

**EFAD EU Policy and Strategy Working Group**

**Brussels, Wednesday 05 February 2020, 9:30-13:45**

**Draft Minutes**

**List of Participants :**

* **Croatia :** Christopher Marcich
* **France :** Emilie Cardoso
* **Germany:** Bérénice Honold (deputy chair)
* **Portugal:** Marta Rodrigues de Sousa
* **Spain :** Jaime Alejandre
* **UK :** Neil Watson (by phone)
* **EFAD :** Julie-Jeanne Régnault (Secretary General)

1. **Updates on Copyright, Territoriality and Media Regulation**
   1. Sky Case

Two ongoing cases:

* + - 1. revision of Canal+, supported by the EFADs, against the Court decision of December 2018 not to accept the original Canal+ appeal against the Commission’s decision to accept the Paramount Commitments;

=> EFAD will participate on the 6 February 2020 in the oral hearing in Luxembourg.

The pleading has been prepared by CNC with contribution of the lawyer and the Secretary general.

The EFAD will be represented in Luxembourg by Olivier Sasserath (lawyer) accompanied by Jérémie Kessler CNC.

Chances to succeed are considered low, so this action is more for supporting the principle than for proper chances to win. Emilie stresses that EFAD support in this case is very important as it adds a cultural legitimacy to the Canal+ and the French Ministry of Culture action. Neil adds that judges of the ECJ may be more sensitive to arguments formulated by EFAD and that it is important that we go until the end of the line.

* + - 1. appeal of Canal+ against the Commission’s decision to accept the commitments of the other studios and Sky UK; this will not be opened by the Court before the case above is closed
      * **Next EFAD steps:** no next steps - After this oral hearing however, it is recommended that EFAD will no longer be active in this case.
  1. AVMSD
* Julie-Jeanne informs the group, that a targeted consultation should be launched soon and that the Commission’s guidelines should be adopted on 5 March 2020 at the next contact committee meeting. Coordinated response to be formulated by EFAD.
* During his hearing in front of the European Parliament, Commissioner Thierry Breton has taken position in favour of a calculation by duration and not titles, in contradiction with the approach that emerged initially (probably influenced by some MEPs). ES, FR, HR, PT, DE confirmed that they support a calculation by title (1 season of a TV series = 1 title)
* During EFAD Plenary in Berlin, the reasons will be asked to Sabine Verheyen (EPP, Germany, President of the Culture Committee) who will attend the meeting.
* Julie-Jeanne refers to the meeting with Belgian regulator (on 4 February) and points out the Italian case on terms of good practice prominence. Bérénice ads that EFAD should look at this Italian example and use it to lobby for an efficient implementation, especially in key territories (such as the Netherlands or Ireland).

Julie-Jeanne mentions that during the EAO conference on independent production on 4 February 2020, Anna Herold had made some declarations that could potentially be problematic for EFAD members. She insisted on the need that Member States implement the investment obligations in a way that does not create barriers, are proportionate and non-discriminatory. The European Commission will look at them with a view of ensuring consistency and transparency between very different systems. “how can we achieve coordination of all these national systems”. Anna Herold also insisted on the need to boost access to private finance for independent producers.

EFAD will try to get more information on the Commissions intentions with this regard.

Feedback from members on transposition process: *see updated document on AVMS directive.*

Main messages:

* France

Provisions of the audiovisual law will be completed and specify by a decree. This decree will state how investment obligations shall be direct towards independent production.

The Law provides a set of criteria on “independence” to take into account in order to determine whether a contribution is directed towards independent works => Emilie to send an English summary of main provisions.

The bill is expected to be reviewed by committees between February and March. Then, it will be debated in the Assemblée Nationale between March and April, and in the Senate end of May. The entry into force will depend on the pension reform agenda.

* Spain

Transposition of AVMSD lies jointly with ministry of culture and ministry of economics. On 5 February 2020 a new minister of culture has been appointed.

There is already an investment obligation for public and private broadcaster in Spain with a certain orientation towards independent production. It is now to be extended to VoD providers. An exception for smaller companies will be included.

Jaime fears that ministry of economics might consider that the increase of money provided by the VoD services, should diminish broadcaster’s contribution.

Like in France, the law will be detailed by a decree.

* Croatia

The government has published early February its consultation document proposing AVMS implementing legislation.  The plan is to go to Parliament in March.  For the moment, there will be no investment obligation or tax applicable to cross border services.   There is only a domestic levy on VoD services (2%). However the Ministry expects from HAVC to make a concrete tax proposal. The Agency for Electronic Media is supportive too.  As a practical matter a production requirement is not feasible given our market size.  So a tax/levy would be more appropriate but the critical issue is to find a way to exempt the smaller ones (i.e. domestic services). A rate of 10%, is envisaged for “large” streamers.

Law to be enacted in June – July.

Netflix in Croatia already has 100k subscribers. Critical issue of the level of the exemption.

For this, there is need for definition of the basis on which to count the levy (European turnover seems the most appropriate than the national one) and of “independent”. Currently “independent” is only broadcaster-linked.

Legislator waits for European examples. Given the 100-120K subscribers that Netflix has in Croatia, an investment obligation does not seem practicable because the turnover is too low.

On promotion, currently discussions mentioned a link ton independent production on the frontpage (so basically the ghetto-idea).

* Portugal

There is preliminary consultation of the sector that showed a huge dissent in the industry on the levy/investment obligation question.

There is already investment obligation on VoD services, the idea is to extend it to cross-border services.

* UK

AMVSD will be implemented into UK law by 19 September 2020.

In 2019 there has been a consultation on the implementation of revised AVMSD. The Government is supposed to respond to this consultation. [on 12 February 2020, subsequent to this meeting, the UK Government published its response]

The transposition is expected to be a copy-out of the Directive. No levy/investment obligation on cross border providers planned.

Julie-Jeanne asks why UK is implementing AVMS and not Copyright. Neil answers that this is due to the situation subsequent to the UK’s departure as an EU Member State on 31 January 2020 . The transposition deadline for implementing the Copyright Directive is 7 June 2021, which is outside the Transition Period which ends on 31 December 2020. The UK Government has said therefore the UK will not be required to implement the Directive, and has said it has no plans to do so.

OFCOM will be in charge of monitoring the implementation of quotas and prominence.

Separately, it was noted that the EU’s draft negotiating mandate for trade negotiations with the UK states that “Audio-visual services should be excluded from the provisions related to liberalisation.”

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* Germany

Bérénice reminds the group that in Germany the provisions of article 13 are implemented on different levels. No investment obligation planned. On the levy side, Germany already had implemented it for national and cross-border VoD providers before the new AVMSD. Depending on the Commissions guidelines, a change of FFG (Federal Film Law) will be necessary in order to implement new threshold (amount of turnover and/or audience).

Quotas and promotion, are within the competence of the regions. *Medienstaatsvertrag* (media state contact) has been adopted but not published yet. The wording should be very close to directive. Regional regulatory administrations are supposed to give their recommendations on concrete application.

* 1. Media action plan

After the announcement by Commissioner Breton during his hearing, the European Commission is working on an action plan for the media sector (non-binding document that may cover funding for the audiovisual sector, findability of European works but also media pluralism). It is expected to be adopted 2nd quarter 2020.

EFAD will ask the Commission for more details and possible input from EFAD during meeting later this day. Especially on findability of works, cultural diversity on VoD services, including adaptation of algorithms.

* 1. Review of the Geoblocking Regulation

An evaluation report of the European Commission was delivered by the consultancies to the Commission by early January. So far no news on the publication of the report. By the end of March 2020, the official deadline for the revision of the Geoblocking Regulation, Thierry Breton is expected to give a general orientation to the future scope of the law.

* 1. Transposition of the DSM Copyright and Television and Radio Programmes Directives

Presentation of report from French authorities in the French Perm Rep on 4 February. This very technical report basically stated that existing technology is perfectly capable of filtering protected content. The problem lies with the fact that this technology, mainly developed by the platforms themselves, is not accessible to smaller rightsholders.

* + - * **Next step**: participants agree, that given the fact that only few members are active in this field and that it is complicated to find a balanced position, the DSM topic will not be a EFAD-WG priority anymore. Members will of course be free to raise attention to certain topics, should there be a common interest at stake.
  1. Digital Services Act

It is an initiative by the Commission about regulation of cultural diversity on user generated content platforms such as Facebook and YouTube.

Werner Stengg, July 2019: DSA will not reopen questions that are solved with the DSM directive; focus on platform regulation with regards to hate speech etc.

EP nominated its rapporteurs: Tiemo Wölken, S+D, will lead on the initial report (“Digital Service Act: adapting commercial and civil law rules for commercial entities operating online”).

1. **EU-Korea PCC and Free trade negotiations**

The group agrees that the Korea cultural protocol to the FTA could be a dangerous precedent. During the last AV-Group meeting, no clear position has been reached concerning member state’s positions.

Participants discussed the benefits of the Council of Europe Convention for coproduction, open to third countries.

Reference was made to reports of Olivier Henrard’s (CNC) remarks on 24 January during the FIPADOC event in Biarritz regarding the AVMSD quotas and British works following the UK's departure from the European Union.

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1. **Strengthening the independent European film industry**
   1. Presentation of the EFAD approach

Two main questions are emerging from precedent discussions and first results of EFAD questionnaire:

* Do the EFAD need/want a common definition of “independence”?
* What kind of knowledge would be valuable for members (mainly in terms of best practice)?

Definition of independence:

Several industry associations are currently working on definitions (CEPI, EPC, MEDIA). Some EFAD members also have definitions in their regulations (Spain: distribution scheme for independent distributors; France for the selective schemes + AV law will direct money from investment obligation to independent production as defined in the law), Croatia do not have a definition in the law but in practice funding goes to “independent” entities; Portugal no definition either, but money goes de facto to independent producers, same in UK and Germany).

* 1. Mapping of existing best practice

What are the main issues and what can be the WG’s role?

The main question for funding institutions is to find a way to make local film industries sustainable and future proof, meaning making existence without money from streamers such as Netflix possible.

Indeed, the current problem is the increased attractiveness of deals with platforms, even without keeping IP rights, because traditional production is not viable (example of Toni Erdmann). Besides depriving European producers from creating a library of rights which they can build on also endangers cultural diversity.

In the UK, the BFI’s annual statistics show a significant drop (45%) of investment in independent production in 2019. Traditional production companies are turning from independent cinematic works to commissioned work (from streamers, Sky or others).

The current contractual structure (often platform only) and an increase of high end series, bypasses theatres and theatrical distributors.

Potentially useful reports on financing of independent productions from EAO and EP.

**Next EFAD steps**: EFAD will setup a page/corner on the website, where all relevant documents on independence will be collected. This is to support/inspire members who need a definition for their national legal framework (either via investment obligations or support schemes).

In terms of best practice, the group decided to enlarge the scope of measures to be collected. Reflection should not only be on funding measures both private and public, but also on possible changes within the industry (structure of revenue share, access to alternative financing i.e. private equity). Idea to look into concrete examples of financing models

1. **Green Industry**
   1. Mapping of environmental promotion initiatives taken by Film Funds – summary of responses

See EFAD mapping on green initiatives.

France: CNC has not done much, besides being member of EcoProd, but there are possibilities to support eco-friendly measures in general. On regional level (ex Ile de France) funding bonuses are given to clean productions.

Portugal: ongoing discussions on implementing green funding criteria. Lisbon is “European Green Capital” 2020.

The Commission is now getting involved in these topics and seeks harmonization throughout Europe.

It is stressed that this is a very ambitious plan, as harmonization is already difficult on national level. Like many “hot topics”, there are a lot of tensions between experts in the field of environmental issues. BFI is to publish a report on sustainability.

One other topic brought to members’ attention, is that they should be prepared for questions on counter-productivity of funding schemes. Indeed, regional funds (in Germany i.e.) or cash rebate/tax incentives tend to artificially move film activities to a given place causing unnecessary traveling. This creates so called “funding tourism”.

In Spain there are plans to adapt funding in order to minimize this problem.

**Next EFAD steps**: Continue to collect best practices and discuss in Berlin. Reflect on how national and MEDIA funding can be more eco-friendly.

**End of meeting**