Audio Visual Services Directive

PE 600.421

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Audiovisual policy in the EU is governed by Articles 167 and 173 of the Treaty on the Functioning of the European Union (TFEU). The key piece of legislation in this field is the Audiovisual Media Services Directive, which is currently (2017) under revision. The main EU instrument to help the industry (especially the film industry) is the MEDIA sub-programme of Creative Europe. The Charter of Fundamental Rights of the European Union asks for respect of ‘freedom and pluralism of the media’.

LEGAL BASIS

The Treaty of Rome did not provide for any direct powers in the field of audiovisual and media policy, and neither does the TFEU. Jurisdiction over media policy is rather drawn from various articles within the TFEU in order to construct policies for the various media and communication technology sectors. This is a necessity arising from the complex nature of media goods and services, which can be defined neither solely as cultural goods nor simply as economic goods. The legal basis is contained in the TFEU in the form of Articles 28, 30, 34, 35 (free movement of goods); 45-62 (free movement of persons, services and capital); 101-109 (competition policy); 114 (technological harmonisation, or the use of similar technological standards, for instance, in internet productions); 165 (education); 166 (vocational training); 167 (culture); and 173 (industry).

OBJECTIVES

According to Article 167 TFEU, the EU encourages cooperation between Member States and, if necessary, supports and supplements their action in the area of artistic and literary creation, including the audiovisual sector. The EU’s role in the audiovisual field is to create a single European market for audiovisual services. It is also required to take cultural aspects into account in all its policies. Decisions are reached under the ordinary legislative procedure.

ACHIEVEMENTS

A. Regulatory framework

1. The Audiovisual Media Services Directive (AVMSD)

During the 1980s, new developments in broadcasting technologies led to an increase in the number of commercial TV stations in Europe and to their broadcasts being able to be received in several countries. This gave rise to a need for common minimum standards, which were first laid out in the ‘Television without frontiers’ (TVwF) Directive (89/552/EEC). The first revision, in 1997, put in place the ‘country of origin’ principle, meaning that broadcasters are under the jurisdiction of the Member State in which they are based. New services, such as ‘video on demand’ (VOD) available over the internet, were added in the 2007 revision. The directive was codified in 2010 and renamed the ‘Audiovisual Media Services Directive’ (AVMSD). Its main elements are: (1) a comprehensive framework that reduces the regulatory burden yet covers all audiovisual media services; (2) modernised rules on television advertising that improve
the financing of audiovisual content; and (3) an obligation to encourage media service providers to improve access for people with visual or hearing impairments.

In the Commission’s 2012 report on the application of the AVMSD and in the discussions following the publication of the Commission’s 2013 Green Paper, ‘Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values’, it became clear that audiovisual media services are converging and that the way in which these services are consumed and delivered changes constantly in line with technological developments.

In 2015, the Commission launched a public stakeholder consultation which was followed up on 25 May 2016 with a proposal for a REFIT assessment of the AVMSD to update the regulatory framework and keep pace with recent developments. Key elements of the proposal include: (1) changing the limit for commercial communications from 12 minutes per hour to 20% per day between 7 a.m. and 11 p.m.; (2) protecting minors from content that ‘may impair’ them, with the same regulation applying to traditional broadcasts and on-demand services; (3) extending the provisions on European works to on-demand services providers, which have to ensure that European works make up at least 20% of their catalogues and give these works due prominence; and (4) bringing video-sharing platforms (VSPs) under the scope of the AVMSD for the purposes of combating hate speech and protecting minors from harmful content.

Both Parliament and the Council are currently reviewing the Commission proposal; negotiations under the ordinary legislative procedure will take place during 2017, with a view to reaching an agreement before the end of the year[1]. The directive contains specific rules to protect minors, with regard to both traditional broadcasting and VOD services. These rules were supplemented by the 1998 and 2006 recommendations on the protection of minors and human dignity. In 2012, the ‘European Strategy to make the internet a better place for kids’ was adopted, and it is supported under the Connecting Europe Facility by the ‘Better Internet for Kids’ programme (previously the ‘Safer Internet’ programme).

2. Copyright in the Digital Single Market

The EU is now working on the modernisation of copyright rules in the Digital Single Market in order to reach several fundamental objectives: (1) more cross-border access to content online; (2) wider opportunities to use copyrighted materials in education, research and cultural heritage; (3) a better functioning copyright marketplace; and (4) implementation of the Marrakech Treaty in EU law. Negotiations are taking place to discuss the copyright package.

3. European film heritage

The EU aims to encourage its Member States to cooperate in the conservation and safeguarding of cultural heritage of European significance (Article 167 TFEU). The recommendation to Member States is to methodically collect, catalogue, preserve and restore Europe’s film heritage so that it can be passed on to future generations. EU Member States are asked to report every two years on what they have done in this context, and the Commission produces an implementation report on the basis of this information.

[1]For further information see procedure file 2016/0151(COD).
B. Creative Europe

The MEDIA sub-programme of the Creative Europe programme is the fifth multiannual programme since 1991 in support of the audiovisual industry. It builds on the success of its predecessors, the MEDIA and MEDIA Mundus programmes (2007-2013). The total budget of Creative Europe amounts to EUR 1.46 billion (2014-2020), a budget increase of 9% compared to the previous programmes. At least 56% of that sum is set aside for the MEDIA sub-programme. It provides support and funding opportunities for film and TV projects, cinema networks, film festivals, audience development, training measures for audiovisual professionals, access to markets, distribution, video game development, online distribution and international co-production funds.

C. Media literacy and media pluralism

Media literacy is the ability to access the media, to understand and to critically evaluate different aspects of the media and media content and to communicate in a variety of contexts. It is a fundamental skill for the younger generation and for adults. The EU considers media literacy to be an important factor for active citizenship in today’s information society. The Council conclusions on developing media literacy and critical thinking through education and training of 30 May 2016 underline that media literacy is more important than ever in the age of the internet and social media and that it needs to be an integral part of education and training at all levels.

Media pluralism calls for the need for transparency, freedom and diversity in Europe’s media landscape. At the beginning of 2012 the EU established the Centre for Media Pluralism and Media Freedom (CMPF) at the Robert Schuman Centre for Advanced Studies, a research initiative within the European University Institute in Florence, with co-funding from the EU. The CMPF is a further step in the Commission’s continuing effort to improve the protection of media pluralism and media freedom in Europe, and to determine the actions that need to be taken at European or national level to foster these objectives.

D. Other initiatives

During the Cannes Film Festival the EU organises discussions and panels on various topics such as film financing, film distribution, audience development and innovation. The European Film Forum was launched in 2015 and is a platform for structured dialogue between policymakers and the audiovisual sector. A ‘New talent in the EU’ award was introduced in 2004 in order to publicise young European directors who have followed MEDIA-sponsored training. The European Border Breakers Award is a prize for emerging artists, co-funded by the Creative Europe programme.

ROLE OF THE EUROPEAN PARLIAMENT

The EP has emphasised that the EU should stimulate the growth and competitiveness of the audiovisual sector whilst recognising its wider significance in safeguarding cultural diversity.

1. European audiovisual industry

strong support for European filmmakers and highlights the role of the financial support provided by the MEDIA sub-programme of Creative Europe. It also stresses the importance of film literacy and audience development.

Its resolution of 11 September 2012 on the online distribution of audiovisual works in the European Union[4] explores aspects of copyright and the challenges posed by the digital availability of audiovisual works in terms of safeguarding the authors’ rights. An implementation report on the Creative Europe programme, and thus the MEDIA sub-programme, was voted in the Committee on Culture and Education (CULT) in January 2017 and is expected to be voted in plenary in the first half of 2017.

2. LUX prize

The LUX prize, which was created by the European Parliament and first awarded in 2007, aims to promote the distribution of European works throughout the EU by providing the means for subtitling a film in the 24 official EU languages, including in the original language of the work and for the deaf and hard of hearing. In 2016, the LUX prize celebrated its 10th anniversary with a simultaneous screening of the 2015 LUX Film Prize winner ‘Mustang’ across the EU and a special address on ‘The Role for European Cinema in Tomorrow’s Europe’ given by international award-winning film director Ken Loach to the CULT Committee.

3. Audiovisual Media Services Directive (AVMSD)

The EP’s resolutions in the 1980s and early 1990s on television repeatedly called for common technical standards for direct broadcasting by satellite and for HDTV. The TVwF Directive was adopted in 1989 and the EP has strongly supported it ever since. This directive was revised in 1997 and 2007 and then renamed the Audiovisual Media Services Directive (AVMSD). Its approval was the outcome of negotiations between the EP and the Council that took into account most of the concerns raised in the EP’s first reading.

The EP has been following the implementation of the AVMSD very closely. In its resolution of 22 May 2013 on the Implementation of the Audiovisual Media Services Directive[5], the EP presents several observations and recommendations, in particular as regards accessibility, promotion of European audiovisual works, protection of minors, advertising, future challenges and international competition.

In its resolution of 4 July 2013 on connected TV[6], the EP called on the Commission to evaluate the extent to which it is necessary to revise the AVMSD and other current requirements laid down in the network and media regulations (e.g. the telecommunications package). The need for revision pertained in particular to the rules on findability and non-discriminatory access to platforms for content providers and content developers as well as for users, expanding the concept of platforms, and to adapting the existing instruments to new constellations, such as the development of Connected TV.

On 12 March 2014, the EP adopted a resolution on Preparing for a Fully Converged Audiovisual World[7] (in response to the Commission’s Green Paper on the same issue). In this, the EP takes note of the convergence of markets, stresses the need to preserve

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access and findability and to safeguard diversity and funding models, and analyses infrastructure and frequencies, values, and the regulatory framework.

Following up on these parliamentary resolutions and in light of the fast pace of change in the audiovisual sector, on 25 May 2016 the Commission came forward with a proposal for amending the AVMSD. In the framework of the ordinary legislative procedure, the CULT Committee will vote on its report in February 2017, in its role as lead committee on the issue.

Mara Mennella / Michaela Franke
02/2017
2 - INTELLECTUAL, INDUSTRIAL AND COMMERCIAL PROPERTY - [3.2.4.]

Intellectual property includes all exclusive rights to intellectual creations. It encompasses two types of rights: industrial property, which includes inventions (patents), trademarks, industrial designs and models and designations of origin, and copyright, which includes artistic and literary property. For many years the European Union has had an active policy in this area, aimed at harmonising legislation between Member States. Since the entry into force of the Treaty on the Functioning of the European Union (TFEU) in 2009, the EU has had explicit competence for intellectual property rights (Article 118).

LEGAL BASIS

Articles 114 and 118 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Although governed by different national laws, intellectual property rights (IPR) are also subject to EU legislation. Article 118 TFEU provides that in the context of the establishment and functioning of the internal market, Parliament and the Council, acting in accordance with the ordinary legislative procedure, establish measures for the creation of European IPR in order to provide uniform protection of such rights throughout the Union, and for the setting-up of centralised, Union-wide authorisation, coordination and supervision arrangements. The legislative activity of the European Union consists chiefly in harmonising certain specific aspects of IPR through the creation of a single European system, as is the case for the Community trademark and Community designs, and as will soon be the case for patents. EUIPO is the European Union Intellectual Property Office, responsible for managing the EU trademark and the registered Community design.

ACHIEVEMENTS

A. Legislative harmonisation
1. Trademarks, designs and models


both of 18 December 2006, link the EU system for the registration of designs or models to the international registration system for industrial designs and models of the World Intellectual Property Organisation (WIPO).

2. Copyright
   a. Copyright

   Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society adapts legislation on copyright and related rights to technological developments. However, the current EU text is in urgent need of reform. Out of pace with the extraordinarily fast developments that have taken place in the digital world since 2001, it is no longer suited to today’s digital landscape. Harmonised copyright legislation across the European Union has yet to be established, which results in legal uncertainty for individuals and companies. On 14 September 2016 the Commission published its package of initiatives and documents on copyright. It consists of a proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016) 0593), of a proposal for a regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions (COM(2016) 0594), of a communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘Promoting a fair, efficient and competitive European copyright-based economy in the Digital Single Market’ (COM(2016) 0592), an impact assessment on the modernisation of EU copyright rules (SWD(2016) 301) and an evaluation of Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (SWD(2016) 309).
   
   b. Term of protection of copyright and related rights

   These rights are protected for life and for 70 years after the death of the author/creator (see Directive 2006/116/EC as amended by Directive 2011/77/EU).

   c. Computer programs and databases

   Directive 91/250/EEC requires Member States to protect computer programs and databases by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. Having been amended on several occasions, the directive was codified by Directive 2009/24/EC of the European Parliament and of the Council. Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 provides for the legal protection of databases, defining a database as ‘a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means’. The directive stipulates that databases are protected both by copyright, which covers intellectual creation, and by a sui generis right protecting investment (of money, human resources, effort and energy) in the obtaining, verification or presentation of the contents.

   d. Collecting societies

   A licence must be obtained from the different holders of copyright and related rights before content protected by copyright and related rights and the linked services may be disseminated. Rightholders entrust their rights to a collecting society, which manages those rights on their behalf. Collective management organisations should continue to
play an important role in promoting the diversity of cultural expression, both by enabling the smallest and least popular repertoires to access the market and by providing social, cultural and educational services to their rightholders and the public.

On 26 February 2014 Parliament and the Council adopted Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. The aim of the directive is to lay down requirements applicable to collective management organisations, with a view to ensuring a high standard of governance, financial management, transparency and reporting.

The Member States have to ensure that collective management organisations act in the best interests of the rightholders, whose rights they represent, and that they do not impose any obligations which are not objectively necessary for the protection of the rights and interests of the rightholders, or for the effective management of these rights.

According to the directive, rightholders have the right to authorise a collective management organisation of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the territories of their choice, irrespective of the Member State of nationality, residence or establishment of either the collective management organisation or the rightholder. Unless the collective management organisation has objectively justified reasons to refuse management, it is obliged to manage these rights.

Rightholders should be free to entrust the management of their rights to independent management entities. These are commercial entities that differ from collective management organisations, inter alia because they are not owned or controlled by rightholders.

3. Patents

A patent is a legal title that can be granted for any invention having a technical character, provided that it is new, involves an inventive step and is susceptible of industrial application. A patent gives the owner the right to prevent others from making, using or selling the invention without permission. Patents encourage companies to make the necessary investment for innovation, and provide an incentive for individuals and companies to devote resources to research and development. In Europe, technical inventions can be protected either by national patents, granted by the competent national authorities, or by European patents granted centrally by the European Patent Office (EPO). The latter is the executive branch of the international organisation, which now has 38 contracting states. The EU itself is not a member of the European Patent Organisation.

After years of discussions among the Member States, in 2012 Parliament and the Council approved two regulations that provide the legal basis for a European patent with unitary effect (unitary patent). Through the ‘unitary patent package’, the EU legislature seeks to confer unitary protection and to establish a unified court in this area.

Following the Court of Justice’s confirmation of the ‘patent package’ in its judgment of 5 May 2015 in Cases C-146/13 and C-147/13 (Spain v. European Parliament and Council of the European Union concerning enhanced cooperation in the creation of unitary patent protection), the way is free for a truly European patent. The previous regime will co-exist with the new system until the Unified Patent Court (UPC) is established.
Once granted by the EPO, a unitary patent will provide uniform protection with equal effect in all participating countries. Businesses will have the option of protecting their inventions in all EU countries with a single unitary patent. They will also be able to challenge and defend unitary patents in a single court action through the UPC. This will streamline the system and save on translation costs.

4. Trade secrets

The practice of keeping information confidential goes back centuries. Legal instruments to protect trade secrets, whether or not defined as part of IPR, exist in many countries. The level of protection afforded to confidential information cannot be compared to other areas of intellectual property law such as patents, copyrights and trademarks. The protection of trade secrets varies more from country to country than other areas of IPR law, as do the approaches taken. There is a patchwork legal framework, but since 2016 there has been an EU legal framework: Directive (EU) 2016/943 of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

Combating counterfeiting

As differences in national systems for penalising counterfeiting and piracy were making it difficult for Member States to combat these offences effectively, Parliament and the Council adopted Directive 2004/48/EC on the enforcement of intellectual property rights as a first step. The directive aims to step up the fight against piracy and counterfeiting by approximating national legislative systems to ensure a high, equivalent and homogeneous level of intellectual property protection in the internal market. Directive 2004/48/EC provides for measures, procedures and compensation under civil and administrative law only. The Commission subsequently proposed that penal measures be adopted. These would supplement Directive 2004/48/EC and boost efforts at fighting counterfeiting and piracy.

B. Theory of the ‘exhaustion’ of rights

a. Definition

This is the theory that the proprietor of an industrial or commercial intellectual property right protected by the law of one Member State cannot invoke that law to prevent ‘the importation of products which have been put into circulation in another Member State’. It applies to all fields of industrial property.

b. Limits

The theory of exhaustion of EU rights does not apply in the case of marketing of a counterfeit product, or of products marketed outside the European Economic Area (Article 6 of the Agreement on Trade-Related Aspects of Intellectual Property Rights — TRIPS). In 1999 the Court of Justice ruled, in its judgment in Sebago Inc. and Ancienne Maison Dubois & Fils SA v. GB-Unic SA (C-173/98), that Member States may not provide in their domestic law for exhaustion of the rights conferred by the trademark in respect of products put on the market in non-member countries.

c. Principal legal acts in this area

— Directive 2006/115/EC 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;

C. Recent case-law of the Court of Justice of the European Union

In 2012 the Court of Justice confirmed in the SAS case (C-406/10) that, according to Directive 91/250, only the expression of a computer program is protected by copyright and that ideas and principles which underlie the logic, algorithms and programming languages are not protected under that directive (paragraph 32 of the judgment). The Court stressed that neither the functionality of a computer program nor the programming language and the format of data files used in a computer program in order to exploit certain of its functions constitute a form of expression of that program for the purposes of Article 1(2) of Directive 91/250 (paragraph 39).

In its judgement in Case C-160/15 GS Media BV v. Sanoma Media Netherlands BV the Court declares that the posting of a hyperlink on a website to works protected by copyright and published without the author’s consent on another website does not constitute a ‘communication to the public’ when the person who posts that link does not seek financial gain and acts without knowledge that those works have been published illegally.

In its judgement in Case C-484/14 of 15 September 2016, the Court holds that making a Wi-Fi network available to the general public free of charge in order to draw the attention of potential customers to the goods and services of a shop constitutes an ‘information society service’ under the directive and confirms that, under certain conditions, a service provider who provides access to a communication network, may not be held liable. Consequently, the copyright holder is not entitled to claim compensation on the grounds that the network was used by third parties to infringe its rights. Securing the internet connection by means of a password ensures a balance between, on the one hand, the intellectual property rights of rightholders and, on the other hand, the freedom to conduct a business of access providers and the freedom of information of the network users.

ROLE OF THE EUROPEAN PARLIAMENT

In various resolutions on IPR, and particularly on the legal protection of databases, biotechnological inventions and copyright, Parliament has argued for the gradual harmonisation of such rights. It has also opposed the patenting of parts of the human body. On 27 February 2014 Parliament adopted a highly controversial own-initiative resolution on private copying levies (the right to make private copies of legally acquired content), as digital private copying has taken on major economic importance as a result of technological progress. Parliament has also played a very active role in the WIPO draft treaty on copyright exceptions for the visually impaired. As preparatory work for the general copyright reform, Parliament adopted on 24 June 2015 its own-initiative resolution on the implementation of Directive 2001/29/EC (see above 2.a.), containing a number of important recommendations on all issues currently at stake.

Parliament and the EU as a whole are engaged in trying to harmonise certain specific aspects of IPR through the creation of a single European system in parallel to national
systems, as is the case for the Community trade mark and Community designs, and the European Unitary Patent.

Udo Bux
01/2017
Since 1995, information and communication technologies (ICTs) have driven productivity gains and growth in the EU. The concept of ICTs covers a broad spectrum of technologies, ranging from information technology (IT) through telecommunications, broadcast media, and all types of audio and video processing and transmission to network-based control and monitoring functions. Over the past three decades, technological ‘convergence’ has been blurring the boundaries between telecommunications, broadcasting and IT. Smartphones, tablets and connected TV are the clearest examples of this phenomenon. Although linear broadcasting continues to be the principal medium of information distribution and entertainment in Europe, more and more audiovisual content is available on demand, while exponential growth in 4G internet connectivity - soon to step up to 5G standard - and the ‘internet of things’ (IoT), involving connected cars, wearable devices and sensors, gives the internet an increasingly ubiquitous dimension.

LEGAL BASIS

While the Treaties do not contain any special provisions for ICTs, the EU may take relevant actions within the framework of sectoral and horizontal policies, such as: industrial policy (Article 173 TFEU); competition policy (Articles 101-109 TFEU); trade policy (Articles 206 and 207 TFEU); the trans-European networks (TENs) (Articles 170-172 TFEU); research and technological development and space (Articles 179-190 TFEU); the approximation of laws (Article 114 TFEU); the free movement of goods (Articles 28, 30 and 34-35 TFEU); the free movement of people, services and capital (Articles 45-66 TFEU); education, vocational training, youth and sport (Articles 165 and 166 TFEU); and culture (Article 167 TFEU). These are all key elements for a Digital Europe.

OBJECTIVES

Following up on the Lisbon Strategy, the Digital Agenda for Europe (DAE) was conceived as one of the seven flagship initiatives of the Europe 2020 strategy adopted by the Commission. Published in May 2010, it sets out to define the key enabling role that the use of ICTs will have to play if Europe wants to succeed in its ambitions for 2020. The Europe 2020 strategy underlined the importance of broadband deployment in the promotion of social inclusion and competitiveness in the EU. The DAE set broadband targets: (1) basic broadband coverage for 100% of EU citizens; (2) fast broadband by 2020: broadband coverage at 30 Mbps or more for 100% of EU citizens; (3) ultra-fast broadband by 2020: 50% of European households should have subscriptions above 100 Mbps. On 14 September 2016, in a communication on ‘Connectivity for a Competitive Digital Single Market — Towards a European Gigabit Society’, the Commission proposed, for the consideration of Parliament and the Council, to revise
those targets to a gigabit connectivity in 2025 for all main socio-economic drivers such as schools, transport hubs and main providers of public services, as well as digitally intensive enterprises. At these speeds the internet evolves into a genuine tool for global communication composed of highly interactive, constantly connected and easily expandable sensors, processors and storage units, although if such connectivity targets are to be achieved a greater focus will be required on the mobile and satellite dimension\[5\], something the Commission is trying to achieve with its ‘5G for Europe Action Plan’\[6\].

ACHIEVEMENTS

In coordination with the Global Internet Policy Observatory (GIPO), the Commission, on 22 April 2015, launched giponet.org, a platform to help make internet governance implementation more democratic and user-friendly\[7\].

As a result of Directive 89/552/EEC (the ‘TV Without Frontiers Directive’ (TVWFD)), updated by Directive 2007/65/EC (the ‘Audiovisual Media Services Directive’ (AVMSD)), and the ‘Regulatory framework for electronic communications networks and services’ (Directive 96/19/EC and its revisions of April 2002 and November 2009), which opened up the telecommunications market to full competition as of 1 January 1998, the EU now has an advanced system of users’ rights and protections for consumers, including:

— the 112 single European emergency number (Directive 2009/136/EC), the 116000 missing children helpline, the 116111 child helpline, and the 116123 emotional support helpline;

— the right to change fixed-line or mobile operator within one working day while still retaining one’s original phone number, i.e. number portability (Directive 2009/136/EC);

— lower prices for electronic communications\[8\], which will eventually lead to the end of roaming charges (by June 2017)\[9\];

— comprehensive basic broadband coverage, mainly owing to developments in mobile and satellite broadband;

— an EU top-level domain (TLD) (Regulation (EC) No 733/2002);


In order to improve the consistency of national regulatory procedures, the Body of European Regulators for Electronic Communications (BEREC) (see Regulation (EC) No 1211/2009) provides for cooperation between national regulators and the Commission, promoting best practice and common approaches, while at the same time avoiding inconsistent regulation that could risk distorting competition in the single market in telecommunications. As regards spectrum management, the multiannual radio spectrum policy programme sets out policy directions and objectives for the strategic planning and harmonisation of the radio spectrum, in order to ensure that the internal market functions in Union policy areas involving spectrum use, such as electronic communications, research, technological development and space, transport, energy, and audiovisual policies. With regard to network and information security (NIS), the European Network and Information Security Agency (ENISA) was established under Regulation (EC) No 460/2004, and its mandate was strengthened after the adoption of Parliament’s resolution of 16 April 2013 (12). Since 1999 there has been a series of multiannual safer internet programmes. On 6 July 2016, Parliament and the Council signed the directive concerning measures to ensure a high common level of network and information security across the Union. (13) Additionally, Parliament adopted a regulation making eCall technology a mandatory feature in all cars made after April 2018 (14).

### ROLE OF THE EUROPEAN PARLIAMENT

Parliament advocates a robust and advanced ICT policy and has been very active in the adoption of legislative acts in the area. It has also continuously helped to keep the focus on ICT issues, through own-initiative reports, oral and written questions, studies (15), workshops (16), opinions and resolutions, as well as through calls for greater coordination of national efforts for the development of pan-European services and EU support for ICT research and development (17).

Parliament has recalled the need to use the ‘digital dividend’ spectrum to achieve broadband for all EU citizens, and has stressed that further action is needed to ensure ubiquitous and high-speed access to broadband, as well as digital literacy and competences for all citizens and consumers (18). It likewise stresses the importance of security in cyberspace (19) in order to ensure robust protection for privacy and civil liberties in general in a digital environment. At the same time Parliament strongly promotes technological neutrality, ‘net neutrality’ and ‘net freedoms’ for European citizens, as well as measures regarding access to or use of services and applications through telecommunications networks, on a basis of respect for the fundamental

rights and freedoms of citizens; such measures must also ensure that internet service providers do not degrade users’ ability to access content and applications and/or run services of their own choice[20].

Parliament is systematically consolidating these guarantees through legislation. It is at the forefront in ending roaming tariffs and setting network neutrality standards[21]. Parliament has initiated and completed important legislative work on the Directive on measures to reduce the cost of deploying high-speed electronic communications networks[22] and the Regulation on electronic identification and trust services for electronic transactions in the internal market[23].

On 27 April 2016 Directive (EU) 2016/680[24] was adopted. It aims to guarantee an effective application of the protection of natural persons in relation to the processing of personal data as a fundamental right. Moreover, the EP and the Council have adopted Regulation (EU) 2016/679[25] on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. This regulation aims to correct: fragmentation in the implementation of data protection across the Union; legal uncertainty; and a widespread public perception that there are significant risks to the protection of natural persons, in particular with regard to online activity.

Recently, Parliament successfully finalised the legislative work on reforming data protection framework and on cybersecurity rules (the directive concerning measures to ensure a high common level of network and information security across the Union (2013/0027(COD)).

Parliament proceeded with its own scrutiny of the Anti-Counterfeiting Trade Agreement (ACTA) and subsequently declined to give its consent to the conclusion of the agreement, in a legislative resolution of 4 July 2012[26].

Parliament is closely monitoring the implementation by the Commission of the Digital Single Market (DSM) strategy roadmap and the 16 initiatives it is to deliver by the end of 2016. On 19 January 2016 Parliament adopted an own-initiative report, ‘Towards a Digital Single Market Act’ (2015/2147(INI))[27]. This report put the focus on the prevention of unjustified geo-blocking, the need for durable consumer protection applicable to both online and offline purchases, the improvement of cross-border parcel delivery, the removal of barriers to digital innovation, and the consistency of privacy and data protection regimes[28]. Parliament is currently doing extensive legislative work on the proposals presented as a follow-up to the DSM Strategy and the resolution ‘Towards a Digital Single Market Act’[29], addressing such issues as unjustified geo-blocking[30], cross-border parcel delivery[31], cross-border portability of online content services[32].

[30]Proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the internal market, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0289
[31]Proposal for a Regulation on cross-border parcel delivery services https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-285-EN-F1-1.PDF
a revision of the Consumer Protection Cooperation Regulation[33], audiovisual media services[34], contracts for the online and other distance sales of goods[35], and contracts for the supply of digital content[36].

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The European Union's action in the field of culture supplements Member States' cultural policy in various areas: for example, the preservation of the European cultural heritage, cooperation between various countries' cultural institutions, and the promotion of mobility among those working creatively. The cultural sector is also affected by provisions of the Treaties which do not explicitly pertain to culture.

LEGAL BASIS

The Treaty of Lisbon places great importance on culture: the preamble to the Treaty on European Union (TEU) explicitly refers to 'drawing inspiration from the cultural, religious and humanist inheritance of Europe'. One of the EU’s key aims, as specified in the Treaty, is to ‘respect its rich cultural and linguistic diversity, and […] ensure that Europe’s cultural heritage is safeguarded and enhanced’ (Article 3 TEU). Article 6 of the Treaty on the Functioning of the European Union (TFEU) states that the EU's competences in the field of culture are to ‘carry out actions to support, coordinate or supplement the actions of the Member States’.

Article 167 provides further details on EU action in the field of culture: the EU must contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and bringing the common cultural heritage to the fore. Action by the Union should encourage cooperation between Member States and support and supplement their action in improving the knowledge and dissemination of the culture and history of the European peoples, conserving and safeguarding cultural heritage of European significance, fostering non-commercial cultural exchanges and artistic and literary creation, including in the audiovisual sector. The Union and Member States may also foster cooperation with third countries and the competent international organisations. Respect for, and the promotion of the diversity of, European cultures need to be taken into account when taking action under other provisions of the Treaty.

Article 13 of the Charter of Fundamental Rights of the European Union stipulates that ‘the arts and scientific research shall be free of constraint’. Article 22 of the same charter lays down the requirement that ‘the EU shall respect cultural, religious and linguistic diversity’.

ACHIEVEMENTS

A. Policy developments

1. European Agenda for Culture

Since 2007 the European Agenda for Culture has been the strategic framework for EU action in the cultural sector. It is based on the promotion of three strategic objectives: (1) cultural diversity and intercultural dialogue; (2) culture as a catalyst for creativity; and (3) culture as a key component of international relations. The Agenda’s core methods are dialogue with cultural stakeholders and the open method of coordination. The 2015-2018 Work Plan for Culture further concretises the agenda and sets out four priorities: (1) accessible and inclusive culture; (2) cultural heritage; (3) cultural and
creative sectors: the creative economy and innovation; and (4) promotion of cultural diversity. The priorities are put into practice in 20 concrete actions.

The Commission Communication ‘Towards an EU Strategy for International Cultural Relations’ presented by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy in mid-2016 is aimed at encouraging cultural cooperation between the EU and its partner countries and promoting a global order based on peace, the rule of law, freedom of expression, mutual understanding and respect for fundamental values.

Intercultural dialogue is an ongoing priority of the EU. With the entry into force of the Treaty of Lisbon, this dimension has become even more significant. In the specific area of culture policy, initiatives such as those on Roma culture, intercultural cities, and dialogue with the Platform on Intercultural Europe are in the spotlight. Other EU policies promoting intercultural dialogue include, to name but a few, those relating to the audiovisual sector, multilingualism, youth, research, integration and external relations.

B. Action programmes and secondary legislation

1. Creative Europe – the EU's culture programme for 2014-2020

The Creative Europe programme (2014-2020) has a budget of EUR 1.46 billion for the programming period (9% higher than the previous level). Under its umbrella it brings together earlier Union programmes: the MEDIA programmes (1991-2013), the MEDIA Mundus programme (2011-2013), and the Culture programmes (2000-2013). It also includes a cross-sectoral sub-programme consisting of (1) a financial guarantee, managed by the European Investment Fund, to make it easier for small operators to access bank loans, and (2) funding to support studies, analysis and better data collection with a view to improving the evidence base for policymaking.

Under its CULTURE sub-programme (for the MEDIA sub-programme, please see the factsheet on Audiovisual policy), there is funding available for (1) transnational cooperation projects between organisations active in the cultural and creative sectors; (2) European networks that aim to enable the workforce in the culture and creative sectors with specific skills and experience, international cooperation and new professional opportunities; (3) European platforms facilitating the mobility and visibility of creators and artists, Europe-wide programming of cultural and artistic activities and audience development and visibility; (4) literary translation of (packages of) works and their promotion.

2. European Capitals of Culture (ECoCs)

The European Capitals of Culture is one of the EU’s most successful and best-known cultural initiatives. Two cities — in two different EU countries — are given ECoC status each year. The cities are selected by an independent panel of experts on the basis of a cultural programme that must have a strong European dimension, involve local people of all ages and contribute to the long-term development of the city. Over the years, the ECoCs have also become a unique opportunity to regenerate cities, boost their creativity and improve their image. More than 40 cities have been designated as ECoCs so far. The procedure for choosing a city starts some six years in advance, although the order of the Member States entitled to host the event is established before then, and is organised in two stages.

The rules and conditions for holding the title, up to and including 2019, are set out in Decision 1622/2006/EC of the European Parliament and of the Council.
For the period between 2020 and 2033, rules are currently under revision. Decision 445/2014/EU extended the chance to participate in ECoC to candidate and potential candidate countries, provided that they participate in the Creative Europe Programme by the date of publication of the call for applications. In 2016, the Commission proposed to open up the action for EFTA/EEA countries. The decision on this proposal now lies with the Council and the European Parliament.

3. European Heritage Label

The European Heritage Label was initially brought into being as an intergovernmental initiative between several Member States in 2005. At the request of the Member States, the Commission proposed in 2010 to formally make the European Heritage Label an EU initiative. The label was established by Decision 1194/2011/EU. Its overarching objective is to strengthen intercultural dialogue and European citizens’ sense of belonging to the Union. In order to achieve these aims, sites are selected for their high symbolic value, the role they have played in the history and culture of Europe and the European Union, and their relation to democratic principles and human rights. So far 29 sites have been designated.

4. European Year of Cultural Heritage 2018

On 30 August 2016, the Commission put forward a proposal to Parliament and Council calling for 2018 to be designated the European Year of Cultural Heritage, in response to requests from both the Council and Parliament. The proposal is currently under negotiation. The Year would seek to highlight the role of Europe’s cultural heritage in fostering a shared sense of history and identity.

5. Unlawful removal of cultural objects

With Directive 2014/60/EU, a recast of Directive 93/7/EEC, the EU aims to protect national treasures and reconcile their protection with the principle of free movement of goods. It provides for the physical return of cultural objects that have been unlawfully removed from the territories of EU countries.

It sets out cooperation mechanisms and return proceedings against the possessor to secure the return of a cultural object unlawfully removed from the territory of one EU country to the territory of another EU country on or after 1 January 1993. It covers all cultural objects identified as ‘national treasures possessing artistic, historic or archaeological value’ under national legislation.

6. Prizes

The EU’s cultural policy supports the awarding of prizes in the fields of cultural heritage, architecture, literature and music. The objective of these EU prizes is to highlight the excellent quality and success of European activities in these sectors. The prizes put the spotlight on artists, musicians, architects, writers and those working in the field of cultural heritage, and on their work. In doing so, they showcase Europe’s rich cultural diversity and the importance of intercultural dialogue and cross-border cultural activities in Europe and beyond.

ROLE OF THE EUROPEAN PARLIAMENT

In its role as co-legislator, the European Parliament is currently examining the Commission proposal to open the European Capitals of Culture initiative to EFTA and EEA countries. It is also negotiating with the Council on the Commission proposal
to make 2018 a European Year of Cultural Heritage, with a decision expected in the first half of 2017. In the previous legislature it shaped, together with the Council, the European Heritage Label and the Directive on the return of cultural objects removed from the territory of a Member State.

Parliament took up the subject of cultural heritage in its resolution of 8 September 2015 ‘Towards an integrated approach to cultural heritage for Europe’[1] and stressed that while the main value of cultural heritage remains its cultural significance, it also has a role to play in growth and jobs.

In 2012 and 2013, Parliament negotiated with the Council on the main financial support for the cultural and creative sector, the Creative Europe programme. During the negotiations on the MFF and also during the annual budgetary procedures, Parliament consistently fights for increased budgetary allocations for the programme. An implementation report on the Creative Europe programme is has been voted in the CULT committee in January 2017 and is expected to be voted in plenary in the first half of 2017.

Parliament has expressed its longstanding interest in the potential and development of cultural and creative industries (CCIs) in various resolutions[2]. Not only are CCIs the expression of cultural diversity, but they also employ 7.5% of the EU work force, creating approximately EUR 509 billion in value added to GDP. In its resolution of 13 December 2016 on a coherent EU policy for cultural and creative industries Parliament called for a strategic approach to unleash the potential of CCIs[3]. It asked the Commission to adopt measures on a coherent EU policy for cultural and creative industries, developing a comprehensive, coherent and long-term industrial policy framework for the cultural and creative sector. Several measures should be adopted to improve the working conditions in the cultural and creative sector, to include CCIs in the Youth Employment Initiative and to provide funds to facilitate careers, entrepreneurship and training in this sector.

Parliament has also pushed for a strategic approach to the role of culture in external relations. In its Preparatory Action in the 2013 and 2014 budgets ‘Culture in EU External Relations’ it highlighted the considerable potential for culture in Europe’s external relations and underlined that the European Union and its Member States stand to gain a great deal by better streamlining their cultural diplomacy, and its resolution of 12 May 2011 on the cultural dimensions of the EU’s external actions[4] pointed in the same direction. In 2016 it drew up a resolution on intercultural dialogue[5]. A first exchange of views for a report in response to the Commission’s ‘Strategy for International Cultural Relations’ was held in a joint AFET and CULT meeting on 9 January 2017.

Michaela Franke / Mara Mennella
02/2017

The aim of the Fact Sheets is to provide an overview of European integration and of the European Parliament’s contribution to that process.

Created in 1979 for Parliament’s first direct elections, the Fact Sheets are intended to provide non specialists with a straightforward and concise – but also accurate – overview of the European Union’s institutions and policies, and of the role that Parliament plays in their development.

The Fact Sheets are grouped into six chapters:

- **How the European Union works**, which addresses the EU’s historical development, legal system, institutions and bodies, decision-making procedures and financing;
- **Citizens’ Europe**, which describes individual and collective rights;
- **The internal market**, which explains the principles and implementation of the internal market;
- **Economic and Monetary Union**, which outlines the context of EMU and explains the coordination and surveillance of economic policies;
- **Sectoral policies**, which describes how the EU addresses its various internal policies;
- **The EU’s external relations**, which covers foreign policy, security and defence, trade, development, human rights and democracy, enlargement and relations beyond the EU’s neighbourhood.

Drafted by the Policy Departments and the Economic Governance Support Unit, the Fact Sheets are reviewed and updated at regular intervals throughout the year, as soon as Parliament adopts any important positions or policies.

The Fact Sheets are updated regularly and published on the website of the European Parliament in 23 languages.