741-Film-Law.pdf>.

²²⁹ <https://likumi.lv/ta/id/212399-filmu-likums/redakcijas-datums/2011/04/22>.

5.21.6 Studies, reports and researches

N/A.

5.21.7 Data compilation

This factsheet was produced based on data compiled by Dita Rietuma, director, National Film centre.

²³⁰ <https://likumi.lv/ta/en/en/id/214039-electronic-mass-media-law>.
<https://neplpadome.lv/en/assets/documents/anglu/Electronic%20Mass%20Media%20Law%2012.2014.pdf>.
²³¹ <https://likumi.lv/doc.php?id=214039>.

5.22 MT – Malta – National legal summary²³²

5.22.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.22.1.1 Audiovisual works

Article 2 of the Copyright Act defines an audiovisual work as follows:

“audiovisual work’ means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible to being made visible and, where accompanied by sounds, susceptible to being made audible.”

The same definition is provided by Article 2 of the Malta Film Commission Act.

5.22.1.2 Cinematographic works

There is no such definition in the Maltese legislation.

However, Article 2 of the Television programmes (classification certificates) Regulations defines “work” as follows:

“work’ means a cinematographic work or a work created by a process analogous to cinematography and also includes any film made for television and any creative audiovisual work.”

Furthermore, Article 2 of the Malta Film Commission Act (Substitution of Schedule) Regulations defines “qualifying production” as follows:

“An audiovisual production shall be deemed to be a “qualifying production” as mentioned in Article 25 of this Act if it satisfies the following conditions:

²³² The factsheet on Malta incorporates the feedback received from Joanna Spiteri (Malta Broadcasting Authority) during the checking round with the national regulatory authorities.

1. *The audiovisual work concerned is partially or wholly carried out in Malta; and*
2. *Processed to commercial release standards, for international distribution for cinema and international telecast (including video-on-demand and subscription video-on-demand platforms); and*
3. *Makes a valid contribution to the expression of creativity and culture through the development of production capability skills in the audiovisual sector. This shall be verified against a predetermined list of cultural criteria established by the film commissioner; and*
4. *The audiovisual work concerned is categorised as:*

(a) a feature film;

(b) a television production (including film, series or mini-series and pilots);

(c) a creative documentary, which is a project based on an original theme which contains a certain "timeless" element so that there is no loss of interest when the event with which it may be linked has passed, and contains significant original filming and does not merely report information;

(d) a reality programme (scripted/unscripted), that may be live or recorded, which directly or indirectly promotes the Maltese Islands and its culture abroad;

(e) a game show or competition, that may be live or recorded, which directly or indirectly promotes the Maltese Islands and its culture abroad:

Provided that audiovisual works involve animation or visual effects (whether computer-generated or otherwise; even if not physically shot in Malta) or are linked to cross-media, trans-media or virtual reality:

Provided further that an audiovisual work shall not be deemed to be a "qualifying production" if the audiovisual work concerned comprises or is substantially based on:

(i) any public or special performance(s) staged for filming or otherwise;

(ii) any sporting event;

(iii) current affairs or talk shows;

(iv) demonstration programmes for tasks, hobbies or projects;

(v) review, magazine-style, or lifestyle programmes;

(vi) advertising programmes or advertisements;

(vii) pornographic content;

(viii) computer games."

5.22.1.3 Domestic works

There is no such definition in the Maltese legislation.

5.22.1.4 European works

Article 5 of the Broadcasting (Jurisdiction and European Co-operation) Regulations defines European works as follows:

“(3) For the purposes of this regulation, “European works” means:

(a) works originating in member states of the European Union, hereinafter referred to as “Member States”;

(b) works originating in European third states party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions in sub-regulation (4);

(c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements;

Provided that the application of the provisions of paragraphs (b) and (c) shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned.

(4) The works referred to in sub-regulation (3)(a) and (b) are works mainly made with authors and workers residing in one or more of the states referred to in the said paragraphs, provided that they comply with one of the following three conditions:

(a) they are made by one or more producers established in one or more of those states; or

(b) production of the works is supervised and actually controlled by one or more producers established in one or more of those states, or

(c) the contribution of co-producers of those states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those states.

(5) Works that are not European works within the meaning of sub-regulation (3) but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.”

5.22.1.5 Categories included in the calculation of the share of European works

Article 5 of the Broadcasting (Jurisdiction and European Co-operation) Regulations imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“5. (1) A broadcaster shall reserve for European works within the meaning of sub-regulations (1) to (7) a majority proportion of its transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping.”

Table 29. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	No, but there is a definition for “work” and “qualifying production”
Domestic works	No
European works	Yes

Source: Maltese response to European Audiovisual Observatory standardised survey

5.22.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Broadcasting Authority)²³³ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the Broadcasting Authority in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive. This is reflected in SL 350.04 – Broadcasting (Jurisdiction and European Co-operation) Regulation.

Finally, it also details, if any, the sources used by the Broadcasting Authority, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the Broadcasting Authority cooperates on this issue with the national film fund (in this case, the Malta Film Commission).²³⁴

5.22.2.1 Eligible nationality of European works

Article 5 of the Broadcasting (Jurisdiction and European Co-operation) Regulations imposes the following obligation on broadcasters:

²³³ <http://ba-malta.org>.

²³⁴ <https://maltafilmcommission.com>.

“(6) A broadcaster shall draw up and send to the Broadcasting Authority an annual report which shall include:

- (a) a statistical statement on the achievement of the proportions referred to in sub-regulations (1) and (2) also showing separately the proportion of programmes originally produced in the Maltese language in respect of the television programme services broadcast by the said broadcaster;*
- (b) the reasons for failure to attain any of the said proportions in cases where the broadcaster has not attained this aim;*
- (c) the measures adopted or envisaged in order to achieve the said proportions.”*

In practice, the Broadcasting Authority receives data from service providers and considers such data as final since it does not have the resources to verify it. Local and national stations in their majority produce local productions in the Maltese language, specifically targeting Maltese audiences originating from Malta, and are thus considered as European works.

5.22.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.22.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

As mentioned under section 5.22.3.1, the Broadcasting Authority receives data from service providers and considers such data as final since it does not have the resources to verify it.

Regarding co-productions which are eligible for funding, this matter is dealt with by the Malta Film Commission. The following would be considered to be official co-productions (and therefore national films):

- bilateral co-productions between Malta and Canada,²³⁵China²³⁶ and all other countries (except the ones who opted out of Article 2(4)) which ratified the European Convention on Cinematographic Co-Production);
- multilateral co-productions under the European Convention on Cinematographic Co-Production or the Council of Europe Convention on Cinematographic Co-Production (revised).

²³⁵ <https://maltafilmcommission.com/wp-content/uploads/2018/02/Audiovisual-treaty-Malta-Canada.pdf>.

²³⁶ www.cfcc-film.com.cn/assets/ueditor/php/upload/20160914/14738514431066.pdf.

5.22.2.4 Other enforcement issues

N/A.

5.22.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the Broadcasting Authority, independently of the Malta Film Commission.

5.22.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers”*.

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.22.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the Broadcasting Act and other relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.22.5 Applicable regulatory framework

Primary legislation:

- Broadcasting Act²³⁷
- Copyright Act²³⁸
- Malta Film Commission Act²³⁹

Secondary legislation:

²³⁷ <http://ba-malta.org/file.aspx?f=366>.

²³⁸ www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8881&l=1.

²³⁹ www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8944&l=1.

- Broadcasting (Jurisdiction and European Co-operation) Regulations²⁴⁰
- Television programmes (classification certificates) Regulations²⁴¹
- Malta Film Commission Act (Substitution of Schedule) Regulations²⁴²

5.22.6 Studies, reports and researches

N/A.

5.22.7 Data compilation

This factsheet was produced based on data compiled by Susan Ronald, Funds Manager, Malta Film Commission.

²⁴⁰ <http://ba-malta.org/file.aspx?f=13>.

²⁴¹ <http://ba-malta.org/file.aspx?f=4>.

²⁴² www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=29548&l=1.

5.23 NL – The Netherlands – National legal summary²⁴³

5.23.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.23.1.1 Audiovisual works

There is no such definition in the Dutch legislation.

5.23.1.2 Cinematographic works

The General Regulations of the Netherlands Film Fund Foundation defines film productions as cinematographic works. This is not used at legislative level.

5.23.1.3 Domestic works

Article 8 of the Policy guidelines on Programme Quotas by the Dutch regulatory authority defines the following:

“As originally Dutch or Frisian productions referred to in article 2.122, paragraph 1 and article 3.24, paragraph 1 of the law shall also be considered:

- a. a programme offering that is spoken in Dutch or Frisian;*
- b. a programme offering whose production contains parts which are not of Dutch or Frisian original expression, but which is provided with a Dutch or Frisian-language voice-over.”*

5.23.1.4 European works

There is no definition of European works, but the Media Act refers to Article 1 of the AVMS Directive.

²⁴³ The factsheet on the Netherlands incorporates the feedback received from Marcel Betzel (*Commissariaat voor de media*) during the checking round with the national regulatory authorities.

5.23.1.5 Categories included in the calculation of the share of European works

Articles 2.115, 2.122, 3.20 and 3.24 of the Media Act stipulate that broadcasters are to reserve a majority proportion of their transmission time for European works. No further reference is provided regarding the works which are included or not in this transmission time.

In exceptional cases, the regulatory authority CvdM can grant private broadcasters a temporary exemption, on the condition that the percentage can never be lower than 10%. In its Policy guidelines on Programme Quotas, mentioned above, the CvdM has described under which circumstances a broadcaster can be released by the CvdM from the obligation to broadcast enough European, independent and Dutch productions. The exemption is granted for a maximum of three years, usually based on a sliding scale. In a well-motivated request, the applicant should refer to the individual circumstances of the case which would justify such an exemption. The nature of the channel (special interest channel), the possibility of obtaining broadcasting rights and the particular economic circumstances of the channel (initial costs of a channel which has just started) can be taken into account when the CvdM decides on a request for an exemption.

Besides general obligations, the following obligations also apply:

- 75% of the yearly television programming of the national public service media shall be in the original Dutch language;
- 50% of the television programming of each service of the national and regional public service media shall be in the original Dutch or Frisian language;
- 40% of the television programming of each service of the private broadcasters shall be in the original Dutch or Frisian language.

Table 30. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	No, but it is defined as “film productions”
Domestic works	Yes
European works	No, but reference is made to the AVMSD

Source: Dutch response to European Audiovisual Observatory standardised survey

5.23.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Commissariaat voor de Media – CvdM)²⁴⁴ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the CvdM in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the CvdM, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the CvdM cooperates on this issue with the national film fund (in this case, the Netherlands Film Fund).²⁴⁵

5.23.2.1 Eligible nationality of European works

The CvdM is in charge of monitoring the compliance of all AVMS providers with the obligations under the provisions of the AVMS Directive regarding European productions and productions by independent producers. It requests the providers, in the first quarter of the year, to report on the fulfillment of the quota obligations in the preceding year by filling in a previously prepared form.

The regulator's assessment is limited to the random sampling of the reports that media service providers send. If justified by the findings on the basis of these samples, the CvdM will further examine the issue. This examination may consist in questioning the media service provider involved, consulting the IMDB (in this case, the country and the producer are known) or consulting public sources like Google.

To facilitate the reporting process by broadcasters, the CvdM has drawn up a model scheme which can be used for reporting. In the guidelines of the European Commission, a tolerance threshold was introduced to facilitate exemptions from reporting obligations. The CvdM was one of the first regulators in the European Union who seized this opportunity to create more lenience for small players. In its modified guidelines, the

²⁴⁴ www.cvd.nl/.

²⁴⁵ www.filmfonds.nl/page/2902/welcome.

CvdM states that commercial TV channels with a technical reach of less than 75% of all Dutch households and a national market share smaller than 0.3% are exempt from the regular reporting obligation once in two years. However, the providers of these TV channels still have to meet the European quota obligations, so, despite the general exemptions, they can still be required by the CvdM to submit all relevant data in order to check compliance.

5.23.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.23.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices of the CvdM in this regard.

Regarding film funding, the Film Fund's General Regulations does not have a definition of a national work, but the Film Fund considers a work as a national work if it satisfies the criteria and has "cultural value". Works eligible for national funding include Dutch majority co-productions, which can be called national works when a Dutch producer of a production company of an international film production, for a work to be released in the Dutch cinema and/or film theatres, makes a risk-bearing investment; is jointly responsible and has decisive decision-making powers; and has contributed (or will contribute) a majority (more than 50%) of the funding for the film production. A Dutch production company can also apply for minority co-production. That production is not a national work, but as long as the work has cultural value, it is eligible for funding.

Other production companies can also apply, as long as the work has cultural value and the production company has been established for at least two years prior to the application in the Netherlands, a European Union member state or in a state that is party to the agreement concerning the European Economic Area, or in Switzerland. Further elements taken into consideration include:

- the script on which the film production is based largely takes place in the Netherlands, in another member state of the European Union or in a state that is party to the agreement concerning the European Economic Area, or in Switzerland;
- at least one of the main characters belongs to the Dutch culture or Dutch language area;
- the script on which the film production is based is mainly written in Dutch;
- the script of the film production is based on a literary work of Dutch origin;
- the main theme of the film production relates to art or artists;
- the main theme of the film production relates to historic figures or events;

- the main theme of the film production relates to current cultural, social or political issues relevant for the Dutch population.

The Netherlands has bilateral agreements with Norway, Canada, China, South Africa, France, Germany's MDM (children's film co-development Fund with MDM), the Flemish Community of Belgium: VAF (Flanders Audiovisual Fund), and the French Community of Belgium.

5.23.2.4 Other enforcement issues

N/A.

5.23.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the CvdM, independently of the Film Fund, except in cases of necessity.

5.23.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *"the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers."*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice, except for the requirement of the Film Fund regarding a mandatory ISAN number identifying each work with its underlying metadata.

5.23.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.23.5 Applicable regulatory framework

Primary legislation:

- Media Act 2008 (*Mediawet 2008*).²⁴⁶

Secondary legislation:

- Policy Regulation “Programme quota” (*Beleidsregel van het Commissariaat voor de Media “Beleidsregel programmaquota”*).²⁴⁷
- General Regulations of the Netherlands Film Fund Foundation (*Algemeen Reglement van de Stichting Nederlands Fonds voor de Film 1 januari 2019*).²⁴⁸

5.23.6 Studies, reports and researches

N/A.

5.23.7 Data compilation

This factsheet was produced based on data compiled by Annemarie Bergman, lawyer at the Netherlands Film Fund and Louise Doorman, independent legal advisor and consultant on media.

²⁴⁶ <http://wetten.overheid.nl/BWBR0025028/2017-02-01>.

²⁴⁷ <https://zoek.officielebekendmakingen.nl/stcrt-2019-10657.html>.

²⁴⁸ www.filmfonds.nl/media/inline/2018/12/18/algemeen_reglement_1_januari_2019.pdf.

5.24 PL – Poland – National legal summary²⁴⁹

5.24.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.24.1.1 Audiovisual works

Article 2, item 8 of the Act of 9 November 2018 on financial support for audiovisual production (Official Journal of 2019, item 50) provides for the following definition of “audiovisual work”:

“audiovisual work - a work consisting of a series of consecutive images, with or without sound, fixed on a carrier allowing multiple playback, giving the impression of movement and forming an original whole expressing the action or the content in an individual form, made as a feature film, documentary or animated film or a feature documentary or animated series, regardless of the field of exploitation referred to in the provisions of the Act of 4 February 1994 on Copyright and Related rights (Official Journal of 2018, items 1191, 1293, 1669, 2245 and 2339)”

5.24.1.2 Cinematographic works

Article 1, paragraph 1 of the Copyright and Related Rights Act of 4 February 1994 (Official Journal of 2019, item 1231, as amended) provides a reference to cinematographic work (film), as follows:

“The subject of copyright is any manifestation of creative activity of an individual nature, established in any form, irrespective of its value, purpose or form of expression (work).”

Article 1, paragraph 2, item 9 clarifies that, in particular, the object of copyright shall include:

“9) audiovisual (including film) works.”

²⁴⁹ The factsheet on Poland incorporates there relevant feedback from the Bureau of the Krajowa Rada Radiofonii i (National Broadcasting Council – KRRiT) during the checking round with national regulatory authorities

Furthermore, Article 4, paragraph 1 of the Act of 30 June 2005 on Cinematography (Official Journal of 2019, item 2199, as amended) defines “film” as follows:

“A film is a work of unspecified length, including a documentary or animated work, comprising a series of successive pictures with or without sound, made permanent on any medium enabling multiple reproduction, producing the impression of movement and together forming an original whole expressing action (content) in an individual form, and moreover, with the exception of documentary and animated compositions, intended for screening in the cinema as the first field of exploitation, as understood by the regulations concerning copyright and related laws.”

5.24.1.3 Domestic works

There is no definition of “domestic work” as such. However, different legal acts contributing to creation of a system of audiovisual production support provide different measures aimed at sustaining presence of works originally produced in the Polish language (as a measure to protect rare languages), sometimes supplemented by additional criteria, in conformity with the European Union Law.

Article 4, paragraph 2 of the Act on Cinematography defines “Polish film” as follows:

“2. A film is deemed to be a Polish film if its producer or co-producer is an entity with headquarters on the territory of the Republic of Poland, and moreover, at least one of the following conditions is fulfilled:

1) the author of the screenplay or adapted literary work, the director or the executor of one of the leading roles are Polish citizens; the share of financial resources of the producer, whose headquarters is on Polish territory, constitutes 100 per cent of the film production costs, and, in addition to this, these resources, up to a level of 80 per cent of the film production costs, have to be spent on Polish territory; and furthermore, the master copy is produced in the Polish language:

2) the author of the screenplay or adapted literary work, the director or the performer of one of the leading roles are Polish citizens; the share of financial resources of the co-producer, with its headquarters on Polish territory, constitutes at least 20 per cent of the film production costs in respect of a film which is a bilateral co-production, and at least 10 per cent in respect of a film which is a multilateral co-production; in addition, these resources, up to a level of 80% of the film production costs, have to be spent on Polish territory; and furthermore, the principal language version is performed in Polish.”

Article 4, item 14 of the Broadcasting Act provides that:

“a programme originally produced in the Polish language” means a programme that meets the criteria of being a European work, as defined in this Act, which has been produced on the basis of a script written originally in the Polish language and first registered in the Polish language.”

5.24.1.4 European works

Article 15b of the Broadcasting Act defines “European work” as follows:

“1. A programme shall be deemed to be a European work, if it:

*1) originates in a member state of the European Union, or
2) originates in another state party to the European Convention on Transfrontier Television adopted in Strasbourg on 5 May 1989 (official journal “Dz.U.” of 1995, item 160 and of 2004, item 250), hereinafter the “European Convention on Transfrontier Television”, which does not apply discriminatory measures against any programmes originating in member states of the European Union, or*

3) was co-produced within the framework of an agreement related to the audiovisual sector executed between the European Union and a third state, and fulfils the requirements defined in the agreement, provided that this state does not apply discriminatory measures against any programmes originating in member states of the European Union.

2. A programme originates in one of the states referred to in paragraph 1, subparagraphs 1 and 2, if the majority of the creative team members have their permanent residence in the territory of one of those states and provided that at least one of the following conditions is met:

1) the programme is produced by a producer whose head office or permanent residence is in one of the states referred to in paragraph 1, subparagraphs 1 and 2,

2) the production of the programme is supervised and controlled by a natural person having a permanent residence in one of the states referred to in paragraph 1, subparagraphs 1 and 2, or by a legal person or entity having no legal personality, while its head office is located in one of the states referred to in paragraph 1, subparagraphs 1 and 2,

3) the contribution of co-producers having a head office or permanent residence in one of the states referred to in paragraph 1, subparagraphs 1 and 2, to the total production costs is preponderant and the co-production is not under the control of co-producers that do not have their head office or permanent residence in one of the states referred to in paragraph 1, subparagraphs 1 and 2.

3. (repealed).

4. A programme shall also be deemed a European work if it was made pursuant to bilateral co-production agreements executed by member states of the European Union and third parties, and the contribution of co-producers having a head office or permanent residence in one of the states referred to in paragraph 1, subparagraph 1, to the total production costs is preponderant and the co-production is not under the control of co-producers that do not have their head office or permanent residence in the territory of one of the states referred to in paragraph 1, subparagraph 1.

5. (repealed).”

5.24.1.5 Categories included in the calculation of the share of European works

Article 15, paragraph 3 of the Broadcasting Act imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:²⁵⁰

“3. Television broadcasters shall reserve more than 50 per cent of their quarterly transmission time for European works, excluding news, advertising, teleshopping, sports events, teletext services and games.”

Article 15, paragraph 1 of the Broadcasting Act stipulates that broadcasters shall reserve at least 33 per cent of their quarterly transmission time (excluding the same categories as above) for programmes originally produced in the Polish language.

As for non-linear services, Article 47f, paragraph 2 of the Broadcasting Act obliges them to reserve at least 20 per cent of their catalogue for European works, including works produced originally in the Polish language, and to provide adequate visibility to such programmes in the catalogue. The percentage is to 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.

Table 31. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	No, but there is a definition of “film”
Domestic works	Yes
European works	Yes

Source: Polish response to European Audiovisual Observatory standardised survey

5.24.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, point (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

²⁵⁰ The mere fact that certain genres of programmes cannot qualify for European quotas established by the Broadcasting Act does not mean that they cannot be qualified as “works” under the Copyright and Neighbouring Rights Act, for example, advertising spots, provided that they fulfil the criterion of the “manifestation of creative activity of an individual nature.”

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, The National Broadcasting Council – KRRiT)²⁵¹ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, point (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the KRRiT in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the KRRiT, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way in which the KRRiT cooperates on this issue with the national film fund (in this case, the Polish Film Institute).²⁵²

References to other Acts that the Broadcasting Act are provided in order to give a full picture of the issues at the stake in the present mapping. Yet, they do not influence the implementation mission of the KRRiT, which applies exclusively the Broadcasting Act and is the sole body in charge of compliance of AVMS providers with the AVMS Directive.

5.24.2.1 Eligible nationality of European works

The Regulation of the KRRiT of 12 July 2011 concerning the manner of keeping a record by the broadcaster of the transmission time of programmes originally produced in the Polish language, European works and European works produced by independent producers, as well as the period of storage of such a record, provides for instructions, exemptions and details on reporting obligations. Reports on the fulfilment of the European quota obligations are sent on a regular basis to the KRRiT and are examined by it.²⁵³

The Polish Film Institute, pursuant to Article 6, paragraphs 1 to 2 of the Act on financial support for audiovisual production, keeps a registry relevant for this, as follows:

“1. The Institute shall maintain the register, gathering data concerning:

- 1) issued certificates referred to in Article 17, paragraph 2;*
- 2) submitted applications for financial support, including:*
 - a) the business name and the registered office of the entrepreneur who has submitted the application,*
 - b) the title and type of the audiovisual work covered by the application,*
 - c) the date and manner of settlement of the application,*
 - d) the amount of financial support requested by the entrepreneur,*

²⁵¹ www.krrit.gov.pl/en/krrit.

²⁵² <https://pisf.pl/en>.

²⁵³ www.krrit.gov.pl/Data/Files/_public/pliki/regulations/12-july-2011_ew.pdf.

- e) the amount of financial support granted and the date of its payment;
 - 3) the current level of the total amount of financial support granted in a given calendar year;
 - 4) the amount of financial support granted by the Institute in previous years.
2. The register shall be public and shall be made available on the Institute's website in the Public Information Bulletin."

5.24.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.24.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices in this regard. In terms of legal provisions, the following ones are worth mentioning.

Article 22, paragraph 1 of the Act on Cinematography states that:

"1. Subject to paragraph 2, any entity engaged in the cinema business, both Polish and from another member state of the European Union or the European Free Trade Association (EFTA), that is, parties to the European Economic Area, irrespective of its organisational or legal status and ownership structure, may apply for matching funds in the area of preparing film projects, film production, the distribution and dissemination of films, the promotion of Polish filmmaking and the dissemination of film culture, hereinafter referred to as "project co-financing."

For other types of productions, Article 7 of the Act on financial support for audiovisual production states as follows:

"1. Financial support shall be granted for audiovisual production or for the provision of audiovisual production services where:

- 1) the value of Polish eligible costs ensures that the objectives referred to in article 1 (5) are fulfilled;*
- 2) the planned duration thereof allows their dissemination in the fields of exploitation appropriate for particular types of audiovisual works.*

2. Financial support may be granted only once for the audiovisual production of a given audiovisual work.

3. In the case of a series, financial support shall be granted for each season of the series separately."

Article 8 adds that:

“1. The Institute shall grant financial support to an entrepreneur who is a producer of an audiovisual work, a co-producer of an audiovisual work or an entity providing an audiovisual production service which:

- 1) has its registered office within the territory of the Republic of Poland;*
- 2) was a producer of an audiovisual work, a co-producer of an audiovisual work or provided an audiovisual production service in relation to at least one audiovisual work which was distributed in cinemas, broadcast or made public by a media service provider or presented at least at one international film festival accredited by the International Federation of Film Producers Associations (FIAPF), or employs a person managing the entrepreneur or a person responsible for audiovisual production having experience in the field of audiovisual production or the co-production of such an audiovisual work;*
- 3) has concluded a contract for the co-production of an audiovisual work within the territory of the Republic of Poland or an agreement for the provision of audiovisual production services within the territory of the Republic of Poland before submitting an application for financial support;*
- 4) meets the requirements set out in the provisions of law on state aid.*

2. Financial support may only be granted to an entity providing an audiovisual production service unless the producer of an audiovisual work or any of the co-producers of an audiovisual work has its registered office within the territory of the Republic of Poland.

3. Financial support may also be granted to an entrepreneur who is a producer of an audiovisual work or a co-producer of an audiovisual work and who has his or her registered office in another member state of the European Union or in a member state of the European Free Trade Association (EFTA), or the party to the Agreement on the European Economic Area should fulfil the following conditions jointly:

- 1) it has a branch within the territory of the Republic of Poland;*
- 2) the subject of financial support is an audiovisual work produced by this branch.*

4. If an audiovisual work is produced by a branch referred to in section 3, the conditions set out in section 1, items 2 to 4 must be fulfilled by this branch.”

5.24.2.4 Other enforcement issues

N/A.

5.24.2.5 Cooperation between the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive and the national film fund

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the KRRiT, independently of the Polish Film Institute.

5.24.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

In that respect, Article 47f of the Broadcasting Act is of relevance, as it states:

- “1. Providers of on-demand audiovisual media services will promote European works, including works produced originally in the Polish language, in particular by:*
- 1) properly identifying the 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 by*
 - 2) placing information and materials promoting European works, including works produced originally in the Polish language.”*

No further details have been provided regarding how this applies in practice in terms of the use of metadata.

5.24.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.24.5 Applicable regulatory framework

Primary legislation:

- Copyright and Neighbouring Rights Act²⁵⁴ (*Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych*).²⁵⁵
- Act on financial support for audiovisual production²⁵⁶ (*Ustawa z dnia 9 listopada 2018 r. o finansowym wspieraniu produkcji audiowizualnej*).²⁵⁷
- Act of 30 June 2005 on Cinematography²⁵⁸ (*Ustawa z dn. 30.06.2005 o kinematografii*).²⁵⁹
- Broadcasting Act²⁶⁰ (*Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji*).²⁶¹

Secondary legislation:

- Regulation of the National Broadcasting Council concerning the manner of keeping a record by the broadcaster of the transmission time of programmes originally produced in the Polish language, European works and European works produced by independent producers, as well as the period of storage of such a record.²⁶²

5.24.6 Studies, reports and researches

The analysis “Video on demand as an object of legal regulations” by Agata Dziekan-Łanucha, Pontifical University of John Paul II in Krakow, might be of interest in the context of this study.²⁶³

5.24.7 Data compilation

This factsheet was produced based on data compiled by Aleksandra Suwala, Attorney-at-law.

²⁵⁴ www.copyright.gov.pl/media/download_gallery/Act%20on%20Copyright%20and%20Related%20Rights.pdf.

²⁵⁵ <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19940240083/U/D19940083Lj.pdf>.

²⁵⁶ [http://en.pisf.pl/files/dokumenty/Zachety/Ustawa%20o%20finansowym%20wspieraniu%20produkcji%20audiowizualnej%20EN%20\(efta\).pdf](http://en.pisf.pl/files/dokumenty/Zachety/Ustawa%20o%20finansowym%20wspieraniu%20produkcji%20audiowizualnej%20EN%20(efta).pdf).

²⁵⁷ http://bip.mkidn.gov.pl/media/download_gallery/20190118_Ust_Fin_Wsp_Pr_AW.pdf.

²⁵⁸ http://en.pisf.pl/files/dokumenty/act_of_30_june_2005_on_cinematography.pdf.

²⁵⁹ <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20051321111/U/D20051111Lj.pdf>.

²⁶⁰ www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/ustawa-o-radiofonii-i-telewizji-2016-eng.pdf.

²⁶¹ <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19930070034/U/D19930034Lj.pdf>.

²⁶² www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/Documents/Regulations/rozp--krrit-z-dnia-18-maja-2016-r- en.doc.

²⁶³ http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.ojs-doi-10_15633_ssc_2002/c/2002-1945.pdf.

5.25 PT – Portugal – National legal summary²⁶⁴

5.25.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.25.1.1 Audiovisual works

Article 2g of the Film Law defines audiovisual works as follows:

“Audiovisual works: intellectual creations expressed by a set of combinations of words, music, sounds, written text and moving images, using any medium, where the technical characteristics of the final production allow for television broadcasting.”

Also, Article 2, paragraph 1 h) of the Law on Television and On-demand Audiovisual Services provides for the definition of creative works as follows:

“‘Creative work’ means a cinematographic or audiovisual production based on structured creative elements, including, for the purpose of complying with the percentage limits set out in section V of chapter IV of this law, long and short fiction films and animation, documentaries, films and series made for television and also, for the same purposes, television reports and educational, musical, artistic and cultural programmes, provided that they are eligible for copyright protection.”

An additional definition in terms of multimedia work can be found in Article 2m of the Decree-Law on the Development and the Protection of Cinematographic and Audiovisual Activities, which implements the Film Law, including aspects such as subsidies and investment obligations:

“Multimedia work: a film or audiovisual work whose economic exploitation includes online distribution and access, namely through the Internet and other electronic media as a distribution channel in its first year of distribution, through any service, platform or technology, including works which are variants or adaptations of a base content.”

²⁶⁴ The factsheet on Portugal incorporates the feedback received from Joana Duarte (ERC – Portuguese Regulatory for the Media) during the checking round with the national regulatory authorities.

5.25.1.2 Cinematographic works

Article 2h of the Film Law defines cinematographic works as follows:

“Cinematographic works: intellectual creations expressed by a set of combinations of words, music, sounds, written text and moving images, using any medium, where the technical characteristics of the final production allow for their exhibition in film theatres.”

5.25.1.3 Domestic works

Article 2m of the Film Law defines national works as follows:

“National works: cinematographic and audiovisual works cumulatively satisfying the following requirements:

- i) A minimum of 50 per cent of the authors, namely the director, the screenplay writer, the dialogue writer and the soundtrack author, are of Portuguese nationality or from any member state of the European Union or of the European Economic Area;*
- ii) Portuguese production or co-production, according to the international agreements which bind the Portuguese state, the bilateral cinematographic co-production agreements and the European Convention on Cinematographic Co-production and further applicable community legislation;*
- iii) A minimum of 75 per cent of the technical team are of Portuguese nationality or from any member state of the European Union or of the European Economic Area;*
- iv) A minimum of 75 per cent of the leading players and of the main and secondary roles played by Portuguese actors are nationals from any member state of the European Union or of the European Economic Area, except in cases when the plot does not allow it or in cases of mostly international co-productions;*
- v) Have an original version in the Portuguese language, except when otherwise imposed by the plot;*
- vi) In the case of animation works, production processes must be fully carried out on national territory, except when otherwise imposed by the co-production or the plot, even if the post-production is carried out in any member state of the European Union or of the European Economic Area.”*

Furthermore, Article 10, paragraph 2 of the Decree-Law on the Development and the Protection of Cinematographic and Audiovisual Activities explains the notion of “Portuguese production” mentioned above as a work which is “produced by one or several producing companies, including in co-production, with its/their seat or establishment on the national territory and whose capital, voting rights and effective control belong in majority to

natural or legal persons who are nationals or residents of, or who are established in member states of the European Union or the European Economic Area.”

5.25.1.4 European works

Article 2(k) of the Film Law defines European works as follows:

“(i) works originating in member states;

(ii) works originating in European non-member states which are parties to the European Convention on Transfrontier Television of the Council of Europe and which satisfy the conditions of paragraph 3;

(iii) works co-produced under agreements relating to the audiovisual sector, including the cinema sector, concluded between the European Union and third countries and fulfilling the conditions laid down in each of those agreements;

The works referred to in (i) and (ii) shall be those works which, essentially carried out with the participation of authors and workers residing in one or more of the states to which those provisions refer, satisfy one of the following conditions:

(i) the production is carried out by one or more producers established in one or more of those states;

(ii) the production is supervised and effectively controlled by one or more producers established in one or more of those states;

(iii) the contribution of co-producers from those states to the total cost of co-production shall be preponderant and the co-production shall not be controlled by one or more producers established outside those states.”

5.25.1.5 Categories included in the calculation of the share of European works

Article 45 of the Law on Television and On-demand Audiovisual Services imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“Broadcasters with national coverage shall reserve for European works a majority proportion of their transmission time, excluding the time allotted to news services, sports events, games, advertising, teleshopping and teletext services.

Table 32. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes

Concept	Existence of a definition
Domestic works	Yes
European works	Yes

Source: Portuguese response to European Audiovisual Observatory standardised survey

5.25.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Regulatory Authority for the Media – ERC)²⁶⁵ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the ERC in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the ERC, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the ERC cooperates on this issue with the national film fund (in this case, the Institute of Cinema and Audiovisual – ICA).²⁶⁶

5.25.2.1 Eligible nationality of European works

Audiovisual media service providers, both linear and non-linear, are obliged to submit reports to the ERC on a quarterly basis, according to a model provided by the ERC. For the purpose of verifying the European nature of the works considered, the ERC uses an internal document, the ERC Classification Manual, as well as the implementing Guidelines of the Directive.

The Classification Manual includes many norms concerning, for example, the types/genres of programmes and the methods for calculating the quotas (European works, works in the Portuguese language, independent works, creative European works originally in the Portuguese language), but as far as the European qualification of works is

²⁶⁵ www.erc.pt.

²⁶⁶ www.ica-ip.pt/en/ica..

concerned, it includes solely a list of member states of the Council of Europe, and no further specifications.

The ERC receives information from the providers, and when some issues are unclear, it asks them for clarification and/or further documents. If the ERC does not agree with the classification adopted by the service provider, it requests a correction and a new submission, and it follows the evaluation.

5.25.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.25.2.3 Nationality and co-productions

For the purpose of assessing quotas for European works, co-production is always taken into account by the ERC in defining the classification, that is, whenever a European country participates with means of production, capital and creativity, even if it is a minority relative to a third country.

Regarding film funding, under bilateral or multilateral treaties in force in Portugal, all co-productions with the participation of at least one Portuguese producer (including minority participations) are eligible for support under the ICA's support schemes, both for film and TV/streaming works.

The same official co-productions should be considered as "national" for the purpose of mandatory investments under the Film Law, which is the case for investment obligations. Minority co-productions with non-European countries are not considered as European works for the purposes of AVMS compliance by broadcasters.

Production support under the national cash rebate scheme of the Fund for Tourism and Cinema is open to all types of works: national, official co-productions, *de facto* co-productions and foreign works.

The regulations for the aforementioned are found in the Film Law and in the Ministerial Ordinance on the cash rebate scheme.

Portugal has signed bilateral treaties with Angola, Belgium (the French-speaking Community), Brazil, Cape Verde, France, Germany, Israel, Italy, Morocco, Mozambique, São Tomé e Príncipe and Spain, in addition to multilateral co-production treaties (the Council of Europe Convention on Cinematographic Co-production and the Ibero-american Co-production Agreement).

5.25.2.4 Other enforcement issues

N/A.

5.25.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance of broadcasters with the AVMS Directive is carried out by the ERC, independently of the ICA.

For the purpose of verifying the compliance of broadcasters with their legal investment obligations under the Film Law, cooperation between the ICA and the ERC is foreseen by Article 14, paragraph 5 of the Film Law.

An administrative cooperation protocol has been concluded between the ERC and the ICA. Under this agreement, the two institutions exchange information, namely: the ERC informs the ICA of any new broadcasters or VOD operators; the ICA informs the ERC of updates to its list of independent producers. For the provision of information, the ICA uses an electronic platform for the reporting process of operators.

5.25.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.25.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.25.5 Applicable regulatory framework

Primary legislation:

- Film Law²⁶⁷ (*Lei nº 55/2012, de 6 de setembro, que estabelece os princípios de ação do Estado no quadro do fomento, desenvolvimento e proteção da arte do*

²⁶⁷ www.ica-ip.pt/fotos/editor2/law_55_14_eng.pdf.

*cinema e das atividades cinematográficas e audiovisuais, alterada pela Lei n.º 28/2014, de 19 de maio).*²⁶⁸

- Law on Television and On-demand Audiovisual Services²⁶⁹ (*Lei n.º 27/2007 da Televisão e dos serviços audiovisuais a pedido*).²⁷⁰

Secondary legislation:

- Decree-Law on the Development and the Protection of Cinematographic and Audiovisual Activities (*Decreto-Lei n.º 25/2018 apoio ao desenvolvimento e proteção das atividades cinematográficas e audiovisuais*).²⁷¹
- Ministerial Ordinance on the cash rebate scheme²⁷² (*Portaria n.º 490/2018, de 28 de setembro*).²⁷³

5.25.6 Studies, reports and researches

N/A.

5.25.7 Data compilation

This factsheet was produced based on data compiled by Nuno Fonseca, Senior adviser to the Institute of Cinema and Audiovisual and Visiting professor at the Higher School of Theater and Cinema (ESTC-IPL, Amadora-Lisbon).

²⁶⁸ <https://dre.pt/web/guest/legislacao-consolidada/-/lc/74901121/201909201250/exportPdf/maximized/1/cacheLevelPage?rp=indice>.

²⁶⁹ www.anacom.pt/render.jsp?contentId=979660.

²⁷⁰ https://dre.pt/web/guest/legislacao-consolidada/-/lc/58853678/201909211222/exportPdf/normal/1/cacheLevelPage?LegislacaoConsolidada_WAR_drefrontofficeportlet_rp=indice.

²⁷¹ www.ica-ip.pt/fotos/downloads/dl_25_2018_24abril_85225ae1a298ae29d.pdf.

²⁷² www.ica-ip.pt/fotos/editor2/ordinance_490_2018-1.pdf.

²⁷³ <https://dre.pt/application/file/a/116528322>.

5.26 RO – Romania – National legal summary²⁷⁴

5.26.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.26.1.1 Audiovisual works

Article 65 of Law N°8/1996 on Copyright and neighbouring rights defines an audiovisual work as follows:

“An audiovisual work is a cinematographic work, a work expressed through a process similar to cinematography, or any other work consisting of a sequence of moving images, whether or not accompanied by sounds.”

5.26.1.2 Cinematographic works

Article 3 (b) of Government Ordinance No. 39/2005 on Cinema defines a cinematographic film as follows:

“Cinematographic film (henceforth called film): the end product of an artistic and technical activity specific to the field, which results in the creation of fiction films, animated films and documentary films of any length and on any kind of technical support, and which are initially exploited by screening in cinema halls or parks, or any other locations to this end.”

5.26.1.3 Domestic works

Article 3 (c) of Government Ordinance No. 39/2005 on Cinema defines a Romanian film as follows:

“Romanian film – the film made with mainly Romanian artistic and technical participation, according to the criteria established in Appendix No. 2, which is an integrated part of this

²⁷⁴ The factsheet on Romania incorporates the National Audiovisual Council (CNA) of Romania - National Regulatory Authority during the checking round with the national regulatory authorities.

ordinance, and to the regulations issued on the basis and for the implementation of the provisions of this ordinance, heretofore called regulations.”

5.26.1.4 European works

Article 1.1. of Audiovisual Law No. 504/2002 defines European works as follows:

- “1) For the purpose of the present law, ‘European works’ means the following:*
- a) works originating in the EU member states*
 - b) works originating in third-party European states (part of the European Convention on Transfrontier Television of the Council of Europe), which fulfil the conditions from point 3.*
 - c) works co-produced as part of agreements regarding the audiovisual sector concluded between the European Community and third-parties, which fulfil the conditions foreseen in each of these agreements.*
- 2) The definitions of works under point 1.b and 1.c are applicable only in the case of works originating in member states that are not part of discriminatory provisions in the respective third-party countries.*
- 3) Works as defined under point 1.a and 1.b are works produced mostly with the contribution of authors and personnel that reside in one or several of the respective states, on condition that these works fulfil one of the following requirements: a) are produced by one or more producers residing in one or more of the respective states; b) the production of these works is supervised and effectively controlled by one or more producers residing in one or more of the respective states; c) the contribution of the co-producers from these states to the total co-production costs is preponderant, and the co-production is not controlled by one or more producers residing outside those respective states.*
- 4) Works that are not European works as defined in point 1, but that are produced as part of bilateral co-production treaties concluded between member states and third-party countries, are considered to be European works, on condition that a majority percentage in the total production costs be covered by the co-producers from the European Community and the production not be controlled by one or more producers residing outside the territory of the member states.”*

5.26.1.5 Categories included in the calculation of the share of European works

Article 22(1) of Audiovisual Law No. 504/2022 imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“Since the date of accession, any radio broadcaster under the jurisdiction of Romania shall reserve for European works a majority proportion of its transmission time, excepting the time dedicated to the news, sports events, games, advertising, as well as teletext and teleshopping services.”

Besides, Article 7 of Law No. 41/1994 on the organisation and functioning of the Romanian Radio Broadcasting Corporation and the Romanian Television Company states

that, of the European works transmitted by the public television broadcaster TVR, at least 30% shall be Romanian creations, including creations specifically for national minorities. Of all the Romanian creations, at least 35% shall be cultural creations.

Article 26 of Decision No. 320/2012 of the regulatory authority CNA concerning the provision of on-demand audiovisual media services obliges VOD providers to reserve at least 20% of their catalogue for European works, with the exception of information programmes, sports broadcasts and teleshopping.

Table 33. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	Yes
European works	Yes

Source: Romanian response to European Audiovisual Observatory standardised survey

5.26.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the National Audiovisual Council – CNA)²⁷⁵ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the CNA in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the CNA, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in

²⁷⁵ www.cna.ro.

which the CNA cooperates on this issue with the national film fund (in this case, the Romanian Film Centre – CNC).²⁷⁶

5.26.2.1 Eligible nationality of European works

According to the provisions of Article 88 of Decision No. 220/2011 regarding the Regulatory Code for audiovisual content, broadcasters shall submit to the CNA a half-yearly report, according to the model in Annex 2 of the code.

In Annex 2, broadcasters must fill in data regarding the TV channel, the audience share and the share of European and independent works, as well as the percentage of recent independent European works broadcast during the reporting period.

Providers of on-demand audiovisual media services who have notified their activities to the CNA have the legal obligation to fill in and submit annually to the CNA the statistical situation regarding the share and prominence of European works in the catalogue of programmes for each service owned (Annex 2, according to Article 26(4) of Decision No. 320/2012 concerning the provision of on-demand audiovisual media services).

In addition to providing data regarding the VOD service, providers should fill in the Annex 2 data on the share of European works included in the catalogue of programmes; data on the share of the spots promoting European works posted on the homepage of the website; and also provide information as to whether the country of origin of the audiovisual work is mentioned in the catalogue, whether the catalogue of programmes has a section dedicated to European works, and whether it is possible to do a search in the catalogue according to criteria based on the country of origin.

It is reported that these activities are done within the context of a collaborative relationship between the CNA and audiovisual media service providers and that no challenging or difficult situations have been encountered. In general, the problems reported by the broadcasters concerned the exceptions provided in the AVMSD regarding the calculation of the quota and the geographical area covered by the broadcast or the thematic profile of the service.

Additionally, the CNA reports that in practice, in cases where it is needed, broadcasters and the CNA consult film catalogues such as, for example, the British Board of Film Classification.²⁷⁷

²⁷⁶ <http://cnc.gov.ro>.

²⁷⁷ <https://bbfc.co.uk/what-classification/research>.

5.26.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.26.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices of the CNA in this regard.

Regarding film funding, there are two funding bodies that support national and/or minority co-productions in Romania.

The Romanian Film Centre only supports productions which will be firstly released theatrically and are produced independently. In order for a minority co-production to receive support through a funding call, it needs to have a Romanian cultural participation with a minimum score of 35 points out of 100, according to Annex 2 of the Romanian Government Ordinance No. 39/2005 on Cinematography.

The National Commission for Strategy and Prognosis supports any type of production for any type of distribution and exhibiting method (TV drama, SVOD productions, theatrical productions, Youtube, etc.). It is a cash rebate scheme. In order to qualify, the production needs to have a co-production (or service providing a contract, but not subject to this study) memo deal in place with a Romanian production company; it needs to pass the cultural test according to Order 166/2018 issued by the National Commission for Strategy and Prognosis to establish the criteria for the classification of the projects eligible for State aid as a “cultural product”; and a minimum of 20% of the total production budget must be spent in Romania, but not less than EUR 100 000. The co-production can be based on any of the treaties or agreements that Romania is part of or as just an agreement between the two parts.

All works that fall under the European Convention on Cinematographic Co-production, whether for theatrical or non-theatrical distribution, are accompanied by a certificate of origin issued by the CNC. With regard to Romanian productions, the certificate is issued only if requested by the producer, and if they have received public financing they are recognised automatically as being a national or co-production with a Romanian minority contribution.

Finally, Romania has signed bilateral treaties with France, Italy, Israel and Canada.

5.26.2.4 Other enforcement issues

N/A.

5.26.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the CNA, independently of the CNC.

5.26.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which “*the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.*”

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.26.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.26.5 Applicable regulatory framework

Primary legislation:

- Government Ordinance No. 39/2005 on the Cinema²⁷⁸ (*Din Ordonanța Guvernului 39/2005 privind cinematografia cu modificările și completările ulterioare*).²⁷⁹
- Law on Copyright and neighbouring rights In Romanian²⁸⁰ (*Din Legea 8/1996 privind dreptul de autor și drepturile conexe republicată*).²⁸¹
- Audiovisual Law²⁸²: In Romanian (*Legea n°504/2002 din 11 iulie 2002 Legea audiovizualului*).²⁸³

²⁷⁸ <http://cncold.gov.ro/wp-content/themes/cnc/pdf/fls-1184.pdf>.

²⁷⁹ http://legislatie.just.ro/Public/DetaliiDocument/63969#id_artA24_ttl.

²⁸⁰ <https://wipolex.wipo.int/en/text/160655>.

²⁸¹ <http://legislatie.just.ro/Public/DetaliiDocument/7816>.

²⁸² www.cna.ro/The-Audio-visual-Law,1655.html.

²⁸³ <http://legislatie.just.ro/Public/DetaliiDocument/37503>.

- Law on the organisation and functioning of the Romanian Radio Broadcasting Corporation and the Romanian Television Company²⁸⁴ (*Legea n°41/1994 din 17 iunie 1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune*).²⁸⁵

Secondary legislation:

- Decision of the CNA concerning the provision of on-demand audiovisual media services²⁸⁶ (*Decizie n°320 din 29 mai 2012 privind furnizarea serviciilor media audiovizuale la cerere*).²⁸⁷

5.26.6 Studies, reports and researches

N/A.

5.26.7 Data compilation

This factsheet was produced based on data compiled by Alex Trăilă, AV policy expert and consultant, PhD. Researcher.

²⁸⁴ www.cdep.ro/legislatie/eng/vol51eng.pdf.

²⁸⁵ <http://legislatie.just.ro/Public/DetaliiDocument/20381>.

²⁸⁶ www.cna.ro/Decision-no-320-2012.html.

²⁸⁷ www.cna.ro/Decizie-nr-320-din-29-mai-2012,5314.html.

5.27 SE – Sweden – National legal summary²⁸⁸

5.27.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.27.1.1 Audiovisual works

There is no such definition in the Swedish legislation.

5.27.1.2 Cinematographic works

Article 1 of the Regulation on State aid to film defines a film, encompassing cinematographic works, as follows:

“Film: long feature films, short films, documentaries and children's and youth films, in different techniques and for different viewing windows.”

5.27.1.3 Domestic works

Article 1 of the Regulation on State Aid to film defines a “Swedish film” as follows:

“Swedish film: film that has a Swedish producer and where the Swedish contribution of artistic staff is of significant importance or, if the film does not have a Swedish producer, the requirements stated in the European Convention of 2 October 1992 on Cinematographic co-production are fulfilled.”

5.27.1.4 European works

There is no such definition in the Swedish legislation, which refers directly to the AVMS Directive.

²⁸⁸ The factsheet on Sweden incorporates the feedback received from Anna Dingertz (The Swedish Press and Broadcasting Authority) during the checking round with the national regulatory authorities.

5.27.1.5 Categories included in the calculation of the share of European works

Chapter 5, Section 7 of the Radio and Television Act obliges broadcasters, unless there are special reasons to the contrary, to reserve more than half of their transmission time for European works. Unless there are special reasons to the contrary, these percentages shall contain a considerable proportion of programmes in the Swedish language, programmes with Swedish artists active in Sweden, and works by Swedish authors active in Sweden.

Pursuant to the same section of the Act, “transmission time is defined as the time when programmes with content other than news, sport, games, advertising and teleshopping are broadcast. Transmission time shall also not include broadcasts consisting purely of text.”

Table 34. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	Yes
Domestic works	Yes
European works	No

Source: Swedish response to European Audiovisual Observatory standardised survey

5.27.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Swedish Press and Broadcasting Authority)²⁸⁹ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the Swedish Press and Broadcasting Authority in terms of the verification of Article 1, paragraph 2

²⁸⁹ www.mprt.se.

(discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the Swedish Press and Broadcasting Authority, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way, if any, in which the Swedish Press and Broadcasting Authority cooperates on this issue with the national film fund (in this case, the Swedish Film Institute).²⁹⁰

5.27.2.1 Eligible nationality of European works

The Swedish Press and Broadcasting Authority applies the “*Revised guidelines for monitoring of the application of Articles 16 and 17 of the Audiovisual and Media Services Directive*” adopted in July 2011 by the European Commission.²⁹¹ No other legislative or relevant text is used.

The Swedish Press and Broadcasting Authority does not check in detail to what extent the audiovisual media service providers’ reports comply with the legislation, and generally trusts in the accounts received. In that respect, no certain types of works have proven more or less difficult to assess. The Swedish Film Institute database²⁹² on Swedish film holds information on all Swedish films produced since 1897, but it is not used by the Swedish Press and Broadcasting Authority, as it does not scrutinise the information provided by the broadcasters.

5.27.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.27.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any relevant practices of the Swedish Press and Broadcasting Authority in this regard.

Regarding film funding, films and documentaries are assessed for eligibility for State aid, for the granting of certificates of origin and for the approval of European co-production status, in accordance with the European Convention on Cinematographic Co-production. TV series are currently not subject to any funding scheme.

²⁹⁰ www.filminstitutet.se/en.

²⁹¹ <https://ec.europa.eu/digital-single-market/en/news/revised-guidelines-monitoring-application-articles-16-and-17-audiovisual-media-services-avms>.

²⁹² www.svenskfilmdatabas.se/en.

With regard to films, Swedish majority co-productions are always regarded as Swedish and therefore eligible for the Swedish Film Institutes funding scheme. Co-productions that are regarded as Swedish minority productions are eligible for funding as “international co-productions.”

Sweden is a party to the Council of Europe Convention on Cinematographic Co-production and a party to bilateral co-production treaties with Canada, France, Germany, Israel and Italy.

5.27.2.4 Other enforcement issues

N/A.

5.27.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the Swedish Press and Broadcasting Authority, independently of the Swedish Film Institute.

5.27.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.27.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review.

The 2018 Audiovisual Media Inquiry has presented a report (SOU 2019:39) on legislative changes and other actions needed to implement the revised Audiovisual Media Services Directive, which relates mainly to changes to the Radio and Television Act.²⁹³ The Inquiry proposes that the Swedish Press and Broadcasting Authority should have the

²⁹³ www.regeringen.se/4adae9/contentassets/705b556627d643d3983a823d008ac5dd/en-moderniserad-radio--och-tv-lag-sou-201939.pdf.

opportunity to create flexibility in the reporting on the application of Articles 16 and 17 of the AVMS Directive. The Inquiry also foresees co-regulation in the area of the promotion of European works.

5.27.5 Applicable regulatory framework

Primary legislation:

- Radio and Television Act²⁹⁴ (*Radio- och tv-lag*).²⁹⁵

Secondary legislation:

- Regulation on State aid to film (*Förordning (2016:989) om statsbidrag till film*).²⁹⁶

5.27.6 Studies, reports and researches

N/A.

5.27.7 Data compilation

This factsheet was produced based on data compiled by Jonas Vilhelmsson, Legal Advisor at the Swedish Film Institute.

²⁹⁴ www.mprt.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf.

²⁹⁵ www.notisum.se/rnp/sls/lag/20100696.htm.

²⁹⁶ www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2016989-om-statsbidrag-till-film_sfs-2016-989.

5.28 SI – Slovenia – National legal summary²⁹⁷

5.28.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.28.1.1 Audiovisual works

There is no such definition in the Slovenian legislation.

5.28.1.2 Cinematographic works

There is no such definition in the Slovenian legislation.

There is, however, a definition of “film” in Article 4, point 4 of the Slovenian Film Centre Public Agency Act, as follows:

“Film’ shall mean any audiovisual work regardless of its duration or the image and audio carrier, intended for public screening, particularly in cinemas.”

5.28.1.3 Domestic works

Article 68 of The Mass Media Act defines Slovenian audiovisual works as follows:

- “(1) Under the present Act, Slovenian audiovisual works are works produced originally in Slovene or works intended for the Hungarian and Italian ethnic communities in the language thereof, and works of Slovenian cultural origin from other areas of the arts.*
- (2) Audiovisual works specified in the previous paragraph are only those expressed in any manner as individual intellectual creations from the fields of literature, science and art.*
- (3) In accordance with Articles 4 and 110 of the present Act, the Republic of Slovenia shall support the establishment and progressive development of the Slovenian audiovisual industry, and shall promote the creation of Slovenian audiovisual works, such as TV*

²⁹⁷ The factsheet on Slovenia incorporates the feedback received from Igor Žabjek (Agency for communication networks and services of the Republic of Slovenia) during the checking round with the national regulatory authorities.

feature films and dramas, arts and culture series, entertainment series, serials, documentaries and educational works.”

5.28.1.4 European works

Article 3(20) and (21) of the Audiovisual Media Services Act defines European works as follows:

“20. Under this Act, ‘European audiovisual works’ means:

- works originating in European Union Member States;*
- works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe in which audiovisual works of European Union Member States are not subject to discriminatory measures and which meet the conditions referred to in point 21 of this paragraph;*
- works originating in European third States in which audiovisual works of European Union Member States are not subject to discriminatory measures and which were wholly made in a co-production of producers established and registered in European Union Member States with producers from European States with which the European Union has signed agreements in the audiovisual area, if these works were mainly made by authors and workers from one or more European States.*

21. The European works referred to in the first and second indents of the previous point are works which have been mainly made by authors and workers residing in the States referred to in these indents, provided they comply with one of the following conditions:

- the producers of these works are established or registered in one or more of those States;*
- the work was made under the supervision and actual control of one or more producers from those States;*
- the contribution of co-producers from those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established or registered outside those States.”*

5.28.1.5 Categories included in the calculation of the share of European works

Article 16(1) and (4) of the Audiovisual Media Services Act imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“(1) European audiovisual works must account for at least 50 per cent of the annual transmission time of every broadcaster.

(4) The annual transmission time referred to in the first paragraph of this Article shall not include the time allotted to news, sports events, games, advertising, teleshopping and teletext services.”

Table 35. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	No
Cinematographic works	No, but there is a definition for “film”.
Domestic works	No, but there is a definition for “Slovenian audiovisual work”
European works	Yes

Source: Slovenian response to European Audiovisual Observatory standardised survey

5.28.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Agency for Communications Networks and Services – AKOS)²⁹⁸ assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, point (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the AKOS in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

Finally, it also details, if any, the sources used by the AKOS, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way in which the AKOS cooperates on this issue with the national film fund (in this case, the Slovenian Film Center).²⁹⁹

5.28.2.1 Eligible nationality of European works

In carrying out its assessment, AKOS can use all available information in this respect. This information can be obtained either from data in the IMDBpro (to find out which country individual producers comes from) and the Lumiere database (to obtain information about

²⁹⁸ www.akos-rs.si/akos-eng.

²⁹⁹ www.film-center.si/en/about/archive-slovenian-film-fund.

EU film production), or from the Slovenian Film Centre's database (to obtain information on films co-financed by the Slovenian Film Centre). Additionally, AKOS may use information from providers, producers, film credits, etc.

It is reported that the task of determining the eligibility of works can be very challenging, as there are no specific or detailed guidelines. In addition, the fact that obligations are on an annual basis (requiring the checking of data for each work in the chosen year) is also reported to be difficult.

5.28.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.28.2.3 Nationality and co-productions

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

However, it is worth mentioning that the Slovenian Film Centre's applicable rules on selecting projects and programmes define the procedure and criteria, and define a minority co-production project as *"the production of a film project of which the Slovenian share must be at least 10 per cent and up to 49 per cent of the film production costs."* In addition, it is necessary that Slovenian co-authors and authors of compound works be included in the production of a film project.

5.28.2.4 Other enforcement issues

N/A.

5.28.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the AKOS, independently of the Slovenian Film Centre.

5.28.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *"the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers."*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.28.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.28.5 Applicable regulatory framework

Primary legislation:

- Slovenian Film Center Public Agency Act (*Zakon o slovenskem filmskem centru, javni agenciji Republike Slovenije*).³⁰⁰
- Audiovisual Media Services Act³⁰¹ (*Zakon avdiovizualnih medijskih storitvah*)³⁰²
- Mass Media Act³⁰³ (*Zakon o medijih*).³⁰⁴

Secondary legislation:

- Rules on the procedure for selecting projects and programmes, on the criteria for selecting projects and programmes, on contracts and their content and on the supervision of the implementation of the contracts of the Slovenian Film Centre (*Pravilnik o izvedbi postopka izbire projektov in programov, pogojih in merilih za izbor projektov in programov ter postopku sklepanja pogodb, vsebine pogodb in načinu nadzora nad izvajanjem pogodb Slovenskega filmskega centra, javne agencije Republike Slovenije*).³⁰⁵

5.28.6 Studies, reports and researches

N/A.

³⁰⁰ www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5960#.

³⁰¹ www.akos-rs.si/files/APEK_eng/Legislation/Act/AKOS-Audiovisual-Media-Services-Act.Unofficial-Translation.pdf.

³⁰² <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6225>.

³⁰³ www.akos-rs.si/files/APEK_eng/Legislation/mass-media-act.pdf.

³⁰⁴ <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1608>.

³⁰⁵ <http://pisrs.si/Pis.web/pregledPredpisa?id=PRAV13079>.

5.28.7 Data compilation

This factsheet was produced based on data compiled by Tomaž Gorjanc, AKOS and Nataša Bučar, Slovenian Film Center.

5.29 SK – Slovakia – National legal summary³⁰⁶

5.29.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.29.1.1 Audiovisual works

Section 82, paragraph 1 of the Copyright Act defines audiovisual work as follows:

“An audiovisual work is a work created by creative filming techniques as well as by the selection and processing of works used in audiovisual form, regardless of their form and the manner of their processing, which are perceivable through a technical device as a sequence of recorded, intentionally ordered and mutually interconnected pictures, creating the impression of motion, whether or not accompanied by sound.”

5.29.1.2 Cinematographic works

Section 2, paragraph 9 of the Audiovisual Act and on the Amendment and Supplementation of Certain Acts defines cinematographic work as follows:

“A cinematographic work shall be an audiovisual work originally intended to be presented to the public by means of an audiovisual performance.”

5.29.1.3 Domestic works

Section 2, paragraph 13 of the Audiovisual Act and on the Amendment and Supplementation of Certain Acts defines Slovak audiovisual work as follows:

“Slovak audiovisual work is an audiovisual work

a) produced by a producer who has or had, at the time when the work was first disclosed to the public, a permanent residence, place of business or registered office within the territory of the Slovak Republic;

³⁰⁶ The factsheet on Slovakia incorporates the feedback received from the Slovak Audiovisual Fund during the checking round with the national regulatory authorities.

b) which fulfils the conditions for the granting of the status of an official co-production according to a special regulation (section 32 of Act No. 516/2008 Coll. on the Audiovisual Fund) and at least one of the co-producers has a permanent residence, place of business or registered seat within the territory of the Slovak Republic; or
c) produced with public funds (section 2, subparagraph a) of Act No. 523/2004 Coll. on the budgetary rules for the public sector)."

5.29.1.4 European works

Section 22 of the Act on Broadcasting and Retransmission defines European works as follows:

"(1) For the purposes of this act, "European work" means work originating from:
a) one of the member states of the European Union,
b) one of the European states which is a contracting party to the European Convention on Transfrontier Television, if there are in this state no discriminatory measures against work under (a) and the work fulfils the conditions under subsection (2),
c) a co-production within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries that fulfil the conditions defined in each of those agreements, if such third countries do not have discriminatory measures against works under (a).
(2) The work referred to in subsection (1)(a) and (b) shall specifically be work made by authors and employees residing in or having a long-term residence in one or more member states of the European Union or in one or more states which are contracting parties to the European Convention on Transfrontier Television, and that satisfies the following conditions:
a) it is made by one or more producers whose headquarters, business establishment or residence is in one or more of those states, or
b) production of the work is controlled by one or more producers with headquarters, a business establishment or residence in one or more of those states, or
c) the contribution of co-producers of those states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers with headquarters, a business establishment or residence outside of those states.
(3) A European work is also a work made within the framework of bilateral co-production treaties concluded between the member states of the European Union and third states, if the co-producers from the member states of the European Union cover most of the total costs of the production, and their production is not controlled by one or more producers having their headquarters, business establishment or residence outside the territory of the member states of the European Union."

5.29.1.5 Categories included in the calculation of the share of European works

Section 23, paragraph 1 of the Act on Broadcasting and Retransmission imposes the following obligation on broadcasters and therefore excludes from the scope of the term “work” the following genres:

“A broadcaster shall reserve a majority share of broadcasting time per calendar month for European works, which shall be calculated for each television programme service individually; for the purposes of calculating the share of total broadcasting time, broadcasting time dedicated to news, sports events, entertainment programmes, teletext services, ancillary broadcasting including advertising, and teleshopping shall not be taken into account.”

Table 36. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	Yes
European works	Yes

Source: Slovak response to European Audiovisual Observatory standardised survey

5.29.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, point (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national bodies in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the Council for Broadcasting and Retransmission – CBR)³⁰⁷ assess whether or not a work falls under one of the situations covered by Article 1, paragraph 1, point (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the CBR in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

³⁰⁷ www.en.rvr.sk.

Finally, it also details, if any, the sources used by the CBR, the specific difficulties encountered in implementing Article 1, paragraph 1, point (n) and the way, if any, in which the CBR cooperates on this issue with the national film fund (in this case, the Slovak Audiovisual Fund).³⁰⁸

5.29.2.1 Eligible nationality of European works (Article 1, paragraph 1, point (n) and Article 1, paragraph 4 of the AVMS Directive)

In general, the application of the definition of “European works” is exercised by audiovisual media service providers, who submit reports to the CBR. Broadcasters are obliged to submit monthly reports, while, in the case of VOD providers, these are only provided at the request of the CBR.

In the broadcasters’ reports to the CBR, the information included pertains to the proportion of European works, without specifying other details that would be necessary in order to evaluate the different criteria of the definition.

The CBR can request more detailed information from both linear service providers (the requested information can include data on the percentage, number and duration of the European works broadcast, their identification and the identification of their producers) and non-linear service providers (the requested information can include a list of data on the European works that are part of its on-demand audiovisual media service, containing the number and duration of the titles that are European works, their identification and the identification of their producers).

In practice, due in particular to the heavy administrative burden that would be involved in the processing and checking of such detailed data, the monitoring of compliance currently takes place on the basis of data on the proportion of European works and not on the individual work. This is reflected in the current case practice that can be found on the CBR website.³⁰⁹

An overview of the CBR cases can also be found in its yearly report.³¹⁰ This shows that case law in this domain is only a minor fraction of the CBR’s work, which, in this area, is based mostly on non-compliance with the set quotas or failure to send the data on the share of European works. In the vast majority of cases, the prescribed shares of European works were successfully reached. There are only a couple of cases of broadcasters breaching the obligation to supply data, limited cases of broadcasters breaching the quotas, and no cases involving VOD providers.

³⁰⁸ www.avf.sk/english_contemporary.aspx.

³⁰⁹ <http://sk.rvr.sk/sankcne-rozhodnuti> (in Slovak).

³¹⁰ Report on the State of the Broadcasting in the Slovak Republic and on the activities of the Council for Broadcasting and Retransmission, <http://sk.rvr.sk/pre-verejnost-spravy-o-stave-vysielania> (in Slovak).

A reoccurring difficulty encountered during the implementation of these provisions relates to the supply of the statistics by broadcasters. A practical difficulty as regards the burden on broadcasters is the monthly reporting obligation, which also entails an administrative burden on the CBR, who is evaluating these statistics on a quarterly basis. If a more elaborate enforcement of these obligations were to be put in place, this would entail a high administrative burden on both sides, but especially on the CBR.

Additionally, difficulties arise from the scarcity of data sources at national level (in terms of their usefulness for regulatory purposes), in addition to the lack of a central data point at European level.

5.29.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices in this regard.

5.29.2.3 Nationality and co-productions

As stipulated in the Audiovisual Act and on the Amendment and Supplementation of Certain Acts, cases where a work may be considered as national include works which fulfil the conditions for the granting of the status of an official co-production according to a special regulation and of which at least one of the co-producers has a permanent residence, place of business or registered seat within the territory of the Slovak Republic.

The granting of official co-production status is elaborated on in the Act on the Audiovisual Fund, with references to very general conditions linking it to the Convention on Cinematographic Co-production and cases of co-productions under bilateral international agreements.

More detailed conditions are found in the Slovak Audiovisual Fund's Guideline on the award of official co-production status³¹¹, which lays down the different types of co-productions in terms of the number and structure of the co-producing parties; the basic concepts and specific provisions on co-production shares; and the specific conditions that have to be fulfilled for the granting of the status. It also specifies the process for the granting of the status. The resulting officially granted co-production statuses can be found in a publicly available database.³¹²

³¹¹ Slovak Audiovisual Fund's Guideline on the award of official co-production status (in Slovak), www.avf.sk/Libraries/Z%c3%a1kony_a_predpisy/VP_5_2017_Smernica_koprodukcie.sflb.ashx.

³¹² www.avf.sk/aboutus/coproduction.aspx.

As for the cases of co-production that would be granted national status under bilateral international agreements, an overview of these is available on the website of the Ministry of Culture of the Slovak Republic.³¹³

There are some databases at national level that could be relevant in this context. These include:

- A list of the co-production statuses that are issued by the Slovak Audiovisual Fund (minority co-productions are also available);
- A list of the Slovak Audiovisual Works, which is based on data gathered by the Slovak Film Institute;
- A registry of the persons active in the audiovisual field in Slovakia, which is based on data gathered by the Slovak Film Institute;
- A database of the supported/non-supported projects by the Slovak Audiovisual Fund (as a complementary source of information);
- The Slovak Film Database, the official database of the Slovak Film Institute that provides for a database of the Slovak or Slovak co-production cinematographic and other audiovisual works (including all archived works); it includes very detailed information on the work itself, including its producers, all its authors, the co-producing countries, its running time, languages, etc.;
- Culture statistics of the Ministry of Culture (in the case of AVMS services, data points on independent production, co-production and foreign production), including European and European independent works, video-on-demand services (providing for an overview of the works in the catalogues, including a division between European and Slovak audiovisual works), co-productions with Slovak participation (aggregated data on the co-producing countries), etc.;
- A yearly “Report on the Slovak Audiovisual Situation” prepared by the Creative Europe Desk Slovakia in cooperation with the Slovak Film Institute describing the whole audiovisual value chain in Slovakia (including co-productions).³¹⁴

³¹³ Relevant lists are found at:

www.culture.gov.sk/posobnost-ministerstva/medzinarodna-spolupraca/bilateralne-dokumenty-160.html (in Slovak).

³¹⁴ Relevant links:

- [List](#) of the co-production statuses that are issued by the Slovak Audiovisual Fund (in Slovak);
- [Registry](#) of Slovak Audiovisual Works (in Slovak);
- [Registry](#) of the persons active in the audiovisual field in Slovakia (in Slovak);
- [List](#) of projects at the Slovak Audiovisual Fund (in Slovak);
- Slovak Film [Database](#) (in Slovak);
- The official [statistics](#) in the area of culture (in Slovak);
- [Report](#) on the Slovak audiovisual (in Slovak and English).

5.29.2.4 Other enforcement issues

N/A.

5.29.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the CBR, independently of the Slovak Audiovisual Fund.

5.29.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

5.29.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the relevant legislation is currently under review. However, at this stage, no further information is available in this regard.

5.29.5 Applicable regulatory framework

Primary legislation:

- Audiovisual Act and on the Amendment and Supplementation of Certain Acts (*Zákon č. 40/2015 Z. z. o audiovizíi a o zmene a doplnení niektorých zákonov*).³¹⁵
- Copyright Act (*Zákon č. 185/2015 Z. z. Autorský zákon v znení neskorších predpisov*).³¹⁶
- Act on Broadcasting and Retransmission (*Zákon č.308/2000 o vysielaní a retransmisii*).³¹⁷

³¹⁵ www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/40.

³¹⁶ www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/185/20190101.

- Act on the Audiovisual Fund and the amendment and supplement of certain acts³¹⁸ (*Zákon č.516/2008 o o Audiovizuálnom fonde a o zmene a doplnení niektorých zákonov*).³¹⁹

Secondary legislation:

- Guideline on the award of official co-production status (*Smernica o priznaní štatútu oficiálnej koprodukcie*).³²⁰

5.29.6 Studies, reports and researches

The following studies deal with legal provisions and include sections on European works provisions, with background on implementation by the CBR and case law:

- Electronic Media Regulation (Wolters Kluwer, 2015).³²¹
- Slovak Broadcasting Act – A Commentary (Wolters Kluwer, 2016).³²²

5.29.7 Data compilation

This factsheet was produced based on data compiled by Michal Hradický, European Affairs Coordinator, Office of the Council for Broadcasting and Retransmission.

³¹⁷ www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/308/20180901.

³¹⁸ www.culture.gov.sk/legislation-1ce.html (non-consolidated collection of all the aforementioned Acts in English).

³¹⁹ www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/516/20180901.

³²⁰ www.avf.sk/Libraries/Z%c3%a1kony_a_predpisy/VP_5_2017_Smernica_koprodukcie.sflb.ashx.

³²¹ www.wolterskluwer.sk/sk/archiv/regulacia-elektronickych-medii.p1852.html (in Slovak).

³²² www.wolterskluwer.sk/sk/zakon-o-vysielani-a-retransmisii-komentar.p2672.html (in Slovak).

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