

The flow of audiovisual content in the EU: Unravelling the legislative changes

By Dr. Apostolos Samaras

I. Introduction

In the ever-evolving legal landscape of the European Union (EU), the movement of cinematographic and other audiovisual content has undergone a significant legislative evolution over the years. As the digital era continues to reshape the way everyone consumes and produces content, the EU has taken steps to adapt its legislative framework to meet the challenges and opportunities faced by the European audiovisual industry. This blog post explores some of the main aspects of this transformation and its implications for the flow of audiovisual works within the Union.

II. Background

Before delving into the legislative changes of EU law, it is vital to grasp the context that set the stage for them. It is well known that Europeans were among the creators of the first moving pictures with the contribution of great artists and craftspeople as early as the late 19th century.^[1] More than a century later, the world discovered new ways of watching movies, shows and other kinds of emerging audiovisual works, beyond the traditional cinema or television broadcasting experience. Nowadays, people are able to watch their favourite shows online. Since the early 2000's, European (and global) audiences have started consuming more audiovisual content on computers, portable devices, smart TVs and other types of devices, through video-on-demand services (alongside cable networks, broadcast television, etc.). In that regard, the technological convergence and the ongoing platformization process in the film industry and the audiovisual sector more broadly have a substantial impact, reforming cultural policies and media regulation in relation to the national (and regional) legal and political settings.^[2]

In a wider context, as Denis de Rougemont has argued: *'Culture is all the dreams and labour tending towards forging humanity. Culture requests a paradoxical pact: diversity must be the principle of unity, taking stock of differences is necessary not to divide, but to enrich culture even more. Europe is a culture or it is not'*.^[3] In a rapidly globalizing world it is evident that European films and programmes include not only culture: the magical optical phenomena deriving from the illusions of cinematographic and other audiovisual works involve trade-related policies, international relations, and industry. However, the cultural side of the European audiovisual sector, which is a core vector of European values and ideals, is just as important as its economic outreach. Therefore, the EU tries to help all the actors involved by making a safe space to create, produce and innovate, in order to give rise to some hope - as a breath of fresh air - on that field.

III. EU competences in the audiovisual sector

The EU interacts with the European film industry and the audiovisual sector by regulation and financial support legal acts where competing priorities have to be balanced.^[4] It should be noted that the introduction of EU competence for the development of cultural action under the Union's law was established just in the early 1990's, with the entry into force of the Treaty of Maastricht, with a view to safeguarding

the ‘cultural acquis’ and, in particular, to promoting the emergence of a ‘European’ identity, taking into account that culture can prevail as a unifying catalyst for the European project, which is essentially the case regarding the audiovisual sector.

In accordance with Article 3(3) of the Treaty on EU (TEU), one of the Union's aims is to preserve ‘its rich cultural and linguistic diversity’ and ‘ensure that Europe's cultural heritage is safeguarded and enhanced’. Furthermore, the Charter of Fundamental Rights of the EU (CFREU) demands respect for ‘the freedom and pluralism of the media’ [*see* Article 11(2) CFREU], freedom of artistic expression [*see* Article 13 CFREU], as well as respect for ‘cultural, religious and linguistic diversity’ [*see* Article 22 CFREU]. Nevertheless, whilst the Union does not have an ‘exclusive’ or ‘shared’ legislative competence in the field of culture [it only has a ‘supporting competence’ pursuant to Article 6(c) of the Treaty on the Functioning of the EU (TFEU)], its vast legislation directly affects the film sector and the broader audiovisual industry in other policy areas, e.g. related to free movement, competition rules and the digital single market. The EU, over time, aimed at ensuring - particularly through the adoption of legally binding acts - that the interests of the audiovisual sector are reflected in other policy fields where the Union has direct legislative powers.

With regard to the freedom to provide services and the freedom of establishment, which are major components of the Union's [internal market](#),^[5] it should be emphasized that they play a crucial role in the further progress of the audiovisual industry. In that vein, the common legal basis of several Directives relating to the aspect of ‘regulation’ in the audiovisual field are Articles 53(1) and 62 TFEU. It is clear that in the cultural domain the allocated competences of the EU are considered only ‘marginal’. Nonetheless, according to Article 167(4) TFEU, the EU institutions shall take cultural aspects into account in their action under the various provisions of the Treaties, in order to respect and promote cultural diversity.^[6] The common legal basis of several Union’s legislative acts relating to the aspect of ‘funding’ in the audiovisual field are Articles 167(5) and 173(3) TFEU. Article 167(5) TFEU provides for the possibility of adopting incentive measures to contribute to the achievement of cultural objectives, whilst Article 173(3) TFEU provides for the possibility of adopting supportive measures in the field of industrial policy (in both provisions excluding any harmonization of the laws and regulations of the Member States).

IV. Key EU legally binding acts in the audiovisual sector

One characteristic EU secondary legislation example is the 1989 [Television without Frontiers Directive](#) (TWFD) that had been the cornerstone of the EU's audiovisual policy for many years, until the enactment of the [Audiovisual Media Services Directive](#) (AVMSD). The TWFD was based on one main principle: the effective guarantee of free movement of television programmes within the common market. It also laid down the obligation for television broadcasters to retain - where feasible - a majority proportion of their transmission time for European works (the so called ‘broadcasting quotas’), ensuring, inter alia, the preservation of cultural diversity. The TWFD was amended twice, in [1997](#) and in [2007](#). The 2007 revision tried to create a more level playing field between traditional broadcasters and new media players conveying similar audiovisual content in a non-linear form. The TWFD was ultimately codified for reasons of clarity and rationality, becoming the AVMSD.

The beginning of the 21st century found the EU in a state of preparation for the digital future, with the [e-Commerce Directive](#) being a core component of digital regulation. It should be mentioned that the 2000 e-Commerce Directive is the

foundational legal framework concerning online services in the context of the EU internal market, aiming to remove obstacles to cross-border online services, and - insofar as its provisions are not repealed by more recent EU legislation^[7] - this Directive remains in force. Eventually it ended up becoming out-of-date due to situations radically changing since its adoption more than two decades ago, which is reasonable as the digital world of 2000 seems ‘light years away’ from today's fast-changing global reality. In fact, the adoption of the 2010 AVMSD and its subsequent revision of 2018 were required in order to deal with key aspects in the regulation of non-linear audiovisual media services, that were not extensively covered by the e-Commerce Directive.

The [2010 AVMSD](#) governs the EU-wide coordination of national legislation on every type of audiovisual media (linear and non-linear), such as conventional television broadcasts, on-demand services, etc. The AVMSD guarantees the free flow of audiovisual programmes in the internal market, provides rules considering the technological progress, establishes a level playing field for emerging audiovisual media, promotes cultural diversity, ensures consumer protection and the protection of minors. Therefore, the shows and programmes that are watched online are also subject to the rules of the internal market. The AVMSD was amended in [2018](#) for the filling in of certain regulatory gaps (*see* the codified text of the AVMSD [here](#)).

As regards the ‘funding’ instruments of EU law, important legislative acts have been adopted concerning the ‘MEDIA’ and the subsequent ‘Creative Europe’ programmes. The [MEDIA strand of the Creative Europe Programme \(2021-2027\)](#) was conceived to support European film and other audiovisual industries, devoting a large budget to culture. Prior to that EU programme boosting the cultural and creative sectors, there were other similar action programmes about the promotion of the development of the European audiovisual industry, such as the first [MEDIA](#) programme (1991–1995), the [MEDIA II](#) programme (1996–2000), the [MEDIA Plus](#) programme (2001–2005), the [MEDIA 2007](#) programme (2007–2013), the [MEDIA Mundus](#) programme (2011-2013), the [Creative Europe Programme](#) (2014-2020).

V. Conclusion

The legislative transformation of the movement of audiovisual content in the EU suggests a dynamic approach to the opportunities and challenges posed by the evolvement of the digital environment. The EU has taken strides to adapt its legal framework in order to foster a more vibrant, integrated, innovative, culturally diverse and competitive audiovisual landscape, in that way benefiting both creators and consumers across Member States. Indeed, the flow of audiovisual content in the EU reflects significant developments, changes and trends in technology, politics, and cultural policies. The ‘competitive’ and the ‘culturally diverse’ features of the European audiovisual industry will continue to stand out, as they remain crucial to understanding the possibilities and stakes that the film stakeholders have to cope with, in a sector that is facing severe tests that were accelerated with the recent COVID-19 crisis.

In today's world, the new suppliers of audiovisual content, i.e. the large streaming platforms (such as Netflix, Amazon Prime Video, Disney+, Apple TV+ and others, as well as online video sharing platforms, such as YouTube), are becoming more robust, due to various circumstances such as the change of viewing habits (particularly in relation to young generations) and the fact that they managed to meet the latest demands of the audiences. In this context, it is crucial to acknowledge that the audiovisual content still amounts to a great deal of culture that lies at the heart of our civilization,

especially when it effectively promotes the intercultural dialogue between European countries, highlighting cultural diversity and multilingualism, filling peoples with hopes and dreams, being a rewarding experience and sometimes even an inspiring and thought-provoking encounter, providing new ways to sparkles of imagination and the perception of modern reality. Overall, provided that proper regulatory and financial interventions will always be in place, the European audiovisual sector, considering its great capabilities in a realistic and not just optimistic way, has the potential to be considered a major success story of European integration.

Author: *Dr. Apostolos Samaras* is an Attorney at Law and Research Fellow at the Hellenic Foundation for European and Foreign Policy (ELIAMEP). He holds a PhD (with distinction) in European Law from the School of Law of the National and Kapodistrian University of Athens (NKUA). Currently, he is a Postdoctoral Research Fellow and Teaching Assistant at the School of Law of the NKUA, Adjunct Lecturer at the Hellenic Naval Academy (Cadets of the Hellenic Coast Guard), Visiting Lecturer at the Hellenic Naval War College. He is a member of the Editorial Board of the Greek legal journal ‘European Law’, member of various scientific associations, author of many articles and other publications (in English & Greek) in reputable scientific journals. His main areas of research are: European Law and Governance, Economic Law, International Law, Public Law, Human Rights. He is the author of the monographs: ‘The restrictions on the free movement of capital in contemporary EU law’ (Nomiki Bibliothiki, 2022, 480 pp.) and ‘The Primacy Principle of EU law: The cornerstone for maintaining the integrity of the autonomous EU legal order’ (Nomiki Bibliothiki, 2023, 248 pp.).

Endnotes:

[1] As indicated, for example, with the famous short film ‘[Roundhay Garden Scene](#)’ in 1888, which was directed by the French inventor Louis Le Prince. Several other European artists and experimenters of that era could be considered innovators and pioneers of early European cinema, like the Skladanowsky brothers, the Lumière brothers, etc.

[2] See A. Vlassis, ‘European integration, audiovisual governance and global online platforms: Between market rationale, cultural logic and social considerations’, in T. Hoerber, G. Weber, I. Cabras (eds), *The Routledge Handbook of European Integrations*, Routledge, 2022, 152-165.

[3] See Commission Communication on a European agenda for culture in a globalizing world, 10.5.2007, COM (2007) 242 final.

[4] For further reading, see M. T. García Leiva and L. A. Albornoz, ‘VOD service providers and regulation in the European Union: an audiovisual diversity approach’, *International Journal of Cultural Policy*, 27, 3, (2021), 267-281; M. Michalis, ‘Focal Points of European Media Policy from Inception till Present: Plus ça change?’, in K. Donders, C. Pauwels, J. Loisen (eds), *The Palgrave Handbook of European Media Policy*, Palgrave Macmillan, 2014, 128-142; O. Calligaro and A. Vlassis, ‘The European policy of culture: Between economic paradigm and the rhetoric of exception’, *Politique européenne*, 56, 2, (2017), 8-28.

[5] See Article 26 TFEU that specifies the reference to the ‘internal market’ among the Union’s principal objectives that are provided in Article 3(3) TEU.

[6] For further reading, see E. Psychogiopoulou, ‘The Audiovisual Media Services Directive and the promotion of European works: cultural mainstreaming revisited’, in P. L. Parcu and E. Brogi (eds), *Research Handbook on EU Media Law and Policy*, Edward Elgar Publishing, 2021, 32-53; E. Psychogiopoulou, ‘The cultural mainstreaming clause of article 151(4) EC: protection and promotion of cultural diversity or hidden cultural agenda?’, *European Law*

Journal, 12, 5, (2006), 575-592; K. Irion and P. Valcke, 'Cultural Diversity in the Digital Age: EU Competences, Policies and Regulations for Diverse Audiovisual and Online Content', in E. Psychogiopoulou (ed.), Cultural Governance and the European Union, Palgrave Macmillan, 2015, 75-90.

[7] The EU legislative efforts, up to the present day, aim at cultivating a borderless online environment for the free movement of goods and services, including audiovisual content. In that respect, the ambitious goal of the [Digital Services Act](#) (DSA) and the [Digital Markets Act](#) (DMA) - as a set of rules that will be applied in the EU as a whole - is to create a better and more secure digital ecosystem, where the fundamental rights of users are protected, and to ensure a level playing field for businesses. Although the focal point made by the DSA and the DMA is primarily on online services and platforms, the implications of these Acts for the audiovisual industry should be considered noteworthy, concerning rules about online intermediaries and platforms, rules that govern gatekeeper online platforms, etc.

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