[BE] Netflix's challenge to the new system of contributions to audiovisual production in French-speaking Belgium: partial rejection of pleas by the Constitutional Court and reference to the CJEU for a preliminary ruling

IRIS 2026-4:1/15

Olivier Hermanns
European Audiovisual Observatory

On 26 March 2026, the Belgian Constitutional Court handed down ruling no. 36/2026 on the action for annulment brought by the Dutch company Netflix International BV (Netflix) against the new system of contributions to audiovisual production in French-speaking Belgium. This contribution is made either in the form of investment in co-production, pre-purchasing of audiovisual works or commissioning of programmes, or in the form of a payment to the Film and Audiovisual Centre of the French-speaking Community of Belgium (*Centre du Cinéma et de l'Audiovisuel de la Communauté française de Belgique* – CCA).

This new system was introduced by a decree of the French-speaking Community of 7 December 2023 "amending the decree of 4 February 2021 on audiovisual media services and video-sharing services". As permitted by Article 13(2) of Directive 2010/13/EU (AVMS Directive), it also applies to providers of non-linear television services who are established on the territory of an EU member state other than Belgium. The new system came into force on 1 January 2024, although there is a transitional period with several intermediate stages until the definitive rates come into force on 1 January 2027.

The rates themselves are progressive, increasing as turnover grows. At the end of the transitional period, the maximum rate applicable may reach 9.5% of a service provider's turnover, if that turnover is equal to or greater than €150 million. Prior to the 2023 reform, the maximum rate was 2.2% of turnover. For providers of "external television services" such as Netflix, turnover only takes into account "revenues from the French-speaking Community marketplace".

In general terms, Netflix challenged the constitutionality of the new audiovisual contribution regime and asked the Constitutional Court to refer various questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling. The Constitutional Court rejected most of these requests on the grounds that the interpretation of the provisions of EU law left no room for reasonable doubt on these points. It referred to various CJEU judgments, including the *Unión de Televisiones Comerciales Asociadas* (UTECA) judgment of 5 March 2009 (C-

© European Audiovisual Observatory (Council of Europe) 2026

222/07, ECLI:EU:C:2009:124). Having already rejected a number of the applicant's arguments, the Constitutional Court decided to refer five questions to the CJEU for a preliminary ruling, before ruling on the merits of the case.

The first two questions concern the way in which the acquisition of broadcasting rights for European works that have already been produced should be taken into account as a direct investment. The third question relates to the fact that the division between investment in European works (65%) and investment in French-speaking Belgian audiovisual works (35%) is not applied when the provider chooses to make an audiovisual contribution in the form of a financial payment to a public body such as the CCA. The fourth question concerns the fact that the targeted member state does not take into account the financial contribution to which an on-demand media service provider targeting audiences on its territory would be subject in another member state. This is an interesting point because Article 13(3) of the AVMS Directive obliges the member state of establishment, if it imposes an audiovisual contribution, to take account of any financial contributions imposed by the member states targeted by the services. The CJEU is therefore asked whether, conversely and in order to avoid the risk of double taxation for audiovisual media service providers, the targeted member state must also take account of the financial contributions imposed by other member states on those providers. Finally, the fifth question seeks to ascertain whether, if the Constitutional Court were to annul one of the contested provisions of the decree of the French-speaking Community, EU law would preclude the effects of that provision from being maintained, either definitively or provisionally.

On the other hand, the Constitutional Court considered that the interpretation of the provisions of EU law left no room for reasonable doubt and that, consequently, the plea was unfounded:

- as to the compatibility of aspects of the investment and financing obligation with Article 3(1) and (2) of Directive 2000/31/EC (e-Commerce Directive). The Constitutional Court rejected this request, particularly in light of CJEU ruling C-366/24 of 18 December 2025;

- as to the interpretation of the concept of "European works" referred to in Article 13(2) of the AVMS Directive;

- as to the proportionate and non-discriminatory nature of the Belgian legislation at issue. If the service provider chose to contribute in the form of investments, at least 35% of the minimum contribution must be invested in the co-production or pre-purchase of audiovisual works of French-speaking Belgian origin. The Constitutional Court noted that, in this scenario, the final rate of such investment amounted to 3.3%, a rate that "cannot be considered disproportionate to the legislative body's objective of promoting cultural and linguistic diversity". The Court calculated that "the rate of investment in European works within the

© European Audiovisual Observatory (Council of Europe) 2026

meaning of Article 13(2) of Directive 2010/13/EU thus amounts to 6.2%, which cannot be regarded as disproportionate either"; and

- as to the nature of the audiovisual contribution obligation, which did not constitute state aid.

Cour constitutionnelle, arrêt n° 36/2026 du 26 mars 2026

https://fr.const-court.be/public/f/2026/2026-036f.pdf

Constitutional Court, ruling no. 36/2026 of 26 March 2026

https://fr.const-court.be/public/f/2026/2026-036f.pdf

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026