[FR] New framework of obligations to contribute to cinematographic and audiovisual production

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Following the decree of 22 June 2021 concerning on-demand audiovisual media services (“SMAD decree”), the framework of obligations to contribute to cinematographic and audiovisual production was further modified with the publication of the so-called "DTT" and "Cable-Satellite" decrees on 30 December 2021. According to the Ministry of Culture, these decrees have a number of objectives. Firstly, they are designed to simplify the regulatory framework by increasing the use of the agreements concluded between service providers and the *Autorité de régulation de la communication audiovisuelle et numérique* (Regulatory Authority for Audiovisual and Digital Communication – ARCOM), and cross-industry agreements. Secondly, they rebalance the rules and guarantee fairness between linear and non-linear services on the one hand, and between domestic and international operators on the other. Finally, they give traditional broadcasters the means to better exploit the works that they finance.

Decree no. 2021-1924 supersedes decree no. 2010-416 of 27 April 2010 and lays down the rules for the contribution to the production of European or French-language cinematographic and audiovisual works by television services “distributed via networks that do not use the frequencies assigned by ARCOM”, in accordance with Articles 33 and 33-1 of the Law of 30 September 1986. It applies to all non-terrestrial networks, i.e. cable and satellite, ADSL, fibre and OTT services (over-the-top, Internet and mobile networks). Services distributed via these networks are the subject of an agreement between their provider and ARCOM, which defines their specific obligations. Service providers established in France whose net annual turnover exceeds EUR 150,000 must sign an agreement with ARCOM with a term, determined by ARCOM, of no more than ten years, defining their specific obligations. Television providers established outside France and French jurisdiction but which target a French audience may, in accordance with the Audiovisual Media Services Directive, conclude an agreement with ARCOM. If they do not, ARCOM will notify them, pursuant to the conditions laid down in part IV of Article 43-7 of the Law of 30 September 1986, of their obligation to contribute to cinematographic and audiovisual production and how they should demonstrate that they have met this obligation.

This so-called ‘Cable-Satellite’ decree contains specific investment obligations that depend on whether the service is dedicated to cinema films or not. These

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obligations apply to services with a net annual turnover greater than EUR 5 million and an audience share of more than 0.5% of the total audience in France for such services. Like the SMAD decree, the Cable-Satellite decree offers significant exemptions for service providers, especially those in the most precarious situations, by setting out turnover and audience thresholds below which the obligations do not apply. These obligations may also be reduced depending on the channels' geographical reach. As is also the case for terrestrial channels, the decree also defines minimum obligations for investment in independent production under criteria linked to the work itself or the production company.

In application of Article 27 of Law no. 86-1067 of 30 September 1986 on freedom of communication, decree no. 2021-1926 lays down the rules governing the contribution to the production of European or French-language cinematographic and audiovisual works by domestic terrestrial television services ('DTT decree'). Under this decree, which replaces decree no. 2010-747 of 2 July 2010, ARCOM can adjust the parameters for service providers' contributions even if there is no cross-industry agreement in place. It also endeavours to give traditional broadcasters the means to better exploit the works that they finance, as well as extending the list of expenses that channels can declare in relation to their obligations. The proportion of contributions allocated to independent production is also reduced in the audiovisual category and the conditions for holding shares in co-productions are relaxed. The decree also gives DTT channels easier access to extended digital rights, reduces the duration of rights and broadens the rules preventing channels acquiring distribution mandates.

Décret n° 2021-1924 du 30 décembre 2021 relatif à la contribution cinématographique et audiovisuelle des éditeurs de services de télévision distribués par les réseaux n'utilisant pas des fréquences assignées par l'Autorité de régulation de la communication audiovisuelle et numérique

https://www.legifrance.gouv.fr/loda/id/JORFTEXT000044792333/

Decree no. 2021-1924 of 30 December 2021 on the contribution to cinematographic and audiovisual production of television services distributed via networks that do not use the frequencies assigned by the Regulatory Authority for Audiovisual and Digital Communication

Décret n° 2021-1926 du 30 décembre 2021 relatif à la contribution à la production d'œuvres cinématographiques et audiovisuelles des services de télévision diffusés par voie hertzienne terrestre

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Decree no. 2021-1926 of 30 December 2021 on the contribution to cinematographic and audiovisual production of terrestrial television services

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