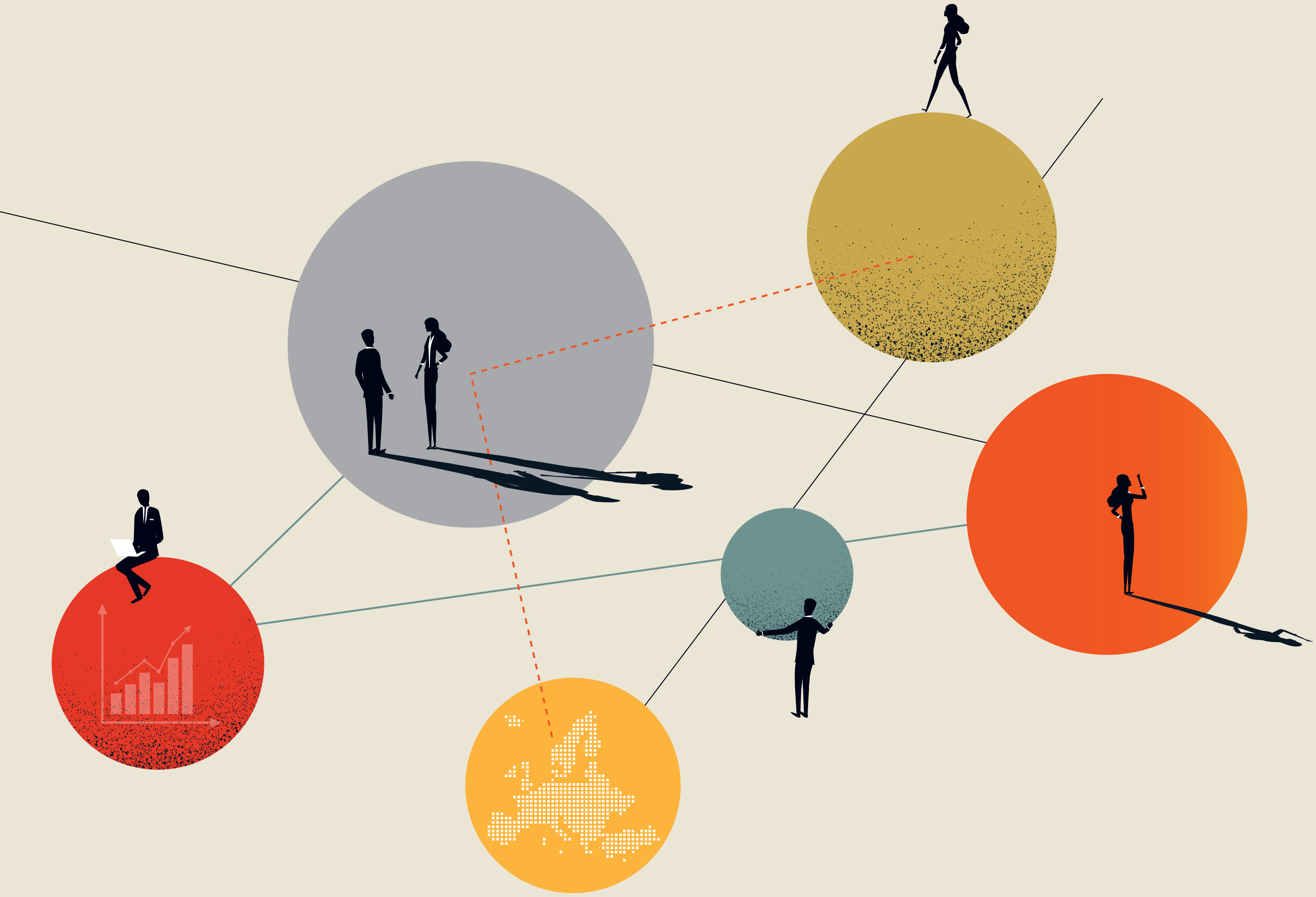

European works: promoting a healthy European audiovisual sector

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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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

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

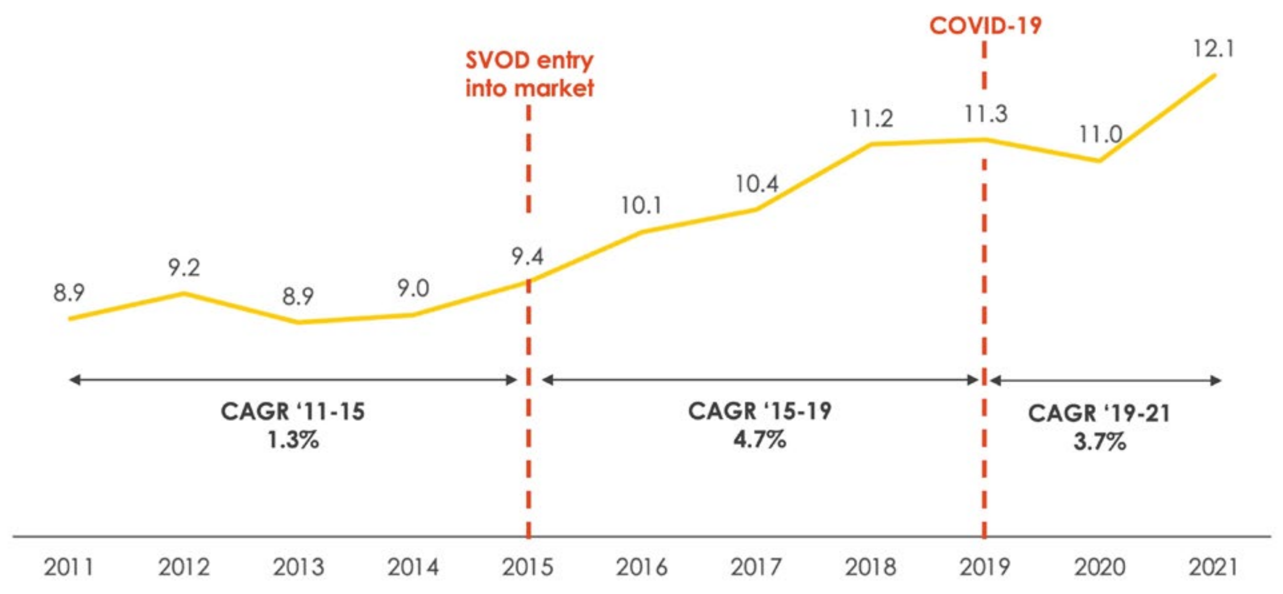
First, it is important to acknowledge the market and policy context within which these proposals are being made and the economic realities for stakeholders in the European audiovisual value chain.

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.

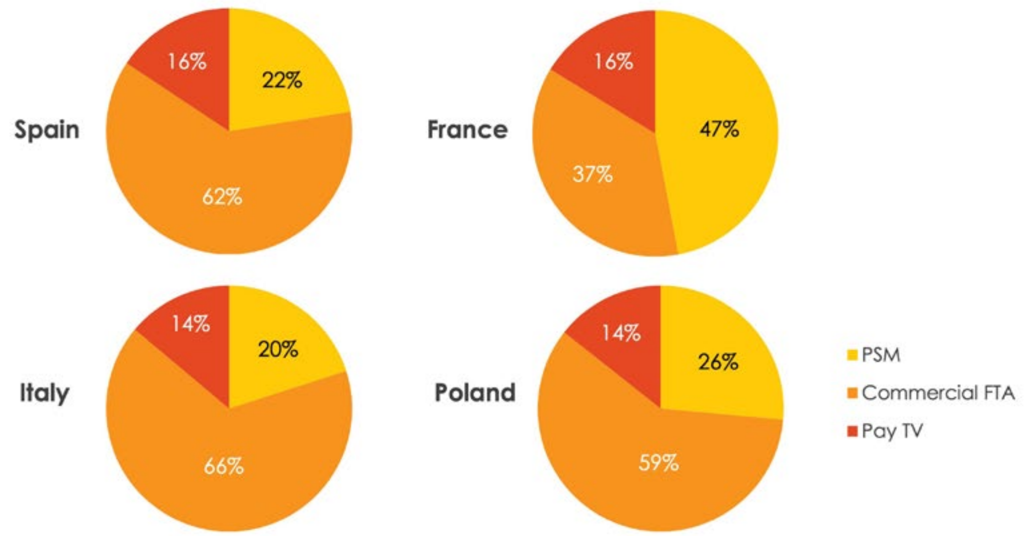
As a result, major FTA channel schedules are optimised to commission original domestic content alongside repeats and acquired content. (Acquired content is often non-domestic; by definition domestic acquisitions cannot be first-run, so they are less appealing to audiences). Original drama generates large 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**

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

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

Broadcasters curate a mix of different genres and origins of content

Domestic originals generate high audiences but cost more than international acquisitions

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.:

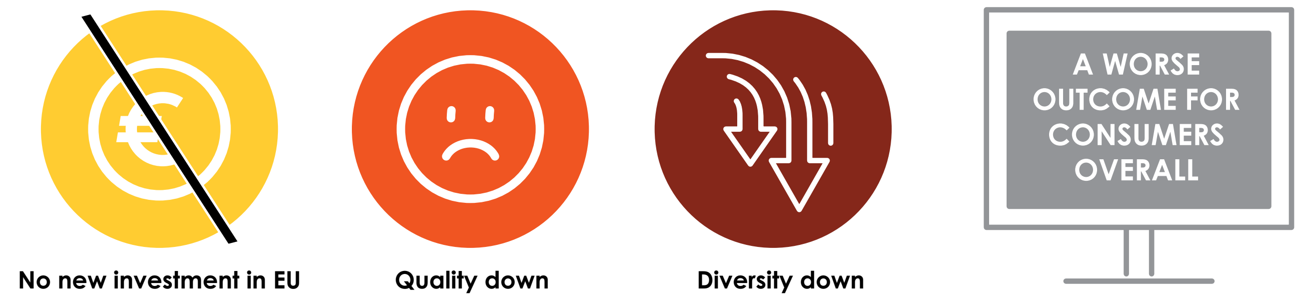
Daytime
International comedy

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



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.

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)

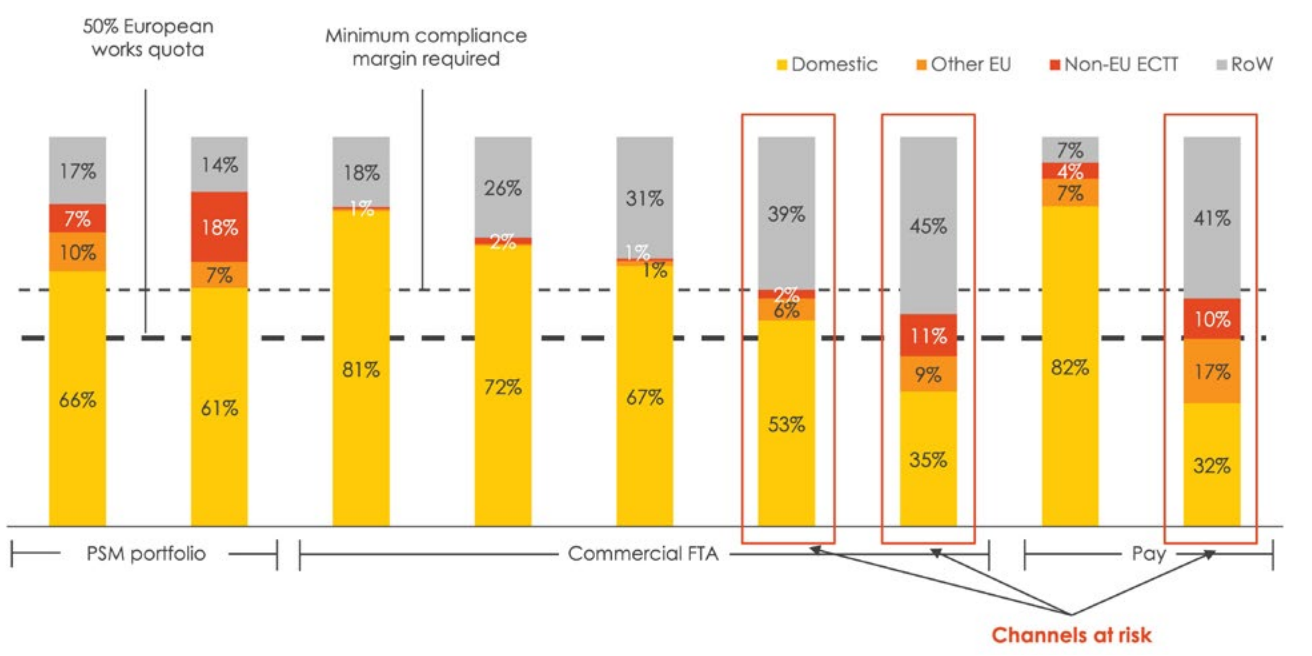
100 per cent of interviewees agreed that **access to non-EU ECTT content improves the consumer offering** in their market.

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-qualifying 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.

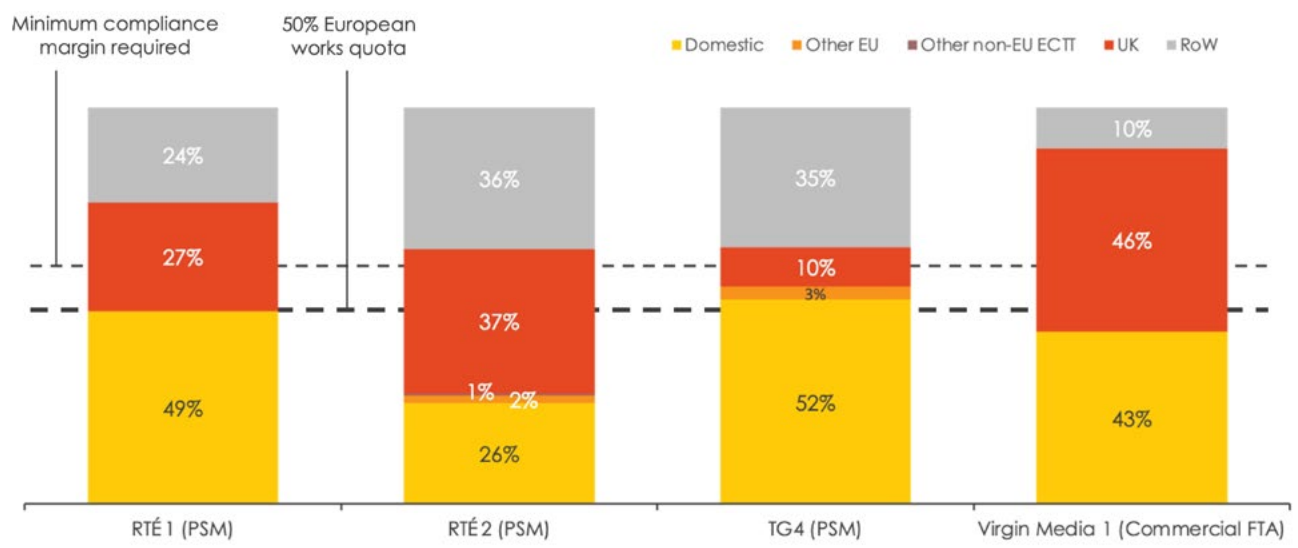
However, there are number of channels where domestic and other EU works are insufficient to meet the quota or a compliance margin. These channels – highlighted in the chart above – are at risk of adverse impact from a narrowed definition of European works. These include portfolio channels from major 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-qualifying 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

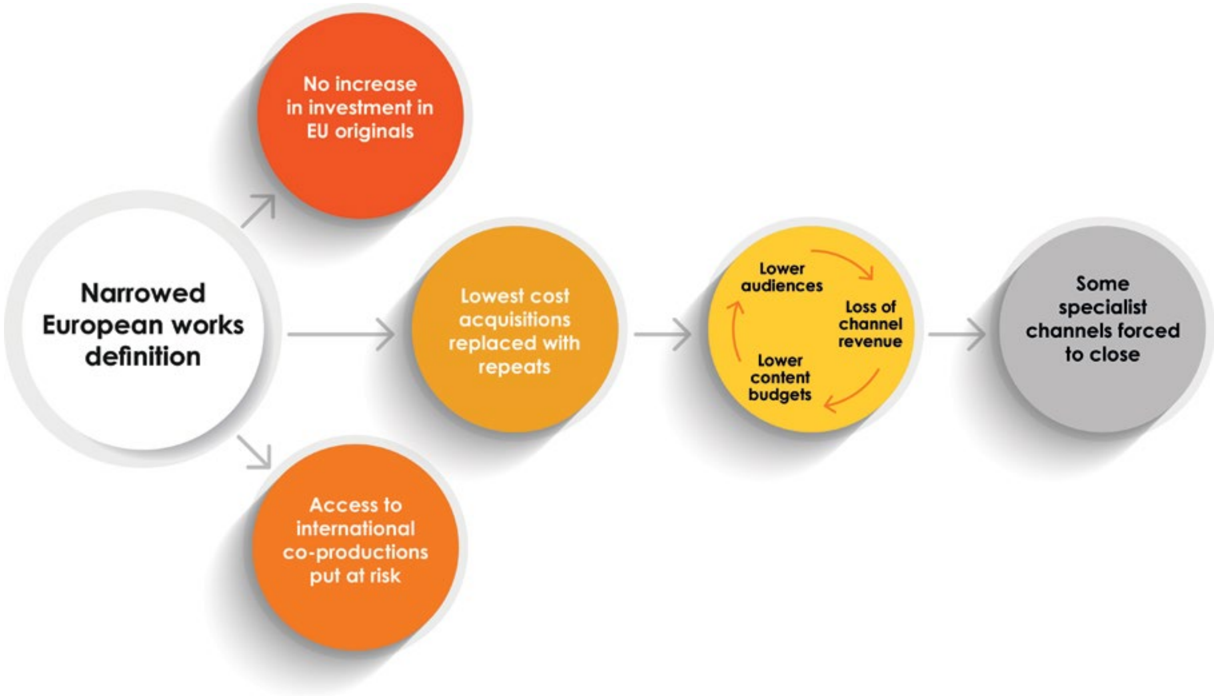
… [narrowing the definition of European works] might even cause the disappearance of some brands that depend on UK content.

– 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.

[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

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**

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.

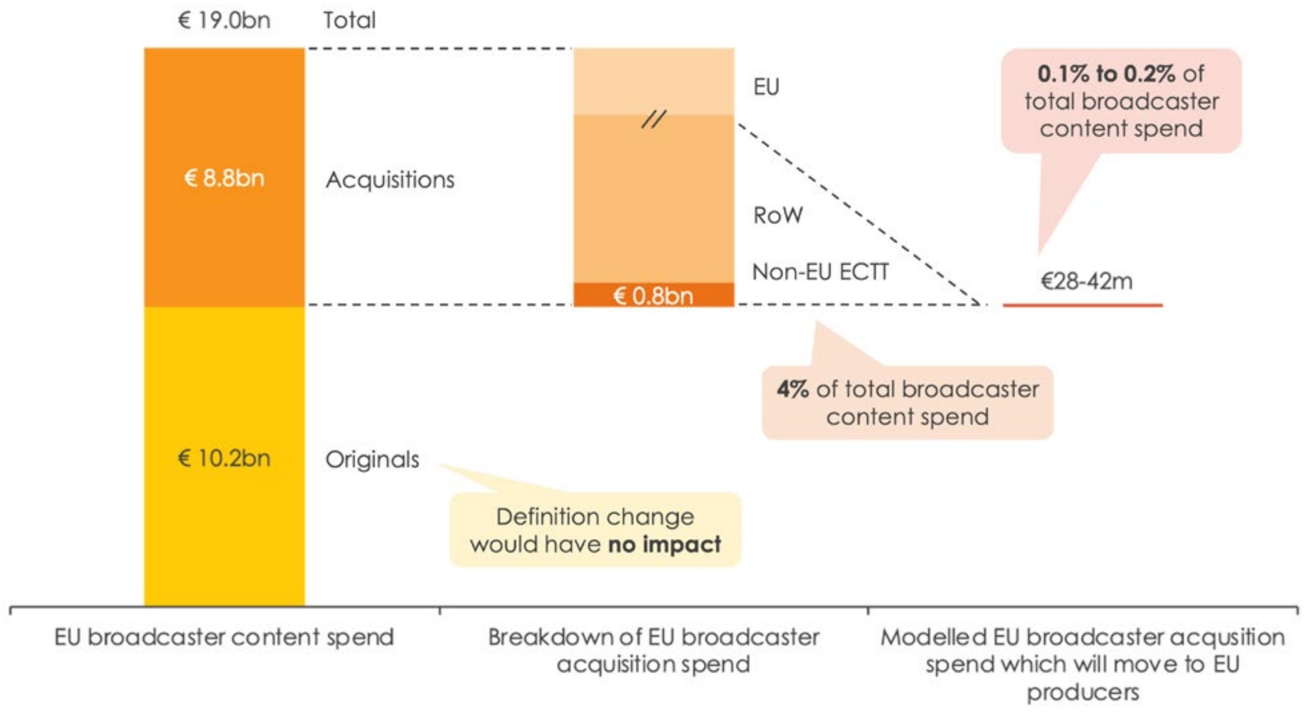
Building on our earlier findings, we modelled the potential financial 'upside' for EU producers from a narrowed definition. As discussed above, we looked at a sample of channels in the eight representative EU Member States that would be affected by a narrowed definition based on current schedules, and 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 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.

[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

[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

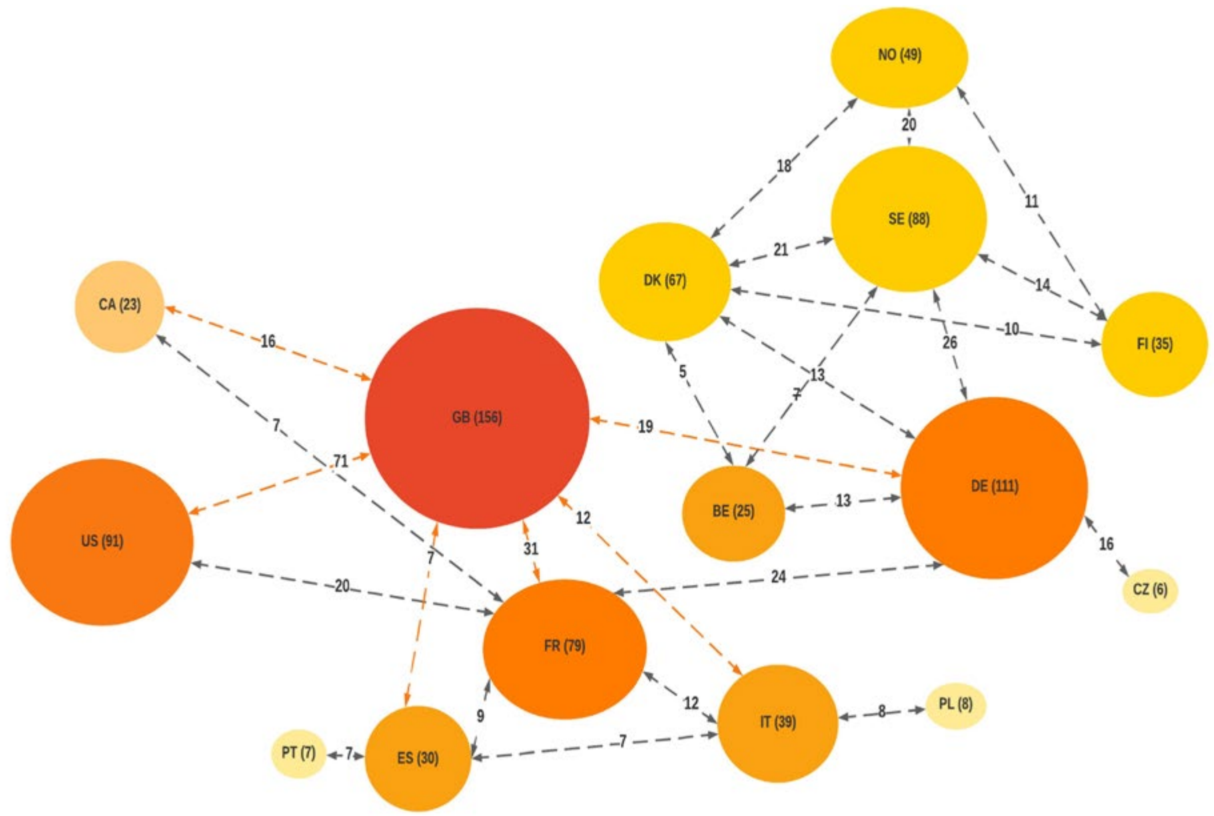
For example, if the second channel of the Irish PSM, RTÉ2, was to close, its total investment in domestic and other EU content would be lost. RTÉ2's spend in 2021 on domestic commissions alone was €52 million. The net impact of the quota change on EU production would therefore be **negative** – the impact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

1

Introduction

This report examines the expected economic impact of narrowing the 'European works' definition. In this part we set out the background to the report, including the context and scope, our methodology and the report structure.

1.1 Context and scope

The 2018 revision of the Audiovisual Media Services Directive (AVMSD) requires broadcast channels to provide at least 50 per cent of qualifying hours as European works (of which at least 10 per cent from independent producers), and VOD services to provide 30 per cent of relevant titles in their catalogues as European works.

In recent years, technology has brought 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. This has benefitted both European consumers and producers, which now have a range of broadcaster and VOD customers competing for commissions, as well as to license content. At the same time, there are a number of pressures on the European audiovisual sector, from the ongoing Covid-19 recovery and wider economic turbulence to the need to invest heavily in digital transformation amid content cost inflation.

Despite this, 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) but are not Member States of the EU. Arguments for such a change focus on purported benefits to EU producers and cultural sovereignty but lack an evidence base. The European Commission has said that it is carrying out a fact-finding exercise. To inform the debate, this report provides quantitative and qualitative evidence on the likely impacts of such a change.

1.2 About O&O and Frontier

O&O is an independent advisory firm specialising in the media, entertainment and sports industries. With over 25 years' experience, we have advised more than 200 public and private sector clients on the most significant developments in European TV, film, radio, music, publishing, digital and sports markets. O&O regularly carries out complex projects that span markets across the EU and the European neighbourhood, encompassing policy development, regulatory impact assessment, competition assessment, market sizing, value chain analysis, and economic modelling. O&O has made a significant contribution to the development of media policy and regulation in Europe. Our experts are recognised as leading thinkers in the field, and much of our work has been published. At O&O, we bring together in-depth knowledge of regulatory theory and practical experience in policy development, legislative negotiations, and implementation. We specialise in measuring the difficult-to-quantify aspects of regulatory impact, commercial value flows, and 'fair value' flows, while considering public policy objectives.

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. With over 300 expert economists, Frontier supports clients across some of the most topical and high-profile policy and commercial issues of the day. Frontier's communication practice provides media clients with advice on all aspects of policy, regulatory and competition matters. The dedicated telecommunications, digital and media team has advised leading players across the sector with cutting-edge policy, strategic and regulatory solutions.

1.3 Methodology

This study has applied a range of methodologies, both quantitative and qualitative, to assess the potential impact of narrowing the definition of European works. We have carried out a detailed analysis of channel schedules and VOD catalogues to understand their composition considering the current European works quotas, the role and value of content from different countries (to both consumers and service providers), and whether schedules or catalogues would have to be changed in response to a narrowed definition. We have also carried out an extensive interview programme with broadcasters, VOD services and studios across Europe to validate the results of the data analysis and to ensure that the potential impacts of the proposed change are fully understood. Here we set out the broad details of this methodology, with further explanation available in the Appendix.

1.3.1 Representative EU Member State focus

We have focused on eight EU Member States and assessed these individual territories in detail in order to identify any nuances that might otherwise be obscured by pan-EU averages. These eight Member States have been chosen to provide a broad cross section of the types of AV markets present in the EU, reflect any geographical or cultural differences, cover a variety of local regulatory regimes, capture varying levels of reliance on non-EU ECTT content and because together they should allow us to highlight a range of issues pertinent to all EU Member States.

Table 1: Eight representative EU Member States focus examined in this report

Member State	Size of AV sector	Region
Czechia	Small	Central and Eastern Europe
Denmark	Small/medium	Nordics
Germany	Large	Western Europe
France	Large	Western Europe
Ireland	Small	Northern Europe
Italy	Medium	Southern Europe
Poland	Medium	Central and Eastern Europe
Spain	Large	Southern Europe

In the market background sections of this report we seek to show trends at an EU-wide level as well as in these eight representative EU Member States, before we focus on analysing the impacts of narrowing the definition of European works in these territories. Our findings from the eight representative EU Member States provide valuable insights on likely impacts that are relevant to the EU27 more broadly.

1.3.2 Data analysis and data sources

Data used in this project comes from a range of sources to ensure that in each case we are using the most relevant information to inform our analysis.

Market background data comes from a variety of standard industry sources including, but not limited to, the European Audiovisual Observatory (EAO), Ampere Analysis, Dataxis[27]. Typically we have analysed this data from an EU wide perspective to show overall trends, and at a representative EU Member State level to pick out any interesting sub-trends that apply to some EU Member States. Where possible, we have tried to use EAO data to ensure that our data inputs are aligned with the main data source used by the European Commission in this area.

For our channel schedule analysis, Essential TV Statistics supplied linear schedule data for 148 channels across our eight representative EU Member States. This was provided in two forms:

Annual totals

- Total broadcast minutes by channel by genre and country of origin (including co-producing countries) for the full year 2021
- Two historic years (2019 and 2017) were also analysed to identify any anomalous findings – e.g. Covid effects – and ascertain any trends
- This was used to measure performance against the European works quotas

Schedule data

- Detailed schedule data for four representative weeks across 2021 for all channels in the sample
- In addition to being able to cut this data by genre, country of origin, and co-production status, we were also able to interrogate daypart (i.e. what content is broadcast in primetime or off-peak) and to look at detailed data cuts such as recency of productions
- This data was supplemented by audience viewing for specific channels acquired from Glance. This has been used as a modelling input to determine the viewership impact of scheduling changes

Ampere Analysis SVOD catalogue data has been used to analyse catalogue composition across Europe. This data has been cleaned, checked and supplemented by O&O analysis and estimates to address uncoded content on a number of services.

Additional sources of information provided by interviewees have been used on an ad hoc basis – typically this is additional viewing and schedule data.

Throughout this report, analysis is frequently performed by breaking out content data into 'domestic', 'other EU', 'non-EU ECTT', and 'RoW' (Rest of World) categories. These should be understood as:

- Domestic – content produced in the country of interest (i.e. French content in France)
- Other EU – content from EU Member States, excluding domestic content
- Non-EU ECTT – content from a country that is a party to the Council of Europe European Convention on Transfrontier Television (ECTT) but is not a Member State of the EU
  - 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
- RoW – content from anywhere else in the world ('Rest of World')

[27] Additional sources referenced in this report are: BFI, Kantar Media, Lumiere, MPA APAC, OECD, Oxford Economics, Pact, The European Media Industry Outlook 2023, PwC Global Entertainment and Media Outlook: 2022-2026

1.3.3 Main assumptions in the data analysis

To simplify the analysis, making it practical and comprehensible, we have used a number of assumptions. These also help to fill any gaps in the available information.

When undertaking schedule and catalogue analysis we needed to identify which content qualified as relevant transmission time/catalogue and which content qualified as European works. Our key assumptions were:

- Any content in our schedules/catalogues classified as sport (note that this does not include sports documentaries), news, or teleshopping is exempt from the quota and not included in our analysis
- A production with a single producer from an EU or non-EU ECTT country qualifies as a European work
- Co-productions where a European works qualifying producer is reported as the lead producer are included within the European works definition, whereas when the lead producer is from RoW the production is excluded. This aligns with the need for >50 per cent of funding to come from qualifying producers. This means that for the purposes of this report, for example:
  - content with an EU primary producer and a secondary US producer is assigned to EU content and qualifies as a European work,
  - content with a US primary producer and an EU secondary producer is assigned to RoW and does not qualify

We also needed to make some assumptions around scaling data snapshots to the full year 2021, and the relationship between linear schedules and VOD catalogues:

- Our four weeks of detailed schedule data was representative of the full year 2021. The four weeks were chosen to be spread throughout the year and avoid any major sporting events and holidays that might significantly skew normal programming
  - The four weeks used were the weeks commencing: 22/02/2021, 10/05/2021, 13/09/2021, 08/11/2021
  - We compared the overall outputs of our four weeks of detailed schedule analysis to our annual total data and found them to be aligned
  - Note that in the majority of key compliance analysis we have used the annual total data rather than this four week snapshot. This data has only been used for deep dives, primetime analysis, and modelling the impact of scheduling changes
- VOD catalogues in December 2021 are indicative of VOD catalogues throughout the full year 2021
- When analysing VOD services present in multiple markets we have taken the average share of catalogue across all representative EU Member States for which we have data
- VOD catalogues of European broadcasters for which we do not have Ampere data available are aligned to the linear channels of the broadcaster

The use of content in primetime (i.e. the time of day when there is peak viewing and broadcasters typically schedule their most important shows) has been used extensively throughout this report to demonstrate the differing role and value of content types. The exact definition of primetime varies by market and channel type, but in order to provide a unified metric throughout our analysis we have defined primetime content as any that was majority broadcast between 18.00 and 22.30.

1.3.4 Modelling methods used

To illustrate the impact of narrowing the definition of European works we have considered how it would apply to 148 channels across our eight representative EU Member States; the specific channels covered in our analysis was led by the available data, but includes a range of major FTA channels, major pay TV group channels, and specialist channels. We analysed the make-up of each channel's schedule by country of origin and assessed the viewing share by country of origin.

It is important to note that the application of the European works quota depends on the specific rules and accompanying regulation as implemented in the relevant Member State, and that can vary between Member States. For example, compliance will be affected by how individual Member States consider thematic or low market share exemptions, or how compliance is assessed for portfolio groups of channels. Nonetheless the selected channels indicate how the definition change will affect broadcasters.

The impact assessment conducted estimates the revenue impact of a change to broadcast schedules – where required by a narrowed European works definition – using audience data from a sample of impacted channels and considers the likely change in EU acquisitions spend by broadcasters affected by the change.

The Appendix (Part 8.6) outlines the methodology for estimating the impact. It outlines the rationale behind the estimated effect of these proposals, the data sources used, and the steps taken in the analysis.

1.3.5 Interviews

As well as quantitative data analysis, we have carried out a comprehensive interview programme with key industry stakeholders across Europe, and in particular from our representative EU Member States. These included broadcasters, VOD services and studios. In total we conducted 35 in-depth interviews with individual organisations and received input from a much larger pool of broadcasters and VOD services via interviews with their trade associations. Those interviewees who wished to be named are listed on the inside cover of this report. We used the interviews to:

- Validate data analysis (i.e. confirm that our schedule analysis reflected broadcasters' own data)
- Gather market-specific insights
- Learn how interviewees expect changes to the European works quota to impact their and other AV businesses, as well as consumers and the wider AV sector
- Focus in on scheduling changes where relevant, and the knock-on impact of any scheduling changes on viewing, revenues, competitiveness etc.
- Test and refine key impacts with interviewees – to arrive at a set of impacts aligned with industry views and quantitatively backed by an identified percentage of interviewees
- Ascertain if interviewees had any other views around European works that were relevant to the study

Quotes and views from these interviews (which may be anonymised due to commercial sensitivity) are used throughout this report to illustrate impacts on the AV industry as a whole rather than any one player, as are quantitative metrics of how many interviewees agreed with the set of key impacts we established during the interview programme; note that since these impacts were developed with the input of stakeholders a high level of agreement is expected.

1.4 Structure of this report

The report is split into four main parts:

Part 1: Introduction

- Where we establish the context and scope of this report and the key activities undertaken in its preparation

Part 2: EU policy context and market background

- Where we set out the reasons for producing this report and the ongoing market trends needed to understand later sections

Part 3: The economics of European broadcaster and VOD strategies

- Where we set out the basics of what determines the schedules or catalogues of service providers, and the role of different types of European content within this. This section provides the necessary foundation to understand the logic of AV stakeholders' responses to any narrowing of the European works definition

Part 4-7: The impact of narrowing the definition of European works:

- Where we dive into the impact on broadcasters, VOD services, producers and consumers, and show that narrowing the definition of European works would be detrimental to the European AV ecosystem

2

EU policy context and market background

In this part, we start by setting out the policy context, which provides important background to this debate. We consider the policy objectives for the European audiovisual ecosystem and the existing regulation around European works. We then take a step back and consider the current state of the sector.

2.1 EU policy objectives for the audiovisual sector emphasise a diverse, pluralistic, and dynamic media environment

From the outset, the European Union has recognised Europe's shared cultural inheritance and universal values, rich cultural and linguistic diversity, and the aims of prosperity, peace and cooperation across the European neighbourhood.[28] Since 1989, the European policy framework for audiovisual services has sought to support the free flow of information and ideas regardless of frontiers, and to support a thriving European (in the widest sense) audiovisual ecosystem.[29]

Most recently, the Media and Audiovisual Action Plan (MAAP)[30] underlines the importance of a diverse, pluralistic, independent and dynamic media environment in the EU. Through cooperation at scale across the European region, individual countries and Europe as a whole can maintain a vibrant 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. They then provide consumers with a choice of high-quality European content that meets diverse needs and expectations.

2.2 The AVMS Directive requires a minimum share of European works

The 1989 Television without Frontiers Directive established the 'country of origin' principle to promote a competitive broadcasting industry across Europe. The principle was subsequently extended to VOD services under the Audiovisual Media Services Directive (AVMSD). Its introduction 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.

The current rules of the AVMSD relating to European works are summarised below and ensure that linear broadcasters and VOD services devote a minimum amount of time or share of catalogue to such works. We also summarise the provisions of the Council of Europe European Convention on Transfrontier Television.

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

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

[30] 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

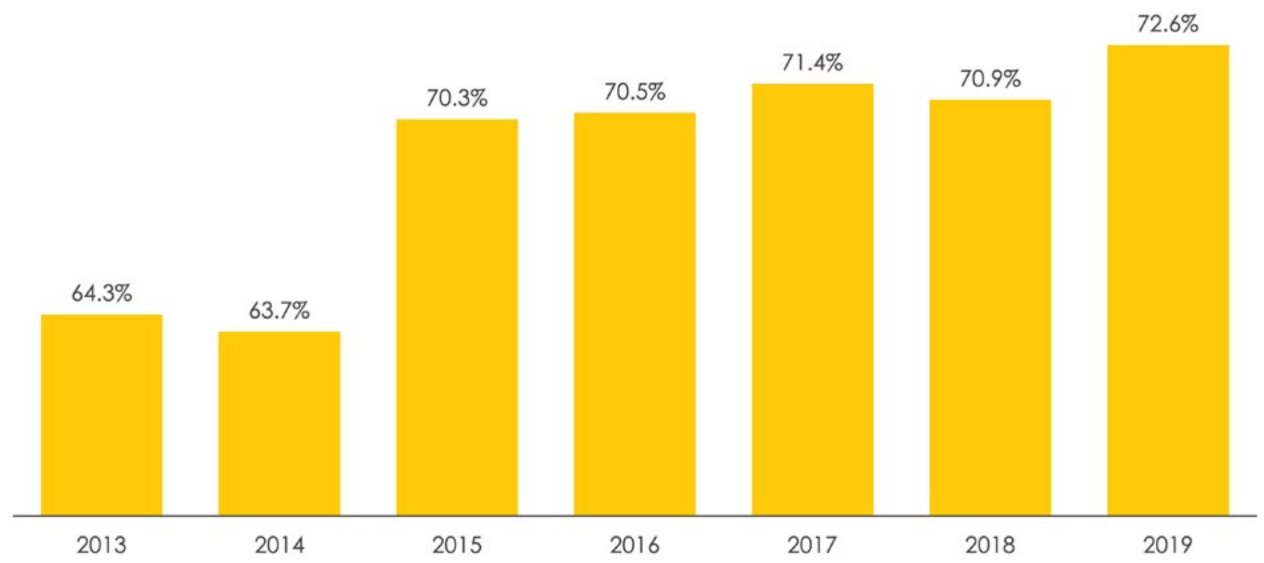
Table 2: Minimum harmonisation provisions on European works under the European Convention on Transfrontier Television 1989 (ECTT) and the revised Audiovisual Media Services Directive 2018 (AVMSD)

Scope	Regulation	Details
ECTT AVMSD	Linear quota	≥50 per cent of relevant Transmission Time devoted to European works, excluding time allotted to certain genres
AVMSD	VOD quota	≥30 per cent of relevant Titles devoted to European works and European works given prominence
ECTT AVMSD	Linear independent works quota	≥10 per cent of relevant Transmission Time devoted to independent European works, excluding time allotted to certain genres

It is worth noting that quota levels were designed taking account of market averages to create a 'floor', on the basis that market dynamics would deliver European works and allow broadcasters and VOD providers to flourish, including different specialist services and SMEs.[31]

Indeed Member States report that the average share of European works in linear schedules in their markets is significantly above the 50% floor and has grown steadily since 2013. **Figure 1** below illustrates this – the average share has risen from 64.3% in 2013 to 72.6% in 2019.

Figure 1: EU average transmission time dedicated to European works, linear channels, 2013-2019 (% share of applicable programming)



Note: As reported by Member States. Large change in 2014/15 likely due to the sample of channels reported by Member States

Source: European Commission: 'Study on the practical implementation of the provisions of the audiovisual media services directive concerning the promotion of European works in audiovisual media services', Oliver and Ohlbaum Analysis

[31] 'Study on the Promotion of European Works', prepared for the European Commission DG Communications Networks, Content & Technology by VVA, KEA European Affairs and Attentional, June 2018

And crucially, in line with the founding ambitions and fundamental principles noted above, from the outset the 'European' dimension of European works has meant more than the Member States of the European Union. As mentioned above, this broad approach supports a European and EU AV ecosystem at scale as well as recognising Europe's shared cultural heritage and values.

European works include:

- **a** Works originating in European Union Member States;
- **b** Works originating from European third country States party to the European Convention on Transfrontier Television (ECTT) of the Council of Europe; and
- **c** Works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements

  Additionally, certain productions that are not 'European works' under the above criteria are European works so long as they are made within the framework of co-production treaties concluded between Member States and third countries. In addition, the EU co-producers should have supplied a majority share of the production costs and the production should not be controlled by the producer from the third country

  Article 1, revised Audiovisual Media Services Directive 2018

2.3 In recent years, intense competition has spurred innovation and pushed European content investment to reach record highs

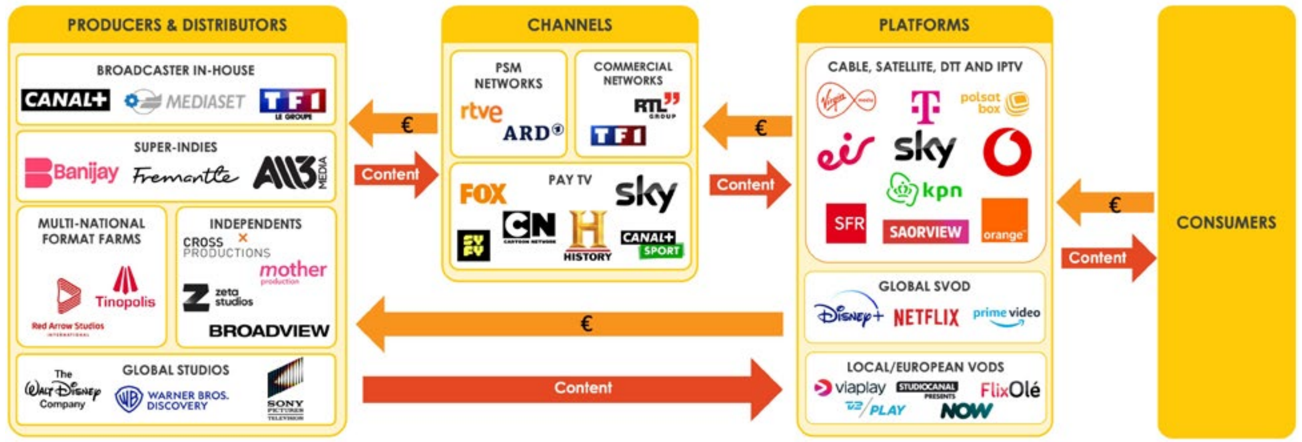
The European production sector is benefiting from rapid growth in demand for content from consumers and content services. A healthy balance has emerged between traditional players and more recent entrants, creating a diverse sector to the benefit of consumers and stakeholders.

2.3.1 A diverse and dynamic audiovisual ecosystem currently exists

A diverse marketplace is a crucial element for the healthy and sustainable flow of funds throughout the European audiovisual industry. When there are multiple players involved, it leads to greater competition, which can drive innovation and improve the quality of content produced. This diversity also helps to spread risk and support plurality, and gives European producers numerous financing and commissioning opportunities.

In the European AV value chain there are three main components: producers and distributors, service providers (channels, platforms) and consumers. **Figure 2** shows the main subdivisions of these groups and how funds and content flow between them.

Figure 2: Simplified European AV value chain interactions

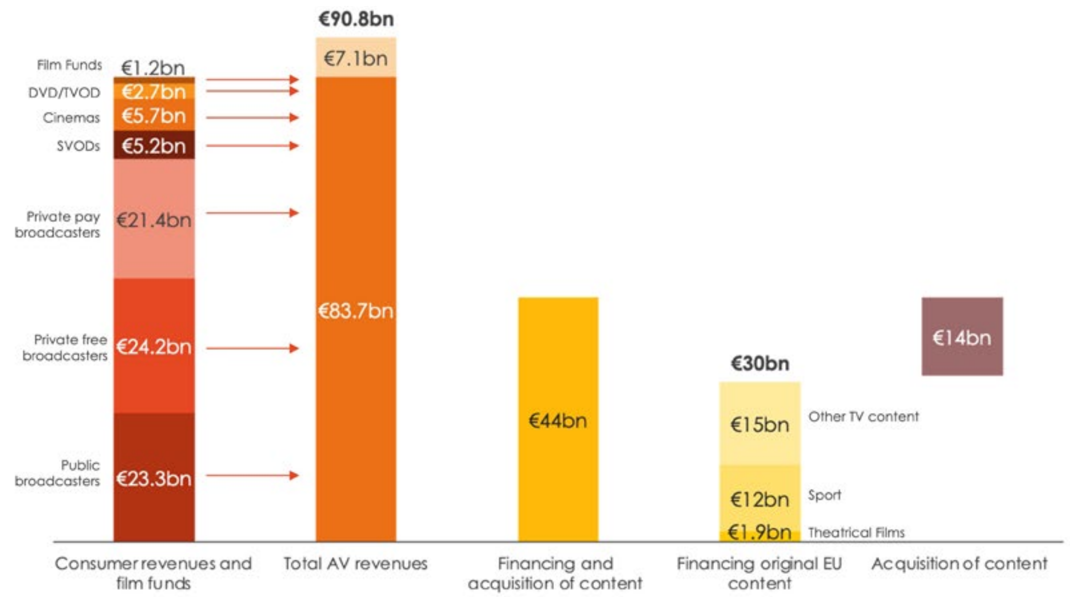


Note: Players may be active in segments not indicated in the figure

In reality, the AV value chain is considerably more complicated and includes sectors such as theatrical film and physical video. A diverse and successful marketplace at all levels of the value chain is the first stage in ensuring that original EU content is produced and reaches consumers.

As shown in **Figure 3**, the estimated total revenues generated by the audiovisual market in the EU27 in 2019 amounted to €90.8 billion, sourced from a wide variety of players. Excluding the estimated €7.1 billion of distribution fees directed towards intermediary pay TV operators, roughly 55 per cent of audiovisual revenues in the EU were dedicated to content financing and acquisition (excluding news). This amounted to €44 billion in 2019, with sport accounting for €12 billion and the remaining €32 billion being spent on original film and TV content financing or acquisition. This spend is rather evenly split between original EU content (specifically commissioned) and acquisitions (finished films/programmes on the secondary market).

Figure 3: Estimated flow of funds from audiovisual revenues and film funds to financing original European content, 2019 (€ billion)



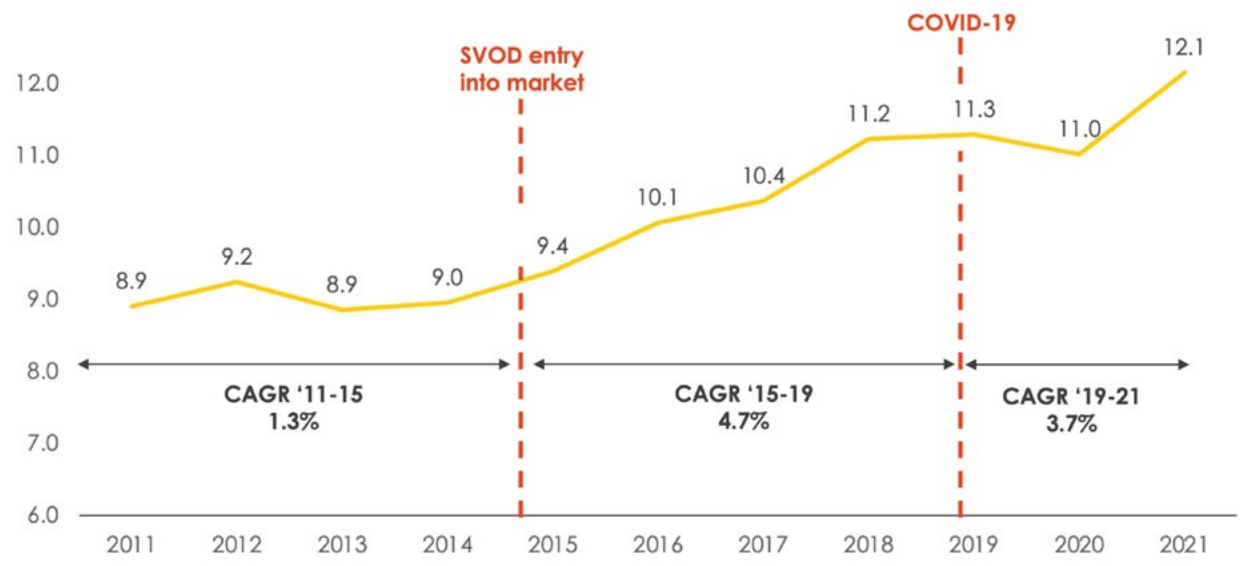
Note: Excludes news

Source: European Audiovisual Observatory: 'Modelling audiovisual sector revenue flows in the EU and test case on impact of Covid-19 on industry revenues', Oliver and Ohlbaum Analysis

2.3.2 Investment in original EU content, already growing, has been boosted by the entry of SVOD services

Investment in original EU content grew steadily at a compound annual growth rate (CAGR) of 1.3 per cent in 2011-2015. In recent years, developments in technology and ways of accessing and paying for content have evolved, and options and flexibility for consumers have increased.[32] European and global SVOD (subscription VOD) services have entered the market and grown strongly[33] driving increased competition for consumers' attention. Having the right content is key, and investment in original EU content surged ahead with a CAGR of 4.7 per cent in 2015-2019.

Figure 4: Total investment in original EU content, 2011-2021 (€ bn)



Note: EU27 content only

Source: European Audiovisual Observatory: 'Investments in original European content', Oliver and Ohlbaum Analysis

As can be seen in **Figure 5** this trend exists across Europe and some markets, such as Spain and Poland, have grown especially strongly. Producers in all markets now have a range of broadcaster and VOD customers for commissions.

[32] See Section 8.2 in Appendix for further detail on technological advancements and increased connectivity

[33] See Section 8.2 in Appendix for further detail on the entrance of SVODs into the EU AV sector

Figure 5: Growth in original content investment (% CAGR), top 10 EU markets, 2015 – 2021

	2015-2019	2019-2021
Average of markets shown	4.8%	4.7%
Belgium	2.5%	1.1%
Denmark	4.5%	1.3%
France	4.9%	3.4%
Germany	4.3%	(0.7%)
Italy	1.2%	7.3%
Netherlands	0.0%	8.0%
Poland	12.1%	2.8%
Portugal	1.7%	5.2%
Spain	8.4%	7.5%
Sweden	8.9%	11.4%

Note: Top 10 markets by size of original content investment

Source: European Audiovisual Observatory analysis of Ampere Analysis data

Investment in acquisitions is also growing strongly, as specialist channels and VOD services showcase series and cinematic releases in subsequent windows, bring archive content to new audiences in-country, and export feature films and TV programmes to new territories. This has brought total EU content investment, across commissions and licensing, to €22.8 billion in 2021. How this growth has been distributed across different players can be seen in **Table 3**.

Table 3: Growth in total content spend by company type (% CAGR), representative Member States, 2015-2021, Excl. news and sport

	2015-2019	2019-2021
PSM	2.4%	0.0%
Commercial FTA	3.0%	3.5%
Pay TV	5.7%	(0.9%)
SVOD	101.5%	43.2%
Total	5.2%	4.2%

Note: Combines spend for Czechia, Denmark, France, Germany, Italy, Poland, Spain. Excludes news and sports spend. Lower growth in content spend 2019-2021 than in the preceding period due to the impact of Covid-19

Source: Ampere Analysis, Oliver & Ohlbaum analysis

The overall transition from traditional broadcast to online and on-demand viewing is seeing a new, diverse, ecosystem being established where FTA broadcasters, pay TV and VOD services all play complementary roles. This new ecosystem is outlined in greater detail in the Appendix to this report (Section 8.2).

2.3.3 Consumers, producers, and wider economies in the EU have greatly benefitted from this investment

Increased competition and content investment have greatly benefitted consumers who have a greater than ever selection of European content to enjoy, and services from which to access this. At the other end of the value chain, European producers of all sizes are benefitting from a greater range of potential commissioners and content licensors competing for content. The top 40 European producers have seen average revenues increase at a CAGR of 13 per cent between 2011 and 2021.[34] This is not just limited to one or two markets, with the top 40 producers representing 11 different European countries in 2021.

This is benefitting producers of different sizes. Between 2016 and 2022, 59 per cent of all European TV fiction titles were produced by production companies outside of the top 20 largest producers[35] and as **Figure 6** shows, both small independent producers and 'super-indies' in a range of EU Member States have good levels of profitability, with the majority having an EBITDA margin over 10 per cent.[36]

Profit margins naturally vary among producers, linked to factors such as business model and appetite for risk, and different genre focus and specialisms. Producing a long-running quiz provides a steady income with low capital investment, and in exchange the margin is lower. Producing a high-end nature documentary requires years of uncertain filming on location with a high level of capital investment and technical innovation, and in exchange the margin is higher.[37]

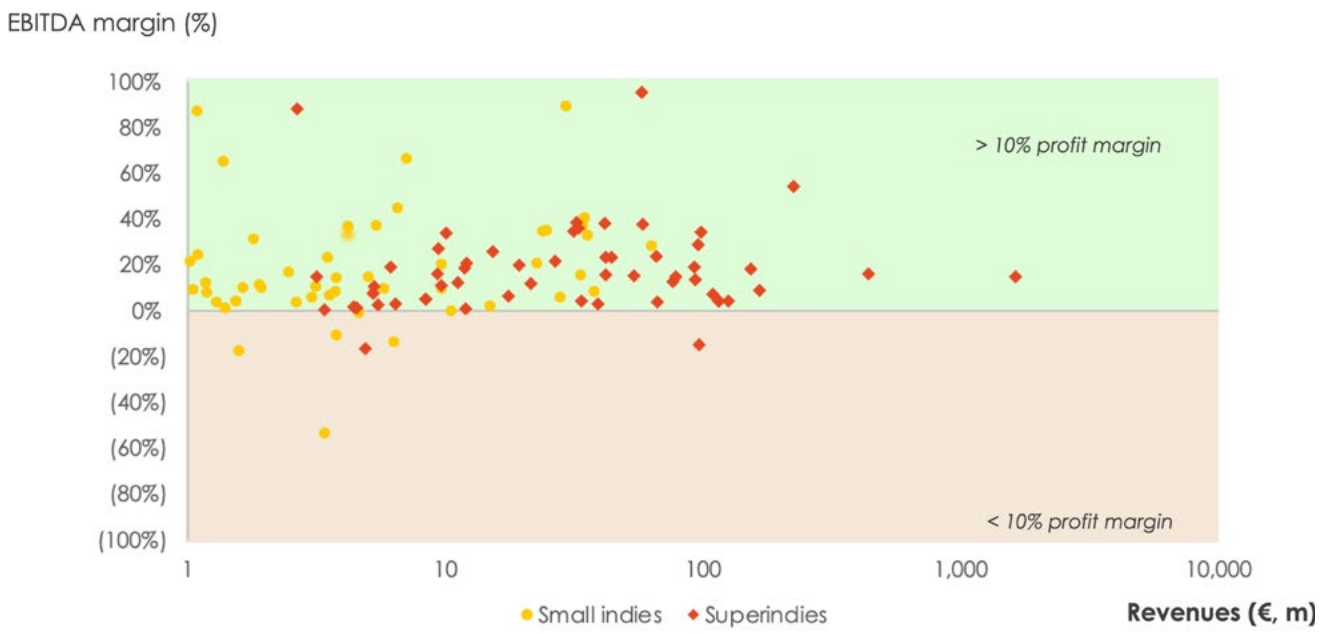
[34] European Audiovisual Observatory, Oliver and Ohlbaum analysis. In any given year the average is somewhat affected by companies not reporting and some missing data, however in 2011 and 2021 similar levels of reporting occurred

[35] Oliver and Ohlbaum analysis of European Audiovisual Observatory data

[36] This is an average of margins on commissions and on licensing activities

[37] There are also producers with negative margins, which demonstrates the riskiness of the sector. Often producers are willing to accept losses whilst they wait for a high margin hit

Figure 6: Production companies, EBITDA margin (%), and revenues (€ m), 2017-2019 (average)



Note: Based on a sample of companies in Spain, Italy, Sweden and France; selection of companies included in the chart has been driven by data availability

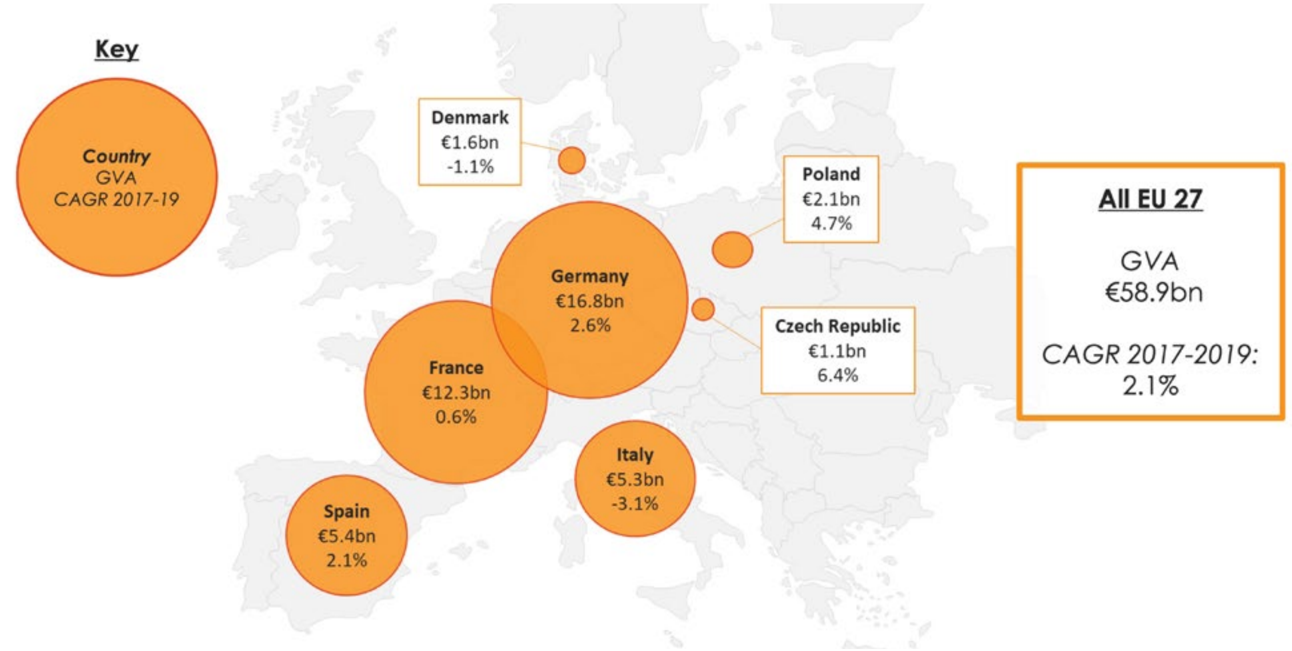
Source: Oliver & Ohlbaum, 'Market forces are creating a balanced European AV ecosystem – and it is booming', 2022

2.3.4 Wider EU economies are benefitting from this growth on both the demand (broadcaster, VOD services) and supply sides (producers)

One of the most meaningful ways to evaluate the AV industry's impact on European economies is through Gross Value Added (GVA) – a metric that measures the contribution of a sector to an economy. **Figure 7** shows that in 2019, the AV sector in the EU27 contributed €59 billion based on the OECD's definition of GVA for 'audiovisual and broadcasting activities'. This contribution has been growing, rising from €56.5 billion in 2017. The AV sector is also a major source of employment; in 2018, direct and indirect jobs numbered more than 2 million.[38]

[38] 2019, AV Data 4 Europe, https://avdata4europe.eu/key-data/

Figure 7: Gross Value Added (GVA) of AV sectors in representative Member States and EU27, 2019 (€)



Note: No information available on Ireland

Source: OECD, Oliver & Ohlbaum analysis

2.4 There is no clear correlation between additional local content regulation and better outcomes in terms of content investment

Comparing market trends in countries with different levels of local content regulation, such as France, Italy, Sweden and Germany, we can see that stricter local content regulations do not necessarily correlate to better outcomes in terms of content investment. In fact, some countries with minimal additional requirements beyond the AVMSD, such as Germany, Spain and Sweden, have stronger content investment, and higher average producer revenues[39].

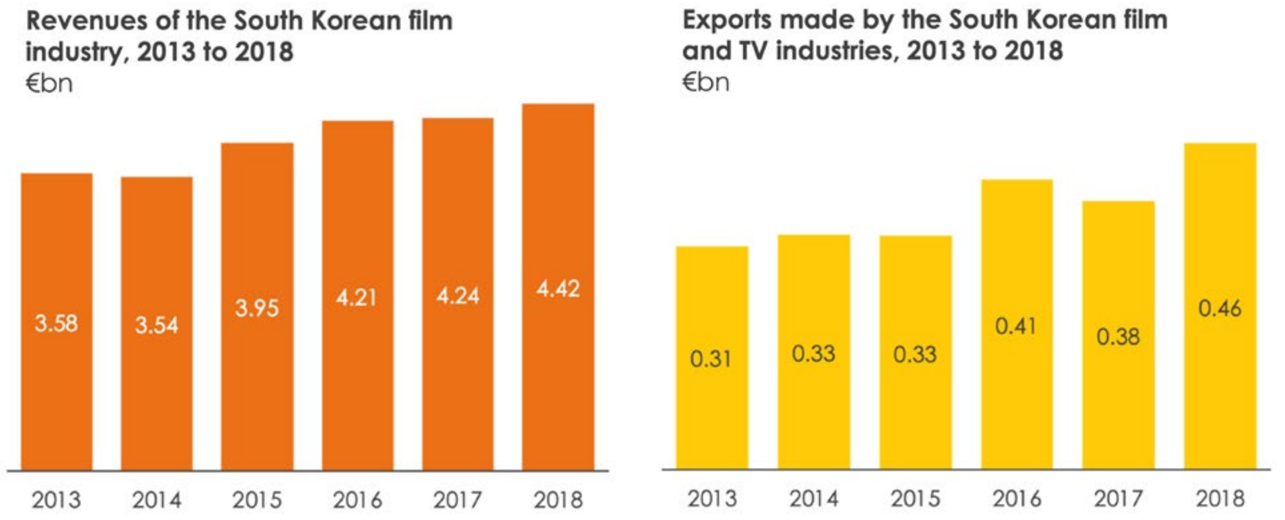
Even if requirements are set below current investment levels for a given service, they reduce flexibility to respond to market changes and may alter the overall business environment, making a territory less supportive of its domestic providers and potentially less attractive for inward investment. Furthermore, regulatory changes can impact legal certainty and the perception of a territory's global competitiveness.

Providing stability is particularly important because the European AV sector exists in a strongly competitive global context. For example, the South Korean film industry has grown significantly over the past twenty years. The country's main policy approach aims to facilitate and attract investment by meeting the basic infrastructure demands of the whole film business, such as studios and skills[40] Meanwhile, Canada has used globally competitive fiscal incentives to establish itself as a key production hub for a number of genres such as animation.

[39] Oliver & Ohlbaum, 'Market forces are creating a balanced European AV ecosystem – and it is booming', 2022

[40] P. Messerlin, Sciences Po Paris, 'Building Consistent Policies on Subsidies in the Film Industry: Institutions and Instruments in France and Korea', Kritika Kultura 32, 2-19

Figure 8: Total revenues of the South Korean film industry and total revenues from exports made by the South Korean film and TV industries, 2013-2018 (€bn)



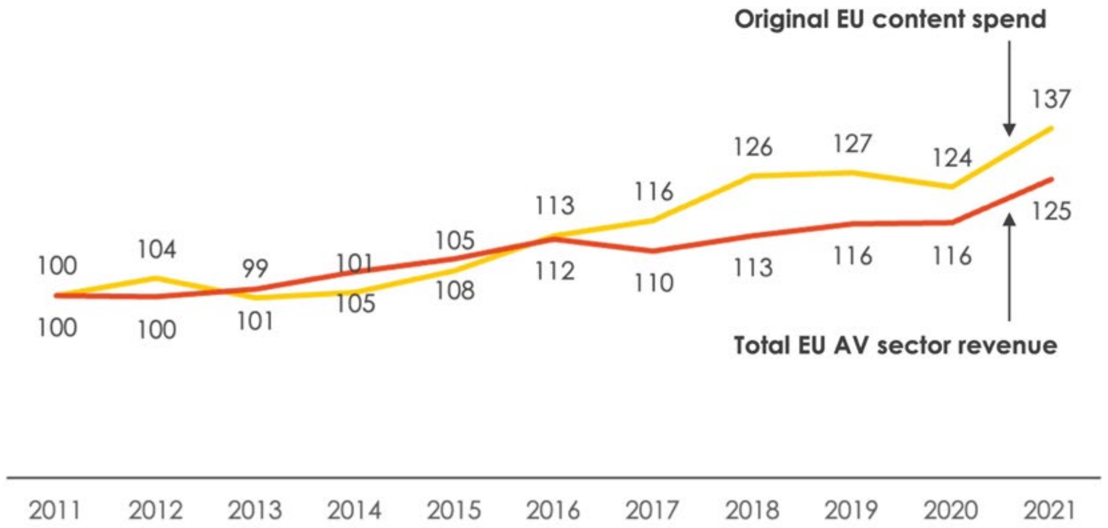
Source: MPA APAC, Oxford economics, 'The economic contribution of film and television in South Korea in 2018'

2.5 Despite its strong performance, the European AV sector faces a number of pressures

While increased competition has served EU producers and consumers extremely well, it has also seen content costs rise faster than revenues in recent years. This is ultimately eating into AV providers' margins and for growth in original EU content to be sustained, revenues must also rise (at least in line with future cost growth to sustain current margins).

It is also resulting in 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.

Figure 9: Comparison of original EU content investment and total EU AV sector revenues (Indexed, 2011=100)



Source: European Audiovisual Observatory, Oliver & Ohlbaum Analysis

Meanwhile, external factors are coming together to place additional pressure on the European AV sector. These include, but are not limited to:

- 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 both consumer discretionary spend (pay TV, SVOD) and advertiser spend (broadcasters, FAST channels,[41] advertising-funded VOD services)
- 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
- The recovery from Covid-19 is ongoing for many providers

Arguably, a balanced and stable regulatory environment is needed especially now so that broadcasters and VOD providers have the capacity to adequately respond to these pressures and plan in surety. Any move that damages the commercial viability of broadcasters or VOD services would also affect European consumers and producers, as content investment falls.

2.6 Nonetheless, some suggest increasing the regulatory burden on providers by narrowing the definition of European works

Some stakeholders within the EU believe that the European works definition should be changed 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)[42], but not a Member State of the EU. Proponents of such changes suggest they will result in a windfall of investment in original film and TV production in the EU and support cultural sovereignty.

Such proposals need to be viewed in the broader market 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.

Some stakeholders in favour of change believe non-EU ECTT content is not culturally European

Some suggest that content from non-EU ECTT countries, which are party to the Council of Europe Convention on Transfrontier Television, is somehow not culturally European for having come from outside the European Union. UK content, in particular, has come under scrutiny in the context of Brexit. Other countries affected include Norway and Iceland, Switzerland, Turkey, Ukraine, and Balkan countries including Bosnia and Herzegovina, Montenegro and Serbia. We provide evidence contrary to this argument in Section 3.6.

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

[42] Referred to in this report as 'non-EU ECTT countries'. Includes 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

And there is a suggestion that non-EU ECTT countries facilitate the classification of US intellectual property (IP) as 'European'

Some stakeholders believe non-EU ECTT countries, in particular the UK, have an oversized role in the European AV ecosystem and that narrowing the definition of European works could redistribute investment elsewhere. This overlooks the fact that such a proposal would create barriers to inward investment irrespective of the country of production – and indeed the latest EAO key trend report found that Spain was a larger benefactor of global SVOD investment than the UK as a percentage of total content investment in the market.[43]

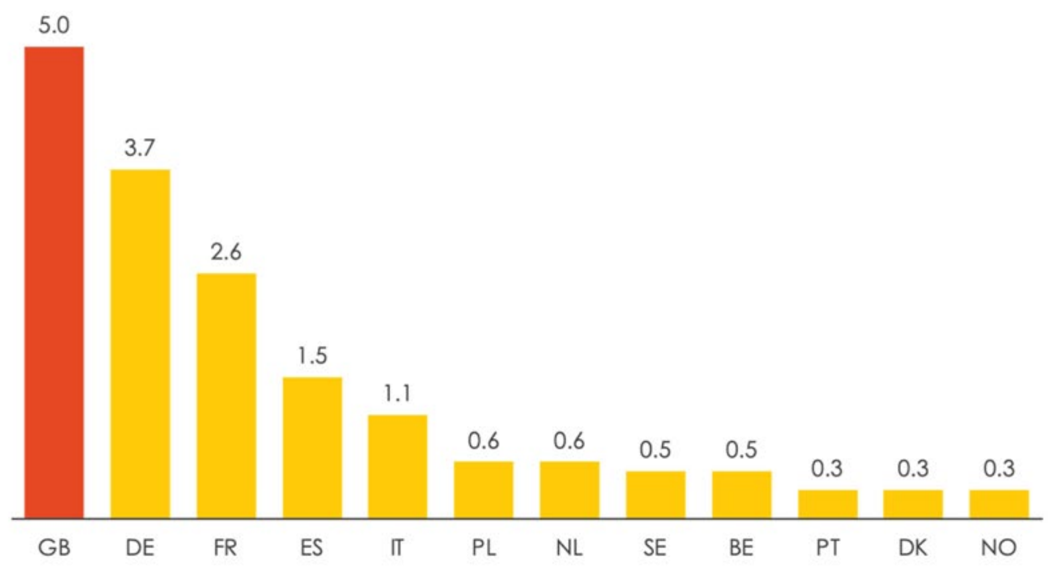
Detailed discussion of ownership and investment models are complex and outside the scope of this report. But the report's key findings would be relevant to any future discussion: investors value regulatory stability, consistency and certainty. Changing the geographic scope of European works – whether achieved through a change to the definition or through changes to rules around IP ownership – would impact the appetite for inward investment and, therefore, risk the continued growth and sustainability of the European AV ecosystem.

There is a belief that changing the definition of European works would increase investment in EU content

It has been claimed that if non-EU ECTT content was excluded from the European works quota, this would result in a direct transfer of value from these European territories to the EU Member States. In particular, instead of acquiring content from or co-producing with wider Europe, broadcasters and VOD services would transfer that investment to EU producers. This would result in an increase in the availability of works from the EU, and those that are not in the English language.

A core tenet of the argument for changing the European works definition is that non-EU ECTT countries, and the UK in particular, 'crowd-out' investment into EU countries. In relation to one analysis, shown below, the EAO states 'about 30 per cent of investments in original European content go to UK works'.[44]

Figure 10: Top 12 European countries by investments in original European content, 2021, broadcaster and SVOD spend (€billions)



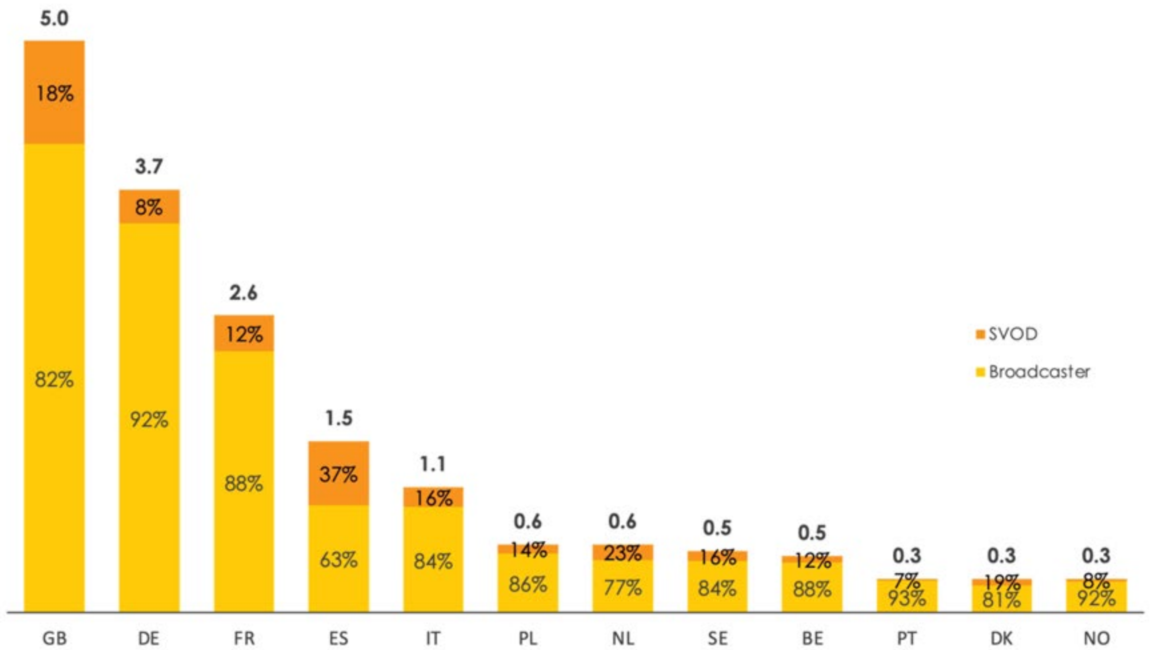
Source: European Audiovisual Observatory: 'Investments in original European content'

[43] Yearbook 2022/2023 Key Trends

[44] Investments in original European content: A 2011-2021 analysis, EAO

However, interpreting this data to suggest 'crowding out' or the possibility that existing investment in non-EU ECTT countries could be transferred into the EU would be an oversimplification. Firstly, this would fail to recognise that domestic broadcasters and SVOD services are investing in local content. As can be seen in **Figure 11**, the majority of original UK spend (82 per cent) is by UK broadcasters and aimed at audiences in the domestic market, and hence entirely unavailable to move into the EU. SVOD services' share of UK original spend at 18 per cent is line with that of other major European markets and is necessary to compete with broadcasters in the UK market. Furthermore, as this report will show, any narrowing of the geographic scope of the European works definition would only impact acquisition spend – there would be no shift in spend on original commissions.

Figure 11: Top 12 European countries by investments in original European content, 2021, breakdown of broadcaster and SVOD spend (€billions)

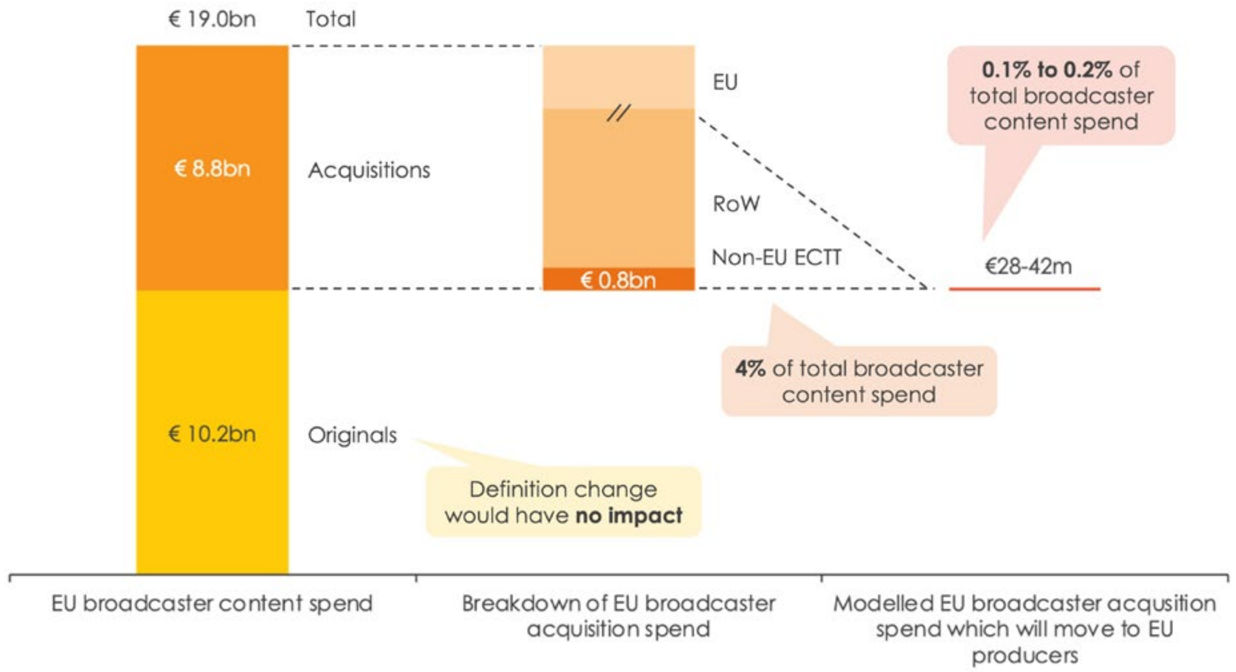


Source: European Audiovisual Observatory: 'Investments in original European content', Oliver and Ohlbaum analysis

Looking specifically at EU broadcaster acquisition spend, which is the segment of spend that this report shows could in theory be affected by narrowing the definition of European works, we estimate that non-EU ECTT content only accounts for €0.8bn, or 4 per cent of total broadcaster spend in the EU each year.[45] Therefore the additional value available to EU producers is in fact very small, and as we will show, only a fraction of this might move in response to narrowing the definition.

[45] €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. €0.8 billion is the upper bound of our estimate

Figure 12: Total EU content spend by type, with estimated split of broadcaster spend on non-EU ECTT acquisitions,[45] 2021 (€ million)



Source: Ampere Analysis, PACT UK TV Exports report, Oliver and Ohlbaum analysis

2.7 Throughout the rest of this report we provide evidence on the impact of narrowing the European works definition to inform the debate

As yet there is no evidence base for the claimed benefits of changing the definition of European works. The European Commission has said that it is carrying out a fact-finding exercise.[46] This report is designed to provide quantitative and qualitative evidence on the likely impacts to inform this debate.

In the following parts we show that there would be no material benefits for EU producers from narrowing the definition. In particular, it would not lead to a further increase in original content investment or inward investment. However, there would be adverse effects for broadcasters, VOD providers and consumers in Europe. Adverse impacts are of particular concern given the existing pressures that the European AV sector is working to manage.

[46] 28 March 2023, 'More Borgen, less Sherlock: Europe cracks down on British TV' Mathieu Pollet, POLITICO EU https://www.politico.eu/article/british-tv-netflix-european-content-lupin-vs-sherlock-british-series-face-eu-setback-post-brexit/

3

The economics of European broadcaster and VOD content strategies

Having discussed the policy and market background, in this part we outline how broadcasters and VOD services approach creating a schedule or catalogue: what they offer and why. This is important further context to enable us to analyse how these services would respond to any narrowing of the definition of European works, which we address in the next part.

3.1 European audiovisual services optimise content investment, balancing cost and revenues

All audiovisual services must compete for viewers. For both broadcast channels and VOD services and irrespective of their business model – whether it is ad funding, subscription or a combination – they must balance the cost of content with the revenues they can generate. Under an ad-funded model, generating a volume of viewing across target demographics is most important. Under a subscription model, revenues depend on encouraging users to join and renew their subscriptions. In both cases, services carefully consider what content is needed to get the best return – not spending more on content when the cost cannot be justified by increased revenues. For publicly funded PSM services, delivering public value and universal reach are important as part of their remit, and this creates a similar trade-off, as they aim to deliver their audience objectives with a finite content budget.

So for each AV service, at a given point in time, there is an optimal level of content investment, and an optimal means of deploying that investment across content types to best compete for viewers. While the optimal total spend on content for a given service might change over time, at market level it is broadly stable; influenced by the available market revenues, and typically following a steady upwards trend, as we saw in the previous part. An upwards trend that is expected to slow in the coming years following the recent period of strong growth that has accompanied the emergence of VOD services and the accompanying competition for eyeballs.

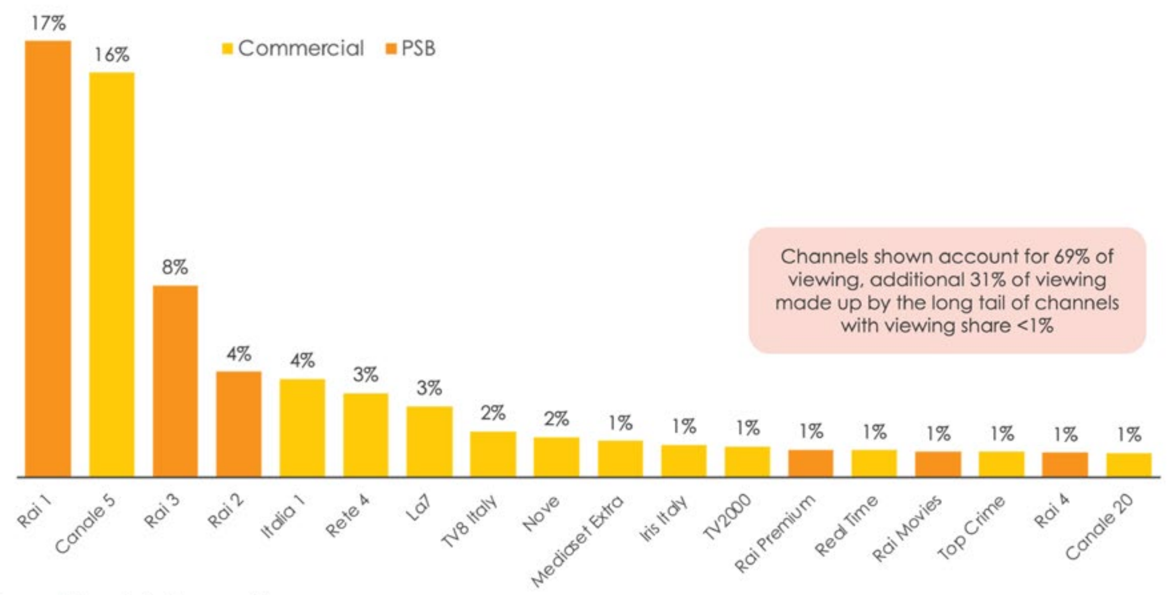
3.2 Broadcasters must curate a mix of content to best meet consumer demand from constraining content budgets

As we have seen, European broadcasters' content mix is driven by consumer demand – broadcasters compete to attract audiences with compelling content – and the level and type of content investment is constrained by available sector revenues. As a result, broadcasters must curate a mix of content that balances audience demand with available content budgets – providing the appropriate mix of genres and the most efficient selection of originals, acquisitions and repeats. Overall, there is little to no room for broadcasters to further increase the share of original content on their channels; channel economics do not allow it.

3.2.1 Diverse and complementary channel types, with different underlying economics, exist in the market

Across Europe, the largest share of linear TV viewing is to a few major FTA channels, with the remainder of viewing to large pay TV group channels and specialist channels catering for more specific interests. **Figure 13** illustrates this for Italy, which is broadly representative of European AV markets, where the top three channels account for 41 per cent of total viewing.

Figure 13: Viewing share of linear channels, Italy, 2021 (%)



Source: Dataxis, Oliver & Ohlbaum analysis

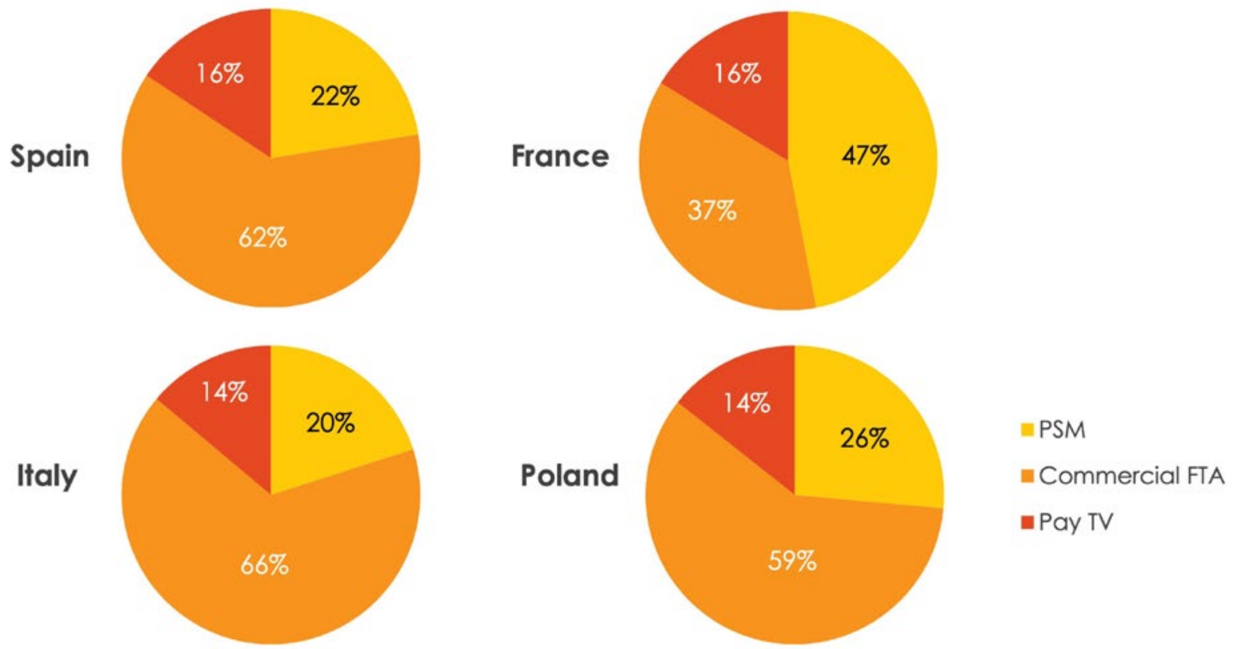
Major FTA channels include the main PSM channels and the largest commercial FTA commercial channels in each country – they also account for the most content investment, which is necessary to cater for and retain their relatively large audiences. Major pay TV groups also invest significantly in content, and as such are key part of the ecosystem, but have lower audiences as a function of their pay model. Meanwhile specialist channels include the portfolio channels from the major FTA broadcaster groups, along with smaller pay groups or standalone channels specialising in serving particular genres or demographic groups. **Table 4** provides examples for the Italian market.

Table 4: Summary of linear channel types, Italian market examples

Broad channel type	Specific channel type	Italian market examples
Major FTA channels	PSM main channels	Rai : Rai 1, Rai 2
	Commercial FTA main channels	Mediaset: Canale 5, Italia 1
Major pay TV group channels	Major pay TV portfolio	Sky: Sky 1, Sky Atlantic
Specialist channels	PSM portfolio channels	Rai : Rai Storia, Rai Scuola
	Commercial FTA portfolio channels	Mediaset: Boing, Italia 2
	Specialist pay TV channels – vertically integrated	WBD: Discovery Channel, Cartoon Network
	Specialist pay TV channels – not vertically integrated	DeA Kids, Caccia e Pesca

Together, these different types of channel provide consumers with a complementary mix of generalist and niche content, originals and acquisitions, FTA and pay models. They offer European producers a range of potential content commissioners and licensors; advertisers access to different target demographics and price points; and TV platforms a range of content providers to build a varied and attractive aggregated service. As can be seen in **Figure 14**, the exact role that the different types of broadcaster play in the ecosystem varies by market, but a full complement of players is essential in all. This is especially true in Member States with fewer broadcaster groups, where the largest pay TV group is often the third largest commissioner in the market. The health of all of these channels and their broadcasting groups is therefore vital to maintaining a diversity and plurality of content and services and a healthy European AV ecosystem.

Figure 14: 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

3.2.2 Major FTA European channels meet consumer demand by maximising original domestic content

To make a reasonable return, major FTA European channels already invest heavily in original domestic content, since this is the most relevant to viewers and hence the most effective in terms of meeting consumer demand and driving revenues. However, original content is expensive, and broadcasters must work within constraining content budgets. Overall, lower cost acquisitions can offer strong audience performance and support investment in original domestic content while providing consumers with a more diverse schedule. This means striking a balance between original and acquired content.

Table 5 below illustrates this; original drama achieves much higher average audiences but is also significantly more expensive. Overall, the incremental cost is worthwhile since original content is more efficient in delivering audiences too – i.e. the audience per € spent on content is higher. But, again, a strategy of investing in original content only is not possible because there is a schedule to fill and the content budget is finite – it is also the case that different audiences are possible in different day parts, so high value original content is typically reserved for peak time while less valuable content is more likely to be aired at other times in the schedule.

Table 5: Differences in audiences and cost per hour for commissions and acquisitions, Drama

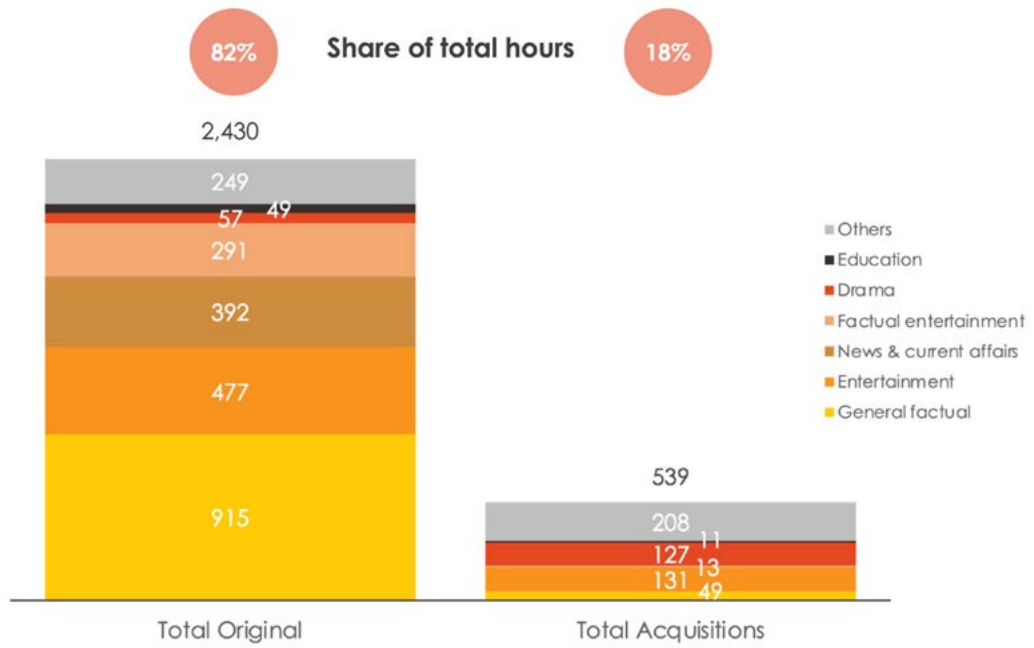
Genre	Type	Average audience (Indexed)	Cost per hour (Indexed)	Audience / cost (Indexed)
Drama	Original	100	100	71
	Acquisition	15	11	100

Note: For first run programming. Analysis based on 2017-2021 averages in the UK market and sense checked with stakeholders in EU markets. Average audience, Cost per hour, and Audience/cost indexed independently

Source: Oliver & Ohlbaum analysis

In **Figure 15** we can see the share of original vs acquired content on major FTA channels in Spain; original content makes up 82 per cent of all broadcast hours.

Figure 15: Hours of original & acquired content on major FTA channels, four representative weeks, 2019 (broadcast hours)



Note: On La1, La2, Antenna 3, Tele5, Cuatro, La Sexta. Live sports excluded

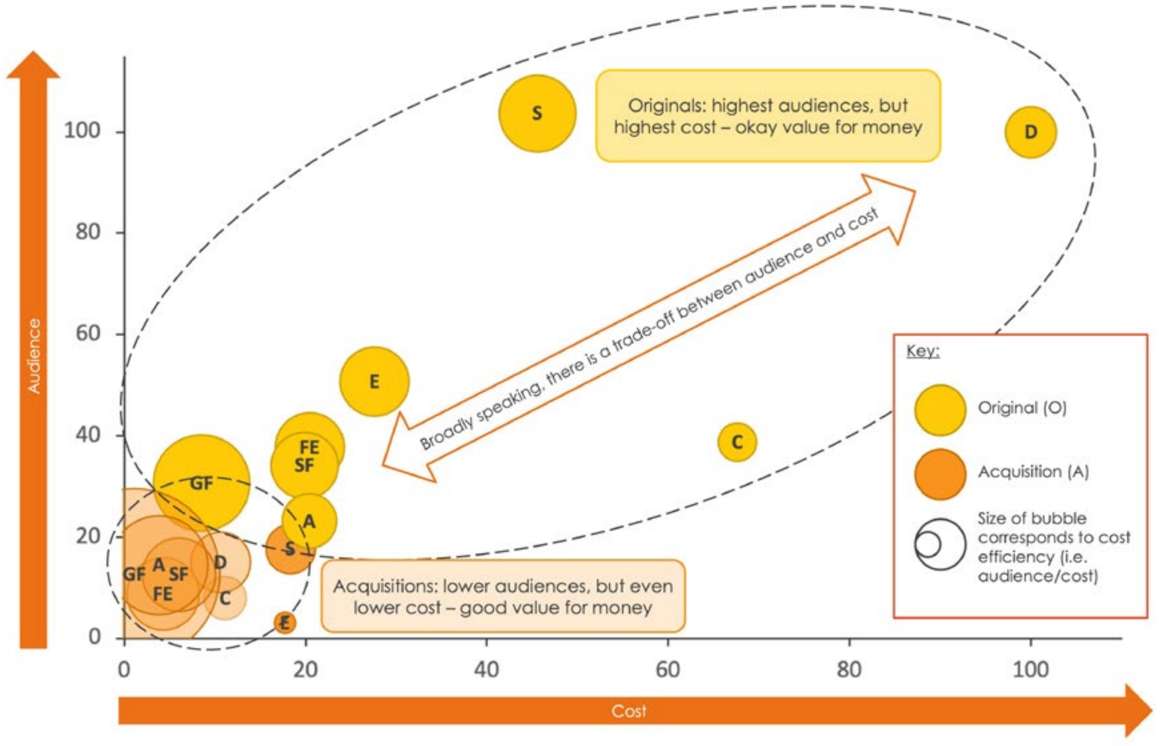
Source: Oliver & Ohlbaum analysis

This trend is consistent across the EU, with the broadcast schedules of major FTA channels in all markets similarly dominated by original content.

3.2.3 A varied schedule is also important to broadcasters and consumers

For the generalist, major FTA channels, it is also important to offer a variety of content to provide choice and maximise their overall appeal to consumers – this drives reach, which in turn supports revenues. In **Figure 15** we can see this in action in Spain. This genre mix is an important consideration when broadcasters are optimising their schedules, with different genres coming with different price points, so whether within original content or acquired content there is a hierarchy – scripted content is typically more expensive and is more likely to be reserved for peak time. Therefore as well as there being a trade-off between commissioning and acquiring content, there is a trade-off between genres. **Figure 16** below also illustrates this.

Figure 16: Differences in audiences and cost per hour for first run commissions & acquisitions, by genre



Note: A = Arts, C = Comedy, D = Drama, E = Entertainment, FE = Factual Entertainment, GF = General Factual, S = Soaps, SF = Specialist Factual

Analysis based on 2017-2021 averages in the UK market and sense checked with stakeholders in EU markets. Average audience and Cost per hour indexed independently. Size of bubble demonstrates cost efficiency of content (its average audience divided by cost per hour)

Source: Oliver & Ohlbaum analysis

Note that the above audiences and costs are averages across multiple channels and multiple years. Within each of these genres, audiences and costs will vary for both originals and acquisitions according to a number of factors. These include:

- Quality of production (cameras, special effects, set design, costume)
- Talent involved
- Contributors involved (writers, directors, cinematographers)
- Year of production (for acquisitions)

The cost efficiency metric (bubble size) in **Figure 16** understates the true value of mass appeal content somewhat as this brings the channel prestige and profile, uplifts audience numbers either side of its broadcast, allows advertising-funded broadcasters to offer mass reach buys to advertisers, and allows PSM to deliver their mission and remit to engage all audiences. Indeed, channels would be unlikely to get the audiences for acquired content and repeats were it not for the presence of key 'landmark' shows (which tend to be original commissions). Although General Factual acquisitions may be the most cost effective at delivering audiences, there is a ceiling to the audiences they can deliver (as seen by the low average audiences in the above table) and for large broad-appeal channels, airing large quantities of such low viewership content is not viable.

Major channel acquisitions are predominantly non-domestic because domestic content is typically used by the original broadcaster as a repeat or as archive content on its portfolio channels or, increasingly, its VOD service. Broadcaster acquisitions are often sourced from other EU countries, non-EU ECTT countries, and the rest of the world (RoW) – where US content is most common.

3.2.4 Generally, major pay TV group channels and specialist channels are the most reliant on acquisitions

Major pay TV group channels invest significantly in premium content. This typically includes high-quality, large-budget (and therefore lower volume) content across a range of areas such as drama, film and sport, which supports their premium profile and helps them to attract and retain subscribers.

This business model involves investing significantly in original content (see **Figure 14**), with large budget scripted originations 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. This includes some premium acquisitions from across Europe and the rest of the world to meet consumer demand and provide choice while living within available content budgets. Indeed, acquisitions are especially efficient at meeting consumer demand; the mix of original domestic content and international acquisitions on these channels is carefully crafted to best serve consumers.

Given that major pay TV groups are important investors in many EU Member States, any change that impacts their businesses models and harms revenues could have significant impacts on the overall level of content investment in those countries.

Specialist channels, which tend to focus on specific genres or are aimed at specific demographics, have lower viewing and content budgets, and it is not economic to commission as much original content – in a fixed schedule size and with a small budget, the best (and possibly the only) way to fill the schedule is to use acquisitions. These acquisitions allow such channels to generate reasonable returns at lower price points in order to turn a profit.

While specialist channels invest less than the major FTA channels and major pay TV group channels, 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 channels, they:

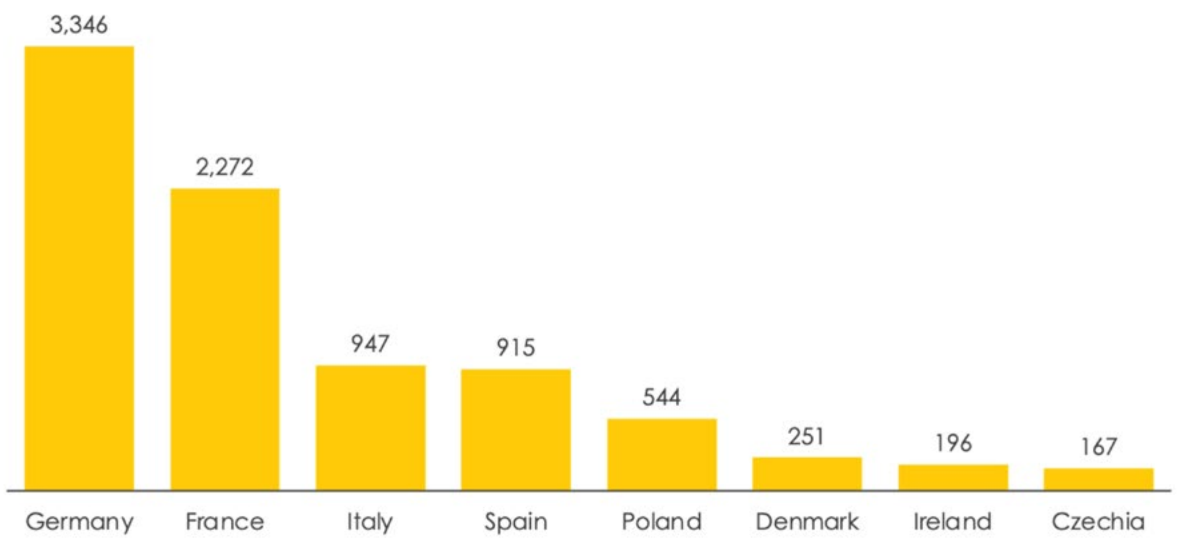
- increase total levels of investment in the market, and support a robust European production sector through secondary sales

- 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
- provide opportunities for more advertisers (typically with lower budgets) to access the TV market

3.2.5 Size and nature of specific AV markets also plays a role in determining the broadcaster 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. In **Figure 17**: Total broadcaster original content investment, eight representative EU Member States, 2021 (€m) we can see that broadcasters in large Member States such as Germany and France spend significantly more on original content than elsewhere. In smaller Member States, major FTA, pay TV and groups specialist channels are more reliant on acquisitions to meet consumer demand.

Figure 17: Total broadcaster original content investment, eight representative EU Member States, 2021 (€m)



Source: Ampere Analysis, Oliver & Ohlbaum analysis

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 more 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). Or 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.

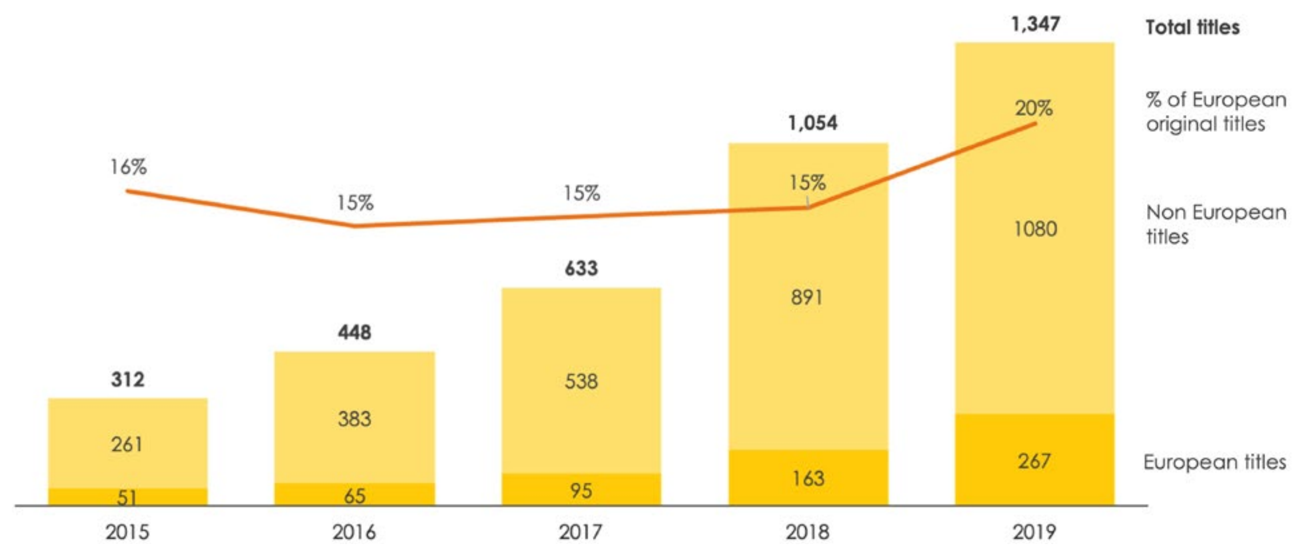
3.3 For VOD services, the optimal catalogue mix typically involves some high budget original content...

AVOD services and European broadcaster VOD services, which usually operate in one or two markets (e.g. RTL+), typically seek a few exclusive original titles as their main differentiator – enabling them to stand out and encourage viewers to try them. These 'tent pole' productions are generally domestic or European original content; while scripted is important, these include a wide range of genres. Across European VOD, offering domestic content, or content from across Europe, acts as a point of differentiation. Many European VOD services have been launched by broadcasters off the back of their linear offers and in this case there is considerable overlap in the content offer, although the volume of exclusive and premier content on these VOD services is increasing. As part of the digital transition, the aim of broadcasters is to position their services as viewing destinations in their own right and to deepen engagement with certain demographics, especially younger audiences.

Global SVOD services have supported their rapid international expansion in content spending by investing heavily in original content, typically high budget scripted content, with both a steady flow of new titles and returning series of successful programmes. These 'tent pole' productions play an important role in maintaining the profile of the service and attracting and retaining subscribers. The share of SVOD libraries accounted for by European original content has grown in recent years, as has the breadth of genres covered, as they have invested to meet consumer demand in European markets (and elsewhere since quality European content travels well overseas).

EAO analysis shows that production of European works by SVOD services has been increasing steadily. As shown in **Figure 18**, in 2015 there were 51 European SVOD originals (representing 16 per cent of total SVOD original titles) and this increased to 267 titles (representing 20 per cent per cent of total SVOD original titles) in 2019.[47] This is evidence that current market forces are successfully encouraging global SVOD services to invest in European content.

Figure 18: EAO analysis of European titles in global SVOD catalogues

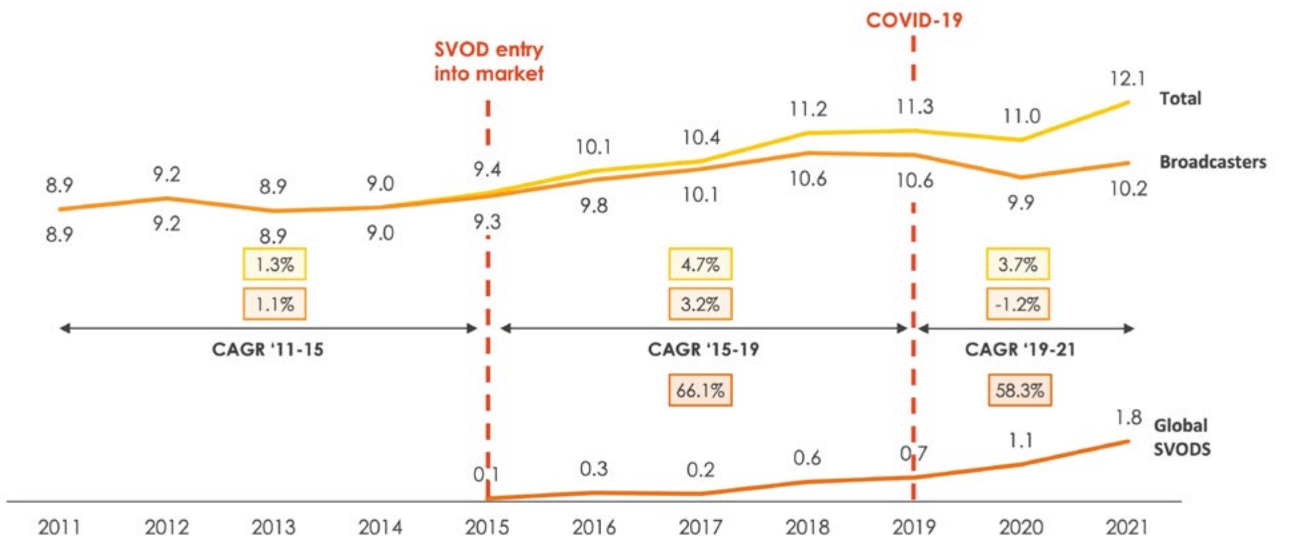


Source: European Audiovisual Observatory: 'Trends in the VOD market in EU28'

[47] Trends in the VOD market in EU28, European Audiovisual Observatory

As shown in **Figure 19**, this is also reflected in the total level of SVOD investment in original EU content, which has increased from €0.1bn in 2015 to €1.8bn in 2021, and has fuelled the overall increase in investment on original European content in recent years. Whilst this investment is highest in the largest EU AV markets (France, Germany, Spain), all EU markets have seen SVOD original investment grow in this period.[48]

Figure 19: Total investment in original EU content, 2011-2021 (€ bn)



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

3.3.1 … and a library of lower cost acquisitions to offer more choice

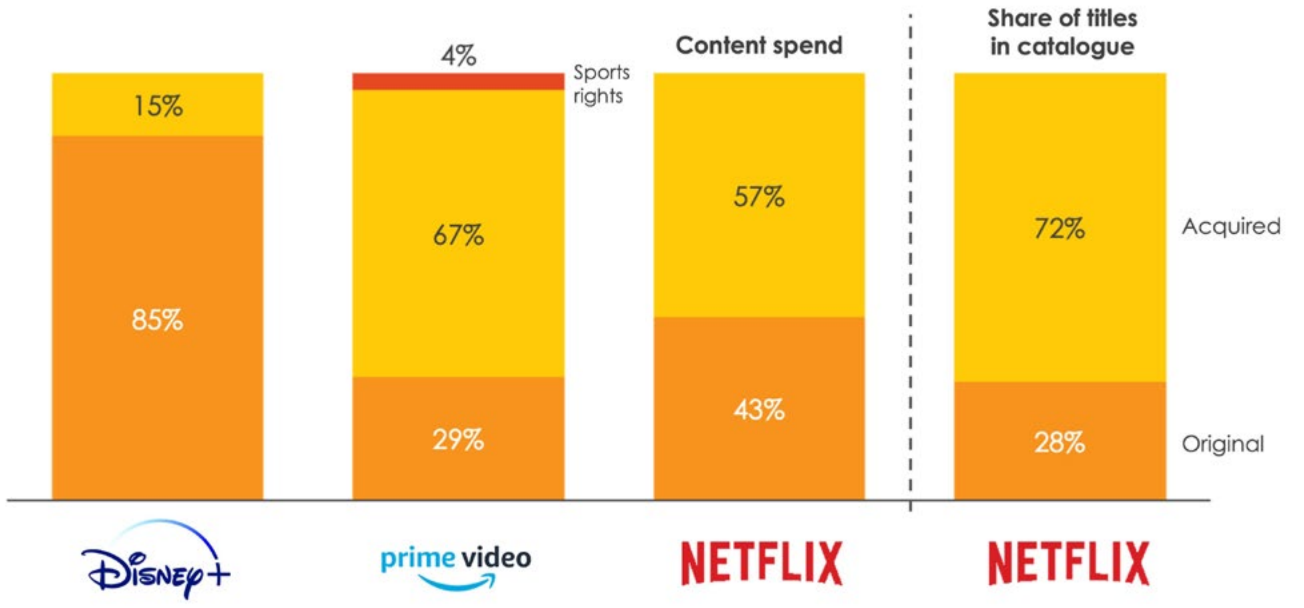
Alongside this original content, VOD services typically offer large libraries to provide consumers with choice and depth of programming. This enables them to appeal to as wide a range of users as possible – from more mainstream tastes to niche interests – and helps to keep users coming back. Given the relatively high cost of original programming, this relies on lower cost acquired TV programmes and feature films (especially for VOD services that are not related to a broadcast or theatrical offer and so do not have a large back catalogue of original content). In this way, VOD services generate value by licensing content from a wide range of European suppliers and bringing it to new audiences.

A broad library of acquisitions is important for European VOD services as they position themselves as attractive and compelling viewing destinations that can compete with global VOD services. This is likely to draw on domestic archive content as well as acquisitions, including from other EU and non-EU ECTT counties as a differentiator.

Figure 20 below focuses on three global SVOD services. While the exact nature of the catalogue and investment strategy varies by player, both Netflix and Amazon Prime Video invest large portions of their content budgets in acquisitions. Disney+ has more recently entered European markets, and benefits from a vast back catalogue of material, and so its investment in acquisitions is lower, but it has grown as Disney has sought to broaden its offer cost effectively (acquisition share of total investment was 8 per cent in 2019). For Netflix, as well as investment, we have data to look at the share of titles by volume; since acquisitions on average are lower cost than originals, the acquisition share by number of titles is higher – Netflix original investment accounted for 43 per cent of total investment in 2021 but only 28 per cent of titles in the catalogue.

[48] All EU markets tracked by Ampere Analysis

Figure 20: Global content investment & catalogue share by type, global SVODs, 2021 (% of total content investment & titles)



Note: Share of titles in Netflix catalogue is for the US catalogue in March 2021. Share of acquired titles in catalogue includes Netflix exclusives (which may be branded as Netflix Originals but are not commissioned)

Source: Ampere Analysis, Oliver & Ohlbaum analysis

So we have seen that for VOD services, there is significant investment in original content, including domestic originations to attract and retain subscribers, and to differentiate services in the eyes of viewers. This is typically complemented by lower cost acquired content to broaden the offer and provide diversity. The mix of content and associated investment is already being optimised to best respond to consumer demand and competition.

3.3.2 The nature of VOD services means they can flex the mix of their library if required

The on-demand nature of VOD services means that, unlike for broadcast channels, the overall content offer is not required to fill a schedule. The size of a service's catalogue can vary over time and can be adapted to meet the needs of consumers and the business, or to accommodate regulation if required. This flexing of catalogue is done in the long tail of lower cost acquisitions (which as discussed appeal more to niche interests), rather than in the core offering of mass appeal original content.

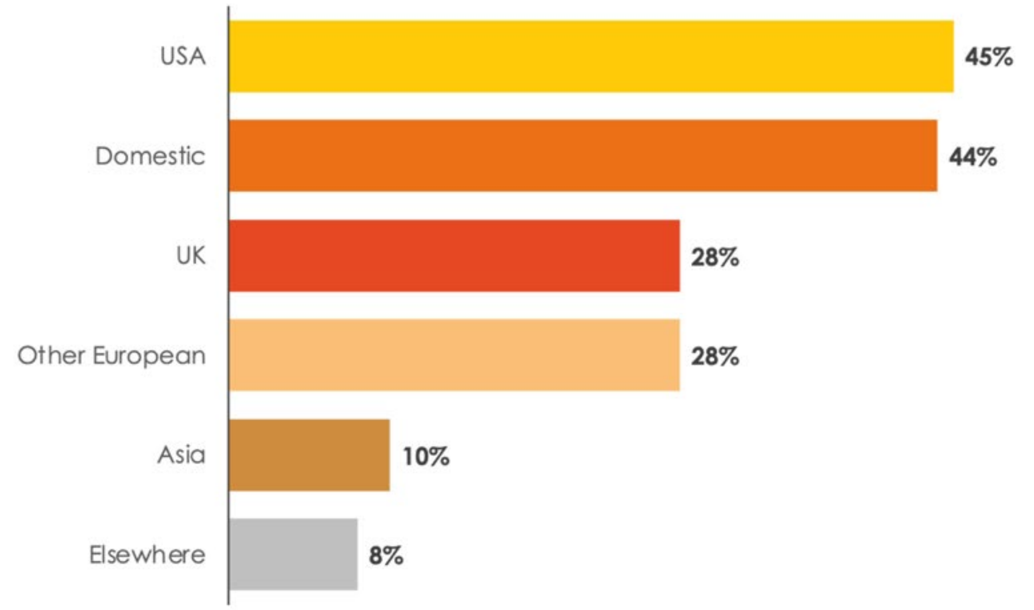
3.4 Non-EU ECTT content plays a key role in meeting consumer demand across the EU

As we have seen, the economics of both European broadcasters and VOD services means that they require different types of content for different purposes, within constraining content budgets. Whether defined by genre, country of origin, or original vs acquisition – these have different prices points, different levels of demand, and different 'efficiencies' in delivering audiences and supporting channel or catalogue economics. In the context of this report, we are particularly interested in the role of non-EU ECTT content. This requires an understanding of its relative appeal, its relative cost, and what its use means for the rest of the content mix – i.e. what the inclusion or not of non-EU ECTT content in a broadcast schedule or a VOD catalogue enables the provider to offer across their service.

3.4.1 Non-EU ECTT content is some of the most popular and high quality European content

Recent research from the European Commission shows that, after domestic content, consumer interest in TV and film content is strongest for content with other European origins. Within this, UK content is highly valued by consumers, to the same extent as all other non-domestic European content. US content was reported as slightly more popular than domestic.

Figure 21: Interest in films and series from different countries, EU 15, 2023 (% respondents)



Note: Question posed as "From which countries or regions would you like to see more films or series?". 15 Member States surveyed were: Bulgaria, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Ireland, the Netherlands, Poland, Portugal, Romania, Spain and Sweden

Source: The European Media Industry Outlook 2023

The European Commission's report also highlights the strong viewing performance of UK content in VOD catalogues.[49] Clearly consumers appreciate this content and service providers find it extremely efficient at meeting demand.

In particular, non-EU ECTT content enriches the range of high production quality acquisitions and co-productions available to providers and European consumers. As seen in **Table 6**, data from the European Audiovisual Observatory on average feature film budgets highlights the important roles of Norway, Switzerland and the UK. 'Quality' is a difficult metric to define, but production budget is a reasonable proxy. In an age of ever-increasing production values (especially in US Studio content) access to a variety of high production value, high quality European content is important for broadcasters and VOD services to compete successfully and meet consumer demand across the EU.

Table 6: Average feature film production budget, Top ten countries, 2021

Rank	Country	EU27 or non-EU ECTT	Average feature film production budget (€m)
1	Ireland	EU	4.2
2	France	EU	4.2
3	UK	Non-EU ECTT	3.4 (range: 5.1 – 1.0)
4	Spain	EU	2.7
5	Norway	Non-EU ECTT	2.7
6	Demark	EU	2.7
7	Switzerland	Non-EU ECTT	2.6
8	Austria	EU	2.5
9	Italy	EU	2.5
10	Germany	EU	2.4

Note: Precise methodology varies by country and some countries include only live action films or have used median instead of mean production budget. Thus position of country within the top 10 should be taken as indicative rather than definitive. In addition, EAO data splits out UK films into three different categories (inward investment, co-productions, and domestic) and provides the median budgets for these. For simplicity here we have combined the UK into a single metric by taking the mean of these three medians, and provided their range

Source: European Audiovisual Observatory, Oliver & Ohlbaum analysis

Non-EU ECTT content is popular across multiple genres. The Swiss-UK children's animation *Pingu*, for example, is still beloved and aired across Europe many years after the original production finished; in Denmark it is possible to stream all six seasons on local SVOD C More. Elsewhere in the Nordics, NRK acquisitions executive Fredrik Luihn made clear in a recent article that "many quality costume dramas and feel-good dramas are produced [in the UK] that also find a large audience in the Nordics."[50] Interviewees for this study from broadcasters and VOD providers in Europe confirmed that non-EU ECTT content is highly valuable to their audiences and improves their content offering.

[49] Table 6: Shares of works of different origins in the catalogues and their viewing time, The European Media Industry Outlook 2023

[50] 3rd March 2023, 'Cultural crossover drives Nordic exports', C21, https://www.c21media.net/department/ahead-of-the-curve/buying-british-cultural-crossover-drives-nordic-exports/

> *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 (Czechia Broadcaster)**

> *We purchase content to meet consumer demand. We have UK and Turkish content because of the quality and the way it works [with audiences].*
>
> **– Broadcaster in Southern Europe**

> *Including non-EU content in the service's offer increases its diversity and allows [it] to provide a complementary offer to the proposal based on local and EU content.*
>
> *British content generates highest ratings on many TV secondary channels.*
>
> **– Polish Commercial Broadcaster**

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

3.4.2 Access to content from non-EU ECTT countries enables investment in original domestic works

As previously discussed, high viewing to lower cost acquisitions allows European broadcasters and VOD services to operate economically viable services and invest in the most in-demand domestic original productions. Multiple interviewees informed us that the high viewing figures they achieve from lower cost non-EU ECTT content enables them to reinvest in higher cost domestic originations.

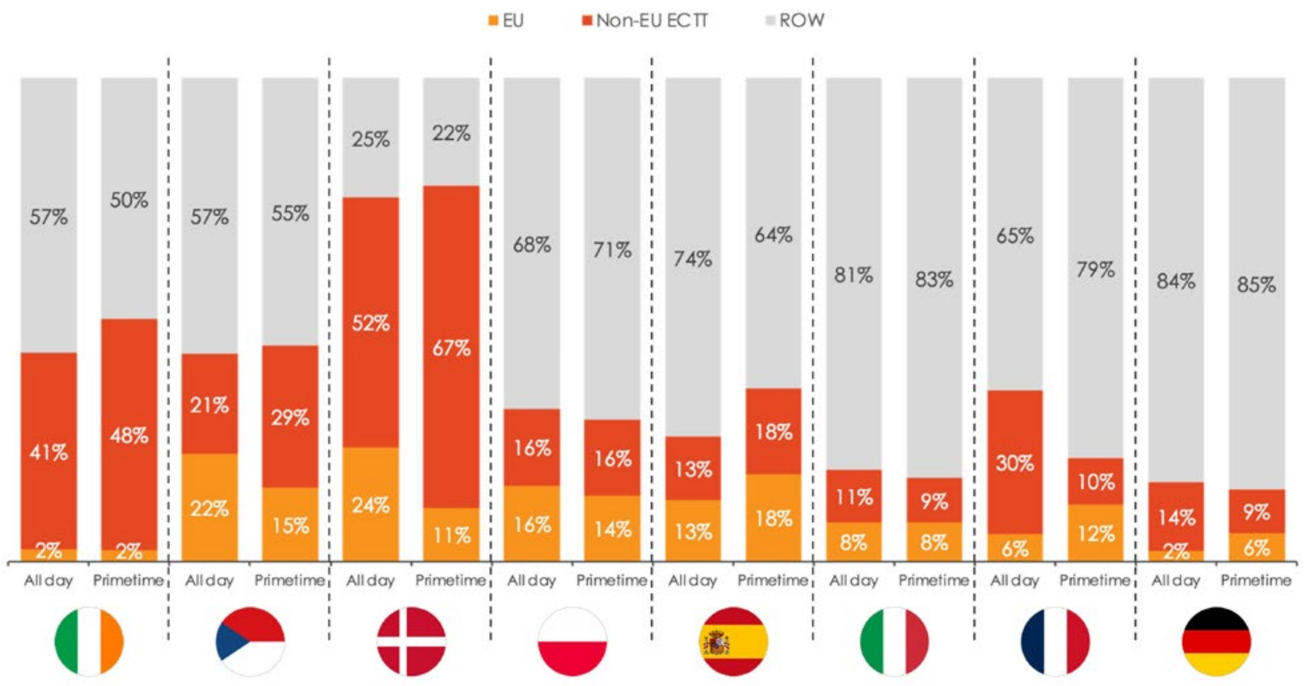
> *We both acquire content from the UK which plays an important function in our schedules and is highly valued by the viewing public … [proposed changes] would have major implications on both broadcasters' funding models and our ability to fund quality home produced content.*
>
> **– Joint letter from RTÉ and Virgin Media Ireland to Catherine Martin, Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, and Irish MEPs**

3.5 Non-EU ECTT content plays a key role in broadcast channel schedules, especially in smaller EU Member States

In this section we provide a deeper dive into the role of non-EU ECTT content in broadcast schedules. A useful metric to assess the importance of non-EU ECTT content to broadcasters (and by extension consumers) is its presence in primetime vs all day schedules, since prime time is when broadcasters typically air programming with the broadest appeal to help maximise audiences. If content has a higher share in primetime than in all day then we can assume it is especially valuable.

Figure 22 shows the usage of content by day part, in our eight representative EU Member States, by country of origin. This focuses on the major channels (by audience share) that show non-EU ECTT content in each market, since looking at all channels obscures trends (channels for which non-EU ECTT content is less important would dilute the picture and make differences by daypart less noticeable). We have also ignored domestic content in this analysis since the large increase in domestic content in primetime also obscures trends.

Figure 22: Share of broadcast schedule by country of origin excluding domestic, eight representative EU Member States, top 3 qualifying channels*, 2021 (% of broadcast time)



*Note: Share of broadcast time using 4 indicative weeks, excluding non-qualifying programming such as news, sports, and teleshopping. *Total broadcast share across top three most viewed channels in each market where non-EU ECTT content makes up at least 5% of broadcast schedule*

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

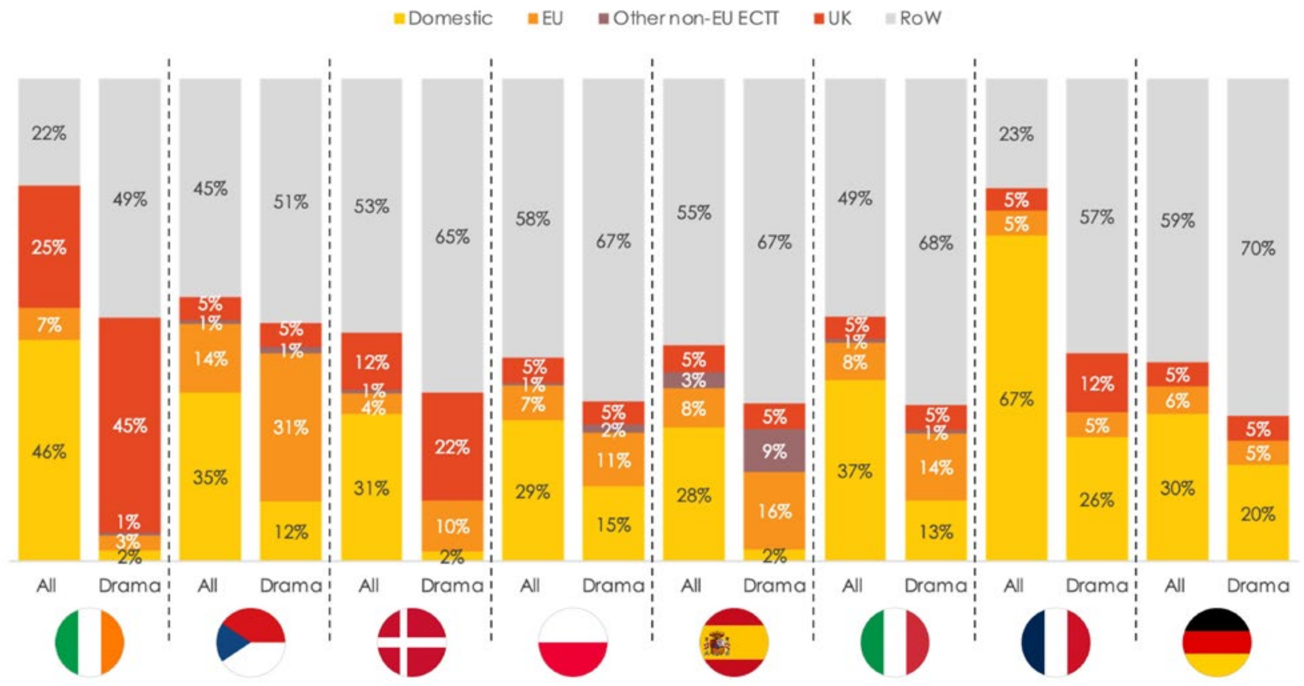
In the smaller EU Member States to the left of the chart, non-EU ECTT content has a significantly higher share of primetime compared to all day (Ireland, Czechia, Denmark). In these markets, non-EU ECTT content is valued as an effective tool to attract primetime audiences and to fill schedules for non-primetime audiences. In such markets there is less original content to go in primetime (because it is high cost and domestic audiences are smaller) and non-EU ECTT content travels especially well where there is cultural affinity to non-ECTT countries (e.g. Norway for Denmark).

In the larger EU Member States to the right of the chart there is little change, or share in primetime is lower (Italy, France, Germany). In these markets, non-EU ECTT content is used in primetime, but has a more important role in meeting consumer demand in off-peak hours. In such markets primetime is dominated by domestic originations. Nevertheless, the high levels of non-EU ECTT content (c.5 per cent of schedule across all tracked channels) shows that it is still important in meeting consumer demand.

3.5.1 Non-EU ECTT content is especially important in certain genres on broadcast channels

Looking at specific genres, we can see that non-EU ECTT content has particular importance in the schedule in certain genres, most notably Drama and Documentaries, specifically natural history. As depicted in **Figure 23**, in each of our eight representative EU Member States, non-EU ECTT content share of schedule is higher in drama than in all TV, with an average increase of 6 per cent schedule share. This reflects the popularity of drama, its value in driving viewing, and the quality of scripted content available from non-EU ECTT countries – all of which make non-EU ECTT drama appealing, particularly given its lower cost relative to original domestic content. Given drama is the most expensive genre to produce, the ability to access high-quality, high-production value non-EU ECTT content for a fraction of the cost is especially important, and it resonates with audiences as it is European.

Figure 23: Share of broadcast schedule by country of origin, all genres vs drama, eight representative EU Member States, all tracked channels, 2021 (% of broadcast time)

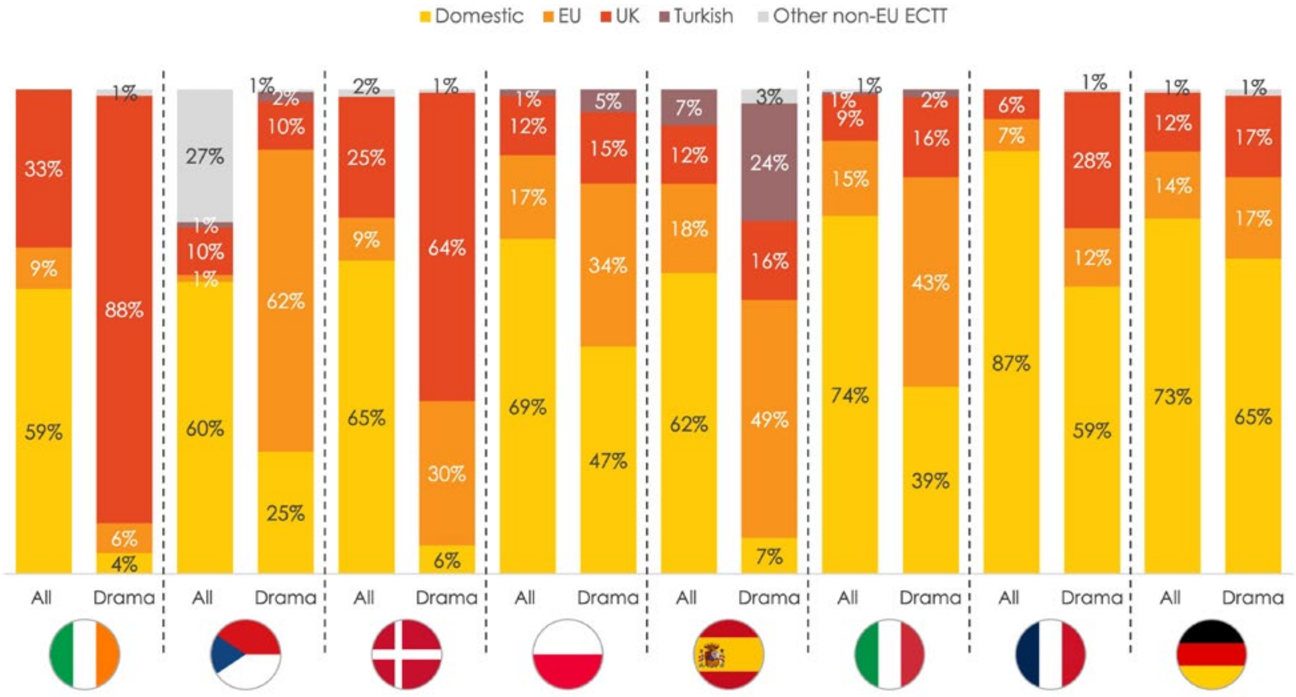


Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports, and teleshopping. Total broadcast share across all tracked channels, whether quota applicable or not

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

As seen in **Figure 24**, when Rest of World content is excluded, non-EU ECTT drama has a much greater share in drama than in all schedule across all representative EU Member States, showing its vital importance within European drama specifically. UK drama accounts for nearly 90 per cent of drama content in Ireland, two-thirds in Denmark, and over a quarter in France. Meanwhile, in Spain, Turkish drama has gained significant popularity in recent years. This can also be seen to a lesser extent in other markets such as Poland.

Figure 24: Share of broadcast schedule by country of origin excluding rest of world, all day vs drama, eight representative EU Member States, all tracked channels, 2021 (% of broadcast time)

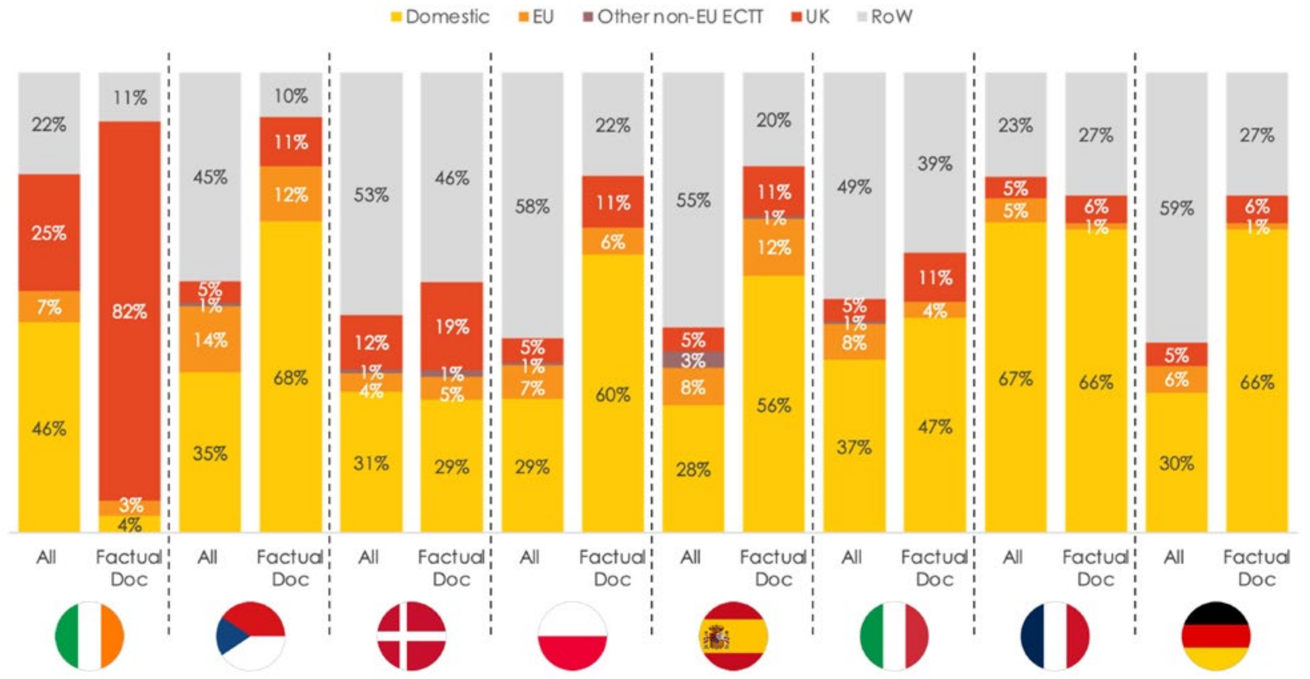


Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports, and teleshopping. Total broadcast share across all tracked channels, whether quota applicable or not. All percentages exclude rest of world

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

As illustrated in **Figure 25**, a similar trend exists for factual documentary. Within this genre, for example, the UK is often the only source of high-end natural history series suited to primetime.

Figure 25: Share of broadcast schedule by country of origin, all day vs factual documentary, eight representative EU Member States, all tracked channels (% of broadcast time), 2021



Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports, and teleshopping. Total broadcast share across all tracked channels, whether quota applicable or not

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Similarly, non-EU ECTT content plays a particular role in meeting consumer demand in certain genres on VOD catalogues, especially feature films, drama, documentaries and children's.[51]

Case studies on the use of UK content by broadcasters in Ireland, and the use of Turkish content in Spain, are explored in more detail in the Appendix to this report.

The stories, scenes and acting in Turkish series are much loved in Spanish society … these are productions that show the modern face of Turkey to more of Europe and destroy prejudices … We find the variety in Turkish TV series that we cannot find in [other European] series… if Turkey continues to produce TV series at this level, the demand will continue in the same way.

– José Antonio Antón, Deputy Director of Content at Atresmedia, as reported by El Confidencial

[51] Ampere Analysis, Oliver & Ohlbaum analysis

3.6 EU consumers consider that non-EU ECTT content is culturally European

Defining what makes content culturally European is complex and open to subjectivity, but some criteria might include:

- **Subject matter:** are the themes explored pertinent to European life? Does it reflect shared European values?
- **Location:** does it take place in Europe?
- **Language:** is it in a European language and does it use European expressions and idioms?
- **Talent:** does it feature European talent, in front of and behind the camera?
- **Style:** is the visual language and editing recognisable as European (e.g. Nordic Noir)?

Interviewees from broadcasters, VOD services and studios in all eight representative EU Member States expressed the view that non-EU ECTT content is culturally European.

> *It's true that the UK or Turkey are not in the EU but they're part of the European continent, … we're all Europeans.*
>
> **– Spanish Broadcaster**

Certain content is seen as even more European than other EU content in certain countries. Switzerland, for example, shares languages and borders with countries including France, Germany, Austria and Italy. Cultural ties between Switzerland and these countries are strong and there is no doubt that consumers in these countries view Swiss content as European and some of the most culturally similar content to their own.

The UK and Ireland share extremely strong cultural and historical ties – a language, border, and access to each other's broadcasters. Some of the biggest actors, writers and presenters in the UK are Irish and vice versa (e.g. Paul Mescal, Sharon Horgan, Graham Norton).

> *High quality content originating from the UK is hugely popular in Ireland and is of vital importance to our schedules and Irish viewers' experience.*
>
> **– Joint letter from RTÉ and Virgin Media Ireland to Catherine Martin, Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, and Irish MEPs**

Similarly in Denmark, and broadly speaking across the Nordics, there is a strong cultural affinity with the UK. 86 per cent of Danish adults speak English,[52] and this combined with a long history of English programmes on TV and a culture of only subtitling foreign programming (no dubbing) means that Danes have a much stronger affiliation to UK content than non-English language non-domestic content. A recent article on the views of content buyers in the Nordics found that another consideration is 'a certain cultural kinship between the Nordic nations and the UK. This applies to everything from ethics and morality to humour and family'.[53] All industry stakeholders in Denmark interviewed for this report agreed that UK content is culturally European.

> *In Denmark you would have success with Danish content, with UK content, and US content. And to some extent with content from Sweden and Norway … It would be damaging for performance if we were to bypass UK content to get more EU content.*
>
> **– Danish Stakeholder**

[52] Eurobarometer

[53] 3rd March 2023, 'Cultural crossover drives Nordic exports', C21, https://www.c21media.net/department/ahead-of-the-curve/buying-british-cultural-crossover-drives-nordic-exports/

4

The impact of narrowing the European works definition on EU content services

Having set out the economics of content services, this part explores how a change in the definition of European works would affect broadcasters (Section 4.1) and VOD services (Section 4.2). The logical reaction of broadcasters and VOD services to the quota change will then inform the assessment of the impact on EU production (Part 5) and on consumers (Part 7).

4.1 European broadcasters would be negatively impacted if the European works definition was narrowed

For this part we investigated how narrowing the definition of European works to exclude non-EU ECTT countries would affect compliance with the linear quota in EU Member States and for different types of channels. This involved analysing data on the composition of broadcast schedules, viewership data and conducting interviews with a range of broadcasters in the eight representative EU Member States (Czechia, Denmark, France, Germany, Ireland, Italy, Poland and Spain).

4.1.1 Narrowing the definition would not impact all broadcasters equally

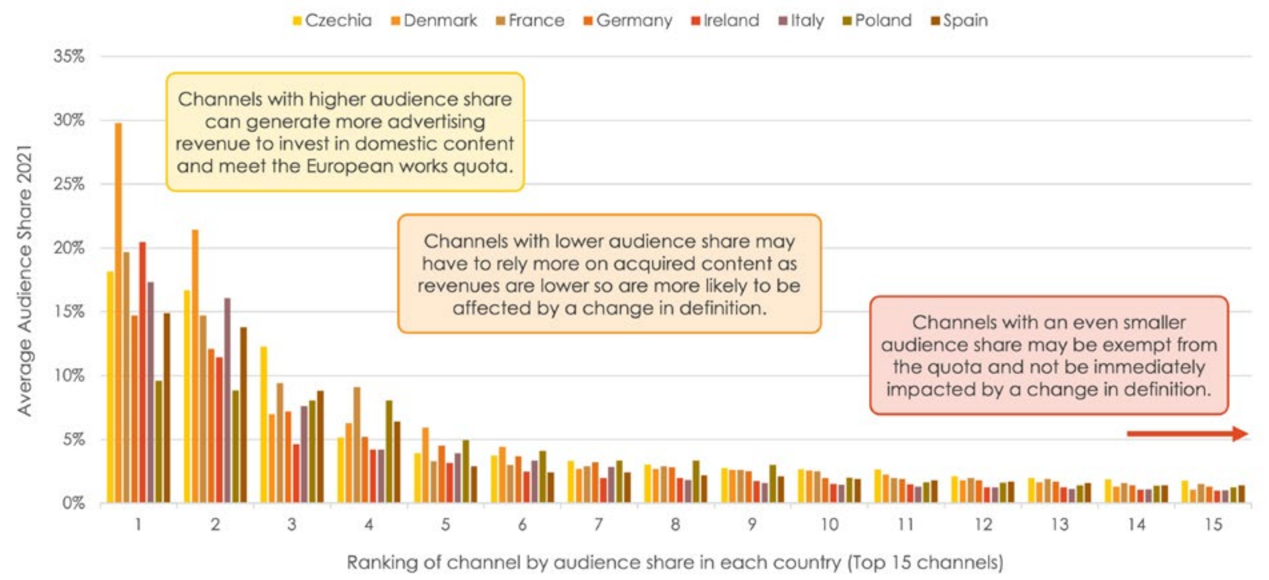
Different types and sizes of broadcaster have different constraints, which determine their content strategies.

Major FTA channels in the largest AV markets would be largely unaffected

In the large EU Member States, which have the largest domestic AV markets, the major PSM and FTA commercial channels can afford to commission higher volumes of domestic content. This is because typically the top few channels in each market capture a large proportion of the available viewing share, as illustrated in **Figure 26** below. For those channels that are primarily advertising funded, audience share is a strong indicator of revenues with channels with the highest viewing share receiving higher revenues and therefore able to support a larger content budget for investment.[54] In smaller EU Member States, this relationship still holds with the top few channels capturing a large proportion of the viewing share, but as the domestic AV market is smaller the revenues captured are not as large.

[54] For example, in Poland when excluding publicly funded channels, the top six remaining channels by audience share are also the top six channels by advertising revenue

Figure 26: Audience share of the top 15 channels in our eight representative EU Member States (% total linear viewing)



Source: Dataxis, Frontier analysis

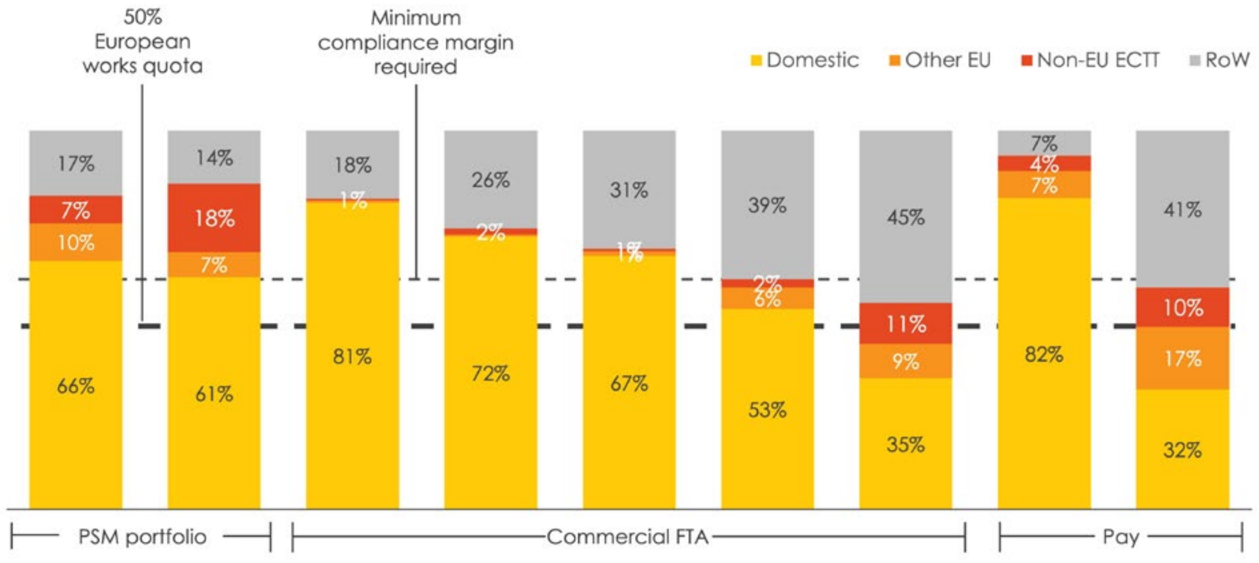
The major FTA channels in the largest Member States would be largely unaffected by a narrowed definition of European works

We observe that the main channels in the largest AV markets are largely comfortably above the European works quota based on domestic works (illustrating that where economics allow, the market incentivises investment in local EU content). They can also sustain 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. As a result, narrowing the European works definition would not require these channels to alter their scheduling or associated investment in EU content.

Figure 27, below, focuses on Poland but shows a situation which is typical across larger Member States; it shows that PSM and major commercial FTA channels comfortably meet the European works quota and a compliance margin. 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 – 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 further below.

Figure 27: Share of broadcast schedule by country of origin, Poland, 2021 (% of broadcast time)

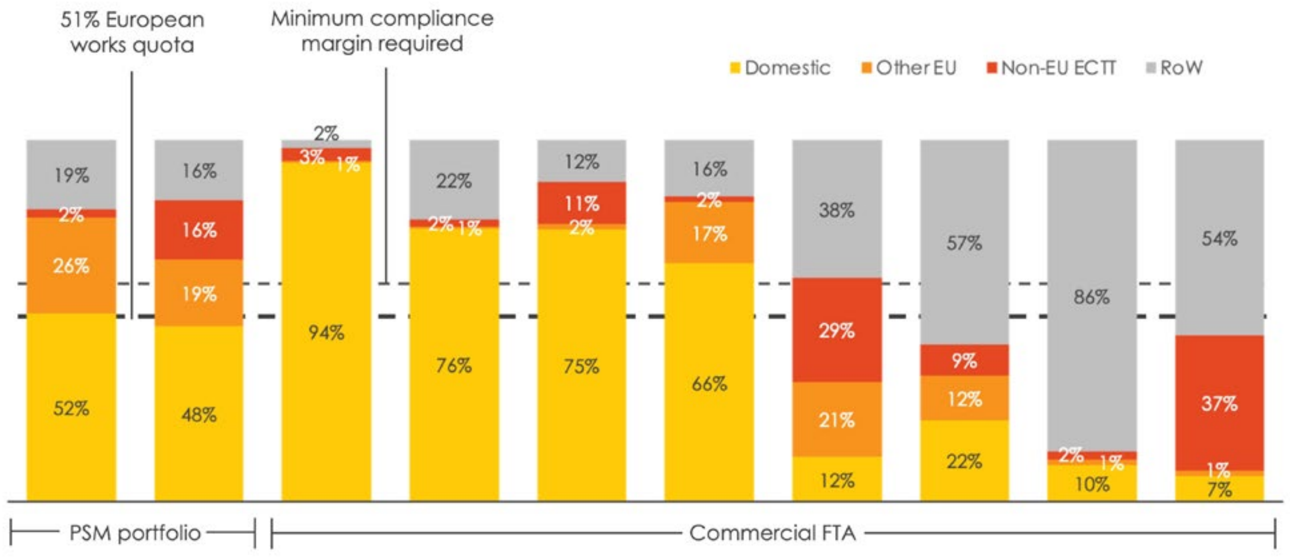


Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports, and teleshopping. Analysis of all linear channels in sample performance against the European works linear quota is in Appendix 8.5

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

This is also illustrated by channels in Spain. The major FTA and PSM channels, which are the main commissioners of new works (shown in the first six columns of **Figure 28**), are sufficiently above Spain's 50 per cent linear quota, plus the compliance margin, with domestic and other EU content. In 2021, these channels represented 50 per cent of audience share in Spain. The remaining columns represent specialist channels, which have much more non-EU ECTT content as part of their schedules. Specialist channels includes portfolio channels of the major FTA commercial broadcasters, so that the wider group may be affected.

Figure 28: Share of broadcast schedule by country of origin, Spain, 2021 (% of broadcast time)



*Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports, and teleshopping. Long tail of pay channels excluded here. *Note that the CNMC allows compliance across a broadcaster portfolio, in line with the Directive. Analysis of all linear channels in sample performance against the European works linear quota is in Appendix 8.5*

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Major pay TV group channels and specialist channels in all Member States surveyed would be adversely affected by a narrowed definition

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 have lower audiences and therefore lower revenues and smaller content budgets than the major FTA channels. This means that they are often closer to the European works linear quota as they rely to a greater degree on lower cost and efficient non-domestic acquisitions to meet consumer demand individually or as part of a broadcaster portfolio – including from non-EU ECTT countries. They also have less financial headroom to adjust to new regulatory pressures. Narrowing the definition would reduce their flexibility to meet consumer demand and impact their content strategies. It would, therefore, represent a significant challenge and, for some, an existential threat.

The previous charts on Poland and Spain show 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.

In accordance with AVMSD, channels may be exempted by the relevant national regulatory authority for thematic or low audience reasons. Narrowing the definition of European works could disincentivise investment and growth for low audience channels that are exempt from the linear quota as moving above the low audience threshold would trigger a regulatory burden – not only as they would need to now meet the 50 per cent European works linear quota (plus a compliance margin), but they would need to change their schedule mix significantly as they are reliant on a significant amount of non-EU ECTT content, which would no longer be considered European works. At the same time, it is worth noting that if exemptions are granted on a case-by-case basis after a periodic review, this can still create legal and business uncertainty, affecting the case for investment in a territory.

[If the definition changed] The whole industry would face… a more difficult time in terms of offering the best content to the Spanish audience.

– Spanish Stakeholder

In smaller EU Member States, major FTA broadcasters, pay TV group channels and specialist channels could all be affected

In smaller EU markets, the domestic audience is smaller, and hence total TV advertising revenues are lower than larger markets. 13 EU countries have a population of less than 7 million.[55] Total TV advertising revenues and expenditure in these countries was on average €226m in 2021, only 6 per cent of the average TV advertising expenditure in the largest four EU Member States (€3,501 million in 2021).[56] Hence even the biggest channels in each of these markets will have relatively low revenues to invest in content. Therefore, to remain financially viable these channels have to rely on a greater proportion of non-domestic content.

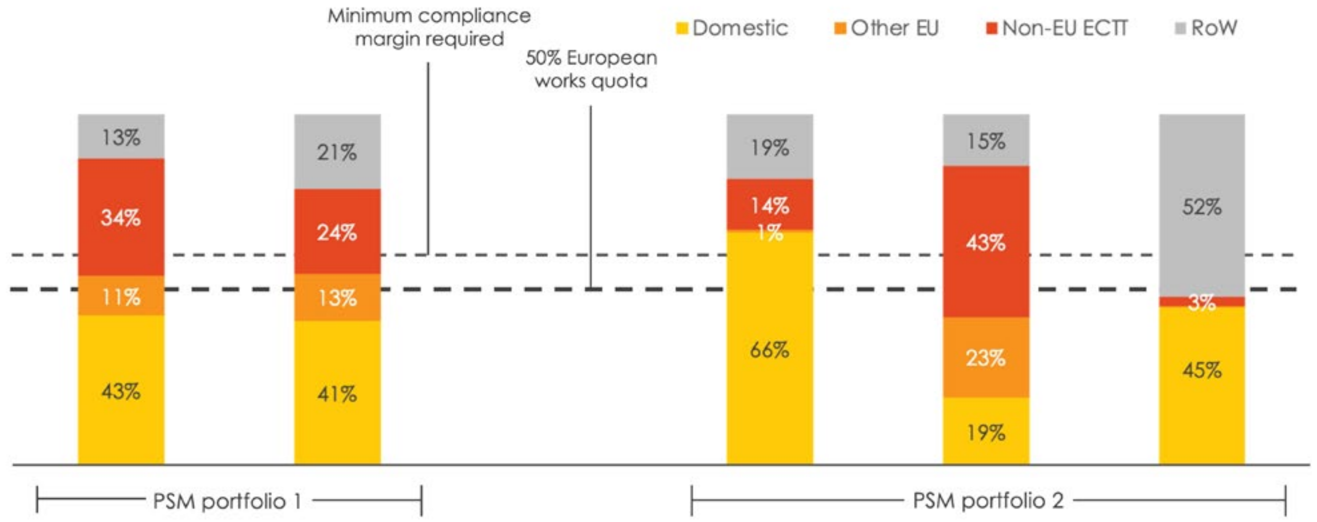
Of the eight representative EU Member States studied in this report, two (Denmark and Ireland) have a population below 7 million. On average, the schedules of channels in these two countries are made up of 18 per cent of non-EU ECTT content. Whereas the schedules of the channels in the remaining five larger countries (by population) – France, Germany, Italy, Poland, Spain – are on average made up of only a third of this amount of non-EU ECTT content (6 per cent).

Looking at Denmark in more detail as an example, it has a population of around 5.8m people, was the 12th smallest EU27 country by population in 2021 and had TV advertising expenditure of €279 million in 2021. As shown in the figure below, in Denmark, one of the PSMs shows a significant proportion of non-EU ECTT content across its two major FTA channels and would fall below the compliance margin and come very close to the linear quota if the European works definition was narrowed – thus losing its flexibility to respond to changing consumer demand and competition. For the other PSM, its smaller portfolio channels are reliant on non-EU ECTT content to meet the linear quota. Although historically the regulator has allowed average compliance across all channels in the portfolio, narrowing the definition would bring the portfolio very close to the quota level, removing any compliance margin and leaving little room to respond to competition.

[55] In 2021, Malta, Luxembourg, Cyprus, Estonia, Latvia, Slovenia, Lithuania, Croatia, Ireland, Slovakia, Finland, Denmark and Bulgaria all had populations under seven million. Eurostat – Average population total

[56] In 2021, Spain, Italy, France and Germany were the four largest countries in the EU by population. Tv Advertising Expenditure by country from the European Audiovisual Observatory Yearbook 2022.

Figure 29: Share of broadcast schedule by country of origin, Denmark, 2021 (% of broadcast time)



Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports, and teleshopping. Analysis of all linear channels in sample performance against the European works linear quota is in Appendix 8.5

Source: Essential TV Statistics, Frontier and Oliver & Ohlbaum analysis

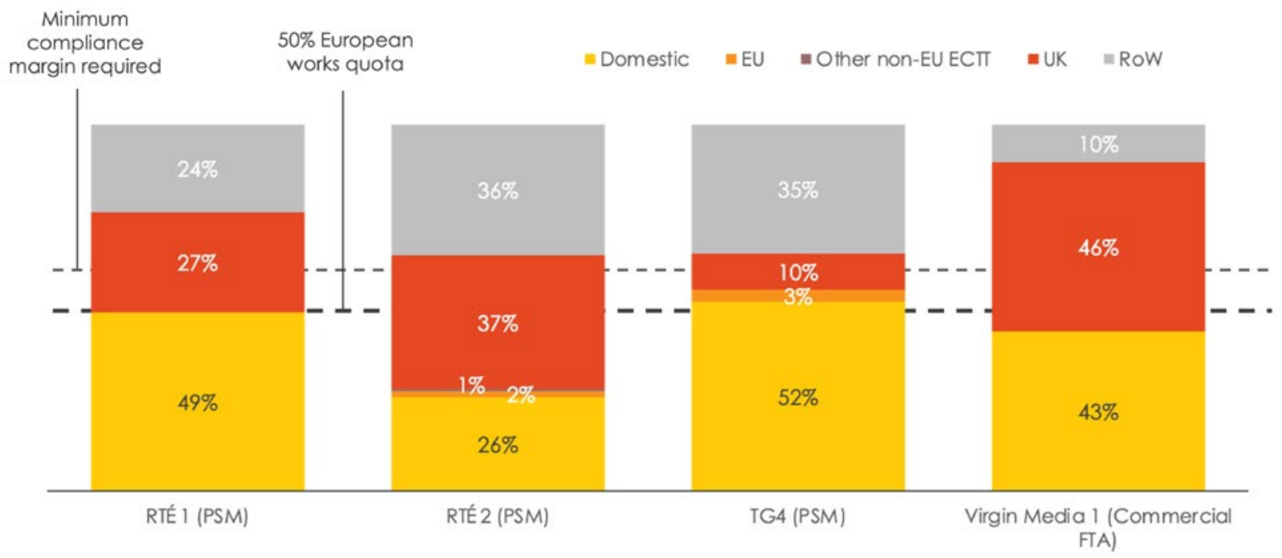
As in other Member States, some channels have been historically exempt from the quota based on low audience share, which offer audiences a reasonable amount of non-EU ECTT content. These would be disincentivised from attempting to grow their channels (and increase investment) should the European works definition be narrowed.

Member States that share close cultural ties with non-EU ECTT countries would be particularly affected

The impacts of the definition change on broadcasters increases 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 and major pay TV group and specialist channels are at risk from a change to the European works definition.

In Ireland, which has a much smaller AV sector and close cultural ties to the UK, both the largest PSM, RTÉ, and the largest commercial FTA commercial broadcaster, Virgin Media Ireland, need UK content to meet consumer demand and support investment in domestic programming, while complying with the 50 per cent European works quota. This is also an issue for the smaller PSM, TG4, which broadcasts in the Irish language and relies on UK acquisitions to provide a cost effective and diverse schedule, which allows it to reinvest in original Irish language commissions and co-productions with neighbouring minority language broadcasters such as S4C (Wales) and BBC Alba (Scotland).

Figure 30: Share of broadcast schedule by country of origin, Ireland, 2021 (% of broadcast time)



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

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

There are many less obvious examples of close cultural ties between countries. For example, many broadcasters highlighted a sense humour that travelled well across specific countries as an important reason for acquiring content. For example, French broadcasters highlighted how UK comedy works particularly well in France (citing *Fleabag*); and a CEE broadcaster noted that certain older UK comedies (such as *Mr. Bean* and *Red Dwarf*) had 'evergreen' appeal in that the content continues to provide value to audiences year after year.

CEE broadcasters highlighted that their audiences' preferences for content from certain non-EU ECTT countries pre-dated their country's relationship with the EU (and indeed stretched back to communist rule, providing an important cultural link between European peoples at that time). The broadcasters pointed out that it would not be possible to simply replace these types of content on a like for like basis with content from the EU.

You can't replace British content with for example, French or German TV series or movies for many reasons. First, the audience likes British content and have done for many years. Second, English is still the most important language for our audience to watch content in. Third, British production is still very high in quality.

– Česká televise (Czechia Broadcaster)

Everyone grows up speaking English, everyone watches English language programmes, there is big consumer demand for UK programmes (both scripted and non-scripted). UK content is perceived as almost local content.

– Danish Stakeholder

4.1.2 A significant number of broadcasters could be affected by narrowing the European works definition

Narrowing the geographic scope of the European works definition would adversely affect any broadcaster whose channel schedule could not meet the European works quota on the basis of domestic and other EU content only.[57]

To illustrate the impact of the definition change we have considered how it would apply to 148 channels across our eight representative EU Member States; the specific channels covered in our analysis was led by the available data, but generally included the major FTA channels, major pay TV groups, and a range of specialist channels. We analysed the make-up of each channel's schedule by country of origin and assessed the viewing share by country of origin.

The analysis focused on channels that are currently either close to the quota (i.e. with at least 40 per cent of their relevant[58] content being European works), or above the quota (i.e. with more than 50 per cent of their relevant content being European works). The purpose of narrowing the scope of the analysis to these channels is to exclude those channels which may be exempted from the quota. It is important to note that the application of the quota depends on the specific rules as applied in the relevant Member State, and that can vary between Member States. For example, compliance will be affected by how individual Member States consider thematic or low market share exemptions, or how compliance is considered in the context of portfolio groups of channels. Nonetheless the selected channels indicate how narrowing the definition would affect broadcasters.

The analysis considers which channels would have to adjust their services to meet a narrowed definition and looks at what proportion of their schedule would need to be replaced to restore their share of European works to its current level before the narrowing of the definition. Of the 148 channels in our sample, 37 are captured in this analysis. The share of transmission time that each channel would need to replace ranges from 1 per cent to 37 per cent. Of course, this is not an exhaustive list of the channels likely to be impacted, but rather an illustration of how channels would be affected – our sample-based approach means that some other channels that we have not picked up in the sample would also likely be affected.

Note that if the analysis were extended to the other 19 Member States there would very likely be more channels affected (particularly as the other 19 Member States include a greater number of countries with smaller populations and therefore smaller domestic AV sectors).

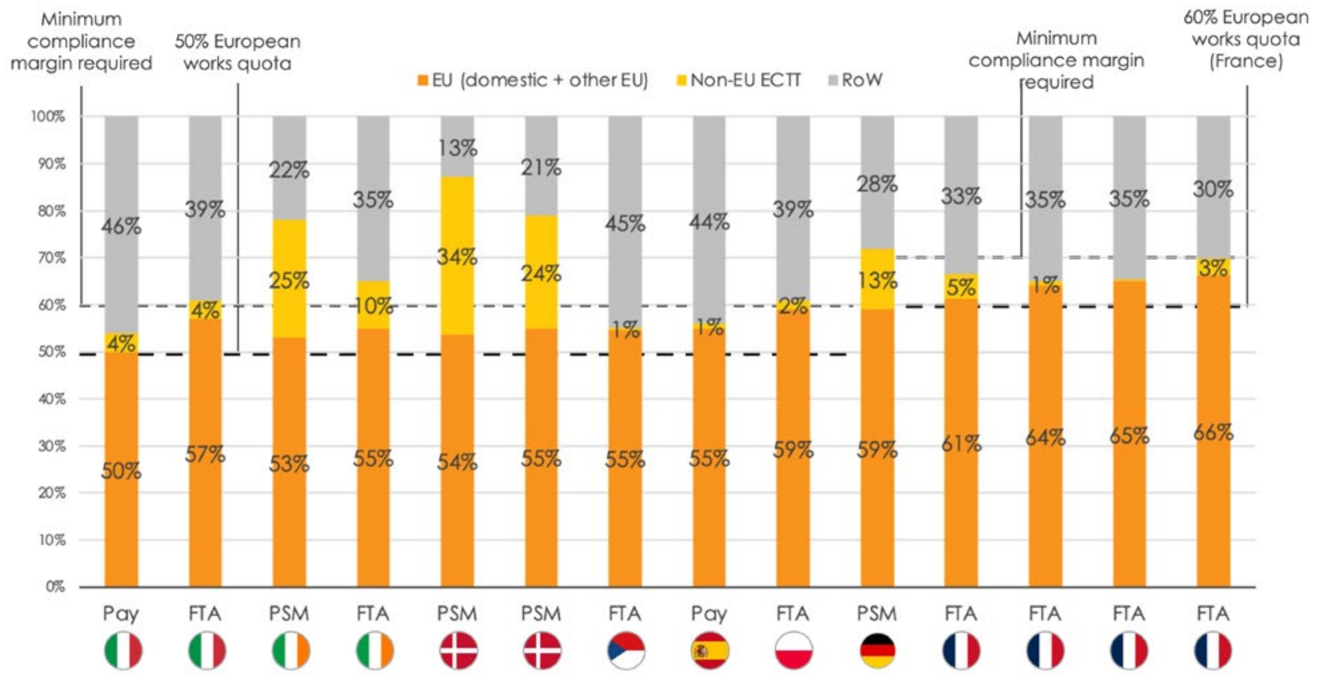
[57] Broadcasters must have at least 50 per cent of their relevant schedule qualifying as European works in the majority of EU Member States. Exceptions within the eight representative EU Member States in this study are channels established in Spain (51 per cent) or France (60 per cent, with a sub-quota in primetime)

[58] The quota only applies to certain types of content and excludes for example the time apportioned to news, sports events, games, advertising, teletext services and teleshopping

In reality, the European works quota ‘bites’ well above the linear quota threshold as broadcasters need to maintain a minimum compliance margin when scheduling

Broadcasters maintain a ‘compliance margin’ above the quota so that any last minute and unexpected scheduling changes do not result in their inadvertent failure to comply with quota requirements. This is because the quota is calculated as a proportion of all scheduled content, excluding certain genres. Unexpected scheduling changes that affect the transmission time dedicated to qualifying works can impact the overall calculation of quota compliance (e.g. a sports event overrunning, breaking news, a series having to be pulled from air, or an event of national significance). As a result, broadcasters routinely carry a ‘compliance margin’, ensuring that their schedule meets and exceeds the European works quota. Based on interviews with broadcasters for this study, we estimate this to be in the region of 10 per cent meaning that broadcasters will need to aim to maintain a minimum of approximately 60 per cent European works (70 per cent in the case of France) to ensure compliance. Channels would have to consider changing their schedule in order to maintain an adequate compliance margin if the European works definition was narrowed. Examples of these channels are shown in **Figure 31**.

Figure 31: Share of broadcast schedule by country of origin, sample of channels impacted due to need to maintain a minimum compliance margin, 2021 (% of broadcast time)



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

Source: Essential TV Statistics, Frontier and Oliver & Ohlbaum analysis

4.1.3 Affected broadcasters would have to change their scheduling mix, affecting revenues and sustainability

Narrowing the definition of European works would mean that affected broadcasters have to remove content from their schedules and replace it with content that they did not choose to show when scheduling to best meet consumer demand within their content budgets. The sections below explain how broadcasters would choose the content to remove and what content would replace it. It explains how these changes would have negative financial impacts on the broadcasters affected and would not lead them to commission further original content.

Broadcasters affected by the narrowed definition would seek to adjust their schedule while minimising the impact on viewers (and hence advertising revenues)

To minimise the adverse impact of a narrowed definition, broadcasters would seek to remove the non-compliant content that makes the lowest contribution to viewing of the affected channel. This will typically be content that is scheduled off-peak and at night. It would not be rational for the channel to remove popular content that delivers a large number of viewers, since it would lose the associated advertising revenues.

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

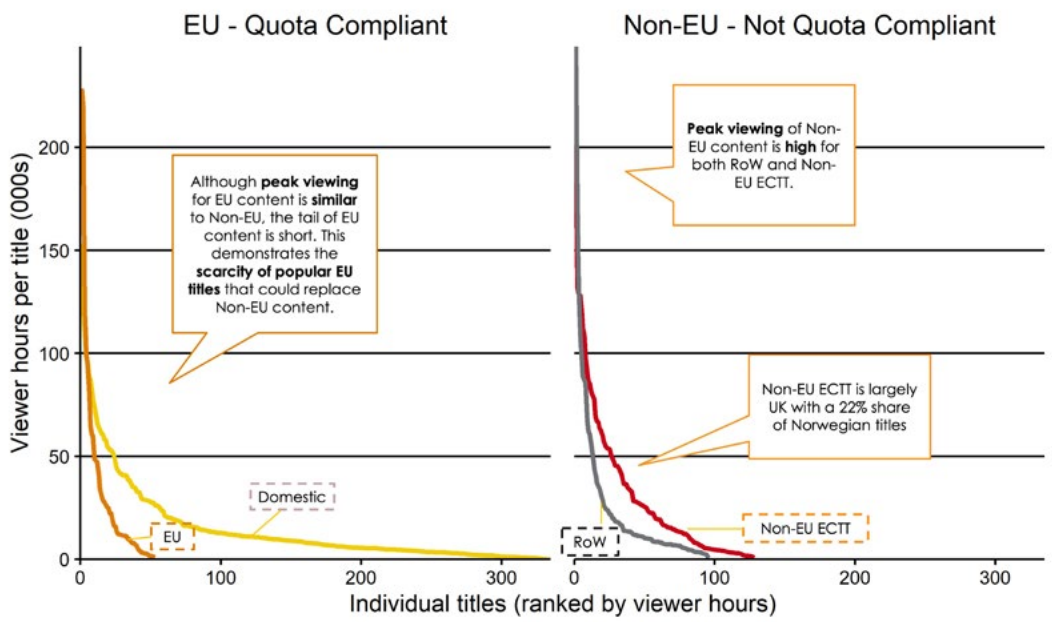
To hit the quota we would schedule more repeats of quota hitting shows in low impact areas of the schedule. It is only the customer that loses out, with not much benefit to producers. Also, we may see a shift from mid-level to lower cost EU content, trying to get more hours for the same cost.

– European Broadcaster

The approach broadcasters would take can be observed by examining the contribution that different content makes to a channel’s total viewing, and hence the value generated (for example via advertising). As explained in Section 3.2, broadcasters curate a selection of content including more expensive and popular domestic content and non-domestic acquired content. The broadcasters schedule the content to maximise audiences given the channel’s content budget.

Typically, across all channels, there is a clear distribution in how content contributes to each channel's viewing. There is a relatively small number of high performing pieces of content (so-called 'landmark' series) which, for major FTA channels, tend to be original drama. These are augmented by a larger number of lower performing but lower cost titles. This is illustrated below in **Figure 32** (a major FTA PSM channel in Denmark) and **Figure 33** (a specialist channel in Spain). For each channel, these figures plot the distribution of average viewers across pieces of content from countries that would be compliant if the European works definition was narrowed (domestic and other EU content) and content that would not be compliant (non-EU ECTT content and RoW content). Each title, by origin of content, is ranked by the viewing hours that it contributes to the channel.

Figure 32: Distribution of average viewers across content titles from different countries of origin (PSM, Denmark)



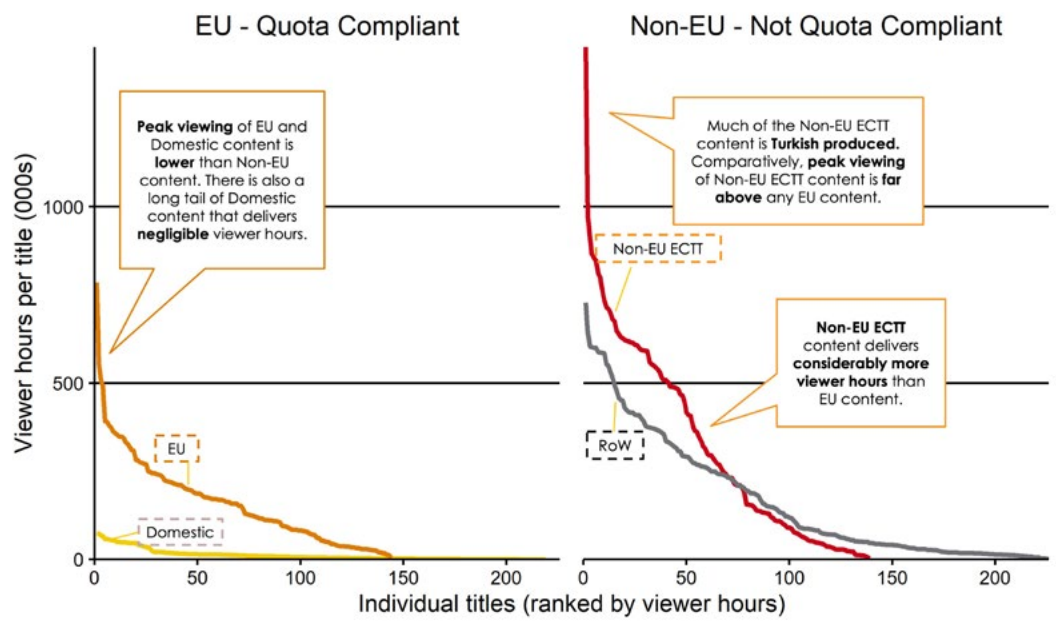
Note: Viewing data is for all the titles shown in four non-consecutive weeks of each channel's schedule in 2021. Titles are ranked in each plot by viewer hours (average viewers multiplied by the duration) within each country of origin group, with 0 on the horizontal axis being used as a label for the individual title in each plot with the highest number of viewer hours.

Source: Glance, Frontier analysis

These charts show that viewing tends to be driven by a small number of titles that 'carry' the rest of the schedule – bringing audiences to the channel who then might stay and consume other, less expensive but attractive content. In Denmark, for example, popular non-EU ECTT content included the Norwegian series *Den glemte polarhelt*, UK documentaries such as *Russia With Simon Reeves* and *Misha's Story* as well as feature films such as *Suite Francaise*, an international co-production from the UK with France, Belgium, Canada and the US.

For some channels, non-EU ECTT content provides these 'landmarks' for their schedule. For example, a specialist channel in Spain that is part of a major FTA broadcaster portfolio relies on a significant proportion of Turkish long running drama series, which are represented as part of the non-EU ECTT line in the "Non-EU" section of the chart below. **Figure 33** shows that for this Spanish channel, non-EU ECTT content – in this case Turkish dramas such as *Hercai* or *Cennet'in Gözyaşları*, drive a significant amount of viewing with other content performing well overall but without the standout audiences of the Turkish titles.

Figure 33: Distribution of average viewers across content titles from different countries of origin (specialist channel, Spain)



Note: Viewing data is for all the titles shown in four non-consecutive weeks of each channels' schedule in 2021. Titles are ranked in each plot by viewer hours (average viewers multiplied by the duration) within each country of origin group, with 0 on the horizontal axis being used as a label for the individual title in each plot with the highest number of viewer hours

Source: Glance, Frontier analysis

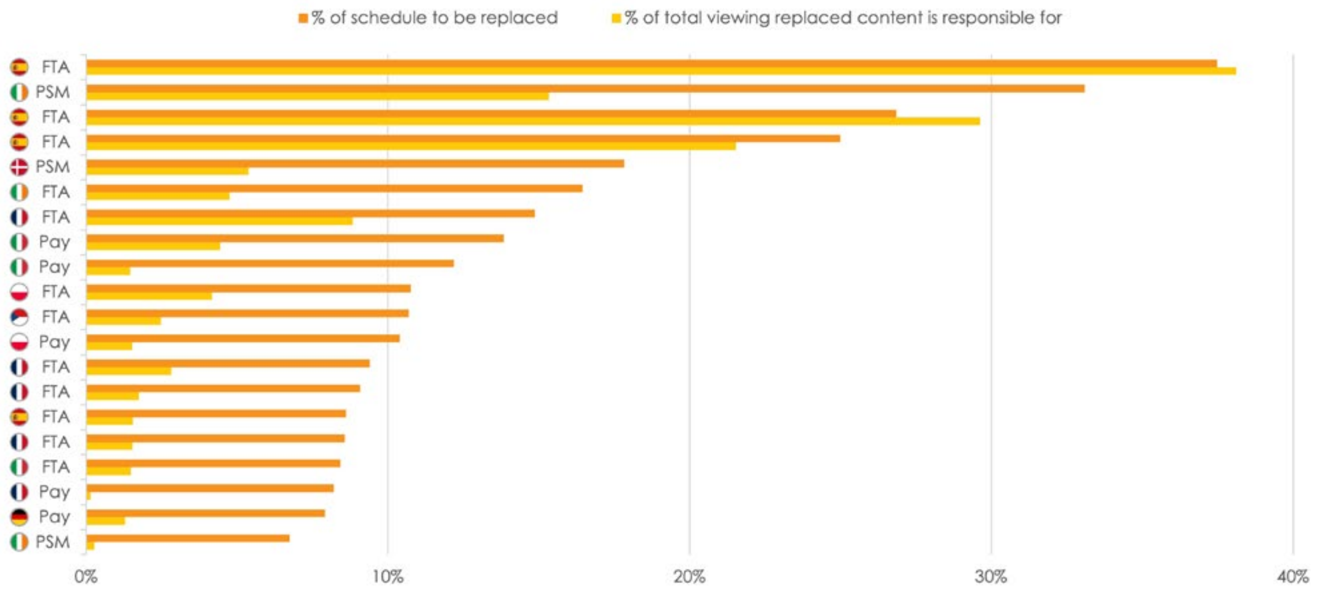
In the examples above, the lowest performing non-compliant (non-EU) content that will be removed would be towards the end of the distributions in the non-EU sections.

Figure 34 below compares the percentage of each channel's schedule that would need to be replaced with EU content to restore its share of European works to its current level before any narrowing of the definition, with the share of the channel's total viewing that this content attracts.[59] As the content that broadcasters would logically choose to replace would be low audience, low value content, the share of total viewing associated with it is significantly below the content's share of schedule for the majority of channels (and as explained below, it is the viewing of the content that is removed that will affect the revenues of the broadcasters). Instances where the viewing share is close to or above the schedule share, highlight the importance of non-EU content to these channels' schedules and revenues.

The disparity between the proportion of the schedule that would have to be changed and the proportion of viewing to which it relates illustrates some of the administrative compliance costs of the change. Broadcasters would have to make a considerable effort to change a relatively large proportion of their schedule, which relates to a low proportion of viewing.

[59] See methodology in Appendix

Figure 34: Share of channel's schedule that would need to be replaced compared to the share of channel's total viewing for which the replaced content is responsible



Note: This figure presents the top 20 impacted channels in the analysis (highest share of schedule that needs to be replaced to restore their share of European works to their current level before any narrowing of the definition). The analysis includes the 37 channels in our sample that would need to make schedule changes to restore their share of European works to their current level before any narrowing of the definition

Source: Essential TV Statistics, Glance data, Frontier analysis

Changes to the definition which 'ration' the use of non-EU content will have financial impacts for broadcasters

As broadcasters aim to optimise their schedules, the requirement for broadcasters to remove and replace non-EU content in the schedule will have financial impacts as it will force a move away from their optimised strategy. Broadcasters have stated that they would have to turn to 'second best' options to fill the schedule, which are less efficient at delivering viewers. In practice this might mean that a broadcaster would have to rely on an alternative piece of EU content that costs the same as the discarded non-EU content but attracts fewer viewers. Or alternatively that costs more to deliver the same number of viewers, though in this case it would have to make a compensating change elsewhere in the schedule in order to stay within its overall content investment budget.

In some specific cases, particularly if a channel has to make more significant changes to its schedule, there may be a limited supply of 'second best' alternative content available, meaning that it has to rely on content that is significantly less efficient.

> *If we have to replace UK content… it can be difficult to have content with the same cost and same audience level. This will be at the expense of the quality of our editorial offer and therefore of our subscribers.*
>
> **– CANAL+ Group**

> *Especially for film channels it 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**

Therefore, enforced changes to schedules due to a narrowed definition of European works would reduce the quality/appeal of the overall content offer, directly impacting the audience share of affected channels. This would in turn hit the advertising revenues of affected broadcasters both in the first year of implementation and future years. It could also potentially increase the propensity of some subscribers to churn from their pay TV package.[60] This could turn into a downward spiral where lower advertising revenues lead to less ability to invest in quality content, therefore further reducing advertising revenues. In relation to those channels funded through other public mechanisms (for example, licence fee funding, public grants) there would be a decrease in the return on public funds and the ability to deliver public service activities.

As set out above, 37 channels (27 per cent of the 148 in the sample) would have to change their schedules to restore their share of European works to its current level before any narrowing of the definition. In 2021, these channels generated on average TV advertising revenues of €88 million per channel.[61]

On average the impacted channels would have to remove 10 per cent of their schedules[62] and replace it with EU content.[63] The content that is removed represents 4 per cent of

[60] Pay TV packages provide access to wide bundles of channels, only some of which could be affected. Nonetheless the impact on certain pay TV channels that are important to some subscribers could affect subscriptions. However, the analysis in this report focuses on the impact on TV advertising

[61] This is €57 million per channel if the smaller set of channels in the analysis that would have to change their schedule to meet their markets' linear quota only are considered

[62] The impacted channels would have to remove 9 per cent of the relevant content, representing 2 per cent of viewing (i.e. excluding content that does not count towards quota compliance such as sports and news) if the smaller set of channels that would have to change their schedule to meet their markets' linear quota only are considered

[63] 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 following a change, 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

viewing and we assume (conservatively[64]) therefore the channels' advertising revenues.[65] Therefore, approximately €2 million of advertising revenues per channel would potentially be at risk in the first year after the definition change, on average in the first year.

Given the replacement content would be less efficient at delivering viewers (i.e. for a given level of investment the content delivers fewer viewers), this analysis conservatively assumes that the replacement EU content is 80 per cent as effective at delivering viewers, meaning there would be a reduction in viewers to the channels and therefore a likely fall in advertising revenues directly linked to this fall in audience[66] and a knock-on fall in content budgets. We have estimated the fall in advertising revenues over the first year after a narrowing of the definition. The resulting lower advertising revenues could then continue in future years leading to further losses. However, our analysis focusses on the impact in the first year after a narrowing of the definition.

As a result, on average TV advertising revenues per impacted channel could decline by €0.4 million over the first year after a narrowing of the definition – 1 per cent of their annual advertising revenues.[67] However, as shown by the range in the share of schedules that channels would need to replace – ranging from 1 per cent to 37 per cent in this sample, there would be significant variation around this average with some channels facing advertising revenue reductions of over €4.5 million in the first year.[68] The total loss in advertising revenues could amount to €15.2 million across the 37 channels affected in the first year.[69]

[64] The assumption that advertising is proportionate to viewing is conservative as advertising revenues are not always proportionate to viewing. 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 is removed from the schedule)

[65] In practice broadcasters will be constrained from removing only the lowest performing content. For example, a poorly performing piece of content may be part of an otherwise good performing series, or there may be contractual or other restrictions. Therefore, this analysis conservatively assumes that broadcasters remove some more attractive content to account for this constraint. Specifically that the value of viewing relates to: 50 per cent of viewing of two times the minimum amount of content that has to be removed for that channel.

[66] However, lower viewing of broadcasters directly affected 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 (VOD, social media, music streaming or podcasts). 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.

[67] The average TV advertising revenue impact across all channels (including unaffected channels that capture the 75 per cent of switching viewing) across the EU would be €0.1 million per channel in the EU

[68] If the smaller set of channels in the analysis that would have to change their schedules to meet their markets' linear quota only are considered, on average TV advertising revenues per impacted channel across the EU could decline by €0.2 million on average in the first year

[69] Given footnote 66, although the total loss in advertising revenues could amount to €15.2 million across the 37 channels affected in the first year, some of this could be re-captured by other channels, so the total sector impact may be smaller

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.

4.1.4 Some broadcasters may have to exit the market or run reduced services

There is a risk that channels with higher reliance on non-EU ECTT content become financially unviable if the definition of European works is narrowed. While for most channels the direct impact relates to audiences for 'marginal' content, narrowing the definition could contribute to a wider decline in viewing and revenues if scheduling changes harmed overall audience perceptions of the channel or brand. Some channels will be particularly affected. 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 that cater to specific audiences often contribute to the diversity and plurality of a country's broadcasting ecosystem.

The channels most at risk are those where close cultural ties mean they rely more on non-EU ECTT content, and where there is a limited supply of alternative content that could be used instead. This risk is magnified where the channel is already facing financial and funding constraints (for example from falling advertising revenues in a country and/or public funding constraints).

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.

For example, RTÉ 2 is the second channel from the largest Irish PSM, RTÉ, and focuses on serving younger audiences. It also carries children's programmes. It would be significantly affected by a narrowed definition, with a limited scope to find alternative substitutable content from the EU or domestically to replace it. These changes would occur in the context of ongoing 'significant challenges facing Irish media generally and public service broadcasting particularly', as noted by the Broadcasting Authority of Ireland.[70] This runs contrary to policy ambitions for a pluralistic, independent and diverse media that supports social cohesion and democracy.[71]

Were a channel's financial viability detrimentally affected such that it had to close, then this would have more profound impacts on both the range and variety of content offered, and the level of content investment within the EU. As well as smaller Member States like Ireland, interviewees raised concerns about channel viability in larger AV markets, including Poland.

> *For many TV channels, which show also British content, the reduction of non-EU ECTT programming would cause a decline of viewership and ultimately could finally lead to their elimination from the market.*
>
> **– Polish Commercial Broadcaster**

4.1.5 It is clear that narrowing the definition of European works would not lead broadcasters to commission new works

Broadcasters would not commission new content to manage the impact of a narrowed definition, rather they would seek to manage the change in a way that minimises costs and risks. This would mean that they remove marginal non-compliant content off-peak or overnight, and replace it with compliant content, the impact of which is analysed above. By definition this content is lower cost, and lower performing content. The change in quota definition will not suddenly make it more profitable – or feasible – to commission new domestic content (if such commissions were profitable, they would already take place).

[70] BAI Annual Review of Performance and Public Funding ("ARPPF") of RTÉ and TG4 2019. The BAI has since been dissolved, and Coimisiún na Meán has been established

[71] Report of the Future of Media Commission 2022 and government response

> *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**

Lastly, it might be suggested in this debate 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 consumer demand and forcing even greater reliance on less efficient content, including in primetime. This would have even worse knock-on effects on revenues and therefore content investment and broadcaster sustainability.

4.2 VOD services would not increase their investment in original EU content

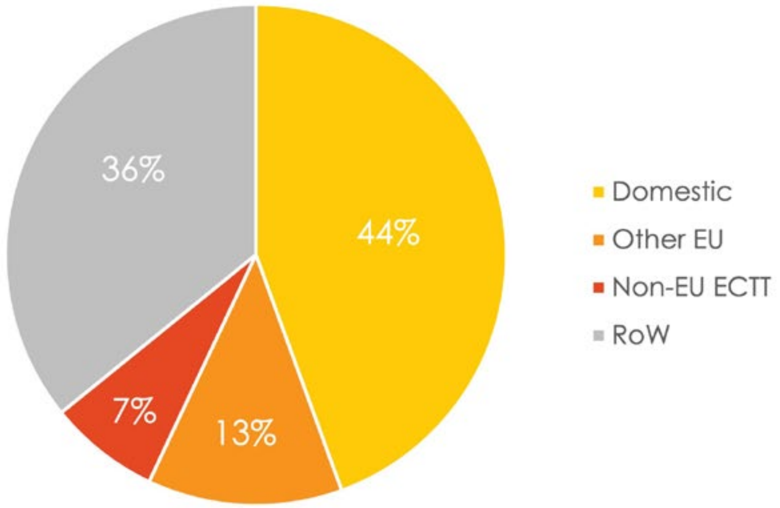
We have investigated how narrowing the definition of European works to exclude non-EU ECTT countries would affect EU content investment by European VOD services and global SVOD services. Noting that the AVMSD VOD quota was still being implemented at the time of this study, we looked at data on the composition of VOD catalogues as a snapshot of the market in 2021 only.[72]

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

As discussed in Part 3, European VOD services differentiate themselves through a greater focus on domestic content, and sometimes wider European content. Depending on catalogue composition at the time that the European works quota is in force, some European services would not need to make any changes at all if the European works definition was narrowed. **Figure 35** shows the average share of catalogue by country of origin across a sample of European SVOD services. Non-EU ECTT works provide an important complement to domestic and other EU works, allowing services to optimise how they meet European consumer interests.

[72] This is before the revised AVMSD 2018 came into effect in various Member States.

Figure 35: Average share of catalogue by country of origin, European SVOD services, 2021 (% of total titles)

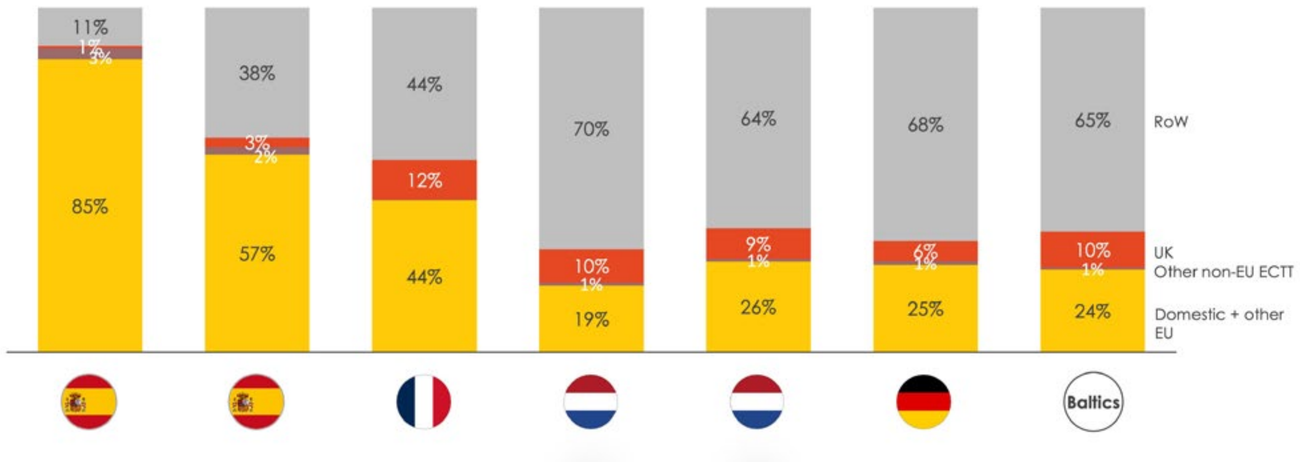


Note: Catalogue composition in December 2021. Title corresponds to single film or TV season

Source: Ampere Analysis, Oliver & Ohlbaum analysis

We have also looked at European VOD services available in different EU Member States in 2021. As illustrated in **Figure 36**, if catalogue composition remained similar and the European works definition was narrowed to exclude non-EU ECTT works, 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 production in response.

Figure 36: Share of catalogue by country of origin, local EU SVODs, 2021 (% of total titles)



Note: France has chosen to go beyond the AVMSD and requires a 60% catalogue share of European works for services established in France

Source: Ampere Analysis, Oliver & Ohlbaum analysis

European VOD services already optimise their investment in original content to best meet consumer demand within constraining content budgets. Fundamentally, these services would lack the budget to commission new content and would instead make changes to the long tail, removing some marginal, low cost non-EU acquisitions and, if necessary, possibly adding some low cost, non-exclusive EU catalogue content. This would result in no benefit to audiences and very little to the EU AV sector overall.

[we would just] buy a very cheap catalogue, which qualifies… that's the reality of it.

– European broadcaster owned VOD service

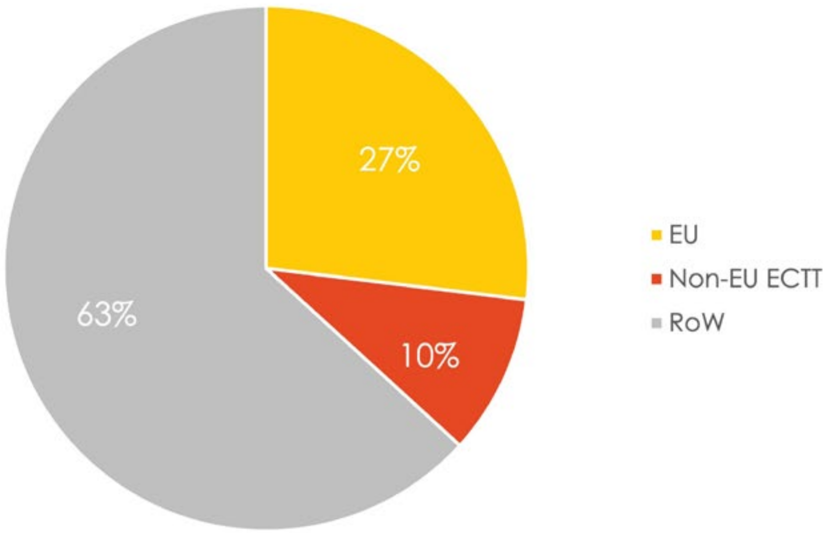
Given their national or regional audience base, these services have smaller budgets and catalogues than those of the major, generalist global SVOD services. A change to the European works definition could therefore result in less commercial flexibility for these operators to tailor catalogues to consumer demand than would be faced by global SVOD services. This would create an additional barrier for European companies in a highly competitive global market. Any suggestions of additional sub-quotas or rules on user interface design to accompany a narrowed definition would exacerbate the 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.

4.2.2 Changing the European works definition would not lead global SVOD services to commission new EU works

As seen in Section 2.3, total investment levels by global SVOD services have been growing strongly year on year in response to competition and consumer demand, including in original and acquired European works. **Figure 37** below shows that, on average, 37 per cent of works on global and multi-territory SVOD services in the EU are European works, of which 27 per cent are from EU Member States.

Depending on catalogue composition at the time that the quota is in force, if non-EU ECTT works were no longer included in the European works definition, some catalogue adjustments might be necessary by a few services – but as we will discuss, they would not further increase their investment in original European production.

Figure 37: Average share of catalogue by country of origin, global and multi-territory SVOD services in the EU, 2021 (% of total titles)



Note: Excludes services that launched in the EU in 2021, and thematic services focusing on single genres or content from a single country of origin. Multi-territory SVODs are present in multiple EU markets beyond a narrow geographic focus (e.g. excluding those only targeting Nordic countries). Since each service is present in various representative Member States, we have first averaged the catalogue composition of each service across those States; each service is therefore only counted once in our final average

Source: Ampere Analysis, Oliver & Ohlbaum analysis

Global VOD services would adjust the long tail of their catalogues to meet the quota

As seen, for global and multi-territory SVOD services there is significant investment in domestic content to attract and retain subscribers, and to differentiate services in the eyes of viewers. This is already being optimised in response to consumer demand and competition, given the confines of their overall content budgets and the economic realities of the businesses. For this reason, providers have said that investment is unlikely to increase in response to narrowing the definition of European works.

Instead, services would have to adapt the non-core part of their catalogues, removing the lowest value non-EU content from the long tail, and potentially adding a small volume of low value EU acquisitions to the long tail if needed for compliance purposes. At this low value end of the content library, these changes would not result in a material uplift in rights payments. They would not change investment strategies in non-EU ECTT countries either, since original content is already optimised to meet domestic demand there and would be just as valuable as before in markets outside of Europe.

> *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.*
>
> *If the definition was narrowed] 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**

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

4.2.3 As well as having no positive impact on investment, narrowing the definition could affect inward investment to the EU and the potential entry and growth of new VOD platforms

Although narrowing the definition of European works would have little direct impact on content investment strategies, it would represent an increase in the overall regulatory burden on the AV sector, as compared to the wider digital actors. It would reduce VOD services' flexibility to respond to consumer demand and market changes and risks affecting the overall perception of EU audiovisual territories as attractive and competitive places to invest. An increased regulatory burden and reduced flexibility could particularly hurt local European VOD services, which do not have all the resources that come with large economies of scale, further disrupting the EU AV ecosystem.

Moreover, narrowing the definition of European works may make it harder for new VOD platforms to emerge and compete in the EU, contrary to policy objectives. Compared to well-established services, new entrants often need additional flexibility to draw on a mix of content to create a compelling offer within more limited budgets, especially to attract new users. Imposing constraints (even if a Member State may exempt services while they are small) on the ability of new providers to grow and compete with established players would deny audiences the benefits of strong European competition and plurality.

5

The impact of narrowing the European works definition on EU production

This part explores how narrowing the definition of European works would impact EU production, across both independent producers and in-house studios. We consider the likely direct impact on the production sector in the EU and in different types of Member State (Section 5.1). We then test the potential for inward investment to move from non-EU ECTT countries into the EU (Section 5.2), and finally we explore the implications for EU producer access to international co-productions involving non-EU ECTT partners (Section 5.3).

5.1 There will not be any material benefits for the EU production sector

Narrowing the definition of European works would not lead to a meaningful increase in investment in EU content.

5.1.1 EU producers would see no material increase in demand for EU content

As we have seen, narrowing the definition of European works would lead to no overall increase in EU commissions and no meaningful impact on the number or value of EU acquisitions. Therefore, there would be little to no economic growth of the EU production sector or wider EU audiovisual sector because of a narrowed definition.

As discussed in Part 4, broadcasters faced with a change in definition would aim to minimise any deviation from their current (optimised) audience and programming strategy. Channels whose current schedule of domestic and EU content failed to meet the quota and provide a sufficient compliance margin would make changes at the margin, swapping the lowest value, lowest performing, content from non-EU origins for similar value content that is compliant. This would likely include repeats of domestic and EU content and any archive content for which broadcasters already have the rights. These schedule changes would result in negligible additional revenues for producers. However, all of the negative impacts on broadcasters described in Section 4.1 would feed through to the production sector, and wider EU audiovisual sector.

Similarly, VOD services already invest significantly in domestic content to attract and retain subscribers, and to differentiate their services in the eyes of viewers. For this reason, both European VOD services and global VOD services have said that investment is unlikely to increase in response to a change in the definition of European works. Instead, services would adapt their catalogues, removing the lowest value non-EU content from the long tail, and potentially adding a small volume of low value EU acquisitions to the long tail if required for compliance purposes.

There would not be an increase in EU commissions

Given the logical response strategies from European broadcasters and VOD services, which we outlined in the previous part, there would be no increase in EU commissions from narrowing the definition of European works. Commissioning decisions are more based around audience demand, competition between services, optimising content strategies within budget constraints and the quality of content than the European works definition.

Instead of driving investment, narrowing the definition could increase uncertainty for producers in what is already a risky sector. In fact, there is scope for the legal uncertainty associated with the proposed change to discourage investment in the sector for a period of years. Broadcasters and film studios know that the policymaking, legislative and implementation process can take over five years. During that period, commissioners, financers, public film funds and producers would not know the future value of the asset in secondary windows – this is a key piece of information that underpins the process of closing production financing. These uncertainties may mean that commissioners, financers and licensors are more reluctant to make investment decisions until the regulatory environment becomes more certain. This is discussed further in Section 6.3.

It follows that broadcaster and VOD service demand for production services would remain stable at best, and producers should not expect any increase in the volume of opportunities that they can compete for.

94 per cent of broadcasters and SVOD services interviewed believed a narrowed European works definition would likely **not increase investment into the EU**

There would be no material increase in the value of EU acquisitions

As described in Part 4, broadcasters (and potentially a few VOD services) might need to add some domestic or other EU content at the margins of their schedules or in the long tail of a catalogue as a result of a narrowed definition of European works. However, there would be no material increase in the value of EU acquisitions as a result.

As we have seen, if necessary to meet the quota, VOD providers can relatively easily flex their catalogue by removing marginal non-EU (including non-EU ECTT and RoW) content. Even if they also added some low cost EU acquisitions, this would be very minor and the impact on the value of EU acquisitions would be negligible.

For European broadcasters, some major pay TV group channels and specialist channels would likely need to make changes to their schedules if the definition of European works was narrowed, as well as some major FTA channels in smaller Member States. However, non-compliant content may be replaced with domestic repeats or archive content for which the broadcaster already has the rights. Even if a channel chose to make an increase in EU acquisitions to fill all of these slots, the increase in investment would not be material: it would only represent an incremental increase in EU broadcasters' 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.[73]

In total, our sample of channels from across the eight representative EU Member States that would need to switch their schedule to restore their share of European works to their current level before any narrowing of the definition, invested around €1.1 billion in acquired film and TV content in 2021 (this is only €111 million if the smaller set of channels that would meet their markets' linear quota only are considered).[74] Assuming 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 less viewed, less popular content) then narrowing the definition of European works would mean that such broadcasters would invest €28 million to €42 million less in non-EU content than they currently do.

Assuming 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, and that the remaining 50 per cent is spent on EU acquisitions, using the

[73] See Appendix description of methodology. This analysis assumes in the central case 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 to which they already have the rights. The remaining 50 per cent is from new EU acquisitions. For an upper bound we assume that 25 per cent are replaced by EU repeats at no incremental cost

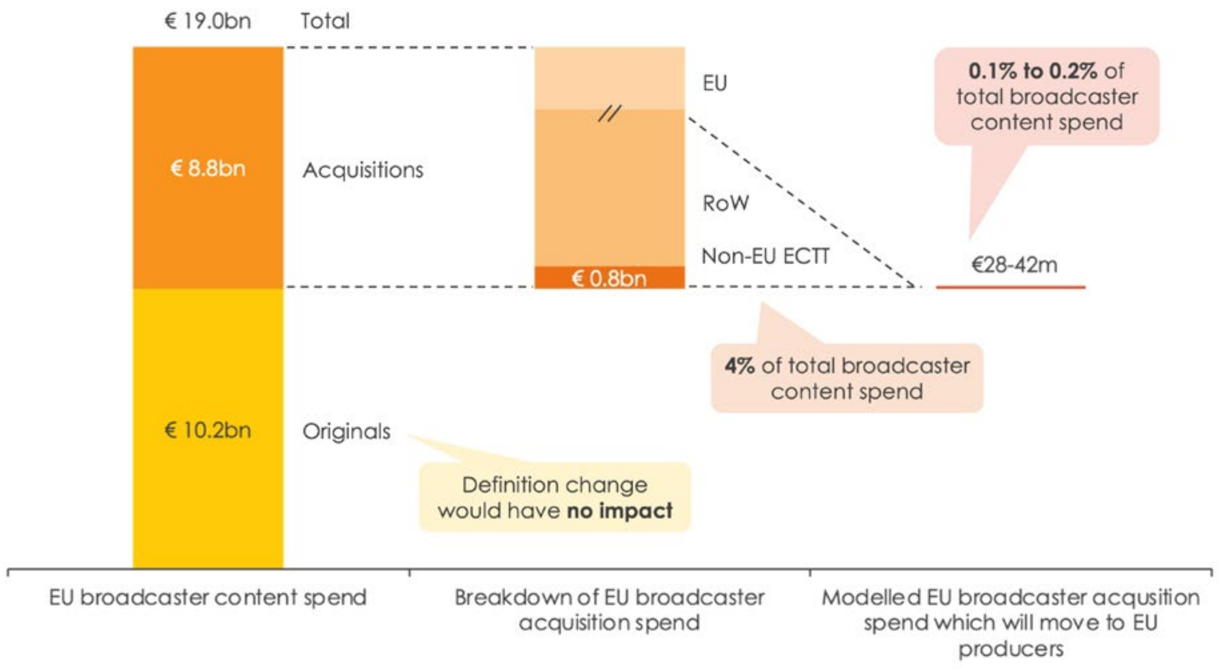
[74] Ampere Analysis data and data from company reports where needed

findings from the sample channels in the eight representative EU Member States considered as a guide to the EU wide impact,[75] narrowing the definition would only release €28 million to €42 million to invest in acquired EU content, or an incremental increase in EU acquisitions spend of 0.3 to 0.5 per cent.[76]

Figure 38 below shows total investment in TV and films by EU broadcasters in 2021. It outlines their spend on non-EU ECTT finished programmes and film sales. Not only does this highlight that EU broadcasters already make the vast majority of their investment in the EU, but that their spend on non-EU ECTT content is a small fraction of their investment. Investment in non-EU ECTT finished programmes and films sales represents 4 per cent of EU broadcasters' overall content spend. Combined with the analysis above, if narrowing the European works definition did release €28 million to €42 million to invest in acquired EU content, this would only result in a small shift in broadcasters' spend towards the EU of their non-EU ECTT and RoW finished programmes and film spend – 0.1 per cent to 0.2 per cent of total EU broadcaster content spend.

Although narrowing the definition might result in this small share of investment shifting, this small benefit would turn into a negative impact when considering the lost content investment from channels that might close.

Figure 38: Total EU content investment by type, with modelled flow of value to EU producers, 2021 (€ million)



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

[75] 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 EU-27 acquired film and TV spend from the eight Member States 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 EU-27. Data from Ampere Analysis with Frontier and Oliver & Ohlbaum analysis

[76] See footnote 73 for description of central case and upper bound

As explained in Parts 4 and 6, some channels may have to close either immediately or in the medium term as they became unviable following a definition change as non-EU works form a key part of their business model. This would mean the loss of their total content investment in the EU. For example, if one channel that would be highly affected by the definition change were to close this would lead to an estimated reduction of investment in EU content (i.e. domestic commissions and EU acquisitions) of €52 million. If four of the most affected channels were to close, this would lead to a reduction in investment in original EU content of €96 million,[77] plus additional losses in investment in acquired EU content.

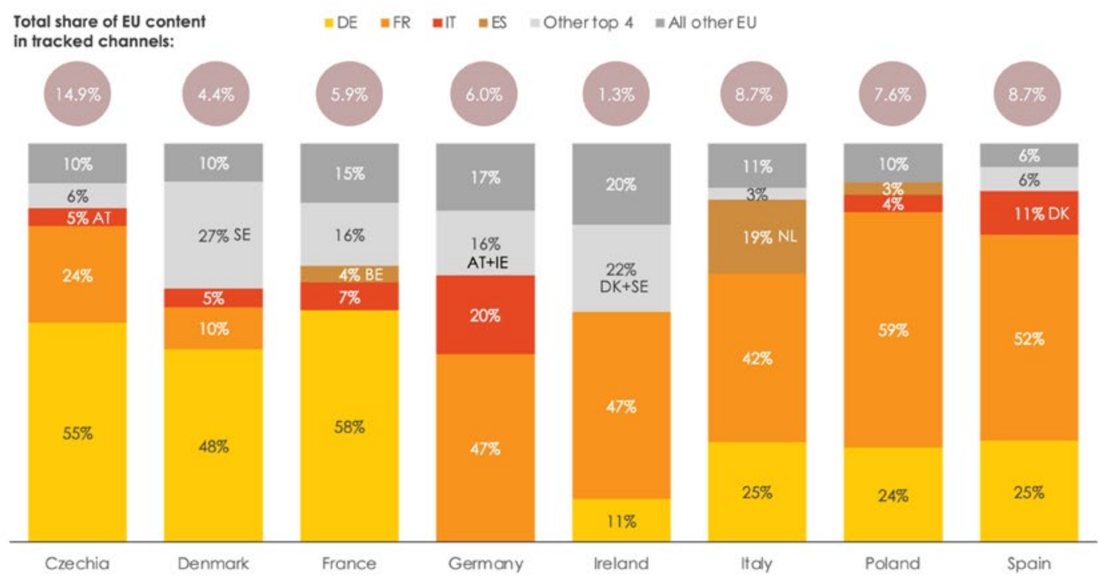
Therefore, the net impact on the level of investment in EU content would likely be negative to the EU production sector as even the impact of one channel closing would be above the estimated €42 million upper bound gain from additional EU acquisitions. In addition, as discussed in Section 4.1, some other broadcasters' revenues would suffer, affecting their content budgets.

5.1.2 Even if there was a small increase in EU content investment, this would only benefit a few large EU Member States

Even if there was a small increase in investment – in lower cost, lower quality EU acquisitions at the margin of schedules – this would not equally benefit territories across the EU, but only a few, already large EU AV markets. Our analysis of schedules shows that broadcasters typically only acquire programmes from the few largest EU AV markets.

As seen in **Figure 39**, France and Germany appeared in the top four countries of origin for EU content across the channels we examined in our representative Member States. Combined, these two countries accounted for 75 per cent of all EU schedule share.[78] Italian, Spanish and Scandinavian content features in broadcast schedules to a lesser extent. The broadcast share (and hence acquisition spend) on content from any other EU Member States is minimal.

Figure 39: Breakdown of EU share of schedule by country of origin, all day, eight representative EU Member States, 2021 (% of broadcast time)



Note: Full year 2021. All tracked channels. Excluding non-qualifying categories such as news and sport
Source: Essential TV statistics, Oliver & Ohlbaum analysis

[77] These figures represent original content investment by these channels in 2021

[78] Sum of average schedule share across our representative Member States (excluding where this content counts as domestic)

Interviewees confirmed this trend, and explained how this reflects consumer demand.

> *Media service providers base their programming on audience demand and the availability of creatively attractive content. These are disproportionately available in the few major audiovisual markets. Restricting the definition would therefore probably lead to an even greater concentration of supply on works from large EU audiovisual markets.*
>
> **– Broadcaster Trade Body**

> *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 operating 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.*
>
> **– CEE Broadcaster**

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

5.2 There is no reason to believe that narrowing the definition of European works would increase EU inward investment

Like many EU Member States, non-EU ECTT countries receive inward investment in TV and film production by international studios. Inward investment is any production (film or TV) that is majority financed and controlled from outside the territory where it is produced. It has been suggested that, if the definition of European works was narrowed, international studios might transfer this inward investment production into the EU, benefiting the EU production sector. However, there are many reasons why this is unlikely to be the case.

5.2.1 Non-EU ECTT countries make a vital contribution to overall European production capacity; this could not be accommodated in the EU

In some EU countries, most notably Spain, there is new investment in production infrastructure and new commitments to skills and training, supported by a comprehensive industrial policy plan. Other Member States, such as Austria, Greece, Italy and Malta, have recently enhanced the level of their screen production incentives. These measures help to attract and support new productions, with Spain benefitting from significant investment by global SVOD services, which now accounts for 38 per cent of all investment in Spanish content. However, in many cases, as reported to us in interviews, demand is outpacing the expansion of infrastructure and the availability of skilled crew and talent; many EU countries are already at capacity and would not be able to take on the additional production currently undertaken in EU-ECTT countries. Exceeding capacity creates cost inflation and resource shortages, including for domestic productions. AV sectors need time to expand in a sustainable and balanced way.

5.2.2 The cultural specificity of a production will also determine inward investment decisions

Many feature films are made in a non-EU ECTT country because the content is culturally rooted in that place, including where they are destined to compete for audiences both domestically and internationally.[79] As shown in **Table 7**, when looking at the 10 of the most commercially successful British film productions since 2018 whose main producer is a British company that is wholly or partially owned or controlled by a US company, the resulting productions are overwhelmingly culturally British, featuring British actors, directors, writers and locations.

[79] Ipsos, London Economics and Olsberg•SPI, Creative Industry Tax Reliefs Evaluation,2022, P14

Table 7: Sample analysis of the extent to which film productions by British producers with US inward investment are culturally British, 2018-2023

Original Title	Setting	Writer	Director	Star	Based On Pre-Existing British Narrative	
Bohemian Rhapsody	Yes	No	No	No	Yes	True story
No Time to Die	Yes	Yes	No	Yes	Yes	Continuation of British book and film series
Fantastic Beasts: The Crimes of Grindelwald	No	Yes	Yes	Yes	Yes	Continuation of British book and film series
1917	Yes	Yes	Yes	Yes	Yes	Inspired by true events
Rocketman	Yes	Yes	Yes	Yes	Yes	True story
Mary Queen of Scots	Yes	No	Yes	Yes	Yes	True story
Cats	Yes	Yes	Yes	Yes	Yes	British musical
Fighting with My Family	Y/N	Yes	Yes	Y/N	Yes	True story
The Kid Who Would Be King	Yes	Yes	Yes	Yes	Yes	Based on British mythology
The King's Man	Yes	Yes	Yes	Yes	Yes	Continuation of British film series
Total	**9/10**	**8/10**	**8/10**	**9/10**	**10/10**	

Note: All UK-US inward investment films captured in the top 200 UK films by European box office success (with additional films in the same series removed, ignoring co-productions involving more than two co-producing countries, and independent films removed)

Source: Lumiere, Oliver and Ohlbaum analysis

Perhaps most notably, all 10 films in our sample are based on a British true story or are adaptations/sequels to existing British properties. It would be unreasonable to assume that such productions would move to the EU as a result of narrowing the definition of European works.

Frankly the intellectual property of [these projects] necessitated us being in the UK.

– Inward investor quoted in the UK Government Response to Consultation on Audio-Visual Tax Reliefs

The same is true when looking at feature films produced in other non-EU ECTT countries. Of the six feature films produced primarily in Norway with US inward investment between 2018 and 2023, seen in **Table 8**, four were set in Norway and five had Norwegian writers. As with the UK productions, these films are all culturally rooted in Norway, particularly in terms of their setting, narrative and key contributors.

Table 8: Sample analysis of the extent to which film productions by Norwegian producers with US inward investment are culturally Norwegian, 2018-2023

Original Title	Setting	Writer	Director	Star	Based On Pre-Existing Norwegian Narrative	
Polaroid	No	Yes	Yes	No	N/A	Original Story
The Painter and the Thief	Yes	Yes	Yes	Yes	Yes	True story (documentary)
Gunda	Yes	No	No	N/A	Yes	True story (documentary)
Mortal	Yes	Yes	Yes	Y/N	Yes	Norse mythology
22 July	Yes	Yes	No	Yes	Yes	True story
Blue Code of Silence	No	Yes	Yes	No	No	True US story
Total	**4/6**	**5/6**	**4/6**	**2/6**	**4/6**	

Note: All NO-US films captured in the top 200 NO films by European box office success

Source: Lumiere, Oliver and Ohlbaum analysis

5.2.3 For major inward investment films conceived for theatrical release, European works status is not a factor in production funding

Such films are expected to generate the vast majority of their revenues during their first exploitation, usually theatrical release. Box office success is also a determinant of future secondary revenues (films that perform well at the box office will be able to charge higher licensing fees), so the primary concern for producers is making as compelling a film as possible in whichever location best enables this.

Secondly, these (blockbuster) films are expected to be highly effective at meeting consumer demand across all exploitation windows, including secondary exploitation on European and global SVOD services in the EU, and for European broadcasters. It is their viewing and revenue performance against cost that justifies their inclusion in peak time schedules and catalogues.

5.2.4 Inward investors also choose to produce in a territory to compete for domestic audiences

As we have seen, European and global SVOD services are investing strongly across Europe (in both EU and non-EU ECTT countries) in order to compete effectively for consumers in each territory.

Taking the UK as an example, in 2022 high-end TV was responsible for €4.25 billion of inward investment directed at 107 productions according to the BFI.[80]

This €4.25 billion can be split into productions aimed primarily at the UK domestic market and those intended for both domestic and international audiences. As previously seen in **Figure 11**, SVOD investment in UK original content was 18 per cent of total original content investment in 2021 – a figure that is in line with the average for the top 10 European AV markets. This share of total investment allows SVOD services to compete effectively against local UK broadcasters – which are the cornerstone of content investment in the UK because it is a highly competitive domestic market. While such productions may also be popular with audiences internationally, they are British in setting and in flavour including *The Crown* and *Top Boy* for Netflix, and factual programmes *Clarkson's Farm* and *All or Nothing* for Amazon Prime Video. Such investment is unlikely to be affected by narrowing the definition of European works.

The HETV inward investment that is less closely focused on UK domestic audiences is equally unlikely to change locations if the definition of European works was narrowed. Rather these productions chose to film in the UK due to the other factors such as script requirements (e.g. *Bridgerton*), infrastructure and skills, tax reliefs, and cultural factors to best support the success of the projects in question.

Figure 11 also shows that SVOD investment in original content in Norway in 2021 was around €20 million. The same major arguments apply as to why such investment would not shift into the EU – much of this investment is aimed at competing for domestic audiences, while serving other consumers, or is culturally specific, and the rest is based there due to the unique production environment. A prominent example of a work originating in Norway is *Ragnarök*. *Ragnarök* is filmed in the Norwegian language and reimagines Norse mythology in the present day. It premiered on Netflix in 2020 and its third and final season is expected to be released in 2023.

Similarly, Turkish productions have a very distinct style and are a very culturally specific product. *Ethos* (Bir Başkadır) is a Turkish drama series that tells the story of a group of characters from dramatically different socio-cultural backgrounds, and deals with the diversity present in Turkish society.

Both series were well-received by critics and local as well as international audiences, and are extremely culturally specific programmes. In both instances, as well as many others, it would be illogical to produce these programmes outside of Norway or Turkey, respectively.

[80] Film and high-end television programme production in the UK: full-year 2022, BFI

5.3 International co-productions are a key part of the European audiovisual ecosystem

The point that narrowing the definition of European works would not generate meaningful increased investment in EU content is just one element of the overall impact. We must also consider the impact on existing levels of investment – it cannot be assumed that existing investment levels would be sustained and simply redistributed. In this section we show how narrowing the definition could contribute to a decline in access to international co-productions for EU producers.

5.3.1 Access to non-EU ECTT and global co-production partners or investors makes European television production stronger

International co-productions enable European producers to gain from an exchange of ideas, talent and skills across European borders and with the rest of the world. In television, international co-productions also allow broadcasters in different countries to share in the costs and risks of production, creating films and programmes of a scope and quality unachievable when working alone. International co-productions thus typically represent the most ambitious and expensive European content. Given the intense competition for audiences, access to such content has become vital to the sustainability and growth of broadcasters and VOD services in Europe.

For commissioners and co-producers, international co-productions present the opportunity to provide high-end TV content to their audiences in a way that offers specific advantages over an acquisition model, including:

- This shared funding model typically allows all co-production partners to retain first-run exclusive rights in their respective territories to content they could otherwise not afford alone – allowing European consumers to benefit from more value on screen
- Co-producers have a degree of editorial input meaning that the content is produced in a way that is more relevant to and valued by their audiences
- Co-producers can brand the content as their own in in their home market, which adds to the broadcaster's brand and reputation
- Co-producers may benefit from a co-production partner's existing third-party funding and distribution relationships and knowledge, including in global markets.

Co-productions may also benefit a country's wider AV ecosystem by facilitating the use of locations, crew or other production infrastructure and services in the co-producer's domestic market.

5.3.2 As content costs rise, commissioners are increasingly relying on international co-productions to fund premium television content t

Traditionally, many international television co-productions were between neighbouring countries sharing the same language (e.g. France and Switzerland, Ireland and the UK). Irish VOD catalogues have a higher share of UK co-productions than VOD catalogues in any other EU Member State.[81] Such co-productions are also essential to broadcasters; *Calum Cille: An Naomh Dàna* (TG4/BBC Alba), marking 1,500 years since the birth of one of Ireland

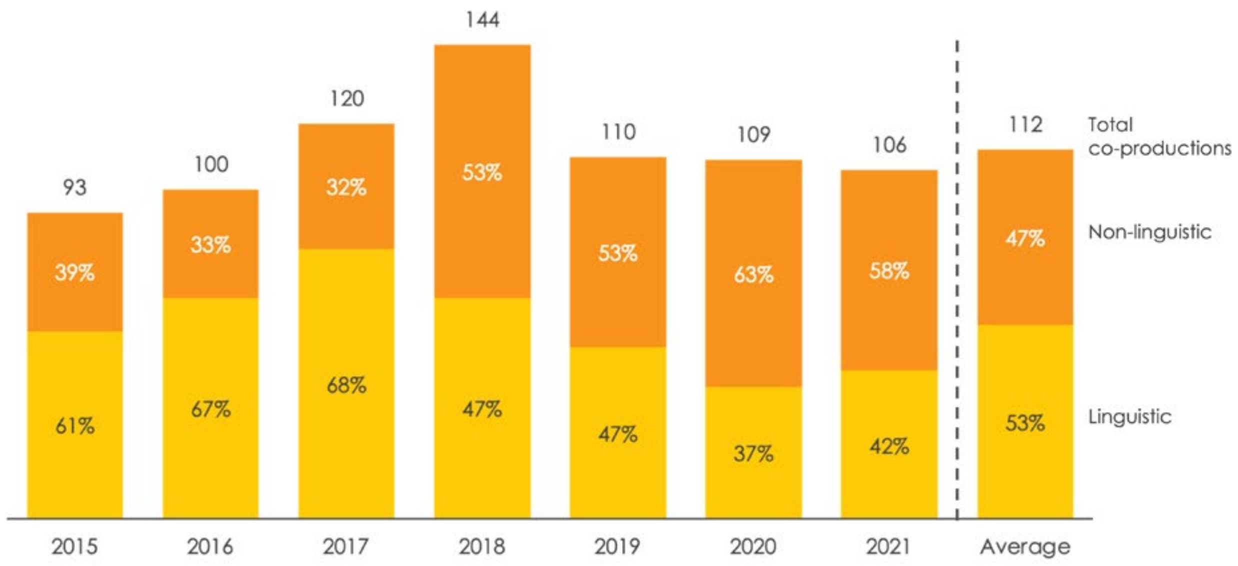
[81] Deloitte and SMIT, 'Study on the practical implementation of the provisions of the Audiovisual Media Services Directive, Final report', commissioned by the European Commission, 2023

and Scotland's most important saints, is a recent example of an Irish-language broadcaster co-production that relied upon a patchwork of Irish and UK funding[82]. 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…".[83]

In addition, as the ambition and cost of premium content has increased along with audience expectations, European broadcasters have looked further across the region for additional partners to contribute funding as well as skills and know-how. Such cross-border and cross-language productions also play a key role in fostering European cultural exchange and shared European values.

EAO analysis of international co-productions shows that in 2021 there were over 100 international fiction co-productions in Europe and that non-linguistic co-productions have gradually increased to represent close to 60 per cent of all co-productions (**Figure 40**).[84]

Figure 40: Number of European international TV co-productions, fiction, by linguistic connection, 2015-2021



Note: "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)

Source: European Audiovisual Observatory analysis of The European Metadata Group data

Figure 41 shows the number of non-linguistic international television co-production partnerships in 2021, and the important role of non-EU ECTT partners. The UK is one of the most interconnected production hubs, contributing to numerous co-productions with

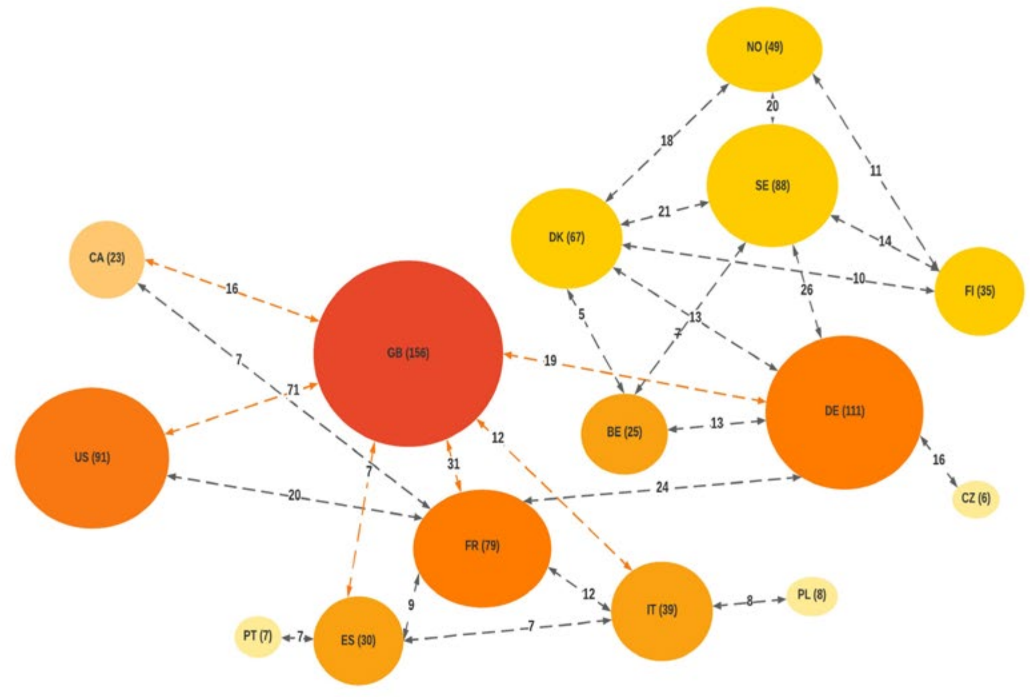
[82] Produced by Abú Media and MacTV with funding from Northern Ireland's Screen's Irish Language Broadcast Fund, TG4 and MG ALBA and shown on TG4 and BBC Alba

[83] 29 November 2021, 'BBC ALBA and TG4 collaboration to bring the story of St Columba to life in new documentary', **mgalba.com**

[84] Audiovisual fiction production in Europe, European Audiovisual Observatory, 2023. Linguistic co-productions are those between neighboring countries sharing a language (DE-AT, FR-BE, FR-CH, GR-CY, BE-NL, DE-CH, CZ-SK, GB-IE)

France, Germany, Italy and Spain. In 2021, there were 31 French-UK co-productions, the highest number for any pair of European countries. In addition, the UK provides a major link between Europe and global co-production partners (US shown here), facilitating an exchange of knowledge, skills and innovation that benefits the whole of Europe. Norway is also highly interconnected with its Nordic neighbours, and was involved in 18 co-productions with Denmark, 20 with Sweden and 11 with Finland. Any disruption making it harder for EU Nordic producers to work with Norway would have implications for production across the whole region. The same considerations would apply to Iceland (not shown here). Co-productions are particularly important for smaller EU Member States – broadcasters are able to co-produce more expensive and high-quality content that they would not be able to commission alone.

Figure 41: Number of partnerships in non-linguistic European international TV fiction co-productions, 2021



Note: This excludes "linguistic co-productions", i.e. 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'

The value of co-productions with partners outside the EU is highlighted clearly through examples. *The Tunnel* is 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.

In feature film, Ukrainian co-productions such as the recent *A House Made of Splinters* (Ukraine, Denmark, Sweden, Finland) have achieved significant critical and commercial success – benefitting all the European countries involved. Ukrainian projects are heavily reliant on co-production funding and are a key source of cultural resistance and documentation of the ongoing Ukrainian conflict.

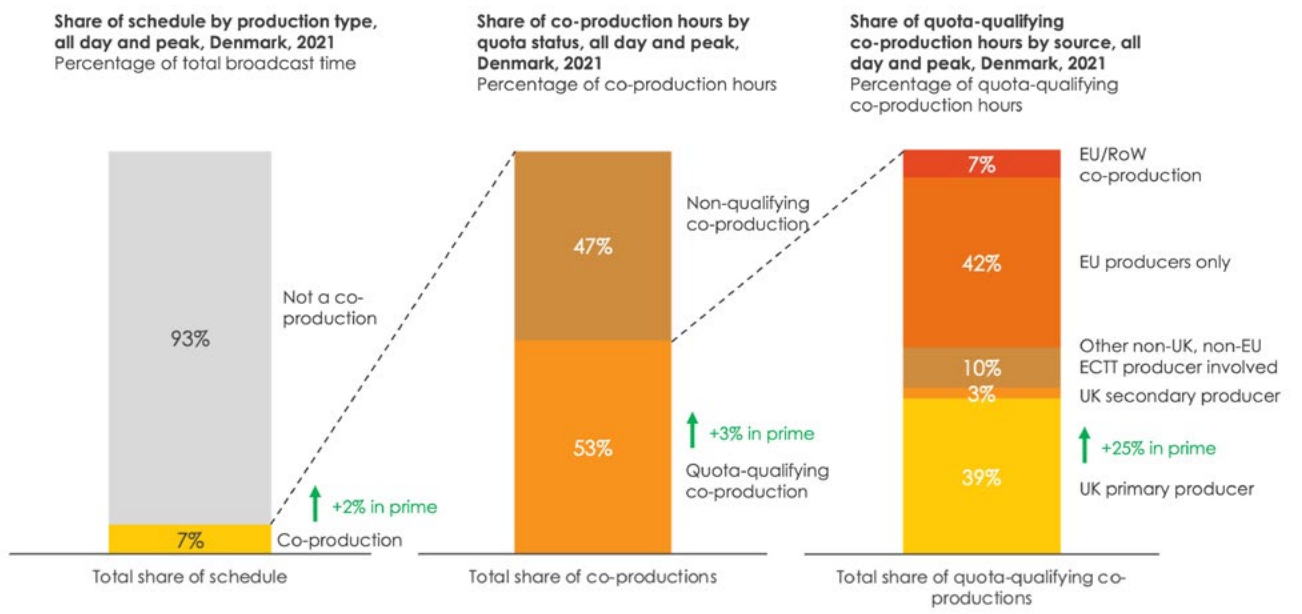
Section 8.4 in the Appendix explores these and other examples in greater detail and shows how EU non-EU ECTT co-productions have brought benefits to the EU production industry that could be lost if their European works status was uncertain.

5.3.3 Given their quality, co-productions are an important part of broadcasters' schedules

Our schedule data analysis highlights the important role of co-productions in broadcasters' schedules. On average, 11.8 per cent of our sample channel schedules in the eight representative EU Member States are co-productions, rising to 13.0 per cent of their peak time schedule[85], and these are usually the biggest, premium shows. These high-budget, high-quality co-productions deliver a high share of viewing and help elevate the overall appeal of a brand. BBC Studio's first scripted co-production with ZDF The Chelsea Detective, for example, received critical acclaim across Europe and in Germany it achieved an audience 2 per cent higher than ZDF's average market share.[86] Co-productions are similarly important to VOD services.

If we take Denmark as an example (**Figure 42**), we can see how non-EU ECTT countries the UK, Norway and Switzerland are a key part of the European co-production ecosystem. The UK is involved in 42 per cent of all qualifying co-productions, and 68 per cent of all peak time qualifying co-productions. Not including co-productions for which the UK is also a partner, other non-EU ECTT countries are involved in a further 10 per cent of the total and 5 per cent in peak – Norway and Switzerland are the main contributing countries here.

Figure 42: The role of non-EU ECTT countries in European co-productions, Denmark linear schedules, 2021



Note: Schedule analysis of 4 weeks in 2021, all tracked channels

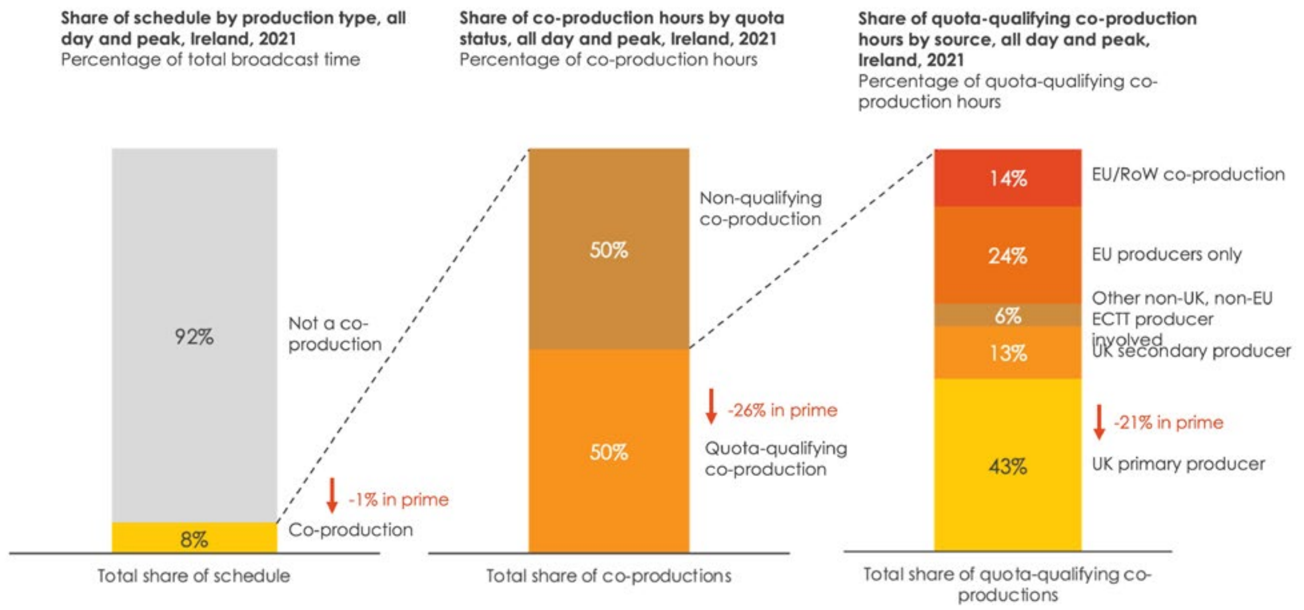
Source: Essential TV statistics, Oliver & Ohlbaum analysis

[85] Essentials TV statistics, Oliver & Ohlbaum analysis

[86] 28 February 2023, 'BBC Studios and ZDF extend strategic partnership', BBC Media Centre https://www.bbc.co.uk/mediacentre/bbcstudios/2023/bbc-studios-and-zdf-extend-strategic-partnership

The role of international co-productions is even more apparent in Ireland (**Figure 43**) where the UK is involved in 56 per cent of all European works qualifying co-productions; albeit the role of these co-productions in peak schedule is reduced.

Figure 43: The role of non-EU ECTT countries in European co-productions, Ireland linear schedules, 2021



Note: Schedule analysis of 4 weeks in 2021, all tracked channels. Excluding Irish-language content

Source: Essential TV statistics, Oliver & Ohlbaum analysis

Beyond providing schedule hours, these Ireland-UK co-productions punch well above their weight in terms of share of viewing, notably higher budget scripted drama and comedy. This can be seen below in **Figure 44**; drama co-production *Normal People*, for example, delivered RTÉ One audience shares 13 per cent higher than the channel prime time average, and comedy co-production *Mrs Brown's Boys* achieved an uplift of 12.4 per cent for its Christmas specials. All the co-productions shown in **Figure 44** also performed exceptionally well on-demand, driving traffic to RTÉ Player and boosting engagement beyond the linear schedule. Such programming delivers both consumer and brand benefits for broadcasters, which supports commercial yield. They also support Irish IP and wider creative economy growth, supporting jobs and skills. Absent the European works classification, such co-productions would be at risk and may not get green lit. This includes co-productions between, for example, RTÉ and BBC Northern Ireland, and between TG4 and minority language broadcasters S4C (Wales) and BBC Alba (Scotland). Creating an unsupportive regulatory environment may have ramifications for the aims of the Good Friday Agreement.

Figure 44: Performance of Irish-UK co-productions shown on RTÉ One versus average prime time share, select series, 2019-2022 (consolidated viewing, share of all individuals 4+)

Note: Average share across all series episodes. EAO data on RTÉ One average prime time share not yet available post 2019, however there has been minimal shift in share from previous years. Series One and Two of Young Offenders shown on RTÉ Two. These co-productions also typically aired on the BBC in Ireland, which results in a dampening of RTÉ audience share

Source: RTÉ, European Audiovisual Observatory, Oliver & Ohlbaum analysis

This is not a phenomenon exclusive to smaller AV markets or those with close cultural ties to the UK; in the larger AV markets of Poland and Spain, for example, the UK is involved in 43 per cent and 48 per cent of qualifying co-productions respectively. Other non-EU ECTT countries also play a significant role in certain markets; Swiss co-productions are especially prevalent in France and Germany for instance.

5.3.4 The EU production sector would suffer if the incentives to co-produce with non-EU ECTT partners were reduced

If the European works definition was narrowed to exclude non-EU ECTT works, international co-productions with majority partners from non-ECTT countries would no longer qualify for European works status.

In interviews, some EU broadcasters said that they would be reluctant to be a minority partner in co-productions that would not qualify as a European work. 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. Instead of investing in a film or programme that they hope will be a big box office or primetime success and, in any event, will certainly contribute to other broadcasters' European works quotas when licensed in the secondary window, they would be wholly relying on the former. They would weigh this up against, for example, the option to wait and try to license the completed work as an acquisition once its actual performance is known.

In Spain, we heard how uncertainty is already impacting the decision-making process of pay TV broadcasters, causing them to postpone or withdraw from co-production investments out of concern that these programmes will no longer qualify as European works. Although there has been no alteration to any definition, the current debate surrounding this issue has increased the perceived risk around co-productions that involve a non-EU ECTT partner, which has made small and medium-sized channels reluctant to commit to projects that would have otherwise benefited the European production sector.

At the same time, if non-EU ECTT players had to be reduced to minority partners in order to secure European works status, closing production finance may become a problem. Such productions may cease to qualify for public funding or fiscal incentives from the non-EU ECTT countries. For feature film, majority non-EU ECTT co-productions involving minority EU partners made under the Eurimages scheme would no longer qualify as European works under a scenario where non-EU ECTT countries were excluded from the European works definition. The same applies to such productions made under the European Convention on Cinematographic Co-production. Given international co-productions often require a patchwork of funding from multiple sources, any change that limits the funding available could have a large knock-on effect on the viability of the project. Meanwhile, EU-based partners would have to take on majority funding and that may not be feasible within constrained content budgets.

Some of the content would likely be made anyway but with global co-production partners, shifting the centre of gravity away from the EU. For example, a minority EU producer may be replaced by a US, Canadian or South Korean production company depending on the project. Of course, such international relationships already exist and would be strengthened in this scenario. For example, BBC Studios' *Les Misérables* was filmed in France and Belgium but as a co-production with PBS (US). While the content may subsequently become available in the EU it would be without country-related branding or cultural adaptation. *Les Misérables* was subsequently sold into a number of EU Member States.

Fewer European co-productions and fewer co-productions with non-EU ECTT partners would mean that EU broadcasters and the EU production industry would lose the associated benefits of these productions. For example, EU producers could lose access to skills and economic opportunities. If a producer from an EU country is no longer a co-producer on a piece of content (even if it would have been minority partner) then that country may no longer be considered as a place to consider filming or for post-production activities. More specifically, globally renowned and highly specialised audiovisual hubs exist in certain non-EU ECTT countries, to which EU producers would lose their privileged access and which cannot be easily replicated. This includes Natural History in Bristol, UK, which has developed over 70 years.

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 jeopardise established co-production relationships and, moreover, the economic development of individual EU AV markets, as international co-productions with their high production values 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**

6

Additional dynamic impacts of changing European works policy

As well as impacting immediate and shorter-term content and scheduling decisions, narrowing the definition of European works could affect European broadcaster and VOD service business models leading to longer term impacts for them and for the wider European audiovisual ecosystem. In this part, we briefly set out what these impacts might be, in particular considering: the impact of potential channel closures, the acceleration of the transition to VOD viewing, the impact on local production resources, and risks around reciprocity and legal uncertainty. We consider each in turn below.

6.1 Expected channel closures triggered by a narrowed definition would have wider impacts

Channels that require schedule changes because of a narrowed European works definition may be forced to change marginal content in their schedules from non-EU ECTT content to EU content that they would not otherwise wish to carry considering consumer demand. This shift in content mix may not be feasible for some channels – because obtainable replacement content cannot deliver sufficient viewing for the available budget – and this would likely force some channels to close. We comment on the more immediate direct impacts of likely closures in Section 4.1.4.

Even for channels and broadcasters able to survive in the short term, their financial performance will necessarily be worse than under their current 'optimised' schedule and, for others, the negative impact could increase over time as lost revenues build up. Narrowing the definition of European works could trigger a downward spiral in revenues and investment, which could lead to these channels having to consider their viability in the medium to long term.

Fewer channels means lower investment in content generally: fewer commissions and acquisitions, which will hurt consumers (the plurality and diversity of what is on offer) and producers (lower revenues).

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

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 the viewers' needs and thus also to ensure an adequate refinancing basis…

– VAUNET

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

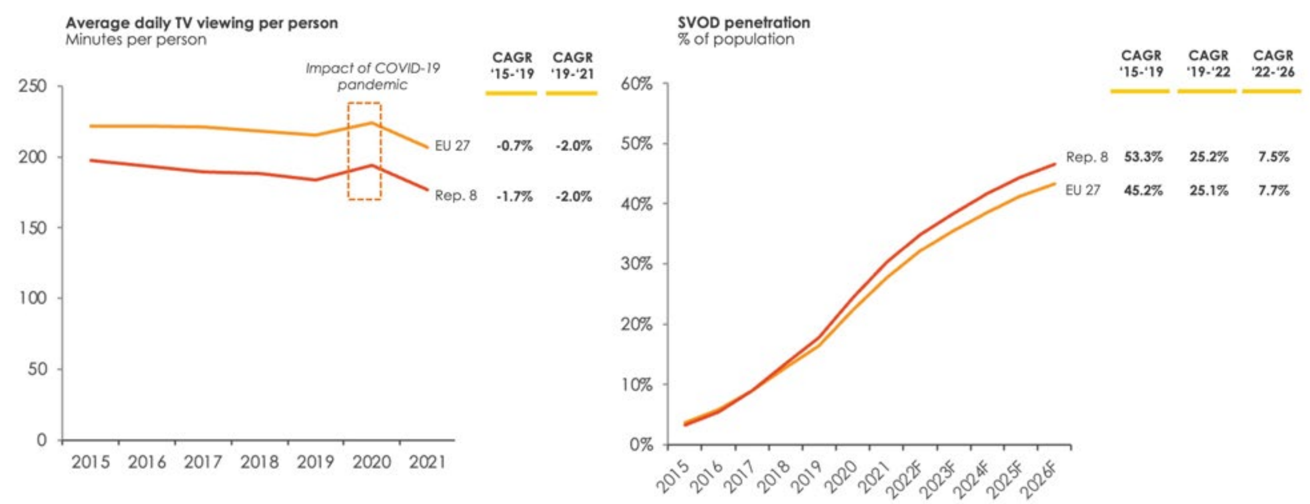
– Southern European Broadcaster

6.2 Narrowing the definition of European works could accelerate existing consumption trends, making it harder for European broadcasters to adapt in time

A narrowed definition could accelerate existing consumption trends. Traditional broadcast viewing remains a popular activity although it gradually declining as viewers transition towards online and on-demand consumption. While narrowing the definition of European works may have a small immediate impact on total channel viewing, it could accelerate this trend as audiences search for their favoured content and greater diversity online. **Figure 45** shows a gradual decline in average TV viewing per person (both live and on-demand), which the EAO finds may be 'interpreted as less live TV', only somewhat compensated for by deferred usage.[87] At the same time SVOD service penetration has grown strongly.

[87] Yearbook 2022/2023 Key Trends, European Audiovisual Observatory

Figure 45: Average daily TV viewing per person and SVOD penetration, EU27 and Representative 8 EU Member States, 2015-21



Note: Average daily TV viewing includes all viewing to TV devices (live and catch up). EU average does not include Malta or Netherlands. SVOD penetration EU average does not include Cyprus or Malta

Sources: European Audiovisual Observatory, Dataxis, Oliver and Ohlbaum Analysis

The impact would be amplified in Member States that experience channel closures. Since VOD services have a catalogue, not a schedule, they can still offer a breadth of content.

All broadcasters are in the process of managing their transition to digital and this remains a significant challenge for smaller broadcasters with fewer resources. Accelerating the transition towards online and on-demand viewing would give broadcasters even less time to adapt and add regulatory costs to a sector already under pressure from these long-term trends.

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 (Czechia broadcaster)

6.2.1 It could also affect the competitiveness of European VOD services, especially newly launched services

Local or regional European VOD services often rely on a higher share of domestic and wider European content as a differentiator and to support their profitability and ability to compete. If there is less investment in domestic works (as a result of a weakened EU broadcast ecosystem), or a negative impact on European co-productions, this would the reduce the quality or volume of European works available. As noted in Section 4.2.3, narrowing the European works definition may also make it harder for new VOD platforms to emerge in future.

6.3 The risks of legal uncertainty and reciprocity are also important to consider

The legal uncertainty created by restricting the well-established European works regime could impact the funding for particular productions and the decision to start new productions, particularly those reliant on European works status for future revenues or access to soft funding.

6.3.1 Any process that considers a narrowed definition would create legal uncertainty, which could diminish incentives to invest

Uncertainty is not helpful for an already risky commissioning and production investment environment. While the analysis in this study shows that there will be limited changes in incentives to invest in new original EU productions, there may be impacts at the margin caused by increased legal uncertainty. This is particularly the case where the decision on where or how to produce content is partly dependent on achieving European works status. This could take the form of delayed investment, or a decision not to invest.

Content investment is particularly vulnerable to uncertainty over legal and regulatory treatment. This is for a number of reasons:

- First, content investment is a relatively high cost and high risk activity. Any artistic and cultural creation involves risk and the cost of producing high quality TV content is increasing. Therefore, anything that adds to this already risky investment has the potential to prevent the greenlighting of more marginal and innovative projects. In general investors may seek to even out the risk of an individual film or programme across a portfolio of works, so that such a change may disrupt the balance of risk across the whole portfolio
- Second, many years of investment may be required before any returns are achieved and, again, the costs of creating and producing content have increased
- Third, the financing of high-quality content involves, in many cases, a number of different co-partners as well as access to 'soft financing'. Each contributor will assess the risk to them of a narrowed definition depending on their circumstances. Counting towards the European works quota is important for access to sources of soft and hard funding for projects as it may affect the value of the production when licensed. Some partners would be put off by increased uncertainty, and some public funding schemes or fiscal incentives may no longer be available. Having clarity on whether a production will qualify under the definition is important when many commissioning decisions are being made, especially for independent and stand-alone production companies

Therefore, willingness and ability to invest can be put in jeopardy where a policy and regulatory environment adds risk and uncertainty. It can be profitable for producers to wait and see rather than risk capital on uncertain returns. In the meantime, non-EU ECTT content investors may feel obliged to strengthen other relationships with global partners. Animation is an area that may be especially sensitive to this given production location is less constrained by geography, and investors can shift focus to global partners and production locations with increased ease – this could have a significant impact on the share of animation commissions and productions in Europe.

The impact of legal uncertainty could persist for many years, even if narrowing the European works definition does not go ahead in the end. The consultation and negotiation stages for changing EU law may take a number of years. If a change is adopted, this would then have to be implemented by the Member States, which in turn could take a number of years. Each Member State would undertake a consultation process to gather views on how best to implement the changed Directive, and if and when to allow for exemptions. Finally, there would be a period of uncertainty in terms of understanding how a National Regulatory Authority would apply any changes in practice.

> *How can you plan for your productions – buying, selling or coproducing – if you are not sure if working with that partner will mean you're making European Content or not?*
>
> **– European VOD Coalition Chair Daniel Friedlaender speaking at NEM Zagreb 2022**

Broadcasters in Spain are already delaying investment decisions

Based on our stakeholder interview programme, it has become apparent that the ongoing implementation of the European works quotas in accordance with the 2018 revised Audiovisual Media Services Directive (AVMSD), coupled with discussions about potential changes to the definition of European works, has resulted in broadcasters delaying investment decisions.

In Spain, we heard how uncertainty is already causing pay TV broadcasters to postpone or withdraw from co-production investments out of concern that these programmes will no longer qualify as European works. We cover this in Part 5. In addition to co-productions, broadcasters and channels are delaying their acquisition decisions since they do not want to enter into a large deal that could potentially involve content that no longer counts towards the quota and hence, cannot be fully utilised on their schedule. However, such works may have involved EU minority producers, EU talent, facilities or locations. Ultimately, this delay is bound to have a significant impact on the consumer as channels are unable to tailor their schedules to suit the preferences of their audiences.

Wider legal uncertainty has affected investment in Denmark

In 2022 the Danish production market felt the effects of legal uncertainty, resulting in a loss of over €200 million as more than 50 titles that had been commissioned by TV2 Play, Viaplay and Netflix had to stop development or production during over four months.[88] In this case, uncertainty arose in relation to a framework agreement on rights payments between the Danish Producers Association (Producentforeningen) and Create Denmark (an umbrella organisation regrouping actors, playwrights and directors' associations, among others). Further legal uncertainty arose surrounding the implementation of a new local content levy. As film and TV producer Meta Louise Foldager Sorensen stated, "They never finished the law making and nobody knows what it's going to look like."[89]

Commenting on their new Danish drama commission, Filippa Wallestam, Viaplay Group's chief content officer, observed, "…Viaplay brings together top Danish talents to create shows with international potential. However, to carry on green-lighting compelling productions like this, we need regulatory certainty, and a fair and balanced playing field in Denmark".[90]

6.3.2 Providers in countries excluded from the narrowed definition might be forced to strengthen their strategic focus outside the EU

There are multiple ways that services in excluded countries may have to respond to a change in the definition of European works. For example, it may be the case that if broadcasters and VOD providers in the EU reduce the volume of non-EU ECTT acquisitions or offer lower prices for content that does not meet the quota, then rightsholders in non-EU ECTT countries would have to increase their strategic focus on non-EU markets. Volume and cost changes are most likely to affect lower value, lower cost content, but sellers nonetheless have incentives to maximise the value that those contribute to their businesses and so would be expected to adapt their strategies.

In addition, as mentioned in Part 5, to the extent that EU co-productions cease to look to non-EU ECTT partners as major contributors or project leads, it is highly likely that some non-EU ECTT co-productions will go ahead with global partners and that those relationships will be strengthened over time. This could shift the centre of gravity for inward investment away from Europe and towards global markets.

[88] 30 November 2022, 'Netflix to resume producing Danish TV and film productions after year-long dispute is resolved', The Copenhagen Post. **https://cphpost.dk/2022-11-30/news/netflix-to-resume-producing-danish-tv-and-film-productions-after-year-long-dispute-is-resolved/**

[89] 14 December 2022, 'What has been the cost of Denmark's landmark streaming deal to the stalled local industry', ScreenDaily, **https://www.screendaily.com/features/what-has-been-the-cost-of-denmarks-landmark-streaming-deal-to-the-stalled-local-industry/5177436.article**

[90] 5 December 2022, 'Viaplay announces its next original, the coming-of-age drama series Bullshit', Cineuropa, **https://cineuropa.org/en/newsdetail/435690/**

7

The impact of narrowing the European works definition on EU consumers

The impact of a narrowed definition as discussed in the previous parts will impose costs on consumers who will ultimately pay for the more restrictive policy. For advertising or publicly funded services, the costs may not be in terms of increased prices, but instead a reduction in the quality, diversity and plurality of content and services compared to those currently enjoyed.

7.1 The diversity and plurality of programming and services would decrease

Consumers would be immediately affected by the narrowing of content available to them.

As explained in Section 4.1, impacted broadcasters, particularly major pay TV group channels and specialised channels plus major FTA channels in smaller EU Member States, would respond to the change by removing non-compliant (non-EU) content from their schedules to ensure they can meet their jurisdiction's European works linear quota and have a compliance margin. Analysis of a sample of the channels that would be affected in the eight representative EU Member States studied suggests that content from numerous countries (although largely that from the UK, Turkey, and the US) could be removed from schedules reducing the diversity of content available to consumers, particularly in smaller EU Member States.

Broadcasters have said that they would be likely to increase their reliance on domestic repeats as a relatively low cost and (importantly) low risk alternative to non-EU acquisitions excluded from the schedule and are likely to prioritise those to which they already hold the rights. While an increase in domestic repeats scheduled in off-peak times will maintain levels of viewing to the channel to a degree, this clearly adversely affects the diversity of content that would otherwise be available to consumers.

As outlined in Section 4.1.4, narrowing the definition could have more serious and direct impacts in some Member States where it affects the financial viability of certain channels. This is particularly the case in smaller Member States where the reliance on non-EU content to supplement domestic content is greater. If the definition change would lead to channel closures (or fewer channel launches), there would be a clear cost to consumers with lost content and services, diversity and plurality, and implications for freedom of information.

Turning to VOD services, as explained in Section 4.2, services that need to respond to a narrowed definition would thin their catalogues of the least efficient non-EU content to mitigate the financial impacts. While this would have a limited impact on most users, there would clearly be a minority of users for whom this would have a bigger impact. VOD services' business models rely on offering a broad catalogue of content to end users, including smaller groups with niche interests. Most niche content is watched infrequently but is valuable to a subset of users who may be denied access to such content if the definition was narrowed.

Finally, narrowing the definition could create barriers to the entry and growth of new VOD services in the EU. As outlined in Section 6.2.1, while small scale entrants may be exempted from the European works quota, they would be aware that if they invested to grow their audiences the constraints of the new definition would bite and add costs. Were this the case, EU consumers could be denied the benefits of new, diverse VOD services.

7.2 The quality of programming would decrease

The quality of content offered to consumers could also suffer. The most direct way is because affected broadcasters would have to replace non-compliant content with alternative content that would be, by definition, less effective at delivering viewers. Broadcasters described how they acquire non-domestic content to cater for their audiences' specific demands.

As discussed in Sections 3.4 - 3.5, this can be for many reasons, most obviously close cultural ties, but also wider links. For example, because the specific type of humour in the acquired content resonates in a broadcaster's market; because there are longstanding flows of content or partnerships, which mean that audiences value content from the non-domestic market in a way that does not apply to other countries; or because the narrative and cinematographic style travels well in their country. A definition change that rations this content and requires broadcasters to replace it with content that is less valuable to audiences will inevitably feel like a decline in the quality of programming to viewers.

Furthermore, the risk to co-productions will limit the ability of broadcasters to offer high-end TV content, which is partly produced for and tailored to their audiences. Instead, broadcasters will likely acquire the content that would otherwise have been co-produced, but without the benefits that come with being a co-producer. The acquired content is less likely to be editorially adapted to the broadcaster's market, and the broadcaster's brand will not be associated with the content in the same way.

As revenues fell at affected channels over time, available content budgets would also fall, bringing continued declines in quality.

7.3 Specific demographic groups across the EU would be disproportionately affected

Specialised broadcast channels would be especially impacted (outlined in Section 4.1.1). These channels are more likely to target a specific audience, rather than being general entertainment channels targeting broad demographics. For example, RTÉ 2 (the channel in our sample most affected by a narrowed definition) targets 15-34 year olds.[91] It is also important to children's viewing. RTÉ considers that this channel would be unviable in the event that the European works definition was narrowed.

Another affected channel, Nova in Spain, is aimed at 18-44 year old women with content including dramas from Turkey. Broadcasters in CEE also highlighted the importance of Turkish content to different audience groups including women and older audiences. Broadcasters' ability to show Turkish content would be reduced if non-EU ECTT content was excluded from the definition of European works.

[91] RTÉ Media Sales 2023, https://mediasales.rte.ie/solutions/rte2/

> *Turkish telenovelas are particularly important to female-orientated channels where they are very popular, providing hours of good quality content for a good price.*
>
> **– AKTV member (Czechia broadcaster)**

As discussed in Section 6.2, linear viewing in general is set to be impacted to a greater degree than on-demand viewing. Older viewers are particularly strong broadcast viewers and the loss of key content on linear channels and the overall loss of some channels would therefore impact older viewers more.

These impacts on specific demographics seem contrary to the EU's policy objective to improve market outcomes for consumers and provide enhanced protection for vulnerable consumers.

> *Older viewers do not use VOD, so if that became the only place to watch it they would suffer.*
>
> **– Polish Commercial Broadcaster**

7.4 Consumers in smaller EU Member States and on the external borders of the EU would be disproportionately affected

As identified in Section 4.1.1, major FTA channels in the larger EU Member States (such as France, Germany, Italy, Poland and Spain) would see minimal direct scheduling impacts. This is because of the economics of broadcasting; the high fixed costs associated with creating and distributing content via broadcast channels means that channels that have a high audience already produce significant volumes of attractive domestic content.

However, for the reasons set out in Section 4.1.1, channels in smaller EU Member States are set to be more heavily impacted by all the factors described in this report. The largest five countries have domestic audiences between 38 and 84 million, whereas 15 Member States have populations of less than 10 million. Smaller EU Member States inevitably rely on lower cost acquisitions, including from European countries not in the EU, to support their broadcast markets. It is this content that drives viewers to their broadcasters in an economically sustainable way and makes it possible for the channels to allocate investment to local content.

Member States that have close cultural, linguistic and historical ties to non-EU ECTT countries, in particular smaller Member States on the external borders of the EU, will inevitably rely more on content from those countries. The relationship between Ireland and the UK that has been highlighted in this report is an obvious example where close ties affect audience demand for content. Under a narrowed definition, Irish consumers would lose access to large quantities of culturally relevant, popular content and would be likely to see major channel closures. Meanwhile, Scandinavian Member States have strong ties with and demand for Norwegian content; Turkish content resonates in Italy and Central and Eastern Europe; Swiss content has ties in France, Germany and Austria; and access to Ukrainian content is increasingly important across Europe such as in Poland.

8

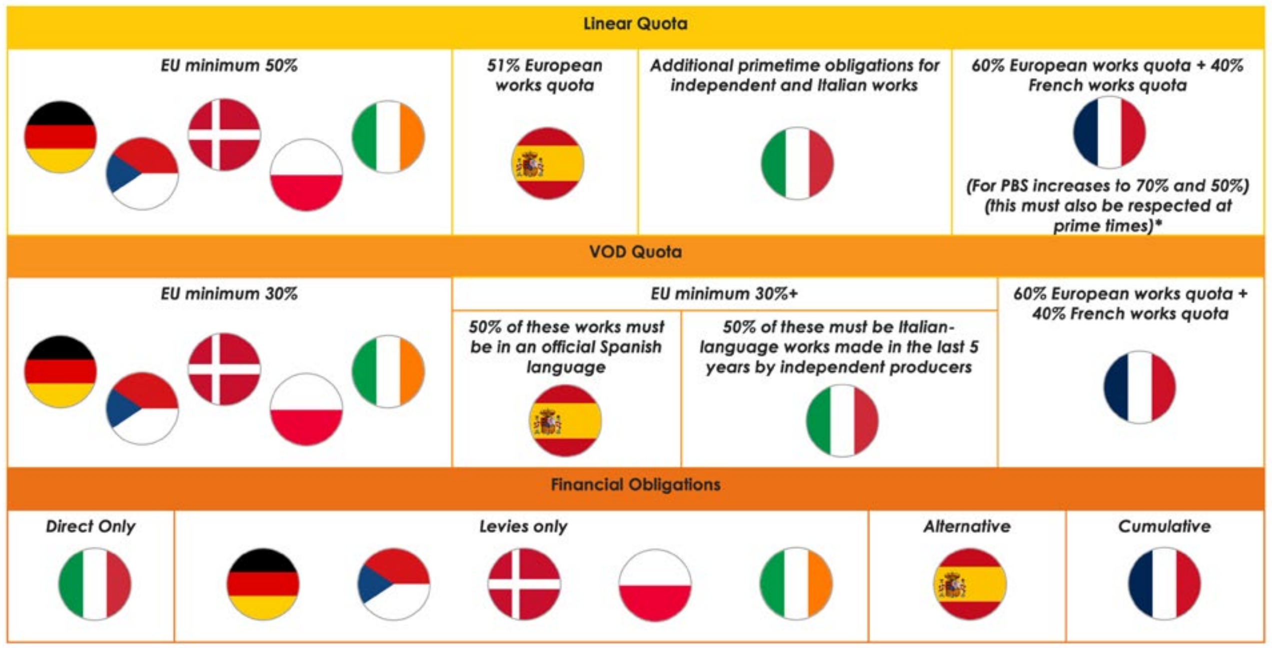
Appendix

8.1 Market-specific AVMSD implementation

Some of the eight representative EU Member States selected for this report have chosen to introduce European works quotas that go beyond the minimum harmonised regulation in the 2018 revision of the AVMSD. The different quota approaches are summarised in Table 9 below. The application of the quotas is further defined at EU level in European Commission Guidelines,[92] and by each Member State, in line with the Directive.

For completeness, the last row of the Table below indicates where our representative EU Member States have chosen to require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and/or contributions to national funds (typically via a levy).[93]

Table 9: Where regulation in representative EU Member States goes beyond the AVMSD minimum harmonisation



*Note: *In France prime time is 20:30 to 22:30 for cinema services or between 18:00 and 23:00 plus Wednesdays between 14:00 and 18:00 for other channels*

8.1.1 Broadcaster and VOD quota exemptions

Under the 2018 revision of the AVMSD, services with a low turnover or a low audience are exempted from the broadcaster and VOD quotas. Member States may also waive requirements where they would be impracticable or unjustified considering the nature or theme of the audiovisual media service.

Specific rules vary by Member State. Exemption decisions may be taken by a national regulatory authority following periodic review.

We have referred to the most recently available Study at the time of our analysis, for the European Commission on the Promotion of European Works in Audiovisual Media Services 2018, which brings together the data collected from Member States fulfilling their reporting obligation on the application of Article 13 of the AVMS Directive for the period 2011- 2014, and on the application of Articles 16 and 17 of the AVMS Directive for the period 2013-2014. Therefore this relates to the AVMS Directive 2010.[94] On this occasion, national authorities reported the following exemptions or exceptions:

- Recently launched broadcaster channels
  - In relation to the linear quota, the AVMS Directive provides that this should be achieved progressively, based on the broadcaster's 'informational, educational, cultural and entertainment responsibilities to its viewing public'
- Small channels
  - In its Guidelines, the Commission considers that an audience share of 0.3 per cent 'could be seen as a 'tolerance threshold' below which it could be supposed that the reporting obligation may place too heavy a burden on the channels concerned'. A Member State may extend this to small channels with a higher audience share 'in exceptional circumstances and on specific and justified grounds' where channels can show that they have the same objective difficulties in complying with the reporting obligation
- Thematic channels
  - Channels specialising in one genre, specialising in non-European content, or targeting a very specific audience, may find it difficult to reach the required proportions of European works and may be exempted
- Problems with the acquisition of European programmes
  - Some national authorities indicated that it is more expensive to commission or acquire European productions than 'rest of world' and for budgetary reasons some channels had a lower share of European works
- Channel portfolios
  - Where channels belong to the same broadcaster group, the national authority may provide that compliance with the European works quota shall be calculated as an average across the portfolio, possibly with a minimum threshold for each channel

We understand that a broadly similar approach is being taken to the implementation of the VOD quota under the 2018 revision of the AVMSD, for example national authorities may provide a transition period for compliance, and/or grant exemptions to small or thematic services.

[92] Revised Guidelines for Monitoring the Application of Articles 16 And 17 of the Audiovisual and Media Services (AVMS) Directive 2011; Communication from the Commission Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover 2020/C 223/03

[93] Such Member States may also require media service providers established in other Member States but targeting audiences in their territories to make such contributions based on the revenues earned in the targeted Member State. (If the Member State of establishment imposes such a financial contribution, it must take account of financial contributions imposed by targeted Member States)

[94] VVA, KEA European Affairs & Attentional, 'Study for the European Commission on the Promotion of European works in Audiovisual Media Services', 2018

Since our analysis, the European Commission has published a Staff Working Document reporting on the application of the European works quotas in the period 2015-2019.[95] This sets out similar considerations around channel exemptions or reasons for non-compliance as noted above, particularly small channels, thematic channels, and the comparative cost of European works compared to 'rest of world'. It does not provide information on Member State reporting of requirements or exemptions at a channel level.

Table 10: List of broadcaster channels where data was available for analysis in this report, by target market, and whether historically they have been subject to the European works quota or have been exempted by the national regulatory authority in the country of jurisdiction[96]

Czechia	CT 1	Required
	CT 2	Required
	NOVA	Required
	NOVA CINEMA	Exempt – 10% licence requirement[97]
	NOVA ACTION	No data
	NOVA FUN	No data
	NOVA GOLD	No data
	PRIMI KRIMI	No data
	PRIMI MAX	No data
	PRIMA	Required
	PRIMA COOL	Exempt – 10% licence requirement[98]
	PRIMA LOVE	Required
Denmark	DR 1	Required
	DR 2	Required
	TV 2	Required
	TV 2 CHARLIE	Required
	TV 2 ZULU	Required
	6EREN	Exempt
	CANAL 9	Exempt
	KANAL 4	Exempt
	KANAL 5	Exempt
	TV 3	Exempt
	TV 3 PULS	Exempt
	TV 3+	Exempt

[95] Commission Staff Working Document Reporting on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2015-2019 as regards non-linear services (Article 13) and linear services (Articles 16 and 17), 17 May 2023

[96] As reported in VVA, KEA European Affairs & Attentional, 'Study for the European Commission on the Promotion of European Works in Audiovisual Media Services, Annexes', 2018. Target market country and country of jurisdiction are often one and the same, but may be different

[97] The licence of this thematic channel provides for minimum of 10% of European works

[98] The licence of this thematic channel provides for minimum of 10% of European works

France	FRANCE 2	Required
	FRANCE 3	Required
	FRANCE 4	Required
France	FRANCE 5	Required
	6TER	Required
	ARTE	Required
	C8	Required
	CANAL+	Required
	GULLI	Required
	M6	Required
	NRJ12	Required
	TF1	Required
	TF1 SERIES FILMS	Required
	TFX	Required
	TMC	Required
	W9	Required
Germany	ARD 1	Required
	ZDF	Required
	ZDF NEO	Required
	KABEL EINS	Required
	KINDER KANAL	Required
	PRO 7	Required
	PRO 7 MAXX	Exempt
	RTL	Required
	RTL NITRO	Required
	RTL 2	Required
	SAT 1	Required
	SAT 1 GOLD	Required
	SIXX	Required
	SKY ATLANTIC	Required
	SKY KRIMI	Required
	SKY ONE	Required
	SKY CINEMA ACTION	Required
	SKY CINEMA BEST OF	Required
	SKY CINEMA CLASSICS	Required

Germany	SKY CINEMA COMEDY	Required
	SKY CINEMA FAMILY	Required
	SKY CINEMA PREMIEREN	Required
	SUPER RTL	Required
	COMEDY CENTRAL	No data
	DISNEY	No data
	NICK	No data
	TELE 5	No data
	SYFY	Exempt
	VOX	Required
Ireland	RTÉ One	Required
	RTÉ 2	Required
	TG4	Required
	VIRGIN MEDIA 1	Required
Italy	RAI MOVIE	Required
	FOX	No data
	RAI 1	Required
	RAI 2	Required
	RAI 3	Required
	RAI 4	Required
	CANALE 20	Required
	CANALE 5	Required
	CIELO	Required
	IRIS	Required
	ITALIA 1	Required
	LA 5	Required
	LA 7	Required
	LA 7D	Required
	NOVE	Required
	RETE 4	Required
	SKY ATLANTIC	Required
	SKY CINEMA 1	Required
	SKY CINEMA DUE	Required

Italy	SKY UNO	Required
	SKY CINEMA ACTION	Required
	SKY CINEMA COLLECTION	Required
	SKY CINEMA COMEDY	Required
	SKY CINEMA FAMILY	Required
	SKY CINEMA ROMANCE	Required
	TOP CRIME	Required
	TV8	Required
Poland	TVP 1	Required
	TVP 2	Required
	13TH STREET	Exempt
	AXN	Exempt
	AXN BLACK	Exempt
	AXN SPIN	Exempt
	AXN WHITE	Exempt
	CANAL+	Required
	CBS EUROPE	Exempt
	CBS REALITY	Exempt
	COMEDY CENTRAL	Exempt – 10% licence requirement[99]
	DISNEY XD	Exempt
	FOX	Exempt
	FOX COMEDY	Exempt
	KINO TV	Required
	MTV	Exempt
	POLSAT	Required
	SCI-FI	Exempt
	STOPKLATKA	Required
	TV PULS	Required
	TVN	Required
	TVN TURBO	Required
	TVN 7	Required

[99] The licence of this thematic channel provides for minimum of 10% of European works

Spain	LA 1	Required
	LA 2	Required
	AMC	Exempt
	ANTENA 3	Required
	AXN	Exempt
	AXN WHITE	Exempt
	CALLE 13	Exempt
	CANAL HOLLYWOOD	Exempt
	COMEDY CENTRAL	Required
	COSMOPOLITAN	Required
	CUATRO	Required
	DIVINITY	Required
	FOX	Exempt
	LA SEXTA	Required
	NEOX	Required
	NOVA	Required
	PARAMOUNT	Required
	SERIES POR M+	Exempt
	SYFY	Exempt
	TCM	Exempt
	TELE 5	Required
	TNT	Exempt

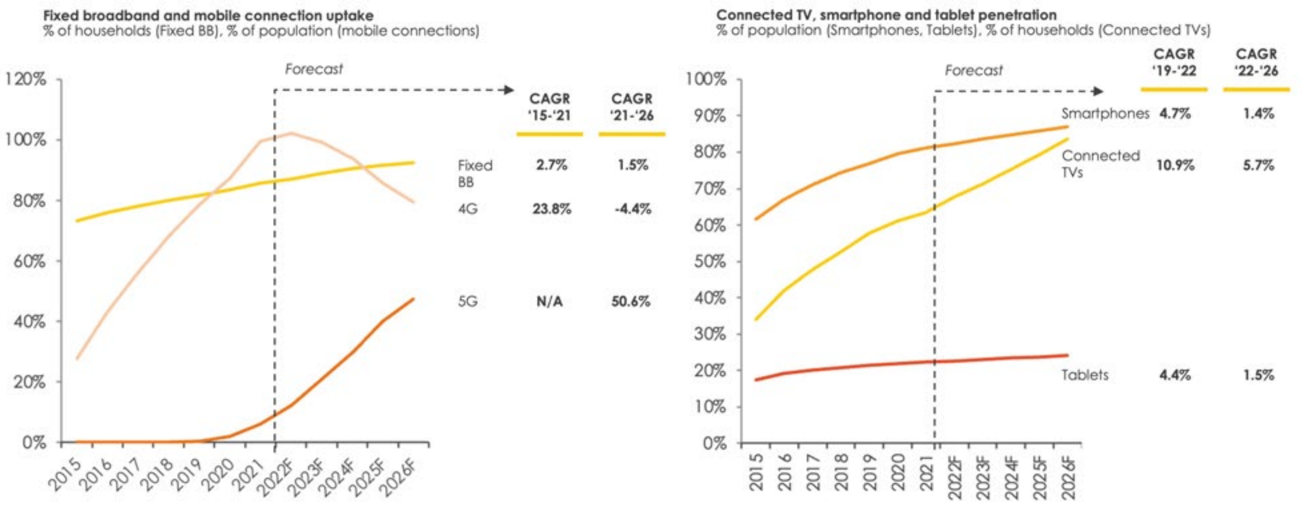
8.2 Additional market insights

This part provides further information on market developments across the European audiovisual ecosystem, as background to this study.

8.2.1 Digitalisation is bringing changes to the European audiovisual sector

At EU27 level we can see increased availability and uptake of fixed and mobile broadband, and rapid growth in the penetration of connected devices. The most significant of these has been connected TV, with penetration increasing by over 10 per cent year on year between 2015 and 2021, while smartphones allow content to be consumed ‘on the go’.

Figure 46: Growth in fixed broadband and mobile connection uptake, and connected TV, smartphone, and tablet penetration, EU 27, 2015-26F



Note: Connected TVs is the total of Smart TVs and TV streaming devices

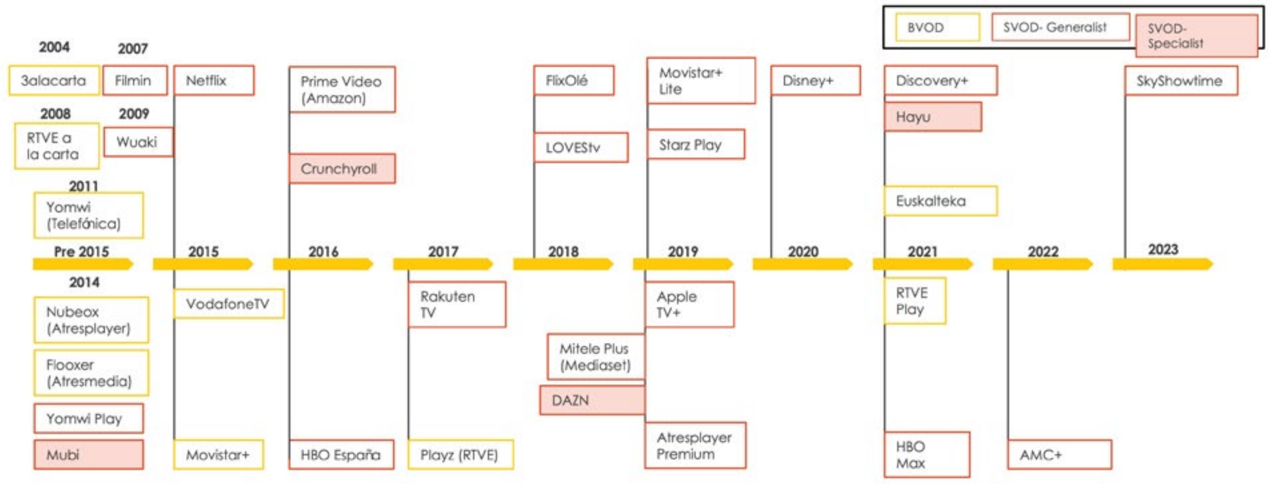
Source: Dataxis, Oliver and Ohlbaum Analysis

European broadcasters and VOD providers were early to seize the opportunities of digital technology, with TF1, M6, Mediaset, RAI and ProSieben all establishing successful online catch-up services by 2008. This innovation stimulated consumer demand for connected products and services and created a new market for long-form content online. European SVOD services also emerged, often with a genre focus such as MUBI and Filmin for independent film, and DAZN for sport.

By 2012, generalist and specialist US SVOD services were entering the European market. For example, Crunchyroll focuses on Anime and Hayu on Reality TV.

Consumers now have a diverse range of VOD services to choose from, as illustrated for Spain in **Figure 47**.

Figure 47: Timeline of VOD market entry, Spain



Source: Oliver and Ohlbaum analysis

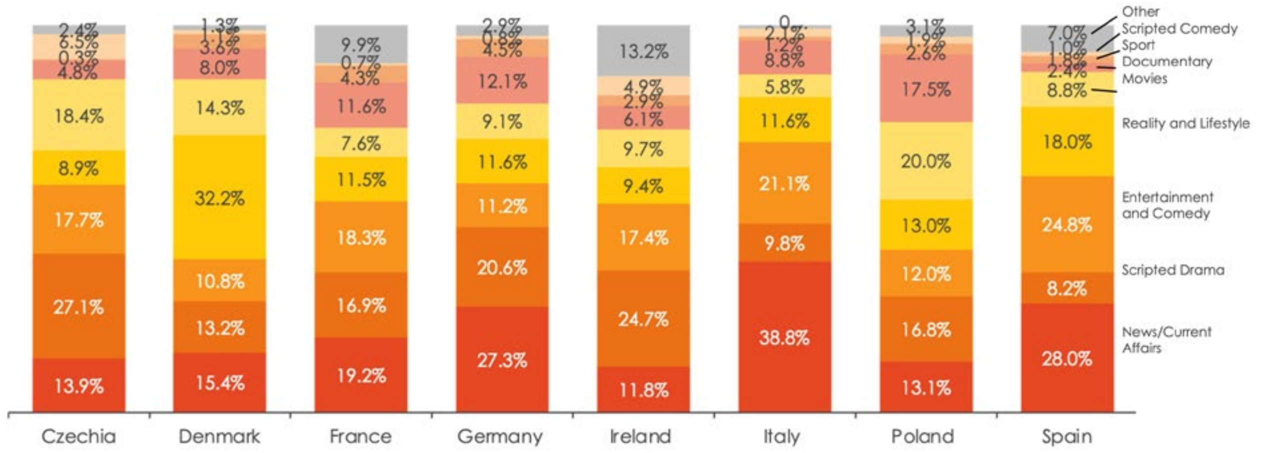
8.2.2 In the current AV ecosystem, FTA and pay TV channels and VOD services play complementary roles

Since 2015 there has been a gradual transition of some TV viewing from traditional broadcast towards online and on-demand consumption. This trend is more pronounced among younger viewers and is expanding across age groups. At the same time, other types of digital services are competing for consumers' attention from Video Sharing Platforms and wider social media to gaming. Nevertheless, linear TV viewing remains highly important and adults in the EU27 Member States had average daily TV viewing time of over 200 minutes in 2021[100]. As a result, European broadcasters need to invest and innovate to bring consumers and advertisers to their own VOD services, while continuing to serve traditional broadcast audiences. This includes investing in exclusive online content, digital advertising solutions, and technology to support efficient online distribution. Broadcasters are also building partnerships, from shared VOD services to joint digital advertising initiatives and distribution arrangements with pay TV providers and ISPs.

Europe's traditional FTA and pay TV broadcasters are commissioners and buyers of market-specific content in particular, meaning that a new European AV ecosystem is developing. In this new ecosystem, FTA broadcasters, pay TV services and VOD services play complementary roles. This can be seen in their genre specialisms. As shown in **Figure 48**, TV schedules for major FTA channels (by viewing share) provide a depth and breadth of genres, playing a vital role in News and Current affairs provision, as well as Scripted Drama, Entertainment and Comedy, Reality and Lifestyle, Movies and Documentaries.

[100] European Audiovisual Observatory, Oliver & Ohlbaum analysis. Viewing is all linear viewing

Figure 48: Genre mix of TV schedules for Top 3 channels*, representative EU Member States, 2021 (% of total minutes)

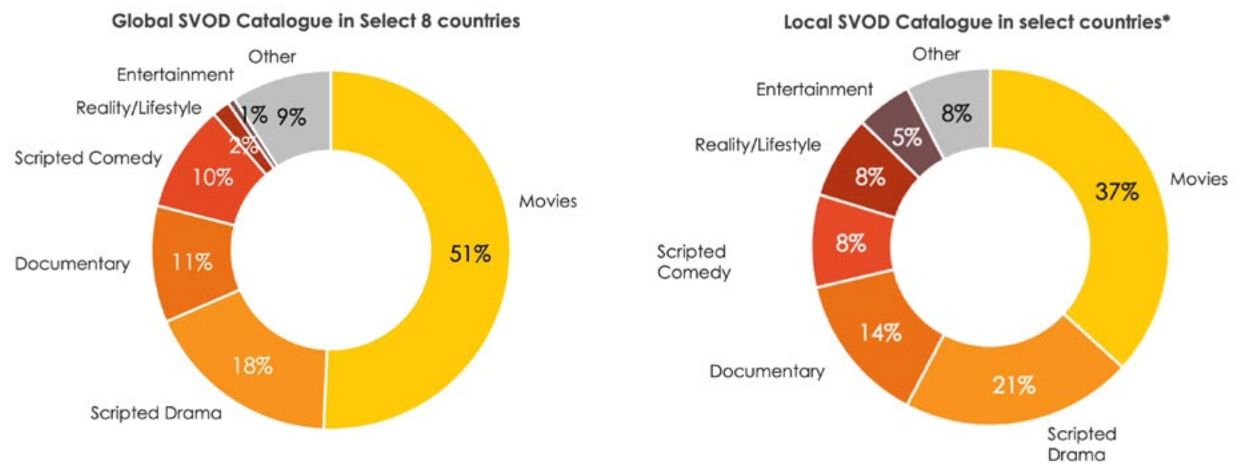


*Note: *By share of total TV viewing. All are FTA channels*

Sources: Dataxis, Essential TV Statistics, Oliver and Ohlbaum Analysis

In contrast, as illustrated in **Figure 49**, both local and global SVOD services have brought increased choice with expansive catalogues of licensed content alongside originals to engage European consumers. This comes in a more focused set of genres, especially feature films and high-end Drama and Documentary.

Figure 49: Genre mix of global and local SVOD catalogues in 8 representative EU Member States, 2021 (% of titles)



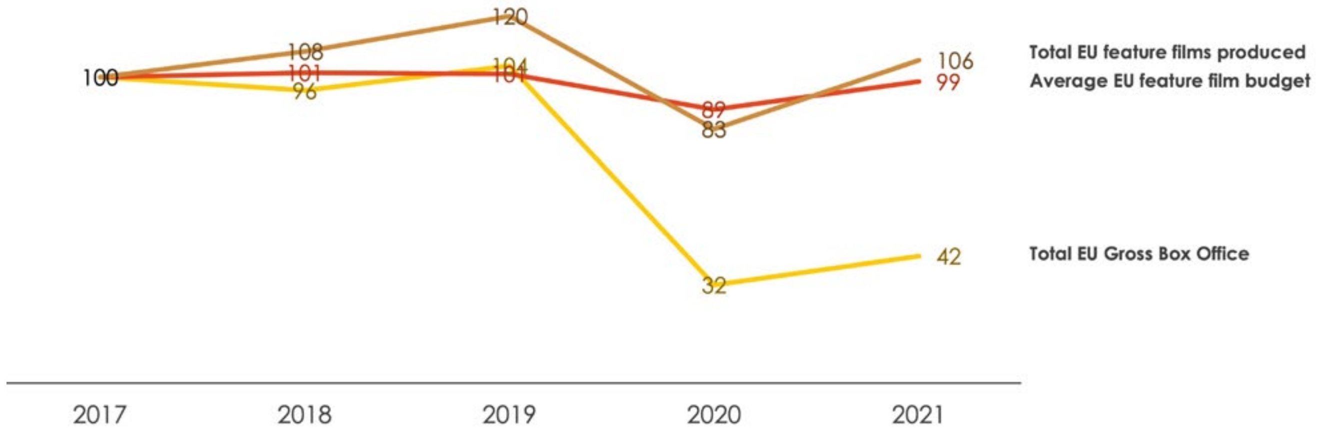
*Note: Documentary includes documentary films. Movies are fictional films only. *Selected local SVOD services are Atresplayer-Spain, Mediaset Infinity-Italy, Joyn-Germany, Canal+ Series-France, Viaplay-Denmark*

Sources: Ampere Analysis, Oliver and Ohlbaum analysis

8.2.3 European feature film is characterised by rising volumes, relatively stable budgets and continuing box office recovery

As seen in **Figure 50**, pre-pandemic, feature film budgets were steady in the EU (and were rising in a number of territories) and average film production volumes continued to grow, given increasing numbers of cross-border co-productions and feature documentaries. Both budgets and volumes experienced a dip in 2020, and are climbing since; the volume of EU feature films produced may be expected to experience a lag following Covid-19 production delays, while average EU feature film budgets were more similar to 2019 levels by 2021. Gross box office was severely affected by the Covid-19 pandemic and associated social distancing measures, and older audiences have been slower to return, but revenues are expected to continue recovering over the next few years.

Figure 50: Evolution of total feature films produced, feature film budgets, and Gross Box Office, EU 27, 2017-2021 (Indexed, 2017=100)



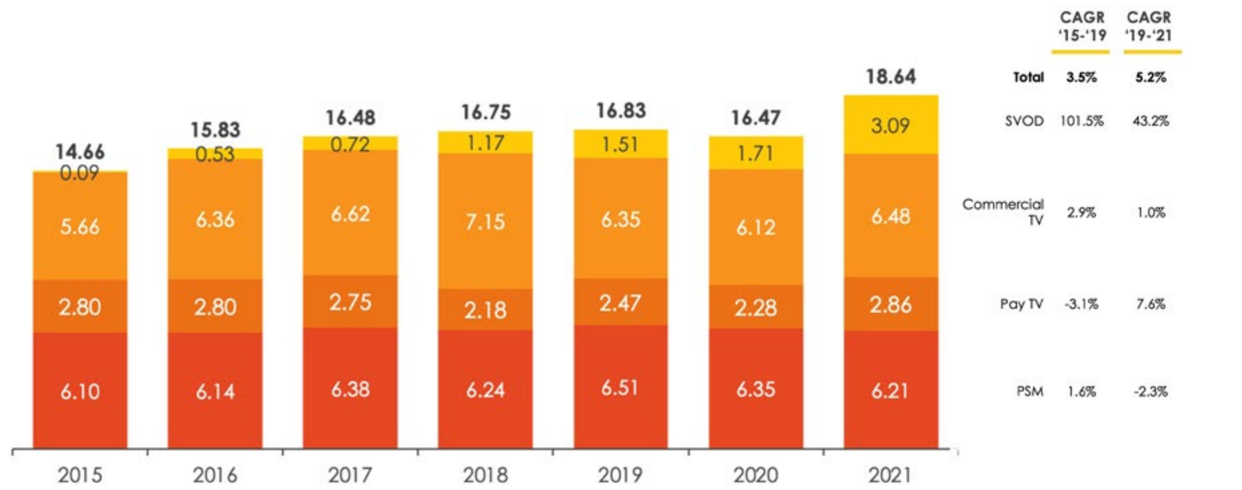
Sources: European Audiovisual Observatory, Oliver and Ohlbaum analysis

European fiction films continue to rely on public funding support, especially in smaller Member States with limited access to pre-sales as a source of finance. As a result, European broadcaster investment is vital to make up producer assembled financing. Both broadcasters and VOD services play important roles in commissioning, licensing and distributing European film, bringing it to consumers across Europe as well as around the world.

8.2.4 This current ecosystem is benefitting producers

In the intense competition for audiences, having the right content is key. As shown in **Figure 51**, this has led to strong growth in content investment across the eight representative EU Member States in this report. European broadcasters are the cornerstone of content investment in Europe, and for PSM and commercial FTA a high share of this investment is in commissions. Broadcaster investment has been steadily rising since 2015, although pay TV was flat during the pandemic. Meanwhile, SVOD investment has made a major contribution to the overall upwards trend, with investment growing at 102 per cent CAGR in 2015-2019. SVOD services were responsible for €3.09 billion of content investment in 2021, up from €90 million in 2015.

Figure 51: Total AV content investment excluding sports rights by provider/channel type, eight representative EU Member States, 2015-2021 (€ billion)

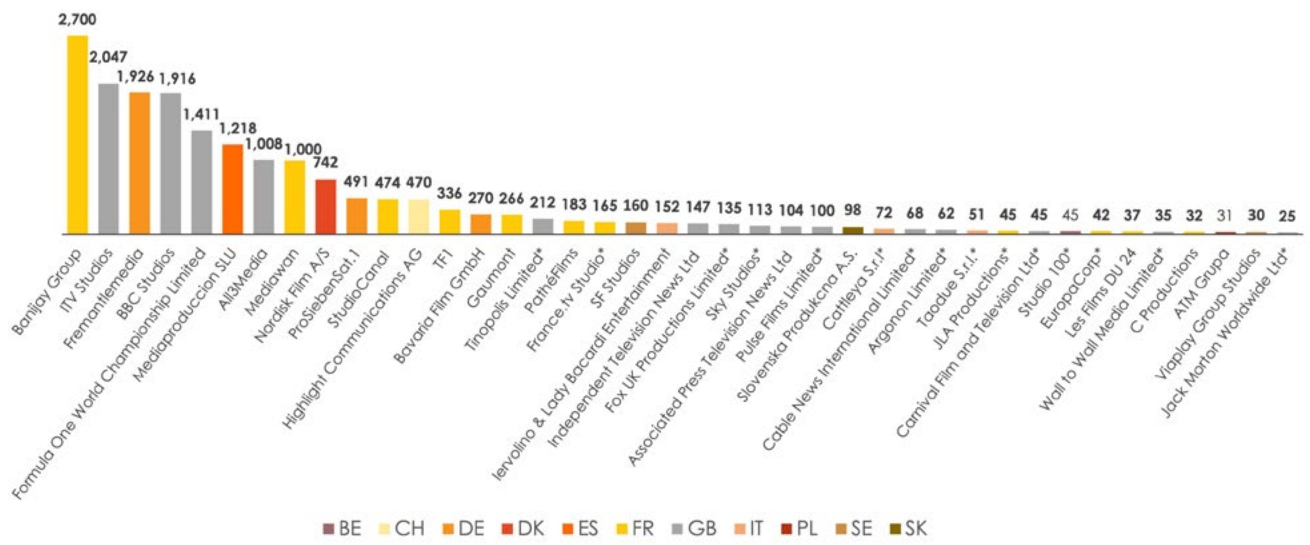


Note: Not including Ireland due to incomplete data

Source: Ampere Analysis, Oliver and Ohlbaum Analysis

This increased investment is resulting in greater demand for European producers' services. In the current ecosystem producers have new opportunities to produce and distribute their work, in a range of genres and budget levels and for different types of commissioners. This has allowed a broad range of producers to thrive, with significant production sector diversity in terms of company size, as shown in **Figure 52**.

Figure 52: The 40 leading production companies in Europe by operating revenues, 2021 (€ million)



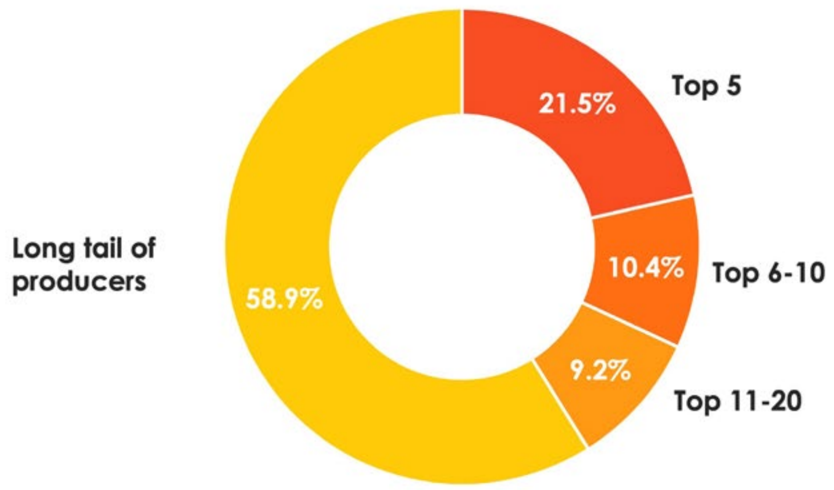
*Note: Some companies may be active in both production and distribution. Some companies belonging to the same group may trade services and therefore the revenues may be duplicated. *2020 revenues used*

Source: European Audiovisual Observatory, Oliver and Ohlbaum Analysis

While there has been some consolidation and vertical integration in the European production sector, with several larger producers emerging, overall this is part of a dynamic cycle where producers are able to enter and grow, in some cases then splitting off to form new start-ups. Partnering and consolidation bring economies of scale, profit consistency and risk management, allowing producers to seize new market opportunities. Meanwhile, smaller producers contribute innovation and creative renewal to the sector.

The significance of the long tail of smaller European producers is clear when looking at the producers responsible for European TV fiction titles, as illustrated in **Figure 53**. From 2016 to 2022, the five largest producers were responsible for just over a fifth of all titles, while the long tail of producers (those outside of the top 20) accounted for nearly 60 per cent.

Figure 53: Concentration of TV fiction titles by production group, all titles 2016-2022 (% of European total titles)



Source: European Audiovisual Observatory, Oliver and Ohlbaum analysis

8.2.5 A broad range of interrelationships exist between content buyers and producers

As a means to finance new, high-quality works and to license European content to attract local audiences, we see an increasing trend towards partnerships. It is a feature of the European AV ecosystem that, for example, European broadcasters may partner with each other to co-produce or co-finance content; European broadcasters may partner with SVOD services to co-produce and co-finance content; and SVOD services are entering into a variety of licensing arrangements with producers to bring older content to new audiences across Europe and beyond. SVOD have also chosen to re-commission European series that otherwise might not have been renewed by the original broadcaster.

8.2.6 As a result of the current ecosystem, European consumers are benefitting from the increased availability of high-quality European content and services

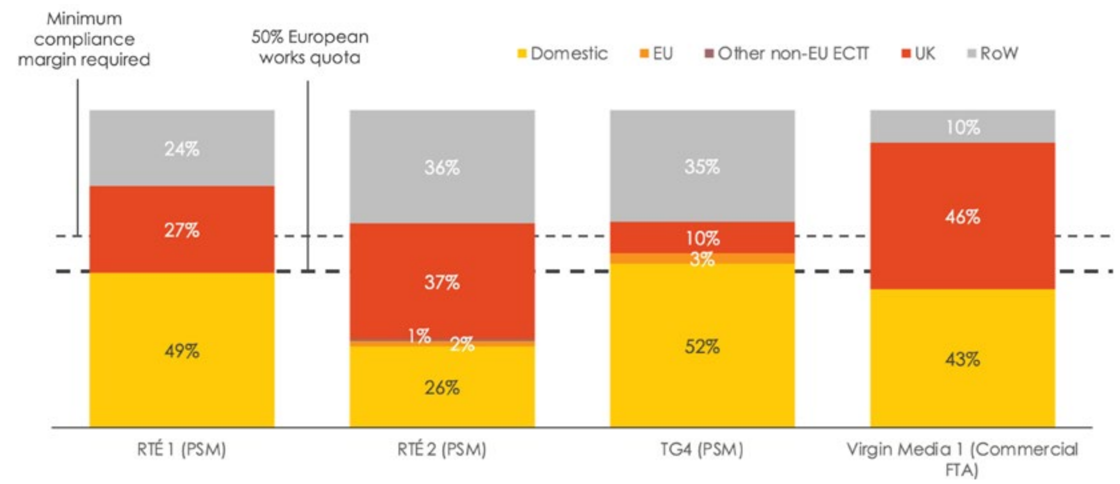
As a result of digitalisation and increased competition, audiences across Europe have benefitted from an explosion in content and services, both generalist and serving niche interests and minority languages. However, as discussed in this study, given the economic pressures both in the sector and in the wider economy, the health of the overall AV sector relies on a stable regulatory framework.

8.3 Case studies: the use of non-EU ECTT content

8.3.1 Ireland

As we have seen in the main report, UK content comprises 27 per cent of schedule on RTÉ One and 37 per cent on RTÉ 2; and 32 per cent of all qualifying hours across both channels.

Figure 54: Share of broadcast schedule by country of origin, Ireland, 2021 (% of broadcast time)

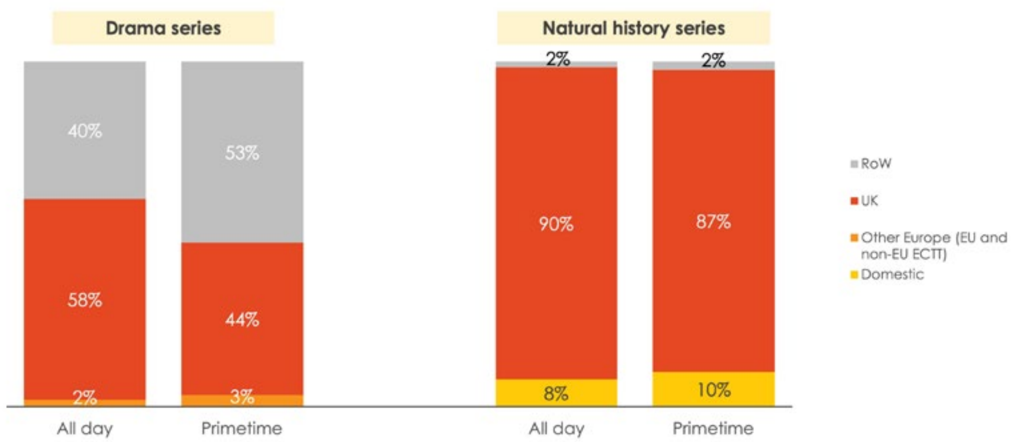


Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports, and teleshopping

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

However, in certain genres this share is even more pronounced. **Figure 55** shows the share of schedule on RTÉ One and RTÉ 2 in acquired drama series and acquired natural history. Here, UK share of schedule rises to 58 per cent and 90 per cent respectively – showing the vital importance of UK works in meeting consumer demand and providing supply in these genres in Ireland.

Figure 55: Share of schedule by country of origin, all day vs primetime, RTÉ One & RTÉ 2, acquired drama and natural history, 2021 (% of broadcast time)



Source: RTÉ

Looking at drama on RTÉ, we can also see that acquired UK shows perform considerably better than equivalent content from EU territories.

Figure 56: Performance of UK and EU (ex-Ireland) acquired drama on RTÉ channels, First run, 2021 & 2022

			Audience	
	Title (UK content)	**Eps.**	**000s**	**Share**
RTÉ One	Crime	6	121.0	13.8%
	The Nest	5	140.9	15.1%
	No Return	4	119.1	13.9%
	Ridley Road	4	74.5	9.2%
	The Teacher	4	143.9	17.3%
	Unforgotten	6	123.0	15.0%
	UK title average		**120.4**	**14.1%**

			Audience	
	Title (European content)	**Eps.**	**000s**	**Share**
RTÉ 2	Deutschland 89	8	17.4	2.5%
	We Are Who We Are	8	11.2	3.1%
	The Investigation	6	9.1	2.6%
	Blinded: Those Who Kill	8	25.3	5.5%
	Our Miracle Years	6	14.7	3.7%
	EU Foreign Language title average		**15.5**	**3.5%**

Note: Viewing 4+ across all platforms. All major titles shown

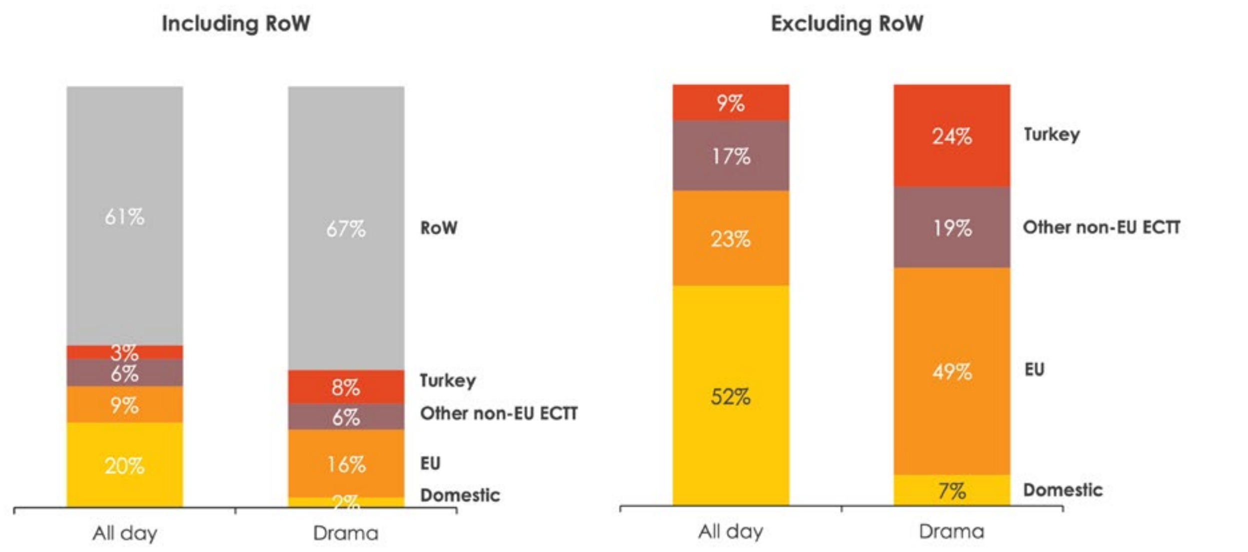
Source: RTÉ, Oliver & Ohlbaum analysis

As can be seen above, UK drama series have outperformed equivalent series from the EU (ex-Ireland) by a factor of eight in terms of average audience achieved for RTÉ. This falls slightly to a factor of four when looking at audience share because these UK programmes are more commonly shown in the most competitive slots (i.e. weekend primetime). The fact that RTÉ chooses to broadcast shows from elsewhere in the EU on RTÉ 2 as opposed to RTÉ One also reflects the fact that they have a more niche appeal in the country. Other EU premium drama shows typically cost RTÉ a similar amount to acquire as UK works while generating lower audiences, meaning that having to swap UK works for other European works would have a serious impact on the audience performance-cost ratio.

8.3.2 Spain

As shown in **Figure 57**, Turkish and other non-EU ECTT content makes up 10 per cent of the total broadcast schedule across all tracked channels in Spain. However, as would be expected, this share is more pronounced in certain genres, most significantly drama.

Figure 57: Share of broadcast schedule, Spain, whole schedule vs drama, all tracked channels, 2021 (% of broadcast time)



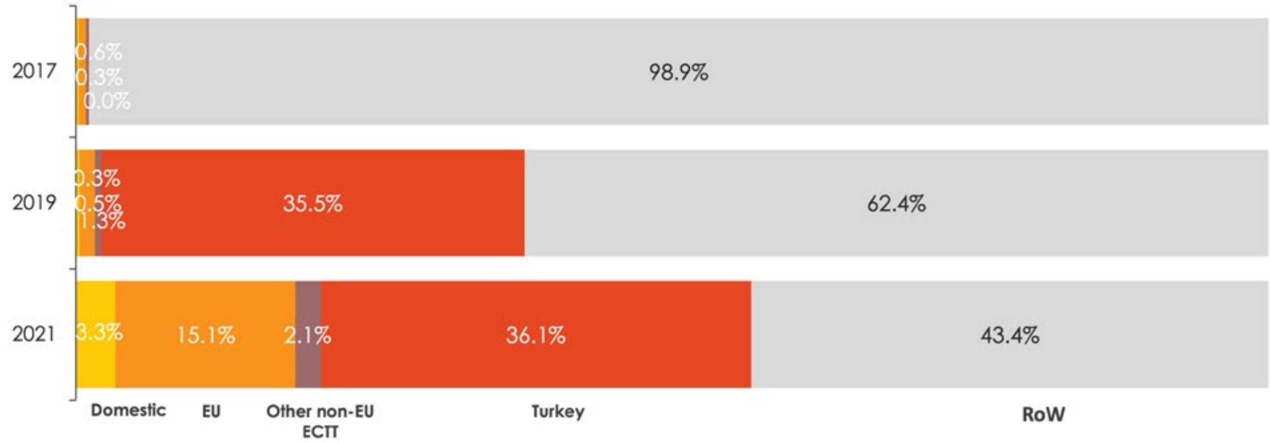
Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports, and teleshopping. Total broadcast share across all tracked channels, whether quota applicable or not. All percentages exclude rest of world

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

The boom in Turkish drama was spearheaded by Atresmedia, which broadcast its first acquired Turkish drama – *Fatmagül* – on the Nova channel in January 2018. This show became an instant hit, quickly becoming the most-watched show in the history of the channel. As a result, Nova has broadcast more Turkish dramas and other broadcasters, including Mediaset through its channel Divinity, have also begun airing Turkish drama.

As shown in **Figure 58**, Turkish dramas are now responsible for a significant proportion of the broadcast schedule on Nova and Divinity. This growth is due to the continued success and popularity of Turkish programming with audiences.

Figure 58: Average share of drama broadcast schedule, Spain, Nova and Divinity, 2021 (% of broadcast time)



Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Dos30' finds that in a sample of 20 Turkish dramas broadcast on Nova and Divinity, 19 achieved an audience share above the channel average. It is also worth noting that these shows are especially important to women viewers, with all shows in the sample achieving a higher than average share among female audiences. This content has been vital to ensuring that these channels are able to engage their target audiences and meet their interests.

Table 11: Performance of Turkish dramas on Nova and Divinity, 2018-2022

Nova

Programme	Avg. audience share (%)	Avg. performance above average* (%)	Avg. share of female audience (%)
Tmagü	4.1%	46.8%	5.8%
Ciudad Cruel	3.4%	29.5%	4.8%
Sila	3.3%	41%	4.7%
Amor De Contrabando	3.4%	27.4%	4.9%
Madre	3.5%	69.5%	5%
Hercai	3.3%	49%	4.8%
Fugitiva	3.3%	27.7%	4.7%
Cennet	3.1%	17.4%	4.2%
Las Mil Y Una Noches	3%	28.7%	4.3%
Elif	3.3%	28.1%	4.2%

Divinity

Programme	Avg. audience share (%)	Avg. performance above average* (%)	Avg. share of female audience (%)
Kara Sevda	2.8%	40.2%	3.9%
Sűhan,Venganza Y Amor	2.7%	30.2%	3.7%
Erkenci Kus	3.1%	55%	4.2%
Habitacion	2.6%	35.5%	3.6%
Love Is In The Air	2.2%	22.2%	3%
Dolunay	2.6%	45.7%	3.6%
Őner:Sueños Robados	2.4%	36.6%	3.4%
Te Alquilo Mi Amor	1.8%	0%	2.6%
Mi Mentira Mas Dulce	2.2%	27.5%	3%
Amor En Blanco Y Negro	1.8%	-6.8%	2.8%

*Note: *Avg. performance above average is given as performance against channel average on days when the programme was broadcast*

Source: Dos30, Kantar Media, Oliver and Ohlbaum analysis

8.4 Case studies: the role of non-EU ECTT countries in international co-productions

This section provides further qualitative evidence, in the form of case studies, on the importance and relevance to EU broadcasters and producers of access to international co-productions with partners from non-EU ECTT countries.

8.4.1 High-end drama: *The Tunnel*

The Tunnel is a French-British drama series that aired from 2012 to 2018. The show was a 50-50 co-production between French production company Shine France (now Endemol Shine France) and British production company Kudos Film, with Canal+ in France and Sky Atlantic in the UK commissioning and broadcasting the series. Reflecting its 50-50 co-production approach, the show was bilingual, and employed both French and British crew.

Throughout its three-season run, *The Tunnel* garnered critical and audience acclaim in both France and the UK as well as internationally. The series premiere achieved estimated consolidated viewing figures of 1.3 million in France and 900,000 in the UK. The show dealt with political and social issues relevant to both countries, making it an insightful exploration of cultural similarities and differences.

The success of The Tunnel on Sky Atlantic paved the way for a series of further international co-productions, including notable titles such as *Domina* and *ZeroZeroZero*. Sky Studios, the company's in-house production arm since 2019, has been instrumental in driving these productions forward. These projects involve EU partners and rely heavily on UK funding contributions.

8.4.2 Natural History

Natural History (nature documentaries) is one of the most in-demand genres[101] but also one of the most expensive and technically challenging to produce – filming typically takes years, requires filmmakers to be on-location in various isolated places worldwide, involves the most technically advanced camera equipment and technological innovation, and features commentary from some of the most well-known talent such as David Attenborough.

BBC Studios is one of the premier producers of Natural History documentaries with recent productions including:

- Frozen Planet II
- The Green Planet
- Dynasties II
- Blue Planet II
- Planet Earth II

Given the immense cost involved in producing landmark shows such as these, BBC Studios is reliant on co-production/co-financing with other broadcasters. All co-production partners contribute money towards the production and in return receive exclusive first-run rights in

[101] 4 February 2021, 'The growing appeal of natural history TV', Shilpa Ganatra, Royal Television Society, https://rts.org.uk/article/growing-appeal-natural-history-tv

13 May 2020, 'Revival of the fittest as Natural History TV comeback booms', Tim Dams, International Broadcasting Convention, https://www.ibc.org/trends/wild-time-for-natural-history-tv/5929.article

their territory, along with a host of additional benefits such as editorial input, production credits (i.e. they can frame to consumers in their market that it is an original commission) and the ability to feature their own market-specific commentary (as opposed to having to subtitle or dub the UK version after the fact). European broadcasters, especially PSM (e.g. RAI, ZDF, France Télévisions) are a key part of this European cooperation and are essential to allowing these shows to get made.

BBC Studios has expressed concern that were such documentaries to lose European works status, it would be forced to seek to strengthen ties with non-European markets in order to secure funding partners there, or such shows would not be produced at all. This is supported by the interviews we have undertaken where EU commissioners have said that they would not invest in commissioning content that does not qualify for European works status as they feel it could increase the levels of commercial risk involved.

If shows such as Planet Earth were no longer produced, this would represent a significant loss to consumers across Europe – as we have seen, there is significant demand for this content and the UK is far and away the most demanded provider of Natural History (especially at primetime) in Europe. This is particularly of concern in an educational genre that shines a light on some of the most pertinent issues for European society, i.e. climate change and environmental sustainability. If these series were made, but without EU partners, this would also represent a loss to European consumers since their local broadcasters would have lost editorial input and shows would likely have to become more 'globalised' in flavour.

8.4.3 Ukraine's role in European feature film

Ukrainian feature film has seen a remarkable rise in prominence over the last decade, with a number of critically acclaimed and commercially successful projects being produced throughout the 2010s. Some of the most notable titles in the last decade include The Tribe (2014), *Donbass* (2018), *Volcano* (2018), *No Obvious Signs* (2018), *Homeward* (2019), *Reflection* (2021), *Pamfir* (2022) and A House Made of Splinters (2022).

A large proportion of these features were the result of multinational European co-productions. For instance, Donbass was a co-production involving Ukraine, Germany, France, Romania and the Netherlands while *A House Made of Splinters* was produced by Ukraine, Denmark, Sweden and Finland. The latter is a documentary film, which tells the story of children temporarily placed in an eastern Ukrainian orphanage as they wait to find out if they will return home, or permanently be placed in care. It has achieved widespread critical acclaim and was nominated for Best Documentary Feature at the 95th Academy Awards. Co-productions are vital to securing funding for such films and allowing for the exchange of creative ideas and resources across the European region.

The importance of Ukrainian cinema has only increased in light of the current war. It may be seen as a method of cultural resistance, to defend and express the country's national identity, and as a tool for documenting events. The achievements and importance of Ukrainian cinematic co-productions were recognised at the 2022 European Film Awards; the Eurimages Co-Production Award was awarded to all producers of Ukraine.

However, if Ukrainian projects were to lose their status as European works, they would likely struggle to find co-production partners as their commercial value in the EU would become uncertain. Without these co-production partners, many Ukrainian projects could find it challenging to secure funding and ultimately not be made. This would represent a significant loss to Ukrainian and other European citizens, since film is seen as a powerful form of resistance and documentation of the ongoing conflict.

8.4.4 Irish-UK co-productions

Working with the UK as a co-production partner is crucial for Irish broadcasters seeking to commission high-quality original content. As the cost of content production has risen, partnerships have become essential to securing funding for ambitious, innovative projects. Such co-productions sustain Irish production companies and the wider industry, by providing employment opportunities and boosting the local economy. Furthermore, co-producing with minority language broadcasters from neighbouring Celtic nations within the UK, notably Scotland and Wales, is important for the production of Irish language programming. These partnerships allow the preservation and promotion of Irish culture, while also enabling Irish broadcasters to respond to changing viewing habits and the competitive landscape.

If the definition of European works was narrowed and Irish-UK co-productions no longer qualified under the quota, the ability of Irish broadcasters to commission or be involved in the production of such programming would be threatened. This would result in less original programming on Irish broadcast channels and VOD services and fewer productions taking place in Ireland, weakening the sector as a whole. Below are a series of co-productions involving major Irish broadcasters to illustrate the types of work that are at stake.

Virgin Media Ireland – *Redemption and Holding*

Co-commissioned by Virgin Media Television in Ireland and ITV in the UK, *Redemption* was a six-part crime drama broadcast in 2022. The series was co-produced by Metropolitan Films (Ireland) and Tall Story Pictures (UK). The show starred Irish actress Paula Malcomson, with primary filming taking place in Dublin.

During 2022, Virgin Media Television also aired *Holding*, a four-part adaptation of Irish presenter and writer Graham Norton's best-selling novel of the same name. The mini-series was co-produced by Dublin-based Port pictures, Happy Prince and ITV Studios. The show was a key part of the launch of the Virgin Media More channel in Ireland – a channel focused on broadcasting first-watch episodes of Irish and international dramas, documentaries, films and sport – with Holding being the first show ever broadcast on the channel. The production was primarily based in Ireland and employed a wide range of Irish talent.

RTÉ – *Smother*

Smother is an Irish-British co-production that ran for three series from 2021-2023. The RTÉ-commissioned thriller drama was a co-production with BBC Studios Production Drama North and Scotland and the Dublin-based Treasure Entertainment. The production primarily filmed in Country Clare in Ireland, providing a significant lift to the local economy. The show itself was a critical and commercial success in both Ireland and the UK. It was the second highest rated Irish drama on RTÉ in 2023.[102]

TG4 – *Calum Cille: An Naomh Dàna (Columba: The Bold Saint)*

Broadcast on both TG4 (Irish language PSM channel) and BBC Alba (Scottish Gaelic PSM channel) in 2021, *Calum Cille: An Naomh Dàna* was an Irish language Irish-Scottish co-production that told the life story of one of Ireland and Scotland's most important saints. The programme was jointly produced by Abú Media in Ireland and MacTV in Scotland, with additional funding provided by Northern Ireland's Screen's Irish Language Broadcast Fund, TG4 and MG ALBA (which co-owns BBC Alba with the BBC).

[102] 12th January 2022, 'RTE reveals most watched programmes of 2022', BuzzNews, https://www.buzz.ie/tv/rte-most-watched-programmes-2022-28939421

Áine Walsh, Chief Executive of Northern Ireland Screen's Irish Language Broadcast Fund, noted that 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, and this programme certainly meets that criterion".[103]

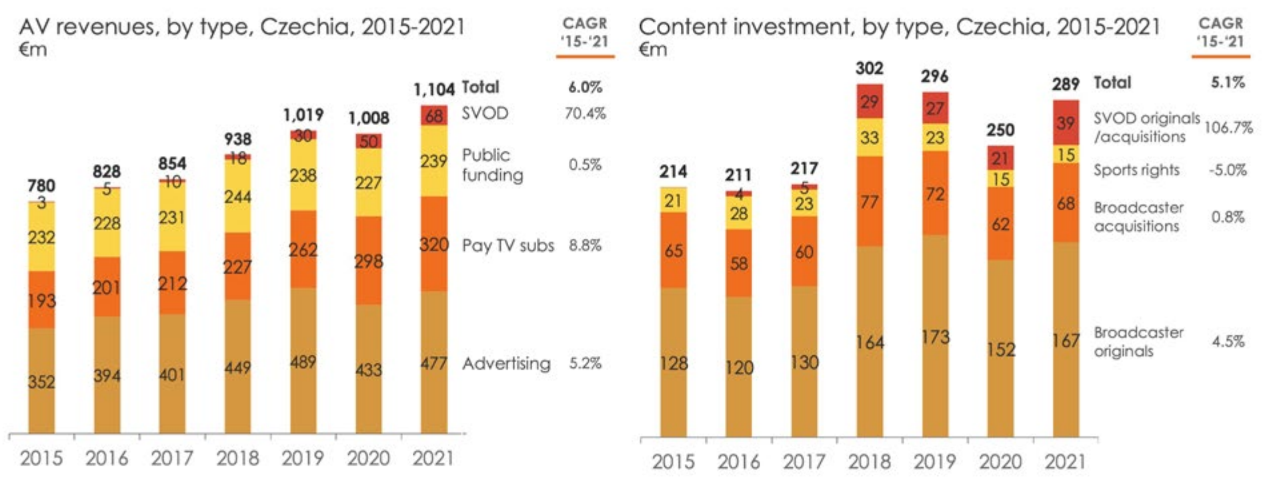
[103] 29th November 2021, 'BBC ALBA and TG4 collaboration to bring the story of St Columba to life in new documentary', MG ALBA, https://mgalba.com/bbc-alba-and-tg4-collaboration-to-bring-the-story-of-st-columba-to-life-in-new-documentary/?lang=en

8.5 Country specific analysis

This section provides key charts for each for each of our eight representative EU Member States in turn.

8.5.1 Czechia

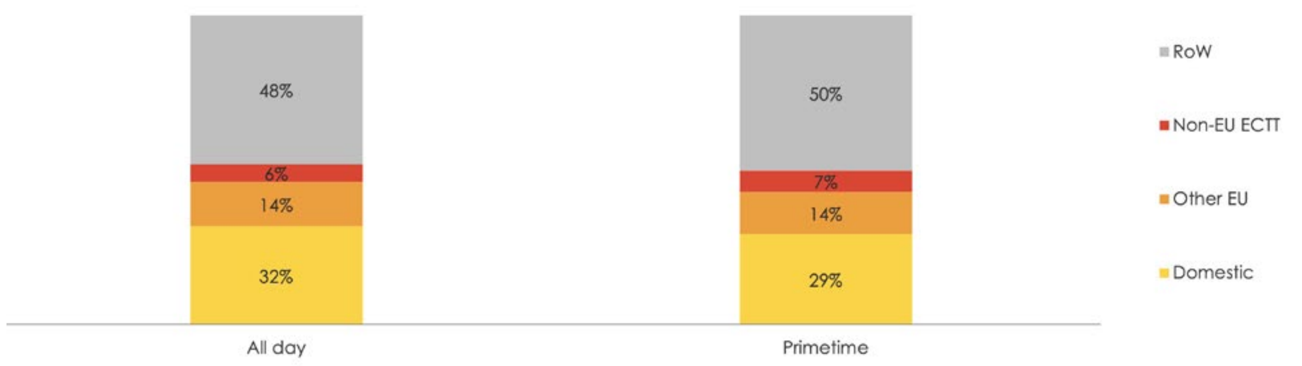
Figure 59: Growth of Czech AV revenues and content investment, 2015-2021 (€million)



Note: SVOD spend includes Netflix, Amazon Prime Video, Disney+, and Apple TV+. Public funding excludes radio but includes public film funds

Source: Ampere Analysis, European Audiovisual Observatory, PwC Global Entertainment & Media Outlook: 2022-2026, Oliver & Ohlbaum analysis

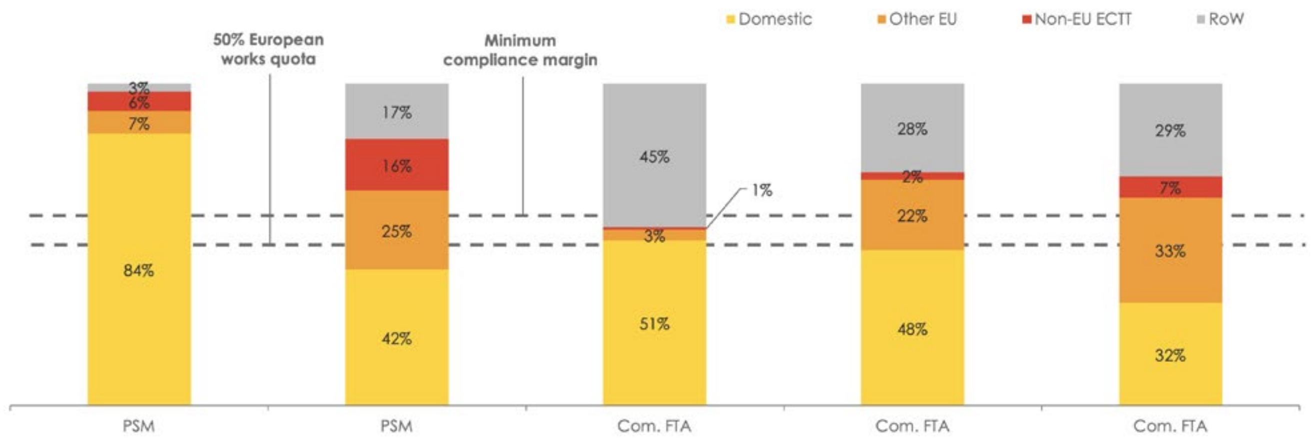
Figure 60: Share of broadcast schedule by country of origin, all channels, total vs primetime, Czechia, 2021 (% of broadcast time)



Note: Schedule analysis of 4 weeks in 2021. All TV channels for which data is available (including exempted channels). Excluding non-qualifying programming such as news, sports and teleshopping

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

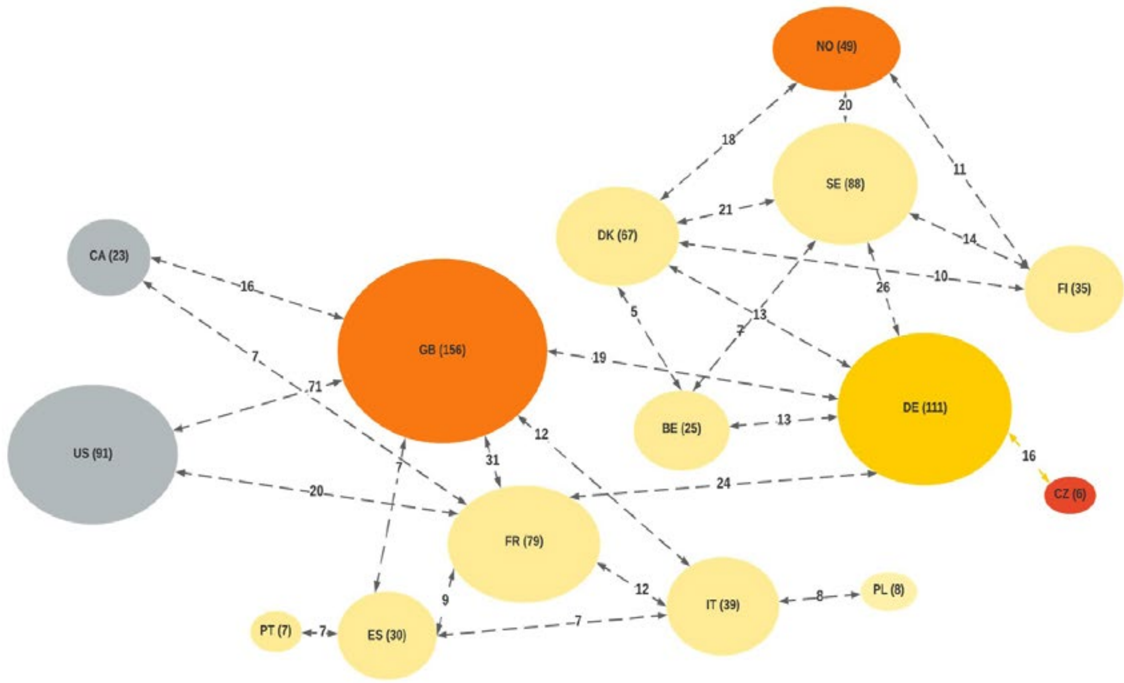
Figure 61: Share of broadcast schedule by country of origin, by channel, Czechia, 2021 (% of broadcast time)



Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports and teleshopping. Exempted channels in sample not shown

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Figure 62: Number of partnerships in non-linguistic European international TV fiction co-productions, Czech links with selected countries, 2021

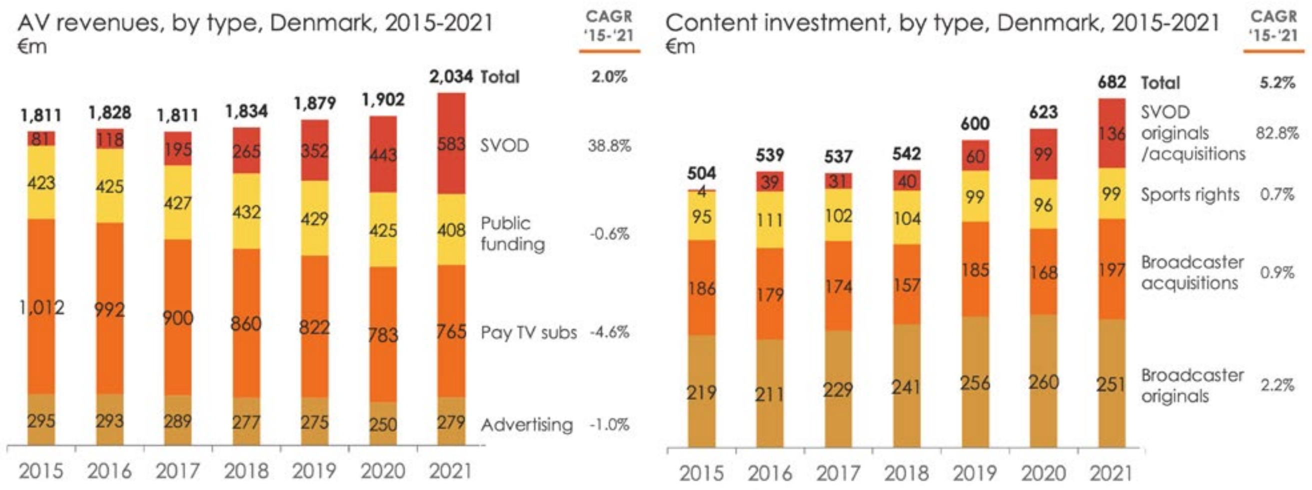


Note: This excludes "linguistic co-productions", i.e. those between neighbouring countries sharing a language (DE-AT, FR-BE, FR-CH, GR-CY, BE-NL, DE-CH, CZ-SK, GB-IE). The number of partnerships differs from the number of productions – Denmark may have participated with Sweden and Norway in the same production

Source: European Audiovisual Observatory, Oliver & Ohlbaum analysis

8.5.2 Denmark

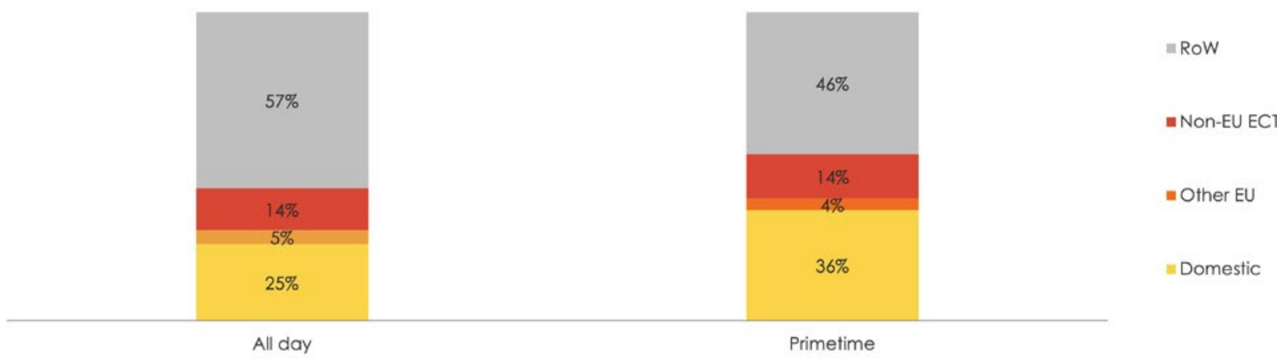
Figure 63: Growth of Danish AV revenues and content investment, 2015-2021 (€million)



Note: SVOD spend includes Netflix, Amazon Prime Video, Disney+, and Apple TV+. Public funding excludes radio but includes public film funds

Source: Ampere Analysis, European Audiovisual Observatory, PwC Global Entertainment & Media Outlook: 2022-2026, Oliver & Ohlbaum analysis

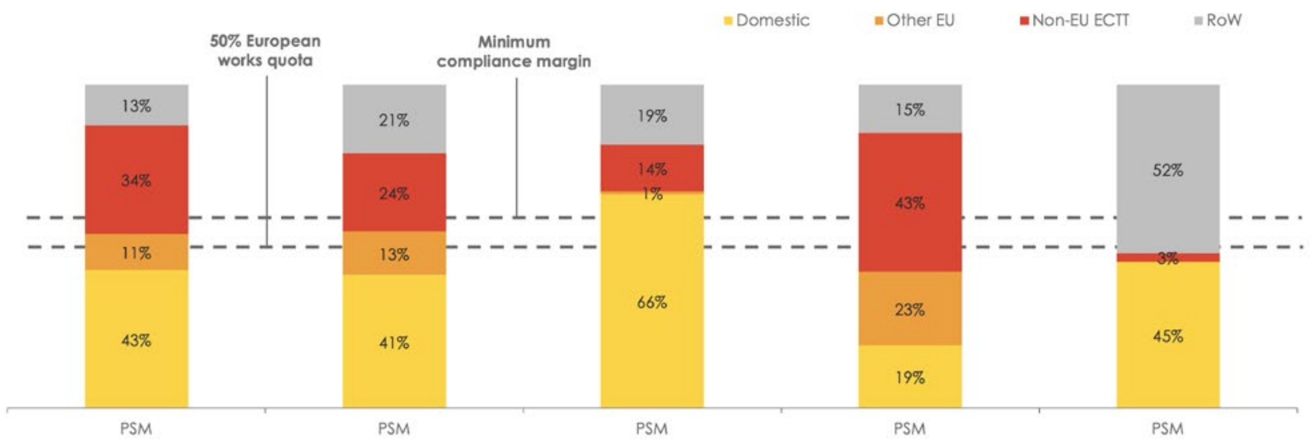
Figure 64: Share of broadcast schedule by country of origin, all channels, total vs primetime, Denmark, 2021 (% of broadcast time)



Note: Schedule analysis of 4 weeks in 2021. All TV channels for which data is available (including exempted channels). Excluding non-qualifying programming such as news, sports and teleshopping

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

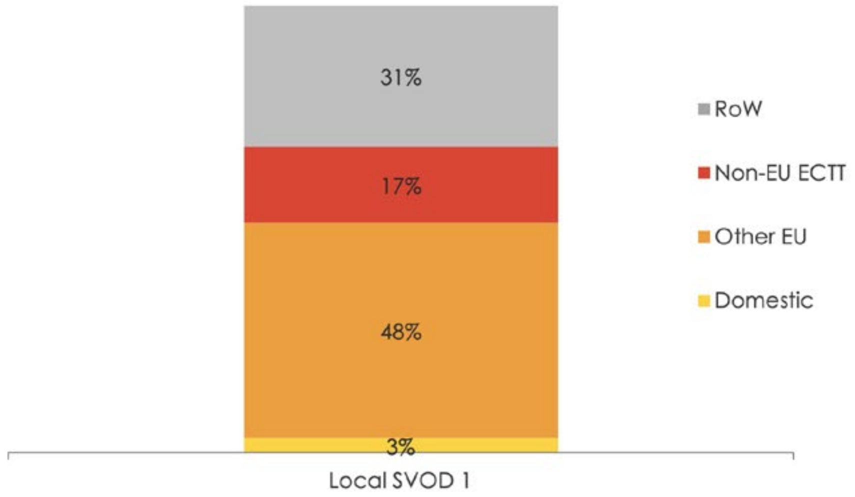
Figure 65: Share of broadcast schedule by country of origin, by channel, Denmark, 2021 (% of broadcast time)



Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports and teleshopping. Exempted channels in sample not shown. Compliance allowed across broadcaster portfolio

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

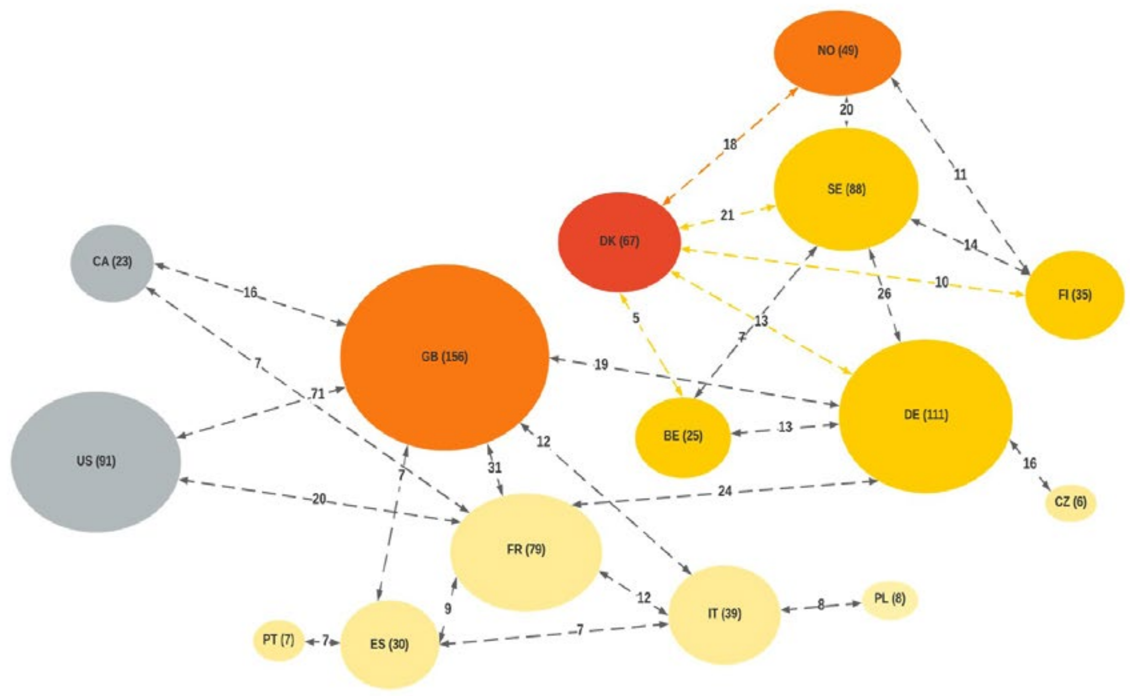
Figure 66: Share of catalogue by country of origin, local SVOD, Denmark, 2021 (share of total titles)



Note: Catalogue composition in December 2021

Source: Ampere Analysis, Oliver & Ohlbaum analysis

Figure 67: Number of partnerships in non-linguistic European international TV fiction co-productions, Danish links with selected countries, 2021

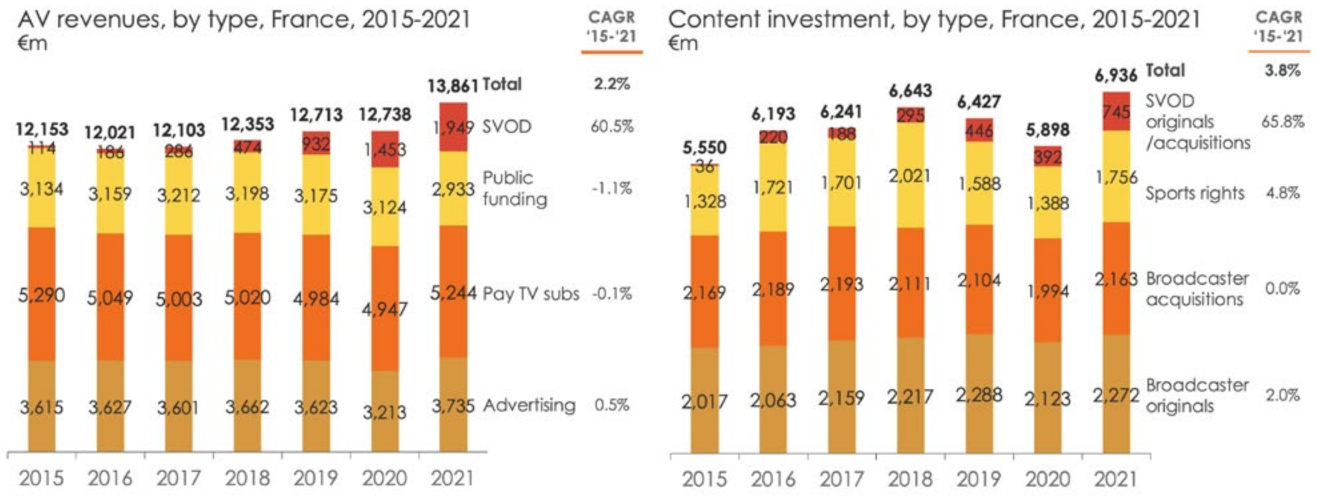


Note: This excludes "linguistic co-productions", i.e. those between neighbouring countries sharing a language (DE-AT, FR-BE, FR-CH, GR-CY, BE-NL, DE-CH, CZ-SK, GB-IE). The number of partnerships differs from the number of productions – Denmark may have participated with Sweden and Norway in the same production

Source: European Audiovisual Observatory, Oliver & Ohlbaum analysis

8.5.3 France

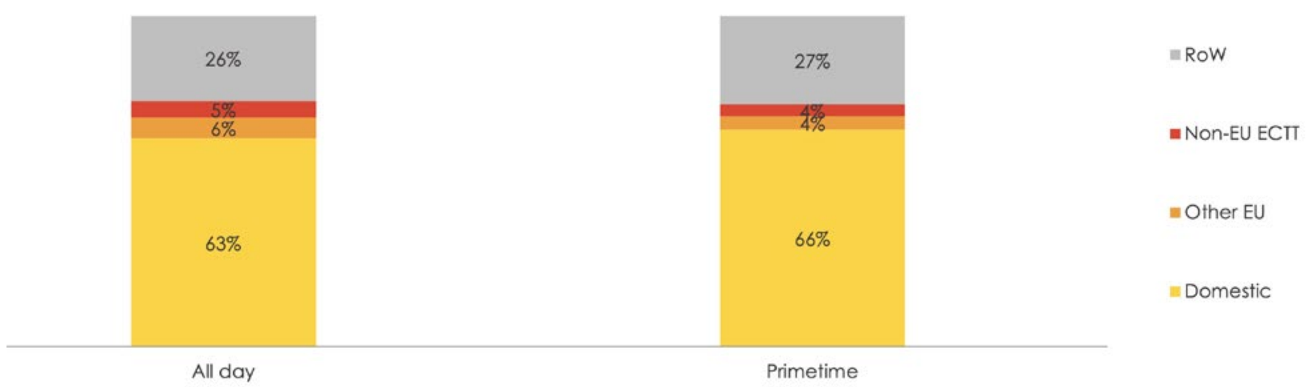
Figure 68: Growth of French AV revenues and content investment, 2015-2021 (€million)



Note: SVOD spend includes Netflix, Amazon Prime Video, Disney+, and Apple TV+. Public funding excludes radio but includes public film funds

Source: Ampere Analysis, European Audiovisual Observatory, PwC Global Entertainment & Media Outlook: 2022-2026, Oliver & Ohlbaum analysis

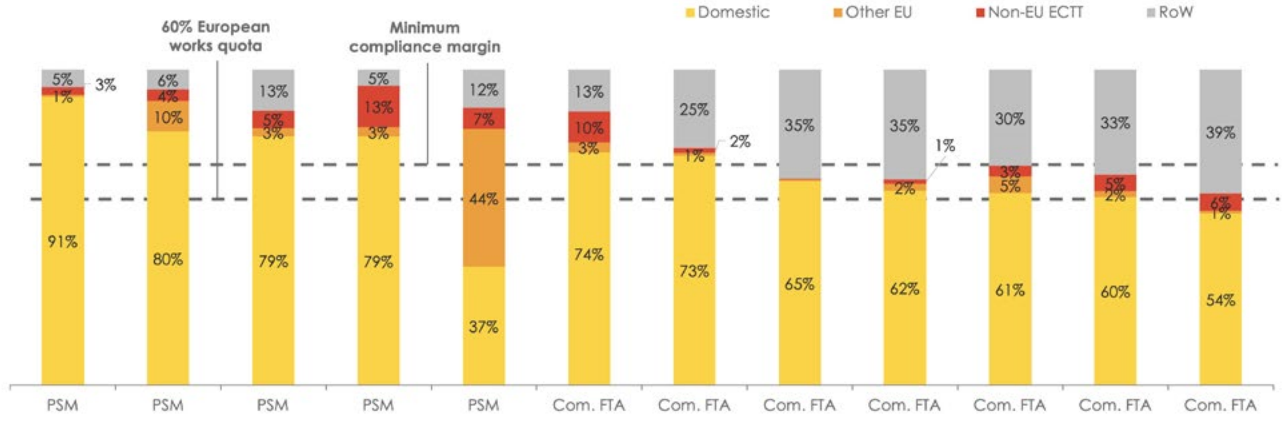
Figure 69: Share of broadcast schedule by country of origin, all channels, total vs primetime, France, 2021 (% of broadcast time)



Note: Schedule analysis of 4 weeks in 2021. All TV channels for which data is available(including exempted channels). Excluding non-qualifying programming such as news, sports and teleshopping

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

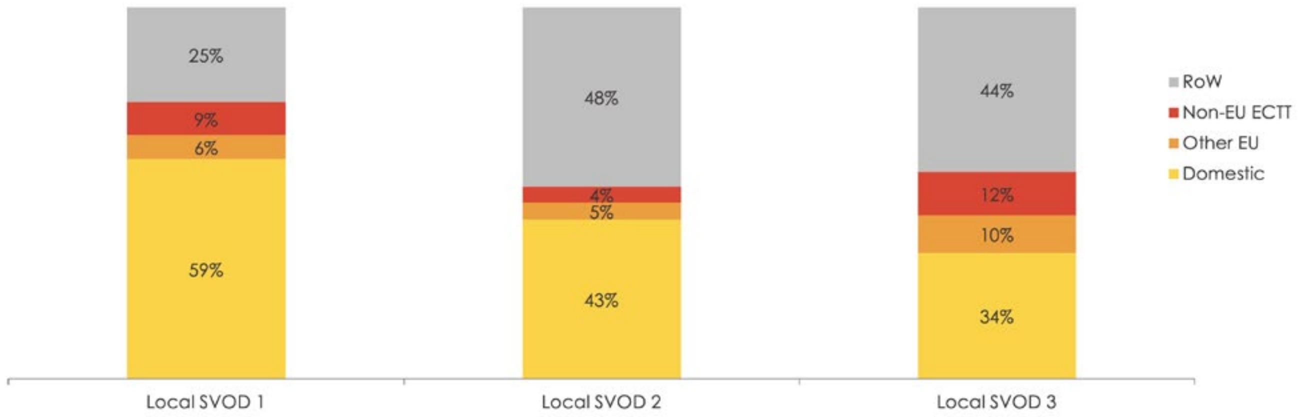
Figure 70: Share of broadcast schedule by country of origin, by channel, France, 2021 (% of broadcast time)



Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports and teleshopping. Note that in France, compliance is calculated on average and in prime time (not shown). Exempted channels in sample not shown

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

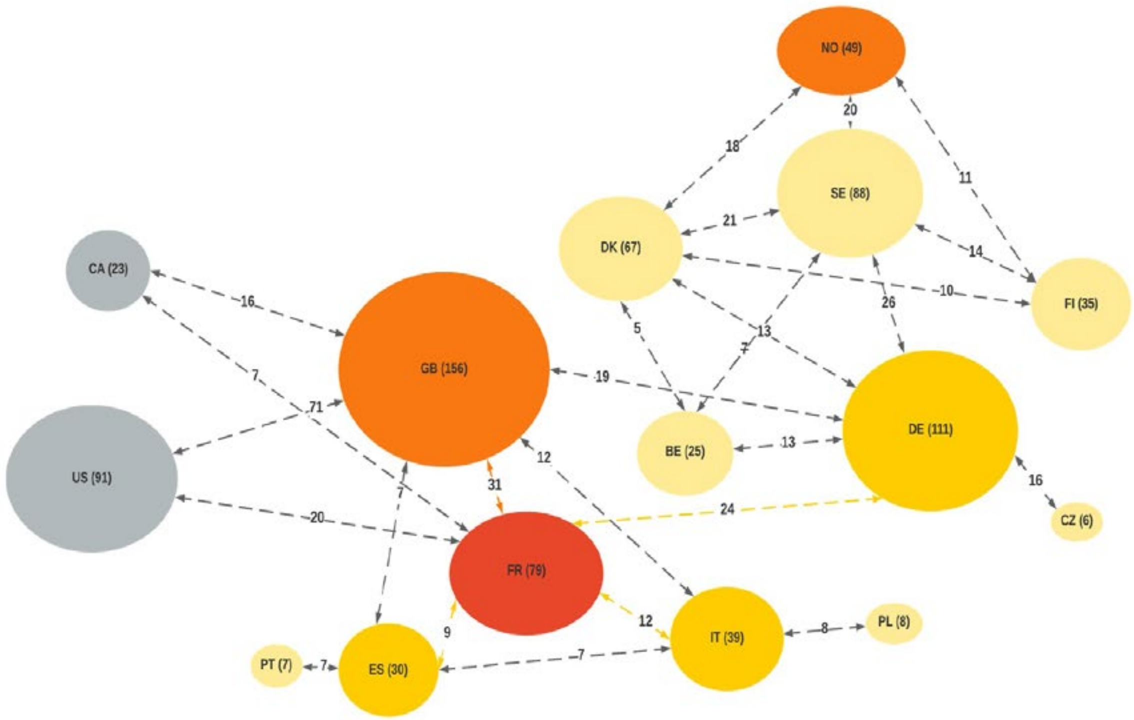
Figure 71: Share of catalogue by country of origin, local SVOD, France, 2021 (share of total titles)



Note: Catalogue composition in December 2021

Source: Ampere Analysis, Oliver & Ohlbaum analysis

Figure 72: Number of partnerships in non-linguistic European international TV fiction co-productions, French links with selected countries, 2021

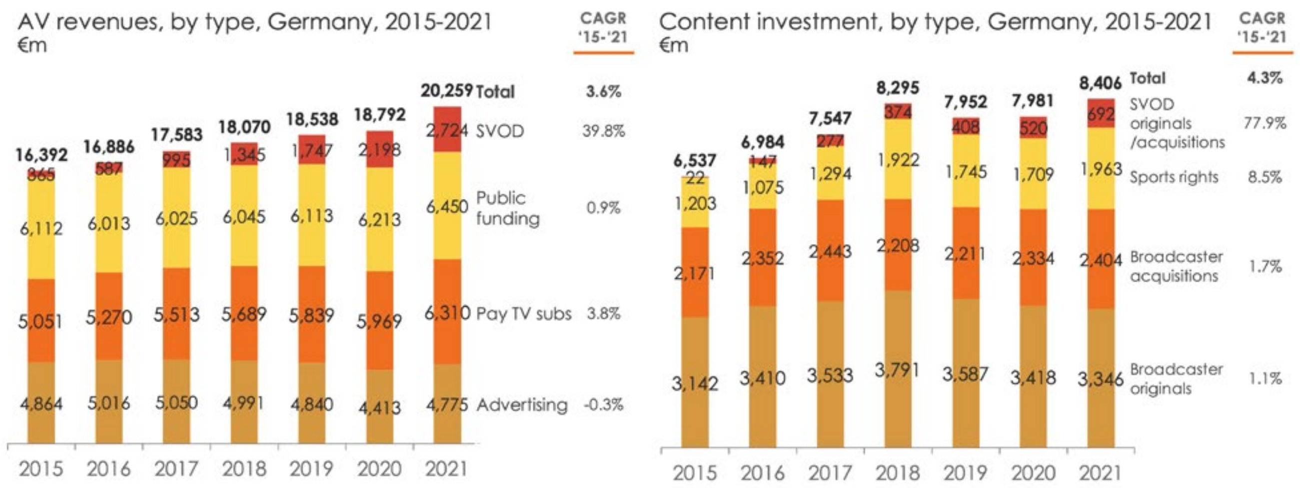


Note: This excludes "linguistic co-productions", i.e. those between neighbouring countries sharing a language (DE-AT, FR-BE, FR-CH, GR-CY, BE-NL, DE-CH, CZ-SK, GB-IE). The number of partnerships differs from the number of productions – Denmark may have participated with Sweden and Norway in the same production

Source: European Audiovisual Observatory, Oliver & Ohlbaum analysis

8.5.4 Germany

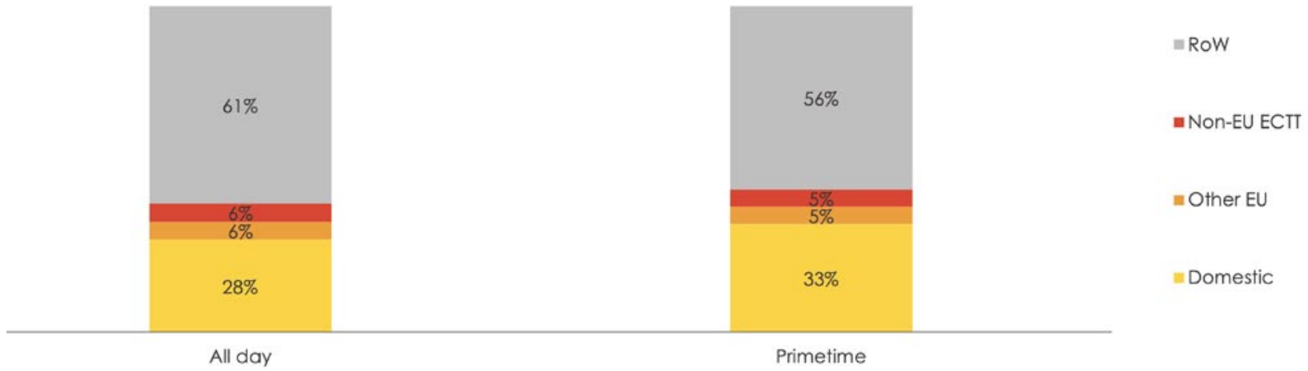
Figure 73: Growth of German AV revenues and content investment, 2015-2021 (€million)



Note: SVOD spend includes Netflix, Amazon Prime Video, Disney+, and Apple TV+. Public funding excludes radio but includes public film funds

Source: Ampere Analysis, European Audiovisual Observatory, PwC Global Entertainment & Media Outlook: 2022-2026, Oliver & Ohlbaum analysis

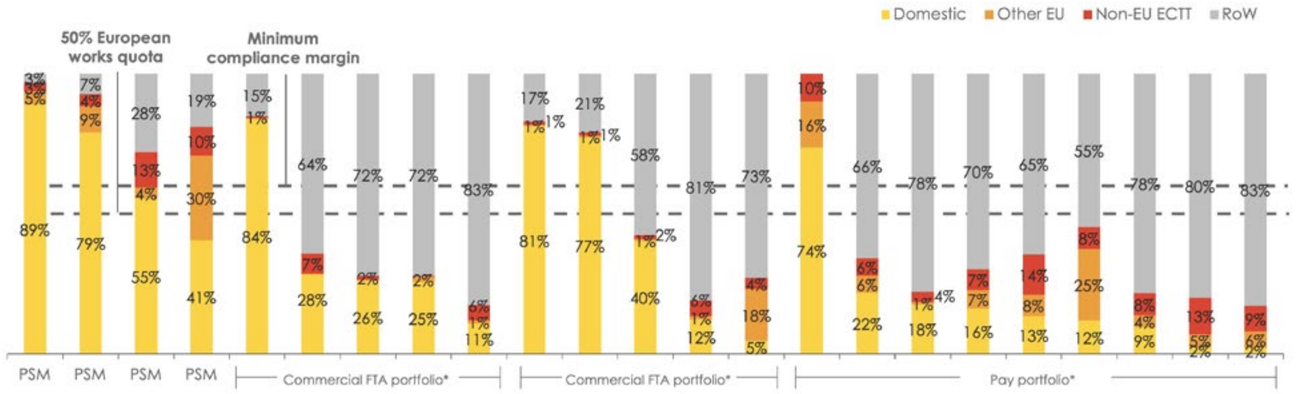
Figure 74: Share of broadcast schedule by country of origin, all channels, total vs prime time, Germany, 2021 (% of broadcast time)



Note: Schedule analysis of 4 weeks in 2021. All TV channels for which data is available (including exempted channels). Excluding non-qualifying programming such as news, sports and teleshopping

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Figure 75: Share of broadcast schedule by country of origin, by channel, Germany, 2021 (% of broadcast time)

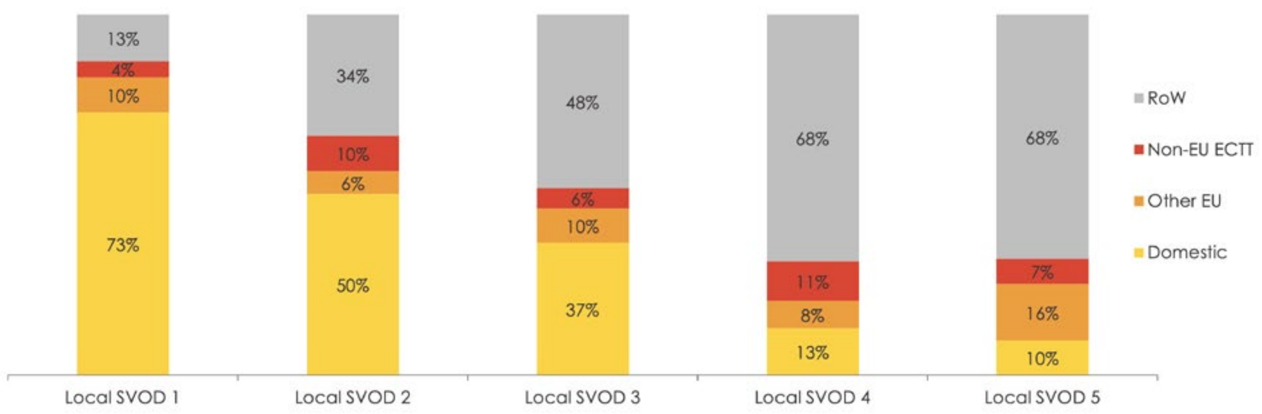


*Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports and teleshopping. Exempted channels in sample removed. *Compliance allowed across broadcaster portfolio; data is not available on all portfolio channels hence chart is not indicative of overall compliance*

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Please note that in the above chart for Germany, channels identified as required to comply with the European works quota but shown with European works below the 50 per cent line are part of a broadcaster group and compliance may be measured as a portfolio average across the group. Additionally, not all portfolio channels were available for analysis and hence are not shown on this chart. Therefore any individual channel or broadcaster portfolio shown as below the 50 per cent quota is not an indication of non-compliance.

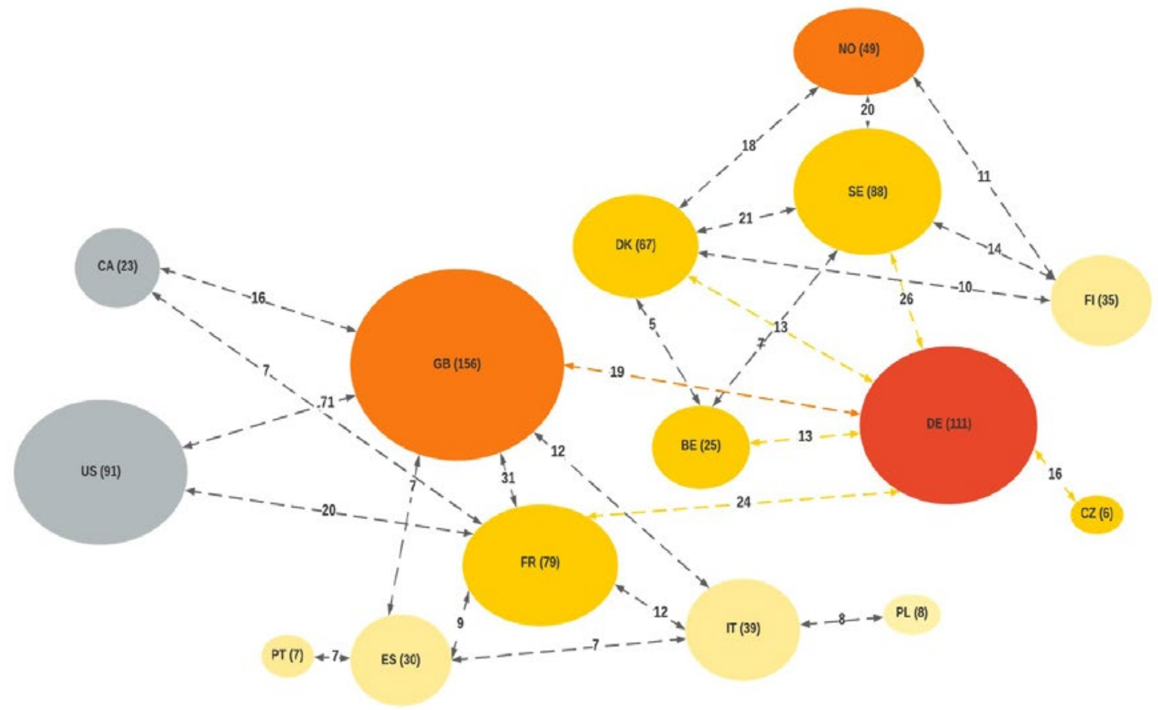
Figure 76: Share of catalogue by country of origin, local SVOD, Germany, 2021 (share of total titles)



Note: Catalogue composition in December 2021

Source: Ampere Analysis, Oliver & Ohlbaum analysis

Figure 77: Number of partnerships in non-linguistic European international TV fiction co-productions, German links with selected countries, 2021

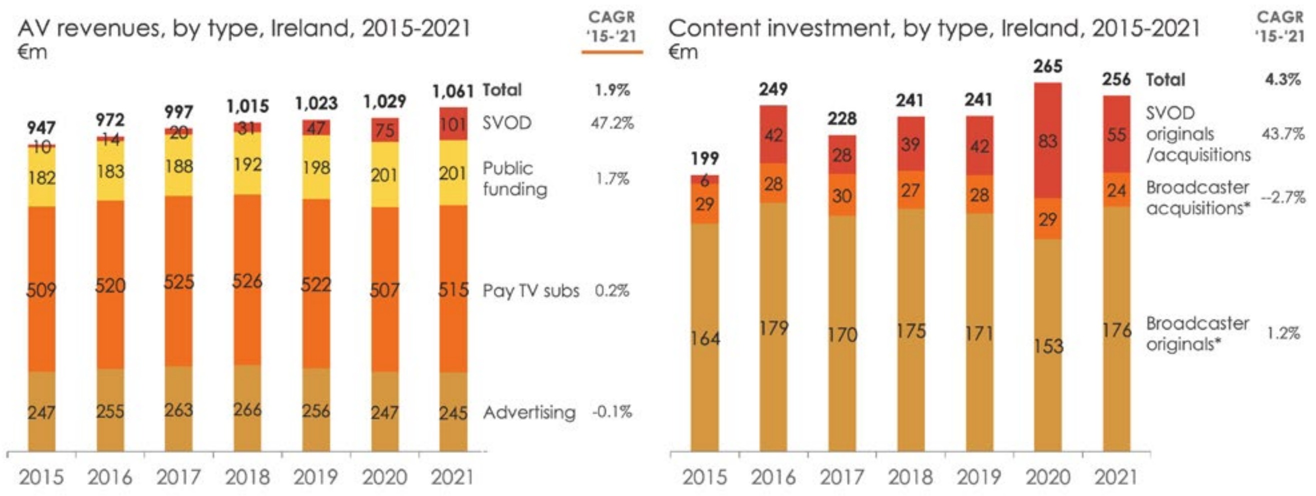


Note: This excludes "linguistic co-productions", i.e. those between neighbouring countries sharing a language (DE-AT, FR-BE, FR-CH, GR-CY, BE-NL, DE-CH, CZ-SK, GB-IE). The number of partnerships differs from the number of productions – Denmark may have participated with Sweden and Norway in the same production

Source: European Audiovisual Observatory, Oliver & Ohlbaum analysis

8.5.5 Ireland

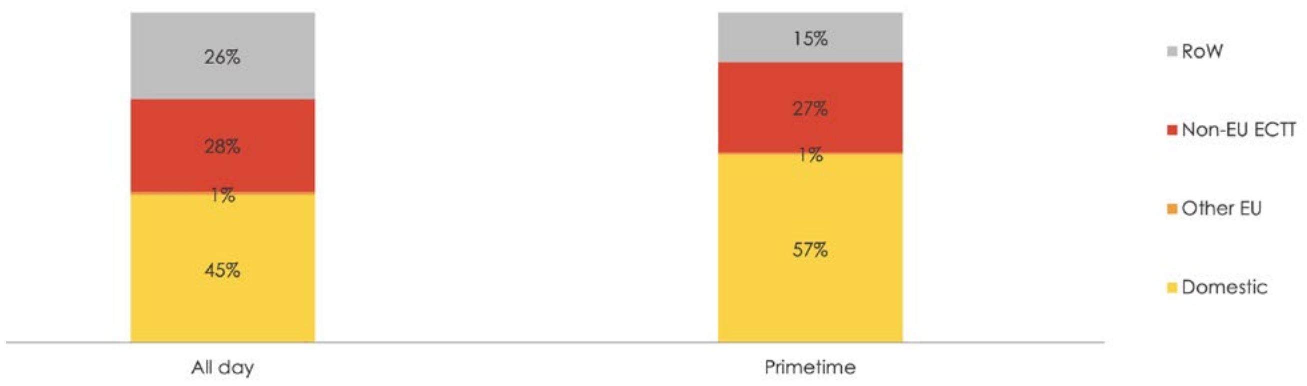
Figure 78: Growth of Irish AV revenues and content investment, 2015-2021 (€million)



Note: Only PSM broadcaster spend data available, no sports rights data available. SVOD spend includes Netflix, Amazon Prime Video, Disney+, and Apple TV+. Public funding excludes radio but includes public film funds

Source: Ampere Analysis, European Audiovisual Observatory, PwC Global Entertainment & Media Outlook: 2022-2026, Oliver & Ohlbaum analysis

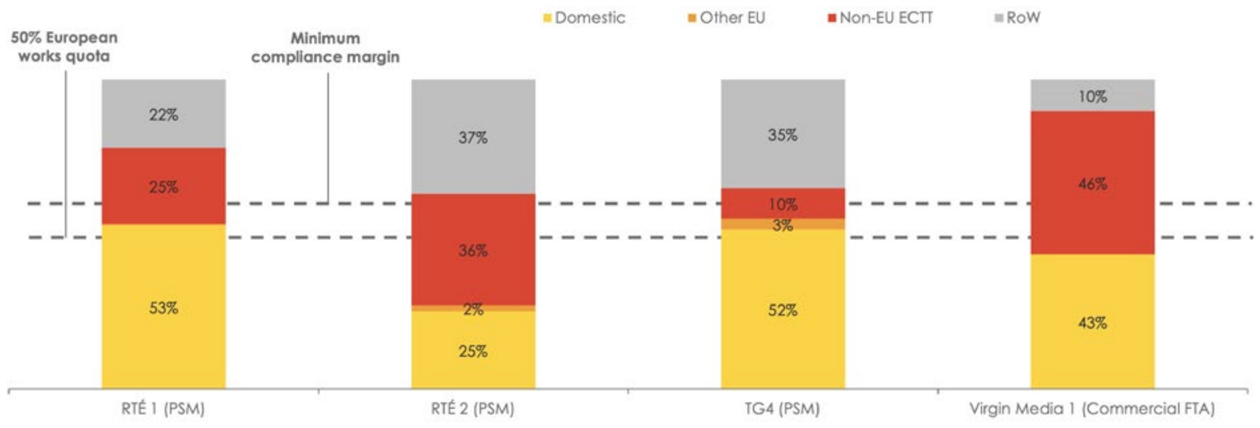
Figure 79: Share of broadcast schedule by country of origin, all channels, total vs primetime, Ireland, 2021 (% of broadcast time)



Note: Schedule analysis of 4 weeks in 2021. All TV channels for which data is available. Excluding non-qualifying programming such as news, sports and teleshopping

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Figure 80: Share of broadcast schedule by country of origin, by channel, Ireland, 2021 (% of broadcast time)

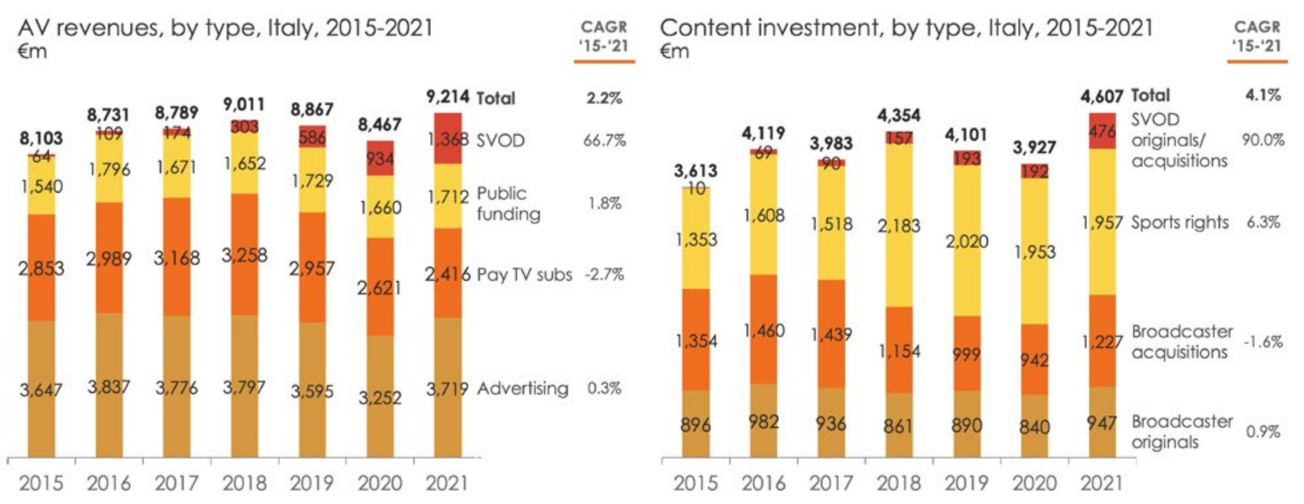


Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports and teleshopping. Exempted channels in sample removed

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

8.5.6 Italy

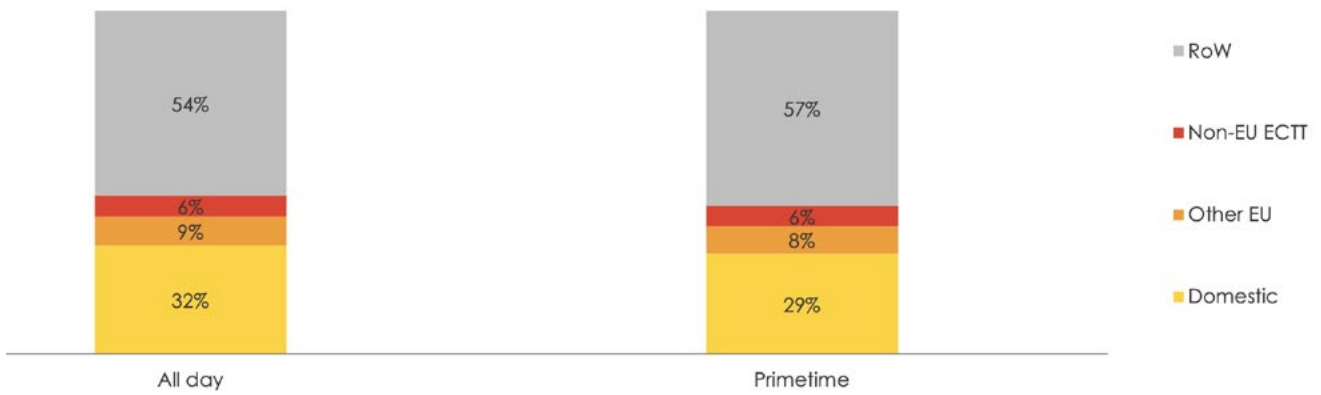
Figure 81: Growth of Italian AV revenues and content investment, 2015-2021 (€million)



Note: SVOD spend includes Netflix, Amazon Prime Video, Disney+, and Apple TV+. Public funding excludes radio but includes public film funds

Source: Ampere Analysis, European Audiovisual Observatory, PwC Global Entertainment & Media Outlook: 2022-2026, Oliver & Ohlbaum analysis

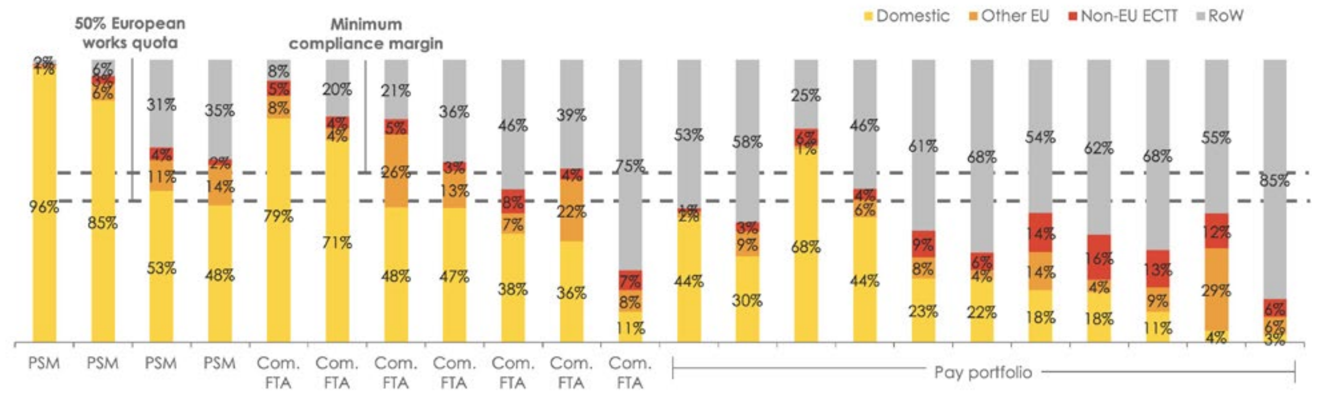
Figure 82: Share of broadcast schedule by country of origin, all channels, total vs primetime, Italy, 2021 (% of broadcast time)



Note: Schedule analysis of 4 weeks in 2021. All TV channels for which data is available (including exempted channels). Excluding non-qualifying programming such as news, sports and teleshopping

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Figure 83: Share of broadcast schedule by country of origin, by channel, Italy, 2021 (% of broadcast time)



*Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports and teleshopping. Exempted channels in sample not shown. *Compliance allowed across a broadcaster portfolio; data is not available on all portfolio channels hence chart is not indicative of overall compliance*

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

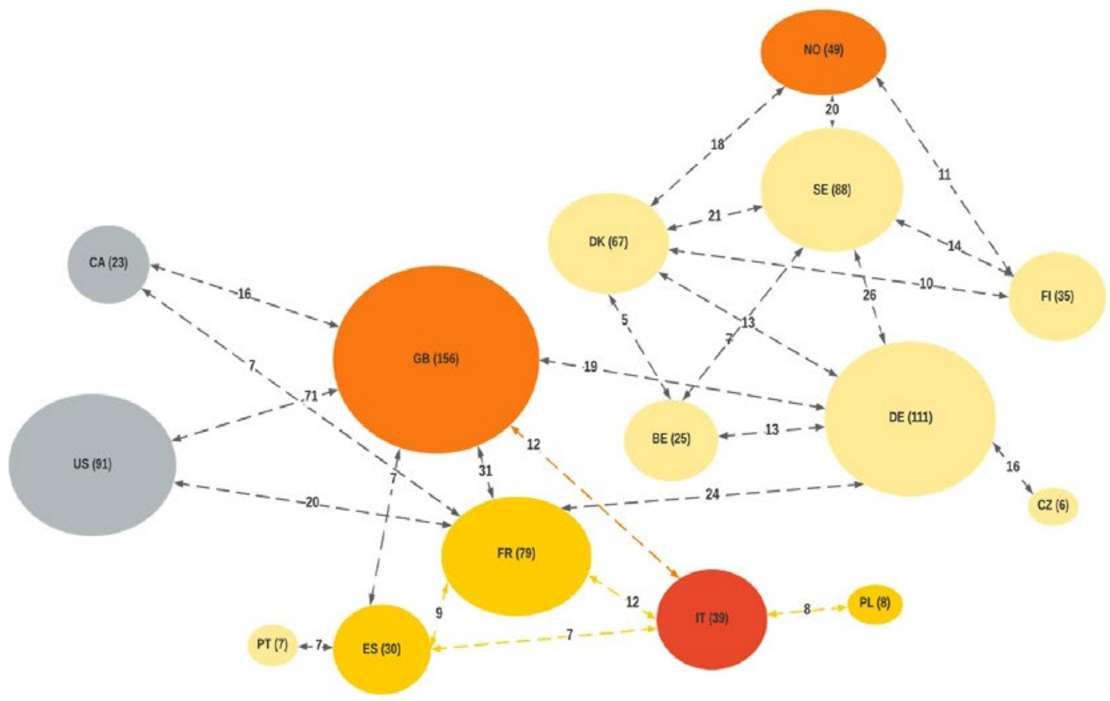
Please note that in the above chart for Italy, channels identified as required to comply with the European works quota but shown with European works below the 50 per cent line are part of a broadcaster group and compliance may be measured as a portfolio average across the group. Additionally, not all portfolio channels were available for analysis and hence are not shown on this chart. Therefore any individual channel or broadcaster portfolio shown as below the 50 per cent quota is not an indication of non-compliance.

Figure 84: Share of catalogue by country of origin, local SVOD, Italy, 2021 (share of total titles)

Note: Catalogue composition in December 2021

Source: Ampere Analysis, Oliver & Ohlbaum analysis

Figure 85: Number of partnerships in non-linguistic European international TV fiction co-productions, Italian links with selected countries, 2021

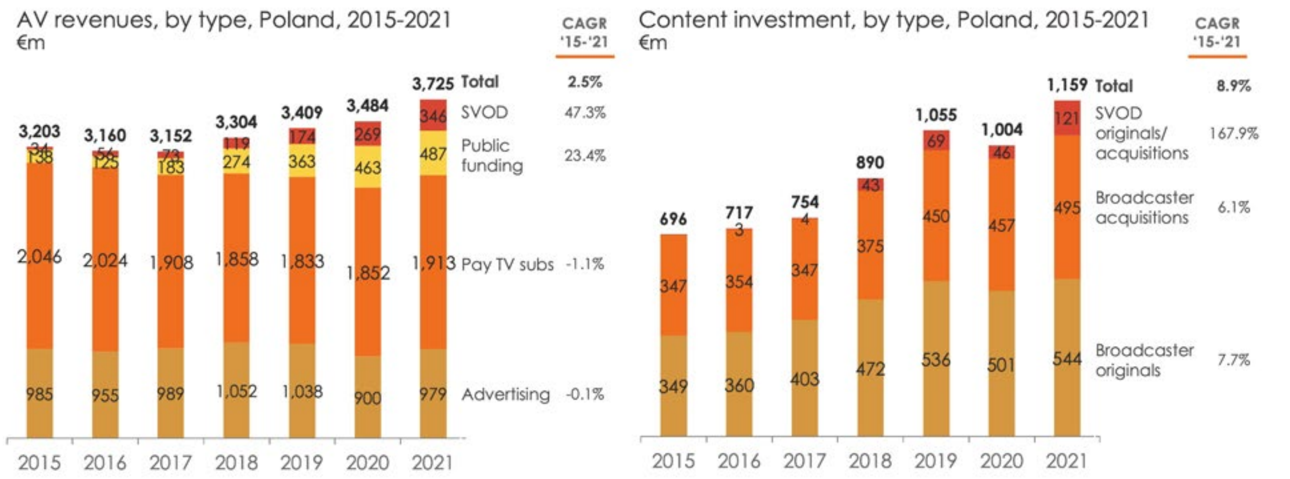


Note: This excludes "linguistic co-productions", i.e. those between neighbouring countries sharing a language (DE-AT, FR-BE, FR-CH, GR-CY, BE-NL, DE-CH, CZ-SK, GB-IE). The number of partnerships differs from the number of productions – Denmark may have participated with Sweden and Norway in the same production

Source: European Audiovisual Observatory, Oliver & Ohlbaum analysis

8.5.7 Poland

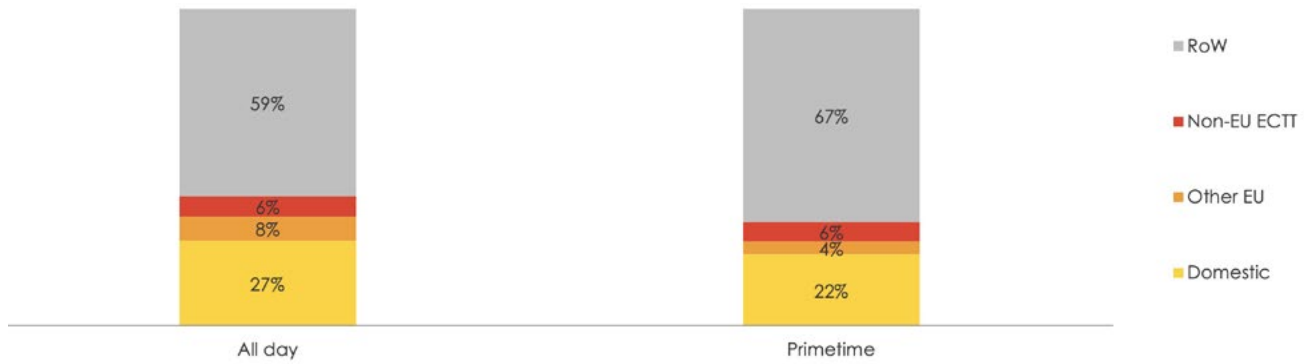
Figure 86: Growth of Polish AV revenues and content investment, 2015-2021 (€million)



Note: No sports rights data available. SVOD spend includes Netflix, Amazon Prime Video, Disney+, and Apple TV+. Public funding excludes radio but includes public film funds

Source: Ampere Analysis, European Audiovisual Observatory, PwC Global Entertainment & Media Outlook: 2022-2026, Oliver & Ohlbaum analysis

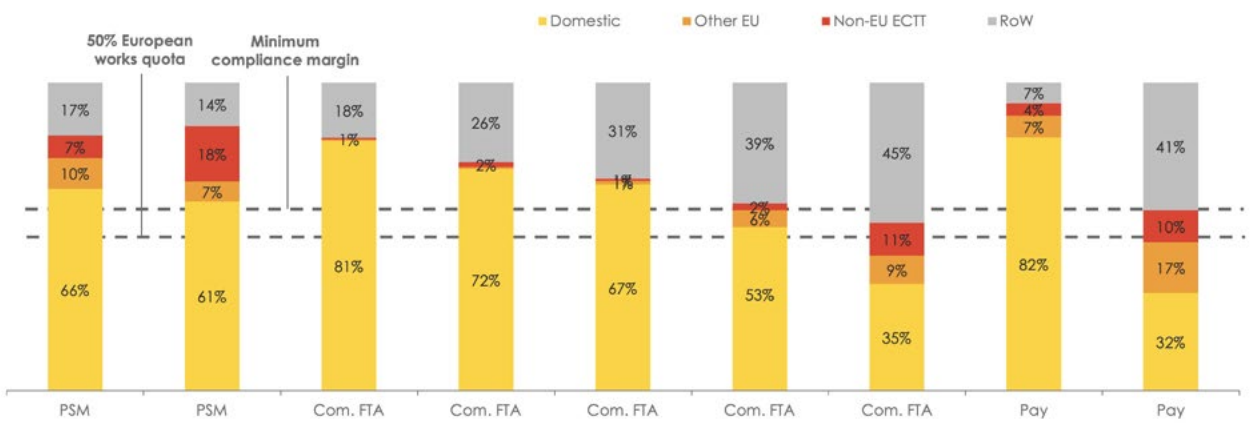
Figure 87: Share of broadcast schedule by country of origin, all channels, total vs primetime, Poland, 2021 (% of broadcast time)



Note: Schedule analysis of 4 weeks in 2021. All TV channels for which data is available (including exempted channels). Excluding non-qualifying programming such as news, sports and teleshopping

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

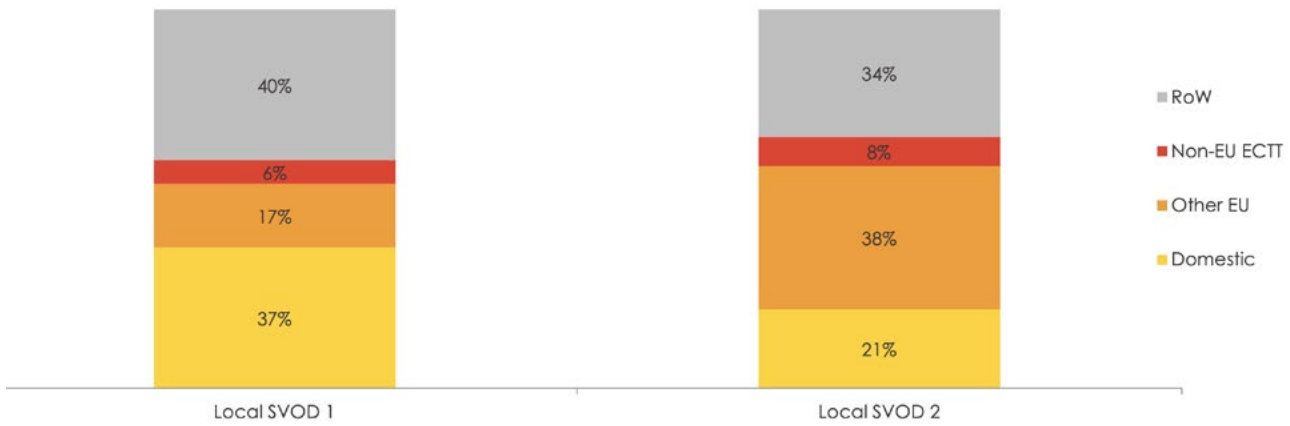
Figure 88: Share of broadcast schedule by country of origin, by channel, Poland, 2021 (% of broadcast time)



Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports and teleshopping. Exempted channels in sample not shown

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

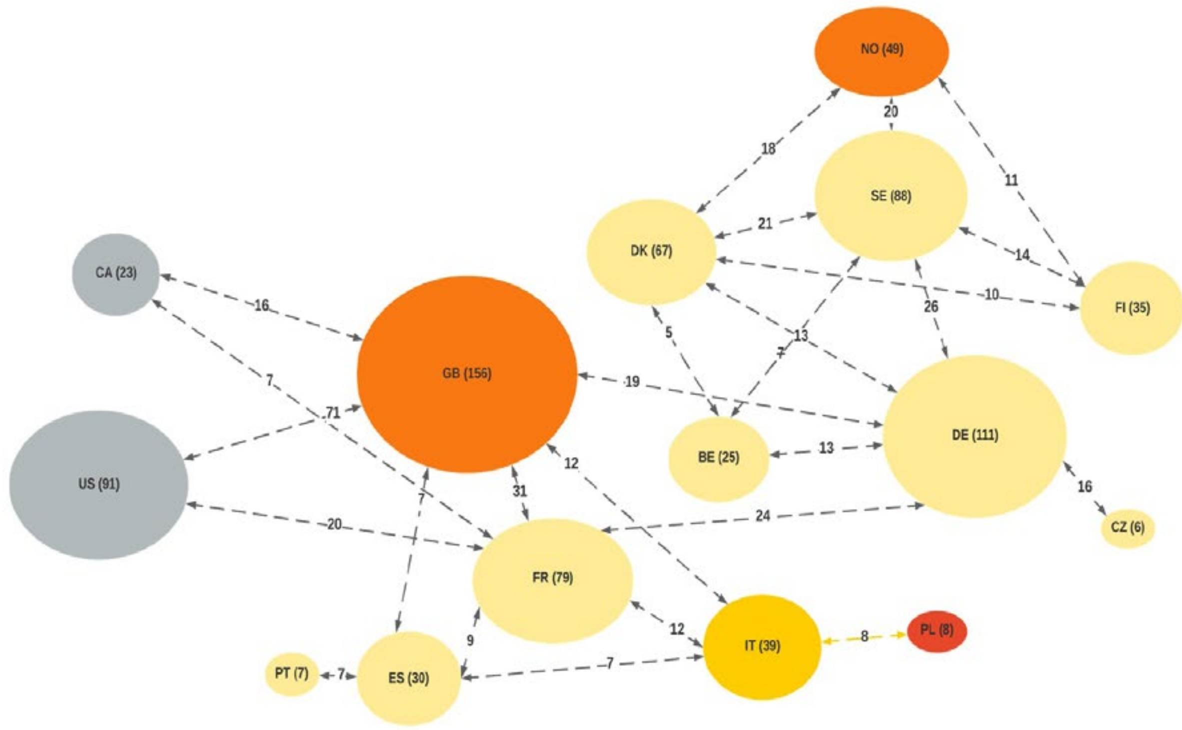
Figure 89: Share of catalogue by country of origin, local SVOD, Poland, 2021 (share of total titles)



Note: Catalogue composition in December 2021

Source: Ampere Analysis, Oliver & Ohlbaum analysis

Figure 90: Number of partnerships in non-linguistic European international TV fiction co-productions, Polish links with selected countries, 2021

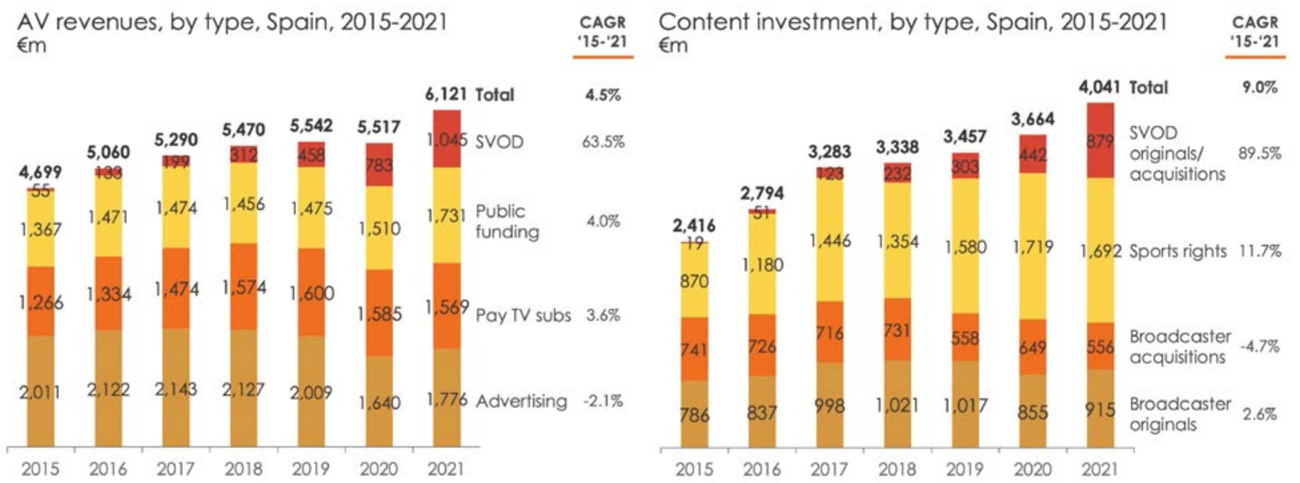


Note: This excludes "linguistic co-productions", i.e. those between neighbouring countries sharing a language (DE-AT, FR-BE, FR-CH, GR-CY, BE-NL, DE-CH, CZ-SK, GB-IE). The number of partnerships differs from the number of productions – Denmark may have participated with Sweden and Norway in the same production

Source: European Audiovisual Observatory, Oliver & Ohlbaum analysis

8.5.8 Spain

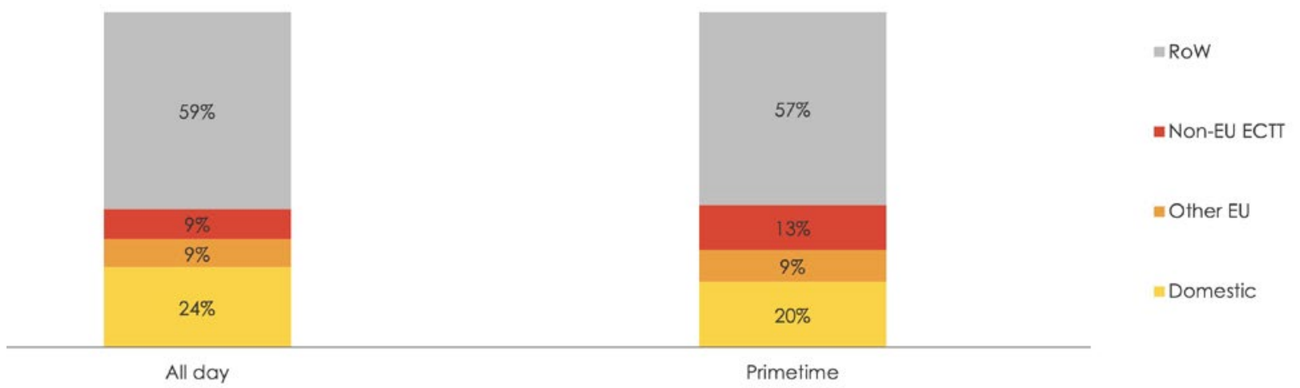
Figure 91: Growth of Spanish AV revenues and content investment, 2015-2021 (€million)



Note: SVOD spend includes Netflix, Amazon Prime Video, Disney+, and Apple TV+. Public funding excludes radio but includes public film funds. Public funding in 2021 is an estimate based on known split of RNE and TVE funding in 2020

Source: Ampere Analysis, European Audiovisual Observatory, CNMC, Oliver & Ohlbaum analysis

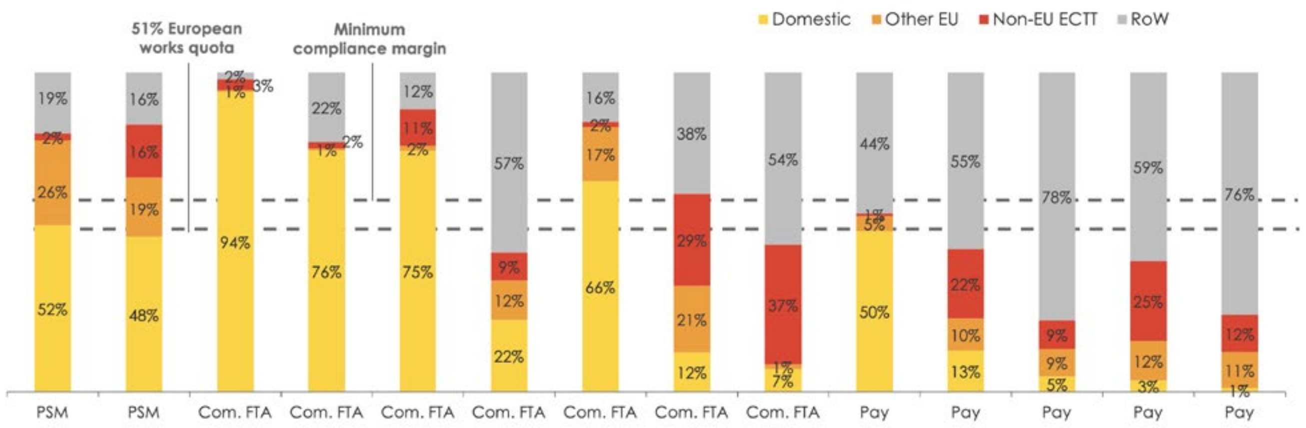
Figure 92: Share of broadcast schedule by country of origin, all channels, total vs primetime, Spain, 2021 (% of broadcast time)



Note: Schedule analysis of 4 weeks in 2021. All TV channels for which data is available (including exempted channels). Excluding non-qualifying programming such as news, sports and teleshopping

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Figure 93: Share of broadcast schedule by country of origin, by channel, Spain, 2021 (% of broadcast time)

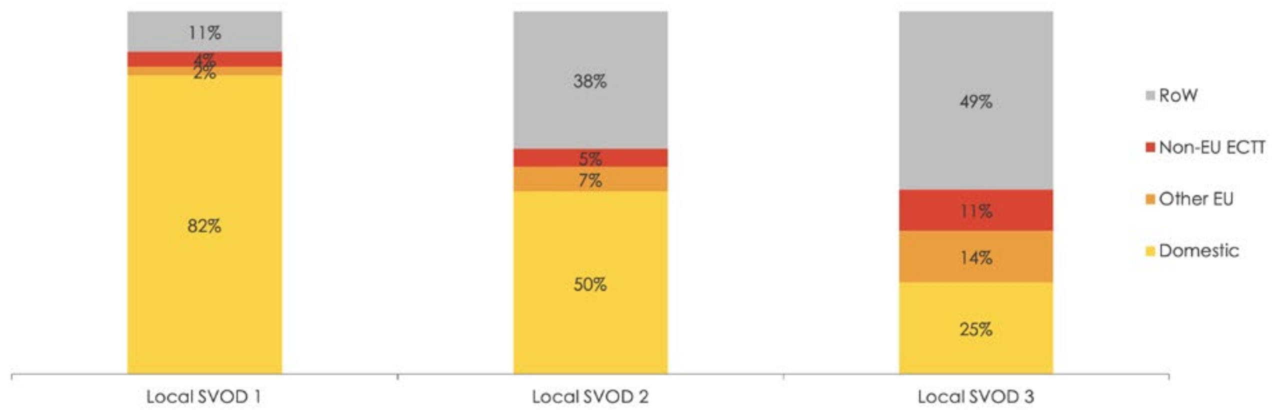


*Note: Share of broadcast time across whole year 2021, excluding non-qualifying programming such as news, sports and teleshopping. Exempted channels in sample not shown. *Compliance allowed across a broadcaster portfolio; data is not available on all portfolio channels hence chart is not indicative of overall compliance*

Source: Essential TV Statistics, Oliver & Ohlbaum analysis

Please note that in the above chart for Spain, channels identified as required to comply with the European works quota but shown with European works below the 50 per cent line are part of a broadcaster group and compliance may be measured as a portfolio average across the group. Additionally, not all portfolio channels were available for analysis and hence are not shown on this chart. Therefore any individual channel or broadcaster portfolio shown as below the 50 per cent quota is not an indication of non-compliance.

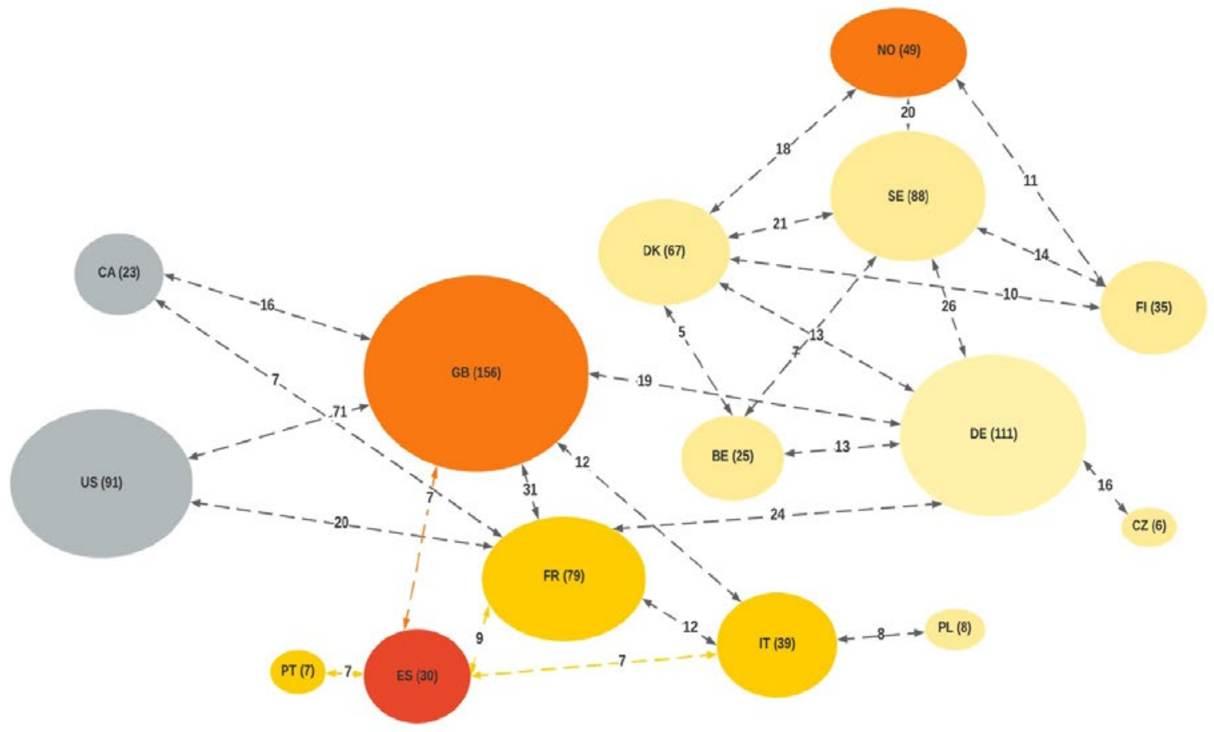
Figure 94: Share of catalogue by country of origin, local SVOD, Spain, 2021 (share of total titles)



Note: Catalogue composition in December 2021

Source: Ampere Analysis, Oliver & Ohlbaum analysis

Figure 95: Number of partnerships in non-linguistic European international TV fiction co-productions, Spanish links with selected countries, 2021



Note: This excludes "linguistic co-productions", i.e. 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

Source: European Audiovisual Observatory, Oliver & Ohlbaum analysis

8.6 Impact Assessment Methodology

This section outlines the methodology for estimating the impact that narrowing the European works definition would have on the European AV sector. It outlines the rationale behind the estimated effect of such a proposal, the data sources used, and the steps taken in the analysis.

To illustrate the impact of the definition change, this study considers how a narrowed definition would apply to a sample of channels in the eight representative EU Member States. It analyses the make-up of each channel's schedule by country of origin and assesses the viewing share by country of origin. Channels that have been selected are those that rely to a greater degree on non-EU content.

The impact assessment estimates the revenue impact of a narrowed definition for affected broadcasters by using audience data from a sample of impacted channels and considers the likely change in EU acquisition investment by such broadcasters.

8.6.1Data sources

The analysis has used the following data sources:

- Detailed schedule data, including breakdowns such as genre and country of origin, for channels in each of the eight representative EU Member States. This gives the proportion of non-news and sport schedules that originated in the EU, non-EU ECTT countries or elsewhere. This is both for the full year 2021 (to assess overall scheduling shares) and in the form of a four-week sample for more detailed schedule analysis (i.e. on a title-by-title basis). The raw data for this analysis was provided by Essential TV Statistics
- Advertising revenues for each channel for the year 2021. Data was sourced from Dataxis
- Content investment by broadcasters on acquired TV programmes and feature films for the set of broadcasters available. Data was sourced from Ampere Analysis
- Supplementary audience viewing data, including demographic splits, for a sample of channels in the representative Member States. Audience data was provided by Glance and combined with the four weeks of schedule data

8.6.2 Channels identified as affected by the removal of non-EU ECTT content from the European works definition

The analysis used schedule data to identify representative channels that would be affected by narrowing the definition of European works. Channels fall into a number of groups based on the impact of changes:

1. Exempt channels[104] – no scheduling changes required
2. Unaffected channels from unaffected broadcaster groups[105] – no scheduling changes required
3. Unaffected channels from affected broadcaster groups – scheduling changes may be required

[104] For a small number of channels in the sample, no data is available on whether or not European works quota compliance is required. For these channels, consideration of whether they are exempt or required to meet the linear quota has been based upon their known audience share and market-specific regulations in country of origin

[105] Although channels and broadcasters will be indirectly affected by negative knock-on effects in the European AV ecosystem, unaffected broadcaster groups were defined for this analysis as a broadcaster group where all of its channels are either (1) exempt, or (2) significantly above the linear quota in their market with only domestic and other EU works

4. Affected channels currently with more than 40 per cent European works in their schedule (50 per cent in France), that would not have a share of European works in their schedule above the 'compliance margin' in their market after a change in definition (i.e. 60 per cent in Poland, 70 per cent in France) – scheduling changes likely required. Some of these affected channels may have previously been allowed to be compliant across a broadcaster portfolio
5. Affected channels that would be below the 'compliance margin' in their market after a change, but allowed to be compliant across a broadcaster portfolio – scheduling changes likely required
6. Affected channels that currently have a share of European works below 40 per cent of their schedule and no clear exemption[106]

As seen above, the existence of broadcaster groups and channel portfolios complicates analysis of the impact of a narrowed definition since in some territories, often on an ad hoc basis, regulators may allow compliance across the whole portfolio. This means broadcasters can respond by making scheduling changes across a number of channels (potentially small changes on all channels, or large changes on one channel) and these channels do not necessarily need to be the ones directly affected by a narrowed European works definition.

For this reason, the analysis focuses on channels from group four above. Those within this group that have previously been allowed to comply across a portfolio, but have a sufficiently high share of European works, have been included in the analysis as scheduling changes are likely required.[107]

Analysing schedule data from these channels allows us to determine the share of non-compliant (non-EU) content that is required to be switched out, either to meet their country of origin's European works linear quota or to restore their share of European works to their current level before any narrowing of the definition.[108] This creates **a share of each channel's schedule that needs to be replaced with EU content (which includes domestic content)**. This could mean replacing US, RoW or non-EU ECTT content.

8.6.3 Modelling the impact of removing non-EU content and replacing it with EU content

Identifying content to be removed from the schedule

Next, the analysis uses data on a snapshot of a channel's audience figures to estimate **the share of total viewing generated by the content to be switched out**.

If the definition was narrowed, broadcasters would be required to switch out a certain proportion of their schedule that is non-EU. In line with the arguments outlined in Section 4.1 above, the analysis assumes that broadcasters will look to swap out the lowest performing (lowest average viewers) non-EU content from their schedules.

[106] Note, exemptions are based on the regulations and national market implementation of these regulations which can vary by country

[107] Additionally, data availability and data costs are prohibitive to assessing viewing across all affected channels portfolios in all representative markets

[108] For channels in the analysis those 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 following a change, 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

This analysis assumes that the value to the broadcaster of each piece of content is the viewer hours (number of viewers per hour) that it generates as this directly links to the advertising revenues a broadcaster can generate for the content. This is calculated by multiplying a title's average viewers by the duration of programme. The viewer hours per title are then ranked for each channel.

Then, the viewing associated with the content that is to be removed can be identified. A proportion of the lowest performing non-compliant content representing the number of hours of content that would have to be removed as a result of the definition change is identified. The sum of viewing to these titles represents the viewing affected by the definition change (β in the calculation below).

Accounting for a degree of flexibility in how broadcasters can adjust their schedule

Broadcasters may be unable to remove only the lowest performing content. For example, some poorly performing content may be part of a longer series, or there may be other contractual or regulatory restrictions on whether content should be retained in the schedule. Therefore, to account for the fact that broadcasters may have to remove some more popular content, the analysis identifies the proportion of viewing that is generated by *double* the proportion of content that is needed to be switched for EU content. This is then divided by two as a conservative estimate of the proportion of viewing affected by the change in schedule.

Total viewing of content that is removed for channels affected by the definition change

For a selection of channels in the analysis, the table below shows the share of each channel's schedule that needs to be replaced with EU content and the share of total viewing that this content is responsible for.

Data is not available on viewing for all channels affected by the definition change. Where data is not available assumptions are used to estimate the impact on viewing of removing non-EU content, using a relevant proxy. For these channels, a combined dataset is used that includes all channels where data is available in our sample. For each title in the data the proportion of total viewing it generates for the channel it was broadcast on is calculated. The dataset is then sorted by this contribution proportion, before a cumulative viewing proportion for each title is calculated. This is then normalised to account for the multiple channels contained in the dataset. This proxy dataset is used to estimate the associated viewing that replaced content is responsible for, for those channels where direct viewing data is not available.

Table 12: Share of each channel's schedule that needs to be replaced and the share of total viewing that the content is responsible for – illustration of six channels in the analysis

		Share of schedule that needs to be replaced to *meet linear quota*		Share of schedule that needs to be replaced to *restore their share of European works*	
		% of schedule to be replaced	% of total viewing replaced content is responsible for	% of schedule to be replaced	% of total viewing replaced content is responsible for
Average		**9%**	**2%**	**10%**	**2%**
Ireland	PSM	23%	3%	33%	15%
Spain	FTA	17%	9%	27%	30%
Czechia	FTA	9%	2%	11%	2%
Denmark	PSM	8%	1%	18%	5%
Poland	FTA	6%	2%	11%	4%
France	Pay	–	–	8%	1%

Source: Essential TV Statistics, Glance data, Frontier analysis

8.6.3.4 The value of EU content that replaces non-compliant (non-EU) content

EU content would need to be substituted for the non-EU content identified above. Broadcasters have said that alternative EU content (i.e. content of a similar cost) would be less efficient at delivering viewers for the reasons set out in the report (see Section 3.5).

The modelling assumes that broadcasters would spend the same amount on the EU content that they switch-in as the content that is removed, but that it is less effective at generating an audience. The assumption imposed is that the EU content that broadcasters switch-in generates 80 per cent of the viewing that the non-EU content it is replacing does. This is a conservative assumption and likely overestimates the value of the alternative EU content:

- As discussed in Section 4.1.3, the reality is that non-qualifying content could be entirely replaced with repeats and archive content. However, the analysis assumes in the central case that 50 per cent is replace by repeats and archive content at no incremental cost to the broadcaster, and that the remaining 50 per cent is spent on equivalent EU acquisitions – a higher share of repeats and archive content would perform worse
- In certain markets, such as Ireland, there is a much greater discrepancy between average audiences to non-qualifying content (i.e. UK and US) and EU acquisitions. In such markets the drop-off in viewing would be much more pronounced
- Thus a sensitivity analysis of impacts at lower shares of viewing (50 per cent and 25 per cent) is provided below

The revenue impact on broadcasters

The estimate of the revenue impact on directly affected broadcasters is therefore the lost advertising revenue as a result of declining audience. It is reasonably assumed that advertising revenue is proportionate to the viewer hours and audience that each programme generates, so for each channel the revenue impact is calculated as:

Revenue impact = (1-80%) × β × *Total advertising revenue*

Where β = Proportion of the channel's total viewer hours generated by the content switched out using the approach set out above.

This assumes that all of the channels analysed in our sample are entirely ad-funded. In fact, a number of the affected channels are PSM (and hence part or fully publicly funded) or pay channels (and hence reliant on subscription revenues/affiliate fees). For simplicity, we have assumed the same relationship between viewership and funding for these channels.

An average revenue impact across the channels in the analysis is then calculated as a representative value for the average loss in revenue that channels impacted across the EU would face.

However, lower viewing to 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 (e.g. VOD, Video Sharing Platforms or other AV media like gaming). For simplicity this analysis assumes that 75 per cent of the affected channels' lost viewing is redistributed to alternative TV channels and 25 per cent is 'lost' to TV, implying an absolute decline in overall TV revenues.

Results and sensitivities

Section 4.1 above outlines the headline results from the impact assessment on average revenues of impacted channels in the EU. This considers all channels that would need to switch their schedule to restore their share of European works to its current level.

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.

As discussed, this analysis assumes that the EU content that broadcasters 'switch in' generates 80 per cent of the viewing that the non-EU content it is replacing does. The results below outline the average loss in revenue that channels impacted across the EU would face if the EU content that replaces the non-EU content achieves a lower proportion of the audience.

Table 13: Per channel decline in TV advertising revenues, sensitivities

Assumption	Situation	Per channel decline in TV advertising revenues	Percentage decrease in their annual advertising revenues
80%	Restore their share of European works to their current level before any narrowing of the definition	€0.4m	0.9%
50%		€1.1m	2.2%
25%		€1.6m	3.2%

Source: Essential TV Statistics, Glance data, Frontier analysis

8.6.5 Estimating the increase in the value of EU acquisitions as a result of the quota change

As outlined in Section 5.1.1, it is assumed that broadcasters will replace non-compliant (non-EU) content with EU content of a similar value (though, as set out above, that is less effective at delivering viewers).

The potential increase in EU acquisitions for each channel was calculated as:

Increased spend on EU acquisitions = spend on acquisitions by channel $\times \beta \times \theta$

Where β = Proportion of the channel's total viewer hours on acquired content generated by the content switched out,

and θ = the efficiency or cost per view assumption for the content being switched out (broadcasters may need to spend more on acquiring EU content, for example if it is scarce).

As set out above according to broadcasters they would replace content on a like for like cost basis, though replacement content would be less efficient at delivering viewers. Therefore θ is assumed to be 1. However, this assumption is tested below assuming that broadcasters have to resort to more expensive content.

Spend on acquisitions by channel

The total spend on acquisitions by channel is based on data on broadcasters' spend on acquisitions pro-rated to the broadcasters' specific channels according to the channels' audience shares.[109]

However, data is not available on how individual channels' spend on acquisitions is allocated to different types of content (domestic, EU, RoW etc). Therefore, on average each channel's total spend on acquisitions is assumed to relate to the sum of all viewing of non-domestic content and 15 per cent of domestic content, assuming 15 per cent of domestic content in schedules is acquired.

[109] Content investment from Ampere Analysis, audience data from Glance

Results

The results are set out in the table below.

Content acquisition budgets in the eight representative EU Member States (including France, Germany, Italy and Spain, the largest four countries) make up 81 per cent of total EU27 content acquisition. Therefore, to contextualise the results against total EU content investment, the increased investment in the eight representative EU Member States is pro-rated up to the EU27 by multiplying by (1/0.81).

The results presented assume in the central case that of the original spend on non-EU acquisitions, 50 per cent would be spent on EU acquisitions. This is because it is assumed that 50 per cent of the no longer compliant content is replace by repeats and archive content at no incremental cost to the broadcaster, and that the remaining 50 per cent is spent on equivalent EU acquisitions. As outlined in Section 4.1.3, broadcasters can use repeats or archive content for which they have the rights, rather than making new EU acquisitions.

The upper bound assumes that 25 per cent of the no longer compliant content is replaced by repeats and archive content at no incremental cost to the broadcaster, and that the remaining 75 per cent is spent on equivalent EU acquisitions.

Table 14: Possible increase in EU27 broadcaster investment in EU acquisitions, sensitivities

Assumption	Increase in EU27 broadcaster investment in EU content	% of EU broadcaster acquisitions	% of EU broadcaster total content investment
θ=1 (EU content costs the same as non-compliant content)	€ 28m - € 42m	0.3% - 0.5%	0.1% - 0.2%
θ=1.25 (EU content costs 25% more than non-compliant content)	€35m - €52m	0.4% - 1.6%	0.2% - 0.3%
θ=1.5 (EU content costs 50% more than non-compliant content)	€42m - €63m	0.5% - 0.7%	0.2% - 0.3%

Source: Essential TV Statistics, Glance data, Frontier analysis

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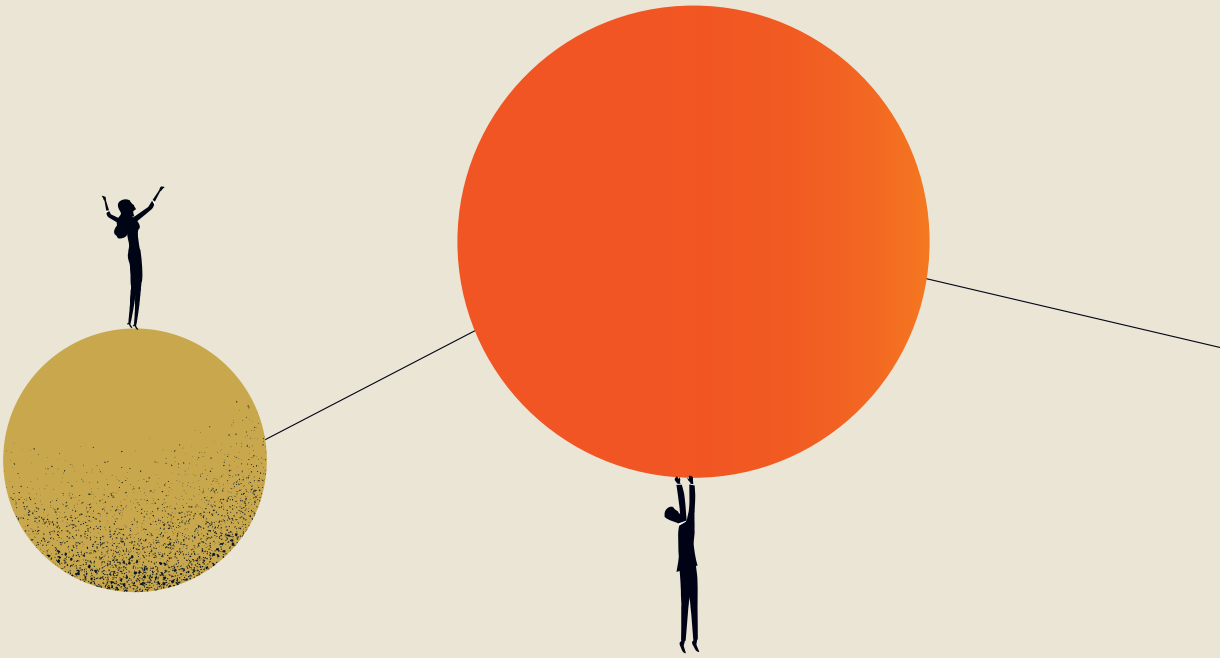

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