

# Audiovisual media in the digital era: An industrial strategy needed to safeguard cultural diversity

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Today, Europeans can watch their favourite programmes on their television, their computers or their mobile devices. They can broadcast live videos, create and share content on online platforms or their own channels. In this context, significant technological and behavioural transformations have transformed Europe's audiovisual industry.

At the same time, the rapid emergence of a few dominant players has spurred further disruption and market concentration. These developments have created concerns about the sustainability of national content production and, with it, the preservation of Europe's cultural diversity.

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In the EU, the digitalisation of the audiovisual industry thus poses several challenges for policymakers: How should regulations evolve to reflect these evolutions? How much does public support for the production of national content weight against the objective of fostering a level playing field across the audiovisual market? How can the EU boost the competitiveness of the industry in the face of a global race for cutting-edge technological development?

This policy brief describes how new technologies have impacted the audiovisual landscape and altered

competition practices. It considers the merits of the EU's review of the Audiovisual Media Services Directive (AVMSD) in addressing this trend. The author argues that, while the adoption of the AVMSD review goes in the right direction, wide-ranging measures are required to safeguard the viable production of native content. Levers for EU action include competition policy rules, economic diplomacy tools and making the most of the EU single market. A combination of such steps will help European players to compete on fair terms with their international competitors.

## BACKGROUND

### Challenges to national strategies

For the past 20 years, advances in information and communication technologies have dramatically modified the way people inform and entertain themselves. The Internet has spurred the emergence of **new business models** – from online sharing platforms to video on demand (VOD) services. At the same time, the widespread dissemination of smartphone devices has spurred new habits regarding audiovisual services by enabling users to produce and share their own content on online platforms (e.g. YouTube, Vimeo or Flickr). These changes have drastically reshaped the structure of the audiovisual services market. In 2016, the total revenue generated by the streaming or downloading of films and TV programmes exceeded for the first time that of DVD sales in the United Kingdom.<sup>1</sup>

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<sup>1</sup> See <https://eraltd.org/news-events/press-releases/2018/streaming-boom-powers-entertainment-market-to-new-all-time-high-of-724bn-in-2017/>

The emergence of a ‘multi-screen environment’ has gone hand-in-hand with a gradual blending of the media, telecommunication and computer industries. Leading mobile device manufacturers (Apple) and online marketplaces (Amazon) have invested in audiovisual production and dissemination. Several technology companies have pioneered the non-linear audiovisual market by advertising their services to a critical mass of viewers. In turn, they have captured the lion’s share of the revenues generated by online advertising, which represents a leading source of television resources.<sup>2</sup> As a result, this new market distribution has challenged the **financing of European audiovisual production** mechanisms.

While these transformations are affecting the entire European audiovisual industry, their perceived impact varies widely due to substantial **cultural differences** across EU member states. Most of them consider the production of audiovisual goods and services as a commercial venture, and films and TV programmes as standard economic products. Others see them as expressing a form of art, which should not be left to market forces alone.<sup>3</sup> In France, some see the domination of a few global players on online audiovisual services as “an immense threat” to cultural diversity.<sup>4</sup> In Denmark, on the contrary, the Internet is seen as a springboard for the dissemination of Danish blockbusters, such as “The Killing”, “The Bridge” or the political thriller “Borgen”.<sup>5</sup>

### **EU’s role: A trade-off between conflicting objectives?**

The conflicting perceptions of the risks and opportunities associated with the digitalisation of the audiovisual industry hamper the definition of a collective response. Meanwhile, from a legal perspective, the treaties confine EU action to “supporting, coordinating or supplementing EU countries’ action” (Art. 6) in the cultural area as well as safeguarding and promoting the bloc’s **cultural diversity** (Art. 167). Accordingly, EU rules on state aid in the media sector acknowledge that “government intervention may be necessary to (...) achieve (...) cultural diversity and to satisfy society’s (...) cultural needs.”<sup>6</sup>

At the same time, EU institutions have a responsibility to ensure the **functioning of the single market** (Art. 26-29). With 38% of audiovisual content distributed across national borders<sup>7</sup>, the single market has become a reality for the audiovisual industry. Recently, national policymakers have introduced regulations to address discrepancies between traditional and new players and protect incumbents from perceived risks of unfair competition. Thus, uncoordinated policy responses across member states are exposing the single market to fragmentation. The lack of shared rules also hinders the ability of European players to scale up and compete with their global competitors.

At first glance, the Union’s aim to promote cultural diversity while preserving a level playing field on the single market may appear as an **inconsistent objective**. The EU’s AVMSD review focuses on the **complementarity** of these objectives. As such, the EU argues that providing a more suited environment

(for new market players to emerge and scale up) is the most effective way to safeguard the viability of original content production.

## **STATE OF PLAY**

The AVMSD review has shed new light on how EU and national regulations can together nurture **cultural diversity in a digital era**. Public and private broadcasters have put pressure on policymakers to address what they perceive as being an ‘unfair treatment’ between ‘traditional’ and ‘new’ market players. To date, differentiated rules apply to linear (broadcasted) and non-linear audiovisual services (i.e. on-demand media). The current legal framework relies on a **graduated approach** with lighter rules applying to non-linear services since viewers are assumed to have more control over them. In response to recent economic and behavioural developments, the **AVMSD review** suggests putting traditional and new market players on an equal footing in their expected contribution to the production and distribution of European content.

### **A level playing field**

Up to now, the AVMSD requires that TV and radio broadcasters earmark more than 50% of their airtime to European works.<sup>8</sup> Traditional broadcasters have usually met these rules: European works have represented 64% of airtime in 2012. They also invest about 20% of their revenues in the production of original content. These rules do not, however, apply to VOD providers. In fact, evidence indicates that the contribution of on-demand providers to the production of original content represents less than 1% of their total revenues.<sup>9</sup>

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<sup>2</sup> Television income usually comes from three primary sources: advertising, subscriptions and service charges. For more details on the developments affecting these sources of financing, see <https://www.revistas.usp.br/matriz/article/download/131622/127907>

<sup>3</sup> These diverging views have fuelled an uninterrupted debate on how to regulate audiovisual trade both at EU level and in the context of the World Trade Organization (WTO).

<sup>4</sup> Lesclure, Pierre, Culture – Acte 2 (Second Report on cultural exception, Contribution to political and digital policies) <http://www.culturecommunication.gouv.fr/Actualites/Culture-acte-2-80-propositions-sur-les-contenus-culturels-numeriques>

<sup>5</sup> See <https://www.economist.com/blogs/prospero/2012/12/danish-culture>

<sup>6</sup> This policy notably allows film-support schemes to benefit from the general ban on state aid provided that they fulfil specific conditions. See [http://ec.europa.eu/competition/sectors/media/overview\\_en.html](http://ec.europa.eu/competition/sectors/media/overview_en.html)

<sup>7</sup> European Commission (2016), “Digital Single Market – Commission updates EU audiovisual rules and presents targeted approach to online platforms”, Brussels, [http://europa.eu/rapid/press-release\\_MEMO-16-1895\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-1895_en.htm)

<sup>8</sup> With its European Convention on Transfrontier Television, the Council of Europe has defined ‘European works’ as excluding “the time appointed to news, sports events, games, advertising, teletext services and teleshopping.” See <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007b0d8>

<sup>9</sup> See [http://europa.eu/rapid/press-release\\_MEMO-16-1895\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-1895_en.htm) and <https://ec.europa.eu/digital-single-market/en/news/study-data-and-information-costs-and-benefits-audiovisual-media-service-directive-avmsd>

In support of national **audiovisual production**, governments have employed varying strategies to make VOD or streaming providers contribute to the promotion of new European works. Among these, member states have introduced minimum quota obligations requesting VOD services to reserve a share of the audiovisual offer of their catalogues to European works. The quotas range from 10% to 60% across member states.<sup>10</sup>

Acknowledging its limited scope to act in an area – cultural policy – considered at the heart of national sovereignty, the Commission has accepted to leave it to the **member states to decide on the kind of support mechanisms** which they deem appropriate to support the production of European content. With the aim to ensure a level playing field, the Commission proposed, however, to bring VOD servers closer to linear channels by demanding that they supply a quota of at least 20% of their catalogues to European works.

### A pragmatic compromise

The proposal has prompted **mixed reactions among businesses**. Market incumbents have argued that the Commission's AVMSD review was a step in the right direction towards a balanced set of rules for all. Conversely, new players have objected there was no need to revise the directive and that some of the new provisions could, in fact, hinder the development of the non-mature online video market in the EU.

The provisions in support of the production of European content have also generated **heated debates** among member states. Several (Finland, Denmark and Sweden) have openly challenged the **added value of quotas** as a vehicle for the promotion of European works and underscored the need to respect consumer preferences. Others (Spain, Romania, Poland and France) have argued that the proposal did not go far enough. In the end, member states agreed to raise the quota for 'European works' to at least 30%.<sup>11</sup>

In a nutshell, the AVMSD review was deemed **protectionist** by those opposing quotas and **liberal** by those considering that it was too lenient towards new market players. On 6 June 2018, the European Parliament, the Council and the Commission announced a preliminary political agreement on the revised rules to apply to audiovisual media. Overall, the compromise appears as an **effort to balance** the need for a level playing field in the audiovisual services market with the objective to safeguard cultural diversity.

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Will the revised AVMSD, however, prove sufficient to help the EU's audiovisual sector address the challenges posed by the digital era? While the AVMSD review goes in the right direction, it may prove insufficient in ensuring the viability of the European audiovisual sector. Thus, the EU must consider how the single market could provide a better framework for new businesses to emerge, scale up and compete with global players.

## PROSPECTS

Despite its limited scope for action in the cultural sector, the EU's other mandates could prove useful in spurring the growth of the audiovisual industry while upholding its commitment to cultural diversity. The EU and its member states should thus consider the following steps.

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**The size and scope of the transformations affecting the audiovisual industry risks dwarfing purely national policy initiatives.**

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### Complete the single market

The global standing of the European audiovisual industry hinges on its ability to nurture pan-European market leaders. In that regard, completing a **digital single market** is paramount.<sup>12</sup> To date, there is no fully-fledged single market for digital and audiovisual products or services. The Commission estimates that removing data localisation restrictions could allow the data economy to double its value to 4% of GDP.<sup>13</sup> Initiatives aimed at completing the capital markets union could also help tech companies in securing the funds to scale up their businesses.<sup>14</sup> Accordingly, member states should support initiatives such as the Commission's 'European Innovation Council' pilot project<sup>15</sup> or French President Macron's Joint European Disruptive Initiative.

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<sup>10</sup> The European Commission published a summary of these approaches in July 2014. See <https://ec.europa.eu/digital-single-market/news/promotion-european-works-practice>

<sup>11</sup> In France, a 60% quota already applies to broadcasters and online video on demand platforms.

<sup>12</sup> Other policy initiatives include a Communication on Online Platforms (May 2016) and a Communication on the Collaborative Economy (June 2016). For more information about the Digital Single Market Strategy, [http://eur-lex.europa.eu/resource.html?uri=cellar:a4215207-362b-11e7-a08e-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:a4215207-362b-11e7-a08e-01aa75ed71a1.0001.02/DOC_1&format=PDF)

<sup>13</sup> IDC & Open Evidence (2017), European Data Market Study, Final Report, <http://datalandscape.eu/study-reports/european-data-market-study-final-report>

<sup>14</sup> See, for example, [http://www.delorsinstitut.de/2015/wp-content/uploads/2017/11/20171110\\_Regulation-for-Startups\\_Dittrich.pdf](http://www.delorsinstitut.de/2015/wp-content/uploads/2017/11/20171110_Regulation-for-Startups_Dittrich.pdf)

<sup>15</sup> Source: <https://ec.europa.eu/research/eic/index.cfm?pg=about>

## Ensure fair competition

Member states should pay more attention to the role **EU competition policy and taxation rules** could play in tackling market distortions globally. No abuse of dominant position has been identified in the audiovisual sector. But the gradual blending of the media, telecommunication and computer industries undoubtedly requires careful monitoring. Should such cases occur, the Commission could invoke new provisions (Art. 116 TFEU) to redress a '**distortion of competition**' without having to recourse to the unanimity rule.

Another concern about fair competition in the single market stems from the **aggressive tax planning practices** of some multinational 'tech giants'. Under current rules, digital companies are taxed only in the countries where they have a physical presence. To draw these profitable businesses, some member states have offered them highly advantageous tax relief schemes. This competition has led to a 'race to the bottom' negatively impacting government revenues and creating a wedge at the expense of traditional public broadcasters. In March 2018, the Commission released a promising proposal to reform corporate tax rules.<sup>16</sup> The Franco-German commitment to "reach an EU agreement on fair digital taxation by the end of 2018"<sup>17</sup> could set in motion greater tax convergence in the EU.

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## Promote cultural diversity

The EU's **trade and investment agenda** could also contribute to supporting cultural diversity. Individual member states can already use a veto right in areas related to culture and the audiovisual sector if a trade agreement threatens "cultural and linguistic diversity" (Art. 207 TFEU). This provision was used in 2013 when EU member states agreed to exclude audiovisual services from the Transatlantic Trade and Investment Partnership negotiations. In the context of the EU's nascent economic diplomacy, the Commission should consider how the internationalisation of EU norms

could give a competitive advantage to the audiovisual industry. For example, the Commission is currently debating with China what should be the scope for state aid control in a global economy. Recognising the exceptional character of audiovisual services in such informal discussions would help demonstrate the EU's commitment to safeguarding cultural diversity.

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## Developing a pan-European industrial strategy may be the most effective way to address the structural challenges that European audiovisual production is facing in the digital era.

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### A call for an EU industrial strategy

To resort to EU-level action for the preservation of national identities may seem paradoxical and appear as a possible threat to national sovereignty. The size and scope of the transformations affecting the audiovisual industry risks, however, dwarfing purely national policy initiatives. In this context, developing a pan-European industrial strategy may be the most effective way to address the structural challenges that European audiovisual production is facing in the digital era.

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<sup>16</sup> Source: [https://ec.europa.eu/taxation\\_customs/business/company-tax/fair-taxation-digital-economy\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en)

<sup>17</sup> Source: <https://www.bundeskanzlerin.de/Content/EN/Pressemitteilungen/BPA/2018/2018-06-19-meseberg-declaration.html>