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**COMMISSION STAFF WORKING DOCUMENT**

**on the External Dimension of Audiovisual Policy**

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## on the External Dimension of Audiovisual Policy

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## 1. INTRODUCTION

The audiovisual sector is facing challenges and opportunities brought about by the increasing internationalisation of markets and the technological advances in Information and Communication Technologies (ICTs).

In this context, closer cooperation and deeper exchanges with other regions of the world can play an important role in reinforcing the competitiveness and projection of the European audiovisual industry at the international level, acting as a necessary complement to policies and instruments implemented within the EU.

The EU Ministers responsible for audiovisual matters meeting informally on 19 May 2008 in Cannes adopted a declaration highlighting this need and indicating that enhanced cooperation in this regard may generate significant added value in terms of improved promotion, better circulation and greater exposure of European audiovisual works in third countries.

Moreover, the audiovisual sector is one of the most important cultural content industries and as such has a significant economic potential. As noted in the conclusions of the Lisbon European Council of 23-24 March 2000, it creates added value by exploiting and networking European cultural diversity.

Because of its strength as a vector for communication, and its specific characteristic, having both economic and cultural features, audiovisual is a powerful tool for international relations and an essential component of actions to foster and improve international cultural cooperation and promote cultural diversity.

As such it is set to play a key role for the strategic objectives of the European Agenda for Culture as set out in the Commission Communication of 2007<sup>1</sup> and endorsed by the Council in its resolution of 16 November 2007. In particular, its contribution is highly relevant for the third strategic objective of the Agenda related to promoting culture as a vital element in the EU's international relations, notably in the context of the implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural expressions at international level by the Community.

In keeping with these objectives, the Council conclusions on the *promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States* adopted on 20 November 2008, calls on the Commission and the Member States, with due regard for the principle of subsidiarity, to :

- strengthen the place of culture in policies and programmes within the framework of external relations,
- define comprehensive and consistent approaches to this end,
- strengthen in this framework the support of the international promotion of European cultural activities, goods and services, including those of an audiovisual nature,

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<sup>1</sup> (COM/2007/242)

- and to develop methods and instruments, inter alia, to encourage synergies with a view to contributing to the complementarity of the activities undertaken by the Union with those of its Member States in this regard.

This document sets out to analyse the current legal and policy framework and, against this background, various initiatives and actions that have been undertaken at EU level to strengthen the external dimension of audiovisual policy in order to improve the readability of this process and to highlight the elements of coherence, as well as the distinctive complementary and added value character of EU action in this area.

## **2. POLICY AND REGULATORY FRAMEWORK**

### **2.1. European Union**

#### *2.1.1. Relevant Treaty Provisions and secondary legislation*

The dual aim of promoting cultural diversity and the competitiveness of the European audiovisual industry stems from the Treaty provisions upon which the main current audiovisual policy instruments are based. These are the new Audiovisual Media Services Directive (AVMSD)<sup>2</sup> and the MEDIA 2007 programme<sup>3</sup>.

The former constitutes the regulatory pillar of audiovisual policy while the latter provides the financial support framework. The AVMSD is essentially an internal market instrument setting out the "rules of the game" for the free circulation of audiovisual media services on the basis of the country-of-origin principle. The MEDIA 2007 programme is based on Article 157 EC ("Competitiveness") and therefore aims at strengthening the competitiveness of European audiovisual enterprises. By virtue of Article 151 ("Culture"), and in particular of paragraph 4 thereof, both instruments "take (ample) account of cultural aspects, particularly in order to respect and promote the diversity of its (the Community's) cultures".

Particularly relevant for the analysis of the external dimension, the Treaty provisions on a "Common Commercial Policy" include a specific reference to audiovisual services in Article 133(6). Audiovisual services fall under shared competence alongside cultural, educational, and social and human health services (Article 133 (5) EC Treaty). According to this provision trade agreements covering such services fall within the shared competence of the Community and its Member States. Consequently, any such agreements require unanimity in the Council and have to be concluded jointly by the Member States and the Commission as a "mixed" agreement.

#### *2.1.2. Audiovisual Media Services Directive*

The Audiovisual Media Services Directive (AVMSD), which entered into force on 19 December 2007, preserves the core principles of the existing European rules for television and adapts them to the new audiovisual environment. The AVMSD was adopted to allow the

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<sup>2</sup> Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 (Official Journal of the European Communities L298, 17.10.1989, p. 23) as last amended by Directive 2007/65/EC (Official Journal of the European Communities L332, 18.12.2007, p. 27)

<sup>3</sup> Programme established by Decision 2006/1718/EC of the European Parliament and the Council of 15.11.2006 concerning the implementation of a programme of support for the European audiovisual sector (Official Journal of the European Communities L327, 24.11.2006, p. 12)

audiovisual sector to confront the profound changes it faces in accommodating technological and market developments, as well as changing viewing habits resulting from convergence.

The AVMSD covers both traditional television broadcasting and new on-demand services like on demand films and news, introduces more flexible advertising rules and a legal framework for product placement and new rights for citizens. The AVMSD upholds core societal values, from protecting minors to ensuring accessible services for people with hearing or visual impairments. At the same time, it recognizes the pivotal role that user choice and responsibility play in the new on-demand environment.

The AVMSD continues to promote cultural diversity through the promotion of European works. Moreover, the AVMSD has adapted the definition of a "European work" in such a way as to allow works co-produced in the framework of agreements related to the audiovisual sector, concluded between the Community and third countries, and under the conditions defined in those agreements to be treated as "European" for the purposes of the Directive's requirements on the promotion of audiovisual works, in both broadcast ("linear") and on-demand ("non-linear") services. This innovation aims *inter alia* at meeting future challenges in cultural cooperation with third countries, notably in relation to the implementation of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions, which the Community has ratified.

The AVMSD therefore includes the possibility of offering a substantial incentive for third countries to cooperate with the Community in the audiovisual sector by favouring enhanced circulation possibilities for co-productions meeting certain requirements. The latest developments on these incentives are further discussed in section 3.4 *Cultural Cooperation Protocols in new EU economic integration agreements with international partners*.

### 2.1.3. MEDIA Programme

The MEDIA 2007 programme (2007-2013) is the fourth multi-annual programme for support to the European audiovisual industry since 1991. Its general objectives are to:

- preserve and enhance European cultural and linguistic diversity and its cinematographic and audiovisual heritage;
- increase the circulation and viewership of European audiovisual works inside and outside the European Union;
- strengthen 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.

MEDIA 2007 includes EU-wide funding for training, development, distribution, promotion and horizontal actions. MEDIA 2007 is overwhelmingly an intra-European programme aiming at increasing cooperation and circulation among Member States.

Thus the possibilities for involving non EU third countries in this context are strictly framed and relatively limited.

Article 8 of the MEDIA 2007 Decision sets out two avenues: on the one hand, participation of European third countries in the programme and, on the other hand, cooperation with non-European third countries in the framework of the programme.

- a) Participation means full involvement of the third country professionals on the same footing as EU professionals, as well as involvement in the decision making process through joint committees (Article 8 paragraphs 1, 2 and 3). It is limited to certain European third countries (EFTA States, accession countries, Western Balkans countries and those which are parties to the Council of Europe Convention on Trans-frontier Television). Participation may be subject to prior examination of the compatibility of the legislation of these countries with the EC audiovisual *acquis*. It is current EU policy to do so and with as its negotiating objective to obtain legislative alignment at least on the country-of-origin principle and on the "European Works" requirements. The compatibility check also includes the country's position in the framework of the WTO in the light of what is analysed in section 2.2.1.
- b) Cooperation is possible for those Western Balkan countries that do not wish to participate fully in the programme (Article 8 paragraph 4). This would equate to "partial participation", most obviously in the training strand.
- c) Cooperation is also possible with other third countries that have concluded Association and Cooperation Agreements with the European Union incorporating clauses on the audiovisual sector (Article 8 paragraph 4). Again, the most obvious strand would be training (other strands are not, at first sight, as practicable - e.g. one can imagine the difficulty of assessing film scripts drafted in a non-European language submitted under the development strand).

All these forms of participation and cooperation require supplementary appropriations and specific arrangements to be agreed upon. This refers to a framework agreement on the participation of the country in Community programmes (such agreements exist for the candidate countries and potential candidate countries) or an international agreement based on Article 113.(5), a Memorandum of Understanding, and an agreement on the financial contribution of the country ('entry ticket').

It should be noted that, apart from the EEA and candidate countries, the only third country to which the MEDIA 2007 programme has been opened so far is Switzerland, for full participation under Article 8.2 of the Decision. In this case, the policy line was to demand legislative alignment with the key aspects of the "acquis" mentioned above and the political commitment to share the European approach on cultural diversity and coordinate positions with the EU in the relevant international *fora* (WTO and UNESCO). These arrangements as such may be considered as setting a benchmark for agreements with other European third states regarding participation whereas political commitments of a similar nature may be considered appropriate to prioritise agreements with non-European third states for cooperation agreements.

Cooperation with non-European third countries is a possibility that has not been explored so far but the framework discussed above shows that procedures and requirements are stringent and the third country will have to pay. Actions recently initiated at EU level (discussed further under section 3.3. "MEDIA International/MEDIA Mundus Programme") seek to provide new and more innovative ways to foster cooperation. As a result the focus is put on the possibility of full participation of European third countries in the MEDIA 2007 Programme.

#### 2.1.4. *Policies on convergence*

EU policy in the audiovisual area falls under the i2010 initiative, the policy umbrella for the EU's information society and media policies. In this context it addresses the challenges arising from the convergence of communication platforms.

To this effect, the AVMSD provides an enabling regulatory framework and legal certainty for fostering new media audiovisual services. In keeping with the times, the MEDIA programme supports also projects fostering the development and distribution of attractive content on new distribution platforms.

Moreover the EU plays an important role in promoting technological developments in the emerging media landscape, with important implications for the international dimension.

In this regard, it is worth recalling the promotion of open technologies where Europe has considerable assets to take advantage of the opportunities offered by the convergence of communication platforms and the transition to digital technologies. This has notably resulted in the support of the open standard DVB-H as the common standard for terrestrial mobile television in the European strategy for mobile television presented by the Commission in 2007. This standard was later included in the EU list of Standards so that Member States will promote its deployment across Europe. This choice by Europe of an open technology is important in the prospect of promoting enhanced exchanges and cooperation with third countries in the audiovisual area taking into account that Europe's choice is increasingly also the choice of other countries around the world (with DVB-H gaining support notably in South-East Asia, India, Africa and Russia).

The EU also supports research activities in the area of audiovisual technologies. The 6<sup>th</sup> Research Framework Programme has funded (for a total 6 M €) specific projects of cooperation in this area with Latin America and China. The DVB-H technology was actually developed by the European industry with the support of EU research funds and the 7<sup>th</sup> Research Framework Programme funds a project (SALA +) which contributes specifically to the dissemination in Latin America of digital television standards whose development is led by Europe. Recent adoption of DVB-T standards by Uruguay, Colombia and Panama demonstrate the added value benefits of international cooperation activities in this field.

## **2.2. International multilateral framework: WTO and UNESCO**

### *2.2.1. WTO*

The WTO General Agreement on Trade in Services (GATS) is the principal multilateral framework where trade issues having an impact on audiovisual policy are dealt with. The GATS covers all areas of services where international trade takes place, including audiovisual services, as a result of the Uruguay Round multilateral trade negotiations concluded in 1994. The audiovisual sector is thus in principle, subject to the most important WTO rule of general application: most-favoured-nation treatment (MFN), which is an obligation of non-discrimination between trading partners whereby the most favourable treatment given to any country must be given to all WTO members, unless the treatment in question is granted in the context of regional trade agreements as described further below. Further obligations may arise through the scheduling of specific commitments in the designated service sector regarding market access for foreign service suppliers and national treatment (non-discrimination of foreign and national operators). Each member undertakes the commitments



it wishes and, when scheduling commitments, has the flexibility to modulate them (full or partial market access, limitations on national treatment).

Many countries' cultural policies and instruments, notably in the audiovisual field, could be qualified as measures relating to market access or national treatment as defined by the GATS. The EC and its Member States, in particular, have sought to maintain their freedom of action in the audiovisual sector on the basis of cultural objectives, and in particular the preservation and development of their capacity to define and implement policies for the purpose of preserving cultural diversity. They have secured this by notifying exemptions from the application of the MFN rule in accordance with Article II of the GATS<sup>1</sup>. In addition, they have consistently refrained from making specific commitments on market access and national treatment in this sector. Although, this position is not shared by some WTO partners, the EU has managed over time to build consensus around the policy objectives underpinning its position, and in particular the protection and promotion of cultural diversity. The negotiations and entry into force of the 2005 UNESCO Convention further helped consolidate its stance (See also point 2.2.2)<sup>4</sup>.

The aim to preserve adequate room for manoeuvre to pursue policy oriented goals related to cultural diversity also includes the development of international co-operation in line with WTO obligations. One of the objectives of the Community MFN exemptions is the preservation of preferential treatment granted to third countries as part of an active policy for the protection and promotion of cultural diversity. For instance, the EC MFN exemption for measures based on agreements on co-productions seeks to preserve the possibility to confer national treatment to audiovisual works covered by such agreements (with respect to all countries with whom an agreement may be concluded). Another MFN exemption that is relevant to cooperation with third countries is the exemption allowing for the granting of benefits of specific support programmes (such as MEDIA) or funds (such as Eurimages) to audiovisual works and suppliers of such works meeting certain European origin criteria.

In the context of this international cooperation, the EU does not encourage countries seeking WTO accession to schedule audiovisual commitments and accepts that they take relevant MFN exemptions. This is necessary in order to preserve their capacity to conclude agreements with the EU or other partners and more generally help these countries preserve the necessary policy options for the promotion of local content and cultural diversity. These exemptions allow the EU's would-be partners to be able to reciprocate the favourable treatment granted to them under certain arrangements or agreements (e.g. co-production agreements).

While overall the policy pursued by the EU has been followed by the vast majority of WTO Members, who either have not taken any commitments or have not taken significant commitments on audiovisual services, some WTO partners limited their ability to enter into bilateral cooperation on audiovisual matters by taking audiovisual commitments and/or not scheduling the relevant MFN exemptions.

In such cases audiovisual cooperation may be engaged in the context of comprehensive economic integration agreements under Article V of the GATS. Such bilateral or regional

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<sup>4</sup> The audiovisual sector is one of the service sectors less committed by WTO Members (only 27 out of 153 Members have included audiovisual services in their GATS schedule either at the outcome of the Uruguay Round or after accession), thus demonstrating an overall understanding of the specificity of the sector and the importance of cultural diversity.

economic partnership agreements or customs unions, provided that they meet certain criteria<sup>5</sup>, allow for a privileged cooperation (which may otherwise be incompatible with the general MFN principle). This dimension is being explored by the EC to further audiovisual cooperation with third countries (seen *infra* section 3.4 on Cultural Cooperation Protocols).

### 2.2.2. *UNESCO*

The UNESCO Convention on the protection and promotion of the diversity of cultural expressions provides a new framework supporting the existing EU's internal and external policies and asking for their strengthening. The Convention was adopted by the UNESCO General Conference in October 2005 and ratified by the Community on 18 December 2006. The Convention entered into force on 18 March 2007.

Beyond its bearing on EU's internal policies (as part of Community law), the UNESCO Convention provides indeed a new legal framework for international cooperation in the area of cultural diversity, with various implications for audiovisual policy.

First of all, it gives concrete expression, in international treaty law, to the recognition of the specificity of cultural goods and services (such as audiovisual works) and legitimises domestic and international cultural policies, thereby "mainstreaming" at international level the provisions of Article 151.4 of the EC Treaty. In relation to the fundamental rights aspect, which is key in the EU audiovisual negotiations with countries seeking accession to or stronger ties with the EU, the Convention enshrines important principles such as equal dignity, the respect of minority rights and media pluralism as part of the promotion and the protection of cultural diversity. It can thus positively impact audiovisual policy making and the promotion of pluralism in third countries.

The Convention provides also a new commitment to international cultural cooperation actions and can pave the way for new developments of EU international co-operation with third countries through co-operation agreements and other instruments allowing for increased exchanges in the cultural and audiovisual fields.

In particular, Article 12 requires the Parties to engage in international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions. A number of provisions are more particularly focused on the development dimension and recognise the need to integrate culture in sustainable development with the objective to foster the emergence of a dynamic cultural sector<sup>6</sup>. Among the provisions addressing developing

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<sup>5</sup> The agreements must have substantial sectoral coverage and remove all discriminations between participants. Such conditions may however be considered in the perspective of the fact that these agreements may be part of a wider integration process, beyond trade in services. In addition, they may be subject to a flexible application in the event of developing countries being parties to the agreement. On the other hand, it must be ensured that they do not raise the overall level of trade barriers vis-à-vis non participating countries.

<sup>6</sup> This includes such support measures as the strengthening of cultural industries in developing countries through creation and reinforcement of cultural production and distribution capacities; facilitation of access for cultural activities, goods and services of developing countries to the territories of developed countries and promotion of appropriate collaboration between developed and developing countries in the areas, *inter alia*, of music and film; capacity building through information, training and skills development; incentives to encourage technology transfers; financial support through a new international Fund for cultural diversity based on voluntary contributions (and additional to other forms of financial assistance).

countries, one of particular relevance to the audiovisual area is Article 16 which provides that developed Parties shall facilitate cultural exchanges with developing countries by granting preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.

Last but not least, the Convention can bring more clarity regarding situations where Parties' measures can be justified for the protection and promotion of cultural diversity. Its Article 20 reaffirms in fact the respect of international rights and obligations arising from other treaties to which the Convention members are Parties but without subordinating the Convention to the latter and obliging, on the contrary, the Parties to take into account the relevant provisions of the Convention when applying and interpreting their existing international obligations or when entering into new international obligations (balancing the principles of non-subordination and mutual supportiveness in the articulation of the Convention with other international treaties).

### **2.3. National Level**

#### *2.3.1. Role of the pan-European level instruments in national actions*

Council of Europe instruments have proven to be an efficient framework to foster the development of audiovisual co-productions among European partner countries. The same cannot be said about the cooperation with non-European countries. The sphere of action of both the European Convention on cinematographic co-productions and the Eurimages Fund is admittedly European. Their aim is to foster and facilitate the production of European works based on co-operations between European partners. It is in this context that the Council of Europe mechanisms take into account the possible involvement of third countries in European partnerships. This element does not however, entail granting any specific benefit to the third countries concerned, whose treatment remains thus different from that reserved to the parties covered by Eurimages or the European Convention. Thus, at least in their present form the Council of Europe framework does not seem to be an avenue adapted to the pursuit of the internalisation of the EU audiovisual sector.

#### *2.3.2. Audiovisual cooperation instruments at national level<sup>7</sup>*

Audiovisual co-operation agreements prove to be a major instrument at national level for developing and promoting international co-operation. Many such agreements take the form of co-production agreements, although the latter are not the sole type of arrangements through which Member States seek to pursue their cooperation in the audiovisual area. In fact some Member States that currently have no co-production agreement signed or in force (Hungary, Lithuania) have some cooperation agreements and/or instruments covering the audiovisual sector, while others with either few or more co-production agreements with third countries, appear to develop in parallel other types of cooperation instruments and arrangements (e.g. arrangement on cinematographic cooperation between Estonia and Russia, Protocol on cinema and TV cooperation between Belgian French-speaking community and Quebec, France's "Fonds Sud" cooperation policy with 69 third countries, etc.).

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<sup>7</sup> The data referred to in this section are based on existing studies available to the Commission and on the Member States replies to a questionnaire circulated in 2008 further to the cinema expert group meeting on the international aspects of audiovisual policy.

As regards co-production agreements, a majority of Member States have concluded one such agreement with at least one non-European third country. Canada is the country having co-production agreements with the largest number of Member States.

The material scope of the agreements can vary, some covering only cinematographic cooperation, others encompassing all audiovisual works and different aspects (pre-production, production and post-production). Beyond this diversity, the following recurring features in most of them can be singled out:

- a) Identification of quantitative (percentages of production costs, etc) and/or qualitative (funding, director, actors, etc) criteria for the definition of 'national' work, and (often) access to national funding or incentive schemes.
- b) Identification of the bodies dealing with the management of the agreement and responsible for the granting of the 'nationality label' (often national bodies for the promotion of cinema).
- c) Direct allocation of funding for the implementation of the agreement *per se* or direct linkage/access to existing schemes at national level.
- d) More recently, some of the agreements make the conditions applying to the signatory parties applicable to their regional partners (e.g. in Germany/Brazil co-production agreement: Brazil => to MERCOSUR countries, and Germany => EU countries).

Regarding the geographical coverage of Member State agreements, if one considers co-production agreements, overall some 26 third non-European countries are linked by agreements of this type with a Member State (see Table 1).

Table 1: Third countries (outside Europe) signatory to a co-production agreement with an EU Member State

Third countries	Number of member states to have signed an agreement of bilateral co-production
Canada	24
Tunisia	5
Australia	5
Morocco	4
Argentina	4
Brazil	4
Israel	4
New Zealand	4
Chile	3
India	3
Mexico	3
Venezuela	3
Québec	3
Cuba	2
Egypt	2
South Africa	2
Capo Verde	2
Colombia	2
Algeria	1
Burkina Faso	1
Cameroun	1
China	1
Ivory Coast	1
Guinea	1
Jamaica	1
Lebanon	1
Puerto Rico	1
Republic of Korea	1
Senegal	1
Uruguay	1

Generally the factor most often mentioned to account for the choice of international partners for audiovisual cooperation agreements is the existence of common cultural links between certain Member States and certain countries/regions.

Taking co-production agreements as a reference, it can be noted that a large number of third countries are linked by an agreement to one Member States only (France or Italy generally, see Table 2). Countries with significant production capacity such as India, China, Brazil, Korea or Mexico are tied to a limited number of Member States (max. 4, see Table 1). However a number of Member States have indicated plans for expanding their networks of agreements (France, Poland, Spain Hungary, Germany, Ireland, Belgium) and some have stated to have already initiated, or to envisage, negotiations to conclude an agreement with some of the mentioned international partners (e.g. the UK, Poland, Spain and Hungary with India; France, the UK and Belgium with China, Portugal with Korea) or others (e.g. France and Ireland with South Africa, Germany with Argentina, Portugal with Canada and Algeria, the UK with Morocco).

As for the difficulties encountered or expected in developing the agreements with third countries, the most commonly mentioned relates to complexity and length of procedures (especially in the case of bilateral co-production agreements which are to be negotiated through classical diplomatic methods). In other cases, problems are country-specific and cannot be generalised, or difficulties are of a political nature. A number of Member States, who are countries with a relatively small production capacity, also point to the factor of not always being regarded as priority partners by potential international partners or to the difficulty of developing co-operation based on an equal basis and reciprocity.

Table 2: Bilateral co-production agreements of EU Member States with third countries (outside Europe)

Member state	Number of third countries covered by an agreement of bilateral co-production
France	21
Italy	18
Spain	10
Germany	7
UK	4
French-speaking Belgium	4
Flemish-speaking Belgium	3
Romania	3
Ireland	2
Poland	2
The Netherlands	2
Portugal	2
Austria	1
Estonia	1
Finland	1
Hungary	1
Latvia	1
Luxembourg	1
Malta	1
The Czech Republic	1
Slovakia	1
Denmark	1
Greece	1
Sweden	1
Bulgaria	1
Cyprus	0
Lithuania	0

### 3. PROCESSES AND INITIATIVES AT EU LEVEL

The presentation of the internal EU policy instruments supporting competitiveness in part 2.1 has highlighted their limits to address adequately European audiovisual competitiveness in the international arena and the need for the EU to develop additional and complementary initiatives.

Moreover, since the ratification of the 2005 UNESCO Convention by the EC, the Commission has been aware of the challenge for the EC –as one of the main promoters of the Convention- to lead by example in the implementation of this Convention in EC instruments and policies, notably in relation to international cooperation.

A number of initiatives and processes, which have been initiated and/or renewed in recent times, constitute major strands for reinforcing the international dimension of audiovisual policy. They illustrate at the same time the essential contribution being brought in this context to the EU policies in favour of cultural diversity.

#### 3.1. Enlargement Strategy

Promoting the alignment with European standards on media legislation and the AVMSD is one of the initiatives of the European Commission pre-accession strategy. The alignment of legislation and practices with European standards on media in accordance with fundamental democratic principles, is an element of the so-called "Copenhagen criteria", and is central for the promotion of cultural diversity and the AVMSD.

Croatia, Turkey and the former Yugoslav Republic of Macedonia are candidate countries to the European Union. As regards other countries of the Western Balkans - Albania, Bosnia and Herzegovina, Montenegro, and Serbia as well as Kosovo<sup>8</sup> - have been promised the prospect of EU membership as and when they are ready and are known as "potential candidate countries". Montenegro and Albania have recently tabled an application for membership.

The pre-accession countries have already made substantial efforts to meet European standards on media and the process of reform is ongoing. A level playing field for public and private broadcasters is needed to ensure the co-existence of viable public and private sectors. The European Commission is directing its efforts at promoting the consolidation of professional structures and raising professional and ethical standards – thereby promoting self-regulation. All enlargement countries, save for Turkey, have now committed to promote cultural diversity by ratifying the 2005 UNESCO Convention and introducing specific provisions on the promotion of European works. Support to the alignment of the broadcasting legislations with the AVMSD is provided through the financial instruments of the pre-accession strategy.

Croatia joined the MEDIA 2007 programme in April 2008 following the ratification of the UNESCO Convention and the alignment of Croatian legislation with the *acquis*. In the light of these achievements the Council of the European Union provisionally closed Chapter 10 of the accession negotiations on Information Society and media on 18 December 2008. The Council opened the same chapter of the accession negotiations with Turkey in view of the commitments of this country to align its legislation with the EC *acquis*.

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<sup>8</sup> under UN Security Council Resolution 1244



### 3.2. Dialogue and cooperation with ENP and other European neighbours

The European Neighborhood Policy countries (ENP) launched in 2003, is a policy for bringing the EU's eastern and southern neighbours closer to the EU, facilitating their participation in the EU internal market and progressively working towards the creation of a free trade area. The EU and its neighbours mutually agree on Action Plans which set ambitious objectives based on joint ownership, common interests and shared values, reciprocal commitments and differentiation. The Action Plans support the implementation of national plans and reform programmes in the political, economic, social and institutional fields. In the audiovisual field the main goals of cooperation as set out in the Action Plans are: the establishment of a dialogue on audiovisual policy (including legislation and reform), a better mutual understanding between EU countries and their neighbours and the cooperation in the fight against racism and xenophobia. Reform and cooperation also contribute to the economic development of the sector in ENP countries with related benefits in terms of income generating activities, industry development etc.

In addition to these general objectives the European Commission aims to promote co-operation in the audiovisual field with the European countries (Moldova, Ukraine, Georgia, Azerbaijan, Armenia) subject to a number of conditions and, notably, encouraging convergence with the EU audiovisual policy, in particular, the EU position on audiovisual services in international *fora* (WTO, UNESCO, Council of Europe). This is also the objective of the European Commission in relation to other European countries such as Russia.

Close cooperation with other European countries such as the EEA-EFTA (Norway, Liechtenstein, and Iceland) and Switzerland takes place on a regular basis.

The ENP complements and builds on the Euro-Mediterranean Partnership, the so-called Barcelona process, that since its launch in November 1995 has created long-term political and institutional links between Europe and its Mediterranean partners.<sup>9</sup> The Mediterranean partners of the EU benefit from the dialogue and cooperation approach which is complementary to the ENP of which they are part. In addition to the standard mechanisms and *fora* to implement the dialogue, these countries have at their disposal specific Euro-Med instruments for audiovisual cooperation (i.e. EuroMed Audiovisual Programme, cf. 3.5.1).

### 3.3. MEDIA International/MEDIA Mundus

Recognising the importance of enhanced exchanges and cooperation with non European third countries for the competitiveness of the European audiovisual sector, the European Parliament has voted a budget (€2 million for actions in 2008/2009 and €5 million in 2009/2010) for a preparatory action, MEDIA International, which aims to explore ways of reinforcing cooperation between European and third-country professionals from the audiovisual industry on basis of mutual benefit. MEDIA International is planned to operate for up to three years with a view to paving the way for a broader EU support programme, MEDIA Mundus, for global cooperation in the audiovisual industry sector as per the Commission proposal for a Decision establishing such programme to the Parliament and the Council (COM/2008/892) of 9 January 2009.

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<sup>9</sup> The Union for the Mediterranean was launched in July 2008 replacing the Euro-Mediterranean Barcelona Process.

The proposed programme, as stated in the Commission proposal is established "for the funding of projects for international cooperation with professionals in third countries in the audiovisual sector" (Chapter I, Article 1). It is thus exclusively focused on professionals and not on countries. Its implementation will consist in granting funding to projects meeting a number of criteria. By its very nature, the programme is open to all professionals regardless of their nationality. The major element accounting for such openness is the intention to ensure the greatest effectiveness of the programme so as to benefit to the largest extent possible the European audiovisual industry and cultural diversity.

From a political perspective, this open feature of the programme embodies the link between the 2005 UNESCO Convention and a programme aimed at encouraging the cooperation between Europe's professionals and professionals from outside Europe. Strategically, it suits the objectives of the programme, which may entail modulating the focus on specific geographical areas depending on the action lines. From a technical standpoint, it is meant to ensure the overall viability of the programme by focusing on professionals/works that are not yet perfectly integrated into the classical functioning of international audiovisual markets.

This is why it is envisaged to address this aspect, which is essential for the programme to be successful, by establishing, through the management Committee, appropriate eligibility and selection criteria in the implementing guidelines. This approach permits to reconcile the openness spirit of the programme, which is a guarantee for its maximum effectiveness to European professionals, its link with the UNESCO Convention and finally its overall viability.

#### **3.4. Cultural Cooperation Protocols in new EU economic integration agreements with international partners**

The margin for manoeuvre preserved in the WTO framework, together with the impact of the 2005 UNESCO Convention which further legitimises the development of international co-operation actions, have given the EU stronger arguments to develop an innovative approach to the audiovisual sector (and other cultural activities areas as a whole) in its new bilateral and regional agreements having an economic integration dimension.

This development links back to the Council negotiating directives for the conclusion of Economic Partnership Agreements (EPA which are to replace the trade-related aspects of the Cotonou Agreement) with ACP partners. The Council requested the negotiation of specific frameworks on audiovisual and cultural co-operation, which should, in particular, provide better access for ACP cultural goods and services into the EU market and be part of the overall EPA.

A similar approach was provided for in the context of the EU-Euro-Mediterranean and EU-Central America trade negotiations which are part of the wider Association Agreement framework. In both cases audiovisual services are excluded from the trade chapter of the agreement and dealt with in a specific co-operation framework, distinct from the trade commitments-based approach. The development of such co-operation framework needs to ensure that the Parties maintain the possibility to preserve and develop their capacity to define and implement their cultural and audiovisual policies for the purpose of preserving their cultural diversity while promoting cultural and audiovisual exchanges and favouring intercultural dialogue. This approach was proposed also for the negotiation of the trade-related aspects of the Association Agreement with the Andean Community (but following the lack of agreement between all Andean countries on this part, it is now being pursued in the

context of a multiparty negotiation on a trade agreement with willing Andean partners). This has resulted into the proposal of including Cultural Cooperation Protocols (covering also audiovisual) in these agreements. The first of such Protocols was concluded in the framework of the EPA signed with the Caribbean region (the Cariforum grouping) on 15 October 2008.

For the EU, the Protocols are away to implement the 2005 UNESCO Convention and in particular its Article 20 and also a tool to promote the ratification of the Convention by its partners. Such cultural cooperation Protocols (CCP) are the basis for a flexible approach to setting the conditions facilitating exchanges of cultural goods and services between the EU and its international partners, while preserving the capacity of the parties to elaborate and implement policies which protect and promote cultural diversity, in line with the UNESCO Convention. In this context, audiovisual services are not only an area to be excluded from trade liberalisation commitments but also a sector where the EU can cooperate to foster more balanced exchanges with partners sharing a common vision on cultural diversity. The end result is therefore to have a new framework setting conditions facilitating exchanges regarding cultural activities between the EU and its partners, including in the audiovisual sector.

The level of co-operation set out in a CCP depends on a number of parameters such as the degree of development of cultural industries, the level of cultural exchanges between the Parties and the existence of preferential schemes for the promotion of local cultural content within the Parties. This is meant to allow for a modulation of the provisions of the CCP according to the differing situations and characteristics of the partners with whom the EU enters into negotiations. In this regard a first important differentiation is to be drawn between developing and developed countries. In addition, the notion and degree of development needs also to be assessed in terms that are relevant to cultural exchanges<sup>10</sup>.

#### *3.4.1. Approach with developing Countries and Regions*

The CCP with developing countries are intended to reflect the asymmetrical relations existing between the EU and developing countries. Preferential treatment provisions of these CCP are thus in line with this characteristic and allow the EC to illustrate its commitments under the UNESCO Convention and in particular its Article 16, engaging developed Parties to grant preferential treatment for, inter alia, cultural operators, goods and services from developing countries.

Thus for instance, provisions granting preferential treatment for facilitating exchanges between artists and the circulation of audiovisual works have been included in the Protocol concluded with the Caribbean region (the Cariforum grouping) in 2008. This CCP notably encourages the conclusion of bilateral co-production agreements between Member States and Caribbean partners and defines some minimum conditions (nationality requirements for ownership and management of production companies and a flexible threshold for financial participation) for granting European work status to EU/Caribbean co-productions under the AVMSD (*see section 2.1.2 the Audiovisual Media Services Directive*). Granting a preferential access into the EU for these co-productions is meant as a tool to facilitate the access of cultural industries from developing partners to the EU and the mutual access to each other's

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<sup>10</sup> In this regard it is worth recalling that the imbalances and asymmetrical patterns characterising exchanges of cultural goods and services are not only and always linked to the level of economic development, a number of "developing" or "emerging" countries being major exporters of such goods and services.

culture through preferential broadcasting of joint productions, thus contributing to wider and more balanced cultural exchanges. The Caribbean partners will extend the same benefit only where they develop their own schemes for the promotion of local or regional cultural content.

The CCP are one response from the EU in terms of cultural cooperation with developing countries amongst a variety of others and are to be regarded as part of a wider ensemble, including development cooperation measures. Addressing the challenges of effectively improving exchanges while protecting and promoting cultural diversity, requires a holistic approach and the search of coherence as well as synergies between diverse policy instruments and frameworks when implemented together. Thus, in the case examined of the EPA with the Caribbean region, the CCP needs to be seen not only together with the other provisions of the EPA on certain cultural services but also with the programmes and actions undertaken by the Community and its Member States in the development policy area (on which see also further under 3.5.). In this context, it is important to ensure good coordination between the different objectives and frameworks involved (industry's competitiveness, trade, culture and development). This also implies the need for a better interaction between the different levels of intervention. For instance, the absence of dedicated funding mechanisms in CCP associated with the facilitation of exchanges through the promotion of co-productions, means that, it is at national level that Member States continue to determine conditions under which co-productions benefit from the advantages or support granted by national legislation to national audiovisual works.

#### 3.4.2. *Approach with other partners*

The objective of fostering wider and more balanced exchanges in the cultural and audiovisual areas is equally valid vis-à-vis partners having a level of development comparable to the EU's, as part of the implementation of the 2005 UNESCO Convention and in particular its Articles 12 and 20 (*see section 2.2.2. UNESCO*). In this context, CCP can be considered in negotiations with certain developed partners. One CCP is currently close to being concluded with the Republic of Korea. As this country has strong and competitive cultural industries, the CCP serves another objective and reflects a different dynamic.

The CCP with Korea is a framework to engage in policy dialogue and cooperate in facilitating exchanges in cultural activities with a partner with whom the EU has an interest in building a co-operation for the mutual immediate benefit of the EU and the concerned partners' cultural and audiovisual sectors.

The Protocol is based on a logic of strict reciprocity of the advantages earned from cooperation between equal partners. In the CCP proposed in the negotiation with Korea, the possibility of having a scheme for the recognition of certain works co-produced with European producers for the purposes of the AVMSD, tailored to the specific situation of the partner concerned, is currently being examined. In this case account is taken that this country has developed and implemented public policies for the promotion of local cultural content in the audiovisual area which are comparable to those underlying in Europe the European content promotion requirements in line with the AVMSD<sup>11</sup> and which additionally have been put under pressure from the outside in recent years.

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<sup>11</sup> In some cases they even go further, in particular through the establishment of cinema theatre screen quotas for local feature films.

Besides the political returns discussed above, in addition to the contribution to advancing the cause of cultural diversity worldwide, a properly framed cooperation in this area presents the potential for bringing different positive effects such as an improved circulation of co-productions and enhanced cultural diversity through better opportunities for exchanges, both within the EU and in Korea. This is an important factor to foster the international circulation of European audiovisual works. In fact, the condition of reciprocity under which the envisaged scheme operates, is set to give the EU Industry wider opportunities in this respect, especially in a region like Asia, where the circulation of works appears to be more difficult. Furthermore, partner operators would profit also in terms of induced benefits from the development of international co-productions such as training and reinforcement of local capacity. This would thus be a supportive element to the overall policy encouraging co-operation within Europe to stimulate our industry and help it to be more internationally competitive.

The opportunity to have CCP with other partners having a level of development comparable to the EU's needs to be assessed on a case by case basis and where this opportunity is recognised, an evaluation of what mechanisms or schemes are more suitable to pursue the objectives of fostering more balanced exchanges needs to be conducted. In this context, European stakeholders will continue to be involved and kept informed of further developments and proposals in this area.

### **3.5. Role played by EU external cooperation policy instruments and actions**

The Resolution of the Council of 16 November 2007 on a European Agenda for Culture set out the strategic objectives of European action in this area and defined specific objectives for cultural activities "as a vital element of international relations".

Because of the two dimensional nature (economic/cultural) of the audiovisual sector, and the inherent characteristics of audiovisual products, cooperation with third countries in the audiovisual field constitutes one of the most powerful tools to fulfil the objectives of the European Agenda for Culture.

In practice it is impossible to dissociate the economic impact of these activities from the effects obtained on furthering intercultural dialogue, promoting cultural diversity or the improvement on mutual knowledge between the peoples, as indeed all these factors are touched by any type of cultural cooperation activity.

Two types of activities are particularly relevant: those targeting development cooperation and those more generally oriented towards international relations.

#### *3.5.1. Activities targeting development, including cooperation programmes*

Within the logic of development cooperation, support for the development of the cultural sector and the creation of cultural industries constitutes a sound and worthwhile option as it is not only a powerful tool to promote dialogue, mutual understanding, tolerance of diversity and minorities, good citizenship and prevention of conflicts, but also provides a non-negligible contribution to sustainable economic (as well as social) development. The case is even stronger in particular for the audiovisual sector and industries.

As globalization and ICTs shrink distances and make content easier to be transmitted and accessed all around the planet, the main competitive advantages of the audiovisual sector rise

to the fore: use of autochthonous resources, local knowledge and inspiration unique to each country, all these being non-depletable assets.

Considerations of a social nature, like the potential of the audiovisual sector as source of employment and vector for education<sup>12</sup>, democratisation and political participation further sustain the argument in favour of such type of activities. Audiovisual cooperation activities are increasingly used in developing countries to convey important educational messages concerning sensitive issues and basic values (inter alia: democracy, inter-ethnic understanding, communal conflicts, health issues, children rights, environment, human rights, corruption) or to facilitate vaccination or health prevention campaigns<sup>13</sup>.

Moreover, when the instruments in question provide for the cooperation of third country professionals with their European counterparts, training opportunities for the former and innovative inspiration for the latter as well as exposure to each other's cultures further contribute to mutual benefit for both sides.

Under the 10<sup>th</sup> European Development Fund (EDF) an envelope of 30 M € has been earmarked to create a "Culture Facility" in order to support the reinforcement of cultural industries in the ACP countries, particularly through a better distribution of channels, access to the local and international markets and the establishment of partnerships, networks and synergies between professionals from the EU and the ACP States.

During the International Colloquium on "Culture and Creativity as vectors for Development, held in April 2009 and promoted by Commissioners Michel and Figel, specific recommendations by audiovisual professionals from the EU and ACP countries have been included in the final Declaration of Brussels<sup>14</sup> for better international cooperation and more efficient use of future cooperation funds.

Though not identical in their origin, legal and budgetary basis, scope or operation, the three following activities can be classified in this section:

#### 1. EUROMED Audiovisual Programme

This programme, developed in the framework of the Barcelona Process, has the following objectives:

- cooperation between audiovisual operators from both shores of the Mediterranean;
- transfer of technology and expertise through the training of professionals;
- fostering the broadcasting of cinematographic works from the Mediterranean partners and the European Union;
- enhancement of the Euro-Mediterranean area audiovisual heritage;

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<sup>12</sup> For example the use of locally produced 'soap operas' in some African countries to inform about and dispel myths and misconceptions about AIDS.

<sup>13</sup> See for instance the cases of "Cinemovil" in Mozambique or the case of the popularity of "Nollywood" in Nigeria.

<sup>14</sup> See: <http://www.culture-dev.eu/colloque/Culture-Dev.eu-theme3-en.pdf>

- promote investments, jobs and wealth creation in the audiovisual sector.

A first phase with 18 million Euros was implemented in the years 2000-2005, and, subsequently, a second phase with a financial envelope of 15 million Euros took place in the years 2006-2008. Currently, the launching of a third phase for this programme is under discussion, on the basis of the Strategy for the Development of Euro Mediterranean Audiovisual Cooperation adopted by the Ministers of Culture of the EUROMED region in Athens in May 2008.

## 2. EU-ACP support Programme for Cinema and Audiovisual

Given the potential of cinema and audiovisual industries to create wealth and employment in ACP countries, the EU has supported for some years since 1986 the production and distribution of nearly 200 ACP films.

In the framework of the 9<sup>th</sup> European Development Fund, a new 5-years "EU-ACP Support Programme for Cinema and Audiovisual" was adopted in July 2006.

The programme aims at promoting the development and the structuring of the audiovisual, cinema and television industries in the 79 ACP countries.

The Programme has a financial envelope of 6.5 M € and it is providing grants to assist film development, production, promotion and distribution, as well as training of professionals.

Assistance is granted to stimulate the emergence or building of production capacity in cinema and audiovisual industries in ACP States, on one hand, to enhance the circulation of audiovisual works, primarily within ACP States, but also in EU Member States and at the international level on the other.

Moreover, the programme pays special attention to training and professional development of ACP filmmakers and professionals in this sector. Strengthening of professional skills is a main focus, in order to reduce the heavy dependence on technical staff out of the ACP, but also to encourage the birth of new talents and new opportunities in ACP states, and to take advantage of these training sessions to create links between professionals of ACP countries and regions.

## 3. MERCOSUR Audiovisual Programme

The European Parliament created in 2008 the budget line 19 09 02 (Preparatory action - Cooperation with middle income group countries in Latin America), whose provisions were to be used to support actions that were outside the scope of the Development Cooperation Instrument Regulation<sup>15</sup>. The 'MERCOSUR Audiovisual Programme', in line with the MERCOSUR Regional Strategy Paper (2007-2013)<sup>16</sup> (adopted by the European Commission on 23rd December 2008) is financed by this preparatory budget line whose provisions for 2008 amounted to 1.5 M Euro. The implementation of the programme goes from mid-2009.

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<sup>15</sup> Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation

<sup>16</sup> C/2007/3671, 02.08.2007

The general objective of the programme is to strengthen the cinematographic and audiovisual sector in MERCOSUR as an instrument fostering the regional integration process and the participation of the civil society.

The activities of the programme will be developed in the following five axes of intervention:

Axis 1: Harmonization of the legislation in the audiovisual sector in MERCOSUR Member countries

Axis 2: Strengthening the capacities of the MERCOSUR Audiovisual Observatory

Axis 3: Circulation of audiovisual contents

Axis 4: Support for the preservation and dissemination of the audiovisual heritage of MERCOSUR

Axis 5: Professional and technical training in the audiovisual sector.

### *3.5.2. Other external cooperation actions*

Because of its strength as a vector for communication, audiovisual is also a powerful tool for international relations: as such it has a potential to strengthen EU goals, policies and values' visibility around the globe. It is also an essential component of actions to foster and improve international cultural cooperation.

As such, it is set to play a key role for the strategic objectives of the European Agenda for Culture as presented in the Commission Communication of 2007 (COM/2007/242) that were endorsed by the Council in its Resolution of 16 November 2007.

The Agenda, in the framework of the implementation of the 2005 UNESCO Convention, has given a new impetus to the development of policies in favour of cultural diversity and thus on to the need for policy dialogues to be engaged with our international partners. A number of policy dialogues with third countries have been in place in the framework of our cooperation with them, or have been recently launched.

Member States are well aware of the value of activities such as festivals and screenings to present and promote abroad their cultures and values. Indeed, their embassies' cultural attachés and/or cultural institutes in third countries regularly support and/or organize cultural activities centred exclusively on audiovisual works, often in close coordination with the Commission's delegations.

At EU level, the Commission supports a network of strategically placed points in the best academic institutions of several industrialized third countries, whose aim is already to present and promote the EU, its Member States and its values: the European Study Centres. The possibility to use this network in the promotion of European films should be explored. This type of activity would naturally have to be carried out in compliance with applicable legislation, and notably with copyright law.

Another aspect for further reflection could be to encourage linking and synergies between existing MEDIA projects, such as European Film Promotion and Europa Cinemas, and activities that could be supported by the Commission's external policies as has already been



the case in respect of funds that were made available for the year of intercultural dialogue in 2008.

Furthermore, in the context of the switch-over from analogue to digital television, the EU audiovisual regulatory framework and policies offer a model on convergence of interest to other regions in the world. Thus, there is a potential to promote further international cooperation on regulatory aspects. In its Strategic European Framework for science and technological cooperation presented in its 2008 Communication<sup>17</sup>, the Commission stressed that where appropriate policy dialogues should be extended to the convergence of the telecom and media sectors. It also indicated among the measures to foster strategic cooperation with key third countries through geographic and thematic targeting, the promotion of an efficient network of EC and Member State science, ICT and media counsellors in the EC Delegations and Member States' embassies in third countries.

With the backdrop of the future development of concerted EU-Member States actions in the foreign affairs area, there is further potential for audiovisual works to foster and improve not just the specific aspects of international cultural cooperation, but the EU's international relations effort in general. Activities in these areas can reinforce EU external policy objectives with third country or region partners as well as with multilateral organisations.

#### **4. CONCLUSIONS**

This paper has analysed the overall policy and regulatory framework for the European audiovisual sector and actions initiated to foster the development and strengthening of its competitiveness. The analysis highlights the need to consolidate and further develop a strong international dimension to policy and actions in this area and has provided an overview of a number of avenues being pursued presently at EU level in this regard.

This overview illustrates how the different actions need to be regarded as elements that can mutually reinforce the great potential for the enhancement of international cooperation and dialogue that audiovisual activities have in the EU's external relations.

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<sup>17</sup> COM/2008/588