

Draft

Act on the contribution by certain media service providers to the promotion of Danish culture (Culture Contribution Act)¹

Chapter 1

Purpose, scope, and definitions

Section 1. The purpose of this Act is to promote Danish audiovisual content, including the production of new Danish films, series and documentaries.

Section 2. This Act shall apply to media service providers that are established in Denmark and which provide on-demand audiovisual media services, without prejudice to (3-5).

(2) This Act shall also apply to media service providers established in another EU Member State and which provide on-demand audiovisual media services targeting audiences in Denmark, without prejudice to (3-5).

(3) The Act does not apply to media service providers that have an annual turnover of less than DKK 15 million or whose audience represents less than 1 % of the total number of users of on-demand audiovisual media services on the Danish market.

(4) The Act shall not apply to media services provided as part of public service activities, cf. Section 11 of the Radio and Television Broadcasting Act, etc., or by virtue of the regulation in the EU Member State where the provider of the on-demand audiovisual media service is established.

(5) The Act does not apply to media service providers that provide media services solely for library or educational purposes.

Section 3. For the purposes of this Act, the terms below shall have the following meanings:

- 1) Audiovisual media service: A service, where the principal purpose of the service or a dissociable part of it is devoted to providing the general public with visual programmes that inform, entertain, or educate, by means of electronic communications

¹ This Act transposes parts 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, OJ 2018, L 303, p. 69.

networks as defined in the Act on electronic communications networks and services.

2) On-demand audiovisual media service: An audiovisual media service provided by a media service provider so that programmes can be received at a time chosen by the user and at their individual request, on the basis of a catalogue of programmes selected by the media service provider.

3) Media service provider: The natural or legal person who has editorial responsibility for the selection of audiovisual content in an audiovisual media service and determines how the audiovisual content is presented.

4) Contributory turnover: Gross revenues of a media service provider in Denmark resulting from the making available of audiovisual content by the on-demand audiovisual media service. Revenues related to the making available of sports or news programmes, revenues from linear programming services made available through the on-demand audiovisual media service, and revenues from the redistribution of other media service providers' on-demand audiovisual media services do not form part of the contributory turnover.

Chapter 2

Culture contribution

Section 4. A media service provider must pay an annual contribution of 2 % of its contributory turnover in Denmark.

(2) A media service provider who invests less than 5 % of its contributory turnover in Denmark in new Danish content shall, in addition to the contribution referred to in (1), pay an annual contribution of 3 % of its contributory turnover in Denmark. A media service provider can distribute investments in new Danish content over a three-year period as an average.

(3) All investments in the production and co-production of new films, series and documentaries can be included as investments in new Danish content.

(4) An investment will be considered to have been made in Danish content when 75 % of the production material for European produced films, series or documentaries is in Danish, and in addition meets at least one of the following criteria:

- 1) More than 50 % of the production's budget has been spent in Denmark.
- 2) More than 50 % of the production's recordings take place physically in Denmark.

Section 5. The Agency for Culture and Palaces shall collect contributions under Section 4(1) and (2) annually in retrospect on the

basis of media service providers' statements of the most recent calendar year's turnover in Denmark.

(2) The Agency for Culture and Palaces may collect contributions of 3 % from a media service provider who has invested less than 5 % of its contributory turnover in Danish content on average over the three-year period, pursuant to Section 4(2).

(3) If contributions are not paid by the media service provider, they shall be handed over for recovery to the Public Debt Collection Agency.

(4) The Minister for Culture may, in consultation with the Minister of Taxation, lay down detailed regulations on the recovery of the contribution, including regulations on a payment reminder procedure, interest and payment deadlines.

(5) The Minister for Culture may lay down detailed regulations on the total or partial non-collection of contributions under Section 4(1) and (2) for media service providers established in Denmark that are charged similar financial contributions in other EU Member States.

Section 6. The proceeds of the culture contribution are distributed after deduction of the costs associated with the administration of the scheme between the public service pool and aid for Danish films.

(2) The Minister for Culture may lay down detailed regulations on the distribution between the public service pool and aid for Danish films.

Chapter 3

Registering, reporting and supervision

Section 7. A media service provider must register with the Agency for Culture and Palaces.

(2) The Minister for Culture may lay down detailed regulations on the registration of a media service provider, including on requirements regarding the form, procedure and content of the registration, as well as deadlines for the registration.

Section 8. A media service provider shall report once a year a statement of the most recent calendar year's contributory turnover in Denmark to the Agency for Culture and Palaces. The statement shall clearly indicate which on-demand audiovisual media service the contributory turnover derives from.

(2) A media service provider's statement shall follow the accounting policies used in the enterprise's most recently approved accounts. If the media service provider has not previously prepared an approved account, the statement of turnover must be

carried out in accordance with the Danish Financial Statements Act.

(3) The reported statement shall be accompanied by a report made with a high degree of assurance by an independent approved auditor.

(4) A media service provider providing more than one on-demand audiovisual media service may report one single report, cf. (3), for these.

(5) The Minister for Culture may lay down detailed regulations on the reporting of statements of the contributory turnover, including on the form, procedure and content of the reporting, deadlines for the reporting and requirements for audit reports.

Section 9. A media service provider shall report once a year a statement of investments in new Danish content, cf. Section 4(2), in the most recent calendar year to the Agency for Culture and Palaces.

(2) A media service provider that distributes investments over three-year periods, cf. Section 4(2), second sentence, must submit a declaration of intent on the expected level of investment for the three-year investment period. Likewise, statements of investments in new Danish content for the up to three most recent calendar years must be reported to the Agency for Culture and Palaces.

(3) A reported statement, cf. (1) and (2), second sentence, shall be accompanied by a report made with a high degree of assurance by an independent approved auditor.

(4) The Minister for Culture may lay down detailed regulations on the reporting of statements of investments in new Danish content, including on the form of the reporting, the determination of the three-year investment period, procedure and content, deadlines for the reporting and requirements for the declaration and the report in accordance with (2), first sentence, and (3).

Section 10. The Agency for Culture and Palaces supervises and makes decisions in accordance with this Act and regulations issued pursuant to it.

(2) A media service provider shall, within a deadline set by the Agency for Culture and Palaces, provide the Agency for Culture and Palaces with the information, disclose the documents, etc. and submit the written opinions requested by the Agency in connection with the exercise of the supervisory obligation.

(3) Decisions taken by the Agency for Culture and Palaces pursuant to this Act or regulations issued pursuant thereto may be brought before the Radio and Television Board no later than 4 weeks after the Agency's decision is notified to the media service provider. The Radio and Television Board may give appeals brought before the Board suspensive effect. Decisions of the

Board under this Act may not be brought before any other administrative authority.

(4) The Minister for Culture may lay down detailed regulations on media service providers' submission of information, disclosure of documents, etc. and the submission of written opinions, including the opinion of the auditor on working practices and independence, statement of turnover, calculation of contributory turnover and statement and calculation of investment in Danish content.

Section 11. The Minister for Culture may lay down regulations which stipulate that written communications to and from the Agency for Culture and Palaces concerning matters covered by this Act or regulations issued pursuant to this Act must be made digitally.

(2) The Minister for Culture may lay down detailed regulations on digital communications, including the use of specific IT systems, special digital formats, and digital signatures or the like.

(3) A digital message is considered to have arrived when it is available for the addressee of the message.

(4) The Minister for Culture may lay down regulations stipulating that authorities may issue decisions and other documents under this Act or under regulations issued pursuant to this Act without a personal signature, rather with an automated signature or similarly reproduced signature or using a technique that ensures the unique identification of the person who issued the decision or document.

Chapter 4

Penal provisions

Section 12. Anyone who intentionally or through gross negligence infringes Sections 4(1) and (2), 7(1), 8(1), 9(1) or 10(2) shall be punished by a fine.

(2) In regulations issued in accordance with this Act, a fine may be imposed on anyone who intentionally or grossly negligently violates the provisions of the regulations.

(3) Companies, etc., (legal persons) may be held criminally liable in accordance with the regulations set out in Chapter 5 of the Penal Code.

Chapter 5

Entry into force and transitional provisions

Section 13. This Act shall enter into force on 1 July 2024.

(2) The first payment for the culture contribution, cf. Section 4(1) and (2), is collected in 2025 and is based on the media service provider's statements of the contributory turnover in Denmark for 2024.

Chapter 6

Changes in other legislation

Section 14. The Radio and Television Broadcasting Act, etc., cf. Consolidated Act No 1350 of 4 September 2020, as amended by Act No 2212 of 29 December 2020 and Act No 1595 of 28 December 2022, is amended as follows:

1. In *Section 9 a(1)*, the following is inserted after '(2)': 'and (4)'.

2. In *Section 9 a*, the following is inserted as (4):

'(4) By way of derogation from (1), media service providers under the authority of another country within the European Union or the European Economic Area providing an audiovisual media service may be required to contribute financially to the production of European works in accordance with Directive of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.'

3. The following is inserted after *Section 42 a*:

'Section 42 b. The Radio and Television Board may handle appeals against the Agency for Culture and Palaces' decisions taken under the Culture Contribution Act or regulations laid down pursuant thereto.'

Chapter 7

Territorial validity

Section 15. This Act does not apply to the Faroe Islands or Greenland.

Comments on the draft Act

General comments

Table of contents

1. Introduction
2. Background of the draft Act
3. Main points of the draft Act
 - 3.1. Introduction of a culture contribution
 - 3.1.1. Existing law
 - 3.1.2. The AVMS Directive
 - 3.1.3. Schemes in other countries
 - 3.1.4. Considerations by the Ministry of Culture and the proposed scheme
 - 3.2. Administration of the culture contribution scheme
 - 3.2.1. Existing law
 - 3.2.2. Considerations by the Ministry of Culture and the proposed scheme
 - 3.3. Penal provisions
 - 3.3.1. Existing law
 - 3.3.2. Considerations by the Ministry of Culture and the proposed scheme
4. Relationship with Denmark's international relations
5. Financial and implementation impact on the public sector
6. Financial and administrative impact on business, etc.
7. Administrative impact on citizens
8. Climate impact
9. Impact on the environment and nature
10. Relationship to EU law
11. Consulted authorities and organisations, etc.
12. Summary table

1. Introduction

On 14 June 2023, the Government made up of Socialdemokratiet (Social Democrats), Venstre (Liberal Party) and Moderaterne (Moderates) concluded with Socialistisk Folkeparti (Green Left), Enhedslisten (Red-Green Alliance), Radikale Venstre (Social Liberal Party) and Dansk Folkeparti (Danish People's Party) the 'Media Agreement for 2023-2026: Unity for free media and strong Danish content.'

It follows from the media agreement that the parties to the settlement agree that the population must have access to more Danish-

produced quality content, whether we read news articles, stream films and series or listen to podcasts. Denmark is a small country and the Danish linguistic area is small. But Denmark is a great cultural nation. There is no one but ourselves to ensure the conditions for producing high-quality Danish content that can unite us, challenge us, make us smarter, entertain us, and unite us as a nation.

Streaming services are more and more prevalent in Danish people's media consumption and contribute to the fact that the population has a huge amount of content from most of the world that they can always choose from. At the same time, Danish content, which can unite us and which we can mirror ourselves in, is challenged in the new global film and series industry. It is therefore essential that not only the large national streaming service providers but also streaming service providers from other EU Member States are engaged in the Danish media circuit and contribute to the sustainability of the creative ecosystem, ensuring that high quality Danish films, series and documentaries are also produced in the future. This must be done in a balanced manner, both by recognising and taking into account the streaming services' investments in Danish content, while ensuring that all streaming services contribute reasonably to the production of new Danish content.

The purpose of the draft Act is therefore to strengthen the production of Danish series, documentaries and films, thereby supporting the supply of Danish content by introducing an obligation for certain media service providers to contribute financially to the promotion of Danish audiovisual content through the State aid schemes, the public service pool and the film aid schemes.

The draft Act thus proposes to collect a culture contribution from media service providers providing on-demand audiovisual media services (streaming services) targeting a Danish audience, amounting to 2 % of their contributory turnover in Denmark arising from on-demand services. It is also proposed to introduce a contribution of 3 % in addition to the 2 % contribution to be paid by the on-demand streaming services that invest less than 5 % of their turnover in Denmark in Danish content. On-demand streaming services that invest 5 % or more of their turnover in Denmark in Danish content are not required to pay the 3 % contribution.

This Act will apply to both Danish on-demand media service providers as well as on-demand media service providers established in another EU Member State, when such foreign providers' on-demand audiovisual media service are targeting audiences in Denmark.

Draft Act on the contribution by certain media service providers to the promotion of Danish culture (Culture Contribution Act) (the Folketing Hansard 2023-2024, Appendix A L 70 as tabled) was originally tabled on 3 November 2023. The draft Act was notified to the European Commission before 29 September 2023 pursuant to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (Information Procedure Directive) with the end of the standstill period on 2 January 2024. The Commission submitted its comments on the notified draft Act on 19 December 2023.

Due to an administrative error, the draft Act was subjected to a third reading and passed by the Danish Parliament on 19 December 2023. As the draft Act was thus adopted within the standstill period, the European Commission closed the Danish notification file, as the draft Act was no longer available in draft form, as Article 6 of the Information Procedure Directive provides. As a result, the draft Act must be re-notified to the European Commission with a new three-month standstill period. This has made it necessary for the Danish legal process to be repeated.

The draft Act on the contribution by certain media service providers to the promotion of Danish culture (Culture Contribution Act) is hereby resubmitted with the necessary clarifications resulting from the opinion of the European Commission of 19 December 2023 concerning the investment obligation and the introduction of an enabling provision so that it is possible to take into account in the collection of the culture contribution from Danish media service providers the cases where similar financial contributions are levied in other EU Member States. In addition, the draft Act specifies that the contributory turnover is calculated on the basis of the turnover in the previous calendar year. Finally, a four-week deadline to appeal decisions by the Agency for Culture and Palaces shall be introduced pursuant to this Act.

2. Background of the draft Act

With the Media Agreement of 14 June 2023 concluded between the Government made up of Socialdemokratiet (Social Democrats), Venstre (Liberal Party) and Moderaterne (Moderates) and the parties Socialistisk Folkeparti (Green Left), Enhedslisten (Red-Green Alliance), Radikale Venstre (Social Liberal Party) and Dansk Folkeparti (Danish People's Party), the parties to the settlement want the production of Danish content to be strengthened. Danish people must also continue to have the opportunity to have

access to high-quality original Danish films, series and documentaries. Therefore, the streaming services' commitment to Danish content production must be strengthened by ensuring that all streaming services on the Danish market contribute to the sustainability of the Danish creative ecosystem.

The parties to the settlement thus agree on the introduction of a culture contribution scheme which obliges providers of on-demand streaming services to contribute to Danish content production, while at the same time benefiting service providers that invest in Danish content.

With a future culture contribution scheme, all on-demand streaming services aimed at a Danish audience will pay a fixed financial minimum contribution of 2 % of their contributory turnover in Denmark. The on-demand streaming services that invest 5 % or more of their contributory turnover in Denmark in Danish content will, through the investment, meet the total culture contribution obligation and thus will not have to pay any additional contributions. Finally, the on-demand streaming services that invest less than 5 % of their contributory turnover in Denmark in Danish content – in addition to the fixed minimum contribution – will have to pay a contribution of 3 %, so that these services will in total pay a financial culture contribution of 5 % of their contributory turnover in Denmark.

The contribution element of the new culture contribution scheme will generate proceeds to promote Danish content, including for the production of new Danish films, series and documentaries. 20 % of the net proceeds of the scheme (after revenue change from behavioural responses and labour supply and deduction of costs for the administration of the scheme) are expected to be used to aid public service purposes (documentaries and series) and 80 % for film aid purposes (films and documentaries); the final distribution will be decided by the parties to the settlement once the proceeds are known.

It will be possible for the media service providers that will be subject to the proposed obligation to pay a culture contribution and comply with the obligations under this Act to apply for aid for the production of new Danish audiovisual content under the aid schemes financed by the proceeds from the culture contribution scheme.

In relation to the introduction of a culture contribution, the parties to the settlement note that Denmark has adhered to the OECD Agreement on Taxation of the Digital Economy of 8 October 2021 and that negotiations on the Multilateral Convention to implement

the standstill and rollback commitments are still ongoing. This obliges participating countries and jurisdictions to roll back, and not subsequently introduce, national digital turnover taxes or similar relevant actions. It is the Danish Ministry of Taxation's immediate view that a culture contribution, as described in the agreement, would not conflict with the wording of the standstill and rollback commitments. The Danish Ministry of Taxation does not currently have the opportunity to make a final assessment of the relationship between the culture contribution and the OECD Agreement. The parties to the settlement therefore agree to follow the OECD Agreement and the commitment of the Multilateral Convention and, where appropriate, to adapt the culture contribution in the light of this.

3. Main points of the draft Act

3.1. Introduction of a culture contribution

3.1.1. Existing law

There is currently no national legislation providing for collecting a culture contribution on on-demand media service providers (streaming service providers). The culture contribution scheme is therefore introduced by a proposal for a new principal act.

Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU of 10 March 2010 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 (the AVMS Directive) provides for the introduction of a culture contribution scheme in Article 13(2) and (3), according to which Member States requiring media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory. The financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid regulations.

It follows from Section 9 a(1) of the Radio and Television Broadcasting Act that a provider of an audiovisual media service under the authority of another country within the European Union or the European Economic Area and providing an audiovisual media service is exempt from compliance with Danish regulations in the area coordinated by the Directive of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, even if the service is targeting Denmark.

3.1.2. The AVMS Directive

The AVMS Directive aims to ensure the free movement of audiovisual media services in the EU, to protect consumers and to promote cultural diversity and media freedom.

The Directive contains a minimum regulation of audiovisual media services; i.e. television broadcasts and on-demand audiovisual media services, among others. The scope of the Directive also includes video-sharing platform services, i.e. services which organise audiovisual content but do not have editorial responsibility for the content, as well as social media services, if a detailed assessment finds that the provision of audiovisual content constitutes an essential functionality of the service in question. The Directive does not regulate social media services as such. The Directive is a minimum directive and Member States may thus require providers of television and on-demand audiovisual media services under their jurisdiction to comply with more detailed or stricter provisions in the fields coordinated by the Directive.

The AVMS Directive allows EU Member States to require media service providers (including streaming service providers), both domestic and from other EU Member States, to contribute financially to the production of European works.

It follows from Article 13(2) of the Directive, that '[w]here Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory.'

The related recital 36 in the preamble explains that these financial obligations may consist of an obligation to invest directly in European content or to pay to a fund which pays the aid for the pro-

duction of European content. The services that are obligated to contribute to funds/pools should be able to benefit in a non-discriminatory way from the aid that is available under the scheme.

It follows from Article 13(3) of the AVMS Directive that ‘the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid regulations.

It follows from Article 13(6) of the AVMS Directive that the obligation imposed pursuant to paragraph 1 and the requirement on media service providers targeting audiences in other Member States, cf. Article 13(2), shall not apply to media service providers with a low turnover or a low audience. Member States may also waive such obligations or requirements where they would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services.

3.1.3. Schemes in other countries

The AVMS Directive’s legal basis under Article 13(2) to introduce a culture contribution has been used in a number of EU Member States. The European Audiovisual Observatory (Council of Europe) provides in its report, IRIS Plus 2022-2: Investing in European works: the obligations on VOD providers, Strasbourg, September 2022, a comprehensive overview of the national schemes transposing Article 13(2) of the AVMS Directive, see Table 1 below.

According to the report, 14 Member States (in addition to Denmark) have introduced – or are in the process of introducing – contribution obligations for on-demand audiovisual media service providers. The obligation to contribute may consist of an investment obligation, a financial contribution to a fund/aid scheme, or a combination of both. The contribution rates in each country’s schemes are determined on the basis of all or part of the annual income of the media service providers covered and vary considerably between countries – both in relation to what is included in the calculation of the relevant income and in relation to the contribution rates used.

Table 1
Overview of national schemes transposing Article 13(2) of the AVMSD Directive

	Contribution obligation*	Investment obligation* (production and/or rights purchase)	Either/or model	Both/and model
Country				
BE DE	--	Waiting for specific regulation	--	--
BE VL	2 %	2 %	X	--
BE WA	0-2.2 %	0-2.2 %	X	--
CH	Unknown percentage	4 %	X	--
CZ	0.5 %	--	--	--
DE	Respectively 1.8 or 2.5 %	--	--	--
ES	5 %	5 %	X	X
FR	5.15 %	15-25 %	--	X
GR	1.5 %	1.5 %	--	X
HR	Unknown percentage	2 %	--	X
IE	Unknown percentage	--	--	--
IT	--	18 %	--	--
NL	--	4.5 %	--	--
PL	1.5 %	---	--	--
PT	Respectively 1 or 4 %	0.5-4 %	--	X
RO	Respectively 3 or 4 %	40 %	X	--

Note: The list covers EU and EFTA countries as of 22 September 2022.

*The basis for calculating the contribution and investment obligation varies widely between countries.

Source: The Ministry of Culture's compilation of data from Investing in European works: the obligations on VOD providers, IRIS Plus, European Audiovisual Observatory, Strasbourg, September 2022

3.1.4. Considerations by the Ministry of Culture and the proposed scheme

Based on the Media Agreement of 14 June 2023, it is proposed to introduce a culture contribution scheme combining a financial contribution obligation with an investment option that will make it possible to balance the contribution obligation in relation to the streaming service's commitment to Danish content production and the Danish creative ecosystem. The proposed scheme will mean that media service providers providing on-demand audiovisual media services targeting a Danish audience will be obliged to pay an annual financial contribution of 2 % of their contributory turnover in Denmark arising from the on-demand services. It is also proposed that media service providers who invest less than 5 % of their contributory turnover in Denmark in new Danish content should be obliged to pay an annual contribution of 3 %, so that these media service providers pay a total culture contribution of 5 % annually. The overall aim of the scheme will thus be to promote the production of new Danish audiovisual content in the form of films, series and documentaries.

It is proposed that the investments in new Danish content included under the scheme be limited so that the investment opportunity contributes directly to the achievement of the objectives of the culture contribution scheme. It is therefore proposed that only investments by media service providers in the production and co-production of new Danish films, series and documentaries can be included in the media service providers' calculation of their annual level of investment.

The proposed investment option will have to support the use of the investment and production financing models used between media service providers and production companies, etc. today, as well as be able to accommodate the development of new investment and production financing models in the future. Furthermore, the investment option is intended to help ensure that high quality Danish content is produced. The investments that must be eligible for inclusion are thus broadly limited to all types of investments in the production and co-production of new Danish content, which must be able to include, among other things, direct investments in the form of productions, co-productions and acquisitions of rights for films, series or documentaries.

In the sense of the draft Act, Danish content would have to be understood as a broad concept covering audiovisual content within the film, series and documentary genres, regardless of which sub-category the content may otherwise be subject to, including, for example, reality, comedy and drama. The concept of Danish con-

tent would thus not have to include investments in, for example, sports and news programmes that do not fall under the film, series and documentary genres, which the scheme aims to promote.

The investments will have to be made in new Danish films, series and documentaries. This means that investments in the form of, for example, the purchase of broadcasting rights for new productions will be eligible for inclusion in the scheme, while investments in broadcasting rights for pre-existing content (e.g. when purchasing production companies' so-called back catalogues) would not be eligible, as it would fall outside the objective of ensuring the production of new quality content.

The proposed investment opportunity will promote and support the production of new Danish quality content while taking into account the potential of international cooperation at the different stages of production and the framework for the EU's internal market. It is proposed that the investment opportunity should have a broad scope in order to recognise both investments in Danish local content as well as productions with large budgets and Danish as well as European elements that can contribute to the international dissemination and recognition of European, including Danish quality content.

It is therefore proposed that the investments made by media service providers can be considered to constitute investments in Danish content within the meaning of this Act and can therefore be included in the fulfilment of the investment opportunity when at least 75 % of the production material for European produced films, series or documentaries is in Danish. In addition, more than half of the individual production budget will have to be spent in Denmark or more than half of the individual production's recordings will have to take place physically in Denmark.

It is proposed that media service providers' investments be measured in time to reflect the real level of investment and reduce the risks of inappropriate consequences of e.g. postponements in production start-up compared to media service providers' statement and reporting of a given year's investments. It is therefore proposed that investments may be balanced over a three-year period. The ability to measure the level of investment of the service over a three-year period is considered to support the possibility of flexible investments that are aligned with the practical reality of the production of films, series and documentaries, which are often project-based, to the benefit of both the producer industry and the on-demand audiovisual media service providers. It is also proposed to grant media service providers methodological freedom in relation to the point in time at which they consider each invest-

ment to have been made, in order to allow the scheme to accommodate possible different practices for media service providers' accounting of their investments.

It is proposed that the proceeds from the culture contribution scheme (after revenue change from behavioural responses and labour supply) go to the public service pool and the film aid schemes, which will thus be partly financed by the culture contribution scheme. The detailed distribution of the proceeds between the respective schemes is intended to be laid down by Order. This ensures that adjustments to the distribution can be made in a flexible and appropriate manner after the entry into force of the culture contribution scheme, in line with the Media Agreement for 2023-2026, according to which parties to the settlement agree that: '20 % of the net proceeds of the scheme (after revenue change from behavioural responses and labour supply and deduction of costs for the administration of the scheme) are expected to be used to aid public service purposes (documentaries and series) and 80 % for film aid purposes (films and documentaries); the final distribution will be decided by the parties to the settlement once the proceeds are known. "

The media service providers that will be subject to the proposed obligation to pay a culture contribution and that comply with their obligations under this Act have access to apply for aid for the production of new Danish audiovisual content from the public service pool and the film aid schemes in cooperation with an independent producer. This applies regardless of whether the media service providers in question are established in Denmark or another EU Member State. The proposed culture contribution scheme thus provides an incentive for media service providers that pay culture contributions to invest in new Danish audiovisual content, as they have the opportunity to apply for funding for this purpose. The scheme will also contribute to promoting a more economically sustainable Danish audiovisual content production by ensuring that those who gain an economic benefit from disseminating audiovisual content in Denmark also contribute to ensuring the future production of Danish content.

The detailed requirements and conditions for receiving aid for the production of new Danish films, series and documentaries are laid down in the conditions for aid for the public service pool and the film aid schemes administered by the Danish Film Institute.

It is proposed that the scheme should cover both media service providers established in Denmark and media service providers established in other EU Member States when their on-demand audiovisual media services are targeting a Danish audience. The culture

contribution scheme will thus not differentiate between on-demand media service providers operating on the Danish market, but ensures the same competitive environment for such providers in relation to the culture contribution scheme, regardless of whether they are established in Denmark or in another EU Member State.

In order to introduce such a scheme, which also applies to media service providers established in another EU Member State, the Ministry of Culture considers that an addition must be introduced in Section 9 a of the Broadcasting Act, according to which it must be possible to require media service providers covered by Section 9 a(1) to contribute financially to the production of European works in accordance with the AVMS Directive.

In order to determine whether an on-demand audiovisual media service is targeted at a Danish audience, it is proposed that, in accordance with recital 38 of the AVMS Directive, emphasis will be placed on indicators such as whether there is advertising or other promotion aimed specifically at customers in Denmark, whether the main language of the on-demand audiovisual media service is Danish and whether it is content or commercial communication specifically aimed at the audience in Denmark.

The proposed culture contribution scheme covers media service providers providing on-demand audiovisual services, including the subscription-based so-called Subscription Video on Demand services (SVOD) and the transaction-based so-called Transactional Video On Demand services (TVOD). The decisive factor in determining whether the service will be deemed to be subscription-based is whether consumers are given continuous access to the service for a given period of time when they register. In this context, monetary or other compensation for the subscription is irrelevant. This means that services that, for example, use subscriptions for which the consumers do not pay any money, but instead agree to view advertisements or provide their data as compensation, will also be considered as subscription-based services within the meaning of this draft Act. Similarly, for TVOD services, it will be irrelevant whether the compensation for accessing the content of the service is of a monetary nature or whether the consumer pays for access by other means.

The culture contribution of either 2 or 5 % to be paid by each media service provider will be determined on the basis of the provider's gross turnover in Denmark resulting from the making available of audiovisual content on its on-demand audiovisual media service, including subscription revenues, transaction or rental revenues, advertising revenues and revenues from the resale of

the on-demand audiovisual media service in other enterprises' subscription-based products. By starting from the gross revenue of the enterprises covered, a single and uniform starting point for the basis for calculation across enterprises is ensured. The broad definition of the contributory turnover is intended to ensure, first, that the scheme does not differentiate between providers on the basis of their applied business model and, on the other hand, that the risk of circumvention is minimised. For example, revenues from the resale of the on-demand audiovisual media services in other enterprises' subscription-based products will therefore be included in order to avoid the risk of circumvention by media service providers being able to change their business model from, for example, direct sales to consumers to sale through another enterprise's subscription-based TV channel packages or mobile subscription schemes, thereby minimising the contributory turnover and thus avoiding the contribution obligation.

It is proposed to limit the calculation basis for the culture contribution only to the relevant turnover of media service providers in Denmark, in accordance with Article 13(3) of the AVMS Directive, according to which the financial contribution shall be based only on the revenues earned in the targeted Member States. In this context, the limitation of turnover in Denmark expresses a fair balance in relation to the fact that a portion of the financial earnings from offering an on-demand audiovisual media service on the Danish market contributes to the continued viability of the market by supporting the production of Danish films, series, and documentaries.

The streaming market is constantly evolving and new types of audiovisual media services are continuously emerging in order to best adapt services to the needs of consumers. For example, some media service providers already offer streaming products that provide access to linear audiovisual media services, i.e. television channels, provided by a media service provider for simultaneous reception of programmes based on a schedule, as well as access to on-demand audiovisual media services, where the consumers themselves choose e.g. which programme or film to watch and when, from the media service provider's catalogue of programmes.

Since the purpose of the draft Act is to introduce a contribution obligation for on-demand audiovisual media service providers in order to promote the production of Danish films, series, and documentaries, the basis for calculation will not include revenues from linear programming services, even if they are made available to the consumer through an on-demand audiovisual media service, e.g. through a purchase option on the same platform or otherwise.

Turnover from traditional linear television channels is exempt on the basis of fairness in the light of the draft Act's objective of ensuring that those who obtain their earnings by disseminating audiovisual content in Denmark also contribute to ensuring the future production of Danish content. Live sports and news programmes, which the scheme does not aim to promote, are generally considered to constitute both an expensive and highly turnover-oriented part of the content on the linear channels. In addition, it is generally considered that the linear media services on the Danish market through their television channels aimed at a Danish audience already contribute adequately to the broadcasting and production of Danish audiovisual content. This consideration of fairness is supported by recital 37 in the preamble to the AVMS Directive, which reads '[b]roadcasters currently invest more in European audiovisual works than providers of on-demand audiovisual media services'. It further follows from the recital that 'if a targeted Member State chooses to impose a financial obligation on a broadcaster that is under the jurisdiction of another Member State, the direct contributions to the production and acquisition of rights in European works, in particular co-productions, made by that broadcaster, should be taken into account, with due consideration for the principle of proportionality'. Furthermore, it should be noted that the linear media services on the Danish market operate in a market dominated by public service and State-owned operators and that the introduction of a culture contribution obligation for these linear media service providers risks further hampering their market position vis-à-vis the dominant public service providers. Against this background, it is not considered necessary or proportionate to subject linear media services to a culture contribution obligation.

Similarly, the present draft Act is not intended to cover turnover from sports or news programmes, even if these are made available to the consumer through an on-demand audiovisual media service, for example through a purchase option on the same platform or otherwise. The turnover covered is thus limited to the making available of audiovisual content, including films, series and documentaries, which are also the categories of creative audiovisual content which the culture contribution scheme aims to promote the production of, but not the making available of sports or news programmes.

Some linear television channels use catch-up or start-over services, where previously broadcast television programmes can be viewed on a linear audiovisual media service within a defined period of time. There is no clear definition of what is in the concept of catch-up or start-over service, and it will therefore depend on a specific assessment whether such services constitute de facto on-demand audiovisual media services, cf. the proposed definition in

Section 3, No 2, and therefore whether revenues from such services will fall within the concept of contributory turnover. Thus, central to the assessment of whether a specific catch-up or start-over service constitutes an on-demand audiovisual media service will be the degree of user choice there is deemed to be in relation to the time at which the user can view the previously linearly broadcast programme.

It is immediately considered that revenue from a catch-up or start-over service, where the user can only start the program over time within the programme's broadcasting time or in close connection with the programme's scheduling in the television programming schedule, will not be covered by the contributory turnover, as the service does not actually allow for viewing the programme at a user-selected time, cf. the proposed definition in Section 3, No 2. In assessing whether it is a service where the user can only start the program from the beginning within the programme's broadcasting time or in close connection with the programme's scheduling in the television programming schedule, emphasis may be placed on recognised industry standards, including whether the service makes content available for up to seven days after the programme's scheduling in the television programming schedule. Compliance with such an industry standard could therefore mean that the service must be regarded as making the programme available in close connection with the programme's scheduling in the television programming.

In addition, it is proposed that turnover generated by providers of on-demand audiovisual media services, as defined in the proposed Section 3, No 2, through the mere redistribution of other on-demand audiovisual media services from the contributory turnover is excluded. This could be, for example, turnover generated by an on-demand audiovisual media service provider, enterprise A, by redistributing and providing access to an on-demand audiovisual media service from enterprise B through enterprise A's platform. The exemption provides that providers are not required to pay culture contributions for profits from services for which they do not have editorial responsibility and are therefore not providers of within the meaning of this draft Act.

The draft Act introduces a rate for the culture contribution of 2 or 5 % of the contributory turnover in Denmark respectively. It follows directly from Article 13(2) of the AVMS Directive that Member States may impose an obligation on media service providers to make such financial contributions, which shall be proportionate and non-discriminatory. This requirement of proportionality under EU law implies that there must be no discrepancy between the purpose of the act, i.e. the intention to promote the production of

new Danish films, series and documentaries, and the means used to achieve the purpose, i.e. the obligation to contribute at a rate of 2 or 5 % respectively, depending on the media service provider's commitment to investments in the Danish creative ecosystem.

Denmark is a small linguistic area and the market for Danish content is similarly limited in size. A contribution obligation is therefore deemed to serve an objective purpose of ensuring the production of new Danish content and thereby contributing to cultural and linguistic diversity in Europe. With considerable uncertainty, the Ministry of Culture estimates that the culture contribution scheme with a contribution rate of 2 or 5 %, respectively, will result in proceeds of approximately DKK 103 million per year, which corresponds to proceeds of approximately DKK 98 million per year after revenue change from behavioural responses and labour supply. In comparison, the Danish Film Institute contributes from the State side in 2023 with a total grant budget of approximately DKK 420 million per year (covered all aid schemes, including the public service pool and the film aid schemes) to ensure the production of new Danish content. For further comparison, the central, commercial, linear media service providers on the Danish market are estimated to invest around DKK 500 million in Danish-produced audiovisual content. Therefore, the expected proceeds from the culture contribution scheme at a contribution rate of 2 or 5 %, respectively, are estimated to generate proceeds that are in reasonable proportion to the desired total aid intensity in this area to promote the production of new Danish films, series and documentaries.

The contribution rates of the proposed culture contribution scheme are thus expected to result in relatively limited proceeds compared to the State aid and investments made by linear media service providers in this area.

It is also the Ministry of Culture's assessment that the contribution obligation must be seen in the context of the possibility of obtaining State aid in this area, thereby reducing the contribution obligation for on demand audiovisual media service providers in general. Against this background, it is considered that there is no discrepancy between the size of the estimated proceeds resulting from the proposed contribution rates of 2 and 5 % respectively, and the objective of promoting Danish films, series and documentaries. The contribution rates are thus assessed, inter alia, in the light of these factors as a whole, not to be disproportionate.

It should be noted that the contribution rates of 2 or 5 %, respectively, generally follow the level of the culture contribution rates and types of culture contribution schemes that have been intro-

duced – or are being introduced – in the other EU Member States, subject, however, to large differences in the assumptions and basis for the collection of the different countries' schemes, as well as large differences in whether the schemes entail only a contribution obligation, an investment obligation or a combination of the two. By way of illustration, the contribution rates in France and Spain are 5.15 % and 5 % respectively, which is thus higher than the proposed Danish contribution rates.

It is proposed that the culture contribution scheme shall only apply to media service providers that have an annual turnover of more than DKK 15 million.

This limitation is made in accordance with Article 13(6) of the AVMS Directive, which reads 'the requirement on media service providers targeting audiences in other Member States set out in paragraph 2 shall not apply to media service providers with a low turnover or a low audience'. The concept of 'low turnover' is clarified in the Commission Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover (2020/C 223/03), Section III.3, which refers to Commission Recommendation 2003/361/CE of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. It follows that enterprises belonging in the same turnover threshold as micro-enterprises, that is to say enterprises with a total annual turnover not exceeding EUR 2 million, when also taking into account the turnover of partner or linked enterprises, should be exempted from the proposed contribution obligation, unless it is necessary and proportionate to include those enterprises.

In addition, it is proposed that the culture contribution scheme should not apply to media service providers with a low audience, defined as an audience representing less than 1 % of the total number of users of on-demand audiovisual media services on the Danish market. The calculation method for the total number of users of on-demand audiovisual media services on the Danish market has not yet been established. The Ministry of Culture will establish a methodology for the concrete calculation of the total number of users of on-demand audiovisual media services on the Danish market.

This limitation is made in accordance with Article 13(6) of the AVMS Directive, which reads 'the requirement on media service providers targeting audiences in other Member States set out in paragraph 2 shall not apply to media service providers with a low turnover or a low audience'. The concept of 'low audience' is de-

scribed in the Commission Guidelines under Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover (2020/C 223/03), Section III.4 where the concept of 'low audience' is used instead of 'low target audience'. It follows from the Guidelines that providers with an audience share below 1 % in a given Member State should be considered to have a low audience for on-demand audiovisual media services. It further follows that the threshold reflects a limited uptake of the services of the providers concerned on the relevant national markets, so that the European Commission considers it appropriate, inter alia, to exempt those media service providers from the obligation that can be imposed on the basis of Article 13(2) of the AVMS Directive.

It is the Ministry of Culture's assessment that media service providers with an annual turnover or a number of users below the proposed thresholds should be exempted from the obligation to contribute in order to avoid that these smaller enterprises and enterprises with a current limited presence on the Danish market are unnecessarily affected and that new operators are prevented from entering the market.

See also Sections 2-6 of the draft Act and the relevant specific comments.

3.2. Administration of the culture contribution scheme

3.2.1. Existing law

There are currently no regulations authorising the administration of a culture contribution scheme, which includes registration or reporting obligations for media service providers in this respect.

3.2.2. Considerations by the Ministry of Culture and the proposed scheme

The Agency for Culture and Palaces administers a number of subsidy schemes in the area of the Ministry of Culture, including as secretariat for the Media Board, the Radio and Television Board and the Danish Arts Foundation. The Agency thus has broad experience with subsidy administration and its administrative system is deemed suitable for handling a scheme such as that which is proposed.

Due to the Agency's provision of secretariat services to the Radio and Television Board, which performs, inter alia, general supervision of on-demand audiovisual media services, the Agency has

employee competences and knowledge of the group of operators that will be subject to the proposed scheme. It is therefore proposed that the Agency for Culture and Palaces shall administer the culture contribution scheme.

It is proposed to introduce an obligation for the covered media service providers to register with the Agency for Culture and Palaces and report annual statements of their contributory turnover and investments in new Danish content in Denmark to the Agency.

The Ministry of Culture deems a registration scheme as appropriate to ensure that covered media service providers thereby become aware of the regulatory framework to which they are subject, while at the same time laying a foundation for identification of those providers of on-demand audiovisual programming services that will be obligated to pay the culture contribution and thus form a basis for supervision of the scheme by the Agency for Culture and Palaces. In addition, the proposed registration obligation is deemed to be the least administratively expensive way to ensure knowledge within the Agency for Culture and Palaces of media service providers covered by the culture contribution scheme, as it would be a disproportionately burdensome administrative task for the Agency for Culture and Palaces to carry out such registration on the basis of outreach work among all potential operators on the Danish market.

There is no independent legal effect attached to registration, in the sense that the registration does not affect whether a media service provider is subject to the culture contribution payment obligation. Thus, the sole purpose of registration is the administration of the scheme by the Agency for Culture and Palaces.

In addition, it is necessary for the administration of the scheme and the calculation of the size of the contribution that the Agency for Culture and Palaces has access to statements of the media service providers' contributory turnover and any level of investment in new Danish content. This calls for an obligation on media service providers to annually report a statement of contributory turnover in the most recent calendar year and covered investment volume in Denmark, as such information is typically of a commercially sensitive nature and not publicly available.

In relation to the on-demand streaming service providers' statement and separation of their different revenues, it is assumed that media service providers, for their pricing of their streaming products, have a certain overview of the extent of their different sources of revenue. However, it is also assumed that there may

be a large difference in the practices of the enterprises in this area, and the draft Act therefore provides for methodological freedom for the providers in relation to the calculation, provided that the statement must follow the accounting policies used by the enterprise's most recently approved accounts or the Danish Financial Statements Act, cf. the proposed Section 8(2).

In relation to the media service providers' determination of contributory turnover, the Ministry of Culture believes the majority of the covered media service providers are big enough that they can be expected to have auditors who audit their accounts regularly, which means that monitoring and auditing contributory turnover and the level of investment will be possible. It is therefore considered unnecessary to require the reporting of the statement to await the full audit of financial accounts in order to be able to obtain a true view of the turnover.

Furthermore, a requirement for financial accounts to be audited prior to submitting the turnover and investment level report would be impractical, as the annual proceeds from the culture contribution, and thus the amount of the funds that can be distributed to Danish enterprises, are unlikely to be known until the third quarter of the distribution year. In addition, different standards apply to when annual financial accounts must be presented across Member States in the EU, which could also pose challenges in getting turnover reports in place as soon as possible during the year of distribution. This could result in a risk of distortion in relation to the time of the collection for media service providers depending on the EU Member State in which they are established.

Therefore, in order to ensure the validity of the statements submitted to the Agency for Culture and Palaces, it is proposed that media service providers shall be obligated to have their statements accompanied by audit reports which establishes with a high degree of certainty that the statements are accurate. This also reduces the need for the Agency to verify the statements, as this is outsourced to accredited independent auditors.

It is proposed that on the basis of reports from the covered media service providers, the Agency for Culture and Palaces shall calculate the respective providers' contributions and subsequently invoice the enterprises concerned.

It is proposed that the detailed regulations for administrating the culture contribution scheme shall be laid down by Order. It is therefore envisaged that the Minister for Culture will be authorised to lay down detailed regulations on the registration and re-

porting of media service providers and on digital communication with the Agency for Culture and Palaces.

The intention is that the proposed authorisation shall be utilised to lay down regulations in the form of an Order on how the media service providers covered must register, the information to be provided and the deadlines for doing so, as well as detailed regulations on the form, procedure, content of the reporting and deadlines for the reporting of statements of the contributory turnover, including requirements for auditing standards applied and the level of certainty of the related audit reports.

Further to the proposal to task the Agency for Culture and Palaces with administering the culture contribution scheme, it is also considered appropriate to assign the same Agency with supervisory and decision-making powers. The Agency already has employee competences in management, subsidy administration, and legal proceedings in the field of media, which is why the Agency is deemed suitable to supervise and take decisions pursuant to this draft Act. Therefore, this calls for the Agency for Culture and Palaces to be provided with the legal basis for supervising and making decisions concerning compliance with this Act and regulations issued pursuant thereto, including supervision of media service providers' payment of the culture contribution and making decisions in relation to which media service providers are subject to the contribution obligation, as well as the extent of the contributory turnover and thus the amount of each media service provider's culture contribution.

Finally, the Agency for Culture and Palaces' decisions in relation to this may be brought before the Radio and Television Board within four weeks of receipt. This ensures that media service providers have an administrative remedy against the Agency's decisions. The decisions generally have a financial impact on the providers. The Ministry of Culture considers that the majority of the decisions that the Agency will take will concern whether specific media service providers are subject to the contribution obligation, the correct calculation of the turnover covered, etc. The forthcoming decision cases will be of both legal and grant administrative technical nature and will require a special technical insight in this area. The Radio and Television Board is deemed to have such technical knowledge, which is why it is considered appropriate to designate the Board as the appeal body for Agency for Culture and Palaces decisions taken by virtue of this Act and regulations issued pursuant thereto.

See also Sections 7-11 of the draft Act and the relevant specific comments.

3.3. Penal provisions

3.3.1. Existing law

There are no regulations that provide for penalties for non-compliance with obligations arising from the culture contribution scheme, since such a scheme does not apply in Denmark today.

3.3.2. Considerations by the Ministry of Culture and the proposed scheme

In order to ensure compliance with the proposed culture contribution scheme and to ensure that the Agency for Culture and Palaces can administer the scheme, the Ministry of Culture considers that it would be appropriate to punish intentional and grossly negligent infringements of this Act's core obligations for media service providers by a fine. It is therefore envisaged to penalise non-compliance with the proposed registration, reporting and information obligations, as well as for non-compliance with the obligation to pay culture contributions. Penalties in the form of financial penalties are deemed to be proportionate to the infringement of the proposed provisions subject to penalties, in particular in view of the fact that, as a general rule, the person liable is expected to be a legal person.

The penalty must be proportionate to the infringement in question. The Ministry of Culture considers that the objective of the penalty should be that the fines are such that they are suitable for effectively ensuring that media service providers pay the 2 % contribution proposed in this Act, cf. the proposed Section 4(1), the proposed contribution of 3 %, cf. the proposed Section 4(2), and that the media services comply with the regulations on reporting, etc. resulting from Sections 7(1), 8(1), 9(1) and 10(2).

The Ministry of Culture considers that the provisions subject to sanctions can generally be divided into two types of obligations, respectively a more formal registration, reporting and disclosure obligation and a more substantive obligation to pay culture contributions. It is considered that an infringement of the two types of obligation should not be penalised in the same way, since it is considered that there is a significant difference between the seriousness and the social impact of the infringement in relation to non-compliance with obligations enabling the necessary administration of the culture contribution scheme and the avoidance of a substantive obligation to pay a financial contribution to a State aid scheme.

As regards non-compliance with registration and information obligations, it is proposed, in order to ensure a significant impact of the fine, that the determination of the amount of the fine for legal persons is determined according to the contributory turnover of the infringing enterprise, cf. the proposed Section 3, No 4, in the year where the offence took place. For natural persons, it is proposed that the level of the fine be set between DKK 10 000 and a net monthly salary at the time of the offence.

It is proposed that the level of fines for the avoidance of the obligation to pay culture contributions, cf. Section 4(1) and (2), should follow the practice of calculating standard fines in criminal proceedings related to tax or VAT, which are fines for intentional or grossly negligent infringements of the tax and duty legislation calculated according to standard rates (tariff fines) before any surcharges due to aggravating circumstances and deductions due to mitigating circumstances pursuant to Sections 81 and 82 of the Penal Code. It follows, inter alia, from Consolidation Act No 283 of 2 March 2022 of the Tax Control Act, Section 82(1), and Consolidation Act No 1021 of 26 September 2019 of the Act on Value Added Tax (VAT Act), Section 81(3), that intentional defrauding of the Treasury is punishable by a fine or imprisonment. The method for calculating fines is established through case law and is described in the Legal Guide 2023-1, Section A.C. 3.5.2.1. Calculation of standard fines in tax, VAT and payroll tax criminal cases expressing the Tax Administration's perception of current practice. In the case of infringements of the legislation on tax, VAT, payroll tax and the Collection Act, it follows from the Legal Guide that the amount of the fine is calculated at twice the total amount avoided when there is intentional avoidance and the person liable is a legal person. The same applies where the person liable is a natural person and their avoidance is intentional, if the avoidance does not exceed DKK 250 000. In the case of gross negligence, the fine corresponds to the total avoidance amount. Of the part of the avoidance that does not exceed DKK 60 000, the fine is calculated only as the total amount avoided in the case of intentional avoidance, and as half of the amount avoided in the case of gross negligence.

The determination of the penalty will continue to rest on the specific assessment of all the circumstances of the case by the courts in the individual cases, and the stated level of penalties can be altered upwards or downwards if in the specific case there are aggravating or mitigating circumstances, cf. the general regulations on the determination of the penalty in Chapter 10 of the Penal Code.

See also Section 12 of the draft Act and the relevant specific comments.

4. Relationship with Denmark's international relations

On behalf of Denmark, the Government has joined the OECD Agreement on Taxation of the Digital Economy of 8 October 2021, which states, inter alia, that the Multilateral Convention (MLC), negotiated on the basis of the OECD Agreement, will 'require all parties to remove all Digital Services Taxes and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future.'. The status of the OECD Agreement is a political declaration.

The OECD Agreement also states that Denmark agrees to the following: '[n]o newly enacted Digital Services Taxes or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the MLC.'.

Furthermore, the Government, on behalf of Denmark, has also endorsed the follow-up declaration of 11 July 2023 to the OECD Agreement. This follow-up declaration also has the status of a political declaration.

This follow-up declaration states that Denmark undertakes not to impose Digital Services Taxes or other relevant similar measures from 1 January 2024 until the earlier of 31 December 2024 or the coming into force of the MLC if at least 30 jurisdictions in which at least 60 % of parent companies of included groups are located sign the MLC by the end of 2023. The commitment may be extended until the earliest date of either 31 December 2025 or the entry into force of the Multilateral Convention if sufficient progress is deemed to have been made towards the entry into force of the Multilateral Convention.

The proposed culture contribution is not considered to directly contravene the OECD Agreement or the intentions it establishes in relation to the negotiations of the Multilateral Convention.

The Multilateral Convention is not yet in final form, so that the precise wording and scope of the obligation have not yet been definitively determined.

5. Financial and implementation impact on the public sector

With considerable uncertainty, the culture contribution is estimated to result in annual proceeds after revenue change from behavioural responses and labour supply of approximately DKK 98 million. There is no estimated financial impact in 2024, as the culture contribution will not be collected until 2025. The media service providers affected are estimated to pay an amount of approximately DKK 103 million annually for the separate culture contribution revenue. The culture contribution is at the same time estimated, with a degree of uncertainty, to result in derived lower proceeds from Section 38 of the Finance Act. The derived lower proceeds from Section 38 of the Finance Act are estimated at DKK 5 million of taxes and duties. Taxes and duties mainly reflect a labour supply effect.

20 % of the proceeds after revenue change from behavioural responses and labour supply and administrative costs associated with the scheme are expected to be used for a public service pool and 80 % to increase the subsidy for Danish films. The final distribution will be decided by the parties to the settlement when the proceeds are known.

It is considered that the culture contribution pursuant to Section 6 of Act No 149 of 10 April 1922 on income and property tax to the State, as amended, will be deductible as an operating cost in determining the taxable income of the covered media service providers who are subject to full or limited tax liability in Denmark.

The draft Act is considered to have an implementation impact on the State, as the introduction of the culture contribution scheme entails new administrative tasks for the Agency for Culture and Palaces and new tasks for the Radio and Television Board, whose secretariat services are provided by the Agency for Culture and Palace. It is estimated that the costs associated with this constitute up to three FTEs consisting of up to two FTEs for the Agency's administration of the scheme and up to one FTE for complaint handling in the Radio and Television Board. The draft Act is also assessed to have an implementation impact on the State in the form of an expected increased number of aid applications to be processed by the Danish Film Institute (DFI) in connection with the implementation under the film aid schemes. It is estimated that the cost of this is up to one FTE. The Danish Film Institute will continue to be able to use up to 3 % of the funds distributed to the public service pool, which is in line with the way in which the pool is administered today. The public administrative costs associated with the administration of the culture contribution and the processing of potential appeals shall be covered by the culture contribution.

The vast majority of communication by Agency for Culture and Palaces with market operators already takes place digitally. The draft Act provides that the Minister for Culture may lay down regulations on written digital communication and the use of certain IT systems, which is why it is not expected to result in an IT implementation impact.

The draft Act is not considered to have an implementation impact on regions or municipalities.

The draft Act is not considered to mean that the Agency for Culture and Palaces must be able to collect or process information from registers or IT systems operated by other authorities.

The draft Act is deemed to be in adherence with the seven principles for digital-ready legislation. The draft Act contains simple and clear regulations in accordance with Principle 1. When drafting the draft Act, emphasis has been placed on supporting digital communication between the Agency for Culture and Palaces and enterprises in connection with the registration and reporting obligations of the media service providers and on technology neutrality in the regulation in accordance with Principle 2. The digital communication, which in the draft Act provides the legal basis for the Minister for Culture to lay down detailed regulations, is expected to be possible by using existing public infrastructure, including e.g. Digital Post, which is why the draft Act complies with Principle 6. In addition, the draft Act provides the legal basis for the Agency for Culture and Palaces to supervise this Act on the basis of the reported enterprise data supplemented by audit reports made with a high degree of certainty in accordance with Principle 7 on the prevention of fraud and errors. The remaining principles are not considered relevant to the draft Act.

It is considered that there is no administrative impact on the Public Debt Collection Agency associated with Section 5 of the draft Act, since the Agency for Culture and Palaces has already been established as a creditor in the Danish Debt Collection Agency and any new types of claims may be handled under the existing creditor agreements. The draft Act is deemed to have a very limited impact on the chain of criminal proceedings and is therefore considered not to entail additional costs in the Ministry of Justice.

6. Financial and administrative impact on business, etc.

The Ministry of Culture estimates that up to 50 media service providers will be included in the culture contribution scheme.

With considerable uncertainty and in total, the draft Act economic impact on media service providers is estimated to be DKK 103 million in culture contribution payments annually.

The draft Act entails minor administrative conversion costs for media service providers to register with the Agency for Culture and Palaces.

The draft Act entails a lesser on-going administrative impact on media service providers in connection with the calculation and annual reporting of their contributory turnover and investment level in new Danish content, including by paying the costs of audit statements in connection with the reporting. Media service providers that do not use the calendar year as a financial year will also have to accrue their turnover, etc. differently in connection with the collection of the contribution than in their financial accounts. However, irrespective of the accrual, statements resulting from the culture contribution shall follow the existing accounting principles of the media service providers used for the preparation of the financial accounts. Finally, the draft Act will entail ongoing administrative costs related to the provision of information by media service providers and the disclosure of documents through supervision. This impact is assessed to be less than DKK 4 million, which is why it is not quantified further.

The draft Act provides the legal basis to issue Orders which have an administrative impact on business. The administrative impact is the possibility for the Minister for Culture to lay down detailed regulations for the registration of media service providers, including on requirements regarding the form, procedure and content of the registration, as well as deadlines for the registration. The Minister for Culture may lay down detailed regulations on the reporting of statements of the contributory turnover, including on the form, procedure, content of the reporting and deadlines for the reporting as well as requirements to the audit report. Furthermore, the Minister for Culture may lay down detailed regulations for media service providers' provision of information, disclosure of documents, etc., during supervision, including, among other things, laying down regulations for the submission of basic documentation, an opinion of the auditor on working practices and independence as well as a statement and calculation of contributory turnover and investments in new Danish content. Finally, the Minister for Culture may lay down detailed regulations on written communication to and from the Agency for Culture and Palaces, including regulations on digital communication and the use of certain IT systems and digital formats.

The original draft Act has been sent to the Danish Business Authority's Area for Better Regulation (OBR), which, on the basis of the information available, estimated that the draft Act in isolation entails an administrative impact below DKK 4 million per year. The administrative impact of the enabling provisions will be assessed in more detail when the provisions are implemented at Order level.

The draft Act complies with the five principles for implementing commercial EU regulation.

The five principles of agile legislation are not deemed relevant to this draft Act, as it is not considered to affect enterprises' ability to test, develop, or use digital technologies and business models.

7. Administrative impact on citizens

The draft Act is considered to have no administrative impact on citizens.

8. Climate impact

The draft Act is deemed to have no climate impact.

9. Impact on the environment and nature

The draft Act is not expected to have any impact on the environment or nature.

10. Relationship to EU law

The draft Act contains provisions that implement parts of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the co-ordination 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, OJ 2018, L 303, p. 69.

The draft Act was therefore notified pursuant to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) on [2] February 2024 with the end of the standstill period on [3] May 2024.

It is considered that the draft Act may involve State aid within the meaning of Article 107(1) of TFEU and must therefore be notified

and approved by the European Commission within the framework of EU State aid rules before the Act can enter into force.

Aid under the current public service pool is granted in accordance with Regulation (EU) No 651/2014 of the European Commission of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, as amended.

The European Commission approved the Danish Film Institute's state aid schemes for films on 27 June 1996. The approval was updated in February 2018.

11. Consulted authorities and organisations, etc.

A draft Act has been submitted for consultation between 15 August 2023 and 11 September 2023.

In the period from [2 February 2024 to 1 March 2024], a draft of the amended provisions in Sections 4, 5 and 10 of the draft Act has been submitted for consultation with the following authorities and organisations, etc.:

[25syv A/S, Advokatrådet (General Council of Danish Bars), Aktionæren, Aller Media, Alrow Media, Altibox Film og serier, Amazon Prime (Denmark), Antennesammenslutningen af 2012, Apple Denmark, Arbejderbevægelsens Erhvervsråd (the Economic Council of the Labour Movement), ARF Multimedier, Bauer Media, BEAM Audio Agency, Berlingske Media, Bideo.dk – digital dannelse og deltagelse, Billedbladet Play, Bispebjerg Lokal-tv, Blockbuster, Broadcast Partners, BTiTV, BumbleBee Productions, Bonnier Publications, Canal Digital Danmark A/S, Canal6000, Center for Podcasting, C More, Copenhagen Bombay, Copydan, Danish Dox, Danmark CTV, Dansk Aktionærforening, Dansk BiblioteksCenter, Dansk Energi, Dansk Erhverv (Danish Chamber of Commerce), Dansk Filmskat, Dansk Folkeoplysnings Samråd, Dansk Industri (Danish Industry), Dansk IT, Dansk Journalistforbund (Danish Union of Journalists) (DJ), Dansk Radioreklame, Dansk Skuespillerforbund (Danish Actors' Association), Dansk Student Tv Forening, Dansk Teater, Danske Advokater (The Association of Danish Law Firms), Danske Annoncører og Markedsførere (DAOM), Danske Filminstruktører, Danske Dramatikere, Danske Handicaporganisationer, Danske Mediedistributører, Danske Medier, Danske Regioner, Datatilsynet (Danish Data Protection Agency), Den Kristne Producentkomité, Den Vestdanske Filmpulje, Det Centrale Handicapråd, Det Danske Filminstitut (DFI) (the Danish Film Institute), Det Nordjyske Mediehus, DI Digital, DILEM (Danske Idebaserede Lokale Elektroniske Medier), Disney+, DK4, DR, Egmont, EU-mod-

standernes lytter og seerforbund kontakt, FAEM (Foreningen af Arbejderbevægelsens Elektroniske Medievirksomheder), FBG Mediehus, FDA (Forenede Danske Antenneanlæg), Filmcentralen, Filmdistributørerne, FilmFyn, Filmounge, Filmmagasinet Ekko, FilmStriben, Forbrugerombudsmanden, Forbrugerrådet TÆNK, Foreningen for Platformsøkonomi i Danmark (FPD), Freeway Media ApS, Frederiksberg Lokal TV, FSR – Danske Revisorer (FSR – Danish Auditors), FTVS – Fællesrådet for tv-sendesamvirker i Danmark, Good Company Pictures, Google Danmark, Grakom, Gramex, HBO Max Denmark, Hi3G, Høreforeningen, IFPI, Institut for menneskerettigheder, IT-Branchen, JP/Politikens Hus, Jysk Fynske Medier, Jyske Bank TV, Kanal 1 web-tv, Kanal Hovedstaden, Kanal 23, KLF, Kirke & Medier, KL (Kommunernes Landsforening), KODA, Konkurrence- og Forbrugerstyrelsen (Danish Competition and Consumer Authority), Kreativitet & Kommunikation, Landsorganisationen i Danmark (LO), Localeyes.tv, Mazanti-Andersen, Mediascale, Medienævnet (the Media Board), Medierådet for Børn og Unge, Min Bio, Monday Media, Monitormedier A/S, MTG (Modern Times Group), NB Medier, Netflix, NENT (Nordic Entertainment Group), NordenNu, Nordisk Film, Nordisk Film TV, Norkring, Norlys, NutAlone, Nye Medier, Ophavsretligt Forum, Producentforeningen, Producent Rettigheder Danmark, Rakuten TV (Denmark), Radio- og tv-nævnet (the Radio and Television Board), Rigsrevisionen, Samarbejdsforum for danske Lytter- og Seerorganisationer, SAML (Sammenslutningen af Medier i Lokalsamfundet), Samrådet for Ophavsret, SE/Stofa, Sendesamvirket i København, Sermitsiaq, SF Anytime, Story House Egmont, SLRTV, Sofarækken, Sport Live, Sportway Denmark ApS, STV Production A/S, TDC/Yousee, Tech Media, Teknologiens Mediehus, Teleklagenævnet (Telecommunications Complaints Board, Denmark), Telenor, Telia Danmark, TV 2 DANMARK A/S, TV 2/Bornholm, TV 2/FYN, TV 2/Kosmopol, TV 2/Nord, TV 2/Øst, TV 2/Østjylland, TV 3 A/S, TV Midt Vest, TV SYD, TV-Kalundborg.dk, Uafhængige Scenekunstnere, UBOD, Uptown TV, Viaplay Group, Viasat, WAOO, Warner Bros. Discovery Danmark, Watch Medier, Danwatch, Yousee/Nuuday, Zebrasport.dk, Zentropa, Ældre Sagen (DaneAge Association) and Aabenraa Local TV (TV ALT).]

12. Summary table

	Positive impact/lower expenditure (if yes, please specify extent/if no, enter 'None')	Negative impact/higher expenditure (if yes, please specify extent/if no, enter 'None')
Economic impact on the State, municipalities, and regions	The effect in terms of proceeds of the culture contribution is estimated with considerable uncertainty to amount to DKK 98 million annually	The culture contribution scheme is estimated with uncertainty to result in a derived lower proceeds for the central government on Sec

	after revenue change from behavioural responses and labour supply (2023 level). The separate culture contribution revenue are estimated at approximately DKK 103 million per year (2023 level).	tion 38 of the Finance Act. Taxes and duties totalling DKK 5 million per year (2023 level), which are covered by the separate culture contribution revenue.
Implementation impact on the State, municipalities, and regions	None	It is expected that the draft Act will result in administrative costs of up to 4 FTEs. The public administrative costs associated with the administration of the culture contribution and any complaint handling in the Radio and Television Board shall be borne by the culture contribution.
Economic impact on business	None	With considerable uncertainty, the draft Act economic impact on media service providers is estimated to be DKK 103 million in culture contribution payments annually.
Administrative impact on business	None	The draft Act entails minor administrative conversion costs for media service providers to register with the Agency for Culture and Palaces. The draft Act has a minor recurring administrative impact on media service providers in connection with the calculating and annual reporting of their contributory turnover, as well as the payment of fees for audit reports in conjunction with the reports. The total administrative costs are estimated to not exceed DKK 4 million at societal level and will not be further quantified.

Administrative impact on citizens	None	None
Climate impact	None	None
Impact on the environment and nature	None	None
Relationship to EU law	<p>The draft Act contains provisions that implement parts 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, OJ 2018, L 303, p. 69.</p> <p>The draft Act may involve State aid and requires notification to the European Commission, cf. the rules on State aid in the EU Treaty, before the Act can enter into force.</p>	
Is contrary to of the five principles for implementing commercial EU regulation/ goes beyond minimum requirements in EU regulation (mark with X)	Yes	No X

Comments on the individual provisions of the draft Act

Re Section 1

It is proposed in *Section 1* that the purpose of this Act is to promote Danish content, including for the production of new Danish films, series and documentaries.

The proposed provision describes the purpose of introducing a culture contribution scheme where the intention would be to promote Danish audiovisual content through the proposed scheme.

See also point 3.1.2 of the general comments on the draft Act.

Re Section 2

Article 2(3)(a) to (c) of the AVMS Directive defines when a media service provider is considered to be established in an EU Member State. It follows that a media service provider shall be deemed to

be established in a Member State where the media service provider has its head office in that Member State and the editorial decisions about the audiovisual media service are taken in that Member State.

It also follows that if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State.

Finally, it follows that if a media service provider has its head office in a Member State but decisions on the audiovisual media service are taken in a third country, or vice versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.

It is proposed in (1) that the Act applies to media service providers established in Denmark providing on-demand audiovisual media services, without prejudice to (3-5).

The proposed provision in (1) would mean that media service providers, understood as the natural or legal person who has editorial responsibility for the selection of audiovisual content in an audiovisual media service and determines how the audiovisual content is organised, cf. the definition in the proposed Section 3, No 3, will be subject to obligations under this Act if they provide on-demand audiovisual media services.

On-demand audiovisual media services are defined in the proposed Section 3, Nos 1 and 2.

The proposed provision in (1) would also mean that the culture contribution scheme covers media service providers that provide on-demand audiovisual services, regardless of the business model used, including e.g. so-called Subscription Video on Demand ser-

vices (SVOD) and Transactional Video On Demand services (TVOD), or a combination thereof. SVOD services are subscription services and are included regardless of whether the service is provided under more traditional subscription terms, where the consumer registers and pays a fee for continuous access to the service for a given period of time, or whether it is offered with subscription-like conditions. Thus, in this context, monetary or other compensation for the subscription is irrelevant. This means that services that, for example, use 'free' subscriptions for which the consumers do not pay any money, but instead agree to view advertisements or provide their data as compensation, will also be considered as subscriptions or subscription-like conditions within the meaning of this draft Act. TVOD services are transactional services where access to the content of the service is paid for, i.e. the consumer pays in each situation for access to, for example, a film for a given period of time. It is also irrelevant for the TVOD services whether the compensation for accessing the content of the service is of a monetary nature or whether the consumer pays for access by other means.

The fact that the media services covered would have to be audio-visual would mean that media service providers providing only audio-on-demand services, such as services with podcasts or previously broadcast radio programmes, would be excluded from the scope of the Act.

See also the special comments on the proposed Section 3, Nos 1-3.

It is proposed in (2) that the Act also applies to media service providers established in another EU Member State and providing on-demand audiovisual media services targeting audiences in Denmark, without prejudice to (3-5).

The proposed provision in (2) would mean that the scheme covers media service providers established in another EU Member State when their on-demand audiovisual media services are targeting audiences in Denmark.

It follows that this Act does not apply to media service providers that are not established in an EU Member State.

A specific assessment of an individual on-demand audiovisual media service will determine whether it is deemed to be targeting a Danish audience. It is presumed that a service is targeting a Danish audience if the service contains advertisements or other promotional activity specifically targeting customers in Denmark, the main language of the service is Danish, or it has content or com-

mercial communication specifically targeting audiences in Denmark. This list is not exhaustive and other factors may therefore affect the assessment.

See also the special comments on (1) of the provision and point 3.1.4 of the general comments.

It is proposed in (3) that the Act does not apply to media service providers that have an annual turnover of less than DKK 15 million or whose audience represents less than 1 % of the total number of users of on-demand audiovisual media services on the Danish market.

The proposed provision in (3) will mean that media service providers whose total annual turnover does not exceed a threshold of DKK 15 million will be excluded from the scope of the Act. The threshold of DKK 15 million is determined in accordance with the European Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, which sets the threshold for micro-enterprises as a total annual turnover not exceeding EUR 2 million, taking also into account the turnover of partner or linked enterprises. The concepts of partner and linked enterprises shall be understood in accordance with the definitions set out in Article 3(2) and (3) of the Annex Definition of micro, small and medium-sized enterprises adopted by the Commission, to Commission Recommendation 2003/361/EC of 6 May 2003.

The annual turnover referred to in (3) will be different from the calculation of the contributory turnover, the calculation of turnover being determined in accordance with Article 4 and Article 6 of the Annex Definition of micro, small and medium-sized enterprises adopted by the Commission, to Commission Recommendation 2003/361/EC of 6 May 2003.

Media service providers whose total annual turnover is in line with micro-enterprises will not be included in the culture contribution scheme. This avoids that the contribution obligation will unnecessarily affect these small businesses and that new entrants are prevented from entering the market, see also the Commission's Guidelines under Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and for the definition of a low audience and low turnover (2020/C 223/03), Section III. 3.

It also follows from the proposed (3) that this Act does not apply to media service providers with a low audience, defined as an au-

dience representing less than 1 % of the total number of users of on-demand audiovisual media services on the Danish market.

With reference to the Commission Guidelines under Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover (2020/C 223/03), Section III.4.1., it is proposed that the audience share of on-demand audiovisual media services be measured on the basis of the sale of the service, where the number of users/viewers is a good indicator of this sale.

The size of the audience for a given on-demand media service will thus be determined by the number of active users of each service. For so-called Subscription Video on Demand services (SVOD), the size of the audience will have to be calculated as the number of paying subscribers to the service. For so-called Transactional Video On Demand services (TVOD), the audience's size will have to be calculated as the number of unique customers/accounts who have acquired at least one title in the service's catalogue within the most recent calendar year. For so-called Advertising Video on Demand services (AVOD), the audience's size will have to be calculated as an average of the number of unique visitors within the most recent calendar year. In the case of subscribers paying for bundled services which also include an on-demand audiovisual service, the measurement will have to be based on users who have actually accessed the content of the service within a certain period of time.

In practice, the media service provider's percentage audience share will have to be calculated as the number of users of the service divided by the total number of users of on-demand audiovisual media services targeted at the Danish market and multiplied by 100. The calculation method for the total number of users of on-demand audiovisual media services on the Danish market will be determined by the Ministry of Culture. On this basis, the Ministry of Culture will annually compile information on the total number of users for use in the calculation by media service providers.

Similarly, media service providers with a low audience will not be included in the culture contribution scheme in order to avoid that the contribution obligation should unduly affect these small businesses and to prevent new operators from being hindered from entering the market, see also the Commission Guidelines under Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover (2020/C 223/03), Sections III.3 and 4.

It is proposed in (4) that the Act does not apply to media services provided as part of the exercise of public service activities, cf. Section 11 of the Radio and Television Broadcasting Act, etc., or pursuant to the regulation in the EU Member State where the provider of the on-demand audiovisual media service is established.

The proposed provision will provide for an exemption to the starting point in Section 2(1) and (2) according to which a media service provider established in Denmark or another EU Member State falls within the scope of this Act if it provides on-demand audiovisual media services targeting a Danish audience.

For media service providers established in Denmark, the proposed provision will mean that a media service provider only providing an on-demand audiovisual media service as part of public service activities, cf. Consolidated Act No 1350 of 4 September 2020 on radio and television broadcasting, etc., Section 11, is not covered by this Act.

The reference to Section 11 of the Radio and Television Broadcasting Act, etc., will mean that the culture contribution scheme does not apply to on-demand audiovisual media services from DR, the regional TV 2 enterprises, or TV 2 DANMARK A/S if they are provided as part of public service activities in accordance with the regulations of the Radio and Television Broadcasting Act, etc., Chapters 4, 6, and 6 a.

The same exemption will apply to other entities established in Denmark which have been authorised to operate public service activities, cf. Section 11(2) of the Radio and Television Broadcasting Act, etc., if they provide an on-demand audiovisual media service as part of it.

The proposed provision for media service providers established in another EU Member State and providing an on-demand audiovisual media service as part of public service activities would also result in this Act not applying to these media service providers. In this case, the existence of a media service provided as part of public service activities will depend on how public service activities are regulated and legally defined in the EU Member State in which the media service provider is established. Moreover, it must be assumed that any on-demand audiovisual media services operated in the context of foreign public service activities will in principle target their own national territory and not a Danish audience, which is why they, for that reason alone, will not be covered by this Act.

If a media service provider provides multiple on-demand audiovisual media services or operates separated media services, only part of which is provided as part of public service activities, only that part of the media service(s) that is subject to a public service obligation will fall under the exemption in Section 2(4). Thus, the part of the media service provider's on-demand audiovisual media services provided under normal commercial terms will not be covered by the exception in Section 2(4).

It is proposed in (5) that the Act does not apply to media service providers that provide media services solely for library or educational purposes.

It follows from the second sentence of Article 13(6) of the AVMS Directive that, in view of changing market conditions, a Member State may derogate from the contribution obligation under Article 13(2) of that directive where it would be impracticable or unjustified by reason of the nature or theme of the audiovisual media service.

It is proposed that the Act will not apply to media service providers providing only library or educational services, such as digitally lending films through libraries and for educational purposes. As a result, such on-demand audiovisual media services, which by their nature have a predominantly general interest objective, will be exempt from paying culture contributions.

Re Section 3

The applicable Section 2(1)(4) and Section 2(3) and (4) of the Broadcasting Act, cf. Consolidated Act No 1350 of 4 September 2020 on radio and television broadcasting, etc., lay down a number of definitions in the Act.

It follows from the current Section 2(1)(4) that the provision of programming services means the provision of on-demand audiovisual media services where the main purpose of a service or part of it that is separable from the main activity of the service provider is to provide informational, entertaining or educational visual programmes to the public via electronic communications networks as defined in the Act on electronic communications networks and services.

Under the applicable Section 2(3), an on-demand audiovisual media service means, for the purposes of this Act, an audiovisual media service provided by a media service provider for the purpose of receiving programmes at a time chosen by the user and at the

request of each user on the basis of a catalogue of programmes selected by the media service provider.

Under the applicable Section 2(4), a media service provider means, for the purposes of this Act, the natural or legal person who has editorial responsibility for the selection of audiovisual content in an audiovisual media service and determines how the audiovisual content is organised.

The applicable Section 2(1)(4) and Section 2(3) and (4) of the Broadcasting Act transposes Article 1(1)(a)(d) and (g) of the AVMS Directive.

The proposed provisions in Nos 1 to 4 would have to be understood in accordance with the definitions of the Broadcasting Act, and would thus also transpose Article 1(1)(a)(d) and (g) of the AVMS Directive. No 4 of the provision does not transpose the AVMS Directive, but is a new Danish definition of the concept of contributory turnover.

The proposed Section 3 defines a number of concepts for the purposes of understanding the provisions of the Act.

It is proposed in *No 1* to define the concept of audiovisual media service as a service where the main purpose of the service or a dissociable part of it is devoted to providing the general public with visual programmes that inform, entertain, or educate, by means of electronic communications networks as defined in the Act on electronic communications networks and services.

The proposed provision in No 1 would have to be interpreted in accordance with Section 2(1)(4) of the Broadcasting Act and would thus imply that the concept of audiovisual media service would have to be understood in accordance with the definition of programming services as being, inter alia, the provision of on-demand audiovisual media services where the main purpose of a service or part of it that can be separated from the main activity of the service provider is to provide informational, entertaining or educational visual programmes to the public via electronic communications networks and services as defined in the Act on electronic communications networks and services.

The proposed definition in No 1 would mean that the media services that would be covered by the Act would have to be audiovisual, which would mean that media service providers providing only audio-on-demand services, such as services with podcasts or previously broadcast radio programmes, would not be covered by the Act.

It is proposed in *No 2* to define the concept of on-demand audiovisual media service as an audiovisual media service provided by a media service provider so that programmes can be received at a time chosen by the user and at their individual request, on the basis of a catalogue of programmes selected by the media service provider.

The proposed provision in *No 2* would have to be understood in the same way as the definition in Section 2(3) of the Broadcasting Act and would thus imply that the concept of on-demand audiovisual media service should continue to be understood as an audiovisual media service provided by a media service provider for the purpose of receiving programmes at a time chosen by the user and at the request of each user on the basis of a catalogue of programmes selected by the media service provider. The provision will have to be interpreted accordingly.

It is proposed in *No 3* to define the concept media service provider as the natural or legal person who has editorial responsibility for the selection of audiovisual content in an audiovisual media service and determines how the audiovisual content is organised.

The concept of on-demand audiovisual media service in *No 3* of that provision would have to be understood in the same way as the definition of the concept in Section 2(4) of the Broadcasting Act and would thus mean that the concept of a media service provider should continue to be understood as the natural or legal person who has editorial responsibility for the selection of audiovisual content in an audiovisual media service and determines how the audiovisual content is organised. The provision will have to be interpreted accordingly.

It is proposed in *No 4, first sentence*, to define the concept of contributory turnover as the gross revenues of a media service provider in Denmark resulting from the making available of audiovisual content by the on-demand audiovisual media service.

It is proposed in *No 4, second sentence*, that revenues related to the making available of sports or news programmes, revenues from linear programming services made available through the on-demand audiovisual media service and revenues from the redistribution of other media service providers' on-demand audiovisual media services do not form part of the contributory turnover.

The proposed definition will limit the part of the media service provider's turnover that will serve as the basis for calculating the culture contribution to be paid by the media service provider.

The contributory turnover will be a broadly defined concept, which will in principle include all turnover generated by the media service provider through its on-demand audiovisual media service related to the making available of audiovisual content in Denmark. Thus, subscription revenues, transaction or rental revenues, advertising revenues and revenues from the resale of the on-demand audiovisual media service in other enterprises' subscription-based products will also be contributory turnover. However, the list will not be exhaustive.

The contributory turnover may include revenues directly from, for example, consumer subscription payments for access to the service or payments for streaming a film, series or documentary. However, it could also include revenues that could be generated indirectly on the basis of consumers' connection to or use of the service, such as revenues from the sale of advertising space on the on-demand audiovisual media service, or revenues from the sale of subscription-based products by other enterprises where the on-demand audiovisual media service is included, such as television packages, mobile subscriptions, etc. The definition would thus also include revenues from the resale of the on-demand audiovisual media service in other enterprises' subscription-based products to ensure that the scheme will be able to accommodate all business models and to avoid the risk of circumvention by media service providers changing their business model from, for example, subscription sales directly to consumers to sale via other enterprises' products in order to avoid the contribution obligation.

The starting point that all revenues resulting from the making available of audiovisual content generated through the on-demand audiovisual media service in Denmark will be covered is waived in the second sentence in respect of revenues arising from the making available of sports or news programmes. The starting point will also be waived in terms of revenues arising from any linear programming services carried out through the on-demand audiovisual media service. This includes, for example, a mixed service where, in addition to the possibility of streaming on-demand audiovisual content, consumers may purchase access to a linear audiovisual media service/channel on which live TV is broadcast (i.e. simultaneous reception of programmes based on a schedule). In such case, the revenues resulting from the sale of the access to the linear channel would not be covered by the concept of contributory turnover.

The revenues from a catch-up or start-over service, where you can view previously broadcast TV programmes on an otherwise linear audiovisual media service within a defined period of time, will be

covered by the concept of contributory turnover if, on a case-by-case basis, the service is considered to be an on-demand audiovisual media service, cf. the proposed Section 3, No 2. This will be the case where the service in question is provided by a media service provider for the reception of programmes at a time chosen by the user and at the request of each user on the basis of a catalogue of programmes selected by the media service provider. The degree of user choice there is deemed to be relative to the time at which the service allows the user to view the previously linearly broadcast program will be at the core of the assessment.

It is considered that revenue arising from a catch-up or start-over service, where the user can only start the program from the beginning within the programme's broadcasting time, or in close connection with the programme's scheduling in the television programming schedule, will not be covered by the contributory turnover. In assessing whether it is a service where the user can only start the program from the beginning within the programme's broadcasting time or in close connection with the programme's scheduling in the television programming schedule, emphasis may be placed on recognised industry standards, including whether the service makes content available for up to seven days after the programme's scheduling in the television programming schedule.

In addition, turnover generated by on-demand audiovisual media services by redistributing other on-demand audiovisual media services will be exempted from the contributory turnover base in order to avoid the double payment of culture contributions for the same on-demand audiovisual service.

Re Section 4

It is proposed in (1) that a media service provider must pay an annual contribution of 2 % of its contributory turnover in Denmark.

The proposed provision will result in all media service providers covered by this Act being obliged to pay a financial contribution of 2 % of their contributory turnover per year, cf. Section 3(4) of the draft Act.

Please refer to the special comments on the proposed Sections 2 and 3(4).

It is proposed in (2) that a media service provider who invests less than 5 % of their contributory turnover in Denmark in new Danish content, in addition to the contribution referred to in (1), must pay an annual contribution of 3 % of their contributory turnover in

Denmark. A media service provider can distribute investments in new Danish content over a three-year period as an average.

The proposed provision will mean that media service providers who choose not to invest – or to invest less than 5 % of their contributory turnover in new Danish content annually – will have to pay a 3 % contribution in addition to the culture contribution that all media service providers will have to pay in accordance with (1). Media service providers with no or limited level of investment in new Danish content will thus have to pay a total of 5 % in annual culture contributions.

Contrary to (2), media service providers who annually choose to invest 5 % or more of their contributory turnover in new Danish content will not have to pay the contribution of 3 % and thus only have to pay a 2 % culture contribution.

The fact that the investments will have to be in new Danish content will mean that investments in the form of the purchase of broadcasting rights for new productions will be eligible for inclusion in the scheme, while investments in broadcasting rights for pre-existing content (e.g. when purchasing production companies' so-called back catalogues) will not be included in the calculation, as it falls outside the objective of ensuring the production of new Danish content. It will be considered as an investment in new content when the investment is made in a content production before production is fully obtained and has generated a final and thus existing product.

See also the special comments on the proposed Sections 2 and 4(3).

Finally, the provision in (2), second sentence, will allow a media service provider to inform the Agency for Culture and Palaces that it will make use of a three-year investment period. In this situation, the calculation of the annual level of investment in new Danish content will be based on an average over the three-year period. On the basis of a statement of the average, it will be determined whether the provider should be charged contributions of 3 % in culture contributions for the individual years in addition to the contribution of the 2 %. With the option of choosing a three-year average investment period, the provider will be able to invest in new Danish content with variable percentage in relation to the contributory turnover over three years and continue to benefit from the investment option's exemption from the 3 % contribution, provided that the investments correspond on average to 5 % of the annual contributory turnover per year in the three years.

It is proposed that media service providers' investments be measured in time to reflect the real level of investment and reduce the risks of inappropriate consequences of e.g. postponements in production start-up compared to media service providers' statement and reporting of a given year's investments. With the proposal that investments could be measured over a period of three years, the level of investment would have to balance over this three-year period in a closed cycle. This means that media service providers will not necessarily have to invest 5 % or more in a given year, as long as the level of investment in the other two years of the period results in the provider's investment level being on average 5 % or higher for each of the three years. It is also proposed that media service providers be given methodological freedom in relation to the time when they consider the individual investment to have been made, however, so that an investment reported to the Agency for Culture and Palaces, cf. Section 8, to have been made at a given time cannot subsequently be changed to have been made at another time.

It is proposed in (3) that investments in new Danish content may include all investments in the production and co-production of new Danish films, series and documentaries.

The proposed provision would mean that only the investments made by media service providers in Danish content will be eligible for inclusion in the media service providers' calculation of their level of investment under Section 4(2).

Thus, investments that will have to be included in the statement under (2) will be broadly defined to cover all types of investments in the production and co-production of new Danish films, series and documentaries. These could include, among other things, direct investment in the form of production, co-production and acquisition of rights to films, series or documentaries.

It is proposed in (4) that an investment will be considered to have been made in Danish content when 75 % of the production material for European produced films, series or documentaries is in Danish, and in addition meets at least one of the following criteria:

- 1) More than 50 % of the production's budget has been spent in Denmark.
- 2) More than 50 % of the production's recordings take place physically in Denmark.

With the proposed provision, a media service provider's investments will be considered to constitute investments in Danish content within the meaning of this Act and will thus be eligible for in-

clusion in the fulfilment of the investment opportunity when at least 75 % of the production material for European produced films, series or documentaries is in Danish. In addition, more than half of the individual production budget will have to be spent in Denmark or more than half of the individual production's recordings should take place physically in Denmark. The requirement that 75 % of the production material will have to be in Danish will thus be mandatory, while there is freedom of choice in relation to the other two criteria.

The proposed criterion that 75 % of the production material will have to be in Danish is based on the objective of Article 13 of the AVMS Directive to ensure adequate levels of investment in European works. Danish content is European content. However, the Danish linguistic area is small, which is why the market for films, series and documentaries in Danish is correspondingly limited. Similarly, production costs are borne by a smaller audience. It is therefore assessed that there is a need to introduce an incentive for media service providers to invest in European quality content in Danish.

According to the provision, production material may include the material behind the finished content production. This could be, for example, manuscripts, dialogue lists, basic production information (credits) or video clips from the finished production.

The film, series and documentary genres, regardless of which sub-category the content may otherwise fall under, including, for example, reality, comedy or drama, will be covered by the provision.

Re Section 5

It is proposed in (1) that the Agency for Culture and Palaces collects contributions under Section 4(1) and (2) annually in retrospect on the basis of media service providers' statements of the most recent calendar year's turnover in Denmark.

The proposed provision will mean that the Agency for Culture and Palaces is provided with the legal basis to collect the contribution from the media service providers included as part of the Agency's administration of the culture contribution scheme.

By using the most recent calendar year's turnover as the calculation period for the collection of the contribution, it will be possible to ensure that the calculation period becomes clear, since all me-

media service providers will have to calculate the culture contribution for the same period.

Under Section 15 of the Danish Financial Statements Act, there is freedom of choice for determining the financial year. If the most recent financial year were used instead, the Agency for Culture and Palaces would potentially have to handle collection after a number of differently determined financial years, depending on how the accounting period falls for each media service provider. For example, if the financial year of a media service provider runs from April to March, collection at the beginning of 2025 would have to be based on the 2023 financial year, as the 2024 financial year would not yet be closed. This means that the culture contribution would be collected for this media service provider with a certain delay. The use of the most recent calendar year as the calculation period will thus be simpler for the Agency for Culture and Palaces on the basis of administrative considerations.

Media service providers that do not use the calendar year as a financial year will have to accrue their turnover, etc. differently in connection with the collection of the contribution than in their financial accounts. However, regardless of the accrual, statements as a result of the culture contribution will have to follow the media service providers' existing accounting principles which have been used in connection with the preparation of the financial accounts, cf. Section 8(2).

The provision will have to be read in conjunction with the proposed provision in Section 8(1), according to which a media service provider must report once a year a statement of the most recent calendar year's contributory turnover in Denmark, and Section 9(1) according to which a media service provider must report once a year a statement of investments in new Danish content.

See the special comments on the proposed Section 8(1) and Section 9(1).

It is proposed in (2) that the Agency for Culture and Palaces may collect contributions of 3 % from a media service provider that has invested less than 5 % of their contributory turnover in Danish content on average over the 3-year period, pursuant to Section 4(2).

The provision will mean that the Agency for Culture and Palaces has the legal basis to retrospectively regulate any contribution of 3 % due that it turns out at the end of a three-year period that a media service provider has been obliged to pay due to underinvestments made in Danish content compared to the expected

level of investment stated in accordance with (3), meaning that the media service provider has not invested an average of 5 % of the contributory turnover in Danish content over the three-year period.

It is proposed in (3) that if contributions are not paid by the media service provider, they shall be handed over for recovery to the Public Debt Collection Agency.

The proposed provision will mean that if the Agency for Culture and Palaces, after collecting the contribution, finds that the contribution has not been paid within a specified deadline, the Agency will transfer the case to the Public Debt Collection Agency for recovery in accordance with the regulations laid down in the Act on the recovery of public liabilities.

It is proposed in (4) that the Minister of Culture may, in consultation with the Minister for Taxation, lay down detailed regulations on the recovery of the contribution, including regulations on a payment reminder procedure, interest and payment deadlines.

It is proposed that the detailed regulations should be established after the involvement of the ministry with expertise in this area. It is proposed that the Minister for Culture will be able to lay down regulations in the form of an Order in consultation with the Minister for Taxation.

The detailed regulations in accordance with the proposed provision may include provisions on the Agency for Culture and Palaces' collection of payments and, respectively, the Public Debt Collection Agency's recovery of culture contributions, such as payment deadlines, interest on the amount of the contribution and the processing of requests for deferment or for payment of the contribution amount in instalments.

It is proposed in (5) that the Minister for Culture be authorised to lay down detailed regulations on the total or partial non-collection of contributions in accordance with (1) and (2), for media service providers established in Denmark that are charged similar financial contributions in other EU Member States.

It follows from Article 13(3) of the AVMS Directive that the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States.

In order for a media service provider established in Denmark not to be charged a financial contribution under Article 13(2) of the AVMS Directive twice, it is proposed that the Minister for Culture be authorised to lay down detailed regulations on the total or partial non-collection of contributions under (1) and (2) of that provision in cases where a media service provider is charged similar financial contributions in other EU Member States.

The draft Act proposes to collect a culture contribution from media service providers providing streaming services targeting a Danish audience on the basis of their contributory turnover in Denmark arising from the streaming services. Not all EU Member States collect a financial contribution from media service providers under Article 13(2) of the AVMS Directive. A full or partial exemption from the contribution obligation will therefore depend on an assessment of the specific circumstances of the individual media service provider established in Denmark which also targets its services to audiences in another EU Member State where contributions are also collected. The proposed provision will thus allow the Minister for Culture to lay down a more detailed framework for the specific assessment of this.

Re Section 6

The current regulations for granting aid from the public service pool follow from Order No 1579 of 27 December 2014 on subsidies for the production of Danish public service television (the public service pool), the legal basis of which is found in Sections 11 a and 92 a(1) of the Radio and Television Broadcasting Act, cf. Consolidation Act No 1350 of 4 September 2020 on radio and television broadcasting, etc.

The current regulations for granting aid under the film aid schemes administered by the Danish Film Institute follow from the Film Act, cf. Consolidation Act No 1354 of 4 September 2020 on films.

It is proposed in (1) that the proceeds of the culture contribution are distributed after deduction of the costs of the scheme's administration between the public service pool and aid for Danish films.

It will be a prerequisite for the culture contribution scheme that the media service providers that will be subject to the proposed obligation to pay culture contributions and who comply with their obligations in accordance with this Act must be able to receive aid

for the production of new Danish audiovisual content from the aid schemes that the proceeds from the culture contribution scheme go to.

The proposed provision will result in the net proceeds obtained from media service providers paying an annual contribution of 2 or 5 % respectively of their contributory turnover in Denmark under the proposed Section 4(1) and (2) being distributed between the public service pool and the film aid schemes administered by the Danish Film Institute. The proceeds after revenue change from behavioural responses and labour supply will be distributed to the above-mentioned aid schemes after deduction of the costs of respectively the Agency for Culture and Palaces' administration of the scheme and the Danish Film Institute's expected increased administration of the aid schemes as a result of the increased funding of the schemes.

In line with recital 36 in the preamble to the AVMS Directive, it is a prerequisite for the culture contribution scheme that the media service providers that are subject to the proposed obligation to pay a culture contribution and who comply with the obligations in accordance with this Act can benefit from the public service pool and the film aid schemes, which will be partly financed from the proceeds from the culture contribution scheme. The detailed requirements and conditions for the applications of media service providers for aid under these schemes follow from the regulation of the public service pool and the film aid schemes and the conditions for aid based thereon. Both the conditions for aid for the public service pool as well as the conditions for aid for the Institute's film aid schemes emphasise that the media service providers covered, regardless of whether they are established in Denmark or another EU Member State, have the opportunity to benefit from the pools by being able to apply for aid for the production of new Danish audiovisual content in cooperation with an independent producer.

It is proposed in (2) that the Minister for Culture may lay down regulations for the distribution between the public service pool and aid for Danish films.

The proposed provision will result in the Minister for Culture being authorised to administratively lay down regulations on how the proceeds of culture contribution are to be distributed between the public service pool and the film aid schemes administered by the Danish Film Institute.

If the regulations for the distribution of the proceeds between the public service pool and the aid schemes for Danish films are laid

down by Order, the necessary adjustments in the distribution after the culture contribution scheme has entered into force can be made flexibly.

Re Section 7

It is proposed in (1) that a media service provider must register with the Agency for Culture and Palaces.

The proposed provision would create an obligation for the media service providers subject to the contribution obligation to register with the Agency for Culture and Palaces.

No independent legal effect will be attached to the registration, since the registration will only be used for the administration of the scheme by the Agency for Culture and Palaces and thus will not affect whether a media service provider will be subject to the obligation to pay culture contributions.

It is proposed in (2) that the Minister for Culture may lay down detailed regulations on the registration of media service providers, including on requirements for the form, procedure and content of the registration, as well as deadlines for the registration.

The provision will result in the Minister for Culture being authorised to lay down administrative regulations on how the covered media service providers are to register and with what information. The Minister for Culture will be able to lay down requirements for the form, procedure and content of the registration. Requirement for deadlines for the registration may also be laid down.

The provision will ensure that the Agency for Culture and Palaces will be able to obtain the information necessary to identify and contact the relevant media service providers, but also that unnecessary reporting of information will not be required.

Re Section 8

It is proposed in (1) that a media service provider shall report to the Agency for Culture and Palaces once a year a statement of the most recent calendar year's contributory turnover in Denmark. The statement must clearly indicate which on-demand audiovisual media service the contributory turnover derives from.

The proposed provision would mean that it would be for a media service provider to report a statement of the most recent calendar year's contributory turnover in Denmark. The provision will result in the Agency for Culture and Palaces having access to statements

of the media service providers' contributory turnover in order to enable the Agency to administer the scheme and calculate the amount of the contribution.

The reported statement of the contributory turnover will have to be based on the most recent calendar year, as there is no separate requirement that the financial accounts themselves must be audited in order to be used as a basis for the reporting. This would mean that the turnover from the most recently completed but not audited calendar year would have to be taken as a starting point.

It also follows from the proposed provision that the statement must be designed in such a way that the on-demand audiovisual media service from which the contributory turnover derives can be clearly identified. The proposed provision ensures transparency in relation to the origin of the reported turnover. Thus, there is no requirement that media service providers would have to report their total turnover, as this is deemed to be unnecessarily burdensome and would not serve a purpose in relation to the calculation of the amount of the contribution.

It is proposed in (2), *first sentence*, that a media service provider's statement shall follow the accounting policies used in the enterprise's most recently approved accounts.

The first sentence of that provision will result in a requirement that the media service provider's statement of the contributory turnover will have to follow the accounting policies used in the enterprise's most recently approved accounts. This will allow the providers to have methodological freedom in relation to the statement, assuming that there may be significant differences in the practices of the enterprises in this area. However, the methodological freedom will be defined in such a way that the statement will have to follow the accounting policies used in the enterprise's most recently approved accounts. This will ensure that media service providers will not be able to change their accounting policies, e.g. in relation to how revenues from linear services are recognised, which will help ensure that the statements are as accurate as possible.

It is proposed in (2), *second sentence*, that if a media service provider has not previously prepared an approved account, the statement of the contributory turnover must be carried out in accordance with the Danish Financial Statements Act.

The second sentence of the provision is intended to ensure that start-ups and enterprises which for other reasons have been exempted from preparing approved financial accounts are also able

to report a statement. This type of enterprise will be required to carry out statements in accordance with the Danish Financial Statements Act, which will ensure a common standard for the statements.

It is proposed in (3) that the reported statement must be accompanied by a report made with a high degree of assurance by an independent approved auditor.

The provision would mean that media service providers would have to ensure that their reported statements of the contributory turnover are accompanied by an audit report stating that the statements are correct and true. This will ensure that the Agency for Culture and Palaces has a correct basis for calculating the culture contribution and for carrying out an effective supervision of the culture contribution scheme.

It is proposed in (4) that a media service provider providing more than one on-demand audiovisual media service may report one single report for these.

The proposed provision would serve to ensure that media service providers which may have more than one on-demand audiovisual media service will have the possibility to make joint reporting of the contributory turnover for these services. The purpose of the provision is thus to make the reporting as resource and administratively efficient as possible for the media service providers concerned. The proposed provision is optional whereby each media service provider will continue to be able to report separate statements for each on-demand audiovisual media service, if it deems this more appropriate.

The statement will have to clearly distinguish between the contributory turnover of the respective on-demand audiovisual media services to which the statement relates.

It is proposed in (5) that the Minister for Culture may lay down detailed regulations on the reporting of statements of the contributory turnover, including on the form, procedure and content of the reporting, deadlines for the reporting as well as requirements for audit reports.

The proposed provision will result in the Minister of Culture being authorised to lay down administrative regulations for the reporting by media service providers of statements of contributory turnover. In this context, the Minister for Culture will be able to lay down requirements for the procedure for the reporting and the form and content of the reporting. Requirement for deadlines for the report-

ing may also be laid down. Finally, it will be possible to lay down requirements for the audit reports of turnover, including the auditing standard and the degree of assurance with which the report is to be made.

By introducing an opportunity to administratively lay down regulations on reporting under Section 8, the requirements for reporting will be easier to adapt in line with the development of the administration system itself at the Agency for Culture and Palaces. This will ensure on an ongoing basis that the Agency for Culture and Palaces receives the required information to calculate and issue correct invoices for culture contribution payments and perform supervision of the scheme, while avoiding requirements for unnecessary information to be reported.

Re Section 9

It is proposed in (1) that a media service provider once a year must report a statement of investments in new Danish content, cf. Section 4(2), in the most recent calendar year to the Agency for Culture and Palaces.

The proposed provision would mean that it would be the responsibility of the media service provider to report a statement of investments in new Danish content made in the most recent calendar year in Denmark. It will be necessary for the administration of the scheme and the calculation of the amount of the contribution that the Agency for Culture and Palaces has access to statements of the media service providers' investments in new Danish content. The provision introduces a reporting obligation, as the necessary information will typically be of a commercially sensitive nature and therefore not publicly available.

The statement of investments will have to be reported at title level to indicate which investments have been made in relation to which titles. This will ensure the necessary level of transparency in relation to which specific projects the reported investment statements of media service providers relate to.

The reported statement of investments in new Danish content will have to be based on the most recent calendar year. In the interests of the administration of the scheme, including the possibility for the Agency for Culture and Palaces to become aware as early as possible of the statement of investments in new Danish content relevant to the scheme, and on this basis have the opportunity to calculate the amount of the contribution, it is considered appropriate to make use of the most recently closed financial accounts

and not the audited financial accounts for the purpose of the statement.

It is proposed in (2) that a media service provider that distributes investments over three-year periods, cf. Section 4(2), second sentence, must submit a declaration of intent on the expected level of investment for the three-year investment period. Likewise, statements of investments in new Danish content for the up to three most recent calendar years must be reported to the Agency for Culture and Palaces.

The proposed provision will mean that a media service provider that distributes their investments in new Danish content over a three-year period will have to submit a declaration of intent to the Agency for Culture and Palaces regarding the expected level of investment for each year of the period, including on future plans for investments in new Danish content. At the same time, in the sense of (1), the media service provider will have to report statements of investments for the three most recent calendar years to the Agency for Culture and Palaces. Thus, the Agency for Culture and Palaces will have a starting point for assessing the expected level of investment.

It is proposed in (3) that a reported statement, cf. (1) and (2), second sentence, shall be accompanied by a report made with a high degree of assurance by an independent approved auditor.

The proposed provision would mean that a media service provider is required to ensure that a reported statement of investment in new Danish content is accompanied by an audit report stating that the statement is correct and true. This ensures that the Agency for Culture and Palaces has an accurate basis for performing effective supervision of the culture contribution scheme.

It is proposed in (4) that the Minister for Culture may lay down detailed regulations for the reporting of statements of investments in new Danish content, including on the form of the reporting, the determination of the 3-year investment period, procedure and content, deadlines for the reporting and requirements for the declaration and the report in accordance with (2), first sentence, and (3).

The proposed provision will result in the Minister for Culture being authorised to lay down administrative regulations for the reporting by media service providers of statements of investments in new Danish content. The Minister for Culture will be able to lay down requirements for the procedure for reporting, as well as the form and content of the reporting. It will also be possible to set dead-

lines for when the reporting has to be made. Finally, it will be possible to lay down requirements for the audit reports on the investment statements, including the auditing standard and the degree of assurance to be provided.

By introducing an administrative possibility to lay down regulations on the requirements for reports, these will be more easily adapted in line with the development of the administration system itself at the Agency for Culture and Palaces. This will ensure on an ongoing basis that the Agency for Culture and Palaces receives the information necessary to, among other things, calculate and issue correct invoices on payment of contributions and supervise the scheme, but also that there is no requirement for unnecessary reporting of information.

Re Section 10

It is proposed in (1) that the Agency for Culture and Palaces supervises and makes decisions in accordance with this Act and regulations issued pursuant thereto.

The proposed provision will give the Agency the power to supervise the scheme and to make decisions in accordance with this Act and regulations issued pursuant to it.

Decisions taken in accordance with this Act are expected to include, inter alia, decisions relating to media service providers' payment of contribution, calculation of the contributory turnover, and decisions in relation to which media service providers are subject to the contribution obligation, including whether their on-demand audiovisual media service is targeting audiences in Denmark.

It is proposed in (2) that a media service provider within a deadline set by the Agency for Culture and Palaces shall disclose the information, provide the documents, etc. and submit the written opinions required of the Agency in connection with the exercise of the supervisory obligation.

The proposed provision will result in the media service provider being obliged to provide and communicate to the Agency information in the form of documents, written opinions, etc. for use in the exercise of the supervision of the scheme by the Agency for Culture and Palaces. The right not to incriminate oneself, cf. Section 10 of the Act on Legal Protection and Administration in Social Matters (Consolidated Act No 1121 of 12 November 2019), shall apply to the obligation to provide information under (2).

For example, the Agency may need information on the number of users of an on-demand audiovisual media service on the Danish market, so that the Agency can monitor whether a provider's audience represents more or less than 1 % of the total number of users of on-demand audiovisual media services on the Danish market. Such information will be necessary for the Agency's decision on whether a provider is exempt from the culture contribution obligation, cf. the proposed Section 2(3).

The proposed provision would mean that the Agency for Culture and Palaces would have the possibility to set a deadline for such information to be received by the Agency. This allows the Agency to organise and conduct effective supervision.

It is proposed in (3) that decisions taken by the Agency pursuant to this Act or regulations issued pursuant thereto may be brought before the Radio and Television Board no later than four weeks after the Agency's decision is notified to the media service provider. The Radio and Television Board may give appeals brought before the Board suspensive effect. Decisions of the Board under this Act may not be brought before any other administrative authority.

It is expected that the decisions that the Agency will take will mainly concern whether specific media service providers are subject to the contribution obligation, the correct calculation of the contributory turnover, etc. It is thus expected that the decisions will be of both legal and grant administrative technical nature and will thus require specific technical insights in this area. The Radio and Television Board already performs a number of tasks in the radio and television sector, cf. Sections 40–44b of the Broadcasting Act, cf. Consolidation Act No 1350 of 4 September 2020 on radio and television broadcasting, etc., and is deemed to possess the necessary expertise and insight to be able to handle any appeals against Agency for Culture and Palaces decisions made pursuant to this Act and regulations laid down pursuant thereto.

The introduction of a four-week deadline for appeals will contribute to a more precise legal situation and a more appropriate administration of the Act. Thus, the introduction of a deadline for appeals is made in the interests of both the authorities, the media service providers and the future applicants to the pools, to which the proceeds of the scheme are distributed.

As a general rule, appeals shall not have suspensive effect. However, the Radio and Television Board will be able to decide by decision that the appeal must have suspensive effect, where special reasons justify it.

The Radio and Television Board is an independent board whose members together possess legal competences (including special criminal insights), financial/administrative competences, media research competences and practical media professional competences. In order to preserve the independence of the Board and in accordance with what applies today under the Broadcasting Act, it is proposed that the Board's decisions are administratively final.

It is proposed in (4) that the Minister for Culture may lay down detailed regulations on media service providers' submission of information, disclosure of documents, etc. and the submission of written opinions, including the opinion of the auditor on working practices and independence, calculation of turnover, calculation of contributory turnover, statement and calculation of investment in Danish content.

The proposed provision will mean that the Minister for Culture is authorised to administratively lay down regulations for the submission of documentation, the calculation of turnover, the distribution of turnover, as well as the calculation and distribution of investments in Danish content, as well as future projections for investment in Danish content. In this context, the Minister for Culture may lay down regulations on the types of information and documentation that media service providers must submit in connection with the Agency for Culture and Palaces' supervision of the providers, including e.g. documentation of the calculation of investments and documentation of the independence of an auditor used by the media service providers.

By introducing an opportunity to administratively lay down regulations on the requirements for reporting, these will be more easily adapted in line with the development of the administration system at the Agency for Culture and Palaces. This will ensure on an ongoing basis that the Agency for Culture and Palaces receives the information necessary to, among other things, calculate and issue correct invoices on payment of contributions and supervise the scheme, but also that there is no requirement for unnecessary reporting of information.

Re Section 11

It is proposed in (1) that the Minister for Culture may lay down regulations to the effect that written communication to and from the Agency for Culture and Palaces on matters covered by the Act or regulations issued pursuant thereto must be carried out digitally.

The proposed provision would mean that it would, among other things, be possible to lay down regulations that written communications etc. to or from the authorities on matters covered by the Act or regulations issued pursuant to the Act would not be deemed to have been duly received by the authorities if they are submitted in a manner other than the prescribed digital means.

The vast majority of the Agency's communications are already done digitally. If the information, etc., is sent to the Agency by any means other than digitally as prescribed, e.g. by letter, it follows from the general obligation to provide guidance in Section 7 of the Public Administration Act that the Agency must provide guidance on the regulations in this area, including the obligation to communicate digitally as prescribed.

At the same time, the provision will mean that written communications etc. to or from the authorities sent digitally as prescribed are considered to have arrived to the addressee when the message, etc., is digitally available to the addressee, cf. the proposed (3). This means that it has the same legal effects as physical mail, which is considered to have arrived when the message, etc., in question has been placed in the physical post box of the addressee.

The proposal should be seen in the context of the proposed registration, reporting and notification obligations in the proposed Sections 7-10. The Order, which will implement the authorisation, may specify who is covered by the obligation to communicate digitally with the Agency for Culture and Palaces, on what matters and in what way. It is expected that the proposed authorisation will be used in such a way that written communication to and from the Agency for Culture and Palaces on matters covered by the Act or regulations issued pursuant thereto must be digital, e.g. via e-mail or possibly via the public digital postal solution.

When contacting the Agency for Culture and Palaces, the Agency may require the party concerned to provide an email address where they can be contacted in connection with the processing of a specific case or communication to the Agency. In this connection, the party in question may be required to inform the Agency of any change in email address before the specific case is concluded or the communication is answered, unless emails are automatically forwarded to the new email address.

There may eventually be plans to develop other digital solutions for use in communications concerning matters covered by this Act or regulations issued pursuant thereto.

The Order, which will be issued pursuant to the proposed authorisation in (1), may, inter alia, lay down regulations under which the Agency may send certain communications, including decisions, to the digital mailbox of the person concerned with the legal effects resulting from the Public Digital Post Act.

In addition, regulations on exemptions from the digital communication obligation may be laid down. The exemption option may potentially be used where, inter alia, a Danish digital signature is required but it involves, for example, an enterprise with fiscal domicile abroad which is unable to obtain a Danish digital signature.

Situations where a company or a person finds that their own computer is not functioning, that they have lost the code for their digital signature, or that they are facing similar obstacles that are up to them to overcome cannot lead to an exemption from the digital communication obligation. In such cases, the person concerned will have to use a publicly accessible computer in e.g. a public library or request an adviser to carry out the communications on their behalf.

It is proposed in (2) that the Minister for Culture may lay down detailed regulations on digital communication, including on the use of certain IT systems, special digital formats and digital signature etc.

The proposed provision would entail, inter alia, laying down regulations on requirements for the use of certain IT systems, digital formats and digital signatures or similar.

It is proposed in (3) that a digital message is considered to have arrived when it is available for the addressee of the message.

The proposed provision would mean that a digital message is regarded as having arrived at the addressee of the message, i.e. the recipient of the message, when it is available for the addressee. For messages sent to the Agency for Culture and Palaces, the Agency will be the addressee of the message. For messages sent by the Agency for Culture and Palaces, the enterprise or natural person to whom the message is sent will be the addressee of the message.

A message will normally be considered to have arrived at the Agency for Culture and Palaces when the message is available to the Agency, i.e. when the Agency can process the message. This timestamp will normally be registered automatically by a receipt function or data system. A message that is only available after

midnight is normally considered to have been received the day in which it is available.

A message will normally be considered to have arrived at an enterprise or person when the message is available to the party concerned. A message will be considered to be available even if the party concerned is unable to access it, if such is due to obstacles that are up to them to overcome. Examples of this include when the party concerned finds that their own computer is not functioning, or they have lost the code for their digital signature,

It is proposed in (4) that the Minister for Culture may lay down regulations to the effect that authorities may issue decisions and other documents in accordance with this Act or in accordance with regulations issued pursuant to this Act without signature, with mechanically or similarly reproduced signature or using a technique that ensures unambiguous identification of the person who issued the decision or document.

The proposed provision would mean that the Minister for Culture may lay down regulations to the effect that the Agency may issue decisions and other documents in accordance with this Act or regulations issued pursuant thereto without signature, with machine or similarly reproduced signature or using a technique that ensures unambiguous identification of the person who issued the decision or document. Such decisions and documents could be equated to decisions and documents with personal signature.

Re Section 12

It is proposed in (1) that anyone who intentionally or through gross negligence infringes Section 4(1) and (2), Section 7(1), Section 8(1), Section 9(1) or Section 10(2) shall be punished by a fine.

The proposed provision of (1) will mean that a media service provider may be liable for fines if, due to intent or gross negligence, the media service provider does not pay the annual contribution of 2 % of their contributory turnover in Denmark, cf. Section 4(1). The provision will also mean that a media service provider who invests less than 5 % of its contributory turnover in Denmark in Danish content may be liable for fines if, due to intent or gross negligence, it does not pay the annual contribution of 3 %, cf. Section 4(2). Thus, infringement of the order of the Agency for Culture and Palaces for the payment of contributions pursuant to Section 5(1) will be punishable.

It is also proposed that a media service provider may be liable for fines if it intentionally or due to negligence does not register with

the Agency for Culture and Palaces, cf. Section 7(1). It is proposed in Section 7(2) that the Minister for Culture may lay down detailed regulations on registration, including requirements for registration deadline. The constituent elements will thus be realised when a media service provider intentionally or grossly negligently fails to register with the Agency for Culture and Palaces within the deadline laid down by the Minister for Culture, cf. Section 7(2).

In addition, it is proposed to punish media service providers who either intentionally or through gross negligence fail to report a statement of the most recent calendar year's contributory turnover in Denmark or of investments in new Danish content to the Agency for Culture and Palaces, cf. Sections 8(1) and 9(1) within the deadline set by the Minister for Culture, cf. Sections 8(5) and 9(4).

Finally, the provision will mean that a media service provider may be liable for fines if it does not provide the Agency for Culture and Palaces with the information, disclose the documents, etc., or submit the written opinions required of the Agency in connection with the exercise of the supervisory obligation, within the deadline set by the Agency, cf. Section 10(2).

For a detailed explanation of the constituent elements, see the special comments on Sections 4(1) and (2), 7(1), 8(1), 9(1) and 10(2).

It follows from the definition proposed in Section 3, No 3, that a media service provider is the natural or legal person who has editorial responsibility for the selection of audiovisual content in an audiovisual media service and determines how the audiovisual content is presented.

It follows from the proposed Section 2 that this Act will apply in principle to media service providers established in Denmark and providing on-demand audiovisual media services, as well as to media service providers established in another EU Member State and providing on-demand audiovisual media services targeting audiences in Denmark. However, the starting point has exceptions, cf. Section 2(3), since media service providers that have a total annual turnover of less than DKK 15 million, or have a low audience of less than 1 % of the total number of users of on-demand audiovisual media services on the Danish market, are not covered by this Act. The starting point shall also be waived for providers of media services provided as part of public service activities, cf. Section 11 of the Radio and Television Broadcasting Act, etc., as well as for media service providers established in another EU Member State where the media service is provided as

part of public service activities in accordance with the regulation in the EU Member State concerned, cf. Section 2(4). Finally, the starting point is waived for media service providers that only provide media services for library or educational purposes, cf. Section 2(5).

Conversely, it follows from the establishment requirements laid down in (2)(1) and (2) that this Act will not apply to media service providers not established in a Member State of the European Union.

For a detailed explanation of the person liable, please refer to the special comments on the proposed Section 2.

It is proposed that the calculation of fines for infringements of Section 4(1) and (2) shall be based on the calculation model for setting standard fines applicable for infringements, inter alia, Section 82(1) of the Tax Control Act and Section 81(3) of the Act on Value Added Tax (VAT Act).

Thus, the fine is calculated as a starting point at twice the total avoidance of the culture contribution obligation where there is intentional avoidance and the person liable is a legal person. The same applies where the person liable is a natural person and their avoidance is intentional, if the avoidance does not exceed DKK 250 000. In the case of gross negligence, the fine corresponds to the total avoidance amount.

The amount of the fine is modified for the more trivial avoidances via a so-called progression break point, which means that the part of the unpaid culture contribution up to DKK 60 000 is included only once in the fine when it is intentional, while the part of the avoided culture contribution exceeding DKK 60 000 is doubled. In the case of gross negligence, the progression break point causes half the part of the avoided culture contribution up to DKK 60 000 to be included, while the remainder of the avoidance is included in full.

It is proposed that the calculation of fines for infringements by legal persons of Sections 7(1), 8(1), 9(1) and 10(2) shall be based on the following normal ranges of fines, see table below. The turnover categories shall be determined on the basis of the contributory turnover, cf. Section 3, No 4, in the year where the offence took place. In setting the specific fine within a range, emphasis shall be placed, inter alia, on whether the enterprise has a low or high contributory turnover in relation to the relevant turnover category.

For infringements of Sections 7(1), 8(1), 9(1) and 10(2) by natural persons, a penalty level of between DKK 10 000 and a net monthly salary is proposed.

It should be noted that the determination of the penalty for infringements of Sections 4(1) and (2), 7(1), 8(1), 9(1) and 10(2) will continue to depend on the specific assessment by the courts in each case of all the circumstances of the case, and that the proposed level of penalties may be altered upwards or downwards if there are aggravating or mitigating circumstances in the specific case, cf. the general regulations on the determination of the penalty in Chapter 10 of the Penal Code.

Table: Levels of fines for infringements of Section 7(1) by legal persons Sections 8(1), 9(1) and 10(2)

	Level of fines for enterprises in turnover category 1	Level of fines for enterprises in turnover category 2	Level of fines for enterprises in turnover category 3
Contributory turnover	Up to DKK 50 million	+ DKK 50 million – DKK 100 million	+ DKK 100 million – DKK 1 billion
Level of enterprise fines	DKK 25 000 – DKK 100 000	DKK 50 000 – DKK 200 000	DKK 150 000 – DKK 600 000

It is proposed in (2) that in regulations issued in accordance with this Act, a fine may be imposed on anyone who intentionally or grossly negligently violates the provisions of the regulations.

The proposed provision will provide for the possibility to impose fines in accordance with regulations issued pursuant to the Act. This will specifically concern regulation in the form of an Order issued on the basis of the proposed Sections 7(2), 8(5), 9(4), 10(4) and 11(1) concerning the registration, reporting and digital communication of media service providers.

It is proposed that the calculation of fines for infringements by legal persons of regulation in the form of an Order issued on the basis of the proposed Sections 7(2), 8(5), 9(4) and 10(4) and 11(1) shall be based on the same normal ranges of fines as for infringements of Sections 7(1), 8(1), 9(1) and 10(2).

For infringements by natural persons of regulation in the form of an Order issued on the basis of the proposed Sections 7(2), 8(5), 9(4), 10(4) and 11(1), infringements of Sections 7(1), 8(1), 9(1) and 10(2) shall be taken as a starting point for the same level of fines of between DKK 10 000 and a net monthly salary.

See the specific comments on (1).

It is proposed in (3) that companies, etc. (legal persons) may be held criminally liable under the regulations laid down in Chapter 5 of the Penal Code.

The proposed provision would mean that legal persons may be held criminally liable for breaches of the Act's penal provisions.

It follows from the regulations laid down in Section 26(1) of the Penal Code that provisions on criminal liability for companies, etc., unless otherwise provided, include any legal person, including public limited companies, limited liability companies, cooperatives, partnerships, associations, foundations, estates, municipalities and State authorities.

In addition, such provisions apply to sole proprietorships in so far as they can be equated with the aforementioned entities with regard in particular to their size and organisation, cf. Section 26(2) of the Penal Code. In addition, criminal liability of a legal person requires that an infringement has been committed within its operations that can be attributed to one or more persons linked to the legal person or to the legal person as such, cf. Section 27(1) of the Penal Code.

Re Section 13

It is proposed in (1) that the Act shall enter into force on 1 July 2024.

It is proposed in (2) that the culture contribution, cf. Section 4(1) and (2), is collected for the first time for payment in 2025 on the basis of the media service providers' calculations of the contributory turnover in Denmark in 2024.

The proposed transitional scheme limits the culture contribution scheme retroactively and states that culture contributions cannot be collected in 2024 on the basis of the turnover in 2023. The proposed transitional scheme will thus ensure that the media service providers concerned are given time to adjust to the new contribution obligation and adapt their routines accordingly, e.g. in relation to correct calculation of the contributory turnover.

Re Section 14

Re No 1

It follows from the current provision of Section 9 a(1) of the Radio and Television Broadcasting Act, etc., that a provider of an audiovisual media service under the authority of another country within the European Union or the European Economic Area and providing an audiovisual media service is exempt from compliance with Danish regulations in the field coordinated by the Directive of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, even if the service is targeting Denmark, without prejudice to (2).

It is proposed that, in addition to (2), reference is also made to the proposed addition of Section 9 a(4).

The proposed amendment would result in a derogation from Section 9 a(1), according to which the covered providers of an audiovisual media service are exempt from compliance with Danish regulations in the field coordinated by the AVMS Directive.

See also point 3.1.2 of the general comments on the draft Act.

Re No 2

There is no provision in the Radio and Television Broadcasting Act, etc., which allows media service providers covered by Section 9 a(1) to be required to contribute financially to the production of European works in accordance with the AVMS Directive.

It is proposed to introduce a new paragraph in Section 9 a.

It is proposed to introduce a Section 9 a(4), according to which media service providers under the authority of another country within the European Union or the European Economic Area and providing an audiovisual media service, by way of derogation from Section 9 a(1), may be required to contribute financially to the

production of European works in accordance with the Directive of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

The proposed amendment would result in a derogation from Section 9 a(1), according to which the covered media service providers are exempt from compliance with Danish regulations in the field coordinated by the AVMS Directive. The proposed amendment would thus make it possible to introduce regulations requiring media service providers under the authority of another country within the European Union or the European Economic Area and providing an audiovisual media service to contribute financially to the production of European works in accordance with the AVMS Directive.

See also point 3.1.2 of the general comments on the draft Act.

Re No 3

The tasks of the Radio and Television Board are set out in Sections 40-44 b of Chapter 7 of the Broadcasting Act, etc. The Radio and Television Board handles appeals against decisions taken by the Agency for Culture and Palaces under the Broadcasting Act, etc. There is currently no legal basis for the Radio and Television Board to handle appeals against decisions taken by the Agency for Culture and Palaces pursuant to the Culture Contribution Act or regulations based thereon.

It is proposed that a *Section 42 b* be introduced in the Radio and Television Broadcasting Act, etc., under which the Radio and Television Board may handle appeals against the Agency for Culture and Palaces' decisions taken under the Culture Contribution Act or regulations laid down pursuant thereto.

With the proposed amendment, it will be possible to bring decisions taken by the Agency for Culture and Palaces in accordance with the Act or orders laid down pursuant to the Act before the Radio and Television Board. As a consequence, it is proposed to introduce a new provision in Chapter 7 of the Radio and Television Broadcasting Act, etc., which clarifies that the Radio and Television Board has the legal basis to take decisions in this type of case.

It follows from the proposed Section 9(3) that decisions taken by the Agency for Culture and Palaces under this Act may be brought before the Radio and Television Board. The Radio and Television

Board may give appeals brought before the Board suspensive effect. It will not be possible to bring the Board's decisions under this Act before any other administrative authority.

See also point 3.1.2. of the general comments in the draft Act and the special comments on Section 9(3).

Re Section 15

It is proposed that this Act shall not apply to the Faroe Islands or Greenland, as this matter has been taken over by the Faroese and Greenlandic authorities, respectively.

Annex 1

The draft Act compared to legislation currently in force

Current wording

Section 9 a

An audiovisual media service provider under the authority of another country within the European Union or the European Economic Area and providing an audiovisual media service shall be exempt from compliance with Danish regulations in the field coordinated by a Directive of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, even if the service is targeting Denmark, without prejudice to (2).
(2-3). —

The draft Act

Section 13

The Radio and Television Broadcasting Act, cf. Consolidated Act No 1350 of 4 September 2020, as amended by Act No 2212 of 29 December 2020 and Act No 1595 of 28 December 2022, is amended as follows:

1. In *Section 9 a(1)*, the following is inserted after '(2)': 'and (4)'.

2. In *Section 9 a*, the following is inserted as (4):

‘(4). By way of derogation from (1), media service providers under the authority of another country within the European Union or the European Economic Area providing an audiovisual media service may be required to contribute financially to the production of European works in accordance with Directive of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.’

3. The following is inserted after Section 42 a:

‘**Section 42 b.** As an appeal body, the Radio and Television Board may take decisions in cases brought before the Board on the decisions of the Agency for Culture and Palaces taken under the Act on the contribution by certain media service providers to the promotion of Danish culture (Culture Contribution Act) or regulations laid down pursuant thereto.