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Government proposal to Parliament for an Act on the investment obligation of audiovisual on-demand service providers

Act

on the investment obligation of audiovisual on-demand service providers

In accordance with the decision of Parliament, the following is hereby laid down:

Section 1

Purpose of the Act

The purpose of this Act is to promote the production of European audiovisual content in Finland.

This Act implements Article 13(2) of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

Section 2

Definitions

For the purposes of this Act:

- 1) *on-demand audiovisual service* means a service referred to in section 3(32) of the Act on Electronic Communications Services (917/2014), excluding a service based on video rental and electronic sales;
- 2) *audiovisual content* means a film, series, or documentary programme;
- 3) *turnover* means revenue obtained by a provider of on-demand audiovisual services from subscription fees, advertising, sponsorship, and product placement generated from paid on-demand audiovisual service activities carried out in Finland. Revenue related to the provision of sports or news programmes or linear programme production is not included in turnover.

Section 3

Scope of application and limitations

This Act applies to providers of paid on-demand audiovisual services established in Finland.

This Act also applies to providers of on-demand audiovisual services established in another EU Member State that target paid on-demand audiovisual services to audiences in the territory of Finland.

This Act does not apply to a provider of paid on-demand audiovisual services whose annual turnover generated in Finland is no more than 2 million euros, or whose share of total subscribers to paid on-demand audiovisual services in Finland is less than 1 percent, or whose service content is limited to a single theme or subject area.

Section 4

Obligation to participate in the financing of audiovisual content

A provider of paid on-demand audiovisual services is obliged to participate annually in the financing of audiovisual content production referred to in this Act in an amount corresponding to 5 per cent of the provider's turnover generated in Finland during the previous financial year. If the provider of on-demand audiovisual services belongs to a group, turnover is considered to be the turnover generated in Finland in accordance with the group's consolidated financial statements. If the provider's financial year differs from the calendar year, turnover shall be converted to an amount corresponding to a calendar year by multiplying it by 12 and dividing it by the number of months in the financial year.

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The provider of on-demand audiovisual services may fulfil this obligation by:

- 1) making an investment determined in accordance with subsection 1;
- 2) paying an amount determined in accordance with subsection 1; or
- 3) combining investment and payment in such a way that their total corresponds to the amount specified in subsection 1.

Section 5

Conditions concerning investments

The investment referred to in section 4(2), point 1 or 3 must be directed towards the acquisition of broadcasting rights, or the production or co-production of new audiovisual content. Of the total amount invested in new audiovisual content, more than half must be directed towards the acquisition of broadcasting rights, production, or co-production of scripted films, documentaries, or drama series. Acquired broadcasting rights may only be taken into account if the audiovisual content has been completed during the financial year on which the investment obligation is based, or within the two preceding years.

In addition, the new audiovisual content or the content for which broadcasting rights are acquired must meet the following conditions:

- 1) more than half of the audiovisual content must be in Finnish, Swedish, or Sámi; and
- 2) the audiovisual content must be closely connected to Finland's history, culture, or society.

The production company creating the new audiovisual content, or in the case of co-production one of the production companies, must be a production company registered in Finland or in another EU Member State.

If a provider of on-demand audiovisual services invests more during a financial year than required under section 4(1), the portion exceeding the investment obligation may be taken into account in fulfilling the financing obligation for the following financial year, insofar as the investment relates to the production or co-production of new audiovisual content.

Section 6

Allocation of revenue from payments

Revenue collected under section 4(2), points 2 and 3, shall be recorded as revenue in the State budget. Within the limits of the appropriation included in the State budget, the Ministry of Education and Culture may grant state funds to the Finnish Film Foundation to support the production of audiovisual works and for administrative work related to the granting of such support.

The performance of the public administrative task provided for in this Act shall be financed from the appropriation in the State budget corresponding to the revenue referred to in subsection 1.

Section 7

Conditions for granting state aid

For the purpose of achieving the objective set out in section 1, the Finnish Film Foundation may, upon application, grant the state aid referred to in section 6(2) for the production of a scripted film, documentary, or drama series, if the production and the resulting work fulfil at least three of the following conditions:

- 1) the script or other written basis of the work has originally been written in Finnish, Swedish, or Sámi;
- 2) more than half of the work is in Finnish, Swedish, or Sámi;
- 3) the work is closely connected to Finland's history, culture, or society;
- 4) more than half of the work is filmed in the territory of Finland;
- 5) the work and its production include a significant contribution from Finnish creators or performers, or those permanently resident in Finland, and the share of wages and fees paid to them is significant in relation to the total remuneration costs of the production.

In addition to what is provided in subsection 1, the production company eligible for state aid must fulfil the following conditions:

- 1) the production company is a limited liability company registered in the Finnish Business Register;
- 2) the production company has the financial capacity and its designated producer has the professional qualifications to produce a scripted film, documentary, or drama series; and

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- 3) the production company manages, to a sufficient extent as assessed for the granting of state aid, the commercial exploitation rights of the work in Finland.

The Finnish Film Foundation performs the duties of a state aid authority when granting state aid. Unless otherwise provided in this Act, the granting and use of funding within the Finnish Film Foundation are governed by the Act on State Funding for the Promotion of Film Culture (1174/2018) and the State Aid Act (688/2001).

Section 8

Obligation of a provider of on-demand audiovisual services to provide information

A provider of paid on-demand audiovisual services must submit to the Finnish Transport and Communications Agency a notification concerning on-demand audiovisual services referred to in section 4(3) of the Act on Electronic Communications Services. A previously submitted notification is deemed to fulfil the notification obligation under this subsection.

The provider of paid on-demand audiovisual services, or a party acting on its behalf, must annually provide the Finnish Transport and Communications Agency with the following information for the purpose of assessing compliance with the obligation set out in section 4:

- 1) information on whether the provider fulfils the obligation through an investment referred to in section 4(2)(1), through payment referred to in point 2, or through a combination of these in accordance with point 3;
- 2) information on the turnover generated in Finland from paid on-demand audiovisual service activities during the most recently completed financial year. The notification must be accompanied by a statement issued by an independent authorised auditor confirming the accuracy of the reported information;
- 3) information on investments made during the previous financial year that meet the requirements of section 5, insofar as the provider fulfils the obligation set out in section 4 through investments.

The Finnish Transport and Communications Agency may issue more detailed regulations on the information to be collected and submitted annually, as well as on the digital format and timing of submission.

Section 9

The duties of the Finnish Transport and Communications Agency

The Finnish Transport and Communications Agency is responsible for determining, collecting, and performing other official duties related to the charge of a tax-like nature referred to in section 4(2), points 2 or 3, except for the application of sections 6 and 7.

The Agency determines the charge based on the information reported by the provider of on-demand audiovisual services.

The charge becomes due annually on a date specified by the Agency. The Agency shall send the payment decision to the persons liable for payment no later than 30 days before the due date.

The Finnish Transport and Communications Agency supervises compliance with this Act, except for the application of sections 6 and 7.

Section 10

Right of the Finnish Transport and Communications Agency to obtain information

Notwithstanding confidentiality provisions concerning trade secrets, the provider of paid on-demand audiovisual services, or a party acting on its behalf, must, upon request, provide the Finnish Transport and Communications Agency with the necessary information for the performance of its duties under this Act.

The information referred to in subsection 1 must be provided without undue delay, in the format requested by the authority, and free of charge.

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Section 11

Supervision decision

If a person violates this Act or provisions issued under it and, despite being requested to do so, fails to rectify his or her actions within a specified reasonable period, the Finnish Transport and Communications Agency, in carrying out their duties under this Act, may order such person to rectify the error or neglect.

Section 12

Coercive fine

The Finnish Transport and Communications Agency may impose a conditional fine to enforce an obligation imposed under sections 8 and 11. Conditional fines are provided for in the Act on Conditional Fines (1113/1990).

Section 13

Rectification to the payer's benefit

A request for rectification may be made against a decision concerning the charge referred to in section 4(2), points 2 or 3. The Administrative Procedure Act (434/2003) provides for requests of administrative review.

If a payer has by mistake been overcharged, the decision imposing the charge must be rectified unless the matter has been resolved by an appeal decision. A rectification in favour of the payer may be made during the calendar year following the year in which the charge was imposed.

Section 14

Rectification in favour of the recipient of the payment

If a payer has by a calculation mistake or a similar error or due to such an error, and unless the matter has been otherwise examined, not been imposed with a legally mandated charge or part of it, the decision imposing the charge must be rectified unless the matter has been resolved by an appeal decision. A rectification in favour of the recipient of the payment may be made during the calendar year following the year in which the charge was imposed or should have been imposed.

Section 15

Appeals

The Administrative Judicial Procedure Act (808/2019) provides for an appeal to the Administrative Court. The charge must be paid within the prescribed time limit regardless of appeal, unless the appellate authority decides otherwise.

Section 16

Recovery of the charge

The direct enforceability, without a separate enforcement order, of the charge referred to in section 4(2), points 2 or 3, is provided for in the Act on the Enforcement of Taxes and Fees (706/2007).

The interest payable on late payments is laid down in section 4 of the Interest Act (633/1982). Instead of charging interest for late payment, the Finnish Transport and Communications Agency may impose a late payment charge of ten euros (EUR 10), if the amount of interest for late payment remains below this level.

Section 17

Entry into force

This Act enters into force on 1 January 2027.