Audiovisual policy and content obligations in a digital, connected and international audiovisual environment

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1. Introduction

1.1. Context

Even if the broadcasting sector has been evolving in a legal environment dominated by the EU regulatory framework for almost 25 years now (the Television without frontiers Directive was adopted in 1989) and which created a common set of rules and the possibility to develop an internal market for audiovisual service at European level, it is only in the recent years that the Europeanization and even the globalization of the audiovisual industry has become more significant.

Until then, in most cases, the combination of the use of terrestrial (and thus scare, especially in an analog environment) resources for distributing content, the limited amount of platforms (mainly terrestrial, sometimes cable and satellite), the limited amount of devices (the “old” television set) and the traditional economic barriers to enter the audiovisual market (production costs, carriage costs, access to rights, …) allowed for evolutions of the sector which were rather slow and rather confined to regional or national borders. Access to non-domestic channels or establishment of channels in one country to target the market of another country remained the exception and “closed” national broadcasting markets dominated by a small group of traditional broadcasters remained the rule.

Today, the existence of a variety of distribution platforms (terrestrial, cable, satellite, IPTV, mobile TV, OTT, …), their almost complete digitization, the fall of several barriers to entry, the multiplication of different kinds of devices (television sets, computers, tablets, smartphones), their permanent connection to internet with broadband connections, the development of on-demand audiovisual services,… are provoking rapid and profound transformations of the audiovisual industry, but also of the consumption patterns among European viewers.

These transformations are putting both national and European policies under pressure: for example, more than half of the on-demand service providers established in the EU are targeting another country than the one in which they are established, 125 VOD service providers established in the US are targeting the EU market and half of the VOD services in the EU are under US control[1]. How can cultural diversity and media pluralism, but also growth opportunities for the domestic audiovisual industry, still be achieved in such an unprecedented European context?

1.2. Scope of the study

Against the backdrop of such a rapidly and simultaneously digitalizing, connecting, converging and globalizing environment, the question of the sustainability of local, regional or national audiovisual policy in general and of content obligations imposed on audiovisual service providers in particular (be it in production, in broadcasting or in prominence) is getting more and more relevant and leading to more and more concerns not only among policy makers, but also among all the stakeholders who either see their traditional business model being put under different kinds of pressure or sometimes even vanishing (this concerns mainly the production sector) or see the obligations imposed on them as threatening their financial balance or disrupting the level-playing field with foreign or global players that compete on their market with different rules (this concerns mainly the broadcasting sector).

In this regard, the object of this study is to develop a selective focus on (and a comparative analysis of) the audiovisual and regulatory environment across 5 EU countries which appear to be of as much relevance as possible for Slovenia. We will also with pay a special attention to the obligations to produce, broadcast or promote domestic content. More specifically, the study will aim at answering the questions raised by AKOS when preparing the scope of the research:

- *How much of the nation specific cultural obligations for media service providers has remained in the media laws of the EU member states?*
- *How successful the countries are in their application?*
- *Is there any pattern of undisputable or at least widely accepted cultural norms or modes of their legal operationalization that have in the EU context proved to be easier to implement than some others?*
- *Are there any good practices of how can EU countries follow their own cultural goals considering the strict application of the country of origin principle or is the only option lowering of expectations and deregulation?*
- *How strict, regular and detailed monitoring of the quotas is being done across the EU member states? How is the "where practicable" part of the provision interpreted and used? What are the best practices in the field?*
- *What are the trends and challenges in content regulation in the light of the ongoing convergence and the advent of the OTT services?*
- *What could be recommended to a small EU country with a specific culture and a language with a very limited number of speakers, as well as a small, but completely digitalized and highly multichannel television market?*

1.3. Choice of the case studies

Considering the aforementioned questions and after having eliminated the neighboring EU countries whose audiovisual and regulatory landscape are well known by AKOS (Austria, Croatia, Hungary and Italy), the choice of the 5 EU most relevant case studies was driven by the following considerations:

- selecting a group of 2 small EU countries or territories facing the difficulty to implement a sustainable audiovisual policy by being close to very large markets with the same language :
    - **Ireland** (population 4,6 millions) being under the strong cultural and linguistic influence of the audiovisual market of the United Kingdom, **but also hosting the EU headquarters of two (Google and Facebook) of the four leading**

    global companies in the digital economy (the so-called "GAFA" : Google, Apple, Facebook, Amazon);
  - **French speaking Community of Belgium** (population approximately 4,5 millions) being under the strong cultural and linguistic influence of the audiovisual market of France, **but also facing the challenge of being right next door to Luxembourg, where several major European and global media companies have established themselves to benefit from the country of origin principle and from which they target the domestic market by circumventing a rather prescriptive domestic legislation;**
- Selecting another group of 2 small EU countries or territories facing the difficulty to implement a sustainable audiovisual policy not due to cultural and geographical competition but rather due to a small market in which reaching a critical mass for monetizing investments in content production and diffusion is challenging :
  - **Denmark** (population 5,6 millions) **for, despite its language, its impressive and unique international success in producing TV series, and also for the lessons to learn of regional cooperation with the other Scandinavian countries (Norway, Sweden, Finland);**
  - **Dutch speaking Community of Belgium** (population approximately 6,5 millions) **for the internationally renowned capacity to develop a thriving audiovisual industry following the liberalization of the audiovisual sector in the 1990's;**
- Selecting one big EU country, **France** (population 65 millions), in order to demonstrate that the challenges faced in audiovisual policy are not exclusively faced by small markets which are currently under high pressure, but also by **markets characterized so far by the absence of international influence, the very low level of European competition, a very detailed (but also quite successful) regulatory framework and a very strong regulator.**

Globally, the choice of these 5 countries will offer an hopefully inspiring combination between 2 countries traditionally considered as flexible in transposition and implementation of the AVMS Directive (Ireland and Denmark), 2 regions considered as balancing between flexibility and prescription (Belgium FR and NL) and one country considered as the most prescriptive one all across the European Union (France).

2. Case studies

2.1. Ireland

2.1.1. Brief overview of the television landscape

The main characteristic of the Irish market is its cultural and geographical proximity with the British market, which is the largest and most influential one in Europe.

Despite this situation and the strong competition created by the presence of groups and brands like BBC, Channel 4, Sky, MTV, Nickelodeon or Discovery (which benefit from their establishment in the United Kingdom and the absence of language barrier and most of which – BBC excepted – target Irish audience with specific advertising windows), the Irish market remains relatively resilient, since the public service broadcaster RTE continues to have around 30% audience share and since a few domestic private broadcasters continue to be able to remain competitive in this highly challenging environment.

DTT has been long delayed due to the financial crisis, but the switch-off finally took place in October 2012. It was the opportunity for the public service broadcaster RTE to launch several thematic channels alongside their "legacy" channels RTE One, RTE Two (and the channel in Irish language TG4): RTE jr, RTE One +1, RTE Aertel Digital (teletext) and a trial HD service.

Since the Broadcasting Act of 2009, which established the new NRA (the Broadcasting Authority of Ireland – BAI) which merged the Broadcasting Commission of Ireland (BCI) and the Broadcasting Complaints Commission (BCC), the BAI is also responsible for the supervision of the public service broadcaster. This has become one of its main duties.

2.1.2. Relevant characteristics for Slovenia

In light of the questions raised by AKOS, the Irish case seems worthy of interest not only because it is one of the smallest markets of the EU and that it is strongly influence by a large neighboring market with the same language, but also and above all because despite these circumstances, the audiovisual domestic sector managed to survive and to perform relatively well.

This is true for the public broadcaster, but also for the private group TV3, active since 1998, which manages to get an audience share around 12% with its main channel TV3 and which doubled the audience share of its second channel 3e (from 0.8% in 2008 to 1.8% in 2012), representing as much audience as the 5 main British channels available in Ireland combined (BBC 1, BBC 2, Sky 1, Channel 4 and UTV). This can be explained, according to the BAI, by the high level of indigenous content, by the high quality of news and current affairs programs and of coverage of sport events, as well as by the successful adaptation of international formats like "The Voice" or "Master Chef".

Even more striking, the private channel UTV, which was until then operating from the UK mainly at the destination of audiences in Northern Ireland, but which already owned several radio channels in the Republic of Ireland, has announced in February 2014 that it had concluded an agreement with the BAI according to which, while it will continue to operate its current UTV service, it will also broadcast a new channel for the audience of the Republic of Ireland, starting early 2015 and leading, thanks to the creation of programming windows (including current affairs programs), to the expected creation of around 100 jobs[2]. This recent evolution shows that the following finding of the study commissioned by the BAI in 2010 remains relevant today: *"the residents of the Republic of Ireland can potentially access hundreds of TV choices via digital platforms and thousands of radio choices via the Internet. Yet the vast majority of Irish viewers and listeners consume Irish broadcasting services and favor domestic content. Over 80% of television viewers watch just 25 services and 17 of these services are established in Ireland"*[3].

Another Irish specificity which is worth mentioning is the existence of the "Broadcasting Funding Scheme (Sound & Vision)", which was established in 2005 to provide funding in support of high quality programmes on Irish culture, heritage and experience, and programmes to improve adult literacy. The fund is financed through the use of a part of the TV license fee (5% at the beginning and 7% since 2009) and is accessible to any terrestrial broadcaster (be it public or private or community), once it makes approved programming in a list of genres including history, arts, culture, children's programming, literacy, sports and the Irish language[4]. This fund is managed by the BAI.

Finally, it is impossible to go through the Irish case to mention the fact that this country is now hosting the European headquarters of the main global companies of the digital economy. Google Ireland Ltd and Facebook Ireland Ltd have declared operating revenues in 2012 of respectively 15 524 billion euros and 1,789 billion euros (see table below). This raised the issue, now widely debated at European level, of the corporate tax rate in Ireland and of the related strategy of corporate tax avoidance within the EU by global media companies. The question of the legitimacy or the merits of such a public policy is of course out of the scope of this study, but it must be mentioned since tax policy can indeed influence, feed or hinder audiovisual policy. It also has to be stressed that such kind of strategy can also "backfire" when other EU countries adopt a competing policy on the same grounds: for example, the activities of Netflix in Ireland are operated, as well as all its other activities in Europe, from Luxembourg and not from Ireland.

2.1.3. Selected data

Operating revenues of the main audiovisual companies (2010-2012) EUR millions						
Main AV companies	**Activities**	**Brands**	**2010**	**2011**	**2012**	**2012/2011**
Google Ireland Ltd	Adv. sales	Google, YouTube	10.098	12.457	15.524	24,6%
Facebook Ireland Limited	Adv. sales	Facebook	229	1.052	1.789	70,1%
Eircom Ltd (1)	3Play	eVision	1.831	1.689	1.515	-10,3%
Vodafone Ireland Ltd (1)	3G TV	Mobile TV	1.059,3	1.031,6	n.a.	n.a.
Telefonica O2 Ireland Ltd (1)	3G TV	O2 TV	815,3	703,0	n.a.	n.a.
RTÉ (cons.)	sptv	RTE 1, RTE 2, radios	371,7	350,9	337,2	-3,9%
UPC Communication Ireland (1)	3Play	Chorus / NTL TV	278,1	308,1	330,5	7,3%
Cineflix International Media Ltd	rights	Cineflix	31,2	44,5	67,2	51,0%
Nelvana International	rights	Nelvana	24,9	46,8	64,7	38,2%
Communicationcorp Group Ltd	rad	98FM, Newtalk 106, Today FM,…	68,4	64,0	58,2	-9,1%
TV3 Television Networks Ltd	adtv	TV3, 3e	53,4	54,4	54,0	-0,7%
United Cinema Internation (Ireland) Ltd	exh	UCI	11,8	15,9	n.a.	n.a.

(1) Includes telecommunication activities.
Source: European Audiovisual Observatory

Main broadcasting groups (2011-2012) by TV audience market share					
Rank	**Name**	**Private/public**	**Number of TV channels available in the country**	**TV daily market share (2011)**	**TV daily market share (2012)**
1	RTE	Public	8	31,7%	29,8%
2	TV3	Private	2	13,9%	12,9%
3	BBC Group (GB)	Public	29	>6.9%	>7%
4	News Corp (US/GB)	Private	62	>4.9%	>5.1%
5	Channel 4 (GB)	Public	11	>3.5%	>3.6%

Source: European Audiovisual Observatory

TV audience market share in Ireland (2008-2012)
In %, 4 years +

Channels	Daily share					Prime time (18:00 - 23:29)				
	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012
RTÉ One	25,1	24,2	23,0	22,8	20,4	31,0	30,5	29,9	29,7	26,9
RTÉ Two	11,5	10,2	10,1	8,9	9,2	12,1	10,7	10,5	9,3	9,9
RTÉ One+1					0,2					0,3
TG4	2,5	2,6	2,1	2,0	1,9	2,2	2,3	2,0	1,8	1,7
Public Irish channels	**39,1**	**37,0**	**35,2**	**33,7**	**31,7**	**45,3**	**43,5**	**42,4**	**40,8**	**38,8**
TV3	11,4	11,9	12,4	12,6	11,1	12,4	12,8	13,5	13,5	12,2
3e (ex Channel 6)	0,8	0,8	1,1	1,3	1,8	0,7	0,8	1,1	1,2	1,9
Setanta Ireland	0,8	0,9	0,4	0,4	0,3	0,7	0,8	0,4	0,3	0,3
Private Irish channels	**13,0**	**13,6**	**13,9**	**14,3**	**13,2**	**13,8**	**14,4**	**15,0**	**15,0**	**14,4**
BBC1	5,4	5,1	4,5	4,4	4,4	5,0	4,8	4,3	4,2	4,6
UTV	4,4	4,4	3,7	3,2	2,8	4,5	4,3	3,8	3,2	2,9
BBC2	3,1	2,9	2,6	2,5	2,2	3,0	3,0	2,3	2,4	2,1
Channel 4	3,7	3,6	2,8	2,4	2,2	3,5	3,3	2,6	2,2	2,0
Sky One	2,5	2,2	1,5	1,3	1,3	2,6	2,0	1,5	1,5	1,4
E4	1,3	1,2	1,0	0,8	0,9	1,2	1,0	0,9	0,7	0,9
Living TV	1,4	1,2	1,0	0,9	0,8	1,2	1,0	0,8	0,8	0,7
Sky Sports 1	1,1	0,9	0,8	0,7	0,8	0,7	0,6	0,6	0,6	0,7
Sky News	1,2	1,1	0,8	0,9	0,7	0,8	0,7	0,5	0,5	0,4
Sky Sports News	_	0,5	0,6	0,7	0,7	_	0,4	0,4	0,5	0,4
Comedy Central (ex Paramount Comedy)	1,0	1,0	0,7	0,6	0,7	0,9	0,9	0,6	0,5	0,6
Nick Jr	0,7	0,6	0,5	0,5	0,6	0,4	0,4	0,3	0,3	0,3
Nickelodeon	1,0	0,8	0,7	0,5	0,5	0,5	0,4	0,2	0,2	0,3
Discovery Ireland			0,5	0,5	0,5			0,4	0,4	0,5
MTV	1,0	0,8	0,3	0,4	0,5	0,7	0,6	0,3	0,4	0,5
Universal Channel Ireland				0,4	0,4				0,4	0,3
Comedy Central +1	_	0,5	0,3	0,3	0,4	_	0,3	0,2	0,2	0,3
At the Races					0,4					0,2
Main foreign channels	**28,4**	**27,7**	**23,3**	**22,4**	**23,3**	**25,5**	**24,5**	**20,6**	**20,4**	**21,7**
Others	19,5	21,7	27,6	29,6	31,8	15,4	17,6	22,0	23,8	25,1

Source: Eurodata TV Worldwide / Nielsen Television Audience Measurement

2.2. French speaking Community of Belgium (Belgium FR)

2.2.1. *Brief overview of the television landscape*

French speaking Community of Belgium (Belgium FR) shares one handicap with Ireland: being close to and highly influenced by a neighboring market with the same language.

This situation is reinforced by the fact that, contrary to Ireland, terrestrial broadcasting was historically not the dominant mode of reception (the DDT offer is free-to-air but, being made only of PSB channels, it has a market share close to zero), the country being covered at 100% by two cable networks (the "traditional" networks of cable operators since the 1960's and the IPTV network develop by the incumbent telecom operator Belgacom since the launch of their package "Belgacom TV" in 2005). As a result, the viewers of Belgium FR have been used for generations to have access not only to domestic channels, but also to channels from the Dutch speaking Community of Belgium, from neighboring countries (France, Netherlands, Germany, United Kingdom) and even from beyond. As a result, the main three French television channels (TF1, France 2 and France 3) have between 25 and 30 % audience share (but no advertising market share, since there are no advertising windows targeting Belgium from France).

Adding to these three difficulties, Belgium FR has been hit in 2005 by the decision of the dominant TV group (RTL) to move the establishment to Luxembourg of their three channels RTL-TVi, Club RTL and Plug RTL (around 30% audience share but between 65 and 70% advertising market share). Since then, the market has been completely disrupted, the remaining private channels being only niche channels unable to compete on the advertising market due to the highly dominant position of RTL group combined with the stricter consumer protection rules imposed by the Belgium FR legislation to domestic broadcasters. And recently, MTV/Nickelodon has alsdo been exploiting advertising windows from the Netherlands, as well as Disney channel from France.

Against such a backdrop, the public service broadcaster RTBF is of course under high pressure from these competitors, not only on the advertising market where it can raise revenues up to 30% of its overall revenues, but also on audience shares, resulting in a reach going just above 20% with three channels (La Une, La Deux, La Trois).

2.2.2. *Relevant characteristics for Slovenia*

Three elements deserve to be highlighted in light of the Slovenian situation.

The first one is the disruptive effect of the country of origin principle on the market. The main one was created by the delocalization of the headquarters of the Belgian division of RTL Group from Brussels to Luxembourg, after 18 years under Belgian jurisdiction. The CSA decided to sanction the service providers for broadcasting without an appropriate license[5], but this decision has been challenged by RTL and cancelled by the higher administrative Court (Conseil d'Etat). Following this decision, which did not solve the issue of the appropriate jurisdiction (oddly considered by the Conseil d'Etat as *"irrelevant"*), the CSA questioned the European Court of justice about the effective control over these services by asking the following question : *"Can the notion of 'effective control both over the selection of the programmes and over their organization', as referred to in point (c) of Article 1 of [Directive 89/552] be interpreted as meaning that a company established in a Member State and licensed by the government of that Member State to provide an audiovisual media service does in fact exercise such control, even though it delegates, with an option to subdelegate, to a third company established in another Member State, against payment of an indeterminate sum equal to the total advertising revenue generated by the broadcasting of that service, the actual production of all the programmes specific to that service, the communication to the public of programme scheduling information and the provision of financial and legal services, human resources, the management of infrastructure and other personnel-related services, and even though it is apparent that it is at the head offices of that third company that decisions are taken and implemented concerning the putting together of programmes and any deletions from or changes to the programming schedule in response to current events?"* Unfortunately, the Court did not give an answer to this question, considering that it did not have jurisdiction to answer, since the CSA could not be considered as a *"court or tribunal"*[6]. Since then, the question remains open in law. In fact, since the only remaining licenses have been issued by authorities from Luxembourg, the control is exerted by the 2 competent national authorities (Ministry and NRA). A "protocol" has been signed in 2009 by both Governments to address this issue. It acknowledged the jurisdiction of Luxembourg over these three channels, but it has no legal value.

Another case of jurisdiction is currently discussed between the Belgian CSA and the French CSA about the service Disney channel, which targets the Belgian audience with specific advertising windows. Yet, the Belgian legislation, contrary to the French legislation, forbids the interruption of children's programmes. The question of the application of article 4 of the AVMS Directive to this case remains open so far, but seems possible since *"stricter measures"* have indeed been applied by the country of reception.

The second point of interest is that, like in Slovenia, the legislation of Belgium FR is characterized by rather important obligations in terms of cultural obligations, which in several cases go beyond the transposition of the AVMS Directive (full details in chapter 2.6. *infra*). Moreover, the control of the fulfillment of these obligations is done in a very detailed way by the CSA, through monitoring of samples throughout the year and verifications of the data provided by service providers in their annual report. A specific monitoring of the prominence obligations of on-demand service providers is also carried out. Nevertheless, this double constraint (high level of obligations and high level of verification of compliance) is strongly balanced by the rather flexible approach when no-compliance is observed: usually, several years are given to the broadcaster to progressively achieve compliance. Only very few sanctions have been applied since the transposition of the AVMS Directive, and when they are decided, their enforcement is most of time suspended during a probation period in which the broadcaster has the opportunity to prove that measures are taken and progress is made towards effective compliance.

Finally, a third consequence of this situation in such a landscape is the difficulty to produce ambitious and original domestic content, with a direct impact on with the difficulty for the smaller domestic broadcasters to fulfill their quotas of domestic content to broadcast. In light of this, the Government has launched in the last few months two initiatives, with a small scale due the budgetary constraints, but aiming nonetheless at creating a new dynamic in local content production. It made available some funds to train independent TV producers in the skills needed to be competitive in the TV format market. It also allocated funds to help some of them (chosen by a jury) to produce a pilot of their ideas. It also created in 2013, in association with the public service broadcaster, a common financial instrument to support the development and production of Belgian TV fiction. This “Fund for Belgian Series” is financed both by the Ministry of Culture and by RTBF who jointly bring an amount of 15 million euros over four years. Its goal is to establish the appropriate conditions for the development of a regular, diversified and sustainable offer of a range of Belgian TV series. Ultimately, the goal is to produce 4 series (of 10 episodes of one hour for each) per year, with a broadcast starting date set for January 2015[7].

2.2.3. Selected data

Operating revenues of the main audiovisual companies (2010-2012) EUR million

	Main AV companies	Activities	Brands	2010	2011	2012	2012/2011
1	Belgacom S.A. (cons.) (1)	3Play, 3G TV, thtv	Proximus Mobile TV, Belgacom TV	7.039,0	6.417,0	6.417,0	0,0%
2	Mobistar (1) (2)	3G TV	Orange TV	1.604,1	1.582,6	1.592,9	0,7%
3	Telenet (1)	3Play	Telenet	1.326,0	1.411,0	1.520,9	7,8%
4	Tecteo (1)	3Play + electricity	Voo	476,4	575,8	671,9	16,7%
p.m.	BETV	packtv	BeTV package	81,9	91,4	92,3	1,0%
5	VRT	sptv	Één, Canvas, Ketnet	448,1	419,7	439,1	4,6%
6	RTBF	sptv	La Une, La Deux, La Trois	312,4	320,2	334,2	4,4%
7	Vlaamse Media Maatschappij	adtv	VTM, 2BE, JimTV	303,9	320,1	311,3	-2,7%
8	Kinepolis Group (cons.)	exh, discin	Kinepolis	239,2	253,7	255,2	0,6%
9	SBS Belgium (3)	adtv	Vier, Vijjf	90,0	31,2	175,5	_
10	RTL Belgium	adtv	RTL-TVI, RTL Club	161,8	173,0	164,4	-5,0%

(1) Telecommunication activities included.
(2) Mobistar has ceased its TV distribution activities in 2013.
(3) 2011 over 4 months; 2012 over 20 months.

Source: European Audiovisual Observatory

Yearbook Online Premium Service 2013 / Premium Service en ligne de l'Annuaire 2013 / Jahrbuch Online Premium Service 2013

Main broadcasting groups (2011-2012) by TV audience market share

Rank	Name	Private/ public	Number of TV channels	TV daily market share (2011)	TV daily market share (2012)
French Community of Belgium					
1	RTL Group (LU)	Private	10	>27.6%	>26.4%
2	RTBF	Public	6	20,5%	20,9%
3	TF1 (FR)	Private	9	>17.2%	>17%
4	France Télévisions (FR)	Public	6	13,3%	12,5%
5	AB (FR)	Private	19	>5.1%	>4.5%

Source: European Audiovisual Observatory

Yearbook Online Premium Service 2013 / Premium Service en ligne de l'Annuaire 2013 / Jahrbuch Online Premium Service 2013

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TV audience market share in the French Community of Belgium (CFB) (2008-2012)

In %, 4 years + guests, Live+6

Channels	Daily Share 2008	2009	2010	2011	2012	Prime time (18:55-22:30) 2008	2009	2010	2011	2012
La Une	15,0	14,6	14,5	14,7	14,6	17,4	17,3	17,1	17,0	17,5
La Deux	5,1	4,7	5,8	4,8	5,4	5,6	5,4	6,2	5,3	6,2
La Trois (1)	_	_	0,9	1,0	0,9	_	_	0,6	0,7	0,8
Public channels of the CFB	***20,1***	***19,3***	***21,2***	***20,5***	***20,9***	***23,0***	***22,7***	***23,9***	***23,0***	***24,5***
AB 3	3,6	4,1	4,7	4,5	4,5	3,1	3,1	3,6	3,6	3,6
Be1	0,4	0,3	0,3	0,3	0,4	0,6	0,5	0,4	0,5	0,6
AB 4 (2)	1,7	1,0	0,9	0,6	n.a	1,9	1,1	1,0	n.a.	n.a
MTV - MTV (FR)	2,0	1,8	0,0	0,1	n.a	0,7	0,6	0,0	0,1	n.a
Private channels of the CFB	***5,7***	***5,4***	***5,9***	***5,5***	***4,9***	***6,3***	***5,3***	***5,0***	***4,2***	***4,2***
RTL TVi	19,2	20,9	21,5	21,6	20,1	27,5	28,1	28,8	29,1	28,0
TF1	17,0	16,5	16,7	17,2	17,0	12,8	12,6	12,9	12,9	11,9
France 2	9,4	9,0	8,3	7,9	7,3	6,5	6,8	6,7	6,6	6,4
France 3	5,8	6,1	5,6	5,4	5,2	4,5	5,2	4,8	4,8	4,5
Club RTL	4,9	4,7	4,1	4,1	4,3	6,9	6,7	5,5	5,6	5,8
Plug RTL	1,9	2,4	2,0	1,9	2,0	2,2	2,7	2,1	2,1	2,3
Nickelodeon / MTV (3)	2,0	1,8	1,4	1,4	1,7	0,7	0,6	0,4	0,4	0,6
TV Breizh					1,6					0,9
ARTE					1,3					1,5
France 5					1,3					0,6
Disney Channel (French version)					0,9					0,5
TV5 Monde	1,7	1,5	1,0	0,9	n.a	1,2	0,7	0,8	0,7	n.a
Foreign channels	***61,9***	***62,9***	***60,6***	***60,4***	***62,7***	***62,3***	***63,4***	***62,0***	***62,2***	***63,0***
Één (VRT)	0,7	0,6	0,6	0,6	n.a	n.a.	n.a.	0,5	0,4	n.a
Ketnet / Canvas (4)	0,3	0,2	0,2	0,2	_	n.a.	n.a.	0,2	0,2	_
VTM	0,1	0,1	0,2	0,1	n.a	n.a.	n.a.	0,2	0,1	n.a
VIER (former VT4)	0,1	0,1	0,1	0,1	n.a	n.a.	n.a.	0,1	0,1	n.a
2BE	0,1	0,1	0,1	0,1	n.a	n.a.	n.a.	0,1	0,1	n.a
Vitaya	0,0	0,0	0,0	0,1	n.a	n.a.	n.a.	0,0	0,0	n.a
Flemish channels	***1,3***	***1,1***	***1,2***	***1,2***	***n.a.***	***0,0***	***0,0***	***1,1***	***0,9***	***n.a.***
Others	*11,0*	*11,3*	*11,1*	*12,4*	*11,5*	*8,4*	*8,6*	*8,0*	*9,7*	*8,3*

Market shares from 01/01/2006 are calculated over Total TV without taking into account external devices such as DVD, VCR, …
(1) Measured only since 01/09/2010. Data are for the period 01/09/2010 - 31/12/2010.
(2) Reported until 30/04/2011.
(3) Version in French. In 2011 & 2012, based on Nickelodeon only.
(4) Ketnet/Canvas split into two channels: CANVAS and OP12 (which replaced KETNET) on 01/05/2012.

Source: Eurodata TV Worldwide / CIM - GfK Audimetrie

2.3. Denmark

2.3.1. Brief overview of the television landscape

As shown in the tables below, the main characteristic of the television landscape in Denmark is the strength of the public service channels: Denmark is the only EU country in which public broadcasters (DR and TV2) continue to benefit from more than the half of the audience share (between 60 and 65% in the recent years). Nevertheless, following the decision of the European Commission about undue State aid of 84.4 million € to TV2, Denmark set up a privatization plan of TV2, which surprisingly ended in 2012 by the transformation of TV2 in a unique case of public service broadcaster funded by subscriptions.

The few domestic private channels have a very marginal role on the market (maximum 1.8% individually and 4.5% globally in 2012). The main private channels are established in London and benefit from licenses delivered by OFCOM. But even those hardly reach significant audience share (maximum 4.3% individually and 25.5% globally in 2012).

Denmark completed the switch-off in 2009. Two free-to-air multiplexes are used to broadcast the 17 channels of DR and TV2 and three others to broadcast private channels on a pay TV platform. But the market remains highly dominated by cable TV (around 70%) although split between a huge number of local cable operators (around 1500), Denmark having so far partly avoided the concentration process going on in the sector of cable TV in Europe.

2.3.2. Relevant characteristics for Slovenia

Even though it is a relatively small EU country, Denmark has managed, since the 1990's and even more in the recent years, to become a worldwide known symbol of the impressive success of a policy of audiovisual creation, especially in TV dramas.

We also thought that it could be of interest to focus on one of the Scandinavian countries, a region from which some lessons can be learned in terms of regional cooperation, and which could potentially be transposed in South East Europe.

The roots of this success story can be found in a fundamentally new approach to production of television programs, which was built in the early 1990's and which led to the subsequent production of many successful series in the 1990's and the 2000's : "Unit One", "Nikolaj og Julie", "The Eagle", "The protectors" were all rewarded in the United States by an Emmy award (Best International TV drama, respectively in 2002, 2003 , 2005 and 2009), culminating with the worldwide success of "The Killing" ("Forbrydelsen"). This TV drama managed to reach, during its third and final season in 2012, up to 2 million viewers, i.e. more than a third the Danish population. Like the other series, it is produced by the Danish public broadcaster DR and has also received numerous international awards (BAFTA awards, Emmy awards...) and a remake was produced by the Fox Television studios for the American television network AMC in 2011. This success of unprecedented magnitude has even been amplified since then by another DR production ("Borgen"), a political drama which has been distributed all over Europe, in Northern America, Japan and Australia. Like "The Killing", a remake has been produced by the BBC and the American network HBO. Some other series also reached record high audience share abroad: for example, up to 54% in Norway for the series "Better Times" ("Krøniken")[8].

What is now called the "Danish model"[9] is based on several pillars, the main one being the strength and independence of the public broadcaster DR, which can be explained by:

- protection from commercial pressure by the lack of funding though advertising: 90,5% of the funding comes from license fee and 9,5% from other sources as selling programs and licenses/concepts, facility rental, income from concert audiences, income from various DR ensembles (orchestras, choirs), program sponsors…;
- a relatively high level of financing (TV license fee is one of the highest in Europe);
- a secured financing scheme (the budget is secured for four years);
- a political culture in which all parties recognize and respect the independence of the public broadcasters in all its aspects (governance, programming…).

Other factors that explain this success are related to the specific conditions in which the teams in charge of TV drams work:

- authors do not work outside but are recruited for the time of writing the series in order to soak up the culture of the public broadcaster;
- unlike the practice in the United States, authors nevertheless are granted complete creative freedom, according to the principle "a writer, a vision";
- producers have the leeway to select their team, including outside the staff if they wish to do so;
- the integration of new talents is encouraged by a privileged relationship with the Danish Film School[10];
- the links between and cinema and TV is encouraged by the use of famous Danish directors: for example, the first series produced by DR in 1994, "The hospital and its ghosts", was directed by Lars Von Trier, the world's most famous Danish director, awarded with several prizes of European cinema and several awards at the Cannes Film Festival.

These principles and some others were summarized by Ingolf Gabold, former director of TV drama at DR and now producer at Eyeworks, in his "10 dogmas for the management of Scandinavian fiction"[11].

At first glance, one might think that it is mainly the high level of the license fee which enables the existence of this "Danish model" and explains its success. However, this is contradicted by the fact that only a small fraction (3.5%) of the budget for DR is dedicated to the production of these series, which represents an average of € 16 million per year[12].

Another interesting point to highlight is that this model functions also remarkably well for regional co-productions. For example, "The Bridge" ("Broen"), co-produced by DR and the Swedish public broadcaster Sveriges Television has been an audience success in both countries, has been distributed in 134 countries and was adapted in two remakes : "The Bridge" (between United States and Mexico) and "Tunnel" (between United Kingdom and France).

Such kinds of co-production are facilitated by the existence, since 1959, of Nordvision, a formal cooperation between public service televisions from Denmark (DR), Norway (NRK), Sweden (SVT), Finland (Yle) and Iceland (RUV)[13]. The goals of Nordvision are to co-produce, co-develop and co-invest in formats, exchange programs and know-how, in order to create added value for the members and to benefit from more and better public service programming at lower cost. Over 2700 programs per year are exchanged through this platform, which is also used to exchange and highlight archives.

2.3.3. Selected data

Operating revenues of the main audiovisual companies (2010-2012) DKK million

Main AV companies	Activities	Brands	2011	2012	2012/2011
TDC A/S (1)	3Play, 3G TV	TDC TV, Oplev Fly	26.304	26.116	-0,7%
Telenor A/S (1)	3G TV	Telenor Mobil TV	6.509	5.690	-12,6%
Yousee A/S (1)	3Play	YouSee Kabel TV, YouSee Web-TV	3.886	4.413	13,6%
Danmarks Radio	sptv	DR-1, DR-2	3.866	3.960	2,4%
TV-2-Danmark AS (cons.)	sptv, thtv	TV-2	2.311	2.455	6,2%
Hi3G Denmark APS (1)	3G TV	3 Mobil TV	2.355	2.097	-11,0%
Telia Stofa A/S (1)	3Play	Stofa TV	1.122	1.344	19,8%
Viasat A/S	sat	Viasat	1.121	1.022	-8,8%
TVDanmark A/S	adtv	TV Danmark	850	929	9,3%
Nordisk Film Distribution AS	discin	Nordisk Film	535	638	19,1%

(1) Includes telecommunication activities.

Source: European Audiovisual Observatory

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Main broadcasting groups (2011-2012) by TV audience market share

Rank	Name	Private/ public	Number of TV channels available in the country	TV daily market share (2011)	TV daily market share (2012)
1	TV-2-Danmark A/S	Public	9	39,7	35
2	DR	Public	7	28,4	29,3
3	Modern Times Group (SE)	Private	34	9,6	10,5
4	ProSiebenSat.1 Media AG (DE) (1)	Private	7	7	7,7
5	The Walt Disney Company (US)	Private	3	2,6	2,9

(1) In April 2013 Discovery Network (US) announced that they have completed the acqusition of the ProSiebenSat 1. Media AG TV assets in Nordic ountries (SBS). In 2012 Discovery had a daily audience market share of 2.2 % in Denmark.

Source: European Audiovisual Observatory

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TV audience market share in Denmark (2008-2012)
In %, 3 years and +

	Daily share					Prime time (18.30 - 23.00)				
Channels	**2008**	**2009**	**2010**	**2011**	**2012**	**2008**	**2009**	**2010**	**2011**	**2012**
DR1	24,6	21,9	19,2	18,8	19,4	30,9	28,3	25,9	25,7	27,1
DR2	4,1	4,5	4,6	4,3	4,2	4,7	5,4	5,5	5,4	4,9
DR Ramasjang				2,1	1,9				1,0	1,0
DR HD				1,4	1,6				1,8	1,8
DR K				1,1	1,4				1,4	1,5
DR Update				0,7	0,8				n.a.	n.a.
TV2 Danmark (1)	31,3	29,3	28,1	27,3	24,0	33,6	31,5	30,4	29,9	26,0
TV2 Charlie (1)	2,4	3,1	3,4	3,8	4,4	2,1	3,1	3,4	3,6	4,2
TV2 News (1)	1,8	2,6	2,8	3,4	3,4	0,7	1,0	1,0	1,3	1,3
TV2 Zulu (1)	2,3	2,5	2,4	2,7	2,5	2,0	2,2	2,1	2,3	2,2
TV2 Film	1,1	1,2	1,1	1,0	0,7	0,8	0,9	0,9	0,9	0,6
TV2 Sport (2)	1,1	1,4	1,3	1,5	_	1,0	1,1	1,2	1,5	_
Danish public channels	**67,6**	**65,1**	**61,6**	**66,6**	**64,3**	**74,8**	**72,4**	**69,2**	**73,3**	**70,6**
6'eren	1,0	1,3	1,3	1,7	1,8	0,7	1,2	1,3	1,5	1,7
TV3 Sport 1 (2)	_	_	_	_	1,6	_	_	_	_	1,7
DK 4	0,5	0,4	0,4	0,4	0,4	0,5	0,4	0,4	0,4	0,3
Infokanaler				0,1	0,1				0,1	0,0
TDC EKSTRA				0,0	0,1				0,0	0,1
Kanal København	n.a.	0,1	0,0	0,0	0,0	n.a.	0,0	0,0	0,0	0,0
Regional TV					0,5					n.a.
Danish private channels	**1,5**	**1,8**	**1,7**	**2,2**	**4,5**	**1,2**	**1,6**	**1,7**	**2,0**	**3,8**
TV3 Danmark	4,9	5,0	5,0	4,5	4,3	4,7	5,0	4,9	4,3	4,2
Kanal 5 Danmark	2,9	2,9	3,4	3,3	3,7	2,9	3,0	3,4	3,2	3,4
TV3+	3,6	3,3	3,4	3,6	3,1	3,4	3,2	3,3	3,4	3,0
Kanal 4	1,8	1,8	2,0	1,8	1,9	1,8	2,0	2,0	2,0	2,2
Disney Channel	2,1	1,9	1,8	1,8	1,8	0,9	0,8	0,9	0,8	0,8
TV3 Puls	n.a.	1,4	1,3	1,4	1,4	n.a.	1,1	0,9	1,1	1,0
Discovery Channel Danmark	1,3	1,3	1,1	1,0	1,0	0,8	0,8	0,9	0,6	0,7
Foreign channels	**19,5**	**23,0**	**22,8**	**24,2**	**25,5**	**16,1**	**20,1**	**18,5**	**18,7**	**18,8**
Others	**11,4**	**10,1**	**13,9**	**7,0**	**5,7**	**7,9**	**5,9**	**10,6**	**6,0**	**6,8**

(1) Since 11/01/2012: TV2, TV2 Charlie, TV2 News and TV2 Zulu are only available on pay TV.
(2) TV2 Sport was rebranded as TV3 Sport 1 following a joint venture between TV2 and the Modern Times Group.

Source: Eurodata TV Worldwide / TNS GALLUP TV-METER

2.4. Dutch speaking Community of Belgium (Belgium NL)

2.4.1. *Brief overview of the television landscape*

The television landscape of the Dutch speaking Community of Belgium (Belgium NL) has a common characteristic with the Danish one: it is a small and successful marketplace.

But contrary to the Danish situation, this success benefits to a greater amount of market players, both public and private.

The position of the public service broadcaster VRT is very strong (usually above 40%), but there are also two large private media groups and several small ones, the whole environment creating a strong emulation between all these players.

There is also a strong competition on the distribution side between the cable operator Telenet (now owned by Liberty Global), the incumbent telecom operator Belgacom and a satellite offer "TV Vlaanderen" commercialized by Airfield Media Group (and which is more successful than the almost insignificant satellite TV package "Télésat" that the same company offers in Belgium FR).

Telenet and Belgacom have also developed their own television services, both linear (football, cinema) and on-demand, and are very successful in developing triple and quadruple play offers.

2.4.2. *Relevant characteristics for Slovenia*

A healthy public service broadcaster, a small group of profitable private broadcasters and - even in a digital and multiplatform environment and with the proximity of a much larger neighboring market (Netherlands, population 16,8 million) - an audience share of foreign channels close to zero (whereas the global audience share of foreign channels in Belgium FR is constantly above 60%, it stays between 3 and 5% in Belgium NL): all these elements can be a source of inspiration for Slovenia.

This is even more relevant since it was absolutely not the case in the past. In the 1990's, Belgium NL had failed to take a successful path in the liberalization of the audiovisual market. The public service broadcaster VRT did not manage to face the loss of its monopoly and when the first private television channel VTM appeared in 1989, its audience shares collapsed to European record lows. Moreover, VTM had been granted a *de facto* monopoly on private television through a *de jure* monopoly on TV advertising (eventually condemned by the European Commission)[14], which led to the "forced" establishment in the United Kingdom of those who wished to compete. And finally, the Dutch channels accessible via the cable network were, as it is still the case now for example in Belgium FR, quite successful.

How did Flanders manage to come back on the right tracks?

First, the monopoly of VTM on advertising was abolished, and its private competitor VT4 (now Vier) went back from London to establish itself in Flanders. This also led to the launch of several channels by newcomers.

But above all, the public service broadcaster was applied a radically new public policy and went through a thorough reorganization. Its statutes were changed from a governmental body ("parastatal") into an independent (although still publicly owned) company in order to keep it at arm's length from the Government, the statute of all the staff was changed from civil servant to employee, the workforce was strongly reduced and the production strategy shifted from dominant internal production to strong external commands to domestic content producers. Many creators and producers therefore left the VRT to set up their own production company to participate in calls for projects, which led to the creation of a thriving TV production industry, alongside the development of a strategy from private broadcaster to also invest in domestic content in order to recover the audience that was attracted by the Dutch channels.

This competition in the sector of independent TV production created a virtuous circle: when they launched calls for tender, the broadcasters were submitted more projects, always more diverse and more original, raising the overall quality, bringing back viewers, and eventually forcing the broadcasters who still relied exclusively in acquiring American programs (like VT4) to also invest in the production of domestic content in order to catch up.

This worked first for entertainment programs (talk shows, games, quizzes...), but also for the TV dramas. At the beginning of the process, the first productions of series were still very traditional and low cost ("Flemish soap"). But the growing success convinced the broadcasters to gradually take risks in favor of more expensive and original projects.

The Government has supported this dynamic by setting up the Flanders Audiovisual Fund (VAF)[15], which inspired the Fund created in 2013 by Belgium FR (see chapter 2.2.2 above), but which is open to all Flemish broadcasters (whereas the Fund in Belgium NL is managed by the public service broadcaster who is the main partner in funding and in co-producing). The Fund receives 12.5 million euros from the Government. It contributed to raise the level of Flemish dramas to a level of excellence and success comparable to the Danish ones. For example, "Salamander" reached almost one third of the Flemish population and enjoyed also an international success: it has been bought by BBC and is broadcasted in prime time in the slot previously occupied by the Danish TV blockbuster "The Bridge" and "The Killing"! And an American remake is announced…

2.4.3. Selected data

See also the first table of in chapter 2.2.3. *supra*.

Main broadcasting groups (2011-2012) by TV audience market share					
Rank	**Name**	**Private/ public**	**Number of TV channels**	**TV daily market share (2011)**	**TV daily market share (2012)**
Flemish Community					
1	VRT	Public	6	41,8%	42%
2	VMM	Private	7	>26.4%	>24.5%
3	Sanoma (FI)	Private	2	10,2%	10,50%
4	Media ad Infinitum	Private	1	4,0%	4,30%
5	NPO (NL)	Public	3	>1.5%	>1.4%

Source: European Audiovisual Observatory

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TV audience market share in the Flemish Community of Belgium (VLG) - (2008-2012)
In %, 4 years +

Channels	**Daily**					**Prime time (18:55-22:30)**				
	2008	**2009**	**2010**	**2011**	**2012**	**2008**	**2009**	**2010**	**2011**	**2012**
Één	31,7	32,1	33,0	33,4	31,6	34,2	35,0	36,0	36,7	35,5
Ketnet/Canvas (1)	8,6	9,1	9,5	8,4	_	7,6	8,2	8,7	8,0	_
Canvas					9,0					8,9
Op 12					1,4					0,6
Flemish public channels	**40,3**	**41,2**	**42,5**	**41,8**	**42,0**	**41,8**	**43,2**	**44,7**	**44,7**	**45,0**
VTM	21,4	20,9	20,4	20,2	18,6	26,9	26,3	25,6	24,9	23,0
VIER (former VT4)	6,5	6,0	6,4	7,0	7,1	7,3	6,6	7,6	7,6	8,3
2BE (ex Kanaal 2)	5,8	5,6	5,1	5,2	5,0	6,4	6,4	5,5	5,9	6,1
Vitaya	3,5	3,8	3,4	4,0	4,3	1,8	1,9	1,6	1,9	2,3
VIJF (former Vijf TV)	4,4	4,3	3,7	3,2	3,4	3,6	3,8	3,0	2,9	3,3
VTMKZoom	_	_	_	1,0	0,9	_	_	_	0,3	0,3
Acht TV					0,5					0,3
Njam!					0,5					0,3
Regional TV	1,4	n.a.	1,2	n.a.	n.a	1,3	n.a.	0,9	n.a.	n.a
Flemish private channels	**43,0**	**40,6**	**40,2**	**40,6**	**40,3**	**47,3**	**45,0**	**44,2**	**43,5**	**43,9**
La Une	n.a.	n.a.	0,3	0,4	n.a.	n.a.	n.a.	0,3	0,3	n.a.
La Deux	n.a.	n.a.	0,2	0,2	n.a.	n.a.	n.a.	0,2	0,1	n.a.
AB3	n.a.	n.a.	n.a.	0,2	n.a.	n.a.	n.a.	n.a.	0,1	n.a.
Channels of the CFB	**n.a.**	**n.a.**	**0,5**	**0,9**	**n.a**	**n.a.**	**n.a.**	**0,5**	**0,6**	**n.a.**
Ned 1	1,8	1,8	1,5	1,5	1,4	n.a.	n.a.	1,5	1,6	1,3
Nickelodeon/MTV (NL)	1,5	1,5	1,1	n.a.	1,2	0,5	0,5	0,4	n.a.	0,5
Discovery Channel (NL)					0,9					0,4
Disney Channel (NL)					0,8					0,4
National Geographic					0,7					0,4
Nick Jr					0,5					0,3
Cartoon Network (NL)					0,2					0,1
Foxlife					0,1					
Ned 2	n.a.	n.a.	0,8	n.a.	n.a.	n.a.	n.a.	0,7	n.a.	n.a.
Ned 3	n.a.	n.a.	0,7	n.a.	n.a.	n.a.	n.a.	0,6	n.a.	n.a.
RTL-TVI	n.a.	n.a.	n.a.	0,3	n.a.	n.a.	n.a.	0,3	0,2	n.a.
France 2	n.a.	n.a.	n.a.	0,3	n.a.	n.a.	n.a.	0,1	0,2	n.a.
France 3	n.a.	n.a.	n.a.	0,2	n.a.	n.a.	n.a.	0,1	0,1	n.a.
TF1	n.a.	n.a.	n.a.	0,2	n.a.	n.a.	n.a.	0,1	0,1	n.a.
Foreign channels	**3,3**	**3,3**	**4,1**	**2,5**	**5,8**	**0,5**	**0,5**	**3,8**	**2,2**	**3,4**
Others	**13,4**	**14,9**	**12,7**	**14,2**	**11,9**	**10,4**	**11,3**	**6,8**	**9,0**	**7,7**

(1) KETNET/CANVAS split into two channels: CANVAS and OP12 (which replaced KETNET) on 01/05/2012.

Source: Eurodata TV Worldwide / CIM - GfK Audimetrie

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2.5. France

2.5.1. Brief overview of the television landscape

To conclude these selected 5 case studies, we believed that it was necessary to leave the issue of the sustainability of an audiovisual policy in a small EU country to address the larger question of any kind of audiovisual policy in a media environment more and more influenced by the EU regulatory framework: in other words, are the solutions to the current challenges a question of size, of cultural isolation, of local or regional constraints, of failures in the development of previous audiovisual policies, of reactive rather than proactive strategies, of capture by interest groups… or can they be found in appropriate answers to universal challenges like rapid technological evolutions, unpredictable changes in consumer behavior and globalization?

To address this issue, the choice of France was unavoidable. As the following comparative analysis in chapter 2.6 will demonstrate, France has by far the most prescriptive regulatory framework among our 5 cases, but also among all the EU. This is due to obvious cultural issues linked to the defense by France, since the 1980’s, of the so-called concept of “cultural exception”, but also to technological issues. The almost exclusive position of terrestrial broadcasting has during decades protected the French media landscape from the potential consequences of the creation of an internal market for audiovisual media services, and its digitization has hardly changed the situation: the terrestrial platform, even if digitized, remains the closest distribution platform, and therefore the most appropriate one for the implementation of a strong audiovisual policy.

This platform also remains the dominant one. According to the European Audiovisual Observatory, even with the roll-out of cable TV and IPTV, DDT reached in 2101 62% of households, which could benefit from 25 French free-to-air channels[16]. The pay TV DDT offer has, since its launch, been suffering, more and more DDT channels are either closing down or asking the regulatory authority (CSA) to move from the free to the pay offer on this platform. In such an environment, even if slowly eroding, the traditionally strong position of public service broadcasting (France 2, France 3, France 4 and France 5) and of the main private channel TF1 has remained uneasy to challenge by the competitors, with the exception of M6 (RTL Group) and of the dominant pay TV player Canal+ (Vivendi).

The traditionally strong powers and influence of the audiovisual regulatory authority has also remained uncontested and even led in the past year to a spectacular reinforcement of its powers[17].

2.5.2. Relevant characteristics for Slovenia

If France remains an unique case in Europe of a market highly influenced by a very prescriptive audiovisual policy allowed by the dominance of a closed platform and a quite high level of acceptance by the market players of their high level of involvement and contribution in a sophisticated system of financing of fiction (both for television and cinema), there are nevertheless growing signs that the challenges faced in most audiovisual landscapes in Europe are indeed challenges that all European countries are going to face, no matter their size, no matter their (real or imagined) level of protection or vulnerability. When a market is globalizing, by definition nobody can escape the trend…

A few recent signs have been the strategic move of TF1, the main French broadcaster, to look for agreements with international players. TF1 concluded a partnership in 2012 with the US broadcaster Discovery Communications, which materialized in the control by Discovery of a majority (51%) of Eurosport International. Another sign is the disruptive entrance of Al Jazeera in the French TV landscape, with the launch of the channel Be In Sport which acquired a large part of the main sports rights until then largely in the hands of the pay TV broadcaster Canal+, threatening the almost monopolistic historical position of this pay TV platform which is also the most generous contributor to the French system of audiovisual production. The most recent sign is the expected launch of Netflix in France in the course of 2014, with a Luxembourg license, leading to the call of the three main broadcasters TF1, M6 and Canal+ to radically lower the level of obligations imposed on them and to take measure against the unfair competition from global companies, in order to reach an as much as possible level-playing field with this dreaded potential competitor, as well as with Google and Apple[18].

In this context, the report of the “Mission Lescure” about cultural policy in the digital age, commissioned by the Ministry of Culture[19] and published in May 2013, was highly expected. This report suggests several reforms of the regulatory framework. It is of course impossible to go through all of them in the framework of this study (the report is 719 pages long…) but we would like to select a few of them which seems worthy of interest:

- Take measures against the “tax heaven” strategy of several EU countries, in line with the decision to shift the collection the VAT from the country of the seller to the country of the buyer;
- Incentivize “virtuous behaviors” by a “give and take” policy: rewarding the service providers which go beyond their legal or contractual content obligations: these virtuous players could be granted a privileged access to public funds (support to or funding of production, support in investments…) and to the consumer (must-carry or prominence on digital platforms, EPG’s, connected devices or application stores…);
- Grant a free must-carry on all platforms to public service media;
- Reducing the length of the release windows for film distribution (“chronologie des médias”) which stifles the emergence of new forms of exploitation of audiovisual works and favors piracy;
- Create a reduce VAT rate for digital cultural goods;
- Create a tax on all connected devices whose result will be assigned to the financing of the creation of cultural goods;
- Modify the tax on distribution of audiovisual services by telecommunications operators in order to tax their overall revenue (and thus take into consideration the revenues created by the existence of OTT offers and connected devices), and also assign it to the financing of the creation of cultural goods.

In its annual report for 2103 published in April 2014[20], the CSA also made several policy and regulatory recommendations, among which:

- Extend the scope of the regulation beyond television, radio and on-demand to "digital audiovisual services" (video platforms, digital stores, application stores…) in order to guarantee pluralism, diversity, protection of minors, protection against hate speech, must-carry or prominence for domestic content;
- Lighten and simplify the regulatory regime for on-demand service providers;
- Extend the powers of "economic regulation" of the CSA (relationship between producers and services providers, relationship between service providers and distributors, spectrum management …).

One last interest for Slovenia of this focus on France is that, even though the combination between a high level of investment in content production and a large market on which theses productions can be monetized represents an opportunity, it is also a country in which lots of different initiatives are mushrooming to facilitate different kinds of productions. In the framework of this study, one initiative deserving attention is the Festival "Series Mania", whose fifth edition has been organized by the "Forum des Images" in April 2014[21]. Such kind of events, like other Festivals of the same size in Europe, are the opportunity to get rid of clichés according to which the current appetite of European viewers for TV series could only be satisfied by non-EU or non-affordable acquisitions or co-productions. Actually, since "incumbent" broadcasters, now facing audience fragmentation and lower advertising revenues, are looking for TV dramas of lower budget, and since newcomers know that they have to enter the race for fiction if they want to conquer a significant part of the audience, there is a new and growing demand on the market for low budget series, and this demand is indeed growingly met by new offers. If, according the French film fund CNC ("Centre national du cinema"), the price of a TV drama is around 900.000 euros, some producers now offer high quality and internationally awarded dramas for prices around ten times lower : 50.000 euros for the French series "Cut" and "In America", 100.000 for the Polish series "Gleboka Woda"[22].

This Festival is also now hosting, with the support of the European MEDIA program, the second European Coproduction Forum, a professional event which presents a selection of 10 projects of TV series to a panel of 100 potential co-producers, distributors, international sales representatives and professionals from Europe's main TV channels[23]. This represents an opportunity on one hand for writers, creators and small producers to find unexpected co-production or distribution schemes and on the other hand for small broadcasters to have access to quality projects but way much more affordable than international blockbusters.

2.5.3. Selected data

Operating revenues of the main audiovisual companies (2010-2012) EUR million						
Main AV companies	**Activities**	**Brands**	**2010**	**2011**	**2012**	**2012/2011**
France Télécom Orange (cons.) [1]	3Play, 3G TV	Orange, OCS, Dailymotion, Deezer	45.503	45.277	43.515	-3,9%
Groupe Bouygues [1]	adtv, thtv, vid, 3Play,…	Bouygues Telecom, TF1	32.317	33.691	34.481	2,3%
p.m. TF1 S.A. (cons.)	adtv, thtv, vid	TF1	2.764	2.646	2.664	0,7%
Groupe Vivendi (cons.) [1]	3Play, thtv, prod, vid, rec	Canal+, SFR, Universal Music	28.878	28.813	28.994	0,6%
France Télévisions (cons.)	sptv	France 2, France 3, France 4, France 5, France Ô	3.256	3.251	3.314	1,9%
Iliad (cons.) [1]	3Play	Freebox / Alice Box	2.062	2.142	3.178	48,4%
Etablissements Darty et fils [1]	3Play	dartybox	2.286	2.169	2.188	0,9%
Métropole Télévision (cons.)	adtv, thtv, vid	M6, W9	1.479	1.438	1.394	-3,0%
Eutelsat S.A. [1]	trans	Eutelsat	1.070	1.159	1.176	1,5%
TDF	trans	TDF	911	911	733	-19,5%
Numéricable [1]	3Play	Numéricable	637	691	727	5,2%

(1) Total operating revenues, including telecommunication and other activities.

Source: European Audiovisual Observatory

Main broadcasting groups (2011-2012) by TV audience market share					
Rank	**Name**	**Private/ public**	**Number of TV channels available in the country**	**TV daily market share (2011)**	**TV daily market share (2012)**
1	France Télévisions	Public	9	29,9%	30,2%
2	Groupe Bouygues	Privé	19	>29.1%	>28.4%
3	RTL Group (LU)	Privé	17	>14.2%	>14.5%
4	Vivendi	Privé	54	>3.9%	>7.2%
5	Groupe Lagardère	Privé	2	2,1%	1,9%

Source: European Audiovisual Observatory

Channels	**Daily share**					**Prime time (19:15 - 22:00)**				
	2008	**2009**	**2010**	**2011**	**2012**	**2008**	**2009**	**2010**	**2011**	**2012**
France 2	17,5	16,7	16,1	14,9	14,9	17,3	17,1	16,5	15,3	15,7
France 3	13,3	11,8	10,7	9,7	9,7	15,3	14,6	13,2	12,8	12,9
France 4	0,9	1,1	1,6	2,0	2,1	n.a.	n.a.	1,4	1,8	1,7
France 5	2,6	3,1	3,2	3,3	3,5	_	_	1,7	2,1	2,4
Arte	1,5	1,7	1,6	1,5	1,8	2,7	2,5	2,2	2,1	2,1
French public channels	**35,8**	**34,4**	**33,2**	**31,4**	**32,0**	**35,3**	**34,2**	**35,0**	**34,1**	**34,8**
TF 1	27,2	26,1	24,5	23,7	22,7	29,7	28,0	27,5	25,4	24,4
M6	11,0	10,8	10,4	10,8	11,2	11,3	11,6	10,8	12,5	13,6
TMC	2,1	2,6	3,3	3,5	3,6	n.a.	n.a.	2,8	2,8	2,7
W9	1,8	2,5	3,0	3,4	3,2	n.a.	2,5	2,9	3,3	3,0
Canal +	3,3	3,1	3,1	3,1	2,9	4,8	4,6	4,7	5	4,7
NRJ12	1,0	1,5	1,9	2,3	2,4	n.a.	n.a.	n.a.	2	1,9
D8 (former Direct 8) [1]	0,7	1,4	2,0	2,3	2,3	n.a.	n.a.	n.a.	1,9	1,8
NT1	1,0	1,4	1,6	1,9	2,1	n.a.	n.a.	n.a.	1,5	1,7
Gulli	1,5	1,8	2,2	2,1	1,9	n.a.	n.a.	1,4	1,5	1,3
BFM TV	0,4	0,7	0,9	1,4	1,8	n.a.	n.a.	n.a.	n.a.	n.a
Virgin 17 / Direct Star [2]	0,5	0,7	1,0	1,2	1,2	n.a.	n.a.	n.a.	n.a.	n.a
i>TELE	_	_	_	0,8	0,8	_	_	_	n.a.	n.a
Main French private channels	**50,5**	**52,6**	**53,9**	**56,5**	**56,1**	**49,2**	**45,8**	**46,7**	**50,1**	**55,1**
Others	**13,7**	**13,0**	**12,9**	**12,1**	**11,9**	**15,5**	**20,0**	**18,3**	**15,8**	**10,1**

Nota: Prior to 2008, market shares based on analogue terrestrial viewing only (France 5 before 19:00, Arte after 19:00).
(1) DIRECT 8 ceased broadcasting on 07/10/2012 and was replaced by D8.
(2) DIRECT STAR ceased broadcasting on 07/10/2012 and was replaced by D17.

Source: Eurodata TV Worldwide / Médiamétrie - Mediamat

2.6. Focus: comparison of the transposition and the implementation of the cultural obligation of the AVMSD

After having determined trends and challenges in these 5 countries and highlighted some best practices which appear to be worthy of interest for Slovenia, the objective of the following chapter will be to draw up comparative analysis focusing on certain specific questions raised by AKOS and linked to the preservation of cultural diversity and the obstacles to the fulfilment of cultural obligations.

For this comparison, we used the data collected for the study commissioned by the European Commission on the implementation of the provisions of the AVMS Directive concerning the promotion of European works in audiovisual media services[24], data that we reselected, reorganized and sometimes reinterpreted to match with the scope of the present study, in order to determine, for each single tool at the disposal of each country if it was (or not) transposed or enforced in a more perspective or detailed way than the AVMSD Directive. These items can be classified in four categories:

- Transposition:
  - for linear services (blue);
  - for non-linear services (light blue);
- enforcement:
  - for linear service (red);
  - for non-linear services (light red).

The 25 selected items are the following:

1. Has the definition of “European works” been detailed, according to recital 32 of the AVMS Directive which allows Member States to *“laying down a more detailed definition as regards media service providers under their jurisdiction, in compliance with Union law and account being taken of the objectives of this Directive”*?
2. Has the definition of *“total qualifying hours”*(i.e. transmission time *“excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping”*) been narrowed by excluding also other categories?
3. Has the *“where practicable and by appropriate means”* clause been rejected?
4. Has the *“majority proportion”* clause been raised to a higher percentage of European works?
5. Does the *“majority proportion”* of European works have to be achieved during peak time?
6. Are there additional measures in terms of type of content to be broadcasted (cultural works, current affairs programmes ...)?
7. Are there additional measures in terms of language?
8. Are there additional measures in terms of original production language?
9. Are there additional measures in terms on regional provisions?
10. Are there obligations to invest in production/acquisition of rights/film funding?

11. Are there additional obligations to invest in independent production (percentage of turnover of revenues, higher percentage than 10%, mandatory investment in specific genres …)?
12. Does the definition of *"producers who are independent of broadcasters"* mentions limitations on ownership of independent producer by a broadcaster?
13. Does the definition of *"producers who are independent of broadcasters"* mentions limitations in the proportion of programmes supplied to the same broadcaster?
14. Does the definition of *"producers who are independent of broadcasters"* mentions provisions about maintaining secondary rights in the hands of the independent producer?
15. Does the definition of *"producers who are independent of broadcasters"* mentions provisions about situations in which independent producer could see their business hindered by a broadcasters' intervention?
16. Is the broadcaster imposed reserving 10% of transmission time to independent production or 10% of programming budget to independent production (or does it have the choice between one of the two options)?
17. Has the obligation that the 10% proportion of independent production *"must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production"* been transposed by adding additional requirements?
18. VOD: Has the "where practicable and by appropriate means" clause been rejected?
19. VOD: Are there obligations to invest in production/acquisition of rights/film funding?
20. VOD: Are there obligations in terms of prominence?
21. VOD: Are there obligations in terms of quotas of European works in catalogues?
22. VOD: Are there additional obligations in terms of promotion of national language or culture?
23. Is there an independent verification or an independent monitoring of the data provided by the broadcasters about articles 16 and 17 of the AVMS Directive?
24. Does the regulator have the power to apply sanctions to broadcasters that do not comply with articles 16 and 17 of the Directive?
25. VOD: Is there an independent verification or an independent monitoring of the data provided by the broadcasters about articles 13 of the AVMS Directive?
26. VOD: Does the regulator have the power to apply sanctions to broadcasters that do not comply with article 13 of the Directive?

	Ireland	Belgium FR	Denmark	Belgium NL	France
1. More detailed definition of *"European works"*	No	No	No	No	Yes
2. Narrower definition of *"qualifying hours"*	No	No	No[25]	No	Yes
3. No use of the *"where practicable"* clause	No	Yes	No	No	Yes
4. Raise of *"majority proportion"* clause	No	No	No	No	Yes[26]
5. *"Majority proportion clause"* to be achieved during peak time	No	No	No	No	Yes[27]
6. Additional measures in terms of content to be broadcasted	No	Yes	No	Yes	Yes
7. Additional measures in terms of language	Yes	No	Yes	Yes	Yes
8. Additional measures in terms of original production language	No	Yes	No	No	Yes
9. Additional measures in terms of regional provisions	No	No	No	Yes	Yes
10. Additional obligations to invest in film funding?	No	Yes	Yes	No	Yes
11. Additions obligations to invest in independent production	No	No	No	No	Yes
12. Independent producers : limitations in terms of ownership	Yes	Yes	No	Yes	Yes
13. Independent producers: limitations in terms of supply	No	Yes	No	No	No[28]
14. Independent producers: limitations in terms of rights	No	No	No	No	Yes
15. Independent producers: limitations in terms of autonomy	Yes	No	No	No	Yes
16. Independent producers: budget/ programming imposed	Yes	Yes	No	Yes	Yes
17. Independent producers: requirements for recent works	No	Yes	No	No	Yes
18. VOD: no use of the *"where practicable clause"*	No	Yes	No	No	Yes
19. VOD: obligations to invest in film funding	No	Yes	No	No	Yes
20. VOD: obligations in terms of prominence	No	Yes	No	No	Yes
21. VOD: obligations in terms of quotas in catalogues	No	No	No	No	Yes
22. VOD: obligations in terms of language/culture	No	No	No	Yes	Yes

23. Enforcement: Verification/monitoring of articles 16 and 17	Yes	Yes	No	Yes	Yes
24. Enforcement: Possible sanctions for violations of articles 16 and 17	Yes	Yes	Yes	Yes	Yes
25. Enforcement - VOD: Verifications/monitoring of article 13	No	Yes	No	Yes	Yes
26. Enforcement - VOD: Possible sanctions for violations of article 13	No	Yes	Yes	Yes	Yes
	Ireland	**Belgium FR**	**Denmark**	**Belgium NL**	**France**
Total of "yes" (i.e. more "prescriptive" measures)	**6/26 (23%)**	**15/26 (57%)**	**4/26 (15%)**	**10/26 (38%)**	**25/26 (96%)**

Source: Study on the implementation of the provisions of the AVMS Directive concerning the promotion of European works in audiovisual media services + additional data collected by Wagner-Hatfield

2.7. Conclusion on potential correlation between the individual case studies and the comparative analysis

The comparison between these 5 cases in terms of transposition and implementation of the cultural obligations of the AVMS Directive (provisions of articles 13, 16 and 17 about broadcasting, producing of promoting European content) brings out 3 kinds of situations:

- Two countries beyond 20% (Ireland and Denmark), adopting a clear light-touch approach;
- Two regions closer to 50% (Belgium FR and Belgium NL) with a few differences, but a common tendency, depending on the issues at stake, to navigate between flexibility and prescription;
- One country approaching 100% (France), adopting a clear willingness to use all the public policy tools at its disposal to regulate the audiovisual industry.

To conclude this chapter, we would like to raise the question of the potential correlation between on one hand the findings of the case studies and on the other hand the comparative analysis on the topic privileged by AKOS. In other words, **does the legal and regulatory framework translates (or answers to) the challenges and the specificities observed?**

This is an ambitious question which raises numerous sub-questions and needs for further evidence, all of which would deserve a much larger study than the one commissioned by AKOS and, above all, a much different deadline than the one set to deliver the current study.

On the basis of the data collected above, our answer to this question would be ***"partially yes but primarily no"***. There is **no obvious link between theses national situations and the transposition and implementation of the AVMSD**, which seem driven more by traditional views on audiovisual policy or historical development of broadcasting than on evidence and on pros and cons of each the different options available. We will illustrate this lack of clear link by the following (and certainly not exhaustive) considerations:

- Ireland is indeed a "very flexible" case, and has indeed adopted a light regulatory approach with the willingness to be attractive in terms of establishment, but has not been successful so far :
  - this role remains mostly played by Luxembourg (where are established the world' leading satellite operator SES, the satellite distribution platform M7, the European leading media group RTL, and in recent years OTT players like i-Tunes and Netflix);
  - the attractiveness for global companies of the digital industry like Google and Facebook is motivated by industrial and economic policy and not by audiovisual or regulatory policy (Apple European headquarters are in Ireland by i-Tunes is registered in Luxembourg);
  - British players did not find this regulatory framework attractive enough to take shelter under its jurisdiction (with the exception of UTV next year, but which already has operations in Ireland in the radio market);

- Ireland is characterized by a strong appetite for the viewers for domestic content, but still foreign broadcasters prefer to target the audience with advertising windows rather than programming windows;
- This strong appetite of Irish viewers for domestic content remains satisfied mainly by the public broadcaster, whose situation is not influenced by the EU regulatory framework;
- Belgium FR is a “rather prescriptive” case and at the opposite, Denmark is the “most flexible” of the 5 case studies; yet they both are the worst cases in terms of private broadcasters under their jurisdiction (respectively 4.9% and 4.5% audience share, see table below); they even both are, and by far, the worst cases all over the EU (see table below);
- Denmark is the “most flexible” case, but is the audiovisual landscape the most dominated by the public broadcaster (63.4% audience share, far ahead of United Kingdom with 49.2%, Belgium NL with 42.0% and Germany with 42.9%, see table below); investment, innovation and creativity are driven by public authorities and not private players;
- If the low scores of Ireland (13.2%) and Belgium FR (4.9%), as well as Austria (8.4%, see table below), in terms of private broadcasters under their jurisdiction can be partly explained by a big neighboring market with the same language (respectively United Kingdom, France and Germany), this is not the case of Denmark;
- Denmark is the most successful model for public service broadcasting and production of TV series, which are both out of the scope of the EU regulatory framework;
- Belgium NL is a “rather flexible” case, but the reasons of a thriving audiovisual landscape, with one of the most successful public broadcasters in Europe (42%), strong domestic private broadcasters (40.3%) and one of the lower audience share of foreign channels <u>even with neighboring Netherlands</u> (5.8%, see table below) are to be found in policies and strategies that are not influenced by the EU regulatory framework;
- Some of the additional measures imposed in some countries, which could contribute to lower the level of flexibility, actually are measures explaining (or at least relating to) to the successes encountered, for example the provisions in Belgium NL in terms of domestic content, culture or language;
- France is the “most prescriptive” case, especially in terms of obligations to invest in audiovisual production, but has nevertheless managed to impose its prescriptive framework to all the players active on its market, even with the continuous development of alternative offers on other platforms than the “easy-to-regulate” DDT platform (satellite, cable TV, IPTV, OTT, …); jurisdiction issues have just started to be raised in recent weeks about the potential launch of Netflix France with a potential license issued by the competent authority in Luxembourg (where Netflix services targeting UK, Ireland, Sweden, Denmark, Finland, Norway and the Netherlands are already established);
- France is the “most prescriptive” case in terms of obligations to broadcast domestic content and the only one to impose additional quotas during prime time, but is one of the less efficient in terms or popularity of dominant TV genres like fiction : a comparative study of the top 10 audiences for fiction in 5 countries in 2012 revealed that: the top 10 audiences were all domestic fictions in the United Kingdom,

Germany, Spain, Italy and the United States, but that in France there were only 4 out of 10[29].

On the other hand, it could be considered that:

- a rather prescriptive regulatory framework did not favor the uninterrupted establishment of the Belgian division of RTL Group in Belgium FR and does not contribute to the development of domestic private broadcasting (even though mainly tax issues and group strategy are at stake);
- a rather flexible regulatory framework can be an element which contributes to the health of the media landscape in Belgium NL (even though is not flexible in some other aspects which are out of the scope of this study, for example in consumer protection);
- a more prescriptive regulatory framework could compromise the relatively high share of domestic private broadcasting in Ireland compared to countries in the same situation.

Finally, and probably more significantly, there is also **no obvious link between the selection of the measures that are transposed in a stricter way, added to the legal framework or enforced without flexibility and their successful impact on the audiovisual landscape**.

TV daily audience share in the 28 EU Countries

(in %, 4 years+)

Country	Domestic public channels	Domestic private channels	Main foreign channels
Austria	36.9	8.4	43.8
Belgium FR	20.9	4.9	62.7
Belgium NL	42.0	40.3	5.8
Bulgaria	8.5	73.0	7.7
Croatia	29.3	52.5	no data
Cyprus	17.4	54.7	1.7
Czech Republic	29.3	60.6	1.2
Denmark	63.4	4.5	25.5
Estonia	19.0	32.5	26.0
Finland	42.0	48.3	0.7
France	32.0	56.1	no data
Germany	42.9	53.7	no data
Greece	14.9	70.0	1.3
Hungary	14.0	52.5	18.9
Ireland	31.7	13.2	23.3
Italy	39.9	32.5	1.2
Latvia	13.3	43.8	19.4
Lithuania	10.6	49.7	10.9
Luxembourg	no PSB	no data	no data
Malta	36.0	23.2	40.5
Netherlands	36.2	17.8	35.6
Poland	34.2	50.5	12.9
Portugal	18.8	52.5	16.3
Romania	6.2	68.0	12.2
Slovakia	11.7	58.7	no data
Slovenia	27.7	42.6	23.1
Spain	28.6[30]	62.7	4.1
Sweden	36.5	31.4	31.6
United Kingdom	49.2[31]	39.8	no data

Source: European Audiovisual Observatory, 2013 Yearbook.

3. Options for future steps in audiovisual policy

Considering that it was not in the scope of this study to analyze its findings in light of the Slovenian regulatory framework, we will not draw firm conclusions or recommendations to AKOS.

However, we believe that it is appropriate to conclude this study by listing a series of options which should help Slovenian policy makers in general and AKOS in particular to positioning its cultural policies in electronic media in the European context and, more importantly, to assess the need and the opportunities for change and improvements.

These options will deal with European policy, national cultural policy and national regulatory policy. Depending on the mandate and powers of AKOS, some policy options could also considered as regulatory options, and *vice-versa*.

3.1. European policy

1. As shown by the comparative study, national policies and national markets are highly influenced by the EU regulatory framework. Unless admitting fate (which does not make a policy) there is therefore an opportunity to position Slovenia on the ongoing debate about the review of the EU regulatory framework. Some steps have already been taken, and it is unfortunate that (unless the contributions were confidential) Slovenia's voice has not been heard in the recent public consultations launched by the European Commission about the Green paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Value"[32], about the independence of the audiovisual regulatory bodies[33] and about the report of the High Level Group on media freedom and pluralism[34]. But it is not too late: these consultations were meant mainly to collect evidence, and the review process of the AVMSD Directive is planned for 2015, with a new Commission and new Parliament and thus potential new priorities and orientations.
   Several of the questions which are at the heart of this process are relevant for Slovenia: the obstacles for audiovisual service providers to have access to new digital platforms; the issue of creation, distribution, availability and findability of European works; the issue of the contribution of new market players to the financing of creation; the greater efficiency in spectrum management; the sustainability of advertising regulation in a converged environment; the sustainability of the country-of-origin principle in a globalized environment and in an environment in which regulatory paradises are tolerated within the EU; the need for more (or less?) harmonization; and even the (indeed provocative but not so unlikely) question of the real need for a EU policy in the audiovisual industry.

2. In the same spirit, it might also be appropriate to position Slovenia on the debate about cultural exception. The European Commission is currently negotiating the transatlantic trade and investment partnership (TTIP), with a mandate of the European Parliament[35]. 16 Members States expressed concerns about the influence of these negotiations on EU

audiovisual policy[36] and request several safeguard in terms of cultural policy. Some of the concerns are probably shared by several stakeholders in Slovenia.
And, in all cases, the attitude in this debate will highly influence the options in national and regulatory mentioned hereinafter.

3.2. National policy

3. This rapid journey across 5 audiovisual policies has shown how important it is to acknowledge the increasing role that the creative economy plays in the economic development. As demonstrated by a recent UNESCO report, *"a much greater proportion of the world's intellectual and creative resources is now invested in culture-based industries, whose largely intangible outputs are as 'real' and considerable as those of other industries. Human creativity and innovation, both at the individual and group level, are the key drivers of these industries, and have become the true wealth of nations in the 21st century"*[37].
   Creative industries, while representing between 5 and 8% of the economic activity and of employment in developed countries, are under may much less scrutiny from policy makers than other sectors considered wrongly as more strategic or generating more growth. The creative economy was way much more resilient to the economic crisis that certain other sectors. In some countries, it even continued to grow since 2008. And international trade of cultural goods and services grows faster than the overall international trade.

4. Similarly, it is also important to acknowledge the fact that this is even more important for small countries and markets. As stressed by Terry Flew, professor of media and communications at the Queensland University of Technology, *"one factor that makes creative economy strategies particularly appealing is that they can draw on human capacities and small-scale initiatives, rather than being reliant on large-scale capital investment, drawing on the stock of intangible cultural capital associated with people's identity and values. By drawing on local cultural practices rather than needing to bring in expertise from the outside, creative industries strategies can maintain cultural diversity and promote cultural sustainability. Moreover, the rapidly falling cost of production and distribution associated with the global dissemination of networked digital media technologies further enhances such possibilities by opening up new markets for such cultural products and practices"*[38].
   Practically, this encompasses attention to issues like investment in education, provision of high speed internet broadband, support to development of small businesses, establishment of and support to creative clusters, … in what can be summarizes as a *"whole-of-government"* approach to cultural policy which recognizes its links with education, trade and industry rather than a sectorial or isolated (if not marginal) one.

5. Considering a media environment in which :
    - o the European regulatory framework provides the opportunity to establish (including virtually) anywhere in the internal market in order to benefit from the free circulation of services;
    - o the technological evolution - mainly digitization of the networks and the multiplication of the platforms - provides abundant ways to deliver content;
    - o the globalization of the audiovisual industry provides access to channels and content from all over the world with less regulation (and sometimes no regulation at all) than traditional broadcasting;

   a shift in the priorities in audiovisual policy from traditional supply side regulatory tools (granting access to market via the deliverance of licenses, controlling concentration via ownership regulations, imposing quotas of European and/or domestic works in schedules or in catalogues…) to demand side regulatory tools (must carry and must offer of public service channels, prominence of domestic content producers and services providers on all platforms and devices, obligations based on value rather than on volume of content, investments driven towards enhancing value rather volume of content, measures to promote and incentivize domestic content…) could be further explored.

   This shift in the priorities in policy tools will be become increasingly important as consumer behavior moves from linear to non-linear services: as it is stressed in a recent publication of the European Audiovisual Observatory, *"Indeed, while the link between programming and consumption is clear for linear services, it certainly is not for non-linear services: an AVMS provider could easily ensure that 20-30% of the works in its catalogue were European, but fail to promote them at all and consign them to menus or sub-menus that TV viewers would never find without embarking on a perilous journey through their electronic programme guide"*[39].

6. Similarly, a shift from a traditionally principle-based audiovisual policy to an outcome-based one could be considered, marking the evolution from a regulation based on obligations (and eventually sanctions of breaches) to a regulation based on results (and eventually rewards of achievements). This new kind of "regulation by incentives" has been suggested even in the most prescriptive legal and regulatory frameworks, as shown by the French case study.

7. In line with what has been stressed in all case studies, public service broadcasters in play a key role in producing domestic content and a pivotal role in the balance within the whole industry. This is confirmed by studies at the European level: according to an analysis conducted by Oliver & Ohlbaum[40], in 2010, public broadcasters invested heavily in-house production (average of 63%) and in commissioning program to independent producers (average 28%); on the contrary, private broadcasters allocated way much less resources to in-house production (24%) and to commissioning programs (32%), giving the priority to the acquisition of programmes (44%).
   Considering the fact that commissioned programs are overwhelmingly produced by domestic producers (93% according to the same study), while the source of

acquisitions is dominantly non domestic (69% from the US and 14% from the EU, 10% from other countries and only 7% to domestic producers)[41], the remit of the public broadcaster could be subject to a thorough review in order to assess to which extent a greater effort can made in terms of in-house production, commissioning programmes to domestic producers or investing in co-productions (including regional ones).

8. Considering the growing impact of these players on the audiovisual chain in general and on distribution and consumption of audiovisual works in particular, the regulatory framework could address the issue of the role of aggregators/distributors. The European and most of the national regulatory frameworks are built on a directive about content providers and a directive about the networks used to carry this content, leaving in the middle a policy and regulatory vacuum, i.e. the new role of the players that distribute the content through the networks, have a direct access to consumers, can play a role of gatekeeper between service providers and consumers, thus influencing pluralism and diversity, and having disruptive effects on the value chain. In 3 of our 5 case studies (Belgium FR, Belgium NL and France), this issue has already been addressed in the regulatory framework by creating the function of "distributor".
   Germany also introduced in its regulatory framework the concept of "platform provider" in 2012, defining it as *"a provider that allocates broadcasting services and comparable telemedia including contents by third parties on digital transmission capacities or digital data streams for the purpose of making these content available as an overall provision or that decides on the selection of the bundling"*.
   Finally, the European Parliament also addressed this issue in its resolution of 4 July 2013 on connected TV and called *"on the Commission to evaluate the extent to which it is necessary to revise the Audiovisual Media Services Directive and other current requirements laid down in network and media regulations (e.g. the telecommunications package) with respect to the rules on findability and non-discriminatory access to platforms, for content providers and content developers as well as for users, expanding the concept of platforms, and to adapt the existing instruments to new constellations"*[42].

9. Considering the commercial potential of TV series and their way much easier European and even worldwide circulation than other European works (cf. the Danish and Belgium NL - and potentially the Belgium FR - case studies), prioritize or reassign funding schemes on television production rather than on film production.

10. Encourage cooperation between South East Europe public service broadcasters.

11. Incentivize co-production between South East Europe countries.

3.3. Regulatory policy

12. As most of the case studies have shown, audiovisual policies tend to be delicate if not fragile and tend to need permanent fine-tuning. They also can be easily disrupted by attitudes of market players (cf. Belgium FR today, cf. potentially VOD French market tomorrow), by non-domestic constraints (cf. all the cases studies), by legal and technological developments which are out of their reach (cf. all the cases studies). But they can also become successful on the basis of very specific strategies (cf. Denmark and Belgium NL). Against such a backdrop, adapting an evidence-based approach to regulation by collecting all the relevant scientific, economic, financial and performance (or failure) evidence and expertise during all decision-making processes and by impact assessments on existing policies, could become a priority in terms of governance of the NRA. From a practical point of view, this approach could materialize in the following regulatory initiatives.

13. The case studies and the comparative analysis did not reveal an obvious link between the selection of the measures that are transposed in a stricter way, added to the legal framework or enforced without flexibility and their effective success. This why it could be appropriate to undertake a specific study on the advantages and disadvantages, considering the specific characteristics of the Slovenian audiovisual landscape, of transposing and implementing the different provisions of AVMSD Directive. Especially since article 4(1) of the AVMS Directive provides for leeway on the “prescriptive” *(“Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive provided that such rules are in compliance with Union law”*) while article 288 of the Treaty on European Union provides for leeway on the “flexible” side *("A directive shall be binding as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and method"*).

14. Such a study could also address the larger issue of the relevance of the whole national regulatory framework, by going back to the motivations of all the provisions of the regulatory framework (production quotas, broadcasting quotas, must-carry, prominence, pluralism, protection of consumers, …), assess their efficiency so far and estimate their appropriateness in today’s environment.

15. Conduct a review on the financing models of public service broadcasting in a digital, multi-platforms, multi-devices, converged and global media environment, possibly in partnership with other South East Europe regulators.

16. Balance any additional support given to public broadcaster in its role to support domestic content producers by safeguarding a level playing field between public service media and private broadcasters. This could be achieved by giving the NRA the mission (and powers) to monitor/assess the fact that this support does not restrict the ability of private competitors to also serve such goals and to develop new services. An example could by the realization of an economic review of the audiovisual market (and eventually the related markets : advertising, film production, copyright, …) on a regular basis, possibly in cooperation with other public bodies

(Ministry of Culture, Ministry of Economic Development and Technology, Competition Authority, Film Center, …).

17. Considering the continued importance of advertising revenues in allowing potential new service providers to emerge and in feeding the “virtuous circle” allowing broadcasters to invest in acquiring and producing new content by monetizing their audience on the advertising market, gathering economic knowledge and evidence on the trends in the advertising market, particularly :
    - on the advantages/disadvantages of giving/restricting/forbidding access to the advertising market to public service media;
    - on the potential advantages of liberalizing the restrictions in terms of commercial communications (time, insertion, …);
    - on the current shifts between sectors (TV, radio, cinema, newspapers, magazines, outdoor, online) which can be source of missed opportunities in developing new revenue streams from traditional broadcast advertising or from advertising on VOD platforms and services;

possibly in cooperation with broadcasters themselves and with other bodies (Slovenia advertising chamber, other stakeholders…).

18. Investigate all the opportunities to finance all these studies at a lower cost by developing partnerships and initiatives like:
    - Awarding a yearly prize for the best dissertation on media regulation;
    - Granting mandates for research fellows on selected topics;
    - Developing partnerships with Universities (making internships available, organizing joint conferences or lectures, suggesting topics of dissertations …);
    - Developing partnerships between South East Europe NRA’s, on the SEE Digi.TV model.

19. Considering the need for coherence in public policy, rethink the respective roles, the interactions, the mandates and powers of all the public institutions involved in elaborating, implementing and enforcing media policy (Ministry of Culture, AKOS, Broadcasting Council, Film Center…).

At a glance:

EU POLICY: Position Slovenia in the review process of the AVMS Directive

NATIONAL POLICY: Acknowledge the role of creative economy in economic development

NATIONAL POLICY: shift from a supply-side to a demand-side regulation

NATIONAL POLICY: develop a regulation by incentives

NATIONAL POLICY: review the remit of PSB

NATIONAL POLICY: address the new role of the distributors in the value chain

NATIONAL POLICY: reassign funding schemes

NATIONAL POLICY: encourage SEE cooperation between PSB and SEE co-productions

REGULATORY POLICY: adopt an evidence-based approach

REGULATORY POLICY: review thoroughly the legal framework

REGULATORY POLICY: review the financing models of PSB

REGULATORY POLICY: guarantee the balance between public and private broadcasters

REGULATORY POLICY: develop an economic knowledge of the advertising market

REGULATORY POLICY: develop research partnerships with academia and stakeholders

REGULATORY POLICY: rethink the role of all the public bodies involved in media policy

[1] Source: European Audiovisual Observatory. http://www.obs.coe.int/documents/205595/1540191/JTalavera+-+The+European+Market+of+VoD+Services/91b6fc6a-a1b0-431c-ab9d-c644a6a6ed74

[2] http://www.rte.ie/news/2014/0227/507064-utv/

[3] Athena Media, *Irish Broadcasting Landscape, economic and environmental review for the BAI*, August 2010, p. 18.

[4] For more details on this fund, see : http://www.bai.ie/wordpress/wp-content/uploads/Broadcasting-Funding-Scheme-scheme-doc.pdf

[5] http://www.csa.be/documents/546. An English version of this decision is available on request.

[6] http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=517/09&td=ALL

[7] http://www.rtbf.be/tv/thematique/fictionetserie/detail_quatre-series-belges-en-developpement-pour-la-rtbf?id=8229912

[8] Ib Bondebjerg & Eva Novrup Redvall, *A small region in a global world, Patterns in Scandinavian Film and TV Culture*, 2011, p. 98. Available at: http://filmthinktank.org/fileadmin/thinktank_downloads/Patterns_in_Scandinavian_Film_and_TV_Culture.pdf

[9] http://www.lemonde.fr/actualite-medias/article/2012/11/16/series-tv-le-modele-danois_1791180_3236.html and http://www.presseurop.eu/en/content/article/3097951-danish-model-small-screen-success

[10] http://www.nordiskfilmogtvfond.com/files/5013/4196/0268/drs_nadia_klvedal_reich_and_piv_bernth_-_11.05.12.pdf

[11] http://samsnet.dk/wp-content/uploads/2013/04/Ingolf-Gabold-10-dogmer.pdf

[12] http://www.nordiskfilmogtvfond.com/files/5013/4196/0268/drs_nadia_klvedal_reich_and_piv_bernth_-_11.05.12.pdf

[13] http://en.nordvision.org/index.php?id=538

[14] http://europa.eu/rapid/press-release_IP-97-569_en.htm?locale=en

[15] http://www.vaf.be/taal/en/

[16] European Audiovisual Observatory, 2013 Yearbook, p. 119.

[17] http://www.lexpress.fr/actualite/medias/olivier-schrameck-sacre-champion-du-paf_1502956.html

[18] http://www.rapidtvnews.com/index.php/2014021732349/tf1-canal-m6-concerned-about-competition-from-netflix-google.html

[19] http://www.culturecommunication.gouv.fr/var/culture/storage/culture_mag/rapport_lescure/index.htm

[20] http://www.csa.fr/Espace-Presse/Communiques-de-presse/Le-Conseil-superieur-de-l-audiovisuel-publie-son-rapport-annuel-2013

[21] http://series-mania.fr/en/

[22] http://www.ladyteruki.com/2014/04/24/new-high-for-low-budget/

[23] http://series-mania.fr/en/espace-professionel/european-coproduction-forum/

[24] http://ec.europa.eu/avpolicy/docs/library/studies/art_13/final_report_20111214.pdf

[25] Denmark has even a broader definition (advertising and teleshopping are included).

[26] 60%.

[27] 14.00-18.00 on Wednesdays and 20.30-22.30 every day.

[28] Such a provision was abandoned in 2008.

[29] http://www.csa.fr/Etudes-et-publications/Les-etudes/Les-etudes-du-CSA/Les-audiences-de-la-fiction-dans-les-grands-pays-europeens-et-aux-Etats-Unis-en-2012

[30] Aggregating national (18.9) and regional (9.6) public channels.

[31] Aggregating BBC (37.3) and Channel 4 (11.5).

[32] http://ec.europa.eu/digital-agenda/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values

[33] https://ec.europa.eu/digital-agenda/en/news/public-consultation-independence-audiovisual-regulatory-bodies-read-contributions

[34] https://ec.europa.eu/digital-agenda/en/news/public-consultation-independent-report-hlg-media-freedom-and-pluralism-%E2%80%93-read-contributions

[35] http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0227&language=EN&ring=B7-2013-0187

[36] http://www.coalitionsuisse.ch/doss/conv2005/fta/ttip/lettre_signee_2013-05-13.pdf Austria, Belgium, Bulgaria, Cyprus, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Slovakia, Slovenia and Spain signed the letter, and they were followed by Croatia and Luxembourg.
[37] UNESCO, *Creative economy report, 2013 special edition, Widening local development pathways*, p. 15. Available at : http://www.unesco.org/new/en/culture/themes/creativity/creative-economy-report-2013-special-edition/
[38] For more details, see: Terry Flew, *The Creative industries: Culture and Policies*, Sage, 2012 and Terry Flew, *Global creative industries*, Polity, 2013.
[39] Jean-François Furnémont, *New Issues and Challenges for Audiovisual Policy-makers, Films Institutions and Audiovisual Regulators: the Example of the French Community of Belgium*, in Iris special "Video on Demand and the Promotion of European works", European Audiovisual Observatory, 2014, p. 38.
[40] http://ec.europa.eu/avpolicy/docs/library/studies/art_13/final_report_20111214.pdf
[41] For more details, see: http://ec.europa.eu/avpolicy/docs/library/studies/art_13/final_report_20111214.pdf, tables pages 105 and 107.
[42] http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0329&language=EN&ring=A7-2013-0212