

[IT] New Culture Decree results in new content and investment quotas for AVMS providers

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A variety of amendments have been introduced by Law Decree No. 59/2019, the so-called Culture Decree, which later became Law No. 81/2019 in the legal framework governing audiovisual media services in Italy (the so-called TUSMAR, that is, Legislative Decree No. 177/2005). The new legislation will come into force on 1 January 2020. The main quota provisions are summarised below; different quota obligations apply to the public service broadcaster.

Content quotas for broadcasters:

The content quota for broadcasters would be calculated on an annual basis and would amount to a minimum of 50.01% for European works for all years; The Culture Decree also provides for a sub-quota of one-third for works of Italian original expression produced anywhere (this amount would be temporarily reduced to one fifth in 2020).

Investment quotas for broadcasters:

The quota requirements for European works made by independent producers amount to: In 2020: 11.5% of annual net revenues; From 2021 onwards: 12.5% of annual net revenues.

A 50% sub-quota of the main European quota above (for example, as of 2021, 6.25% of the annual net revenues) applies for works of Italian original expression produced anywhere by independent producers within the last five years; An additional sub-quota for cinematographic films of Italian original expression produced anywhere by independent producers would be imposed as follows: Before 2020: 3.2% of annual net revenues; As of 2020: 3.5% of annual net revenues (75% for works of Italian original expression produced anywhere by independent producers within the last five years).

Content quotas for on-demand service providers:

The quota requirements would be different for subscription video-on-demand service providers (SVOD) and transactional video-on-demand service providers (TVOD): from January 2020, the SVOD quota would amount to 30% of the catalogue for European works produced within the last five years. When it comes to TVOD, the quota for EU works (30% of the catalogue) is calculated on the titles

available in the catalogue, and the requirement for European works to have been produced within the last five years shall not apply. From January 2020, the Culture Decree provides for an additional 50% sub-quota of the main European quota (that is, 15% of the catalogue) for works of Italian original expression produced anywhere by independent producers within the last five years.

Investment quotas for on-demand service providers:

As of January 2020, investment obligations shall be binding on providers having the editorial responsibility for offers targeting Italian consumers, even if based abroad; As of January 2020: (i) up until the adoption of the relevant implementing regulation by the Italian Communications Authority (AGCOM): 15% of the annual net revenues gathered in Italy for European works produced by independent producers; and (ii) as of the implementation of the new AGCOM regulation: 12.5% of the annual net revenues gathered in Italy for European works produced by independent producers; The 12.5% investment obligation may be subject to increase if the following conditions occur: The lack of an operational office on the Italian territory and the recruitment of less than 20 employees, to be assessed within 12 months as of the entry into force of the relevant AGCOM regulation, would trigger an additional penalty of up to 3 percentage points; The absence of a quota of secondary rights for independent producers proportional to the financial contribution of each producer in the work in which investments are made, or the implementation of contractual schemes resulting in independent producers being vested in a merely executorial role would result in an additional penalty of up to 4.5 percentage points. A 50% sub-quota of the main European quota shall be reserved for works of Italian original expression produced anywhere by independent producers within the last five years (that is, the sub-quota ranges between 6.25% and 10% of the net revenues made in Italy); 10% of the sub-quota above shall be reserved for cinematographic works of Italian original expression produced anywhere by independent producers, 75% of which for works produced within the last five years.

Legge 8 agosto 2019, n. 81 - Conversione in legge, con modificazioni, del decreto-legge 28 giugno 2019, n. 59, recante misure urgenti in materia di personale delle fondazioni lirico sinfoniche, di sostegno del settore del cinema e audiovisivo e finanziamento delle attività del Ministero per i beni e le attività culturali e per lo svolgimento della manifestazione UEFA Euro 2020

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2019-08-08;81>

