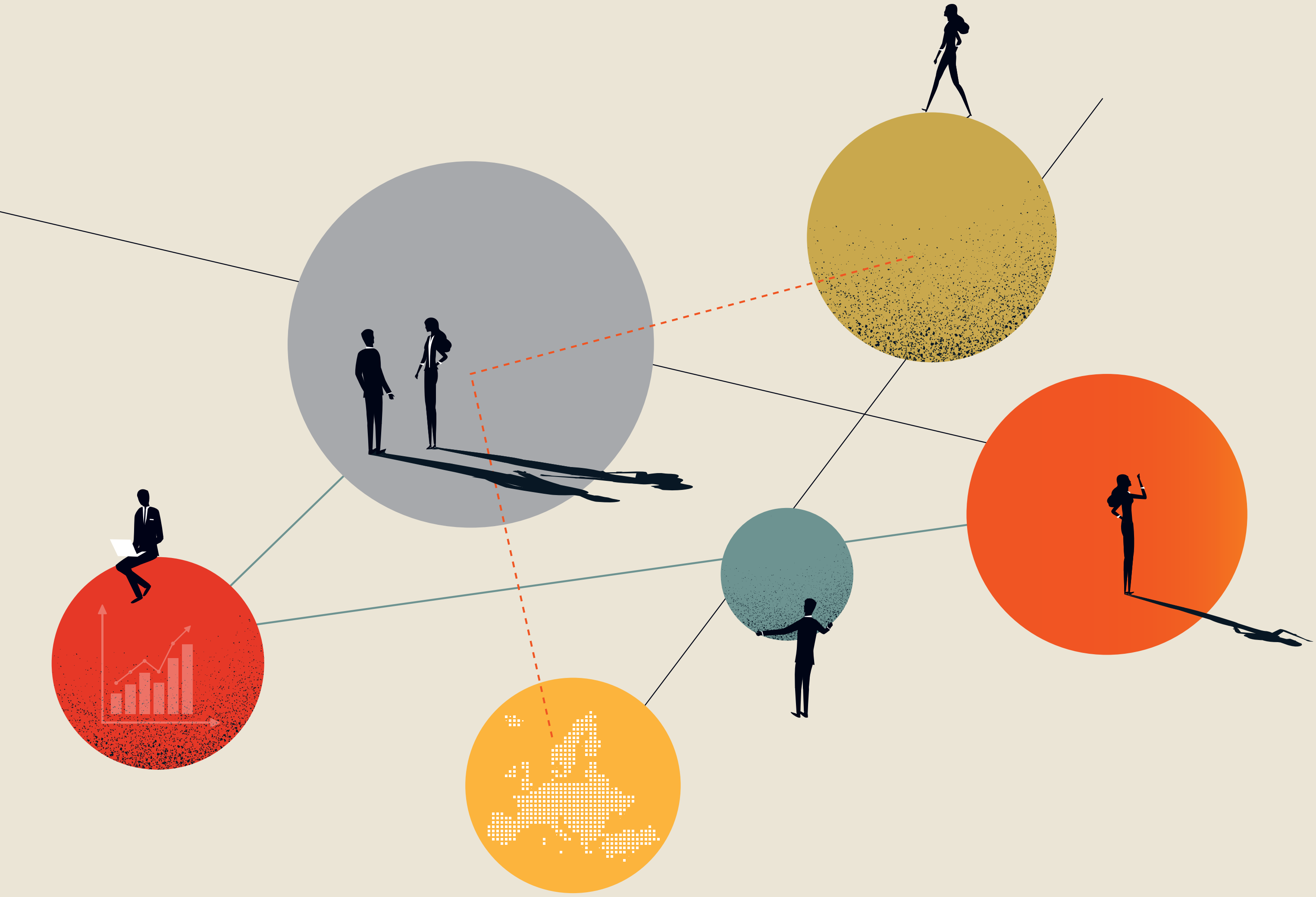

European works: promoting a healthy European audiovisual sector

A report commissioned by a group of audiovisual stakeholders in Europe
prepared by Oliver & Ohlbaum Associates Ltd & Frontier Economics

About Oliver & Ohlbaum

O&O is an independent advisory firm that specialises in the media, entertainment and sports industries across three practice areas: Policy & Regulation, Strategy & Commercial and Investment. With over 25 years' experience, we have advised more than 200 public and private sector clients on the most significant developments in the European TV, film, radio, music, publishing, digital, and sports sectors. O&O regularly undertakes complex projects that span multiple markets across the EU and the European neighbourhood.

About Frontier Economics

Frontier Economics is a leading international economic consulting firm with extensive experience successfully applying economics to a range of policy and strategic issues for major blue-chip companies, as well as for governments and regulatory authorities. The dedicated telecommunications, digital and media team has advised major players across the sector with leading-edge policy, strategic and regulatory solutions.

Commissioning organisations:

ACT
MPA
RTÉ
BBC Studios
Netflix
Sky Group
CANAL+ Group
PACT
Viaplay Group
ITV
Paramount Global
Virgin Media Ireland

Organisations that contributed to the research for this report:

AKTV
BBC Studios (Global)
BBC Studios (Nordics)
CANAL+ France
CANAL+ Poland
Česká televize
Danish Media Distributors
MFE-MediaForEurope N.V.
MTV Entertainment Group (EMEA)
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Screen Producers Ireland
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KEY FINDINGS

European consumers currently benefit from a vibrant and dynamic European audiovisual (AV) ecosystem

- This is made up of **local, European and global broadcasters and VOD services**
- Competition for audiences is fierce
- This is driving **strong content investment in the EU**, supported by important Member State industrial policy initiatives

€2.7bn
increase in spend on **original EU content** between 2015 and 2021

100%
of interviewees agreed that access to **non-EU ECTT* content improves the consumer offering** in their territory

Narrowing the definition of European works would create **immediate and longer-term negative impacts for consumers…**

- a **reduced range of programming** on channels and VOD services…
- …and **fewer services to choose** from
- **Cultural diversity**, **plurality** and **freedom of information** would suffer
- Certain consumer demographics could be particularly affected

And there would be **no material benefits for the EU production sector** as a result of narrowing the definition

Broadcasters and VOD services **optimise their schedules and catalogues** to best meet consumer demand

- They already **commission as much costly original domestic content as is optimal**
- This is supplemented with lower cost acquisitions – those that are most desired by consumers – which includes films and programmes from non-EU ECTT* countries

Only
4%
of all EU broadcaster content investment goes on non-EU ECTT* acquisitions

Narrowing the definition of European works would **harm broadcasters in Europe**

- Major pay TV group channels, smaller pay and free to air (FTA) portfolio channels, plus major FTA channels in smaller EU Member States, would be affected
- Such **broadcasters** would have to adapt their scheduling
- But would do so at the margins, adjusting the mix of the lowest cost, lowest performing content to minimise negative impacts
- **It would not be feasible for them to invest in new EU productions**
- Neither should we assume that current levels of investment would stay the same and simply be redistributed

And only
0.1% to 0.2%
of current EU broadcaster spend would be free to move to EU producers

KEY FINDINGS

Instead, there would be an immediate **negative impact** on affected **broadcasters' revenues**

- And further severe impacts in the long term
- **Some channels or groups may become unviable and have to close**
- And European broadcasters' transition to digital could be disrupted

94%

of broadcasters and SVODs interviewed believed that narrowing the European works definition would **not increase investment into the EU**

€4.5m

advertising revenues would be at risk in the first year at more severely impacted channels, and **€2m** per impacted channel on average

European and global **VOD services** would not increase or move original production

- This is already optimised to meet consumer demand
- They would respond to a narrowed European works definition by **altering the long tail of acquired content** in their catalogues
- But narrowing the definition would create a regulatory hurdle for new European VOD entry and growth

> "There wouldn't be a material change. We would look into what adjustments we could make to be compliant, but there are several ways of achieving that and we wouldn't be fundamentally changing our content strategy.
>
> **Global SVOD service**

100%

of interviewees agreed that any changes which made it **harder to co-produce** with non-EU ECTT* countries would be **detrimental to consumers and the AV sector as a whole**

EU producers' access to **international co-productions** would be damaged

- **Access to resources** from non-EU ECTT* countries would be lost
- And the **centre of gravity risks moving away from Europe** to global markets

Additionally, a change could create **significant legal and business uncertainty**

- This would **affect content investment**...
- ...and make European territories less competitive in attracting inward investment
- This would **undermine industrial policy successes** at EU level and by Member States, which are supporting the growth of their audiovisual sectors

'Non-EU ECTT' countries are European countries that are party to the European Convention on Transfrontier Television (ECTT) of the Council of Europe, and are not Member States of the European Union

Contents

Summary

Summary

This study assesses the economic impact of suggested changes to narrow the geographic scope of the definition of European works on the European audiovisual sector, and in particular on broadcasters, video on demand (VOD) services,[1] producers and ultimately consumers.

The European Union has long recognised the European region's shared cultural inheritance and universal values, rich cultural and linguistic diversity, and the aims of prosperity, peace and cooperation across the European neighbourhood.[2] Since 1989, the European policy framework for audiovisual services has sought to support a thriving European (in the widest sense) audiovisual ecosystem and the freedom of information and ideas regardless of frontiers.[3]

The 1989 Television without Frontiers Directive established the 'country of origin' principle to promote a vibrant and competitive broadcasting industry, alongside the independence of cultural developments in the Member States and the preservation of cultural diversity. The principle was subsequently extended to VOD services under the Audiovisual Media Services Directive (AVMSD). The 'country of origin' principle required a minimum of necessary harmonisation – which must be aimed at facilitating the pursuit of broadcaster activities and the free movement of information and ideas. Setting a minimum share of European works in a broadcast channel schedule or in a VOD catalogue was part of this. As such, broadcasters must reserve a majority of broadcast schedules for content made in Europe; this regime has remained largely unchanged for over thirty years. Under the 2018 revision of the AVMSD, VOD services must provide a minimum catalogue share (30 per cent) of European works and give these 'sufficient prominence'.

Crucially, in line with the EU's founding ambitions and fundamental principles, from the outset the 'European' dimension of European works has meant more than the Member States of the European Union – involving European countries with a whole variety of possible relationships with the EU, including those with no plans to join the economic and political union at any stage.

Most recently, the European Commission's Media and Audiovisual Action Plan (MAAP)[4] has underlined the importance of a diverse, pluralistic, independent and dynamic media environment in the EU. Through cooperation at scale across the European region, and not only the EU, individual countries and Europe as a whole can maintain a strong and competitive audiovisual ecosystem: producers, distributors, broadcasters and VOD services are able to enter the market, grow sustainably and embrace the opportunities of digitalisation – driving forward European economic progress. In doing so, they provide consumers with a choice of high-quality European content and services that meet their diverse needs and expectations.

Nonetheless, some stakeholders within the EU believe that the European works definition should be narrowed to exclude works from all or some countries that are part of Europe and parties to the Council of Europe European Convention on Transfrontier Television (ECTT)

[1] Throughout this report we refer to 'VOD services'. For the purposes of this report this term refers to SVOD, AVOD, and ad-free PSM VOD, but does not include TVOD unless otherwise stated

[2] Consolidated version of the Treaty on the European Union

[3] Council Directive 89/552/EEC 'Television without Frontiers Directive' 1989; Council of Europe Convention on Transfrontier Television 1989

[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation

but are not a Member State of the EU[5]. Arguments for such a change focus on purported benefits to EU producers and cultural sovereignty, but lack an evidence base to support them. The European Commission has said that it is carrying out a fact-finding exercise.

This report provides quantitative and qualitative evidence on the likely impacts to inform this debate. We have investigated how narrowing the geograhic scope of the European works definition to exclude non-EU ECTT countries ('narrowing the definition') would affect EU content investment by broadcasters and VOD services in Europe, and the impact on producers and consumers. We undertook an extensive interview programme with key stakeholders along the audiovisual value chain in eight representative EU Member States: Czechia, Denmark, France, Germany, Ireland, Italy, Poland and Spain. We also carried out quantitative analysis of channel schedules and VOD catalogues by country of origin[6]. Our approach allowed us to understand how stakeholders would react if the European works definition was narrowed to exclude programmes and feature films from non-EU ECTT countries, and this then enabled us to model the impact.

It would be a misconception to suggest that investment in non-EU ECTT countries is 'crowding out' investment in EU Member States or that a large pot of investment is somehow 'available' that could move into the EU; most investment in non-EU ECTT countries is in domestic works to compete for domestic audiences. We estimate that only 0.1 per cent to 0.2 per cent of total EU broadcaster content spend might move to EU producers, and that would generally be in the lowest cost, lowest performing EU acquisitions – with no material investment in new commissions because these are already optimised to meet consumer demand within constraining content budgets. However, there would be adverse effects for broadcasters and VOD providers in Europe, and ultimately for consumers, with no meaningful upsides for producers. Adverse impacts are all the more worrying given the other pressures that the European AV sector has to manage, including the transition to digital, content cost inflation and production resource shortages, the Covid-19 recovery, environmental sustainability, and wider economic turbulence.

Our key findings:

1. Broadcasters in Europe may be forced to make changes that negatively impact audiences and that could impact the viability of certain services: major pay TV group channels, other pay channels and free to air (FTA) broadcaster portfolio channels across the EU, plus the major FTA channels in smaller EU Member States.
2. Changes made by affected broadcasters would not lead to meaningful new investment in original domestic or other EU content.
3. VOD services would not increase their investment in original EU content. However, there would be a regulatory hurdle for European VOD services to enter the market and grow, with implications for overall competition and innovation.
4. Narrowing the definition of European works would create uncertainty and disruption for broadcasters and VOD services and undermine the stability of a sector that is crucial for the EU economy and for consumers.

[5] Referred to in this report as 'non-EU ECTT' countries. These countries are: Albania, Bosnia and Herzegovina, the Holy See, Iceland, Lichtenstein, Montenegro, North Macedonia, Norway, Republic of Moldova, San Marino, Serbia, Switzerland, Turkey, Ukraine and the UK

[6] Noting that the AVMSD VOD quota was still being implemented at the time of this study, and that some services only launched in 2021, we looked at data on the composition of VOD catalogues as a snapshot of the market in 2021

We conclude that narrowing the definition of European works would disrupt the overall AV ecosystem, ultimately harming consumers. Consumers would not experience any upsides but would see both immediate and longer-term impacts on the volume, diversity and plurality of European content and services. Consumers in smaller EU Member States and those on the outer borders of the EU would be especially affected, as would certain demographics such as older viewers that favour broadcast services and certain non-EU ECTT content (Turkish drama, UK comedy).

Instead of narrowing the definition of European works through reference to the country of origin of works, some stakeholders have referred to the country of IP ownership. Detailed discussion of ownership and investment models is complex and outside the scope of this report. But the report's key findings will be relevant to any future discussion: investors value regulatory stability, consistency and certainty. Changing the geographic scope of European works – whether achieved through the country of origin of works or rules around IP ownership – will impact the appetite for inward investment and, therefore, risk the continued growth and sustainability of the European AV ecosystem.

Market and policy context

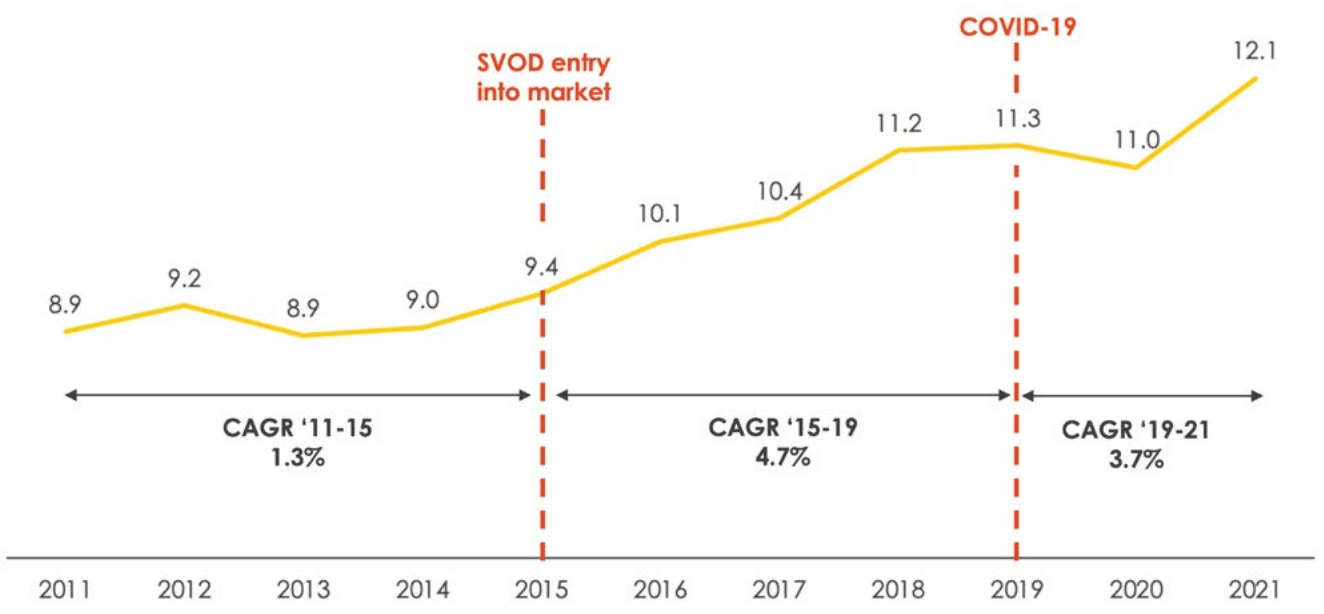
First, it is important to acknowledge the market and policy context within which these proposals are being made and the economic realities for stakeholders in the European audiovisual value chain.

Intense competition has spurred local innovation and pushed European content investment to reach record highs, benefitting producers and consumers

Today there is a strong European audiovisual ecosystem with the scale to support numerous producers and broadcasters, and that punches above its weight on the global stage. In recent years, technology has brought consumers new ways of accessing and paying for content. European and global SVOD (subscription VOD) services have entered the market and grown, driving increased competition for consumers' attention. This competition has seen broadcasters and VOD services across Europe increase content spend significantly, greatly benefitting consumer choice. Given investment is driven by competition for audiences, and European consumers typically want to view local content, the majority of this content spend has flowed to European producers.

Coinciding with the emergence of SVOD services, investment in original EU content has gone from steady growth at a compound annual growth rate (CAGR) of 1.3 per cent in 2011-2015 to a CAGR of 4.7 per cent in 2015-2019. Producers now have a range of broadcaster and VOD customers competing for commissions, as well as to license content.

Total investment in original EU content, 2011-2021 (€ bn)



Note: Excluding non-EU European content

Source: European Audiovisual Observatory: 'Investments in original European content', Oliver & Ohlbaum analysis

But the European audiovisual sector faces a number of pressures

The European economy is currently experiencing an economic downturn, the length and extent of which remains to be seen. Coupled with the soaring cost of living, European broadcaster and VOD services need to manage the possibility of changes in consumer discretionary spend (pay TV, SVOD) and advertiser spend (broadcast channels, FAST channels,[7] advertising-funded VOD).

At the same time, broadcasters are having to invest heavily in digital transformation to respond to audiences and advertisers' online needs, while still serving audiences that favour traditional broadcast. In addition to this, the recovery from Covid-19 is ongoing for many providers. Soaring demand for production resources, as well as Covid-19 production protocols and new environmental sustainability commitments, are resulting in content cost inflation and resource shortages across studios, crew, contributors and talent. Stakeholders in various Member States reported that their production sectors are at capacity and need time to develop these to enable more balanced growth. It is also important to note that competition in the audiovisual sector is now global, with jurisdictions from South Korea to Australia to Canada seeking to attract investment and grow exports.

The proposals to narrow the definition of European works need to be considered in this broader context, and with a clear understanding of how the sector works. They should also be viewed in the context of a broad range of regulations around local content that are already in place in many European countries. Indeed, such a change would come on top of a set of existing regulations for broadcasters and VOD services in Europe. This is particularly important where local regulations have been recently introduced, since it is too early to assess their impact.

[7] FAST stands for 'Free Ad-Supported Streaming Television', accessible on connected devices

Key Finding 1: European broadcasters, including major FTA channels in small EU Member States, would be negatively impacted by narrowing the definition of European works

In this report, 'major FTA channels' refers to generalist advertising-funded commercial channels and Public Service Media (PSM) channels with universal reach and the largest audience shares in a Member State. 'Pay TV group channels and specialist channels' refers to channels from Europe's main pay TV groups, plus channels from smaller pay TV groups or standalone channels and portfolio channels from the major FTA commercial and PSM broadcasters.

We find that pay TV group and specialist channels across the EU, plus major FTA channels in small Member States, rely on non-EU ECTT content to provide the optimal schedule mix to meet audience needs, while also meeting the European works quota. Narrowing the definition of European works would force these services to make financially sub-optimal changes to their schedules that could, in some cases, result in broadcast services becoming unviable.

Major European FTA channels respond to consumer demand by optimising original domestic content as part of a varied schedule

All broadcasters compete to attract audiences by offering the most compelling content, but their content investment is limited by the available sector revenues, such as advertising, public funding, and pay TV subscriptions. Therefore, broadcasters curate a mix of content that balances audience demand with their content budgets. Given its strong audience performance, major FTA channels in Europe favour investment in original domestic content, however, original content is expensive, and broadcasters must work within constraining content budgets. To maximize overall appeal to consumers, major FTA channels also need to offer a variety of content.

As a result, major FTA channel schedules are optimised to commission original domestic content alongside repeats and acquired content. (Acquired content is often non-domestic; by definition domestic acquisitions cannot be first-run, so they are less appealing to audiences). Original drama generates large audiences, but it is also the most expensive type of content. Broadly, acquired content costs less than original commissions but some of it can still deliver strong audience performance. As a result, having a mix of content, including acquisitions, provides support for broadcaster investment in original domestic content while meeting audience expectations for a diverse schedule.

> *Investment already flows and will continue to flow to where there are creative, audience-appropriate and attractive formats. The available budget does not increase as a result of [quota obligations]. The programme budget depends on the revenue situation, and this on audience interest, which is why it is at the forefront of our actions. If the room for manoeuvre continues to shrink, the audience's focus might not be served adequately and the plurality of content will decrease.*
>
> **– German Commercial Broadcaster**

Broadcasters curate a mix of different genres and origins of content

Domestic originals generate high audiences but cost more than international acquisitions

Local Drama	International Drama	Local factual entertainment	International Comedy
€€€	€	€€	€

Lower cost international acquisitions are efficient at meeting consumer demand, and free up content budgets for investment in domestic originals

Generalist channels also need to provide variety and appeal to a range of audiences across the day, e.g.:

Daytime
International comedy

Late Afternoon
Local factual entertainment

Evening
Local drama

Broadcasters optimise their mix of content, including by county of origin and genre, to best meet consumer demand from available content budgets

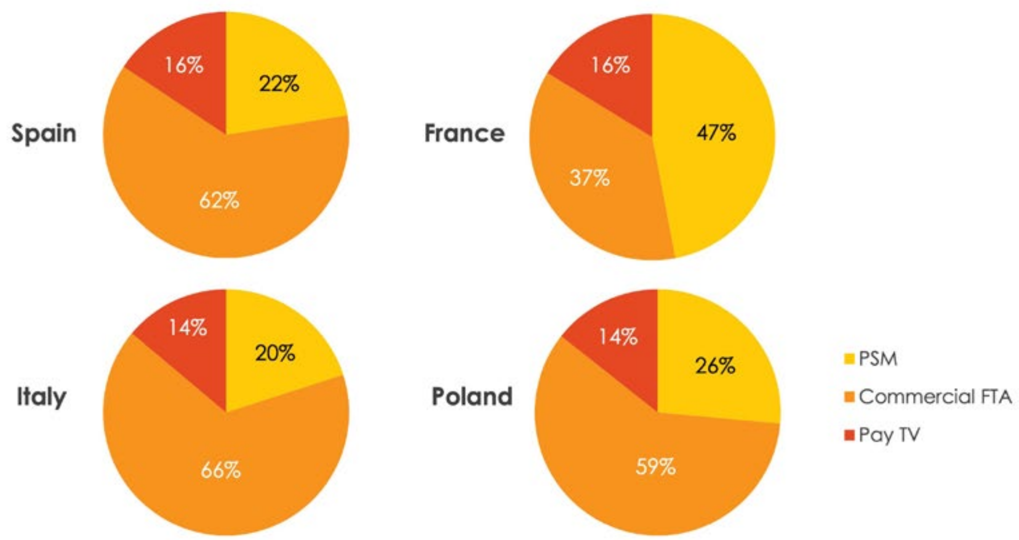
Restricting broadcaster freedom to schedule content from across Europe will prevent the optimal mix

- No new investment in EU
- Quality down
- Diversity down
- A WORSE OUTCOME FOR CONSUMERS OVERALL

Generally, major pay TV group channels and specialist channels are more reliant on acquisitions

Major pay TV groups in Europe invest significantly in original content (see figure below). In Member States with fewer broadcaster groups, a pay TV group is often the third largest in investor original content in the country.[8] Large budget scripted originations, in film and drama are often complemented by investment in some lower budget originals in other genres, such as Factual Entertainment; this provides variety and helps maintain subscriber interest. Given the lower total volume of originals compared to major FTA channels, due to their different business models, acquisitions are then relied upon to a greater degree to complete schedules, including premium acquisitions from across Europe and the rest of the world (RoW).

Share of spend on original programming by broadcaster type, 2021, Spain, France, Italy and Poland



Note: Some broadcasters operate across both commercial FTA and pay TV; here they have been segmented into whichever accounts for the majority of their business activity. Excludes spend on sports rights

Source: Ampere Analysis, Oliver & Ohlbaum analysis

Meanwhile, specialist channels tend to focus on specific genres or are aimed at specific demographics. They are extremely important for the overall health of the European broadcast ecosystem. As well as increasing plurality and consumer choice, and catering to specialist demand not met by the major FTA and pay TV channels, they increase total levels of investment (and support a robust European production sector through secondary sales); support demand for pay TV subscriptions (in particular through consumer perception of a varied range of channels in a pay TV bundle); contribute to the sustainability of larger broadcast groups; and provide opportunities for more advertisers (typically lower budget) to access the TV market.

Given their lower viewing compared to the major FTA and major pay TV group channels, content budgets are much smaller and it is not economic to commission as much original content. As such, these channels are much more reliant on acquisitions, especially to fill off-peak schedules. As before, acquisitions are predominantly non-domestic and are sourced from other EU countries, non-EU ECTT countries, and (RoW) – US content dominates content sourced from RoW.

[8] Ampere Analysis, Oliver & Ohlbaum analysis. Excludes sports rights

The size and nature of specific AV markets also plays a role in determining the schedule mix

Channels in smaller EU Member States, where there are smaller domestic audiences, generate lower revenues and so cannot fund as much original domestic production as large EU Member States. Therefore, major FTA channels, major pay TV group channels, and specialist channels in these Member States all rely on acquisitions – to a greater extent than equivalent channels in larger Member States – to meet consumer demand and, ultimately, to secure their commercial sustainability.

In addition, channels typically acquire content from countries with strong cultural and linguistic affinities with their consumers. Content from neighbouring territories may be perceived as 'near-domestic' (e.g. Danish consumer demand can be met relatively easily with Norwegian content; or French consumer demand with Swiss French content). Cultural affinity may also relate to other factors such as historical or political ties (e.g. Ukrainian content in Poland). There may be a specific history of watching programmes from a particular country, for example classic UK drama and comedy programmes are traditionally popular in Czechia, since the period of Communist rule.

Non-EU ECTT content is especially efficient at meeting consumer demand

Non-EU ECTT content is often the most efficient acquired content at meeting consumer demand and driving EU broadcaster revenues, while also contributing to European works compliance. In part this is because it is culturally European: in addition to the strong cultural and language affinities mentioned above, it has culturally familiar talent, narrative arcs and editorial treatments (e.g. situation comedy). Furthermore, non-EU ECTT countries represent a number of specialised AV clusters, such as in natural history (nature documentaries) and drama, and have the facilities, talent and know-how to produce some of the highest quality European content in these genres.

This content has strong appeal in EU territories and is highly cost effective for broadcasters – the costs of production being recovered from multiple broadcasters through licensing agreements also enables higher production values.

> *The more providers from the different regions of Europe can be considered as suppliers of content…the greater the diversity of programming for users.*
>
> **– Broadcaster Trade Body**

> *If replacing Turkish content, there is no other content of comparable quality for the same price on the market.*
>
> **– AKTV member (Czech broadcaster)**

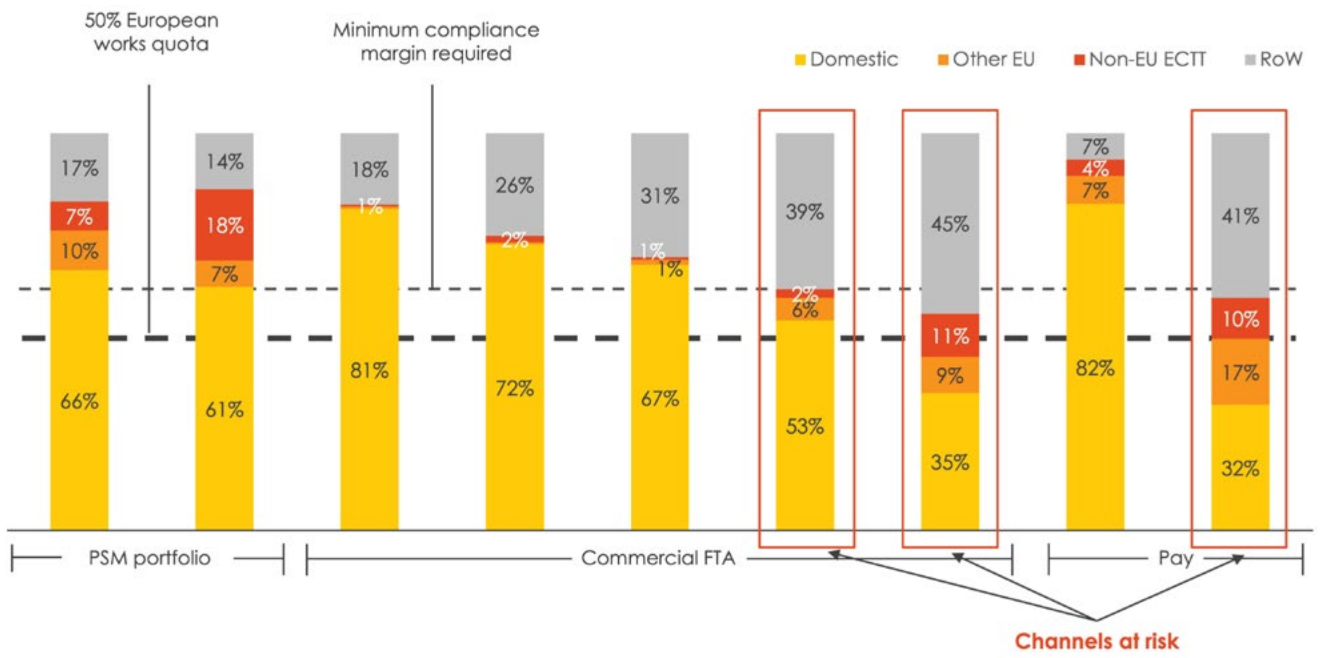
100 per cent of interviewees agreed that **access to non-EU ECTT content improves the consumer offering** in their market.

Given this background, we have investigated how narrowing the definition of European works to exclude non-EU ECTT countries would affect compliance with the linear quota in different sizes of EU Member State and for different types of broadcasters and channels. This involved analysing data on the composition of broadcast schedules to assess, among other things, whether a channel would need to adjust its schedule to meet the European works quota under a narrowed definition. In addition, we conducted interviews with a range of broadcasters in our eight representative EU Member States (Czechia, Denmark, France, Germany, Ireland, Italy, Poland and Spain) to better understand how those involved in scheduling, commissioning and acquisition decisions would adjust to such a change.

Key Finding 1(a): The major FTA channels in the largest EU Member States would be largely unaffected

In the large EU Member States, which have the largest domestic AV sectors, the major PSM and FTA commercial broadcasters can afford to (and in some cases are required to) commission higher volumes of domestic content. This means that their major FTA channels are largely comfortably above the European works quota based on domestic works (again illustrating that where economics allow, the market automatically drives investment in local EU content). As a result, narrowing the definition of European works would not require these channels to alter their scheduling or associated investment in EU content.

Share of broadcast schedule by country of origin, Poland, 2021 (% of broadcast time)



Note: Share of broadcast time across whole year 2021, excluding non-applicable programming such as news, sports, and teleshopping

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

The chart above focuses on Poland but shows a situation which is typical across larger Member States; it shows that the major PSM and commercial FTA channels comfortably meet the European works quota and a compliance margin, based on their current schedule of domestic content. A compliance margin above the quota level is necessary for broadcasters to mitigate the risk that last-minute or unexpected scheduling changes result in non-compliance. There is therefore no need for these channels to change their content strategy if the definition of European works is narrowed.

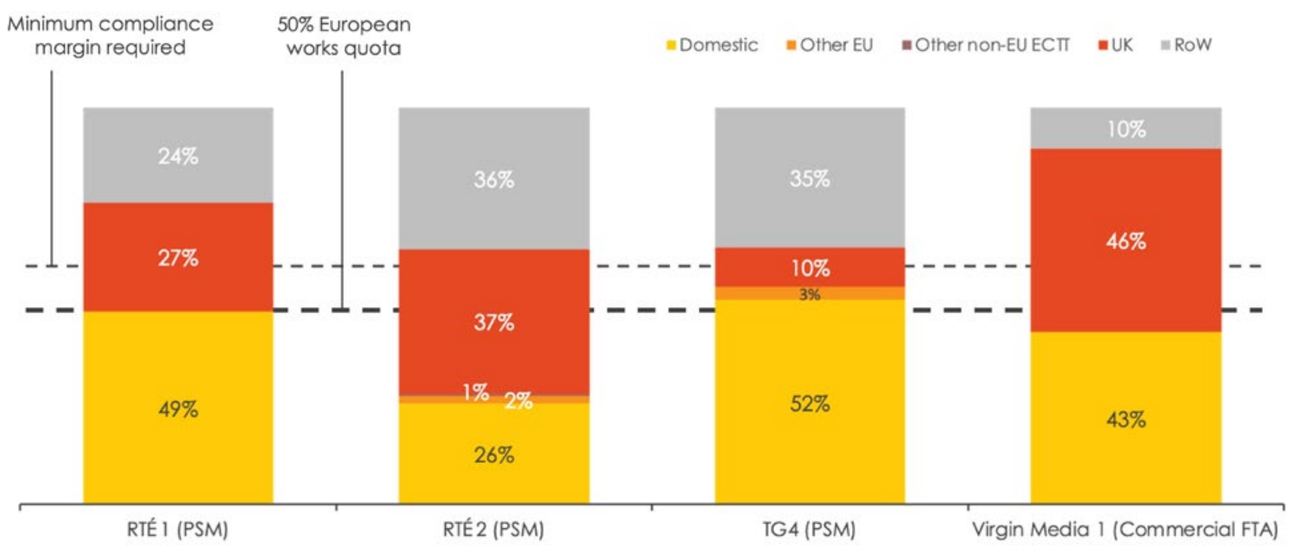
However, there are number of channels where domestic and other EU works are insufficient to meet the quota or a compliance margin. These channels – highlighted in the chart above – are at risk of adverse impact from a narrowed definition of European works. These include portfolio channels from major FTA broadcaster groups and major pay TV groups, meaning that their overall business may be adversely affected by a narrowed definition even if their major FTA channel is not. We discuss this in Key Finding 1(c) below.

Key Finding 1(b): Major broadcasters in smaller Member States would be adversely impacted by a narrowed definition of European works and certain services may cease to be viable

As we have seen, in smaller EU Member States where there are smaller domestic audiences, acquisitions are even more important. Therefore, major FTA channels would be affected by narrowing the definition of European works and would be forced to make scheduling changes. These impacts increase where there is cultural and linguistic affinity with a non-EU ECTT country – particularly for smaller Member States on the external borders of the EU (e.g. Denmark and Norway, Poland and Ukraine, Ireland and the UK). In these cases, the sustainability of major FTA channels is at risk.

In Ireland, the major FTA channels of both the largest PSM, RTÉ, and the largest commercial broadcaster, Virgin Media, need to schedule UK content to meet consumer demand and support investment in domestic programming, which they can do while complying with the 50 per cent European works quota and maintaining a compliance margin. Meanwhile the smaller PSM, TG4, broadcasts in the Irish language and relies on UK acquisitions to provide a varied schedule and allow it to reinvest in original Irish language commissions and co-productions with neighbouring minority language broadcasters such as S4C (Wales) and BBC Alba (Scotland).

Share of broadcast schedule by country of origin, Ireland, 2021 (% of broadcast time)



Note: Share of broadcast time across whole year 2021, excluding non-applicable programming such as news, sports, and teleshopping

Source: Essential TV Statistics, RTÉ, Oliver & Ohlbaum analysis

Such channels would not respond to a narrowed definition by increasing investment in original EU productions. To manage the impact of such a change and reach quota compliance, affected broadcasters would minimise any deviation from their current (optimised) audience and programming strategy.

Affected broadcasters would make changes at the margin, swapping the lowest value, lowest performing, non-EU content for other 'marginal' content that is compliant with the definition and counts towards the quota, to be shown at a similar time of day (likely off-peak and overnight). This includes domestic repeats and archive for which they already have the rights.

> *A shift to increased production would not be possible as it very expensive. Plus, there would be limited industry capacity to deal with any increased investment.*
>
> **– Česká televise (Czech broadcaster)**

Even in a hypothetical scenario, if there were an inexplicable sudden increase in investment in original EU content, as is envisaged by those proposing a narrowed definition, this would be problematic. Given capacity constraints in different Member States and the time required to develop facilities, talent and crew, it would risk further increasing content production costs and resource shortages, especially for domestic players.

Key Finding 1(c): Major pay TV group channels and specialist channels in all Member States surveyed would be adversely impacted by a narrowed European works definition and certain services may cease to be viable

Our research shows that major pay TV group channels and specialist channels in all Member States (large and small) would be adversely affected by narrowing the definition of European works. Most channels have a significant element of fixed costs and these channels in particular have significantly smaller budgets than the major FTA channels meaning that they have less financial headroom to adjust to new regulatory pressures. Narrowing the definition of European works would, therefore, represent a significant challenge and, for some, an existential threat.

> *Especially for film channels it [narrowing the European words definition] would affect acquisition and scheduling substantially, as non-EU ECTT productions and co-production, especially in the English language, are a substantial part of the film and series offer.*
>
> **– CANAL+ Group**

The previous chart on Poland shows how some channels, including the major pay TV group channels and commercial FTA portfolio channels with smaller budgets, would need to adjust their content mix to comply with a revised European works definition.

To manage the impact of a narrowed definition, affected broadcasters would have to minimise any deviation from their current (optimised) content investment strategy. Again, they would make changes at the margin, swapping the lowest value, lowest performing, non-EU content for other 'marginal' content that is compliant with the definition, to be shown at a similar time of day (likely off-peak and overnight). This would include domestic repeats and archive for which they already have the rights.

> *To keep up with the required percentage for the quota, TV channels would not turn to other EU markets for programming on a bigger scale than usual, as the number of programmes acquired from a certain country/company results from compatibility of such programmes with the preferences of the audience. TV channels would rather increase the number of repeats of content that works, and they already have in stock.*
>
> **– Polish Commercial Broadcaster**

> *To hit the quota we would schedule more repeats of quota hitting shows in low impact areas of the schedule. It is only the customer that loses out, with not much benefit to producers. Also, we may see a shift from mid-level to lower cost EU content, trying to get more hours for the same cost.*
>
> **– European Commercial Broadcaster**

94 per cent of broadcasters and SVODs interviewed believed that proposed changes would **not increase investment into the EU.**

Key finding 1(d): There would be a negative impact on broadcaster revenues and sustainability, and therefore content investment by affected channels

If the European works definition was narrowed, affected broadcasters would have to replace some non-quota compliant content. However, broadcasters have said that the domestic repeats and archive, or potentially some low-cost EU acquisitions, that would replace the non-compliant content would be less effective at delivering viewers and hence revenues. If such content was similarly cost effective, it would be used now.

Since revenues ultimately fund content, it is inevitable that policies that reduce broadcaster revenues will also reduce their content investments. This study estimates the impact on broadcasters of having to replace non-EU content with lower performing EU content in order to restore their share of European works to its current level.[9] Looking at a sample of channels that would have to make changes based on schedule composition in 2021, such channels generated on average TV advertising revenues of €88 million per channel.

To provide an estimated quantification of the impact on these channels of a narrowed definition, we can say that on average to restore their share of European works to their current level before any narrowing of the definition, impacted channels[10] would have to remove 10 per cent of their schedule and replace it with domestic or other EU content.[11]

The content that is removed represents 4 per cent of viewing and it is (conservatively)[12] assumed to account for approximately the same share of the channels' advertising revenues.[13] The content represents a smaller share of viewing than its share of the channels' schedules as the content being replaced will be low performing, marginal content in order to limit the revenue impact.

[9] Additional analysis is conducted including a sample of channels that would only need to shift their schedule in order to keep their share of European works in their schedule above the quota

[10] This analysis assumes that impacted channels would include those that currently have above the quota of European works, including a compliance margin (of up to 10 per cent needed to ensure the channel has some flexibility in scheduling). Furthermore, channels that have between 40 per cent and 50 per cent European works are assumed to be impacted. This is because their level of European works may have fallen just below the threshold for the period covered by the data, or because they are subject to the quota but are assessed on a portfolio basis. Channels with less than 30 per cent European works are conservatively assumed to be quota exempt, though in reality these channels may also be affected by narrowing the definition of European works for example if they are contributing to portfolio compliance. The quota and compliance margin for channels under French jurisdiction are assumed to be 10 per cent higher

[11] For channels in the analysis whose current European works share of their schedule is above the compliance margin (i.e. 60 per cent in Poland, 70 per cent in France) before a narrowing of the definition but below it under a narrowed definition, we assume they will only replace the amount of no longer compliant content in order to restore their schedule's share of European works up to their compliance margin, not their current share before a narrowing of the definition

[12] The assumption that advertising is proportionate to viewing is conservative as this is not always the case. This is because broadcasters can charge a premium for advertising that offers significant reach. This implies that the 'price' of advertising (measured by Cost Per Thousand (CPT) or Cost Per Impression (CPI)) is likely to be higher for the most popular content with high reach, than for the marginal, low viewership advertising (i.e. the non-compliant content that would be removed from the schedule)

[13] An alternative narrower interpretation of the impact of the quota is also presented in this report. This interpretation would assume that channels would only shift their schedule in order to keep their share of European works in their schedule above the quota without any compliance margin. These impacted channels would on average have to remove 9 per cent of their schedule and replace it with domestic or other EU content. The content that is removed represents around 2 per cent of viewing. This narrower approach identifies a smaller sample of channels as being impacted, and assumes that channels would not have any compliance margin (i.e. they would carry a significant risk that they would breach the quota), it is therefore provided as an illustrative lower bound of impact, though in reality the impact on broadcasters would be higher

Therefore, this corresponds to up to **€2 million of advertising revenues per channel** on average, which would potentially be at risk in the first year due to the definition being narrowed.[14]

Given that broadcasters have stated that the replacement content would be less efficient (i.e. for a given level of investment the content delivers fewer viewers), there would also be a reduction in viewers of the channels and therefore a likely fall in advertising revenues directly linked to this drop in audience. The content that replaces non-compliant content is assumed to be 80 per cent as effective at delivering viewers on average, but for some channels the impact could be higher.

As a result, on average TV advertising revenues per impacted channel across the EU could decline by €0.4 million, 1 per cent of their annual advertising revenue. However, a relatively modest average impact masks bigger impacts on a subset of broadcasters that need the highest volume of non-EU ECTT content to meet consumer demand, with **some channels potentially facing advertising revenue reductions of over €4.5 million** in the first year.[15]

Channels in the smallest EU Member States, which are more reliant on acquisitions, would suffer the most. In Ireland, for example, given the longstanding cultural and language links between Ireland and the UK, RTÉ2 would have to remove and change up to 33 per cent of its schedule[16] to meet the revised quota and the compliance margin. RTÉ2 is the PSM's second channel that serves younger audiences, and provides children's programmes. A specialised channel in Spain would have to remove and change over 50 per cent of its schedule of relevant content to meet the quota and a compliance margin, including a share of Turkish content.[17] This impact could be further exacerbated if scheduling changes were to harm overall audience perceptions of the channel or brand.[18]

[14] Revenues at risk are the revenues associated with content that would be switched out. Under the alternative narrower interpretation of the impact of the definition change (see footnote) approximately €1 million of advertising revenues per channel would potentially be at risk on average, in the first year

[15] Under the alternative narrower interpretation of the impact of the quota change (see footnote 14) average TV advertising revenues per impacted channel across the EU could decline by €0.2 million – 0.5 per cent of their annual advertising revenues

[16] Specifically it would have to remove 33% of the content that is relevant for quotas, i.e. excluding sport and news

[17] It would need to remove 37 per cent of the content that is relevant for quota compliance to return to its current share of European works

[18] Lower viewing of directly affected broadcasters would be partially offset by an increase to other broadcasters, as viewers switch away from the affected broadcasters to other channels; though some viewing would be lost to TV overall as viewers instead turn to alternative activities (likely VOD, video sharing platforms, or other AV media like gaming). For simplicity this analysis assumes that of the 20 per cent loss in viewing, 75 per cent of it is redistributed to alternative TV channels and 25 per cent is "lost" to TV, implying an absolute decline in overall TV revenues. The average TV advertising revenue impact across all channels (including those unaffected channels that capture the 75 per cent of switching viewing) across the EU would be €0.1m per channel in the EU

Narrowing the definition of European works could affect at least **27%** of channels in our sample.

In response, **channels must adjust their schedules**. Of the impacted channels, the average required proportion of content that needs to switch to EU is **10%**, though for some channels it is as high as **37%**.

This content is responsible for an average of **4%** of channel viewership, and the associated advertising revenues. The EU content that is brought in will be less efficient at delivering viewership, and so channel revenues will be negatively impacted. This results in a total of **€15.2m** lost channel revenues, with an average impact of **€0.4m**.

The **€15.2m** is equivalent to **0.1% of the total advertising revenue in our 8 countries of interest**, however there are channels not included in our sample, so the full effect could be larger.

Given the high fixed costs associated with broadcasting (transmission, distribution and content creation), smaller channels are more vulnerable to changes in revenues or costs. Even small changes can make such channels unprofitable. However, these smaller channels cater to specific audiences and often contribute to the diversity and plurality of a country's broadcasting ecosystem. According to some broadcasters, there would not be sufficient alternative domestic or EU content to substitute for non-EU ECTT content removed from the schedule and maintain the audience they need. Some of the next best alternative content could be so low performing with audiences that the overall viability of channels would be challenged. Some broadcasters have said that in some instances the only economic option may be to close the channel.

We both acquire content from the UK which plays an important function in our schedules and is highly valued by the viewing public … [proposed changes] would have major implications on both broadcasters' funding models and our ability to fund quality home produced content.

– Joint letter from RTÉ and Virgin Media Ireland to Catherine Martin, the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media and to Irish MEPs

Ireland would be a major issue, it would be incredibly hard to shift to a new quota. Many broadcasters would have to explore shutting certain channels within their offering.

– Irish Commercial Broadcaster

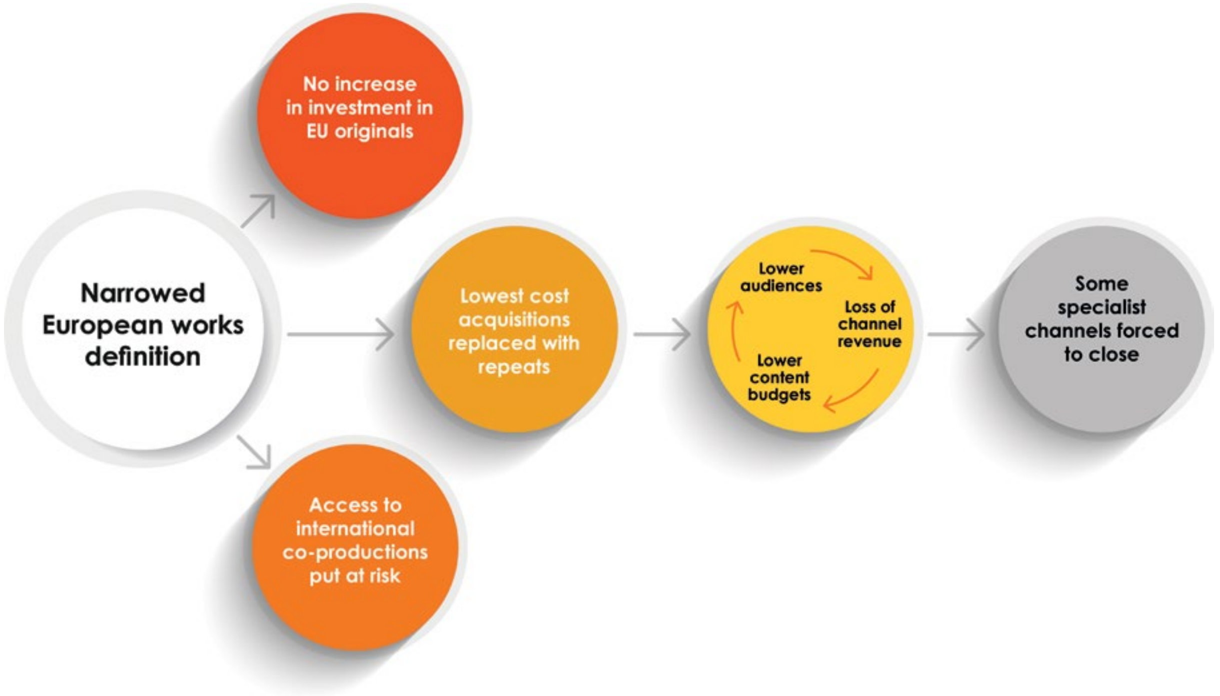
… [narrowing the definition of European works] might even cause the disappearance of some brands that depend on UK content.

– Commercial broadcaster in Southern Europe

The impact on individual channels may also have wider-reaching impacts on FTA and pay TV broadcaster portfolios. Strong performance on one portfolio channel helps to fund original domestic content investment on the 'main' channel. Specific audience demographics on portfolio channels also enable broadcasters to make a compelling ad sales offering across all channels. Furthermore, in some markets, regulators measure compliance with the European works quota as an average for the portfolio, and therefore significant impacts on one or two smaller channels may mean scheduling changes have to be made across the portfolio.

In sum, a definition change risks upsetting the delicate and complex European broadcasting ecosystem.

Impact of narrowing the definition of European works on EU broadcaster business models



Broadcasters that would be compliant with the quota under a narrowed definition but are close to the threshold would still be affected, since the changes could result in them losing their compliance margin. They would have to make scheduling changes at the margins to recover this.

> *Private content providers are restricted in their room for manoeuvre by ever greater fixed obligations, and yet they will still have to align themselves with the market in order to be successful. These principles will not (cannot) be undermined by further restrictions; it will only become more and more difficult for the providers to meet viewers' needs and thus also to ensure an adequate refinancing basis.*
>
> **– VAUNET**

A narrowed definition could also accelerate existing consumption trends. Traditional broadcast viewing remains a popular activity though it is gradually declining as viewers transition towards online and on-demand consumption. While a narrowed European works definition may have a small immediate impact on total viewing of a broadcast channel, it could accelerate this trend. This risks disrupting European broadcasters' existing strategies to transition to digital while bringing their audiences and advertisers with them.

> *If the change decreases the quality of linear, it would increase push for viewers to go to VOD. We are at this moment weaker [compared to global services] from a market perspective on the VOD side. Locally owned platforms would get a lower viewership share than they have on linear.*
>
> **– AKTV member (Czech broadcaster)**

Lastly, some stakeholders might suggest that sub-quotas could be used to address the use of repeats or archive content off-peak alongside a narrowed definition; however, such an approach would only exacerbate all of the negative impacts for broadcasters identified in this study by further decreasing their flexibility to curate their schedules to best meet consumer demand and forcing even greater reliance on less efficient content, including in primetime. This would have even worse knock-on effects for revenues and therefore content investment and broadcaster sustainability.

Key Finding 2: VOD services would not increase investment in original EU content

We have also investigated how narrowing the definition of European works to exclude non-EU ECTT countries would affect EU content investment by VOD services in the EU. As for our research on the impact on broadcast channels, this involved (i) conducting interviews with a range of providers offering services in eight representative EU Member States: Czechia, Denmark, France, Germany, Ireland, Italy, Poland and Spain, and (ii) reviewing data on the composition of VOD catalogues.[19]

Narrowing the definition of European works would not lead European VOD providers to commission new EU works

In recent years, there has been a rise in the number of homegrown European VOD services providing an alternative AV offering. Digital streaming technology has enabled services to emerge that serve regions (e.g. Viaplay) or areas where there are linguistic links (e.g. RTL+), giving European audiences access to a wider range of content than was previously available through traditional broadcast distribution technology.

European VOD services differentiate themselves through a greater focus on domestic content, and sometimes European content more broadly. Depending on catalogue composition at the time that the European works quota is in force, some European VOD services would not need to make any changes at all in response to a narrowing of the geographic scope of the European works definition. A few European VOD services might be forced to make some adjustments to their content mix. However, they would not increase their investment in original EU productions.

As with broadcasters, European VOD services already optimise their investment in original content to best meet consumer demand within constraining content budgets. These services would be best served by making changes to the long tail of their catalogues, by removing marginal content – i.e. the lowest cost / lowest performing non-EU acquisitions. If necessary for compliance purposes, they might add a small volume of the lowest cost, non-exclusive EU catalogue content. This would not benefit EU audiences or the AV sector overall.

> *…[we would just] buy a very cheap catalogue, which qualifies… that's the reality of it.*
>
> **– European broadcaster-owned VOD service**

[19] Noting that the AVMSD VOD quota was still being implemented at the time of this study, we looked at data on the composition of VOD catalogues as a snapshot of the market in 2021

European VOD services have less flexibility and would, faced with having to make uneconomic adjustments, find it harder to compete

Given their national or regional audience base, European VOD services generally have smaller budgets and catalogues than those of the major, generalist global SVOD services. A narrowed European works definition could therefore result in less commercial flexibility for these operators to tailor catalogues to consumer demand than would be faced by global SVOD services. Any suggestions of additional sub-quotas or rules on user interface design alongside a narrowed European works definition would only exacerbate such risks. This would come at a crucial time when European broadcasters are working to develop their VOD services and to evolve from broadcasting to streaming, amid a difficult economic climate.

Global VOD services already optimise investment in a core of original content plus an expansive catalogue of licensed films and series

Exclusive original content is the main differentiator that drives consumer retention for a VOD service. Global VOD services operate in multiple territories across Europe and beyond. The share of European original content has been growing as these services invest to meet consumer demand in European markets (and elsewhere since quality European content travels well overseas).

While original content is important to drive profile, global VOD services also provide large libraries to give consumers choice and depth of programming – serving mainstream tastes and niche interests in the same catalogue. Given the relatively high cost of original content, this relies on acquired TV programmes and feature films. In this way, global VOD services generate value by licensing content from a wide range of European suppliers.

> *We are already investing in the EU, a change in the definition would not change this.*
>
> **– Global VOD service that operates in the EU**

Global VOD services would respond to a narrowed European works definition by altering their long tail of acquired content, and would not increase their investment in original EU productions

Global VOD services make significant investments in local content to attract and retain subscribers and to differentiate their services. This is already being optimised to respond to consumer demand and competition. Indeed, in our interview programme, global VOD providers were clear that investment in the EU would not increase in response to narrowing the definition of European works.

Investment in non-EU ECTT countries would not change either, as this is similarly optimised to meet domestic demand in those countries and would be just as valuable as before in markets outside of Europe. Instead, services that need to make changes would adapt their catalogues, removing the lowest value non-EU content from the long tail. Even if they did add a very small volume of EU acquisitions to the long tail this would be the very lowest cost EU acquisitions, driven by compliance. This would not result in a meaningful uplift in rights payments, or investment in riskier, more varied content.

[If the definition changed] there would not be a dramatic shift in our content strategy. We would not move significant investment from one region to another, we would still be focused on finding the best content for our members. However, we may look to change the overall size of the catalogue in order to remain compliant.

– Global VOD service that operates in the EU

European and global VOD services oppose any narrowing of the geographic scope of European works

Even though it would have no meaningful impact on their content investment strategies, VOD providers are opposed to any increase in the regulatory burden such as narrowing the geographic scope of the European works definition: this would place new restrictions on their flexibility to respond to consumer demand and market changes and would not improve the consumer experience. We also heard that, given significant investment is already happening, and many Member States are at or above production capacity, narrowing the definition of European works would simply increase production costs and resource shortages.

Narrowing the definition of European works may make it harder for new VOD platforms to launch and grow in the EU

Compared to well-established VOD services, new entrants need extra flexibility around their content mix as they develop a compelling offer for end users, and especially to attract new users, within constraining content budgets. Increasing the overall regulatory burden and imposing constraints (even if a Member State may exempt operators while they are small) on the ability of new providers to grow and compete with established players would deny audiences the benefits of strong competition and plurality, weakening or reducing the range of services available to EU consumers.

Key finding 3: There will not be any material benefits for the EU production sector

The above analysis shows that, faced with a narrowed geographic scope of European works, affected broadcast channels and VOD services would not commission new original content because this is already optimised to reflect consumer demand, given budgetary constraints. Instead they would remove the lowest cost, lowest performing non-compliant content from the margins of their schedules or the long tail of their catalogues – typically, acquired content. In some cases, they might add a small volume of EU content if necessary to comply, but any licensing payments would be minimal, and they may instead offer more domestic repeats including archive for which they already have the rights.

Building on our earlier findings, we modelled the potential financial 'upside' for EU producers from a narrowed definition. As discussed above, we looked at a sample of channels in the eight representative EU Member States that would be affected by a narrowed definition based on current schedules, and found that, on average for those channels, 10 per cent of a schedule would have to be replaced to restore their share of European works to the current level in 2021 schedules. This would be taken from acquired content, since the content with the lowest audience and lowest importance to the schedule tends to be acquired; it accounts for an average of 4 per cent of total viewing, which equates to 7 per cent of total viewing of *acquired* content per channel.

To provide a feel for the potential impact in financial terms, we can make some simplifying assumptions and suppose that the cost to acquire content is proportionate to the contribution that it makes to viewing (where highly viewed popular content costs more to acquire than little viewed less popular content) and thus broadcaster revenues. On this basis, taking the 7 per cent decline in viewing of acquired content, at an EU level this would release around €28 million of content spending, which could in theory be reinvested in EU content.[20] [21]

The figure below shows this potential increase in EU spend in the context of total EU content spending and broadcaster spend on non-EU ECTT acquisitions – i.e. the content that would likely be replaced. We estimate spend on non-EU ECTT acquisitions by EU broadcasters to be €0.8 billion, or 4 per cent of total EU broadcaster content spend. Based on our analysis, part of this spend on non-EU ECTT acquisitions and other spend on RoW acquisitions would need to be replaced, resulting in €28 million potentially reallocated spending from non-EU ECTT or RoW acquisitions to EU acquisitions.

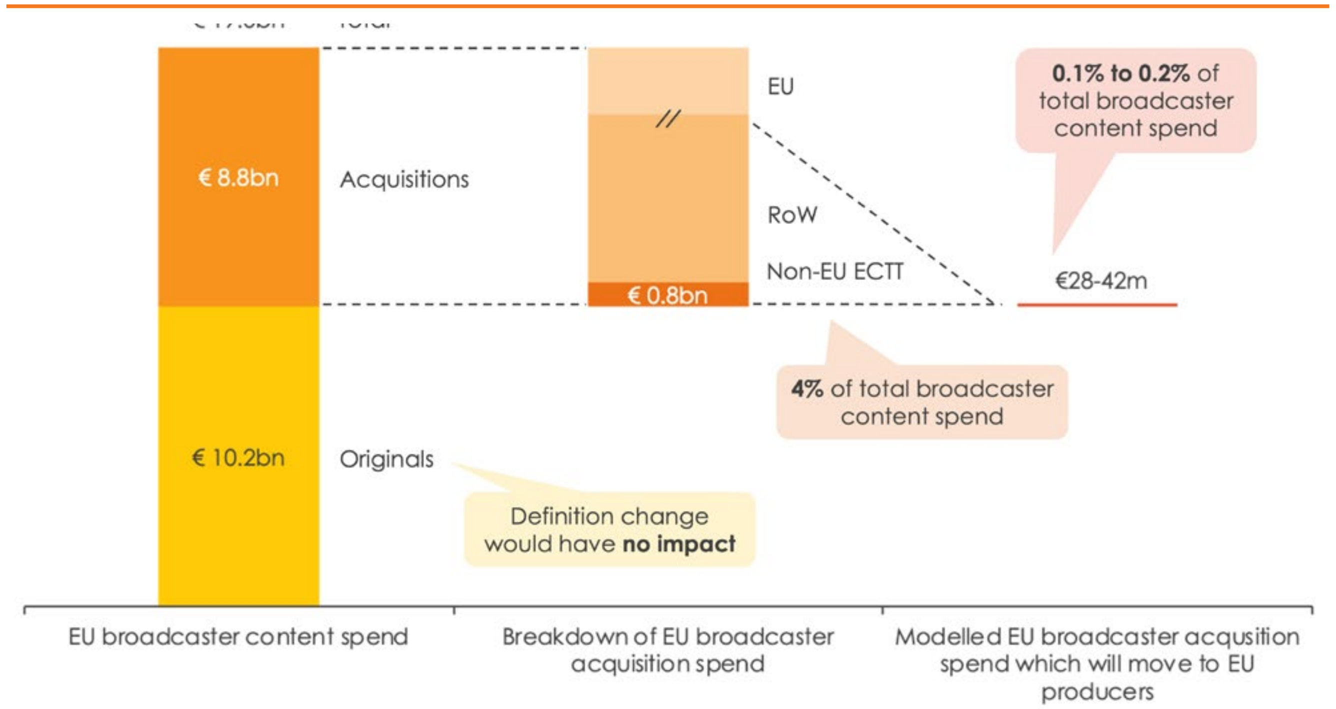
Of course, this amount may not be reinvested; indeed it is optimistic to assume that total investment would stay the same, rather than decreasing, considering the negative potential impacts on audiences, revenues and sustainability. If it were reinvested, low-cost content options would be needed and would likely include repeats of existing content or domestic archive. For the central case where €28 million could be released, we assume that 50 per cent of acquisitions that are no longer compliant after a narrowing of the definition of European works are replaced by EU repeats at no incremental cost to the broadcaster, as broadcasters said they would use archive material and repeats of content

[20] Our calculated amount of content investment available to be invested in EU acquisitions instead of non-EU ECTT ones was scaled up to an EU-27 value using the proportion of total EU27 acquired film and TV spend from the eight countries in the analysis as an input. Czechia, Denmark, France, Germany, Ireland, Italy, Poland and Spain represent 81 per cent of acquired film and TV spend in the EU27. Data from Ampere Analysis

[21] Only up to €2 million would be released if we consider the impact on broadcasters that only want to ensure they continue to meet the applicable linear quota instead of returning to their current level of quota performance

to which they already have the rights.[22] This assumes that the remaining 50 per cent is spent on EU acquisitions. For a generous upper bound we assume that only 25 per cent of the non-compliant content is replaced with domestic repeats at no incremental cost; this would result in €42 million being released. Even given these generous assumptions, we estimate that narrowing the definition would only amount to an incremental increase in EU acquisitions spend of 0.3 to 0.5 per cent, increasing total EU broadcaster content spend by only 0.1 to 0.2 per cent.

Total EU content spend by type, with modelled flow of value to EU producers, 2021 (€)



Note: The €0.8 billion EU broadcaster spend on non-EU ECTT acquisitions is an indicative estimate, using reported spend on UK TV finished programme sales in the PACT UK TV Exports report – scaled up to include film and other non-EU ECTT countries

Source: Ampere Analysis, Pact UK TV Exports report, Frontier and Oliver & Ohlbaum analysis

Any increased EU investment would only benefit a few large territories

Even if there was a small increase in EU acquisitions spend, this would likely go to the largest EU Member States. French and German content accounted for 75 per cent of all EU schedule share in our sample channels across the eight representative EU Member States in this study.[23] Spanish and Italian content also featured heavily in the EU portion of schedules. Even if there were to be benefits for EU suppliers from narrowing the definition, producers in smaller EU Member States would not really benefit. Even if they did, as previously discussed, any sudden increase in investment raises the risk of worsening content cost inflation and resource shortages. The European AV sector requires balanced growth so that facilities, skills and talent have the chance to respond.

[22] Where a broadcaster shows a repeat it may have to pay away royalties to contributors and underlying right holders such as writers, composers or performers, depending on the applicable legislation and contractual arrangements in place

[23] Average schedule share across our representative EU Member States (excluding where this content counts as domestic)

If investment or acquisitions at the margin do move as a result of the definition change, bigger audiovisual markets in the EU will draw most of the investment as it is important for a show to appeal to a critical mass which you can get in large countries. Also, even if investment comes, it is not possible to duplicate the creative potential of a country without other support – skills, training, more stories. If [there was] too much demand on small countries with limited creative talent then production costs could rapidly increase.

– Global VOD service that operates in the EU

The proposed change is driven by two EU countries – both with big film production... The purpose is to establish a legal environment to help them make more money. It is a selfish attitude.

– Commercial broadcaster in CEE

100 per cent of interviewees believed that any increase would **benefit only a few, already large, AV markets**

Moreover, any increase would be offset by a decline in EU production and licensing if channels were to close as a result of the narrowed definition

For example, if the second channel of the Irish PSM, RTÉ2, was to close, its total investment in domestic and other EU content would be lost. RTÉ2's spend in 2021 on domestic commissions alone was €52 million. The net impact of the quota change on EU production would therefore be **negative** – the impact of just one channel closing would be above the €42 million upper bound gain from additional EU acquisitions.

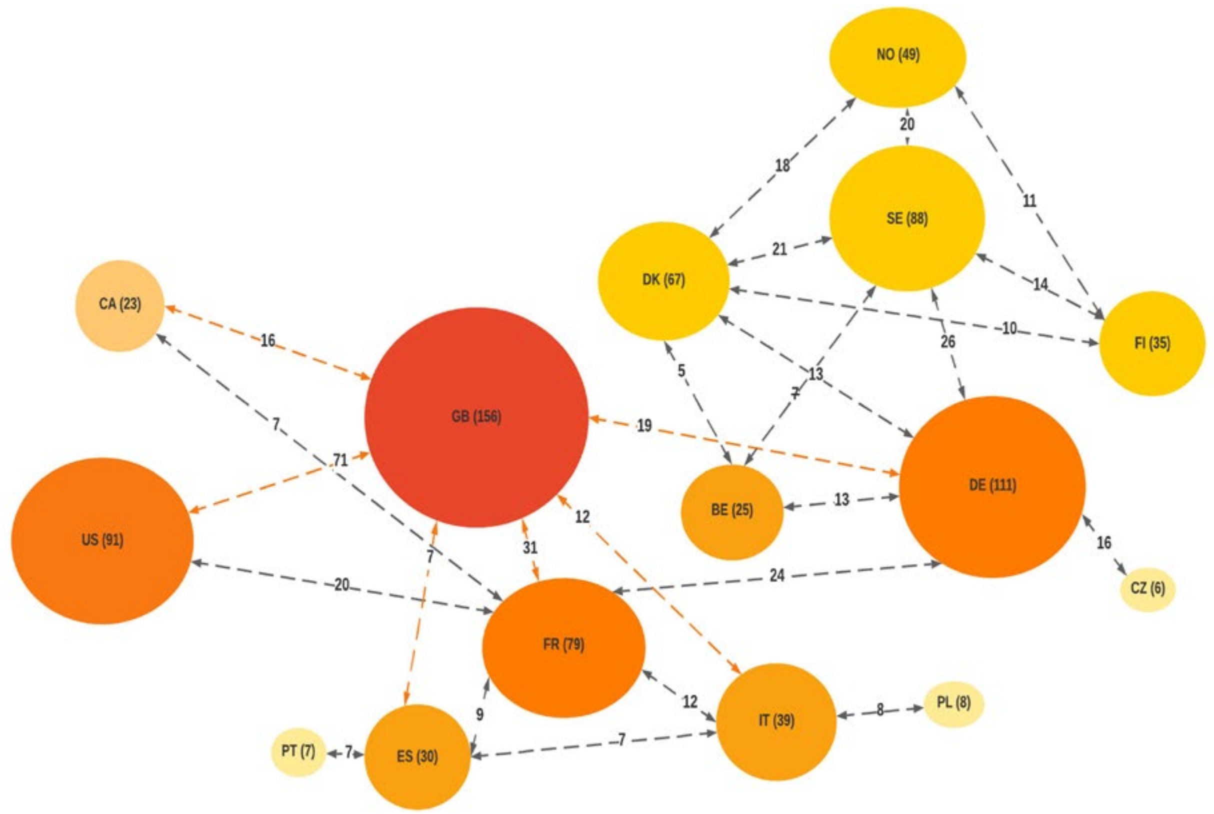
The EU's role in international co-productions would be put at risk

A further significant impact would be the loss of EU co-production opportunities. In television, co-productions are an increasingly common way to fund expensive, high-quality content. Often EU broadcasters co-produce with non-EU ECTT countries that currently are within the European works definition. Consumers enjoy higher quality programming that is adapted to their territory and commissioners share costs and risks and benefit from each other's creativity and expertise. In particular, co-producers benefit from priority access and exclusive rights; a degree of editorial input; sometimes using locations in the co-producer's domestic market; the ability to brand the content as the co-producer's in its home market. All of which can mean that the content is viewed by audiences as 'locally produced'.

Co-producers may also benefit from a co-production partner's existing third-party funding, distribution relationships and know-how, including in global markets. This supports pre-sales, secondary exploitation and exports.

The figure below shows the number of international television fiction co-production partnerships in 2021 between European countries that do not share a language (non-linguistic co-productions). The UK is one of the most interconnected production hubs, taking part in numerous co-productions with France, Germany, Italy and Spain. Norway is also highly interconnected with its Nordic neighbours and any disruption making it harder for EU Nordic producers to work with Norway would have implications for production across the whole region. *The Tunnel* is an excellent example of this, as a premium French-British drama series. Airing on both Canal+ and Sky, the show was bilingual, employed both French and British crew, and garnered critical and audience acclaim on both sides of the Channel.

Number of partnerships in non-linguistic European international TV fiction co-productions, 2021



Note: This figure excludes partnerships for "Linguistic co-productions" are those between neighbouring countries sharing a language (DE-AT, FR-BE, FR-CH, GR-CY, BE-NL, DE-CH, CZ-SK, GB-IE). The number of partnerships differs from the number of productions – Denmark may have participated with Sweden and Norway in the same production. Not all countries shown

Source: European Audiovisual Observatory analysis of The European Metadata Group data. Reproduced from 'Audiovisual fiction production in Europe: 2021 figures'

Linguistic co-productions are also highly important. For example, Irish VOD catalogues have a higher share of UK co-productions than VOD catalogues in any other EU Member State.[24] Calum Cille: An Naomh Dàna, marking 1,500 years since the birth of one of Ireland and Scotland's most important saints, is a recent example of an Irish-language co-production for local broadcasters that relied upon a patchwork of Irish and UK funding.[25] Chief Executive of Northern Ireland Screen's Irish Language Broadcast Fund Áine Walsh noted how the co-production "provided another opportunity to strengthen the links between Ireland and Scotland on a significant programme which will be broadcast on TG4 and BBC ALBA. Partnerships like this are very important in our efforts to deliver engaging and high-quality content…".[26]

EU broadcasters have said that they would be unlikely to fund or join co-productions that resulted in non-compliant content. This is because the legal and commercial uncertainty would grow, particularly around the sell-on value to other EU broadcasters, increasing the risk level of the investment. This would mean that EU industry and audiences would lose the associated benefits of these productions. EU access to skills and economic opportunities (location filming, VFX, contributors, cast and crew) could be lost or weakened. For example, if a producer from an EU country is no longer a co-producer on a piece of content (even if it would have been a minority partner) then that country may no longer be considered for filming or post-production activities, or as a source of major contributors and cast.

This is mainly an issue for the highest cost television productions (e.g. blue-chip natural history, premium drama). These are key strategic co-production investments so non-EU ECTT broadcasters and VOD services would seek to go ahead with some projects even without EU partners and would have to look to strengthen their global relationships. This would gradually shift the centre of gravity away from the EU. EU producers that no longer co-produce on these projects would lose out. While the content may subsequently become available in the EU it would be without cultural adaptation. An existing example of this type of co-production might be premium drama series *Les Misérables*. Based on the French novel and filmed in France and Belgium it was co-commissioned by BBC One and PBS in the US from UK producers Lookout Point and BBC Studios. It features a UK screenwriter and Executive Producer, UK Director, and UK and US main cast. *Les Misérables* was subsequently sold to a number of EU markets.

For feature films, majority non-EU ECTT co-productions involving minority EU partners made under the Eurimages scheme would no longer qualify as European works if non-EU ECTT countries were excluded from the European works definition. The same would apply to such productions made under the European Convention on Cinematographic Co-production.

As a nation with a small AV sector, Ukrainian films are especially reliant on EU co-production partners. Without these co-production partners, many Ukrainian projects would struggle to secure funding and ultimately would not be made. This would represent a significant loss to European consumers and strip Ukraine of one of its most powerful forms of resistance and documentation of its ongoing conflict.

[24] Study on the practical implementation of the provisions of the audiovisual media services directive concerning the promotion of European works in audiovisual media services, European Commission

[25] Produced by Abú Media and MacTV with funding from Northern Ireland's Screen's Irish Language Broadcast Fund, TG4 and MG ALBA and shown on TG4 and BBC Alba

[26] 29 November 2021, 'BBC ALBA and TG4 collaboration to bring the story of St Columba to life in new documentary', mgalba.com

> *Over the years, co-production relationships have developed between EU and non-EU ECTT countries, which would be challenged by excluding these countries from the definition. In particular, for co-productions with minor participation from an EU country, recognition as a European work is essential. If it were removed, minority participation would become a rarity and lead to a significant reduction in the diversity of offerings – both among media service providers and in cinemas. But it would also create uncertainties for majority co-productions, which are unacceptable for high-risk investments such as theatrical films. Many non-EU countries bring valuable resources, partnerships and talent that also benefit all EU countries.*
>
> *Changing the definition would jeopardize established co-production relationships and, moreover, the economic development of individual EU AV markets, as international co-productions with their high production volumes are the driving force for the economic development of film markets.*
>
> **– VAUNET**

100 per cent of interviewees agreed that any changes which made it **harder to co-produce** with non-EU ECTT countries would be **detrimental to consumers and their AV sector**

Key Finding 4: Narrowing the definition of European works would disrupt the overall AV ecosystem, ultimately harming consumers

Investment requires stability and certainty, which the current scope of the European works definition has provided for over 30 years. It is clear from the analysis above that narrowing the definition could result in significant legal and commercial uncertainty, which could discourage investment in the sector for years to come. Broadcasters know that the policy-making, legislative and implementation process can take over five years. Commissioners and producers would not know the future value of an asset in secondary markets during this period.

Consumers would not experience any upsides, but would see both immediate and longer-term impacts on the volume, diversity and plurality of European content and services

For consumers, some changes would be immediate, for example the removal of content from a schedule or catalogue that some audiences enjoy. This may include content where there are limited EU alternatives available. It may especially impact certain demographics; Turkish drama is especially popular among older audiences in Spain, for example. There may also be a reduction in the overall quality of programming schedules as broadcasters would likely air more repeats and domestic archive content for which they already have the rights, and in the volume of available content – particularly in smaller EU Member States, where channel closures are more likely.

There would also be longer term impacts on consumers. Some large broadcaster groups could be affected if their portfolio strategy has been disrupted. Broadcasters may be less able to compete (with other broadcasters, VOD services or wider audiovisual services) where the quota restricts their flexibility to adapt schedules to meet consumer demand. Some broadcasters may face pressure on content budgets if revenues suffer as a result. And consumers may find that co-productions, especially for premium drama and factual, have a less 'local' or 'European' flavour.

Ultimately all the impacts discussed in this report would come together to harm consumers – who will be left with a less vibrant and diverse EU audiovisual sector.

Conclusion

The current European audiovisual ecosystem has supported record levels of investment in EU content, driven by intense competition and consumer demand. Producers now benefit from a range of potential broadcaster and VOD customers.

However, the European audiovisual sector faces a number of pressures. The current economic turbulence requires broadcasters and VOD services to manage the possibility of changes to advertiser spend and to consumer discretionary spend on subscriptions. Broadcasters are having to invest heavily in digital transformation, while still serving audiences that favour tradition broadcast. The Covid-19 recovery is ongoing, and soaring demand for production resources is leading to content cost inflation and resource shortages. Meanwhile, jurisdictions across the world are competing to attract inward investment. Proposals to narrow the definition of European works also come in the context of a broad range of existing regulations around local content investment. Some of these have been recently introduced, and it is too early to assess their market impact.

Considering the economics of broadcaster schedules and VOD catalogues, we find that AV services already optimise investment in original domestic content in response to consumer demand. They also invest in acquisitions from across Europe to provide variety and balance demand with constraining content budgets. Non-EU ECTT acquisitions are especially efficient because of cultural, linguistic and historical affinities across the European region. Through their varied content and services, broadcasters and VOD services support diversity, plurality and freedom of information in the EU.

If the definition of European works was narrowed, it would not drive new EU commissions of feature films or TV programmes or an overall increase in investment in EU acquisitions by broadcasters in Europe.

However, it would put some broadcasters under serious financial pressure. Major pay TV groups, smaller pay groups and standalone pay channels, and pay and FTA portfolio channels would be especially affected. Even major FTA channels from large broadcasters would be adversely affected in smaller Member States, especially in Northern, Eastern and Southern Europe where there are close geographic and cultural ties to European neighbours outside the EU. This is because smaller channels are more vulnerable to changes in revenues or costs given the high fixed costs associated with broadcasting (transmission, distribution and content creation). Some channels may cease to be viable, either immediately as in the case of RTÉ 2 in Ireland, or as a result of ongoing revenue impacts.

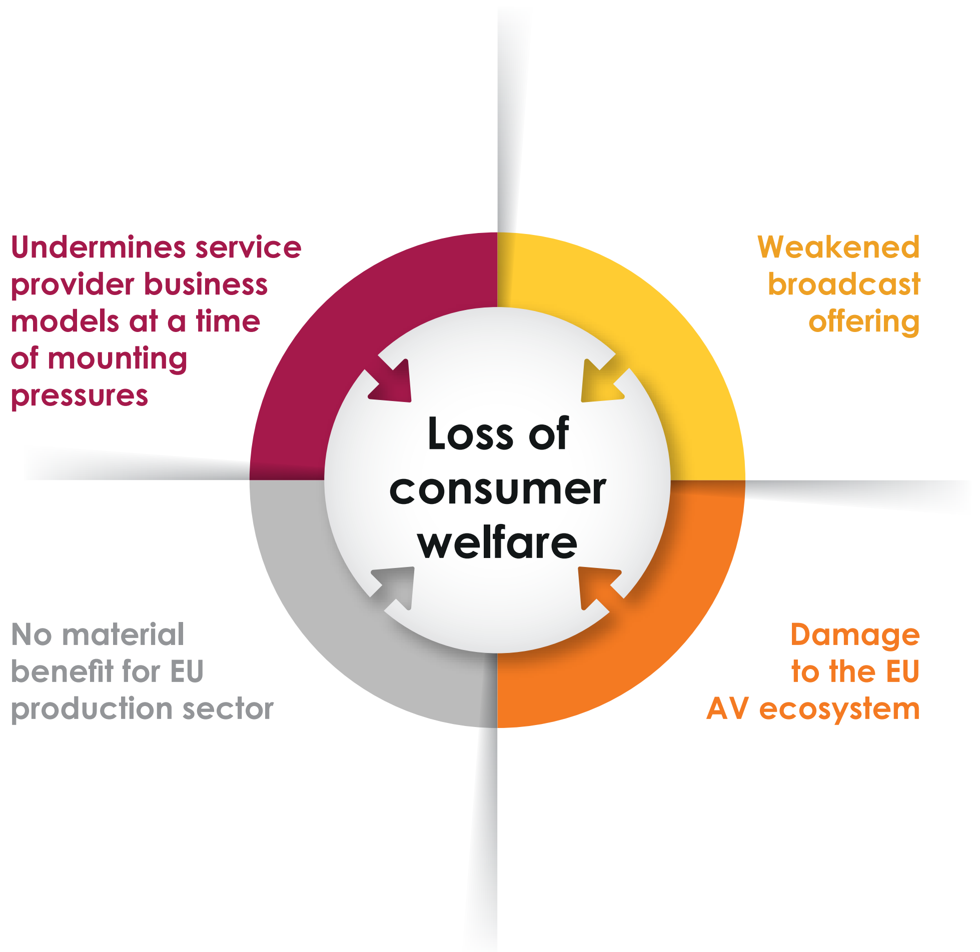
Similarly, narrowing the definition of European works would not lead VOD services to commission new EU works as, like broadcasters, commissioning is already optimised for consumer demand. Instead, affected VOD services could simply remove the lowest cost, lowest performing non-EU ECTT or rest of world content from the long tail of their catalogues. However, European VOD services generally have smaller budgets and catalogues than major global VOD services and narrowing the definition could result in less commercial flexibility for them. In addition, narrowing the definition would increase the regulatory hurdle for new entrant VOD services to grow, with risks to innovation and competition.

It follows that narrowing the definition would not generate any material benefits for the EU production sector. We estimate that only 0.1 per cent to 0.2 per cent of total broadcaster content spend might be available, and that would generally be for the lowest cost, lowest performing EU acquisitions – with no meaningful investment in new commissions. Even if there was a small increase in EU acquisition spend, this would likely go to the largest EU Member States. Moreover, it would be outweighed by lost EU content investment if even one channel closed. EU producers would also lose access to some international co-productions involving non-EU ECTT partners.

We conclude that narrowing the definition of European works would disrupt the overall European AV ecosystem, ultimately harming consumers. Consumers would not experience any upsides but would see both immediate and longer-term impacts on the volume, diversity and plurality of European content and services. Consumers in smaller EU Member States and those on the outer borders of the EU would be especially affected, as would certain demographics such as older viewers that favour broadcast services and certain non-EU ECTT content (Turkish drama, UK comedy).

Overall, these adverse effects risk weakening the health and sustainability of the European AV ecosystem in the longer-term, likely in favour of global markets. Contrary to the EU policy objectives, this would lessen diversity and plurality and freedom of information; fairness and balance between different EU Member States and different AVMS providers; undermine industrial policy successes at EU level and by Member States, which are supporting the growth of their audiovisual sectors; and weaken European cultural and digital sovereignty.

Summary of impacts



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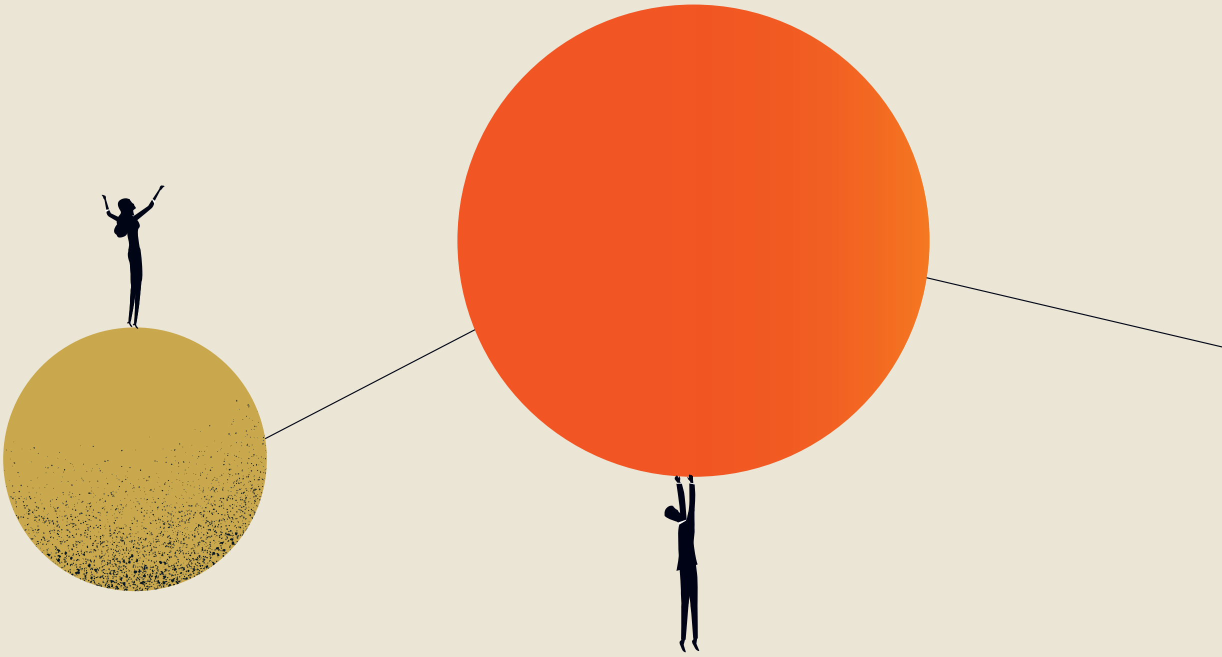

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