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# Cultural Levies and the EU Audiovisual Market

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ICLE Issue Brief 2023-07-11

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# I. Introduction

In the ever-evolving landscape of digital entertainment, European consumers enjoy a broad variety of viewing options, including substantial availability of non-European content offered by large international streaming services. This availability has raised red flags for some EU policymakers, however, who are concerned that the supply of and demand for domestic cultural products might suffer. Prompted by these concerns, the European Union has opened the door for national policymakers to expand preexisting policies to support or favor domestic content by placing new obligations on foreign streaming providers to invest in EU member states' domestic markets. The risk, however, is that member states have such broad latitude in implementing these provisions that they stoke inflationary pressures that distort local content markets.

Amended in 2018, the EU Audiovisual Media Services Directive (AVMSD)[1] has two relevant provisions: 1. Article 13(1) sets a requirement that 30% of the works that on-demand audiovisual media service ("VOD") providers carry be European in origin, and that these works be given those works prominent placement; and 2. Article 13(2) provides that member states may impose additional financial obligations on VOD providers and broadcasters ("media service providers") based on the revenues these services generate in, or that are targeted toward, the member state's territory, with the proceeds used to support the production of European works.

The second set of obligations, which depend on a member state enacting enabling legislation, can be pursued either through direct investment in the production of European works (sometimes with very prescriptive local language or independent producer sub-quotas, among other limitations), or through contributions to a national fund. Providers with no significant presence in a local market (*i.e.*, with low turnover or an exceedingly small audience) are not typically subject to these obligations. Member states also may waive such obligations where they would be impracticable or unjustified due to the nature or theme of the audiovisual media service in question.[2]

The AVMSD can thus be characterized as "a unique blend of the barrier lifting liberal market approach typical of the EU's single market and classic protectionism stemming from a history of concern that American content and media services would dominate European screens, threatening its cultures and industries."[3]

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[1] Directive (EU) 2018/1808 Amending Directive 2010/13/EU on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive) in View of Changing Market Realities, [2018] OJ L 303/69.

[2] *Ibid.* at Article 13(6).

[3] Sally Broughton Micova, *The Audiovisual Media Services Directive: Balancing Liberalisation and Protection,* in RESEARCH HANDBOOK ON EU MEDIA LAW AND POLICY (E. Brogi and P.L. Parcu, eds.), Cheltenham:Edward Elgar Publishing (2021) at 264.

It is understandable, on many levels, why member states would want to ensure local production of cultural products.[4] The history of this sort of regulation in the EU and the basic economics underlying these schemes, however, both point to the risk of serious unintended consequences if lawmakers do not take market realities adequately into account.

## II. Previous Attempts to Ensure Cultural Production in the EU Audiovisual Market

The AVMSD amendments are part of a long history in the EU of regulating media distribution, with at least a partial eye toward culture-specific measures.[5] Although the EU has more recently been concerned with foreign streaming services, the early history of these regulations were focused on broadcast media. Under those different regulations, "EU institutions were required to take values such as cultural diversity into account. They also had to respect the fundamental contribution of public broadcasters to the 'democratic, social and cultural needs of each society.'"[6]

Notably, pursuant to the Television without Frontiers Directive (TwFD) of 1989, member states were required to ensure that broadcasters reserve a minimum of 50% of television programming to European works and a minimum of 10% of either their transmission time or programming budgets to independent productions.[7]

Further, the previous version of the AVMSD (2010) imposed a general commitment for member states to ensure that VOD service providers promoted, "where practicable and by appropriate means," the production of and the access to European works.[8] Such promotion could "relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service."[9]

Finally, member states are also permitted to sustain European audiovisual production through state aid (*i.e.*, direct funding or tax incentives), which is considered an important tool in this regard by

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[4] It is important to note a latent tension, however, between the AVMSD's focus on European content, which suggests a pan-European preference, versus the practical reality that member states may choose to preference their own national content. The latter would actually frustrate the general goal of the AVMSD in some important respects.

[5] Joëlle Farchy, Grégoire Bideau, & Steven Tallec, *Content Quotas and Prominence on VOD Services: New Challenges for European Audiovisual Regulators,* 28 INT'L J. CULTURAL POL'Y 419 (2022).

[6] Catalina Iordache, Tim Raats, & Karen Donders, *The "Netflix Tax": An Analysis of Investment Obligations for On-Demand Audiovisual Services in the European Union*, 16 INT'L J. COMM. 545, 548 (2022).

[7] Directive 89/552/EEC on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities [1989] OJ L 298/23, Articles 4 and 5.

[8] Directive 2010/13/EU on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive), [2010] OJ L 95/1, Article 13(1).

[9] *Ibid.*

the European Commission. According to the Commission's Communication on State Aid for Films and Audiovisual Works:

> It is difficult for film producers to obtain a sufficient level of upfront commercial backing to put together a financial package so that production projects can proceed. The high risk associated with their businesses and projects, together with the perceived lack of profitability of the sector, make it dependent on State aid.[10]

Nonetheless, these efforts had not fully delivered the expected results. Notably, analysis of the European audiovisual market between 2011 and 2016 found that, while broadcasters met the requirements set in the AVMSD 2010 to reserve a proportional majority of their transmission time for European works, when it came to nonlinear media services, European works were significantly less present in the catalogues of VOD service providers and non-European audiovisual works dominated audience demand.[11] Against this background, the 2018 AVMSD provisions were introduced to better harmonize the treatment of traditional audiovisual players and VOD providers.[12]

Indeed, the European audiovisual market has been described as "a collection of diverse markets, with different languages, cultures and market sizes."[13] In this sense, market factors (*i.e.*, small market size and a limited number of companies) and linguistic and cultural differences make it more difficult to make profitable audiovisual content in Europe. Given that reality, the revised AVMSD aimed to provide member states with new opportunities to support their local audiovisual markets.

Earlier regulations were also not without side effects. Quotas have proven ineffective at ensuring cultural diversity and encouraging the circulation of European works. They also risk diminishing the quality of works and undermining the creation of a pan-European audiovisual industry.[14] Moreover, although the ultimate goal of cultural diversity should be achieved through promoting the production and distribution of European works,[15] these regulations encouraged the production of local works without adequately addressing pan-European distribution. That is, while member states

[10] European Commission, *Communication on State Aid for Films and Other Audiovisual Works*, (2013) OJ C 332/1, para. 4.

[11] Attentional, KEA European Affairs, and Valdani Vicari & Associati, *supra* note 3, at 17. It should be noted, further, that in this time period, providers were still early in their efforts to develop the VOD market. Thus, the relative immaturity of that market shaped these outcomes to some extent.

[12] Marlen Komorowski, Catalina Iordache, Ivana Kostovska, Stephanie Tintel, & Tim Raats, *Investment Obligations for VOD Providers to Financially Contribute to the Production of European Works, a 2021 Update,* STUDIES MEDIA INNOVATION TECHNOLOGY (2021) at 31, *available at* https://smit.vub.ac.be/wp-content/uploads/2021/06/A-European-comparison-of-investment-obligations-on-VOD-providers-to-financially-contribute-to-the-production-of-European-works_Report-2021_FINAL.pdf.

[13] *Ibid.* at 7.

[14] *See* Piero Papp, *The Promotion of European Works: An Analysis on Quotas for European Audiovisual Works and their Effect on Culture and Industry*, STANFORD-VIENNA EUROPEAN UNION LAW WORKING PAPER NO. 50 (2020), *available at* https://law.stanford.edu/wp-content/uploads/2020/10/papp_eulawwp50.pdf; and Sally Broughton Micova, *Content Quotas: What and Whom are the Protecting?* in *Private Television in Western Europe: Content, Markets, Policies* (K. Donders, C. Pauwels, and J. Loisen, eds.), Hampshire: Palgrave (2013) at 245.

[15] AVMSD 2010, *supra* note 8, at Recital 69.

would pour resources into creating new local works, they remained insufficiently committed to distributing the works of other member states. This caused an oversaturation in local markets and dried up opportunities for creators to generate revenue for their work across the EU.

National implementation of AVMSD Article 13(2) may duplicate this problem, insofar as it involves approaches that can promote "continued fragmentation" among EU member states, and "reinforce [] focus on production over circulation, and domestic over nonnational European works."[16] Of course the AVMSD does not aim to do this, but is explicitly designed to promote European works generally. It is, instead, implicit in the design of the AVMSD, insofar as it empowers member states to determine how to impose national sub-quotas. The history noted above suggests that member states will continue to interpret these provisions in ways that preference national content rather than pan-European content, thus exacerbating the fragmentation problem.

Indeed, an analysis of the member states that have decided to introduce such measures suggests that these assessments have contributed to a highly fragmented regulatory framework, as the obligations differ significantly both in terms of form (*i.e.*, levies, direct investments, or joint obligations for both levies and direct investment) and amount, ranging from 0.5% to 25% of VOD services' revenues.[17] Further, as national policymakers have been interested primarily in protecting domestic works, rather than supporting nonnational European content, some member states have mandated sub-quotas that direct the total share of revenues disproportionately toward the promotion of national works. These new provisions, moreover, threaten to drive up the cost of local production and ultimately crowd out many smaller local producers.

## III. The Economics of the AVMSD Financial Obligations

As reported by the European Audiovisual Observatory,[18] and recently corroborated by the European Commission,[19] the quota requirement under Article 13(1) AVMSD 2018 is already essentially met. Despite ongoing concerns regarding difficulties in monitoring prominent placement on VOD services,[20] the share of European works in VOD catalogues currently amounts to between 32% and

[16] Iordache, Raats, & Donders, *supra* note 6, at 551.

[17] *Investing in European Works: The Obligations on VOD Providers*, EUROPEAN AUDIOVISUAL OBSERVATORY (2022), *available at* https://rm.coe.int/iris-plus-2022en2-financial-obligations-for-vod-services/1680a6889c.

[18] *Yearbook 2022/2023 - Key Trends*, EUROPEAN AUDIOVISUAL OBSERVATORY (2023), *available at* https://rm.coe.int/yearbook-key-trends-2022-2023-en/1680aa9f02.

[19] *The European Media Industry Outlook*, EUROPEAN COMMISSION (2023), *available at* https://digital-strategy.ec.europa.eu/en/library/european-media-industry-outlook.

[20] Daphne R. Idiz, Kristina Irion, Joris Ebbers, & Rens Vliegenthart, *European Audiovisual Media Policy in the Age of Global Video on Demand Services: A Case Study of Netflix in the Netherlands,* 12 J. DIGITAL MEDIA & POL'Y 425 (2021).

37%.[21] Further, in transactional VOD services, there is no significant gap between the share of European works in catalogues and their share of promotion.[22]

While quota obligations originated in an era dominated by broadcast television, they have been extended over time to nonlinear services, where they have encountered a different set of challenges in securing compliance. Since the concept of "prime time" loses its essential meaning in nonlinear services as a tool to secure visibility of certain works, nonlinear providers rely on other measures of prominence. For example, some have created distinct platform categories to group European or domestic works or tags to ease search for those works.[23]

Significant doubts arise, however, about the effectiveness of Article 13(1) quotas to ensure cultural diversity and encourage the circulation of European works. Further, as previously mentioned, quotas may have the unintended consequences of lowering the quality of works and undermining the creation of a pan-European audiovisual industry.

But given that more dramatic problems can accompany poor implementation of the optional Article 13(2) AVMSD 2018, the remainder of this paper will consider the economic features of the latter, and offer recommendations for how member states should weigh the risks and benefits of various strategies to implement this provision.

### A. The Risks of Poor Article 13(2) Implementation

As noted above, Article 13(2) financial contribution requirements take several different forms. Member states can require some mixture of direct investment in local markets by VOD providers and/or mandate, by levies, contributions to national cultural funds. The former can take a number of forms, including co-production, direct development of content, or acquisition of existing rights.

It is useful to think of this scheme as a form of Pigouvian tax. Pigouvian taxes work by imposing a tax on activity that creates a negative externality.[24] The goal is to force producers to internalize the costs of the negative externality, rather than forcing society as a whole to bear those costs. Typically, a Pigouvian tax is levied directly on the externality itself.[25] A classic example is a tax imposed on the production of goods that create pollution or health harms, such as cigarettes. The goal of the tax is

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[21] European Audiovisual Observatory, *supra* note 17, (finding 32%). The more recent European Commission study, *supra* note 19, found that EU works alone constituted 28% of VOD catalogs (evenly divided between national and nonnational works), while UK works (qualifying as European for AVMSD purposes) constituted an additional 9%, for a total of 37%.

[22] *The Visibility of Audiovisual Works on TVOD - Edition 2021*, EUROPEAN AUDIOVISUAL OBSERVATORY (2021), *available at* https://rm.coe.int/visibility-of-av-works-on-tvod-2021-edition/1680a59bc2.

[23] But according to the European Media Industry Outlook of the European Commission, *supra* 19, "Consumers are quite open to the country and language of origin." And further: "Four out of five (80%) EU consumers say that they are likely to watch films or series from the US, followed by 76% that say they are likely to watch films or series from their home country. About seven in 10 (71%) EU consumers say that they are likely to watch films or series coming from other European countries."

[24] *See, e.g.,* William J. Baumol, *On Taxation and the Control of Externalities*, 62 AM. ECON. R. 307, 312 (1972).

[25] *Ibid.* at 307.

to increase the cost of producing harm such that, as a consequence, the final price of the goods will rise to a level that maximizes social benefits.

Here, the good in question is local-content production and the users/consumers in question are the producers of said content. The underlying presumption of the AVMSD seems to be that the operation of foreign streaming services displaces production and distribution of local content, and that this represents a negative externality for which foreign providers need to take account. In theory, at least, the financial obligations are intended to force VOD providers to internalize this cost.

Of course, this is not strictly a textbook case. Where member states require the tax to be directed into a national fund, it looks much more like a Pigouvian tax. Where providers are obligated to devote some percentage of their turnover directly to local production, it may look less so, depending on how those obligations are structured. Nonetheless, the basic dynamics of Article 13(2) are close enough for our purposes here.

To be clear, we do not believe that audiovisual products—whether local or foreign—should actually be regarded as harmful in the same ways that smoking or sugary foods are. But the utility of this example is to demonstrate the regulatory equivalence implicit in treating nonnational content as damaging to local cultures, particularly when local consumers have chosen to select that content.

Moreover, there is an obvious problem with the presumptions underlying the AVMSD that should serve as a limiting principle when considering possible implementation of Article 13(2). It should not be so readily assumed that foreign entities are actually or disproportionately displacing local content. The VOD providers have every incentive to provide local audiences whatever it is they want to consume, and evidence suggests that audiences demand local content.[26]

Indeed, this underlying reality points to a very real distortion that exceedingly high financial obligations can produce. If local content production is overstimulated, as was the case under earlier versions of the legislation, member states may drive up the prices for local production, while at the same time oversaturating local markets and providing little avenue for local creators to distribute and market their works more broadly.

## IV. Getting the Financial Obligations 'Right'

Member states' goal is to seek the best outcome for their audiovisual sectors. Even if we assume that a tax on VOD providers is necessary in some cases, that still leaves the questions of which cases and how much the tax should be. Without answers to those questions, there is little hope of achieving a socially beneficial tax assessment or of doing more than, at best, distorting local market signals or, at worst, undermining local audiovisual production. Thus, the EU and member states need to both

[26] For example, a recent report from the European Commission on the audiovisual market found that EU consumers expressed a roughly equal demand for both U.S. and national content. European Commission, *supra* 19, at 23. U.S. works represent just less than half (47%) of VOD providers' catalogs, while EU works (national and nonnational) comprise 28% and UK works comprise 9%. *Id.* at 26. The report does not indicate from whence the remaining 16% originate, but we can surmise that it is material sourced from around the world.

continue and deepen their examinations of the state of the sector, identify any market failures, and address these with the regulatory tools at their disposal. If, as a result of this analysis, any financial obligations are to be put in place—which Article 13(2) AVMSD 2018 grants them the option to do, although it does not require it—then member states should tailor any such taxes to tackle the identified problems.

Indeed, implicit in the idea of Pigouvian taxes is the notion that we do not seek a costless end: there are always tradeoffs among competing goals. That is the very essence of using levies to mitigate externalities: there is some benefit that society is reaping, and some harm for which it has incorrectly accounted. Accounting for the harm will necessarily reduce some of the good.

One of the main problems that can arise with taxes of this type is the introduction of perverse incentives. As William Baumol noted of Pigouvian taxes:

> [T]he appropriate price (compensation) to a user of a public good (victim of a public externality) is zero except, of course, for lump sum payments. Thus, perhaps, rather than saying there is no price that will yield an optimal quantity of a public good (externality), it may be more illuminating to say that a double price is required: a nonzero price (tax) to the supplier of the good, and a zero price to the consumer.[27]

In essence, treating a Pigouvian tax as a sort of transfer payment creates a system that encourages overconsumption of the public good. Thus, to the extent that member states mandate that foreign VOD providers contribute directly to local content production—that is, via direct payments to local content producers to produce more local content—we would expect an *overproduction* of such content.

Even with levies to mandate contributions to national funds, there will be *some* of this dynamic, although national authorities may be positioned to moderate the effect. National authorities face tradeoffs, insofar as any investments they make are, to some degree, uncoupled from organic demand. Thus, these national investments will generate at least some inefficiencies, to the extent that they divert investment from opportunities that would have otherwise been realized in the marketplace.

National authorities may, for instance, determine that there is little harm in having too many locally produced movies and television shows, particularly when digital storage is next to costless. But content does not spring into existence *ex nihilo*. It depends on the use of a vast array of scarce local labor and resources. In short, that means that financial obligations to contribute to local production can bid up the price of every resource involved in production, leading to *fewer* local producers being able to afford to compete. Eventually, this will make local production relatively more dependent on a smaller number of firms that can absorb the higher costs.

More broadly, these sorts of interventions also risk distorting investment by nonlocal firms in a way that discourages entry and encourages exit, thus resulting in overall less production than would have

[27] William J. Baumol, *supra* note 24, at 312.

otherwise occurred without an intervention. This is particularly true to the extent that national authorities fail to consider the profitability of their investments. Over time, funding unprofitable projects will exacerbate this dynamic by making local production more reliant on subsidies (which, in effect, means that consumers are insufficiently interested in the product). Decoupled from demand, there will be an ever greater need to demand payment from nonlocal firms to prop up relatively unsuccessful local productions.

When these financial obligations go too far, they can create inflationary pressures that may dry up local production altogether. A recent study for the European Commission identifies "[i]ncreasing costs across the board, and in particular for costs on technical crew and creative talent" as principal risk factors for European audiovisual producers.[28] Financial obligations force streamers to demand more production. As the study observes, the resulting cost increases are "no surprise," since "increased demand would normally increase supply, which would explain the inflated costs upstream."[29]

In a world of normal production incentives, if a particular market reaches capacity and becomes expensive, the production community will shift to a different market in a different country to avoid the higher prices. To the extent that local content production remains (thanks to the financial-contribution requirements), while the cost of production will go up, the actual volume of production *might not increase* very much.

In order to find the optimal level of contributions (that is, the level at which they minimally inflate local costs of production while maximally ensuring cultural production), authorities need to engage in an incremental learning process. In short, member states will need to discover a proper equilibrium that prevents the tax from instigating a cost spiral. This argues for regulatory caution. As Baumol further noted:

> [S]uch a learning process always involves wastes and irreversabilities, just like the process of convergence of competitive prices to their equilibrium values in the absence of externalities. But if we follow the usual practice of assuming away these costs, one can show that the process may be expected to converge to the optimum, provided the equilibrium is unique and stable. That is, there is then nothing inherently different about gradually moving taxes and prices towards their equilibrium here, and the process of adjustment toward competitive equilibrium when there are no externalities.[30]

Thus, national authorities considering how to structure these obligations should bear in mind that: 1. There almost certainly will be some bidding up of prices; 2. At a certain point, the gains from trying to increase local content production will be swamped by these inflationary pressures; and 3.

[28] European Commission, supra *note* 28, at 48.

[29] *Ibid.*

[30] *Ibid.* at 315.

There is necessarily a learning process inherent in setting such financial obligations, owing to the serious danger of provoking a cost spiral.

## V. The Mirage of a 'European Netflix'

Financial obligations imposed under Article 13(2) AVMSD 2018 may generate further unintended consequences.

As already illustrated, the extraordinary diversity of consumer preferences in, and resulting from, fragmentation of the European audiovisual market represents the main barrier to the circulation of European works. In particular, the significant linguistic and cultural differences that contribute to Europe's celebrated cultural vibrancy also make it less feasible to treat Europe as a single audiovisual market and more challenging to produce profitable content in Europe. The hurdles represented by language and cultural specificities have been confirmed by a recent study reporting that Netflix users have a strong preference for domestic productions.[31]

From this perspective, it is worth acknowledging, as noted in the literature, that "it took a U.S. player to develop a service that increased the pan-European circulation of audiovisual content and gave European audiences increased access to nonnational EU content, in an accessible and user-friendly manner."[32]

Against this backdrop, Article 13(2) AVMSD 2018 may serve to further increase fragmentation of the European audiovisual market. Indeed, its implementation by some member states places greater emphasis on supporting domestic works than on supporting (nonnational) European content more broadly.

As a result, the AVMSD financial obligations provision will also preserve "a varied fabric" of European producers, making the emergence of European VOD service providers able to compete against foreign players on a level playing field even more unlikely.

## VI. Proceed with Care

Member states that have chosen to implement Article 13(2) have taken various approaches. Most of them have opted to introduce both direct investment obligations and levies to support a fund. Italy is the only country that has introduced a direct investment obligation as the sole option, while at least two member states (Germany and Poland) have introduced levies without any direct investment obligation thus far.[33]

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[31] Annette Broocks & Zuzanna Studnicka, *Gravity and Trade in Video on Demand Services*, JRC DIGITAL ECONOMY WORKING PAPER 2021-12 (2021), *available at* https://joint-research-centre.ec.europa.eu/publications/gravity-and-trade-video-demand-services_en.

[32] Iordache, Raats, & Donders, *supra* note 6, 557.

[33] Svitlana Buriak & Dennis Weber, *Investment Obligations and Levies on VOD Media Service Providers and Cultural Policies of*

Further fragmentation can be observed in disparities in the rates applied to turnover achieved in the respective member states. Even the base may sometimes differ. With regard to direct investment obligations, while some member states have employed fair measures, a handful have begun to impose steep obligations on VOD service providers.[34] On the more careful end are the Czech Republic, Netherlands, Portugal, Croatia, Spain, and Greece, which assess their direct investment obligations in the 1-5% range.[35] On the less careful end are countries like France (15%-25%) and Italy (18%-20%). With regard to indirect investment obligations, the rate is usually around 2%, with the exception of Denmark, Spain, Portugal, Romania, and France, where the rate is in the 4-6% range.[36]

The regulatory caution needed to avoid trapping local content-production industries in destructive cost spirals is embodied in the "proportionality principle," which essentially requires that the costs of regulatory intervention not be disproportionate to the benefits sought.[37] Indeed, the risk of disproportionate implementation of Article 13(2) was so palpable to its drafters that they expressly mandated that any financial contribution required of a service provider "shall be proportionate."

More data are needed to assess optimal financial contribution levels, but it appears highly risky to venture out as far on a limb as France and Italy have done. Assessing a total 20-25% financial obligation—whether in the form of a national fund levy or investment obligations on the turnover of multiple companies (some of them quite large)—in order to fund local production could easily have dramatic inflationary effects on local content markets.[38] Perhaps a large and wealthy country like France can absorb and offset some of these effects, but it would only be through heavy subsidization of the very industries the financial obligation otherwise threatens to destroy.

Moreover, this approach fails to deal with the distribution problems that these sorts of regulations have historically created in the EU. There is such a thing as too much content and too little distribution. Huge local catalogs can be generated and never adequately shared across member states. Indeed, as noted above, large VOD providers like Netflix have, to a large extent, actually solved this historical problem. Penalizing these providers for offering such solutions is a curious move.

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*Member States*, 15 WORLD TAX J. 2, 3-4 (2023), *available at* https://www.ibfd.org/shop/journal/investment-obligations-and-levies-vod-media-service-providers-and-cultural-policies.

[34] *Ibid.*

[35] *Ibid.* at 4.

[36] *Ibid.* at 28-30.

[37] The principle of proportionality requires that the legislator considering adoption of a new measure consider "the need for any burden" that that legislative act is likely to create "to be minimised and commensurate with the objective" pursued. Article 5, Protocol (No 2) on the application of the principles of subsidiarity and proportionality (OJ C 115), 9.5.2008, p. 206-209.

[38] *See, e.g., Economic Analysis of the French Audiovisual Industry Main Trends and Focus on the Costs of High-End Fiction In France*, Arcom (2023) at 13-18, *available at* https://www.arcom.fr/sites/default/files/2023-04/Presentation%20economic%20analysis%20of%20the%20french%20audiovisual%20industry_0.pdf.

An alternative approach, already pursued in some member states, is for local cultural authorities to use much more modest financial obligations to enhance cross-EU commercialization strategies for their local producers.

Of course, it should not be forgotten that member states are entirely at liberty not to implement 13(2) at all, a direction a number have taken.[39] This option is entirely consistent with preserving a vibrant audiovisual market based on the demand of local consumers, who are free to demand as much local content as they wish.

Ultimately, however, much care should be taken, particularly for member states with markets smaller and less subsidized than France.[40] As some members choose to experiment with these financial contribution rates, they should start with impact assessments and proceed from there incrementally, consistent with the principle of proportionality.

[39] Svitlana Buriak & Dennis Weber, *supra,* note 33 at 4.

[40] In particular, smaller member states should take notice of the fact that France is pushing for aggressive obligations against the backdrop of a 2023 budget of 4.2 billion euros for the French Culture Ministry. See, *Ministry of Culture Budget 2023 - Finance Bill*, MINISTERE DE LA CULTURE (Sep. 28, 2022), https://www.culture.gouv.fr/en/Presse/Dossiers-de-presse/Budget-2023-du-ministere-de-la-Culture-Projet-de-loi-de-finances#:~:text=In%202023%2C%20the%20Ministry%20of,(up%20€527%20million).