



## AVMS Directive FAQ

### Country of Origin principle and financial contributions

#### 1. What is the scope of the derogation of the Country of Origin principle?

According to the initial proposal of the Commission, the derogation to the Country of Origin principle will apply to **financial contributions that VoD operators have to pay or to dedicate to the production of European works.**

There are two kinds of financial contributions:

- Taxes or levies that are intended to feed into film funds budget to the benefit of the development, production, distribution and exhibition of European films;
- Investment obligations, i.e. a percentage of the company's turnover or fixed obligation based on revenue that needs to be dedicated to production of European works (acquisition of rights, co-productions shares...).

The derogation to the Country of Origin principle would mean that the rules of the country targeted by the service will apply.

Requests for adaptation of the Country of Origin principle have preceded the proposal from the European Commission, in particular through State aid cases submitted by Germany and France. On 1<sup>st</sup> September 2016, the European Commission approved the possibility for the FFA to apply levies to on-demand services coming from other Member States and targeting German audiences.<sup>1</sup>

#### 2. How many countries have financial contributions already in place?

In total, 9 countries impose financial contributions on VoD operators (levies or investments obligations): Czech Republic, Spain, France, Germany, Italy, Croatia, Slovenia, Portugal, Belgium (Wallonia-Brussel Federation).

- **Tax/Levies currently in force in 6 countries**

6 countries currently have systems whereby VoD operators have to contribute to film funds through a levy/tax based on their national turnover.<sup>2</sup>

Countries	Rate of the levy (on the turnover)
Croatia	2% <sup>3</sup>

<sup>1</sup> [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38418](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38418)

<sup>2</sup> Contrary to the data mentioned in the Impact assessment of the European Commission, Poland does not apply levy to online services (only revenues from the cinemas, DVD, broadcasting terrestrial, satellite and cable transmissions).

<sup>3</sup> Art. 36 of Law on Audiovisual Activities Official Gazette Nr. 76/07 and 90/11

Czech Republic	0.5% <sup>4</sup>
Germany	1,8% to 2,3% <sup>5</sup> 0% if turnover below €500.000
France	2% <sup>6</sup>
Portugal	1% (choice between contribution to a fund or investment in production) <sup>7</sup>
Wallonia-Brussels Federation (Belgium) <sup>8</sup>	1,4% to 2,2% (choice between contribution to a fund or investment in production) 0% if turnover below €300.000 <sup>9</sup>

As shown in the table above, the rates are very low and have a very limited impact on the benefits of the operators. This will not significantly impact the profitability of big players while allowing them to contribute to the objective of cultural diversity through film funds' supports. The money generated by these levies feed into film agencies' budgets and allow them to support a wide range of initiatives from film education, to production of local and European content to supporting efficient distribution in theatres or online.

Moreover, the provisions of the revised AVMS Directive provide for an exemption for small operators. In Germany already, companies with a turnover below €500.000 are not subject to the levy.<sup>10</sup> The same applies in Belgium (Wallonia-Brussels Federation) for companies with a turnover below €300.000. Last but not least, it has to be noted that VoD Services paying a levy regardless of their place of establishment are also entitled to receive German funding for the distribution of films.

- **Investment obligations**

7 countries currently implement investment obligations whereby a percentage of the company's turnover needs to be dedicated to the production of European works.

Countries	% of turnover to invest in European production
Spain	5% of revenues <sup>11</sup>

<sup>4</sup> Article 27 of Act 496/2012 on Audiovisual Works and Support for Cinematography and on Amendment to Certain Acts (Audio/Video Act) <http://www.fondkinematografie.cz/assets/media/files/legislativa/act-on-audiovisual-works-and-support-for-cinematography.pdf>

<sup>5</sup> Article 66a of Gesetz über Maßnahmen zur Förderung des deutschen Films (Filmförderungsgesetz – FFG) <http://www.ffa.de/ffg.html>

<sup>6</sup> Art. 1609 sexdecies B, French General Tax Code <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000022202043&cidTexte=LEGITEXT00006069577&dateTexte=20120101&oldAction=rechCodeArticle>

<sup>7</sup> Article 45(2) of the Television and Audiovisual Services On Demand Act <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheDiplomaAProvado.aspx?BID=16310>

<sup>8</sup> There is an obligation of investment either by giving the money to the Film Fund (CCA) or by investing directly in films. The majority of operators have chosen the second option so that they acquire rights on the films.

<sup>9</sup> Article 41 French Community Decree 26 Mars 2009 on Audiovisual Media Services. Article 41 does not specify whether the audiovisual works should be European works or not. [http://www.audiovisuel.cfwb.be/index.php?id=avm\\_regl\\_radiodif](http://www.audiovisuel.cfwb.be/index.php?id=avm_regl_radiodif)

<sup>10</sup> In the new law, the minimum turnover has been raised from 50,000 to 500,000 Euros allowing more companies to claim exemption from the levy.

<sup>11</sup> Art. 5.2 and 5.3 Law 7/2010 of 31 March of Audiovisual Communication <http://www.boe.es/buscar/act.php?id=BOE-A-2010-5292>; the Cinema Act of 28 December Ley 55/2007 [http://noticias.juridicas.com/base\\_datos/Admin/l55-2007.html](http://noticias.juridicas.com/base_datos/Admin/l55-2007.html)

France	Between 15-26% of net turnover <sup>12</sup>
Italy	5% of revenues (applies if quota obligation is not met) <sup>13</sup>
Slovenia	1% (applies if quota obligation is not met) <sup>14</sup>
Czech Republic	1% (applies if quota obligation is not met) <sup>15</sup>
Portugal	1% (choice between contribution to a fund or investment in production) <sup>16</sup>
Wallonia-Brussels Federation (Belgium)	1,4% to 2,2% (choice between contribution to a fund or investment in production) 0% if turnover below €300.000 <sup>17</sup>

### 3. Why is derogation to the Country of Origin necessary?

As recognised by the European Commission, the current situation “leads to *forum shopping*” practices (i.e. on-demand services establishing themselves in Member States with light or no financial obligations). This in turn can create competition distortions.”

To ensure equal treatments between operators and preserve the national redistribution systems dedicated to the promotion of European works, an adjustment to the Country of Origin principle was necessary.

### 4. How will the anti-double imposition mechanism work in practice?

Another safeguard introduced by the European Commission in its proposal concerns the provisions to avoid double imposition.

While implementing its own requirements on financial contributions, the Member State of origin will first have to check whether the operator has been subject to similar measures in the country of destination. It will then have to adjust its obligations to take into account the contribution already made in the country of destination.

This provision may require, to be properly implemented, the introduction an information exchange mechanism between the competent authorities of the concerned countries.

<sup>12</sup> Articles 3-5, On-demand Audiovisual Services [Decree](#) No.2010-1379 of 12 November 2010

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023038244&dateTexte=20160922>

<sup>13</sup> Article 4(2) of Regulation 66/09/CONS <https://www.agcom.it/documents/10179/539397/Allegato+13-02-2009+2/ac8fe5a2-940d-485f-9c8a-0212e67eb2fc?version=1.0> The investment obligation does not apply if the on-demand media service provider meets the quota obligation on European works.

<sup>14</sup> Article 16(3) of the Act on Audiovisual Media Services Directive

[http://www.sze.hu/~smuk/Nyilvanossag\\_torvenyek\\_CEE/Mediatorvenyek/Slovenia\\_audiovis%20media%20services%202011.pdf](http://www.sze.hu/~smuk/Nyilvanossag_torvenyek_CEE/Mediatorvenyek/Slovenia_audiovis%20media%20services%202011.pdf) The investment obligation does not apply if the on-demand media service provider meets the 10% quota obligation on European works.

<sup>15</sup> Section 7(2) of the On-Demand Audiovisual Media Services Act

[http://www.en.uni.lu/content/download/31258/371382/file/Czech\\_Republic\\_translation.pdf](http://www.en.uni.lu/content/download/31258/371382/file/Czech_Republic_translation.pdf) The investment obligation is deemed to be fulfilled if the on-demand audiovisual media service allocates at least 10% of the total number of programmes in their catalogue to European works.

<sup>16</sup> Article 45(2) of the Television and Audiovisual Services On Demand Act

<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheDiplomaAProvado.aspx?BID=16310>; Article 16 of the Cinema Act which rules that on-demand services have to spend at least 1% of their revenues on national cinematographic works

<sup>17</sup> Article 41 French Community Decree 26 Mars 2009 on Audiovisual Media Services

[http://www.audiovisuel.cfwb.be/index.php?id=avm\\_regl\\_radiodif](http://www.audiovisuel.cfwb.be/index.php?id=avm_regl_radiodif)