The definition of independent production in direct and indirect public support measures

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The definition of independent production in direct and indirect public support measures

1. Foreword

"The beginning of wisdom is the definition of terms" is a quote often attributed to Greek philosopher Socrates or to his pupil Antisthenes,[1] referring to the underlying need to understand the deep meaning of terms in order to have a logical discussion. Transposed into a legal context, the importance of defining terms ensures legal certainty and provides clarity to parties on how to fit within a given scope and how to benefit from certain rules.

This also applies to independent audiovisual productions, where the notion of 'independence' is charged with several meanings, making the definitory aspect complex in itself. The relevance of this definition reflects on a variety of regulatory solutions in the audiovisual field, ranging from the possibility of independent producers to benefit from certain quotas in programming time or investment obligations of audiovisual media services providers as also to benefit from direct or indirect public support measures.

This study looks at how this concept is defined in the context of public support measures in the EU-27, Norway, Switzerland, and the United Kingdom, as well as in 22 regional funds across Europe. Building on the European Audiovisual Observatory's 2023 study on 'Independent production and retention of intellectual property rights' under the Audiovisual Media Services Directive (AVMSD), this new study also updates the findings of 2023 and expands on the independence criteria in the context of public support measures.

The study examines how the main criteria (financial, operational and intellectual property rights) are applied in the transposition of the AVMSD and in public support measures and compares their use in both contexts. It also provides an overview of the complex and varied definitions of independence across Europe in national country summaries.

This study is based on information received from a network of national experts and elaborated in-house. I would like to thank them all, as well as the national and regional film funds that helped us check the accuracy of the information. While the responsibility is entirely ours, the publication would not have been possible without their involvement.

Enjoy the read!

Strasbourg, December 2024

Maja Cappello

Head of the Department for Legal Information

European Audiovisual Observatory

[1] Arrianus, Epictetus Diatribai, Book I.17.

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2. Executive summary

The objective of this study is to provide the European Commission with a comprehensive understanding of the concept of "independence" as it applies to independent producers and independent production of audiovisual works/films at both national and regional levels. It begins with an updated definitional framework for independent producers, as identified in the 2023 "AVMSD Note on Independent Production and IPR Retention", particularly in the context of transposing the Audiovisual Media Services Directive (AVMSD) into national legislation.[2][3] The study also explores various definitions used in public support schemes and concludes with a comparative analysis of these definitions across different contexts.

Covering the EU27, Norway, Switzerland, and the United Kingdom, along with 22 regional funds, the study highlights that countries and regional funds typically employ five criteria to determine the independence of producers from audiovisual media service (AVMS) providers. These criteria are inspired by Recital 71 of the 2010 AVMSD.

Recital 71 of the 2010 AVMSD provides guidance for member states in defining independence, including three criteria: ownership of the production company, amount of programmes supplied to the same AVMS provider and ownership of secondary rights. The European Audiovisual Observatory's Note on the definition of the independent production, in the context of the AVMSD,[4] revealed additional criteria beyond those in Recital 71. These criteria can be categorised into the following: **three financial criteria (ownership, content supply, and financing ability), operational independence, and the retention of intellectual property rights**.

The financial criterion is divided into three sub-criteria:

- Ownership: it focuses on ownership and capital structure. This criterion typically imposes restrictions on the number of shares an audiovisual media service provider (AVMS) can own in a production company, or conversely, on the shares a production company can hold in a broadcaster.
- Producer's content supply ratio to AVMS provider: it sets limits on the proportion of a producer's content that can be supplied to an AVMS provider. These measures are

[2] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

[3] Independent production and retention of intellectual property rights, European Audiovisual Observatory, Strasbourg, 2023.

[4] *Independent production and retention of intellectual property rights, European Audiovisual Observatory, Strasbourg, 2023*

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designed to safeguard financial independence within the industry, preventing excessive concentration of ownership and promoting a diverse media landscape.

- Producer's ability to finance (parts of) the work: it requires producers to have financial capacity to fund (parts of) the content.

The operational criterion, also known as the autonomy criterion, examines the extent to which a producer can conduct business without interference from broadcasters.

The IPR ownership/retention criterion, which considers the producer's ability to retain IPR when transferring rights to an AVMS provider.

This new study encompasses legislations that do not always explicitly indicate the type of support granted, sometimes referring only to the role of funds or governments in supporting cinema/audiovisual production.

The independence concept in the AVMSD context

As mentioned above, additional criteria that the ones used in Recital 71 are used in the AVMSD context (eg. operational criterion, ability to finance the work).

In examining the concept of independence within the AVMSD context, it was found that **almost all countries (26 out of 31) have established definitions in their legislation**.

In the context of the AVMSD, ownership is the **predominant criterion for defining independence (used by 24 countries),** either exclusively or in combination with other criteria.

While the content supply criterion is also used, it is less prevalent than the ownership one (used by 12 countries). When used, it often comes as an additional cumulative criterion alongside others. Notably, the content supply criterion is never isolated from other criteria in the AVMSD context by those countries.

Similarly, **the operational criterion is broadly used, in 19 cases**, for defining independence, either exclusively or in combination with other criteria.

Though the **IPR criterion** is mentioned in Recital 71, **only few countries** use it as a criterion to define independence in the AVMSD context (**7** countries).

Most countries adopt either a three-criteria approach, often combining ownership, content supply and operational criteria; or a two-criteria approach, often combining ownership and operational criteria. Few use either a single criterion (3 countries use the ownership criterion) or four criteria (4 countries combine ownership, content supply, operational and IPR criteria). As to the one-criterion approach, countries like Latvia require independence only from "electronic mass media" without further elaboration. The single-criterion approach often requires ownership independence; only a few countries use operational independence alone.

In conclusion, even if the notion of independence is widely used, it is not a universally applied concept, as countries employ various combinations of financial, operational and IPR criteria in a non-homogenous way.

The independence concept in the context of public support schemes

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Most of the countries have a definition of independence in the context of public support (25 out of 31 countries) and 16 do so in a different manner than in the AVMSD context. In the regional context, 15 regional funds out of 22 use the notion of independence but only seven do so differently than in the national public support context.

Of note is the fact that regional considerations often prioritise local impact over independence requirements. For instance, Switzerland mandates that production companies be domiciled within the country to qualify for support, and some regional funds require productions to take place locally to promote regional visibility.

The concept of independence in public support schemes is not as straightforward as in the AVMSD context (i.e., via legislations). Though 11 countries and two regional funds employ explicit definitions of independence, others rely on implicit criteria that do not directly reference independence but require applicants' independence to obtain public funds.

Furthermore, few countries and regional funds refer to the definition used in the AVMSD context. Some other regional funds simply use the definition as established by national public support schemes.

At the national level, definitions are primarily enshrined in legislation (12 countries), with some countries using fund regulations (7) or specific guidelines (2). Regional approaches paint a more nuanced picture, particularly in countries with distinct administrative divisions like Germany and Spain.

The three main criteria (financial independence (incl. ownership, content supply, and financial ability), operational independence, and the retention of intellectual property rights for independence remain valid in public support schemes, but their application varies significantly.

One key takeaway is that in the context of public support, **ownership is the predominant criterion for defining independence (used by 16 countries),** either exclusively or in combination with other criteria.

The content supply criterion is not as widely used, three countries requiring it (BE(FR), ES, and PT), and combining it with the ownership one. Notably, the content supply criterion is never isolated from other criteria in the public support context.

The operational criterion is used frequently, namely by 11 countries (AT, BE(FR and VL), BG, ES, FR, CH, LV, NL, NO and PT). In CH, LV and NO, the operational criterion is an alternative requirement.

The use of the IPR criterion is rarer, alone or in combination, to define the notion of independence (6 countries).

The most common scenario, adopted by 11 countries and two regional funds, is the single-criterion approach. Some countries emphasise IPR ownership, though often without detailed specifications. The Netherlands prioritises solely operational independence, ensuring producers maintain commercial freedom from AVMS providers. Others emphasise on the ownership criterion.

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The two-criteria approach is also found, in four countries at national level. This approach typically combines ownership and operational criteria or pairs financing content with IPR considerations.

The three-criteria approach is used by five countries. It covers three main scenarios combining ownership, content supply, financing ability, operational and IPR criteria.

The four-criteria approach is the rarest, Portugal alone combines ownership, content supply, operational and IPR criteria to define independence.

The application of these criteria can be complex. Financial criteria may involve limitations on capital participation, turnover restrictions, or requirements for self-financing. Operational criteria focus on decision-making autonomy, often through voting rights limitations. The IPR criterion, when present, frequently lacks details on the scope of rights.

As in the AVMSD context, a distinction in applying these criteria is the use of specific thresholds (quantitative) versus more general criteria (qualitative). This varies depending on the criterion, with financial and operational aspects often having numerical thresholds, while IPR criteria typically use qualitative descriptions.

Finally, the scope of independence requirements also varies. While often focused on AVMS providers, some countries extend this to include public entities, radio operators, educational institutions, and even other production companies. The UK notably broadens this scope to include non-UK corporate entities and large companies based on specific financial criteria.

Here, too, there is a significant variation in how independence is defined and applied across countries and regions, regardless of the textual source, where the use of financial, operational, and IPR criteria can differ widely.

Comparing AVMSD and public support contexts

This final section underscores once more the great variety that is apparent in defining the independence of audiovisual producers/production, in both the AVMSD and public support scheme contexts.

Comparing the two contexts, 16 countries have different approaches. There can be additional financial restrictions in one context with for instance turnover limitations (as a new sub-criterion or with a different threshold). In some cases, it is simply the case that in one context, fewer or more criteria are used. Sometimes there is a focus shift to different types of criteria (i.e., the number of criteria required in each context is equivalent, but the type of criteria is different). Finally, the difference may be minor, lying only in a change of threshold (often lower for national support schemes).

In a nutshell

On the one hand, it is worth noting that there is no settled and unified definition across Europe. On the other hand, some funding structures introduce additional requirements reflecting more local priorities (e.g., producer with a link with the country/fund). Furthermore, sometimes the notion of independence can be applied in practice with a different understanding, not focusing on AVMS providers but on another type of financial

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independence. For instance, in Cyprus, the fund recognises the independence of producers when they have not received funding from the Ministry of Culture.

In both contexts, the ownership criterion and the operational criterion are widely used.

Finally, it should not be forgotten that legislations can change rapidly, as is the case with Czechia. At the time of writing, Czechia was in the process of revising its Audiovisual Act to introduce, notably, a definition of independence resembling the one used in the context of the AVMSD. It is expected to be finalised and published on 1 January 2025.

Overall, this diversity in defining independence highlights the flexibility of countries and regions in interpreting independence, implementing audiovisual policies, and using public money.

The independence in the AVMSD context:

Aspect	Number	Country
Countries with a definition	26	AT, BE(FR and VL), BG, CH, CZ, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, and UK
Using ownership criterion	24	AT, BE(FR and VL), BG, CH, CZ, EE, ES, FI, FR, HR,HU, IE, IT, LU, MT, NL, NO, PL, PT, RO, SI, SK, UK
Using operational criterion	19	AT, BE(FR and VL), BG, CH CZ EE, ES, FR, HR IT LT MT, NO, PL PT SI SK, and UK
Using IPR criterion	7	AT, EE, FR, HR, IE, IT, and PT
Absence of independence	5	CY, DE, GR and SE
Three-criteria approach	9	AT, BE(FR), CH, CZ, FR, IE, NO, SI, and SK
Two-criteria approach	8	BE(VL), BG, ES, FI, MT, PL, RO, and UK
Single criterion approach	5	HU, LT, LU, LV, and NL
Four-criteria approach	4	EE, HR, IT and PT
Independence from *electronic mass medium*	1	LV
Four-criteria approach	4	EE, HR, IT, and PT

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

The independence in the public support schemes context:

Aspect	Number	Country
Notion of independence, different from AVMSD context	18 countries, 7 regional funds	BE(VL), CH, DK, EE, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PT, RO, SE, and UK Cinéforom, Filmfonds Wien, IDM-Südtirol Alto Adige, Institut Catala de les empreses, Film- und Medienstiftung NRW, Screen Brussels, Wallimage
Reference to the definition used in AVMSD context (or use of same language)	7 countries, 3 regional funds	AT, BE(FR), BG, HR, IT, SI and SK Screen Flanders, Trentino Film Commission & Fund, and the Flanders Audiovisual Fund (VAF)
Reference to the definition used at national level	5 regional funds	Basque Government's Culture Department, Ile de France, Midtnorsk Filmsenter, Oslo Filmfond, Vestdanske Filmpulje
Explicit use of independence	11 countries, 2 regional funds	AT, BG, CH, DK, ES, FR, MT, NL, NO, PT, UK, and Institut Catala de les empreses culturals and Film- und Medienstiftung NRW

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Aspect	Number	Country
Implicit use of independence	10 countries, 5 regional funds	(FR & VL), EE, FI, HU, IE, LU, LV, RO, SE, and Cinéforom, Filmfonds Wien, IDM-Südtirol Alto Adige, Screen Brussels, Wallimage
Using ownership criterion	13 countries, 5 regional funds	AT, BE(FR and VL), BG, ES, EE, FR, IE, LV, MT, PT, SE, UK, and Filmfonds Wien, Screen Brussels, NRW, Institut Catala de les empreses, and Cineforom
Using operational criterion	11 countries, 3 regional funds	AT, BE(FR and VL), BG, ES, FR, CH*, LV*, NL, NO*, PT, and Filmfond Wien, Wallimage, and Cineforom. *For CH, LV, and NO, it is an alternative criterion (either operational, or another criterion).
Using IPR criterion	6 countries, 1 regional fund	AT, EE, HU, LU, PT, and RO and IDM-Südtirol
Single-criterion approach	11 countries, 2 regional funds	CH, DK, HU, IE, LV, MT, NL, NO, RO, SE and UK Film- und Medienstiftung NRW, and Wallimage
Two-criteria approach	4 countries, 5 regional funds	BE(VL), BG, FR, and LU and Filmfonds Wien, Screen Brussels Institut Catala de les empreses, Cineforom, and IDM-Südtirol Alto Adige
Three-criteria approach	5 countries	AT, BE(FR), EE, ES, and FI
Four-criteria approach	1 country	PT

Source: European Audiovisual Observatory, Analysis of the responses to the EAO standardised questionnaire.

Comparison between the two contexts:

Aspect	Number	Country
Use of different wording/criteria	16	BE(VL), CH, EE, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PT, RO and UK),
Support scheme refers to the definition used in AVMSD context	5	BE(VL), HR, IT, SI, and SK),
Existence of a definition in AVMSD context but absence in public support schemes context	3	CZ, LT and PL
Existence of a definition in public support schemes context but absence in AVMSD context	2	DK and SE
Absence of independence in both contexts	3	CY, DE and GR

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

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3. Introduction

3.1. Objective of the study

The objective of the study is to provide the European Commission with information on the notion of independence in public support schemes as used at national and regional levels and the criteria applied to define independent producer or independent production of audiovisual works. The study also includes annexes which summarise the identified trends.

The study contains two areas of analysis:

- **an update of the definitory framework for independent producer/production as identified in the 2023 "AVMSD Note on independent production and IPR retention", and**
- **an overview of any further definition of independent producers/productions envisaged in the framework of direct (e.g. automatic and selective aid) and indirect (e.g. fiscal incentives) public support schemes.**

It covers the EU27, Norway, Switzerland and the United Kingdom.

This study explores the specific definitions of independent producers/production used for direct and indirect public support for audiovisual content, beyond the investment obligations outlined in Articles 13(2) and the obligations on independent production set on Article 17 of the AVMSD.

For this analysis, 'audiovisual content' encompasses films, series, documentaries, and children's programmes and animation.

The scope of this investigation covers both direct and indirect support mechanisms:

Direct public support encompasses, for the purpose of this study, the automatic aid that applies to content meeting predefined eligibility criteria, and the selective aid awarded through a selection process, often by a panel or designated individual.

Indirect public support regroups fiscal incentives that are defined as a proportion of production expenditure in the granting member state.

It is important to note that the textual sources referencing public support are not always explicit about the type of support granted. They often broadly refer to the role of funds or governments in encouraging cinema/audiovisual production. However, analysis of websites and funding guidelines reveals that support typically includes direct grants, cash rebates, and loans, sometimes broadly categorised as direct or indirect support.

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4. Methodology

4.1. Production of national and regional summaries

A standardised questionnaire was elaborated by the European Audiovisual Observatory (EAO) and sent to a selection of national experts. Based upon their replies, and further exchanges with the national experts, the EAO prepared national summaries for all countries within the scope of the study, with the aim to constitute accurate overviews of the situation in each country.

Each national summary was sent back to the corresponding national expert for review. Once validated by the expert, each national summary was submitted to the relevant national film fund for further verification of the content.

The national film funds were contacted with the cooperation of the European Film Agency Directors Association (EFAD). A total of 29 national film funds validated the content of their corresponding national summary.

The regional summaries were drafted in direct collaboration with the relevant regional film funds, with the cooperation of Cineregio (network of regional film funds in Europe). The EAO reached out to over 40 regional funds, focusing on those with budgets exceeding EUR 1 million, based on Cineregio membership. This outreach encompassed 15 countries (AT, BE, CH, DE, DK, EE, ES, FR, IE, IT, LV, NO, PL, SE and UK).

The research was ultimately conducted successfully for 11 of these countries (AT, BE, CH, DE, DK, ES, FR, IT, PL, NO and UK), resulting in the inclusion of 22 regional funds. This information has been incorporated into the corresponding national summaries. Regional funds were analysed separately to account for potential variations between national and regional approaches to defining independence.

Upon reception of the initial replies to the questionnaires and the elaboration of the first national and regional summaries, the EAO began identifying trends and particularities among countries within the scope of the study. These elements constituted the preliminary steps towards the drafting of the comparative analysis which, along with the national and regional summaries, form the basis of the study.

4.2. Production of the comparative analysis

4.2.1. The nature of the criteria for independence

National legislations usually employ several criteria to determine if an audiovisual production company is independent from an audiovisual media service (AVMS) provider.

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These criteria are largely based on Recital 71 of the Audiovisual Media Services Directive (AVMSD), which aims to guide member states when defining independence.[5]

Recital 71 of the 2010 AVMSD provides guidance for member states in defining independence, including three criteria: ownership of the production company, number of programmes supplied to the same AVMS and ownership of secondary rights.[6] The European Audiovisual Observatory's Note on the definition of the independent production, in the context of the AVMSD, revealed additional criteria beyond those in Recital 71. They include financial independence (incl. ownership, content supply, and financial ability), operational independence, and the retention of intellectual property rights.[7]

The financial criterion is sub-divided into ownership, producer's content supply ratio to the same AVMS provider and producer's ability to finance (parts of) the work.

The operational criterion examines the extent to which a producer can conduct business without interference from an AVMS.

The IPR criterion considers the producers' ability to retain intellectual property rights in his/her relationship with the AVMS.

This new report looks deeper into the notion of independent production in the context of public support.

The country summaries refer to the three criteria (financial, operational and IPR), and detail the type of financial criterion used by countries in each country key findings.

4.2.2. Comparing the use of criteria

This analysis is based on a comprehensive review of national legislation, funding guidelines, and public support scheme documents from 31 European countries and relevant regional funds. Each country's approach was categorised based on two main aspects:

- **Explicit vs. implicit definitions:** whether countries use express definitions of independence or indirect criteria requiring applicants to be independent (without clear reference to the noun "independence" or adjective "independent").

[5] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

[6] Recital 71, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive):

When defining 'producers who are independent of broadcasters' as referred to in Article 17, Member States should take appropriate account notably of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights.

[7] Independent production and retention of intellectual property rights, European Audiovisual Observatory, Strasbourg, 2023.

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- **Types of criteria:** financial (ownership, producer's content supply ratio to the same AVMS provider and producer's ability to finance (parts of) the work), operational, and/or IPR criteria.

This categorisation was determined through a thorough examination of the national legal texts and funding guidelines. To identify trends, the following were quantified:

- **The number of countries using each approach (explicit definition vs. implicit criteria),**
- **The types of criteria used (financial (including three sub-criteria), operational, IPR),**
- **The use of thresholds within the criteria,**
- **The type of textual source hosting the definitions,**
- **The type of entities from whom producers must be independent.**

The objective of this study is to analyse and compare legal situations. In order to achieve this, it focuses only on written and binding criteria with the aim of identifying and analysing trends. For instance, when a text refers only to financial criteria without operational criteria (or vice versa), only the criteria included in the text were included in the trends.

The regional funds were analysed separately to account for potential variations between national and regional approaches to defining independence.

Practical implementation may vary and was not the subject of this study.

4.3. Scope

At national level, the study covers the EU27 (including BE-VL and BE-FR), CH, NO and UK, adding up to 31 countries in total. At sub-national level, the study encompasses the countries that are members of Cineregio, the network of regional film funds in Europe, and that completed the EAO's standardised questionnaire: AT, BE, CH, DE, DK, ES, FR, IT, NO, PL, and UK – with funds above EUR 1million).

Throughout the study, the Flemish and the French Communities of Belgium are treated as separate entities, and as separate countries for the purpose of clarity when enumerating countries belonging to certain categories.

Figure 1. Scope of the study

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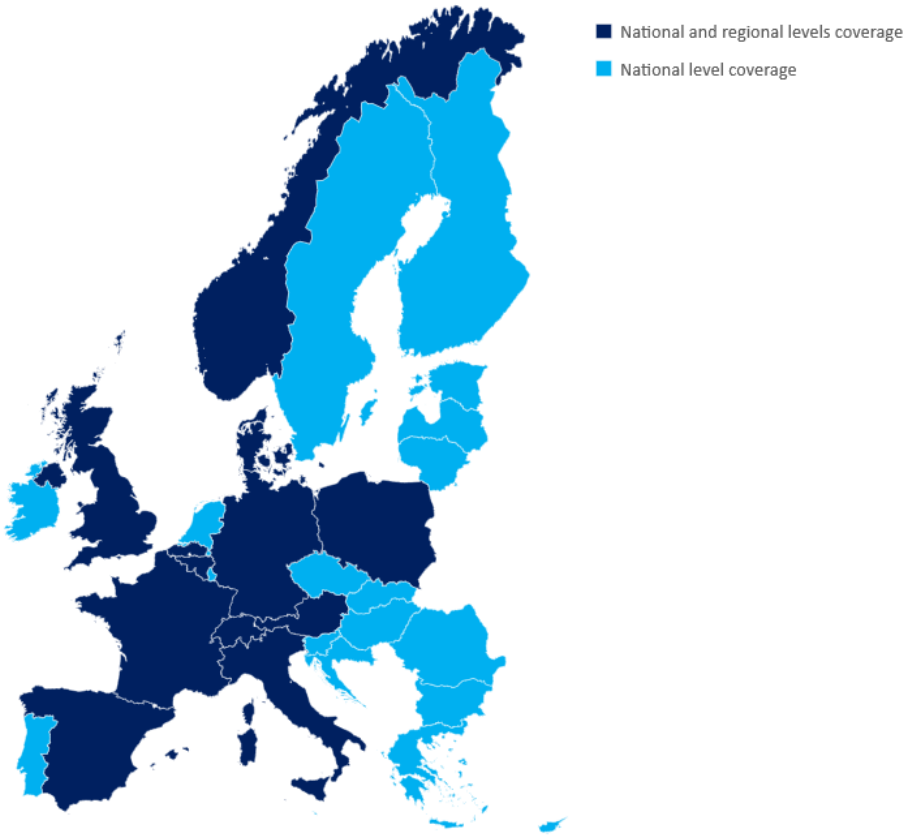

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

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5. Defining independence in the context of the AVMSD

Independent production has traditionally been at the core of the obligations concerning broadcasters under Article 17 of the Audiovisual Media Services Directive 2018/1808/EU (AVMSD). Pursuant to this provision, broadcasters are required to reserve at least 10% of their transmission time or programming budget for European works created by producers who are independent of broadcasters. Following the inclusion of Article 13(2) in the AVMSD, video-on-demand (VOD) service providers may be required to finance, directly or indirectly, European works. Some member states, when transposing Article 13(2), required that the investment obligation finance independently produced works. The European Union (EU) provision is therefore broad and covers both self-produced and acquired audiovisual works.

The AVMSD does not contain a definition of independent producers or independent works (hereinafter referred to as "independence in the context of the AVMSD"). However, in its recitals, the Directive provides for certain elements that should be considered, which refer to the relationship between independent producers and audiovisual media service (AVMS) providers. In particular, Recital 71 states the following:

> *"When defining 'producers who are independent of broadcasters' as referred to in Article 17, Member States should take appropriate account notably of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights."*

5.1. Key findings

Type of findings	Brief summary
Definitions	The definition of independence in the context of the AVMSD refers to the following main criteria: financial (including ownership, content supply, and financial ability), operational, and intellectual property rights (IPR).
AVMSD context	Out of 31 countries: **26 directly define independence in legislation** (AT, BE(FR and VL), BG, CH, CZ, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, and UK), Five countries do not provide a definition (CY, DE, DK, GR and SE). Among the 26 countries with definitions: **Ownership is the predominant criterion** to define independence in the context of the AVMSD, either exclusively or in combination with other criteria (used by 24 countries (AT, BE(FR and VL), BG, CH, CZ, EE, ES, FI, FR, HR,HU, IE, IT, LU, MT, NL, NO, PL, PT, RO, SI, SK, UK).

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	The **operational criterion is broadly used**, in 19 cases, for defining independence, either exclusively or in combination with other criteria (AT, BE(FR and VL), BG, CH, CZ, EE, ES, FR, HR, IT, LT, MT, NO, PL, PT, SI, SK, and UK).
	
	The **content supply criterion is used only by 12 countries** (BE(FR), CH, CZ, EE, FI, HR, IE, IT, NO, PT, SI, SK), in combination with the ownership criterion.
	
	The **IPR criterion is not predominantly** used (7 countries: AT, EE, FR, HR, IE, IT, and PT).
	
	The **combinations of criteria** by countries in the context of the AVMSD are the following:
	• **Nine countries use three criteria (most common)**
	  • **Six countries combine ownership, supply and operational criteria (BE(FR), CH, CZ, NO, SI and SK),**
	  • **Two countries combine ownership, operational and IPR criteria (AT and FR),**
	  • **IE requires to look at ownership, supply and IPR criteria.**
	• **Eight countries use two criteria:**
	  • **Six countries combine ownership and operational criteria (BE((VL), BG, ES, MT, PL and UK),**
	  • **Romania combines ownership and ability to finance the work,**
	  • **Finland uses ownership and supply criteria.**
	• **Five use a single criterion:**
	  • **Three countries use only the ownership criterion (HU, LU and NL).**
	  • **One country uses the operational criterion (LT).**
	  • **LV requires independence from "electronic mass medium".**
	• **Four countries use four criteria, combining ownership, supply, operational and IPR criteria (EE, HR, IT and PT).**

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

5.2. Update on the definitions of independence in the context of the AVMSD

The 2023 EAO mapping on "Independent production and retention of IPR" covered only the EU27 and the UK.[8] The present study updates the definitions of independence in the context of the AVMSD accordingly, and includes also NO and CH.

5.2.1. Existence of a definition of independence in the context of the AVMSD

Article 17 of the AVMSD promotes European works created by producers who are independent of broadcasters, by requiring broadcasters to either allocate 10% of their

[8] Independent production and retention of intellectual property rights, European Audiovisual Observatory, Strasbourg, 2023.

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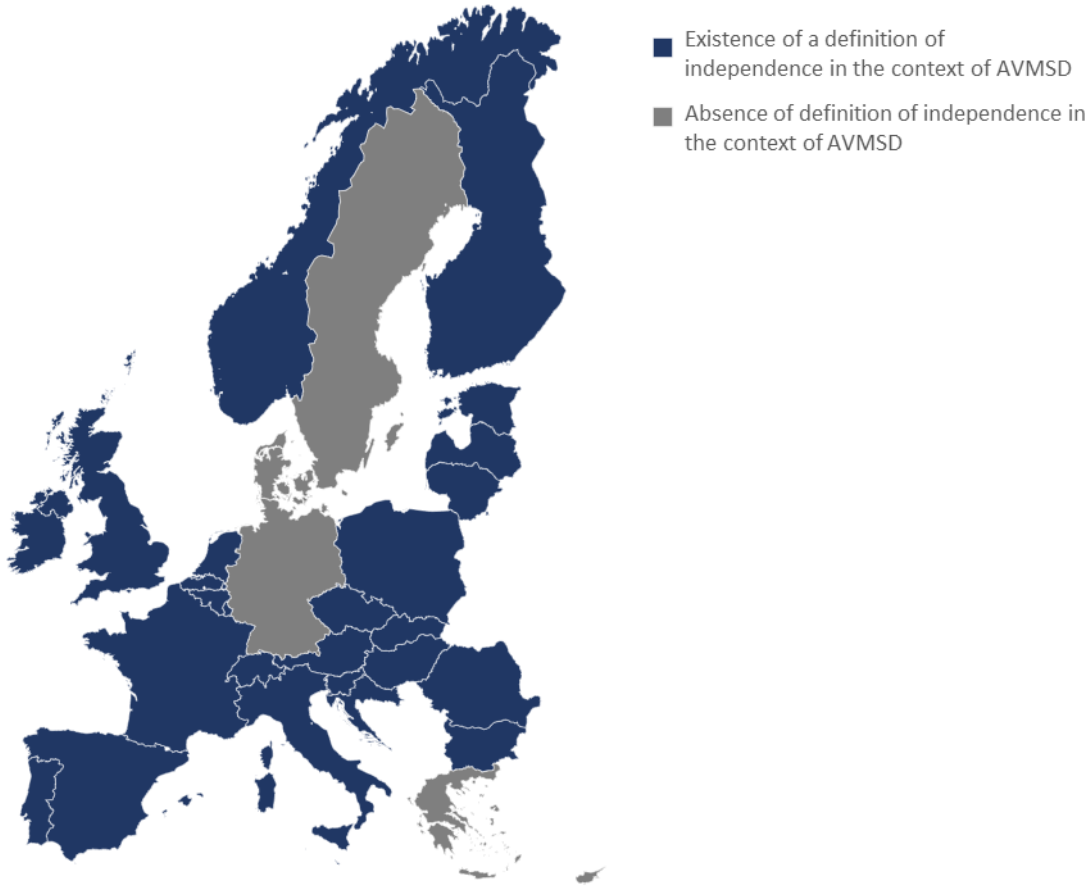
transmission time or 10% of their programming budget to such content. While the AVMSD of 2018 does not provide a unified EU definition of 'independent production/producer', Recital 71 of the 2010 AVMSD offers guidance criteria:

- **Ownership of the production company,**
- **Amount of programmes supplied to the same broadcaster,**
- **Ownership of secondary rights.**

Out of the 31 studied countries, 26 define either 'independent producer' and/or 'independent production' in their national legislation in the context of European works (AT, BE(FR and VL), BG, CH, CZ, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK), while five do not (CY, DE, DK, GR and SE).

Figure 2. Definition of independence in the context of the AVMSD



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

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5.2.2. Main criteria used for the definition of independence in the context of the AVMSD

Recital 71 of the 2010 AVMSD provides guidance for member states in defining independence, including three criteria: ownership of the production company, number of programmes supplied to the same AVMS and ownership of secondary rights. The European Audiovisual Observatory's Note on the definition of the independent production, in the context of the AVMSD, revealed additional criteria beyond those in Recital 71. They include financial independence (incl. ownership, content supply, and financial ability), operational independence, and the retention of intellectual property rights. [9]

These criteria were used in the EAO's 2023 report and are used again in this new mapping exercise: financial (including ownership, producer's content supply ratio to AVMS provider; and producer's ability to finance (parts of) the work), operational and IPR criteria.[10]

- **The first criterion is the financial criterion, which is divided into three sub-criteria:**
  - **Ownership: it focuses on ownership and capital structure. This criterion typically imposes restrictions on the number of shares an audiovisual media service provider (AVMS) can own in a production company, or conversely, on the shares a production company can hold in a broadcaster.**
  - **Producer's content supply ratio to AVMS provider: , it sets limits on the proportion of a producer's content that can be supplied to an AVMS provider. These measures are designed to safeguard financial independence within the industry, preventing excessive concentration of ownership and promoting a diverse media landscape.**
  - **Producer's ability to finance (parts of) the work: it requires producers to have financial capacity to fund (parts of) the content.**
- **The second criterion is the operational criterion, also known as the autonomy criterion, which examines the extent to which a producer can conduct business without interference from broadcasters.**
- **The third criterion is the IPR ownership/retention criterion, which considers the producer's ability to retain IPR when transferring rights to an AVMS provider.**

[9] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

[10] Independent production and retention of intellectual property rights, European Audiovisual Observatory, Strasbourg, 2023.

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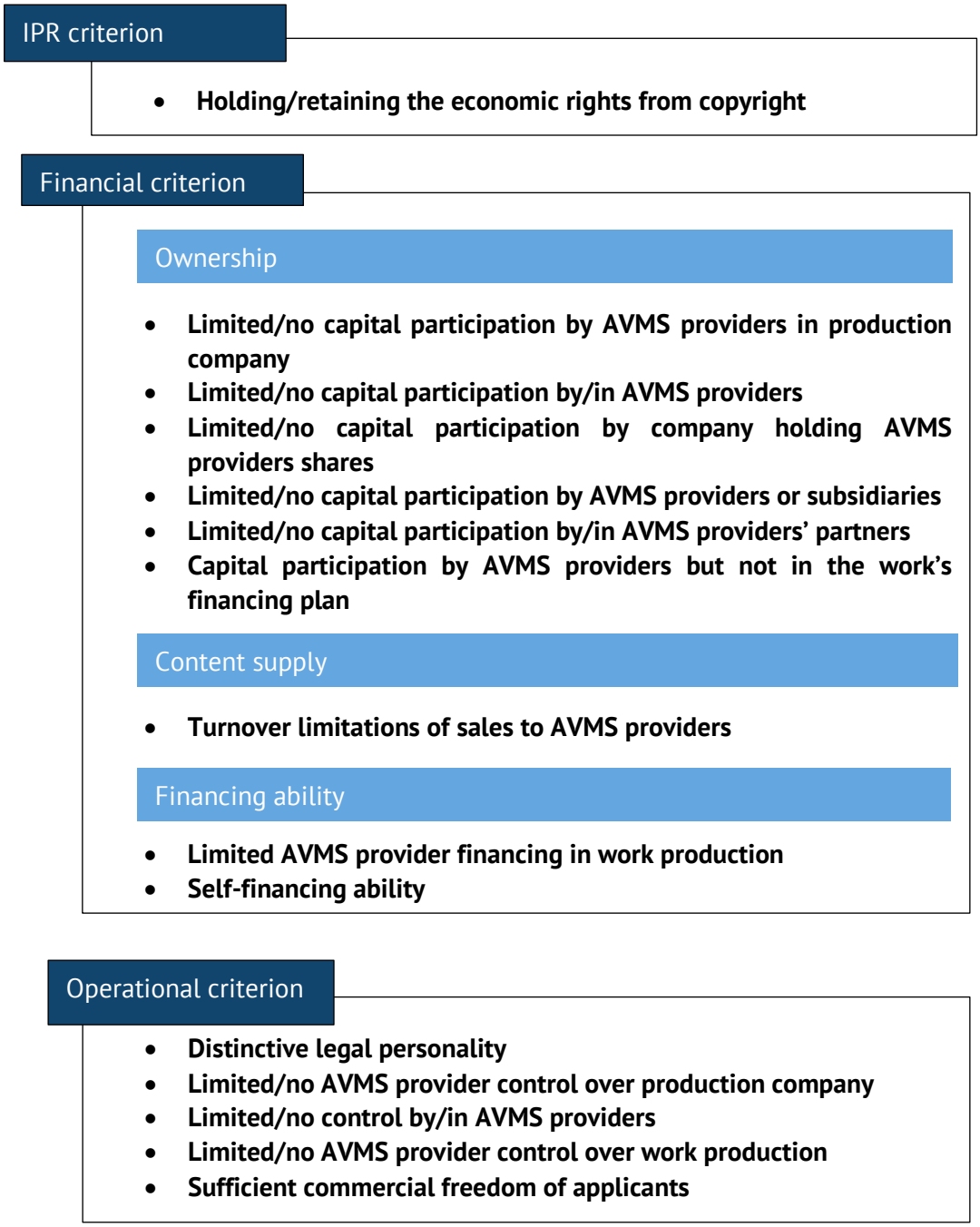
Figure 3. Diversity of sub-criteria used in public support schemes:



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

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These criteria are applied in various combinations and with different thresholds across countries and contain sub-categories.

Among the 26 countries that define independence, there are variations in the uses and combinations of criteria.

- **Most common scenario: the use of three criteria**

The majority of countries among the 26 that define independence opted for a three-criteria approach (9: AT, BE(FR), CH, CZ, FR, IE, NO, SI, and SK).

Among these nine countries, **the most common combination of three criteria is the combination of the ownership, the content supply and operational criteria** (6 countries: BE(FR, CH, CZ, NO, SI and SK).

Switzerland for instance focuses on the absence of financial ties between the independent producer and the AVMS provider, no more than 50% of the independent production company's commissions should come from an AVMSD provider subject to the investment obligation within a five-year period and the AVMS provider shall not have a decisive influence over the production company.

Among these nine countries combining three criteria, **two countries do different than the majority by combining the ownership, content supply and IPR criteria** (Austria and France).

Ireland is the only country with a **unique three-criteria approach**, requiring the combination of the **ownership, content supply and IPR criteria**.

- **Significant use of the two-criteria-approach**

The second most common approach consist in the use **two-criteria,** as found in **eight countries.**

Most of these countries combine ownership and operational criteria (6: BE(VL), BG, ES, MT, PL, and UK). Bulgaria for instance focuses on limited ties between the producer and an AVMS provider (and vice versa), and the production's managing body must not be related to an AVMS provider.

Romania stands out by combining ownership and ability to finance the work. The producer shall be the owner of the production company, (s)he shall not hold more than 25% of the capital of the broadcasting company financing an audiovisual work, and no broadcaster shall participate in the financing of this specific work in a proportion that exceeds 25% of the production cost.

Finland is particular too, using ownership and supply criteria together. An AVMS provider shall not hold more than 25% of the production company's shares and shall not receive more than 90% of programmes for the producer.

- **The use of four-criteria and solo-criterion approaches: limited trends**

Four countries employ four criteria (EE, HR, IT and PT) to ensure a producer's independence, and combine ownership, content supply, operational and IPR aspects. For instance, Croatia

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requires the production company to meet all the four criteria: no ownership stake from AVMS provider, independent operationality, no more than 90% of turnover can come from a single AVMS over a period of three years, and ownership of secondary rights.

On the contrary, **four countries rely on a single criterion**. HU, LU, and NL focus solely on **ownership** criteria (e.g. limited or no capital participation by an AVMS in a production company), while in Lithuania, the emphasis is on operational independence (e.g. no participation in activities by an AVMS). Latvia has a distinctive approach, requiring independence from an electronic mass medium, without more details.

Overall, ownership is the predominant criterion to define independence in the context of the AVMSD, either exclusively or in combination with other criteria. The criterion is employed by 24 countries (AT, BE(FR and VL), BG, CH, CZ, EE, ES, FI, FR, HR,HU, IE, IT, LU, MT, NL, NO, PL, PT, RO, SI, SK, UK).

The **content supply criterion comes after, used by 12 countries** (BE(FR), CH, CZ, EE, FI, HR, IE, IT, NO, PT, SI, SK).

These different approaches show the various national understandings in defining independence in the context of the AVMSD.

5.3. Conclusion

This comparative analysis reveals a rich variety of approaches to defining the concept of independence in the context of the AVMSD. This section highlights a few key observations.

While the notion is widely used (26 out of 31 countries), it is not a universally adopted concept, as countries employ various combinations of ownership, content supply, financial ability to finance (parts of) the work, operational and IPR criteria.

In the context of the AVMSD, ownership is the predominant criterion for defining independence (used by 24 countries), either exclusively or in combination with other criteria. While the financial criterion related to content supply is also used, it is less prevalent than the ownership one. When used, the content supply criterion refers to the AVMS provider from which the independence is required, and it often comes as an additional cumulative criterion alongside others. Notably, the content supply criterion is never isolated from other criteria in the AVMSD context.

The IPR criterion is not widely used as the ownership one. Only 7 countries use the IPR criterion to define the independence of a producer, either in combination with other criteria or alone.

The ability to finance production work, though not included in Recital 71, is a criterion limitedly used in the context of public support. However, it is absent from the definition of independence in the AVMSD context. The financing of the content is a criterion in Romania, but only in relation with to the AVMS provider. The legislation stipulates that no broadcaster shall finance more than 25% of a production's cost.

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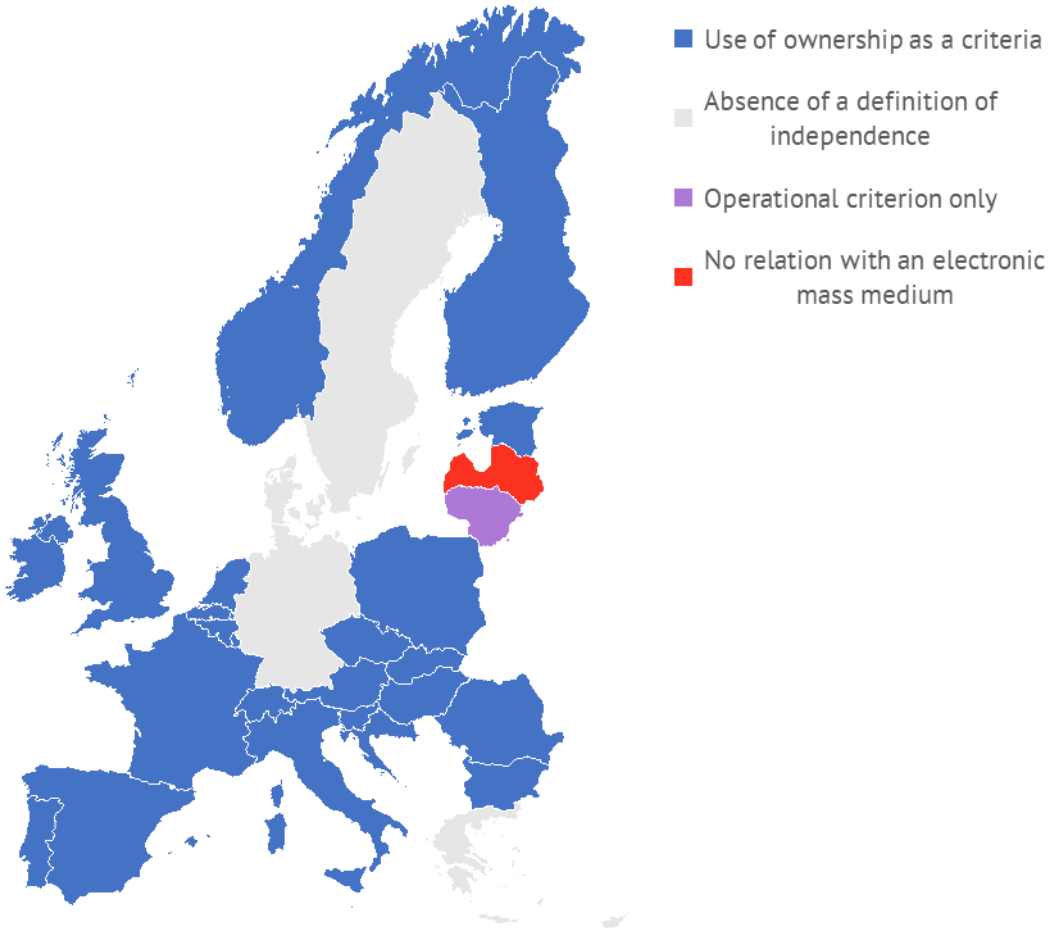
In summary, in this AVMSD context, the relatively common scenarios to define independence are:

- **Three-criteria approach: ownership, content supply and operational criteria combination (used by six countries),**
- **Two-criteria approach: ownership and operational criteria combination (used by six countries).**

This variety in approaches to defining independence in the context of the AVMSD underscores the flexibility given to member states in implementing the AVMSD objectives.

Figure 4. Criteria and variations in defining independence in the context of the AVMSD:



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

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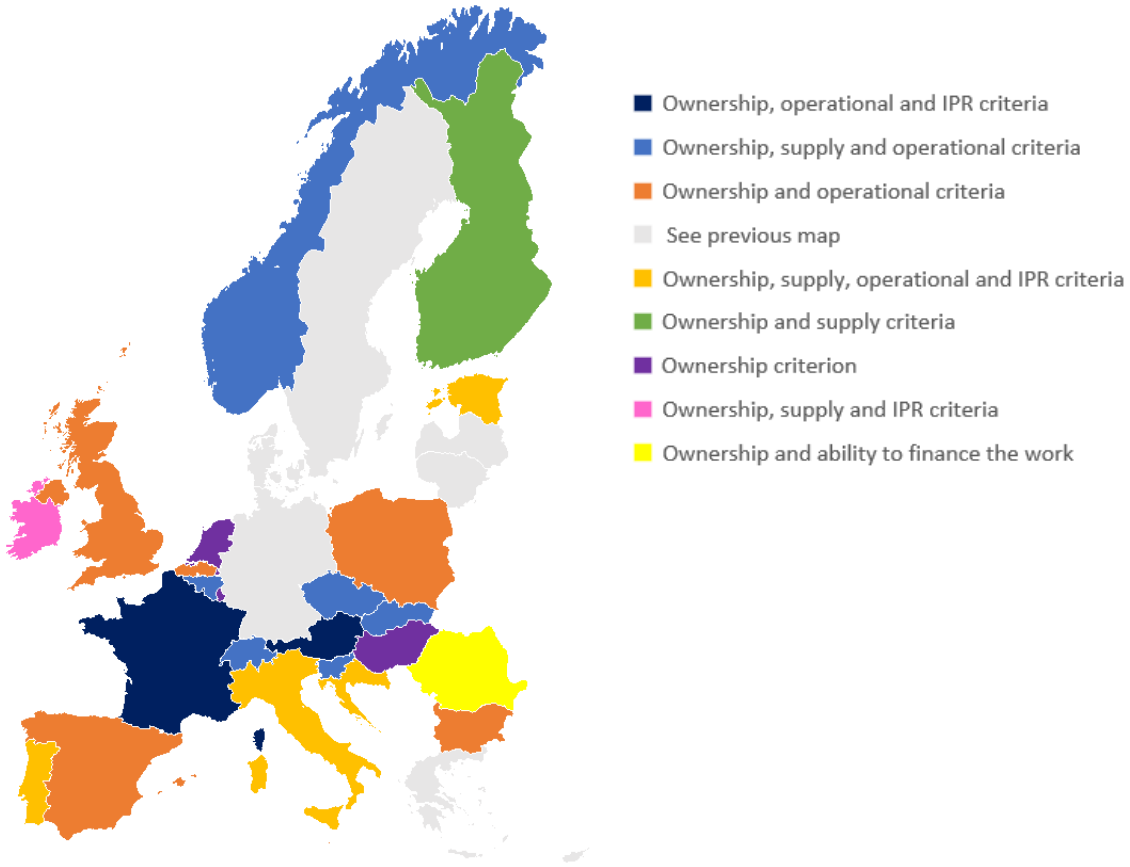
Figure 5. Zoom in on the use of the ownership criterion:



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

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6. Defining independence in the context of public support schemes

This section examines definitions of independent producers/production in public support schemes for audiovisual content, beyond AVMSD.

The analysis includes:

- **Direct support: automatic (based on eligibility criteria) and selective (awarded through selection process),**
- **Indirect support: fiscal incentives based on production expenditure.**

While textual sources often lack specificity on support types, analysis of funding guidelines shows support typically includes grants, rebates, loans and allocations.

This section is structured to first examine how the concept of independence is addressed in various texts (5.1), followed by an analysis of the specific criteria defining independence (5.2).

On the use of a definition of independence, the following trends can be identified:

The majority of countries define the independence in the context of public supports (25: AT, BE(FR and VL), BG, CH, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK, and UK).

At the national level, **the majority of countries use the concept of independent producer/production in their public support schemes in a different manner** from the definition of independence used in the context of the AVMSD (16 countries: BE(VL), CH, EE, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PT, RO, and UK).

The Flemish community of Belgium has a particularity: in the context of the VAF film fund, it refers to the definition used in the context of the AVMSD; however, it uses the notion of "eligible production company" in the context of tax law and the criteria are slightly different.

There is another main difference between the definitions used in the AVMSD context and in the public support context. Within the public support one, **a first half of country directly use explicit definitions of independence enshrined in legal texts** (**11:** AT, BG, CH, DK, ES, FR, MT, NL, NO, PT, UK) while **the second half rely on eligibility criteria** that suggest that applicants should be independent (10: BE(FR and VL), EE, FI, HU, IE, LU, LV, RO, SE).

Regional funds rely in their vast majority on the notion of independence too, with 15 out of 22 of them using this notion (in AT, BE, DE, DK, EE, ES, FR, IE, IT, LV, PL, SE). Among these, half of them have their own definition of this concept (seven regional funds: Cinéforom, Filmfonds Wien, IDM-Südtirol Alto Adige, Institut Catala de les Empreses Culturals, Film- und Medienstiftung NRW, Screen Brussels, Wallimage), while the others

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refer to the definition used by the national support schemes or to the definition used in the context of the AVMSD.

6.1. Key findings

Type of findings	Brief summary
Scope	25 out of 31 countries use the concept of independence in public support schemes. 15 out of 22 regional funds use the notion of independence. Seven out of these 15 have their own notion of independence. Regional funds usually focus more on the regional impact rather than independence criteria.
Definition approaches	Explicit definitions: used by 11 countries and two regional funds Implicit criteria: used by 10 countries and five regional funds Reference to European works definition: used by five countries and three regional funds
Textual sources	National level: primary legislation (12 countries) and film fund regulations (seven countries). Two countries use guidelines. Regional level: mainly regional fund regulations (five funds) and regional legislation (two funds)
Criteria used	Main criteria used: financial (ownership, producer's content supply, producer's ability to finance content), operational and IPR ownership • **Most common scenario when defining independence: single criterion (11 countries, four regional funds),** • **Least common scenario: four criteria (one country: PT).** **Ownership is the predominant criterion to define independence in the context of public direct and indirect support, either exclusively or in combination with other criteria (used by 16 countries: AT, BE(FR and VL) BG, ES, EE, FR, IE, LV, MT, PT, SE, UK). DK gives flexibility between ownership or content supply criterion. CH and NO offer flexibility too (ownership or operational criterion).** **The operational criterion is not as widely spread as the ownership one, but it remains quite important (11 countries: AT, BE(FR and VL), BG, ES, FR, CH* LV* NL NO*, PT). In CH, LV and NO, the operational criterion is an alternative requirement.** **The content supply criterion is rarely used, only three countries require it (BE(FR), ES, and PT), and combine it with the ownership one.** **The IPR criterion is not predominantly used (6 countries: AT, EE, HU, LU, PT, and RO).**
Key variations in using criteria	Thresholds for ownership and turnover limits vary significantly. Some countries allow either financial or operational criterion to be fulfilled IPR criteria often lack detailed explanations Unique regional approaches (e.g. Screen Brussels, Film- und Medienstiftung NRW)
Relationship direction	Criteria may apply from AVMS providers to production companies, and vice versa

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	Never solely from production companies to AVMS

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

6.2. The notion of independence in the context of public support

Section 5.2.1. explores whether the notion of independence is explicitly used and recognised in texts, or if it is implied through eligibility criteria without direct reference in texts. Additionally, Section 5.2.2. looks at the diverse textual sources of these definitions and criteria, ranging from legislations to funding guidelines and other texts.

6.2.1. Explicit definitions and implicit eligibility requirements

The concept of independence in the context of public support for audiovisual production is not always explicitly defined. Instead, it is addressed in two main ways:

- **Explicit reference: some countries clearly state "independence" or "independent" and define the notion of independence in legal texts or funding guidelines.**
- **Implicit criteria: other countries incorporate the concept of independence through various eligibility criteria that applicants must meet when applying for public support, without explicitly using the term 'independence'.**

Although 25 countries use the concept of independence, a limited number of countries use the same definition as in the AVMSD context (4: HR, IT, SI, SK), and therefore are not incorporated in the next sections.

The next section looks at the definition of independence used by 21 countries in total (AT, BE(FR & VL), BG, CH, DK, EE, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PT, RO, SE, UK). This is achieved either through **explicit definitions** (11 countries) enshrined in legal texts or via **eligibility criteria** calling for the independence of applicants (10 countries).

A majority (16) **use the concept of independent producer/production in their public support schemes in a different manner** from the definition of independence used in the context of the AVMSD.

For instance, Austria's guidelines explicitly require independence from AVMSs, while Bulgaria enshrines this in its Film Industry Act. Similarly, Switzerland dedicates an entire article in its Federal Act on Film Production to defining independence, and Portugal's Cinema Law includes a specific subparagraph on independent producers.

In contrast, some countries use implicit criteria with eligibility requirements. In the French Community of Belgium, independence is implied in the Cinema Support Decree, mirroring the definition used in the context of the AVMSD. Besides, there is another

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definition used in the context of tax law, requiring an "eligible production company" to meet some implicit criteria. The Flemish Community of Belgium refers to the definition used in the context of the AVMSD and introduces a second notion through the "eligible production company", as in the French community.

Regional funds also have their own approach to independence, with **15 out of 22 regional funds use the notion of independence** (located in AT, BE, CH, DE, DK, ES, FR, IT, PL, NO and UK).

It is more common for regional funds to implement national level definition (8 instances). These eight regional funds either refer to the corresponding definition set in text at national level, or copy the similar definition into their regional laws or relevant guidance documents. Regional funds such as Vestdansk Filmpulje or the Basque fund (Zineuskadi) use the notion of independence and define it in their funding guidelines, mirroring the national fund definition.

A significant number of regional funds uses a different definition than the national one (7 funds: Cinéforom, Filmfonds Wien, IDM-Südtirol Alto Adige, Institut Catala de les Empreses Culturals, Film- und Medienstiftung NRW, Screen Brussels, Wallimage). Interestingly, only the Institut Catala de les Empreses Culturals and Film- und Medienstiftung NRW explicitly reference independence with regional legislation. This highlights a trend where **implicit criteria are more prevalent regionally**.

In a minority of countries, for both national and regional level, there are scenarios with either no definition of independence, or simply a reference to the definition used in the context of the AVMSD (10 cases at national level, and 11 ones at regional level). The country breakdown is presented in the table below.

Table 1. Use of the notion of independence in national and regional support schemes

National level			Regional level		
Notion of independence	**Total**	**Countries**	**Notion of independence**	**Total**	**Regional funds**
Explicit definition enshrined in text, with requirements	**11**	AT, BG, CH, DK, ES, FR, MT, NL, NO, PT, UK	Same definition in regional scheme as in national scheme or regional law	**6**	Basque Government's Culture Department, Ile de France, Film- und Medienstiftung NRW, Midtnorsk Filmsenter, Oslo Filmfond, Vestdanske Filmpulje
			Explicit definition, different from national public funds	**1**	Institut Catala de les Empreses Culturals

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No definition, but eligibility criteria require independence of the recipient	**10**	BE(FR & VL[11]), EE, FI, HU, IE, LU, LV, RO, SE	No definition, but eligibility criteria require independence of the recipient	**5**	Cinéforom, Filmfonds Wien, IDM-Südtirol Alto Adige, Screen Brussels, Wallimage
Reference in public support to the definition established in the context of the AVMSD	**4**	HR, IT, SI, SK	AVMDS definition used in the context of regional support	**3**	Screen Flanders, Trentino Film Commission & Fund, VAF
No reference to independence in national public support scheme	**6**	CY, CZ, DE, GR, LT, PL	No reference, no use of independence	**8**	Krakow Regional Film Fund, Lower Austrian Film Commission, FFF Bayern, Medienboard Berlin-Brandenburg, MOIN Hamburg Schleswig-Holstein, Nouvelle Aquitaine, Screen Scotland

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

6.2.2. Examination of textual sources calling for independence

At the national level, **a large number of countries incorporate the concept of independent producer/production into their public support schemes** (21 countries: AT, BE(FR & VL), BG, CH, DK, EE, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PT, RO, SE and UK)/.

A **majority of them embed this notion in their legislation** (12 countries: BE(FR and VL), BG, CH, EE, ES, FI, FR, LU, LV, PT and RO). Illustrations are found in the Bulgarian Film Industry Act, or the Estonian Regulation from the Cultural Ministry on the conditions and procedures for supporting the development, production and distribution of film.

While for these countries the definition is directly embedded into legislation, the use of an explicit or implicit definition varies. For instance, countries like Bulgaria and Portugal provide a clear legal definition of independence in primary legislation (along with CH, ES, and FR). Meanwhile, countries such as Belgium and Luxembourg implicitly refer to independence through eligibility criteria (along with EE, FI, LU, LV and RO). More specifically, Luxembourg details in the legislation the criteria a production company must fulfil in order to obtain public support without clear reference to the word "independence",

[11] The Flemish community of Belgium uses the definition established in the context of the AVMSD for its VAF fund, and introduces the notion of "eligible production company" in its tax law. This table includes the implicit tax law criteria.

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meaning the eligibility criteria suggest the recipient should be independent. These details are found in the Grand-Ducal Regulation of 4 November 2014 implementing the Law of 22 September 2014[12] on the National Audiovisual Production Support Fund.

A minority of countries address independence through their film fund regulations (AT, DK, HU, NL, NO, SE and UK). Denmark explicitly refers to independence in its Film Fund's general terms and conditions, and the UK in its application guide of the UK Global Screen Fund. By contrast, Hungary and Sweden implicitly refer to independence in their film fund regulations, setting eligibility criteria applicants must meet to obtain financial support.

Unlike other countries, Ireland and Malta define independence in the public support context in different types of text. Ireland embeds the concept in its Revenue Commissioners' Tax Manual, focusing on tax credits for film production. Malta incorporates independence criteria in its Arts Council's Screen Support Scheme guidelines rather than directly through its Film Commission.

Regional funds often define independence within their own guidelines or regional laws. The use of regional laws in this study is particularly evident in countries with distinct administrative divisions, such as Germany and Spain.

For instance, in Germany, where there is no national definition of independence in the context of the AVMSD or public schemes, the North Rhine-Westphalia region sets its own standards in its audiovisual law, which is replicated by the regional fund guidelines.

Catalonia in Spain also offers a unique example. While there is a national definition of independence required for public support, the Catalonian fund opts for its own criteria, as outlined in its regional cinema law.

These variations highlight the diverse approaches to defining and implementing independence criteria in European public support schemes.

The table below shows the breakdown by country, and the map illustrates the relationship between explicit and implicit references to independence across the region.

Table 2. Textual source where the concept of independence is defined or implied

National level			Regional level		
Textual source	**Total**	**Country**	**Textual source**	**Total**	**Regional fund**
Legislation	**12**	BE(FR and VL), BG, CH, EE, ES, FI, FR, LU, LV, PT, RO	Regional legislation	**2**	Film- und Medienstiftung NRW,

[12] Grand-Ducal Regulation of 4 November 2014 implementing the Law of 22 September 2014 on the National Audiovisual Production Support Fund (in French only), *Règlement grand-ducal du 4 novembre 2014 portant exécution de la loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle*

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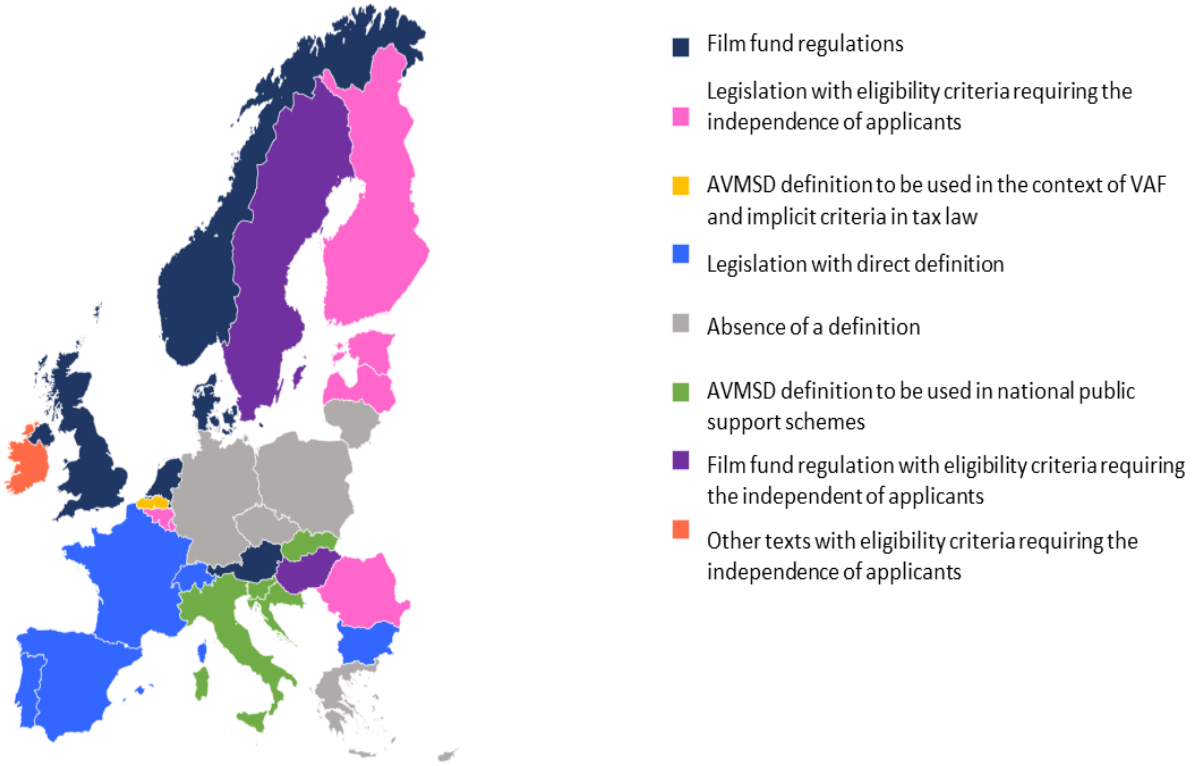
					Institut Catala de les Empreses Culturals
Film Fund regulation	**7**	AT, DK, HU, NL, NO, SE and UK	Regional fund regulation	**5**	Cinéforom, Filmfonds Wien, IDM-Südtirol Alto Adoge, Screen Brussels, Wallimage
Guidelines	**2**	IE and MT			

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

Figure 6. Textual sources and implementation of independence: explicit definition or implicit criteria at national level



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

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6.3. Criteria for independence in the context of public support

In the AVMSD context, the Note shows that countries use three criteria to define independence in both the AVMSD and public support contexts. They include financial independence (incl. ownership, content supply, and financial ability), operational independence, and the retention of intellectual property rights. No new criteria are introduced in the public support context.

However, the application of these criteria varies significantly among countries and regional funds. For instance, the 21 countries and the seven regional funds that use the concept of independence do so differently from their AVMSD definitions (or national definitions in the case of regional funds).[13]

Section 5.3. looks at the varying approaches taken at national and regional levels in using these criteria.

6.3.1. Use of the three criteria

The definitions in the public support context use the same criteria as the ones in the AVMSD context:

- **Financial criterion** (including three sub-criteria**):**
  - **Ownership:** it focuses on ownership and capital structure, limiting shares that an AVMS provider can own in a production company or vice versa;
  - **Producer's content supply ratio to AVMS provider:** it restricts the proportion of a producer's content supplied to a single AVMS provider,
  - **Producer's ability to finance (parts of) the work:** it requires producers to have financial capacity to fund (parts of) the content.
- **Operational criterion:** examines the producer's ability to conduct business without interference from broadcasters.
- **IPR criterion:** considers the producer's ability to retain IPR when transferring rights to an AVMS provider.

The use of independence criteria in production support schemes shows numerous approaches, suggesting diverse understandings of independence across the continent. This analysis reveals a nuanced approach to defining and implementing independence criteria in public support mechanisms.

- **Dominant use of single-criterion approach (x 11 countries)**

[13] 21 countries: AT, BE(x2), BG, CH, DK, EE, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PT, RO, SE and UK ;
7 regional funds: Cinéforom, Filmfonds Wien, IDM-Südtirol Alto Adige, Institut Catala de les Empreses Culturals, Film- und Medienstiftung NRW, Screen Brussels, Wallimage

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At the national level, simplicity often prevails, with a **majority of countries opting for a single-criterion approach** (11 out of 21 countries referring to the notion of independence, namely CH, DK, HU, IE, LV, MT, NL, NO, RO, SE and UK).

Ownership criterion (x4 countries): Ireland, Malta, Sweden, and the United Kingdom focus on ownership, typically limiting AVMS provider capital participation in production companies.

Flexibility between ownership or operational criterion (x 3 countries): Switzerland, Latvia and Norway offer flexibility, allowing producers to meet either ownership or operational criterion.

IPR criterion (x 2 countries): Hungary and Romania uniquely emphasise IPR ownership, though their definitions lack specifications regarding the scope of rights.

Ownership or content supply criterion (x1 country): Denmark conditions the grant to the fulfilment of one criterion: either the ownership criterion or the content supply criterion.

Operational criterion (x 1 country): The Netherlands prioritises operational independence only, restricting AVMS providers' control over production companies and ensuring producers maintain commercial freedom.

Some regional funds mirror this one-criterion trend, with two (out of seven) funds using the single- ownership criterion approach (Film- und Medienstiftung NRW,), while Wallimage looks solely at operational aspects.

- **The three-criteria approach used to a lesser extend (x 5 countries)**

It is used in Austria, the French community of Belgium, Estonia, Finland and Spain. The three-approach is less spread, and each country implemented different criteria combination.

Austria pairs ownership, operational and IPR criteria. The French Community of Belgium and Spain put a stronger focus on the financial aspects with both ownership and content supply criteria in addition to the operational one. Estonia combines ownership, ability to finance the work and IPR criteria. Though Finland uses the three criteria, they cannot be categorised as sub-criteria, as they lack details in the national text.

- **The two-criteria scenario: a limited approach (x4 countries)**

The use of two criteria is not so common at national level (four countries).

Ownership and operational criteria (x3 countries): The Flemish community of Belgium, as well as Bulgaria, and France have adopted a two-criteria approach, combining ownership and operational criteria, ensuring both economic separation and decision-making autonomy. This dual approach is echoed in regional funds like Filmfonds Wien and Cinéforom.

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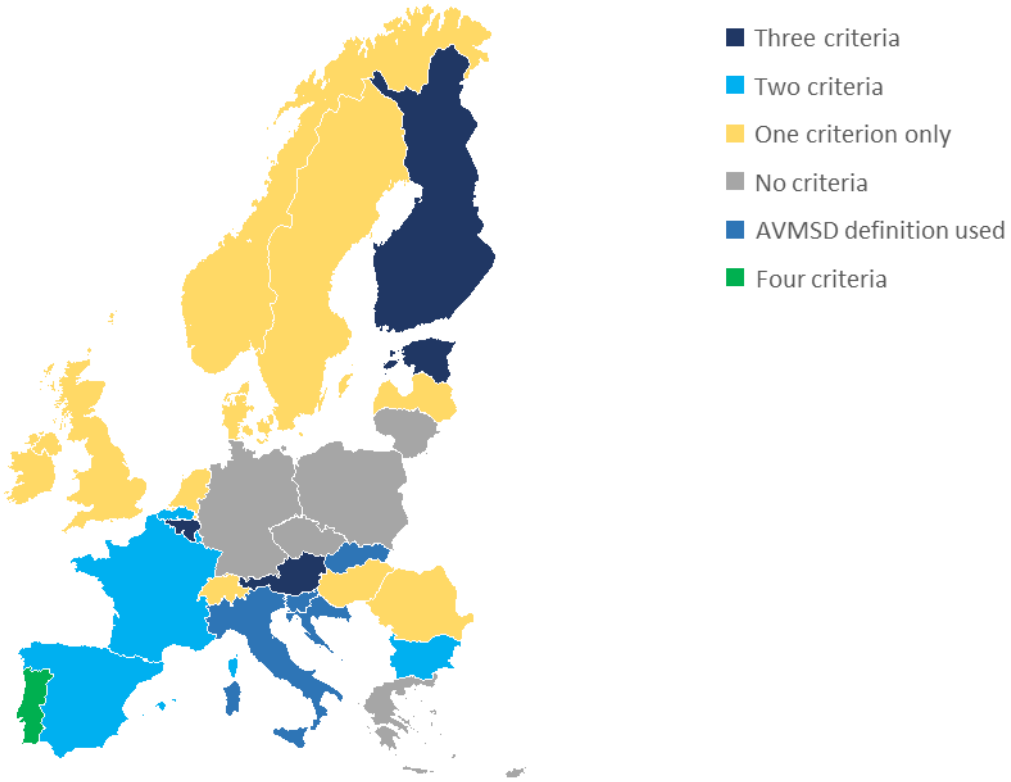
Financing ability and IPR criteria (x1 country): Luxembourg pairs the ability to finance the work with IPR considerations, as does IDM-Südtirol Alto Adige at the regional level.

The regional fund, Screen Brussels and Institut Catala de les empreses both focus on the financial criterion, pairing the ownership and supply criteria.

- **The four-criteria scenario: a rare approach (x 1 country)**

The combination of four criteria is rare, only Portugal does so (ownership, content supply, operational and IPR criteria).

Figure 7. Number of criteria required for independence by country (national level)



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

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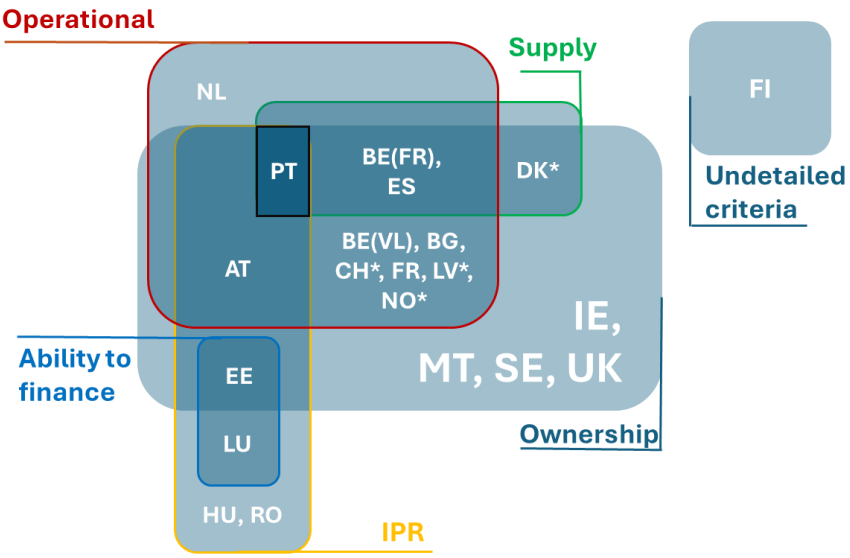
Figure 8. Type of criteria used



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

6.3.2. Criteria combination

This subsection examines how national and regional funds combine and apply the main criteria – financial (including tree sub-criteria), operational, and IPR - when defining independence in national and regional support schemes.

6.3.2.1. General trends

Regarding the definition of independent producer/production used in the context of the AVMSD,[14] **both national and regional funds employ various combinations of these criteria when referring to independence**.

While some national funds use the three criteria, for example Austria, or Finland or even four in the case of Portugal, most countries and regions such as Bulgaria, Luxembourg, Malta, and Switzerland, as well as Cineforom, Filmfonds Wien, and Institut Catala de les Empreses Culturals, focus on one or two criteria, reflecting diverse regulatory approaches.

The IPR criterion, when used, often lacks detailed explanation, such as on the scope of rights, particularly in HU, LU, and RO.

Besides, the financial and operational criteria is applied differently to AVMS providers and production companies: either the AVMS provider alone cannot (partially or

[14] See Section 3.1.2. of "Independent production and retention of intellectual property rights", European Audiovisual Observatory, Strasbourg, 2023.

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totally) own the production company, or, together with this first scenario, the AVMS provider cannot be owned (partially or totally) by the production company. These two requirements can be combined in a bi-directional manner, while the requirement that the production company not owning parts of the AVMS provider is never used alone.

For instance, in the French Community of Belgium, an AVMS shall not directly or indirectly own 15% of shares in the production company, and vice-versa, the production company shall not, directly or indirectly, own 15% shares of the AVMS provider.

On the contrary, in Denmark, only one direction of the relationship is looked at. The production company should not be owned by more than 25% by a single TV-station/VOD service.

When used, the content supply criterion is used in addition to other criteria, all of which examine the relation with the same AVMS provider to which the other criteria are applied. Thus, for example, in Portugal, a producer is independent when it cumulatively meets the ownership and content supply criteria. An AVMS provider shall not, directly or indirectly, own more than 12,5% of the producer's capital, and the producer shall not obtain more than 90% of total revenue generated by an AVMS provider.

Finally, Latvia, Norway and Switzerland offer flexibility in their national support, as they require producers to meet either the ownership or operational criterion. So does Denmark, requiring either the ownership or supply criterion.

6.3.2.2. Key particularities

As shown above, the use of independence criteria in public support reveals several key particularities that highlight the diversity of definitions in different countries and regions. These particularities underscore the variations in terminology, vagueness of certain criteria, and nuanced relationships between AVMS providers and production companies. The following points summarise these distinctions and the trends observed in the application of the financial (including three sub-criteria), operational, and IPR criteria.

Though Finland uses the three criteria, they cannot be categorised as sub-criteria, as they lack details in the national text.

The figure below illustrates the various sub-criteria within each type of criterion.

Figure 9. Diversity of sub-criteria used in public support schemes:

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Financial criterion

Ownership

- **Limited/no capital participation by AVMS providers in production company**
- **Limited/no capital participation by/in AVMS providers**
- **Limited/no capital participation by company holding AVMS providers shares**
- **Limited/no capital participation by AVMS providers or subsidiaries**
- **Limited/no capital participation by/in AVMS providers' partners**
- **Capital participation by AVMS providers but not in the work's financing plan**

Content supply

- **Turnover limitations of sales to AVMS providers**

Financing ability

- **Limited AVMS provider financing in work production**
- **Self-financing ability**

Operational criterion

- **Distinctive legal personality**
- **Limited/no AVMS provider control over production company**
- **Limited/no control by/in AVMS providers**
- **Limited/no AVMS provider control over work production**
- **Sufficient commercial freedom of applicants**

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

6.3.2.2.1. Financial criterion

As discussed, the definition of independence at national and regional levels reveals variations in the use of the criteria, suggesting diverse understandings of independence across the continent.

- **Ownership**

First, **ownership thresholds vary significantly**, with countries setting specific percentages for AVMS providers' ownership of production companies, such as 25% in Austria or 15% in

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the French community of Belgium. There are sometimes variations in the number of AVMS providers considered. For example, Portugal has envisaged scenarios where a single AVMS provider financially participates in the production company (12,5%), or where several AVMS providers participate (25%).

Several countries take into account both direct and indirect financial participation, though these concepts often lack a clear definition in national or regional texts.

Malta is the only case limiting the financial participation of AVMS providers both in the production company's origins and in its current ownership structure.

Regarding the type of organisations from which financial independence must be proven, one case is worth noting.The Film- und Medienstiftung NRW explicitly includes AVMS subsidiaries in ownership restrictions.

- **Content supply**

Some countries, like Denmark, Spain, and Portugal, impose turnover limitations restricting the percentage of revenue a production company can derive from a single AVMS. These limitations show variations in percentages. For instance, in Denmark and Portugal, the producer must obtain less than 90% of revenue from a single AVMS provider over three years; this percentage is fixed at 80% in Spain.

- **Financing ability**

Interestingly, two countries (EE and LU) require producers to demonstrate self-financing ability, with Luxembourg specifically setting this at 10% of the work's budget. This example is one of the rarest in this study, suggesting that the use of independence criteria from the perspective of the work to be produced is not often considered in the legislations and funding guidelines. In contrast, Screen Brussels allows AVMS provider capital participation but prohibits involvement in the work's financing plan.

- **Key take-aways**

Ownership is a predominant criterion to define independence in the context of public direct and indirect support. It is used in 16 countries (AT, BE(FR and VL) BG, ES, EE, FR, IE, LV, MT, PT, SE, UK). Some countries offer a degree of flexibility in the use of the ownership criterion by allowing a choice with other criteria. The Danish Film Fund's regulation, for example, considers the independence fulfilled as long as either the ownership criterion or content supply criterion is respected by the producer. Switzerland and Norway also offer flexibility between the ownership or the operational criterion. It is also worth mentioning that the ownership criterion is used either exclusively or in combination with other criteria.

In contrast, the content supply criterion is not as widely used (three countries require it (BE(FR), ES, and PT), and combine it with the ownership one., The same conclusion applies to the financing ability criterion.

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6.3.2.2.2. Operational criterion

The operational criterion follows the same multifaceted approach. It focuses on ensuring production companies operate without AVMS provider influence. This can vary from one fund to another.

This often manifests as restrictions on decision-making autonomy and limitations on AVMS provider voting rights in production companies, sometimes accompanied by thresholds. Illustrating this, Latvia limits AVMS provider voting rights within the production company to 25%.

As with financial participation, several countries consider both direct and indirect control, though again, the terms remain undefined.

As regards independence examined from the perspective of the work to be produced, and adding to the self-financing aspect of the work used in Estonia and Luxembourg, the Netherlands stands out: it requires a certain level of artistic freedom from the producer; the AVMS provider must not have a decisive influence over the content, production or execution of the content. Regarding the type of organisations from which operational independence must be demonstrated, one case is worth noting. France has implemented a two-tiered independence requirement. Producers must demonstrate independence not only from AVMS providers but also from other production companies that benefit from automatic production support.

6.3.2.2.3. IPR criterion

When present, the IPR criterion often lacks specific details on the rights that producers must retain. Notably, Hungary, Luxembourg, and Romania employ broad and vague phrasing when requiring that this criterion be satisfied.

Norway has a peculiar approach. On top of offering flexibility under which producers must meet either ownership or operational criterion, it requires the successful applicant to agree with the terms of grants. These terms mention IPR ownership: the producer shall hold the necessary rights for the exclusive management of rights in the work to be produced.

6.3.2.2.4. Summary tables

These sub-criteria are used either in combination or individually. The table below illustrates this:[15]

[15] As indicated in the methodology, only written and binding criteria were considered in the analysis and trend calculations. When a text mentions only financial criteria without operational criteria (or vice versa), only the written criteria were included.

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Table 3. Comparative overview of independence criteria in public support schemes

Type	Number	Countries/ Regions
Financial criterion (x3)	National: 17 Regional: 6	AT, BE(FR & VL), BG, EE, ES, FI, FR, IE, MT, PT, SE, UK DK (ownership or content supply) CH LV NO (financial OR operational) Cinéforom, Filmfonds Wien, Film- und Medienstiftung NRW, IDM-Südtirol Alto Adige, Institut Catala de les Empreses Culturals, Screen Brussels
OWNERSHIP CRITERION		
Limited/no capital **participation by AVMS** in production company	National: 10 Regional: 2	AT, CH, DK, IE, LV, MT, NO, PT, SE, UK Cinéforom, Filmfonds Wien
Limited/no capital participation **by/in** AVMS	National: 5 Regional: 1	BE(FR & VL), BG, ES, FR Institut Catala de les Empreses Culturals
Limited/no capital participation by **company holding** AVMS shares	National: 2 Regional: 0	BE(FR & VL)
Limited/no capital **participation by AVMS** or subsidiaries	National: 0 Regional: 1	Film- und Medienstiftung NRW
Limited/no capital **participation by/in AVMS partners**	National: 1 Regional: 0	FR
Capital participation by AVMS but not in the work's financing plan	National: 0 Regional: 1	Screen Brussels
SUPPLY CONTENT		
Limitations on turnover from AVMS sales	National: 3 Regional: 2	DK, ES, PT Screen Brussels, Institut Catala de les Empreses Culturals
FINANCING ABILITY		
Limited AVMS financing in work production	National: 0 Regional: 1	IDM-Südtirol Alto Adige
Self-financing ability	National: 2 Regional: 0	EE, LU
Operational criterion (autonomy of decision)	National: 12 Regional: 3	AT, BE(FR & VL), BG, ES, FI, FR, NL, PT CH LV NO (financial OR operational) Cinéforom, Filmfonds Wien, Wallimage
Distinctive legal personality	National: 2 Regional: 1	BE(FR&VL) Wallimage

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Limited/no AVMS control over production company	National: 6 Regional: 3	AT, CH, EE, LV, NL, NO Cinéforom, Filmfonds Wien, Wallimage
Limited/no control by/over AVMS	National: 3 Regional: 0	BG, ES, FR
Limited/no AVMS control over work production	National: 2 Regional: 0	NL, PT
Sufficient commercial freedom of applicants	National: 1 Regional: 0	NL
IPR criterion	National: 7 Regional: 1	AT, EE, FI, HU, LU, PT, RO IDM-Südtirol Alto Adige
Holding/retaining the economic rights from copyrights	National: 6 Regional: 1	AT, EE, HU, LU, PT, RO IDM-Südtirol Alto Adige

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

The table below summarises the use of criteria by national support schemes.

Table 4. Criteria combination in national schemes[16]

	Financial criterion (x3)	Operational criterion	IPR criterion
AT	Ownership: Max 25% direct or indirect participation (shares) by single AVMS, 50% by multiple AVMSs.	Max 25% direct or indirect decisive influence (voting rights) by single AVMS, 50% by multiple AVMSs.	Ownership of the exploitation rights)
BE (WL)	Two separate notions calling for independence: According to the audiovisual fund (producer of AV works): Ownership: Max 15% direct or indirect participation (shares) by/in TV broadcaster (linear and non-linear); Max 15% direct or indirect participation (shares) by a company that directly or indirectly holds more than 15% of TV broadcaster; Supply content: Max 90% turnover from TV broadcaster over three years, According to the tax law (eligible production company) (ownership): Limited financial ties with an AVMS (and vice-versa)	Two separate notions calling for independence: According to the audiovisual fund (producer of AV works): The producer has a legal personality distinct from that of a service provider. According to tax law (eligible production company): Limited control exercised by an AVMS (and vice-versa).	×

[16] The cross x excludes the use of the criterion.

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	Financial criterion (x3)	Operational criterion	IPR criterion
BE (VL)	The Flanders fund (VAF) refers to the definition used in the context of the AVMSD. According to tax law (eligible production company) (ownership): Limited financial ties with an AVMS (and vice-versa)	According to tax law (eligible production company): Limited control exercised by an AVMS (and vice-versa).	×
BG	Ownership: Limited capital participation by/in AVMS	Limited/absent control by/in AVMS	×
CH	Ownership: Absence of ownership by AVMS or training and continuing education institutions OR	Absence of decisive influence on the part of AVMS or training and continuing education institutions	×
DE	Non-existence of a definition of independence in European works and national support contexts		
DK	Ownership: Max 25% ownership by single AVMS, or 50% by multiple AVMSs; OR, Supply content: less than 90% revenue from a single AVMS over three years	×	×
EE	Ownership: No AVMS, state, or local government shareholders, and Financing content: self-financing ability	×	Ownership of economic rights
ES	Ownership: Max 20% participation by single AVMS; Content supply: Less than 80% turnover from a single AVMS over three years	Limited dominant influence by/in AVMS or absence of ownership by a media service broadcaster (max 20%)	×
FI	Financial capacity	Operational capacity	Management of film's commercial exploitation rights
FR	Applicant to be independent from two types of entities: From AVMS: Ownership: Max 15% direct or indirect participation by/in AVMS; Max 15% direct or indirect participation by a partner of the production company in production company and AVMS at the same time	From AVMS: Max 15% direct or indirect decisive influence (voting rights) by/in AVMS; Max 15% direct or indirect decisive influence (voting rights) by a partner of the production company in production company and AVMS at the same time From a production company benefitting from automatic production support: Absence of decisive influence by a single production company benefiting from automatic production support	×
GR	Non-existence of a definition of independence in European works and national support contexts		
HR	European work definition to be used in national public support schemes		
HU	×	×	Ownership of exploitation rights
IE	Ownership: Producers must hold all shares in qualifying company	×	×
IT	European work definition to be used in national public support schemes		
LT	No reference to independence in national public support		

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	Financial criterion (x3)	Operational criterion	IPR criterion
LU	Financing content: Self-financing ability	×	Ownership of exploitation rights
LV	Ownership: Max 25% ownership by state (or municipal) or AVMS OR	Max 25% decisive influence (voting rights) by state (or municipal) or AVMS	×
MT	Ownership: Minimum capital participation (both in the entity's origins and in its current ownership structure)	×	×
NL	×	No decisive influence by end operator; No control over work production by end operator; Sufficient commercial freedom	×
NO	Ownership: Limited ownership by AVMS	Limited business ties with AVMS	×
PL	No reference to independence in national public support		
PT	Ownership: Max 12.5% direct or indirect participation (shares) by single AVMS, or 25% by multiple AVMSs; Content supply: Max 90% turnover from single AVMS accumulated over three years or over last financial year	Creative autonomy in development	Ownership of rights to work produced
RO	×	×	Holding exploitation rights
SE	No majority ownership by AVMS	×	×
SI	European work definition to be used in national public support schemes		
SK	European work definition to be used in national public support schemes		
UK	Ownership: Max 25% participation (shares) by a non-UK corporate entity, TV broadcaster, SVOD platform or large company	×	×

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

6.3.3. The use of thresholds in criteria

A distinction in the application of independence criteria across the 21 countries is the use of specific thresholds (quantitative criteria) versus more general criteria (qualitative criteria). This dichotomy is shown in several aspects, although it is specific to the criterion used, as financial (including three sub-criteria) and operational criteria may have numerical thresholds (e.g. ownership percentages, voting rights), while IPR criteria typically use descriptions due to their nature.

However, it should be noted that some countries use financial and/or operational criteria without thresholds. This is the case for Bulgaria, which uses negatives such as "is not an owner of an AVMS or of a share of its assets" or Finland, which uses the three criteria but does not specify any of them.

In total, 12 countries and six regional funds have opted for clear numerical thresholds (AT, BE(FR), CH, DK, ES, FR, IE, LU, LV, PT, SE and UK; Filmfonds Wien, Screen

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Brussels, Wallimage, Film- und Medien Stiftung NRW, Institut Catala de les Empreses Culturals, IDM-Südtirol Alto Adige)[17], while the other nine countries and Cinéforom employ more general criteria without thresholds.

Financial thresholds typically fall into three categories: ownership shares (e.g. in Austria, maximum 25% participation by one TV broadcaster, 50% in case of several TV broadcasters), producer's content supply to AVMS providers (e.g. for Screen Brussels, maximum 75% of turnover from single AVMS provider over three years) and producer's ability to finance (parts of) the work (e.g. in Luxembourg, minimum 10% of the work to be produced should be self-financed).

Operational thresholds often focus on voting rights. The relationship between AVMS providers and production companies is another point of variation, with some countries applying criteria unidirectionally (from AVMS providers in the production company only) and others bi-directionally.

For instance, France requires two-tiered independence: from AVMS providers and from production companies benefitting from automatic production support. While there must not be more than 15% direct or indirect decisive influence (voting rights) by/in an AVMS provider, the French rules add that there must not be more than 15% direct or indirect decisive influence (voting rights) by a partner of the production company in the production company and the AVMS at the same time. However, limited decisive influence vis-à-vis the production company benefitting from automatic production support is not set in numerical terms.

It is worth noting that countries using multiple criteria may only provide numerical thresholds for one, typically reserving quantitative measures for financial and operational aspects while using broader descriptions for the IPR criterion.

[17] Vestdanske Filmpulje's terms and conditions funding language is identical to the Danish Film Fund's general terms.

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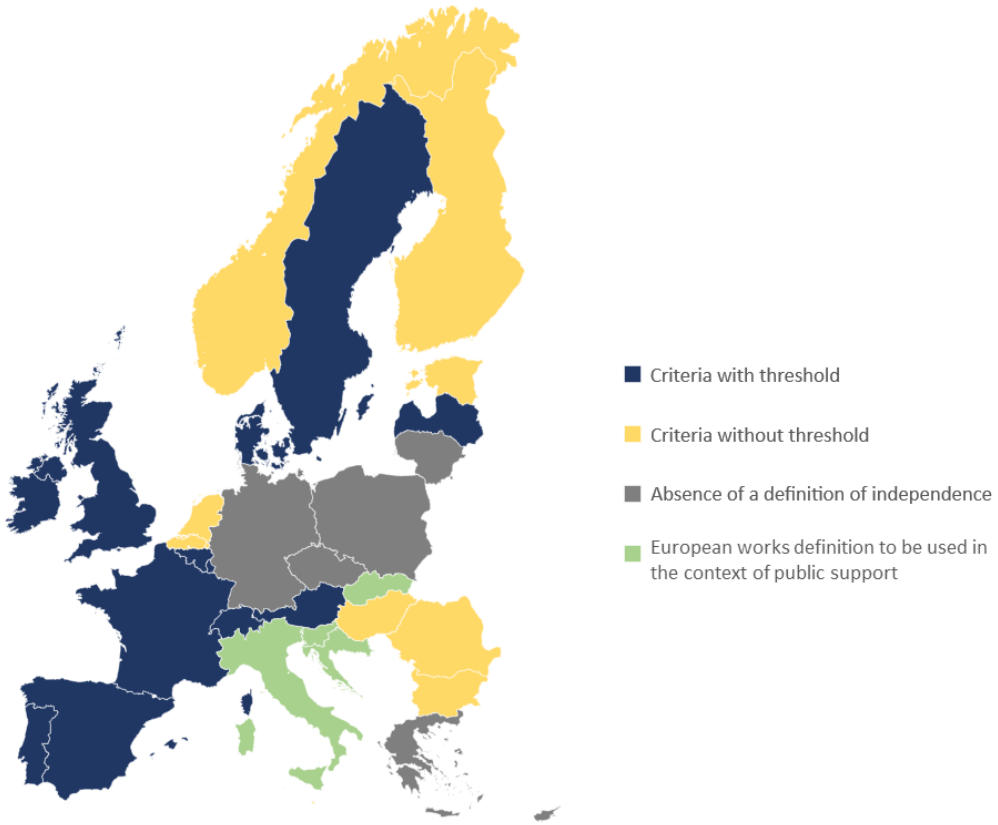
Figure 10. Divergence in the use of thresholds to define independence in national public



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

Table 5. Thresholds for independence criteria in national and regional support schemes

Country	Support	Criteria	Threshold applicable to:
AT	**National level**	Fin, Op, IPR	Ownership: Max 25% direct or indirect participation (shares) by single AVMS, 50% by multiple AVMS providers. Operational: Max 25% direct or indirect decisive influence (voting rights) by single AVMS, 50% by multiple AVMS providers.
	Regional level: Filmfonds Wien	Fin and op	Ownership: Max 25% direct or indirect participation (shares) by TV broadcaster, 50% by multiple TV broadcasters. Operational: Max 25% direct or indirect decisive influence (voting rights) by TV broadcaster, 50% by multiple TV broadcasters.
BE(WA)	**National level**	Fin and Op	According to Decree on support for creation (producer of AV works): Ownership: Max 15% direct or indirect participation (shares) by/in TV broadcaster (linear and non-linear); Max 15% direct or indirect participation (shares) by a company that directly or indirectly holds more than 15% of TV broadcaster;

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Country	Support	Criteria	Threshold applicable to:
			Content supply: Max 90% turnover from TV broadcaster over three years. According to tax law (eligible production company): Ownership: Limited financial ties with a TV broadcaster (and vice-versa) Operational criteria: Limited control exercised by a TV broadcaster (and vice-versa).
	Regional level: Screen Brussels	Fin	Content supply: Max 75% turnover from single TV broadcaster over three years; Ownership: No financial participation from TV broadcaster in the work's financing plan (either as a co-producer or as a pre-purchaser) though it has (in) direct capital ties to producer.
	Regional: Wallimage	Op	Operational: Max 50% decisive influence (voting rights) by AVMS provider; distinctive legal personality
BE(VL)	**National level**	Fin and Op	According to tax law (eligible production company): Ownership: Limited financial ties with an AVMS provider (and vice-versa) Operational criteria: Limited control exercised by an AVMS provider (and vice-versa).
CH	**National level**	Fin or Op	Ownership or operational: Absence of ownership or decisive influence by AVMS or training and continuing education institutions.
DE	**Regional level: NRW**	Fin	Ownership: Max 25% participation (shares) by TV broadcaster or subsidiaries.
DK	**National level**	Fin	Ownership: Max 25% ownership by single AVMS, or 50% by multiple AVMS providers; OR, Content supply: less than 90% of revenue from a single AVMS provider over three years.
	Regional level: Vestdanske Filmpulje	Fin	Ownership: Max 25% ownership by single AVMS, or 50% by multiple AVMS providers; OR, Content supply: less than 90% revenue from a single AVMS provider over three years.
ES	**National level**	Fin and Op	Ownership: Max 20% participation by single AVMS provider; Content supply: Max 20% of turnover from a single AVMS provider over three years. Operational: Limited dominant influence by/in AVMS or absence of ownership by a media service broadcaster (max 20%).
	Regional level: Catalonia	Fin	Ownership: Max 15% participation (shares) by/in one or more AVMS provider Content supply: Max 90% of revenue from a single AVMS provider over three years.
FR	**National level**	Fin and Op	Applicant to be independent from two types of entities: From AVMS provider:

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Country	Support	Criteria	Threshold applicable to:
			• Ownership: Max 15% direct or indirect participation by/in AVMS provider; Max 15% direct or indirect participation by a partner of the production company in production company and AVMS at the same time • Operational: Max 15% direct or indirect decisive influence (voting rights) by/in AVMS provider; Max 15% direct or indirect decisive influence (voting rights) by a partner of the production company in production company and AVMS provider at the same time From a production company benefitting from automatic production support: • Operational: Absence of decisive influence by single production company benefitting from automatic production support.
IE	**National level**	Fin	Ownership: Producers must hold all shares in qualifying company.
IT	**Regional level: Südtirol**	Fin and IPR	Financing ability: Max 30% of the work's total production financing by AVMS provider.
LU	**National level**	Fin and IPR	Financing ability: Min. 10% of the work's production by the applicant/producer.
LV	**National level**	Fin or op	Ownership or operational: Max 25% ownership or decisive influence (voting rights) by state (or municipal) or AVMS provider.
PT	**National level**	Fin, op and IPR	Ownership: Max 12.5% direct or indirect participation (shares) by single AVMS provider, or 25% by multiple AVMS providers; Content supply: Max 90% turnover from single AVMS provider accumulated over three years or over last financial year. *Operational criterion is not detailed with threshold (work produced with creative autonomy and freedom in the form of development).*
SE	**National level**	Fin	Ownership: No majority ownership by AVMS provider.
UK	**National level**	Fin	Ownership: Max 25% participation (shares) by a non-UK-corporate entity, TV broadcaster, SVOD platform or large company.

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

6.4. Independence from which party?

Based on the 21 national and seven regional funds that use the concept of independence, the entities from which applicants / producers / production companies must remain independent vary across the different public support schemes.

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The most common scenario appears in 11 instances at national and regional levels, where independence is required from AVMS providers, including broadcasters and VODs (AT, DK, ES, IE, NO, PT, SE and Cinéforom, IDM Südtirol Alto Adige, Institut Catala de les Empreses Culturals, Wallimage).

Setting aside the cases only using the IPR criterion (HU, LU and RO) several countries and regions extend the independence requirement beyond AVMS providers only.

Sometimes the texts require independence from other entities, such as public entities. Estonia, Latvia and Malta add state and local governments, and in Finland independence from public companies is required too.

Similarly, Bulgaria specifically includes radio operators.

Switzerland adds training and education institutions in addition to AVMS providers.

More linked to the film industry, the Netherlands requires independence from traditional AVMS providers and extends it to cinemas. France, for its part, has a two-tiered independence-strengthening approach: it must be demonstrated by both AVMS providers and production companies benefiting from automatic production support.

Finally, the United Kingdom enlarges the scope to include non-UK corporate entities and large companies (meeting two of these criteria: turnover of more than GBP 36 million, balance sheet total of more than GBP 18 million, or more than 250 employees).

In contrast, the scope of AVMS providers can be limited too. There are examples where countries limit the scope of AVMS providers to linear and non-linear broadcasters only (French community of Belgium, Filmfonds Wien, and Screen Brussels).

The figure below reflects the diversity and varied approaches across the different countries and regions. It illustrates the range of entities from which applicants / producers / production companies must demonstrate independence in national and regional support contexts.

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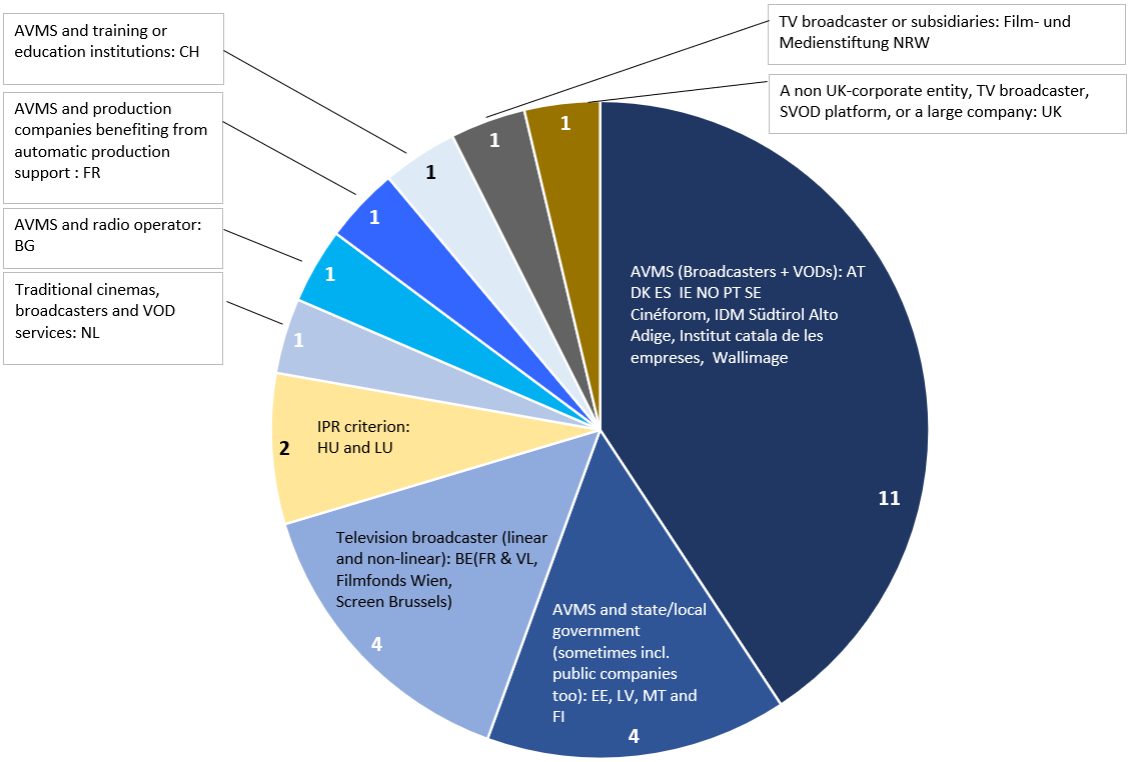
Figure 11. Range of entities from which independence must be demonstrated



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

6.5. Conclusion

This comparative analysis reveals a rich variety of approaches to defining the concept of independence in national and regional support schemes. The study highlights several key observations.

One key takeaway is that **in the context of public support, ownership is the predominant criterion for defining independence** (used by 16 countries). It is either used **exclusively or in combination with other criteria**.

While the financial criterion related to content supply is also used (used by 4 countries), it is less prevalent than the ownership one. When used, the content supply criterion refers to the AVMS provider from which the independence is required, and it often comes as an additional cumulative criterion alongside others. Notably, **the content supply criterion is never isolated from other criteria in the public support context**.

The **operational criterion is quite important**, used by 11 countries (AT, BE(FR and VL), BG, ES, FR, CH* LV* NL NO*, PT). In CH, LV and NO, the operational criterion is an alternative requirement.

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There is a **significant variation in how independence is defined and applied across different countries and regions**, regardless of the textual source (e.g. legislation, funding guidelines).

The use of financial, operational, and IPR criteria differs widely, with variations in:

- **Thresholds applied,**
- **Scope of AVMS from which independence must be demonstrated,**
- **Combinations and emphasis of different criteria,**
- **Relationship complexity:** the study reveals diverse interpretations of the relationship between applicants / production companies and AVMS providers,
- **Context of independence:** these variations exist across different support mechanisms, including direct support (e.g. grants) and indirect support (e.g. cash rebates, tax credits).

This analysis underscores the flexibility within the production landscape in interpreting and implementing the concept of independence. It reflects the diverse regulatory approaches across different national and regional contexts.

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7. Comparing definitions of independence in the context of the AVMSD and in public support

The two previous sections presented definitions of independence, first as a wrap-up in the context of the AVMSD, as per the EAO's 2023 study, and second to showcase the variety of approaches used by countries and some regions in the context of public support.

Section 6 compares these two approaches and concludes by outlining the differences between them. As presented above, 26 countries define independence of the producer/production in the context of the AVMSD, and 21 in the context of public support.

7.1. Key findings

Type of findings	Brief summary
Comparison between definitions used in the context of the AVMSD and of national support:	A total of 16 countries use different wording or criteria (BE(VL), CH, EE, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PT, RO and UK) Three countries use similar wording in both contexts (AT, BE(FR) and BG) Four countries directly refer to the AVMSD definition in their support scheme (HR, IT, SI, and SK) Three countries define independence in the context of the AVMSD but not for national schemes (CZ, LT, and PL) Two countries define independence for national support but not in the context of the AVMSD (DK, and SE) Three countries do not refer to independence in either context (CY, DE, and GR)
Trends regarding differences (for the 16 countries with different approaches)	Additional financial restrictions (e.g. turnover limitations) Variations in scope of criteria (more or fewer for national support) Shift in focus on different types of criteria (same number of criteria but each definition uses different criteria) Threshold adjustments (often lower for national support)

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

7.2. General trends

As a reminder, to start this section:

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- **26 countries define independence in the context of the AVMSD (AT, BE(x2), BG, CH, CZ, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, and UK),**
- **25 do so for public support (AT, BE(FR & VL), BG, CH, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK and UK).**

Firstly, some countries and regional entities use the definition of independence in the context of the AVMSD for national or regional support: they include Croatia, Italy, Slovakia and Slovenia, as well as Screen Flanders and the Trentino Film Commission & Fund. The Flemish community of Belgium stands out in its reference to the definition of independence in the AVMSD context for its film fund, VAF, but has another notion of independence in the case of tax law: the same criteria though with less-detailed thresholds.

In Czechia, Lithuania and Poland, there exists only a definition of independence used in the context of the AVMSD, and no definition of independence in the context of public support.

In contrast, Denmark and Sweden define independence in the context of national support but not in the context of the AVMSD.

There are instances where countries at national level do not define independence (CY, DE and GR), but do so at regional level. The Film- und Medien Filmfond NRW has a definition, although it may be due to the administrative division of Germany.

Three countries mirror the language used in the context of the AVMSD in their legislations or funding guidelines for national support (AT, BE(FR), BG).

The 16 remaining countries with different definitions for each context are studied further below (BE(VL), CH, EE, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PT, RO and UK).

7.3. Key particularities

When comparing definitions of independence in the context of the AVMSD and public support (the definition being explicit in the context of the AVMSD with direct national provisions setting criteria), it is crucial to understand that in public support schemes, the concept of independence is addressed in two main ways:

- **Explicit definitions:** some countries directly define independence in legal texts or funding guidelines.
- **Implicit criteria:** other countries incorporate the concept through eligibility criteria that requiring applicants to be independent to obtain financial support, without explicitly using the terms 'independence' or ‘independent’.

For the purpose of the following comparison, both explicit definitions and implicit criteria in public support schemes are treated equally, as they both serve to understand the concept of independence.

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Comparing the definitions used in the context of the AVMSD with the ones used in the context of national support, it appears that **out of the 16 countries with different wordings for national support, the difference mostly lies in the number of criteria used, and the thresholds of the type of criteria used**, although the number remains the same in both contexts.

Some countries add limits to turnover from a single AVMS provider (i.e. a producer may not obtain revenues above a certain threshold from a single AVMS provider during a certain period of time), resulting in additional financial restrictions. Switzerland has followed this trend: though the two definitions use the financial criterion, it is only in the case of the AVSD context that the additional sub-criterion on the content supply is required (i.e. no more than 50% of the independent production company's commissions can come from a media company within a five-year period).

In some cases, there are fewer **criteria for defining the concept of independence in the context of national support**, and in other instances, there are more criteria. Estonia illustrates this finding: four criteria are used to define independence in the context of the AVMSD while Estonia uses financial (ownership and financing ability) and IPR criteria in the context of public support. Finland does it the other way around, though as highlighted before in this study, the three criteria used in the context of national support are not detailed.

For some countries, the difference is in the shift of criteria: they emphasise **different types of criteria in each context**. The Netherlands focuses on financial independence (ownership) in the context of the AVMSD, whereas it shifts its focus to operational independence in the context of national support.

The final easily noticeable difference is the **changes in thresholds**. The same criteria are used but with lower thresholds in the context of national support. This is the case in Portugal where the financial independence thresholds are different.

In summary, **most countries have adapted their definitions to the context of their national support schemes**, rather than using the definition provided in the context of the AVMSD. The map, figure and table below summarise these findings.

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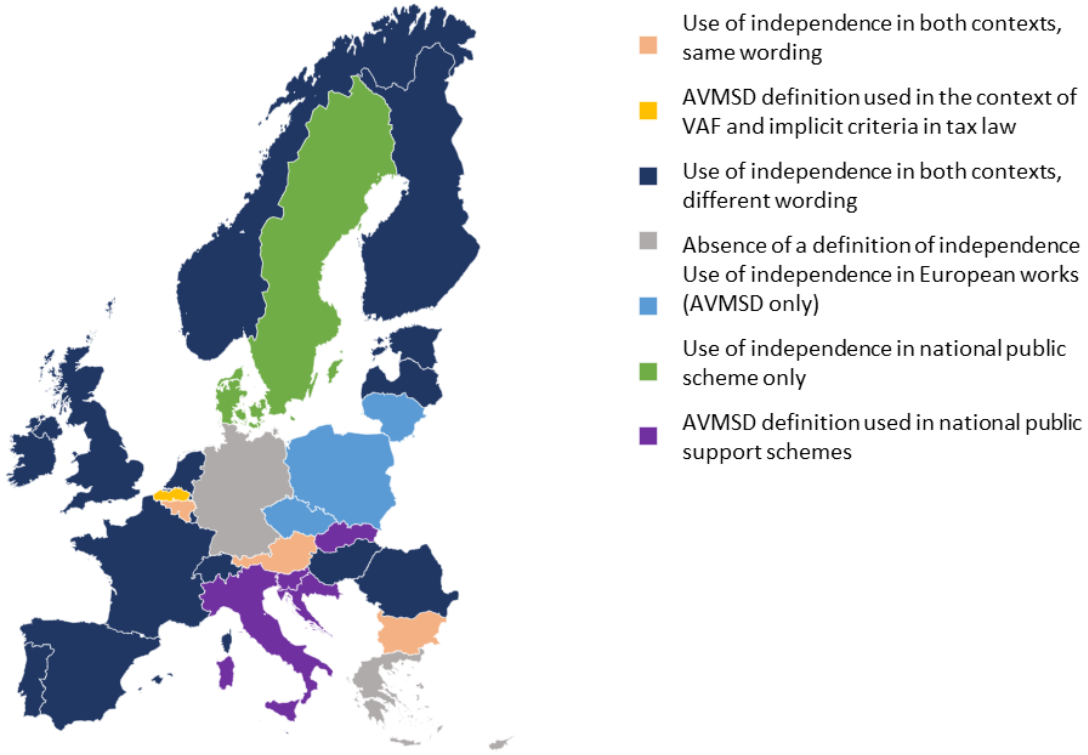
Figure 12. Reference to independence in the context of the AVMSD and national support schemes



Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

Figure 13. Breakdown of differences per category

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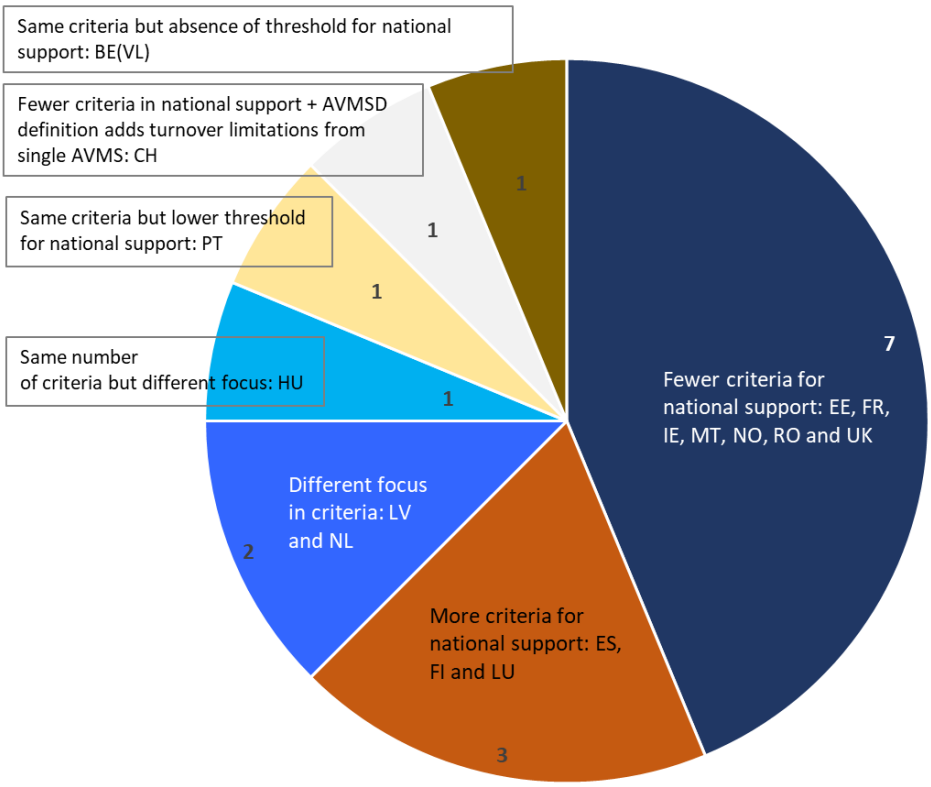

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

Table 6. Key differences in the definitions of independence in AVMSD and national support scheme contexts

Country	AVMSD	National support	Key difference(s)
BE(VL)	Ownership and operational	Ownership and operational	Same criteria but absence of threshold for national support
CH	Ownership, content supply and operational	Ownership OR operational	Fewer criteria in national support European works adds limit to turnover from a single AVMS provider.
EE	Ownership, content supply, operational, IPR	Ownership, financing ability and IPR	Fewer criteria for national support
ES	Ownership and operational	Ownership, content supply and operational	More criteria for national support
FI	Ownership and content supply	Financial, operational, IPR	More criteria for national support
FR	Ownership, operational, IPR	Ownership and operational	Fewer criteria for national support

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Country	AVMSD	National support	Key difference(s)
HU	Ownership	IPR	Same number of criteria but different focus in criteria
IE	Financial and IPR	Ownership	Fewer criteria for national support
LU	Ownership	Financing ability and IPR	More criteria for national support
LV	Indep. from electronic mass media	Ownership OR operational	Different focus in criteria
MT	Ownership and operational	Ownership	Fewer criteria for national support
NL	Ownership	Operational	Different focus in criteria
NO	Ownership, supply and IPR	Ownership OR operational	Fewer criteria for national support
PT	Ownership, content supply and operational (with a 25% threshold), and IPR	Ownership, content supply and operational (with a 12.5% threshold), and IPR	Same criteria but lower threshold for national support
RO	Ownership and ability to finance the work	IPR	Fewer criteria for national support
UK	Ownership (max 25%) and operational	Ownership	Fewer criteria for national support

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

7.4. Conclusion

This final section underscores once more the great variety that is key in defining the independence of audiovisual producers/production, both in the context of the AVMSD and public support schemes. The study reveals the diverse definitions used to qualify this independence.

On the one hand, it is worth noting that there is **no settled and unified definition** across Europe. While the main criteria (financial (ownership, content supply and financing ability), operational and IPR) are consistently used, their **application varies significantly**.

Countries and regions often tailor these criteria to sub-categories, often applying thresholds with varying degrees of specificity. Furthermore, the scope of independence sometimes extends beyond traditional broadcasters and video-on-demand services, in some cases encompassing, for instance, educational institutions or local governments.

On the other hand, some funding structures introduce **additional requirements reflecting more local priorities**. For instance, in Switzerland, the producer / production

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company must be domiciled in Switzerland (the equity and borrowed capital as well as the management are predominantly held and controlled, respectively, by persons with domicile in Switzerland). Regional funds can leave aside the notion of independence to focus on promoting their territories, requiring applicants to shoot partially or entirely within the region to showcase it on-screen.

Furthermore, sometimes the notion of independence can be **applied in practice with a different understanding**, not focusing on AVMS providers but on another type of financial independence. For instance, in Cyprus, the fund recognises the independence of producers when the latter have not received funding from the Ministry of Culture.

Finally, it should not be forgotten that legislation can rapidly change, as is the case with Czechia. At the time of writing, Czechia was in the process of revising its Audiovisual Act, to introduce notably a definition of independence similar to the one used in the context of the AVMSD. It is expected to be finalized and published on 1 January 2025.

All in all, this diversity in defining independence highlights the flexibility of countries and regions in interpreting independence, implementing audiovisual policies and using public money.

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8. Overview tables

There are two annexes. One provides a general overview on criteria used for public supports, and the second offers more details on definitions in European works and public support contexts.

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Annex 1: Summary of the criteria used for public support schemes

	National/ Regional	Fin.			Op.	IPR
		Owner-ship	Sup-ply	Fin. Ability		
AT	*National*	•			•	•
	LAFC	No reference to independence in regional scheme				
	Filmfonds Wien	•			•	
BE (WA)	*National*	•	•		•	
	Screen Brussels	•	•			
	Wallimage				•	
BE (VL)	*National*	•			•	
	Screen Flanders	Reference to the definition used in AVMSD context				
	VAF					
CH	*National*	• OR			•	
	Cinéforom	•			•	
CY	No reference to independence in national scheme					
CZ	No reference to independence in national scheme					
DE	*National*	No reference to independence in national public support scheme				
	Bayern	No reference to independence in regional scheme				
	Berlin	No reference to independence in regional scheme				
	Hamburg	No reference to independence in regional scheme				
	NRW	•				
DK	*National*	• OR	•			
	Vesdanske Filmpulje	Same definition in regional scheme as national scheme				

	Nat./ Reg.	Fin.			Op.	IPR
		Owner-ship	Sup-ply	Fin. Ability		
FR	*Nat.*	•			•	
	Ile de France	Same definition in regional scheme as national scheme				
	Nouvelle Aquitaine	No reference to independence in regional scheme				
GR	*Nat.*	No reference to independence in national scheme				
HR	*Nat.*	Reference to the definition used in AVMSD context				
HU	*Nat.*				•	
IE	*Nat.*	•				
IT	*Nat.*	Reference to the definition used in AVMSD context				
	IDM-Südtirol			•	•	
	Trentino Film Cion	Reference to the definition used in AVMSD context				
LT	*Nat.*	No reference to independence in national scheme				
LU	*Nat.*			•	•	
LV	*Nat.*	• OR			•	
MT	*Nat.*	•				
NL	*Nat.*				•	
NO	*Nat.*	• OR			•	
	Midtnorsk Filmsenter					
	Oslo Filmfond	Same definition in regional scheme as national scheme				
PL	*Nat.*	No reference to independence in national scheme				
	Krakow	No reference to independence in regional scheme				

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EE	*National*	•		•		•	**PT**	*Nat.*	•	•	•	•
ES	*National*	•	•		•		**RO**	*Nat.*				•
	Catalonia	•	•				**SE**	*Nat.*	•			
	Pais Vasco	Same definition in regional scheme as national scheme					**SI**	*Nat.*	Reference to the definition used in AVMSD context			
FI	*National*	Financial, operational and IPR criteria without details					**SK**	*Nat.*	Reference to the definition used in AVMSD context			
							UK	*Nat.*	•			
								Screen Scotland	No reference to independence in regional scheme			

Source: European Audiovisual Observatory, analysis of the responses to the EAO standardized questionnaire.

Annex 2: Details on definitions in AVMSD and public support contexts

	Existence in AVMSD	Existence in national support	Criteria in national support	Criteria in regional support
AT	Yes with 3 criteria, similar to public support definition	Yes, direct definition different	Ownership, operational and IPR criteria	**Filmfonds Wien**: implicit eligibility criteria (ownership and operational) **Lower Austrian Film Commission**: No reference to independence in regional scheme
BE (WA)	Yes with 3criteria, similar to public support definition	No, though eligibility criteria in legislation suggest applicant independence	Ownership, supply and operational criteria	**Screen Brussels**: implicit eligibility criteria (ownership and supply) **Wallimage**: implicit eligibility criteria (operational)
BE (VL)	Yes with 2 criteria but interpretation different from public support definition (in the case of tax law)	AVMSD definition to be used in the context of national fund, and implicit criteria in tax law (eligible production company)	Ownership and operational criteria	**Screen Flanders**: European works definition to be used **VAF**: European works definition to be used
BG	Yes, with 2 criteria, similar to public support definition	Yes, direct definition	Ownership and operational criteria	/
CH	Yes with 3 criteria but interpretation different from public support definition	Yes, direct definition different from AVMSD context	Ownership or operational criterion	**Cinéforom**: implicit eligibility criteria (ownership and operational)
CY	No use of independence	No use of independence	No use of independence	/

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	Existence in AVMSD	Existence in national support	Criteria in national support	Criteria in regional support
CZ	Yes, with 3 criteria	No use of independence	No use of independence	/
DE	No definition of independence	No use of independence	No use of independence	**Bayern, Berlin, Hamburg**: No reference to independence in regional schemes **NRW**: direct definition (ownership)
DK	No definition of independence	Yes, direct definition	Ownership or supply	**Vestdanske Filmpulje**: same definition as national scheme (financial)
EE	Yes, with 4 criteria	No, though eligibility criteria in legislation suggest applicant independence	Ownership, financing ability and IPR criteria	/
ES	Yes, with 2 criteria	Yes, direct definition different from AVMSD context	Ownership, supply and operational criteria	**Basque**: same definition as national scheme **Catalonia**: direct definition (ownership and supply)
FI	Yes, with 2 criteria	No, though eligibility criteria in legislation suggest applicant independence	Financial, operational and IPR criteria (not detailed)	/
FR	Yes with 3 criteria	Yes, direct definition different from AVMSD context	Ownership and operational criteria	**Nouvelle Aquitaine**: No reference to independence in regional scheme **Ile de France**: same definition as national scheme
GR	No definition of independence	No use of independence	No use of independence	/
HR	Yes with 4 criteria	AVMSD definition to be used	Definition in AVMSD context to be used	/
HU	Yes with 1 criterion	No, though eligibility criteria in Film fund regulation suggest applicant independence	IPR criterion only	/
IE	Yes with 3 criteria suggested by the OSMR Act for consideration by Cnam when preparing a scheme	No, though eligibility criteria in guidelines suggest applicant independence	Ownership criterion only	/
IT	Yes with 4 criteria	AVMSD definition to be used	Definition in AVMSD context to be used	**IDM-Südtirol**: implicit eligibility criteria (financing ability and IPR)

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	Existence in AVMSD	Existence in national support	Criteria in national support	Criteria in regional support
				Trentino: European works definition to be used
LT	Yes with 1 criterion	No reference to independence in national public support scheme	No reference to independence in national public support scheme	/
LU	Yes with 1 criterion	No, though eligibility criteria in legislation suggest applicant independence	Financing ability and IPR criteria	/
LV	Yes with 1 criterion	No, though eligibility criteria in legislation suggest applicant independence	Ownership or operational criterion	/
MT	Yes with 2 criteria	Yes, direct definition different from AVMSD context	Ownership criterion only	/
NL	Yes with 1 criterion	Yes, direct definition different from AVMSD context	Operational criterion only	/
NO	Yes with 3 criteria	Yes, direct definition different from AVMSD context	Ownership or operational criterion	**Midtnorsk Filmsenter** & **Oslo Filmfond**: same definition as national scheme
PL	Yes with 2 criteria	No reference to independence in national public support scheme	No reference to independence in national public support scheme	**Krakow**: No reference to independence in regional scheme
PT	Yes with 4 criteria	Yes, direct definition different from AVMSD context (different threshold)	Ownership, supply, operational and IPR criteria	/
RO	Yes with 2 criteria	No, though eligibility criteria in legislation suggest applicant independence	IPR criterion	/
SE	No definition of independence	No, though eligibility criteria in Film fund regulation suggest applicant independence	Ownership criterion	/
SI	Yes with 3 criteria	AVMSD definition to be used	Definition in AVMSD context to be used	/
SK	Yes with 3 criteria	AVMSD definition to be used	Definition in AVMSD context to be used	/
UK	Yes with 2 criteria	Yes, direct definition different from AVMSD context	Ownership criterion	Screen Scotland: No reference to independence in regional scheme

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Source: European Audiovisual Observatory, analysis of the responses to the EAO standardised questionnaire.

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9. Country summaries

9.1. AT – Austria[18]

9.1.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[19]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Explicit eligibility criteria (with mention of "independence")	Yes, in the funding guidelines of the Austrian Film Institute[20]
Regional fund: Filmfonds Wien (Implicit eligibility criteria) • Implicit eligibility criteria	No, though the Filmfonds Wien's guidelines set eligibility criteria which suggest that applicants should be independent.
Regional fund: Lower Austrian Film Commission (LAFC) • No definition	No, the LAFC grants financial support to projects that are commercially difficult films.

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Austria**	**Source**

[18] The summary on Austria incorporates the feedback from Alessandro Chia, project management and controlling, at the Austrian Film Institute.
[19] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report *produced* by the European Audiovisual Observatory in 2023.
[20] Funding guidelines of the Austrian Film Institute, 6 and 21 December 2023 (in German only).

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The Film Funding regulation explicitly sets independence criteria in the context of public support. The applicant must be a legal entity, or a partnership registered in the commercial register or a sole proprietorship with a permanent establishment or branch office in Austria and a company location in the EU or a state of the Agreement on the European Economic Area (EEA) or Switzerland.		
Three criteria **Financial criterion** (ownership and capital structure) *Limited ownership of the production company* **Operational criterion** (autonomy of decision) *Limited voting rights* **IPR criterion** (ownership of the exploitation rights)	(The text details the financial operation criteria only.) One AVMS via direct or indirect participation shall not hold more than 25% of the shares. Two or more AVMSs shall not hold together more than 50% of the shares. One AVMS via direct or indirect participation shall not hold more than 25% of the voting rights. Two or more AVMSs shall not hold together more than 50% of the voting rights.	Funding guidelines of the Austrian Film Institute

Criteria related to independence in the context of regional support		
Type of criteria	**In practice in Filmfond Wien**	**Source**
Films produced on behalf of third parties are excluded from funding. **Production companies in Vienna should develop into sustainably successful enterprises in which artistic work finds a good economic basis. Production companies should be self-confident partners in the funding process, promoting and exploiting projects independently.**		
Two criteria **Financial criterion** (ownership and capital structure) *Limited ownership ties* **Operational criterion** (autonomy of decision) *Limited voting rights*	Financial criterion (ownership and capital structure): Limited financial ties between a television broadcaster and the production company (25%, and 50% in case of two or more broadcasters). Operational criterion (autonomy of decision): Limited voting rights on the part of a television broadcaster with regard to the production company (25%, and 50% in case of two or more broadcasters).	Filmfonds Wien's Guidelines

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9.1.2. Existence of a definition of independence in public support schemes

While there is no reference to the notion of independence in tax law, the regulations of the Film Institute and the public service media (*Österreichischer Rundfunk*) refer to this notion.

The funding guidelines of the Austrian Film Institute contain eligibility criteria for production and distribution companies in Article 3.1.3:

> *3.Eligibility requirements*
> *3.1 In accordance with the provisions of § 11 of the Austrian Film Funding Act, the following requirements apply to funding by the Film Institute:*
> *3.1.2 The funding recipient must be a legal entity or a partnership registered in the commercial register or a sole proprietorship with a permanent establishment or branch office in Austria and a company location in the EU or a state of the Agreement on the European Economic Area (EEA) or Switzerland, be responsible for the realisation of the film project, have a valid business licence and be independent of audiovisual media service providers within the meaning of §2 no. 20 of the Audiovisual Media Services Act (AMD-G).*
> *3.1.3. The independence of production and Distributor is defined based on the ownership structure in the production company, the control of production, the scope delivered by the same audiovisual media service provider programs and the ownership of the exploitation rights.*
> *In particular, an applicant production company is not considered as independent if an audiovisual media service provider is a major shareholder of the applicant company. In any case, majority ownership is given, if an individual audiovisual media service provider via direct or indirect participation holds more than 25% of the shares or voting rights or if two or more audiovisual media service providers together hold more than 50% of the shares or voting rights. A direct involvement of more than 25% or 50% is deemed equivalent if one or more indirect participations exist and the participation on each level reaches more than 25% or 50%. The participation limits are to be checked for every stage. The Film Institute is entitled to request a confirmation signed by a lawyer or notary that confirms the independence of the funding applicant.*

The funding guidelines consider a producer as independent when the three criteria are met (financial, operational and IPR). Though the guidelines call for the three criteria, they only detail the financial and operational criteria:

- **Financial (ownership and capital structure): one AVMS via direct or indirect participation shall not hold more than 25% of the shares. Two or more AVMSs shall not together hold more than 50% of the shares.**
- **Operational (autonomy of decision): one AVMS via direct or indirect participation shall not hold more than 25% of the voting rights. Two or more AVMSs shall not together hold more than 50% of the voting rights.**

A direct involvement of more than 25% or 50% is deemed equivalent if one or more indirect participations exist and the participation on each level reaches more than 25% or 50%.

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9.1.2.1. Independence from whom?

The concept of independence requires being independent from an "audiovisual media service provider" ("*Mediendienste-Anbieter*").

The funding guidelines (Article 3.1.2) refer to the Austrian Audiovisual Media Services Act to define what the audiovisual media service is. [21]

> *Article 2, 20° of the Audiovisual Media Services Act:*
> *Audiovisual media service provider: the natural or legal person who bears editorial responsibility for the selection of the audiovisual content of the audiovisual media service and determines how it is organised.*

The "audiovisual media service provider" includes television broadcasters and on-demand services.

9.1.3. Regional funds

9.1.3.1. Filmfonds Wien[22]

Filmfonds Wien[23] sets criteria applicants shall meet to obtain fundings in the funding guidelines.[24]

Part A. "General part", Section 3.5:

> *3.5 Reasons for exclusion*
> *The following are excluded from funding:*
> *[…]*
> *- Films that are produced on behalf of third parties.*

Part C, "Production of cinema films", Section 3:

> *Applicants who are under the significant influence of a television broadcaster are also not eligible to apply. Significant influence is deemed to exist if a single television broadcaster holds more than 25 per cent of the shares or voting rights in the company or if two or more television broadcasters hold more than 50 per cent of the shares or voting rights.*

The funding guidelines provide for possible eligibility criteria which implicitly refer to the notion of independence (without clear references to "independence"). The criteria refer to financial and operational independence:

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[21] Audiovisual Media Services Act (in German only)
[22] This information incorporates feedback received from Christine Dollhofer, Managing Director at Filmfonds Wien.
[23] https://www.filmfonds-wien.at/
[24] Funding Guidelines of the Vienna Film Fund, last amended on 26 June 2024 (in German only*), Förderrichtlinien des Filmfonds Wien*.

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- **Financial criterion (ownership and capital structure): Limited financial participation from a television broadcaster over the production company (25%, and 50% in case of two or more broadcasters).**
- **Operational criterion (autonomy of decision): Limited voting rights on the part of a television broadcaster with regard to the production company (25%, and 50% in case of two or more broadcasters).**

9.1.3.2. Lower Austrian Film Commission (LAFC)[25]

The LAFC[26] does not use independence as a criterion for granting financial support. The criteria are more general. One of the eligibility requirements set by the LAFC's funding guidelines reads:[27]

> *2.1. Objective*
> *The aim of funding projects within this range of applicability is to support filmmakers who produce commercially difficult films. A film is considered to be commercially difficult if presumably it will have a limited market acceptance and its chances of commercial use will have to be qualified as limited because of the experimental nature of its content, its style, its artistic and/or technical design or its cultural aspiration and is thus associated with high commercial risks.*

The LAFC grants financial support to projects that are commercially difficult films.

[25] This information incorporates feedback received from Linn Rott, Film Commissioner at the LAFC.
[26] https://www.lafc.at/
[27] Funding Guidelines Government of Lower Austria of 1 January 2024 (in German only), *Filmfoerederrichtlinien Land Noe* ab 1 Januar 2024.

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9.2. BE (FR) – Belgium (French Community)[28]

9.2.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[29]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Implicit eligibility criteria	No, though there are eligibility criteria in the Belgian (French Community) Decree of 10 November 2011 on support for cinema and audiovisual creation[30] (definition similar to the one discussed in the 2023 EAO study) and in the Income Tax Code 1992.[31]
Regional fund: Screen Brussels **Implicit eligibility criteria**	No, though Screen Brussel's rules for applying sets eligibility criteria which suggest that recipients of the grant should be independent.
Regional fund: Wallimage **Implicit eligibility criteria**	No, though Wallimage's Regulation sets eligibility criteria which suggest that recipients of the grant should be independent.

Criteria related to independence in the context of public support		
Type of criteria	In practice in Belgium (French Community)	Source
The Decree of 10 November 2011 on support for cinema and audiovisual creation implicitly outlines potential eligibility criteria related to the notion of independence in the context of public support. However, the text does not specify whether the applicant must be established within the country of application.		

[28] The summary on Belgium (French Community) incorporates feedback received from Gracia Naranjo Guevara, in charge of the contribution of audiovisual media services to audiovisual production, at the Cinema and Audiovisual Centre (Centre du Cinéma et de l'Audiovisuel).
[29] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[30] Decree of 10 November 2011 on support for cinema and audiovisual creation (in French), Décret du 10 novembre 2011 relatif au soutien au cinéma et à la création audiovisuelle
[31] Income Tax Code 1992 (in French), Code des impôts sur les revenus 1992

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The Income Tax Code 1992 implicitly provides potential eligibility criteria related to the notion of independence. Besides, the applicant should not be affiliated with Belgian or foreign broadcasting companies.		
Two criteria: **Financial criterion (ownership and capital structure)** *Minimum capital participation in the AVMS service* *Limitations on the turnover from sales to a single broadcaster within a three-year period* *Minimum capital participation in the production company (ownership)* **Operational criterion (autonomy of decision)** *Distinctive legal personality*	The producer does not directly or indirectly hold more than 15% of the capital of a service provider; The producer does not derive more than 90% of his/her turnover over a three-year period from the sale of productions to a single service provider; The producer's capital is not held directly or indirectly to an extent greater than 15% by a service provider. The producer's capital is not held to an extent greater than 15% by a company that directly or indirectly holds more than 15% of the capital of a service provider. The producer has a legal personality distinct from that of a service provider.	Decree of 10 November 2011 on support for cinema and audiovisual creation
Two criteria: **Financial criterion (ownership and capital structure)** *Limited financial ties with a broadcasting company (and vice-versa)* **Operational criteria (autonomy of decision)** *Limited control exercised by a broadcasting company (and vice-versa)*	A resident company or Belgian establishment other than a broadcasting company or an affiliated company within.	Income Tax Code 1992

Criteria related to independence in the context of regional support		
Type of criteria	In practice	Source
One criterion **Financial criterion (ownership and capital structure)** **Limitations on the turnover from sales to a single broadcaster within a three-year period**	Limitations on the turnover from sales to a single broadcaster within a three-year period (75%) Broadcaster with (in)direct capital ties to producer, but absent from the work's financing plan (either	Screen Brussels

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Broadcaster absent from the work's financing plan	as a co-producer or as a pre-purchaser, etc.)	
One criterion **Operational criterion (autonomy of decision)** *No decisive influence*	Operational criteria (autonomy of decision): limited decisive influence on the part of a service provider over the producer.	Wallimage

9.2.2. Existence of a definition of independence in public support schemes

The French Community of Belgium does not provide for a definition of independence with regard to public support schemes in its specific legislation such as that relating to cinema. Though there is no definition of the notion of "independence" as such, "independent producer" is defined in the Decree of 4 February 2021 on audiovisual media services and video-sharing services in the context of European works.

The two above-mentioned pieces of legislation do not explicitly refer to the notion of independence; however there are criteria that implicitly suggest the notion of independence:

- **In the context of support for cinema and audiovisual creation, the Decree on support for cinema and audiovisual creation contains eligibility criteria an applicant shall meet to obtain financial support. These criteria are similar to those relating to the definition of independent producer in the Decree of 4 February 2021 on audiovisual media services and video-sharing services.**
- **In the context of the tax shelter, the Income Tax Code 1992 defines the "eligible production company".**

NB: Article 6.2.1-2 of the Decree of 4 February 2021 directly references the independence requirement for government-provided support for series.

The **Decree of 10 November 2011** on support for cinema and audiovisual creation contains eligibility criteria an applicant shall meet to obtain financial support:

Article 1
16° Producer of audiovisual works: a legal entity that meets all of the following criteria:
- whose corporate purpose is primarily in the audiovisual sector, and which employs administrative or artistic staff in compliance with the applicable social legislation;
- brings together the financial resources, personnel and all the elements necessary for the production of an audiovisual work;
- has a legal personality distinct from that of a service provider;
- does not directly or indirectly hold more than 15% of the capital of a service provider;
- does not derive more than 90% of its turnover over a three-year period from the sale of productions to a single service provider;

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- does not have capital held directly or indirectly to an extent greater than 15% by a service provider;

- does not have capital held to an extent greater than 15% by a company that directly or indirectly holds more than 15% of the capital of a service provider.

The Decree of 10 November 2011 on support for cinema and audiovisual creation provides for possible eligibility criteria which implicitly refer to the notion of independence (without clear references to "independence"). While this definition refers formally to the sole concept of "producers of audiovisual works", the producers must be independent of broadcasters in order to be eligible for the public financial support. The criteria refer to financial and operational capacity:

- **Financial criteria (ownership and capital structure): minimum capital participation, and limitations in the turnover from sales to a single broadcaster within a three-year period,**
- **Operational criteria (autonomy of decision): distinctive legal personality.**

NB - In its 2011 version, the Decree explicitly referred to independence in Article 1, paragraph 14. It detailed the conditions according to which an independent producer could obtain public support. The change happened after a revision of the text in 2017.

The **Income Tax Code 1992** defines the eligible production company, containing criteria calling for independence:[32]

Article 194ter, § 1
[...]
2° Eligible production company: the resident company or Belgian establishment of a taxpayer referred to in Article 227, 2°, other than a broadcasting company or an affiliated company within the meaning of Article 1:20 of the Companies and Associations Code for Belgian or foreign broadcasting companies, whose main objective and main activity is the development and production of audiovisual works and which has been approved as such by the Minister responsible for Finance in accordance with a simplified procedure, the terms and conditions of which are determined by the King (1);
For the purposes of this Article, an undertaking which is linked to Belgian or foreign broadcasting undertakings, but which undertakes to not sign a framework agreement relating to the Tax Shelter scheme for the production of an eligible work for which these broadcasting undertakings derive benefits directly linked to the production or exploitation of the eligible work, shall not be deemed to be an undertaking linked to Belgian or foreign broadcasting undertakings. This condition is presumed to be met if the eligible production company has given a written undertaking to this effect, both to the eligible investor and to the federal authority.

Article 1:20, 1° Code on Companies and Associations reads:[33]

[32] Income Tax Code 1992 (in French), Code des impôts sur les revenus, 1992
[33] Code on Companies and Associations (in French), Code des sociétés et des associations

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Art. 1:20. For the purposes of this Code, the following definitions shall apply:
1° "companies affiliated with a company":
a) companies which it controls;
b) companies which control it;
c) companies with which it forms a consortium;
d) other companies which, to the knowledge of its administrative body, are controlled by the companies referred to in a), b) and c);

Article 1:14, Codes on Companies and Associations reads:

§ 1. 'Control' of a company means the de jure or de facto power to exercise decisive influence over the appointment of the majority of the company's directors or managers or over the direction of its management.
§ 2. Control is irrefutably presumed:
1° when it results from holding the majority of the voting rights attached to all [1 of the shares, units or other securities] of the company in question,
2° when a partner has the right to appoint or dismiss the majority of the directors or managers.

Producers may benefit from the tax shelter provided they are not affiliated with a broadcasting company (Belgian or abroad):

- **Financial criteria (ownership and capital structure): limited financial ties with a broadcasting company (and vice-versa),**
- **Operational criteria (autonomy of decision): limited control exercised by a broadcasting company (and vice-versa) (decisive influence is present when the majority of the production company's directors/managers are appointed by an external company).**

9.2.2.1. Independence from whom?

The concept of independence requires being independent from a "service provider" ("éditeur de service"). The service provider is defined in Article 1, 6° of the Decree of 10 November 2011 and Article 1.3-1, 13° (Title III) of the Decree of 4 February 2021 on audiovisual media services and video-sharing services. These decrees define a provider of television services as follows:

Provider of television services: the natural or legal person who assumes editorial responsibility for choosing the content of the television service and who determines the way in which it is organised.

"Service provider" refers to providers of linear and non-linear television services.

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9.2.3. Regional funds

9.2.3.1. Screen Brussels[34]

Screen Brussels[35] provides for eligibility criteria applicants shall meet to obtain financial support in its rules for applying:[36]

> *The beneficiary must be a production company that meets the following criteria:*
> *• Established as a commercial company*
> *• Has had operational offices in Belgium for at least a year*
> *• Has delegate producer, co-producer or associate status on the project for which it owns a partial share, which is at least proportionally equal to the Screen Brussels co-production share in relation to the total production budget*
> *• Has a separate legal entity from a service provider*
> *• The producer of which has not been placed under the authority of public authorities*
> *• The producer of which does not earn more than 75% of their turnover from a single broadcaster over a period of three years*
> *• The work for which financing is requested is not intended for a service provider with direct or indirect capital ties to the same production company*
> *• Has no outstanding debt with the Belgian National Social Security Office or ongoing proceedings on the basis of European or national law regarding the recovery of granted aid*

The "Rules for applying" provide for a possible eligibility criterion which implicitly refers to the notion of independence (without clear references to "independence"). The producer must be independent of broadcasters in order to be eligible for the regional support:

- **Financial criterion (ownership and capital structure): Broadcaster with (in)direct capital ties to producer, but absent from the work's financing plan (either as a co-producer or as a pre-purchaser, etc.) and limitations in the turnover from sales to a single broadcaster within a three-year period (75%).**

Besides, the producer shall own a share of the work to be allowed to apply for a funding.

9.2.3.2. Wallimage[37]

Wallimage's[38] regulation provides for eligibility criteria that applicants shall meet to obtain financial support in Article 3.2:[39]

> *The beneficiary must fulfil the following obligations:*

[34] This information incorporates feedback received from Noël Magis, Managing Director at Screen Brussels.
[35] http://www.screen.brussels/
[36] Screen Brussels, "Rules for applying".
[37] This information incorporates feedback received from Virginie Nouvelle, Director at Wallimage.
[38] https://www.wallimage.be/
[39] Wallimage Coproductions Regulation, 19 December 2023 (in French only), *Règlement de coproduction*.

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a) be incorporated as a commercial company;
b) have a legal personality distinct from a service provider;
c) not be controlled by a service provider within the meaning of Article 1:14 of the Companies Code;
d) not be placed under the authority of a public authority;
e) not be a company in difficulty within the meaning of Article 2.18 of the RGEC1.

Article 1:14, Codes on Companies and Associations reads:[40]

§1 'Control' of a company means the de jure or de facto power to exercise decisive influence over the appointment of the majority of the company's directors or managers or over the direction of its management.
§ 2. Control is irrefutably presumed:
1° when it results from holding the majority of the voting rights attached to all [1 of the shares, units or other securities] of the company in question,
2° when a partner has the right to appoint or dismiss the majority of the directors or managers.

Producers may benefit from financial support from Wallimage provided that they are not affiliated with an audiovisual media service provider:

- **Operational criteria (autonomy of decision): limited decisive influence on the part of a service provider over the producer (i.e. the majority of the rights should not be owned by a service provider; in other words, if the percentage owned by a broadcaster is lower than 50%, the producer is eligible unless the broadcaster has taken control of the decision by constituting a majority on the board of the production company).**

[40] Code on Companies and Associations (in French), Code des sociétés et des associations.

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9.3. BE (VL) – Belgium (Flemish Community)[41]

9.3.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes
Update of the AVMSD definition since the 2023 EAO study	Yes
Other definition(s) of "independent producer" in the context of public support • AVMSD definition to be used in the context of public support	No, the secondary legislation refers to the definition as established by the Flemish Decree of 27 March 1999 on radio and television broadcasting which was studied in in the 2023 EAO Note.[42] The definition has been amended and is further studied below. There is an implicit reference in the Income Tax Code 1992.[43]
Regional funds: Screen Flanders and Vlaams Audiovisueel Fond • AVMSD definition to be used in the context of public support	Definition of independence as established by the Flemish Media Decree of 27 March 2009.

Criteria related to independence in the context of public support		
Type of criteria	In practice in Belgium (Flemish Community)	Source
The Decree of 13 April 1999 authorising the Flemish government to enter into and participate in the establishment of the non-profit association Vlaams Audiovisueel Fonds refers to the definition of independent producer in article 2, 49°, of the Decree of 27 March 2009 on radio and television broadcasting. **The Income Tax Code 1992 implicitly provides potential eligibility criteria related to the notion of independence. Besides, the applicant should not be affiliated with a Belgian or foreign broadcasting company.**		

[41] The summary on Belgium (Flemish Community) incorporates feedback received from Caroline Uyttendaele, Advisor Mediabeleid and Nele Sals, policy advisor, at the Department of Culture, Youth and Media of Flanders.
[42] Media Decree of 27 March 2009, amended on 1 March 2024 (in Dutch only), DECREET BETREFFENDE RADIO-OMROEP EN TELEVISIE van 27 maart 2009 bijgewerkt tot 19 April 2024. EN version on the website of the Flemish Media Regulator available here.
[43] Income Tax Code 1992 (in Flemish), Wetboek van de inkomstenbelastingen 1992.

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Two criteria: **Financial criterion (ownership and capital structure)** *Minimum capital participation by/in AVMS or by a company holding the AVMS.* **Operational criterion (autonomy of decision)** *Distinctive legal personality and limitation on voting rights*	Cumulatively: Producer does not directly or indirectly hold more than 25% of property rights of a television broadcasting organization, No more than 25% of a producer's property rights are directly or indirectly held by a company that holds more than 25% of a television broadcasting organisation's property rights, Producer does not directly or indirectly hold more than 25% of voting rights of a television broadcasting organisation, Legal personality distinct from television broadcasting organisations, Producer not affiliated with a television broadcasting organisation as per Article 1:20 of the Companies and Associations Code. No more than 25% of producer's voting rights are directly or indirectly held by a company that holds more than 25% of a television broadcasting organisation's voting rights, If dependent according to these previous points, the independence can be proven if: Average annual turnover from audiovisual productions over the last three years is realised, to an extent less than 25% with dependent television broadcasting organisations, The dependent television broadcasting organisation had a limited proven average annual turnover of a maximum of 10 million euros over the last three years	Decree of 13 April 1999 authorising the Flemish government to enter into and participate in the establishment of the non-profit association Vlaams Audiovisueel Fonds Decree of 27 March 2009 on radio and television broadcasting
Two criteria:	A resident company or Belgian establishment other than a	Income Tax Code 1992

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Financial criterion (ownership and capital structure) *Limited ties with a broadcasting company (and vice-versa)* **Operational criteria (autonomy of decision)** *Limited control exercised by a broadcasting company (and vice-versa)*	broadcasting company or an affiliated company within	

9.3.2. Update of the national definition used in the context of European works

The definition of independence presented in the 2023 EAO study was updated in 2024. The difference lies in the percentage of voting/property rights: the previous definition set the threshold at 15%, which has now been raised to 25%. Article 2(49) of the Flemish Media Decree now reads:[44]

Independent producer:
a) the producer who meets all of the following conditions:

1. *the legal personality of the producer is distinct from that of a television broadcasting organisation;*
2. *the producer is not affiliated as mentioned in the sense of Article 1:20 of the Companies and Associations Code*, with a television broadcasting organisation;*
3. *the producer does not directly or indirectly hold more than 25% of the voting rights or property rights of a television broadcasting organisation;*
4. *no more than 25% of the voting rights or property rights of the producer are directly or indirectly held by a television broadcasting organisation;*
5. *no more than 25% of the voting rights or property rights of the producer are directly or indirectly held by a company that directly or indirectly holds more than 25% of the voting rights or property rights of a television broadcasting organisation.*

b) the producer who is dependent as per point a), 2), 3), 4), or 5), but who meets one of the following conditions:

1. *the figures underlying the last three approved annual accounts show that the producer has an average annual turnover from audiovisual productions that is less than 25% directly or indirectly realised with the television broadcasting organisations on which the producer is dependent; for the producer who does not yet have three approved annual accounts, the average annual turnover is assessed based on a good faith estimate;*

[44] Media Decree of 27 March 2009, amended on 1 March 2024 (in Dutch only), DECREET BETREFFENDE RADIO-OMROEP EN TELEVISIE van 27 maart 2009 bijgewerkt tot 19 April 2024. EN version on the website of the Flemish Media Regulator available here.

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2. *the television broadcasting organisation on which the producer is dependent has a limited proven average annual turnover as shown by the figures underlying the last three approved annual accounts, namely a maximum of 10 million euros. The mentioned turnover includes the income, excluding VAT, acquired in the context of:*

- *payment by the consumer;*
- *B2B agreements regarding the exploitation and/or distribution of audiovisual content;*
- *valorisation of data;*
- *audiovisual commercial communication.*

For the television broadcasting organisation that does not yet have three approved annual accounts, the average annual turnover is assessed based on a good faith estimate.

9.3.3. Existence of a definition of independence in public support schemes

The Flemish community relies on the definition of an independent producer as defined by the Media Decree for most of its public support schemes in its specific legislation such as cinema, or public service media regulations.

The Decree of 13 April 1999 authorising the Flemish government to enter into and participate in the establishment of the non-profit association Vlaams Audiovisueel Fonds refers to the definition established by the Media Decree of 27 March 2009 (Article 3, §1, 2nd subparagraph, 4°).[45]

Additionally, there are criteria implicitly suggesting the notion of independence:

- **In the context of the tax shelter provisions, the Income Tax Code 1992 defines the "eligible production company".**

The **Income Tax Code 1992** defines the eligible production company, containing criteria calling for independence:[46]

Article 194ter, § 1
[…]
2° Eligible production company: the resident company or Belgian establishment of a taxpayer referred to in Article 227, 2°, other than a broadcasting company or an affiliated company within the meaning of Article 1:20 of the Companies and Associations Code for Belgian or foreign broadcasting companies, whose main objective and main activity is the development and production of audiovisual works and which has been approved as such by

[45] Decree authorising the Flemish Government to join and cooperate on the establishment of the non-profit association Vlaams Audiovisueel Fonds (VAF Decree) (in Dutch only), Decreet houdende machtiging van de Vlaamse regering om toe te treden tot en om mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds (VAF Decreet)
[46] Income Tax Code 1992 (in Dutch).

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the Minister responsible for Finance in accordance with a simplified procedure, the terms and conditions of which are determined by the King (1);
For the purposes of this Article, an undertaking which is linked to Belgian or foreign broadcasting undertakings, but which undertakes not to sign a framework agreement relating to the Tax Shelter scheme for the production of an eligible work for which these broadcasting undertakings derive benefits directly linked to the production or exploitation of the eligible work, shall not be deemed to be an undertaking linked to Belgian or foreign broadcasting undertakings. This condition is presumed to be met if the eligible production company has given a written undertaking to this effect, both to the eligible investor and to the federal authority.

Article 1:20, 1° Code on Companies and Associations reads:[47]

Art. 1:20. For the purposes of this Code, the following definitions shall apply:
1° "companies affiliated with a company":
a) companies which it controls;
b) companies which control it;
c) companies with which it forms a consortium;
d) other companies which, to the knowledge of its administrative body, are controlled by the companies referred to in a), b) and c);

Article 1:14, Codes on Companies and Associations reads:

§1 'Control' of a company means the de jure or de facto power to exercise decisive influence over the appointment of the majority of the company's directors or managers or over the direction of its management.
§ 2. Control is irrefutably presumed:
1° when it results from holding the majority of the voting rights attached to all [1 of the shares, units or other securities] of the company in question,
2° when a partner has the right to appoint or dismiss the majority of the directors or managers. […]

Producers may benefit from the tax shelter provided they are not affiliated with a broadcasting company (Belgian or abroad):

- **Financial criteria (ownership and capital structure): limited financial ties with a broadcasting company (and vice-versa),**
- **Operational criteria (autonomy of decision): limited control exercised by a broadcasting company (and vice-versa) (decisive influence is present when the majority of the production company's directors/managers are appointed by an external company).**

[47] Code on Companies and Associations (in Flemish).

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9.3.3.1. Independence from whom?

The concept of independence requires being independent from a "television broadcasting organisation". It seems to be limited to providers of linear or non-linear television services.

9.3.4. Regional funds

9.3.4.1. Screen Flanders[48]

Screen Flanders refers to the definition of independence as established in Article 2(49) of the Flemish Media Decree (transposing AVMSD).[49] The production shall have a link with Flanders (min. one lead actor, leading character, original script, etc.), based on a cultural test.[50]

9.3.4.2. Vlaams Audiovisueel Fond[51]

The Vlaams Audivisueel Fond refers to the definition of independence as established in Article 2(49) of the Flemish Media Decree (transposing the AVMSD). The production shall have a link with Flanders (key creative talent from Flanders needs to be involved ; min. one lead actor, leading character, original script, etc.).[52]

[48] https://screenflanders.be/en/
[49] See "2.1. Who can apply for support" in Screen Flanders Application Guidelines, version 2023.
[50] This information incorporates feedback received from Katrien Maes, Coordinator at VAF.
[51] https://www.vaf.be/
[52] This information incorporates feedback received from Katrien Maes, Coordinator at VAF.

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9.4. BG – Bulgaria[53]

9.4.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[54]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Direct definition	Yes, in the Film Industry Act[55]

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Bulgaria**	**Source**
The Film Industry Act directly defines independence in the context of public support. However, the text does not set a requirement as to the geographical origin of the producer.		
Two criteria: **Financial criterion** (ownership and capital structure) *Limited capital participation in the AVMS service* *Limited capital participation in the production company* **Operational criterion** (autonomy of decision) *Independent decision-making capacity*	Limited ties between the producer and an audiovisual media service provider (and vice versa). The production's managing body shall not be related to an audiovisual media service provider.	Film Industry Act

[53] The summary on Bulgaria incorporates the feedback received from Kamen Balkanski, head of Creative Europe MEDIA desk – Bulgaria.
[54] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[55] Film Industry Act, February 2003 (in Bulgarian and English), ЗАКОН ЗА ФИЛМОВАТА ИНДУСТРИЯ

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9.4.2. Existence of a definition of independence in public support schemes

The Film Industry Act (which regulates production, distribution, promotion and screening of films and the state support of the film industry) defines independence in Point 39 of the "Supplementary Provisions":

> *An "independent producer" is a producer who is organisationally and financially independent in their work from any provider of audiovisual media services, whether linear or non-linear, and who satisfies the following requirements:*
> *a) is not an owner or provider of linear or non-linear audiovisual media services or a radio operator, or of a share of its assets; and*
> *b) no provider of linear or non-linear audiovisual media services or a radio operator, or a related entity, is the owner of said entity or part of its assets; or*
> *c) no member of a managing body of the independent producer or its owner is a related entity with a provider of linear or non-linear audiovisual media services or a radio operator.*

According to the Film Industry Act, the producer shall be financially and economically independent:

- **Financial criterion (ownership and capital structure): limited ties between the producer and an audiovisual media service provider (and vice versa),**
- **Operational criterion (autonomy of decision): independent decision-making capacity, as the production's managing body shall not be related to an audiovisual media service provider.**

Following the Film Industry Act, the rules for implementation of the Film Industry Act were adopted in 2018.[56] The "additional provisions" of the rules for implementation of the Film Industry Act read:

> *1)Pursuant to this regulation*
> *[…]*
> *4. (new - SG No. 67 of 2021, in force from 13.08.2021) " Main co-producer " is an independent producer who participates in the financing of the production of a film, including a series, with the largest share of the total budget value of the film, or the series.*

The public service media broadcaster BNT (БНТ) is concerned by the definition established by item 24 of the "Additional Provisions" of the Radio and Television Act (RTA)[57] in its Article 3 of the General Conditions: this provides for inclusion in the BNT programs of works created by independent Bulgarian producers and for its participation in joint productions.[58]

[56] Rules for implementation of the Film Industry Act, December 2018 (in Bulgarian only), ПРАВИЛНИК ЗА ПРИЛАГАНЕ НА ЗАКОНА ЗА ФИЛМОВАТА ИНДУСТРИЯ.
[57] "Additional Provisions" of the Radio and Television Act (RTA), SG No. 138, 24 November 1998, amended in 2022 (in Bulgarian only), ЗАКОН ЗА РАДИОТО И ТЕЛЕВИЗИЯТА.
[58] General Conditions for inclusion in the BNT programs of programs created by independent Bulgarian producers and for its participation in joint productions (in Bulgarian only), ПРАВИЛНИК ЗА ПРОИЗВОДСТВО НА ТЕЛЕВИЗИОННА ПРОДУКЦИЯ И ПРОДУЦЕНТСКА ДЕЙНОСТ

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This definition is the one presented in the 2023 EAO study on the definition of independence in the context of Article 17 AVMSD. The same goes for the Regulations for external and joint productions in BNR (БНР).[59] The definition requires the producer to meet the financial criterion only (ownership).

9.4.2.1. Independence from whom?

The Film Industry Act requires the producer to be independent from providers of linear or non-linear audiovisual media services or a radio operator. It includes audiovisual media service providers and radio operators.

9.4.3. Regional funds

Non-applicable.

[59] Regulations for external and joint productions at the BNR, Правилник за външните и съвместните продукции в БНР.

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9.5. CH – Switzerland[60]

9.5.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes, in the Ordinance on the quota for European Films and Investment in Swiss film production[61]
Update of the AVMSD general definition since the 2023 EAO study	N/A
Existence of other definition(s) of "independent producer" in public support scheme • Direct definition	Yes, in the Ordinance of the Federal Department of Home Affairs on the promotion of cinema (films only)[62]
Regional fund: Cinéforom • Implicit eligibility criteria	No, though the regional fund sets eligibility criteria which suggest that recipients should be independent.

Criteria related to independence in the context of promoting independent works (similar to Art. 13-17 AVMSD)		
Type of criterion	**In practice in Switzerland**	**Source**
The Ordinance on the quota for European Films and Investment in Swiss film production directly defines independence for the promotion of independent works. Besides, the producer/production company shall be domiciled in Switzerland (the equity and borrowed capital as well as the management are predominantly held and controlled respectively by persons with domicile in Switzerland).		
Two criteria **Financial criterion** (ownership, capital participation) *Absence of ownership,* *Limited number of works commissioned by one media company*	No ownership on the part of the audiovisual company over the production company, and no more than 50% of the independent production company's commissions should come from a media company within a five-year period (or since	Ordinance on the quota for European Films and Investment in Swiss film production

[60] The summary on Switzerland incorporates feedback from Matthias Bürcher, Head of Service Distribution and Diversity at the Federal Office of Culture, section Film.
[61] Ordinance on the Quota for European Films and Investment in Swiss Film Production of 6 September 2023.
[62] Ordinance of the Federal Department of Home Affairs on the promotion of cinema, 21 April 2016 (in French, German and Italian).

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AND **Operational criterion** (autonomy of decision) *Absence of decisive influence*	the producer's establishment, if less than five years); No decisive influence on the part of the media company over the production company.	

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Switzerland**	**Source**
The Ordinance of the Federal Department of Home Affairs on the promotion of cinema directly defines independence in public support schemes. Besides, the applicant shall be linked to Switzerland (Swiss citizens or resident in Switzerland, or registered office in Switzerland and majority-owned or -managed by persons domiciled in Switzerland).		
One criterion **Financial criterion** (ownership, capital participation) *Absence of ownership* OR **Operational criterion** (autonomy of decision) *Absence of decisive influence*	Absence of ownership on the part of a television broadcaster, or a media company (audiovisual media services), or training and continuing education institutions, or Absence of decisive influence on the part of a television broadcaster, or a media company (mass communication media), or training and continuing education institutions.	Ordinance of the Federal Department of Home Affairs on the promotion of cinema

Criteria related to independence in the context of regional public support		
Type of criteria	**In practice in Cinéforom**	**Source**
The General Regulation of fundings for production implicitly outlines potential eligibility criteria related to the notion of independence in the context of regional support (without clear references to "independence"). Besides, an applicant shall be linked to French-speaking Switzerland (e.g. production company established in French-speaking Switzerland for at least three years; if not, then its directors shall be personally resident in French-speaking Switzerland for more than three years). Equity, liability and management shall mainly be in the hands of persons domiciled in French-speaking Switzerland.		
Two criteria: **Financial criterion** (ownership, capital participation) *Absence of ownership* **Operational criterion** (autonomy of decision) *Absence of decisive influence*	Absence of ownership on the part of a distributor (*diffuseur*) Absence of decisive influence on the part of a distributor (*diffuseur*) over the producer and the work, and independent exploitation of the work.	General Regulation of fundings for production

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9.5.2. Existence of a definition of independence to promote independent works (similar to Art. 17 AVMSD)

According to Article 24b of the Federal Act on Film Production and Culture (FiA), audiovisual media service providers shall invest at least 4% of their gross revenues annually in independent Swiss film production or pay a compensation tax.[63]

In this context, independence is defined in Article 9 of the Ordinance on the quota for European Films and Investment in Swiss film production.[64]

> *Article 9*
> *1 Independent third parties are persons and legal entities that are neither owned nor significantly influenced by, nor have close economic links with, companies subject to the investment obligation.*
> *2 Production companies are deemed to be independent third parties if they additionally meet the following requirements:*
> *a. They meet the requirements of Article 2 paragraph 2 letter b FiA.*
> *b. They are professionally organised.*
> *c. They have been producing films in Switzerland for more than two years.*
> *d. In the last five years or since their establishment, no more than half of the films that they have made have been films commissioned by a company subject to the investment obligation.*
> *3 If a new production company is established solely for a specific film project, the requirements of paragraph 2 letters c and d do not apply; instead, producers who have several years' experience of carrying out independent film projects must be responsible for the project.*

Article 2 paragraph 2 letter b FiA:

> *A Swiss film is defined as a film that:*
> *b. has been produced by a natural person who is domiciled in Switzerland or a company with a registered office in Switzerland in which the equity and borrowed capital as well as the management is predominantly held and controlled respectively by persons with domicile in Switzerland.*

The Ordinance on the quota provides for a definition of independence in the context of financing independent works, calling for the financial and operational criteria to be fulfilled:

- **Financial criterion (ownership, capital participation): no ownership on the part of the audiovisual company over the production company, and no more than 50% of the independent production company's commissions should come from a media company within a five-year period (or since the producer's establishment, if less than five years).**

[63] Federal Act on Film Production and Culture of 14 December 2001.
[64] Ordinance on the Quota for European Films and Investment in Swiss Film Production of 6 September 2023.

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- **Operational criterion (autonomy of decision): no decisive influence from the media company over the production company.**

9.5.3. Existence of a definition of independence in public support schemes

The FiA, Article 3, calls for support from the Swiss Confederation for the continuity and development of the independent Swiss film industry.

Based on this Article 3 FiA, public support is detailed in the Ordinance of the Federal Department of Home Affairs on the promotion of cinema (films only). It provides for a definition of "independence".

> *Article 4 Link to Switzerland*
> *1. Only persons with a connection to Switzerland may apply for financial support from the film promotion scheme.*
> *2. Natural persons must be Swiss citizens or resident in Switzerland. Sole proprietorships and partnerships must have their registered office in Switzerland.*
> *3. Legal entities must have their registered office in Switzerland and be majority-owned or majority-managed by persons domiciled in Switzerland.*
>
> *Article 5 Independence*
> *1. Anyone applying for a contribution to a project in accordance with Title 2, Chapter 2, must provide evidence of the independence of all natural and legal persons who play a decisive role in the project.*
> *2. These persons must be neither partially nor wholly in possession of or under decisive influence:*
> *a. a television broadcaster,*
> *b. a media company which, in a similar way, produces media content which it distributes via mass communication media,*
> *c. training and continuing education institutions.*
> *3. The persons concerned develop and produce the film projects and operate them under their own responsibility.*

The Ordinance provides for a definition of independence, calling for either financial or operational criteria to be fulfilled:

- **Financial criterion (ownership, capital participation): Absence of ownership on the part of a television broadcaster, or a media company (mass communication media), or training and continuing education institutions, or**
- **Operational criterion (autonomy of decision): Absence of decisive influence on the part of a television broadcaster, or a media company (mass communication media), or training and continuing education institutions.**

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9.5.3.1. Independence from whom?

Article 5 of the Ordinance requires the absence of ties with a television broadcaster, or a media company (mass communication media), or training and continuing education institutions.

9.5.4. Regional funds

9.5.4.1. Cinéforom[65]

The General Regulation of funding for production mentions eligibility criteria which are implicitly related to independence.[66]

> *Article 2*
> *2 A production company in French-speaking Switzerland is defined as a production company that has been legally established in French-speaking Switzerland for at least three years and is entered in the commercial register. A new company that has been in existence for less than three years is eligible if its directors were personally resident in French-speaking Switzerland for more than three years before the company was set up. It may take the form of a sole proprietorship, a commercial company or an association.*
> *3 The Foundation decides on applications for registration and de-registration. It may call on the representative professional associations in French-speaking Switzerland to give prior notice.*
> *4 For the admission of production companies in French-speaking Switzerland, the Foundation will ensure in particular that these companies:*
> *a) are entered in the commercial register;*
> *b) their equity and liabilities, as well as their management, are mainly in the hands of persons domiciled in French-speaking Switzerland;*
> *c) have their operational headquarters in French-speaking Switzerland;*
> *d) are not wholly or partly owned by a broadcaster/streamer;*
> *e) are not subject to the decisive influence of a broadcaster/streamer;*
> *f) develop and produce audiovisual works under their own responsibility;*
> *g) and operate independently;*
> *[…]*
> *5 A company is considered to be a Swiss producer if it is entered in the Commercial Register, its directors are Swiss nationals or are legally resident in Switzerland, and the majority of its equity and liabilities are held by persons resident in Switzerland. Points d to i of paragraph 4 also apply.*

The Regulation does not explicitly refer to the notion of independence, but it provides for eligibility criteria which implicitly refer to the notion of independence (financial and

[65] This information incorporates feedback received from Stéphane Morey, Secretary General of Cinéforom.
[66] General Regulation of fundings for production, Règlement general des soutiens à la production (in French only).

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operational criteria) (without clear references to “independence”). In addition, a link with French-speaking Switzerland is required.

- **Financial criterion (ownership, capital participation): absence of ownership from a broadcaster/streamer (*diffuseur*)**
- **Operational criterion (autonomy of decision): absence of decisive influence from a broadcaster/streamer (*diffuseur*) over the producer and the work, and independent exploitation of the work**

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9.6. CY – Cyprus[67]

9.6.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[68]
Update of the AVMSD general definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes	No, and the public support text does not refer either to the AVMSD definition

9.6.2. Existence of a definition of independence in public support schemes

The Ministry of Culture issued a document titled "The Programme of Support for Independent Producers (Feature Films, Short Films, Documentaries)". The programme concerns independent productions which have not received other funding from the Ministry of Education's cinema programmes. It outlines eligibility criteria specifically tailored for these producers:[69]

> *(page 3) Paragraph 1. Participation in the Program:*
> *- The film's director is Cypriot and the production company shall be registered in Cyprus.*
> *- The theme of the film concerns Cyprus in terms of general reality and/or history.*
> *- 80% of the filming will take place in Cyprus and be located in the final stage.*
> *- The language in which the film will be shot must be entirely or mainly in one or both of the official languages of the Republic of Cyprus.*

These criteria relate to the project's contribution to the Cypriot cultural environment. They do not provide for possible eligibility criteria which refer to the notion of independence.

[67] The summary on Cyprus incorporates the feedback from Yiannis Georgiades, Cyprus Cinema Office (Deputy Ministry of Culture), Cyprus.
[68] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[69] Programme of Support for Independent Producers (in Greek), ΠΡΟΓΡΑΜΜΑ ΕΝΙΣΧΥΣΗΣ ΑΝΕΞΑΡΤΗΤΩΝ ΠΑΡΑΓΩΓΩΝ

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There is no other definition of / reference to independence in other public support texts. In practice, film productions without any funding from the Deputy Ministry of Culture could fall under the notion of independence.

9.6.3. Regional funds

Non-applicable.

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9.7. CZ - Czechia[70]

9.7.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[71]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition of "independent producer" in public support schemes	No

9.7.2. Existence of a definition of independence in public support schemes

Apart from the general definition and criteria relating to "independent producer", neither Czech cinema and audiovisual legislation, nor Czech tax legislation, provides for a definition of "independence" or eligibility criteria that would be useful in terms of understanding what "independence" means in the context of financial support.

Implicitly, independence is addressed in the Audiovisual Act in terms of applicant eligibility: among other things, the applicant applying for support must not be a television broadcaster or a provider of on-demand audiovisual media services. The updated version of the audiovisual act (should be valid from 2025) contains new obligations linked to copyright, which are intended to strengthen the position of the recipient of support (independent producer) vis-à-vis other financiers.[72]

Besides, the ongoing amendment of the Audiovisual Act should result in revision of Article 39(1)b and is currently providing for criteria for independence:

[70] The summary on Czechia incorporates the feedback received from Veronika Lengálová, working at the Research Unit of the Czech Film Fund.

[71] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report conducted by the European Audiovisual Observatory in 2023.

[72] The amended version is not available at the time of writing (November 2024), the current one is the Audiovisual Act (*Zákon č. 496/2012 Sb. Zákon o audiovizuálních dílech a podpoře kinematografie a o změně některých zákonů*).

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... is not a television broadcaster or an on-demand audiovisual media service provider, nor is they financially connected to a television broadcaster or an on-demand audiovisual media service provider, nor do their supply of works for one television broadcaster or an on-demand audiovisual media service provider exceed 90% of total production within the span of three years; a person financially connected to a television broadcasting operator or an on-demand audiovisual media service provider means a person who participates in the voting rights or share capital of this television broadcasting operator or an on-demand audiovisual media service provider, or a person via which the television broadcasting operator or the on-demand audiovisual media service provider participates in terms of voting rights or share capital.

The Czech Film Fund regulations outline various forms of public financial support available for productions. However, the eligibility criteria provided by the Fund do not address or define the concept of independence for productions. Criteria are generally related to the project's aspects, such as its contribution to and significance for Czech and European cinema and society and/or its affinity with the territory of the Czech Republic, rather than its independence status (with the exception mentioned above).

Public service media offer financial support and cooperate with independent producers.[73] However, there are no references to a definition of independence or to eligibility criteria. When public service media consider a cooperation with independent producers, it is based on criteria such as whether the content of a work is aligned with television's conceptual programme plans.

9.7.3. Regional funds

Non-applicable.

[73] Česká televize website, see the page on cooperation with independent producers: Nabídka distribučních filmů

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9.8. DE – Germany[74]

9.8.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	No[75]
Update of the AVMSD definition since the 2023 EAO study	No
Other definition of "independent producer" in regional media law[76]	Yes, in the Media Act of NRW Land
Other(s) definition(s) of "independent producer" in the context of public support at national level	No
Regional fund: NRW Fund	Yes, it refers to the Media Act of NRW
Regional funds: Berlin-Brandenburg, Bayern, Moin	No, the eligibility criteria exclude public/private broadcasters (sometimes platforms too)

In Germany, media law and subsidy law are different areas of law, the case of NRW being the exception. The guidelines of the NRW regional fund refer to the NRW media law in defining independent producers.

Criteria related to independence in the context of regional support (NRW)		
Type of criteria	In practice in NRW	Source
One criterion **Financial criterion (ownership, capital participation)**	Financial criterion (ownership, capital participation): Limited ownership on the part of a television broadcaster or its subsidiaries (maximum participation limited to 25%).	Funding guidelines of the Film- and Medienstiftung NRW, and Media Act, North Rhine-Westphalia, refer to the definition of the NRW Media Act.

[74] The summary on Germany incorporates feedback from the German Federal Film Board.
[75] There has been no update compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[76] Four German Länder were the focus for the regional part: Bavaria, Berlin-Brandenburg, Hamburg, and NRW.

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9.8.2. Existence of a definition of independence in media law

In the context of financing independent European works under the scheme of Article 17 AVMSD, Germany has not implemented a definition at inter-state level. On a regional level only one German state, North Rhine Westphalia (NRW), has regulated and defined independence in its regional Media Act:

Section 31 Paragraph 3, Media Act NRW: "Television programmes should also contain contributions of independent producers."

The Act defines independence as follows:[77]

Section 3, paragraph 2:
For the purposes of this law, independent producers are those who create contributions to a television program and in whose capital or voting rights television broadcasters and companies affiliated with them (§ 62 of the Interstate Broadcasting Treaty) hold no interest or a total interest of more than 25%, and who are not involved in television broadcasters or companies affiliated with them (§ 62 of the Interstate Broadcasting Treaty) with a total of 25% or more in capital or voting rights..

The Media Act NRW provides for a definition of independence, calling for the financial criteria to be fulfilled:

- **Financial criteria (ownership, capital participation): Limited ownership on the part of a television broadcaster or its subsidiaries (maximum participation limited to 25%).**

9.8.3. Existence of a definition of independence in public support schemes on a national level

The German Motion Picture Fund,[78] administered by the German Federal Film Board (FFA), supports the production of German high-end television and streaming content.

It does not define the notion of independence.

NB – Retention of rights: German subsidy law (Film Subsidy Act on the federal level [section 67][79] and guidelines of regional funds)[80] contain rules on the retention of rights favouring producers. But these legal limitations for broadcasters, distribution and streaming companies, are not related to the definition of independent producers.

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[77] State Media Law, North Rhine-Westphalia of 2 July 2002 (LMG NRW) (in German only), Landesmediengesetz Nordrhein-Westfalen vom 02. Juli 2002.
[78] German Motion Picture Fund (GMPF), Guidelines from the Culture and Media Federal Ministry (in German only), German Motion Picture Fund, Richtlinien der Bundesregierung für Kultur und Medien.
[79] Film Subsidy Act (in German only), Filmförderungsgesetz
[80] See for instance Section 2.9 of the guidelines for film and media funding of the Film Fund of Hamburg Schleswig-Holstein, valid since 7 June 2024 (in German only), Richtlinien für Film- und Medienförderung, Stand 07.06.2024.

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9.8.4. Regional funds

9.8.4.1. Medienboard Berlin-Brandenburg

The Medienboard Berlin Brandenburg grants regional support to projects. Terms and conditions are in the guidelines of the regional fund.[81] It provides for the following:

> *3.1.5. In principle, public broadcasters, private broadcasters and platform operators are not eligible to apply.*

The regional Berlin Brandenburg fund excludes broadcasters and VODs; they are not allowed to apply. It does not define the notion of independence. However, in practice, subsidiaries of broadcasters, which produce content mainly for their TV parent company, are regarded as broadcasters and excluded likewise.

9.8.4.2. FilmFernsehFonds Bayern

The regional Bavarian fund grants regional support to projects. Terms and conditions are in the guidelines of the fund.[82] It provides for the following:

> *1.3.2. Public broadcasters and private broadcasters are not eligible to apply under these guidelines.*

The regional Bavarian fund excludes broadcasters and VODs; they are not allowed to apply. It does not define the notion of independence. However, in practice subsidiaries of broadcasters, which produce content mainly for their TV parent company, are regarded as broadcasters and excluded likewise.

9.8.4.3. Film- und Medienstiftung NRW

The regional NRW fund grants regional state aid for the production of content (cinema, TV, VOD). Terms and conditions are in the guidelines of the fund,[83] and provide for the following:

> *1.2.1.2. The aim of the funding is to strengthen the performance of North Rhine-Westphalian film and media companies, in particular independent producers as defined by the current version of the State Media Act.*

The regional NRW fund refers to the definition in the Media Act NRW (see above).

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[81] Funding guidelines, valid from 1 January 2015, Medienboard Berlin-Brandenburg (in German only), Förderrichtlinie, gültig ab 1 Januar 2015, Medienboard Berlin-Brandenburg.
[82] Funding guidelines, in effect from 1 January 2022, to be applied until 31 December 2024 (in German and English), FFF Bayern Richtlinien.
[83] Funding guidelines of the Film- und Medienstiftung NRW, applicable since 1 January 2024 (in German only), Förderleitlinien der Film- und Medienstiftung NRW.

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9.9. DK - Denmark[84]

9.9.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	No[85]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Direct definition	Yes, in the Danish Film Fund's general terms and conditions of 1 September 2022[86]
Regional fund: Vestdanske Filmpulje (DVF) • Direct definition	Yes, in the DVF's terms and conditions for funding, identical to the definition set by the Danish Film Fund's general terms and conditions

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Denmark**	**Source**
The Danish Film Fund's general terms and conditions directly define independence in the context of public support. The applicant must be a resident in Denmark, or EU member state, or Switzerland.		
One criterion **Financial criterion** (ownership, capital structure) *Minimum capital participation in the production company (ownership)* *OR*	The production company should not be owned to an extent greater than 25% by a single TV station/VOD service (nor should it be owned to an extent greater than 50% in the event that several TV stations/VOD services are part of the ownership). OR	Danish Film Fund's general terms and conditions of 1 September 2022

[84] The summary incorporates feedback from Helene Hansen, Advisor at the Danish Film Institute and Tina Berg, Special Legal Advisor at the Danish Film Institute.
[85] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[86] Filminstituttets almindelige vilkår of 1 September 2022 (in Danish), Danish Film Institute's General Terms and Conditions, 1 September 2022 (in English).

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Limitations in the turnover from sales to a single AVMS service within a three-year period While not explicitly stated, the financial criterion may imply that the entity should be both financially and operationally independent from external organisations.	The production company shall obtain less than 90% of the revenues over a three-year period from production agreements with a single TV station/VOD service (with an exception due to the small Danish market: the Film Institute may, upon application, grant exemptions from the established revenue limit).	

Criteria related to independence in the context of regional support		
Type of criteria	**In practice in DVF**	**Source**
One criterion **Financial criterion** (ownership, capital structure) *Minimum capital participation in the production company (ownership)* *OR* *Limitations in the turnover from sales to a single AVMS service within a three-year period* While not explicitly stated, the financial criterion may imply that the entity should be both financially and operationally independent from external organisations.	The production company should not be owned to an extent greater than 25% by a single TV station / VOD service (nor should it be owned by to an extent greater than 50% in the event that several TV stations / VOD services are part of the ownership). OR The production company shall obtain less than 90% of revenues, over a three-year period, from production agreements with a single TV station / VOD service (with an exception due to the small Danish market: the Film Institute may, upon application, grant exemptions from the established revenue limit).	Vestdanske Filmpulje (DVF)

9.9.2. Existence of a definition of independence in public support schemes

Danish cinema, audiovisual and tax legislation does not provide for a definition of "independence" in the context of public financial support. Neither do the public service media's regulations.

Only the Danish Film Fund's general terms and conditions of 1 September 2022 refer to "independent producers" and the definition applies to most of the Film Fund's funding schemes:

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Section 1.1.1:
The applicant must be a producer based in Denmark, in an EU or EEA Member State or in Switzerland as of the application date and in accordance with the existing legislation and must have documented film production experience. Furthermore, film production must be the applicant's main activity.
The applicant must be an independent producer. An independent producer is a producer that is not majority-controlled by a TV station or a VOD service, either in terms of ownership or in business terms, see clause 11.6, second paragraph. For co-productions with a foreign main producer and a Danish co-producer (minor films), it is also a condition that the requirements in clause 1.3.3 have been met.

Section 11.6, second paragraph:
If the co-producer or investor is majority-controlled by a TV station/VOD service, the investment cannot be included in the private investment.
Majority control occurs when more than 25% of the production company is owned by a single TV station/VOD service (50% if multiple TV stations/VOD services are included in the ownership), or when more than 90% of the production company's revenues over a three-year period come from production agreements with a single TV station/VOD service. Considering the small size of the Danish market, the Danish Film Institute may allow an exemption from the established revenue limit following an application for this.

The Danish Film Fund provides for a definition of independence, calling for the financial criterion to be fulfilled:

- **Financial criterion: limited ownership link between the production company and the AVMS service (25% maximum for one service or 50% in case of several services), or the production company should not earn its turnover mainly from a single AVMS service (less than 90%) over a three-year period.**

9.9.2.1. Independence from whom?

According to Section 1.1.1 of the Danish Fund's general terms and conditions of 1 September 2022, the concept of independence requires being independent ("not majority-controlled by […] neither in terms of ownership nor in a commercial perspective") from a television broadcaster ("TV station") and audiovisual media service provider ("VOD Service").

The producer must be independent from audiovisual media service providers (broadcasters or VODs).

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9.9.3. Regional funds

9.9.3.1. Vestdanske Filmpulje (DVF)[87]

Vestdanske Filmpulje[88] uses independence as a criterion to grant financial support. It is defined in its terms and conditions for funding,[89] the language of which is identical to the Danish Film Fund's general terms and conditions of 1 September 2022:

> *Section 4.1 The DVF's requirement for the nationality of the applicant and beneficiary:*
> *To be eligible for support from the DVF, the following conditions must be met:*
> *The applicant must be a producer or production company, which at the time of application is domiciled in Denmark, a member state of the EU, EEA, or Switzerland, in accordance with applicable legislation, and must have documented experience in film production and film production as its main occupation.*
> *The applicant must be an independent producer. An independent producer is defined as a production company or producer that is not majority-controlled by a TV station or a VOD service, either in terms of ownership or business relations, cf. section 4.7.2.*
> *The applicant must be legally represented by a producer who can document being qualified or has documented experience in film production.*
> *The applying production company/producer must, at the time of the DVF's approval of funding, be conducting business in Denmark by establishing a permanent business address or equivalent in Denmark in accordance with applicable legislation.*
> *The applicant, regardless of nationality and ethnic origin, must reside or permanently stay in Denmark or otherwise have a substantial and significant connection to Danish film art or film culture.*
> *Section 4.7.2.*
> *If the producer, co-producer or investor is majority-controlled by a broadcaster/VOD service, the investment cannot be counted towards the private investment under these terms.*
> *Majority control occurs when more than 25% of the production company is owned by a single broadcaster/VOD service (50% if several broadcasters/VOD services are included in the ownership) or when more than 90% of the production company's revenues over a three-year period derive from production agreements with a single broadcaster/VOD service. Taking into account the small size of the Danish TV market, the DVF may, upon application, grant exemptions from the established revenue limit. Exemptions granted to the project by the DFI are automatically accepted by the DVF.*

The DVF provides for a definition of independence, identical to the one established by the Danish Film Fund's general terms and conditions, requiring applicants to meet the financial criterion (limited ownership link between the production company and the AVMS service

[87] This information incorporates feedback received from Steen Risom Chief at Den Vestdanske Filmpulje.
[88] https://filmpuljen.dk/
[89] Vestdanske Filmpulje's Terms and Conditions for funding, 5 April 2019 (in Danish only), *Den Vestdanske Filmpuljes vilkår for støtte*.

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(25% maximum for one service or 50% in case of several services), and the production company should not earn its turnover mainly from a single AVMS service).

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9.10.EE – Estonia[90]

9.10.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[91]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Implicit eligibility criteria	No, though there are eligibility criteria in the Regulation of 4 January 2019 on conditions and procedures for supporting development, production, and distribution which implicitly refer to the notion of independence[92]

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Estonia**	**Source**
The Regulation "Conditions and procedures for supporting the development, production, and distribution of film" implicitly outlines potential eligibility criteria related to the notion of independence in the context of public support. Besides, the applicant shall be a legal person registered in Estonia or a self-employed person in the commercial register.		
Two criteria: **Financial criterion (ownership and capital structure)** *Self-financing capability (contribution to the financing of the work)* *Absence of ownership link between the production company and media service providers / state or local governments*	Producer's shareholders shall not include media service providers or the state or local governments. Producer shall have self-financing capability. Economic rights arising from the copyright of the audiovisual work shall be held by or licenced to the film producer.	Conditions and procedures for supporting the development, production, and distribution of film Regulation of 4 January 2019

[90] The summary on Estonia incorporates the feedback received from Edith Sepp, Head of the Estonian Film Institute.
[91] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[92] Regulation "Conditions and procedures for supporting the development, production and distribution of films", adopted on 4 January 2019 (in English).

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IPR criteria *Holding the economic rights arising from the copyright of the work*		

9.10.2. Existence of a definition of independence in public support schemes

The country does not provide for a definition of independence in public support schemes in its specific legislations such as those relating to cinema, tax law or public service media regulations.

The "Conditions and procedures for supporting the development, production, and distribution of film" regulation allows for public financial support by the Estonian Film Institute but does not provide for a definition of independence.

However, the regulation contains eligibility criteria an applicant shall meet to obtain financial support:

Article 4. Requirements for applicants
(1) An applicant shall be a legal person in private law registered in Estonia or a self-employed person entered in the commercial register.
(2) Applicants shall meet the following requirements:
1) the principal activity of applicants for development support, production support or minority co-production support shall be the production of films, and the economic rights arising from the copyright of the audiovisual work shall be held by or licensed to the film producer;
2) the principal activity of applicants for distribution support shall be the production and/or distribution of films;
2[1]) the principal activity of applicants for arthouse cinema support shall be the screening and distribution of films;
3) applicants shall have no tax or other debts to the state or the debt has been deferred to be paid in instalments;
4) applicants shall not be bankrupt, undergoing liquidation or compulsory dissolution, or have received a current warning regarding deletion from the commercial register;
5) applicants shall not be in difficulty within the meaning of Article 18 (2) of the Block Exemption Regulation;
6) if the granting authority has issued a decision to recover support from the applicant with regard to a previous project, the applicant shall not have overdue payments arising from the decision;
7) applicants shall be capable of paying self-financing as specified in subsection 10 (4) of this Regulation and covering non-eligible project costs until the completion of the project;
8) applicants shall not be overdue in submitting an annual report;
9) applicants' shareholders shall not include media service providers or the state or local governments. The requirement does not apply to applicants for arthouse cinema support;

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10) applicants shall not have negative shareholder equity;
11) applicants shall not have outstanding financial obligations to film service providers or a debt that has been deferred to be paid in instalments. In the event of payment in instalments, the debt shall be paid in accordance with the payment schedule;
12) applicants shall have no other outstanding obligations to the granting authority.
(3) The responsible producer of an applicant for development support, production support or minority coproduction support or, in the case of an international co-production, the Estonian responsible producer of the applicant shall be a natural person who is a resident within the meaning of subsection 6 ((1) of the Income Tax Act.
(4) The director of a feature film or animated feature film of an applicant for development support or production support shall not be the sole responsible producer or production manager of the project.
(5) An applicant for arthouse cinema support shall have operated in the field specified in clause (2) 21) of this section for two years by the time of the application and shall be a member of the Europa Cinemas network.

The article 10(4) as referred to by article 4-2(7) reads:

The eligible costs that are not funded with support shall be covered with self-financing. Repayable or nonrepayable support granted by the state or local governments, or other European Union institutions or funds, shall not qualify as self-financing.

The regulation does not explicitly refer to independence; its criteria suggest the notion of independence implicitly. The producer must be independent of broadcasters in order to be eligible for financial public support. The criteria refer to the financial, operational and IPR capacity of the applicant:

- **Financial criteria (ownership and capital structure): applicants shall have self-financing capabilities; and applicants' shareholders shall not include media service providers or the state or local governments. The requirement does not apply to applicants for arthouse cinema support,**
- **IPR criteria: the economic rights arising from the copyright of the audiovisual work shall be held by or licenced to the film producer.**

9.10.2.1. Independence from whom?

According to Article 4 (9) of the conditions and procedures of the Estonian Film Institute: "*applicants' shareholders shall not include media service providers or the state or local governments. The requirement does not apply to applicants for arthouse cinema support*."

Producers must be independent from audiovisual media service providers and providers of the state or local government.

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Audiovisual media services include broadcasters and VODs.[93] The definition extends to situations in which shareholders are the state or local governments. is extended to shareholders being the state or local governments.

9.10.3. Regional funds

Non-applicable.

[93] See Article 4 of the Estonian Media Services Act in the EAO database.

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9.11.ES – Spain[94]

9.11.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the EAO's 2023 study	Yes[95]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Direct definition	Yes, in the Cinema Law 55/2007 of 28 December 2007[96]
Regional fund: Zineuskadi • No definition	Refers to the Cinema Law definition if necessary
Regional fund: Catalunya Film Commission • Direct Definition	Yes, in the Catalonian Cinema Law of 7 July 2010

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Spain**	**Source**
The Cinema Law 55/2007 directly defines independence in the context of public support. The applicant must be a natural person resident in Spain or a Spanish company or a national of another member state of the European Union and of the European Economic Area established in Spain in accordance with the Spanish legal system.		
Two criteria **Financial criterion** (ownership, capital structure) *Absence of financial participation and limitations in the turnover from*	The applicant should not be subject to a dominant influence on the part of an audiovisual media service provider/broadcaster or of a private television channel owner,	Cinema Law 55/2007 of 28 December 2007

[94] The summary incorporates the feedback from Lidia Martínez Barahona, Technical Adviser at the Spanish Film and Audiovisual Arts Institute.
[95] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[96] Ley 55/2007, de 28 de diciembre, del Cine (in Spanish), Cinema law of 28 December 2007

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sales to a single broadcaster within a three-year period **Operational** criteria (autonomy of decision) *Independent decision-making capacity / absence of dominant influence* *Absence of ownership*	nor, for its part, exercise a dominant influence, whether by virtue of ownership, financial participation or by having the power to condition, in any way, the decision-making of the respective administrative or management bodies (limit of 20%).	

Criteria related to independence in the context of regional support		
Type of criteria	**In practice in Catalonia**	**Source**
Applicants shall be independent audiovisual production companies that are registered in the Registry of Audiovisual Companies of Catalonia or in the Administrative Registry of Cinematographic and Audiovisual Companies managed by the Institute of Cinematography and Audiovisual Arts (ICAA), or those from a member state of the European Union or associated with the European Economic Area and with an operating establishment in the Spanish State.		
One criterion **Financial criterion (ownership, capital structure)** *Limited financial participation* *Limitations in the turnover from sales to a single broadcaster within a three-year period*	Limited financial ties with one or more audiovisual service provider(s) (and vice-versa) (maximum of 15%); and limitations in the turnover from sales to a single audiovisual media service within a three-year period (maximum of 90%).	Catalonian Cinema Law 20/2010 of 7 July 2010

9.11.2. Existence of a definition of independence in public support schemes

The Cinema Law 55/2007 of 28 December 2007 provides for a definition of independent producer:

> *Article 4 (n) (1) – Independent producer*
> *1. Any natural or legal person who is not the subject of a dominant influence on the part of an audiovisual media service provider/broadcaster or of a private television channel owner, nor, for its part, exercises a dominant influence, whether by virtue of ownership, financial participation or by having the power to condition, in any way, the decision-making of the respective administrative or management bodies.*
> *Without prejudice to other cases, it shall be understood, in any case, that dominant influence exists when any of the following circumstances concur:*

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1°. The ownership of a production company and an audiovisual communication/broadcasting service provider and/or a television channel owner by a group of companies, in accordance with the provisions of Article 42 of the Commercial Code.
2°. Direct or indirect ownership by a provider of an audiovisual communication/broadcasting service or a television channel owner of at least 20% of the share capital or 20% of the voting rights of a production company.
3°. The direct or indirect ownership by a production company of at least 20% of the voting rights of an audiovisual communication/broadcasting service provider or television channel owner.
4°. The production company has obtained, during the last three financial years, more than 80% of its accumulated turnover from the same audiovisual communication/broadcasting service provider or owner of a state-wide television channel. This circumstance shall not apply to production companies whose turnover has been less than four million euros during the three previous financial years, nor during the company's first three years of activity.
5°. Direct or indirect ownership, by any natural or legal person, of at least 20% of the subscribed capital or voting rights of a production company and, at the same time, of at least 20% of the share capital or voting rights of a provider of audiovisual communication/broadcasting services and/or a television channel owner.
2. Also, a natural or legal person who is not linked to an undertaking with non-Community capital and is dependent on it for its executive bodies, its shareholding, its decision-making capacity or its business strategy.

Article 2. Scope of application.
The provisions of this Law shall apply to natural persons resident in Spain and to Spanish companies and nationals of other Member States of the European Union and of the European Economic Area established in Spain in accordance with the Spanish legal system, which carry out film and audiovisual creation, production, distribution and exhibition activities, as well as related technical industries.

The Spanish Cinema Law provides for a definition of independence and uses the financial and operational criteria:

- **Financial criteria (ownership, capital structure): Limited financial participation from a media service provider (maximum of 20%), and limitations in the turnover from sales to a single broadcaster within a three-year period (maximum of 20%),**
- **Operational criteria (autonomy of decision): Limited dominant influence vis-à-vis audiovisual media service providers, either way, or absence of ownership from a media service broadcaster (maximum of 20%).**

Besides, the Order establishing the regulatory bases for state aid for the production of feature films and short films and regulating the structure of the Administrative Register of Film and Audiovisual Companies established the bases for production aid, specifically

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selective and general aid for the production of feature films. Article 15 details who are the beneficiaries of the support:[97]

> *Article 15. Beneficiaries.*
> *The following shall be eligible for this aid:*
> *(a) Independent production companies, including economic interest groupings, as defined in Article 4 n) of Law 55/2007, of 28 December.*
> *b) Non-independent production companies, including economic interest groupings, in relation to feature films made in co-production with independent production companies.*

It is the definition of independence as established by the Cinema Law that is to be used. There were no other references to "independence" in the context of public supports.

9.11.2.1. Independence from whom?

According to article 4 (n) (1) of the Cinema Law 55/2007, the independent producer is "not the subject of a dominant influence on the part of an audiovisual media service provider/broadcaster or of a private television channel owner […]."

There is a definition of audiovisual media services in article 2.1 of Law 13/2022, of July 7, General Audiovisual Communication:

> *"A service whose main purpose or with a dissociable section whose main purpose is to provide, under the editorial responsibility of an audiovisual media service provider, through electronic communications networks, programmes with a view to informing, entertaining or educating the general public, and to broadcast audiovisual commercial communications."*[98]

The same text defines "audiovisual media service provider" in Article 2(4):

> *"Audiovisual media service provider: a natural or legal person that has editorial responsibility over the selection of audiovisual programmes and content for the audiovisual media service and determines the way in which said content is organised."*[99]

Audiovisual media services include broadcasters and VODs. Therefore, producers must be independent from broadcasters and video-on-demand services.

[97] Orden CUD/582/2020, de 26 de junio, por la que se establecen las bases reguladoras de las ayudas estatales para la producción de largometrajes y de cortometrajes y regula la estructura del Registro Administrativo de Empresas Cinematográficas y Audiovisuales (in Spanish), Order CUD/582/2020, of 26 June, establishing the regulatory bases for state aid for the production of feature films and short films and regulating the structure of the Administrative Register of Film and Audiovisual Companies.
[98] See article 2 (1) of the Spanish General Audiovisual Communication in the EAO database
[99] See article 2 (4) of the Spanish General Audiovisual Communication in the EAO database

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9.11.3. Regional funds

9.11.3.1. Zineuskadi[100]

Zineuskadi[101] refers, when necessary, to the definition of independence as established in the Cinema Law.

9.11.3.2. Catalunya Film Commission[102]

The Catalunya Film Commission uses the definition of independence as established in the Catalonian Cinema Law. The different lines of support use this definition.[103]

Article3. i) of the Catalonian Cinema Law reads:[104]

> *i) Independent production company: the production company that has a legal personality different from that of an audiovisual media service provider, and that meets the following conditions:*
> *1. Does not participate directly or indirectly in more than 15% of the share capital of one or more audiovisual media service providers.*
> *2. Less than 15% of its share capital is held by one or more audiovisual media service provider.*
> *3. Did not receive more than 90% of its revenue in the last three fiscal years from the same audiovisual media service provider.*

The Catalonian Cinema Law provides for a direct definition of independent producer.

- **Financial criterion (ownership, capital participation): limited financial ties with one or more audiovisual service provider(s) (and vice versa) (maximum of 15%); and limitations in the turnover from sales to a single audiovisual media service within a three-year period (maximum of 90%).**

[100] This information incorporates feedback received from Mar Izquierdo, Head of Zinema Euskaraz & Grants at Zineuskadi.
[101] https://www.zineuskadi.eu/
[102] This information incorporates feedback received from Carlota Guerrero Bernaus, Manager at the Catalunya Film Commission.
[103] The various grants are accessible here.
[104] Catalonian Cinema Law 20/2010, 7 July 2010, *Llei 20/2010, del 7 de juliol, del cinema* (in Catalonian and in Castellan)

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9.12.FI - Finland[105]

9.12.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[106]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Implicit eligibility criteria	No, though the Finnish Act on state funding for the promotion of film culture sets eligibility criteria which suggest that recipients should be independent.[107]

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Finland**	**Source**
The Finnish Act on state funding for the promotion of film culture implicitly outlines potential eligibility criteria related to the notion of independence in the context of public support, though they are not elaborated in the text. The applicant must be registered in Finland.		
Three criteria (but not detailed) *Financial, operational and management of rights criterion without further details.*	Professional and financial capacity, and management of the film's commercial exploitation rights in Finland to a sufficient extent.	Finnish Act on state funding for the promotion of film culture.

[105] The summary on Finland incorporates the feedback received from Reetta Hautamäki, Head of Communications & Research at the Finnish Film Foundation.
[106] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report *produced* by the European Audiovisual Observatory in 2023.
[107] Finnish Act on state funding for the promotion of film culture 1174/2018, 19 December 2018 (in Finnish only), *Laki valtion rahoituksesta elokuvakulttuurin edistämiseen*.

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9.12.2. Existence of a definition of independence in public support schemes

Finnish cinema, audiovisual and tax legislation, and public service media regulations do not provide for a definition of "independent producer".

However, the Finnish Act on state funding for the promotion of film culture (1174/2018) contains eligibility criteria an applicant shall meet to obtain public financial support:

> *Article 7:*
> *Production support can be granted to a film production company registered in Finland, which has the professional and financial prerequisites for producing a film and which, judging from the point of view of granting a state grant, manages the film's commercial exploitation rights in Finland to a sufficient extent. Production support cannot be granted to a state institution, municipality, joint municipality or parish, nor to a state-majority company or an entity or institution comparable to the aforementioned. Also, production support cannot be granted to a television operator or an entity that distributes films online, or to a film production company whose partner is one or more television operators or an entity that distributes films online with a share of at least 15%.*

Though the text does not explicitly refer to independence, its criteria provide for eligibility criteria which implicitly refer to the notion of independence. The producer must meet some independence criteria in order to be eligible for public financial support. The criteria refer to professional and financial capacity, and to the management of the film's commercial exploitation rights:

- **Financial/operational criterion: the producer shall not be partner with one or more television operators.**
- **IPR criterion: The producer shall manage the film's commercial exploitation rights in Finland to a sufficient extent.**

9.12.2.1. Independence from whom?

According to Article 7 of the Finnish Act on state funding for the promotion of film culture, support cannot be granted "*to a state institution, municipality, joint municipality or parish, nor to a state-majority company or an entity or institution comparable to the aforementioned". Also, support cannot be granted to a "television operator or an entity that distributes films online, or to a film production company whose partner is one or more television operators or an entity that distributes films online with a share of at least 15%*".

In conclusion, independence is required from audiovisual media services and public entities and companies.

9.12.3. Regional funds

Non-applicable.

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9.13.FR – France[108]

9.13.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[109]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Direct definition	Yes, in the Annex "General Regulation for financial aid from the CNC" of the Cinema and Image Code[110].
Regional fund: Région Ile de France • No definition	When relevant, refers to the national definition set by the CNC's General Regulation for financial aid.
Regional fund: ALCA Nouvelle Aquitaine • No definition	No definition of independence or independent.

Criteria related to independence in the context of public support		
Type of criteria	**In practice in France**	**Source**
The Annex "General Regulation for financial aid from the CNC" of the Cinema and Image Code directly defines independence in the context of selective public support for audiovisual works. **The applicant shall be independent cumulatively from two types of entities (audiovisual media services and production companies benefiting from automatic production support). Moreover, to qualify for support, the producer needs to be the person who undertakes the initiative, endorses the financial, technical, and artistic responsibility of the production of a work and guarantees its completion ("producteur délégué"). It should also, in certain cases, hold certain minimum amounts of copyright and coproduction shares, and exploitation rights in the long run (see article 311-9 or 311-17). Besides, the applicant must have an establishment in**		

[108] The national summary on France incorporates the feedback received from Aurélie Champagne, Director in charge of legal and European affairs of the French Film Centre (for the national film fund part).
[109] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[110] Annex: "General Regulation for financial aid from the CNC" of the Cinema and Image Code (in French only), Annexe: Règlement general des aides financières du CNC, Code du cinema et de l'image animée

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Europe and it cannot be controlled by one or more natural or moral persons of a state other than European entities.		
Independence from audiovisual media services - one criterion: **Financial or operational criterion** *Financially (ownership) or operationally (autonomy) independent from any audiovisual media service provider (**and** vice versa)*	**From audiovisual media services**: The service publisher does not hold, directly or indirectly, more than 15% of the share capital or voting rights of the production company; And The production company does not hold, directly or indirectly, more than 15% of the share capital or voting rights of the service publisher; And No partner or group of partners holding, directly or indirectly, at least 15% of the share capital or voting rights of the service publisher (and vice versa: the service publisher shall not directly or indirectly hold more than 15% of the capital share or voting rights of the production company; And The partner(s) controlling the production company do not control the service publisher.	Annex "General Regulation for financial aid from the CNC" of the Cinema and Image Code, *inter alia* articles 311-82 and 311-92.
Independence from production companies benefiting from automatic production support - one criterion: **Operational criterion** *Absence of control from the production company (or its natural or legal persons) which benefits from automatic production support.*	**From a production company benefiting from automatic production support**: Not controlled (voting rights) by one or more production companies holding an automatic audiovisual production account or by the natural/moral persons controlling the said companies.	

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9.13.2. Existence of a definition of independence in public support schemes

In France, the National Film Fund does not grant financial support for production to audiovisual media services (including broadcasters and video-on-demand services).[111] The production company shall be established in Europe[112] and it cannot be controlled by one or more natural or moral persons of a country other than European.[113]

The General Regulation for financial aid from the CNC details the conditions a producer shall meet to obtain selective support for audiovisual production (Art. 311-82) or selective support for developing works (Art. 311-92).

Article 311-82
1° Be independent of any publisher of television services and any publisher of on-demand audiovisual media services, according to the following criteria:
a) The service publisher does not hold, directly or indirectly, more than 15% of the share capital or voting rights of the production company;
b) The production company does not hold, directly or indirectly, more than 15% of the share capital or voting rights of the service publisher;
c) No associate or group of associates holding, directly or indirectly, at least 15% of the share capital or voting rights of the service publisher holds, directly or indirectly, more than 15% of the share capital or voting rights of the production company;
d) The partner(s) controlling the production company do not control the service publisher;
2° Not controlled by one or more production companies holding an automatic audiovisual account. This condition is not required for the allocation of selective financial aid for production accessible to production companies holding an automatic audiovisual production account;
3° Not controlled by one or more natural or legal persons controlling a production company holding an automatic audiovisual production account. This condition is not required for the allocation of selective financial aid for production accessible to production companies holding an automatic audiovisual production account."

Article 311-92
1° Be independent of any publisher of television services and any publisher of on-demand audiovisual media services, according to the following criteria:
a) The service publisher does not hold, directly or indirectly, more than 15% of the share capital or voting rights of the production company;
b) The production company does not hold, directly or indirectly, more than 15% of the share capital or voting rights of the service publisher;
c) No partner or group of partners holding, directly or indirectly, at least 15% of the share capital or voting rights of the service publisher holds, directly or indirectly, more than 15% of the share capital or voting rights of the production company;

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[111] See Article 311-4 of the Annex "General Regulation for financial aid from the CNC" of the Cinema and Image Code (in French only), Annexe: Règlement general des aides financières du CNC, Code du cinema et de l'image animée.
[112] *Ibid*, see Article 311-3 in combination with Article 120-1.
[113] *Ibid*, see *inter alia* Article 211-3, 212-17, 311-3, 312-39, 411-4…

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d) The partner(s) controlling the production company do not control the service publisher;
2° Not controlled by one or more production companies holding an automatic audiovisual production account;
3° Not controlled by one or more natural or legal persons controlling a production company holding an automatic audiovisual production account.

These articles require producers to be independent in order to qualify for selective audiovisual production and development support. Producers must meet the financial (ownership, meaning capital participation) and operational (autonomy, meaning voting rights) criteria.

The applicant shall be independent cumulatively from two types of entities:

- **Financially (ownership, capital participation) and operationally (autonomy of decision, voting rights) independent from an audiovisual media service provider (and vice versa), and**
- **Operationally independent from a production company (or natural or legal persons controlling the said company) benefiting from automatic production support.**

Independence from audiovisual media services:

- **Financial criterion (ownership, capital participation): the applicant's capital should not be more than 15% directly or indirectly owned by an audiovisual media service (and vice versa). And, no partners of the production company shall, directly or indirectly, own at the same time at least 15% of capital of the audiovisual media service and more than 15% of the production company.**

and

- **Operational criterion (autonomy of decision): the applicant's voting rights should not be more than 15% directly or indirectly owned by an audiovisual media service (and vice versa). And, no partners of the production company shall, directly or indirectly, own at the same time at least 15% of voting rights of the audiovisual media service and more than 15% of voting rights of the production company. The partner(s) controlling the production company do not control the audiovisual media service.**

Independence from a production company benefiting from automatic production support:

- **Operational criterion (autonomy of decision): absence of control from a production company (or natural or legal persons controlling the said company) which benefits from automatic production support. The notion of control is defined in Article 120-1 in the CNC Annex, which refers to Article L233-3 of the French Commerce Code. Control occurs when a physical or moral person owns the majority of the voting rights.**[114]

[114] Article L233-3 of Commerce Code (in French only), *Code du commerce*.

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9.13.2.1. Independence from whom?

The abovementioned Regulation requires the applicant to be independent cumulatively from both an audiovisual media service and a production company benefiting from automatic production support.

Articles 311-82 and 311-92 both read "independent of any publisher of television services and any publisher of on-demand audiovisual media services", which directly includes the two services.

As to the production company holding an automatic audiovisual production account, the automatic account is detailed in Articles 123-1 to 123-5. All beneficiaries obtaining automatic support are registered in the CNC's registries. Companies benefiting from automatic production support (e.g. for fiction, documentaries, live shows and animation) are[115] production companies in the form of commercial companies whose number of hours broadcast (for their works considered by the CNC as reference works) on television channels or on-demand audiovisual media services established in France or targeting French audiences[116] allows them to have an automatic account.

9.13.3. Regional funds

9.13.3.1. Film Paris Region[117]

When relevant, Film Paris Region[118] uses the definition of independence as established by the CNC's General Regulation for financial aid.

The criteria used by Film Paris Region to grant financial support are not specifically linked to the independence but to the nationality of the production company.

9.13.3.2. ALCA Nouvelle Aquitaine[119]

ALCA Nouvelle Aquitaine does not have a definition of "independence" or "independent".[120] Current discussions are focusing on what a regional producer is.

[115] *Ibid,* see article 311-27 and following.
[116] *Ibid*, see article 311-29 and 311-8.
[117] This information incorporates feedback received from Joanna Gallardo, Institutional Relations Manager at Film Paris Region.
[118] https://www.filmparisregion.com/en
[119] This information incorporates feedback received from Nathalie Brémond, in charge of the feature film fund at ALCA Nouvelle Aquitaine.
[120] https://alca-nouvelle-aquitaine.fr/

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9.14.GR – Greece[121]

9.14.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a general definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	No[122]
Update of the general definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes	No

9.14.2. Existence of a definition of independence in public support schemes

Greek audiovisual, cinema and tax legislations, and public service media regulations, do not provide for a definition of "independence".

On 29 April 2024, the Law "Creative Greece: strengthening the cinematographic, audiovisual and creative sector, establishment of a body for the book sector and other provisions of contemporary culture" was published in the official gazette. The law combined two former institutions (the ex- "Greek Cinema Center" and the ex-"EKOME" [The National Centre of Audiovisual Media and Communication])) into the Greek Centre of Cinema, Audiovisual Media and Creation, with one unified financial support programme named "Cash Rebate Greece".[123] This new legislation does not mention the notion of "independence" or eligibility criteria calling for this notion.

[121] The summary on Greece incorporates feedback from Anna Kasimati, Head of the Creative Europe MEDIA Desk in Greece at the Greek Film Center.

[122] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.

[123] Law Creative Greece: strengthening the cinematographic, audiovisual and creative sector, establishment of a body for the book sector and other provisions of contemporary culture, 29 April 2024 (in Greek only), ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ. 5105 ΦΕΚ Α 61/29.4.2024 Δημιουργική Ελλάδα: ενίσχυση του κινηματογραφικού, οπτικοακουστικού και δημιουργικού τομέα, ίδρυση φορέα για το βιβλίο και λοιπές διατάξεις για τον σύγχρονο πολιτισμό

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9.14.3. Regional funds

Non-applicable.

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9.15.HR – Croatia[124]

9.15.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[125]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • AVMSD definition to be used in the context of public support	No, it is the definition of the Law on electronic media (OG 111/21, 114/22) that applies (as per the 2023 EAO study). [126] The definition applies to certain support schemes in the National Program for the Promotion of Audiovisual Creativity.[127]

9.15.2. Existence of a definition of independence in public support schemes

In Croatia, there is a general definition of independent producers set by the Law on electronic media, as per the 2023 EAO study.

All subsequent ordinances, regulations, co-regulation agreements and other by-laws or internal terms and conditions refer to or cite the definition as set by law.

The Croatian audiovisual centre has a specific measure in its support scheme (National Program for the Promotion of Audiovisual Creativity) that is strictly dedicated to independent producers and is regulated by the Ordinance on the procedure, criteria and deadlines for the implementation of the National Program for the Promotion of Audiovisual

[124]The summary on Croatia incorporates the feedback received from Chris Marcich, Chief Executive Officer at the Croatian Audiovisual Centre.
[125] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[126] Law on electronic media
[127] Pravilnik o postupku, kriterijima i rokovima za provedbu Nacionalnog programa promicanja audiovizualnog stvaralaštva

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Creativity.[128] The measure covers the following categories: the development of TV series (Art. 48); and the production of TV series (Art. 54).

Regarding the definition of independent producers, the Ordinance refers to the relevant law that regulates electronic media (Law on electronic media).

Note: A proposal for amending the Audiovisual Activity Act envisages a special support scheme for independent production.[129] The current wording of the proposal refers to the definition used by the Electronic Media Act, as described in the 2023 EAO study.

There is no other definition for the purpose of public support in Croatia that differs from the general definition of independence in the context of European works, as explored in the 2023 EAO study.

9.15.3. Regional funds

Non-applicable.

[128] Ordinance on the procedure, criteria and deadlines for the implementation of the National Program for the Promotion of Audiovisual Creativity (in Croatian only), *Pravilnik o postupku, kriterijima i rokovima za provedbu Nacionalnog programa promicanja audiovizualnog stvaralaštva*.

[129] Prijedlog zakona o izmjena i dopunama zakona o audiovizualnim djelatnostima 2024 (in Croatian), Proposal for amendments of the Audiovisual Activities Act.

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9.16.HU - Hungary[130]

9.16.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[131]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Implicit eligibility criterion	No, though the Support Policy of the National Film Institute sets eligibility criteria which suggest that recipients should be independent.[132]

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Hungary**	**Source**
The Support Policy of the National Film Institute implicitly outlines potential eligibility criteria related to the notion of independence in the context of public support. It contains a definition of "film production company" with an IPR requirement which implicitly suggests a need for some level of independence (no clear references to "independence"). Besides, the applicant must be a legal entity domiciled in Hungary, or a legal entity or an economic entity without legal personality domiciled in an EEA state.		
One criterion: **IPR retention criterion** *Holding the exploitation rights and the possibility to license these rights.*	The production company shall hold the exploitation rights and the rights to license exploitation in respect of the cinematographic work.	Support Policy of the National Film Institute

[130] The summary on Hungary incorporates the feedback received from Gergely Kalocsay, Head of Legal Support for Applications at the National Film Institute, Hungary.
[131] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[132] Support Policy of the National Film Institute Non-Profit Private Limited Company (in English), effective as of 20 June 2024.

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9.16.2. Existence of a definition of independence in public support schemes

Hungary does not provide for a definition of independence in its public support rules (i.e., cinema, tax law or public service media regulations).

The Support Policy of the National Film Institute contains definitions in Section 5 of "film production company", "film production company with appropriate references" and "producer with appropriate references". The latter two do not contain references to independence.

When defining "film production company", the text does not explicitly refer to independence; its criteria implicitly suggest the notion of independence. It requires the company to provide for the necessary finance and other conditions, and to hold the exploitation rights and the rights to license exploitation in respect of the cinematographic works.

Financial conditions are not clearly defined and do not explicitly require independence. In contrast, the IPR requirement implicitly suggests the need for some level of independence (no clear reference to "independence").

> *Section 5. Definition of terms*
> *[…]*
> *Film production company: a legal entity domiciled in Hungary, or a legal entity or an economic entity without legal personality domiciled in an EEA state, which initiates and organises the implementation of the cinematographic work by providing for the necessary financial and other conditions, and which holds the exploitation rights and the rights to license exploitation in respect of the cinematographic work.*
> *[…]*

9.16.3. Regional funds

Non-applicable.

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9.17.IE – Ireland[133]

9.17.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[134]
Update of the AVMSD definition since the 2023 EAO study	No[135]
Existence of other definition(s) of "independent producer" in public support schemes • Implicit eligibility criteria	No, though the Revenue Commissioners' Tax Manual on Section 481 Film Corporation Tax Credit sets eligibility criteria which suggest that recipients of tax credit should be independent. However, beyond stating that recipients should not be broadcasters or streamers, the Revenue Commissioners do not overtly define what independence actually means. [136]

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Ireland**	**Source**
The Revenue Commissioners' Tax Manual on Section 481 Film Corporation Tax Credit implicitly outlines potential eligibility criteria related to the notion of independence in the context of public support. The Manual also states that applicants for tax credit shall be a resident in Ireland or in an EEA State other than the State and carry on a business in the State through a branch or agency.		
One criterion: **Financial criterion (ownership, capital participation)** *Not being an AVMS* *Holding all the shares in the company*	The production company cannot be a broadcaster or a company whose business consists wholly or mainly of transmitting films on the internet, nor can it be connected to a broadcaster or to a company whose business, taken together with all companies to which it	Revenue Commissioners' Tax Manual on Section 481 Film Corporation Tax Credit

[133] The summary on Ireland incorporates feedback from Fís Éireann/Screen Ireland.
[134] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[135] At the day of writing, the scheme described in the 2023 EAO study had not yet been established; therefore, the specifics of the criteria have not yet been publicly declared.
[136] Revenue Commissioners' Tax Manual, Section 481 Film Corporation Tax Credit, last update in June 2024.

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	is connected, consists wholly or mainly of transmitting films on the internet; Besides, it must hold all of the shares in the qualifying company.	

9.17.2. Existence of a definition of independence in public support schemes

Ireland does not provide for a definition of independence in public support schemes in its specific legislations such as cinema law, tax law or public service media legislation.

In Ireland, producers can benefit from a tax credit, set by Section 481 of the 1997 Taxes Consolidation Act.[137] The Revenue Commissioners' Tax Manual describes the eligible company under Section 5.4.1.:

> *5.4.1. Qualifying as a "producer company":*
> *The film corporation tax credit can only be claimed by a producer company. To be a producer company, a company must comply with all of the following requirements:*
> *a) it is resident in the State or an EEA State other than the State and carries on a business in the State through a branch or agency;*
> *b) it carries on a trade of producing films on a commercial basis with a view to the realisation of profit that are made for exhibition to the public in cinemas or by means of broadcast;*
> *c) it cannot be a broadcaster or a company whose business consists wholly or mainly of transmitting films on the internet, nor can it be connected[8] to a broadcaster or to a company whose business, taken together with all companies to which it is connected, consists wholly or mainly of transmitting films on the internet;*
> *d) it must hold all of the shares in the qualifying company; and*
> *e) it has filed the required CT1 return with the Collector-General in Revenue within 21 months of trading as a producer company; and*
> *f) it is not part of an undertaking which would be regarded as an undertaking in difficulty.*
> *A producer company is required to be operating the trade of producing films on a commercial basis in order to qualify for the credit. This is not the same as a general trading test. A further requirement of the legislation is for that producer company to continue in that trade of producing films for a period of 12 months after the date of completion.*
> *[8] Connected companies are parent/subsidiary companies or those that are controlled by the same persons or their relatives.*

Under this eligibility criteria, the Irish tax credit scheme implicitly requires the producer to be financially independent from audiovisual media services providers (without clear references to independence).

[137] Taxes Consolidation Act, Section 481, 1997

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- **Financial criterion (ownership, capital participation): producers must be independent from audiovisual media service providers, as they cannot be AVMS themselves and must hold all the shares in the qualifying company.**

As per Article 17 AVMSD, the public service broadcaster RTE must spend some of its programme budget on independently-produced work.[138] The definition of independence requires the programme to be produced by a producer who is financially and operationally independent. This entails: (i) not being a subsidiary or a holding company of a broadcaster and ii) having autonomy with regard to the programme-making process. This definition was described in the 2023 EAO study.

In 2003, the Broadcast Funding Act established the Broadcasting Funding Scheme (also known as the Sound and Vision Scheme),[139] administered by the Irish Coímisiún na Meán (Media Commission).[140] It grants funds to support the production of content for broadcast on any Irish radio or television broadcasting outlet.

The National Film Fund (Fís Éireann/Screen Ireland) allocates direct funding. The Irish Film Board Act which established the Film Fund in 1980 does not refer to the notion of independence.[141] Screen Ireland's Production Funding 2024 Guidelines detail that eligible candidates shall be independent production companies, established in Ireland or in an EEA State, be tax-compliant in the Republic of Ireland and make a significant contribution to culture in the Republic of Ireland.[142] However, there are no eligibility criteria implicitly defining independence nor is there a direct definition of the notion.[143]

9.17.2.1. Independence from whom?

The Tax Funding Scheme requires independence of an applicant from a

> "*broadcaster or a company whose business consists wholly or mainly of transmitting films on the internet, nor can it be connected to a broadcaster or to a company whose business, taken together with all companies to which it is connected, consists wholly or mainly of transmitting films on the internet*".

It includes "connected companies" which are "parent/subsidiary companies or those that are controlled by the same persons or their relatives".

Producers must be independent from broadcasters and video-on-demand services.

[138] Section 116 of the Broadcasting Act

[139] Scheme Sound Vision 4 is a funding scheme for television and radio that provides funding in support of high-quality programmes on Irish culture, heritage and experience. It grants support to broadcasters and producers without defining the notion of independence.

[140] Established in 2003, now in the Broadcasting Act 2009, number 18 of 2009, see section 154.

[141] Irish Film Board Act, 1980

[142] Screen Ireland's Production Funding 2024 Guidelines, see page 12 of the document.

[143] The absence of a clear definition may also be explained by the fact that the CnaM is expected to develop a definition of independence.

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9.17.3. Regional funds

Non-applicable.

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9.18.IT – Italy[144]

9.18.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[145]
Update of the AVMSD definition since the 2023 EAO study	No[146]
Existence of other definition(s) of "independent producer" in public support schemes • AVMSD definition to be used in the context of public support	No, the secondary legislation (Decrees of the Ministry of Culture) refers to the definition as established by Italian Legislative Decree No. 208 which was studied in the 2023 EAO Note.
Regional fund: Trentino Film Commission & Fund • AVMSD definition to be used in the context of public support	Definition of independence as established by Italian Legislative Decree No. 208
Regional fund: IDM-Südtirol • Implicit eligibility criteria	No, though the Regional Funding Guidelines, in the case of works partially financed by AVMS, sets eligibility criteria which suggest that recipients should retain some control over the work.

Criteria related to independence in the context of regional support

[144] The summary on Italy incorporates the feedback received from Bruno Zambardino, Advisor for European Affairs, from the Italian Ministry of Culture.

[145] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023, except for those regarding the time constraints related to the assignment of secondary rights, since the relevant 2011 AGCOM Regulation (AGCOM Resolution No. 30/11/CSP) has been repealed. The legal basis for AGCOM Resolution was Article 57(3)(a) of the Legislative Decree transposing the AVMSD No. 208 (*DECRETO LEGISLATIVO 8 novembre 2021, n. 208*). However, Legislative Decree no. 2024 of 25 March 2024, in amending the abovementioned Legislative Decree No 208, repealed such a provision and, consequently, the underlying AGCOM Resolution No. 30/11/CSP can be considered as implicitly repealed.

[146] While the Legislative Decree transposing the AVMSD No. 208 (*DECRETO LEGISLATIVO 8 novembre 2021, n. 208*) was amended in March 2024, the definition of independent producer detailed as per Article 3(1)(t) of the Italian Decree remains unchanged.

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Type of criteria	In practice in IDM-Südtirol	Source
The IDM-Südtirol Funding Guidelines require a certain level of freedom on the part of the applicant, with regard to an AVMS, only when the work is to be partially financed by the AVMS.		
Two criteria: **Financial criterion** (financing the work) *Minimum financing of the work* **IPR criterion** *Retention of rights*	No more than 30% of the total production cost of the work should be financed by the AVMS; The producer must retain rights to the work after an agreed number of broadcasts by the AVMS provider.	IDM-Südtirol Funding Guidelines

9.18.2. Existence of a definition of independence in public support schemes

Secondary legislation refers to the definition of independence as established in Article 3(1)(t) of Italian Legislative Decree No. 208 (transposing the AVMSD):[147]

- **Production Tax Credit – Decree of the Ministry of Culture and the Ministry of Economy and Finance of 10 July 2024, laying down the "Implementing provisions on tax credit for film and audiovisual production companies under Article 15 of Law No. 220 of 14 November 2016"[148]**
- **Distribution Tax Credit – Decree of the Ministry of Cultural Heritage and Activities and Tourism (now Ministry of Culture) and the Ministry of Economy and Finance of 2 April 2021, as amended, laying down the "Implementing provisions on tax credit in the cinematographic and audiovisual sector under Articles 16, 17, paragraph 1, 18, 19 and 20 of Law No. 220 of 14 November 2016"[149]**
- **Automatic Contribution - Decree of the Ministry of Cultural Heritage and Activities and Tourism (now Ministry of Culture) of 15 July 2021, laying down the "*Implementing provisions on automatic contributions under Articles 23, 24 and 25 of Law No. 220 of 14 November 2016*"[150]**
- **Selective Contribution – Decree of the Ministry of Cultural Heritage and Activities and Tourism (now Ministry of Culture) of 31 July 2017, as amended, laying down**

[147] While the Legislative Decree transposing the AVMSD No. 208 (*DECRETO LEGISLATIVO 8 novembre 2021, n. 208*) was amended in March 2024, the definition of independent producer detailed as per Article 3(1)(t) of the Italian Decree remains unchanged.

[148] Disposizioni applicative in materia di credito di imposta per le imprese di produzione cinematografica e audiovisiva di cui all'articolo 15 della legge 14 novembre 2016, n. 220

[149] Disposizioni applicative dei crediti d'imposta nel settore cinematografico e audiovisivo di cui agli articoli 16, 17, comma 1, 18, 19 e 20 della legge 14 novembre 2016, n. 220

[150] Disposizioni applicative in materia di contributi automatici di cui agli articoli 23, 24 e 25 della legge 14 novembre 2016, n. 220

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the "*Implementing provisions on selective contributions under Article 26 of Law No. 220 of 14 November 2016*"[151]

- **Call for Selective Grants for the writing, development and production of cinematographic and audiovisual works - Article 26 of Law No. 220 of 2016[152]**
- **Call for Selective Grants for the Production of Feature Films of Particular Artistic Quality - Articles 26 and 27 of Law No. 220 of 2016 - Year 2024[153]**

As per the 2023 EAO study, the definition established by Italian Legislative Decree No. 208 is:

> *Article 3(1)*
> *(t) "Independent producers" means European media operators performing audiovisual production activities and who are not controlled by or affiliated to audiovisual media service providers under the jurisdiction of Italy and, alternatively*
> *1) for a period of three years they do not allocate more than 90% of their production to a single audiovisual media service provider (audiovisual media service provider);*
> *2) they are holders of secondary rights.*

There is no other definition for the purpose of public support in Italy that differs from the general definition of independence in the context of European works, as explored in the 2023 EAO study.

9.18.3. Regional funds

9.18.3.1. Trentino Film Commission & Fund[154]

The Regional Trentino Film Commission & Fund[155] refers to the definition of independence as established in Article 3(1)(t) of Italian Legislative Decree No. 208 (transposing the AVMSD):[156]

> *società di produzione audiovisiva indipendenti italiane, comunitarie ed extracomunitarie*
> *meaning Italian, EU or extra-EU independent production companies*

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[151] Disposizioni applicative in materia di contributi selettivi di cui all'articolo 26 della legge 14 novembre 2016, n. 220.

[152] Bando per la concessione di contributi selettivi per la scritura, lo sviluppo e la produzione di opere cinematografiche e audiovisive - articolo 26 della legge n. 220 del 2016

[153] Bando per la concessione di contributi selettivi per la produzione di opere cinematografiche di lungometraggio di particolare qualità artistica – articoli 26 e 27 della legge n. 220 del 2016 - Anno 2024

[154] This information incorporates feedback received from Luca Ferrario, Director of the Trentino Film Commission & Fund.

[155] http://www.trentinofilmcommission.it/

[156] While the Legislative Decree transposing the AVMSD No. 208 (*DECRETO LEGISLATIVO 8 novembre 2021, n. 208*) was amended in March 2024, the definition of independent producer detailed as per Article 3(1)(t) of the Italian Decree remains unchanged.

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9.18.3.2. IDM-Südtirol Alto Adige[157]

The Regional Fund IDM-Südtirol's[158] Funding Guidelines set eligibility criteria which suggest that recipients of the support should be partially independent.[159]

> *Article 3 ELIGIBLE UNDERTAKINGS AND APPLICATION REQUIREMENTS*
> *1. Film and television production companies, television production companies, irrespective of the country in which the headquarters or a branch office of the of the applicant company is located. The film and television production companies must have sufficient economic resources and ensure high-quality production.*
> *[…]*
> *2. Television broadcasters and streaming platforms are also not eligible for funding;*
>
> *Article 4. ELIGIBLE WORKS*
> *1. Only the following are eligible for funding:*
> *[…]*
> *3. Within the limits of Article 21 (2), (3) and (4), television films and works for streaming platforms may be supported if the costs and quality of the production are above average or, if there is an important cultural reference to South Tyrol or, if the work is of particular interest for the development of South Tyrol as a film location. The contractual distribution of rights between the producer and the distributor must reflect their respective participation in the project. Financing by means of the South Tyrolean Film and Television Fund is to be considered as the producer's intake. Fully financed commissioned productions of linear or video-on-demand media are generally not eligible for funding. The amount of state contributions or commissioned funding must not exceed 30% of the total production costs. A significant part of the production costs should be taken over by the linear or video-on-demand medium; additionally, a significant amount of rights should remain with the producer, after agreement on a certain number of broadcasts.*

The following criteria only apply when a work is partially financed by a linear or VOD audiovisual media service (AVMS). It establishes two criteria which suggest recipients of the grant should retain some freedom and independence:

- **Financial criterion (financing the work): no more than 30% of the total production cost of the work should be financed by the AVMS,**
- **IPR criterion (retention of rights): the producer must retain rights to the work after an agreed number of broadcasts by the AVMS provider.**

[157] This information incorporates feedback received from Birgit Oberkofler, Head Film Fund & Commission at IDM-Südtirol Alto Adige.
[158] http://www.film.idm-suedtirol.com/
[159] IDM Funding Guidelines, 23 April 2024 (in Italian and German), Approvazione dei criteri di agevolazione a favore delle produzioni cinematografiche e televisive, 23 Aprile 2024, Genehmigung der Anwendungsrichtlinien zur Film- und Fernsehförderung, 23 April 2024.

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9.19.LT – Lithuania[160]

9.19.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[161]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes	No, and the public support text does not refer to the AVMSD definition either

9.19.2. Existence of a definition of independence in public support schemes

Lithuania does not provide for a definition of independence in public support schemes in its specific legislations such as cinema law, tax law or public service media legislation.

The Law on Cinema of the Republic of Lithuania does not refer to independent producers (with an explicit definition or implicit eligibility criteria).[162]

The Order of the Minister of Culture of the Republic of 16 November 2018 "On the Approval of the Rules for State Funding of Film Culture Dissemination Projects" does not either.[163]

[160] The summary on Lithuania incorporates feedback from Laimonas Ubavicius, Director at the Lithuanian Film Centre.

[161] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.

[162] Law on Cinema of the Republic of Lithuania (in Lithuanian only), Lietuvos Respublikos kino įstatymas (Žin., 2002, Nr. 31-1107; 2012, Nr. 6-192; TAR, 2017-12-28, Nr. 2017-21487)

[163] Order of the Minister of Culture of the Republic of Lithuania No ĮV-812 of 16 November 2018 "On the Approval of the Rules for State Funding of Film Culture Dissemination Projects" (in Lithunian only), Lietuvos Respublikos kultūros ministro 2018 m. lapkričio 16 d. įsakymas Nr. ĮV-812 „Dėl Kino kultūros sklaidos projektų valstybinio finansavimo taisyklių patvirtinimo" (TAR, 2018-11-21, Nr. 2018-18761; 2021-12-01, Nr. 2021-24868).

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The Order of the Minister of Culture of the Republic of 23 March 2016 "On the Approval of the Rules for State Financing of Preliminary Film and Production Work Projects" has a description of applicant ("applications for funding may be submitted by natural persons carrying out individual film production activities in accordance with a individual certificate (EVRK code 59.11), and legal entities whose main areas of activity are film production, with the exception of television broadcasters") but does not provide for a definition of independence.[164]

The Lithuanian Film Centre's website and the "Description of the evaluation procedure" details the eligibility criteria and production criteria to benefit from the Film Tax Incentive:[165] [166]

> *Eligibility (*website*)*
> *The incentive is available for the production of feature films, TV dramas, documentaries and animated films. It includes domestically produced, co-produced or commissioned films (produced under the service agreement). At least 80% of eligible film production costs must be incurred in Lithuania and the total amount of eligible spend in Lithuania has to be no less than 43,000 EUR.*
>
> *Section three – Film production evaluation:*
> *29. A film or part of a film meets the criteria for the production evaluation if:*
> *29.1. during the production of the film (other than the animated film) or part of it the filming in the Republic of Lithuania lasted for at least 3 days;*
> *29.2. during the production of the animated film, at least 20 percent of the total cost of production of all or part of the film in the Republic of Lithuania was incurred to cover the costs of at least two of these activities:*
> *29.2.1. execution of filming work (if required by the film script);*
> *29.2.2. creating visual (character/backgrounds) design;*
> *29.2.3. frame layout / storyboard creation;*
> *29.2.4. creating visual effects;*
> *29.3. at least 51 percent of the members of the film group hired by the Lithuanian film producer (creative and technical staff that the Lithuanian film producer has brought together for the creation and production of the film) are citizens of the Republic of Lithuania or other state (s) of the European Economic Area.*

There is no definition nor implicit criteria calling for the notion of independence in the context of public support.

[164] Order of the Minister of Culture of the Republic of 23 March 2016 "On the Approval of the Rules for State Financing of Preliminary Film and Production Work Projects, "Įsakymas dėl parengiamųjų filmo ir gamybos darbų projektų valstybinio finansavimo taisyklių patvirtinimo", (in Lithuanian only).
[165] Lithuanian Film Centre's website
[166] Description of the evaluation procedure of cultural content and production of the film produced in the Republic of Lithuania, Approved on 20 December, 2013 Order No VV-892/1K-406 of the Minister of Culture of the Republic of Lithuania and the Minister of Finance of the Republic of Lithuania (in English).

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9.19.3. Regional funds

Non-applicable.

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9.20.LU - Luxembourg[167]

9.20.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[168]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Implicit eligibility criteria	No, though the Grand-Ducal Regulation of 4 November 2014[169] implementing the Law of 22 September 2014 on the National Audiovisual Production Support Fund requires the applicant to hold the exploitation rights of the work.

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Luxembourg**	**Source**
The Grand-Ducal Regulation of 4 November 2014 implicitly outlines potential eligibility criteria related to the notion of independence in the context of public support (without clear references to "independence"). It refers to an IPR requirement which implicitly suggests a need for some level of independence. Besides, the applicant must submit scenarios or concepts for cinematographic or audiovisual works to be produced or co-produced by a Luxembourg production company to be eligible for production or co-production assistance.		
Two criteria: **Financial criterion** *Self-financing ability* **IPR criterion** *Holding the exploitation rights*	The producer shall be able to finance at least 10% of the project; (co-)exploitation by the beneficiary production company, in particular through the effective and lasting ownership of a significant proportion of the cinematographic or audiovisual exploitation rights	The Grand-Ducal Regulation of 4 November 2014 implementing the Law of 22 September 2014 on the National Audiovisual Production Support Fund

[167] It was not possible to receive feedback from the Film Fund Luxembourg.
[168] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[169] Règlement grand-ducal du 4 novembre 2014 portant exécution de la loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle.

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9.20.2. Existence of a definition of independence in public support schemes

The Law of 22 September 2014[170] on the National Support Fund for Audiovisual Production details in Article 10 criteria the works shall respect to obtain financial support:

> *Article 10 (1)*
> *(1) Audiovisual works eligible for selective financial support must:*
> *1. contribute to the development of the European, and in particular Luxembourg, audiovisual production sector, taking into account a reasonable proportionality between the benefits granted and the long-term cultural, economic and social repercussions of the production of these works;*
> *2. be designed to be produced mainly within one or more Member States of the European Union, the countries of the European Economic Area and Switzerland, and in particular on the territory of the Grand Duchy of Luxembourg;*
> *3. be exploited or co-exploited by the beneficiary production company, in particular through the effective and lasting ownership of a significant proportion of the cinematographic or audiovisual exploitation rights.*

The Grand-Ducal Regulation of 4 November 2014 implementing the Law of 22 September 2014[171] on the National Audiovisual Production Support Fund details further the criteria in Article 2:

> *[…]*
> *2. 2 Scenarios or concepts for cinematographic or audiovisual works to be produced or co-produced by a Luxembourg production company are eligible for production or co-production assistance.*
> *Without prejudice to the provisions of international law and national regulations applicable in the State(s) to which the potential co-producer(s) belong(s), cinematographic or audiovisual works must, in order to benefit from the Assistance created by the Law, meet the following cumulative conditions in particular:*
> - *the beneficiary company's share of financing may not be less than 10 percent (10%) of the total production cost of the work concerned, and that of any foreign minority co-producer may not, in principle, be less than the same percentage;*
> - *ownership of the original image and sound negative of the co-produced work or of the original fixing medium of the co-produced work, enabling exploitation copies to be reproduced, must be the undivided property of the co-producers. The exploitation rights of the beneficiary company in the work must be at least proportional to its contribution to the financing of the work concerned;*

[170] Law of 22 September 2014 on the National Audiovisual Production Support Fund (in French only), *Loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle*
[171] Grand-Ducal Regulation of 4 November 2014 implementing the Law of 22 September 2014 on the National Audiovisual Production Support Fund (in French only), *Règlement grand-ducal du 4 novembre 2014 portant exécution de la loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle*

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- *during the production of the co-produced work, the artistic and technical participation of the receiving company must be effective.*

Together, though these rules do not explicitly refer to independence; their criteria implicitly refer to the notion of independence (without clear references to "independence"), requiring the fulfilling of financial and IPR criteria.

- **Financial criterion: the producer shall be able to finance at least 10% of the project,**
- **IPR criterion: the producer must hold the exploitation rights.**

The rules on production support by Film Fund Luxembourg detail the procedure but not the eligibility criteria.[172]

9.20.3. Regional fund

Non-applicable.

[172] The Film Fund's rules on selective financial support, 15 December 2022 (in French), *Règles AFS et glossaire en vigueur au 15.12.2022*, see Section 5.3.1 on production support.

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9.21.LV - Latvia[173]

9.21.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[174]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Implicit eligibility criteria	No, though there are eligibility criteria in the Regulation "Procedure by which the National Cinema Centre allocates public funding to film industry projects" of 10 October 2010[175]

Criteria related to independence in the context of public support		
Type of criteria	In practice in Latvia	Source
The Regulation "Procedure by which the National Cinema Centre allocates public funding to film industry projects" of 10 October 2010 implicitly outlines potential eligibility criteria related to the notion of independence in the context of public support (without clear references to "independence"). However, the text does not specify whether the applicant must be (or not) established within the country of application.		
<u>One criterion</u> **Financial (ownership, capital participation) or operational criterion (autonomy of decision)** *Limited capital participation* **Or** **Operational criterion (autonomy of decision)** *Limited voting rights*	The applicant's capital or voting rights should not be, to a degree greater than 25%, owned by the state, a municipality, a broadcasting organisation, or state- or publicly owned companies.	Regulation "Procedure by which the National Cinema Centre allocates public funding to film industry projects" of 10 October 2010

[173] The summary on Latvia incorporates the feedback received from Dita Rietuma, Director at the Film Centre of Latvia.
[174] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[175] Kārtība, kādā Nacionālais kino centrs piešķir publisko finansējumu filmu nozares projektiem (in Latvian only), Regulation "Procedure by which the National Cinema Centre allocates public funding to film industry projects" of 12 October 2010.

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9.21.2. Existence of a definition of independence in public support schemes

Latvia does not provide for a definition of independence in public support schemes in its specific legislation, such as cinema, tax law or public service media legislation.

However, the Regulation "Procedure by which the National Cinema Centre allocates public funding to film industry projects" contains eligibility criteria that an applicant shall meet to obtain financial support:

> *Article 5*
> *One cannot apply for funding if:*
> *5.4. the project is submitted by the broadcasting organisation;*
> *5.5. more than 25% of the share capital or voting rights of the applicant belong to the state or municipality, broadcasting organisation or state or municipal capital companies.*

The Regulation "Procedure by which the National Cinema Centre allocates public funding to film industry projects" does not explicitly refer to the notion of independence, but it provides for eligibility criteria which implicitly refer to the notion of independence (financial or operational criterion), without clear references to "independence":

- **Financial criterion (ownership, capital participation): limited capital participation, or**
- **Operational criterion (autonomy of decision): limited voting rights.**

Besides, the Law on Public Electronic Mass Media and Administration mentions "independent producer" without defining the notion further.[176] Additional details can be found in the guidelines for the production and placement of content and announcements in public service media programmes and services, in which the definition established by the Electronic Mass Media Law is referred to.[177]

[176] Sabiedrisko elektronisko plašsaziņas līdzekļu un to pārvaldības likums, Law on Public Electronic Mass Media and Administration of 19 November 2020. See mentions of independent producers in Section 3 paragraph 17 and in Section 8 paragraph 2.

[177] Vadlīnijas satura un paziņojumu veidošanai un izvietošanai sabiedriskā medija programmās un pakalpojumos, Guidelines for the production and placement of content and announcements in public service media programmes and services of 2022 (in Latvian only), see Section 1.7. It uses the same definition as the one established by the Electronic Mass Media Law (Elektronisko plašsaziņas līdzekļu likums).

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Note: The National Strategy of the National Electronic Mass Media Council for 2023-2027 highlights the necessity to define the term "independent producer".[178] Its implementation plan highlights the same, though there is no detail as to when it should be done.[179]

9.21.2.1. Independence from whom?

According to article 5 of the Procedure by which the National Cinema Centre allocates funding to film industry projects, one cannot apply "if more than 25% of the share capital or voting rights of the applicant belong to the state or municipality, broadcasting organisation or state or municipal capital".

Article 1 (23) of the Electronic Media Law defines "broadcasting":[180]

> *Broadcasting - distribution of programmes for reception by the public. This term does not include on-demand service.*

The applicant shall be independent from broadcasters or state/local government.

9.21.3. Regional funds

Non-applicable.

[178] Elektronisko plašsaziņas līdzekļu nozares attīstības nacionālā stratēģija 2023-2027.gadam, National strategy for the development of the electronic media sector (in Latvian only), see point B-1-2, page 25.
[179] Elektronisko plašsaziņas līdzekļu nozares attīstības nacionālās stratēģijas 2023.-2027.gadam ieviešanas rīcības plans, Action plan for the implementation of the national strategy for the development of the electronic media sector 2023-2027 (in Latvian only), see item 26.
[180] Electronic Mass Media Law (in English), Elektronisko plašsaziņas līdzekļu likums (in Latvian).

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9.22.MT – Malta[181]

9.22.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[182]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Direct definition	Yes, in the Arts Council Malta's Screen support scheme, Guidelines and Regulations 2024

Criteria related to independence in the context of national public support		
Type of criteria	**In practice in Malta (Arts Council Malta)**	**Source**
The Arts Council Malta's screen support scheme requires that an applicant be duly registered in Malta, or have established a branch or place of business in Malta, and that their principal activity consist in developing and producing audiovisual works and that they be a tax resident in Malta.		
One criterion: **Financial criterion** (ownership and capital structure) *Minimum capital participation from external organisations both in the entity's origins and in its current ownership structure* While not explicitly stated, the financial criteria may imply that the entity should be both financially and operationally	The origins of the independent entity are independent of the state, or public and/or parastatal entities, public or private broadcasting organisations, streaming platforms or telecom companies. Besides, the entity should not be owned by the state, public and/or parastatal entities, public or private broadcasting organisations, streaming platforms or telecom companies.	Arts Council Malta's Screen support scheme, Guidelines and Regulations 2024

[181] The summary on Malta incorporates the feedback received from Susan Ronald, Manager at the Malta Film Commission.
[182] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.

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independent from external organisations.		

9.22.2. Existence of a definition of independence in public support schemes

The Malta Film Commission Act does not define independence. When presenting the incentive schemes and financial support, it refers to "qualifying company" and "qualifying production" in Articles 25 and 26 and in the Schedule (Articles 26 and 33):[183]

The Film & TV Financial Incentives Guidelines developed by Screen Malta (Malta Film Commission) further detail these two notions, but none of them refer directly or implicitly to independence.[184]

> *2.1 What is a qualifying company?*
> *The qualifying company shall be the ultimate beneficiary and the entity responsible for all activities involved in making a qualifying production and having access to the full budget and full financial information for the total production worldwide, which shall be made available to the Commissioner upon the latter's request.*
> *Where the qualifying production is a co-production, the co-producers shall appoint one (1) of the co-producers amongst them to act as the qualifying company in respect of the qualifying production for the purposes of these regulations and the appointed co-producer shall be deemed to be the entity responsible for all activities involved in making the qualifying production:*
> *Provided that:*
> *(1) there shall be only one (1) qualifying company with respect to a particular qualifying production;*
> *(2) in the case of a co-production, the financial incentive granted shall be apportioned between the co-producers as agreed between them, or in the absence of any agreement to that effect, in proportion to their share in the overall budget of the qualifying production; and*
> *(3) any co-producers shall be jointly and severally liable for their obligations under the Act and these regulations:*
> *Provided further that when the qualifying company is:*
> *(1) a foreign qualifying company, it shall be either a special purpose corporate vehicle or a company which carries on, or intends to carry on in Malta, a trade or business which is considered as a qualifying production; or*
> *(2) a local qualifying company, it shall be either a special purpose vehicle or a company that is duly registered in Malta as an audiovisual production company and intends to produce a qualifying production as its main purpose and activity.*

[183] Malta Film Commission Act, 15 July 2005 (in English), Att dwar il-kummissjoni ċinematografika ta' malta, 15 ta' Lulju, 2005 (in Maltese). Subsequent legal notices LN186 of 2024 and LN187 of 2024.
[184] Film & TV Financial Incentives Guidelines, June 2024 (in English), see "2.1 What is a qualifying company?" and "2.2 What is a qualifying production?".

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2.2. What is a qualifying production?
An audiovisual production shall be deemed to be a "qualifying production" as mentioned in Article 25 of the Malta Film Commission Act and if it satisfies the following format conditions:
a. the audiovisual work concerned is partially or wholly carried out in Malta (including works related to animation, visual effects, and virtual production activities together with post-production); and
b. processed to commercial release standards, for local and, or international distribution for theatrical release, TV broadcast and video-on-demand and subscription video-on-demand platforms; and
c. makes a valid contribution to the expression of creativity and culture through the development of production capability skills in the audiovisual sector.

The Screen Support Scheme developed by the Arts Council Malta defines an "independent audiovisual entity" as follows:[185][186]

Definitions
An Independent Audiovisual Entity is a juridical person duly registered in Malta, as a limited liability company, a partnership en Commandite or that establishes a branch or place of business in Malta under Part XI Chapter 1 of the Companies Act (CAP 386 of the Laws of Malta), and whose principal activity consists in developing and producing audiovisual works and is a tax resident in Malta.
It is considered independent if its origins are independent of the state, or public and/or parastatal entities, public or private broadcasting organisations, streaming platforms or telecom companies. The entity's stocks or shares may not belong to the state, public and/or parastatal entities, public or private broadcasting organisations, streaming platforms or telecom companies.

These guidelines from the Arts Council Malta provide for a definition of independence and refer to both the entity's origins and its current ownership structure:

- Financial criterion (ownership and capital structure): the origins of the independent entity are independent of the state, or public and/or parastatal entities, public or private broadcasting organisations, streaming platforms or telecom companies. Besides, the entity should not be owned by the state, public and/or parastatal entities, public or private broadcasting organisations, streaming platforms or telecom companies.

While not explicitly stated, the financial criteria may imply that the entity should have both financial and operational independence from external organisations.

Other texts do not provide for possible eligibility criteria which could refer to the notion of independence. There is no other definition/reference to independence in other public support legislations.

[185] Screen Support Scheme, Guidelines and Regulations, 5 August 2024.
[186] The Arts Council Malta is the national agency for development and investment in the cultural and creative sectors. Its principal task is to fund, support and promote Malta's cultural and creative sectors.

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9.22.3. Regional funds

Non-applicable.

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9.23.NL – The Netherlands[187]

9.23.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[188]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer/production" in public support schemes • Direct definition	Yes, in the Dutch Film Fund's General Regulations[189] and in the Regulations for the Film Production Incentive Scheme[190]

Criteria related to independence in the context of public support		
Type of criteria	**In practice in the Netherlands**	**Source**
The regulations for the Film Production Incentive Scheme and the General Regulations of the Dutch Film Fund directly define independence in the context of public support. Besides, the applicant shall be based in the Netherlands, a member state of the European Union or a State that is a party to the Agreement in respect of the European Economic Area, or in Switzerland, for a minimum period of two years prior to the application.		
One criterion **Operational criterion** (autonomy of decision) *Absence of influence from a media company*	A media company shall not influence the applicant's business or the applicant's content.	Dutch Film Fund's General Regulations
One criterion **Operational criterion** (autonomy of decision) *Absence of influence over the content production*	The end operator shall not have a decisive influence over the content, production and execution of the film production. The end operator shall not have in(direct) control over the applicant.	Regulations for the Film Production Incentive Scheme (cash rebate)

[187] The summary on the Netherlands incorporates the feedback received from Jonathan Mees, Research and Communications Projects Manager at the Netherlands Film Fund.
[188] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[189] Dutch Film Fund's General Regulations (in English), *Algemeen Reglement* (in Dutch) of 1 January 2024.
[190] Dutch Regulations for the Netherlands Film Production Incentive Scheme (in English), *Reglement Stimuleringsmaatregel Filmproductie in Nederland* (in Dutch), of 1 January 2023.

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Absence of (in)direct control by the end operator *Sufficient commercial freedom of the applicant*	The applicant shall retain sufficient commercial freedom (with regard to the exploitation and screening of the film production or a derivative thereof).	

9.23.2. Existence of a definition of independence in public support schemes

Dutch cinema, audiovisual and tax legislation does not provide for a definition of "independence" in the context of public financial support. The public service media's regulations do not either.

However, the Dutch Film Fund's rules refer to the notion of independence.

The Regulations for the Netherlands Film Production Incentive Scheme require the applicant to present an independent film production. Besides, while there is no direct definition of the notion of "independence" in Dutch legislation, the Dutch Film Fund's General Regulations require applicants to meet general criteria that are similar to those in the Regulations for the Film Production Incentive scheme.

- **General regulations: operational criterion (autonomy of decision): absence of (in)direct influence by a media company over the applicant's policy or content. The general regulations apply to most of the Film Fund's funding schemes.**
- **Regulations for the Film Production Incentive Scheme: operational criterion (autonomy of decision): in addition to the operational criteria referred to the above (no decisive influence over the content, production and execution of the film production), other sub-criteria exist: the end operator shall not have in(direct) control over the applicant and the applicant shall retain sufficient commercial freedom (with regard to the exploitation and screening of the film production or a derivative thereof). These regulations apply to cash rebates for film production).**

General Regulations - Article 9 Applicant
1. A grant on application will only be awarded to a film professional or a legal entity who for at least a minimum of two years prior to the application is living or located in the Kingdom of the Netherlands, a member state of the European Union, or in a state that is party to the agreement concerning the European Economic Area, or in Switzerland, and whose profession or main activity is writing for, developing, producing, exploiting/distributing film productions or the organisation and/or execution of a film activity to promote the quality and diversity of film production in the Netherlands and a climate for production and otherwise in the Netherlands receptive to film art.
2. The board may lay down further requirements for the applicant in sub-regulations.
3. Not eligible for a grant are:
- a media company;
- an applicant in which a media company has such direct or indirect control or actual influence that this media company can largely determine the applicant's policy or has significant influence over the content of the applicant's policy;

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- anyone still attending vocational or other training.

Regulations for the Film Production Incentive Scheme (cash rebate) – Article 7(6):

A grant can otherwise only be awarded on the basis of these regulations if, in the opinion of the board: a. the applicant has sufficiently demonstrated that the film production is ***independent****.* ***A film production is independent if:***
(i) the end operator has no direct or indirect control over the applicant;
(ii) the end operator, in the opinion of the board, has no decisive influence over the content, production and execution of the film production;
(iii) the applicant, in the opinion of the board, has and retains sufficient commercial freedom with regard to the exploitation and screening of the film production or a derivative thereof;

9.23.2.1. Independence from whom?

Article 1 of the General Regulations defines a "media company" as follows:

Media company: a company involved in distributing, or permitting the distribution of, audiovisual media content to the general public or parts thereof.

"Media company" has a restricted meaning and pertains to content distributors offering their services to the general public (e.g. broadcasters, VODs, etc.).

Regulations for the Netherlands Film Production Incentive Scheme – Article 7(6)
A grant can otherwise only be awarded on the basis of these regulations if, in the opinion of the board:
a. the applicant has sufficiently demonstrated that the film production is independent; a film production is independent if:
(i) the end operator has no direct or indirect control over the applicant;
(ii) the end operator, in the opinion of the board, has no decisive influence over the content, production and execution of the film production;
(iii) the applicant, in the opinion of the board, has and retains sufficient commercial freedom with regard to the exploitation and screening of the film production or a derivative thereof.

Article 1 defines what an end operator is:

… market participant that makes film production and derivatives thereof and other audiovisual works publicly available through screenings in cinemas or film theatres, public or commercial broadcasting channels or on the basis of a revenue model of subscriptions, advertisements or transactions.

The "end operator" has a broad meaning and pertains not only to traditional cinemas and broadcasters but also to providers of VOD services.

Article 1 defines what a production company is:

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A "production company" is a legal entity that engages in business activities on a continuous basis, with the main objective being the production and exploitation of film productions and/or media productions. At the time of the application the legal entity will have been based and operational in the Netherlands, a Member State of the European Union or a State that is a party to the Agreement in respect of the European Economic Area, or in Switzerland, for a minimum period of two years prior to the application.

9.23.3. Regional funds

Non-applicable.

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9.24.NO - Norway[191]

9.24.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes
Update of the AVMSD general definition since the 2023 EAO study	N/A
Existence of another definition(s) of "independent producer" in public support scheme • Direct definition	Yes, in the Regulation relating to support for audiovisual production of 31 October 2016 [192]
Regional fund: Midtnorsk Filmsenter	Refers to the national definition set by the Regulation relating to support for audiovisual production of 31 October 2016
Regional fund: Oslo Filmfond	Refers to the national definition set by the Regulation relating to support for audiovisual production of 31 October 2016

Criteria related to independence in the context of public support		
Type of criterion	In practice in Norway	Source
The Regulation relating to support for audiovisual production directly defines independence in the context of public support. Besides, the applicant shall be in Norway or in another EEA country.		
One criterion **Financial criterion (ownership, capital participation)** *Limited ownership from the State and/or audiovisual media services (distribution platforms)* **Or** **Operational criterion (autonomy of decision)** *Absence of significant business ties with the primary distribution platform.*	The producer does not have public or private main ownership nor significant business ties to the primary distribution platform for the project	Regulation relating to support for audiovisual production

[191] The summary on Norway incorporates feedback from Sigbjørn Sandberg, statistics and analysis advisor at the Norwegian Film Institute.
[192] Forskrift om tilskudd til audiovisuell produksjon (in Norwegian), Regulation relating to support for audiovisual production of 31 October 2016.

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9.24.2. Existence of a definition of independence

The scope of the 2023 EAO study did not include Norway. The Regulation relating to broadcasting and audiovisual on-demand services requires that 10% of the European works broadcast by broadcasters be produced by independent producers.[193]

> *Section 2-2:*
> *[…] A producer is to be regarded as an independent producer in relation to the first paragraph if:*
> *a. A broadcaster does not own shares or interests in the production company representing more than 25% of the votes in the company. Where several broadcasters are co-owners of a production company, the broadcasters' shares must not constitute more than 50% of the votes in the production company. The same applies where a production company owns shares or interests in a broadcaster.*
> *b. The producer does not sell more than 90% of its production over a three-year period to a single broadcaster unless the producer produces only one programme or a series in the course of this period.*
> *c. The producer holds secondary rights to its productions.*

The Regulation provides for a definition of independence, calling for both financial and operational criteria to be fulfilled:

- **Financial criterion (ownership, capital participation): Limited ownership from the broadcaster over the production company and number of works supplied to the same broadcaster over a three-year period is under 90%.**
- **IPR criterion: Producer holds secondary rights.**

9.24.3. Existence of a definition of independence in public support schemes

Only the Norwegian Regulation relating to support for audiovisual production provides for a definition of "independence" and imposes terms on the successful applicant, who shall hold exploitation rights.

> *Section 3-2 Requirements for applicants:*
> *The applicant shall be an independent audiovisual production company established in Norway or in another EEA country and that has audiovisual production as its primary purpose. With independence is meant that the company does not have public main ownership nor significant business ties to the primary distribution platform for the project.*
> *The company shall be organised as a shareholder company. The company shall be registered with the Norwegian Central Coordinating Register for Legal Entities.*
> *Key participants in the project need to have significant professional experience within their fields of practice.*

[193] Forskrift om kringkasting og audiovisuelle bestillingstjenester 28. Februar 1997 (in Norwegian), Regulation relating to broadcasting and audiovisual on-demand services of 28 February 1997 (in English)

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The aid scheme administrator can grant exceptions to the demands for organisational structure and the demands for key participants with professional experience. In the assessment, emphasis shall be placed on the scale, complexity, and budget of the project.

Section 3-3 Terms:
The following conditions must be met in order to receive a grant:
[...]
a. The applicant must document that it has entered into agreements with rights holders pursuant to the Copyright Act that ensure that the applicant possesses or can acquire all necessary rights to realise the audiovisual work, and that the applicant can enter into agreements for the sale, distribution and exhibition of the finished audiovisual work. When engaging such rights holders, the applicant is required to comply with the applicable agreements on collective rights management with the industry's organisations.
The grant recipient must possess and alone have the necessary right to dispose of such rights when an offer of a grant is accepted.
The grant recipient must also have, without restrictions, the necessary rights for the exclusive management of rights in the audiovisual work, as well as the financial management of the audiovisual work.
The grant recipient may enter into agreements that grant third parties the right of exploitation (licence) for the sale, distribution and screening of the audiovisual work, provided that the agreements are time-limited and geographically limited, but may not transfer ownership of intellectual property rights to or in the audiovisual work.
For minority producers, only ownership in the audiovisual work is required.
b. The applicant must document satisfactory financial, professional and practical ability to carry out the project and be responsible for the project's accounts.

Besides, the Norwegian Film Institute (NFI) states in its guidelines that:[194]

Films that receive a launch subsidy must be available on ordinary market terms to anyone who wishes to show the film publicly. You cannot, for example, limit the display to platforms that you own or have significant commercial ties to.

The Regulation provides for a definition of independence, calling for either financial or operational criteria to be fulfilled:

- **Financial criteria (ownership, capital participation): Absence of ownership from the State and/or audiovisual media services (distribution platforms), or**
- **Operational criteria (autonomy of decision): Absence of significant business ties with the primary distribution platform.**

Besides, once the applicant is successful, (s)he shall hold the necessary rights for the exclusive management of rights in the audiovisual work, as well as the financial management of the audiovisual work.

[194] Norwegian Film Institute's website

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The Norwegian Film Production Incentive Regulation does not detail eligibility criteria calling for the notion of independence.[195]

9.24.3.1. Independence from whom?

Section 3-2 of the Norwegian Regulation relating to support for audiovisual production requires the absence of ties with the primary distribution platform. Distribution platforms are not defined in the Broadcasting Act of 4 December 1992. However, they are referred to in other definitions (television, and audiovisual on-demand services):[196]

> *Section 1-1:*
> *c. Television: a service that is provided by a media service provider where the primary purpose is to provide audiovisual programmes that are intended or suitable for watching live and simultaneously on the basis of a programme schedule, and that are distributed to the general public via electronic communication networks.*
> *d. Audiovisual on-demand service: a service provided by a media service provider where the primary purpose is to provide audiovisual programmes that can be viewed at the moment chosen by the user and at their individual request on the basis of a catalogue of programmes and that is distributed to the general public via electronic communication networks.*
> *f. Media service provider/broadcaster: a natural or legal person who, as a part of their economic activity, has editorial responsibility for the selection and organisation of the audio or audiovisual programmes.*

The concept of independence requires independence from distribution platforms, which are media service providers in the media legislation (broadcasters and video-on-demand platforms).

9.24.4. Regional funds

9.24.4.1. Midtnorsk Filmsenter[197]

Midtnorsk Filmsenter[198] uses the definition of independence as established by the national Regulation relating to support for audiovisual production of 31 October 2016.

[195] Non-official translation: The Regulation on financial incentives for the production of international films and series in Norway – valid for framework grant decisions from 1 January, 2023
[196] Act relating to broadcasting and audiovisual on-demand services (Broadcasting Act), 4 December 1992 (in English), Lov om kringkasting og audiovisuelle bestillingstjenester (kringkastingsloven) (in Norwegian).
[197] This information incorporates feedback received from Eli Gjerde, General Manager at Midtnorsk Filmsenter.
[198] https://midtnorskfilm.no

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9.24.4.2. Oslo Filmfond[199]

Oslo Filmfond[200] uses the definition of independence as established by the national Regulation relating to support for audiovisual production of 31 October 2016.

[199] This information incorporates feedback received from Fridrik H. Mar, CEO at Oslo Filmfond.
[200] https://oslofilmfond.no

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9.25.PL – Poland[201]

9.25.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[202]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • No definition	No
Regional fund: Krakow Film Commission • No definition	No use of 'independence'

9.25.2. Existence of a definition of independence in public support schemes

Poland does not provide for a definition of independence in public support schemes in its specific legislation such as cinema, tax law or public service media legislation.

The 2005 Act on Cinematography does not refer to the notion of independence (with explicit definition or implicit eligibility criteria).[203]

The 2018 Act on financial support for audiovisual production (introducing the cash rebate system for audiovisual producers and audiovisual production services providers)

[201] The summary on Poland incorporates the feedback received from Agnieszka Tofil, International Relations Department at the Polish Film Institute.
[202] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[203] Cinematography Act of 30 June 2005 (in Polish only), Ustawa z dnia 30 czerwca 2005 r. o kinematografii.

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does not either, though it prevents audiovisual media services providers (among others) from applying for the rebate.[204]

The operational program for 2024 of the Polish Film Institute refers to the definition of "producer" established by the Cinematography Act (Art. 5(6)), which states:[205]

> *Film producer - a natural person, a legal person or an organizational unit referred to in Art. 331 § 1 of the Civil Code, which takes the initiative, actually organizes, conducts and is responsible for the creative, organizational and financial process of film production.*

Similar elements are mentioned in the definition of a producer, which is contained in Article 4(25) of the Broadcasting Act:

> *Producer - a natural person, a legal person or an organizational unit referred to in Art. 331 § 1 of the Civil Code, which takes the initiative, actually organizes and is responsible for the creative, organizational and financial process of audiovisual work production.*

The Broadcasting Act contains a definition of "independent producer" in Article 4(26), as per the 2023 EAO report, which calls for additional criteria beyond those set for the definition of "film producer" in the context of Article 17 AVMSD.[206]

There is no other definition or nor other implicit criteria calling for the notion of independence in the context of public support.

9.25.3. Regional funds

9.25.3.1. Krakow Film Commission[207]

The Krakow Film Commission[208] does not use the notion of independence as an eligibility criterion to grant fundings.

[204] Act on financial support for audiovisual production, 9 November 2018 (in Polish only), Ustawa z dnia 9 listopada 2018 r. o finansowym wspieraniu produkcji audiowizualnej.
[205] Operational Programmes 2024, 7 December 2023, Polish Film Institute (in English).
[206] Broadcasting Act of 29 December 1992 (in Polish only), Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji.
[207] This information incorporates feedback received from Anna Krupiarz, Film Commissioner at the Krakow Film Commission.
[208] http://film-commission.pl/

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9.26.PT – Portugal[209]

9.26.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[210]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Direct definition	Yes, in the Cinema Law[211]

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Portugal**	**Source**
The Cinema Law directly defines independence in the context of public support. Besides, the Cinema Law refers to "national works" and "European works" without setting any geographical criteria that the applicant must meet.		
Three criteria: **Financial criterion** (ownership, capital participation) *Limitations in the turnover from sales to a single broadcaster within a three-year period* *Minimum capital participation in the production company (ownership)*	Capital not held, directly or indirectly, to an extent greater than 12.5% by a television operator or an on-demand audiovisual service operator, or to an extent greater than 25% in the case of several television or on-demand audiovisual service operators; Limit of 90% of total revenue, either in the last financial year or accumulated in the last three financial years, generated by a single television or on-demand audiovisual service operator.	Cinema Law

[209] The summary on Portugal incorporates feedback from Marta Sousa, Advisor at the Legal Affairs Department at the Portuguese Film and Audiovisual Institute.
[210] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[211] Article 2 (1) (j) Law No. 55/2012 - Principles of state action in the framework of the promotion, development and protection of the art of cinema and cinematographic and audiovisual activities (Cinema Law) (*Princípios de ação do estado na proteção da arte do cinema e audiovisua*).

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Operational criterion (autonomy of decision) *Independent decision-making capacity* **IPR criterion** *Ownership of the rights to the work produced*	Work produced with creative autonomy and freedom in the form of development. Ownership of the rights to the work produced, with a clear contractual definition of the duration and limits of broadcasting rights transferred to audiovisual media services.	

9.26.2. Existence of a definition of independence in public support schemes

The Portuguese Cinema Law governs the various schemes established after its adoption. The Cinema Law contains a definition of "independent producer" in Article 2.

Article 2(q) of the Cinema Law:

> *q) "Independent producer" is the legal entity whose main activity consists of the production of cinematographic or audiovisual works, provided that the following requirements are met cumulatively:*
> *i) Share capital not held, directly or indirectly, to an extent greater than 12.5% by a television operator or an on-demand audiovisual service operator, or to an extent greater than 25% in the case of several television or on-demand audiovisual service operators;*
> *ii) Limit of 90% of total revenue, either in the last financial year or accumulated in the last three financial years, generated by a single television or on-demand audiovisual service operator.*

Besides, Article 2(j) details additional requirement for an "independently produced work":

> *"Independently produced work" means the cinematographic and audiovisual work produced by an independent producer and which cumulatively meets the following requirements:*
> *i) Holding, by the independent producer, of the ownership of the rights to the work produced, with a clear contractual definition of the duration and limits of broadcasting rights transferred to television operators, and in the case of co-productions between independent producers and other operators, namely television operators, on-demand audiovisual service operators or distributors, the qualification as an independent production work depends, precisely, on this retention, by the independent producer;*
> *ii) Work produced with creative autonomy and freedom in the form of development, particularly with regard to the choice of studios, actors, media and distribution, and in the case of co-productions between independent producers and other operators, namely television operators, audiovisual services on request or distributors, decisions regarding production are adopted by agreement, taking into account the technical and artistic quality of the work;*

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According to the Cinema Law, an independent producer producing an independent work shall meet the following three criteria (financial, operational, and IPR-related):

- **Financial criterion (ownership, capital participation): minimum capital participation (ownership), and limitations in the turnover from sales to a single broadcaster within a three-year period).**
- **Operational criterion (autonomy of decision): independent decision-making capacity (creative autonomy and freedom in the form of development).**
- **IPR criterion: ownership of the rights to the work produced, with a clear contractual definition of the duration and limits of broadcasting rights transferred to audiovisual media services.**

Article 8 of the Cinema Law states that only independent producers can benefit from financial support for development and production.

Other specific texts refer to the definition established by the Cinema Law:

- **Decree-Law n.º 74/2021: regulation of the Cinema Law as concerns taxes and investment obligations.**[212]
- **Decree-Law n.º 25/2018: support for the development and protection of cinema and audiovisual activities.**[213]
- **Tourism and Cinema Fund, regulated by Ordinance n.º 124-A/2024/1.**[214]
- **General Bylaw for Financial Support Programs – 2024.**[215]

In these texts, such as Ordinance 124-A/2024/1, mention is made of the executive producer ("produtor executivo"), defined as:

> *The legal person who, on behalf of a producer duly authorised to produce a cinematographic or audiovisual work, by means of a service contract concluded with the latter, is responsible for bringing together the artistic and technical means for the realisation of the work and for ensuring the management of operations leading to the realisation of the work or parts thereof, in accordance with a previously agreed budget, without participating in the ownership of rights relating to the work.*

The Cinema Law does not indicate a geographical origin condition that the producer shall fulfill in order to obtain support. However, the Cinema Law refers to "national works" and "European works". The national work shall respect various criteria, including the original Portuguese language requirement. The European work is defined as per the AVMSD.

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[212] Decree-Law n.º 74/2021:regulation of the Cinema Law as concerns taxes and investment obligations (in Portuguese only), Decreto-Lei n.º 74/2021 de 25 de agosto, Regulamenta a Lei do Cinema no que respeita à cobrança de taxas e às obrigações de investimento a que os operadores estão sujeitos

[213] Decree-Law n.º 25/2018: support for the development and protection of cinema and audiovisual activities (in Portuguese only), DL n.º 25/2018, de 24 de abril apoio ao desenvolvimento e proteção das atividades cinematográficas e audiovisuais

[214] Tourism and Cinema Fund, regulated by Ordinance n.º 124-A/2024/1 (in Portuguese only), Decreto-Lei n.º 45/2018, Fundo de Apoio ao Turismo e Cinema, regulatado pela Portaria n.º 124-A/2024/1

[215] General Bylaw for Financial Support Programs – 2024 (in Portuguese only), Regulamento Geral Relativo Aos Programas De Apoios Financeiros – 2024

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9.26.2.1. Independence from whom?

The concept of independence requires being independent from a television operator or an on-demand audiovisual service operator. Therefore, the producer shall be independent from audiovisual media services.

9.26.3. Regional funds

Non applicable.

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9.27.RO – Romania[216]

9.27.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[217]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of another definition of "independent producer" in public support schemes	No, though there are eligibility criteria in the Decision No 421/2018 establishing a state aid scheme to support the production of audiovisual works in Romania

9.27.2. Existence of a definition of independence in public support schemes

There is no direct definition of "independence" in public support schemes in specific legislation (i.e., cinema, tax, or public service media legislation). However, although Decision No 421/2018 establishing a state aid scheme to support the production of audiovisual works in Romania does not explicitly refer to independence, its criteria implicitly suggest the notion of independence in Article 6:[218]

> *Article 6 Beneficiaries and eligibility criteria*
> *(1) Romanian or foreign enterprises registered and operating in accordance with the provisions of the legislation applicable in Romania or in the country of origin, as the case may be, which cumulatively meet the following conditions, can benefit from this state aid scheme, regardless of the national or international nature of the project eligible:*

[216] The summary incorporates the feedback received from Ilinka Teodorescu, international relations, at the Romanian Film Centre.
[217] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[218] Decision No 421/2018 establishing a State aid scheme to support the production of audiovisual works in Romania - consolidated 25 March 2024 (in Romanian only), *Hotărârea nr. 421/2018 pentru instituirea unei scheme de ajutor de stat privind sprijinirea producției de opere audiovizuale pe teritoriul României - consolidată 25 martie 2024*

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a) their main activity is cinematographic production, and, in the case of Romanian enterprises, they are registered in the Cinematographic Register;
b) have the capacity of producer, co-producer and/or production service provider and produce short, medium and feature fiction films, mini-series or television series, films intended for distribution directly on video or internet media or any other type of media, artistic documentaries, animation films, partially or entirely on the territory of Romania;
c) as a producer/co-producer, they own the intellectual property rights over the work to be produced or, if they provide services for a foreign production company, it acquired the rights for the purpose of the production;
d) in the case of foreign producers, a co-production contract or service provision agreement must be signed with a Romanian producer;
e) presents information related to the total budget of the production for which this state aid is requested, in the case of productions that are carried out entirely on the territory of Romania, and, in the case of those that are carried out partially on the territory of Romania, information related to the budget corresponding to the expenses related to production carried out on the territory of Romania, for which state aid is requested;
f) prove that they have no debts to the general consolidated budget of Romania.
g) provide proof of their own and co-financiers' financial contribution to the financing of the project in the case of producers/co-producers, and in the case of service providers, provide proof of the firm commitment of the foreign producer to ensure the financial contribution for the production of the project. The own financial contribution must cover at least the total eligible production budget, exclusive of VAT, less the state aid requested under this scheme and any other state aid granted to finance the same eligible costs, in compliance with the provisions of art. 15 . The own financial contribution is constituted either from own resources or from attracted resources, in a form that is not subject to any other public aid.

The IPR criterion is implicitly required as producers should own the IPR over the work to be produced. The criterion is limited to this and does not expand on details.

9.27.3. Regional funds

Non-applicable.

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9.28.Sweden[219]

9.28.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	No[220]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • Implicit eligibility criteria	No, though it is implicitly referred to in the Swedish Film Fund's Guidelines on continuity aid - production companies[221]

Criteria related to independence in the context of public support		
Type of criteria	**In practice in Sweden**	**Source**
The Film Fund's guidelines implicitly outline potential eligibility criteria related to the notion of independence in the context of public support (without clear references to "independence"). Besides, the applicant must be a Swedish company.		
One criterion only **Financial criterion (ownership, capital participation)** *Limited ownership of the production company by media company*	The production company must not be mainly owned by companies involved in distribution, broadcasting, or similar activities	The Swedish Film Fund's guidelines on continuity aid - production companies

[219] It was not possible to receive feedback from the Swedish Film Institute.
[220] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[221] Riktlinjer för stöd till kontinuitet – produktionsbolag (in Swedish).

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9.28.2. Existence of a definition of independence in public support schemes

Except for the Swedish Film Fund's rules, there is no legislation providing for a definition of independence in the context of public financial support. Public service media regulations do not either.

Only the Swedish Film Fund's guidelines on continuity aid for production companies refer to "independent producers". They do not explicitly refer to the notion of independence, but implicitly suggest it:

> *Who can apply?*
> *The company must have film and television production as its primary business and must not be a majority-owned subsidiary of companies engaged in distribution or broadcasting activities or similar, or be part of such a group.*

The Swedish Film Fund requires the production company to pass the financial criterion test: the production company must not be mainly owned by companies involved in distribution, broadcasting, or similar activities.

9.28.2.1. Independence from whom?

According to the Swedish Film Fund's Guidelines, the applicant must not be "*a majority-owned subsidiary of companies engaged in distribution or broadcasting activities or similar, or be part of such a group*".

Article 3(22) of the Swedish Radio and Television Act defines television broadcasting:[222]

> *TV broadcast: a broadcast of, or to broadcast TV programmes with the help of, an electronic communications network, in which the broadcast,*
> *a) is provided by a media services provider,*
> *b) is directed to the public, and*
> *c) is intended to be received using technical aids.*

Article 3(1) of the Radio and Television Act defines what a media service provider is:

> *Media service provider: a person who*
> *a) has editorial responsibility for the choice of content in a radio or television broadcast, on-demand radio or television, or searchable teletext; and*
> *b) decides how the content is to be structured.*

Article 3(6) of the Radio and Television Act defines what on-demand television is:

[222] See the Radio and Television Act (consolidated on 30 June 2022) (*Radio- och tv-lag*) transposing the AVMS Directive, AVMSDatabase of the EAO.

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a service where a media service provider, for information, entertainment or training purposes, provides the public with television programmes using electronic communications networks,
a) at the request of the user;
b) at a time chosen by the user; and
c) from a catalogue of programmes selected by the provider.

Based on the information above, the applicant must be independent from audiovisual media service providers (broadcasters and VODs).

9.28.3. Regional funds

Non-applicable.

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9.29.SI – Slovenia[223]

9.29.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[224]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • AVMSD definition to be used in the context of public support	No, the Film Fund regulation refers to the definition as established by the Slovenian Audiovisual Media Services Act which was described in the 2023 EAO Note.

9.29.2. Existence of a definition of independence in public support schemes

When using the notion of independent producer, the Act on the Slovenian Film Centre (which determines the Film Fund's activities and operations)[225] refers to the definition provided by the Slovenian Mass Media Act.

> *Article 4 -Definitions:*
> *The terms used in this Act have the following meanings:*
> *[…]*
> *"independent producer" is a producer as defined by the law governing the media;*

The laws governing the media in Slovenia are the Mass Media Act[226] and the Slovenian Audiovisual Media Services Act which replaced the former. References to the definition of

[223] The summary incorporates feedback from Nika Gričar, Head of Film Development at the Slovenian Film Centre.
[224] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.
[225] Zakon o Slovenskem filmskem centru, javni agenciji (Uradni list RS, št. 77/10, 40/12 – ZUJF, 19/14 – odl. US, 63/16 in 31/18) (in Slovenian), Act on the Slovenian Film Centre, a public agency (Official Gazette of the Republic of Slovenia, No. 77/10, 40/12 – ZUJF, 19/14).
[226] Zakon o medijih, 26/05/2001 (in Slovenian), Media Act.

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independent producers in the Mass Media Act should be read by reference to the definition from the Audiovisual Media Services Act.

As per the 2023 EAO study, the definition established by the Slovenian Audiovisual Media Services Act is as follows:[227]

> *Article 3 (26) and (27):*
> *An independent producer of audiovisual works is considered the natural or legal person whose activity meets the following four criteria:*
> *a) it is registered for the production of audiovisual works and has its establishment either in the Republic of Slovenia or in another member state,*
> *b) it has no organisational or legal connection to a broadcaster,*
> *c) no broadcaster holds more than 25% of the shares or voting rights of the production company, and*
> *d) the total volume (in minutes) of the audiovisual works produced in the previous calendar year commissioned by a specific broadcaster does not exceed 50% of the total volume (in minutes) of all audiovisual works produced in the previous calendar year.*
> *The natural or legal person having its establishment in a third country (outside the EU) is considered to be an independent producer when (a) the majority of its audiovisual production in the last three years consists of European works, (b) it does not have any organisational or legal connection to a broadcaster, and (c) no broadcaster has more than 25% of the shares or the voting rights of the production company in question.*

Currently, the Mass Media Act is undergoing a revision process. The proposed 2023 law, in Article 3(23), states:[228]

> *Independent producer has the meaning as defined in the law governing audiovisual media services.*

There is no other definition for the purpose of public support in Slovenia that differs from the general definition of independence in the context of European works, as described in the 2023 EAO study.

9.29.3. Regional funds

Non-applicable.

[227] Zakon o avdiovizualnih medijskih storitvah (ZAvMS) (in Slovenian), Audiovisual Media Services Act, consolidated 15 December 2021
[228] Predlog predpisa Zakon o medijih, 2023-3340-0019, ZMed-1, 2023 (in Slovenian), Proposal for a Media Act

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9.30.SK – Slovakia[229]

9.30.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[230]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • AVMSD definition to be used in the context of public support	No, the Film Fund regulation refers to the definition as established by the Slovakian Act on Media Services described in the 2023 EAO Note.

9.30.2. Existence of a definition of independence in public support schemes

Neither the scheme of state aid granted in the Slovak Republic to support the audiovisual industry through the Audiovisual Fund[231] nor the methodological guidance on the provision of funding to support the audiovisual industry refer to the notion of independence,[232] nor the principles of providing funding to support audiovisual culture.[233]

[229] The summary on Slovakia incorporates the feedback received from Zuzana Bielikova, Film Commissioner at the Slovak Film Commission.

[230] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.

[231] Scheme of state aid granted in the Slovak Republic to support the audiovisual industry through the Audiovisual Fund, March 2024 (in Slovakian only), Schéma štátnej pomoci poskytovanej v Slovenskej republike na podporu audiovizuálneho priemyslu prostredníctvom Audiovizuálneho fondu (marec 2024).

[232] Methodological guidance on the provision of funding to support the audiovisual industry (17 September 2024), Metodické usmernenie k poskytovaniu finančných prostriedkov na podporu audiovizuálneho priemyslu

[233] Principles of providing funding to support audiovisual culture no. 4/2018 as amended from 17 Setpmber 2024 (in Slovakian only), Zásady poskytovania finančných prostriedkov z Audiovizuálneho fondu na podporu audiovizuálnej kultúry, č. 4/2018 v znení zo 17.9.2024.

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In Slovakia, the Act of 5 November 2008 on the Audiovisual Fund[234] refers to the definition established by the Act on Media Services (transposing the AVMSD)[235] and the Audiovisual Law.[236]

Article 19
(2) The Fund may grant financial resources:
a) to independent audiovisual producers registered under a special regulation (Act No. 264/2022 on Media Services – Art 65 (2) and Audiovisual Law and Amendments to Certain Acts, No. 40/2015 – Art 8(1), (2) (3);

As per the EAO's 2023 study, the definition established by the Act on Media Services is:

Articles 65 and 67, Media Services Act:
Article 65
(1) An independent production is a programme produced by an independent producer for the purpose of being broadcast.
(2) For the purposes of this Act, a programme produced by an independent producer shall be deemed to be a programme which has been produced, or in the production of which the independent producer has contributed at least 51% of the total cost of its production.
Article 67
Restrictions on the independent producer
The proprietary connection of a broadcaster of a television programme service with an independent producer shall be prohibited.

Article 8, Audiovisual Law
(1) An independent producer in audiovisual production (hereinafter referred to as "independent producer") is a producer of an audiovisual work registered in the list of independent producers who meets the following conditions:
a) is not a broadcaster,
b) is not personally linked or financially linked to the broadcaster; and
c) the minutes of audiovisual works originally produced by it for television broadcasting by a single broadcaster do not represent more than 90% of the total minutes of audiovisual works, including cinematographic works, produced by it.

There is no other definition for the purpose of public support in Slovakia that differs from the general definition of independence in the context of European works, as described in the 2023 EAO study.

[234] See Article 2 of the Act of 5 November 2008 on the Audiovisual Fund (in Slovakian only), Zákon z 5. novembra 2008 o Audiovizuálnom fonde (516/2008)
[235] Act No. 264/2022 on Media Services and on Amendments to Certain Acts (in Slovakian only), Zákon o mediálnych službách a o zmene a doplnení niektorých zákonov.
[236] Audiovisual Law and Amendments to Certain Acts, No. 40/2015, last amended on 24 July 2024 (in Slovakian only), Zákon o audiovízii a o zmene a doplnení niektorých zákonov.

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9.30.3. Regional funds

Non-applicable.

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9.31.UK – United Kingdom[237]

9.31.1. Overview of definitions in the context of AVMSD and public support

Notion	Existence
Existence of a definition of "independent producer/production" under the scheme of Art. 17 AVMSD as per the 2023 EAO study	Yes[238]
Update of the AVMSD definition since the 2023 EAO study	No
Existence of other definition(s) of "independent producer" in public support schemes • **Direct definition**	Yes
Regional fund: Screen Scotland	No use of 'independence'

Criteria related to independence in the context of public support		
Type of criteria	In practice in UK	Source
In UK, the Global Screen Fond supports international business development, co-production, promotion and distribution activities.		
One criterion only **Financial criterion (ownership, capital participation)** **Limited ownership of the production company**	The production company must not be held to an extent greater than 25%, by an external party (a non-UK corporate entity, TV broadcaster, SVOD platform, or a large company).	Application guideline of the UK Global Screen Fund international co-production strand

[237] The summary on the United Kingdom incorporates the feedback received from Agnieszka Moody, Head of International Relations at the British Film Institute.
[238] There has been no change in legislation compared to the *Independent production and retention of intellectual property rights* report produced by the European Audiovisual Observatory in 2023.

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9.31.2. Existence of a definition of independence in public support schemes

The only reference to independence lies in the UK Global Screen Fund. The international co-production strand requires applicants to be independent.[239] The guidelines read:[240]

> *The UKGSF supports international business development, co-production, promotion and distribution activities, so as to:*
> - *grow the revenue and sustainability of UK independent screen businesses by supporting their international activity*
> - *we define a 'UK independent screen business' as an organisation that has no more than 25% ownership by the following third parties:*
> - *a non-UK corporate entity*
> - *a television broadcaster/SVOD platform or operator*
> - *any company defined as a large company under the Companies Act 2006*
> - *enable industry to further grow international partnerships and to develop projects with international appeal for mutual benefit.*
> - *increase the reach of UK screen content to international audiences.*

Under the Companies Act, it means the company satisfies at least two of the following criteria:[241]

- **turnover of more than £36 million,**
- **balance sheet total of more than £18 million,**
- **more than 250 employees.**

The UKGSF requires the production company to pass the financial criterion test: the production company should not be partially owned by an organisation that is a non-UK corporate entity, or a TV broadcaster, or a SVOD platform or a large company.

9.31.2.1. Independence from whom?

The Application Guide requires independence from an organisation that is a non-UK corporate entity, or a TV broadcaster, or a SVOD platform or a large company.

Note: in early 2024, the UK Independent Film Tax Credit (IFTC) was established.[4] Rather than defining independence, this enhanced rate focuses on additional conditions:

- **The budgetary condition - The IFTC allows films with a total core expenditure of up to £15 million to be eligible for a relief of 53% on 80% of qualifying expenditure. Films with a total core expenditure of up to £23.5 million can qualify for the IFTC,**

[239] See the 'Who can apply' page: "This funding strand is open to applications from independence UK producers with demonstrable production experience."
[240] Making an application for the UK Global Screen Fund International Co-production strand, Application Guide
[241] Companies Act 2006

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however can only claim on up to a maximum of 80% of £15 million of the core expenditure, and

- **The creative connection condition: In addition to the budget condition, the project must also meet the condition that the lead director or scriptwriter must be a British citizen or UK resident, or**
- **the film must qualify as an official UK co-production.**

9.31.3. Regional funds

9.31.3.1. Screen Scotland

Screen Scotland does not use the notion of independence as an eligibility criterion to grant funding.

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