



# REBOOT

EUROPEAN FILM COMPETITIVENESS

## Competitiveness in European law

Project: Reviving, Boosting, Optimising and Transforming European Film Competitiveness - REBOOT  
Grant Agreement: 101094796 - HORIZON-CL2-2022-HERITAGE-01  
Author(s): Evangelia Psychogiopoulou, Apostolos Samaras, Laia Comerma (ELIAMEP)  
Antonios Vlassis, Dealan Riga (ULIEGE)  
Reviewer(s): Caterina Sganga, Pelin Turan (SSSA)

<b>Object</b>	<b>D2.1 'Competitiveness in European law'</b>
<b>WP</b>	WP2 (Diachronic understandings of the 'competitiveness' and of the 'European' in EFI)
<b>Deliverable Lead</b>	ELIAMEP
<b>Type</b>	R=report
<b>Dissemination Level</b>	PU=public
<b>Version</b>	1.0



Funded by the  
European Union

## Metadata

Project	Reviving, Boosting, Optimising and Transforming European Film Competitiveness - REBOOT
Acronym	REBOOT
Programme	Horizon Europe
Call	HORIZON-CL2-2022-HERITAGE-01
Grant Agreement No.	101094796
Licensing terms	CC BY 4.0
Author(s)	Evangelia Psychogiopoulou, Apostolos Samaras, Laia Comerma (ELIAMEP) Antonios Vlassis, Dealan Riga (ULIEGE)
Reviewer(s)	Caterina Sganga, Pelin Turan (SSSA)
Title	Competitiveness in European law
Deliverable No.	2.1
WP No.	2
Deliverable Lead	ELIAMEP
Type	R – Document, report
Dissemination Level	PU - Public
Version	1.0 E. Psychogiopoulou, A. Samaras, L. Comerma (ELIAMEP), A. Vlassis, D. Riga (ULIEGE)
Description	Engaging in a diachronic analysis, this report examines the ways in which the European institutions have addressed the concepts of 'competitiveness' and 'cultural diversity' in the development of their policies for the European audiovisual sector and film industry.
Keywords	Competitiveness, cultural diversity, European Film Industry (EFI), audiovisual, European Union (EU)
Language	English



REBOOT ([www.thereboot-project.eu](http://www.thereboot-project.eu)) has received funding from European Union's Horizon Europe Research and Innovation programme under Grant Agreement No. 101094769.



### List of main abbreviations

AVMSD	Audiovisual Media Services Directive
CCIE	Cultural and creative industries ecosystem
CCSI	Cultural and creative sectors and industries
CFR	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
COVID-19	Coronavirus disease 2019
EAO	European Audiovisual Observatory
EC	European Community
EEC	European Economic Community
EFI	European Film Industry
EIB	European Investment Bank
EIF	European Investment Fund
EU	European Union
ICT	Information and communication technology
OJ	Official Journal of the European Union
SME	Small and medium-sized enterprise
TEC	Treaty establishing the European Community
TEEC	Treaty establishing the European Economic Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TWFD	Television without Frontiers Directive
UNESCO	United Nations Educational, Scientific and Cultural Organization



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### PROJECT DESCRIPTION

This project focuses on the European audiovisual sector and film industry. It aims to connect their existing strengths, identify and overcome weaknesses, and plan for future competitiveness in the fields of policy, practice and experience. More concretely, the project's objectives are, on the one hand, to explore the long-standing strengths and pervasive gaps in European competitiveness and policies for competitiveness--including ways of 'measuring' 'analysing' and 'evaluating' the impact of policies and strategic pathways. On the other hand, the project aspires to focus attention on actively preparing for the future by exploring audience preferences and how these are generated, as well as modes of film content production. The latter are elements which today's youth will carry and engage with in the coming decades as makers and consumers, as well as industry and policy leaders. The project therefore interrogates the 'what is', but also the 'what has been' and 'what will be' through fresh lenses. REBOOT sets out to provide a holistic picture of the European film industry with a view to maximising its existing strengths, plus strategies and tactics for optimising the potential of European youth publics, both as emerging audiences and as citizens. Specifically, the project's goals combine several dimensions which reinforce each other but are listed separately (and in no particular order) for analytical purposes: a) increasing support intended to increase young people's engagement with European film; b) strengthening the EU's position in the global audiovisual economy, particularly in light of the rise of video-on-demand; c) supporting cultural diversity in the EU film industry; d) addressing the need for a different understanding of competitiveness and relevant indicators in this context; and e) recognising and supporting the importance for the EU of film and, more broadly, of the cultural and creative sector as a geopolitical asset.



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### **EXECUTIVE SUMMARY**

This report examines the development and evolution of the European Union's (EU) action in the film and broader audiovisual sector. It assesses the ways in which the EU has approached, defined and sought to promote the 'competitiveness' of its audiovisual sector and the European film industry (EFI), taking into account the evolving technological context and other significant changes that have taken place. As the EFI and the audiovisual industry are situated at the intersection of the economy and culture, the report combines its study of the concept of 'competitiveness' with a study of the concept of 'cultural diversity'. Engaging in a diachronic analysis that follows the development and evolution of EU policy in the field of interest, it analyses the ways in which the EU institutions have understood and addressed the two concepts in advancing and applying their policy and legislative initiatives.

To do so, the study engages in an in-depth diachronic textual analysis of legislative and non-legislative acts and policy instruments issued by the EU institutions. The diachronic textual analysis covers a corpus of 183 documents published by the European Commission (Commission), the European Parliament, the Council of the European Union (the Council), and the European Parliament and the Council as co-legislators, along with a selection of documents issued by the Council of Europe (CoE). The latter is also active in the audiovisual field, and its documents therefore complement the analysis of the EU documents with a view to identifying broad trends in the ways in which the EU and the CoE approach 'competitiveness' and 'cultural diversity' in the area of interest. As such, the diachronic textual analysis is based on documents covering a period of more than 40 years. Given that the film industry is an intrinsic component of the audiovisual sector, and that the film and audiovisual industries are heavily interrelated and interdependent, it was decided not to restrict the documents in the database to those relating to the film sector alone. Thus, the selected documents from the EU institutions and the CoE also relate to the audiovisual sector more broadly. Moreover, given the significant corpus of documents and the long historical period under





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examination, the research question guiding the analysis is approached from various perspectives. As such, the study combines quantitative and qualitative methods of textual analysis, which enhance each other.

The quantitative textual mapping performed in Section 2 seeks to shed light on the diachronic use of the term 'competitiveness' in the European audiovisual policy framework, and to understand the ways in which 'competitiveness' has historically been understood in the light of other key terms, concepts, and principles of European audiovisual and film governance. The first part of the quantitative textual analysis is based on historical criteria and divides the dataset into five historical periods designed around four turning points in EU audiovisual and film policy: prior to 1990, 1990-2000, 2001-2010, 2011-2018 and 2019-present. The second part is based on an institutional analysis. The dataset is divided into five distinct categories as described above: the Commission, European Parliament, the Council, the European legislator and the CoE. The final stage of analysis involves a comprehensive comparison of each institution over the five historical periods.

The historical textual mapping illustrates that technological transformations and modernisation concerns have grown steadily in importance in European audiovisual and film policy, ultimately taking centre stage as the prime focus in the period which began in 2019. Starting in the early 2000s, terms such as 'digital content', 'digitisation', 'innovation', 'data' and 'platforms' rose in prominence to become some of the top priorities in European audiovisual and film governance in the 2010s and 2020s. However, the European authorities have continuously sought to combine technological advances with economic and socio-cultural considerations. Consequently, economic and industrial concerns have been a key priority throughout all the periods analysed, being represented most prior to 1990 in the regulation of 'advertising'. However, a clear emphasis on 'competitiveness' and 'market'-related issues emerged between 1990 and 2018. Interestingly, both have experienced a decline in recent years. In addition, European audiovisual and film governance has maintained a consistent focus on ensuring 'consumer' access to available content. While this trend was weak



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prior to 1990, the terms 'availability', 'accessibility' and 'consumer' have been prominent since 1990, serving as a central focus throughout every subsequent period. Finally, the integration of cultural and creative concerns into audiovisual policy became manifest after 1989. 'Cultural diversity' gained in prominence in 1990-2000, experiencing a powerful surge in 2001-2010, while European policymaking began to link the audiovisual and film industry to 'cultural heritage' concerns and creativity considerations in a significant way after 2000.

The institutional textual analysis shows that technological advances --indicated by terms including 'cable', 'satellite', 'internet', 'convergence', 'platforms', 'digitisation' and 'innovation'--are of interest to all EU institutions. In addition, cultural--and, more broadly, creative--considerations are well-represented in the texts of both the European Parliament and the Council. Both institutions had played a role in giving cultural and artistic concerns greater prominence in agenda-setting by the 2010s and contributed actively to the diversification of the EU's approach towards audiovisual and film governance. 'Competitiveness', and economic concerns in general, are strongly supported by the Commission, while since the 2000s the Commission's framing of European audiovisual policy seems to have broadened to encompass cultural concerns. Moreover, terms, such as 'availability' and 'accessibility' which relate to ensuring consumer access to audiovisual-cultural products are prominent in the documents of EU institutions, making them the focus of European audiovisual policy. Finally, the CoE tends to be a complementary and somewhat alternative policy arena for audiovisual and film issues, having introduced a norm-oriented framing in European audiovisual governance and an agenda which hinges on public considerations and political coordination rather than economic integration concerns.

The qualitative analysis performed in Section 3 examines the most significant EU legal instruments relating to regulation and financial support, as well as a selected set of EU policy documents. Attention is also paid to relevant CoE instruments in an attempt to identify broad trends in the ways in which the EU tackles competitiveness and cultural diversity in the EFI and the audiovisual sector.



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In relation to the EU's regulatory instruments, an initial legal framework for the cross-border transmission of television programmes was established at the end of the 1980s, at which point the notion of 'competitiveness' was primarily associated with guaranteeing fair conditions of competition in the single market. However, technological developments and the rapid 'platformisation' of the audiovisual industry proved key drivers for the restructuring of cultural policies and media regulation at EU level. The gradual evolution of the EU's legislative instruments for the audiovisual sector since 1989, which has proceeded in accordance with the spirit and aims of the EU Treaties (as revised in the years that followed), has resulted in a European legal framework that represents a good balance between 'national (cultural) sovereignty' and 'market' considerations. This legal space aspires to preserve and promote Member States' rich 'cultural diversity', while ensuring optimal conditions of 'competitiveness' for Europe's audiovisual industry. Importantly, it also embraces a pluralist reading of culture and cultural diversity, favouring openness towards others' cultures, cultural interaction and exchange.

Turning to the EU funding instruments, a clear evolution in the understanding of 'competitiveness' can be identified, with creativity and innovation appearing as major factors alongside more traditional, market-related issues. Also, cooperation in terms of support and market integration among countries and stakeholders is repeatedly stressed as an important element for increased competitiveness and growth, sometimes through the lens of excellence. Moreover, the structural challenges posed by recent technological transformations, the digitalisation of the audiovisual industry, and the COVID-19 pandemic have brought the concepts of resilience and sustainability to the fore as major determinants of the future competitiveness (and survival) of the European audiovisual industry. 'Cultural diversity' is another concept that is becoming increasingly common and complex over time, as it comes to be understood as not only representing the geographical variety of Europe and reflecting a 'European heritage' born out of unity in diversity, but also as representative of pluralism and multilingualism. It is also increasingly being given a particular focus on stakeholders with less capacity to promote their diversity and access funds and continues to



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adapt to new realities in general and the digitised, knowledge-based, global economy in particular. Cultural diversity is considered a key asset for building a European identity and for social cohesion, becoming a key component in the promotion and protection of EU values and the countering of all forms of discrimination. Nonetheless, its operationalisation in linguistic and regional terms remains rather underdeveloped.

With regard to the policy documents under study, this report finds that ‘competitiveness’ is promoted in the context of new digital technologies with a view to creating the conditions in which a new entrepreneurial culture can flourish. The main factors in competitiveness are fair access to the market, a level playing field, and the free movement of services with a particular focus on SMEs and a skills shortage in the labour market in the context of strong international competition. From the publication of the earlier EU policy documents onwards, the EU institutions address the concept of ‘cultural diversity’ in a complex way. The EU documents consider cultural diversity to play a key role in shaping identities and fostering intercultural exchange and mutual understanding across Europe. This relates to the widely acknowledged dual nature of audiovisual goods as both economic and cultural goods. Regional partnerships are suggested as a way to increase European films’ potential to reach a wider audience, enhancing cultural interaction and preserving the EU’s cultural heritage. It is also deemed necessary to tackle any existing obstacles to the development of the internal market, especially in the online environment, in order to ensure consumer demand and a diverse online offering, in parallel with promoting European audiovisual works internationally.

Section 4 delves into the concepts examined and the main emphasis placed on them, working towards a better understanding of their various facets, links and synergies but also any possible contradictions. The analysis shows that the notions of ‘competitiveness’ and ‘cultural diversity’ both generally reflect certain ‘market’ and ‘non-market’ values in EU policies vis-à-vis the audiovisual sector and the EFI. It also shows that the two concepts have progressively become increasingly interrelated and not necessarily opposed to one another.



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The main conclusion of Section 5 is that the concepts of ‘cultural diversity’ and ‘competitiveness’ both have a multifaceted nature in relation to the EFI and the audiovisual industry, and that this results in an intricate synergy when they are employed concurrently. Since the 1990s, there has been consistent pressure to deal with the cultural and political aspects of the audiovisual sector along with its economic aspects; this pressure has left its mark on the EU’s audiovisual media and film policy. The tension between the two led the EU to seek balance, promoting the competitiveness of its audiovisual industry without compromising the protection of its cultural diversity. This is reflected in the regulatory framework established, the funding instruments enacted, and the policy approaches contemplated and adopted by the EU, which on the whole display an increasingly sophisticated understanding of ‘cultural diversity’ and ‘competitiveness’. In the meantime, key structural challenges like the ongoing process of digital globalisation, the COVID-19 pandemic, digital innovation and platformisation appear to have assumed a pivotal role in the formulation of EU audiovisual and film policies. In sum, the analysis shows that ‘cultural diversity’ and ‘competitiveness’ are notably rich concepts which are open to interpretation and can be operationalised in various ways.



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### 1 INTRODUCTION

Pursuant to Article 2 of the Treaty on European Union (TEU), the European Union (the EU or the Union) is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and the respect for human rights, including the rights of persons belonging to a minority. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. The Union's values are further proudly proclaimed and articulated in the rights, freedoms and principles enshrined in the Charter of Fundamental Rights of the European Union (the CFR), which enjoys the same legal value as the Treaties.<sup>1</sup> In particular, Articles 11 and 13 CFR respectively enshrine freedom of expression and the freedom of the arts. Article 11(2) CFR also affirms that the freedom and pluralism of the media shall be respected. Pursuant to Article 3(1) TEU, the Union's aims include promoting its values. According to Article 3(3) TEU, which lays down the Union's objectives, the Union shall establish an internal market and work for the sustainable development of Europe based inter alia on balanced economic growth, a highly competitive social market economy, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advances, social justice and cohesion, and it shall combat social exclusion and discrimination. It shall also respect its rich cultural and linguistic diversity and ensure that Europe's cultural heritage is safeguarded and enhanced.

Culture, cultural diversity and cultural heritage are of great value to European societies from a cultural, democratic, educational, social, human rights and economic point of view. The audiovisual sector and the European film industry (EFI) constitute an essential element of Europe's cultural diversity. They embody Europe's common values, portray them within and outside the EU, and fulfil an indispensable role in the preservation and promotion of cultural diversity. Significantly, they are situated at the crossroads of the economy and the cultural realm. While they enable the expression

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<sup>1</sup> See Art. 6(1) TEU [2012] OJ C 326/3.



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of cultural values, reflect the uniqueness and plurality of cultural identities in Europe and promote cultural exchange, intercultural dialogue and rapprochement, they also make a key contribution to growth, innovation and competitiveness. As such, the audiovisual and film industries have a dual nature, oscillating as they do between the symbolic and material spheres and between intrinsic value and market value. This raises a series of economic, social, cultural and identity-based considerations for those involved in their governance (Calligaro & Vlassis, 2017; Psychogiopoulou, 2015).

This report aspires to capture this duality by examining the ways in which the European institutions have addressed 'competitiveness' and 'cultural diversity' in the development of their policies for the audiovisual sector and the EFI. The report engages in a diachronic analysis, following the historic development and evolution of EU policy in order to shed light on the ways in which considerations of 'competitiveness' and 'cultural diversity' have accompanied and characterised the European institutions' policy discourse, regulatory action and funding rationale for the audiovisual and film sector. As will be shown, while the concepts of 'competitiveness' and 'cultural diversity' can be seen as reflecting, respectively, certain 'market' and 'non-market' values in EU policymaking for the audiovisual sector and the EFI, they have become increasingly interlinked and not necessarily juxtaposed.

To work towards a better understanding of the ways in which 'competitiveness' and 'cultural diversity' have been approached, defined and conceptualised by the European institutions, the diachronic analysis follows the development of the Union's competences. Culture was brought within the spectrum of the Union's competences in the early 1990s by the Treaty of Maastricht. The Treaty of Maastricht introduced provisions that were firmly founded on respect for cultural diversity and also underscored the role of cultural diversity for overall EU decision-making (Craufurd Smith, 2004; Psychogiopoulou, 2008; 2021; de Witte, 2008). More specifically, the Treaty of Maastricht assigned the Union a cultural competence, but recognised the preponderant role of Member States in this



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sphere by requiring the Union to ‘contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore’.<sup>2</sup> EU cultural action was strictly delimited: the Union should, in essence, assist in the development of Member States’ cultures and only support and supplement Member States’ action in specific areas, which included creation in the audiovisual sector,<sup>3</sup> ‘if necessary’.<sup>4</sup> Thus, the cultural competences adhered to the principle of subsidiarity; moreover, while referring to a common cultural heritage, explicit reference was made to the ‘flowering of the cultures of the Member States’ in the plural, showing the importance of the diversity of cultures in the EU (Romainville, 2015). The Treaty of Maastricht also required the Union to take cultural aspects into account in its action under other provisions of the Treaty establishing the European Community<sup>5</sup> – a ‘mainstreaming’ duty which the Treaty of Amsterdam linked specifically to the objective of respecting and promoting cultural diversity (Psychogiopoulou, 2014).<sup>6</sup>

Until 1993, when this cultural competence was formally ascribed to the Union, cultural issues had been mostly addressed under the predominantly economic approach of the European integration process, the free movement provisions of the 1957 Treaty of Rome, and the revived single market project of the Single European Act. Certain exemplary cultural initiatives had also been given the go ahead on the normative premise that the economic, social and political goals pursued at the time by the European institutions would not gain public support unless targeted efforts were made to bring the peoples of Europe closer together through actions to boost culture and cultural understanding (Craufurd Smith, 2004; Psychogiopoulou, 2008; Shore, 2000).

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<sup>2</sup> See Art. 128(1) of the Treaty establishing the European Community (TEC) [1992] OJ C 191/1.

<sup>3</sup> Article 128(2) TEC referred to the following areas: improving knowledge about, and the dissemination of, the culture and history of the European peoples; conserving and safeguarding cultural heritage of European significance; non-commercial cultural exchanges; and artistic and literary creation, including in the audiovisual sector.

<sup>4</sup> See Art. 128(2) TEC.

<sup>5</sup> See Art. 128(4) TEC.

<sup>6</sup> See Art. 128(4) TEC as amended by the Treaty of Amsterdam [1997] OJ C 340/1.





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Free movement and the internal market continue to play a crucial role in the development of the cultural and creative sectors today, in the wake of the Treaty of Lisbon, including the audiovisual sector and the EFI. Other Union policies such as competition, education, vocational training and EU industrial policy have also gained in importance. At the same time, the Treaty of Lisbon has wrought important changes to the EU constitutional framework concerning culture. Although the treaty did not introduce any significant changes to the provisions of what became Article 167 of the Treaty on the Functioning of the European Union (TFEU) on culture, it has underlined respect for cultural (and linguistic) diversity, together with safeguarding and enhancing Europe's cultural heritage, as primary EU objectives in Article 3 TEU.<sup>7</sup> Moreover, it has openly recognised that the Union shall respect the national identities of the Member States in Article 4(2) TEU and listed culture among the Union's complementary competences. In those areas covered by the latter, the Union may only carry out actions to support, coordinate or supplement the actions of the Member States, without superseding their competence or engaging in the harmonisation of their laws and regulations.<sup>8</sup> Significantly, the CFR, which acquired binding legal force with the Treaty of Lisbon,<sup>9</sup> requires the EU institutions to respect cultural diversity in the exercise of their competences and also makes respect for cultural diversity a duty of the Member States when they act within the scope of EU law (Craufurd Smith, 2021).<sup>10</sup>

As a complex area which European public policy approaches as both a marker of identity and a factor in economic growth (Littoz-Monnet, 2007; Vlassis, 2022), the EFI lends itself to an exploration of the diachronic definitions and operationalisations of 'competitiveness' and 'cultural diversity' in EU rule- and policy-making. In this regard, the evolution of the EU constitutional framework, and the changes and qualifications brought to the EU competences, form the background against which this report explores the ways in which the European institutions have been confronted with the concepts

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<sup>7</sup> See Art. 3(3) TEU.

<sup>8</sup> See Arts 2(5) and 6 TFEU.

<sup>9</sup> See Art. 6(1) TEU.

<sup>10</sup> See Art. 22 CFR in conjunction with Art. 51(1) CFR.



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of 'competitiveness' and 'cultural diversity' when addressing the audiovisual sector and the EFI. Indeed, how have questions pertaining to 'competitiveness' and 'cultural diversity' been approached with regard to the audiovisual sector and the EFI, and have the approaches and stances taken by the European institutions changed over time? If so, how have they changed?

To answer these questions, this study engages in an in-depth diachronic textual analysis of legislative and non-legislative acts and policy instruments of the EU institutions. The diachronic textual analysis covers a corpus of 183 documents issued by the European Commission (Commission), the European Parliament, the Council of the European Union (the Council), and the European Parliament and the Council as co-legislators, along with a set of documents selected from those issued by the Council of Europe (CoE). The latter is also active in the audiovisual field, and its documents thus complement the analysis of the EU documents with a view to identifying broad trends in the ways in which the EU and the CoE approach 'competitiveness' and 'cultural diversity' in the area of interest. More concretely, our database includes Green Papers,<sup>11</sup> Communications<sup>12</sup> and Recommendations<sup>13</sup> issued by the Commission; Resolutions<sup>14</sup> and Recommendations issued by the European Parliament or the Council; and Council Conclusions.<sup>15</sup> The database also

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<sup>11</sup> Green papers are documents published by the Commission to stimulate discussion on given topics at EU level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green papers may give rise to legislative developments that are then outlined in white papers.

<sup>12</sup> The Commission issues a wide variety of Communications. Communications may include policy evaluations, commentary on--or explanations of--action-programmes, or brief outlines of future policies or arrangements concerning details of current policy.

<sup>13</sup> Recommendations are a form of non-binding EU act cited in Article 288 TFEU (the other form of non-binding EU acts being opinions). Although Recommendations do not have legal consequences, they may offer guidance on the interpretation or content of EU law.

<sup>14</sup> Council or Parliament Resolutions usually set out future work foreseen in a specific policy area. They have no legal effect and commonly serve: (i) to invite a Member State or another EU institution to act on a specific issue; (ii) to ask the Commission to prepare a proposal on a specific topic; and (iii) to express a political position.

<sup>15</sup> Conclusions of the Council are used to identify specific issues of concern for the EU and outline actions to take or goals to reach. Council Conclusions can also set a deadline for reaching agreement on a particular item or for the presentation of a legislative proposal. They therefore allow the Council to influence and guide the EU's policy agenda.



## D2.1 Competitiveness in European law

incorporates legislative acts of the Union in the form of Regulations,<sup>16</sup> Directives<sup>17</sup> and Decisions.<sup>18</sup>

All documents in this category are binding legal acts. Finally, the data collection also includes CoE Conventions,<sup>19</sup> Resolutions of the Parliamentary Assembly of the CoE<sup>20</sup> and Recommendations of the CoE Council of Ministers.<sup>21</sup>

As such, the diachronic textual analysis carried out is based on documents covering a period of more than 40 years. Given that the film industry is an intrinsic component of the audiovisual sector and that the film and audiovisual industries are strongly interrelated and interdependent (Gibbons & Humphreys, 2012; Ranaivoson, Micova, Raats, 2023), the choice was made to refrain from including only documents relating to the film sector in the database. Rather, the selected documents from the EU institutions and the CoE also relate to the audiovisual sector more broadly. Such documents offer insights into the ways in which the European institutions have dealt with issues revolving around the 'competitiveness' of the EFI in the formulation of their audiovisual policies in the light of other key concepts, such as 'cultural diversity'.

Given the large corpus of documents and the long historical period under study, the research question that guides the analysis is approached from various perspectives. The study thus combines mutually-enhancing quantitative and qualitative methods of textual analysis. While the quantitative analysis allows a large number of documents to be studied, the qualitative analysis permits an in-

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<sup>16</sup> Regulations are binding in their entirety, they have general application and they are directly applicable in all Member States.

<sup>17</sup> Directives are binding on each of the Member States to which they are addressed (usually all of them) as to the result to be achieved. However, the choice of form and methods is left to national authorities, which are free to implement them in any way they see fit in order to achieve the goals set.

<sup>18</sup> A decision is a legally binding act in its entirety. Unless explicitly stated otherwise, a decision is binding on the EU. Decisions can address specific legal entities, in which case a decision is binding only on them.

<sup>19</sup> Under Article 15.a of the CoE's Statute, the Committee of Ministers considers the action required to further the aim of the CoE, including the conclusion of Conventions or Agreements and the adoption by governments of a common policy on specific matters. Conventions are legally binding acts once ratified.

<sup>20</sup> Resolutions are non-binding statements or opinions adopted by the CoE's Parliamentary Assembly. They often address specific issues or concerns but do not create legally binding obligations.

<sup>21</sup> Article 15.b of the CoE's Statute provides for the Committee of Ministers to make Recommendations to Member States on matters for which the Committee has agreed 'a common policy'. Recommendations are not binding on Member States. However, the Statute of the CoE permits the Committee of Ministers to ask member governments 'to inform it of the action taken by them' in regard to Recommendations (Article 15.b).



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depth study of the diachronic framings, conceptualisations and operationalisations of 'competitiveness' in European audiovisual and film policy and its relationship with 'cultural diversity'. The combination of qualitative and quantitative textual analysis provides a broad and flexible approach to the research question. We chose to conduct mixed methods research after the textual analysis because it offers three main advantages: (i) results using data collected through different methods can be triangulated and corroborated; (ii) intersecting but different aspects of the diachronic development of European action vis-à-vis the audiovisual and film sector can be examined; and (iii) the breadth and range of the study can be extended to capture variations in approaches to the concepts examined (DeCuir-Gunby & Schutz, 2016). The quantitative and qualitative findings are then presented separately in this report. Section 2 discusses key findings stemming from the quantitative textual analysis conducted on the entire corpus of documents identified, while Section 3 is based on a qualitative analysis of a smaller number of documents issued by the EU institutions; then, this analysis is juxtaposed upon approaches followed by the CoE, using insights gained from a set of its documents.

More concretely, Section 2 employs a diachronic textual analysis approach using a lexicometric method. Rather than manually coding the documents to reveal diachronic developments related to key terms, concepts and principles, the quantitative textual analysis is facilitated by NVivo, a computer-assisted data analysis programme. NVivo is a methodologically rigorous textual tool that allows documents to be quantitatively mapped and coded by generating numerical data relating to the coverage and occurrences of specific keywords (Hilal and Alabri, 2013). The results are subsequently presented in terms of a relevance rating generated by NVivo and expressed as percentages. In all, 150 relevant keywords were chosen to break the text material into small chunks of information; targeted textual research was then conducted across the entire dataset, resulting in each keyword being assigned numerical data. In total, the quantitative analysis drew its conclusions from 2,490 discrete data points obtained by subdividing the dataset in different ways using the same process (see Section 2).



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Section 3 is based on an in-depth qualitative textual analysis of the usage of the terms 'competitiveness' and 'cultural diversity' in a number of legally-binding acts and policy documents. The analysis begins by focusing on five key legislative acts, which represent turning points in the regulation of the audiovisual sector and the EFI at EU level: the Television without Frontiers Directive (TWFD) (1989), the first amendment of the TWFD (1997), the second amendment of the TWFD (2007), the Audiovisual Media Services Directive (AVMSD, 2010) and its revision (2018). Legislative developments with regard specifically to video-on-demand platforms are discussed, with due note made of the legislative framework put in place by the e-Commerce Directive (2000), which was left practically untouched for over twenty years. The analysis then moves on to examine how concepts of 'competitiveness' and 'cultural diversity' have been defined and develop diachronically in key EU legal instruments that support the audiovisual sector through funding: the MEDIA programme, the MEDIA II, MEDIA 2007 and MEDIA Mundus programmes, the Creative Europe Programme (2014-2020) and the Creative Europe Programme (2021-2027). The analysis continues with a focus on policy documents issued by the Commission, the European Parliament and the Council. In all, 14 policy documents were selected which NVivo revealed to have a high combined coverage and number of occurrences of the two key terms of the qualitative analysis: 'competitiveness' and 'diversity'. Section 3 also offers a bird's eye view of CoE approaches in the field under study by drawing on a set of selected documents relating to the audiovisual sector and the film industry. Section 4 analyses the various approaches and emphasises the understanding of cultural diversity in the various regulatory, funding and policy documents before reviewing the links and conflicts between cultural diversity and competitiveness that arise from how the concepts are understood in the documents. Finally, Section 5 concludes the analysis.



## 2 HIGHLIGHTING KEY DIACHRONIC DEVELOPMENTS IN EUROPEAN AUDIOVISUAL AND FILM GOVERNANCE: A QUANTITATIVE TEXTUAL CODING

The quantitative coding and mapping were intended to identify trends in the diachronic use of the term 'competitiveness' in the European audiovisual policy framework, and to understand the ways in which the meaning of 'competitiveness' has evolved in the light of other key terms, concepts and principles in European audiovisual and film governance.

The first part of the quantitative textual analysis is based on historical criteria and divides the dataset into five historical periods in order to provide an initial diachronic overview of the key developments in European audiovisual policymaking. The periods are designed around four turning points in EU audiovisual/film policy:

- 1989: An initial pivotal moment occurs in 1989, which marks the adoption of the Television without Frontiers Directive, a milestone in the establishment of a legal framework for the European audiovisual and film sector.
- 2000: The next turning point comes with the adoption of the Directive on Electronic Commerce, the foundational legal framework for online services in the context of the EU internal market.
- 2010: This critical juncture arose from the adoption of the Audiovisual Media Services Directive, the descendant of the Television without Frontiers Directive.



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- 2018: The final tipping point occurred in 2018 with the adoption of the revised Audiovisual Media Services Directive, which deals with key regulatory gaps in the provision of audiovisual media services (see Table 1).

The second part is based on institutional analysis. The dataset is partitioned into the five distinct categories listed above: European Commission (Commission), European Parliament (Parliament), Council of the European Union (Council), the European legislator (legislative acts adopted by Parliament and the Council), and the CoE (see Table 1). This approach allows overarching trends in institutional preferences vis-à-vis European audiovisual and film governance to be identified, as well as providing a comprehensive overview of institutional and legal stances and allowing the main positions of, and trends in, key EU institutions, the European legislator, and the CoE to be identified. It also facilitates a comparative assessment of the positioning of the EU institutions and the CoE vis-à-vis design priorities for European audiovisual policymaking.

The final stage of the analysis involves a comprehensive comparison of each institution across the five historical periods, for which the dataset is further divided into 25 subcategories representing each of the institution-period pairs. This approach provides a nuanced perspective on how each institution evolves over time, while also capturing the differences and similarities in their respective approaches to EU audiovisual policy. This analytical process is crucial for providing a detailed overview of how the use of various concepts and notions in the political discourse of the EU and the CoE has evolved over time and across different institutions.

It is worth noting that, given the scope of the analysis, keywords like 'broadcasting', 'audiovisual', 'film' and 'cultural' returned highly diachronic results in the lexicometric analysis and it is not necessary to include them in the top 20 words with the highest scores. Likewise, the words 'production' and 'distribution', key components in the audiovisual and film value chain, also returned copious results across all the historical periods and institutions. Their lexicometric results are included in sub-section 2.3 compared to the low results of the word 'exhibition'.



**Table 1: Database summary**

Sample	Target	Size (in pages)
European Commission	Green Papers, Communications and Recommendations	1049 p.
European Parliament	Resolutions and Recommendations	262 p.
Council of the European Union	Resolutions, Recommendations and Conclusions	158 p.
European legislator	Decisions, Directives and Regulations	621 p.
CoE	Resolutions, Recommendations and Conventions	236 p.
Period 1	All documents enacted before 1990	570 p.
Period 2	All documents enacted between 1990 and 2000	352 p.
Period 3	All documents enacted between 2001 and 2010	459 p.
Period 4	All documents enacted between 2011 and 2018	498 p.
Period 5	All documents enacted between 2019 and 2023	457p.

## 2.1 Diachronic textual analysis – An overview of the historical periods



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The mapping seeks to assess the outcomes across five distinct time periods prior to highlighting the key historical developments in European audiovisual governance through a broad textual analysis of 150 relevant keywords (see Annex 3). The five graphs that follow present the top 20 words with the highest scores calculated on NVivo for each period.

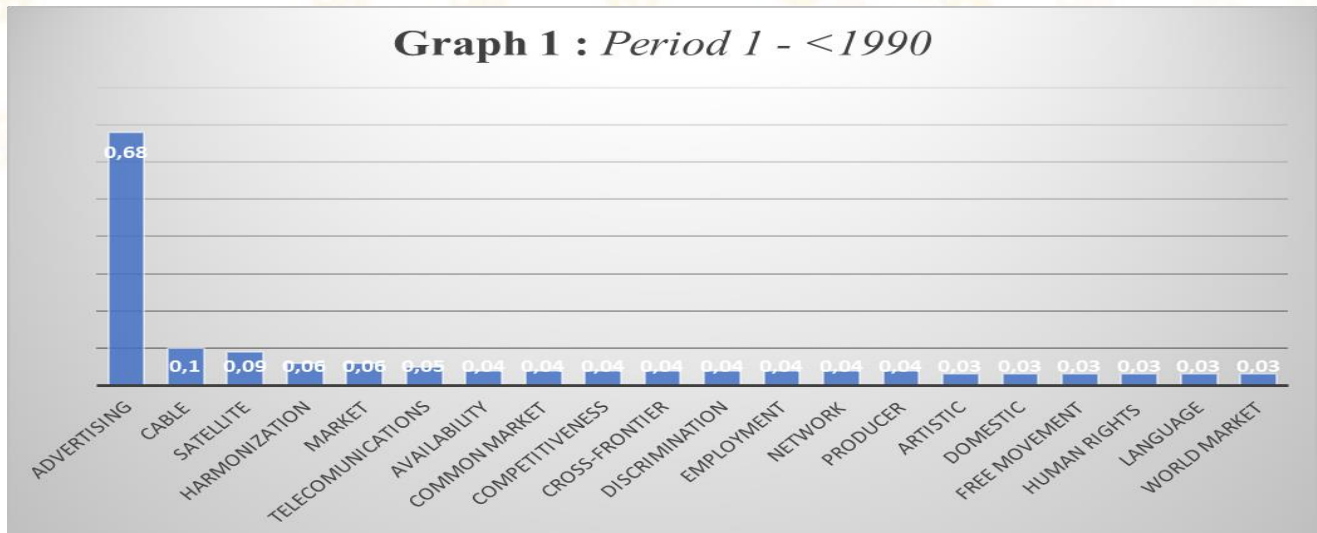


Figure 1

**Prior to 1990**, there was a clear emphasis on how to regulate ‘advertising’ in the European audiovisual sector, as illustrated in Graph 1. ‘Advertising’ returned the highest score, which may be explained by three key factors: (i) the end of state monopolies in the broadcasting sector in the late 1970s in several European Economic Community (EEC) member states; (ii) the consequent proliferation of private TV broadcasters, and (iii) the years of debates that preceded the adoption of the Television without Frontiers Directive on the necessity of regulating advertising in an emerging single European broadcasting market (Littoz-Monnet, 2007). In addition, terms pertaining to technological transformations (‘cable’, ‘satellite’, ‘telecommunications’, etc.) and the delivery of audiovisual media services through these channels also played a significant role in European audiovisual policymaking. Interestingly, though terms like ‘market’ and ‘competitiveness’, which one would expect to be associated with economic and industrial concerns, still ranked high during this period, they were used less frequently than in the periods that followed (as shown in Graphs 2, 3 & 4). In addition, terms such as ‘producer’ and ‘employment’, which relate to societal and professional



## D2.1 Competitiveness in European law

considerations, occupy a central place in the European audiovisual policy agenda. Importantly, as a core cultural industry, the audiovisual/film industry generates both economic and cultural value

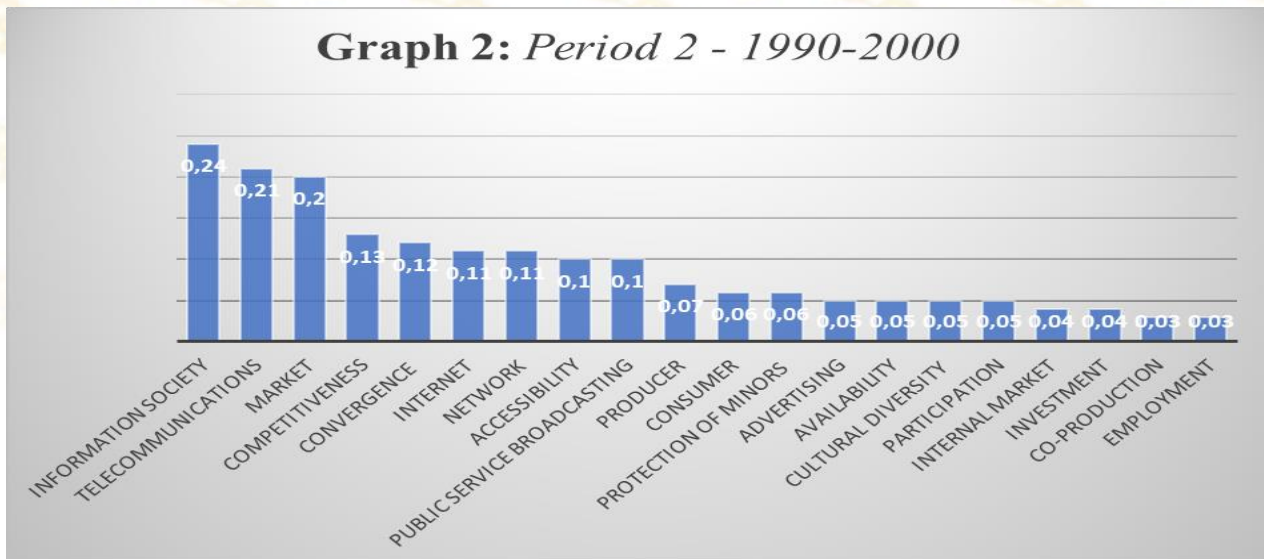


Figure 2

(De Vinck and Lindmark, 2014). However, cultural considerations were not central to the European audiovisual policy agenda before 1990. Notions such as ‘accessibility’, ‘cultural diversity’ and ‘creative’ industries or the ‘creative’ economy were absent from the list of the 20 most frequently used terms, though they would score more highly in subsequent periods. Additionally, Graph 1 shows that ‘harmonisation’ became a central policy priority in the process of establishing an audiovisual ‘common market’, which indicates that European audiovisual policy proceeded hand in hand with key political considerations of the EEC at that time. Finally, the high scores returned by ‘human rights’, ‘language’ and ‘freedom of movement’ relate primarily to the policy agenda of the CoE (see subsection 2.2.5). On the basis of the available data analysed, it may therefore be argued that European audiovisual policy before 1989 was drawn up in accordance with technological, economic and professional considerations. Indeed, the EU would have no legal competence in the field of culture until the Maastricht Treaty was signed in 1992 and, during the first period analysed, cultural considerations such as protecting and promoting cultural diversity were not yet central to the policy agenda.



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## D2.1 Competitiveness in European law

**From 1990 to 2000**, Graph 2 clearly indicates that ‘advertising’ became far less of a top priority in audiovisual policy, with the focus shifting towards other technological, industrial and economic considerations. Firstly, information was regarded as a defining feature and dominant resource in the modern audiovisual economy, along with the opportunity for the public to have better access to information and be able to use it better. As such, European audiovisual governance in this period embraced a dominant trend which began in the United States and the United Kingdom, where the term ‘information society’ had become a commonplace with the rise of information and communication technology (ICT) (Webster, 1994; Moore 1997). Secondly, other economic aspects such as the ‘market’ and ‘competitiveness’ remained prominent in European audiovisual policymaking. Thirdly, the concept of ‘convergence’, meaning the delivery of media, telephone and Internet services via the same transmission channel, became a widely used concept in the 1990s, when it established itself at the core of the EU’s audiovisual policy agenda. Against this backdrop, ‘convergence’ was revealed as a key developmental trend in the industrial transformation of the European audiovisual sector in the 1990s (Latzer, 2014); however, it would completely disappear from the top 20 lists in the periods that followed (see Graphs 3, 4 & 5). In addition, although the term ‘artistic’ did not enter the top 20 during this period, ‘cultural diversity’ scored highly for the first time in the context of the adoption of Article 128 of the Treaty establishing the European Community (TEC) with the Treaty of Maastricht (which became Article 151 TEC under the terms of the 1997 Treaty of Amsterdam and was consolidated as Article 167 TFEU). At the same time, technological advances which were also related to the rise of the ‘Internet’, introduced questions about audiovisual ‘accessibility’ and its primary services, sparking debates on the need different social groups to have access to audiovisual content and creation. In addition, societal concerns were also focused on the notion of the ‘protection of minors’, whereas the high returns for ‘public service broadcasting’ is explained by the priorities captured in the policy agenda of the European Parliament and the CoE (see the subsections on European Parliament and CoE). Finally, from 1990 to 2000, but also during the following period (see Graph 3), the objective of promoting and strengthening ‘networks’ between



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actors involved in the audiovisual sector became a key priority for European audiovisual policy against a backdrop of decentralisation and the redistribution of state powers in European audiovisual governance; the notion of the 'network' would feature far less prominently in policy priorities after 2011.

**Between 2001 and 2010**, 'accessibility' emerged as the primary concern in audiovisual policy, with slightly more returns than economic considerations, which remained a top priority for a third consecutive period, as Graph 3 makes clear. With 'availability' and 'European works' ranking 7<sup>th</sup> and 9<sup>th</sup> respectively, there is no doubt that ensuring citizens' access to audiovisual content and enforcing accessibility became a central focus of the EU institutions and the CoE during that period. Notably, 'cultural diversity' continued to rise, becoming the 4<sup>th</sup> most returned term. This high score in the 2001-2010 period could also be explained by the international debates on the adoption of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. It is

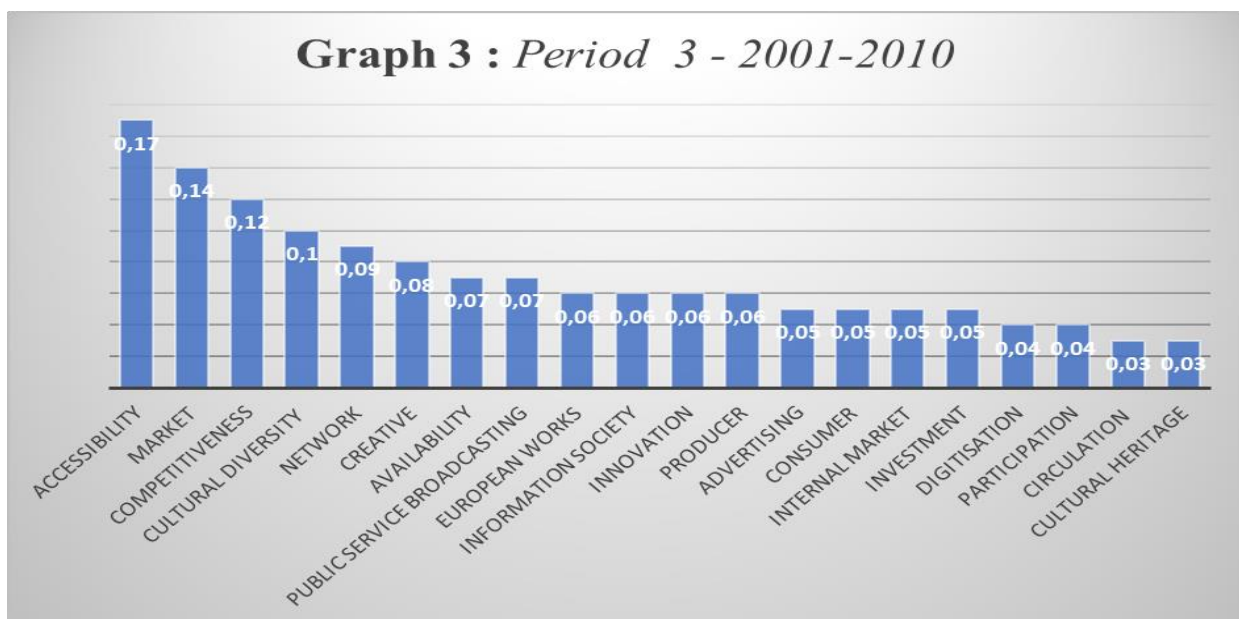


Figure 3

worth noting both that the EU ratified the 2005 UNESCO Convention in 2006, and also that this was the first instance of the bloc participating in an international culture-oriented agreement (Vlassis,



## D2.1 Competitiveness in European law

2016; Psychogiopoulou, 2014). In addition, the term 'creative' economy and 'creative' industries also became highly prominent in European audiovisual policy for both 2001-2010 and 2011-2018 (see Graph 4). On the one hand, the EU and the CoE embraced a policy initiative which began in Australia and the United Kingdom and was widely popularised by Richard Florida's *The Rise of the Creative Class* (2002). This initiative established the 'creative' industries as both a dominant resource and a competitive advantage in a post-industrial economy, which was strongly linked to policy agendas centred on technological 'convergence', entrepreneurial culture, 'innovation' policy, the 'information society', and going beyond the traditional ideas of the subsidised arts (Vlassis and De Beukelaer, 2019; 2021).

On the other hand, the high returns for 'creative' can also be explained by the fact that, since the early 2000s, several intergovernmental organisations had been advancing the idea that the 'creative' economy could be a feasible option for the development of cultural and audiovisual sectors, as shown in the 2008 and 2010 Creative Economy Reports published by the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Development Programme (UNDP). Finally, the third period witnessed the start of a distinct emphasis on new



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## D2.1 Competitiveness in European law

modernisation issues, as evidenced both by the use of ‘innovation’ and by concerns regarding technological transformations--led by ‘digitisation’--remaining at the top of the policy agenda.

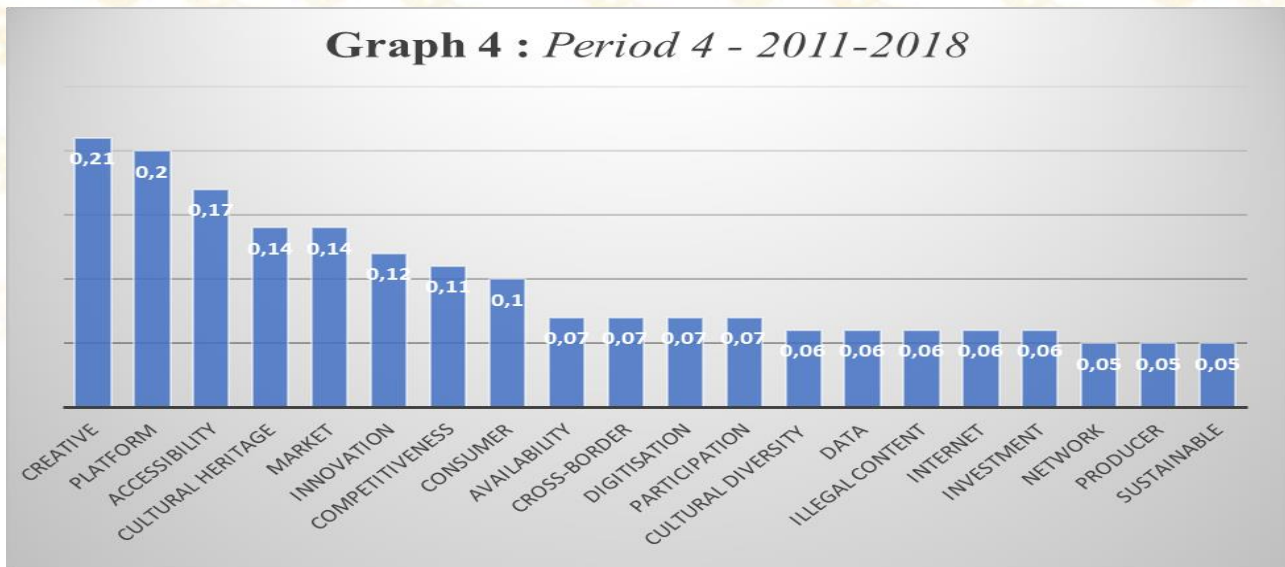


Figure 4

Graph 4 clearly shows a significant shift in EU priorities during **2011-2018**. In this period, ‘creative’ emerged as the primary consideration in European audiovisual policy, whereas new technological concerns, such as issues related to the rise of ‘platforms’, had become central to the European policy agenda. More specifically, ‘platforms’ were at the core of the European audiovisual policy agenda after 2011 (see Graphs 4 and 5), when it correlated with ‘innovation’, which had become a central policy imperative in the audiovisual industry. This is explained by the fact that, since the early 2010s, video-on-demand platforms have driven tremendous changes in the audiovisual sector, impacting how people watched TV programmes and movies and entailing the rise of ‘platforms’ as the dominant infrastructural and economic model (Evens and Donders, 2018; Vlassis, 2021). At the same time, ‘accessibility’ and ‘availability’ also remained top concerns, particularly in the context of the ongoing platformisation process and of audiences’ rapid transition from linear to VOD services. Interestingly, ‘cultural diversity’ lost some ground, though the emergence of terminology such as ‘cultural heritage’ confirms the increasing diversification of European cultural considerations in audiovisual policy. Finally, with the introduction of terms such as ‘data’ and ‘sustainable’, the fourth period continues to exemplify the transversal and transitional aspects of European audiovisual and



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film governance. While these terms may not yet have been highlighted as top priorities (see Graph 5), their presence in the top 20 underscores the fact that European audiovisual policymaking had started to be embedded within a combined framework of co-evolution with issues relating to both the governance of 'data' as a source of dominance in the audiovisual platform market (Micova & Jacques, 2020) and with questions about sustainability and climate transition.

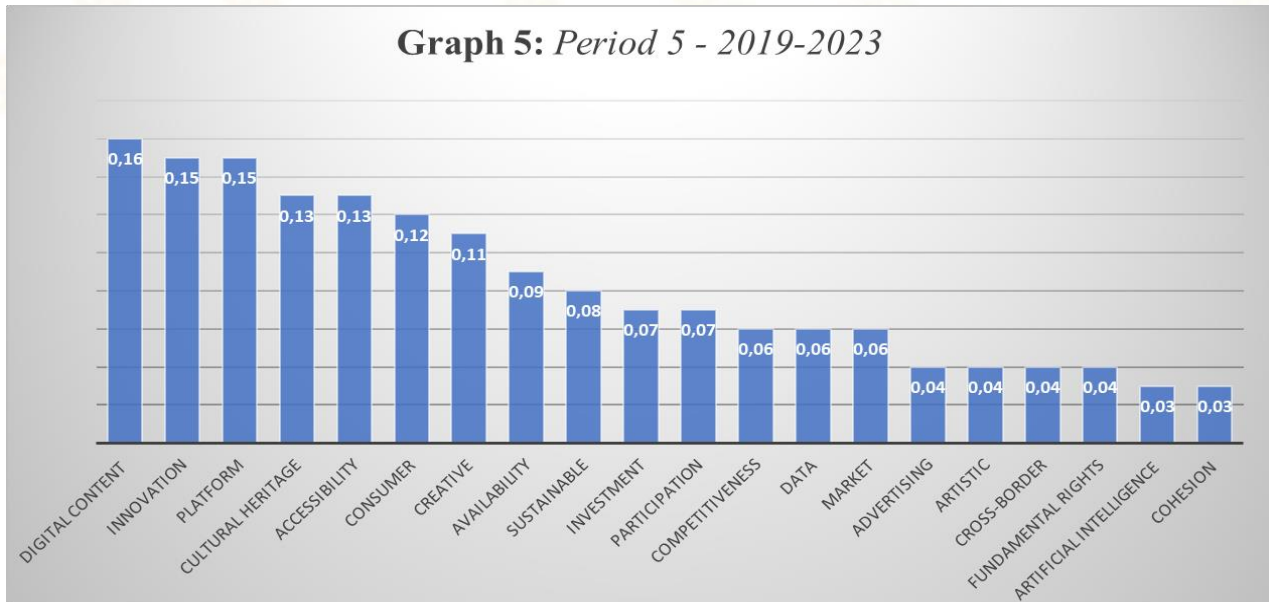


Figure 5

Lastly, **the most recent period** can be labelled a period of technological concerns in the light cast on it by Graph 5. With terms such as 'digital content', 'innovation', 'platforms' and 'data' taking the lead, EU audiovisual policy has shifted its focus onto new technological transformations and the policy adaptations these require. The use of these terms is strongly linked to the recent proliferation of EU legislative acts, such as the Digital Services Act, focused on the regulation of the digital economy and dealing with various digital aspects of the audiovisual and film industries in a platform-dominated European audiovisual economy. In addition, it is worth noting that, over the last twenty years, the aforementioned terms have completely replaced terms such as 'cable', 'satellite', 'information society', 'convergence' and 'telecommunications' in European audiovisual and film governance. 'Accessibility' and 'availability' remain top concerns and precede economic considerations (e.g. the 'market' and 'competitiveness'), which continue to decline in priority,



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although it is important to note that the term 'investment' scored highly for the first time. The term 'artistic' has also gained in prominence in this most recent period. This trend has grown in prominence since the emergence of challenges the sector faced during the COVID-19 pandemic. Indeed, the lockdown measures introduced have had a major impact on the workings of the cultural and audiovisual markets and the sustainability of creative work by artists and professionals in the audiovisual sector (Vlassis, 2021; Salvador et al., 2021). The EU's efforts to support the artistic sector thus seem coherent and relevant. Ancillary elements such as 'sustainability', 'illegal content', 'artificial intelligence', 'cohesion' and the resurgence of 'advertising' highlight a range of issues addressed by European audiovisual policy. Importantly, the emphasis on 'sustainability' could reflect the political impact of the European Green Deal approved in 2020.

However, it is worth mentioning that terms such as 'climate change' or 'climate transition' did not yield significant results in this analysis. Given current trends towards sustainability, one can expect climate issues to gain momentum in the years ahead. In addition, 'cultural diversity', a prominent term in the European political discourse between 1990 and 2018, no longer ranks in the top 20, even though the EU's audiovisual governance increasingly deals with 'digital content'. This shows that the protection and promotion of the diversity of digital cultural content has not established itself as a political concern in European audiovisual policy; other terms like 'prominence' or 'discoverability', which have not yet appeared in the top 20, will probably gain far more attention in the next few years. On the other hand, 'cultural heritage' and 'creative' remain in the top ten, emphasising the crucial importance of cultural concerns in the most recent period.





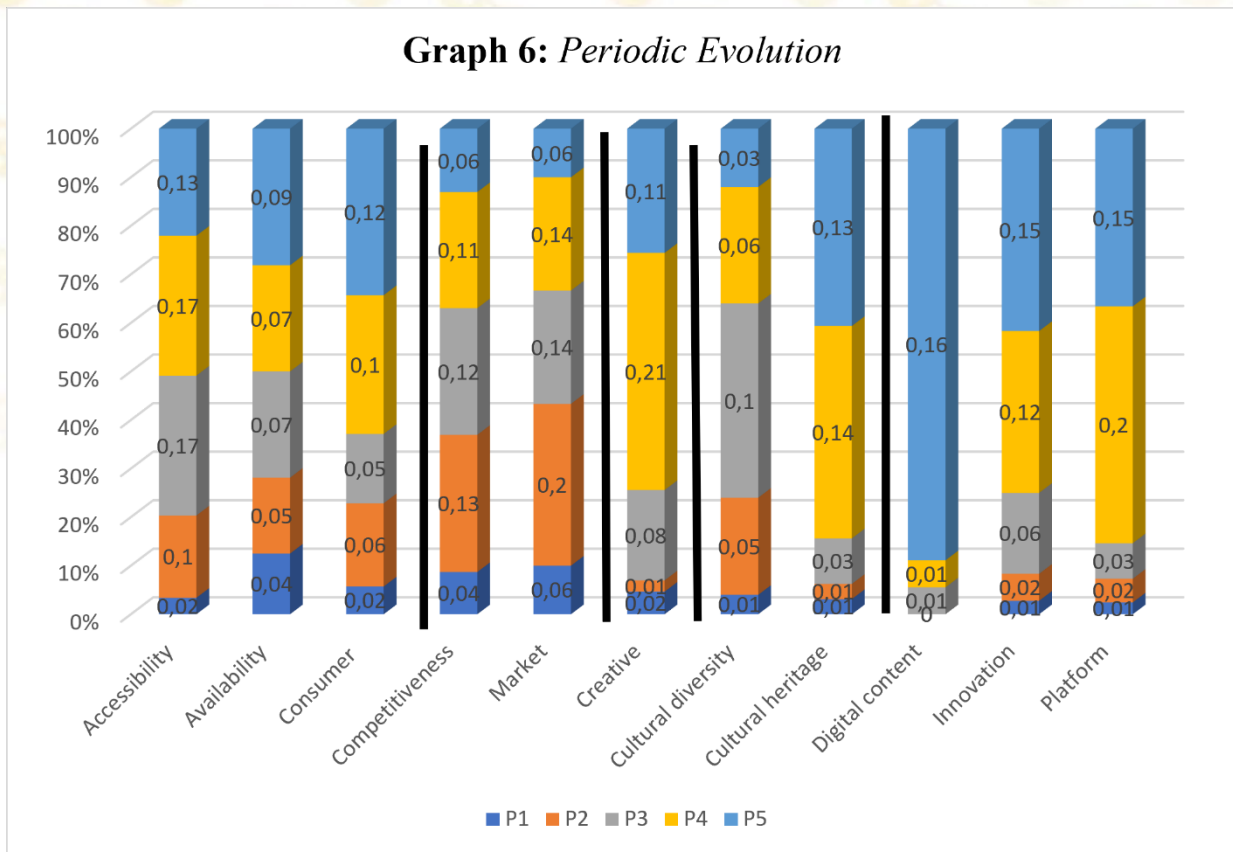


Figure 6

In conclusion, this periodic analysis can be summarised into four main trends, which are illustrated in Graph 6.

Firstly, over the course of the period analysed, technological transformations and modernisation concerns have steadily grown in importance, ultimately taking centre stage as the prime focus in the most recent period. Starting in the early 2000s, ‘innovation’ and ‘platforms’ have continued to rise in prominence and have numbered among the top priorities in European audiovisual and film governance in the 2010s and 2020s. Importantly, ‘digital content’ has also emerged as a predominant term as video-on-demand platforms have created enormous disruption in the three key streams of the traditionally linear film value chain: production, distribution and exhibition. It is also worth noting that ‘cable’ and ‘satellite’ scored very highly during the first period, while ‘information society’, ‘telecommunications’, ‘convergence’ and ‘internet’ took central stage in 1990-2000, underscoring the enduring presence of technological issues within European audiovisual and film



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governance. However, as De Vinck and Lindmark (2014: 121) note, technological transformations have 'historically and continuously interplayed with business environments and socio-cultural elements'.

Secondly, European audiovisual and film governance has maintained a consistent focus on ensuring 'consumer' access to available content. While this trend was very weak during the first period, the terms 'availability', 'accessibility' and 'consumer' have been prominent since 1990 and remained a central focus throughout every subsequent period.

Thirdly, economic and industrial concerns have been a key priority throughout all the periods analysed. Although these were represented more through the regulation of 'advertising' in the first period, a clear emphasis on 'competitiveness' and 'market'-related issues emerged between 1990 and 2018. Interestingly, both experienced a significant decline in the fifth period, whereas the term 'investment' became highly prominent during the final period.

Fourthly, the integration of cultural and creative concerns into audiovisual policy became evident after 1989. 'Cultural diversity' gained prominence in 1990-2000, experienced a powerful surge in 2001-2010, but has been losing salience since. Moreover, the term 'creative' industries / 'creative' economy has been a widely-used concept in the European political discourse since the early 2000s. In addition, in 2011-2018, European policymaking began connecting the audiovisual and film industry to 'cultural heritage' concerns, with the term 'cultural heritage' established itself at the core of European audiovisual governance. Finally, it is worth mentioning that European audiovisual and film governance concerned itself with other issues. As such, 'employment' was a source of social and professional concern in the first period, whereas the term 'network', which is strongly related to professional concerns, became a key term in the European policy agenda during the second and third periods.



## 2.2 Diachronic textual analysis: an institutional overview

Now, having used diachronic data to highlight how European audiovisual and film policy has used key terms, concepts and principles in different historical periods, it is time to trace the key institutional developments in European audiovisual and film governance and to assess how the EU institutions - the Commission, Parliament, Council, both Parliament and Council as co-legislators and the CoE - endorse key terms, concepts and principles over time.

### 2.2.1 European Commission

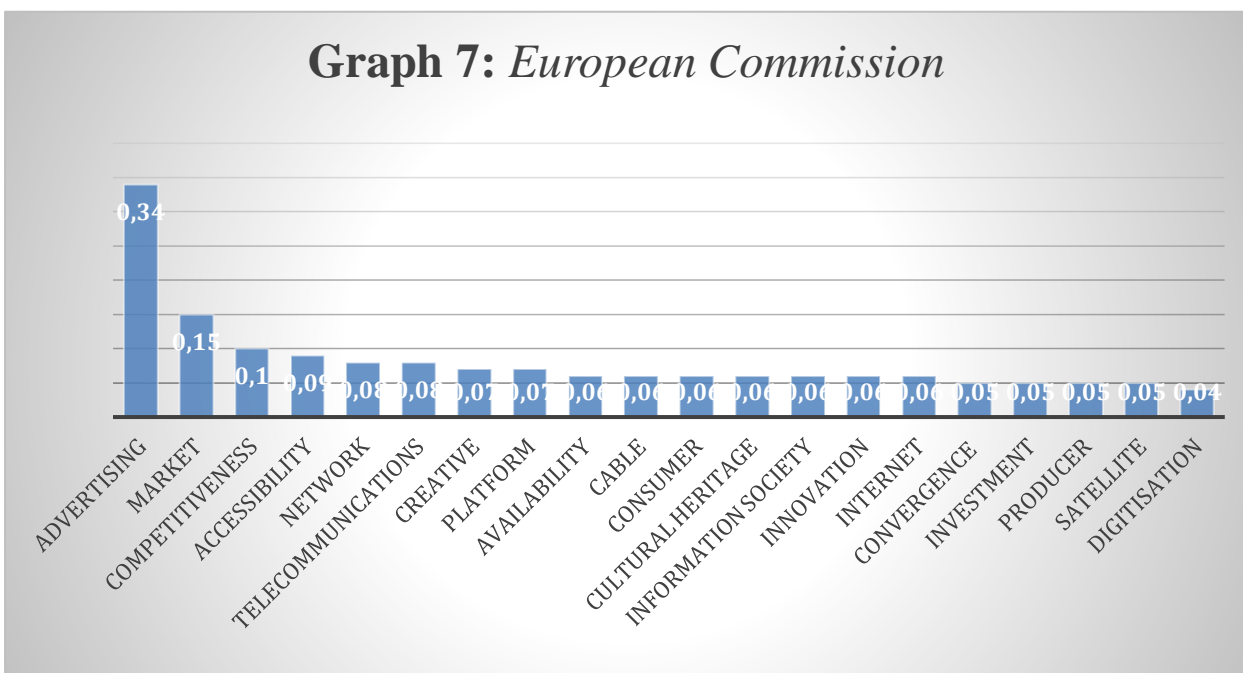


Figure 7

The data (see Graph 7 for the entire period under study) strongly indicates that the European Commission's primary priorities in shaping audiovisual policy are largely rooted in economic and industrial considerations. As such, 'market' dynamics and 'competitiveness' remain key concerns in the Commission's agenda through different time periods, preceding all other categories of concerns, whether they be social, cultural or technological. 'Accessibility' and 'network' also emerge as key aspects in the Commission's discourse on the audiovisual sector. Interestingly, technological



## D2.1 Competitiveness in European law

advances (indicated by terms such as ‘telecommunication’, ‘platform’, ‘cable’ and ‘convergence’)

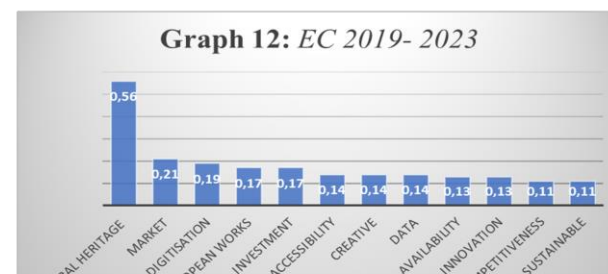
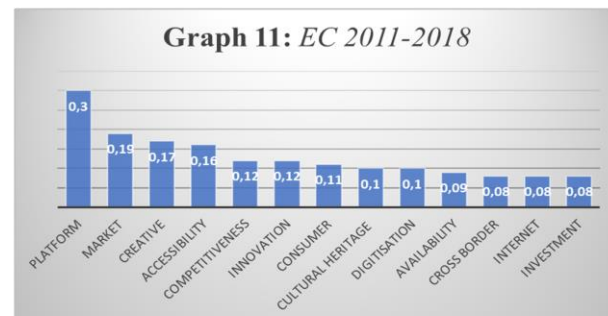
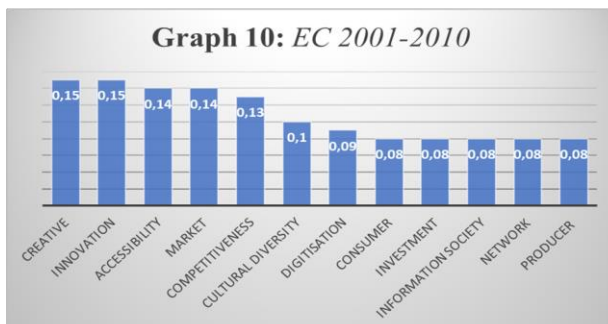
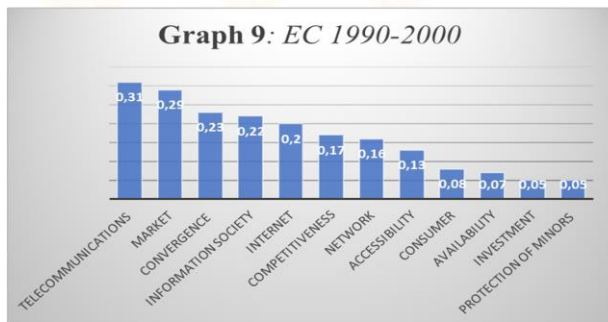
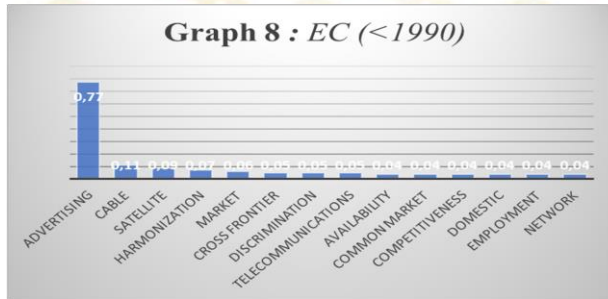


Figure 8

and cultural and creative concerns (marked by terms such as ‘cultural heritage’ or ‘creative’) lag behind but still secure positions in the top 20. It is worth mentioning that ‘cultural diversity’, a prominent term in the European political discourse from 1990 to 2018, did not secure a place in the Commission’s top 20 (Graph 7).

Analysing institutions over different periods enables their preferences to be identified and their development compared. While the Commission's preference for economic and industrial concerns remained consistent throughout the various periods, the question is whether it mirrors the periodic trends identified earlier.

Before 1989, the trends within the Commission closely resembled the results observed in Graph 1, with ‘advertising’ used far more frequently than any other term. Another similarity concerns ‘cable’ and ‘satellite’, which were both top priorities, supporting the hypothesis that the Commission played an important role in setting key guidelines in the EU audiovisual policy relating to these notions before 1989. In essence, all of the top ten terms related to market or technological concerns, while subsequent areas of concern were not yet in the spotlight. Nonetheless, the presence of ‘harmonisation’ underscores a specific focus on the political coordination of the EEC Member States.



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## D2.1 Competitiveness in European law

Furthermore, the same market-driven logic persists in the period 1990-2000, illustrated by Graph 9. The Commission also tended to focus on 'telecommunications', 'information society' and 'convergence', which may be classified under technological logics, as top concerns, meaning that its results align with the second period results analysed above. 'Internet', 'accessibility' and 'availability' also secured places in the Commission top ten. However, as suggested by Graph 9, it appears that the Commission also placed an emphasis on professional and social concerns during this period, as shown by the frequent use of 'network' and 'protection of minors'. Cultural concerns, indicated by terms such as 'cultural diversity', did not secure their place in the top ten.

At the turn of the century, the Commission's framing of European audiovisual policy seems to have broadened to dynamically encompass cultural concerns. Intriguingly, the Commission emerged as a pioneer of a more multifaceted approach to European audiovisual policy. For the first time, pure economic and technological concerns failed to reach the top positions, as 'market', 'innovation' and 'competitiveness' ranked below 'creative', as shown in Graph 10. 'Cultural diversity' also emerged as a core concern in the Commission's agenda. Although the multifaceted approach continues to define the post-2010 period depicted in Graph 11, there was a resurgence in the emphasis on technological concerns, with the term 'platforms' resurfacing as the most important term, its use numerically exceeding economic considerations. Lastly, Graph 12 confirms the previous findings with concerns of all types represented in the top ten. In addition, new terms such as 'data' and 'sustainable' secured their place in the top ten. Overall, since 2000 the Commission seems to have switched from a strongly market-driven perspective to a broader and more wide-ranging perspective in European audiovisual governance.



2.2.2 European Parliament

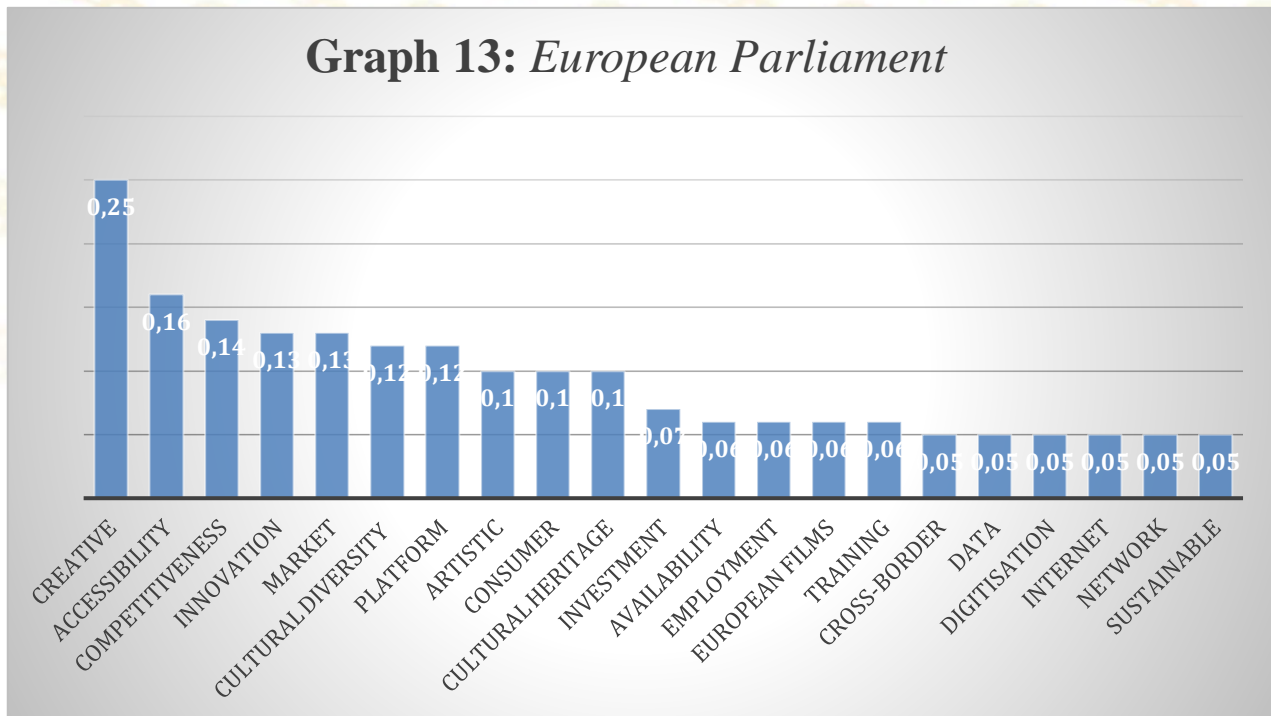


Figure 9

Turning to the European Parliament (see Graph 13 on the entire period under study), the institution clearly takes a multifaceted approach, addressing ‘creative’, ‘accessibility’, economic concerns, modernisation and cultural issues as top priorities with relatively little variation among these issues over time. However, in contrast to the Commission’s strong focus on economic matters, Parliament seems to lean towards framing audiovisual policy from a cultural standpoint, as shown by ‘creative’, ‘cultural diversity’, ‘cultural heritage’ and ‘European films’ being key priorities in Parliament’s agenda.



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## D2.1 Competitiveness in European law

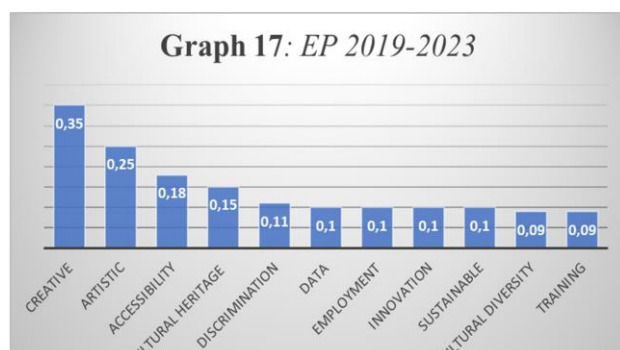
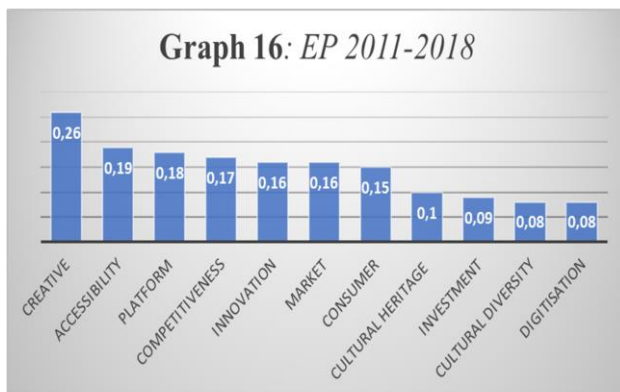
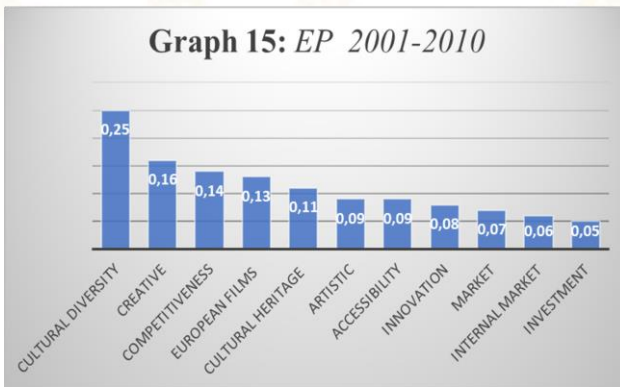
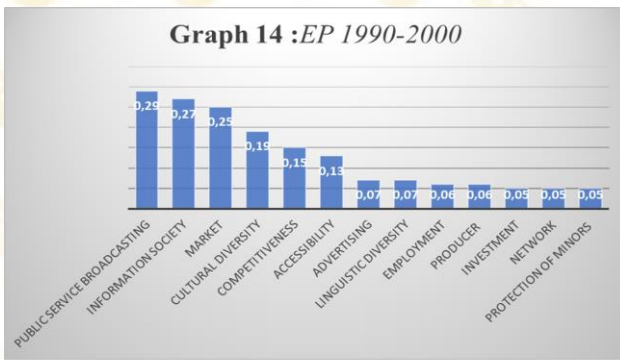


Figure 10

The following paragraphs explore the evolution of Parliament's position over time, permitting a comparison with the other EU institutions.<sup>22</sup>

Graph 14 shows that 'information society' scored highly between 1990 and 2000, which is in line with the previous conclusions relating to the Commission and the second period (1990-2000). However, that 'public service broadcasting' is in first position demonstrates Parliament's ability to set its own political agenda at this time. While economic concerns are a common feature of this period, Parliament stands out with the inclusion of 'cultural diversity' and 'linguistic diversity' above 'competitiveness', as well as with its focus on social/professional issues related to 'employment'. The specific features of Parliament's policy agenda become even clearer in the third period, illustrated in Graph 15, when 'cultural diversity', 'European films', 'artistic', 'creative', and 'cultural heritage' all occupied positions in the top ten. Thus, Parliament seems to have pioneered the introduction of cultural concerns into European audiovisual governance. Crucially, 'cultural diversity' and 'creative' scored higher than any economic-related term.

<sup>22</sup> As the European Parliament was a side institutional stakeholder in audiovisual policy before the Maastricht Treaty, its institution period analysis starts in the second period.



## D2.1 Competitiveness in European law

Moreover, between 2011 and 2018, Parliament continued to prioritise concerns related to ‘creative’ industries and the ‘creative’ economy, although cultural concerns, represented by terms such as ‘cultural heritage’ and ‘cultural diversity’, fell out of the top ten, as illustrated in Graph 16. In addition, there is a noticeable rise in technological concerns, with ‘platforms’ and ‘innovation’ both entering the top 5 priorities.

The analysis of the last period confirms the specific character of Parliament’s policy agenda, as Parliament’s inclination to frame European audiovisual governance in cultural terms is evident. This is demonstrated in Graph 17, which shows that the cultural focus has returned to the top spot, overtaking even technological concerns. ‘Creative’, ‘artistic’ and ‘cultural heritage’ have secured the first, second and third places respectively. As explained above, the rise of concerns relating to the terms ‘artistic’ and ‘employment’ can be interpreted in the light of the COVID-19 pandemic and the lockdown measures having a strong impact on the sustainability of artistic work. It is worth mentioning that elements such as ‘training’ appear in this top ten, which could be indicative of new trends in Parliament’s audiovisual policy agenda. To conclude, the European Parliament prioritises artistic and cultural concerns, while economic and technological concerns score lower. Parliament can thus be viewed as spearheading a cultural and artistic focus within European audiovisual and film governance.



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2.2.3 Council of the European Union

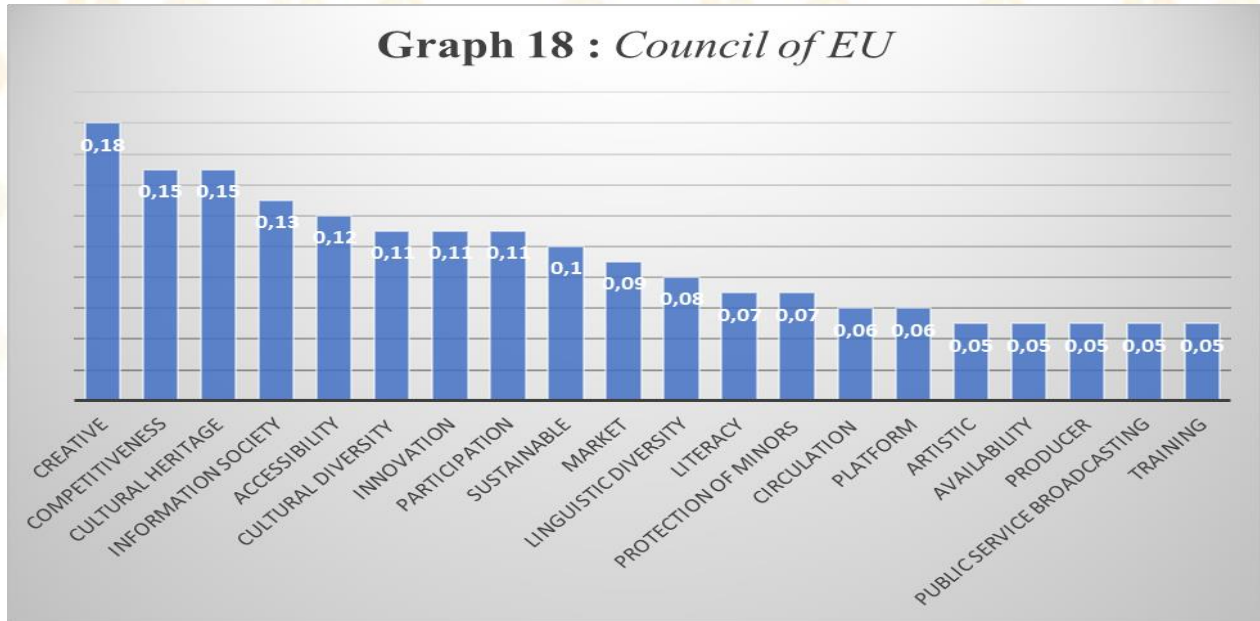


Figure 11

The institutional analysis of the Council of the European Union provides few insights into specific top institutional priorities. Whether they are technological, economic, cultural or access-related concerns, they all appear to rank equally high in priority. In addition, it is worth noting that there is a special focus in the Council’s agenda on the notions of ‘linguistic diversity’ and ‘literacy’. This suggests that the Council may have a more nuanced understanding of diversity, to which the differences among Member States, including their linguistic backgrounds, are integral. Overall, the Council seems to be the most comprehensive institution in our dataset to take a clear stance in favour of a multifaceted approach to European audiovisual governance. The paragraphs that follow examine whether this aligns with previous periodic trends.

Graph 19 shows that, prior to 1990, the Council paid little attention to ‘advertising’ issues, focusing instead on matters such as ‘availability’, ‘creative’ and ‘employment’. This reflects a highly variegated approach in this early period. It is noteworthy that ‘participation’ occupies the second position, emphasising the Council’s commitment to conducting collaborative and inclusive policies. Similarly, the Council was among the first institutions to incorporate ‘artistic’ concerns into its decision-making process regarding audiovisual policies. In contrast, economic considerations were relatively less



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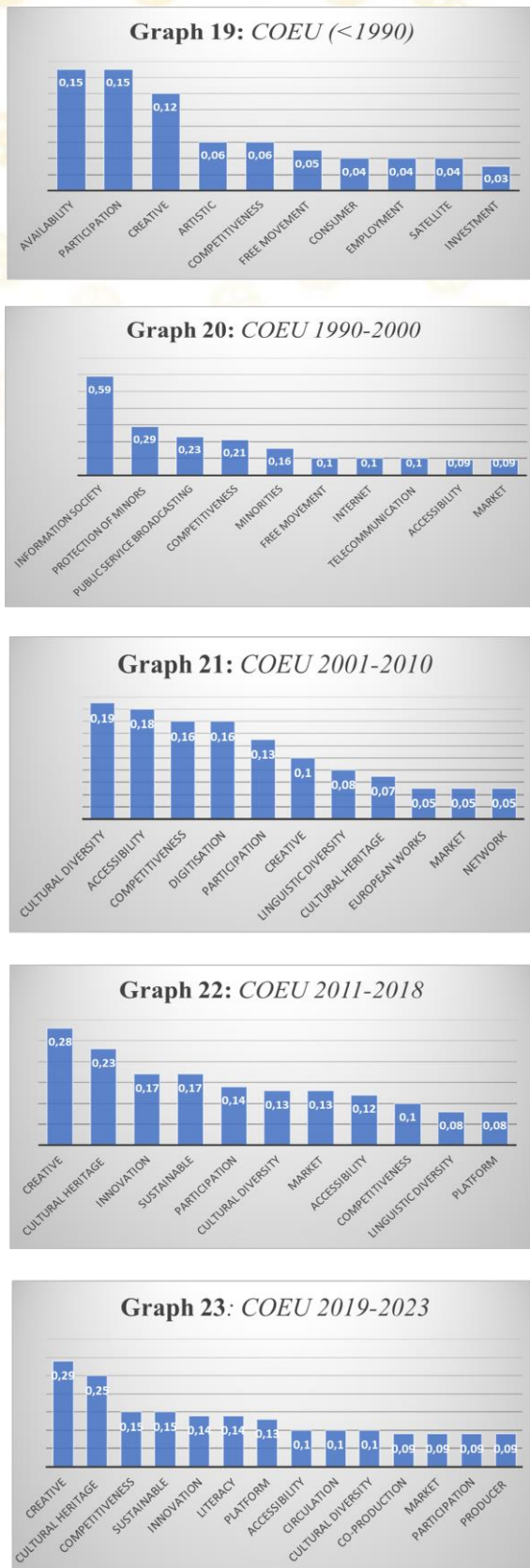


Figure 12

significant for the Council during this period, with only 'competitiveness' ranking in the top ten and 'market' not yet a prominent factor in this timeframe.

Graph 20 shows that the Council is consistently aligned with the insights of the historical period, making 'information society' its primary focus in European audiovisual and film governance. However, it differs in assigning relatively less importance to 'internet' and 'market' aspects, which demonstrates the Council's reluctance to frame audiovisual policy in economic and technological terms. Interestingly, the Council shifted its attention to the 'protection of minors', 'minorities' and 'public service broadcasting' in this period. As such, the Council's agenda encompasses various other considerations that are not strongly addressed by the Commission and/or Parliament.

Starting in 2001, the Council began to adopt a more intricate approach to the European audiovisual and film industry. Notably, the Council's top policy priorities became a mix of economic aspects, technological issues, cultural focus, and artistic concerns, as depicted in Graph 21. As a result, the Council provides a comprehensive and multifaceted approach to European audiovisual policymaking. Interestingly, this approach continued in the fourth



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## D2.1 Competitiveness in European law

period, as seen in Graph 22, with a slight shift in focus towards cultural issues, with 'cultural heritage', 'cultural diversity' and 'linguistic diversity' entering the top ten priorities. As mentioned earlier, the inclusion of linguistic concerns once again sets the Council apart as a comprehensive institution. Linguistic issues may be linked to the Council's decision-making process, which is grounded in an intergovernmental framework. Moreover, economic concerns remained in the top ten, though they could hardly be considered a top priority. A similar pattern is evident when it comes to the Council's technological focus, as 'platform' only ranks 10th. However, the third-place ranking of 'innovation' adds some nuance to this observation. Economic and technological concerns are indeed a part of the Council's multifaceted approach, but none of them emerge as top priorities. In the fifth period, the Council's shift towards a multifaceted take on audiovisual policy is confirmed. However, as indicated in Graph 23, cultural focuses such as 'creative' industries and 'cultural heritage' retain the top positions. It is also worth noting the Council's strong emphasis on 'sustainable', 'literacy' and 'co-production', which highlights the consistency with which the Council takes into consideration the role of professionals and audiences in Europe's audiovisual industry. Overall, the Council provides the most comprehensive approach to European audiovisual policy. It addresses all the key aspects of audiovisual policy, including cultural, access, artistic, economic and technological considerations. Additionally, the Council aligns with many of the periodic findings. However, while the economic focus is somewhat underrepresented, cultural and artistic concerns are overrepresented compared to our periodic insights.



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2.2.4 European legislator

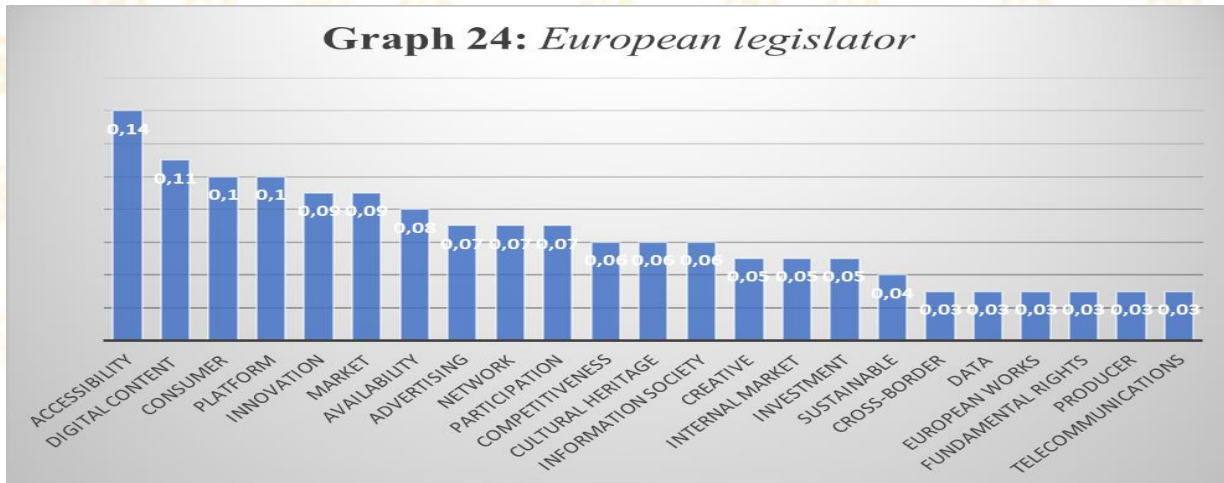


Figure 13

Now that the EU’s institutional preferences have been laid out, this sub-section delves into the content of legislative acts in order to identify which of those preferences are most salient in the EU legislation. The data suggests that access and technological advances rank highest in the classifications. However, economic and cultural concerns still score relatively highly, demonstrating a certain consistency in the legislative framework’s multifaceted approach. It is worth noting that social and professional issues do not command a significant share of the legislative attention, with only ‘producer’ represented in Graph 24. The paragraphs that follow scrutinise the evolution of the legislative acts to determine if this remains consistent over time.

Before 1990, ‘advertising’ held a central role in the audiovisual legislation. This suggests that the European legislator echoed the Commission’s agenda, translating its policy guidelines relating to economic and technological issues into legislative decisions prior to 1990. In addition, Graph 25 also shows the prominence of terms like ‘producer’ and ‘language’, indicating a growing interest in professional issues and early cultural concerns. The prominence of ‘common market’, ‘minorities’ and ‘consumer’ highlights key concerns relating to political and social considerations.

Graph 26 follows a similar pattern, with periodic results showing ‘information society’ taking the lead. In contrast, the legislative agenda ranks the terms ‘telecommunication’ and ‘market’ highest,



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probably echoing the Commission's policy agenda. 'Advertising' continues to hold a top position in this second period. The inclusion of 'accessibility' in the top ten indicates the emergence of new

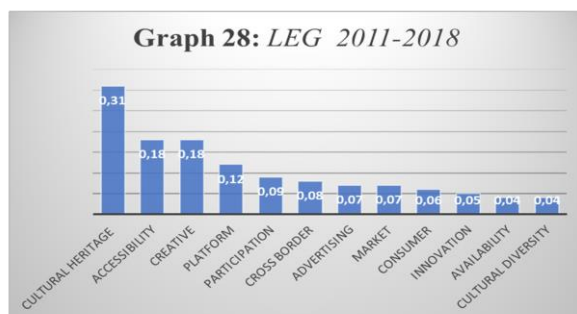
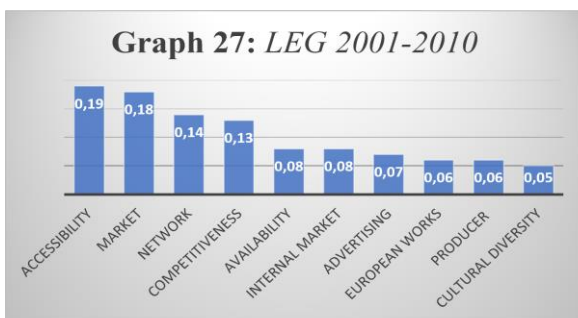
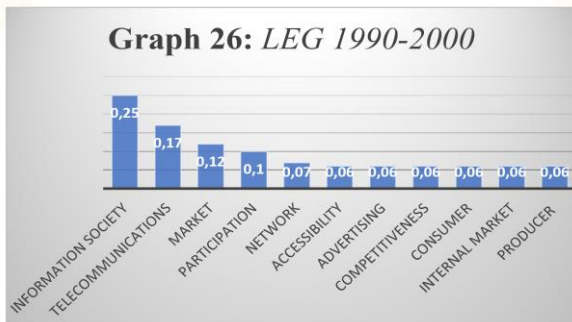
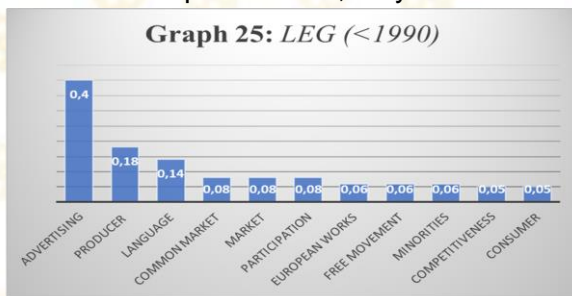


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## D2.1 Competitiveness in European law

concerns for the European legislator. At the same time, though social and professional factors lose some of their prominence, they continue to be a key focus between 1990 and 2000.



The third period, depicted in Graph 27, witnessed a slight change in legislative priorities with a reduced technological focus coupled with increased concern about access, with ‘accessibility’ ranking first and ‘market’ second. Consequently, the legislative side of audiovisual policy became narrowly focused on access and economic priorities, though some professional and cultural aspects are still taken into account through the notions of ‘network’ and ‘European works’. ‘Producer’ remains in the top ten, illustrating the ongoing focus on professional concerns in the EU legislation.

The fourth period, shown in Graph 28, is characterised by a more multifaceted approach to audiovisual policy. The inclusion of cultural concerns as a top priority contrasts with previous preferences, with ‘cultural heritage’ and ‘creative’ occupying the top spots. Technological concerns such as ‘platforms’ and ‘innovation’ take their place in audiovisual regulations, as well. Nevertheless, both ‘accessibility’ and ‘availability’ also establish their presence in the top ten, while professional concerns

Figure 14



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seem to have faded. The inclusion of ‘consumer’ underscores the EU's commitment to enhancing consumer access to audiovisual content. These results are consistent, since previous results displayed a similar tendency towards a more multifaceted approach.

In the most recent period, legislative acts have transitioned from being comprehensive to adopting a more hierarchical focus. Notably, technological concerns now hold the top three positions as ‘digital content’, ‘platforms’, and ‘innovation’. These are closely followed by concerns relating to ‘consumer’, ‘accessibility’ and ‘availability’. Cultural issues can be categorised as the third priority, with ‘cultural heritage’ and ‘creative’ included in the top ten. Additionally, as previous results indicate, new concerns have emerged in EU regulation during this period, including ‘sustainable’ and ‘data’.

### 2.2.5 Council of Europe

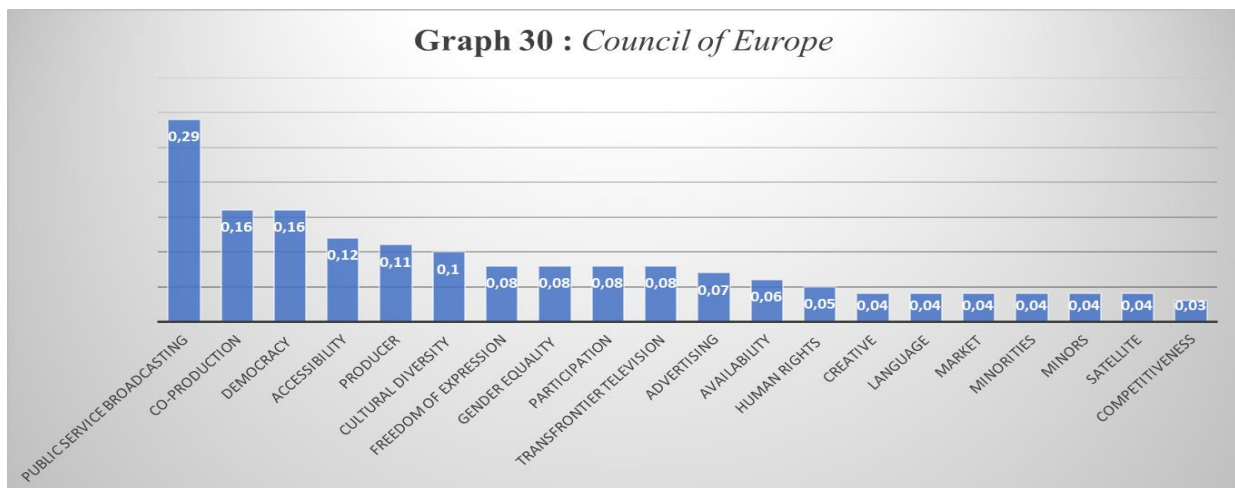


Figure 15

This sub-section analyses the data collected from the CoE, whose trends and characteristics differ from those of the EU. The discussion here focuses on identifying the three primary trends in the CoE agenda.

Firstly, the CoE distinguishes itself by introducing a norm-oriented framing into European audiovisual governance. Building a normative framework for regulating Europe’s audiovisual sector has been a core aim of the CoE for a long time, particularly if we consider the audiovisual and film industry as a



## D2.1 Competitiveness in European law

subfield of efforts to promote 'democracy', 'freedom of expression', 'gender equality' and 'human rights' (Sithigh, 2015). As such, the CoE has favoured the relationship between the European audiovisual industry and issues relating to 'democracy', 'freedom of expression', 'gender equality' and 'human rights', which achieve much higher scores within the CoE than in any EU institution or EU legislative acts.

Secondly, the high frequency of words and phrases such as 'public service broadcasting' and 'co-production' makes it clear that the CoE tends to be a complementary, and somewhat alternative, policy arena in the regulation of audiovisual issues, whose agenda rests on public considerations and political coordination rather than economic integration concerns. Indeed, the EU's focus is intrinsically related to the need to strengthen economic integration and modernise the internal market. While the EU's score across periods and institutions is high for terms such as 'market', 'platforms', 'competitiveness' and 'innovation', the CoE does not consider these terms a top priority in its audiovisual policy agenda. The CoE differs in focusing primarily on specific issues such as 'accessibility' (also discussed by the EU), 'gender equality', 'co-production', 'language', 'minors' and 'minorities'. In a nutshell, there is far less emphasis on economic and technological considerations in the CoE, and no focus whatsoever on 'competitiveness'.

Finally, as mentioned by Patel and Calligaro (2017), prior to the 1990s, the CoE was the most important Western European international organisation engaging with cultural policy; indeed, over several years, it turned into something of a laboratory for the European Community. The data returned by the analysis suggests various convergences and divergences between the CoE and the European Union. Thus, both organisations prioritise 'accessibility' and 'availability' in their respective policy agendas, making access to audiovisual content a central concern of European audiovisual governance. In addition, the progressive suspension of the national media order and emergence of a transnationalised European broadcasting landscape in the 1980s and 1990s were concerns shared by the EU and the CoE through terms such as 'trans-frontier television', 'advertising', 'satellite', 'cross-border' and 'free movement'. It is also worth mentioning that the CoE agenda





## D2.1 Competitiveness in European law

focuses in particular on issues relating to ‘producer’, ‘co-production’, ‘public service broadcasters’ and ‘language’--issues that are much less salient in the EU agenda. Finally, ‘cultural diversity’ ranks very high among the CoE’s policy priorities. Indeed, the Council often champions ‘cultural diversity’ as a key component of its core political mission.

In conclusion, this institutional and comparative analysis can be summarised into the four main trends illustrated in Graph 31 below.

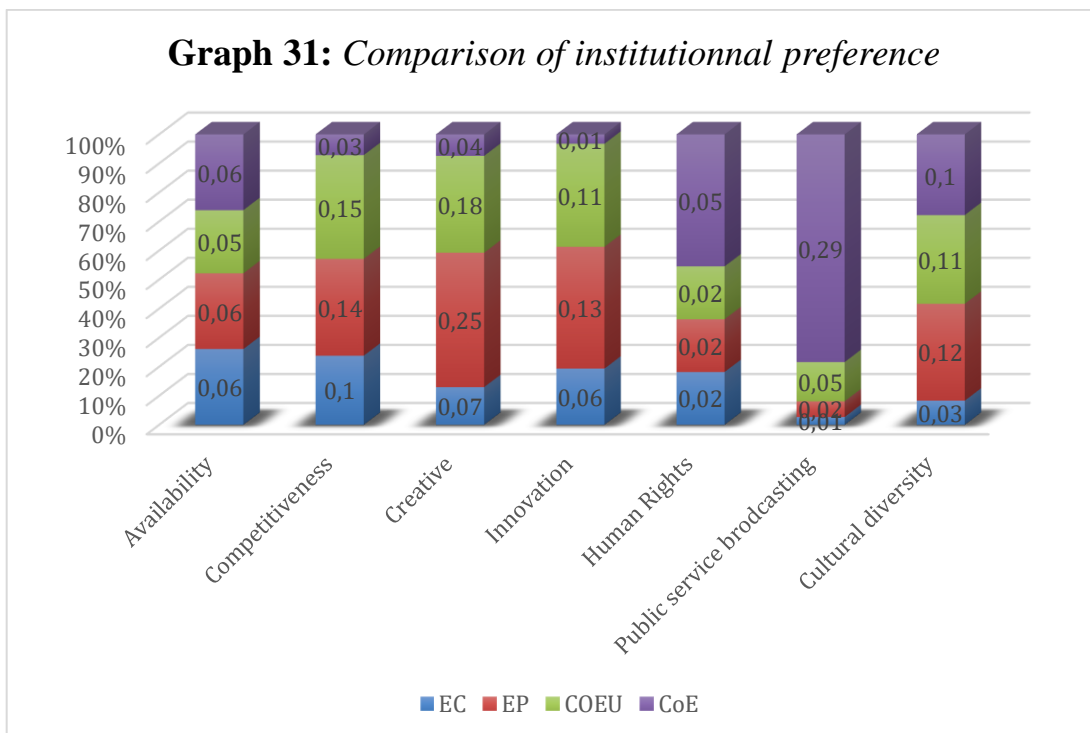


Figure 16

Firstly, ‘availability’ – and all related access concerns – is a consistent preference across all the institutions, with a slightly higher consideration by the European Parliament and a comparable frequency of occurrence in both the Commission and the Council. The mapping confirms that ‘accessibility’ and ‘availability’ followed a similar course throughout all the periods examined, making them the most stable focal points in European audiovisual policy. In addition, terms connected to ensuring consumer access to audiovisual-cultural expressions also hold salient positions in EU legislative acts across the time frame of the study.



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Secondly, 'competitiveness' and economic concerns in general are strongly supported by the Commission. This trend also mirrors a significant concern for economic issues on the part of the European legislator. Thus, we could assume that the Commission generated political echoes, translating some of the guidelines in its policy documents into concrete legislation. Economic concerns failed to reach the CoE, since the institution's mandate has no direct link to market regulation and economic integration issues of any kind. Crucially, economic concerns are no longer the primary focus in European audiovisual governance, nor are they the central focus of current legislation.

Thirdly, cultural--and, more broadly, creative--concerns are well-represented through the European Parliament and the Council. The Council was the key institution in the promoting of artistic concerns before 1990, after which date Parliament began to support its efforts. Together, they enabled cultural and artistic concerns to gain prominence in agenda-setting by the 2010s and to contribute actively to the diversification of the EU's approach to audiovisual governance. In addition, 'public service broadcasting' ranks very high among the CoE's policy priorities and is a key component of its core political mission. In addition, it is important to note that the CoE, the Council and the European Parliament have all placed great emphasis on 'cultural diversity', even though EU institutions currently tend to favour terminology such as 'cultural heritage'. However, not only did the cultural focus fail to achieve a significant presence in the Commission's official documents, it is also poorly represented in EU legislative acts.

Finally, 'innovation' has been addressed dynamically, as EU audiovisual policy has proved responsive to technological advances (e.g. 'cable', 'satellite', 'internet', 'platforms', 'digitisation', 'digital content'). It has gained additional salience with current digitisation issues, as captured by the periodic analysis. While 'innovation' is of interest to all institutions, it is important to mention that it features strongly in legislation, thanks to the proliferation of recent EU legislative acts, such as the Digital Services Act, focused on the regulation of the European digital economy and, consequently, addressing digital aspects of the audiovisual and film industry.



## 2.3 Addressing the unaddressed: overview of low-scored terms in European audiovisual governance

**Table 2: Overview of unaddressed words**

<b>Word</b>	<b>EC</b>	<b>EP</b>	<b>COEU</b>	<b>LEG</b>	<b>CoE</b>	<b>P1</b>	<b>P2</b>	<b>P3</b>	<b>P4</b>	<b>P5</b>
American	0.01	0.01	0	0	0.01	0.01	0.01	0.01	0.01	0
Blockbuster	0.01	0.01	0	0	0	0	0.01	0	0.01	0
China	0.01	0.01	0	0.01	0	0	0.01	0.01	0.01	0.01
Value chains	0.01	0.01	0.01	0.01	0.01	0	0.01	0.01	0.01	0.01
Hollywood	0.01	0.01	0	0	0.01	0	0	0.01	0.01	0
Distortion	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Disruptive	0.01	0.01	0.01	0.01	0	0.01	0.01	0.01	0	0.01
Non-discrimination	0.01	0.01	0	0.01	0	0.01	0.01	0.01	0.01	0.01
SME	0.01	0.01	0	0.01	0	0	0.01	0	0.01	0.01
Trade deficit	0.01	0.01	0	0	0.01	0	0.01	0.01	0.01	0
State subsidies	0.01	0	0	0	0.01	0.01	0.01	0.01	0	0
Domestic production	0.01	0	0	0	0.01	0.01	0.01	0	0	0
Independent production	0.01	0	0.01	0.01	0	0.01	0.01	0.01	0.01	0.01
Language barrier	0.01	0.01	0	0.01	0	0.01	0.01	0	0.01	0.01
Multilingualism	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Small market	0.01	0.01	0	0	0	0	0	0	0	0.01
Regional diversity	0.01	0	0.01	0.01	0	0	0.01	0.01	0.01	0
Youth	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Production	0.13	0.12	0.18	0.12	0.34	0.12	0.20	0.18	0.16	0.09
Distribution	0.09	0.11	0.10	0.07	0.18	0.09	0.12	0.11	0.10	0.04
Exhibition	0.01	0.01	0.01	0.01	0.01	0.02	0.01	0.01	0.01	0.01

It has been deemed important to address several terms briefly, as they provide valuable insights into what falls beyond the scope of European audiovisual and film governance.



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## D2.1 Competitiveness in European law

To start, the low attention paid to terms such as 'American', 'blockbuster', 'China' and 'Hollywood' likely underscores the political reluctance within European institutions to identify and recognise potential rivals to the EFI. In this context, 'competitiveness' might be seen as an attempt to improve the economic effectiveness and profitability of the European audiovisual and film industry. Nevertheless, 'competitiveness' does not inherently involve actively vying against other players. Taking also into account the reluctance to delve into the 'value chain', this potentially leaves the 'competitiveness' framework in European audiovisual policy ill-equipped to contemplate international competition, whether it be in merchandising or the production of audiovisual goods and services. Interestingly, this disregard for international competition while addressing 'competitiveness' contradicts the approach to global trade which the EU applies to most goods and services in today's interconnected world. Indeed, in its latest communication on the long-term competitiveness of the EU in 2023, the Commission asserts: *'In the face of strong global competition and a new geopolitical context, competitiveness can never be taken for granted. It deserves political attention at the highest political level. The renewed attention to long-term competitiveness is about the European Union taking charge of its attractiveness and standing in the world economy'*.<sup>23</sup>

Likewise, the absence of terms like 'SME' stands out, especially given the EU's long-term emphasis on promoting its micro, small, and medium-sized enterprises. In 2019, the Council, in its Conclusions on an EU industrial policy strategy, underlined the significance of the productivity of its micro, small, and medium-sized enterprises for the competitiveness of the EU industry and the contribution made by the internationalisation of SMEs to growth.<sup>24</sup> While the 'competitiveness' of EU industries depends to a significant degree on SMEs (Singh et al., 2008), the highlighting of this aspect in European audiovisual policy has been poor. In addition, the lack of emphasis on terms such as

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<sup>23</sup> European Commission (2023a). *Long-term competitiveness of the EU: looking beyond 2030*. Brussels, available at: [https://commission.europa.eu/system/files/2023-03/Communication\\_Long-term-competitiveness.pdf](https://commission.europa.eu/system/files/2023-03/Communication_Long-term-competitiveness.pdf) (Accessed 16.11.2023).

<sup>24</sup> Council of the EU (2019). *Council calls for a comprehensive long-term industrial policy strategy with a vision for 2030*. Brussels, available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/05/27/council-calls-for-a-comprehensive-long-term-industrial-policy-strategy-with-a-vision-for-2030/> (Accessed 16.11.2023).



## D2.1 Competitiveness in European law

'distortion', 'disruptive', 'non-discrimination', 'trade deficit' and 'state subsidies' sets the EFI apart from other industrial sectors. In this regard, whereas market distortion due to unfair practices, the disruptive impact of foreign competitors supported by state subsidies and the discrimination stemming from illegal trade barriers have become major concerns for EU trade policies (Dür et al., 2020), competitiveness seems to have historically been framed in a distinctive way in European audiovisual policy which appears to overlook the foreign competitors' dimension in the EU single market.

Clearly, none of the institutions -- the Commission, Parliament, Council, both Parliament and Council as the European legislator, as well as the CoE -- have successfully considered 'competitiveness' in the framework of a globalised and competitive world economy. Both the EU and CoE have failed to adequately highlight the global implications of competitiveness for the EFI, and they also seem to overlook the disruptive effects that potential competitors are expected to have on the European audiovisual market. This distinctive view of 'competitiveness' in European audiovisual and film policy contrasts with the long-standing recognition of globalised challenges in EU trade and industrial policy (Ketels & Porter, 2020).

Moreover, when it comes to diversity, the limited focus on 'domestic production', 'independent production', 'language barriers', 'multilingualism', 'small market' and 'regional diversity' tends to confine 'diversity' to a broad cultural context, with no focus on regional, domestic and linguistic specificities. These terms' poor score could, on the one hand, indicate that the ways in which European authorities have approached the term 'diversity' over time are related to strengthening and promoting cultural exchanges *between* European countries, rather than focusing on the 'cultural diversity' *within* European societies. In other terms, European authorities concentrate on and define 'cultural diversity' *horizontally*, placing cultural relations between EU Member States at the heart of the concept; they deal less with vertical aspects of the concept, such as linguistic specificities or regional diversity, in state and sub-state/nation relations. On the other hand, the poor score could also indicate a lack of efforts to operationalise 'diversity' in linguistic, domestic or regional terms and



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provide specific indicators for the application of 'diversity'. Moreover, while the Council places significant emphasis on 'linguistic diversity', other institutions do not share the same level of focus on this aspect. This point warrants further discussion. In addition, the underperformance of 'youth' (and 'young people') stands out as a notable oversight in European audiovisual and film governance. Given the close connection between audiovisual policy and technology, in which younger individuals typically play a more significant role, the lack of comprehensive attention to their specific needs, preferences and habits could point to broader concerns about the efficacy and consistency of European audiovisual and film policy.

Finally, it is worth noting that of the three key streams in the audiovisual and film-related value-chain, 'production' and 'distribution' provide high returns across both historical periods and institutions, whereas the 'exhibition' stream is poorly emphasised in European audiovisual governance.



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### **3 UNPICKING ‘COMPETITIVENESS’ AND ‘CULTURAL DIVERSITY’ IN THE AUDIOVISUAL SECTOR AND THE EUROPEAN FILM INDUSTRY (EFI): A MAPPING EXERCISE**

The qualitative analysis performed in this section is broken down according to EU regulatory instruments, EU financial support instruments and EU soft law/policy instruments while attention is also paid to relevant CoE instruments with a view to identifying similarities and differences in how the EU and CoE conceptualise and approach the audiovisual sector, the EFI, their ‘competitiveness’ and ‘cultural diversity’. Whereas regulatory instruments engage in rule-making at EU level, financial support instruments are funding tools established at EU level. The category of soft law/policy instruments brings together a broad set of non-binding acts of the EU. These may discuss, interpret and/or assess EU policy design and implementation, identifying positive and negative developments while setting forth avenues for future action. They also comprise Communications, guidelines, etc. which, though they lack features such as obligations, uniformity or sanctions, do advance normative understandings in European audiovisual and film governance and invite Member States to pursue and follow specific policy directions.

#### **3.1 Mapping ‘competitiveness’ and ‘cultural diversity’ in regulation: The development and evolution of the EU legal framework for the audiovisual sector and the EFI**

This subsection employs a diachronic textual analysis perspective to map understandings and operationalisations of the concepts of competitiveness and cultural diversity vis-à-vis the audiovisual sector and the EFI. The focus is on key legislative acts addressing the audiovisual industry and the EFI in a direct or indirect manner. The following acts represent major turning points in regulation, and their analysis is a diachronic mirror of the key developments in European audiovisual and film



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governance over the last forty years. The following acts (see Table 3) are presented and discussed in chronological order:

— **Council Directive 89/552/EEC** (Television without Frontiers Directive; **the TWFD**),<sup>25</sup> the forerunner to the 'Audiovisual Media Services Directive': The TWFD was for two decades the main regulatory instrument for the audiovisual media sector in Europe. It rested on two basic principles: the free movement of European television services and programmes within the internal market, and requirements for TV channels to reserve more than half of their transmission time for European works (the 'broadcasting quotas').<sup>26</sup> The TWFD was adopted by the Council in 1989 as a single-market initiative. It marked a milestone in the establishment of the legal framework for the cross-border transmission of television programmes, while seeking to safeguard important public interest objectives such as cultural diversity. Addressed to the then twelve Member States of the European Economic Community (EEC), the TWFD was adopted on the basis of (what were) Articles 57(2) and 66 of the Treaty establishing the EEC (TEEC). Its main aspiration was to create a common broadcasting area within the EEC in which the unconstrained provision of television broadcasting services would be ensured on the basis of the principle of mutual recognition; it also sought to endorse the 'new approach' to regulatory intervention followed by internal market measures after the mid-1980s. On the basis of the principle of the country of origin, according to which broadcasters should (only) comply with the law of the Member State in which they originate (and thus be subject to the law of their country of establishment, not the country of destination), the TWFD laid down minimum rules to 'ensure the transition from national markets to a common programme production and distribution market' (Psychogiopoulou, 2021: 36).

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<sup>25</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ('Television without Frontiers Directive'), OJ L 298, 17.10.1989, p. 23–30.

<sup>26</sup> See 'Summaries of EU Legislation: Television broadcasting activities: 'Television without Frontiers' Directive'. Available at: <<https://eur-lex.europa.eu/EN/legal-content/summary/television-broadcasting-activities-television-without-frontiers-tvwf-directive.html>>. Accessed September 21, 2023.





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— **Directive 97/36/EC:** In 1997, with the Treaty of Maastricht in force, a relatively punctual first amendment to the TWFD took place with a view to updating the initial rules and achieving a sufficient degree of legal certainty. The amendment focused on such aspects as the principle of jurisdiction (how a Member State is determined to be responsible for a TV service), the protection of minors, events of major importance for society, teleshopping, etc. Directive 97/36/EC was adopted<sup>27</sup> by the European Parliament and the Council of the EU (the Council) as co-legislators,<sup>28</sup> and it was addressed to the then fifteen Member States of the European Community. Being subject to a review procedure since the early 2000s, which included several phases, the TWFD would ultimately be subject to more radical amendments in 2007.

— **Directive 2007/65/EC:** In 2007, after nearly two decades, the TWFD was overhauled by the European Parliament and the Council.<sup>29</sup> The revision of the TWFD sought to introduce a comprehensive regulatory framework for *all* audiovisual media services and sought to create a level playing field between traditional broadcasters, who were subject to the heavier regulation laid down in the TWFD, and new media players which, conveying the same or similar audiovisual content, benefited from the ‘light-touch’ approach of Directive 2000/31/EC (Valcke et al., 2008: 104), known as the e-Commerce Directive.<sup>30</sup> This Directive, which was adopted on the basis of Article 47(2) of the Treaty establishing the European Community (TEC), in conjunction with Articles 55 and 95 TEC, would provide the foundational legal framework concerning online services in the context of the EU

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<sup>27</sup> Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 202, 30.7.1997, p. 60–70.

<sup>28</sup> With the entry into force of the Treaty of Maastricht and the introduction of ‘the codecision procedure’, the Parliament became a co-legislator on an equal footing with the Council, except in the cases provided for in the Treaties where special legislative procedures apply. The Lisbon Treaty renamed the codecision procedure ‘the ordinary legislative procedure’ and increased the number of policy areas to which this procedure applies, thus enhancing the Parliament’s powers. See ‘Ordinary legislative procedure (Codecision)’. Available at: <<https://eur-lex.europa.eu/EN/legal-content/glossary/ordinary-legislative-procedure-codecision.html>>. Accessed September 7, 2023.

<sup>29</sup> Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 332, 18.12.2007, p. 27–45.

<sup>30</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 concerning certain legal aspects of information-society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’), OJ L 178, 17.7.2000, p. 1–16.



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internal market for years to come. The e-Commerce Directivesought to remove obstacles to cross-border online services and remains in force, even though conditions have changed substantially since its adoption.

— **Directive 2010/13/EU:** Amended several times, the TWFD was codified in the interests of clarity and rationality and became Directive 2010/13/EU of the European Parliament and of the Council of the EU,<sup>31</sup> which is also known as the Audiovisual Media Services Directive (the **AVMSD**). The ‘descendant’ to the TWFD, the AVMSD was addressed to the twenty-seven Member States at the time of its enactment and adopted on the basis of Article 53(1) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 62 TFEU. For many years, it constituted the EU’s main regulatory instrument for the audiovisual sector, regulating the coordination of national legislation on traditional (linear) and on-demand (non-linear) audiovisual media services across the EU. Its aim was to establish and safeguard the proper functioning of the EU single market for audiovisual media services, while supporting the promotion of cultural diversity and offering a high level of consumer and child protection.

— **Directive (EU) 2018/1808:** On 28 November 2018, Directive (EU) 2018/1808 of the European Parliament and of the Council of the EU, amending the 2010 AVMSD, was published.<sup>32</sup> It sought to stop additional regulatory gaps concerning the provision of audiovisual media services. Naturally, the legal basis of the Directive, which was addressed at all Member States, remained Articles 53(1) and 62 TFEU. A codified text of Directive 2010/13/EU, encompassing the 2018 amendments, followed.<sup>33</sup>

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<sup>31</sup> Directive 2010/13/EU of the European Parliament and of the Council 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), OJ L 95, 15.4.2010, p. 1–24.

<sup>32</sup> 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 the light of changing market realities, OJ L 303, 28.11.2018, p. 69–92.

<sup>33</sup> Consolidated text: Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the



**Table 3: The regulatory instruments under study**

EU Legislative Act	Legal Force	Official Journal of the EU
<b><i>The 'TWFD' and its amendments</i></b>		
<b>Directive <a href="#">89/552/EEC</a></b>	<b>No longer in force</b> - Date of end of validity: 4.5.2010 - Repealed by Directive 2010/13/EU	OJ L 298, 17.10.1989, p. 23–30
<b>Directive <a href="#">97/36/EC</a></b> <i>(1<sup>st</sup> amending act)</i>	<b>No longer in force</b> - Date of end of validity: 4.5.2010	OJ L 202, 30.7.1997, p. 60–70
<b>Directive <a href="#">2007/65/EC</a></b> <i>(2<sup>nd</sup> amending act)</i>	<b>No longer in force</b> - Date of end of validity: 4.5.2010	OJ L 332, 18.12.2007, p. 27–45
<b><i>The 'AVMSD' and its amendment</i></b>		
<b>Directive <a href="#">2010/13/EU</a></b>	<b>In force</b> - This legislative act has been amended.	OJ L 95, 15.4.2010, p. 1– 24
<b>Directive (EU) <a href="#">2018/1808</a></b>	<b>In force</b>	OJ L 303, 28.11.2018, p. 69–92

provision of audiovisual media services (Audiovisual Media Services Directive) (codified version). Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0013-20181218>>.



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### 3.1.1 Promoting ‘competitiveness’

Subsubsection 3.1.1 deals with the concept of the ‘competitiveness’ of the audiovisual industry and the EFI as defined in the EU legislative acts. There is an emphasis on the direct and indirect ways in which competitiveness is reflected in the aforementioned legal instruments, while the ways in which the main competitiveness objectives were formulated, and which measures were proposed (in the form of legal provisions) for seeking to attain several of these objectives, are also examined. For the convenience of the reader, the analysis is divided by era and the successive amendments of the TWFD and the AVMSD. The diachronic analysis of the historical path followed by the consecutive legislative amendments to secondary EC/EU law from the 1989 TWFD to the present day and the legislative framework of the AVMSD reveals the Union’s efforts to ensure optimal conditions of competitiveness for Europe’s audiovisual industry. These would ultimately cover both linear services (such as conventional television broadcasts) and non-linear services (such as the on-demand audiovisual media services that have emerged in recent decades).

#### 3.1.1.1 The TWFD in the pre-Maastricht era

At the outset, it should be noted that the concept of ‘competitiveness’ was not explicitly included in **Council Directive 89/552/EEC**. Nonetheless, the free-market orientation of the Directive was quite clear. The market aspirations traced in the Directive employed the notion of ‘competition’ as a factor in development within the common market for television broadcasting services.

As underlined by the Directive’s preamble, the 1957 Treaty of Rome establishing the EEC provided for the establishment of a common market, including the abolition of obstacles to freedom of movement for services and the institution of a system ensuring that competition in the common market was not distorted.<sup>34</sup> Broadcasts transmitted across frontiers by means of various technologies were one of the ways in which the objectives of the EEC were pursued.<sup>35</sup> However,

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<sup>34</sup> Directive 89/552/EEC, Recital 2.

<sup>35</sup> Ibid., Recital 3.



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the laws, regulations and administrative measures in Member States concerning the pursuit of activities by television broadcasters and cable operators contained disparities, some of which could impede the free movement of broadcasts within the EEC and distort competition within the common market.<sup>36</sup> EEC-based measures, it was stated, should be adopted to permit and ensure the transition from national markets to a common programme production and distribution market and to establish conditions of fair competition without prejudice to the public interest of television broadcasting services.<sup>37</sup>

Although 'competitiveness' is not explicitly mentioned anywhere in the text of the TWFD, ensuring the free movement of broadcasts essentially meant establishing conditions of fair competition and reducing disparities between Member States' laws. On that basis, the main goal of the Directive was to abolish certain kinds of obstacles to freedom of movement for television broadcasting services, ensuring that competition in the common market functioned properly in this field.

It is important to note the industrial mindset of the so-called 'European quotas' of the time, aimed at sustaining the competitiveness of the audiovisual industry. According to Article 4(1) of the Directive, Member States had to ensure with appropriate means, where feasible, that broadcasters reserved a majority proportion of their transmission time for European works. This was to be achieved progressively, on the basis of suitable criteria, and with regard for the broadcaster's responsibilities to its viewing public. Pursuant to Article 6 of the Directive, 'European works' meant works originating in Member States, European third states party to the European Convention on Transfrontier Television of the CoE, and other European third countries subject to certain criteria like the authors' and workers' residence, the producer's place of establishment, the exercise of supervision and control over production, and the share of contribution to total co-production costs. Article 5 of the Directive further stipulated that Member States were entrusted with ensuring, where practicable and

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<sup>36</sup> Ibid., Recital 9.

<sup>37</sup> Ibid., Recital 3.



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by appropriate means, that 'broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternately, at the discretion of the Member State, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters'. This proportion, on the basis of the broadcasters' (informational, educational, cultural and entertainment) responsibilities to its viewing public, was to be achieved progressively, in accordance with suitable criteria.

It was emphasised in the TWFD that it was necessary 'to promote markets of sufficient size for television productions in the Member States to recover necessary investments not only by establishing common rules opening up national markets but also by envisaging for European productions where practicable and by appropriate means a majority proportion in television programmes of all Member States'.<sup>38</sup> It was also mentioned that suitable measures were needed 'to encourage the activity and development of European audio-visual production and distribution, particularly in countries with a low production capacity or restricted language area'.<sup>39</sup> Moreover, it was noted, in the Directive's preamble, that the commitment, where feasible, to a specific proportion of broadcasts for independent productions would stimulate new sources of television production (especially through the creation of small and medium-sized enterprises), while it would also present new opportunities and outlets for the marketing of creative talents and employment in the cultural field.<sup>40</sup> The definition of the concept of 'independent producer' was left to the discretion of Member States, with consideration given to small and medium-sized producers and with regulations that allowed the financial participation of the co-production subsidiaries of television organisations to be authorised.<sup>41</sup> The 'legislative birth' of the European content requirements (the 'European quotas') can thus be considered an industrial policy measure par excellence aimed at correcting imbalances

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<sup>38</sup> Ibid., Recital 20.

<sup>39</sup> Ibid., Recital 21.

<sup>40</sup> Ibid., Recital 23.

<sup>41</sup> Ibid.



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arising from the establishment of the common broadcasting market (Psychogiopoulou, 2021: 36 et seq.).

Overall, the TWFD was particularly important in the particular historical context. Due to the historical development of broadcasting in Europe (from the 1920s until about 1980) and the model of media governance followed at the time, which rested on national broadcasting monopolies or duopolies, cooperation beyond national frontiers was constrained. Concurrently, in Western Europe broadcasting was mostly considered as a public service rather than a commercial, competitive industry. However, from the 1980s on, the national media order was progressively superseded by a pro-competitive and 'Europeanising-transnationalising' media order, with national and EU media policies becoming both interdependent and interrelated in the wake of the growing globalisation of communication systems (Iosifidis, 2011). The factors that led to this transformation, the switch from a national public service monopoly ethos to a liberalised, commercial, multichannel transfrontier television offering, were many; they included the ground-breaking technological advances relating to the opportunities provided by cable and satellite broadcasting for transnational dissemination of audiovisual content, along with social changes, political motivations and the relaunch of European integration in 1986 through the target of the 'single' market, which provided the impetus for pro-competitive market restructuring, etc. (Micova, 2023). As the first outcome of this historic process, the TWFD focused on the notion of the liberalisation of the audiovisual market, establishing minimum common rules rather than effectively harmonising the areas that came within its scope. Ultimately, it has been argued, it would promote negative integration by opening up national audiovisual markets (Michalis, 2014: 130-134).

### 3.1.1.2 The amendments to the TWFD in the pre-Lisbon era

Contrary to Council Directive 89/552/EEC, which made no direct reference to the concept of the EFL's 'competitiveness', the concept of 'competitiveness' was referenced in **Directive 97/36/EC**. The preamble to the Directive contained two references. First, with reference to an action plan devised





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by the European Commission (Commission) in its Communication of 19 July 1994 entitled 'Europe's way to the information society: an action plan',<sup>42</sup> which the Council had welcomed at its meeting of 28 September 1994, it was noted that there was a need to improve the competitiveness of the European audiovisual industry.<sup>43</sup> Secondly, the need to create conditions for improving the competitiveness of the programme industry in particular was mentioned. According to the Council, the measures vis-à-vis the promotion of European works could contribute to such an improvement, though account would have to be taken of developments in the field of television broadcasting.<sup>44</sup> Still, the first amendment to the TWFD did not introduce any changes leading to stricter European content requirements.

The European Community (EC)'s free-market orientation was made clear in this Directive through the notion of 'competition'. More specifically, it was explicitly stated that 'Member States should take action with regard to services comparable to television broadcasting, in order to prevent any breach of the fundamental principles which must govern information, but also the emergence of wide disparities with regard to free movement and competition'.<sup>45</sup> In that regard, it was necessary to ensure the effective application of Directive 89/552/EEC as amended by Directive 97/36/EC to preserve free and fair competition between firms in the same industry.<sup>46</sup> It was also stressed that, in order to eliminate the obstacles arising from differences in national legislation vis-à-vis the promotion of European works, the revised TWFD contained provisions that sought to harmonise such legislation, and thus to harmonise the conditions of competition.<sup>47</sup> Generally speaking, the harmonisation of all the different national legislations was pursued to safeguard the smooth

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<sup>42</sup> The said 1994 Communication of the Commission highlighted the importance of a regulatory framework that applies to the content of audiovisual services which would help to safeguard the free movement of such services in the Community and be responsive to the opportunities for growth in this sector opened up by new technologies, whilst considering the unique nature, in particular the cultural and sociological impact, of audiovisual programmes, whatever their mode of transmission. See Recital 4 of Directive 97/36/EC.

<sup>43</sup> Directive 97/36/EC, Recital 5.

<sup>44</sup> Ibid., Recital 28.

<sup>45</sup> Ibid., Recital 8.

<sup>46</sup> Ibid., Recital 16.

<sup>47</sup> Ibid., Recital 24.



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functioning of the internal market and to avoid distortions of competition within the EC. However, Member States remained free to apply more detailed or stricter rules to broadcasters under their jurisdiction in the fields coordinated by the Directive, including *inter alia* rules concerning the achievement of language policy goals; protection of the public interest in terms of television's role as a provider of information, education, culture and entertainment; the need to safeguard pluralism in the information industry and the media; and the protection of competition with a view to avoiding the abuse of dominance and/or the establishment or strengthening of dominant positions by mergers, agreements, acquisitions or similar initiatives.<sup>48</sup> Crucially, protecting competition in the audiovisual sector by avoiding dominant positions and their abuse at the national level stood side by side with constitutionally-oriented public interest objectives pursued by the Member States, such as protecting Member States' languages, media pluralism and the role of the media in a democratic society.

The Directive thus sought to improve the competitiveness of the European audiovisual industry in various distinct ways: by ensuring the free movement of television broadcasts within the European Community and free (and fair) competition between firms in the same industry; by creating conditions for boosting competitiveness, and the competitiveness of the programme industry in particular through the promotion of European works; and by protecting values and fundamental principles at the Member State level.

The concept of 'competitiveness' was also expressly mentioned in **Directive 2007/65/EC**. As stated in the preamble, new technologies in the transmission of audiovisual media services called for the regulatory framework to be adapted to take account of structural change and the spread of information and communication technologies (ICT); to address the impact of technological developments on business models, and especially on the financing of commercial broadcasting; and to ensure optimal conditions of competitiveness and legal certainty for both Europe's information

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<sup>48</sup> Ibid., Recitals 35 and 44.



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technologies and its media industries and services.<sup>49</sup> Notably, in addition to technological advances and their effects, the concept of competitiveness was also associated with issues such as protecting minors, human dignity and media literacy. Express reference was made in this respect to the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry,<sup>50</sup> which had already set out a series of measures for promoting media literacy and using the Internet responsibly.<sup>51</sup> Moreover, it was noted that product placement was a reality in both cinematographic works and audiovisual works made for television, and that Member States regulated this practice differently. With a view to ensuring a level playing field and thus enhancing the competitiveness of the European media industry, it was necessary to adopt rules with regard to product placement.<sup>52</sup>

As was also the case with past versions of the TWFD, the EU's free-market rationale was particularly pronounced in the 2007 amended version of the Directive, especially through the notion of 'competition'. Specifically, the 2007 Directive mentioned that the rules applicable to activities such as on-demand audiovisual media services contained disparities, some of which could impede the free movement of those services within the EC and distort competition within the internal market.<sup>53</sup> Both conventional audiovisual media services (like television) and emerging on-demand audiovisual media services could be sources of significant employment opportunities in the EC, especially in small and medium-sized enterprises, and thus stimulate economic growth and investment. Guaranteeing fair market conditions for all, as well as a real European market for audiovisual media services, would mean ensuring respect for the basic principles of the internal market (free competition, equal treatment, etc.) in order to secure transparency and predictability in markets for

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<sup>49</sup> Directive 2007/65/EC, Recital 1.

<sup>50</sup> OJ L 378, 27.12.2006, p. 72.

<sup>51</sup> Directive 2007/65/EC, Recital 37.

<sup>52</sup> Ibid., Recital 61.

<sup>53</sup> Ibid., Recital 2.



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audiovisual media services along with low barriers to entry.<sup>54</sup> However, legal uncertainty and a non-level playing-field did exist for European companies delivering audiovisual media services with regard to the legal regime governing emerging on-demand audiovisual media services. It was therefore essential for the prevention of distortions of competition that at least a basic tier of coordinated rules apply to all audiovisual media services, irrespective of the technology that delivers them and whether that be television broadcasting (i.e. linear audiovisual media services) or on-demand audiovisual media services (i.e. non-linear audiovisual media services).

Significantly, it was also noted that the scope of the 2007 Directive should be limited to 'services' as defined by the Treaty. This meant that it could cover any form of economic activity, including public service enterprises, but should not cover activities which are primarily non-economic and not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest.<sup>55</sup> However, on-demand audiovisual media services did seem to be 'television-like', which is to say they were competing for the same audience as television broadcasts. Thus, to prevent disparities with regard to free movement and competition, the notion of 'programme' had to be interpreted in a dynamic way which took developments in television broadcasting into account.<sup>56</sup> The Directive also recognised the country-of-origin principle as the cornerstone of European audiovisual governance and 'a major advantage for online and other new media providers' (Valcke & Stevens, 2007). As such, it emphasised that, in order to promote a strong, competitive and integrated European audiovisual industry while enhancing media pluralism throughout the EU, only one Member State should have jurisdiction over any given audiovisual media service provider.<sup>57</sup>

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<sup>54</sup> Ibid., Recital 6.

<sup>55</sup> Ibid., Recital 16.

<sup>56</sup> Ibid., Recital 17.

<sup>57</sup> Ibid., Recital 28.



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Undoubtedly, the main objective of the 2007 Directive was to exemplify and shed light on the transversal aspects of European audiovisual governance. It encompassed issues of technological convergence, adapted the regulatory framework in view of the impact of new technologies on audiovisual media services, and took steps to foster a strong, competitive and integrated European audiovisual industry while safeguarding media pluralism. In this respect, it should be noted that the emerging technologies of the time in the media sector had created new challenges for EU policy makers by introducing new means of communications (e.g. the Internet), the convergence of networks and services, a sudden increase in the number of devices through which traditional and new media services could be accessed, and the lowering of the threshold for media content production/distribution. The increasing popularity of new technologies in this field was destined to radically change the public sphere, with a significant societal impact (for further reading, see Valcke et al., 2008: 103 et seq.).

With regard to the 'European quotas' in particular, whereas European content requirements for linear audiovisual media services were maintained, Article 3i was inserted into the amended TWFD to specifically address on-demand audiovisual media services. Member States had to guarantee that on-demand audiovisual media services provided by media service providers under their jurisdiction encouraged, where practicable and by appropriate means, both the production of and access to European works; promotion in this context could relate inter alia to the financial contribution made by such services to the production and rights acquisition of European works, or to the share and/or prominence of European works in the catalogue of programmes provided by the on-demand audiovisual media service in question. Furthermore, Article 26 of the Directive stipulated that, from December 2011 and every three years thereafter, the Commission would submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the Directive and, if necessary, make proposals to modify it, in particular in the light of technological developments, the competitiveness of the sector, and levels of media literacy in all Member States.



### 3.1.1.3 The AVMSD and its amendment in the post-Lisbon era

As **Directive 2010/13/EU** codified Directive 89/552/EEC and its amendments, it also referred expressly to 'competitiveness'. In fact, several elements contained in Directive 2007/65/EC are replicated in Directive 2010/13/EU, including the need to ensure optimal conditions of competitiveness and legal certainty in light of technological developments,<sup>58</sup> and approaching competitiveness from the protection of minors, human dignity and media literacy perspectives.<sup>59</sup>

Another fundamental concern is guaranteeing conditions of fair competition without prejudice to the public interest role of audiovisual media services.<sup>60</sup> Some of the recitals of Directive 2007/65/EC are repeated.<sup>61</sup> In addition, with regard to the country-of-origin principle, it is affirmed that, with a view to promoting 'a strong, competitive and integrated European audiovisual industry' and in order to boost media pluralism in the EU, the jurisdiction over an audiovisual media service provider must fall upon one Member State only.<sup>62</sup>

It could be argued that the main objective of the 2010 AVMSD was indeed to reaffirm the necessity of a regulatory framework to enhance the competitiveness of the European audiovisual industry in light of new market structures, the impact of ICT and new business models. It would do so, like the TWFD, by permitting the transition from national markets to a common programme production and distribution market while stimulating economic growth and investment and guaranteeing conditions of fair competition in the new environment. Moreover, the 2010 AVMS Directive retained the provisions on the promotion of the distribution/production of European works, including European works created by producers who are independent of broadcasters, along with the distinction drawn in this regard between conventional audiovisual media services and on-demand audiovisual media

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<sup>58</sup> Directive 2010/13/EU, Recital 4.

<sup>59</sup> Ibid., Recital 47.

<sup>60</sup> Ibid., Recitals 2 and 9.

<sup>61</sup> See Recital 10 of the 2010 AVMSD and the corresponding Recital 6 of the 2007 TWFD, Recital 11 of the 2010 AVMSD and the corresponding Recital 7 of the 2007 TWFD, Recital 21 of the 2010 AVMSD and the corresponding Recital 16 of the 2007 TWFD, Recital 24 of the 2010 AVMSD and the corresponding Recital 17 of the 2007 TWFD, etc.

<sup>62</sup> See Recital 34 of the 2010 AVMSD (and the corresponding Recital 28 of the 2007 TWFD).



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services.<sup>63</sup> Also retained were the reporting requirements vis-à-vis changes contemplated to the regulatory framework in light of considerations pertaining inter alia to the competitiveness of the sector.<sup>64</sup>

**Directive (EU) 2018/1808** also mentioned ‘competitiveness’ expressly. As noted in its preamble, the audiovisual media services market had progressed remarkably and with considerable speed since the last substantive amendment to the TWFD, due to the ongoing convergence of television and internet services, while new types of services and user experiences had emerged and viewing habits, particularly those of younger generations, had changed significantly. This convergence of media made it necessary for the EU to revise its legal framework so as to accurately capture this evolution and to strike a proper balance between access to online content services, consumer protection and competitiveness.<sup>65</sup>

Here again, the promotion of the distribution/production of European works as a competitiveness and industrial objective is quite clear. According to the revised Article 13(1) of the AVMSD, which is more detailed than the original provision, Member States have to guarantee that providers of on-demand audiovisual media services under their jurisdiction ensure both at least a 30% share of European works in their catalogues and the prominence of these works. Moreover, Article 13(2) stipulates that, where Member States require media service providers under their jurisdiction to financially support the production of European works (including by means of direct investment in content and contributions to national funds), the Member States may also impose proportionate and non-discriminatory contribution obligations on media service providers which, though established in other Member States nonetheless target audiences in their territories. This is a clear exception to the country-of-origin principle. Article 13(3) clarifies, first, that the financial contribution shall be

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<sup>63</sup> The wording of Article 13 (which addresses on-demand audiovisual media services) and the wording of Articles 16 and 17 (addressing traditional broadcasting) of the 2010 AVMSD is equivalent to the wording of Articles 3i, 4 and 5 of the 2007 TWFD, respectively.

<sup>64</sup> See Art. 33 of the 2010 AVMSD and Art. 26 of the 2007 TWFD, respectively.

<sup>65</sup> Directive (EU) 2018/1808, Recital 1.



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based only on the revenues earned in the targeted Member State; secondly, that if the Member State in which the provider is established imposes such a financial contribution, it shall also consider any financial contributions imposed by the targeted Member States; and, thirdly, that any financial contribution shall comply with EU law (with state aid rules). Article 13(6) goes on to stipulate some exceptions concerning certain obligations imposed (by paragraphs 1 and 2 of that Article) regarding media service providers with a low turnover/audience, stating further that Member States may also set aside such obligations/requirements if they are impracticable or unjustified given the nature or theme of the audiovisual media services at issue.

While the 2010 AVMSD strongly affirmed the country-of-origin principle, that approach was called into question in its 2018 revision. This is because, while in the past the country-of-origin principle had remained at the core of EU regulation in this field, it could no longer effectively prevent the so-called 'jurisdiction shopping practices' from escalating: e.g. major US audiovisual companies such as Netflix, HBO or Amazon Prime Video (re)locating to 'regulatory heavens' within the Union. Moreover, the 2018 AVMSD made many changes to the text of the 2010 AVMSD; it covered the video-sharing platforms in its scope but imposed different obligations. As Micova and Kuklis (2023) observe, the expansion of the scope of the AVMSD to cover video-sharing platforms such as YouTube was arguably one of the most significant changes in the 2018 revision, as it was the first time that legislation at the EU level addressed content regulation for a specific kind of digital platform. However, this revision only deals with audiovisual content and does not cover all content on social media services. Importantly, the 2018 AVMSD also led to a degree of alignment between linear and non-linear services. For instance, while the older version of Article 13 was devoted exclusively to on-demand audiovisual media services, the new version extends to linear services in relation to the financial obligations set out in Article 13(2) (García Leiva & Alborno, 2021: 271-272).

Finally, it is worth noting that the adoption of Directive 2007/65/EC, the codification performed in 2010 and, most importantly, the changes brought to the AVMSD in 2018 were necessary to tackle





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key aspects in the regulation of non-linear audiovisual media services in the light of the framework established by the e-Commerce Directive and its intermediary liability regime. From 2000 on, audiences would increasingly consume audiovisual content on mobile devices and through video-on-demand services, due to the technological convergence and ongoing platformisation process in the audiovisual and film industry. At the time of its adoption, the e-Commerce Directive opted for a market-strengthening strategy which excluded digital intermediaries, including hosting providers, from liability insofar as they did not actively participate in the information exchange process through their services, and therefore have knowledge of, or control over, the information being transmitted or stored (Psychogiopoulou & Casarosa, 2023). As Micova (2023) explained, until the 2018 revision of the AVMSD and the adoption of the Digital Services Act,<sup>66</sup> the e-Commerce Directive, which was underpinned by the non-liability principle, was the key EU legal framework for regulating video-sharing platforms and the user-generated audiovisual content shared by users and made publicly available through online services. The e-Commerce Directive could thus be seen as laying out a dominant normative pattern, given that providers of ‘information society services’, such as YouTube, were seen as technical systems for content delivery and were assumed to ‘have no knowledge of the content and were exempt from liability for it’ (Micova & Kuklis, 2023: 108); which is to say, as long as they remained passive hosts. As such, the e-Commerce Directive sparked a long-running political debate (which ended with the AVMSD revision) as to whether ‘information society services providers’ such as video-sharing services are audiovisual media or not. It should also be mentioned that, according to the e-Commerce Directive, the ‘information society services’ shall be regulated in accordance with the country-of-origin principle, though certain case-by case exceptions are allowed when a country of destination has specific public interest concerns.<sup>67</sup> As Valcke and Stevens (2007:

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<sup>66</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1.

<sup>67</sup> Article 1(6) of the e-Commerce Directive stipulates, for instance, that this Directive does not affect measures taken at EU or national level to promote cultural and linguistic diversity and to ensure the defence of pluralism. Recital 63 of the Directive also mentions that the Directive does not prevent the Member States from considering the numerous social, societal and cultural implications that are considered inherent in the development of the information society, and thus does not hinder measures which Member States might adopt in conformity with EU law to achieve social, cultural and democratic



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297) note, the latter derived from the fact that the ‘e-Commerce Directive did not deal with measures relating to cultural and linguistic diversity and pluralism and allowed the Member States to derogate from the country of origin principle in view of [...] public policy objectives’. As such, before the adoption of Directive 2007/65/EC and following the e-Commerce Directive, providers of non-linear services would also have to comply with different and diverging national provisions, with on-demand audiovisual media services becoming subject to different legal frameworks related to content delivered in different Member States.

### 3.1.2 Promoting ‘cultural diversity’

Subsubsection 3.1.2 deals with the concept of ‘cultural diversity’ in the audiovisual sector and the EFI, as defined in the EU legislative acts. The emphasis here is on the direct and indirect ways in which the EU institutions are confronted with cultural diversity in the aforementioned legal instruments, while the approaches and main objectives that were devised with reference to cultural diversity, and the measures proposed in their light, are also investigated. As above, the analysis follows the successive amendments to the TWFD and the AVMSD with a view to demonstrating how the institutional and legal discourse on the promotion of cultural diversity has evolved gradually over time, while making it clear that cultural diversity constitutes an important general interest objective.

#### 3.1.2.1 The TWFD in the pre-Maastricht era

The **1989 TWFD** explicitly referred to the concept of ‘cultural diversity’ in relation to the preservation of Member States’ cultures. As underlined by the Directive’s preamble, the Directive laid down minimum rules to guarantee freedom of transmission in broadcasting, without affecting the responsibility of the Member States with regard to the organisation (including the systems of licensing, administrative authorisation or taxation), financing and the content of programmes. Hence, it was noted that the independence of cultural developments in the Member States and cultural

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goals, considering factors such as linguistic diversity, national and regional specificities as well as their cultural heritage, and to guarantee public access to a broad range of information society services.



REBOOT ([www.thereboot-project.eu](http://www.thereboot-project.eu)) has received funding from European Union's Horizon Europe Research and Innovation programme under Grant Agreement No. 101094769.



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diversity would remain unaffected.<sup>68</sup> This express reference was protective of the cultural prerogatives and competences of the Member States.

There were also some indirect references to cultural diversity. In fact, the European legislator, while laying down minimum rules for television broadcasting services, began to consider cultural diversity to be a priority. In addition to coordinating the national broadcasting laws, the TWFD, as indicated above, also considered it important to establish appropriate instruments and procedures to promote European works and, to a certain proportion, works by independent producers.<sup>69</sup> The objective was to encourage activity in, and the development of, European audiovisual production and distribution, particularly in countries with a low production capacity or restricted language area.<sup>70</sup> This could be seen as an industrial objective, but also as a cultural promotion objective. From this latter perspective, the European content quotas of the 1989 Directive clarified that the legal framework it put in place would not be limited to the elimination of trade barriers: Articles 4 and 5 of the Directive strived to establish the conditions necessary for a thriving European programme industry with a focus on aspects of distribution and on fostering European audiovisual production. This was therefore--in part, at least--also a cultural measure.

### 3.1.2.2 The amendments to the TWFD in the pre-Lisbon era

**Directive 97/36/EC**, although adopted after the entry into force of the Treaty of Maastricht which formally brought culture within the Union's purview, did not expressly refer to 'cultural diversity'. Nevertheless, this does not mean that the Community co-legislators did not consider 'cultural diversity' when enacting this Directive. For instance, the Directive's preamble expressly references what was then Article 128(4) TEC [now Article 167(4) TFEU],<sup>71</sup> which required the Community to take cultural aspects into account in its action under other provisions of the Treaty (here internal

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<sup>68</sup> Directive 89/552/EEC, Recital 13.

<sup>69</sup> Ibid., Recital 23.

<sup>70</sup> Ibid., Recital 21.

<sup>71</sup> Directive 97/36/EC, Recital 25.



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market action), confirming its commitment to cultural mainstreaming. The original wording of Articles 4 and 5 of the TWFD was not radically amended, either.<sup>72</sup>

**Directive 2007/65/EC** addressed 'respect for cultural and linguistic diversity' in the pursuit of broadcasting activities directly and right from the start.<sup>73</sup> The Directive's preamble is of particular interest in this regard. The cultural mainstreaming clause of Article 151(4) TEC was expressly invoked.<sup>74</sup> Reference was also made to two Resolutions of the European Parliament, one from 1 December 2005<sup>75</sup> and another from 4 April 2006,<sup>76</sup> on the Doha Round and on the World Trade Organisation (WTO) Ministerial Conferences respectively, where calls had been made for basic public services, such as audiovisual services, to be excluded from liberalisation under the General Agreement on Trade in Services (GATS) negotiations. The preamble further noted that Directive 2007/65/EC respected the principles of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>77</sup> Council Decision 2006/515/EC of 18 May 2006 on the conclusion of this Convention<sup>78</sup> had approved it on behalf of the EC. The UNESCO Convention, it was observed, recognises that 'cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value'. This was in line with the preamble stating that audiovisual media services are to be considered as much cultural services as they are economic services, and that their growing importance for societies, democracy (by ensuring freedom of information, diversity of opinion and media pluralism), education and culture justifies the application of specific rules to these services.<sup>79</sup> In addition, on 15 December 2003, the Commission had adopted a Communication on the future of European regulatory audiovisual policy which stressed that

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<sup>72</sup> There were only some modifications: e.g. the words 'and teletext services' were replaced by the words 'teletext services and teleshopping'.

<sup>73</sup> Directive 2007/65/EC, Recital 1.

<sup>74</sup> Ibid., Recital 4.

<sup>75</sup> OJ C 285 E, 22.11.2006, p. 126.

<sup>76</sup> OJ C 293 E, 2.12.2006, p. 155.

<sup>77</sup> Directive 2007/65/EC, Recital 5.

<sup>78</sup> OJ L 201, 25.7.2006, p. 15.

<sup>79</sup> Directive 2007/65/EC, Recital 3.



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regulatory policy should safeguard certain public interests, such as cultural diversity, the right to information, media pluralism, the protection of minors and consumer protection, but also enhance public awareness and media literacy.<sup>80</sup>

Directive 2007/65/EC also openly acknowledged the cultural dimension of the European content requirements. European content requirements for linear audiovisual media services persisted, while Article 3i of the amended TWFD contained provisions applicable to on-demand audiovisual media services which required Member States to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promoted, where practicable and by appropriate means, the production of and access to European works. As regards non-linear services in particular, the Directive's preamble stated that on-demand audiovisual media services had the potential to partially replace television broadcasting and should therefore promote, where practicable, the production and distribution of European works, thus contributing actively to the promotion of cultural diversity.<sup>81</sup> Support for European works could, for example, take the form of financial contributions by such services to the production of, and acquisition of rights in, European works, a minimum share of European works in video-on-demand catalogues, or the attractive presentation of European works in electronic programme guides. The application of the provisions relating to the promotion of European works by audiovisual media services should be regularly re-examined. Within the reporting framework set out under the 2007 Directive, Member States should take into account financial contributions by such services to the production and rights acquisition of European works, the share of European works in their catalogue of audiovisual media services, and the actual consumption of European works offered by such services.<sup>82</sup> In terms of overall reporting, the Commission was required,<sup>83</sup> on the basis of the information provided by Member States and of an independent study, to inform the European Parliament and the Council concerning the application

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<sup>80</sup> Ibid., Recital 8.

<sup>81</sup> Ibid., Recital 48.

<sup>82</sup> Ibid.

<sup>83</sup> See Art. 3i(3) of the amended TWFD.



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of the rules introduced in terms not only of the market and technological developments but also in terms of the goal of cultural diversity.

The TWFD provisions were thus radically modified in 2007 to reflect transformations in the ways in which audiovisual content was distributed and produced, but cultural diversity was included among the policy considerations which guided the process of rule-revision. In fact, a pluralist reading of cultural diversity was advanced. The European quotas clearly sought to support the exchange of cultural content and openness to others' cultures. Thus, it was also noted in Recital 50 of the 2007 Directive that 'when implementing the provisions of Article 4 of Directive 89/552/EEC, Member States should encourage broadcasters to include an adequate share of co-produced European works or of European works of non-domestic origin'.

In fact, various approaches to the concept of cultural diversity can be detected in the 2007 Directive. One approach relates to enhancing the intrinsic value of culture in the field of broadcasting and audiovisual media services as a means of respecting and preserving Member States' cultures. From this perspective, as mentioned above, it is emphasised in the Directive that cultural activities, goods and services have a cultural as well as an economic nature. Another approach relates to associating cultural diversity with supporting the audiovisual industry. The opportunities generated for the production and distribution of European works by the requirements set forth for the promotion of European works can also be seen as contributing to the promotion of cultural diversity. Overall, in the context of the regulatory framework, cultural diversity is considered an important public interest that must be preserved along with the right to information, media pluralism, the protection of minors, consumer protection, public awareness and media literacy. The 2007 Directive seeks to adapt the regulatory framework, while also respecting cultural and linguistic diversity in this context.



### 3.1.2.3 The AVMSD and its amendment in the post-Lisbon era

As a preliminary remark, Directive 2007/65/EC and **the 2010 AVMSD** are quite similar in terms of their content relating to ‘cultural diversity’, which is reasonable given that the 2010 AVMSD is actually a codification instrument. Thus, as it validates the main tenets of the Union’s audiovisual policy, the 2010 AVMSD also makes several references to (cultural) diversity. As underlined by the preamble to the Directive, in the light of new technologies in the transmission of audiovisual media services, a regulatory framework for the pursuit of broadcasting activities should ensure, inter alia, respect for cultural and linguistic diversity.<sup>84</sup> Mention is also made of Article 167(4) TFEU, which requires the EU to take cultural aspects into account in its action under other provisions of the Treaties, in order, in particular, to respect and promote the diversity of its cultures.<sup>85</sup> Moreover, various cultural-diversity-related recitals from Directive 2007/65/EC can be found in the 2010 AVMSD: the Member States retaining the prerogative to decide on the organisation, financing and content of programming, for example, as well as the ‘independence’ of their cultural development.<sup>86</sup> Similarities can also be identified in relation to the emphasis on, approaches to, and main objectives and measures expressed in terms of cultural diversity and the related reporting requirements.<sup>87</sup>

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<sup>84</sup> Directive 2010/13/EU, Recital 4.

<sup>85</sup> Ibid., Recital 6.

<sup>86</sup> Directive 2010/13/EU, Recital 19. Other examples include Recital 5 of Directive 2007/65/EC, concerning the approval of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which is repeated in Recital 7 of the AVMSD. Similarly, Recital 8 of Directive 2007/65/EC, referring to the 2003 Commission Communication on the future of European regulatory audiovisual policy (in which it was stressed that cultural diversity must be safeguarded), is repeated in Recital 12 of the AVMSD. Then Recital 48 of Directive 2007/65/EC, concerning the potential of on-demand audiovisual media services to partially replace television broadcasting and the promotion of the production/distribution of European works that will contribute actively to the advancement of cultural diversity, is repeated in Recital 69 of the AVMSD. In addition, it is noted that the ‘audiovisual media services are as much cultural services as they are economic services’; a similar approach is evident in the 2007 Directive (see Recital 5 of the AVMSD; see also Recital 3 of the 2007 Directive respectively).

<sup>87</sup> The provisions targeting the promotion of the distribution/production of European works for linear and on-demand services were maintained, including the provisions concerning independent productions [see Articles 13, 16 and 17 of the AVMSD]. Similarly, as in the 2007 TWFD, Article 13(3) of the 2010 AVMSD provided for the Commission’s task, on the basis of the information provided by Member States and of an independent study, to report to the European Parliament and to the Council on the promotion of the production of and access to European works by on-demand audiovisual media services provided by media service providers under the Member States’ jurisdiction, taking into account the market and technological developments but also the objective of cultural diversity.



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The AVMSD further preserved the TWFD's pluralist reading of cultural diversity, expanding the notion of European works to co-produced works realised as part of the implementation of agreements concluded with third countries by the EU. Boosting a sub-quota for co-productions and non-national European works within the broadcasting quota for traditional audiovisual media services could also be interpreted as a sign of the intention to enhance cultural collaboration. In the context of the stepwise approach, with lighter rules applying to on-demand audiovisual media services, the scope of the broadcasting and independent production quotas was not extended to cover non-linear services. Nevertheless, the joint industrial and cultural logic of the TWFD was retained, with Member States being invited to guarantee that on-demand service providers back the distribution/production of European works as a means of concurrently endorsing cultural diversity, with a clear intention to enable cultural enjoyment by encouraging viewers' access to European works (Psychogiopoulou, 2021: 42).

**The 2018 AVMSD** addresses 'cultural diversity' expressly. The preamble to the Directive associates cultural diversity with, *inter alia*, the safeguarding of legitimate public policy considerations, pointing out that Directive 2010/13/EU does not prevent Member States from imposing an obligation to safeguard the appropriate prominence of content of general interest under defined general interest objectives including media pluralism, freedom of speech and cultural diversity. However, it does note that when such obligations are introduced, they should be proportionate and only be imposed when they are necessary for general interest objectives clearly defined by Member States in line with EU law to be met.<sup>88</sup> It is also emphasised that the measures adopted by Member States under Directive 2010/13/EU need to respect freedom of expression and information along with media pluralism and both cultural and linguistic diversity, in line with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>89</sup>

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<sup>88</sup> Directive (EU) 2018/1808, Recital 25.

<sup>89</sup> *Ibid.*, Recital 61.





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The 2018 Directive seeks to reinforce EU objectives such as cultural diversity, media pluralism and consumer protection, but also the proper functioning of the internal market and the promotion of fair competition. By considering cultural diversity to be a general interest objective, the Directive acknowledges its intrinsic and political value. At the same time, the measures set forth in Article 13 of the 2018 AVMSD for the promotion of the distribution/production of European works can also be read from a cultural diversity perspective. Overall, the new challenges which the 2018 update of the legal framework was expected to address by way of the revised AVMSD centre on changes in the market and in audiovisual consumption, along with the functioning of what were by then well-established video-on-demand services and video-sharing platforms. At the same time, the modernisation of the legal framework has been pursued through rules that are the result of a useful combination of a level playing field in the audiovisual services market and the pursuit of cultural diversity objectives. In short, the European institutions have engaged in rule-making aimed at achieving economic aims by means of an approach that also encourages cultural diversity.

**Table 4: The major CoE legal instruments vis-à-vis the European audiovisual sector**

CoE Conventions	
Instrument	Description



<p><a href="#">European Convention on Transfrontier Television</a></p> <p>(ETS No. 132) of 1989</p> <p>Entry into force: 1.5.1993</p>	<p>This Convention is considered the international treaty which created the first legal framework for the free circulation of transfrontier television programmes in Europe through common rules in fields such as programming, advertising and sponsorship, and the protection of certain individual rights [see <i>summary from the CoE website <a href="#">here</a></i>]. It was the blueprint for the TWFD.</p> <p>The Convention makes no direct mention of ‘competitiveness’, nor does it mention ‘diversity’ expressly. Nonetheless, the Convention addresses a close and related topic: pluralism. It affirms the importance of broadcasting in the development of culture and the free formation of opinions, safeguarding equality of opportunity for all democratic groups and political parties. It also states that providing a wide choice of audiovisual programmes for the public enhances Europe’s heritage. The signatories are therefore required to make sure that no broadcaster within their jurisdiction (re)transmits any programme that would endanger media pluralism.</p>
<p><a href="#">European Convention on Cinematographic Co-Production</a></p> <p>(ETS No. 147) of 1992</p> <p>Entry into force: 1.4.1994</p>	<p>The main aims of this Convention are to promote the development of European multilateral cinematographic co-production, to safeguard creation and freedom of expression, and to defend the cultural diversity of Europe’s individual nations [see <i>summary from the CoE website <a href="#">here</a></i>].</p> <p>The Convention asserts that ‘the defence of cultural diversity of the various European countries is one of the aims of the <a href="#">European Cultural Convention</a>’. It considers cinematographic co-production to be a means of creating and expressing cultural diversity on the European scene, and specifically calls for it to be supported and helped to grow.</p>



<p><a href="#">European Convention for the Protection of the Audiovisual Heritage</a></p> <p>(ETS No. 183) of 2001</p> <p>Entry into force: 1.1.2008</p>	<p>The advancement of European cinema has always been a crucial aspiration of cultural cooperation under the auspices of the CoE. Following on from the European Convention on Cinema Co-production of 2 October 1982 (ETS No. 147) and other Resolutions around this subject, this Convention and its Protocol, with a focus on the principle of the compulsory legal deposition of all moving-image material produced or co-produced and made available to the public in each signatory State, are considered the first binding international instruments in this field. They introduce systematic storage of audiovisual works in film archives [see <i>summary from the CoE website</i> <a href="#">here</a>].</p> <p>The Convention directly links Europe's heritage to the cultural identity and diversity of its people. Besides considering Europe's audiovisual heritage as a form of art, it promotes the idea that moving image material (or audiovisual material in a broader sense) must be promoted and safeguarded for posterity, since it reflects Europe's cultural heritage, everyday life and contemporary society. To effect this goal, two measures are proposed: First, States should introduce an obligation to deposit moving image material that is part of their heritage and that has been produced or co-produced on their territory. The second measure relates to the restoration of physically deteriorated moving image material which has been legally deposited.</p>
<p><a href="#">CoE Convention on Cinematographic Co-Production (revised)</a></p> <p>(CETS No. 220) of 2017</p> <p>Entry into force: 1.10.2017</p>	<p>This revised Convention, which updates the provisions of the 1992 European Convention on Cinematographic Co-production to reflect the deep transformations undergone by the film industry in the intervening period, provides, inter alia, a legal/financial framework for the co-production of feature-length films involving production companies established in three or more States Parties [see <i>summary from the CoE website</i> <a href="#">here</a>].</p> <p>Keeping pace with changes in the film industry and ensuring its continued relevance, the revised Convention reasserts that fostering the cultural diversity of the various European countries is one of the aims of the <a href="#">European Cultural Convention</a>. Moreover, the text draws on the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005) to argue that cultural diversity is a defining characteristic of humanity. Here, cinematographic co-production is recognised as an important means of creating and expressing diversity on a global scale, but it is also considered essential in maintaining and supporting democratic</p>



values and principles such as freedom of expression, democratic citizenship, creativity and diversity.

### 3.2 Mapping 'competitiveness' and 'cultural diversity' in funding instruments: the development and evolution of the EU legal framework for the audiovisual sector and the EFI

This subsection examines how concepts of competitiveness and cultural diversity concerning the audiovisual sector and the EFI have been framed and operationalised in EU funding instruments. The analysis focuses on the main funding schemes in European audiovisual and film governance: the MEDIA and Creative Europe programmes. Using its subsidiary competence to support creativity in the audiovisual sector (see Article 167(5) TFEU, in conjunction with Article 167(2) TFEU) and other Union competences, the Union has since 1991 been funding various MEDIA (*Mesures pour Encourager le Développement de l'Industrie Audiovisuelle* / Measures to encourage the development of the audiovisual industry) lines of action aimed at strengthening the European audiovisual industries (Irion and Valcke, 2015). Today, MEDIA is a part of the Creative Europe Programme, with 58% of the overall programme budget (Vlassis, 2022).

— Decision 90/685/EEC<sup>90</sup> (the **MEDIA programme**): The first MEDIA programme, published in 1990, sought to stimulate and increase the competitive supply capacity of European audiovisual products, with special regard for the role and requirements of small and medium-sized undertakings, the legitimate interests of all professionals who play a part in audiovisual creation, and the position of countries in Europe with smaller audiovisual production capacities and/or with a limited geographical and linguistic area.<sup>91</sup> Its aims and measures focused specifically on the

<sup>90</sup> Council Decision 90/685/EEC of 21 December 1990, concerning the implementation of an action programme to promote the development of the European audiovisual industry (MEDIA, 1991 to 1995), OJ L 380, p. 37-44.

<sup>91</sup> Ibid., Art. 2.



## D2.1 Competitiveness in European law

competitiveness side of the audiovisual industry, without paying specific attention to cultural diversity. The programme took as its legal base Article 235 TEEC, known as the flexibility clause of the TEEC. This provision enabled the EEC to act beyond the powers explicitly conferred upon it to pursue objectives connected to the internal market.

— Decision 95/563/EC<sup>92</sup> (**MEDIA II**): The MEDIA II Decision, adopted on the basis of Article 130(3) TEC (industry) presents a similar case: though none of the specific aims of the programme concerning the development of production projects and distribution specifically mentioned the promotion of such competitiveness, its stated aim was to increase the competitiveness of the audiovisual industry, particularly in the European market, by supporting the development of projects with a true distribution potential.<sup>93</sup> This changed in the 2000s with the MEDIA Plus programme and the programmes that followed it. Thus, MEDIA II introduced the specific aim of working towards respect for European linguistic and cultural diversity.<sup>94</sup>

— Decision 2000/821/EC<sup>95</sup> (**MEDIA Plus**): The MEDIA Plus programme, adopted on the basis of Article 157(3) (industry) TEC, sought to improve the competitiveness of the European audiovisual sector--including small and medium-sized enterprises--in European and international markets, by supporting the development, distribution and promotion of European audiovisual works and, in so doing, taking account of the development of new technologies.<sup>96</sup> It also had the stated aim of ensuring respect for, and the promotion of, linguistic and cultural diversity in Europe. Its specific goals in the fields of distribution and dissemination included supporting the linguistic diversity of European audiovisual and cinematographic works.<sup>97</sup>

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<sup>92</sup> Council Decision 95/563/EC of 10 July 1995 on the implementation of a programme encouraging the development and distribution of European audiovisual works (MEDIA II - Development and distribution) (1996 to 2000), OJ L 321, p. 25-32.

<sup>93</sup> Ibid, Art. 2(2).

<sup>94</sup> Ibid.

<sup>95</sup> Council Decision 2000/821/EC of 20 December 2000, on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus - Development, Distribution and Promotion) (2001-2005), OJ L 336, p. 82-91.

<sup>96</sup> Ibid., Art. 2(a) and (f).

<sup>97</sup> Ibid., Art. 3(f).



## D2.1 Competitiveness in European law

— Decision 1718/2006/EC<sup>98</sup> (**MEDIA 2007**): The MEDIA 2007 programme, enacted on the basis of Article 150(4) (vocational training) and Article 157(3) (industry) TEC, had the following main objectives: preserving and enhancing European cultural and linguistic diversity and its cinematographic and audiovisual heritage, guaranteeing its accessibility to the public, and promoting intercultural dialogue;<sup>99</sup> increasing the circulation and viewership of European audiovisual works inside and outside the EU, including through greater cooperation between players;<sup>100</sup> and strengthening the competitiveness of the European audiovisual sector in the framework of an open and competitive European market favourable to employment, including by promoting links between audiovisual professionals.<sup>101</sup> The specific objectives downstream of audiovisual production included encouraging the digitisation of European audiovisual works and the development of a competitive digital marketplace.<sup>102</sup> In addition, MEDIA 2007 recognised that the audiovisual sector is an essential vector for conveying and developing European cultural values and for creating highly-skilled future-oriented jobs, and that its creativity is a positive factor in competitiveness and public cultural appeal.<sup>103</sup> The programme therefore sought to strengthen the audiovisual sector economically, so that it could play its cultural roles more effectively by developing an industry with powerful and diversified content and a valuable and accessible heritage.<sup>104</sup>

— Decision 1041/2009/EC<sup>105</sup> (**MEDIA Mundus**): The 2009 MEDIA Mundus programme, also adopted on the basis of Articles 150(4) (vocational training) and Article 157(3) (industry) TEC, aimed to increase the competitiveness of the European audiovisual industry, to enable Europe to play its cultural and political role in the world more effectively in its external relations with third countries,

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<sup>98</sup> Decision 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007), OJ L 327, p. 12-29.

<sup>99</sup> *Ibid.*, Art. 1.2(a).

<sup>100</sup> *Ibid.*, Art. 1.2(b).

<sup>101</sup> *Ibid.*, Art. 1.2(c).

<sup>102</sup> *Ibid.*, Art. 5(d).

<sup>103</sup> *Ibid.*, Art. 1.2.

<sup>104</sup> *Ibid.*, Art. 1.2.

<sup>105</sup> Decision 1041/2009/EC of the European Parliament and of the Council of 21 October 2009 establishing an audiovisual cooperation programme with professionals from third countries (MEDIA Mundus), OJ L 288, p. 10-17.



## D2.1 Competitiveness in European law

and to increase consumer choice and cultural diversity.<sup>106</sup> It also aimed to improve access to third-country markets, to build trust and long-term working relationships,<sup>107</sup> and to help strengthen the Union's horizontal policies and principles by i) promoting the fundamental principle of freedom of expression;<sup>108</sup> ii) raising awareness of the importance of cultural diversity, common values, intercultural dialogue and multilingualism in the world;<sup>109</sup> and iii) helping to combat all forms of discrimination based on sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.<sup>110</sup> It is noteworthy that while the MEDIA Mundus programme is no longer in force, the MEDIA programme still exists under the Creative Europe schemes.

— Regulation (EU) 1295/2013<sup>111</sup> (**the Creative Europe Programme 2014-2020**): The Creative Europe Programme, founded on the basis of Article 166(4) (vocational training), Article 167(5) (culture) and Article 173(3) (industry) TFEU, sought to strengthen the competitiveness of the European cultural and creative sectors, and of the audiovisual sector in particular, with a view to promoting smart, sustainable and inclusive growth.<sup>112</sup> On cultural diversity, Creative Europe 2014-2020, as its successor Creative Europe 2021-2027, aimed to safeguard, develop and promote European cultural and linguistic diversity and to promote Europe's cultural heritage,<sup>113</sup> with Creative Europe 2021-2027 expanding this aim to include the promotion of policy cooperation and innovative actions supporting all strands of the Programme,<sup>114</sup> as well as the promotion of a diverse,

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<sup>106</sup> Ibid., Art. 1.2.

<sup>107</sup> Ibid., Art. 1.2.

<sup>108</sup> Ibid., Art. 11(b).

<sup>109</sup> Ibid., Art. 11(c).

<sup>110</sup> Ibid., Art. 11(e).

<sup>111</sup> Regulation (EU) 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC, OJ L 327, p. 221-237.

<sup>112</sup> Ibid., Art. 3(b).

<sup>113</sup> Ibid., Art. 3(a).

<sup>114</sup> The Programme covers three main strands: (i) the Culture strand, which covers all cultural and creative sectors with the exception of the audiovisual sector; (ii) the Media strand, which covers the audiovisual sector; (iii) the Cross-sectoral strand, which covers actions across all cultural and creative sectors.



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independent and pluralistic media environment along with media literacy, thereby fostering freedom of artistic expression, intercultural dialogue and social inclusion.<sup>115</sup>

— Regulation (EU) 2021/818<sup>116</sup> (**the Creative Europe Programme 2021-2027**): The 2021-2027 Creative Europe Programme, adopted on the same legal bases as the Creative Europe Programme 2014-2020, aims to increase the competitiveness and economic potential of the cultural and creative sectors, and the audiovisual sector in particular,<sup>117</sup> and to promote competitiveness, scalability, cooperation, innovation and sustainability, including through mobility, in the European audiovisual sector.<sup>118</sup> These aims of the Creative Europe Programme for 2021-2027, and the measures that the programme foresees, will be presented in the following section with a focus on how they seek to help strengthen Europe's identity and values while promoting cultural and linguistic diversity.<sup>119</sup>

**Table 5: The funding instruments under study**

EU Legislative Act	Legal Force	Official Journal of the EU
<b>The MEDIA Programme</b>		
<b>Decision <a href="#">90/685/EEC</a> (MEDIA)</b>	<b>No longer in force</b>  - Date of end of validity: 31.12.1995	OJ L 380, 1.12.1990, p. 37–44
<b>Decision <a href="#">95/563/EC</a> (MEDIA II)</b>	<b>No longer in force</b>  - Date of end of validity: 31.12.2000	OJ L 321, 30.12.1995, p. 25–32
<b>Decision <a href="#">2000/821/EC</a> (MEDIA Plus)</b>	<b>No longer in force</b>  - Date of end of validity: 31.12.2006	OJ L 336, 30.12.2000, p. 82–91

<sup>115</sup> Regulation (EU) 2021/818, Art. 3.2(c).

<sup>116</sup> Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013, OJ L 189, p. 34-60.

<sup>117</sup> Ibid., Art.3.1(b).

<sup>118</sup> Ibid., Art. 3.2(b).

<sup>119</sup> Ibid., Preamble, Recital 12.





<b>Decision <a href="#">1718/2006/EC</a> (MEDIA 2007)</b>	<b>No longer in force</b> - Date of end of validity: 31.12.2013	OJ L 327, 24.11.2006, p. 12–29
<b>Decision <a href="#">1041/2009/EC</a> (MEDIA Mundus)</b>	<b>No longer in force</b> - Date of end of validity: 31.12.2013	OJ L 288, 4.11.2009, p. 10–17
<b><i>The Creative Europe Programme</i></b>		
<b>Regulation (EU) <a href="#">1295/2013</a> (Creative Europe Programme 2014-2020)</b>	<b>No longer in force</b> - Date of end of validity: 31.12.2020	OJ L 347, 20.12.2013, p. 221–237
<b>Regulation (EU) <a href="#">2021/818</a> (Creative Europe Programme 2021-2027)</b>	<b>In force</b>	OJ L 189, 28.5.2021, p. 34–60

### 3.2.1 Promoting ‘competitiveness’

This subsection presents how ‘competitiveness’ is understood in the legal instruments that provide financial assistance to the European audiovisual industry and film sector. Prior to the 2000s, indirect references to competitiveness are the key to grasping the concept in the instruments studied, as direct references are less common. After the 2000s, the indirect references become both more limited and less relevant, since the direct references to competitiveness become both more numerous and more detailed.

#### 3.2.1.1 Competitiveness in the pre-Maastricht era

The 1990 **MEDIA programme** referred to competitiveness only in relation to its stated aim of stimulating and increasing the competitive supply capacity of European audiovisual products,<sup>120</sup> which was this instrument’s main competitiveness-related topic. Beyond this, the programme sought to promote competitiveness indirectly by helping to create a favourable environment within which

<sup>120</sup> Decision 90/685/EEC, Art. 2.



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Community undertakings would act as a driving force alongside those from other European countries. It would do so by: i) stimulating and increasing the competitive supply capacity of European audiovisual products, with special regard for the role and requirements of SMEs and countries in Europe with smaller audiovisual production capacities and/or a limited geographical and linguistic area; ii) encouraging the interdependence of the various sectors of the audiovisual industry; iii) ensuring that action taken at European level complements that taken at national level; iv) improving the economic and commercial management abilities of professionals in the audiovisual industry, and v) in conjunction with existing institutions in the Member States, creating conditions which would enable undertakings in that sector to take full advantage of the single market dimension.<sup>121</sup> Additionally, the MEDIA programme sought to: i) step up intra-European exchanges of films and audiovisual programmes; ii) make maximum use of the various means of distribution which either existed or had still to be set up in Europe with a view to securing a better return on investment, wider dissemination and greater public impact; iii) increase the share of world markets controlled by European production and distribution companies; and iv) promote access to and use of the new communications technologies in the production and distribution of audiovisual material.<sup>122</sup> This illustrates how using the various means of distribution can be helpful for competitiveness. In addition, improving the economic and commercial management abilities of professionals in the European audiovisual industry was also a factor related to competitiveness, since it should enable the sector to take full advantage of the single market.<sup>123</sup>

### 3.2.1.2 Competitiveness in the pre-Lisbon era

The 1995 **MEDIA II programme** relied more on direct references to competitiveness than its predecessor, but it also had a broad range of indirect references. To start with, the programme took

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<sup>121</sup> Ibid., Art. 2.

<sup>122</sup> Ibid., Art. 2.

<sup>123</sup> Ibid., Art. 2.



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the 1993 White Paper on 'Growth, competitiveness and employment' as a frame of reference;<sup>124</sup> this supported an industrial development approach based on global competitiveness as the key to growth and employment. The programme also argued that the competitiveness of Europe's audiovisual programme industry required the use of new techniques at the programme development stage,<sup>125</sup> and that the competitiveness of the industry should be enhanced through support for the development of projects with a true distribution potential.<sup>126</sup> New technologies and the distribution potential of projects were thus the two main factors to which competitiveness was directly linked. To achieve competitiveness, the programme considered actions related to the distribution potential of projects: a special film subsidy,<sup>127</sup> the promotion of networking between distributors and publishers,<sup>128</sup> support for linguistic diversity,<sup>129</sup> the promotion of cinema attendance at a European film outside its national territory through a subsidy,<sup>130</sup> improved access for independent producers and distributors.<sup>131</sup> A system of support in the form of guaranteed receipts was also intended to encourage exhibitors to include a significant showing of European films in commercial first-appearance cinemas for a minimum exhibition period.<sup>132</sup> At the development phase, the programme sought to provide assistance with writing techniques, with making financial arrangements, with preparing business plans for the development of project packages with European market potential, with encouraging a favourable environment for companies in the sector to launch initiatives employing new technology and animation, and with promoting their networking.<sup>133</sup>

At an indirect level, the main factors that were listed as having the potential to improve competitiveness were: i) an improvement in the circulation prospects of European cinematographic

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<sup>124</sup> European Commission (1993). White Paper 'Growth, competitiveness, employment: the challenges and ways forward into the 21st century'. COM\_1993\_0700\_FIN. Available at: <<https://op.europa.eu/en/publication-detail/-/publication/4e6ecfb6-471e-4108-9c7d-90cb1c3096af/language-en>>

<sup>125</sup> Decision 95/563/EC, Art. 2.1.

<sup>126</sup> Ibid., Art. 2.2.

<sup>127</sup> Ibid., Annex, 1.2.1.

<sup>128</sup> Ibid., Art. 2.

<sup>129</sup> Ibid., Annex, 1.2.2.

<sup>130</sup> Ibid., Annex, 1.2.1(b).

<sup>131</sup> Ibid., Annex, 1.2.3.

<sup>132</sup> Ibid., Annex, 1.2.1(c).

<sup>133</sup> Ibid., Annex, 1.1.



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works on the market, together with increased cooperation between distributors, cinema owners and producers;<sup>134</sup> an improvement in the television broadcasting prospects of European works on the market and increased cooperation between broadcasters and producers;<sup>135</sup> the promotion of the circulation of European television programmes developed in cooperation by European producers and broadcasters;<sup>136</sup> a levelling-up of European countries by developing the potential in countries or regions with a low audiovisual production capacity and/or a restricted geographical and linguistic area;<sup>137</sup> and the development of an independent production and distribution sector, with a focus on SMEs.<sup>138</sup> Together with these additional factors, it is interesting to note the emphasis that was placed on cooperative action among stakeholders and on the deepening of the European single market. From this perspective, competitiveness was placed in the context of the economic importance of the audiovisual industry, of global competitiveness and of the information society, which shaped the understanding and evolution of the concept of competitiveness in the 1990s.

Moving on, the 2000 **MEDIA Plus** was the first MEDIA programme to relate the concepts of competitiveness and cultural diversity. It did so by referring to the 1998 Council's outcomes of the European Audiovisual conference, which stated 'the desirability of encouraging the development of a strong and competitive European audiovisual programme industry, taking particular account of Europe's cultural diversity and the specific conditions in restricted linguistic areas'.<sup>139</sup> Here, increased public support was presented as a main factor in strengthening the competitiveness of the European audiovisual industry, along with the use of new technologies at the programme development, production and distribution stages, which required a specific focus on the needs and potential of SMEs operating in the audiovisual market.<sup>140</sup> Start-ups, high-tech firms and micro-enterprises appeared for the first time as key players in the sector. The industry's access to capital

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<sup>134</sup> Ibid., Preamble, Recital 16.

<sup>135</sup> Ibid., Preamble, Recital 13.

<sup>136</sup> Ibid., Art. 2.2.

<sup>137</sup> Ibid., Art. 2.2.

<sup>138</sup> Ibid., Art. 2.2.

<sup>139</sup> Decision 2000/821/EC, Preamble, Recital 2.

<sup>140</sup> Ibid., Art. 1.2(a)



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markets was also identified as a factor in its competitiveness.<sup>141</sup> Finally, competitiveness was referred to not only in a European context, but also clearly in the framework of international markets, where European audiovisual firms and projects should also increase their competitiveness.<sup>142</sup>

Looking at indirect references, creating jobs in the industry was added as a final factor impacting its competitiveness.<sup>143</sup>

Having understood competitiveness thus, the programme aimed to promote it through a range of measures. The Commission committed to increase public support, thereby enhancing the competitiveness of the European audiovisual industry in line with the Communication 'Audiovisual Policy: Next Steps'.<sup>144</sup> It also sought to ensure suitable and effective coordination with the measures undertaken in the field of new technologies, and in particular the Fifth Framework Programme for research, technological development and demonstration activities (1998-2002), as adopted by Decision No 182/1999/EC of the European Parliament and of the Council,<sup>145</sup> and the future Sixth Framework Programme, in order to achieve consistency with the measures to be undertaken under those programmes, focusing in particular on the needs and potential of SMEs operating on the audiovisual market. The aim was to ensure an effective use of new technologies at the programme development, production and distribution stages. Finally, in accordance with the Conclusions of the Lisbon European Council, the Council and the Commission committed to report by the end of 2000 on the ongoing review of the European Investment Bank (EIB) and the European Investment Fund (EIF) financial instruments in order to redirect funding towards business start-ups, high-tech firms and micro-enterprises. They would also report on other risk capital initiatives and guarantee

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<sup>141</sup> Ibid., Preamble, Recital 23.

<sup>142</sup> Ibid., Preamble, Recitals 29-30.

<sup>143</sup> Ibid., Preamble, Recital 26.

<sup>144</sup> European Commission (1998). Communication from the Commission to the European Parliament and the Council of Ministers 'Audiovisual Policy: Next Steps'. COM(1998)446 final.

<sup>145</sup> Decision No 182/1999/EC of the European Parliament and of the Council of 22 December 1998 concerning the fifth framework programme of the European Community for research, technological development and demonstration activities (1998 to 2002). OJ L 26, 1.2.1999, p. 1-33.



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arrangements proposed by the EIB and the EIF, with a particular focus on the audiovisual industry, in order to improve its access to capital markets and increase its competitiveness.<sup>146</sup>

The **MEDIA 2007 programme** focused exclusively on direct references to competitiveness. In this context, competitiveness was associated with increasing the market share in Europe of non-national European works.<sup>147</sup> European support was mentioned as a key factor in this respect, as well as the need for more companies specialising in the provision of loan financing to the audiovisual sector. Increased transparency and the dissemination of information were also seen as making operators in the sector--and SMEs in particular--more competitive, as they increased private investors' confidence by improving their understanding of the industry's potential.<sup>148</sup> Similarly, making it easier to compare data collected in different countries, and ensuring that operators have access to financial and legal statistics and information,<sup>149</sup> were both factors that were considered to influence competitiveness. Cooperation in the form of EU-wide projects was also viewed as strategically important for the competitiveness of the EFI. Notably, creativity was listed for the first time as a positive factor in competitiveness and the cultural appeal of European audiovisual products with the public.<sup>150</sup> An open market favourable to employment which promotes links between audiovisual professionals was also key for the competitiveness of the European film industry, along with the digitisation of more European audiovisual works and the development of a competitive digital marketplace. As a result, the focus was placed on cooperation once again, both between Member States, but also among the various EU programmes that dealt with the audiovisual industry. Thus, along with many other market-related factors that influence competitiveness, the MEDIA 2007 programme also acknowledged the relevance of soft factors such as creativity and public appeal.

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<sup>146</sup> Decision 2000/821/EC, Preamble, Recital 23.

<sup>147</sup> Decision 1718/2006/EC, Preamble, Recital 1.

<sup>148</sup> Ibid., Preamble, Recital 16.

<sup>149</sup> Ibid., Art. 18(a).

<sup>150</sup> Ibid., Art. 1.2.



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The measures foreseen for enhancing the European audiovisual sector's ability to compete and develop were as follows: i) encouraging transparency in the market by enhancing the comparability of data collected in different countries and ensuring that operators have access to financial and legal statistics and information, especially on Member States which acceded to the Union after 30 April 2004;<sup>151</sup> and ii) ensuring that the EU continued to participate in the European Audiovisual Observatory,<sup>152</sup> with a view to facilitating the dissemination of information in the sector and access to it for operators, while also contributing to greater transparency in the production process. The programme would also allow the EU to explore possibilities for cooperation through the Eurimages Support Fund (though not in financial and/or administrative spheres)<sup>153</sup> with a view to increasing the competitiveness of the European audiovisual sector on the international market. This would be done by ensuring an effective liaison between the Media 2007 programme, on the one hand, and programmes and actions in the training and audiovisual fields, on the other, taking place within the framework of Community cooperation with non-member countries and relevant international organisations (Eurimages and the European Audiovisual Observatory in particular).<sup>154</sup> It would also be achieved by monitoring the Community's audiovisual policy measures.

The 2009 **MEDIA Mundus** programme located competitiveness in the context of the Lisbon agenda, together with the need to boost skills, growth and jobs in the knowledge-based economy.<sup>155</sup> Financial support was mentioned as a key factor in increasing competitiveness, together with information exchange and training, and the distribution, circulation and exhibition of audiovisual content.<sup>156</sup> Overall, knowledge was mentioned here as the factor most pertinent to increasing the global competitiveness of the European film industry.<sup>157</sup> Of the indirect references, the last relevant factor could be said to be the link between the EU's internal and external policies, which could allow Europe

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<sup>151</sup> Ibid., Art. 18.

<sup>152</sup> Ibid., Art. 17.

<sup>153</sup> Ibid., Preamble, Recital 20. Further detailed in the Annex, Chapter II.3.

<sup>154</sup> Ibid., Art. 13.3.

<sup>155</sup> Decision 1041/2009/EC, Preamble, Recital 1.

<sup>156</sup> Ibid., Preamble, Recital 19.

<sup>157</sup> Ibid., Art. 11(d).



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to share in the new opportunities created by markets, globalisation and an open society capable of absorbing people, ideas and new technologies.<sup>158</sup> This brings us back to the importance of knowledge, as discussed above.

To improve the competitiveness of the European audiovisual industry and the distribution of European works outside Europe (and those of third countries within Europe), the programme sought i) to facilitate the search for third-country partners for European works; ii) to support the organisation of co-production markets and partner search events (pitching), with a view to bringing possible partners (e.g. screenwriters, directors, actors, producers and distributors) together;<sup>159</sup> and iii) to encourage international sales and the promotion of European works in third-country markets and audiovisual works from third countries in Europe. The programme also sought to encourage the drawing up of agreements between groupings of rights-holders, sales agents and distributors to ensure distribution (e.g. in cinemas, on TV, IPTV, Web TV and VOD platforms) and promotion<sup>160</sup> with a view to improving the competitiveness of the European audiovisual industry and the distribution of European works outside Europe and those of third countries within Europe.

### 3.2.1.3 Competitiveness in the post-Lisbon era

The first **Creative Europe Programme 2014-2020** had a wide range of direct references to the concept of competitiveness, which help elucidate how it is used and what are the main factors that underlie it. The programme started by stating its dual focus: protecting the cultural diversity of the Union and promoting the competitiveness of its cultural and creative industries. Following on from Media 2007 and Media Mundus but going one step forward, the programme mentioned innovation and creativity<sup>161</sup> and the development of a smart, sustainable and inclusive economy with high levels

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<sup>158</sup> Ibid., Preamble, Recital 7.

<sup>159</sup> Ibid., Art. 6(a).

<sup>160</sup> Ibid., Art. 6(b).

<sup>161</sup> Regulation 1295/2013, Preamble, Recital 7.





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of employment, productivity and social cohesion<sup>162</sup> as an engine for growth and competitiveness in the cultural and creative sectors. Competitiveness was placed at the same level as excellence, and both were seen as resulting from the work of artists, creators and professionals whose efforts need to be promoted.<sup>163</sup> In this respect, access to finance was listed once again as a relevant factor, especially in relation to SMEs,<sup>164</sup> but also as a route to greater internationalisation.

The programme therefore committed itself to improving the cultural and creative sectors' access to finance; to promoting excellence alongside competitiveness; to supporting and supplementing Member States' actions with respect to cultural and linguistic diversity, in accordance with Article 167 TFEU and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;<sup>165</sup> to strengthening the competitiveness of the cultural and creative sectors; and to facilitating their adaptation to industrial changes.<sup>166</sup>

The second **Creative Europe Programme 2021-2027** states that education and culture are crucial for sustaining European competitiveness, along with creativity, new knowledge and innovation in industrial value change.<sup>167</sup> It follows the same general line as its predecessor, but places more emphasis on the dichotomy between the artistic value of culture and the economic value of the cultural and creative sectors, with the latter contributing more directly to their growth, competitiveness, creativity, innovation, scalability and sustainability.<sup>168</sup> The programme also maps the economic importance of the audiovisual sector in relation to other creative sectors. It recognises that competition in cultural and creative sectors has been further intensified by the deepening digital shift--changes in media production and consumption, for example, or the growing importance of global platforms in the distribution of content. There is therefore a need to step up support for

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<sup>162</sup> Ibid., Preamble, Recital 7.

<sup>163</sup> Ibid., Preamble, Recital 7.

<sup>164</sup> Ibid., Art. 14(a).

<sup>165</sup> UNESCO (2005). 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. *United Nations UNESCO*. Available at: <<https://www.unesco.org/creativity/en/2005-convention>>

<sup>166</sup> Regulation 1295/2013, Preamble, Recital 1.

<sup>167</sup> Regulation 2021/818, Preamble, Recital 1.

<sup>168</sup> Ibid., Preamble, Recital 9.



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Europe's creative industry.<sup>169</sup> Finally, the programme addresses the structural challenges of Europe's cultural and creative sectors for the first time, as these had been exacerbated by the COVID-19 pandemic;<sup>170</sup> obviously, this had not been a factor in previous funding programmes. As a result, competitiveness is positioned less in relation to excellence here than to resilience, which has become a major factor in addressing future crises and the digital and ecological transition. The indirect references identify economies of scale, growth and jobs as additional factors affecting competitiveness,<sup>171</sup> along with innovation and mobility in Europe's cultural and creative sectors.<sup>172</sup>

In pursuit of competitiveness, and taking into account the intensification of competition in global audiovisual markets as a result of the digital shift, Creative Europe 2021-2027 sets out to step up support for the European film industry, and to enhance its capacity to reach diverse audiences and its economic importance, including its economic importance for other creative sectors.<sup>173</sup> In addition, the programme, together with other relevant Union funding programmes and Next Generation EU, aims to support the short-term recovery of the cultural and creative sectors in the wake of COVID-19; to enhance their longer-term resilience and competitiveness, putting them in the best possible position to weather possible major crises in the future; and to accompany them through their digital and green transitions.<sup>174</sup>

Overall, the legal instruments dealing with the funding of the European audiovisual industry display a clear evolution in their understanding of competitiveness. First, creativity and innovation appear as major factors from the very first funding programmes, alongside more traditional market-related elements. Second, cooperation in terms of support and market integration among countries and stakeholders is repeatedly presented as crucial for increasing competitiveness and growth, sometimes through the lens of excellence. Finally, the structural challenges posed by new

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<sup>169</sup> Ibid., Preamble, Recital 9.

<sup>170</sup> Ibid., Preamble, Recital 44.

<sup>171</sup> Ibid., Art. 3.4(c).

<sup>172</sup> Ibid., Art. 3.2(a).

<sup>173</sup> Ibid., Preamble, Recital 9.

<sup>174</sup> Ibid., Preamble, Recital 44.



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technologies, the digitalisation of the audiovisual industry and the COVID-19 pandemic brought the concept of resilience to the forefront for the first time as a major determinant of the future competitiveness (and survival) of the European audiovisual industry.

### 3.2.2 Promoting ‘cultural diversity’

This subsection presents how ‘cultural diversity’ is understood in the legal instruments that provide financial assistance to the European audiovisual industry and the EFI. Since the Maastricht treaty, cultural diversity has been a key issue in funding programmes for the European audiovisual industry. Specifically, the protection and promotion of the cultural diversity and cultural heritage of Member States are a recurring topic in the EU’s funding programmes for the audiovisual sector, as is strengthening a European identity and European values, and as is being open to--and making exchange with--other world cultures. This subsection provides a detailed overview of how the concept of cultural diversity is captured in the various funding programmes, as well as how the instruments’ understanding of the term has evolved since the 1990s.

#### 3.2.2.1 Cultural diversity in the pre-Maastricht era

The first **MEDIA programme**, which was approved in 1990, provided a limited understanding of cultural diversity, with only one express mention of ‘diversity’ and ‘culture’. The programme viewed the audiovisual sector as an opportunity to demonstrate the richness and diversity of European culture.<sup>175</sup>

#### 3.2.2.2 Cultural diversity in the post-Maastricht era

If we proceed to 1995, the **MEDIA II programme** reveals an expanded understanding of cultural diversity, which is both listed as a main objective of the programme and described as referring to ‘European linguistic and cultural diversity’.<sup>176</sup> The reflection of Europe’s cultural diversity in the

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<sup>175</sup> Decision 90/685/EEC, Preamble, Recital 1.

<sup>176</sup> Decision 95/563/EC, Art. 2.2.



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audiovisual industry was portrayed as having a geographic component that could be conveyed with a 'good geographical spread among the professionals participating in the programme',<sup>177</sup> especially given the fact that some countries are linguistically or geographically restricted. A second component that appeared was that of Europe's audiovisual heritage.<sup>178</sup>

To promote these two components of diversity, the programme established measures such as a subsidy system for cinema distributors<sup>179</sup> and a support system for audiovisual works which encouraged exhibitors to include a significant showing of European films in commercial first-appearance cinemas.<sup>180</sup> It specifically sought to actively support linguistic diversity in audiovisual works (dubbing, subtitling and multilingual production) by granting support to audiovisual works which presented an interest in enhancing European cultural diversity.<sup>181</sup> The Commission was also required to pay particular attention to the specific needs of countries which had a low production capacity and/or were linguistically or geographically restricted, as well as to develop the independent production and distribution sector, and in particular the SMEs within those sectors.<sup>182</sup>

The concept of cultural diversity is more markedly present in the **MEDIA Plus programme** of 2000 and all subsequent programmes. MEDIA Plus specifically stated that efforts to develop a strong and competitive European audiovisual programme industry had to pay special heed to Europe's cultural diversity and to the specific conditions in restricted linguistic areas.<sup>183</sup> Thus, cultural policies at national and European level should henceforth seek to preserve cultural diversity, including through public support. Significantly, the concept of cultural 'pluralism' was also introduced into European funding programmes for the first time.<sup>184</sup> The promotion of European cultural diversity was located within the global economy, and cooperation with non-European third countries was presented as a

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<sup>177</sup> Ibid., Annex 2.1.

<sup>178</sup> Ibid., Art. 2.1.

<sup>179</sup> Ibid., Annex 1.2.1(a).

<sup>180</sup> Ibid., Annex 1.2.1(c).

<sup>181</sup> Ibid., Annex 1.2.2.

<sup>182</sup> Ibid., Annex 2.1.

<sup>183</sup> Decision 2000/821/EC, Preamble, Recital 2.

<sup>184</sup> Ibid., Preamble, Recital 16.



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way to derive added value from European works in those countries. The concept of showing 'respect' for linguistic and cultural diversity was also expressly noted,<sup>185</sup> as was 'multilingualism' and its place in European film-making as an aspect of diversity.<sup>186</sup> The programme also stated that public access to Europe's audiovisual heritage should be improved through its digitisation and via networking among stakeholders at a European level;<sup>187</sup> these were the first mentions of the digital and networking components in EU funding instruments. The three main aspects referred to were thus cultural diversity, linguistic diversity and heritage.

The Media Plus programme established eight main measures designed to enhance cultural diversity. First, offering financial assistance to enterprises in the audiovisual sector to incentivise business strategies that reflect and promote diversity. A contribution of 50% of project costs was offered, which could be raised to 60% for projects which served to enhance European linguistic and cultural diversity.<sup>188</sup> Second, supporting the multilingual aspects of European film-making (dubbing, subtitling, multilingual production and international sound tracking), with such support taking the form of a subsidy intended inter alia to finance the linguistic diversity of works.<sup>189</sup> Third, paying special attention to films which served to enhance Europe's heritage, and linguistic and cultural diversity when selecting beneficiaries.<sup>190</sup> Fourth, raising reinvestment arrangements for investment in the production stage, and in films that are of interest because they enhance European linguistic and cultural diversity, from 50% to 60%.<sup>191</sup> Fifth, supporting the linguistic diversity of European productions (dubbing, subtitling and multilingual production) in their off-line distribution.<sup>192</sup> Sixth, ensuring that part of the support given to television broadcasters goes towards financing the linguistic diversity of works (including production of the sound track - music and effects) in the form

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<sup>185</sup> Ibid., Annex 1.2(c).

<sup>186</sup> Ibid., Annex 1.2.1(a).

<sup>187</sup> Ibid., Preamble, Recital 32.

<sup>188</sup> Ibid., Annex 1.1.

<sup>189</sup> Ibid., Annex 1.2.1(a).

<sup>190</sup> Ibid., Annex 1.2.3.

<sup>191</sup> Ibid., Annex 1.2.1(b).

<sup>192</sup> Ibid., Annex 1.2.2.



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of a subsidy.<sup>193</sup> Seventh, raising support in the fields of promotion and access to professional markets and festivals from 50% to 60% for projects that promote European linguistic and cultural diversity.<sup>194</sup> Finally, in implementing the programme, the Commission [...] should work closely with the Member States, consult the partners concerned and ensure that the participation of professionals in the programme reflects European cultural diversity.<sup>195</sup>

Next, the **MEDIA 2007 programme** also drew attention to Article 22 of the Charter which affirms that the Union is to respect cultural and linguistic diversity.<sup>196</sup> Special attention should thus be paid to smaller Member States, and to those with more than one linguistic area.<sup>197</sup> The programme also contemplated the strategic component defined for the Union by the Lisbon European Council of 23-24 March 2000 of 'exploiting and networking European cultural diversity' for the knowledge-based economy;<sup>198</sup> this was translated into the programme action supporting the networking and mobility of European training professionals, in particular in European film schools, training institutes and professional sector partners.<sup>199</sup> Importantly, Media 2007 also introduced the fragmentation component of cultural and linguistic diversity in the European audiovisual market.<sup>200</sup> This was said to have resulted in a large number of chronically undercapitalised SMEs and very small enterprises, and thus to define the nature of the audiovisual sector;<sup>201</sup> this should be taken into account when defining public and private support and administrative and financial procedures. In addition, heritage was mentioned once again as a key factor, along with intercultural dialogue, which appeared as a significant factor for the first time.<sup>202</sup> Finally, the programme stressed the key role that the European audiovisual sector plays in the emergence of European citizenship as a vector for conveying the

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<sup>193</sup> Ibid., Annex 1.2.1(a).

<sup>194</sup> Ibid., Annex 1.3.1.

<sup>195</sup> Ibid., Annex 2.1.

<sup>196</sup> Decision 1718/2006/EC, Preamble, Recital 4.

<sup>197</sup> Ibid., Preamble, Recital 4.

<sup>198</sup> Ibid., Preamble, Recital 6.

<sup>199</sup> Ibid., Art. 3.2(a).

<sup>200</sup> Ibid., Preamble, Recital 8.

<sup>201</sup> Ibid., Preamble, Recital 12.

<sup>202</sup> Ibid., Art.1.2(a).



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Union's common and shared fundamental social and cultural values to Europeans in general, and young people in particular.<sup>203</sup> It can do so by promoting intercultural dialogue, raising mutual awareness among Europe's cultures, and developing the political, cultural, social and economic potential of the European Union. The improvement in public access to Europe's cinematographic and audiovisual heritage at both the European and international level was also listed as a necessary factor.

For this, the programme provided special support to films of interest for the development of European cultural and linguistic diversity.<sup>204</sup> It also encouraged independent producers to produce works (drama, documentary and animation) involving the participation of at least three broadcasters from different Member States, so that geographical diversity is implemented in the distribution of works supported, and granted support to films of interest for the enhancement of Europe's cultural and linguistic diversity and audiovisual heritage, as part of the objective to promote the transnational broadcasting of European audiovisual works produced by independent production companies.<sup>205</sup> Moreover, the programme prioritised and supported festivals contributing to the promotion of works from Member States or regions with low audiovisual production capacity and of works produced by young Europeans, and/or works that enhance cultural and linguistic diversity and intercultural dialogue.<sup>206</sup> Its financial contribution could exceptionally exceed 50% of the costs of the operations supported, if the project spotlights the value of European linguistic and cultural diversity. In the implementation phase, the Commission committed itself to ensuring that the participation of professionals in the programme reflects European cultural diversity in a balanced way.<sup>207</sup> Clearly then, as can be seen from previous analysis and in the respective annexes of the two texts, there was a high level of continuity between the measures foreseen by MEDIA Plus and MEDIA 2007.

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<sup>203</sup> Ibid., Preamble, Recital 1.

<sup>204</sup> Ibid., Annex, Chapter I, 3.2.

<sup>205</sup> Ibid., Annex, Chapter I, 3.3.

<sup>206</sup> Ibid., Annex, Chapter I, 4.2.

<sup>207</sup> Ibid., Annex, Chapter II, 4.



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The 2009 **MEDIA Mundus programme** noted that ‘the audiovisual sector makes an important contribution to the European creative and knowledge economy and plays a central role in promoting cultural diversity and pluralism, as well as being an important platform for freedom of speech’.<sup>208</sup>

Thus, reference here was made to two previously mentioned topics, the knowledge economy and pluralism, and a new one: freedom of speech. Cooperation with third countries was again presented as a main avenue for Union support of cultural diversity, with the addition of ‘competent international organisations in the sphere of culture’ as a partner in the promotion of cultural diversity.<sup>209</sup> Culture was considered a vital element in international relations and should thus play a key role in the EU’s external relations and development policy. The main action to be implemented towards this aim was the provision of support for networking between European and third-country film literacy initiatives, in particular those aimed at young audiences, to promote the diversity of audiovisual works internationally.<sup>210</sup>

Overall, the MEDIA Mundus programme encouraged intercultural dialogue and common values, with multilingualism considered a part of the efforts being made to promote Europe’s cultural diversity externally.<sup>211</sup> It also stated that increasing the competitiveness of the European audiovisual industry should enable Europe to play its cultural and political role in the world more effectively, and in so doing to increase consumer choice and cultural diversity.<sup>212</sup> Finally, freedom of expression was introduced as an indirect factor in promoting cultural diversity and combating all forms of discrimination.<sup>213</sup>

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<sup>208</sup> Decision 1041/2009/EC, Preamble, Recital 2.

<sup>209</sup> *Ibid.*, Preamble, Recital 4.

<sup>210</sup> *Ibid.*, Art. 7(c).

<sup>211</sup> *Ibid.*, Art. 11(c).

<sup>212</sup> *Ibid.*, Art. 1.2.

<sup>213</sup> *Ibid.*, Art. 11(b) and Art.11(e).





### 3.2.2.3 Cultural diversity in the post-Lisbon era

The **Creative Europe Programme 2014-2020** established respect for Member States' national and regional diversity, together with the promotion of the conditions necessary for the competitiveness of the Union's industry, and the promotion of a closer union, as the guiding principles of the programme, in line with the TFEU.<sup>214</sup> Moreover, it viewed culture as a catalyst for creativity in the context of growth and jobs, and as a vital element in the Union's international relations.<sup>215</sup> In line with the MEDIA Mundus programme, it viewed the cultural and creative sectors as key contributors in the fight against all forms of discrimination, and as an important platform for freedom of expression.<sup>216</sup> The programme also noted the dual nature of cultural activities as economic and cultural goods, observing that they convey identities, values and meanings beyond their commercial value, and advocated for international cooperation and solidarity in support of the cultural expression of all countries and individuals in line with the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>217</sup> For the first time, it was stated that special attention should be paid to various social groups, including minorities.<sup>218</sup> Moreover, the challenges facing the cultural and creative sectors were highlighted: the digital shift and globalisation, market fragmentation relating to linguistic diversity, difficulties in accessing finance, complex administrative procedures and a shortage of comparable data.<sup>219</sup> More saliently, concerning fragmentation, it was noted that:

'The European cultural and creative sectors are inherently diversified along national and linguistic lines, which results in a culturally rich and highly independent cultural landscape, providing a voice for the different cultural traditions of Europe's heritage. However, such diversification also gives rise to a series of obstacles that impede the smooth transnational circulation of cultural and creative

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<sup>214</sup> Regulation 1295/2013, Preamble, Recital 1.

<sup>215</sup> *Ibid.*, Preamble, Recital 3.

<sup>216</sup> *Ibid.*, Preamble, Recital 4.

<sup>217</sup> *Ibid.*, Preamble, Recital 5.

<sup>218</sup> Regulation 1295/2013, Preamble, Recital 5.

<sup>219</sup> *Ibid.*, Preamble, Recital 10.



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works and hamper the mobility of cultural and creative players within and outside the Union, which can lead to geographical imbalances and, subsequently, to a limited choice for the consumer'.<sup>220</sup>

However, Creative Europe went on to list the solutions that audiovisual works had at their disposal for overcoming fragmentation along linguistic lines, which include subtitling, dubbing and audio description. The programme sought to foster cultural diversity at the international level, in line with the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions,<sup>221</sup> by supporting the capacity of European cultural and creative sectors to operate transnationally and internationally, promoting the transnational circulation of their works, strengthening the financial capacity of SMEs, and fostering policy development, innovation, creativity, audience development and new business and management models.<sup>222</sup> The MEDIA sub-programme should thus support initiatives presenting and promoting a diversity of European audiovisual works/initiatives, including short films, festivals and other promotional events.<sup>223</sup> It also contemplated activities aimed at promoting film literacy and at increasing audiences' knowledge of, and interest in, European audiovisual works, to preserve and promote European heritage among young audiences in particular.<sup>224</sup>

The **Creative Europe Programme 2021-2027** begins with a strong affirmation that 'culture, arts, cultural heritage and cultural diversity are of great value to European society from a cultural, educational, democratic, environmental, social, human rights and economic point of view and should be promoted and supported'.<sup>225</sup> The programme situates the intrinsic value of culture and artistic expression at its heart, but introduces--for the first time among the documents analysed in this section--the key role that education and culture play in building inclusive and cohesive societies. It supports the aim of harnessing 'the power of culture and cultural diversity for social cohesion and

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<sup>220</sup> Ibid., Preamble, Recital 11.

<sup>221</sup> Ibid., Art. 8.1.

<sup>222</sup> Ibid., Art. 4.

<sup>223</sup> Ibid., Art. 10(i).

<sup>224</sup> Ibid., Art. 10(j).

<sup>225</sup> Regulation 2021/818, Preamble, Recital 1.



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societal well-being by fostering the cross-border dimension of cultural and creative sectors and fostering their capacity to grow, to encourage culture-based creativity in education and innovation, and for jobs and growth, and to strengthen international cultural relations'.<sup>226</sup> It also acknowledges the positive impact of culture on intercultural dialogue and the dissemination of knowledge.<sup>227</sup> It further refers to 'a shared area of cultural diversity for the peoples of Europe',<sup>228</sup> which it aims to promote through the transnational circulation of artistic and cultural works, the encouragement of dialogue and cultural exchanges, and the transnational mobility of artists and cultural and creative professionals.

Moreover, the programme refers once again to cultural heritage as a key component of cultural diversity, and relates both directly to the values of peace, democracy and sustainable development. Freedom of artistic expression provides the base for the promotion of cultural diversity, as well as artists' and cultural operators' capacity to create, innovate and produce, which in turn leads to job creation, competitiveness and growth.<sup>229</sup> The programme asserts that the 'Union's rich cultural and linguistic diversity is a key asset for the European project',<sup>230</sup> which is characterised by geographical and/or linguistic specificities that can cause market fragmentation. In the light of this, the programme acknowledges that effort is required to ensure that the cultural and creative sectors fully benefit from the Union's single market and, in particular, the digital single market.<sup>231</sup> Stressing the cross-border, transnational and international component of culture and cultural diversity, the programme focuses on activities that offer 'European added value'<sup>232</sup> and are pursued in a way that encourages inclusion, equality, diversity and participation, especially with regard to people with disabilities, and fosters gender equality.

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<sup>226</sup> Ibid., Preamble, Recital 4.

<sup>227</sup> Ibid., Preamble, Recital 9.

<sup>228</sup> Ibid., Preamble, Recital 5.

<sup>229</sup> Ibid., Preamble, Recital 7.

<sup>230</sup> Ibid., Preamble, Recital 7.

<sup>231</sup> Ibid., Preamble, Recital 7.

<sup>232</sup> Ibid., Art. 3.4.



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In a more detailed fashion, the programme establishes its support for actions and activities with European added value, which complement regional, national, international and other Union programmes and policies. The programme should positively impact European citizens and support the development and promotion of transnational cooperation and exchanges within the cultural and creative sectors.<sup>233</sup> The programme seeks to ensure a European added value in the film sector by providing a more level playing field and through actions that take into account the specificities of different countries, with regard in particular to the production and distribution of content, access to content, the size and specificities of their markets, and their cultural and linguistic diversity, broadening the participation of countries with different audiovisual capacities and strengthening collaboration between those countries.<sup>234</sup> Taking into account the contribution which overseas countries and territories make to the international cultural influence of the Union,<sup>235</sup> the programme also makes persons and entities established in overseas countries and territories eligible for funding subject to the rules and objectives of the programme and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked. This is because the programme is based on the premise that it should be possible for people to benefit from the competitive advantages that Europe's cultural and creative industries can offer, in particular in terms of economic growth and employment. It also places particular focus on inclusion, equality, diversity and participation, especially with regard to people with disabilities and people belonging to minorities and socially marginalised groups, as well as on gender equality, in particular as a driver of creativity, economic growth and innovation.<sup>236</sup>

Overall, the analysis shows that the concept of 'cultural diversity' is becoming more popular and occupying a more prevalent position in the EU's audiovisual funding instruments, which simultaneously increases the complexity of Europe's understanding of the concept. Thus, 'cultural

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<sup>233</sup> Ibid., Preamble, Recital 12.

<sup>234</sup> Ibid., Art. 3.4(d).

<sup>235</sup> Ibid., Preamble, Recital 55.

<sup>236</sup> Ibid., Art. 3.5(b).



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diversity' is no longer understood as simply representing geographical variety or reflecting a 'European heritage', and now it includes concepts such as 'pluralism' and 'multilingualism' in Europe's conception of linguistic and cultural diversity. Increasingly, this focuses not only on country-stakeholders with fewer capabilities vis-à-vis the protection and promotion of their diversity, but also stakeholders--such as SMEs--which face greater difficulties accessing the funds. Moreover, in a more globalised and digitalised reality, cultural diversity is increasingly located in the context of a knowledge-based economy and influences from third-parties' cultures, and even from the COVID-19 pandemic. Moreover, while cooperation has been prioritised since the early funding programmes, after the 2000s it has focused particularly on access for younger audiences, networking, and using digital and new technologies in the promotion and distribution stages. Moreover, cultural diversity is considered, especially in the Creative Europe programmes, as a key asset in efforts to build a European identity and achieve greater social cohesion, becoming a key component in the promotion and protection of EU values and the countering of all forms of discrimination. Overall, cultural diversity has become more complex but simultaneously more representative of the peoples of Europe against a backdrop of increased market fragmentation, globalisation and digitalisation.

**Table 6: The major CoE funding instrument in the European audiovisual sector**

The Eurimages perspective from the CoE	
Instrument	Description



REBOOT ([www.thereboot-project.eu](http://www.thereboot-project.eu)) has received funding from European Union's Horizon Europe Research and Innovation programme under Grant Agreement No. 101094769.



<p><a href="#">Resolution 88(15)</a> setting up a European Support Fund for the co-production and distribution of creative cinematographic and audiovisual works (Eurimages) of 1988</p> <p>Entry into force: 26.10.1988</p>	<p>The 1988 Resolution sets up the Eurimages fund, a European support fund for the co-production and distribution of creative cinematographic and audiovisual works. It takes diversity into consideration by mentioning that the Board of Management, which shall be composed by one representative from each Member State, shall promote the contribution of the diverse national components to Europe's cultural identity. The Board of Management shall take all decisions regarding the granting of financial aid and determine the policy and modalities for the granting of financial aid, assuring itself beforehand that the works retained fulfil in particular the cultural criteria conforming to the objectives of the fund, ensuring the most effective use of its resources.</p> <p>This Resolution is one of the few documents published by the CoE that mentions the issue of competitiveness, and the only one to mention competitiveness with reference to Eurimages. Specifically, it raises the issue of increased competition in television programmes because of the evolution of Information and Communication Technologies (ICT).</p>
<p><a href="#">Resolution 1138</a> on a European Support Fund for the co-production and distribution of creative cinematographic and audiovisual works (Eurimages) of 1990</p> <p>Entry into force: 22.11.1990</p>	<p>The 1990 Resolution is a follow-up to Resolution (88)15 which set up the Eurimages fund. It states that, as of 1990, eighteen European countries had joined the fund, and that it considers that the fund's accessibility for Central and Eastern European (CEE) countries is key, as it regards them as part of the common European cultural heritage. To this aim, it considers that a greater financial effort is essential. The main purpose of this Resolution is to recommend the broadening and strengthening of the fund, its opening up to CEE countries, and an increase in Member States' contributions to its financial resources.</p> <p>However, possibly due to its brevity, it mentions neither 'diversity' nor 'competitiveness'.</p>
<p><a href="#">Recommendation (2020)8</a> amending Res(88)15 setting up a European Support Fund for the co-production and distribution of creative cinematographic and</p>	<p>The 2020 Recommendation on Eurimages amends the initial Res(88)15 which set up the fund. While it does mention diversity, it does so as follows: having stated that the Eurimages fund is intended to 'foster independent, original and diverse filmmaking of quality', it goes on to add that 'it may decide to take other measures in any area of the audiovisual sector including, but not limited to, gender equality, diversity, inclusion and environmental</p>



<p>audiovisual works (Eurimages) of 2020</p> <p>Entry into force: 9.9.2020</p>	<p>protection'. Diversity is thus included once again as a goal and criterion of the fund, in a manner faithful to the original resolution. The Recommendation also argues that pluralism and freedom of expression must be protected in our contemporary context in which digital technology and artificial intelligence are changing the way in which films and other audiovisual material are consumed.</p> <p>Interestingly, the Recommendation does not mention competitiveness. This would indicate that the CoE is focused more on diversity being promoted and taken into consideration when a support fund is being set up for the industry than on competitiveness being employed as a criterion for grants made from the fund.</p>
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### 3.3 Mapping 'competitiveness' and 'cultural diversity' in EU non-legislative documents: The development and evolution of EU policy approaches to the audiovisual sector and the EFI

This subsection continues the discussion on the conceptualisation and operationalisation of the concepts of competitiveness and cultural diversity with reference to the audiovisual sector and the EFI. The focus here will be on policy documents issued by the EU institutions, with an emphasis on the Commission, the European Parliament and the Council. The analysis centres on key documents identified for their importance in relation to the evolution of the EU's approach to audiovisual policy. These are presented by institution in chronological order, with a view to identifying trends and developments. In all, 14 documents have been selected on the basis of their coverage--and the number of occurrences--of the two key terms of our analysis: 'competitiveness' and 'diversity'.<sup>237</sup>

<sup>237</sup> See Annex: *List of documents relevant to the audiovisual sector and the EFI which have good coverage--and a high number of occurrences--of the terms 'competitiveness' and 'diversity'.*



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The following documents display a high combined coverage and number of occurrences of the terms 'competitiveness' and 'diversity' over a period of more than 25 years:

— the **1997 Commission Green Paper<sup>238</sup> on the convergence of the telecommunications, media and information technology sectors**: The 1997 Green Paper was directed at the Union embracing the changes represented by new technologies by creating an environment which supports rather than restrains the process of change. The ensuing change should become a powerful motor for job creation and growth, increasing consumer choice and promoting cultural diversity. The Green Paper sought to address the nature of the convergence phenomenon in the audiovisual industry and its implications for the regulatory framework for service provision; it also sought to support the development of an information society.

— the **2000 European Parliament Resolution<sup>239</sup> on Principles and guidelines for the Community's audiovisual policy in the digital age**: The main objective of the 2000 European Parliament Resolution was to ensure European audiovisual content could be competitive internationally. Consequently, the European Parliament called the Commission, first, to develop a regulatory framework for intellectual property rights (IPRs) which was adapted to the specific features of the various sectors and, second, to harmonise and reform the copyright framework in order to improve access to content and strengthen creators' position and choices. In the light of the competitiveness of the cultural and creative industries, the Resolution also advocated a better sharing of responsibilities in the digital value chain. The ensuing reform of the IPR system should facilitate access to, and increase the global circulation of, European content, guaranteeing that customers have easy access to diverse, legal content and a real choice in terms of linguistic and

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<sup>238</sup> Commission Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation: Towards an information society approach, COM(97)623 final.

<sup>239</sup> European Parliament Resolution on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, Principles and guidelines for the Community's audiovisual policy in the digital age, OJ C 135, 7.5.2001, p. 181–186.





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cultural diversity, which is an essential condition for ensuring that the cultural and creative sectors are competitive.

— the **2001 Commission Communication<sup>240</sup> on certain legal aspects relating to cinematographic and other audiovisual works**: The 2001 Commission Communication served in the process of making clearer and more definite the Commission's policy in the area of interest. Generally, it should be recalled that the Commission oversees that state aid complies with EU law. With this Communication, the Commission set out, inter alia, the principles employed for the application of state aid rules to the cinema sector, with a view to creating an advantageous environment for the production/distribution of audiovisual works. Several other issues relating to protection of heritage and exploitation of audiovisual works, e-cinema, tax issues, ratings and other measures to improve the circulation of films were raised.

— the **2002 Council Resolution<sup>241</sup> on the development of the audiovisual sector**: The Council Resolution of 21 January 2002 reaffirmed the need for the EU and the Member States to, taking into account cultural and linguistic diversity, foster an environment conducive to the establishing of a competitive audiovisual sector through, inter alia, improving the circulation of European works. It also argued for improving investment in the field of cinematographic and audiovisual production at both national and EU level, and welcomed the actions, measures and programmes developed by the EU in that field.

— the **2010 Commission Communication<sup>242</sup> on opportunities and challenges for European cinema in the digital era**: The broad aim of the 2010 Commission Communication was to increase

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<sup>240</sup> Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works, COM/2001/0534 final, OJ C 43, 16.2.2002, p. 6–17.

<sup>241</sup> Council Resolution of 21 January 2002 on the development of the audiovisual sector (2002/C 32/04), OJ C 32, 5.2.2002, p. 4–6.

<sup>242</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on opportunities and challenges for European cinema in the digital era, COM(2010)487 final.



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and facilitate access to European films and cinemas in the new digital context. The Communication suggested different ways of financing the digital transition of European cinemas, be it through commercial models; public intervention at national, regional or local level; or the EU structural funds.

— the **2010 Commission Green Paper<sup>243</sup> on unlocking the potential of cultural and creative industries**: The goal of the 2010 Green Paper was to foster conditions in which creativity and innovation can flourish in a new entrepreneurial culture, thereby allowing Europe to remain competitive. Here, creativity and innovation were introduced as the main factors in the competitiveness of the EFI, which accords with the contextual shift experienced by the sector. The Green Paper sought to capture the various connotations ascribed to the terms ‘cultural’ and ‘creative’ throughout the EU, reflecting Europe’s cultural diversity.

— the **2011 European Parliament Resolution<sup>244</sup> on unlocking the potential of cultural and creative industries**: The European Parliament Resolution of 12 May 2011 aimed to unlock the potential of cultural and creative industries, considering in various ways the notion of ‘competitiveness’ while seeking decisive innovations, especially where ICT are concerned, since such technologies are associated with the creation of wealth and jobs, long-term growth and international competitiveness and have played a decisive role in the Union's economic recovery. It also sought to safeguard ‘cultural diversity’ and effectively protect and promote the diversity of cultural expressions. It was noted that market fragmentation in the cultural and creative sectors is in part due to cultural diversity and the language preferences of consumers. It was stressed that the regulatory framework--and in particular the rules on competition policy--should be adapted to match the specific conditions of the cultural sector in the best way possible, in order to ensure cultural diversity and consumer access to a range of high-quality cultural content and services.

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<sup>243</sup> Commission Green Paper on unlocking the potential of cultural and creative industries, COM(2010)183 final.

<sup>244</sup> European Parliament Resolution of 12 May 2011 on unlocking the potential of cultural and creative industries (2010/2156(INI)), OJ C 377E, 7.12.2012, p. 142–155.



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— the **2011 European Parliament Resolution<sup>245</sup> on European cinema in the digital era**: The European Parliament Resolution of 16 November 2011 aimed to preserve and promote European cinema in the digital era, safeguarding cultural diversity. Given the European shift towards digital cinema, this was to be achieved by creating new opportunities for the distribution of European films, maintaining the diversity of European production and enhancing its accessibility for European citizens. In addition, the Resolution noted that the diversity of the EU's cinematic landscape should be preserved. It observed that, partly because of the primacy assigned to blockbuster films, both the diversity of films in Europe and cinemas' freedom to decide on their own programming were endangered, and as a result there was reason to fear an irreversible market concentration in the field of cinema. The Resolution emphasised that the digital roll-out should preserve programming diversity and cultural facilities in both rural and urban areas in all EU countries and should not result in the closure of small and art-house cinemas to the benefit of multiplexes.

— the **2013 European Parliament Resolution<sup>246</sup> on promoting the European cultural and creative sectors as sources of economic growth and jobs**: The 2013 European Parliament Resolution was aimed at boosting the competitiveness of Europe's cultural and creative sectors. To do so, it argued for the need to create networks and partnerships between creative enterprises and other industries to deal with or address the new economic and societal challenges. Establishing connections between educational systems, research centres, SMEs and the cultural and creative sectors was also singled out as suitable approaches. The Resolution also suggested leveraging cultural diplomacy in support of the cultural and creative sectors.

— the **2013 Commission Communication<sup>247</sup> on state aid for films and other audiovisual works**: The 2013 Commission Communication sought to deal with the distorting effects of state aid

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<sup>245</sup> European Parliament Resolution of 16 November 2011 on European cinema in the digital era (2010/2306(INI)), P7\_TA(2011)0506.

<sup>246</sup> European Parliament Resolution of 12 September 2013 on promoting the European cultural and creative sectors as sources of economic growth and jobs (2012/2302(INI)), OJ C 93, 9.3.2016, p. 95–104.

<sup>247</sup> Communication from the Commission on State aid for films and other audiovisual works, 2013/C 332/01, 15.11.2013, p. 1-11.



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in the European audiovisual sector, which could detract from the competitiveness of the film industry. Overall, it was argued that the production of European audiovisual works should be supported and the existence of the infrastructure necessary for their production and exhibition ensured so as to shape European cultural identities and enhance cultural diversity. Therefore, the purpose of any aid along these lines should be considered to be the promotion of culture. The Communication addressed these issues and introduced amendments to the criteria included in the 2001 Communication for assessing state aid. In particular, it covered state aid for a broader scope of activities, introduced a higher maximum aid intensity for cross-border productions, and set forth measures to protect and ensure access to film heritage. The Commission considered such changes to reflect developments since 2001, and believed they would make European works more competitive and pan-European in the future.

— the **2014 Commission Communication<sup>248</sup> on European film in the digital era: Bridging cultural diversity and competitiveness**: The goal of the 2014 Commission Communication was to adapt to the digital era and exploit its potential both to retain existing audiences and reach new ones, and to build bridges between cultural diversity and competitiveness. The Communication sought to increase access to private financing through EU financial instruments. It stated that financial engineering instruments, in particular guarantee funds, demonstrated their ability to open up access to private funding. These instruments would help to raise capital for infrastructure projects like cinemas, heritage and new technological platforms, and ultimately enhance the general competitiveness of the EFI by unlocking access to loans in that area. Simultaneously, as both a prerequisite for the quality, diversity and originality of European films, and as crucial assets to attract audiences and strengthen competitiveness, the Communication intended to strengthen the creative environment, nurture European talent and develop professional skills in the EFI.

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<sup>248</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European film in the digital era: Bridging cultural diversity and competitiveness, COM/2014/0272 final.



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— the **2014 European Parliament Resolution<sup>249</sup> on preparing for a fully converged audiovisual world**: The European Parliament Resolution of 12 March 2014 called for the various EU policies about media, culture and networks to adapt and bring the regulatory framework up to date with the latest conditions and guarantee the establishment and enforcement of a uniform level of regulation. Key considerations in this regard were technical and audiovisual convergence, the need for innovation, the fact that there were progressively more overlaps between media law and network policy issues, and the fact that both access to and the findability of audiovisual content were evolving into major factors in a converging world.

— the **2021 Council Conclusions<sup>250</sup> on increasing the availability and competitiveness of European audiovisual and media content**: The 2021 Council Conclusions aimed to increase the availability and competitiveness of European audiovisual media content. They established three priorities: cultural diversity, the prominence and promotion of European content, and sustainability. First, the Council argued for putting digital solutions in place that could facilitate larger accessibility, while co-productions, support for cross-border distribution, a vibrant independent theatrical and distribution sector, promotion of linguistic diversity and freedom of creation could have a major impact on making the content more available and improving the competitiveness of the European audiovisual sector. Second, the Council suggested developing improved policies that would boost the competitiveness of the European audiovisual sector by fostering the creation of high-quality European content with the potential to appeal to a wider audience, while supporting authors as key content creators, co-productions and the distribution of original content. Third, the Conclusions pointed to licensing as part of the discussion on increasing the competitiveness of the European audiovisual sector, noting the role played by the territorial and exclusive licensing of rights in the freedom of creation, in the sustainability and financing of the sector, and in providing a basis for the

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<sup>249</sup> European Parliament Resolution of 12 March 2014 on Preparing for a Fully Converged Audiovisual World (2013/2180(INI)), P7\_TA(2014)0232.

<sup>250</sup> Council Conclusions on increasing the availability and competitiveness of European audiovisual and media content, OJ C 501I, 13.12.2021, p. 7-12.



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development of new business models. Finally, the Conclusions sought to promote and support the new possibilities that the digital economy opened up for the distribution of content with particular regard to achieving a fair balance between the development of AI systems and their use of the content so as to guarantee the competitiveness of both the AI and audiovisual/media sectors.

— the **2022 Council Conclusions<sup>251</sup> on building a European strategy for the cultural and creative industries ecosystem**: The Council Conclusions of 13 April 2022 emphasised the fundamental role that culture and creativity play for the EU and its citizens in protecting their democracies and common values, expanding the boundaries of the imagination, enhancing the prosperity of its societies, ensuring the vitality of local areas, improving the quality of the lived environment and increasing the general wellbeing of individuals. As global digital players emerged, the need was stressed to stimulate the creation and growth of strong and competitive European cultural and creative sectors and industries, also referred to as the cultural and creative industries ecosystem (CCIE), which play a crucial role both in guaranteeing Europe's common heritage and in promoting European cultural diversity, boosting the EU's cultural assets and strategic autonomy.

**Table 7: The policy documents under study**

Policy Documents by EU Institution	Identifier of Document
<b>European Commission</b>	
<b>1997 Green Paper on the convergence of the telecommunications, media and information technology sectors (COM(97)623)</b>	COM_1997_0623_FIN, 13.12.1997
<b>2001 Communication on certain legal aspects relating to cinematographic and other audiovisual works (COM(2001)534)</b>	OJ C 43, 16.2.2002, p. 6-17

<sup>251</sup> Council Conclusions on building a European Strategy for the Cultural and Creative Industries Ecosystem (2022/C 160/06), ST/7809/2022/INIT, OJ C 160, 13.4.2022, p. 13–19.



<b>2010 Communication on opportunities and challenges for European cinema in the digital era (<a href="#">COM(2010)487</a>)</b>	<i>COM/2010/0487 final, 24.9.2010</i>
<b>2010 Green Paper on unlocking the potential of cultural and creative industries (<a href="#">COM(2010)183</a>)</b>	<i>COM_2010_0183_FIN, 27.04.2010</i>
<b>2013 Communication on state aid for films and other audiovisual works (<a href="#">2013/C 332/01</a>)</b>	<i>OJ C 332, 15.11.2013, p. 1-11</i>
<b>2014 Communication on European film in the digital era: Bridging cultural diversity and competitiveness (<a href="#">COM(2014)272</a>)</b>	<i>COM/2014/0272 final, 15.5.2014</i>
<b>European Parliament</b>	
<b>2000 Resolution on ‘Principles and guidelines for the Community’s audiovisual policy in the digital age’ (<a href="#">2000/2087(COS)</a>)</b>	<i>OJ C 135, 7.5.2001, p. 181–186</i>
<b>2011 Resolution on unlocking the potential of cultural and creative industries (<a href="#">2010/2156(INI)</a>)</b>	<i>OJ C 377E, 7.12.2012, p. 142–155</i>
<b>2011 Resolution on European cinema in the digital era (<a href="#">2010/2306(INI)</a>)</b>	<i>P7_TA(2011)0506, 16.11.2011</i>
<b>2013 Resolution on promoting the European cultural and creative sectors as sources of economic growth and jobs (<a href="#">2012/2302(INI)</a>)</b>	<i>P7_TA(2013)0368, 12.9.2013</i>
<b>2014 Resolution on preparing for a fully converged audiovisual world (<a href="#">2013/2180(INI)</a>)</b>	<i>P7_TA(2014)0232, 12.3.2014</i>
<b>Council of the European Union</b>	



<p><b>2002 Resolution on the development of the audiovisual sector (<a href="#">2002/C 32/04</a>)</b></p>	<p><i>2002/C 32/04, 5.2.2002, p. 4-6</i></p>
<p><b>2021 Conclusions on increasing the availability and competitiveness of European audiovisual and media content (<a href="#">2021/C 501 I/02</a>)</b></p>	<p><i>OJ C 501 I, 13.12.2021, p. 7-12</i></p>
<p><b>2022 Conclusions on building a European strategy for the cultural and creative industries ecosystem (<a href="#">2022/C 160/06</a>)</b></p>	<p><i>OJ C 160, 13.4.2022, p. 13-19</i></p>



REBOOT ([www.thereboot-project.eu](http://www.thereboot-project.eu)) has received funding from European Union's Horizon Europe Research and Innovation programme under Grant Agreement No. 101094769.





### 3.3.1 Promoting 'competitiveness'

This subsection presents how 'competitiveness' was approached and conceptualised in policy documents addressing the European audiovisual industry and the EFI. Efforts to formulate a distinct audiovisual policy at the European level started prior to the Maastricht Treaty. They were mainly triggered by endogenous factors embodied in the development of satellite broadcasting, the proliferation of TV broadcasters and the rapidly increasing audiovisual trade deficit with the US. Although no documents were identified in the pre-Maastricht period with a high coverage and numerous occurrences of 'competitiveness' and 'diversity', the Green Paper of 1984 on the establishment of the common market for broadcasting, specifically by means of satellite and cable,<sup>252</sup> is considered the starting point for the Community's audiovisual media policy (Nenova, 2007: 171-172). In this Commission document, the creation of a common broadcasting market is already linked to questions of competitiveness. The establishment of a common market for television production, for instance, is considered essential to counterbalance 'the dominance of the big American media corporations [...] and allow European firms to improve their competitiveness'.<sup>253</sup> Other key policy considerations revolve around the fresh impetus provided by the cross-frontier distribution of broadcasting services by means of new and integrated communication networks, highlighting inter alia the latter's contribution to improved international competitiveness.<sup>254</sup> As will be shown, after the entry into force of the Treaty of Maastricht, the competitiveness paradigm would become more pronounced in EU policy documents, with an array of related aspects touched upon by the EU institutions.

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<sup>252</sup> COM(84)300 final, 14 June 1984.

<sup>253</sup> Ibid., p. 47.

<sup>254</sup> Ibid., see indicatively p. 38, 47 and 66.



### 3.3.1.1 Competitiveness in the pre-Lisbon era

#### *European Commission*

The **Commission's 1997 Green Paper on the convergence of the telecommunications, media and information technology sectors** referred expressly to competitiveness from the perspective of industrial competitiveness, with market convergence, growth, job creation, creative capabilities and investment mentioned as related factors.<sup>255</sup> Turning to indirect references, the Green Paper mentioned the need to achieve a balance between sector-specific regulation and competition rules, openness, non-discrimination, the free movement of services, consumer welfare and access to content as factors in competition.<sup>256</sup> The stated aim of the Green Paper was to invite comment and stimulate debate, while it also envisaged the launch of a flexible and open process of international dialogue open to all actors concerned and aimed at reaching agreed solutions as and when problems arise in conjunction with technological, social and industrial development.<sup>257</sup> This process could feed into the drafting of an international Charter on global communications, but the possible scope and aims of such a Charter were left open.<sup>258</sup>

The **2001 Commission Communication on certain legal aspects relating to cinematographic and other audiovisual works** raised the issue of the competitiveness of the EFI in three specific areas. The first observation was that European films faced important competition worldwide because of their relatively low level of distribution outside of their country of origin. The second area related to copyright law and the fact that different countries having different sets of laws could affect the competitiveness of audiovisual material. The Commission also referred to digital technologies, which were deemed vital for accessing audiovisual content in a globalised world.

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<sup>255</sup> COM(97)623, p.10.

<sup>256</sup> *Ibid.*, p.24.

<sup>257</sup> *Ibid.*, p.32.

<sup>258</sup> *Ibid.*, p.32.



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### *European Parliament*

The **2000 European Parliament Resolution on principles and guidelines for the Community's audiovisual policy in the digital age** made no direct mention of 'competitiveness' as such but alluded to it. The European Parliament argued that competition policy must constitute an appropriate and effective instrument for preventing the emergence of dominant positions with regard both to the concentration of media ownership in the new digital environment and to the safeguarding of pluralism. At the same time, EU competition policy should not lead to a situation in which the development of a competitive and varied supply of European audiovisual content was frustrated by restrictions on state aid to such productions.<sup>259</sup> Another point regarded public service broadcasting and the use of new technical resources and forms of marketing to enable it to compete on the market.<sup>260</sup>

### *Council*

The **2002 Council Resolution on the development of the audiovisual sector** mainly encouraged the EU and its Member States to create a breeding ground that would allow the European audiovisual sector to thrive and become more competitive. The significance of public broadcasting was emphasised, and it was encouraged to, inter alia, play an active role in the progress of rolling out new digital services. The Council Resolution also invited the Commission to be more effective in its contributions to enhancing the audiovisual sector on the basis of a synthesis integrating its cultural, competitive and industrial aspects.

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<sup>259</sup> European Parliament Resolution 2000/2087(COS), Recital H.

<sup>260</sup> Ibid., Recital J.



### 3.3.1.2 Competitiveness in the post-Lisbon era

*European Commission*

In the **2010 Commission Communication on opportunities and challenges for European cinema in the digital era**, one of the issues that concerned the Commission was that of competitiveness and the circulation of European works. The Communication clearly affirmed that '[t]he competitiveness of the audiovisual content industry in Europe will strongly depend on the use of [...] new technologies in the distribution stage'.<sup>261</sup> It therefore argued that access to digital equipment was critical and that a new MEDIA scheme should be designed to help European cinemas through the digital transition.<sup>262</sup>

The **2010 Green Paper on unlocking the potential of cultural and creative industries** clearly put competitiveness in the context of the new digital economy, where 'immaterial value increasingly determines material value, as consumers are looking for new and enriching "experiences"'.<sup>263</sup> The Commission argued that the ability to create social experiences and networking had become a factor in competitiveness. Competitiveness was introduced as a strategic objective of the EU's cohesion policy, and the Commission also recognised that 'if Europe wants to remain competitive [...], it needs to put in place the right conditions for creativity and innovation to flourish in a new entrepreneurial culture'.<sup>264</sup> Entrepreneurship was presented as a key factor in the indirect references to competitiveness, together with the free movement of services, fair access to the market and a level playing field between international and European companies, plus the need to strike a balance between the need to protect and sustain creation and the need to foster the development of new services and business models. Adaptability was also assigned a prevalent position, which 'makes it essential to exchange information, build on intangible assets and attract talent to refresh the

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<sup>261</sup> COM(2010)487, Introduction, par. 1.

<sup>262</sup> Ibid., Section 6, par. 7.

<sup>263</sup> COM(2010)183, p. 2.

<sup>264</sup> Ibid., p. 2.



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process'.<sup>265</sup> These characteristics derived from the nature of cultural products per se, the Commission noted, which implied that the factors that influence the competitiveness of the audiovisual industry derive from their cultural nature; crucially, this argument linked the two.

The Green Paper listed a series of measures to achieve these goals vis-à-vis competitiveness. First, it sought to promote partnerships between education and business to ensure a match between the supply of skills and the demands of the labour market. This was crucial to boost the sector's competitive potential in the medium and long run, especially with regard to SMEs. Second, it aimed to promote e-skills and business competences--e.g. management, commercial skills, etc.--so that the sector would have people who could grasp new ICT and financing opportunities, in the digital environment in particular. This was meant to prevent shortages of potential skills, mismatches and gaps that could undermine the industry's potential. Third, the Green Paper called for the implementation of innovative financial instruments--such as venture capital, guarantees and other risk-sharing instruments--to facilitate SMEs' access to finance. These instruments, which were implemented in the context of market-oriented EU expenditure programmes like the Competitive and Innovation Programme, would need to be more tailored to the cultural and creative sectors. Fourth and last, the Commission suggested promoting first-class cultural amenities and high-tech services, good living and recreational conditions, vibrant cultural communities, and strong CCSI in European cities and regions to boost their economic competitiveness and attract highly skilled people who could establish a positive environment for innovation.

The **2013 Commission Communication on state aid for films and other audiovisual works** is an exception here, as it focused on 'competition' and state aid rather than 'competitiveness'. To understand the reasons behind this, the Communication needs to be understood in context. When the previous 2001 Cinema Communication was adopted, few Member States tried to use film aid to attract major foreign film productions. Since then, several Member States had introduced schemes

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<sup>265</sup> Ibid., p. 9.



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intended to attract high-profile productions to Europe, competing globally with locations and facilities elsewhere, in Australia, Canada, New Zealand and the United States. Contributors to the public consultations that preceded the 2013 Communication agreed that these productions were necessary to maintain a high-quality audiovisual infrastructure, to contribute to the use and employment of high-class studio facilities, equipment and staff, and to foster the transfer of technology, know-how and expertise. Having foreign productions make use of facilities would also help develop the capacity to make high-quality, high-profile European productions. Thus, in the light of strong competition from outside Europe, both in films produced and to attract major foreign productions, the Communication discussed state aid for audiovisual works and their compatibility with EU primary law. Specifically, the Commission was of the opinion that such aid could in principle be considered compatible with Article 107(3)(d) TFEU as an aid to promoting culture, supporting the production of European audiovisual works and ensuring the existence of the infrastructure necessary for their production and exhibition; this, in turn, shapes European cultural identities and enhances cultural diversity.<sup>266</sup> However, as the amount of aid provided to major international productions could be very high, the Commission should monitor developments.

Having said this, the wide range of indirect references used by the 2013 Communication in relation to competitiveness allows us to infer the following: the two key factors the Commission viewed as undermining the competitiveness of EU audiovisual works at the time were strong international competition and the limited circulation of European audiovisual works outside their country of origin. The Communication recognised the dual nature of film production and distribution as both a cultural and an economic activity and acknowledged that financial support might give a competitive advantage to the producers and audiovisual works that receive it over those that do not.<sup>267</sup> This is what the EU's cultural aid policy sought to regulate (and limit).

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<sup>266</sup> European Commission Communication 2013/C 332/01, Recital 51.

<sup>267</sup> Ibid., Recital 8.



The **2014 Commission Communication on European film in the digital era: Bridging cultural diversity and competitiveness** recognised the opportunity to improve competitiveness, disseminate the diversity of European cultures worldwide and address the audiovisual trade deficit with third countries.<sup>268</sup> It also noted that the digital revolution offers more possibilities and greater flexibility in terms of distribution, as well as having a fundamental impact on audience behaviour. If the EFI was to keep existing audiences, reach new ones, and build bridges between cultural diversity and competitiveness, it was deemed necessary to adapt to the digital era.<sup>269</sup> Digitalisation was seen as an opportunity to enhance the links and synergies between those two key concepts underlying EU audiovisual policy. Increased complementarity between Member States and Union policies was also singled out as necessary if the EFI was to embrace the opportunities and address the challenges created by the digital shift, and strengthen the global efficiency of existing funding tools in increasing the competitiveness and diversity of the European film sector.<sup>270</sup> The indirect references mostly related to the need to promote debate and begin a dialogue with all stakeholders--public authorities and the private sector--about film policy in Europe, focused 'on the shared objectives of making the rich diversity of European films more accessible to the audience and making the film sector more competitive and more profitable'.<sup>271</sup>

### *European Parliament*

The **European Parliament's Resolution of 12 May 2011 on unlocking the potential of cultural and creative industries** acknowledged that the cultural and creative industries impact on almost every other economic sector, furnishing them with innovations that are decisive for competitiveness, especially where ICT are concerned.<sup>272</sup> The impact, competitiveness and future potential of the cultural and creative industries was seen to make them an important engine for sustainable growth

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<sup>268</sup> COM(2014)272, par. 4.

<sup>269</sup> Ibid., par. 5.

<sup>270</sup> Ibid., par. 9.

<sup>271</sup> Ibid., Conclusion, par. 3.

<sup>272</sup> European Parliament Resolution 2010/2156(INI), Recital P.



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in Europe, with a potentially decisive role to play in the EU's economic recovery.<sup>273</sup> In that regard, the Commission was called on to produce a better definition of the cultural and creative industries with a view to analysing in depth their impact on long-term growth and international competitiveness, and to raising awareness of their specific features.<sup>274</sup> Furthermore, the effectiveness of EU programmes like the Programme for Innovation and Competitiveness at enabling SMEs to access financing was recognised, and it was suggested that the Commission should assess the possibility of devising similar specific programmes for the cultural and creative industries.<sup>275</sup> It was stressed that the cultural and creative industries can create wealth and jobs, provided they are given the tools they need to be competitive in the context of a European international competition strategy.<sup>276</sup> An important note was that online use could be an opportunity to increase the diffusion/distribution of European audiovisual works, as long as legal supply can develop in an environment of healthy competition which tackles the illegal supply of protected works effectively, and provided that new ways of remunerating creators develop which involve them in the success of their works financially.<sup>277</sup> The Commission was also called upon to guarantee the strict implementation of Article 13 of the AVMSD, which relates to promoting the production of, and access to, European works.<sup>278</sup>

One of the aims of the **European Parliament's Resolution on European cinema in the digital era of 16 November 2011** was to promote the competitiveness of European cinema. The Resolution noted that many small, rural and art-house cinemas which mainly show European content were excluded from the so-called virtual print fee commercial model,<sup>279</sup> and that alternative financing models, including public support, might be necessary to maintain and strengthen cultural diversity

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<sup>273</sup> Ibid., Par. 20.

<sup>274</sup> Ibid., Par. 2.

<sup>275</sup> Ibid., Par. 82.

<sup>276</sup> Ibid., Recital R.

<sup>277</sup> Ibid., Par. 39.

<sup>278</sup> Ibid., Par. 40.

<sup>279</sup> The European Parliament acknowledged that the virtual print fee commercial model for financing the installation of digital equipment was suited to large cinema networks, but not an optimal solution for small and independent cinemas, which are restrained by inter alia the lack of investment funds (see par. 85). Under this model, both film distributors and cinemas contribute to the investment costs. For more information on how this model typically works, see: <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_11\\_257](https://ec.europa.eu/commission/presscorner/detail/en/IP_11_257)>. Accessed November 14, 2023.





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and safeguard competitiveness.<sup>280</sup> The Resolution highlighted how important it is to support independent cinemas in terms of reinforcing their European programming policy and enhancing their competitiveness in the market.<sup>281</sup>

The **2013 European Parliament Resolution on promoting the European cultural and creative sectors as sources of economic growth and jobs** emphasised the need to promote and strengthen, collaboration between education systems, research centres and the cultural and creative sectors, as well as transfers of skills and knowledge sharing, in order to enhance the competitiveness of the European cultural and creative sectors. Specifically, the Resolution addressed the issue of access to private financing through EU financial instruments, considering it essential to unlock access to loans if the general competitiveness of the European film industry was to be raised. It also stated that Europe needed to nurture talent and develop professional skills in the European film industry, both because this is imperative for the quality, diversity and originality of European films, and because it is a crucial asset for attracting audiences and enhancing competitiveness. Finally, it was noted that making European films more accessible in all their rich diversity would make the film sector both more competitive and more profitable. Cultural diplomacy was also mentioned as a way for the EU to act on the world scene with a view to promoting and increasing the competitiveness of its cultural and creative sectors.

The **European Parliament Resolution of 12 March 2014 on preparing for a fully converged audiovisual world** did not refer explicitly to 'competitiveness', but several indirect references to the notion of 'competition' can still be identified. For instance, it was stressed that it was necessary to guarantee that platforms would operate in accordance with market conditions, entailing fair

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<sup>280</sup> European Parliament Resolution 2010/2306(INI), Par. 86.

<sup>281</sup> Ibid., Par. 122.



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competition.<sup>282</sup> It was also noted that the goal of European media and internet policy would be to remove barriers relating to media innovation.<sup>283</sup>

### *Council of the EU*

The **2021 Council Conclusions on increasing the availability and competitiveness of European audiovisual and media content** identified the availability and effective accessibility of European audiovisual and media content as crucial for the sustainable development of the European media sector and intrinsically linked to the promotion of cultural and linguistic diversity, which it considered a major asset in terms of its competitiveness. The Conclusions took into account the changes the COVID-19 pandemic represented for the industry, and listed cultural diversity, the promotion and prominence of European content, and sustainability as the main priorities which increasing the availability and competitiveness of European audiovisual and media content would serve. The fair remuneration of authors, producers and other right-holders was considered essential for their freedom of creation and economic independence, as well as for the sustainability, originality and competitiveness of the media sector. The Conclusions also contemplated the role public service media in Europe could play to enhance the availability and competitiveness of European content, especially when using innovative technological tools. Finally, regulations on the promotion and prominence of European audiovisual and media content were portrayed as having an important role to play in ensuring media pluralism, enhancing cultural diversity, strengthening international competitiveness and promoting independent production. Specifically, the Council Conclusions invited the Commission to ease the administrative burden associated with accessing funding for European content, while fully respecting the requirements of the Financial Regulation.<sup>284</sup>

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<sup>282</sup> European Parliament Resolution 2013/2180(INI), Par. 46.

<sup>283</sup> *Ibid.*, Par. 44.

<sup>284</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1.



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Finally, the **Council Conclusions of 13 April 2022 on building a European strategy for the cultural and creative industries ecosystem** recalled the considerable impact the COVID-19 pandemic had had on the cultural and creative economy. They went on to state the need to keep supporting both the CCIE's resilience and the twin (green and digital) transitions within the EU, with a view to their complementing the impact of the European Recovery and Resilience Facility<sup>285</sup> and enabling its full potential as a driver of economic growth and jobs and of the EU's enhanced global competitiveness.<sup>286</sup> The Council invited the Member States to take advantage of the progress made by the revised AVMSD, through its fostering the effective advancement and prominence of European works by audiovisual media service providers and by taking into account the benefits of the options relating to financial contributions, to guarantee the vitality of European production, the visibility of works and their dissemination in Europe.<sup>287</sup> The Council also considered ways to improve the access European CCIE enterprises, including the audiovisual industry, had to funding.<sup>288</sup>

### 3.3.2 Promoting 'cultural diversity'

This subsection discusses the ways in which the EU institutions have confronted and framed the concept of 'cultural diversity' in policy documents relating to the European audiovisual industry and the EFI. As indicated above, the analysis revealed no documents with a high coverage and numerous occurrences of 'competitiveness' and 'diversity' in the pre-Maastricht period. Nonetheless, though it did not expressly mention 'cultural diversity', the first document signalling the launch of an audiovisual policy at Community level had a clear cultural dimension. Not only did the 1984 Green Paper on the establishment of the common market for broadcasting state that the activity of the then EEC encompassed 'essential aspects of cultural life in Member States', with the cultural sector 'having a claim to the freedoms and forms of equality available... and primarily to the

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<sup>285</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17.

<sup>286</sup> Council Conclusions 2022/C 160/06, Recital 5.

<sup>287</sup> Ibid., Recital 59.

<sup>288</sup> Ibid., Recitals 20-23.



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protection afforded by the basic rights of freedom of movement, freedom of establishment, freedom to supply goods and services, and treatment abroad as a national'.<sup>289</sup> The Green Paper also recognised that cross-frontier broadcasting would make a significant contribution to European unification, with the audiovisual sector playing an important part in developing and nurturing awareness of the rich variety of Europe's common cultural and historical heritage, while helping a European identity to develop.<sup>290</sup> By supporting cultural exchanges and contacts with different cultures, the audiovisual sector in particular could prove a source of cultural enrichment, fostering creativity and also helping address 'a certain uniformity in the range of films screened on television', which mostly came 'from one single non-member country - the USA'.<sup>291</sup> In subsequent documents, as will be discussed below, the EU institutions have expanded and elaborated on the 'cultural diversity' elements of the European audiovisual policy in distinct ways.

### 3.3.2.1 Cultural diversity in the pre-Lisbon era

#### *European Commission*

The understanding of cultural diversity presented in the **1997 Green Paper on the convergence of the telecommunications, media and information technology sectors** must be put into the context of the 'information revolution' of the 1990s, when the risks of a growing volume of readily available information were coming into view, along with the opportunities this data provided 'to enhance the quality of European citizens' lives, by increasing consumer choice, facilitating access to the benefits of the Information Society and promoting cultural diversity'.<sup>292</sup> Cultural diversity was linked to the creative capacities of the diverse cultural environments inside Europe, which could be undermined if the EU refrained from taking action to strengthen the competitiveness of the companies in this sector so that they could grasp the opportunities offered by the new media. This

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<sup>289</sup> Commission of the European Communities, Television without Frontiers, Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable, COM(84) 300, p. 7.

<sup>290</sup> Ibid., p. 28.

<sup>291</sup> Ibid., p. 30 and 33.

<sup>292</sup> COM(97)623, p.vii.



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was also linked to the fragmentation, complexity and diversity of regulatory structures within the EU, which the Green Paper suggested should be rationalised. Thus, the threat that convergence might pose to cultural diversity was noted. The Green Paper also referred to the jurisprudence of the then European Court of Justice,<sup>293</sup> which had considered cultural policy objectives a matter of public interest for Member States to pursue. It recognised the historical role of public broadcasting as a vehicle for achieving this, and pointed to the Protocol to be appended to the TEC, as amended by the Treaty of Amsterdam, according to which the system of public service broadcasting in the Member States was directly related to the democratic, social and cultural needs of their societies and the need to preserve media pluralism.

In the **2001 Commission Communication on certain legal aspects relating to cinematographic and other audiovisual works**, audiovisual works, and films in particular, were considered to be crucial tools for the functioning of European democracies and societies. Indeed, they were recognised as representing Europe's different traditions and histories, and as exerting a considerable influence on society, shaping identities and fostering respect for cultural diversity and mutual understanding across Europe. It was recalled that the main goal of regulation in the audiovisual sector was to protect certain public interest objectives such as pluralism, the protection of minors, and cultural and linguistic diversity; the Communication stated that it is vital Member States foster audiovisual production as a means of ensuring that their indigenous culture and creative capacity is expressed, and of spotlighting the diversity and richness of European culture.

### *European Parliament*

The **2000 European Parliament Resolution on principles and guidelines for the Community's audiovisual policy in the digital age** stated that the audiovisual sector contributes significantly to safeguarding and promoting cultural and linguistic diversity in Europe. However, the European Parliament noted that ensuring that cultural diversity and pluralism are protected requires vigilance

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<sup>293</sup> European Court of Justice, Case C-23/9, TV10, 9.10.94.



## D2.1 Competitiveness in European law

in the way regulations differentiate infrastructure from content, important funding, and an adequate marketing and distribution structure. The local dimension and cultural diversity were also considered to be key elements in international negotiations on audiovisual services.<sup>294</sup> In addition, the Resolution clearly focuses on consumers' access to audiovisual content, which requires appropriate rules to safeguard pluralism and cultural and linguistic diversity, and to protect users' freedom of choice.

### *Council of the EU*

Despite acknowledging the action already taken at European level to respect and promote the diversity of Member States' cultures, the **2002 Council Resolution on the development of the audiovisual sector** stated that there was a continuing need to meet objectives in the public interest such as the protection of minors, human dignity, linguistic and cultural diversity, and pluralism, as well as a need to promote investments in the audiovisual sector. The Council also affirmed that the EU and its Member States should, during future WTO negotiations, retain the possibility of defining and implementing cultural and audiovisual policies in order to ensure their diversity of cultures. Nevertheless, it mentioned that the audiovisual sector is characterised in Europe culturally by diversity and economically by the fragmentation of the internal market. The Commission was therefore called upon to take these complexities into account and to adopt an approach that integrates the cultural, competitive and industrial dimensions of the sector, boosting its position on the world stage, while preserving its cultural diversity.

### 3.3.2.2 Cultural diversity in the post-Lisbon era

#### *European Commission*

The **2010 Commission Communication on opportunities and challenges for European cinema in the digital era** primarily approached the diversity of the EFI from a distribution perspective. The

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<sup>294</sup> Res. 2000/2087(COS), Recital Q.



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Communication acknowledged the challenge posed by the need to maintain the diversity of films and cinemas in a digital future, noting that keeping a large number of European cinemas up and running was necessary to ensure diversity in both films and cinemas, from small local cinemas to urban multiplexes. It viewed cultural diversity and the renewal of talent as hinging on the retaining of Europe's unique network of cinemas, fearing a dual exhibition/distribution market in which only multiplexes and high-value commercial films would benefit from the digital cinema revolution. The cost of digital equipment was, however, a challenge that had to be dealt with to prevent European cinemas from closing down or being left behind technologically, and therefore less competitive. On the other hand, the transition to digital cinema was needed to enable future generations to access European films and thus Europe's cultural heritage.

The **2010 Green Paper on unlocking the potential of cultural and creative industries** focused on the CCSI's untapped potential in terms of creating new sources of smart, sustainable and inclusive growth and jobs, using knowledge and creative talent to spur innovation and building on Europe's rich and diverse cultures. Diversity was portrayed as something which offers opportunities, not only challenges, in the context of globalisation and digitisation. The Green Paper argued that, in terms of the cultural and creative industries being able to make the most of the opportunities provided by cultural diversity, globalisation and digitalisation, the challenge was to move towards a creative economy by catalysing their spill-over effects in a wide range of economic and social contexts. Its conception of culture and cultural expressions was framed by the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which proposed an understanding of culture as international and intercultural in nature and fostering dialogue and cooperation, with developing countries in particular. The Commission also noted that, according to Article 167(4) TFEU, cultural aspects should be taken into account when implementing all matters of EU law. Aiming to capture the various connotations of 'cultural' and 'creative' throughout the EU, the Green Paper called for the circulation of audiovisual products to be expanded beyond national borders within the EU, as this would help give Europe's citizens a better knowledge



REBOOT ([www.thereboot-project.eu](http://www.thereboot-project.eu)) has received funding from European Union's Horizon Europe Research and Innovation programme under Grant Agreement No. 101094769.



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and understanding of each others' cultures, an appreciation of the richness of Europe's cultural diversity, and insights into what they have in common. The Commission also underlined the importance of improving the mobility of artists, cultural practitioners and works, as this is essential for the circulation of ideas across linguistic or national borders and gives broader access to cultural diversity. Finally, nurturing world-class cultural and creative industries and exporting their works, products and services obviously entails developing links with third countries, especially with regard to SMEs. Industry-to-industry dialogue, scouting missions, market intelligence and collective representation at international fairs were some of the specific tools developed to support exports. Cooperation schemes were seen as offering both an opportunity for mutual learning and a network of contacts abroad. Facilitating artistic exchanges with third countries was also seen as important for stimulating cultural diversity.

The **2013 Commission Communication on state aid for films and other audiovisual works** stressed the role that audiovisual works play in shaping European identities, reflecting the cultural diversity of the different traditions and histories of EU Member States and regions. Their dual nature as economic and cultural goods was affirmed, and the challenge posed by the current fragmentation of the European audiovisual sector into national or even regional markets, resulting in limited circulation, was noted. This, the Commission pointed out, was not only the result of linguistic and cultural diversity, but also of national, regional and local funding schemes. The 2013 Communication therefore focused on how to overcome the threat of potential distortions posed by state aid at the EU level, while increasing the cultural diversity of the choice of works available to European audiences. Fearing that providing aid to production alone risked stimulating the supply of audiovisual content without ensuring that the resulting audiovisual work was properly distributed and promoted, the Commission stated that aid should cover all aspects of film creation, from story concept to delivery to the audience.<sup>295</sup> The Commission also noted that funding needed to promote culture in

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<sup>295</sup> European Commission Communication 2013/C 332/01, Recital 21.





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order to be compatible with Article 107(3)(d) TFEU,<sup>296</sup> and that this should be understood to include championing and promoting the use of one or several of a Member State's languages.

The **2014 Commission Communication on European film in the digital era** focused on the potential the digital revolution could open up for the sector to build bridges between cultural diversity and competitiveness. It understood diversity as cultural and linguistic diversity, and drew attention to the ways in which regional partnerships and a stimulating environment could help European films achieve their full cultural and economic potential. The Communication stated that the provision of information, engagement, the visibility and discoverability of films, an acceptable price for accessing European films, and film education were all key factors in making European films more accessible and appealing to a wider audience, as well as more profitable. The Communication highlighted the components of quality and originality, and presented cultural diversity as both an opportunity and a challenge in the digital era. Nurturing talent and developing professional skills in the EFI was considered a necessity for promoting the quality, diversity and originality of European films, as well as an asset that would feed into greater competitiveness. Consideration was also given to improving the accessibility of video-on-demand services, by aggregating rights or achieving a more coordinated approach to mastering and managing linguistic versions, which would significantly cut the transaction and technical costs which could otherwise constitute entry barriers to such services.

### *European Parliament*

The **European Parliament Resolution of 12 May 2011 on unlocking the potential of cultural and creative industries** found the cultural and creative industries to play a major role both in promoting cultural and linguistic diversity, pluralism and social and territorial cohesion; in democratising access to culture; and in promoting intercultural dialogue throughout the Union.<sup>297</sup> The Resolution considered Europe's cultural diversity, and particularly its rich heritage of regional

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<sup>296</sup> Ibid., Recital 25.

<sup>297</sup> European Parliament Resolution 2010/2156(INI), Recital H.



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languages and cultures, to be irreplaceable raw material for the cultural and creative industries.<sup>298</sup>

Ensuring the artistic and cultural education of citizens was identified as a necessary condition for developing both creativity and the cultural diversity of the Union.<sup>299</sup> Hence, Member States were invited to support creativity in the preservation and enhancement of cultural heritage, which would feed in turn into the creation of a sense of identity and heighten the public's cultural awareness.<sup>300</sup>

The Commission was called to tackle existing obstacles to the development of the internal market, especially in the online environment, while ensuring consumer demand and cultural diversity.<sup>301</sup>

Another important note, concerning the effective promotion of cultural exchanges, was that access to third-country markets was subject to tariffs and other barriers which would, among other factors, make it harder for European culture to establish a genuine presence.<sup>302</sup>

The **European Parliament Resolution of 16 November 2011 on European cinema in the digital era** considered European film as an important element in culture, which promotes dialogue and understanding and embodies and showcases European values within and outside the EU, while playing a significant role in preserving and supporting cultural and linguistic diversity.<sup>303</sup> Completing the digitisation of both the European film industry and its cinemas was therefore considered a matter of some urgency, as it would help to circumvent reduced access to cultural diversity by making European films available on multiple platforms, and should therefore receive support at both a European and national level.<sup>304</sup> Particular attention was paid to the urgent need to digitise small and independent cinemas in order to keep these venues open for films and audiences, and for the sake of cultural diversity.<sup>305</sup> It was highlighted that for many small, rural and art-house European-content-oriented cinemas, alternative financing models, including public support, would perhaps be

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<sup>298</sup> Ibid., Recital I.

<sup>299</sup> Ibid., Recital AC.

<sup>300</sup> Ibid., Recital G.

<sup>301</sup> Ibid., Par. 59.

<sup>302</sup> Ibid., Par. 114.

<sup>303</sup> European Parliament Resolution 2010/2306(INI), Recital F.

<sup>304</sup> Ibid., Recital N.

<sup>305</sup> Ibid., Par. 41.



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necessary.<sup>306</sup> The Resolution also encouraged Member States to ensure the widest possible inclusion of European films in their cinemas' screening programmes, in order to increase the circulation and promotion of European works across the EU, providing EU citizens with the opportunity to grasp the richness and diversity of these films on a wide variety of platforms.<sup>307</sup> The significance of supporting independent cinemas dedicated to European films (such as the Europa Cinemas members) for sustaining European programming and diversity, along with the films' competitiveness on the market, was also acknowledged.<sup>308</sup>

The **2013 European Parliament Resolution on promoting the European cultural and creative sectors as sources of economic growth and jobs** focused on several aspects related to cultural diversity. First, the cultural and creative sectors were recognised as playing an important role in the promotion of cultural and linguistic diversity in the EU. These sectors, it was noted, are themselves characterised by diversity in the way they are financed and in their development models, and such diversity should be taken into account when developing strategies for support or cooperation. The Resolution also had a strong focus on education, as did other documents under study. It was said that EU citizens should receive a cultural and artistic education during their youth in order to better enjoy and respect the diversity of Europe's cultures and develop their own creativity. In a relatively bold manner, the Resolution affirmed that the cultural and creative sectors are 'manifestly richer and more diverse in Europe than in other parts of the world, and these sectors should be used to foster growth'.<sup>309</sup> There was also an emphasis on promoting a common identity within the cultural and creative sectors through joint productions, dialogues, networks connecting actors and the transfer of skills and knowledge. In addition, it was recognised that cultural diversity should be cherished for its richness, power to inspire and development potential, which would, as a whole, help bring a common European identity into being. The issue of intellectual property rights was also raised, with

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<sup>306</sup> Ibid., Par. 86.

<sup>307</sup> Ibid., Par. 119.

<sup>308</sup> Ibid., Par. 122.

<sup>309</sup> European Parliament Resolution 2021/2302(INI), Recital O.



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the European Parliament stressing the need for consumers to have easy access to diversified content and a real choice in terms of linguistic and cultural diversity. Finally, the Resolution affirmed that cultural and audiovisual goods should be seen as distinct from other kinds of goods when trade agreements are negotiated. As such, the EU and its Member States should be able to maintain their own cultural and audiovisual policies.

The **European Parliament Resolution of 12 March 2014 on preparing for a fully converged audiovisual world** drew attention to net neutrality which, in line with a 'best-effort Internet' and non-discriminatory access to--and transmission of--audiovisual content, would, it was believed, ensure both a pluralist supply of information and content diversity.<sup>310</sup> For the purpose of safeguarding diversity, the Resolution also noted that the process of searching for and finding audiovisual content should not be controlled by economic interests,<sup>311</sup> calling upon the Commission to check the extent to which operators of content gateways tended to abuse their position in order to prioritise their own content, and then to develop measures to rule out any future abuse.<sup>312</sup> Furthermore, the Resolution argued against the inclusion of audiovisual culture and media in international free trade agreements, stating that this would be contrary to the EU's commitment to encouraging cultural diversity and to respect the sovereignty of Member States in relation to their cultural heritage and identity.<sup>313</sup> The Resolution also noted that, in the era of convergence, it was important to continue to promote cultural diversity alongside media freedom, media pluralism and the protection of minors.<sup>314</sup> European media and internet policy should remove barriers to media innovation, but without losing sight of the normative aspects of a democratic and culturally diverse media policy.<sup>315</sup> The European Parliament also encouraged Europe's audiovisual industry to continue to develop attractive services (mainly online), in order to improve the range of European audiovisual content on offer, emphasising that

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<sup>310</sup> European Parliament Resolution 2013/2180(INI), Par. 6.

<sup>311</sup> *Ibid.*, Par. 11.

<sup>312</sup> *Ibid.*, Par. 12.

<sup>313</sup> *Ibid.*, Par. 38.

<sup>314</sup> *Ibid.*, Par. 35.

<sup>315</sup> *Ibid.*, Par. 44.



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content has to remain the primary consideration and that the existence of multiple platforms cannot in itself ensure content diversity.<sup>316</sup>

### *Council of the EU*

The **2021 Council Conclusions on increasing the availability and competitiveness of European audiovisual and media content** considered the promotion of cultural and linguistic diversity as a prime asset for the competitiveness of the European media sector, which was intrinsically linked to the availability and effective accessibility of European audiovisual and media content. With the increased prevalence of online platforms in the sector, fair access was considered key to safeguarding democratic debate, media pluralism, and cultural and linguistic diversity. Cultural diversity and creativity were placed at the very heart of the European audiovisual and media sectors. Thus, the Council noted, 'It is important to boost the capacities of those sectors to reach wider audiences, increase the circulation of the content, and promote its various expressions, innovation and talents, while at the same time preserve our strategic cultural assets',<sup>317</sup> which can be achieved through digital solutions, but also through co-productions, support for cross-border distribution, and the promotion of linguistic diversity and freedom of creation. The Conclusions also considered it of the utmost importance that European creations are both of a high standard and highly innovative and reflect the cultural and thematic diversity of European society. Crucially, European diversity was presented as potentially enjoying international appeal. Moreover, the protection of freedom of creation was linked to the safeguarding of freedom of expression, media pluralism, and the diversity of opinions and ideas as fundamental values of the EU. The role of public service media in safeguarding democratic values, encouraging a diversity of opinions, and enhancing the availability and competitiveness of European content was also stressed, along with the role which EU regulations play in the promotion and prominence of European audiovisual and

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<sup>316</sup> Ibid., Par. 39.

<sup>317</sup> Council Conclusions 2021/C 501 I/02, Recital 8.



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media content by ensuring media pluralism, enhancing cultural diversity, strengthening international competitiveness and promoting independent productions.<sup>318</sup>

Aiming to increase the availability and competitiveness of European audiovisual and media content, the Council also argued for stimulating new sources of financing and models of distribution in line with the main priorities of cultural diversity, the promotion and prominence of European content, and sustainability. It invited Member States to encourage greater availability of original content in different language versions, and to support the development of digital solutions enabling linguistic diversity and making it possible to watch content in its original language. Member States were also invited to promote gender balance and social diversity in content creation by introducing incentives for stakeholders in the audiovisual sector to strive for equality, diversity and inclusivity with respect to freedom of creation. The need to support the circulation of a large range of European films, and the staging of festivals as effective outlets for original and diverse content at the national, European and international levels, was also considered. Overall, the Council argued for ensuring a diverse, fair and balanced market of European works in a shifting context. It thus advocated promoting the sustainable development of the media sector and building on its current assets to adapt to the challenges and opportunities offered by the digital transformation. It also addressed the role of platforms and online providers in ensuring the availability, accessibility and distribution of content, while simultaneously acknowledging that they are becoming increasingly pertinent to the democratic debate, cultural diversity, respect for fundamental rights and values, the protection of minors, and the protection of intellectual property rights.

The **Council Conclusions of 13 April 2022 on building a European strategy for the cultural and creative industries ecosystem** underlined the crucial role that the CCIE plays in elaborating a common heritage, common references and the culture of tomorrow—all of which are essential for

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<sup>318</sup> Ibid., Recital 30.



## D2.1 Competitiveness in European law

European cultural diversity.<sup>319</sup> In this context, many challenges and opportunities for the CCIE were noted, such as their contribution to equality and diversity and their role in social cohesion, local economies, and even external relations and the green transition.<sup>320</sup> Furthermore, it was noted that to preserve cultural heritage, promote access to it, and to keep on creating, producing and distributing new and original works that contribute to cultural diversity, it was vital to examine, in close collaboration with the sector, how to define, safeguard and promote Europe's strategic cultural assets.<sup>321</sup> Strategic cultural assets were said to encompass inter alia capacities for the independent creation, production, distribution and showcasing of cultural content and works.<sup>322</sup> Along with experimentation, a robust, diverse, competitive, innovative, viable and independent European CCIE that was appropriate for the digital era was considered important for promoting cultural and linguistic diversity for the benefit of all audiences.<sup>323</sup> The Council noted that the independence of the CCIE lies in the decision-making autonomy of CCIE enterprises (mostly SMEs) in relation to their main artistic and financial choices.<sup>324</sup> Against this background, it was noted that reaffirming Europe's cultural wealth and diversity in the digital era<sup>325</sup> included boosting creativity and the independent production of European works by providing an advantageous framework for enterprises. In that sense, there was to be a focus on co-productions and the territoriality of intellectual property rights, which were considered key to the sustainable financing of the sector and to distribution strategies.

**Table 8: Important CoE policy instruments relating to the audiovisual sector**

The policy approaches of the CoE	
Instrument	Description

<sup>319</sup> Council Conclusions 2022/C 160/06, Recital 2.

<sup>320</sup> *Ibid.*, Recital 7.

<sup>321</sup> *Ibid.*, Recital 8.

<sup>322</sup> *Ibid.*

<sup>323</sup> *Ibid.*, Recital 9.

<sup>324</sup> *Ibid.*

<sup>325</sup> *Ibid.*, see particularly Recitals 27-35.



<p><a href="#">Recommendation 862</a> on cinema and state of 1979</p> <p>Entry into force: 11.5.1979</p>	<p>The 1979 Recommendation on cinema and state provides policy guidance at the national and European level aimed at improving cinema policies. It covers film production, state aid, education and civil society involvement, accessibility, storage, conservation, restoration, film financing and coordination efforts at the European level.</p> <p>The Recommendation directly addresses the question of national and cultural diversity in the EFI and insists that such diversity should be expressed and diffused through film. While no precise measures are proposed, the Committee of Ministers is invited to consult professionals and other stakeholders with a view to formulating recommendations for governments concerning the diversification of film distribution and the individuality of film-making in Europe. The Recommendation does not mention competitiveness.</p>
<p><a href="#">Recommendation (85)8</a> on the conservation of European film heritage of 1985</p> <p>Entry into force: 14.5.1985</p>	<p>The 1985 Recommendation on the conservation of European film heritage reflects the CoE's willingness to achieve greater unity in cultural matters, given that cinema is of particular importance because it expresses the cultural identity of Europe's peoples. According to the Recommendation, cinema is a 'witness to the cultural and social heritage and [...] must therefore be protected without qualifications' (p. 1, entry 4).</p> <p>The Recommendation mentions neither diversity or competitiveness, focusing instead on the availability, restoration and conservation of film archives. It aims to make European film heritage better known, as it regards films as historical and cultural documents.</p>
<p><a href="#">Recommendation (86)3</a> on the promotion of audiovisual production in Europe of 1986</p> <p>Entry into force: 14.2.1986</p>	<p>The 1986 Recommendation on the promotion of audiovisual production in Europe proposes measures that include the whole audiovisual circle, from creativity to production and distribution. The measures suggested fall into three main categories: the coordinated development of production at the European level; financial and fiscal support to encourage audiovisual creation; and copyright and neighbouring rights.</p> <p>Interestingly, this Recommendation is one of the few CoE documents that does not mention diversity, mentioning the issue of competitiveness instead. It anticipates that increased demand for television programmes, and the ensuing competition between programmes, will result in the emergence of new channels for the transmission and distribution of television in Europe. Consequently, it encourages more competitive audiovisual production by Member States.</p>





<p><a href="#">Recommendation (87)7</a> on film distribution in Europe of 1987</p> <p>Entry into force: 20.03.1987</p>	<p>The 1987 Recommendation on film distribution in Europe factors in the shifts that new communication technologies are creating for the film sector. It focuses mostly on the distribution side of the film industry, targeting the promotion of films of European origin.</p> <p>The Recommendation does not mention cultural diversity. It focuses on diversification in film distribution and aims to ensure that cinemas are given priority in the hierarchy of distribution channels. While this understanding of diversity has a competitive angle, the text does not mention competitiveness specifically, either.</p>
<p><a href="#">Declaration on cultural diversity</a> of 2000</p> <p>Entry into force: 7.12.2000</p>	<p>From 2000 on, there is an observable increase in mentions of the concept of cultural diversity in the CoE's policy documents concerning the EFI. More attention is paid to what diversity means and entails, along with the reasons for its protection and promotion.</p> <p>The Declaration on cultural diversity of 2000 is relevant in this regard, as cultural diversity is considered 'an essential condition of human society' (preamble), while it is acknowledged that today's technological innovations and globalised world impact on it. The Declaration recognises that the CoE and European countries have a major role to play in the protection and promotion of cultural diversity, and that they have taken various measures and developed instruments towards that goal. It identifies new challenges posed by the global market for democratic states, mostly in terms of developing policies for 'assuring the recognition and expression of forms of cultural diversity coexisting within their</p>



	<p>jurisdiction' (preamble), but also for defending and promoting media freedoms and media pluralism as fundamental preconditions for cultural exchange, diversity and democracy. To address these challenges, there is a need to elaborate a set of principles to protect cultural diversity and to reach international agreements on cultural cooperation.</p> <p>The Declaration argues that cultural and audiovisual policies are a necessary complement to trade, since they promote and respect cultural diversity, which in turn is vital for the development of a knowledge economy, pluralism, innovation, competitiveness and employment. Technological innovations are said to have the potential to enhance diverse forms of production. The emphasis is also put on wide distribution, public service broadcasting, education and training as means to promote cultural diversity. Member States are called on in particular to examine ways of sustaining and promoting cultural and linguistic diversity in the new global environment, at all levels, including other international fora, and in line with the relevant instruments of the CoE.</p> <p>Interestingly, the Recommendation closely links the notions of competitiveness and diversity, which has an essential role to play in the knowledge economy and is understood to contribute positively to competitiveness and employment.</p>
<p><a href="#">Recommendation 1674</a> on challenges facing the European audiovisual sector of 2004</p> <p>Entry into force: 7.9.2004</p>	<p>The Recommendation on challenges facing the European audiovisual sector stresses that combining artistic creativity and cultural diversity with a 'truly European dimension' (art. 5) is a major challenge for European works, in terms of the cultural values they represent and their market reach. The difficulties stem from the fact that national audiovisual works are mostly distributed in small-sized markets, and from the fact that there are cultural and linguistic differences between Europe's nations. Funding film productions through national markets and national public support funds is helpful for sustaining such national productions, but it is not enough to allow for worldwide distribution in cinemas and on television.</p> <p>Thus, the Recommendation suggests the development of a high-quality, culturally diverse and economically competitive European audiovisual sector; it also argues for better coordination within the CoE's structures and with the EU. On the issue of funding, the Committee of Ministers is invited to encourage Member States to expand their contributions to the Eurimages programme, and the EU is invited to participate further in the efforts to increase pan-European film production, either by the European Commission becoming a member of the Eurimages programme, or by putting the programme's capacities and competences at the disposal of an EU-financed support fund. Finally, the Recommendation affirms that cultural diversity is 'a political justification for</p>



	<p>maintaining national support systems for film and audiovisual creation [...] in order to enable each culture to express itself and contribute to the rich European cultural heritage' (art. 13.5), and argues in favour of a UNESCO international instrument protecting cultural diversity.</p> <p>On competitiveness, the Recommendation states that the European audiovisual sector is under stress due to the domination of American, but also Asian and Latin American, films, as well as being impacted by new technologies and the closure of theatres and cinemas. As in the 2000 Declaration on cultural diversity, the notions of competitiveness and cultural diversity are intertwined, with both being a priority of the CoE's cultural policy for the European audiovisual sector.</p>
<p><a href="#">Recommendation (2009) 7</a> on national film policies and the diversity of cultural expressions of 2009</p> <p>Entry into force: 23.9.2009</p>	<p>The 2009 Recommendation on national film policies and the diversity of cultural expressions is drafted in the same spirit as the 2017 revised Convention on cinematographic co-production. It argues that cultural diversity is a defining characteristic of humanity and that it must be protected as a common European ideal. There is a strong focus on freedom of expression, which must be safeguarded during both the production and the distribution phases. The Recommendation recognises that film has both an economic and a cultural dimension and should not therefore be approached as either a cultural product or a commercial product. It considers film as an important good that helps uphold principles such as democracy, diversity and freedom of expression and states that it should be easily accessible to wide audiences.</p> <p>In this regard, the Recommendation acknowledges that new technologies were triggering major changes in the ways European films are financed, produced and accessed. However, the existing business models are deemed obsolete; being incapable of ensuring a fair representation of European films on screens around the world, they do not ultimately foster diversity on a large scale. Aiming to promote cultural diversity, the Recommendation proposes several ideas. Co-production and co-distribution are advocated as significant tools with the potential to improve the circulation of European films and thus its diversity. Concerning audiences, attention is focused on the young and the need to raise their awareness of the variety and richness of film culture and European films.</p>
<p><a href="#">Recommendation 2001</a> on the protection of and access to the audiovisual cultural heritage of 2012</p>	<p>The 2012 Recommendation on the protection of, and access to, Europe's audiovisual cultural heritage follows up and promotes the European Convention for the Protection of the Audiovisual Heritage and its Protocol on the Protection of Television Productions. It steers the creation of a second protocol that could encourage the creation of public audiovisual libraries in Member</p>



Entry into force:  
25.5.2012

States. It states that audiovisual heritage should be made available for people with disabilities and calls the European Broadcasting Union to develop joint strategies and concrete actions with the CoE for the protection of audiovisual material. It also recommends that Member States make 'an inventory of their audiovisual heritage and protect it at national and, where appropriate, regional levels' (art. 7).

On the issue of cultural diversity, the Recommendation states that public support is needed if the diversity of the audiovisual heritage, and particularly audiovisual works that do not necessarily attract a large group of consumers, is to be guaranteed. Competitiveness is not mentioned in this document.

#### **4 'COMPETITIVENESS' AND 'CULTURAL DIVERSITY' IN EU LAW AND POLICY FOR THE AUDIOVISUAL SECTOR AND THE EFI: CONCEPTS, SYNERGIES, COLLISIONS**

Section 4 presents the culmination of the quantitative textual mapping and the qualitative analysis performed and presented in the two preceding sections. The analysis discusses EU regulatory instruments, financial support and policy instruments. First, the discussion explores the various approaches that the Union's legally binding and non-legally binding acts take with regard to the concept of 'cultural diversity', and where the main emphasis is placed within its various facets and dimensions. Second, the concept of 'competitiveness' is incorporated in order to examine the various links and synergies that the Union's documents portray between 'cultural diversity' and 'competitiveness': i.e. in what ways these concepts could be considered complementary and



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interrelated to each other. In a similar fashion, the analysis explores any contradictions that are noted between the two concepts: that is, if and how the promotion of 'competitiveness' might not be fully compatible with the preservation of 'cultural diversity' and vice-versa.

### **4.1 Different approaches to 'cultural diversity' and emphasis in EU law and policy for the audiovisual sector and the EFI**

This subsection assesses the approaches that were adopted and the principal thrust that was given to the concept of 'cultural diversity' in the context of: i) the EU legislative acts under study (see subsection 3.1), with a focus on the TWFD, the AVMSD and their amendments; the EU funding instruments examined (see subsection 3.2), i.e. the MEDIA programmes and the Creative Europe programmes; and the set of EU policy documents selected (see subsection 3.3).



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### 4.1.1 EU regulation

In the EU, the preservation and promotion of ‘cultural diversity’ is key. It has underpinned the Union’s evolving legislative framework over the years with regard to the TWFD, the AVMSD and their amendments. In the context of long-term challenges and drastic changes that dictated the need for common action in the audiovisual sector and the EFI, attention to cultural diversity has been constant and multifaceted.

The 1989 TWFD stressed the intrinsic value of cultural diversity, i.e. the aim of preserving Member States’ cultures. The economic value of cultural diversity was also discernible: the 1989 Directive made arrangements for the promotion of European works and works by independent producers, which can be seen both as an industrial and a cultural advancement goal for a thriving European audiovisual industry. The first amending act of the TWFD in 1997 did not expressly refer to ‘cultural diversity’, but mentioned what was then Article 128(4) TEC [now Article 167(4) TFEU], confirming the dedication of the then EC legislator to cultural mainstreaming: that is, to the integration of cultural diversity considerations into EU policies--in this case, into an internal market legislative act. A pluralist reading of cultural diversity, broadly understood as openness towards others’ cultures, became visible from the second amending act of the TWFD in 2007 and the 2010 AVMSD, which had a lot of similarities regarding references to the concept of cultural diversity, given that the latter served primarily as a codification instrument. In particular, not only did the 2007 Directive and the 2010 AVMSD directly address respect for cultural/linguistic diversity in connection with the pursuit of broadcasting activities in the internal market, also acknowledging the cultural dimension of the European content requirements; they further encouraged Member States to include an adequate share of co-produced European works, or European works of non-domestic origin, when implementing the latter. Various approaches to the notion of cultural diversity can thus be traced in the 2007 Directive and in the 2010 AVMSD, such as enhancing the intrinsic value of culture in the field of broadcasting and audiovisual media services, while the notion is also associated with the free market, cultural interaction and openness to other points of cultural reference.



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Then, as anticipated, the modernisation of the EU legal framework via the amendment of the AVMSD in 2018 explicitly addresses the concept of cultural diversity, reinforcing it and associating it, *inter alia*, with the safeguarding of legitimate public policy considerations. Cultural diversity is clearly described as a general interest objective, with a guaranteed intrinsic and political value that coexists with the reinforcement of media pluralism, consumer protection, fair competition and the internal market, taking into account the transformations in the market and in audiovisual consumption, and the operation of the well-established video-on-demand services and video-sharing platforms. Significantly, approaching cultural diversity as a public interest objective enables action at Member State level. To illustrate, Member States can impose obligations to ensure the appropriate prominence of content of general interest with a view to attaining cultural diversity objectives.<sup>326</sup> At the same time, they are to ensure that when national regulatory authorities exercise their powers, they do so in accordance with the objectives of the Directive, ‘in particular media pluralism, cultural and linguistic diversity’ and others.<sup>327</sup> Thus, cultural diversity may be a general interest objective to be pursued at Member State level, but it is also a genuine EU objective that the legal framework established seeks to attain.

Overall, the development and evolution of the EU’s legislative instruments for the audiovisual sector fosters a sense of inclusivity, intercultural respect and cultural exchange which echoes the spirit of unity in diversity and at times extends beyond strictly economic considerations. At the same time, the basic need to preserve and promote Member States’ rich cultural/linguistic diversity is reflected in attempts to develop a sound legal environment that seeks to balance the ‘common market’ against ‘national sovereignty’.

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<sup>326</sup> See Recital 25 of the 2018 AVMSD.

<sup>327</sup> See Recital 53 of the 2018 AVMSD and Article 30(2) AVMSD as amended.



### 4.1.2 EU funding programmes

Overall, the analysis of the legal framework dealing with the funding aspects of the European audiovisual industry and the EFI portrays an economic approach to the concept of cultural diversity. The support instruments adopted overwhelmingly focus on the economic value of cultural diversity, but this is nuanced by the contemplation of other approaches: predominantly, the social and political value of cultural diversity. Therefore, cultural diversity is captured as a multifaceted concept that is relevant not only for its economic value, but also for its social and political worth. More specifically, the first MEDIA decisions reflected only the economic value, while the MEDIA II, MEDIA Plus, MEDIA 2007 and MEDIA Mundus programmes also incorporated its social value, as a tool for enhancing multiculturalism and intercultural awareness, and political value, as a tool for promoting and spreading both the EU's common democratic values and cultural exchange on the international scene. Interestingly, the two Creative Europe programmes not only incorporated the extrinsic values of cultural diversity and what it could contribute to the pursuit of other objectives (Ratiu 2009); they also included the intrinsic value of cultural diversity, its value *per se*, revealing that it took some time for the EU to recognise the intrinsic value of cultural diversity when dealing with financial support to the audiovisual sector. Also, the two Creative Europe programmes have been decidedly more open and vocal about cultural diversity as a key asset which contributes to European identity and promotes the Union's values.

Thus, the MEDIA programme put the emphasis on demonstrating the richness and diversity of European culture,<sup>328</sup> while the MEDIA II programme conceptualised European culture as being built on the protection and promotion of Member States' cultures while also emphasising their common cultural heritage. Moreover, the Commission, wanting to reflect the economic and political value of cultural diversity, sought to achieve a good geographical spread among the professionals participating in the programme and focused on the specific need of countries with a low production

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<sup>328</sup> Council Decision 90/685/EEC of 21 December 1990 (MEDIA, 1991 to 1995), Preamble, Recital 1.





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capacity and/or a linguistically restricted area, as well as on the development of the independent production and distribution sector and SMEs in particular.<sup>329</sup> MEDIA Plus placed the emphasis on respect for, and the promotion of, cultural and linguistic diversity in Europe; enhancing European heritage;<sup>330</sup> fostering the role of the audiovisual sector in sustaining cultural pluralism, a healthy economy and freedom of expression;<sup>331</sup> and including third countries.<sup>332</sup> In addition to confirming the above dimensions, the MEDIA 2007 programme drew attention to the needs of Member States with more than one linguistic area,<sup>333</sup> and set out to improve the public's access to Europe's cinematographic and audiovisual heritage.<sup>334</sup> MEDIA Mundus, for its part, put the stress on the promotion of cultural diversity, multilingualism and pluralism; on intercultural dialogue as a vital element of the external relations of the Union and its Member States; and on openness towards other cultures, combating all forms of discrimination based on, inter alia, race and ethnic origin.<sup>335</sup>

The Creative Europe Programme 2014-2020 focused on promoting Member States' cultures while respecting their national and regional diversity;<sup>336</sup> on fighting all forms of discrimination,<sup>337</sup> on fostering cultural diversity at international level in line with the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions; and on promoting Europe's cultural heritage.<sup>338</sup> The Creative Europe Programme 2021-2027 took a broader focus by emphasising the protection and promotion of cultural and linguistic diversity and heritage; the intrinsic and economic value of culture;<sup>339</sup> the strengthening of European identity and values,<sup>340</sup>

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<sup>329</sup> Council Decision 95/563/EC of 10 July 1995 (MEDIA II – Development and distribution) (1996 to 2000), Annex, 2.

<sup>330</sup> Council Decision 2000/821/EC of 20 December 2000 (MEDIA Plus – Development, Distribution and Promotion) (2001-2005), Art. 1.2.

<sup>331</sup> *Ibid.*, Preamble, Recital 16.

<sup>332</sup> *Ibid.*, Art. 11.5.

<sup>333</sup> Decision 1718/2006/EC of 15 November 2006 (MEDIA 2007), Preamble, Recital 4.

<sup>334</sup> *Ibid.*, Art. 6.

<sup>335</sup> Decision 1041/2009/EC of 21 October 2009 (MEDIA Mundus), Art. 11.

<sup>336</sup> Regulation (EU) 1295/2013 of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020), Preamble, Recital 1.

<sup>337</sup> *Ibid.*, Preamble, Recital 4.

<sup>338</sup> *Ibid.*, Preamble, Recital 6.

<sup>339</sup> Regulation (EU) 2021/818 of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027), Preamble, Recital 4.

<sup>340</sup> *Ibid.*, Preamble, Recital 12.



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cultural diversity as a tool for social cohesion, societal well-being,<sup>341</sup> inclusion, equality and participation;<sup>342</sup> the promotion of an independent and pluralistic media environment, along with media literacy; and the fostering of freedom of artistic expression, intercultural dialogue and social inclusion.<sup>343</sup>

Overall, the protection and promotion of the cultural diversity of Member States and their cultural heritage are a recurring topic among the EU funding programmes in the audiovisual sector, as is strengthening a European identity and European values, openness to and exchange with other world cultures, and the recognition of the economic and social ramifications of cultural diversity.

### 4.1.3 EU policy documents

In some of the policy instruments analysed, the economic value of cultural diversity appeared to be the predominant approach. This was the case with the 1997 Commission Green Paper on the convergence of the telecommunications, media and information technology sectors, the 2010 Commission Green Paper on unlocking the potential of cultural and creative industries, and the 2014 Commission Communication on European film in the digital era: bridging cultural diversity and competitiveness. In other cases, cultural diversity was approached in a multifaceted way, considering not only its economic but also its intrinsic value, as the 2013 Commission Communication on state aid for films and other audiovisual works did, or its economic value, intrinsic value and political value, as in the 2021 Council Conclusions on increasing the availability and competitiveness of European audiovisual and media content.

In the European Parliament Resolution on unlocking the potential of cultural and creative industries of 12 May 2011, it was the social/political value of cultural diversity that was particularly evident, given that in the EU, the cultural and creative industries were considered to play a major role both

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<sup>341</sup> Ibid., Preamble, Recital 4.

<sup>342</sup> Ibid., Art. 3.5.

<sup>343</sup> Ibid., Art. 3.2.



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in promoting cultural/linguistic diversity, pluralism and social/territorial cohesion, and in democratising access to culture and intercultural dialogue throughout the Union. However, the economic repercussions of cultural diversity were also traced since it was noted that market fragmentation in the cultural and creative sectors is due in part to cultural diversity and the language preferences of consumers. In the European Parliament Resolution on European cinema in the digital era of 16 November 2011, the social value and political value of cultural diversity was made clear once again: as well as supporting cultural and linguistic diversity, European film also plays an important role in promoting intercultural dialogue and understanding, embodying and promoting European values within and beyond the Union. The European Parliament Resolution on preparing for a fully converged audiovisual world of 12 March 2014 focused on protecting media freedom and promoting media pluralism, cultural diversity and the protection of minors as relevant values in an era of convergence. The Council Conclusions on building a European strategy for the cultural and creative industries ecosystem of 13 April 2022 underlined the strategic value of cultural diversity for the Union on various grounds. The Conclusions referred to the strategic cultural assets of the CCIE and put European cultural diversity in the digital era on an equal footing with other fundamental EU goals such as equality, the green transition, social cohesion, and economic and/or social development.

Particularly, with regard to where the emphasis is placed among the various perspectives, understandings and aspects of cultural diversity, the policy documents often mention the promotion of Member States' regional and national cultures: this was the case with the 1997 and 2010 Green Papers, the European Parliament Resolution of 16 November 2011, and the 2013 and 2014 Commission Communications. In addition, the 1997 Green Paper on the convergence of the telecommunications, media and information technology sectors emphasised the need to harness creative capabilities and promote media pluralism. Similarly, the 2010 Green Paper on unlocking the potential of cultural and creative industries considered the role of culture in development and the global diffusion of cultural diversity and underlined both openness towards other cultures through



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intercultural exchanges and international cooperation and solidarity. It also pointed out that it is not only necessary to promote the cultures of Member States in order to promote cultural diversity; it is essential to preserve them, as well. These two documents approach cultural diversity from a primarily economic standpoint.

In contrast, the following policy documents placed a greater focus on the social and political value of culture. The European Parliament Resolution of 12 May 2011 on unlocking the potential of cultural and creative industries emphasised the protection and promotion of cultural and linguistic diversity, the preservation and enhancement of cultural heritage, pluralism, and social and territorial cohesion, while also asserting the need to democratise access to culture and promote intercultural dialogue throughout the EU. The European Parliament Resolution of 16 November 2011 on European cinema in the digital era considered European film to be an important element of culture, given that it promotes dialogue and understanding as well as embodying and showcasing European values both within and outside the Union, playing a significant role in preserving and supporting cultural and linguistic diversity. The European Parliament Resolution of 2014 on preparing for a fully converged audiovisual world sought mainly to guarantee a pluralist supply of information and a diversity of opinion and culture.

Finally, the 2021 Council Conclusions on increasing the availability and competitiveness of European audiovisual and media content focused on the promotion of linguistic and cultural diversity as a primary asset for competitiveness and ensuring access to diversified cultural and creative content for broad audiences. The Council Conclusions of 13 April 2022 on building a European strategy for the cultural and creative industries ecosystem once again emphasised the continuous blossoming of cultural and linguistic diversity, along with the need to elaborate on a common heritage, with efforts made to reinforce European cultural wealth and diversity through a strategy which fosters European creativity and diversity of cultural expression and is applicable to all CCSI.



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In summary, it can be concluded that the promotion and preservation of Member States' cultures as a primary asset for the competitiveness of the audiovisual industry, served as points of emphasis across the policy instruments analysed, with other cultural diversity frames being emphasised strategically by individual instruments.

### **4.2 The interplay between the concepts of 'competitiveness' and 'cultural diversity' in EU law and policies for the audiovisual sector and the EFI**

This subsection assesses the interplay between the concepts of 'competitiveness' and 'cultural diversity' in the documents under study (see subsections 3.1, 3.2 and 3.3.). In that sense, the focus of the analysis is whether links are forged and/or unravel between the concepts of competitiveness and cultural diversity. The analysis takes place chronologically, reflecting key points in the development and evolution of the legal framework for the audiovisual sector and the EFI (i.e. the TWFD, the AVMSD and their amendments) and using major treaty revisions as dividing lines between periods with regard to the funding instruments and policy documents under study.

#### **4.2.1 EU regulation**

In the 1989 TWFD, which established a legal framework for the cross-border transmission of television programmes, there was no express interplay between the concepts of 'competitiveness' and 'cultural diversity'. On the one hand, 'competitiveness' was mostly associated with ensuring fair conditions of competition in the single market. In addition, as indicated in the quantitative textual analysis, the concept of 'competitiveness' was largely seen as an attempt to improve economic effectiveness and profitability in the European audiovisual and film industry. On the other hand, in the 1989 TWFD, the concept of 'cultural diversity' was mentioned directly, but the European legislator approached it in an independent manner, without associating it with any competitiveness considerations in either a positive or a negative way. It did so by considering that the level of



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harmonisation which the Directive performed in key areas with a view to guaranteeing the free movement of television broadcasting services across borders would not affect domestic cultural policymaking, the independence of cultural developments in Member States, and thus the preservation of cultural diversity in the then EEC.

At the same time, certain connections between the two concepts were achieved. The 'legislative birth' of the European quotas can also be seen from a cultural point of view, which was inherently linked to their industrial dimension: namely, establishing conditions favouring the production and distribution of European audiovisual works by creating a demand for European-made content in the market. This should ultimately encourage cultural creation, dissemination and the circulation of different cultures in Member States' broadcasts. Admittedly, the cultural aims of the TWFD fit the tenor of the time in relation to the internal market aims pursued. As also mentioned in the quantitative mapping, prior to 1989, issues related to 'harmonisation' became a central policy priority in the context of the process of establishing an audiovisual 'common market'. As such, the cultural aims sought to address the structural challenges to cultural diversity deriving from market-building; in so doing, they also approached cultural diversity from a pluralist perspective. The emphasis here was on creating contacts with other cultures and facilitating access to a diverse audiovisual product range, even if European works naturally embodied domestic audiovisual content (Psychogiopoulou, 2021: 39).

Directive 97/36/EC brought no significant changes to the interaction between 'competitiveness' and 'cultural diversity' in relation to the aforementioned. The Directive's preamble simply made an express reference to what is now Article 167(4) TFEU, requiring the EC to take cultural aspects into account in its action under other provisions of the Treaty (such as internal market initiatives); this fortified Europe's dedication to cultural promotion objectives.

The second amendment to the TWFD (ten years later) by means of Directive 2007/65/EC and the 2010 AVMSD, as a codifying instrument, sought to reflect transformations in the way audiovisual



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content was distributed and produced, while also respecting cultural and linguistic diversity. Thus, while the European content requirements remained in place for traditional audiovisual media services, the amended TWFD contained provisions applicable to the emerging on-demand audiovisual media services relating to the production of, and access to, European works. In addition, the quantitative textual analysis illustrated that the period from 2000 to the early 2010s witnessed the start of a distinct emphasis on new technological transformations, as evidenced by the dynamic introduction of terms such as ‘innovation’, ‘digitisation’ and ‘platforms’. In fact, the second amendment to the TWFD and the 2010 AVMSD introduced a regulatory framework for all audiovisual media services, which sought to ensure a level playing field between linear and non-linear services through the imposition of requirements on both to promote European works, thereby supporting cultural diversity alongside competitiveness. To a certain extent, the two concepts could therefore be characterised as complementary objectives within the framework of the 2007 Directive and 2010 AVMSD.

In the same vein, there are no discernible contradictions between the application of the concepts of ‘competitiveness’ and ‘cultural diversity’ in the 2018 AVMSD. This strives to reinforce EU objectives like cultural diversity, media pluralism, consumer protection, etc., but also seeks to guarantee the proper functioning of the internal market and the promotion of fair competition. Consequently, through different and graduated types of obligations, the rules established by the Directive merge the demand for a level playing field in the European market of audiovisual services with the objective of safeguarding and encouraging cultural diversity by, inter alia, reinforcing requirements for the promotion of European works by on-demand audiovisual media services (through exceptions to the country-of-origin principle, too), while leaving the rules on television broadcasting services unaltered.

An important point, mentioned in a 2019 publication of the European Audiovisual Observatory (EAO), is that ‘European films and other audiovisual works are culturally valuable, they face strong



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competition from outside Europe, and they suffer from a somewhat weak circulation outside their country of origin' (EAO, 2019: 1). For the EAO, 'these three reasons make a compelling case for regulatory intervention' (EAO, 2019: 1). Against this background, the rapid 'platformisation' of the audiovisual industry has proven a key driver in reshaping cultural policies and media regulation at EU level. The quantitative textual mapping also indicated that, since the early 2010s, EU audiovisual and film policy has shifted its focus onto new technological transformations and respective policy adaptations, as illustrated by the extensive use of terms such as 'digital content', 'platforms', 'data' and 'innovation'. Online content platforms, especially the major global players that control a large share of the content demand in the context of the audiovisual market (e.g. Netflix, Amazon Prime Video, Disney Plus, Apple TV Plus, HBO Max), generate major challenges for EU governance with regard to the production, broadcasting, distribution, and consumption of media and cultural works (for further reading, see A. Vlassis, 2022: 152 et seq.). Undoubtedly, online content platforms have powerfully disrupted the three main streams in the traditional linear film value chain: production, distribution and exhibition. The introduction of quotas, a typical example of regulatory intervention designed to address the deficiencies arising from the functioning of the free market (which has both advocates and critics), represents a policy measure that pursues 'market and culture' goals concurrently. In other words, quotas have both a cultural and industrial policy facet, as they seek to increase intra-EU trade and exposure to European content, thus directly influencing the diversity of the audiovisual content available (García Leiva & Albornoz, 2021: 269-270).

### 4.2.2 EU financial support instruments

In all the instruments regulating the funding of the audiovisual sector and the EFI under study, there is a recognisable link between competitiveness and cultural diversity as policy objectives. The only exception is the 1990 MEDIA programme, in which no clear link can be inferred from the text. The fact that, at the time of the enactment of the MEDIA programme prior to the Treaty of Maastricht, the then EEC enjoyed no formal competence related to culture might account for this. As the quantitative textual mapping also demonstrated, prior to the Treaty of Maastricht, cultural





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considerations such as the protection and promotion of cultural diversity were not yet at the core of the European audiovisual policy agenda.

Moving on to analyse the linkage revealed by the remaining financial support instruments, and to do so chronologically, MEDIA II incorporated linguistic diversity as a structural factor for determining the level of support the audiovisual sector might need to enhance its competitiveness in terms of circulation, transnational distribution and audience.<sup>344</sup> It also considered the need to enhance audiovisual heritage to meet the requirements of the programme market.<sup>345</sup> Next, MEDIA Plus stated a clear intention to encourage the development of a strong and competitive European audiovisual programme industry, taking particular account of Europe's cultural diversity and the specific conditions in restricted linguistic areas.<sup>346</sup> It acknowledged that the audiovisual sector plays a special role in sustaining cultural pluralism, a healthy economy and freedom of expression.<sup>347</sup> The programme also recognised the need for it to help guarantee a place for the European audiovisual sector in the global economy and to promote cultural diversity effectively on an international basis.<sup>348</sup>

The MEDIA 2007 programme stated its objective of strengthening the audiovisual sector economically, by developing an industry with powerful and diversified content, thereby enabling it to play its cultural roles more effectively.<sup>349</sup> It set out to promote the EU's own internal diversity, by enhancing the film industry's competitiveness and, in particular, increasing the market share of non-national European works in Member States.<sup>350</sup> The MEDIA Mundus programme followed a similar approach in seeking to increase the competitiveness of the audiovisual industry, enabling it to play its cultural as well as its political role; however, it focused more specifically on the additional need

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<sup>344</sup> Council Decision 95/563/EC of 10 July 1995 (MEDIA II – Development and distribution) (1996 to 2000), Art. 2.

<sup>345</sup> *Ibid.*, preamble, Recital 19.

<sup>346</sup> Council Decision 2000/821/EC of 20 December 2000 (MEDIA Plus – Development, Distribution and Promotion) (2001-2005), Preamble, Recital 2.

<sup>347</sup> *Ibid.*, Preamble, Recital 16.

<sup>348</sup> *Ibid.*, Preamble, Recital 27.

<sup>349</sup> Decision 1718/2006/EC of 15 November 2006 (MEDIA 2007), Art. 1.

<sup>350</sup> *Ibid.*, Preamble 1.



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to increase consumer choice and cultural diversity.<sup>351</sup> It also introduced internationalisation or access to third-country markets as a goal, which was to be achieved by building trust and long-term working relationships.<sup>352</sup> In this approach, cultural diversity can be seen as a means of promoting intercultural dialogue, but also as an asset that can help strengthen the global competitiveness of the Union, and vice-versa.

Significantly, most of the instruments governing the funding of the European audiovisual industry do not present the objectives of promoting the competitiveness and the cultural diversity of the film sector in the EU as conflictual. The exception to this is the MEDIA 2007 programme, whose decision pointed to the market fragmentation that ensues from cultural and linguistic diversity and results in a large number of SMEs and very small enterprises whose chronic undercapitalisation could potentially undermine the competitiveness of the EFI.

Turning to the Creative Europe programmes, the first one, from 2014 to 2020, considered the dual nature of culture and cultural activities, recognising, on the one hand, the intrinsic and artistic value of culture and, on the other, the economic value of the audiovisual sector, including its broader societal contribution to creativity, innovation and social inclusion.<sup>353</sup> It highlighted the importance of artists, creators and professionals for the excellence and competitiveness of European CCSI, and the need for their efforts to be promoted and their access to finance improved,<sup>354</sup> especially in the case of SMEs.<sup>355</sup> To achieve these twin goals of competitiveness and cultural diversity, the Creative Europe Programme 2014-2020 stressed its transnational and international character, which is deemed necessary to achieve the desired scale and impacts.<sup>356</sup> Thus, safeguarding, developing and promoting European cultural diversity and heritage went hand in hand with strengthening the

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<sup>351</sup> Decision 1041/2009/EC of 21 October 2009 (MEDIA Mundus), Art. 1.

<sup>352</sup> Ibid.

<sup>353</sup> Regulation (EU) 1295/2013 of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020), Preamble, Recital 20.

<sup>354</sup> Ibid., Preamble, Recital 7.

<sup>355</sup> Ibid., Preamble, Recital 17.

<sup>356</sup> Ibid., Preamble, Recital 36.



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competitiveness of European CCSI with a view to promoting smart, sustainable and inclusive growth.<sup>357</sup> Here, it is worth remembering that the quantitative textual mapping revealed a strong presence in the European governance of the audiovisual and film industry of terms such as ‘creative economy’, ‘creative industries’ and ‘cultural heritage’ since the 2000s. Going one step further, the Creative Europe Programme 2021-2027 stated its general objectives thus: to ‘safeguard, develop and promote European cultural and linguistic diversity and heritage, while also increasing the competitiveness and the economic potential of the cultural and creative sectors, in particular the audiovisual sector’.<sup>358</sup> This is because it acknowledges the mutually reinforcing potential of cultural diversity and competitiveness, as it recognises that the ‘power of culture and cultural diversity for social cohesion and societal well-being is clear in fostering the cross-border dimension of cultural and creative sectors and fostering their capacity to grow, to encourage culture-based creativity in education and innovation, and for jobs and growth, and to strengthen international cultural relations’.<sup>359</sup> The programme also considers the promotion of the transnational circulation of artistic and cultural works, the transnational mobility of artists and other cultural and creative professionals, and the encouraging of dialogue and cultural exchanges as means of fostering a shared area of cultural diversity for ‘the peoples of Europe’.<sup>360</sup> In addition, it aims to provide a more level playing field by taking the specificities of the different countries, both market- and language/culture-wise, into consideration.

Although the Creative Europe Programme 2021-2027 does not identify any conflicts between promoting the competitiveness and the cultural diversity of the EFI as objectives, the Creative Europe Programme 2014-2020 referred to market fragmentation as a significant conflictual issue that could arise from linguistic diversity and harm competitiveness. Moreover, while the diversification of the European cultural and creative sectors along national and linguistic lines should

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<sup>357</sup> Ibid., Art. 3.

<sup>358</sup> Regulation (EU) 2021/818 of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027), Art. 3.

<sup>359</sup> Ibid, Preamble, Recital 4.

<sup>360</sup> Ibid., Preamble, Recital 5.



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result in a culturally rich and highly independent cultural landscape, such diversification could also give rise to a series of obstacles that could impede the transnational circulation of cultural and creative works and hamper the mobility of cultural and creative players within and outside the Union. This, in turn, could lead to geographical imbalances and hence to a limited choice for the consumer. The programme thus underlined the understanding of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which considers that cultural activities, goods and services must not be treated as having commercial value alone but should instead be viewed as also having a cultural value, given that they convey identities, values and meanings. Accordingly, the programme focused on the concept of 'European added value' as a means to resolve this conflict, recognising both the intrinsic and economic value of culture. This means that the Programme should support actions and activities which are transnational in nature; which complement regional, national, international and other Union programmes and policies; and which have an impact on the cultural and creative sectors as well as on citizens and their knowledge of cultures other than their own.<sup>361</sup> Secondly, it should develop and promote transnational cooperation between cultural and creative players with a view to stimulating more comprehensive, rapid, effective and long-term responses to global challenges.<sup>362</sup> It should also aim to achieve economies of scale and critical mass,<sup>363</sup> and to ensure a more level playing field in the European CCSI by providing assistance to low production capacity countries and/or countries or regions with a restricted geographical and/or linguistic area.<sup>364</sup>

### 4.2.3 EU policy instruments

The link between 'competitiveness' and 'cultural diversity' is presented in various ways in the main policy documents which relate to the EFI. A first set of documents presents them as complementary

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<sup>361</sup> Regulation (EU) 1295/2013 of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020), Art. 5.2(a).

<sup>362</sup> *Ibid.*, Art. 5.2(b).

<sup>363</sup> *Ibid.*, Art. 5.2(c).

<sup>364</sup> *Ibid.*, Art. 5.2(d).



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objectives, as in the 1997 Commission Green Paper on the convergence of the telecommunications, media and information technology sectors and the 2014 Commission Communication on European film in the digital era. For them, harnessing the potential of cultural diversity, on the one hand, and the competitiveness of European companies in the film industry, on the other, are well-matched objectives, in that promoting one can help strengthen the other. For instance, more cultural diversity can bolster competitiveness by attracting investment and increasing demand. The two objectives are interrelated and mutually reinforcing. Similarly, according to the 2022 Council Conclusions on building a European strategy for the cultural and creative industries ecosystem, a strong, dynamic, diverse, competitive, innovative, viable and independent European CCIE, one suited to the digital era, could be crucial for promoting cultural/linguistic diversity for the benefit of every audience.

The second set of policy documents presents competitiveness and cultural diversity as separate objectives to be pursued independently, with different policies and no synergies or a mutually reinforcing relationship. Examples of this group are the 2010 Commission Green Paper on unlocking the potential of cultural and creative industries and the 2013 Commission Communication on state aid for films and other audiovisual works. In the former, competitiveness and cultural diversity are portrayed as independent targets for the various EU funding programmes, to be tackled with different measures and as having value on their own, while it is acknowledged that Europe's diversity of cultures can lead to new ways of creating added value and innovation. The latter presents audiovisual works, and films in particular, both as economic goods which offer significant opportunities for the creation of wealth and employment, and as cultural goods which mirror and shape our societies and reflect the cultural diversity of the different traditions and histories of the EU Member States and regions. However, the links and synergies between cultural diversity and competitiveness in the audiovisual sector are not taken into consideration. In the 2011 European Parliament Resolution on unlocking the potential of cultural and creative industries, a link is possibly made between competitiveness and cultural diversity. Specifically, it mentions that the cultural and creative industries are characterised by a dual nature, being economic (in that they contribute to



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economic development through employment, growth and wealth creation) but also cultural (in that they integrate individuals socially/culturally into society and are involved in promoting values and cultural identities as well as developing a European cultural heritage). The 2011 European Parliament Resolution on European cinema in the digital era involves a soft link between competitiveness and cultural diversity, as digitisation is seen as safeguarding both the competitiveness and diversity of European cinema. The 2014 European Parliament Resolution on preparing for a fully converged audiovisual world makes no direct reference to competitiveness and there is no clear link between competitiveness and cultural diversity.

The third and final set of documents presents one of the two values as superior to the other, and as the main priority. The 2021 Council Conclusions on increasing the availability and competitiveness of European audiovisual and media content, for instance, state that cultural and linguistic diversity is the primary asset for European audiovisual competitiveness. The above statement is corroborated by the findings from the quantitative textual mapping, which suggested that the Council has a more nuanced understanding of diversity, including its linguistic backgrounds. The focus on linguistic concerns may also be linked to the Council's decision-making process, which is grounded in an intergovernmental framework.

Many of the policy documents analysed do not portray a conflict between the promotion of competitiveness and cultural diversity, respectively, in the audiovisual industry. An exception is clearly the 2014 Commission Communication on European film in the digital era, in which competitiveness and cultural diversity, though presented as complementary objectives, as mentioned above, are also considered to be in conflict. Enhancing the competitiveness of the audiovisual industry can come at a cost for its cultural diversity and vice-versa: they are not synergic and mutually enhancing objectives; they are mutually conflictual. For instance, a niche film that succeeds in reaching its target audience and promotes cultural diversity may result in lower market shares at the national/EU and worldwide levels. This needs to be accounted for, so bridges should



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be built between the two goals. This offers both challenges and opportunities in terms of improving the complementarity of Member State and Union policies and improving the funding tools to promote both the competitiveness and diversity of the film industry. While promoting Europe's rich diversity, European films, the Commission argues, should be made more accessible and appealing for a wider audience and thus more profitable. Here, the digital revolution provides an opportunity by offering greater flexibility and more possibilities vis-à-vis distribution, which has a fundamental impact on audience behaviour. It is worth noting that the quantitative textual mapping revealed that, starting in the early 2000s, the Commission has emerged as a pioneer of a more multifaceted approach to European audiovisual policy. Compared with other EU institutions, the Commission's agenda sought specifically to deal with new technological transformations (such as 'platforms' and 'digitisation') and economic considerations, while encompassing cultural concerns at the same time. The 2014 Communication provides the best analysis of how to counter the challenges that might arise from promoting competitiveness and diversity simultaneously, and the opportunities an appropriate policy framework could bring about. As it states in its conclusion, the EU can help the EFI meet the challenges of cultural diversity and economic development, making the rich diversity of European films more accessible to the audience and making the film sector more competitive and profitable.

It is also vital to unravel some *possible* conflicts between competitiveness and cultural diversity. For example, in the 2011 European Parliament Resolution on unlocking the potential of cultural and creative industries, there is a possible conflict between the two concepts, as long as market fragmentation in the cultural and creative sectors is due in part to consumers' cultural diversity and language preferences. The 2014 European Parliament Resolution on preparing for a fully converged audiovisual world also contains a possible conflict between competitiveness and cultural diversity: here, it is noted that to include audiovisual culture and media in international free trade agreements would represent a contradiction of the Union's commitment to promote cultural diversity. Interestingly, the quantitative textual analysis showed that the European Parliament has leaned towards framing audiovisual governance from a cultural standpoint, prioritising concerns related to



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the terms 'cultural diversity', 'creative', 'accessibility', 'European films', 'artistic' and 'cultural heritage'. Finally, in the context of the 2022 Council Conclusions on building a European strategy for the cultural and creative industries ecosystem, it is stressed that, while the emergence of global digital players acting as gatekeepers in the digital market might bring with it great financial and creative opportunities, it can also pose challenges both for the financing of European creation and for cultural/linguistic diversity. The above statement is also corroborated by the findings of the quantitative mapping, which suggests that technological transformations and modernisation considerations have taken centre stage as the prime focus of European audiovisual and film policy in recent years. Nonetheless, European authorities have continuously sought to comprehend technological advances with socio-cultural concerns.



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### 5 CONCLUSION

The formulation and implementation of policy for the audiovisual sector in which distinct priorities have to be matched and balanced has always been a challenge, since the relevant industries are affected by economic and industrial policy concerns (growth, profitability, efficiency, etc.), but also by considerations stemming from the socio-political and cultural role of the media industries (García Leiva & Albornoz, 2021: 269). In particular, the pressure to square the cultural and democratic aspects of the audiovisual and film sectors with their economic and industrial ones has had a marked bearing on the Union's audiovisual and film policy, which has not been static and continues to evolve (Michalis, 2014: 140).

In the intricate legal tapestry of the EU, the notions of 'competitiveness' and 'cultural diversity', as delicately addressed with regard to the audiovisual sector and the EFI, can be seen--depending on the legislative acts analysed and the era of their adoption--not as incompatible and opposing forces, but rather as interactive or even deftly complementary. The EU seeks to strike a careful balance between its ongoing efforts to ensure optimal conditions of competitiveness for Europe's audiovisual industry (eventually covering both linear and non-linear services) and the promotion of the irreplaceable cultural fabric of the Union's Member States. Thus, embedded within the Union's



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legally binding web, a nuanced and multifaceted perception can be traced whereby the competitive dynamism of the audiovisual sector, which is paramount for a flourishing internal market, must be fostered, but increasing economic vitality should not be detrimental to cultural diversity, cultural heritage, intercultural dialogue, accessibility and exchange. The EU's regulatory framework reflects this awareness, with variations according to the time frame, in a subtle interface between the concepts of 'competitiveness' and 'cultural diversity'. Apart from this subtle interface, however, the degree of attention and effort devoted to the conceptualisation and operationalisation of the concepts of 'competitiveness' and 'cultural diversity' in the regulatory instruments reviewed is no match for that which can be observed in the funding legal acts and policy instruments under study.

We observe a clear evolution in the understanding of 'competitiveness' in the legal instruments that deal with the funding of the European audiovisual industry and the EFI. First, creativity and innovation are taken on board as major factors of relevance early on alongside the more common market-building ones. Second, cooperation among countries and stakeholders is repeatedly advanced as an important factor in increasing competitiveness and growth. Finally, in the light of the structural challenges posed by recent technological transformations, the digitalisation of the audiovisual industry and the COVID-19 pandemic, the concepts of resilience and sustainability emerge as major determinants of the future competitiveness of the European audiovisual industry.

As a concept, 'cultural diversity' became highly prominent in the period 1990-2000 and has since established itself in the EU's audiovisual funding instruments while becoming increasingly complex in the way it is captured, understood and promoted through the policy instruments. On the one hand, the overall quantitative mapping showed a limited focus on terms such as 'domestic production', 'language barriers', 'multilingualism', 'small market' and 'regional diversity', indicating a diachronic lack of effort directed at operationalising 'diversity' in linguistic and regional terms and providing specific indicators for the application of 'diversity'. On the other hand, in the EU's funding schemes, cultural diversity is understood not only as representing the geographical variety among the



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professionals participating in the programmes and the diversity among the Member States' national and regional cultures, or as reflecting a 'European heritage' that stems from the common cultural wealth of Europe's shared past and history, because Europe's conception of linguistic and cultural diversity also includes concepts such as 'pluralism' and 'multilingualism'. Increasingly, this puts the focus on country stakeholders in a poorer position to protect and promote their diversity, but also on stakeholders--such as SMEs--which face greater difficulties accessing funds. Moreover, in a more globalised and digitalised reality, the enacted funding instruments increasingly locate cultural diversity in the context of a knowledge-based economy and the impacts of third-party cultures. In the latest programmes, cultural diversity is considered as a key asset in building a European identity and social cohesion, in paying attention to younger audiences and people with disabilities, and in the use of networking and digital and new technologies. Interestingly, the particular emphasis on younger audiences represents an important shift, insofar as the quantitative textual mapping brought to light the underperformance of terms such as 'youth' and 'young people' as a notable diachronic oversight in European audiovisual and film governance. Given the interface between audiovisual policy and new technologies, in which young people play a more salient role, paying comprehensive attention to the specific needs and preferences of younger audiences can lead to a more comprehensive and consistent audiovisual and film policy.

When it comes to the policy documents, we have seen that, starting with a chiefly economic approach that nonetheless recognised the cultural, social and intrinsic value of culture, the promotion and preservation of Member States' cultures has come to be considered the primary asset in efforts to achieve competitiveness in the audiovisual industry. The link between 'competitiveness' and 'cultural diversity' is presented in various ways in the main policy documents related to the EFI: the two concepts are portrayed as complementary objectives, or as separate objectives to be pursued independently by means of different policies, with no synergies or mutually reinforcing relationship. Elsewhere, one value is presented as being superior to the other and as the main priority, particularly in the case of competitiveness over cultural diversity, as elaborated on above.



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However, as illustrated by the quantitative textual mapping, the few instances over the period of study of the terms 'blockbuster', 'American', 'Hollywood', 'China' and 'trade deficit' underscores a reluctance in European audiovisual and film policy to consider the 'competitiveness' of the EFI in the framework of a globalised and competitive world economy, to identify and recognise potential rivals to the EFI, and to highlight the global implications of competitiveness for the EFI.

Another specific observation regarding the concept of 'cultural diversity' in relation to the regulation instruments analysed in this report, is that the EU legislator has not focused on aspects pertaining to diversity *within* Member States, given that the EU institutions have concentrated their attention on the diversity *between* Member States. The EU rules do not reflect--in no clear way, at least--any marked (or distinct) interest in their possible impact on domestic diversity and subnational relations. In the EU funding instruments under study, 'cultural diversity' itself becomes more diverse, from considering culture in terms of the mainstream majority culture in each Member State to encompassing minority considerations, as well as geographical factors and others. Nevertheless, here too, the concept is mostly operationalised horizontally as diversity *between* Member States. As for the EU policy instruments reviewed, the concept of 'diversity' is mainly approached in terms of reinforcing and supporting intercultural exchanges between Member States in the context of a horizontal application of cultural diversity to the audiovisual reality, rather than in terms of addressing the concept from a 'within the societies' of Europe perspective. It follows from the above that, at an intra-state level, the promotion of domestic cultural diversity still depends primarily on the willingness and capacity of Member State authorities, even if the EU is increasing its assertiveness and recognition of cultures other than the mainstream dominant culture(s) in each Member State in order to promote and protect them, at the level of rhetoric at least.

Overall, the analysis shows that cultural diversity and competitiveness are notably rich concepts in themselves, which are open to interpretation and can be operationalised in multiple ways, leading to a complex synergy when one concept is juxtaposed upon the other. The understanding of the



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concepts in EU legislative and non-legislative acts and documents has evolved with the times, reflecting the challenges of an evolving reality in which the emergence of new technologies and globalisation have shaken the audiovisual sector to its core, and in which--importantly--the internal politics of the Union have also evolved and changed. As it has advanced towards a closer political Union since the 1980s, where the EU embarked on interventions in the audiovisual sector, the integrative role of culture, and with it the audiovisual sector, has become a key asset. The documents analysed in this report reflect the fact that cultural diversity in the EU is perceived as being more than the sum of its parts: that is, the sum of the national and regional cultures of the Union's Member States. They also reveal that the manner of its construction can be approached from multiple perspectives. Cultural diversity and the competitiveness of the audiovisual industry and the EFI have indeed become interlinked over time in EU documents, reflecting the complexity but also the breadth and potential of the two concepts as a key asset for policymaking in the EFI sphere.



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# ANNEX

1. List of documents relevant to the audiovisual sector and the EFI which have good coverage--and a high number of occurrences—of the terms ‘competitiveness’ and ‘diversity’

Policy Documents by EU Institution	Identifier of Document	Competitiveness coverage	Competitiveness occurrence	Diversity coverage	Diversity occurrence
<i>European Commission</i>					
<b>1997 Green Paper on the convergence of the telecommunications, media and information technology sectors (COM(97)623)</b>	<i>COM_1997_0623_FIN, 13.12.1997</i>	0.23%	78	0.03%	13
<b>2001 Communication on certain legal aspects relating to cinematographic and other audiovisual works (COM(2001)534)</b>	<i>OJ C 43, 16.2.2002, p. 6-17</i>	0.14%	15	0.07%	11
<b>2010 Communication on opportunities and challenges for European cinema in the digital era (COM(2010)487)</b>	<i>COM/2010/0487 final, 24.9.2010</i>	0.23%	13	0.22%	17



<b>2010 Green Paper on unlocking the potential of cultural and creative industries</b> <a href="#">(COM(2010)183)</a>	<i>COM_2010_0183_FIN, 27.04.2010</i>	0.13%	11	0.16%	23
<b>2013 Communication on state aid for films and other audiovisual works</b> <a href="#">(2013/C 332/01)</a>	<i>OJ C 332, 15.11.2013, p. 1-11</i>	0.14%	11	0.13%	12
<b>2014 Communication on European film in the digital era: Bridging cultural diversity and competitiveness</b> <a href="#">(COM(2014)272)</a>	<i>COM/2014/0272 final, 15.5.2014</i>	0.17%	10	0.14%	14
<b>European Parliament</b>					
<b>2000 resolution on 'Principles and guidelines for the Community's audiovisual policy in the digital age'</b> <a href="#">(2000/2087(COS))</a>	<i>OJ C 135, 7.5.2001, p. 181-186</i>	0.15%	6	0.18%	9
<b>2011 resolution on unlocking the potential of cultural and creative</b>	<i>OJ C 377E, 7.12.2012, p. 142-155</i>	0.18%	14	0.11%	12



<b>industries</b> <b>(<a href="#">2010/2156(INI)</a>)</b>					
<b>2011 resolution on European cinema in the digital era</b> <b>(<a href="#">2010/2306(INI)</a>)</b>	<i>P7_TA(2011)0506, 16.11.2011</i>	0.14%	8	0.23%	19
<b>2013 resolution on promoting the European cultural and creative sectors as sources of economic growth and jobs</b> <b>(<a href="#">2012/2302(INI)</a>)</b>	<i>P7_TA(2013)0368, 12.9.2013</i>	0.13%	7	0.19%	16
<b>2014 resolution on preparing for a fully converged audiovisual world</b> <b>(<a href="#">2013/2180(INI)</a>)</b>	<i>P7_TA(2014)0232, 12.3.2014</i>	0.14%	5	0.25%	11
<b>Council of the European Union</b>					
<b>2002 Resolution on the development of the audiovisual sector</b> ( <a href="#">2002/C 32/04</a> )	<i>2002/C 32/04, 5.2.2002, p. 4-6</i>	0.41%	7	0.35%	8
<b>2021 Conclusions on increasing the availability and competitiveness of European audiovisual and</b>	<i>OJ C 501 I, 13.12.2021, p. 7-12</i>	0.43%	13	0.43%	21



## D2.1 Competitiveness in European law

<b>media content</b> <b>(<a href="#">2021/C 501 I/02</a>)</b>					
<b>2022 Conclusions on building a European strategy for the cultural and creative industries ecosystem (<a href="#">2022/C 160/06</a>)</b>	<i>OJ C 160, 13.4.2022, p. 13-19</i>	0.32%	11	0.30%	14



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## 2. 'Single list' of legal and policy documents from the EU institutions and the CoE

### PART I

Selected documents from EU institutions for the analysis of how 'competitiveness' of the 'European' film industry is defined in EU law and governance.

PART I of the list contains EU legally binding acts (Regulations, Directives, Decisions).

<p style="text-align: center;"><i>Table No. 1</i></p> <p style="text-align: center;"><b>EU legally binding acts</b> <sup>365</sup></p> <p style="text-align: center;"><i>(In chronological order)</i></p>		
<b>Year</b>	<b>Type/Title</b>	<b>Link</b>
<b>1963</b>	<p>Council <b>Directive 63/607/EEC</b> of 15 October 1963 implementing in respect of the film industry the provisions of the General Programme for the abolition of restrictions on freedom to provide services,</p> <p style="text-align: center;"><i>OJ 159, 2.11.1963, p. 2661–2664.</i></p>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31963L0607&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31963L0607&amp;qid=1679491948532</a>
<b>1965</b>	<p>Second Council <b>Directive 65/264/EEC</b> of 13 May 1965 implementing in respect of the film industry the provisions of the General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services,</p> <p style="text-align: center;"><i>OJ 85, 19.5.1965, p. 1437–1439.</i></p>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31965L0264&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31965L0264&amp;qid=1679491948532</a>
<b>1989</b>	<p>Council <b>Decision 89/337/EEC</b> of 27 April 1989 on high-definition television,</p> <p style="text-align: center;"><i>OJ L 142, 25.5.1989, p. 1–2.</i></p>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31989D0337&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31989D0337&amp;qid=1679491948532</a>
<b>1989</b>	<p>Council <b>Directive 89/552/EEC</b> of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in</p>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0552">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0552</a>

<sup>365</sup> This table contains all the relevant EU legally binding acts (*Regulations, Directives, Decisions*).



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	Member States concerning the pursuit of television broadcasting activities (" <b>Television without Frontiers Directive</b> "), <i>OJ L 298, 17.10.1989, p. 23–30.</i>	
<b>1990</b>	Council <b>Decision 90/685/EEC</b> of 21 December 1990, concerning the implementation of an action programme to promote the development of the European audiovisual industry (MEDIA, 1991 to 1995), <i>OJ L 380, 1/12/1990, p. 37–44.</i>	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31990D0685">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31990D0685</a>
<b>1992</b>	Council Directive <b>92/100/EEC</b> of 19 November 1992, on rental right and lending right and on certain rights related to copyright in the field of intellectual property. <i>OJ L 346, 27/11/1992, p. 61-67</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31992L0100">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31992L0100</a>
<b>1993</b>	Council <b>Directive 93/83/EEC</b> of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, <i>OJ L 248, 6.10.1993, p. 15–21.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31993L0083&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31993L0083&amp;from=EN</a>
<b>1995</b>	Council <b>Decision 95/563/EC</b> of 10 July 1995, on the implementation of a programme encouraging the development and distribution of European audiovisual works (MEDIA II - Development and distribution) (1996- 2000), <i>OJ L 321, 30.12.1995, p. 25-32.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995D0563">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995D0563</a>
<b>1997</b>	<b>Directive 97/36/EC</b> of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, <i>OJ L 202, 30.7.1997, p. 60–70.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31997L0036">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31997L0036</a>
<b>1999</b>	<b>Council Decision 1999/279/EC</b> of 22 March 1999 concerning the conclusion on behalf of the European Community, of the interregional framework cooperation agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part.	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999D0279">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999D0279</a>





## D2.1 Competitiveness in European law

	<i>OJ L 112, 29.04.1999, p 65-66</i>	
<b>1999</b>	<b>Directive 1999/5/EC</b> of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, <i>OJ L 91, 7.4.1999, p. 10–28.</i>	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31999L0005">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31999L0005</a>
<b>2000</b>	<b>Directive 2000/31/EC</b> of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), <i>OJ L 178, 17.7.2000, p. 1–16.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031</a>
<b>2000</b>	Council <b>Decision 2000/821/EC</b> of 20 December 2000, on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus - Development, Distribution and Promotion) (2001-2005), <i>OJ L 336, 30.12.2000, p. 82–91.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000D0821">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000D0821</a>
<b>2001</b>	<b>Directive 2001/29/EC</b> of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, <i>OJ L 167, 22.6.2001, p. 10–19.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0029">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0029</a>
<b>2002</b>	<b>Directive 2002/19/EC</b> of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), <i>OJ L 108, 24.4.2002, p. 7–20.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002L0019">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002L0019</a>
<b>2006</b>	Council <b>Decision 2006/515/EC</b> of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, <i>OJ L 201, 25.7.2006, p. 15–30.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D0515">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D0515</a>
<b>2006</b>	<b>Decision 1718/2006/EC</b> of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007),	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006D1718">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006D1718</a>



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## D2.1 Competitiveness in European law

	<i>OJ L 327, 24.11.2006, p. 12–29.</i>	
<b>2006</b>	<b>Directive 2006/116/EC</b> of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, <i>OJ L 372, 27.12.2006, p. 12–18.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0116">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0116</a>
<b>2006</b>	<b>Directive 2006/115/EC</b> of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which amends Council Directive 92/100/EEC, <i>OJ L 376, 27.12.2006, p. 28–35.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0115">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0115</a>
<b>2007</b>	<b>Directive 2007/65/EC</b> of the European Parliament and of the Council of 11 December 2007 <b>amending Council Directive 89/552/EEC</b> on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, <i>OJ L 332, 18.12.2007, p. 27–45.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007L0065">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007L0065</a>
<b>2009</b>	<b>Decision 1041/2009/EC</b> of the European Parliament and of the Council of 21 October 2009 establishing an audiovisual cooperation programme with professionals from third countries (MEDIA Mundus), <i>OJ L 288, 4.11.2009, p. 10–17.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009D1041">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009D1041</a>
<b>2009</b>	<b>Directive 2009/140/EC</b> of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (Text with EEA relevance), <i>OJ L 337, 18.12.2009, p. 37–69.</i>	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009L0140">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009L0140</a>
<b>2010</b>	<b>Directive 2010/13/EU</b> of the European Parliament and of the Council 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	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013</a>



	media services ( <b>Audiovisual Media Services Directive</b> ), <i>OJ L 95, 15.4.2010, p. 1–24.</i>	
2013	<b>Regulation (EU) 1295/2013</b> of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC, <i>OJ L 347, 20.12.2013, p. 221–237.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1295">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1295</a>
2017	<b>Decision (EU) 2017/864</b> of the European Parliament and of the Council of 17 May 2017 on a European Year of Cultural Heritage (2018), <i>OJ L 131, 20.5.2017, p. 1–9.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017D0864&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017D0864&amp;qid=1679491948532</a>
2017	<b>Regulation (EU) 2017/1128</b> of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market, <i>OJ L 168, 30.6.2017, p. 1–11.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1128&amp;qid=1679309918229">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1128&amp;qid=1679309918229</a>
2018	<b>Directive (EU) 2018/1808</b> of the European Parliament and of the Council of 14 November 2018 amending <b>Directive 2010/13/EU</b> 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, <i>PE/33/2018/REV/1, OJ L 303, 28.11.2018, p. 69–92.</i>	<a href="https://eur-lex.europa.eu/eli/dir/2018/1808/oj">https://eur-lex.europa.eu/eli/dir/2018/1808/oj</a>
2019	<b>Directive (EU) 2019/789</b> of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC, <i>PE/7/2019/REV/1, OJ L 130, 17.5.2019, p. 82–91.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0789&amp;qid=1679309918229">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0789&amp;qid=1679309918229</a>
2019	<b>Directive (EU) 2019/790</b> of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single	<a href="https://eur-lex.europa.eu/eli/dir/2019/790/oj">https://eur-lex.europa.eu/eli/dir/2019/790/oj</a>



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	Market and amending Directives 96/9/EC and 2001/29/EC, <i>PE/51/2019/REV/1, OJ L 130, 17.5.2019, p. 92–125.</i>	
<b>2019</b>	<b>Directive (EU) 2019/770</b> of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, <i>PE/26/2019/REV/1, OJ L 136, 22.5.2019, p. 1–27.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770&amp;qid=1679309918229">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770&amp;qid=1679309918229</a>
<b>2021</b>	<b>Regulation (EU) 2021/694</b> of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (Text with EEA relevance), <i>PE/13/2021/INIT, OJ L 166, 11.5.2021, p. 1–34.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0694">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0694</a>
<b>2021</b>	<b>Decision (EU) 2021/820</b> of the European Parliament and of the Council of 20 May 2021 on the Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT) 2021–2027: Boosting the Innovation Talent and Capacity of Europe and repealing Decision No 1312/2013/EU (Text with EEA relevance), <i>PE/9/2021/REV/1, OJ L 189, 28.5.2021, p. 91–118.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D0820&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D0820&amp;qid=1679491948532</a>
<b>2021</b>	<b>Regulation (EU) 2021/818</b> of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013, <i>PE/31/2021/INIT, OJ L 189, 28.5.2021, p. 34–60.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0818">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0818</a>
<b>2021</b>	<b>Regulation (EU) 2021/1058</b> of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund, <i>PE/48/2021/INIT, OJ L 231, 30.6.2021, p. 60–93.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32021R1058">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32021R1058</a>
<b>2022</b>	<b>Regulation (EU) 2022/2065</b> of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act),	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065</a>



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	OJ L 277, 27.10.2022, p. 1–102.	
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Table No. 2

**Categorisation of the EU legally binding acts by EU Institution**  
(In chronological order)

**Council of the EU**

Year	Type/Title	Link
1963	Council <b>Directive 63/607/EEC</b> of 15 October 1963 implementing in respect of the film industry the provisions of the General Programme for the abolition of restrictions on freedom to provide services, <i>OJ 159, 2.11.1963, p. 2661–2664.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31963L0607&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31963L0607&amp;qid=1679491948532</a>
1965	Second Council <b>Directive 65/264/EEC</b> of 13 May 1965 implementing in respect of the film industry the provisions of the General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services, <i>OJ 85, 19.5.1965, p. 1437–1439.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31965L0264&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31965L0264&amp;qid=1679491948532</a>
1989	Council <b>Decision 89/337/EEC</b> of 27 April 1989 on high-definition television, <i>OJ L 142, 25.5.1989, p. 1–2.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31989D0337&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31989D0337&amp;qid=1679491948532</a>
1989	Council <b>Directive 89/552/EEC</b> of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (“Television without Frontiers Directive”),	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0552">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0552</a>



## D2.1 Competitiveness in European law

	<i>OJ L 298, 17.10.1989, p. 23–30.</i>	
<b>1990</b>	Council <b>Decision 90/685/EEC</b> of 21 December 1990, concerning the implementation of an action programme to promote the development of the European audiovisual industry (MEDIA, 1991 to 1995), <i>OJ L 380, 1/12/1990, p. 37–44.</i>	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31990D0685">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31990D0685</a>
<b>1992</b>	<b>Council Decision 1999/279/EC</b> of 22 March 1999 concerning the conclusion on behalf of the European Community, of the interregional framework cooperation agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part. <i>OJ L 112, 29.04.1999, p 65-66</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999D0279">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999D0279</a>
<b>1993</b>	Council <b>Directive 93/83/EEC</b> of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, <i>OJ L 248, 6.10.1993, p. 15–21.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31993L0083&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31993L0083&amp;from=EN</a>
<b>1995</b>	Council <b>Decision 95/563/EC</b> of 10 July 1995, on the implementation of a programme encouraging the development and distribution of European audiovisual works (MEDIA II - Development and distribution) (1996- 2000), <i>OJ L 321, 30.12.1995, p. 25-32.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995D0563">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995D0563</a>
<b>1999</b>	<b>Council Decision 1999/279/EC</b> of 22 March 1999 concerning the conclusion on behalf of the European Community, of the interregional framework cooperation agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part. <i>OJ L 112, 29.04.1999, p 65-66</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999D0279">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999D0279</a>
<b>2000</b>	Council <b>Decision 2000/821/EC</b> of 20 December 2000, on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus - Development, Distribution and Promotion) (2001-2005), <i>OJ L 336, 30.12.2000, p. 82–91.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000D0821">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000D0821</a>



<b>2006</b>	Council <b>Decision 2006/515/EC</b> of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, <i>OJ L 201, 25.7.2006, p. 15–30.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D0515">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D0515</a>
<b>European Parliament &amp; Council of the EU</b>		
<b>Year</b>	<b>Type/Title</b>	<b>Link</b>
<b>1997</b>	<b>Directive 97/36/EC</b> of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, <i>OJ L 202, 30.7.1997, p. 60–70.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31997L0036">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31997L0036</a>
<b>1999</b>	<b>Directive 1999/5/EC</b> of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, <i>OJ L 91, 7.4.1999, p. 10–28.</i>	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31999L0005">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31999L0005</a>
<b>2000</b>	<b>Directive 2000/31/EC</b> of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), <i>OJ L 178, 17.7.2000, p. 1–16.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031</a>
<b>2001</b>	<b>Directive 2001/29/EC</b> of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, <i>OJ L 167, 22.6.2001, p. 10–19.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0029">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0029</a>
<b>2002</b>	<b>Directive 2002/19/EC</b> of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002L0019">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002L0019</a>



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	communications networks and associated facilities (Access Directive), <i>OJ L 108, 24.4.2002, p. 7–20.</i>	
<b>2006</b>	<b>Decision 1718/2006/EC</b> of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007), <i>OJ L 327, 24.11.2006, p. 12–29.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006D1718">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006D1718</a>
<b>2006</b>	<b>Directive 2006/116/EC</b> of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, <i>OJ L 372, 27.12.2006, p. 12–18.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0116">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0116</a>
<b>2006</b>	<b>Directive 2006/115/EC</b> of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which amends Council Directive 92/100/EEC, <i>OJ L 376, 27.12.2006, p. 28–35.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0115">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0115</a>
<b>2007</b>	<b>Directive 2007/65/EC</b> of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, <i>OJ L 332, 18.12.2007, p. 27–45.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007L0065">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007L0065</a>
<b>2009</b>	<b>Decision 1041/2009/EC</b> of the European Parliament and of the Council of 21 October 2009 establishing an audiovisual cooperation programme with professionals from third countries (MEDIA Mundus), <i>OJ L 288, 4.11.2009, p. 10–17.</i>	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009D1041">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009D1041</a>
<b>2009</b>	<b>Directive 2009/140/EC</b> of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009L0140">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009L0140</a>





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	<p>authorisation of electronic communications networks and services (Text with EEA relevance),</p> <p><i>OJ L 337, 18.12.2009, p. 37–69.</i></p>	
<b>2010</b>	<p><b>Directive 2010/13/EU</b> of the European Parliament and of the Council 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 (<b>Audiovisual Media Services Directive</b>),</p> <p><i>OJ L 95, 15.4.2010, p. 1–24.</i></p>	<p><a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013</a></p>
<b>2013</b>	<p><b>Regulation (EU) 1295/2013</b> of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC,</p> <p><i>OJ L 347, 20.12.2013, p. 221–237.</i></p>	<p><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1295">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1295</a></p>
<b>2017</b>	<p><b>Decision (EU) 2017/864</b> of the European Parliament and of the Council of 17 May 2017 on a European Year of Cultural Heritage (2018),</p> <p><i>OJ L 131, 20.5.2017, p. 1–9.</i></p>	<p><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017D0864&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017D0864&amp;qid=1679491948532</a></p>
<b>2017</b>	<p><b>Regulation (EU) 2017/1128</b> of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market,</p> <p><i>OJ L 168, 30.6.2017, p. 1–11.</i></p>	<p><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1128&amp;qid=1679309918229">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1128&amp;qid=1679309918229</a></p>
<b>2018</b>	<p><b>Directive (EU) 2018/1808</b> 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,</p> <p><i>PE/33/2018/REV/1, OJ L 303, 28.11.2018, p. 69–92.</i></p>	<p><a href="https://eur-lex.europa.eu/eli/dir/2018/1808/oj">https://eur-lex.europa.eu/eli/dir/2018/1808/oj</a></p>
<b>2019</b>	<p><b>Directive (EU) 2019/789</b> of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright</p>	<p><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX</a></p>



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	and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC, <i>PE/7/2019/REV/1, OJ L 130, 17.5.2019, p. 82–91.</i>	<a href="#">%3A32019L0789&amp;qid=1679309918229</a>
<b>2019</b>	<b>Directive (EU) 2019/790</b> of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, <i>PE/51/2019/REV/1, OJ L 130, 17.5.2019, p. 92–125.</i>	<a href="https://eur-lex.europa.eu/eli/dir/2019/790/oj">https://eur-lex.europa.eu/eli/dir/2019/790/oj</a>
<b>2019</b>	<b>Directive (EU) 2019/770</b> of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, <i>PE/26/2019/REV/1, OJ L 136, 22.5.2019, p. 1–27.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770&amp;qid=1679309918229">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770&amp;qid=1679309918229</a>
<b>2021</b>	<b>Regulation (EU) 2021/694</b> of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (Text with EEA relevance), <i>PE/13/2021/INIT, OJ L 166, 11.5.2021, p. 1–34.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0694">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0694</a>
<b>2021</b>	<b>Decision (EU) 2021/820</b> of the European Parliament and of the Council of 20 May 2021 on the Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT) 2021-2027: Boosting the Innovation Talent and Capacity of Europe and repealing Decision No 1312/2013/EU (Text with EEA relevance), <i>PE/9/2021/REV/1, OJ L 189, 28.5.2021, p. 91–118.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D0820&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D0820&amp;qid=1679491948532</a>
<b>2021</b>	<b>Regulation (EU) 2021/818</b> of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013,	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0818">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0818</a>



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	<i>PE/31/2021/INIT, OJ L 189, 28.5.2021, p. 34–60.</i>	
<b>2021</b>	<b>Regulation (EU) 2021/1058</b> of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund, <i>PE/48/2021/INIT, OJ L 231, 30.6.2021, p. 60–93.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32021R1058">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32021R1058</a>
<b>2022</b>	<b>Regulation (EU) 2022/2065</b> of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), <i>OJ L 277, 27.10.2022, p. 1–102.</i>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065</a>

## PART II

PART II of the list contains selected soft law documents (*non-legally binding acts such as Recommendations, Resolutions, Green Papers, Opinions, etc.*) from EU institutions for the analysis of how ‘competitiveness’ of the ‘European’ film industry is defined in European law and governance.

*Each document is classified by the institution in charge, and by chronological order.*

Table No. 3

### Categorisation of the EU soft law documents *by EU Institution* (*In chronological order*)

#### EUROPEAN COMMISSION

<i>Year</i>	<i>Type/Title</i>		<i>Link</i>
1977	COM(77) 560	Communication: Community action in the cultural sector	<a href="https://op.europa.eu/en/publication-detail/-/publication/cbbcb2c7-8ee3-4a71-b56d-c43723a43518">https://op.europa.eu/en/publication-detail/-/publication/cbbcb2c7-8ee3-4a71-b56d-c43723a43518</a>



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1982	COM(82)590	Communication - Stronger Community action in the cultural sector	<a href="https://op.europa.eu/en/publication-detail/-/publication/54ab4403-e3db-44f4-8746-418d2416da8c">https://op.europa.eu/en/publication-detail/-/publication/54ab4403-e3db-44f4-8746-418d2416da8c</a>
1984	COM(84)300	Television without frontiers - Green Paper on the Establishment of the Common Market for Broadcasting, especially by Satellite and Cable	<a href="https://op.europa.eu/en/publication-detail/-/publication/f8f1e8d2-d6b5-471d-b4b1-8a6026e70020">https://op.europa.eu/en/publication-detail/-/publication/f8f1e8d2-d6b5-471d-b4b1-8a6026e70020</a>
1987	COM(87) 603	Communication - A fresh boost for culture in the European Community	<a href="https://op.europa.eu/en/publication-detail/-/publication/cee0214a-9caa-406f-a399-fd540b7793ac/language-en">https://op.europa.eu/en/publication-detail/-/publication/cee0214a-9caa-406f-a399-fd540b7793ac/language-en</a>
1994	COM(94) 347	Communication - Europe's way to the information society - an action plan	<a href="https://op.europa.eu/en/publication-detail/-/publication/deed9eb9-0b6e-11e4-a7d0-01aa75ed71a1/">https://op.europa.eu/en/publication-detail/-/publication/deed9eb9-0b6e-11e4-a7d0-01aa75ed71a1/</a>
1994	COM(94)96	Green Paper-Strategy Options to strengthen the European Programme Industry in the context of the audiovisual policy of the European Union	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51994DC0096">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51994DC0096</a>
1996	COM(96) 487	Commission Communication - on illegal and harmful content on the internet	<a href="https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1996:0487:FIN:en:PDF">https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1996:0487:FIN:en:PDF</a>
1997	COM(97) 623	Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for Regulation - Towards an information society approach	<a href="https://op.europa.eu/en/publication-detail/-/publication/3967c098-852d-4774-af8b-691e70b40395">https://op.europa.eu/en/publication-detail/-/publication/3967c098-852d-4774-af8b-691e70b40395</a>
1999	COM(1999) 657	Communication - Principles and guidelines for the Community's audiovisual policy in the digital age	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A51999DC0657">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A51999DC0657</a>
2001	2009/C 31/01	Communication from the Commission concerning the state aid assessment criteria of the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52009XC0207%2801%29">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52009XC0207%2801%29</a>
2002	COM(2001) 534	Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52001DC0534">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52001DC0534</a>



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		relating to cinematographic and other audiovisual works	
2003	COM(2003) 784	Commission communication on the future of European regulatory audiovisual policy	<a href="https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0784:FIN:en:PDF">https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0784:FIN:en:PDF</a>
2006	COM(2006) 459	Commission Communication on the application of Articles 4 and 5 of Directive 89/552/EEC 'Television without Frontiers', as amended by Directive 97/36/EC	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0459">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0459</a>
2006	2006/585/EC	Commission Recommendation on the digitisation and online accessibility of cultural material and digital preservation	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006H0585">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006H0585</a>
2007	COM(2007) 242	Communication: European agenda for culture in a globalising world	<a href="https://op.europa.eu/en/publication-detail/-/publication/08b17e06-4758-44cd-a770-22652cd62783">https://op.europa.eu/en/publication-detail/-/publication/08b17e06-4758-44cd-a770-22652cd62783</a>
2008	COM(2007) 836	Commission communication on Creative content online in the single market	<a href="https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0836:FIN:en:PDF">https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0836:FIN:en:PDF</a>
2010	COM(2010) 183	Green Paper: Unlocking the potential of cultural and creative industries	<a href="https://op.europa.eu/en/publication-detail/-/publication/1cb6f484-074b-4913-87b3-344ccf020eef/language-en">https://op.europa.eu/en/publication-detail/-/publication/1cb6f484-074b-4913-87b3-344ccf020eef/language-en</a>
2010	COM(2010) 245	Commission Communication: a digital agenda for Europe	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A52010DC0245">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A52010DC0245</a>
2010	COM(2010) 487	Commission Communication on opportunities and challenges for European cinema in the digital era	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52010DC0487">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52010DC0487</a>
2011	COM(2011) 427	Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market	<a href="https://op.europa.eu/en/publication-detail/-/publication/7ec0fa4a-3983-4b25-881e-4add98b3057c/language-en">https://op.europa.eu/en/publication-detail/-/publication/7ec0fa4a-3983-4b25-881e-4add98b3057c/language-en</a>
2011	COM(2011) 711	Commission Recommendation 2011/711/EU of 27 October 2011 on the digitisation and online accessibility	<a href="https://eur-lex.europa.eu/legal-">https://eur-lex.europa.eu/legal-</a>



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## D2.1 Competitiveness in European law

		of cultural material and digital preservation	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011H0711">content/EN/TXT/?uri=CELEX%3A32011H0711</a>
2012	COM(2012) 537	Commission Communication: Promoting cultural and creative sectors for growth and jobs in the EU	<a href="https://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2012/0537/COM_COM(2012)0537_EN.pdf">https://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2012/0537/COM_COM(2012)0537_EN.pdf</a>
2013	COM(2013) 231	Green Paper: Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2013%3A0231%3AFIN">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2013%3A0231%3AFIN</a>
2013	2013/C 332/01	Commission Communication on state aid for films and other audiovisual works	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013XC1115%2801%29">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013XC1115%2801%29</a>
2014	COM(2014) 272	Commission Communication: European film in the digital era: Bridging cultural diversity and competitiveness	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0272&amp;qid=1679491948532">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0272&amp;qid=1679491948532</a>
2015	COM(2015) 192	Commission Communication: A Digital Single Market Strategy for Europe	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0192">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0192</a>
2016	COM(2016) 288	Communication Online Platforms and the Digital Single Market - Opportunities and Challenges for Europe	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0288">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0288</a>
2016	JOIN(2016) 29	Joint communication: Towards an EU strategy for international cultural relations	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN%3A2016%3A29%3AFIN">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN%3A2016%3A29%3AFIN</a>
2017	COM(2017) 555	Communication - Tackling Illegal Content Online Towards an enhanced responsibility of online platforms	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0555">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0555</a>
2018	COM(2018) 267	Communication: a new European agenda for culture	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A267%3AFIN">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A267%3AFIN</a>
2020	COM(2020) 67	Communication: Shaping Europe's digital future	<a href="https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020DC0067">https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020DC0067</a>



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2020	2020/C 223/03	Communication from 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	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AC%3A2020%3A223%3ATOC&amp;uri=uriserv%3AOJ.C_.2020.223.01.0010.01.ENG">https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AC%3A2020%3A223%3ATOC&amp;uri=uriserv%3AOJ.C_.2020.223.01.0010.01.ENG</a>
2020	COM(2020) 784	Communication: Europe's media in the digital decade: an action plan to support recovery and transformation	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0784">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0784</a>
2021	COM(2021) 1970	Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a common European data space for cultural heritage	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021H1970">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021H1970</a>

### EUROPEAN PARLIAMENT

Year	Type/Title	Link	
1974	OJ C 79/6	European Parliament Resolution on Community action in the cultural sector	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1976:079:FULL">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1976:079:FULL</a>
1981	OJ C 87/110	European Parliament Resolution on radio and television broadcasting in the European Community	<a href="https://op.europa.eu/en/publication-detail/-/publication/91fd7f3a-16b3-43c1-b988-be7f7d498cde/language-en">https://op.europa.eu/en/publication-detail/-/publication/91fd7f3a-16b3-43c1-b988-be7f7d498cde/language-en</a>
1995	A4-0140/95	Resolution on the Green Paper, 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union'	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51995IP0140">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51995IP0140</a>
1997	B4-0979, 0993, 0994, 0995, 0996, 0997 and 0998/97	Resolution on the Guarantee Fund to promote audiovisual production	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A51997IP0979&amp;qid=1684772132985">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A51997IP0979&amp;qid=1684772132985</a>
2000	A5-0209/2000	European Parliament Resolution on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions 'Principles	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000IP0209">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000IP0209</a>



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## D2.1 Competitiveness in European law

		and guidelines for the Community's audiovisual policy in the digital age	
2001	P5_TA(2001)0506	European Parliament Resolution on the third report of the Commission to the Council, the European Parliament and the Economic and Social Committee on the application of Directive 89/552/ EEC 'Television without Frontiers'	<a href="https://www.europarl.europa.eu/doceo/document/TA-5-2001-0506_EN.html">https://www.europarl.europa.eu/doceo/document/TA-5-2001-0506_EN.html</a>
2001	P5_TA(2001)0593	Resolution on achieving better circulation of European films in the internal market and the candidate countries	<a href="https://www.europarl.europa.eu/doceo/document/TA-5-2001-0593_EN.html">https://www.europarl.europa.eu/doceo/document/TA-5-2001-0593_EN.html</a>
2002	P5_TA(2002)0347	Resolution on certain legal aspects relating to cinematographic and other audiovisual works	<a href="https://www.europarl.europa.eu/doceo/document/TA-5-2002-0347_EN.html">https://www.europarl.europa.eu/doceo/document/TA-5-2002-0347_EN.html</a>
2005	OJ L 323/57 - (2005/865/EC)	Recommendation on film heritage and the competitiveness of related industrial activities	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32005H0865">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32005H0865</a>
2006	P6_TA(2005)0135	Resolution on working towards a Convention on the protection of the diversity of cultural content and artistic expression	<a href="https://eur-lex.europa.eu/legal-content/MT/ALL/?uri=CELEX:52005IP0135">https://eur-lex.europa.eu/legal-content/MT/ALL/?uri=CELEX:52005IP0135</a>
2008	P6_TA(2008)0123	Resolution of 10 April 2008 on cultural industries in Europe	<a href="https://www.europarl.europa.eu/doceo/document/TA-6-2008-0123_EN.html">https://www.europarl.europa.eu/doceo/document/TA-6-2008-0123_EN.html</a>
2008	P6_TA(2008)0124	Resolution of 10 April 2008 on a European agenda for culture in a globalising world (2007/2211(INI))	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52008IP0124">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52008IP0124</a>
2011	P7_TA(2011)0239	Resolution of 12 May 2011 on the cultural dimensions of the EU's external actions (2010/2161(INI))	<a href="https://www.europarl.europa.eu/doceo/document/A-7-2011-0112_EN.html">https://www.europarl.europa.eu/doceo/document/A-7-2011-0112_EN.html</a>
2011	OJ C 377E	Resolution of 12 May 2011 on unlocking the potential of cultural and creative industries (2010/2156(INI))	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011IP0240">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011IP0240</a>
2011	P7_TA(2011)0240	Resolution of 16 November 2011 on European cinema in the digital era (2010/2306(INI))	<a href="https://www.europarl.europa.eu/doceo/document/TA-7-2011-0506_EN.html">https://www.europarl.europa.eu/doceo/document/TA-7-2011-0506_EN.html</a>
2012	P7_TA(2012)0324	Resolution of 11 September 2012 on the online distribution of audiovisual works in the European Union (2011/2313(INI))	<a href="https://www.europarl.europa.eu/doceo/document/TA-7-2012-0324_EN.html">https://www.europarl.europa.eu/doceo/document/TA-7-2012-0324_EN.html</a>



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2013	P7_TA(2013)0215	Resolution of 22 May 2013 on the Implementation of the Audiovisual Media Services Directive	<a href="https://www.europarl.europa.eu/doceo/document/TA-7-2013-0215_EN.html">https://www.europarl.europa.eu/doceo/document/TA-7-2013-0215_EN.html</a>
2013	P7_TA(2013)0329	Resolution of 4 July 2013 on connected TV	<a href="https://www.europarl.europa.eu/doceo/document/TA-7-2013-0329_EN.html">https://www.europarl.europa.eu/doceo/document/TA-7-2013-0329_EN.html</a>
2013	P7_TA(2013)0368	European Parliament resolution of 12 September 2013 on promoting the European cultural and creative sectors as sources of economic growth and jobs (2012/2302(INI))	<a href="https://www.europarl.europa.eu/doceo/document/TA-7-2013-0368_EN.pdf">https://www.europarl.europa.eu/doceo/document/TA-7-2013-0368_EN.pdf</a>
2014	P7_TA(2014)0232	Resolution of 12 March 2014 on Preparing for a Fully Converged Audiovisual World	<a href="https://www.europarl.europa.eu/doceo/document/TA-7-2014-0232_EN.html">https://www.europarl.europa.eu/doceo/document/TA-7-2014-0232_EN.html</a>
2015	P8_TA(2015)0108	Resolution of 28 April 2015 on European film in the digital era	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015IP0108">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015IP0108</a>
2016	P8_TA(2016)0009	European Parliament Resolution on Towards a Digital Single Market Act	<a href="https://www.europarl.europa.eu/doceo/document/TA-8-2016-0009_EN.html">https://www.europarl.europa.eu/doceo/document/TA-8-2016-0009_EN.html</a>
2016	P8_TA(2016)0486	European Parliament Resolution A coherent EU policy for cultural and creative industries	<a href="https://www.europarl.europa.eu/doceo/document/TA-8-2016-0486_EN.html">https://www.europarl.europa.eu/doceo/document/TA-8-2016-0486_EN.html</a>
2017	P8_TA(2017)0272	European Parliament Resolution on Online platforms and the Digital Single Market	<a href="https://www.europarl.europa.eu/doceo/document/TA-8-2017-0272_EN.html">https://www.europarl.europa.eu/doceo/document/TA-8-2017-0272_EN.html</a>
2018	P8_TA(2018)0499	European Parliament Resolution on a new European agenda for culture	<a href="https://www.europarl.europa.eu/doceo/document/TA-8-2018-0499_EN.html">https://www.europarl.europa.eu/doceo/document/TA-8-2018-0499_EN.html</a>
2020	P9_TA(2020)0239	European Parliament Resolution on the cultural recovery of Europe	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2021.385.01.0152.01.ENG">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2021.385.01.0152.01.ENG</a>
2021	P9_TA(2021)0238	European Parliament Resolution on Artificial intelligence in education, culture and the audiovisual sector	<a href="https://www.europarl.europa.eu/doceo/document/TA-9-2021-0238_EN.html">https://www.europarl.europa.eu/doceo/document/TA-9-2021-0238_EN.html</a>
2021	P9_TA(2021)0430	European Parliament Resolution on the situation of artists and the cultural recovery in the EU	<a href="https://www.europarl.europa.eu/doceo/document/TA-9-2021-0430_EN.html">https://www.europarl.europa.eu/doceo/document/TA-9-2021-0430_EN.html</a>

## COUNCIL OF THE EUROPEAN UNION



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## D2.1 Competitiveness in European law

<b>Year</b>	<b>Type/Title</b>		<b>Link</b>
1984	OJ C 204/2 - 84/C 204/01	Council Resolution on measures to combat audio-visual pirating.	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41984X0803">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41984X0803</a>
1984	OJ C 204/2 - 84/C 204/02	Council Resolution on the rational distribution of films through all the audio-visual communication media.	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41984X0803">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41984X0803</a>
1984	OJ C 204/2 - 84/C 204/03	Council Resolution on measures to ensure that an appropriate place is given to audio-visual programmes of European origin.	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41984X0803">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41984X0803</a>
1986	OJ C 320/4 - (86/C 320/04)	Resolution of the Council and of the Ministers responsible for Cultural Affairs, meeting within the Council of 13 November 1986 on the European cinema and television year (1988)	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41986X1213%2803%29&amp;qid=1679499162046">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41986X1213%2803%29&amp;qid=1679499162046</a>
1996	OJ C 376/1 - 96/C 376/01	Council Resolution on new policy-priorities regarding the information society	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996Y1212%2801%29&amp;qid=1684773943211">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996Y1212%2801%29&amp;qid=1684773943211</a>
1997	OJ C 70/1 - 97/C 70/01	Council Resolution on illegal and harmful content on the Internet	<a href="https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997X0306:EN:HTML">https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997X0306:EN:HTML</a>
1997	OJ C 70/4 - 97/C 70/03	Council Conclusions on the Green Paper on the protection of minors and human dignity in the audiovisual and information services	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y0306(02)">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y0306(02)</a>
1998	OJ L 270, 7.10.1998	Council Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998H0560">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998H0560</a>
1999	OJ C 30/1 - 1999/C 30/01	Resolution of the Council concerning public service broadcasting	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41999X0205">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41999X0205</a>
1999	OJ C 283/1 - 27.09.1999	Council Conclusions concerning the results of the public consultation on the Convergence Green Paper (in	<a href="https://eur-lex.europa.eu/legal-">https://eur-lex.europa.eu/legal-</a>



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		particular the aspects relating to the media and the audiovisual sector)	<a href="https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:31999Y1006(01)">content/GA/TXT/?uri=CELEX:31999Y1006(01)</a>
1999	OJ L 283/3 - 1999/C 283/02	Council Conclusions on the role of self-regulation in the light of the development of new media services	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31999Y1006(02)">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31999Y1006(02)</a>
1999	OJ C 8/3 - 2000/C 8/02	Council Resolution - on the promotion of the free movement of persons working in the cultural sector	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32000Y0112%2801%29">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32000Y0112%2801%29</a>
1999	2000/C 8/06	Council Conclusions on the protection of minors in the light of the development of digital audiovisual services	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000Y0112(05)">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000Y0112(05)</a>
2000	2000/C 193/01	Council Resolution on the conservation and enhancement of European cinema heritage	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000Y0711(01)">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000Y0711(01)</a>
2000	200/C 196/01	Council Resolution concerning the communication from the Commission on principles and guidelines for the Community's audiovisual policy in the digital age	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42000X0712">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42000X0712</a>
2001	2001/C 73/02	Council Resolution national aid to the film and audiovisual industries	<a href="file:///C:/Users/u233569/Downloads/council%20resolution%20of%2012%20february%202001%20national%20aid-c_07320010306en00030004-1.pdf">file:///C:/Users/u233569/Downloads/council%20resolution%20of%2012%20february%202001%20national%20aid-c_07320010306en00030004-1.pdf</a>
2001	2001/C 281/01)	Council Resolution on the need for a reinforced exchange of information and experience between the European Union and its Member States and the candidate countries within the audiovisual sector	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001G1005(01)">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001G1005(01)</a>
2002	2002/C 32/04	Resolution on the development of the audiovisual sector	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002G0205(04)&amp;from=NL">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002G0205(04)&amp;from=NL</a>
2002	2003/C 13/04	Council Resolution on interactive media content in Europe	<a href="https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:013:0008:0009:EN:PDF">https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:013:0008:0009:EN:PDF</a>



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2003	2003/C 295/03	Resolution on the deposit of cinematographic works in the European Union	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1205(03)&amp;from=FI">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1205(03)&amp;from=FI</a>
2005	2005/865/CE	Recommendation 2005/865/CE of the European Parliament and of the Council of 16 November 2005 on film heritage and the competitiveness of related industrial activities,	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32005H0865">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32005H0865</a>
2010	2010/C 323/05	Council Conclusions of 18 November 2010 on the opportunities and challenges for European cinema in the digital era	<a href="https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:323:0015:0017:EN:PDF">https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:323:0015:0017:EN:PDF</a>
2010	2010/C 324/01	Council Conclusions on European film heritage, including the challenges of the digital era	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2010.324.01.0001.01.ENG&amp;toc=OJ%3AC%3A2010%3A324%3AFULL">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2010.324.01.0001.01.ENG&amp;toc=OJ%3AC%3A2010%3A324%3AFULL</a>
2010	2010/C 325/01	Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the Work Plan for Culture 2011-2014	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A42010Y1202%2801%29">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A42010Y1202%2801%29</a>
2014	2014/C 433/02	Council Conclusions on European Audiovisual Policy in the Digital Era	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1203(01)&amp;from=GA">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1203(01)&amp;from=GA</a>
2014	2014/C 463/02	Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on a Work Plan for Culture (2015-2018)	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014XG1223%2802%29">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014XG1223%2802%29</a>
2018	2018/C 460/10	Council Conclusions on the Work Plan for Culture 2019-2022	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018XG1221%2801%29">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018XG1221%2801%29</a>
2018	2018/C 457/02	Council Conclusions on the strengthening of European content in the digital economy	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2018:457:FULL">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2018:457:FULL</a>



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2019	2019/C 192/05	Council Conclusions on improving the cross-border circulation of European audiovisual works, with an emphasis on co-productions	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019XG0607%2802%29">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019XG0607%2802%29</a>
2020	2020/C 193/06	Council Conclusions on media literacy in an ever-changing world	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XG0609(04)">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XG0609(04)</a>
2021	2021/C 501 I/02	Council Conclusions on increasing the availability and competitiveness of European audiovisual and media content	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XG1213%2802%29&amp;qid=1653084640567">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XG1213%2802%29&amp;qid=1653084640567</a>
2022	2022/C 160/06	Council Conclusions on building a European Strategy for the Cultural and Creative Industries Ecosystem	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022XG0413(01)">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022XG0413(01)</a>
2022	2022/C 466/01	Council Resolution on the EU work plan for culture 2023–2026	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022G1207(01)">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022G1207(01)</a>

### PART III

PART III of the list contains selected *international agreements & policy instruments* from the Council of Europe for the analysis of the ‘competitiveness’ of the ‘European’ film sector.

*Each document is classified by chronological order.*

*Table No. 4*

### **Categorisation of the Council of Europe’s documents by Treaties and soft law instruments**

*(In chronological order)*

#### **COUNCIL OF EUROPE**

#### ***Council of Europe's treaties***<sup>366</sup>

<sup>366</sup> This part of the table may contain ‘Treaties’, ‘Conventions’, ‘Agreements’, ‘Charters’, etc. All these legal instruments are Treaties as defined by the ‘Vienna Convention on the Law of Treaties’. The Treaties concluded within the CoE are multilateral Treaties, which means that they are concluded between more than two States.



<b>Year</b>	<b>Type/Title</b>		<b>Link</b>
1989	Convention (ETS 132)	European Convention on transfrontier television	<a href="https://rm.coe.int/168007b0d8">https://rm.coe.int/168007b0d8</a>
1992	Convention (ETS 147)	European Convention on Cinematographic Co-Production	<a href="https://rm.coe.int/168007bd2d">https://rm.coe.int/168007bd2d</a>
2001	Convention (ETS 178)	European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access	<a href="https://rm.coe.int/1680080623">https://rm.coe.int/1680080623</a>
2001	Convention (ETS 183)	European Convention for the Protection of the Audiovisual Heritage	<a href="https://rm.coe.int/168008155f">https://rm.coe.int/168008155f</a>
2001	Convention (ETS 184)	Protocol to the European Convention for the Protection of the Audiovisual Heritage, on the Protection of Television Productions	<a href="https://rm.coe.int/1680081560">https://rm.coe.int/1680081560</a>
2017	Convention (CETS 220)	Council of Europe Convention on Cinematographic Co-Production (revised)	<a href="https://rm.coe.int/168069309e">https://rm.coe.int/168069309e</a>

**Council of Europe's policy instruments** <sup>367</sup>

**Parliamentary Assembly**

<b>Year</b>	<b>Type/Title</b>		<b>Link</b>
1975	Recommendation 748	Role and management of national broadcasting	<a href="https://pace.coe.int/pdf/a699430f9ca9133fd6292e0f512f367d7584d0872b4d556b1aacb36e2c903bcc/rec.%20748.pdf">https://pace.coe.int/pdf/a699430f9ca9133fd6292e0f512f367d7584d0872b4d556b1aacb36e2c903bcc/rec.%20748.pdf</a>
1975	Recommendation 749	European Broadcasting	<a href="https://pace.coe.int/en/files/14783/html">https://pace.coe.int/en/files/14783/html</a>

<sup>367</sup> This list includes policy documents (Recommendations, Resolutions, etc.) from two main bodies of the CoE: Parliamentary Assembly and Committee of Ministers. Each document is classified by the *statutory body* in charge, and by chronological order.



## D2.1 Competitiveness in European law

1979	Doc. 4306 - Recommendation 862	Cinema and state	<a href="https://pace.coe.int/en/files/14896/html">https://pace.coe.int/en/files/14896/html</a>
1981	Recommendation 926	Questions raised by cable television and by direct satellite broadcasts	<a href="https://pace.coe.int/en/files/14960">https://pace.coe.int/en/files/14960</a>
1987	Resolution 887	European Cinema and Television Year	<a href="https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=16298&amp;lang=en">https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=16298&amp;lang=en</a>
1987	Resolution 1067	Cultural dimension of broadcasting in Europe	<a href="https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=15101&amp;lang=en">https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=15101&amp;lang=en</a>
1989	Recommendation 1098	East-West audiovisual co-operation	<a href="http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15132&amp;lang=en">http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15132&amp;lang=en</a>
1990	Resolution 1138	European Support Fund for the co-production and distribution of creative cinematographic and audiovisual works Eurimages	<a href="https://pace.coe.int/en/files/15172/html">https://pace.coe.int/en/files/15172/html</a>
1991	Recommendation 1147	Parliamentary responsibility for the democratic reform of broadcasting	<a href="http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15181&amp;lang=en">http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15181&amp;lang=en</a>
1994	Recommendation 1228	Cable networks and local television stations: their importance for greater Europe	<a href="https://pace.coe.int/en/files/15262#trace-2">https://pace.coe.int/en/files/15262#trace-2</a>
1995	Recommendation 1276	Power of the visual image	<a href="https://pace.coe.int/en/files/15310">https://pace.coe.int/en/files/15310</a>
2004	Recommendation 1641	Public service Broadcasting	<a href="https://pace.coe.int/en/files/17177/html">https://pace.coe.int/en/files/17177/html</a>
2004	Recommendation 1674	Challenges facing the European audiovisual sector	<a href="https://pace.coe.int/en/files/17246">https://pace.coe.int/en/files/17246</a>
2006	Recommendation 1773	The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance co-operation and synergy with the OSCE	<a href="https://pace.coe.int/en/files/17494/html">https://pace.coe.int/en/files/17494/html</a>
2009	Recommendation 1855	The regulation of audiovisual media services	<a href="https://pace.coe.int/en/files/17700">https://pace.coe.int/en/files/17700</a>
2009	Recommendation 1878	Funding of public service broadcasting	<a href="https://pace.coe.int/en/files/17763">https://pace.coe.int/en/files/17763</a>



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## D2.1 Competitiveness in European law

2012	Recommendation 2001	Protection of and access to the audiovisual cultural heritage	<a href="http://assembly.coe.int/nw/xml/Ref/Xref-XML2HTML-en.asp?fileid=18725&amp;lang=en">http://assembly.coe.int/nw/xml/Ref/Xref-XML2HTML-en.asp?fileid=18725&amp;lang=en</a>
2014	Recommendation 2036	Revision of the European Convention on Transfrontier television	<a href="https://www.coe.int/en/web/freedom-expression/parliamentary-assembly-adopted-texts/-/asset_publisher/3EiBXIMCQhRS/content/recommendation-2036-2014-and-resolution-1978-2014-revision-of-the-european-convention-on-transfrontier-televi-1">https://www.coe.int/en/web/freedom-expression/parliamentary-assembly-adopted-texts/-/asset_publisher/3EiBXIMCQhRS/content/recommendation-2036-2014-and-resolution-1978-2014-revision-of-the-european-convention-on-transfrontier-televi-1</a>
2014	Resolution 1978	Revision of the European Convention on Transfrontier television	<a href="https://www.coe.int/en/web/freedom-expression/parliamentary-assembly-adopted-texts/-/asset_publisher/3EiBXIMCQhRS/content/recommendation-2036-2014-and-resolution-1978-2014-revision-of-the-european-convention-on-transfrontier-televi-1">https://www.coe.int/en/web/freedom-expression/parliamentary-assembly-adopted-texts/-/asset_publisher/3EiBXIMCQhRS/content/recommendation-2036-2014-and-resolution-1978-2014-revision-of-the-european-convention-on-transfrontier-televi-1</a>
2016	Recommendation 2089	Intellectual property rights in the digital era	<a href="https://pace.coe.int/en/files/22740">https://pace.coe.int/en/files/22740</a>
2021	Recommendation 2411	The impact of the Covid-19 pandemic on education and culture	<a href="https://pace.coe.int/en/files/29577/html">https://pace.coe.int/en/files/29577/html</a>

### **Committee of Ministers**

<b>Year</b>	<b>Type/Title</b>		<b>Link</b>
1954	Resolution(54) 7	Multilateral Cultural Co-operation	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805e36bb">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805e36bb</a>
1954	Resolution(54) 11	Use of television as a medium for securing the support of the general public for the European idea	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805e3677">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805e3677</a>
1970	Resolution(70) 19	On educational and cultural uses of radio and television in Europe and the relations in this respect between public authorities and	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804cbc4a">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804cbc4a</a>



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## D2.1 Competitiveness in European law

		broadcasting organisations	
1985	Recommendation (85) 8	Recommendation on the conservation of European film heritage	<a href="https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804c3aca">https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804c3aca</a>
1986	Recommendation (86)2	On principles relating to copyright law questions in the field of television by satellite and cable	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016804f57d3">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016804f57d3</a>
1986	Recommendation (86) 3	Recommendation of the committee of ministers to member states on the promotion of audiovisual production in Europe	<a href="https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804f622f">https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804f622f</a>
1987	Recommendation (87) 7	Recommendation of the committee of minister to member states on film distribution in Europe	<a href="https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804dbf22">https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804dbf22</a>
1988	Recommendation (88)1	On sound and audiovisual private copying	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016804c3806">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016804c3806</a>
1988	Resolution (88) 15	Resolution setting up a European Support fund for the co-production and distribution of creative cinematographic and audiovisual works	<a href="https://rm.coe.int/setting-up-a-european-support-fund-for-the-co-production-and-distribut/16804b86e2">https://rm.coe.int/setting-up-a-european-support-fund-for-the-co-production-and-distribut/16804b86e2</a>
1990	Recommendation (90) 10	On Cinema for Children and Adolescent	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016804df90b">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016804df90b</a>
1992	Resolution (92) 70	Resolution establishing a European Audiovisual Observatory, adopted by the Committee of Ministers on 15 December 1992 at the 485th meeting of the Ministers' Deputies	<a href="https://rm.coe.int/1680783a7c">https://rm.coe.int/1680783a7c</a>
1993	Recommendation (93) 5	Containing principles aimed at promoting the distribution and broadcasting of audiovisual works originating in countries or regions with a low audiovisual output or a limited geographic or	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016804fa0c7">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016804fa0c7</a>



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		linguistic coverage on the European television market	
1995	Recommendation (95) 1	On measures against sound and audiovisual piracy	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804cb8ce">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804cb8ce</a>
1996	Recommendation (96) 10	On the guarantee of the independence of public service broadcasting	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168050c770">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168050c770</a>
2000	Declaration	Declaration on cultural diversity	<a href="https://rm.coe.int/16804bfc0b">https://rm.coe.int/16804bfc0b</a>
2002	Recommendation Rec(2002)7	On measures to enhance the protection of the neighbouring rights of broadcasting organisations	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804cde14">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804cde14</a>
2003	Recommendation Rec(2003)9	On measures to promote the democratic and social contribution of digital broadcasting	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805dfbf5">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805dfbf5</a>
2007	Recommendation (2007)3	On the remit of public service media in the information society	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5</a>
2007	Recommendation (2007)2	On media pluralism and diversity of media content	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6be3">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6be3</a>
2009	Recommendation (2009) 7	On national film policies and the diversity of cultural expressions	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d07fe">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d07fe</a>
2017	Recommendation (2017) 9	Gender equality in the audiovisual sector	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807509e6">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807509e6</a>
2017	Recommendation (2017) 8	Big Data for culture, literacy and democracy	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680750d68">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680750d68</a>
2018	Recommendation (2018) 10	Culture's contribution to strengthening the internet as an emancipatory force	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808eedf1">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808eedf1</a>
2020	Recommendation (2020) 8	Amending Resolution Res(88)15 setting up a European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual Works (Eurimages)	<a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809f8736">https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809f8736</a>



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### 3. Results from the quantitative mapping

600 - EC	610 - EP	620 - COEU	630 - LEG	640 - CoE	Wording	650 - Period 1	660 - Period 2	670 - Period 3	680 - Period 4	690 - Period 5
0,09	0,16	0,12	0,14	0,12	accessibility	0,02	0,1	0,17	0,17	0,13
0,01	0,01	0,01	0,01	0,01	active citizenship	0	0,01	0,01	0,01	0,01
0,34	0,04	0,02	0,07	0,07	advertising	0,68	0,05	0,05	0,04	0,04
0,01	0,01	0	0	0,01	American	0,01	0,01	0,01	0,01	0
0,01	0,01	0,03	0,01	0,03	archives	0,01	0,01	0,02	0,01	0,01
0,01	0,02	0,03	0,01	0	artificial intelligence	0	0	0	0,01	0,03
0,02	0,1	0,05	0,01	0,03	artistic	0,03	0,01	0,02	0,03	0,04
0,01	0,01	0,01	0,01	0,01	artistic expression	0,01	0,01	0,01	0,01	0,01
0,06	0,06	0,05	0,08	0,06	availability	0,04	0,05	0,07	0,07	0,09
0,01	0,01	0,01	0,01	0,02	big data	0	0	0	0,01	0,01
0,01	0,01	0	0	0	blockbuster	0	0,01	0	0,01	0
0,01	0,01	0	0	0	business model	0	0	0,01	0,01	0,01
0,06	0,01	0	0,01	0,02	cable	0,1	0,01	0,01	0,01	0,01
0,02	0,02	0,06	0,01	0,02	circulation	0,01	0,02	0,03	0,02	0,01
0,01	0,01	0,01	0,01	0,01	citizenship	0	0,01	0,01	0,01	0,01
0,01	0,01	0	0,01	0	China	0	0,01	0,01	0,01	0,01
0,01	0,01	0,02	0,01	0	climate change	0	0	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0	cloud	0	0	0,01	0,01	0,01
0,01	0,02	0,02	0,02	0,01	cohesion	0	0,01	0,01	0,02	0,03
0,02	0,01	0,01	0,01	0	common market	0,04	0,01	0,01	0,01	0
0,1	0,14	0,15	0,06	0,03	competitiveness	0,04	0,13	0,12	0,11	0,06
0,06	0,1	0,02	0,1	0,01	consumer	0,02	0,06	0,05	0,1	0,12



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## D2.1 Competitiveness in European law

0,01	0,01	0	0,01	0	consumer choice	0	0,01	0,01	0,01	0
0,01	0,03	0,01	0,02	0,01	consumer protection	0,01	0,02	0,02	0,03	0,02
0,05	0,04	0,01	0,01	0,01	convergence	0,01	0,12	0,01	0,03	0,01
0,01	0,01	0,03	0,01	0,16	co-production	0,01	0,03	0,02	0,03	0,01
0,01	0,01	0,01	0,01	0	country of origin	0,01	0,01	0,01	0,01	0,01
0,07	0,25	0,18	0,05	0,04	creative	0,02	0,01	0,08	0,21	0,11
0,03	0,05	0,03	0,03	0,01	cross-border	0,01	0,01	0,02	0,07	0,04
0,01	0,02	0,02	0,01	0,01	cultural cooperation	0,01	0	0,01	0,02	0,01
0,01	0,01	0	0	0,01	cultural exchange	0,01	0,01	0,01	0,01	0
0,03	0,12	0,11	0,02	0,1	cultural diversity	0,01	0,05	0,1	0,06	0,03
0,02	0,02	0,02	0,01	0,01	cultural goods	0,02	0,01	0,01	0,01	0,01
0,06	0,1	0,15	0,06	0,03	cultural heritage	0,01	0,01	0,03	0,14	0,13
0,01	0,01	0,01	0,01	0,02	cultural identity	0,01	0,01	0,01	0,01	0,01
0,03	0,05	0,02	0,03	0,03	data	0,01	0,01	0,01	0,06	0,06
0	0	0,01	0,01	0,16	democracy	0,01	0,01	0,01	0,01	0,01
0,01	0,01	0	0,11	0,01	digital Content	0	0	0,01	0,01	0,16
0,01	0,01	0,01	0,01	0	digital market	0	0	0,01	0,01	0,01
0,02	0,03	0,03	0,01	0,01	digital technologies	0	0,01	0,02	0,02	0,03
0,01	0,01	0,01	0	0,01	digital transition	0	0	0,01	0,01	0,01
0,04	0,05	0,04	0,01	0,01	digitisation	0	0,01	0,04	0,07	0,03
0,01	0,02	0,01	0,02	0,01	disabilities	0	0,01	0,02	0,02	0,02
0,09	0,11	0,1	0,07	0,18	distribution	0,09	0,12	0,11	0,1	0,04
0,01	0,01	0,01	0,01	0,02	distributor	0,01	0,01	0,02	0,01	0,01
0,01	0,01	0,01	0,01	0,01	distortion	0,01	0,01	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0	disruptive	0,01	0,01	0,01	0,01	0,01
0,02	0,01	0	0,01	0,01	domestic	0,03	0,01	0,01	0,01	0,01
0,01	0	0	0	0,01	domestic production	0,01	0,01	0	0	0
0,03	0,04	0,01	0,01	0,01	discrimination	0,04	0,01	0,01	0,02	0,02
0,01	0,02	0	0,01	0	e-commerce	0	0,01	0,01	0,02	0,01
0,03	0,06	0,03	0,01	0,01	employment	0,04	0,03	0,01	0,03	0,02
0,01	0,06	0,02	0,01	0,01	European Films	0,01	0,01	0,03	0,04	0,01
0,01	0,01	0	0	0,01	European integration	0,01	0	0,01	0,01	0
0,03	0,03	0,04	0,03	0,01	European Works	0,01	0,02	0,06	0,03	0,03
0,01	0,01	0,01	0,01	0,01	equitable	0,01	0,01	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	Exhibition	0,02	0,01	0,01	0,01	0,01
0,01	0,02	0,01	0,01	0,01	Fair	0,01	0,01	0,01	0,01	0,01
0,01	0,02	0,01	0,01	0,01	Fairness	0,01	0,01	0,01	0,01	0,01



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## D2.1 Competitiveness in European law

0,01	0	0,01	0,01	0,01	flow of information	0,01	0,01	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	fragmentation	0,01	0,01	0,01	0,02	0,01
0,01	0,01	0,01	0,01	0,01	free flow	0,01	0,01	0,01	0,01	0,01
0,02	0,01	0,02	0,01	0,01	free movement	0,03	0,03	0,01	0,01	0,01
0,02	0,02	0,02	0,02	0,08	freedom of expression	0,02	0,02	0,02	0,03	0,02
0,01	0,01	0	0,01	0,01	freedom of information	0,01	0,01	0,01	0,01	0
0,01	0	0	0,01	0	freedom of movement	0,03	0	0,01	0,01	0
0,01	0,01	0,01	0	0,01	fundamental values	0	0	0,01	0,01	0,01
0,01	0,04	0,01	0,03	0,01	fundamental rights	0,01	0,01	0,01	0,03	0,04
0,01	0,01	0,02	0,01	0,08	gender equality	0	0	0,01	0,03	0,01
0,02	0,02	0,02	0,01	0,01	globalisation	0	0,03	0,01	0,02	0,02
0,01	0	0,01	0	0	green transition	0	0	0	0	0,01
0,02	0,04	0,02	0,01	0,01	growth	0,01	0,02	0,01	0,04	0,01
0,03	0	0,01	0,01	0	harmonisation	0,06	0,01	0	0,01	0,01
0,05	0,1	0,19	0,04	0,06	heritage	0,02	0,01	0,08	0,11	0,07
0,01	0,01	0	0	0,01	Hollywood	0	0	0,01	0,01	0
0,02	0,02	0,02	0,01	0,05	human rights	0,03	0,01	0,01	0,02	0,01
0,01	0,02	0,01	0,01	0,02	identity	0,01	0,01	0,02	0,01	0,01
0,01	0,03	0,04	0,02	0,01	inclusive	0,01	0,01	0,01	0,03	0,03
0,03	0,04	0,01	0,05	0,01	internal market	0,01	0,04	0,05	0,03	0,03
0,06	0,13	0,11	0,09	0,01	innovation	0,01	0,02	0,06	0,12	0,15
0,03	0,06	0,04	0,02	0,02	intellectual property	0,01	0,03	0,04	0,06	0,03
0,01	0	0,01	0,01	0	internationalisation	0	0,01	0,01	0,01	0,01
0,06	0,05	0,03	0,01	0,02	internet	0	0,11	0,03	0,06	0,01
0,05	0,07	0,03	0,05	0,01	Investment	0,01	0,04	0,05	0,06	0,07
0,01	0,02	0,01	0,01	0,01	Jobs	0,01	0,01	0,01	0,01	0,01
0,01	0,01	0	0,01	0,01	knowledge economy	0	0,01	0,01	0,01	0
0,01	0,01	0,01	0,01	0,01	labour	0,01	0,01	0,01	0,01	0,01
0,02	0,02	0,02	0,02	0,04	language	0,03	0,02	0,02	0,02	0,02
0,01	0,01	0	0,01	0	language barriers	0,01	0,01	0	0,01	0,01
0,01	0,03	0,02	0,01	0	level playing field	0	0,01	0,01	0,03	0,01
0,01	0,01	0	0,01	0,01	liberalisation	0,01	0,02	0,01	0,01	0
0,01	0,01	0	0,01	0	linear services	0	0	0	0,01	0,01
0,01	0,03	0,08	0,02	0,01	linguistic diversity	0,01	0,03	0,02	0,02	0,02



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## D2.1 Competitiveness in European law

0,01	0,02	0,07	0,01	0,02	literacy	0,01	0,01	0,01	0,02	0,02
0,15	0,13	0,09	0,09	0,04	market	0,06	0,2	0,14	0,14	0,06
0,01	0,01	0	0,01	0,03	mass media	0,01	0,01	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	media freedom	0	0	0	0,01	0,01
0,01	0,01	0,04	0,02	0,04	minorities	0,01	0,03	0,03	0,02	0,01
0,01	0,01	0,04	0,02	0,04	Minors	0,01	0,03	0,03	0,02	0,01
0,01	0,01	0,01	0,01	0,01	multimedia	0	0,03	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	multilingualism	0,01	0,01	0,01	0,01	0,01
0,02	0,02	0,02	0,01	0,01	new technologies	0,01	0,03	0,02	0,01	0,01
0,08	0,05	0,04	0,07	0,03	network	0,04	0,11	0,09	0,05	0,03
0,01	0,01	0,01	0,01	0	non-linear	0	0	0,01	0,01	0,01
0,02	0,02	0,02	0,01	0,02	on demand	0,01	0,02	0,03	0,02	0,01
0,01	0,01	0,02	0,01	0,01	on-line services	0	0,01	0,01	0,01	0
0,02	0,04	0,11	0,07	0,08	participation	0,02	0,05	0,04	0,07	0,07
0,07	0,12	0,06	0,1	0,03	platform	0,01	0,02	0,03	0,2	0,15
0,01	0,02	0,02	0,01	0,03	pluralism	0,01	0,01	0,02	0,01	0,01
0,05	0,03	0,05	0,03	0,11	producer	0,04	0,07	0,06	0,05	0,02
0,13	0,12	0,18	0,12	0,34	production	0,12	0,2	0,18	0,16	0,09
0,01	0	0	0	0,01	production cost	0	0,01	0	0,01	0,01
0,01	0,01	0,01	0,01	0,01	profitability	0,02	0,01	0,01	0,01	0,01
0,01	0,01	0	0,01	0,01	programme content	0,01	0	0,01	0,01	0,01
0,02	0,02	0,07	0,01	0,01	protection of Minors	0,01	0,06	0,03	0,01	0,01
0,01	0	0	0	0,01	public intervention	0	0	0,01	0,01	0
0,01	0,02	0,05	0,01	0,29	public service broadcaster	0,01	0,1	0,07	0,01	0
0,01	0,02	0,02	0,01	0	recovery	0,01	0	0,01	0,01	0,02
0,01	0	0,01	0,01	0	regional diversity	0	0,01	0,01	0,01	0
0,01	0,01	0,02	0,01	0	resilience	0	0	0,01	0,01	0,03
0,01	0,02	0,01	0,01	0,02	rights holders	0,01	0,01	0,01	0,01	0,01
0,05	0,01	0,01	0,01	0,04	satellite	0,09	0,02	0,01	0,01	0,01
0,01	0	0	0,01	0	satellite television	0,02	0,01	0	0,01	0,01
0,01	0,01	0	0,01	0	self-employed	0,02	0,01	0,01	0,01	0,01
0,01	0,01	0	0,01	0	SME	0	0,01	0	0,01	0,01
0,01	0,02	0,02	0,01	0,01	social cohesion	0	0,01	0,01	0,02	0,01
0,02	0,01	0,01	0,01	0	State aid	0	0,01	0,02	0,02	0,01
0,01	0	0	0	0,01	state subsidies	0,01	0,01	0,01	0	0
0,01	0,01	0,01	0,01	0,01	streaming	0	0,01	0,01	0,01	0,01
0,01	0,01	0,03	0,01	0,01	subsidiarity	0	0,01	0,01	0,01	0,01
0,01	0,01	0	0,01	0,01	subsidies	0,01	0,01	0,01	0,01	0,01



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## D2.1 Competitiveness in European law

0,02	0,05	0,1	0,04	0,01	sustainable	0	0,01	0,02	0,05	0,08
0,01	0,01	0	0,01	0	technology-neutral	0	0,01	0,01	0,01	0,01
0,08	0,01	0,02	0,03	0,01	telecommunication	0,05	0,21	0,02	0,01	0,01
0	0,01	0,01	0,01	0	territorial cohesion	0	0	0,01	0,01	0,01
0,02	0,06	0,05	0,02	0,03	training	0,02	0,02	0,03	0,04	0,03
0	0	0	0,01	0,08	transfrontier television	0,02	0,01	0,01	0,01	0
0,01	0,02	0,03	0,02	0,01	transition	0,01	0,01	0,02	0,01	0,03
0,02	0,02	0,01	0,01	0,01	trade	0,02	0,01	0,02	0,01	0,01
0,01	0,01	0,01	0,01	0,01	value chain	0	0,01	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	viewers	0,02	0,01	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0	VoD	0	0,01	0,01	0,01	0,01
0,02	0,03	0,01	0,01	0,01	world market	0,01	0,01	0	0,01	0
0,01	0,01	0	0,01	0	workers	0,03	0,01	0,01	0,01	0,01
0,01	0,03	0,03	0,01	0,01	working condition	0,01	0	0,01	0,01	0,01
0,01	0,02	0,03	0,01	0,03	young people	0,02	0,01	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	youth	0,01	0,01	0,01	0,01	0,01
0,01	0	0,01	0,01	0	independent production	0,01	0,01	0,01	0,01	0,01
0,01	0,01	0	0	0	small market	0	0	0	0	0,01
0,01	0,01	0	0	0,01	trade deficit	0	0,01	0,01	0,01	0



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### Disclaimer

This document is part of the outputs of the Reviving, Boosting, Optimising and Transforming European Film Competitiveness - REBOOT project, which received funding from the Horizon Europe programme of the European Union under the Grant Agreement No. 101094769.

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### Citation

Please cite this report as follows:

E. Psychogiopoulou, A. Vlassis, A. Samaras, L. Comerma, D. Riga (2024): *Competitiveness in European Law*. Developed by the Horizon Europe project REBOOT (Reviving, Boosting, Optimising and Transforming European Film Competitiveness – REBOOT), funded by the European Union’s Horizon Europe Research and Innovation programme under Grant Agreement No. 101094769. DOI: XXX.

### Contact

Website: [www.thereboot-project.eu](http://www.thereboot-project.eu)



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## REBOOT Contributors



universität  
wien



LIÈGE  
université



ΕΛΙΑΜΕΠ  
ELIAMEP

HISTORIA DEL ARTE

FACULTAD DE GEOGRAFÍA E HISTORIA UNIVERSIDAD COMPLUTENSE DE MADRID



KADIR HAS  
ÜNİVERSİTESİ

uc3m

Universidad Carlos III de Madrid  
Instituto Universitario del Cine Español

Erasmus  
University  
Rotterdam



UNIVERSITEIT  
GENT



Sant'Anna  
School of Advanced Studies - Pisa



UNIVERSITÉ  
CÔTE D'AZUR



JYVÄSKYLÄN YLIOPISTO  
UNIVERSITY OF JYVÄSKYLÄ



UNIVERSITY  
OF WARSAW



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