

**MANDATORY CONTRIBUTIONS
TO PUBLIC FUNDS AND MANDATORY
INVESTMENTS IN PRODUCTION OF
FILM AND TV PROGRAMMES**
Some data on France and Germany

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EUMEPLAT Round Table
Brussels (26 September 2022)

Directive AVMS (2018) - Article 13

"1. Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works. 2. Where 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. 3. In the case referred to in paragraph 2, 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 rules."

Various reports available



Study on the Promotion of European Works in Audiovisual Media Services

FINAL REPORT
A study prepared for the European Commission
DG Communications Networks, Content & Technology by:

VVA CONSULTING KEA EUROPEAN AFFAIRS attentional



**Investing in European works:
the obligations on VOD providers**

A publication
of the European Audiovisual Observatory


30 Years European Audiovisual Observatory COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Investment obligations for VOD providers to contribute to the production of European works: A 2022 update

September 2022

Ivana Kostovska
Prof. Dr. Tim Raats
Prof. Dr. Marlen Komorowski
Catalina Iordache
Nino Domazetovikj
Stephanie Tiniel

SMIT VUB



The implementation of the "Netflix tax" in Europe, based on the AVMSD
Working paper for the EUMEPLAT First Policy Round-Table:
State of health of European media, and what to do
Brussels, September 26, 2022
Andrea Miconi
IULM University, Milan

Working document, not be shared outside of the EUMEPLAT Consortium

(1) The Audiovisual Media Services Directive, Article 13(1)

FOUR TYPES OF OBLIGATIONS IN MEMBER STATES

Source : SMIT

There are four types of investment obligations introduced in Member States:

- **An obligation for direct investment in production:** Belgium (DE) and Italy;
- **A levy payable to a fund:** Denmark (legislative proposal), Germany, Poland and Romania;
- **A choice between direct investment or levy:** Belgium (FL), Belgium (FR), Spain and Greece;⁶
- **Both levy and direct investment obligation:** Croatia, Czech Republic, France and Portugal.

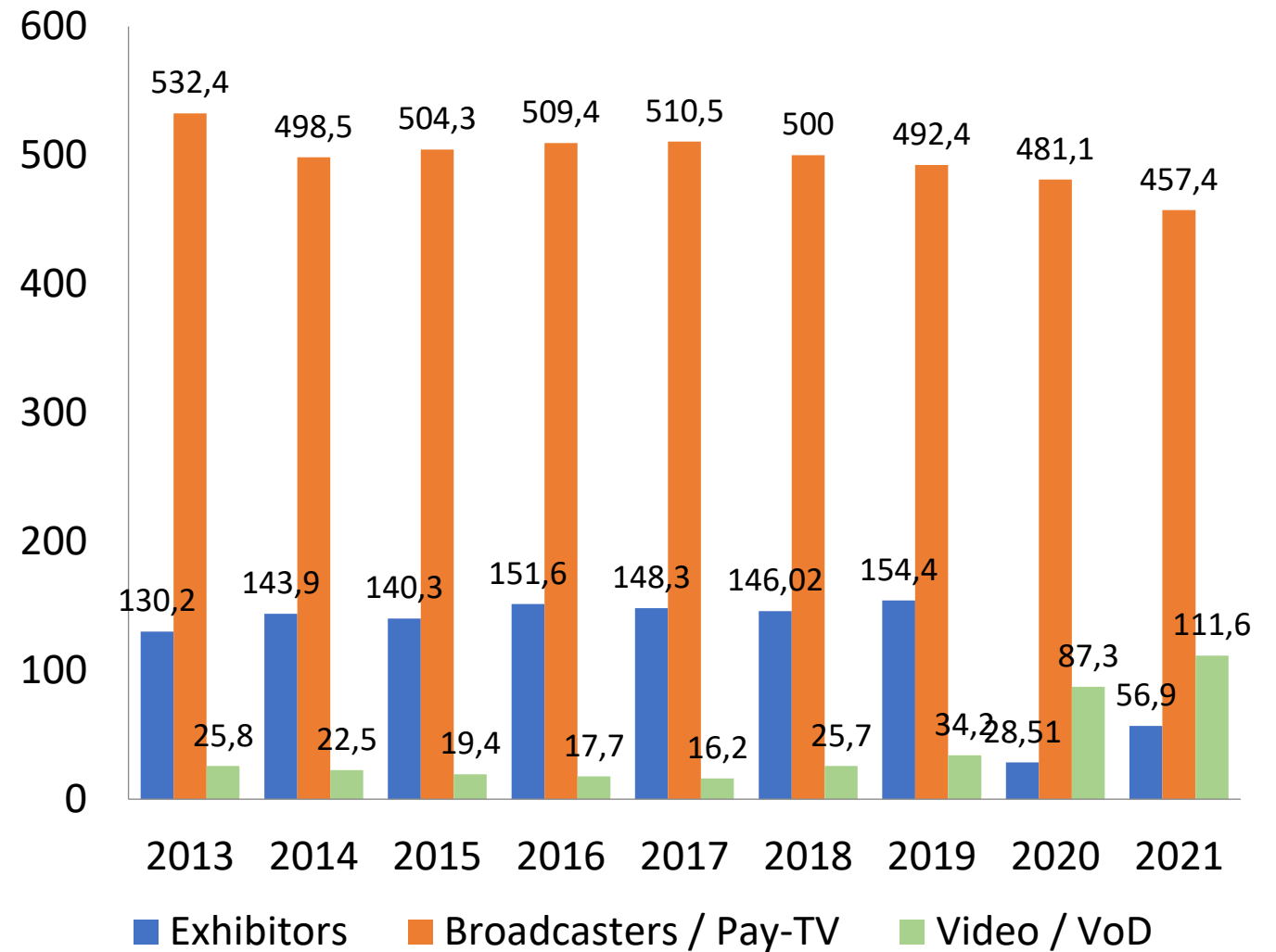
FRANCE —
MANDATORY
CONTRIBUTIONS TO
THE FUND OF THE
CNC

Source : CNC

- **Exhibitors : TSA :**
 - Tax on the film ticket : 10,72 % of the box-office revenue
- **Providers of TV services : TST :**
 - Revenues (advertising, sponsoring, licence fee, interactive services) : Basis : 5 %.
- **Distributors of TV services (pay-TV) :**
 - 0,5 to 3,5 % of subscription revenues
- **Publishers of physical video**
 - 2 % en 1993, 5,15 % en 2020
 - 5 % porn or violent content in 1993, 15 % in 2020
- **Providers of VoD services (2004)**
- **Foreign providers of VoD services (2013), of video-sharing platform (2016), implementation in 2019**

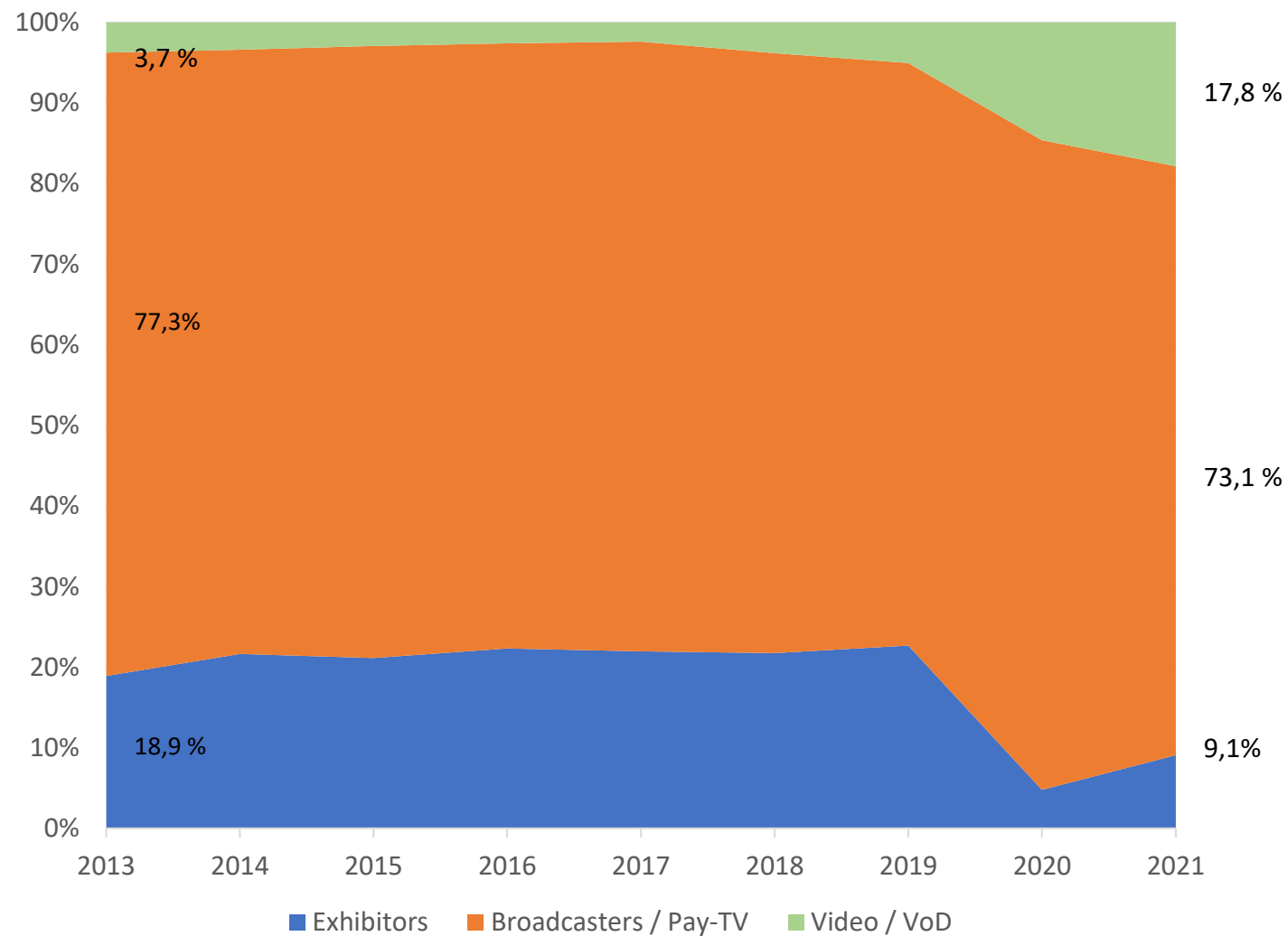
FRANCE – TAX ON THE VARIOUS CATEGORIES OF OPERATORS FOR THE FINANCING OF THE CNC FUND (2013-2020)- EUR million

Source : CNC / André Lange



FRANCE – TAX ON THE VARIOUS CATEGORIES OF OPERATORS FOR THE FINANCING OF THE CNC FUND (2013-2020)- in %

Source : CNC / André Lange



GERMANY – MANDATORY CONTRIBUTIONS TO THE FFA

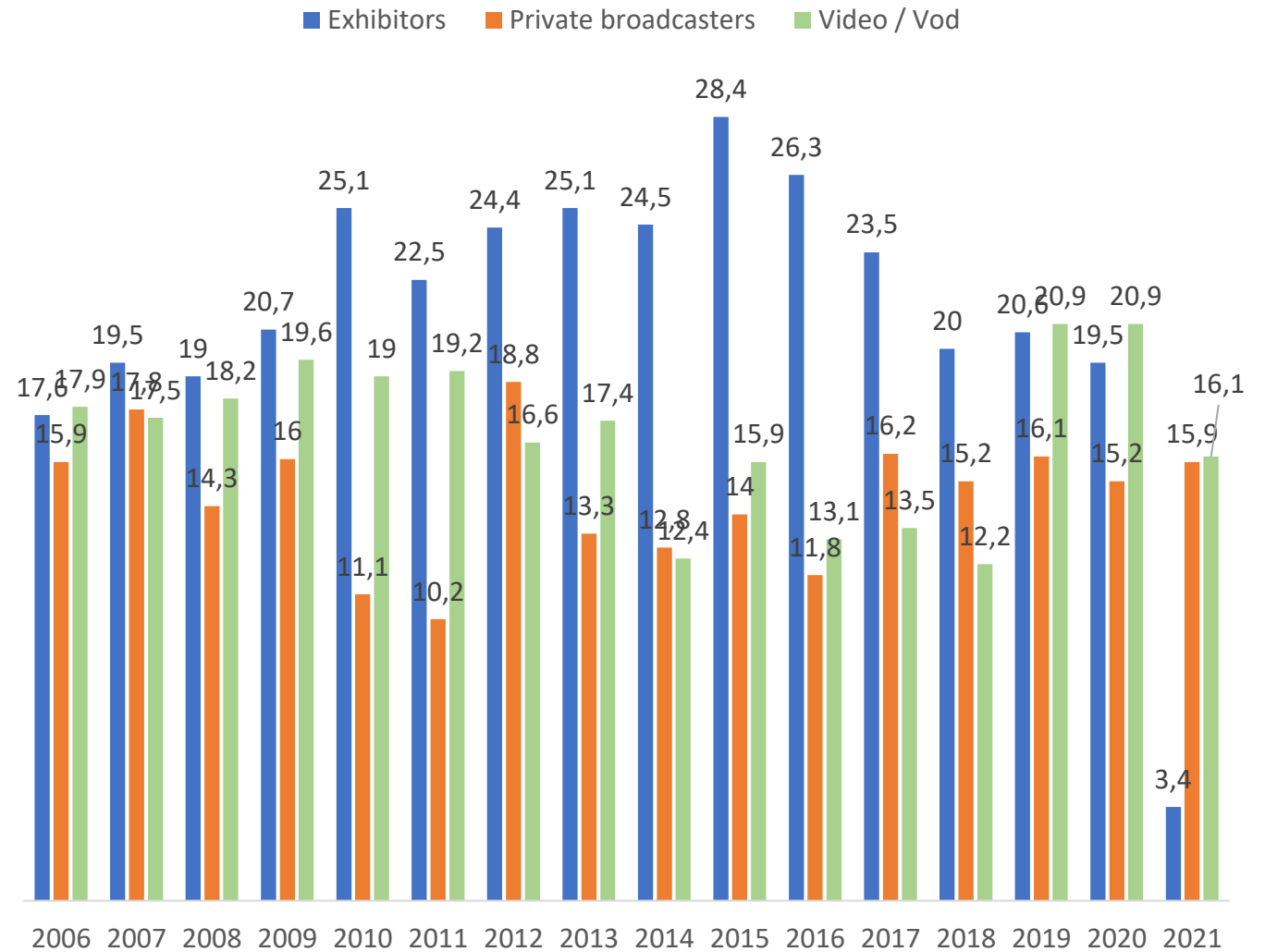
Source : FFA

- **Exhibitors** : Film Abgabe : from 1,8 to 3 % of turnover
- **Video publishers and VoD providers** : Video Abgabe from 1,8 to 2,5 % of turnover
 - VoD Abgabe applied on foreign services since 2014
- **Public broadcasters** : 3 % of costs of film broadcasting
- **Advertising TV broadcasters** with significant film programming : 0,15 to 0,95 % of net advertising sales
- **Pay-TV and film sales agents** : 0,25 % of net sales generated in Germany

GERMANY | LEVY ON THE REVENUES OF THE VARIOUS OPERATORS FOR FINANCING THE FFA (2006-2021)

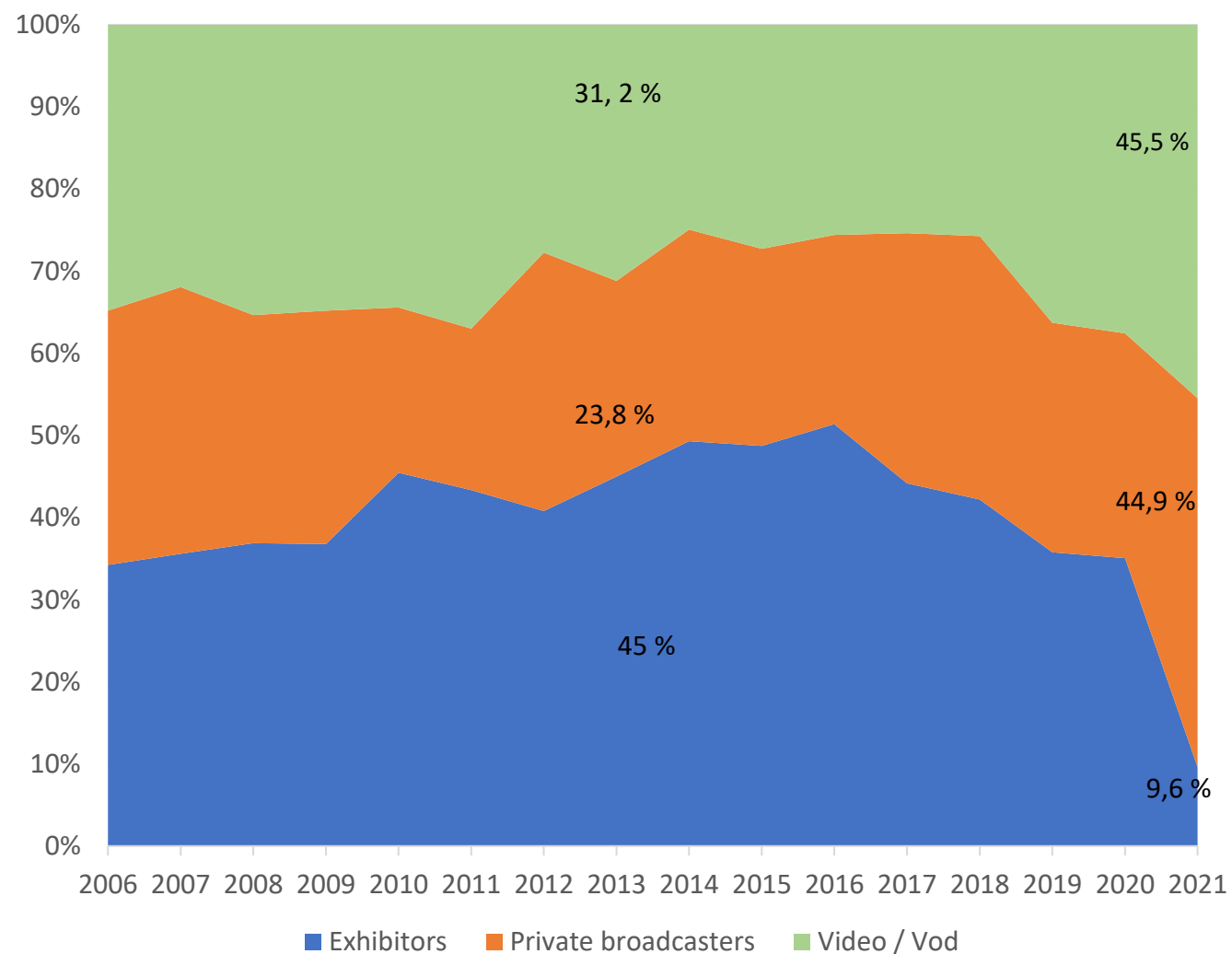
EUR Million

Source : FFA / André Lange



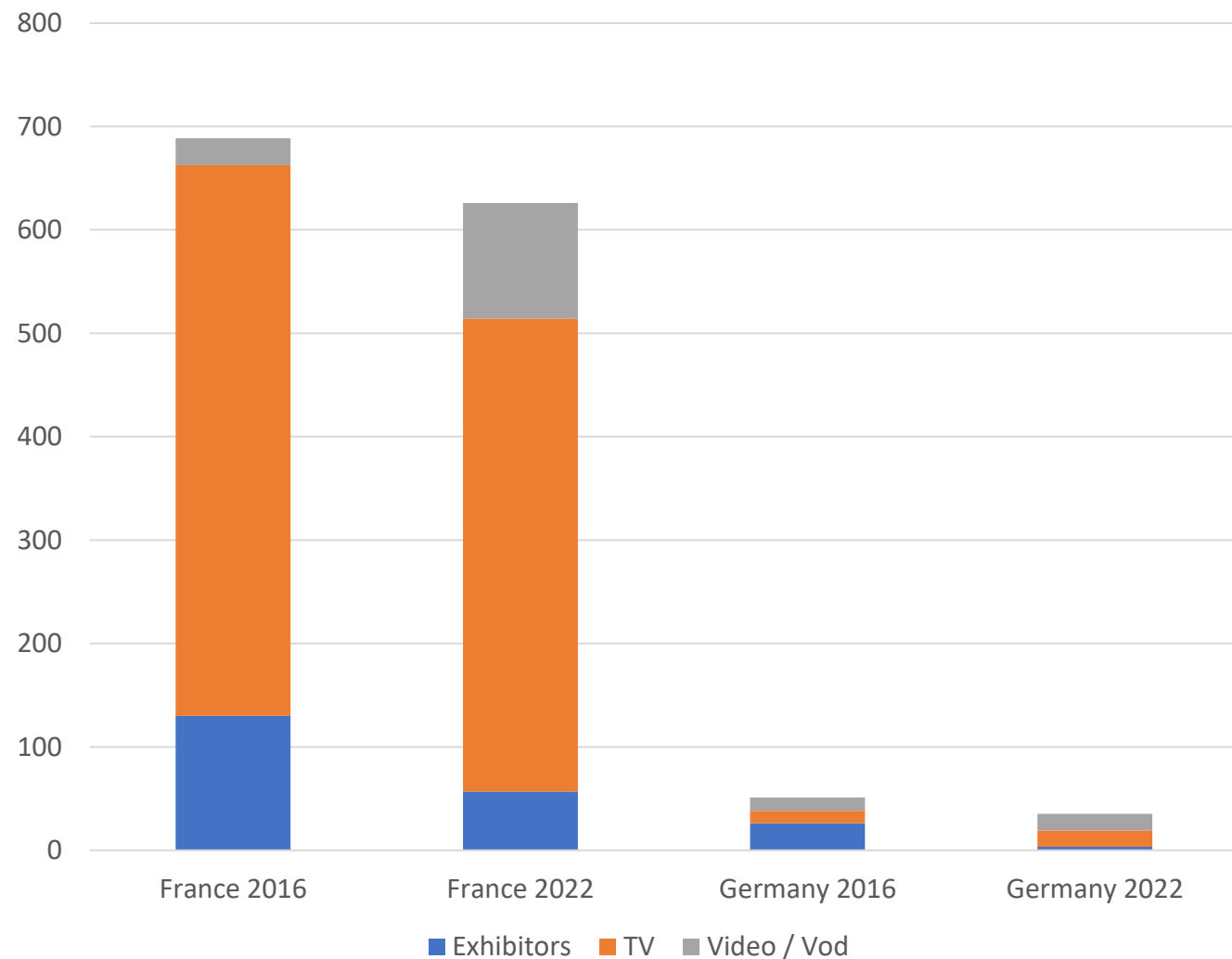
GERMANY – LEVY OF THE VARIOUS OPERATORS TO FINANCE THE FFA (2006-2021) (in %)

Source : FFA / André Lange



FRANCE and GERMANY – MANDATORY CONTRIBUTIONS TO THE FUNDS (2016 and 2021) EUR Million

CNC / FFA / André Lange



FRANCE MANDATORY INVESTMENTS IN FILM PRODUCTION FOR FREE TV BROADCASTERS

Source : CSA

- These services must devote
 - at least 3.2% of their net turnover for the previous year to the production of European cinematographic works and
 - 2.5% of this turnover must relate to films of French original expression.
- Terrestrial broadcasters whose turnover exceeds 150 million euros can only value co-production shares and pre-purchases of rights, on which they must commit before the end of the shooting period. Their entire contribution is therefore devoted to the production of new cinematographic works.
- For their part, terrestrial broadcasters whose turnover is less than 150 million euros as well as broadcasters distributed non-terrestrial can value simple purchases of broadcasting rights, knowing that from 75 million euros of turnover these editors must begin to invest in pre-purchase under the conditions fixed in the agreements signed with the CSA.

FRANCE – MANDATORY INVESTMENTS IN FILM PRODUCTION FOR FILM TV CHANNELS

Source: CSA

- This category includes the so-called “first broadcast” services and the others.
- “First broadcast services” must devote each year at least 26% of their annual resources for the current financial year to the acquisition of rights to broadcast European works and 22% to the acquisition of rights to broadcast works of French original expression.
- Guaranteed minimums and a diversity clause are also set by the agreement.
- Other film services must devote each year at least 21% of their annual resources for the current financial year to the acquisition of broadcasting rights for European works and 17% for the acquisition of rights to broadcast works of French original expression .
- Canal+ must devote each year at least 12.5% of its annual resources for the current financial year to the acquisition of broadcasting rights for European works and 9.5% to the acquisition of broadcasting rights for work of. French original expression.
- At least 80% of the amount of the obligation to acquire broadcasting rights for FOE works must relate to pre-sales and 17% of the amount of this obligation must be devoted to works for which the estimate is equal to or less than an amount set by the convention (“diversity clause”).

FRANCE – MANDATORY INVESTMENTS IN TV PRODUCTION FOR TERRESTRIAL TV CHANNELS

Source : CSA

- For free-to-air channels, three schemes for contributing to the development of the production of audiovisual works have been introduced:
 - A **general scheme** which sets the “overall” obligation : at least 15% of net annual turnover for the previous financial year, with a sub-quota in favor of heritage works set at least 10.5% of this same figure
 - An **alternative regime** centered solely on the production of heritage works, with a contribution rate of at least 12.5% of the net annual turnover of the previous financial year (“entirely heritage” obligation)
 - A specific regime applicable to so-called “**music channels**” (providers of services devoting annually more than half of their broadcasting time to recordings or recreations of live shows and video clips, the latter having to represent at least 40% of the annual time distribution) which sets at least 8% of the net annual turnover of the previous financial year the “global” obligation, with a sub-quota in favor of heritage works set : at least 7.5% of this same turnover.
- For **non-cinema pay-TV channels**, the decree establishes a general regime which sets at least 15% of total net annual resources for the previous financial year the “global” obligation, with a sub-quota in favor of heritage works of at least 5% of these same resources.
- For **pay-TV cinema channels**, the obligation is entirely financial and subject to a more favorable rate (at least 3.6% of net annual turnover for the previous financial year rather than 4.8%) when the publisher is its own distributor.

FRANCE – MANDATORY INVESTMENTS IN TV PRODUCTION FOR NON-TERRESTRIAL TV CHANNELS

Source : CSA

- The obligations apply to broadcasters reserving annually more than 20% of their broadcasting time for audiovisual works.
- For **providers of "non-films" services**, the rate of contribution to audiovisual production is at least 14% of the total net annual resources for the previous financial year and the share of this contribution devoted to "heritage" works is 8.5% of these same resources.
- For **providers of first-run films services**, the rate of contribution to audiovisual production is at least 6% of the total net annual resources of the previous financial year, the obligation relates exclusively to "heritage" works
- For **music channels** (providers of services which annually devote more than half of their broadcasting time to recordings or recreations of live shows and video clips, the latter having to represent at least 40% of the annual broadcasting time), this rate is set at 8% of total net annual resources for the previous financial year.
- These expenditures must, in whole or in part, be devoted to the development of **independent production**.

FRANCE -
MANDATORY
INVESTMENTS BY
PROVIDERS OF VoD
SERVICES
Decrees :
Nov., 12, 2010
June 22, 2021

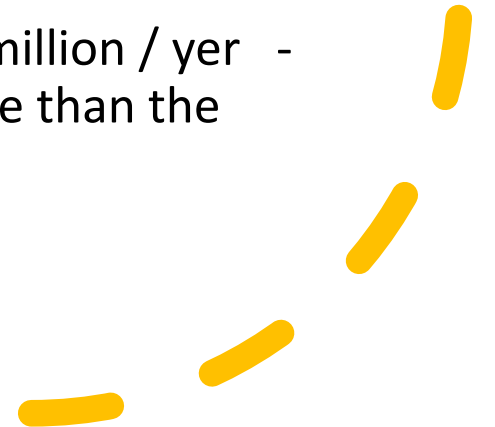
Source : CSA

- **Obligations for providers** that
 - achieve a net annual turnover of more than ten million euros and offer at least ten cinematographic works annually: obligation to contribute to the production of cinematographic works;
 - offer at least ten audiovisual works annually (other than pornographic programs or programs inciting violence): the obligation to contribute to the production of audiovisual works.
- **Catch-up television services** : obligation to contribute to
 - European film production,
 - Works of French original expression,
 - at the same rate as the providers of the television service whose catch-up television service is from. If their receipts are included in the resources of the television service from which they come, these services are not subject to the obligation to contribute
- **SVoD services** : contribution to
 - the production of European cinematographic and audiovisual works,
 - The production of works of French original expression,
 - 26% and 22% when they offer at least ten long-running cinematographic works annually within a period of less than twenty-two months after their theatrical release in France;
 - 21% and 17% when they offer at least ten long-running cinematographic works annually within a period of less than thirty-six months and equal to or greater than twenty-two months after their theatrical release in France
 - 15% and 12% in other cases.
 - The contribution is invested in the production of cinematographic works and in the production of audiovisual works (except pornographic or inciting violence), in proportion to the shares represented by each of these two types of works in the total downloading or viewing works by users of the service during the previous fiscal year.
- **Transaction VoD** production contribution obligation:
 - films: 15% of the net annual turnover of the previous financial year resulting from the exploitation of cinematographic works to expenditure for the development of the production of European cinematographic works,
 - including at least 12% for the development of production of cinematographic works of French original expression
 - at least 15% of the net annual turnover of the previous financial year resulting from the exploitation of audiovisual works (excluding pornography or incitement to violence) for the development of the production of European audiovisual works, including 12 % to expenses contributing to the development of the production of audiovisual works of French original expression.

FRANCE –
MANDATORY
INVESTMENTS IN
FILM AND TV
PRODUCTION FOR
FOREIGN VoD
SERVICES

Decree June, 21,
2021
Agreement
December 9, 2021

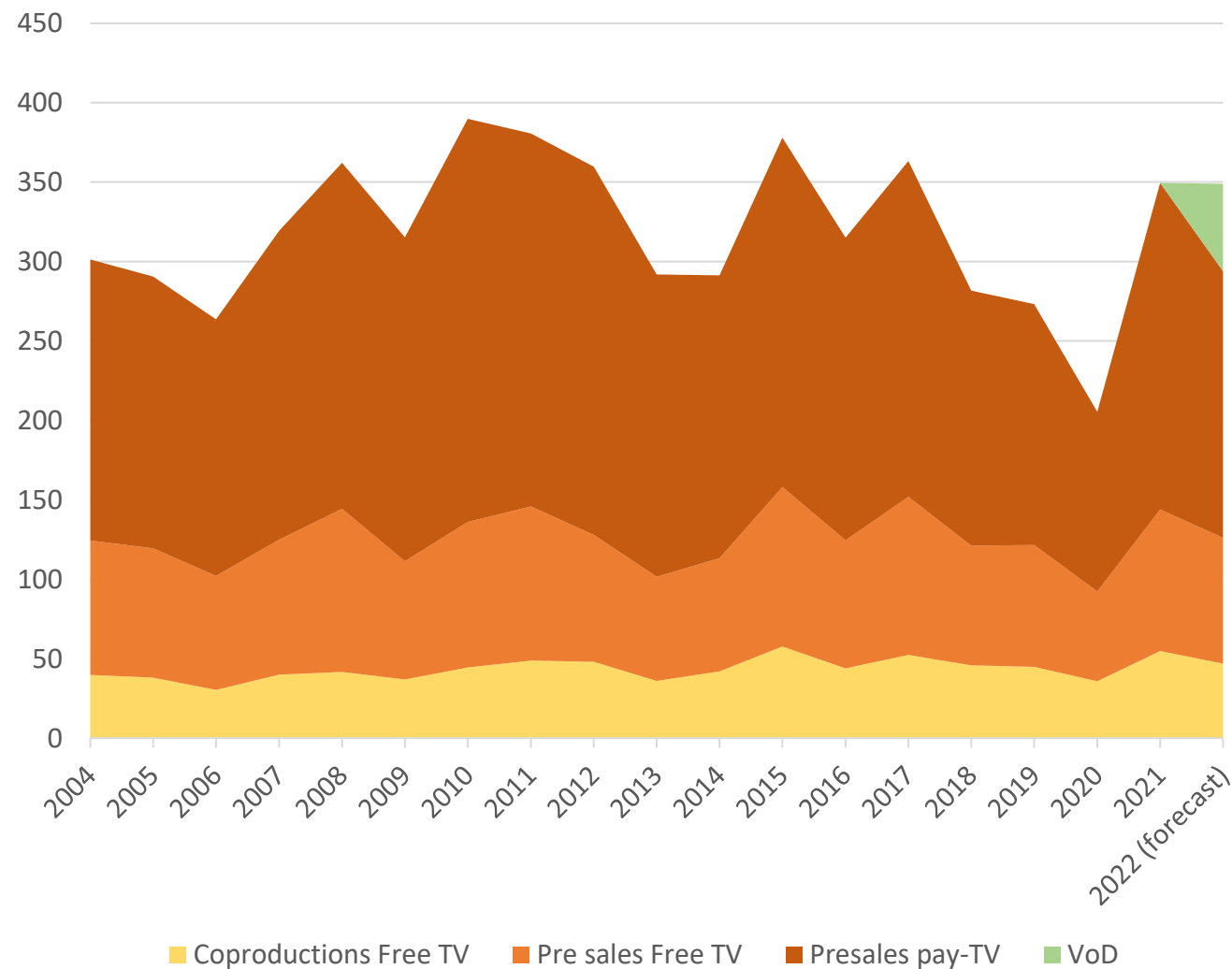
- US platforms active in France will devote
 - 16% of their turnover to audiovisual programs (between 200 million and 240 million euros per year)
 - 4% to cinema (from 50 million to 60 million euros). This distribution was provided for by the decree on audiovisual media services (SMAD) adopted in June, application of the European directive of 2018, transposed in France in 2020. The agreements are concluded for three years.
- Netflix : around 200 EUR million
- Amazon Prime Video minimum 40 EUR million / yer - 30 % of total turnover if this provide more than the minimum



FRANCE – INVESTMENTS BY TV IN FILM PRODUCTION (2004-2022)

EUR Million

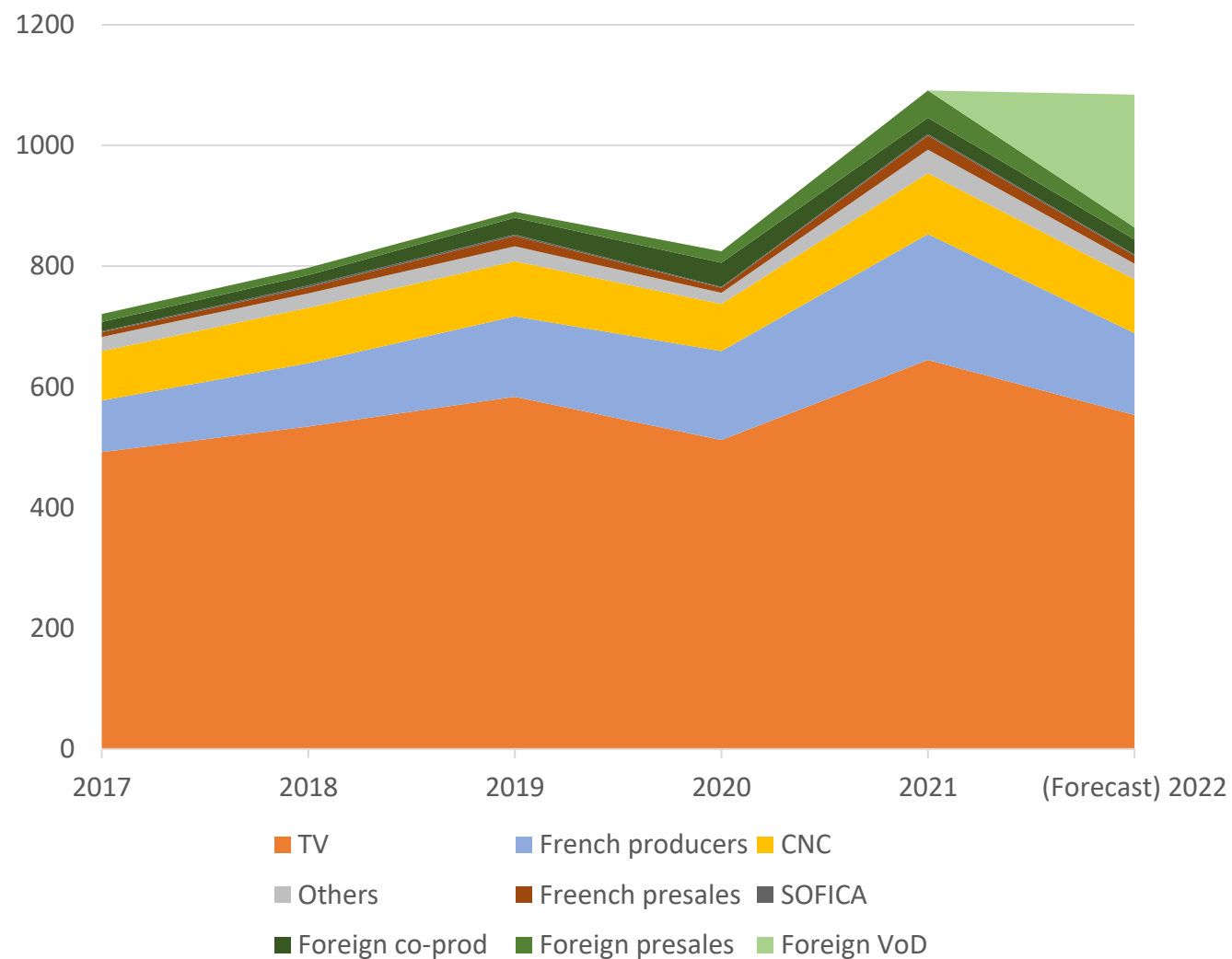
Source : CNC / André Lange



FRANCE – FINANCING OF TV PRODUCTION (2017-2022)

EUR Million

Source : CNC / André Lange





More ...

- European Audiovisual Observatory

<https://www.obs.coe.int>

- André Lange Academia website

<https://andrelangemedart.academia.edu/>

- Histoire de la télévision

<https://histv.net>