

[CH] Investment obligations for audiovisual services come into force in Switzerland

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In 2021, the Swiss Parliament passed a revision of the Film Act introducing quota and investment obligations for linear and non-linear audiovisual services [see IRIS 2021-9:1/3]. The law was challenged in a public referendum and adopted on 15 May 2022 with 58% approval. On 6 September 2023, the Federal Council adopted the ordinance on the Quota for European Films and Investments in Swiss Film Production (FOIO, FQIV in German) which will enter into force on 1 January 2024.

The ordinance implements the law and defines the conditions that the investment obligation must meet. Audiovisual services must invest 4% of their gross revenues into national independent film production. The volume of investment is estimated at CHF 18 million per year.

The relevant gross revenue is calculated based on the company's VAT declaration, which means that the reporting is lowered for most of the companies (Art. 19). The ordinance foresees a specific situation: if the company can prove that the majority of its revenue comes from other activities, such as the sale of computers or vacuum cleaners, gross revenue is calculated based on revenue from services only, consisting of sales, rentals, subscriptions, advertising and data usage (Art. 20). Companies that are economically linked, e.g. in a holding structure, may also apply for mutualisation of their investments (Art. 21).

Companies providing audiovisual services have multiple options for investing in films: they can acquire licenses for independently produced films, finance commissioned films and invest in the co-production of independently produced films (Art. 12-14). Under certain conditions, they can also invest in promotion, spend for collective royalties and support regional film funds (Art. 15-17).

Investments are eligible only if the partner is an independent producer. Independence is defined by ownership, influence and economic ties to companies subject to the investment obligation. In the case of commissioned films, no more than half of all films produced by the production company in the last five years may be commissioned films of the actual investing company. In the case of acquisitions, the independent third party may be a rights holder other than the production company, such as a distributor (Art. 9).

In addition, the ordinance establishes the concept of independently-produced film, which is more specific than that of independent producer. The independently-produced film must be realized on the initiative and under the economic and artistic responsibility of an independent producer, and the producer must retain exploitable rights outside the use of the co-producing audiovisual service (Art. 13). It is not stated in this ordinance, but the implicit consequence of this rule is that only independently produced films will have access to federal support schemes. The service can invest in commissioned films but without public funding.

Acquisitions are limited to the Service's own use and the license is limited to five years. Rights granted with a co-production are limited to seven years. In both cases, renewal options up to 15 years can be concluded. In the case of a commissioned film, the license is unlimited in time or place (Art. 15-17).

Eligible works include fiction films, documentaries and animated films or series of any duration. Works from other genres may be eligible if they are structured or creative in their narrative. However, news, events, shows, games, live broadcasts, simple event recordings and promotional films are excluded (Art. 2). Eligible films must be either Swiss films (certificate of origin) or official co-productions. This condition currently poses a challenge for series, as co-production agreements for audiovisual works exist only between Switzerland and Canada, Mexico and the French Community of Belgium. Furthermore, commissioned films may not meet the formal requirements for Swiss films because the executive producers are not the rights holders, and the service is not Swiss. In this case, the Federal Office of Culture (FOC) can issue a confirmation of Swiss origin for a commissioned film, if the other requirements of artistic and technical participation of Swiss talent are met (Art. 8).

With the certification of the invested films, the eligibility is clarified at an early stage for all parties involved. The annual reporting of audiovisual services, therefore consists of the VAT declaration, a list of investments, supplemented by proof of payment and certificates (Art. 25). Based on the reports, the FOC determines every year the investment obligation and the eligible investments. Every four years, a subsidiary levy is charged for missing investments (Art. 28-29)

All companies providing audiovisual services and offering films must register by 31 March 2024. The FOC will conduct an initial overview of the investment volume in the autumn of 2024 and an initial analysis of the investments in the autumn of 2025.

Ordinance on the Quota for European Films and Investments in Swiss Film Production FQIO

<https://www.bak.admin.ch/bak/en/home/cultural-creativity/film1/fqiv.html>

