[DK] Danish Act on Cultural Contribution now enacted after second round and some adjustments following the EU Commission's comments

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On 19 December 2023 the Danish Parliament passed a bill on the contribution of certain media service providers to the promotion of Danish culture (the Act on Cultural Contribution). However, due to a procedural irregularity, the EU Commission had not been notified of the legislation in time; the bill did not therefore receive royal assent, and the legislative process had to be repeated.

Consequently, a bill for the Act on Cultural Contribution was sent for a second round of public hearings with a deadline of 1 March 2024; it was presented in parliament on 12 April, then presented to the EU Commission who gave their comments on 2 May. It was adjusted to comply with these comments, presented again in parliament, and finally approved by parliament on 30 May.

The purpose of the act is to introduce an obligation for VOD service providers to pay a cultural contribution to promote Danish culture.

According to the act, providers of on-demand audiovisual media services must make an annual payment to the Danish state of 2% of their turnover in Denmark stemming from the on-demand service and an additional 3% if the provider's investment in new Danish content is below 5%.

An investment is regarded to be in Danish content when 75% of the production material for films, series and documentaries produced in Europe is in Danish – and more than 50% of the production budget is spent in Denmark or more than 50% of the production recordings take place physically in Denmark. The EU Commission found these last territorial demands problematic in relation to the free exchange of services in the internal market. Therefore, the territorial demands were removed from the bill in May before its enactment.

Thus, the demands as to where the production budget should be spent and where the production should take place were left out.

The EU Commission also criticised the demand for 75% Danish production material and the demand that investment should be in "new" content, but this was not changed in the bill. According to the Danish Ministry of Culture's evaluation, the cultural contribution is not illegal state aid under TFEU Article

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107(1).

Thus, the EU Commission has not formally accepted the Danish Act on Cultural Contribution in its present form – which the Danish Minister for Culture referred to as an inherent risk in his letter to the parliamentary Culture Committee before enactment – but, as mentioned, the Act on Cultural Contribution was nevertheless passed by parliament on 30 May.

In the answers to the hearing and in the media, many expressed the opinion that it is not appropriate – and constitutes retrospective legislation – that payment of the cultural contribution has to be made for the turnover for the whole of 2024, i.e. dating back to 1 January 2024, when the act does not enter into force until 1 July 2024. However, this was not changed, as the Danish Ministry of Culture found that the media service providers concerned had had sufficient time and opportunity to adapt to the new rules, both via the legislative process in 2023 and the ministry's communication regarding the second round of the legislative process in preparation for enactment in 2024.

The net proceeds of the contributions are expected to be divided so that 20% goes to support public-service purposes (documentaries and series) and 80% is used for film-funding purposes (feature productions and series), to be decided finally when the proceeds are known. Media service providers that pay the contribution may subsequently apply for funding for the production of new Danish audiovisual content from these national aid schemes.

The Danish Ministry of Culture assessed, conservatively – before the territorial demands had been left out as described above – that the total cultural contribution would amount to about DKK 98 million (EUR 13 million) annually. It is not known what impact these amendments will have on the cultural contribution yield.

Lov om visse medietjenesterudbyderes bidrag til fremme af dansk kultur (kulturbidragsloven)] as passed by the Parliament on 19 December 2023

https://www.ft.dk/ripdf/samling/20231/lovforslag/l70/20231_l70_som_vedtaget.pdf

Act on Certain Media Service Providers' Contribution to Promote Danish Culture (the Act on Cultural Contribution) as passed by the Parliament on 19 December 2023

Høring over ændrede dele af lovforslag, med deadline 1. marts 2024

https://hoeringsportalen.dk/Hearing/Details/68375

Public consultation on adjusted parts of the Act, with deadline 1 March 2024

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Lovforslag til Kulturbidragslov, som fremlagt i Folketinget den 12. april 2024 (med lovbemærkninger)

https://www.ft.dk/ripdf/samling/20231/lovforslag/l159/20231_l159_som_fremsat.pdf

Bill for Act on Cultural Contribution, as introduced in parliament on 12 April 2024 (with explanatory notes)

EU Kommissionens bemærkninger af 2. maj 2024

https://www.ft.dk/samling/20231/lovforslag/L159/spm/4/svar/2050451/2870353.pdf

2 May 2024 comments from the European Commission

Brev af 25. maj 2024 fra Kulturministeren til Folketingets Kulturudvalg om EU Kommissionens bemærkninger, og statsstøtte

https://www.ft.dk/samling/20231/lovforslag/L159/bilag/11/2873425.pdf

Letter from the Danish Minister for Culture to the Parliament Culture Committee about the EU Commission's comments, and state aid, 25 May 2024

Ændret lovforslag til Kulturbidragslov, efter afstemning i Folketinget ved 2. behandling den 28. maj 2024

https://www.ft.dk/ripdf/samling/20231/lovforslag/l159/20231_l159_efter_2behandling.pdf

Revised bill for Act on Cultural Contribution, after Parliamentary treatment 28 May 2024

Kulturbidragslov som vedtaget af Folketinget ved 3. behandling den 30. maj 2024

https://www.ft.dk/ripdf/samling/20231/lovforslag/l159/20231_l159_som_vedtaget.pdf

Act on Cultural Contribution, as enacted 30 May 2024

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