

EU TRADE POLICY

In past bilateral and multilateral trade agreements, the EU has secured a 'carve-out' for audiovisual services, ensuring that the EU and its Member States can shape, preserve and develop their audiovisual sector.

At a time when audiovisual services are rapidly evolving amidst media convergence, the audiovisual 'carve-out' needs to continue being fully secured with a broad and future-proof exclusion from the Transatlantic Trade and Investment Partnership (TTIP) and other ongoing trade negotiations.

A specific approach for European culture

Europe has a specific approach for its audiovisual sector as part of a broader range of policies aiming to protect and promote cultural and linguistic diversity and media pluralism. The EU member States' cultural and linguistic diversity is protected by the Lisbon Treaty, as well as in the 2005 UNESCO Convention on the Protection and the Promotion of the Diversity of Cultural Expressions. The texts recognise the sovereign right of States to formulate and implement cultural policies and measures for the protection and promotion of cultural diversity.

Preserving Europe's audiovisual model

The European audiovisual industry is extremely diverse, highly successful, and has delivered significant benefits for Europe up to now. Employing over 1 million people, it represents 20% of the world audiovisual market in 2011. The European TV market is the second largest in the world after the US.

The European audiovisual sector relies not only on financial support mechanisms, but also, significantly, on regulatory mechanisms at EU and national level. Audiovisual policies in the EU convey certain obligations to providers of audiovisual services, which ensure for example that all citizens can access news or watch events of major importance for society. EU rules also promote the distribution and production of European audiovisual works.

An audiovisual exclusion to secure EU and Member State cultural policies

In trade agreement negotiations, the EU has consistently applied a mandate ensuring that EU and Member States remain free to develop their own cultural and audiovisual policies, in line with EU Treaties and the UN Convention. This has been secured by not taking any commitments for audiovisual services ("carve out") and by securing 'most favoured nation' exemptions for the sector.

Accordingly, the EU negotiation mandate for the TTIP contains an exclusion for audiovisual services. However, fully translating the exclusion into the final agreement may be particularly complex because of the combination of two factors: on the one hand, the deep and comprehensive nature of these trade discussions, tending towards regulatory convergence on both sides of the Atlantic; and on the other hand, accelerating technological convergence in the field of media services.

Regulatory convergence challenges Europe's capacity to shape its audiovisual landscape

With TTIP, the EU and the USA are aiming to go beyond habitual free trade measures such as tariff cutting. The negotiations aim to facilitate trade by notably bringing rules and standards on both sides of the Atlantic closer together. Yet the US and Europe have very different traditions, approaches and concepts as regards audiovisual sector policies and regulations, and more generally, policies to protect and promote cultural and linguistic diversity and media pluralism.

The intention to achieve regulatory convergence risks working against Europe's capacity to shape its own regulatory approaches independently, in particular as regards audiovisual policy measures.

Strengthening the EU audiovisual market should come first

The size and uniformity of the US market enables increased economies of scale and higher investment capabilities on average. In 2011, the average market share for US films in the EU was 61,4%. The EU's focus in the audiovisual sector should be on strengthening the Internal Market and its cultural diversity, not on further opening it up to a US industry which, by its scale and linguistic uniformity, benefits from disproportionate advantages.

A future-proof notion of audiovisual services

It is crucial that the audiovisual exclusion in the context of EU trade negotiations is understood to encompass all audiovisual services, irrespective of the platform and device. Online audiovisual services and bundled telecom and television access packages are now widespread on both sides of the Atlantic and developing further. Against this background, there is a risk that electronic services which give access to audiovisual programmes are solely considered as electronic services in the context of the trade negotiations. Such partial liberalisation of audiovisual services through the back door needs to be avoided.

A positive list approach for clarity

For the sake of clarity regarding commitments, the agreement should follow a 'positive list approach', where services subject to liberalisation are explicitly mentioned and listed. A negative list approach risks introducing uncertainties regarding the exact scope of the services covered by trade liberalisation commitments.

The EU and its Member States' ability to maintain and develop audiovisual policies and exclude those policies from any commitment in the agreement, as expressed in the TTIP negotiating mandate, is paramount. In application of this mandate, the exclusion of audiovisual services should be comprehensive and future-proof.

EU State of play

Once negotiations for a trade agreement are concluded, the draft agreement is submitted to the European Parliament for consent by simple majority and to the Council for approval. Where provisions risk prejudicing cultural diversity, a unanimous agreement between EU Member States is required.

Alongside ongoing TTIP negotiations, the European Commission is currently negotiating several other agreements, including the Trade in Services Agreement (TiSA).