



EFADs letter on the Audiovisual Media Services Directive (AVMSD) : Article 13, paragraph 5

26 January 2018

Dear Madam, Dear Sir,

As the European Parliament, the Council and the European Commission are intensifying their discussions on the Audiovisual Media Services Directive (AVMSD), the European Film Agency Directors (EFADs), would like to stress their support for a fair and ambitious approach regarding the promotion of European Works. In that context, we would like to submit several comments regarding Article 13, paragraph 5, which provides a derogation from the requirements on quotas (Article 13, paragraph 1) and financial contributions (paragraph 2).

First of all, we want to make clear that the EFADs fully support the need to provide an exception to paragraphs 1 and 2 for services with low turnover or a low audience and understand that allowing Member States (“may”) to provide an exception in certain limited and justified cases might also be necessary.

However, at this stage, the European Parliament’s position provides an amendment to Article 13, paragraph 5 that establishes a mandatory (“shall”) exception to paragraphs 1 (quotas and prominence) and 2 (financial contributions) *“in cases where they would be impracticable or unjustified by reason of the nature or theme of the on-demand audiovisual media services.”*

In our view, the conjunction of the mandatory nature of the exception (“shall”) and the very broad characteristics (“the nature or theme”) of the media service provider could undermine the objective of Article 13, which is to promote European works.

Our concerns are particularly important in the case of thematic services, which do not represent a minor part of the market and often have a lower share of the European works than generalist services. In that regard, it is important to note that a small thematic service with low turnover or low audience would already be exempted from the obligations provided by paragraphs 1 and 2. The effect of the EP’s amendment would therefore to provide an exemption to “non-small” services that have a lower share of European works, which is unjustified in our view.

In the event the EP amendment would be adopted during the trilogues negotiations, certain “big” services might therefore systematically argue for the thematic of their services to escape from the obligations set out in paragraphs 1 and 2.

Moreover, from a legal perspective, this mandatory exception will be very **hard to put into practice** in line with the current legislative regime and practice, notably because i) the concept of the thematic services is not defined at EU level and might be discriminatory ii) there is no harmonization of the licensing regimes in the different Member States.

As a result, we ask you to reject this amendment and support instead Article 13, 5 as per the European Commission's proposal or the Council's General Approach. This is essential to ensure that such derogation does not go further to what is necessary and proportionate to achieve its intended objective. The promotion of European works should be ambitious and prevent loopholes contrary to its primary objective.

We hope that you will be able to take into consideration the comments above and we remain at your disposal for any questions you might have.

Sincerely yours,

The European Film Agency Directors (EFADs)

Avenue des Arts, 43 | 1040 Brussels | Belgium

Tel: +32 2 231 12 99 | Fax: +32 2 230 76 58

secretariat@efads.eu

Read our position papers [here](#)

For more information please visit: www.efads.eu

Twitter: @EFADs_Aссо