Regulating audiovisual and digital services in the global trade context

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Regulating audiovisual and digital services in the global trade context

Amélie Lacourt and Sophie Valais

European Audiovisual Observatory

COUNCIL OF EUROPE
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Foreword

"Creative works are not commodities; cultural services are not mere business transactions. It is our duty to uphold the diversity of creative works and the public's freedom of choice. What is at stake is the cultural identity of our nations, the right of every people to their own culture, and the freedom to create and choose our own images. [...]".[1] These sentences, quoted from a speech by French President François Mitterrand during the Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT) in 1993, capture a principle that continues to shape international trade policy today.

From the introduction of the "cultural exception" during the GATT negotiations in 1993 to the adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions in 2005, and up to the present day, the European Union has maintained a non-negotiable position in international trade negotiations that states the sovereign right to adopt and maintain measures aimed at protecting and promoting cultural diversity.

However, today's audiovisual sector bears little resemblance to that of 1993. Digitalisation and platformisation have fundamentally reshaped the production, distribution and consumption of audiovisual content, with new players, business models, consumption habits and regulatory frameworks. In this transformed landscape, new challenges have emerged and tensions have intensified. The growing influence of global digital platforms, increasing market concentration and the entrenchment of powerful gatekeeper positions have directly impacted cross-border audiovisual and digital trade, raising new and challenging legal questions.

Accordingly, the public policies that regulate and promote the audiovisual and digital sectors have evolved drastically and now include not only content quotas and investment obligations but also digital services taxes (DSTs) targeting certain digital activities of large technology companies. The United States, home to many of the world's largest digital platforms and technology companies, has characterised some of these measures as discriminatory, either because they represent barriers to trade or because they raise concerns related to freedom of expression. The accusations of protectionism led to escalating threats of tariff action by the United States in 2025.

Free trade is a hallmark of a free society, but so is cultural diversity. For the audiovisual sector, the issues at stake extend far beyond market access and commercial interests. They concern the ability of states to pursue cultural policies, preserve diverse cultural offerings, regulate powerful digital intermediaries and shape their own digital futures. How these objectives interact with international trade rules, and where tensions emerge between them, is the central question explored in this report. We hope that this

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[1] President F. Mitterrand, *Allocution de M. François Mitterrand, Président de la République, sur l'identité culturelle européenne et sur sa défense dans les négociations du GATT* [Address by Mr François Mitterrand, President of the Republic, on European cultural identity and its defence in the GATT negotiations], *L'Élysée*, Gdansk, 21 September 1993.

analysis will provide readers with a clearer understanding of this complex and rapidly evolving landscape.

Enjoy the read!

Maja Cappello

IRIS Coordinator

Head of the Department for Legal Information

European Audiovisual Observatory

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List of abbreviations and acronyms

AI Act	Artificial Intelligence Act
AVMS	Audiovisual Media Services
AVMSD	Audiovisual Media Services Directive
BEPS	Base Erosion and Profit Shifting
CETA	Comprehensive Economic and Trade Agreement
CJEU	Court of Justice of the European Union
CPC	Central Product Classification
DSA	Digital Services Act
DSU	Dispute Settlement Understanding
DST	Digital Services Tax
EBU/MIS	European Broadcasting Union / Media Intelligence Service
EDPB	European Data Protection Board
EU	European Union
FTA	Free Trade Agreement
GAFAM	Google, Apple, Facebook, Amazon, Microsoft
GATT	General Agreement on Tariffs and Trade
GDPR	General Data Protection Regulation
GPAI	General-Purpose Artificial Intelligence
ITIF	Information Technology and Innovation Foundation
MPIA	Multi-Party Interim Appeal Arbitration Arrangement
OECD	Organisation for Economic Co-operation and Development
OPUS	refers to European Audiovisual Observatory database
OTT	Over-the-Top
PE	Permanent Establishment
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SVOD	Subscription Video-on-Demand
TFEU	Treaty on the Functioning of the European Union
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
US	United States

USTR	United States Trade Representative
VLOPs	Very Large Online Platforms
VLOSEs	Very Large Online Search Engines
VOD	Video-on-Demand
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

Executive Summary

This report delves into the intricate issues surrounding the trade of audiovisual and digital goods and services. Creative works and cultural services, particularly those in the audiovisual sector, have long been subjects of concern in trade negotiations. Digitalisation, however, quickly reshuffled the cards and overhauled the entire sector by enabling the easy exchange of content and data across countries and continents, thereby changing both production, distribution and consumption habits. The ability of audiovisual services or digital platforms to generate income from foreign markets without being established there has allowed to concentrate market power in the hands of a few mostly non-EU players. Over the years, these sectors have therefore become a central segment of international trade. This environment not only raises questions of property, but also of sovereignty - both cultural and digital. Legislators across the globe are therefore increasingly regulating this area. This new arena has led to growing concern and tensions, raising legal economic and diplomatic questions, in particular with the US. This report provides a global overview of these issues, inscribing them in the global trade and regulation context.

Chapter 1 provides an overview of the European audiovisual and digital markets on an international scale, shedding light on the landscape in which these issues play out. Although the European audiovisual sector represents a major component of the global media industry, generating around EUR 142 billion in revenue in 2024, its position in the global market is more limited. In particular, an imbalance exists with the US. Only around 12% of the world's largest audiovisual companies are EU-owned. This duality can be observed at different levels of the audiovisual value chain. Despite the relatively strong overall presence of European players, the top end of the market is dominated by a small number of largely non-European firms. Taking a closer look, subscription video-on-demand (SVOD) services have become a central segment of the European audiovisual ecosystem, but approximately 90% of subscriptions in Europe are held by a majority of US-based platforms. Likewise, external dependence is apparent in terms of advertising revenues and monetisation, and audience attention in Europe is increasingly shared by a small number of global digital platforms, notably Facebook, Instagram, TikTok and YouTube. Interestingly though, Europe is one of Meta's largest regional markets outside North America. The distribution of audiovisual services on mobile devices is also largely dependent on US companies: Apple and Google. In terms of circulation and visibility of content, the US presents again the largest share. Around 48% of available titles in catalogues are works of US origin, compared with approximately one-third of European works. Furthermore, national content remains unevenly represented across European SVOD catalogues, although this depends on the production market. Besides, global streaming platforms generally influence the visibility of works through commissioning, curation and promotion strategies that often prioritise internationally scalable content. These structural differences are also reflected in audience consumption patterns. Focusing on the purely digital sector, most gatekeepers designated under the Digital Markets Act are US-based companies. Ultimately, although dependence on non-EU services varies significantly between EU member states, the market remains highly concentrated, with a small number of primarily US-based actors capturing a dominant share of the market.

Chapter 2 of the report presents the rules governing the audiovisual and digital sectors in Europe and how they have become a source of trade tensions on the international stage. The key sectoral rules deriving from the Audiovisual Media Services Directive (AVMSD) aim, inter alia, at promoting European works by supporting European audiovisual production, ensuring availability of European content, and facilitating its circulation across the EU. Beyond these immediate objectives, the promotion of European works may also contribute to strengthening Europe's cultural sovereignty. To reach this objective, the AVMSD notably introduces quota requirements and the possibility to impose investment obligations, both applicable to broadcasting and video on-demand (VOD) services. While member states have all reached the quota requirements provided for under Articles 13(1), 16 and 17 of the AVMSD, the imposition of financial obligations, foreseen by Article 13(2), and the way they have been implemented, varies across member states. In addition, European works can benefit from regional, national EU or even international public support, through direct and indirect funding. Under Creative Europe's programme, MEDIA supported films and series achieve wider distribution than comparable non-supported works. While acknowledging the programme's success, the European Commission stresses that it cannot counter powerful market forces arising from changing consumer behaviour and technology alone. The opposition between protecting cultural diversity and sovereignty on the one hand and achieving international integration on the other has triggered important tensions, in particular with the US, who perceives the promotion of European works as a potential trade barrier. Global US streamers themselves are also actively challenging European investment rules. Against this backdrop, the European Parliament has urged the European Commission to reject any attempt to consider the AVMSD a distortion of trade, and to defend it as a legitimate regulatory instrument.

Digital services fall under a range of horizontal EU regulations, each of which addresses specific aspects of platform regulation. These include the Digital Services Act (DSA), the Digital Markets Act (DMA), the General Data Protection Regulation (GDPR), the AI Act and the Digital Omnibus Package. While their primary purpose is to regulate digital services, enforce accountability, and protect users within the EU, these rules may also affect the flow of content and data between EU member states and third countries. In the 2026 US National Trade Estimate (NTE) report, the United States Trade Representative (USTR) labelled all of these pieces of EU legislation as foreign barriers to trade. These developments illustrate the profound ongoing tensions between the EU's ambition to promote cultural diversity, preserve sovereignty, and ensure fair competition in the digital sector, and the US' perception of targeted and discriminatory regulations against its leading audiovisual and technology companies.

Chapter 3 puts these tensions into context, presenting the international trade framework for the audiovisual sector. As economic assets, audiovisual works are included in EU external trade policy, which is governed by a complex legal framework encompassing the World Trade Organisation (WTO) disciplines, as well as a variety of regional, multilateral and sector-specific instruments. As established in the Treaty on the Functioning of the European Union (TFEU), the EU holds exclusive competence in the field of common commercial policy, including to conclude international agreements if certain conditions are met. Special rules, however, apply for particularly sensitive sectors, such as cultural and audiovisual services. Unanimity (as opposed to qualified majority) in the Council must be met to negotiate and conclude international agreements where they risk prejudicing the Union's cultural and linguistic diversity.

Within this framework, trade negotiations in the audiovisual sector are shaped at international level by global multilateral agreements established by the WTO: the General Agreement on Tariffs and Trade (GATT) and the Agreement on Subsidies and Countervailing Measures (SCM Agreement) for audiovisual goods, and the General Agreement on Trade in Services (GATS) for audiovisual services. Each of these sets out distinct disciplines for market access, non-discrimination and the use of public support measures. Regional and preferential trade agreements, in particular Free Trade Agreements (FTAs) such as the Comprehensive Economic and Trade Agreement (CETA) with Canada and the EU–Japan Economic Partnership Agreement (EPA), complement the multilateral trading system by establishing commitments that often go beyond those undertaken within the WTO framework for sensitive sectors. Such agreements must however be notified to the WTO and must not raise overall barriers to trade with third countries.

However, audiovisual goods and services are not only economic assets but also carriers of cultural identity. This dual nature creates a structural tension between market access and cultural policy in audiovisual trade negotiations. As a result, negotiations are typically shaped by reciprocal concessions, sectoral trade-offs and "carve-outs". Digitalisation has intensified the tensions between trade rules and audiovisual policy, particularly in the EU-US context. At the same time, the EU has strengthened its capacity to respond to external economic pressure across a range of sectors through the adoption of the "Anti-Coercion Instrument". Although transversal in scope and not specific to the audiovisual sector, this instrument is designed to deter economic coercion and enables the EU, where appropriate, to adopt countermeasures in response to coercive practices by third countries.

Chapter 4 explores a more recent issue that has emerged on the international trade scene: Digital Service Taxes (DSTs). Unlike corporate income taxes, which are paid where the tax-payer has a presence or where production takes place, DSTs consist of taxes on digital value generated abroad (most often in Europe, by foreign companies). This new fiscal tool was introduced in Europe in 2019 to respond to the evolving digital economy and changing market configurations. With most audiovisual content now circulating on online platforms, leading companies can generate profit worldwide without a physical presence across the globe. Seven EU member states, as well as some third countries, have implemented or announced their intention to implement such taxes. As taxes are a national prerogative, DSTs can vary widely from one country to another. However, the imposition of national DSTs and the (now dropped) possibility of a European one have been particularly controversial, culminating in heightened tensions in 2025. Following investigations by the

USTR and the 2025 NTE report describing foreign trade barriers, the US issued retaliatory tariff threats. However, concerns are not limited to the EU and tariff threats extended to other areas of the globe, such as Canada and India. While some states have maintained their approach despite external pressure, others have opted for compromise.

Subsequent negotiations and agreements have helped mitigate some of these tensions, but no comprehensive and widely accepted solution has yet emerged. Since 2019, the Organisation for Economic Cooperation and Development (OECD) has been negotiating a global tax reform involving over 140 countries, with the aim of adapting the international tax system. However, despite ongoing negotiations within the OECD/G20 Inclusive Framework, no common ground has yet been found. This has prompted other international organisations, such as the United Nations, to explore alternative solutions.

In conclusion, the dual nature of the audiovisual sector, combined with the rapid digitalisation of the industry, has produced a particularly articulated international legal and policy landscape, encompassing platform regulation, accountability enforcement, protection of users and the promotion of European audiovisual works. In the trade context, the interaction of multilateral and regional trade agreements, cultural conventions and tax treaties make the efforts to accommodate the specificities of the cultural and digital sectors even more complex. Against this backdrop, concerns about market dynamics have intensified, in particular between the EU and the US, leading the EU to strengthen its regulatory capacity and assert both its cultural and digital sovereignty. However, the debates surrounding trade in audiovisual and digital goods and services remain far from settled. In the absence of broader international consensus, tensions between trade liberalisation, public policies promoting cultural diversity and digital sovereignty are likely to persist.

1. Setting the scene – the European audiovisual market[2]

1.1. The European audiovisual market in context

The European audiovisual sector represents a major component of the global media industry. In 2024, total revenues in Europe reached approximately EUR 142 billion.[3] More than half of this (around EUR 72 billion) was derived from direct consumer spending, including pay-TV, subscription video-on-demand (SVOD), cinema and home video.[4]

Despite this scale, Europe's relative global position remains more limited: the EU accounts for roughly 22% of global audiovisual revenues, compared with approximately 49% for the United States.[5] This imbalance is also reflected in corporate ownership structures. Only a small share of the world's largest audiovisual companies with revenues of EUR 1 billion or more are EU-owned (around 12%), with the majority headquartered in the United States or other non-European jurisdictions.[6]

Taken together, these indicators point to a structurally significant but externally exposed market, characterised by strong demand but comparatively weak global corporate positioning.

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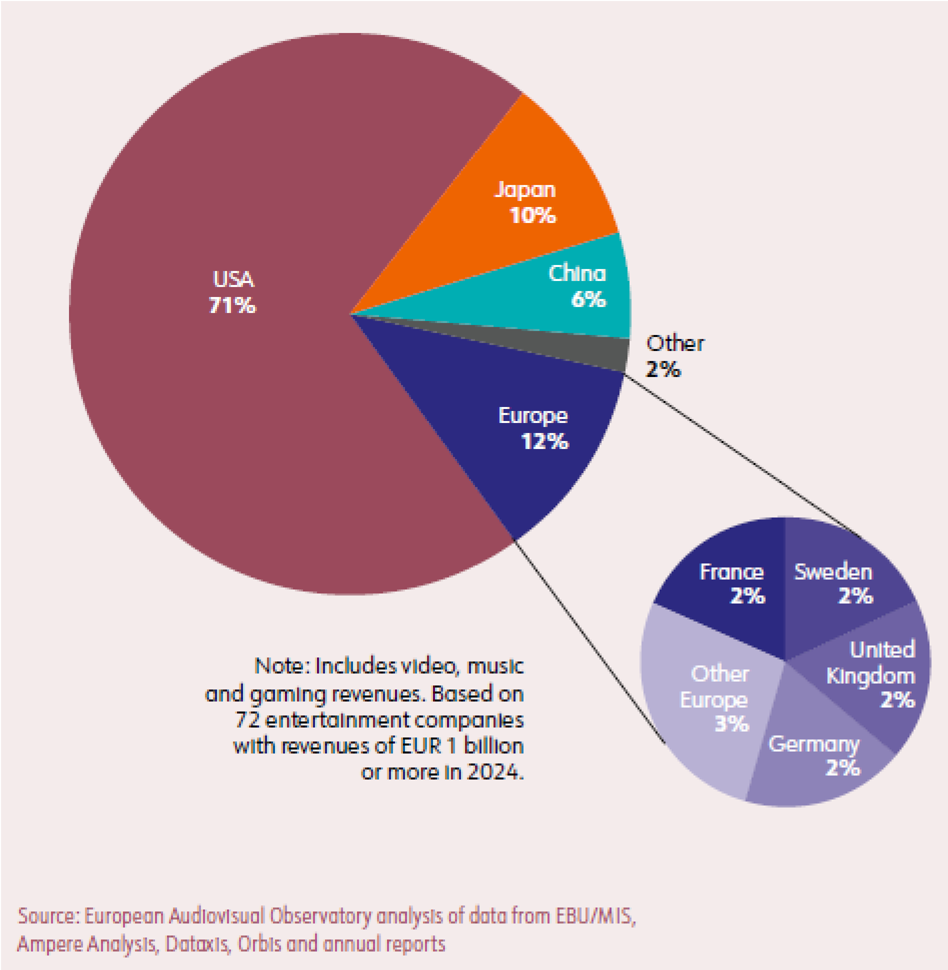
[2] This chapter has been reviewed by Christian Grece, Market analyst at the European Audiovisual Observatory.
[3] Fontaine G. (ed.), *Key Trends 2026*, European Audiovisual Observatory, Strasbourg, 2026, p. 38.
[4] Ibid.
[5] European Commission, *The European Media Industry Outlook*, September 2025, p. 6.
[6] Fontaine G. (ed.), *Key Trends 2026*, op. cit., pp. 52-53.

Figure 1. Breakdown by origin of 2024 revenues of entertainment companies with revenues of EUR 1 billion or more[7]



1.2. Concentration across the audiovisual value chain

1.2.1. Market structure

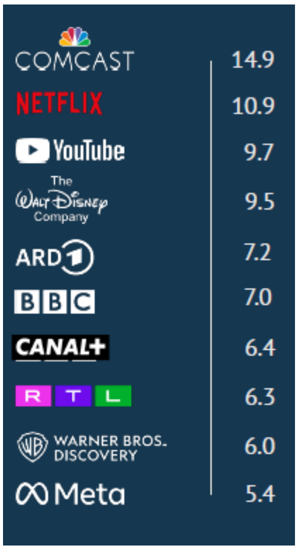
The European audiovisual market is characterised by a dual structure: a relatively strong presence of European players overall, but high concentration of market power among a small number of largely non-European firms at the top end.

Among the top 100 audiovisual groups operating in Europe, European-owned companies account for approximately 56% of cumulative revenues, supported in part by large telecommunications operators. However, concentration increases significantly at the

[7] Fontaine G. (ed.), *Key Trends 2026*, op. cit., p. 53.

upper end of the market. Within the top 10 groups, US-based companies capture close to two-thirds of total revenue (nearly 67%).[8] The three largest audiovisual groups by revenues in Europe at the end of 2024 – Comcast, Netflix and YouTube – are all US-based.[9]

Figure 2. Top 10 groups by audiovisual (AV) revenues (2024, in EUR billions)



Source: European Audiovisual Observatory, Top players in the European AV industry – Concentration, statute, origin and profile.

This concentration is further reflected in distribution reach: of the main TV and VOD groups with the widest pan-European presence, the vast majority originate in the United States (nine out of 11).[10] The market position of these players has strengthened over time, with their share increasing significantly since 2016, driven primarily by the expansion of global streaming platforms and video-sharing services.[11] Growth dynamics reinforce this trend. Revenues among the top 100 audiovisual groups have grown faster than the market average, with a disproportionate share of expansion captured by a small number of leading firms.[12]

[8] Iancu Ene L., Top players in the European AV industry – Concentration, statute, origin and profile (2024 figures), European Audiovisual Observatory, 15 January 2026.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.

1.2.2. Subscription Video-on-Demand (SVOD) services

SVOD services have become a central segment of the European audiovisual ecosystem, accounting for around 60% of pay-service subscriptions in 2024.[13] This segment is highly concentrated: close to 90% of subscriptions in Europe are held by the top 10 OTT platforms, the majority of which are US-based.[14]

Global streamers occupy leading positions in both scale and revenue. Netflix ranks among the largest audiovisual groups operating in Europe, while other major platforms, such as Amazon Prime Video and Disney+, have established significant market shares.

When considering the broader pay audiovisual market, including SVOD and pay-TV, a limited number of operators dominate revenue generation. For example, Sky (Comcast) and Netflix together account for a substantial share of pay audiovisual revenue in Europe.[15]

1.2.3. Advertising and monetisation

Advertising revenue shows an even stronger degree of concentration and external dependence. More than 80% of SVOD and in-video OTT advertising revenues were captured by US-based platforms by the end of 2024.[16]

In the broader TV and online video advertising market, European broadcasters remain significant players, but they compete directly with global platforms, most notably YouTube, for audience attention and advertising expenditures. The market is highly concentrated, with a small number of actors capturing a dominant share.[17]

1.2.4. Social media and platform ecosystem

Audience attention in Europe is increasingly shared by a small number of global digital platforms. Meta's platforms, most notably Facebook and Instagram, continue to dominate the European social media landscape in terms of reach and user engagement,[18] while TikTok has experienced particularly rapid growth among younger audiences through algorithmic content recommendation and an advertising-based business model.[19] YouTube

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[13] Fontaine G. (ed. sup.), *2026 Key trends*, op. cit., p. 6.
[14] Iancu Ene L., *Top players in the European AV industry – Concentration, statute, origin and profile (2023 figures)*, European Audiovisual Observatory, 9 April 2024, p. 22.
[15] Ibid.
[16] Iancu Ene L., *Top players in the European AV industry – Concentration, statute, origin and profile (2024 figures)*, op. cit.
[17] Iancu Ene L., *Top players in the European AV industry – Concentration, statute, origin and profile (2023 figures)*, op. cit., p. 9.
[18] *Statista* website, *Leading social media platforms by share of website visits in Europe as of May 2026*, (consulted on 18 June 2026).
[19] Curry D., *Meta accounted for 60% of social app revenues in 2024*, *Business of Apps,* 1 August 2025.

occupies a hybrid position as both one of the world's largest audiovisual distribution platforms and a major digital advertising intermediary, competing directly with traditional broadcasters and subscription streaming services for audience attention. These developments illustrate the growing role of platforms as gatekeepers to audiovisual content and advertising markets.[20]

The economic importance of the European market is equally significant. According to Meta's 2024 annual report, Europe generated USD 38.36 billion in revenues in 2024, representing approximately 23% of the company's global revenues (USD 164.5 billion). Europe therefore constitutes one of Meta's largest regional markets outside North America.[21]

1.2.5. App distribution

Distribution of audiovisual services on mobile devices is largely dependent on the Apple and Google ecosystems. The Apple App Store and Google Play together account for virtually the entire mobile app distribution market in Europe, with Apple capturing a large share of revenues.[22] This duopolistic structure limits the ability of European players to control access to end users and has become a central issue in platform regulation debates.

1.2.6. Artificial Intelligence services

Artificial intelligence (AI) is emerging as a new layer of intermediation in the audiovisual value chain, particularly in content discovery, recommendation and creation. The leading AI services deployed in Europe, such as those developed by OpenAI, Google and Microsoft, are predominantly US-based and benefit from integration into existing platform ecosystems.[23] European providers, including Mistral AI, remain comparatively small in scale.[24] While the market is still evolving, early indicators suggest a risk of further concentration linked to data access, computing capacity and platform integration.

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[20] Iancu Ene L., *Top players in the European AV industry – Concentration, statute, origin and profile (2024 figures)*, op. cit.; Fontaine G. (ed. sup.), *2026 Key trends*, op. cit., pp. 54-55.
[21] See the Statista website, *Meta platform – statistics and facts*, published by Daniel Slotta, 17 December 2025.
[22] See the *Grand View Horizon* website, *Europe Mobile Application Market Size & Outlook, 2026-2033.*
[23] *OpenAI Ireland Limited* published information on the average "monthly active recipients" of ChatGPT search in the European Union, calculated over a six-month period. For the six-month period ending 31 March 2026, ChatGPT search had approximately 159.1 million average monthly active recipients in the European Union.
[24] Mistral AI is the leading EU LLM alternative but commands a small market share.

1.3. Content circulation and visibility

1.3.1. Content catalogues and visibility

The composition of VOD catalogues highlights structural asymmetries in content visibility. Works of US origin represent the largest share of available titles in catalogues (around 48%), compared with approximately one-third of European works.[25] In addition, US works tend to be distributed across a greater number of catalogues, increasing cross-border visibility.

National content remains unevenly represented across European SVOD catalogues. On average, a large majority of works available in national catalogues are of non-national origin, although the situation varies considerably across countries. Larger production markets, such as France, Germany, Spain, the United Kingdom and Italy, maintain a relatively strong presence of national works. By contrast, smaller markets tend to have much lower visibility of domestic content, owing to more limited production capacity and the additional constraint posed by language, resulting in catalogues that are dominated by non-national works.[26]

Beyond catalogue composition, global streaming platforms further influence the visibility of works through commissioning, curation and promotion strategies that often prioritise internationally scalable content.[27]

These structural differences are also reflected in audience consumption patterns. In 2024, for example, US works accounted for 31% of total SVOD viewing time in the EU, compared with 25% for European works overall, including only 16% for EU works. Moreover, in most countries analysed, European content, particularly non-national European works, generated a lower share of viewing than its share in catalogues, indicating that the availability of European and national works does not automatically translate into equivalent audience demand or consumption. Larger producing countries also tend to record higher viewing shares for national and European works than smaller markets.[28]

1.3.2. National market dependency and vulnerability

Dependence on non-EU services varies significantly across member states. As previously mentioned, large markets (France, Germany, Italy, Spain) benefit from stronger production capacity, regulatory frameworks and public service media, which partially mitigate external dependence. However, they remain exposed in digital segments such as SVOD and platform

[25] Fontaine G. (ed. sup.), *2026 Key trends*, op. cit., p. 26.
[26] Ibid.
[27] Grece C., *Film and TV content in TVOD, SVOD and FOD catalogues (2025 data)*, European Audiovisual Observatory, 2 April 2026.
[28] Grece C., Tran J-A, *SVOD Usage in the European Union – 2024 data*, European Audiovisual Observatory, July 2025.

distribution. Mid-sized and smaller markets exhibit higher levels of dependency, particularly where domestic streaming services are underdeveloped. In several smaller member states, audiovisual consumption relies heavily on imported content, reflecting both limited production capacity and linguistic fragmentation.[29]

1.4. Digital gatekeepers and regulatory pressure

The Digital Markets Act (DMA)[30] provides a regulatory lens on market power in the digital environment. As of May 2025, most designated gatekeepers are US-based companies (Alphabet, Amazon, Apple, Meta, Microsoft), alongside ByteDance, with only one European company (Booking.com) included. No European company has been designated as a gatekeeper in core audiovisual or platform intermediation services, underscoring the limited global scale of EU-based digital actors.[31]

Key concentration indicators across the sector include:

- SVOD: the top 10 platforms account for close to 90% of subscriptions.
- OTT advertising: global-based players capture over 80% of revenues.
- Top audiovisual groups: approximately two-thirds of revenues are generated by US-owned firms.
- Top 100 groups: non-European players account for a substantial minority of total revenues (around 40-45%).[32]

In conclusion, the European audiovisual sector combines significant market scale with structural vulnerabilities. While domestic demand and production capacity remain strong, market power is increasingly concentrated among a small number of global, primarily US-based, platforms and corporations. This imbalance is visible across multiple layers of the value chain, including distribution, advertising, platform infrastructure and emerging AI services.

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[29] Ibid.

[30] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

[31] See the European Commission, *Digital Markets Act (DMA)* website page on DMA Gatekeepers Portal (consulted on 17 June 2026).

[32] Iancu Ene L., *Top players in the European AV industry – Concentration, statute, origin and profile (2024 figures)*, op. cit., p. 22.

2. Sector-specific rules: regulation and trade impact

In the EU, audiovisual media services (AVMS) are primarily regulated by the Audiovisual Media Services Directive (AVMSD),[33] which is the main EU instrument relevant to the trade tensions discussed in this report. In contrast, digital services fall under a broader range of horizontal EU regulations, each addressing specific aspects of platform regulation. These notably include the Digital Services Act (DSA),[34] the Digital Markets Act (DMA),[35] the General Data Protection Regulation (GDPR)[36] and the AI Act.[37] Together, these various pieces of legislation form the foundational framework governing those services. While their primary purpose is to regulate them, enforce accountability, protect users and promote audiovisual works in the EU, some of these rules may also impact the flow of content and data between EU member states and third countries. Interestingly, the United States Trade Representative (USTR) labelled all of these pieces of EU legislation as foreign trade barriers in the 2026 US National Trade Estimate Report (NTE report).[38] These tensions highlight the opposition between protecting cultural diversity and sovereignty on the one hand, and achieving international integration on the other.

2.1. Key sectoral rules on audiovisual media services

Audiovisual services are subject to a number of specifically dedicated EU obligations and frameworks for promoting European works. The AVMSD is the primary reference for regulating audiovisual media services, introducing a number of obligations for the promotion of European works, including quota requirements and investment obligations. Recently, the AVMSD has been central to trade disputes with the US. Specific EU instruments also cover public support of European works, mainly through direct funding

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[33] *Directive 2010/13/EU* of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.
[34] *Regulation (EU) 2022/2065* of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC.
[35] *Regulation (EU) 2022/1925* of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828.
[36] *Regulation (EU) 2016/679* of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
[37] *Regulation (EU) 2024/1689* of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828.
[38] Unites States Trade Representative, *2026 National Trade Estimate Report on Foreign Trade Barriers of the President of the United States on the Trade Agreements Program*.

typically granted by national or regional film funds or public agencies and indirect forms of funding through fiscal incentives and cash rebates.

2.1.1. Legal obligations in the AVMSD

Initially adopted in 2010 to replace the Television Without Frontiers Directive,[39] the AVMSD is the foundational EU instrument for regulating audiovisual media services, from linear to video-on-demand (VOD) services and, since 2018, video-sharing platforms (VSPs). Five years after the deadline for transposing the 2018 Directive and after major technological and digital transformations, the AVMSD is, at the time of publication, undergoing an evaluation by the European Commission to assess whether any of its rules need updating. This review also forms part of the Commission's commitments under the European Democracy Shield,[40] a global initiative aiming to make democracies more resilient, in particular by strengthening the EU's media sector. Promoting European works is one way of achieving this objective and represents an important form of soft power that is central to establishing cultural sovereignty in Europe. By encouraging the production and dissemination of European content, the EU aims to support its creative industries, safeguard linguistic and cultural diversity, and ensure European audiences can access content that reflects their own societies and values.

In May 2025, the Council of the EU set out its priorities for the audiovisual media sector. In its conclusions on the assessment of the legal framework for audiovisual media services and VSPs, it notably highlighted the crucial role of the AVMSD in providing a legal framework "to safeguard and promote the further development of a diverse, fair, safe, trustworthy and competitive EU audiovisual media market as well as independent, trustworthy and culturally diverse European audiovisual content."[41] Although a revision of the Directive could introduce additional safeguards, the AVMSD already promotes cultural identity and encourages diversity of European content in several ways. These strategies, which impact trade within Europe and in relation to other international powers, include quotas for European works in VOD catalogues and on television, as well as financial obligations for local content.[42]

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[39] *Council Directive 89/552/EEC* of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities. *Consolidated text of 1997*: Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC).
[40] European Commission, *European Democracy Shield and EU Strategy for Civil Society pave the way for stronger and more resilient democracies*, Press release, 12 November 2025.
[41] Council of the European Union, *Draft Council conclusions on assessment of the legal framework for audiovisual media services and video-sharing platform services*, 2 May 2025.
[42] For an overview of the quotas and financial obligations applicable at national level, see the EAO's *OPUS* database.

2.1.1.1. Quotas

Broadcasting services are subject to quota obligations under Articles 16 and 17 AVMSD. The first of these articles requires that the majority of transmission time (excluding time allotted to news, sports events, games, advertising, teletext services and teleshopping) be reserved for European works. The second article obliges member states to ensure that broadcasting services reserve at least 10% of their transmission time (excluding time allotted to news, sports events, games, advertising, teletext services and teleshopping) or of their programming budget for independent European works, i.e. works produced by entities independent from broadcasters.[43] The AVMSD also stipulates that an "adequate" proportion of these independent works must be "recent", referring to works less than five years old. Member states may also require specific sub-quotas for particular types of content under Article 4(1) AVMSD.

The wide range of programmes and content available on VOD services from around the world can also make it challenging to showcase local content on those services. Article 13(1) AVMSD therefore establishes an obligation to promote European works on such services by requiring member states to ensure that VOD service providers under their jurisdiction secure at least 30% of European works in their catalogues and ensure prominence of these works. Member states are free to implement stricter and more detailed sub-quotas for specific types of content within the global 30% target under Article 4(1) AVMSD. For example, they may require specific proportions for cinematographic works, independent production or works in their official language (also known as "original expression works"). As suggested in Recital 35 of the Directive, prominence can in turn be ensured in several ways. However, the methods for achieving this are open, allowing member states and providers to decide how best to proceed. Examples include featuring European works on the service's home page, creating a dedicated category in the search menu or otherwise highlighting the availability of such content.

2.1.1.2. Financial obligations

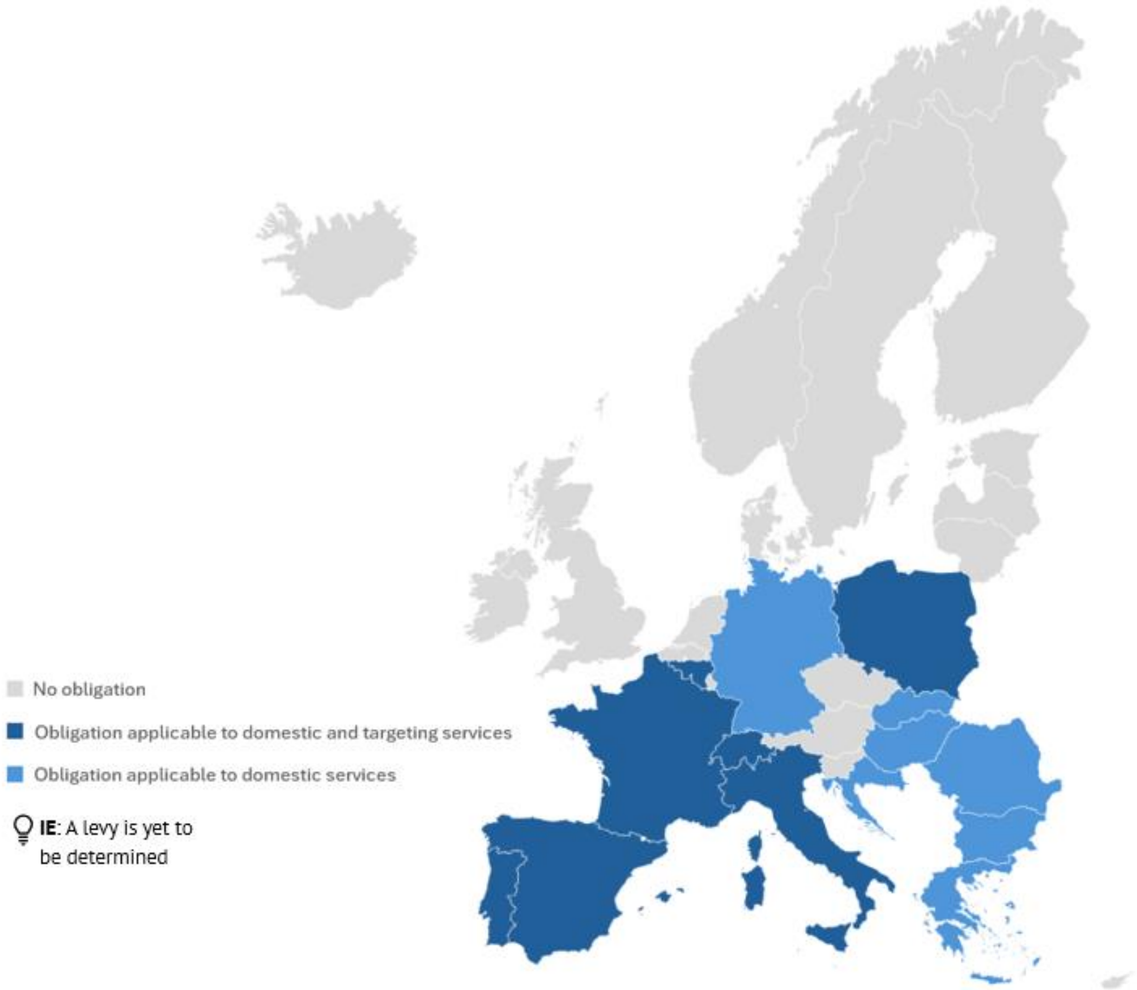
The promotion of European works can also be achieved by imposing financial obligations on VOD services and/or broadcasters for the production of these works. This measure, as set out in Article 13(2) AVMSD, is at the discretion of member states and can take the form of direct investments in production and/or acquisition of rights to European works, or of indirect investments such as financial contributions through levies to national funds. Member states introducing such obligations for domestic services (i.e. services established in and falling under their jurisdiction), may also require media service providers established abroad but targeting audiences in their territories to make such financial contributions.

To date, seven jurisdictions have adopted financial obligations for domestic broadcasting services only (Bulgaria, Croatia, Germany, Greece, Hungary, Romania and Slovakia). Seven other jurisdictions have extended financial obligations to targeting

[43] For more information on the definition of independent production, see European Audiovisual Observatory, *The definition of independent production in direct and indirect public support measures*, Strasbourg 2024.

services (the French-speaking Community of Belgium, France, Italy, Poland, Portugal, Spain and Switzerland).[44]

Figure 3. Investment obligations on broadcasting services

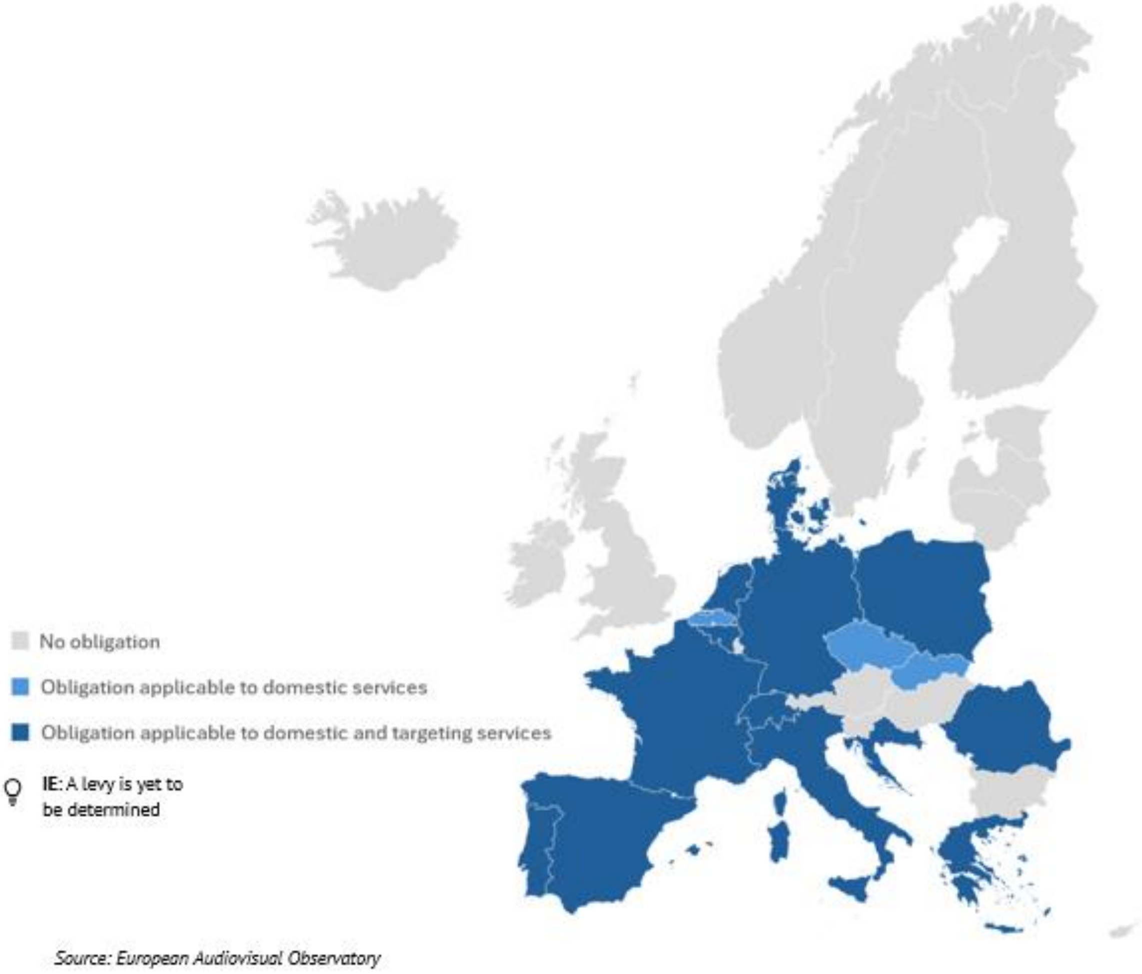


Source: European Audiovisual Observatory

In parallel, a majority of jurisdictions have decided to implement financial obligations for domestic and targeting VOD services (the French -speaking community of Belgium, Croatia, Denmark, France, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Romania, Spain and Switzerland). Such rules are imposed only on domestic VOD services in the Flemish-speaking community of Belgium, Czechia and Slovakia.[45]

[44] See search result from the Observatory's dedicated OPUS database (19 May 2026).
[45] Ibid.

Figure 4. Investment obligations on VOD services



In practice, the obligation for domestic VOD services ranges from 2 to 4% in Flanders and up to 25% in France. According to a study published by the French film fund, the *Centre national du cinéma et de l'image animée* (CNC), European countries that introduced direct investment obligations saw investments by global streamers in all types of content increase by 146% between 2020 and 2024, compared with 73% in countries without direct financial obligations.[46]

2.1.1.3. Trade tensions over the EU's promotion of European works

While the promotion of European works remains one of the EU's key strategies for developing the European audiovisual market, it is also perceived by some as a potential barrier to trade, giving rise to persistent tensions on the global stage. As already highlighted in a 2013 report by the European Audiovisual Observatory, "[t]o draw the line between legitimate promotion and unjustified privileging of European over other works will continue

[46] Les études du CNC, [Streamers Investments in Europe](), 27 March 2025.

to be as difficult as is the struggle to find out what type of promotion renders the desired beneficial effects for European works".[47] More than a decade later, this tension remains largely unresolved and continues to shape the debate. However, it should be kept in mind that, since then, the market has drastically changed with the emergence of new global powers.

The United States has been particularly vocal in its criticism. In a memorandum published on 21 February 2025 under the title "Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties",[48] the US government stressed that in addition to limiting cross-border data flows, foreign legal regimes also require American streaming services such as Netflix, Amazon Prime and Disney+ to invest in local productions. Against this backdrop, the obligation for VOD services to include at least 30% EU-produced content in their catalogues has been largely criticised. This was further echoed by the 2025 NTE report, which included the AVMSD as part of a foreign trade barrier and listed national measures affecting trade in audiovisual services, notably in Belgium, Denmark, France, Italy, the Netherlands and Spain.[49]

Global US streamers themselves are also actively challenging these European investment rules. Supported by Walt Disney Company (Benelux) B.V., Netflix International BV (Netflix), based in the Netherlands, filed an action for annulment before the Constitutional Court of Belgium in August 2025, contesting an amendment to the French-speaking Community of Belgium decree on audiovisual media services and video-sharing services.[50] Under this decree, broadcasters and VOD services established in and targeting the French-speaking Community of Belgium must contribute to audiovisual production, investing in co-productions, pre-purchasing audiovisual works, commissioning programmes or paying EUR 3 million to the Film and Audiovisual Centre (*Centre du Cinéma et de l'Audiovisuel - CCA*). The amendment increases the maximum percentage of direct financial obligations from 2.2% to up to 9.5%. The maximum rate applies to VOD services with a turnover of EUR 150 million or more. The Belgian Constitutional Court rejected most of the applicant's arguments on the grounds that the interpretation of the provisions of EU law left no room for reasonable doubt on these points and referred the following questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling:[51]

- how the acquisition of broadcasting rights for European works that have already been produced should be taken into account as a direct investment;
- the fact that the division between investment in European works (65%) and investment in French-speaking Belgian audiovisual works (35%) is not applied when the provider chooses to make an audiovisual contribution in the form of a financial payment to a public body such as the CCA;

[47] Nikoltchev S. (ed.), *Video on Demand and the Promotion of European Works*, IRIS *Special*, European Audiovisual Observatory, Strasbourg 2013.
[48] US White House website, *Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties*, 21 February 2025.
[49] United States Trade Representative, *2026 National Trade Estimate Report on Foreign Trade Barriers of the President of the United States on the Trade Agreements Program*.
[50] *Décret relatif aux services de medias audiovisuels et aux services de partage de vidéos* (in French) [Decree on audiovisual media services and video-sharing services], *Moniteur Belge*, 4 February 2021.
[51] Constitutional Court (Belgium), *Arrêt n° 36/2026* (in French), 26 March 2026.

- the fact that the targeted member state does not take into account the financial contribution to which an on-demand media service provider targeting audiences on its territory would be subject in another member state;
- whether, if the Constitutional Court were to annul one of the contested provisions of the decree of the French-speaking Community, EU law would preclude the effects of that provision from being maintained, either definitively or provisionally.

In response to these escalating tensions, the European Parliament urged the European Commission in a resolution of 23 October 2025 to “reject any attempt to consider the AVMSD a distortion of trade, and to defend it as a legitimate regulatory instrument [...]”. It further emphasised the importance of excluding audiovisual media services from trade negotiations in order to safeguard the EU and its member states’ ability to design and implement cultural and audiovisual policies that protect and promote cultural diversity. The European Parliament also stressed that the Directive “operates neutrally and without discrimination for both domestic and foreign providers, thereby ensuring fair competition and a level playing field.”[52]

2.1.2. Support schemes for audiovisual content

It is no surprise that audiovisual productions can have an important impact on a country’s economy. While quotas and financial obligations help to promote European productions, dedicated support schemes further reinforce the growth of the audiovisual sector and help foster cultural identity, diversity and sovereignty. These schemes exist at national, sub-national and supra-national levels, and provide assistance to filmmakers and producers by targeting specific types of audiovisual content and applying eligibility criteria such as language, themes, origin of the production team or the filming location. Support is typically granted through national film funds or implemented via fiscal incentives designed to attract and encourage the production of audiovisual works in the relevant territory. Various measures therefore exist in the audiovisual sector, and at various stages of the value chain. This section will provide an overview of a selection of support schemes, including state aid, and the main EU and international support schemes in the audiovisual sector.

2.1.1.4. State aid in the audiovisual sector

State aid schemes play a crucial role in supporting a diverse range of audiovisual works, such as films, animations, documentaries, TV programmes and other audiovisual works, at various stages of production, particularly where private investment is limited. The aim of these support schemes is therefore to support both cultural policy aims and broader

[52] European Parliament, *Resolution on Audiovisual Media Services Directive obligations in the transatlantic dialogue*, 2025/2776(RSP), 23 October 2025.

economic objectives,[53] including job creation and the overall development of the audiovisual sector. The balance between these aims can vary depending on the type of aid, with some instruments such as fiscal incentives and cash rebates focusing more on economic impacts while others, such as direct grants, prioritise cultural outcomes. State aid can come in many forms, ranging from direct public funding, such as grants, loans or advances transferred directly from state resources to beneficiaries, to indirect aid, including fiscal incentives and other financial instruments such as reimbursable loans, repayable advances or guarantees. While, according to the Cinema Communication,[54] grants and fiscal incentives are the most commonly used mechanisms, member states can also combine different forms of aid by adopting hybrid schemes that integrate multiple support mechanisms.

The European Commission assesses the compliance of state aid measures for films and audiovisual works with the internal market to ensure that they support cultural objectives without unduly distorting competition. To do so, it applies the Cinema Communication,[55] the main sector-specific framework for assessing aid for films and other audiovisual works, either directly or by analogy. Where the Communication does not apply, the Commission evaluates the measures directly under Article 107(3)(d) of the Treaty on the Functioning of the European Union (TFEU). Compatibility of such schemes with EU law is primarily ensured through the application of the "cultural test", whereby member states must demonstrate that the activities they support qualify as cultural. Based on this review, the aid may be approved, conditioned or deemed incompatible and unlawful aid may be subject to recovery.[56]

However, it should be noted that notification to the Commission, as set out in Article 108(3) TFEU, may be waived in certain cases. This applies to aid that does not exceed a total of €300 000 per single undertaking over any period of three years (*De Minimis* Aid Regulation),[57] or where the General Block Exemption Regulation (GBER)[58] applies. The GBER allows EU member states and EEA-EFTA states to grant small-scale or pre-defined compatible aid, including for audiovisual projects, without prior notification, provided that the aid promotes culture or heritage conservation and does not unfairly distort competition or trade within the EU.

Aid can be allocated either automatically, based on predefined eligibility criteria, or selectively, via a selection panel involving discretionary assessments. Although indirect aid

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[53] Olsberg•SPI, *Global Film and Television Production Incentives – A White Paper*, prepared for the Motion Picture Association, November 2024, p. 4 (Key highlights) and p. 56.
[54] Communication from the Commission on State aid for films and other audiovisual works, *EUR-Lex*, OJ C 332, 15 November 2013, paragraph 33.
[55] Communication from the Commission on State aid for films and other audiovisual works, *EUR-Lex*, OJEU C 332, 15 November 2013.
[56] Hermanns O., Radel-Cormann J., *State aid and the audiovisual sector*, *IRIS*, European Audiovisual Observatory, Strasbourg, June 2025.
[57] The *de minimis* threshold was raised from EUR 200 000 to EUR 300 000 following the 2023 revision of the *De Minimis* Aid Regulation. The new EUR 300 000 threshold entered into force on 1 January 2024 under Commission Regulation (EU) 2023/2831.
[58] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

is based on a set of criteria, its allocation is often said to be automatic or quasi-automatic once these objective criteria are met. These automatic schemes offer predictability, legal certainty and administrative speed, and are valued by producers and investors for their direct impact on investment decisions. By removing *ex ante* content selection, they also limit state involvement in creative choices, a dimension that carries significant weight from the perspective of editorial independence and democratic governance. At the same time, selective aid schemes remain important in facilitating support for culturally significant or innovative projects that may not meet automatic criteria, thus providing a mechanism for public policy aims not always served by market-driven investment.

A dual approach combining automatic mechanisms with selective quality tiers or conditionality has long been established in many jurisdictions as a pragmatic response to this tension, though it requires careful governance design and entails its own administrative complexity.[59]

2.1.1.5. Creative Europe: the flagship EU support scheme

Founded by the EU in 2014, the Creative Europe programme seeks to provide support to the media, audiovisual and other cultural sectors through transnational cooperation initiatives such as collaborations, co-productions and networks. According to the European Commission, "national-level funding alone is insufficient to support the overall competitiveness and diversity of [those] sectors". Given the EU's subsidiary role in culture, as governed by the principles set out in Article 167 TFEU, the objectives of this initiative are therefore twofold: to safeguard, develop and promote European cultural and linguistic diversity and heritage, and to increase competitiveness and economic potential to compete on a global level. In practice, the MEDIA strand of the programme provides support across the value chain of the audiovisual industry, for example by facilitating the pan-European distribution of films and series or strengthening European cinemas, notably through the Europa Cinemas network.[60] It continues to expand its scope to cover new formats, including streaming services and, more recently, video games and immersive content. On 17 December 2025, after over 10 years of existence, the European Commission released an evaluation report on the Creative Europe programme.[61] While acknowledging success in strengthening the circulation of European films, series, documentaries and other audiovisual works across national borders, the report stressed that further efforts were needed to attract wider cross-border audiences on all platforms, in particular younger generations.

The MEDIA strand of the Creative Europe programme has driven collaboration initiatives, enhancing the value of national cultural assets beyond national borders and

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[59] For detailed information about state aid schemes and fiscal incentives, refer to: Hermanns O., Radel-Cormann J., *State aid and the audiovisual sector*, op. cit., and Santanna M., Valais S., *Fiscal incentives and cash rebates in the audiovisual sector*, IRIS, European Audiovisual Observatory, Strasbourg, May 2026.
[60] *Europa Cinemas* website.
[61] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Decade of Creative Europe*, *EUR-Lex*, COM/2025/768 final, Brussels, 17 December 2025.

facilitating equal access to media and cultural content for people living in the EU. The share of supported works involving collaboration between low- and high-capacity countries has increased from less than 5% between 2014 and 2020 to around 30% between 2021 and 2023. Support for audiovisual works in lesser used languages also increased from 25% to 32% over the same period. Support is, however, still concentrated in a limited number of beneficiary countries.

The Commission further showed that, on average, films and series supported by the MEDIA strand could be viewed in 9.5 more EU countries on TV, 6.6 more in cinemas and 3.2 more on VOD services than comparable non-supported works. While the evaluation further revealed that the programme had successfully contributed to safeguarding cultural diversity, strengthening competitiveness and shaping a European ecosystem by complementing national policies, the Commission stressed that it could not counter powerful market forces arising from changing consumer behaviour and technological advances alone.

2.1.1.6. Eurimages: the Council of Europe's cultural fund

Public support schemes for audiovisual works are not limited to national or EU-driven mechanisms, but can also be structured at international level. One key instrument is Eurimages, the cultural support fund established by the Council of Europe in 1989.[62] Eurimages promotes independent filmmaking by providing financial support to feature-length films, animation and documentary films, notably by supporting and promoting international co-productions, film marketing and audience development, and encouraging co-operation between professionals across different countries.

Eurimages' international support framework is closely linked to legal instruments governing co-production. The European Convention on Cinematographic Co-production, initially signed in 1992[63] and significantly revised in 2017,[64] provides the legal basis for recognising co-productions as national works in participating countries. As provided under Article 4 of the revised Convention, cinematographic works made as multilateral co-productions and falling within the scope of the Convention are entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the parties to the Convention participating in the co-production concerned. The revision introduced greater flexibility in establishing co-productions, adapted the framework to technological changes and better considered the needs of smaller producing countries. Today, both texts coexist. The new Convention prevails if it applies between parties that have ratified it (to this day, 37 Council of Europe member states), while the 1992 Convention continues to apply in cases involving states that have not. Eurimages support takes the form of soft loans or subsidies (co-production support) or subsidies (promotion of co-production and exhibition). Soft loans are repaid on the basis of revenues generated by the projects supported.

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[62] *Eurimages* website.
[63] Council of Europe, *European Convention on Cinematographic Co-production, ETS No. 147*, 1992.
[64] Council of Europe, *Convention on Cinematographic Co-production* (revised), C*ETS No. 220*, 2017.

Building on this established model, the Council of Europe has recently extended support to series. In March 2026, at Series Mania, it opened for signature the new Convention on the Co-Production of Television and Streaming Series.[65] This is the first international treaty specifically aimed at facilitating and harmonising the rules for independently initiated co-productions of television and streaming series, reflecting the growing importance of these formats in the audiovisual landscape. The Convention transposes key principles from film co-production frameworks to series. These include co-production certification, access to national support schemes, promotion of cultural diversity and clearer rules on rights allocation between partners. It also aims to simplify and harmonise administrative procedures, making international co-productions more predictable, transparent and attractive.

Ultimately, the Convention responds to the increasing prevalence of cross-border partnerships in series production, involving collaboration between independent producers, national broadcasters and global streaming platforms. It complements and institutionalises the Council of Europe's Pilot Programme for Series Co-productions launched in 2023, which tested support mechanisms for such projects.

2.2. Horizontal digital regulation

2.2.1. Digital Services Act (DSA)

The DSA regulates digital services, in particular very large online platforms (VLOPs) and very large online search engines (VLOSEs) with over 45 million users in the EU. Due to their extensive reach, these services must comply with specific rules designed to ensure a secure online environment, including obligations to moderate and block illegal content, and to assess and mitigate any systemic risks, e.g. violations of fundamental human rights such as the right to freedom of expression and information, electoral manipulation and the dissemination of illegal or otherwise harmful content. The DSA applies to all companies that target a large number of EU users, whether they are based in Europe or elsewhere.

However, the US has accused the EU of discriminating against US firms by placing regulatory burdens on American platforms.[66] These concerns intensified after the EU imposed the first ever fine under the DSA on X (formerly Twitter) in December 2025, totalling EUR 120 million, for three violations of the DSA: the deceptive design of blue checkmarks (Article 25 DSA), the inaccessibility of its ad repository (Article 39 DSA) and restrictions on researchers' access to public data (Article 40.12 DSA).

[65] The Convention has been signed by nine countries (France, Georgia, Greece, Italy, Luxembourg, Malta, Montenegro, Poland and Portugal).

[66] United States Trade Representative, *2026 National Trade Estimate Report on Foreign Trade Barriers of the President of the United States on the Trade Agreements Program*, March 2026.

On 3 February 2026, the US House Judiciary Committee released an interim staff report entitled "The Foreign Censorship Threat, Part II: Europe's Decade-Long Campaign to Censor the Global Internet and How it Harms American Speech in the United States."[67] In this report, the US claims that the European Commission has "repeatedly pressured non-EU platforms to change their global content moderation rules",[68] censoring true information and political speech about some of the most important policy debates in recent history. The US Committee also recalls that "in December 2025, the European Commission took its most aggressive censorship step to date, fining X nearly six percent of its worldwide revenue in obvious retaliation for its protection of free speech around the globe".[69]

In an amendment to the findings and recommendations of the Special Committee on the European Democracy Shield, the European Parliament:

> *Calls to urgently investigate to clarify, in a transparent and comprehensive manner, the allegations contained in the* [...] *Report* [...]*, in particular as regards the nature and scope of Commission's engagement and regulatory interactions with major online platforms that raise allegations as to the freedom of expression's breaches; calls to explain whether, and on what legal basis, any regulatory frameworks, policy instruments or informal enforcement practices have entailed extraterritorial effects leading to the removal, suppression or downranking of lawful content in the electoral campaign period, including political speech originating in third countries; calls on the Commission to demonstrate how its actions ensure full respect for freedom of expression, democratic debate and electoral integrity, in line with fundamental rights and international democratic standards*.[70]

In summary, the implementation of the DSA has not only reshaped the regulatory landscape for online platforms in the EU, but has also fuelled growing transatlantic tensions, as the US perceives these measures as extraterritorial and discriminatory towards American companies. The ongoing debate highlights the broader challenge of balancing fundamental rights, platform accountability and the sovereignty of regulatory frameworks in a global digital market.

2.2.2. Digital Markets Act (DMA)

Core digital platforms such as GAFAM (Google, Apple, Facebook, Amazon and Microsoft), but also others like TikTok, have considerable economic power and provide an important gateway between business users and consumers. These tech giants typically enjoy a strong market reputation and possess powers that give them a significant position in the market, to the detriment of small or medium-sized enterprises (SMEs) that struggle to compete,

[67] *The foreign censorship threat, Part II: Europe's decade-long campaign to censor the global internet and how it harms American speech in the United States*, Interim Staff Report of the Committee on the Judiciary of the U.S. House of Representatives, 3 February 2026.
[68] Ibid., p. 76.
[69] Ibid., p. 139.
[70] Tobé T., *Findings and recommendations of the Special Committee on the European Democracy Shield* (2025/2069(INI)), draft report, 12 February 2026, pp. 38-39.

regardless of how innovative and efficient they may be. This detrimental effect is notably characterised by gatekeepers' ability to set commercial conditions in a unilateral manner.[71] Strong network effects also reinforce this, enabling them to connect many business and end users through the multi-sided nature of their services. This also impacts the data market, which is further enhanced by continued AI developments. Such powers create high levels of dependence and lock-in effects for both business and end users, compounded by opaque algorithms. The resulting challenges to innovation and growth result in unfair market conditions and a much narrower choice for business and end users, and may also impact quality and prices. As observed by the European Commission, this phenomenon may result in underlying markets not functioning well or failing prematurely.[72]

The DMA aims to counter such anti-competitive behaviours and ensure fair competition in the digital single market through greater transparency, accountability, contestability, fairness and openness among market competitors. It complements other competition rules, such as Articles 101 and 102 TFEU.[73] DMA rules apply to gatekeepers regardless of their place of establishment, as long as they reach end users in the EU. The DMA, however, states that focus should only be put on those services that are most broadly used by business and end users and where concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective.[74] Core platform services are qualified as gatekeepers if they meet requirements pertaining to size (impacting the internal market), constitute an important gateway for businesses to reach end users and hold an entrenched and durable position.

Undertakings that are presumed to be gatekeepers have the opportunity of submitting substantiated arguments to demonstrate that, due to exceptional circumstances, they should not be qualified as such. In April 2025, the European Commission, for example, found that Meta's online intermediation service, Facebook Marketplace, should no longer be designated under the DMA. The Commission determined that the service had less than 10 000 business users in 2024, placing it below the threshold giving rise to the presumption that it would qualify as an important gateway for business users to reach end users.[75]

The DMA operates on the basis of a "dos and don'ts" list that gatekeepers must implement in their daily operations. These rules are meant to provide for a wider or better choice of services, such as by creating more opportunities to switch providers or allowing the installation of apps from other sources. Non-compliance with the DMA is subject to sanctions that can take the form of fines of up to 10% of the company's total worldwide annual turnover or 20% for repeated infringements (Article 30 DMA). Periodic penalties up to 5% of average daily worldwide turnover may also be imposed (Article 31 DMA). Additional behavioural or structural remedies can also be imposed by the European

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[71] DMA, Recital 13.
[72] DMA, Recitals 3 and 4.
[73] *Consolidated version of the Treaty on the Functioning of the European Union*, *EUR-Lex*, *OJ* C 326, 26 October 2012.
[74] DMA, Recital 13.
[75] European Commission, *Commission finds Apple and Meta in breach of the Digital Markets Act*, Press release, 23 April 2025.

Commission following market investigations in case of systematic infringements (Article 18 DMA).

On 23 April 2025, the European Commission concluded that Apple and Meta had breached the DMA. Apple was found to have violated its anti-steering obligation, while Meta had failed to comply with the obligation to give consumers the choice of a service that uses less of their personal data. The Commission fined Apple and Meta EUR 500 million and EUR 200 million respectively.[76] Meta criticised the decision, which it called a "tariff" intended to "handicap successful American businesses," while Apple argued that the EU was "unfairly targeting" the company.[77] These perspectives align with the USTR's view, which characterised the DMA as a foreign trade barrier. According to their report, "The 'gatekeepers' designated by the DMA disproportionately capture US firms compared to their EU competitors, and therefore undermine US competitiveness in the European market by increasing the compliance costs on certain US firms while not placing a similar burden on EU competitors."

On 3 July 2025, the European Commission launched a public consultation on the first review of the DMA to assess the effectiveness of the legislation. In response, some US players voiced concern, including the Information Technology and Innovation Foundation (ITIF), a US non-profit public policy think tank funded by several technology companies including Alphabet, Amazon, Apple, Meta and Microsoft.[78] According to ITIF, the DMA is not an effective tool of competition policy and harms consumers and small businesses through its discriminatory and anti-American intent. A report by LAMA Economic Research establishes that the DMA could result in revenue losses of up to EUR 114 billion, or 0.64% of the total turnover of the most widely used digital service platforms.[79]

These developments illustrate the profound ongoing tensions between the EU's ambition to ensure fair competition in the digital sector and the US perception of targeted, discriminatory regulation against its leading technology firms. As the DMA's implementation unfolds, its long-term impact on market dynamics, platform innovation and transatlantic digital trade relations remains a focal point of debate and international scrutiny.

2.2.3. General Data Protection Regulation (GDPR)

Regarded as the gold standard for data privacy in Europe, the GDPR regulates the increasing volume of personal data and its flow across markets and between data holders. Personal data has become central to the digital sector and to economic development in general,

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[76] Ibid.
[77] Duffy C., *Trump administration's vision of US tech dominance is colliding with Europe*, *CNN Business*, 12 January 2026.
[78] Coniglio J., Kiss L., *Comments to the European Commission for Its First Review of the Digital Markets Act*, ITIF, 24 September 2025.
[79] Cennamo, C., *Economic Impact of the Digital Markets Act on European Businesses and the European Economy*, *Lama Economic Research*, June 2025.

turning it into a tradable asset. The EU has taken a leading role in protecting individuals' personal data and rights by ensuring that personal data is processed, stored and transferred under specific protective rules. These rights include, for example, the right to information, access, objection, rectification, erasure and data portability.

Globalisation and widespread technological advances open up a whole new horizon of business and user opportunities, which can even involve cross-border flows. Although data transfers to countries outside the EU are, in principle, restricted, they may be allowed if certain conditions are met. This is the case, for example, where the EU has issued an adequacy decision under Article 45 GDPR, finding that the country to which the data is transferred ensures a level of data protection essentially equivalent to that of the EU. Japan, for example, has recognised personal data protection as a fundamental right and has benefitted from an adequacy decision since July 2018.

If no adequacy decision exists, data transfers may still be possible if appropriate safeguards are provided (Article 46 GDPR) through binding corporate rules, standard contractual clauses (SCCs), codes of conduct, certification mechanisms or administrative commitments. Where neither adequacy decisions nor appropriate safeguards exist, data transfers to third countries may still be authorised under exceptional circumstances detailed in Article 49 GDPR, which allow for specific occasional processing activities under certain conditions.

Established in 2001, the Safe Harbor Principles previously ensured a sufficient level of data protection between the EU and the US by guaranteeing that certain principles of data protection were respected by both parties. US companies voluntarily adhered to it to allow the transfer of data from the EU to the US. However, this framework was invalidated by the CJEU in 2015 (Schrems I).[80] Alternatives, such as binding corporate rules and SCCs, were subsequently used to pursue activities across the Atlantic until the Privacy Shield[81] was introduced in 2016 as a new adequacy decision to fill this legal void and ensure the protection of EU citizens' personal data. Data controllers in the EU had to make sure US data processors were registered on the Privacy Shield list. In July 2020, the CJEU again ruled that the Privacy Shield did not offer sufficient safeguards, particularly regarding US intelligence services' access to data and the lack of equivalent judicial remedies, though SCCs could still be valid if additional checks on data protection levels were carried out.[82]

Following further negotiations, the European Commission granted the US an adequacy decision for the Data Privacy Framework[83] (DPF) in July 2023. Since then, personal data can be transferred between the EU and the US without SCCs but under the DPF instead.

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[80] *Maximillian Schrems v Data Protection Commissioner* [GC], European Court of Justice, Case C-362/14, 6 October 2015.

[81] *Commission Implementing Decision (EU) 2016/1250* of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield, *EUR-Lex*, *OJ* L 207.

[82] *Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems* [GC], European Court of Justice, Case C-311/18, 16 July 2020.

[83] *Commission Implementing Decision EU 2023/1795* of 10 July 2023 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate level of protection of personal data under the EU-US Data Privacy Framework.

However, the DPF has, in turn, been subject to legal challenges both on administrative grounds and with regard to substantive issues. In September 2025, the CJEU, which had been called on directly by a French politician, upheld it.[84]

Since then, the European Data Protection Board (EDPB) has adopted draft Guidelines[85] on the interplay between the DSA and the GDPR, aimed at clarifying the dual objectives of ensuring a safe online environment and protecting the processing of individuals' personal data, in particular on intermediary services such as VLOPs and VLOSEs, which process large amounts of personal data under certain DSA rules. As such, the current version of the Guidelines focuses on specific parts of the DSA, including in relation to reporting of illegal content, targeted advertising aimed at children or based on sensitive data, age verification systems and recommender systems.

At the time of writing, the period for public consultation on these Guidelines has closed and a final version is yet to come. The EDPB has announced that it is also preparing joint guidelines with the European Commission on the interplay between the GDPR and DMA on the one hand and the AI Act on the other.[86]

In the meantime, the US has established that the GDPR constitutes a digital trade barrier. According to the NTE report, "restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for enabling the functionality embedded in intelligent goods (*i.e.*, smart devices). [...] U.S. companies have [also] expressed concerns that there remains a need for clear and consistent guidance in the implementation and enforcement of the GDPR."[87]

These ongoing developments illustrate the complex balance the EU seeks to achieve between strong data protection and facilitating international data flows, a balance that continues to shape transatlantic digital relations. The evolving regulatory landscape is further complicated by new challenges posed by emerging technologies and the increasing interconnection of digital markets.

2.2.4. AI Act

First developed in the 1950s, Artificial Intelligence (AI) has now become an integral part of our daily lives, both for business and end users. Although disruptive, AI is already firmly established in the digital economy and impacts many sectors. Its border-free operation makes it another core element of international trade. However, innovation and productivity made possible by AI are generally opposed to concerns about safeguarding certain fundamental rights, the impact on users' engagement and empowerment.

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[84] *Philippe Latombe v. European Commission*, European Court of Justice, Case T-553/23, 3 September 2025.
[85] *Guidelines 3/2025* on the interplay between the DSA and the GDPR.
[86] European Data Protection Board, *Interplay between the DSA and the GDPR: EDPB adopts guidelines*, 12 September 2025.
[87] United States Trade Representative, *2026 National Trade Estimate Report on Foreign Trade Barriers of the President of the United States on the Trade Agreements Program*.

Adopted in 2024, the EU's AI Act is the first regulation of its kind to regulate the development and use of AI, creating consequences for content creation and platform accountability. The EU rules address AI in terms of risk, ranging from minimal to high and unacceptable risks (such as social scoring and manipulative AI). The AI Act also regulates General-Purpose AI (GPAI) models, which can pose systemic risks, by setting strict transparency and copyright rules.

Penalties can be imposed as administrative fines or as a percentage of the company's total worldwide annual turnover for the preceding financial year. For non-compliance with the prohibition of the AI practices concerned, these penalties can amount to either EUR 35 million or 7% of the company's total worldwide annual turnover for the preceding financial year, whichever is higher (Article 99).

In the EU, member states must designate and empower national competent authorities (Article 77 AI Act). However, the AI Act also has extraterritorial effects. The rules apply to AI providers whether they are established in the EU or not, as long as the AI system is placed or put into service in the EU. They also apply to deployers whose output is used in the EU.

The fact that the effective functioning of AI relies on the free flow of data and on the use of already existing works directly impacts well-established rights such as copyright and data protection. However, the EU's protective measures, including substantial fines and extraterritorial reach, are deemed too restrictive by the US, which has labelled the AI Act as a foreign trade barrier.

According to the 2026 NTE report, concerns have been expressed in particular about source codes, trade secrets and copyright protection. It also stresses that "the European Committee for Standardization and the European Committee for Electrotechnical Standardization have launched a dedicated technical committee (JTC 21) to develop harmonized standards that will support the implementation of the AI Act, including a framework for AI trustworthiness and standards for AI risk management and quality assurance". For the US, it is unclear whether these standards will be consistent with existing ISO standards such as ISO 42001. If not, the US emphasises that it would need to adapt to EU-specific requirements.[88]

2.2.5. Framework Convention on Artificial Intelligence

In parallel to the EU's AI Act, the Council of Europe adopted the Framework Convention on Artificial Intelligence, the first international binding instrument of its kind.[89] The text, drafted and negotiated by the Committee on Artificial Intelligence (CAI), aims to be technology-neutral and complement existing international standards on human rights, democracy and the rule of law to ensure consistency with activities involving AI systems. It

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[88] Ibid.

[89] *Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law*, *CETS No. 225.*

covers in particular the use of AI systems by public authorities, including private actors acting on their behalf, and private actors.

Activities within the lifecycle of AI systems must comply with the following fundamental principles: human dignity and individual autonomy; equality and non-discrimination; respect for privacy and personal data protection; transparency and oversight; accountability and responsibility; reliability; safe innovation.

The Framework Convention further requires states to ensure the provision of a number of remedies, procedural rights and safeguards, which include to: document the relevant information regarding AI systems and their usage and to make it available to affected persons; make the information sufficient to enable people concerned to challenge the decision(s) made through the use of the system or based substantially on it, and to challenge the use of the system itself; provide effective ways to lodge a complaint to competent authorities; provide effective procedural guarantees, safeguards and rights to affected persons in connection with the application of an artificial intelligence system where an artificial intelligence system significantly impacts upon the enjoyment of human rights and fundamental freedoms; ensure that notices informing that one is interacting with an artificial intelligence system and not with a human being are provided.

Opened for signature on 5 September 2024, the Framework Convention was signed by 20 parties, including the EU and the US. Upon its signature, the US government stated that the Convention is "well-aligned with existing U.S. policy, such as the requirements for governance, innovation, and risk management of AI systems released by the White House Office of Management and Budget's policy on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence, as well as Executive Orders and policy developed by multiple administrations".[90]

The rapid evolution of AI regulation and standards thus adds yet another layer of complexity to transatlantic digital trade, deepening the need for ongoing dialogue and coordination between the EU and the US on emerging technologies.

2.2.6. Digital Omnibus Package

In November 2025, the European Commission unveiled its Digital Omnibus Package and presented two separate legislative initiatives: the Digital Omnibus Regulation[91] and the

[90] Bureau of Democracy, Human Rights, and Labor, *The Council of Europe's Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law*.
[91] Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as regards the simplification of the digital legislative framework, and repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868, and Directive (EU) 2019/1024 (*Digital Omnibus*).

Digital Omnibus on AI Regulation.[92] The Package is also accompanied by the Data Union Strategy and a proposal for a European Business Wallet.

The Package aims to simplify the application of the digital regulatory framework, which has been widely expanded since 2020, with the introduction, *inter alia,* of the GDPR, Data Governance Act,[93] DMA, DSA, Cyber Resilience Act[94] and AI Act. The European Commission has notably stated that the accumulation of rules has also had an adverse effect on competitiveness and, through these initiatives, seeks solutions that will simplify, "by design", regulatory compliance for companies and start-ups whose administrative burdens have piled up with the introduction of each new legal framework. These two legislative proposals notably address matters of data access, privacy, AI and cybersecurity, and propose amendments to certain elements of legal frameworks such as the GDPR, ePrivacy Directive, Data Act, NIS2, DORA and AI Act to better align obligations across each regulation, limiting accumulations, discrepancies and ensuring a harmonised environment, and to allow for an easier and freer flow of data between different administrations.

The Digital Omnibus Regulation proposes, *inter alia,* ways of streamlining cybersecurity incident reporting by bringing all related reporting obligations under the umbrella of a single reporting mechanism. The acceleration of the digitalisation of public services with less dependency on infrastructures based outside the EU is also an important element of this initiative. Parties concerned would need to provide information or data only once to the administration through the Once Only Technical System,[95] and a federated cloud system (Gaia-X) would make it possible to link many cloud service providers and users together.[96] The European Commission expects these simplification efforts to save up to EUR 5 billion in administrative costs by 2029.

The Digital Omnibus on AI Regulation was adopted on 29 June 2026. It proposes targeted amendments to the AI Act, delaying certain obligations and deadlines: the application of watermarking obligations on AI-generated content is delayed until 2 December 2026, rules for stand-alone high-risk AI systems will apply as of 2 December 2027 and those for AI systems embedded as safety components and covered by EU sectoral legislation on safety and market surveillance from 2 August 2028. It also prohibits AI systems that generate non-consensual sexually explicit and intimate content or child sexual abuse material, such as AI "nudification" apps, and introduces simpler rules and clearer governance, extending certain privileges for small and medium-sized enterprises to small mid-cap companies.

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[92] Regulation of the European Parliament and of the Council amending Regulations (EU) 2024/1689, (EU) 2018/1139 and (EU) 2023/1230 as regards the simplification of the implementation of harmonised rules on artificial intelligence (*Digital Omnibus on AI*).
[93] *Regulation (EU) 2022/868* of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724.
[94] *Regulation (EU) 2024/2847* of the European Parliament and of the Council of 23 October 2024 on horizontal cybersecurity requirements for products with digital elements and amending Regulations (EU) No 168/2013 and (EU) No 2019/1020 and Directive (EU) 2020/1828.
[95] See the European Commission website page on *Once Only Technical System* (OOTS).
[96] See the *Gaia-X* website.

Negotiations on the Digital Omnibus Regulation are still ongoing at the time of writing. Its reach and impact are still to be seen, as the proposal has sparked concern and been contested by certain privacy and digital rights groups.

Alongside its work on the Digital Omnibus Package, the European Commission published its conclusions to the Digital Fairness Fitness Check in 2024. This check was aimed at evaluating the continued appropriateness, coherence and effectiveness of the EU's digital regulatory framework and identifying regulatory overlaps, inconsistencies, synergies, digitalisation potential and cumulative impacts between the various EU digital and consumer protection rules currently in force. The European Commission consequently announced a legislative consumer protection initiative to strengthen digital fairness online in the form of a "Digital Fairness Act",[97] which would address certain issues raised during the Fitness Check, such as dark patterns, marketing by social media influencers, the addictive design of digital products and online profiling, especially when consumer vulnerabilities are exploited for commercial purposes. A public consultation was launched in 2025, with a proposal expected in the fourth quarter of 2026.[98] The risks of adding a new legal framework to an already complex legal framework have since come in for criticism.

[97] See the European Commission webpage on *2026 Commission work programme*, COM (2025) 870.
[98] See the European Commission webpage on *Public consultation on the Digital Fairness Act*.

3. International trade framework for the audiovisual sector

The regulation and promotion of audiovisual services lie at the intersection of international trade, cultural policy and technological change. As both economic assets and carriers of cultural identity, audiovisual works are governed by a complex legal framework encompassing EU external trade policy, World Trade Organisation (WTO) disciplines,[99] as well as a variety of regional, multilateral and sector-specific instruments.

This chapter outlines the main trade rules shaping global governance in the audiovisual sector and the scope for public intervention through EU instruments, multilateral frameworks, regional agreements, cultural conventions and tax treaties. It further considers how technological disruption and emerging geopolitical tensions are influencing the EU's regulatory autonomy in this sector. Through this lens, the chapter explores both the opportunities and challenges for the EU and its member states in protecting cultural interests while engaging in global trade.

3.1. EU trade policy framework for the audiovisual sector

3.1.1. Legal basis under EU treaties

The European Union's competence in the field of trade policy is grounded in its primary law and, in particular, the Treaty on the Functioning of the European Union (TFEU). Under Article 3(1)(e) TFEU, the common commercial policy falls within the Union's exclusive competence. This means that, in this field, it is for the Union alone to act through its institutions, while member states may not adopt binding measures unless they are empowered to do so by the Union or are implementing Union acts. Article 3(2) TFEU reinforces this exclusivity by providing that the Union also has exclusive competence to conclude an international agreement where such conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its internal competence or may affect common rules or alter their scope.[100]

The scope and purpose of this competence are further specified in Articles 206 and 207 TFEU. Article 206 sets out the broad objective of the Union's trade policy: to contribute,

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[99] In WTO terminology, "disciplines" are the legally binding rules, obligations and constraints contained in WTO agreements that regulate the trade-related policies and practices of WTO members. These disciplines establish what members may or may not do in specific policy areas (e.g. subsidies, tariffs, technical regulations) and provide the basis for monitoring and dispute settlement under the WTO framework.
[100] *Article 3* TFEU.

in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.[101] Article 207 then provides the substantive and procedural framework for the common commercial policy.[102] It confirms that this policy covers not only trade in goods and services, but also the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping[103] or subsidies.[104] It is therefore the main legal basis enabling the Union to negotiate and conclude international trade agreements in these fields, in accordance with the broader procedure laid down in Article 218 TFEU.[105]

At the same time, Article 207 TFEU contains an important safeguard for particularly sensitive sectors. Thus, in the field of trade in cultural and audiovisual services (as well as trade in social, education and health services), the Treaty requires unanimity in the Council for the negotiation and conclusion of international agreements where those agreements risk prejudicing the Union's cultural and linguistic diversity. This requirement departs from the ordinary rule of qualified majority voting and gives each member state a stronger voice where trade commitments might have an impact on areas closely linked to national identity, public policy choices or cultural policy.

In practice, the requirement of unanimity significantly shapes the Union's external trade policy. While it does not exclude audiovisual services from the scope of the common commercial policy, it does mean that agreements affecting those services may be subject to stricter decision-making rules. Consequently, member states retain the ability to influence the Union's negotiating position where cultural diversity, public service broadcasting traditions or national audiovisual policies are at stake. This legal framework is one reason why audiovisual services have long been treated with particular caution in EU trade negotiations and why cultural considerations often play a central role in discussions on market access and liberalisation.

It is also worth noting that, in exercising its trade policy powers, the Union must take into account broader Treaty principles and objectives, such as sustainable development, cultural diversity, and the promotion of European values and interests, in its external action. Notably, Article 167 TFEU requires the EU to contribute to the flowering of the cultures of the member states and to respect their national and regional diversity, which is particularly relevant in the field of cultural and audiovisual policy.[106] This framework enables the EU to represent its member states collectively in key international trade forums

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[101] *Article 206* TFEU.
[102] *Article 207* TFEU.
[103] According to the *WTO glossary*, "dumping" occurs when goods are exported at a price less than their normal value, generally meaning they are exported for less than they are sold in the domestic market or third-country markets, or at less than production cost.
[104] According to the *WTO glossary*, there are two general types of subsidies: export and domestic. An export subsidy is a benefit conferred on a firm by the government that is contingent on exports. A domestic subsidy is a benefit not directly linked to exports.
[105] *Article 218* TFEU.
[106] *Article 167* TFEU.

and to act as the principal negotiator and signatory of trade agreements with third countries.

3.1.2. Key dynamics in audiovisual trade negotiations

Trade negotiations involving the audiovisual sector require careful management of competing interests and policy objectives. Beyond commercial considerations, these negotiations are often characterised by close scrutiny of proposed commitments, with parties carefully assessing how each concession may affect domestic policy space. In particular, the reciprocal nature of multilateral and regional negotiations, such as those conducted under the framework of the World Trade Organisation (WTO), means that states must balance offers of market access with the need to maintain regulatory discretion over cultural policy instruments.

Audiovisual trade negotiations are typically shaped by reciprocal concessions, sectoral trade-offs and the influence of domestic interest groups advocating for either increased liberalisation or preservation of regulatory autonomy. Negotiators must reconcile the potential benefits of expanded market access and cross-border trade against the economic and social costs of exposing domestic industries to international competition. These tensions are especially pronounced in the audiovisual sector, where technological convergence and digital distribution have amplified the cross-border circulation of content, while many states continue to invoke cultural policy as grounds for differentiated treatment.

Audiovisual works hold a dual legal and economic status: they are both marketable goods or services and vehicles for cultural expression. Consequently, regulatory choices in this area may have direct implications for cultural diversity, media pluralism and national identity, even as they remain subject to international trade disciplines. This duality explains why audiovisual policy has historically been treated as a sensitive area in trade negotiations and why states strive to maintain flexibility to support domestic production and distribution. As a result, trade agreements frequently contain explicit or implicit sectoral exclusions, commonly referred to as “carve-outs,” for culture and audiovisual services. These carve-outs reflect the political weight of the cultural and creative sector, alongside a broader recognition that public authorities must preserve the ability to pursue cultural policy objectives through instruments such as quotas, subsidies and other support measures. This approach is apparent at WTO level, where members, including the EU, frequently limit or refrain from scheduling commitments in audiovisual services. Regional agreements, such as EU trade deals, similarly feature specific exceptions or reservations designed to protect regulatory autonomy. The persistence of these carve-outs highlights the ongoing tension between trade liberalisation and the preservation of cultural sovereignty in the audiovisual domain.

3.1.3. Preserving EU sovereignty: the EU Anti-Coercion Instrument

The intersection of international trade rules and audiovisual policy has become increasingly complex as digitalisation and global market integration reshape the sector. The cross-border nature of streaming platforms and other digital distribution models has challenged traditional approaches to supporting domestic production and safeguarding cultural diversity. In response, the EU and a growing number of countries have expanded their regulatory framework to include on-demand services and taken steps to reinforce measures supporting national audiovisual production.[107] These efforts reflect the EU's broader goal of preserving cultural diversity in the digital age, but have also generated trade tensions, particularly with the United States, over policies such as quotas in VOD service catalogues and investment obligations. This highlights the growing overlap between EU audiovisual regulation and international economic relations.

More broadly, the EU has strengthened its ability to respond to external economic pressure in certain sectors through Regulation (EU) 2023/2675 on the protection of the Union and its Member States from economic coercion by third countries (the "Anti-Coercion Instrument"),[108] which entered into force on 27 December 2023.[109] This transversal instrument establishes a legal framework for addressing situations where third countries seek to influence EU or member state policymaking by applying or threatening measures affecting trade or investment, thereby safeguarding the Union's sovereign policymaking authority and regulatory autonomy.

Under Article 2 of the Regulation, "economic coercion" refers to situations in which a third country seeks to compel the Union or a member state to adopt or refrain from adopting certain policies by applying, or threatening to apply, measures affecting trade or investment. Such practices are recognised as illegitimate interference with the sovereign policymaking authority of the Union and its member states.

The assessment of economic coercion is conducted on a case-by-case basis, taking account of the circumstances, objective and effect of the measures concerned (Recitals 9-12, Article 3). Designed primarily as a deterrent, the instrument also enables the EU to adopt countermeasures where necessary in areas including trade, services, foreign direct investment, public procurement and intellectual property. In this way, it reinforces the EU's ability to safeguard its regulatory autonomy and defend its policy choices, including in the audiovisual sector, against external pressures.[110]

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[107] See Chapter 2 of this publication. See also the European Audiovisual Observatory's OPUS Database on national legislation promoting European audiovisual works across Europe, and, at global level: Garcia J. J., *State of OTT video regulation in the Americas, Cullen International*, 6 September 2022.
[108] Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries.
[109] See the European Commission website, Trade and Economic Security, *Protecting against coercion* (consulted on 12 June 2026).
[110] Peggy C., *Film industry fears being swept into EU-US tariff war,* *Euronews*, 6 May 2025; Michaels D., Gordon M., and Mackrael K., *Trump Administration Targets Europe's Digital Laws as a Threat to Basic Rights and U.S. Business*, *Wall Street Journal*, 15 May 2025.

3.2. WTO rules for audiovisual goods and services

Alongside the EU's efforts to safeguard regulatory autonomy, the global governance of audiovisual trade is also shaped by multilateral agreements established by the WTO.[111] The audiovisual sector's treatment under the WTO framework is governed by several key agreements: the General Agreement on Tariffs and Trade (GATT) and the Agreement on Subsidies and Countervailing Measures (SCM Agreement) for audiovisual goods; and the General Agreement on Trade in Services (GATS) for audiovisual services. Each of these sets out distinct disciplines for market access, non-discrimination and the use of public support measures.

3.2.1. Audiovisual goods under the GATT and SCM Agreement

Trade in audiovisual content is governed by both the rules related to trade in goods and trade in services, depending on the form of delivery and the regulatory characterisation of the transaction. Physical audiovisual products, such as films distributed on DVDs, Blu-rays and other tangible carriers, fall within the scope of the 1994 General Agreement on Tariffs and Trade (GATT).[112] Subsidy measures affecting the production or trade of such goods may additionally fall under the Agreement on Subsidies and Countervailing Measures (SCM Agreement),[113] insofar as they constitute a financial contribution conferring a benefit in relation to goods production or export.

The GATT establishes the core non-discrimination principles governing trade in goods. The "most favoured nation" (MFN) obligation requires WTO members to grant the same trading terms to all other members without discrimination. The "national treatment" obligation further requires that imported goods be treated no less favourably than similar domestic products once they have entered the market. These principles constrain regulatory autonomy in the audiovisual goods sector, including with respect to customs duties, internal taxation and regulatory measures affecting the distribution of physical media. Accordingly, measures that formally or materially disadvantage imported cinematographic works on physical carriers relative to domestic productions may fall within the scope of GATT scrutiny.

In parallel, the SCM Agreement sets the parameters for the use of subsidies in relation to the trade of goods. It prohibits certain categories of subsidies, in particular those that are contingent upon export performance or the use of domestic over imported goods (e.g. local content requirements). In sectors involving trade in goods, such measures may include production support schemes or fiscal incentives that, if specific and causing adverse effects, may be challenged as "actionable subsidies" under the SCM Agreement. In the

[111] WTO, *Marrakesh Agreement Establishing the World Trade Organization*, Marrakesh, 15 April 1994.
[112] WTO website on *The GATT years: from Havana to Marrakesh*.
[113] WTO website on *Agreement on Subsidies and Countervailing Measures (SCM)*.

audiovisual sector, however, many such measures relate primarily to services and are more commonly assessed under the GATS framework rather than the SCM Agreement.

A central issue in contemporary trade law concerns the classification of digitally delivered audiovisual content. Streaming services and online audiovisual platforms are generally analysed under the GATS, particularly under commitments relating to audiovisual, distribution or telecommunications services, depending on the structure of the service. Unlike the GATT/SCM framework, the GATS does not contain detailed subsidy disciplines, although Article XV envisages future negotiations on the matter. However, such disciplines have not been operationalised, resulting in a comparatively limited regulatory framework for subsidies affecting trade in services.

Despite the formal applicability of WTO disciplines, disputes concerning audiovisual trade remain relatively limited. This is partly attributable to the sensitivity of cultural policy, as reflected in the limited scope of members' specific commitments under the GATS in the audiovisual sector, as well as the design of regulatory measures that preserve domestic cultural policy space while remaining formally within WTO disciplines.

3.2.2. Audiovisual services under the GATS

Audiovisual services are governed within the framework of the GATS.[114] Sectoral classification for scheduling purposes is guided by the WTO Services Sectoral Classification List (MTN.GNS/W/120),[115] which provides a non-binding reference framework used by WTO members in structuring their specific commitments. Within this list, audiovisual activities are primarily situated under "communication services", which include a subsection covering motion picture and video tape production and distribution services, motion picture projection services, radio services and television services. In WTO practice, these categories have served as a functional basis for scheduling commitments relating to the creation, production, distribution and dissemination of audiovisual content.

Although the W/120 classification predates the emergence of digital streaming technologies and does not expressly refer to on-demand audiovisual media services, WTO members have generally relied on existing classifications rather than creating a separate category for digitally delivered content. As a result, streaming services are typically analysed by reference to their functional characteristics and delivery mode and may be scheduled under different headings depending on the member's approach. In particular, such services may fall within audiovisual services, distribution services or telecommunications-related transmission services, depending on how the service is defined in a member's schedule. The Central Product Classification (CPC) system is frequently used as an interpretative reference, with CPC 961 (motion picture and video tape production and distribution services) commonly associated with audiovisual content services, while CPC 7524 may be relevant where the service is characterised as a telecommunications

[114] WTO, *General Agreement on Trade in Services, Annex 1B*.
[115] United Nations Statistics Division (UNSD), *WTO Services Sectoral Classification List*.

transmission activity. This flexible classification practice reflects the absence of a dedicated WTO category for digitally convergent audiovisual services.[116]

During the Uruguay Round negotiations (1986–1994), a multilateral trade negotiation aimed at extending global trade rules to new areas such as services, intellectual property and agriculture, audiovisual services emerged as one of the most politically sensitive and contentious sectors. A key point of divergence concerned the extent to which members should keep regulatory autonomy for cultural policy objectives, often discussed in political terms as the "cultural exception." The European Communities, supported by several other members, advocated for the inclusion of a specific annex that would allow members to cater for their cultural industries through measures such as broadcasting quotas, subsidies and other forms of cultural support. However, no general "cultural exception" or sectoral exclusion was incorporated into the final text of the GATS, and audiovisual services remain fully within its scope.

Rather than relying on a formal exemption, WTO members have primarily preserved policy space through the scheduling of commitments. In practice, many members, including the EU, Canada, India and several other significant markets, have undertaken limited or no specific commitments in audiovisual services, or have inscribed significant limitations on market access and national treatment. In addition, certain members have scheduled MFN exemptions under Article II:2 of the GATS, although such exemptions are exceptional in nature, subject to review and do not constitute a general legal mechanism for excluding a sector from MFN obligations.[117] The predominant regulatory outcome is therefore not exclusion from the Agreement, but rather the absence or narrow scope of liberalisation commitments in a sensitive cultural sector.

It should also be noted that the GATS contains general exceptions under Article XIV, which permit members to adopt measures necessary to protect public morals and maintain public order, among other objectives. However, WTO jurisprudence has consistently interpreted these exceptions narrowly, requiring a necessity and proportionality analysis. Consequently, they do not function as a comprehensive safeguard for cultural policy autonomy.

Accordingly, the notion of "cultural exception" in WTO law does not reflect a formal legal doctrine, but rather a labelling term for the combination of limited scheduling commitments, selective MFN exemptions and domestic regulatory autonomy retained within the GATS framework. This approach is complemented at the international level by the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions,[118] adopted over a decade later, which recognises the sovereign right of states

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[116] UNSD, *GATS classification (CPC, Version 3.0 - Code 961)*.

[117] Audiovisual services is one of the sectors where the number of WTO members with specific commitments is among the lowest. Only 18 WTO members undertook commitments following the conclusion of the Uruguay Round, with some additional members doing so as part of their process of accession to the WTO. Countries with significant audiovisual markets that have undertaken commitments in the sector include China, India, the Republic of Korea, Japan, Mexico and the United States. For more details, please refer to *Schedules of WTO members with specific commitments on audiovisual services*.

[118] UNESCO, *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, 20 October 2005.

to adopt cultural policies promoting cultural diversity. While not altering WTO obligations, it shapes the broader normative context of audiovisual trade regulation.

Focus box – Key notions of the GATS
The GATS is concerned with trade that takes place through four modes of supply: (1) **cross-border supply** (services supplied from a supplier in one country to a consumer in another, e.g. direct broadcasting of TV programmes abroad); (2) **consumption abroad** (a consumer or his/her property is receiving a service in another country, e.g. filming abroad in a certain location); (3) **commercial presence** (temporary or permanent establishment through investment abroad, e.g. co-producing a motion picture abroad); (4) **presence of natural persons** (where individuals move to a foreign country on a non-permanent basis to supply a service, e.g. a foreign film crew is making a film for a local film studio). The GATS aims to progressively eliminate barriers to trade in services for market access and national treatment across all modes of supply through successive rounds of negotiations. It is based on the principles of most-favoured-nation (MFN) treatment or non-discrimination and transparency, and aims to ensure the increasing participation of developing countries in services trade. One of the issues most pertinent to audiovisual services under the GATS relates to negotiations on specific commitments under national treatment (Article XVII). The GATS does not explicitly define the types of limitations that countries may negotiate under that article. However, local content requirements and domestic support for local producers are typical examples of measures falling under national treatment.

3.2.3. Intellectual property rights under the TRIPS

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)[119] plays a central role in the regulation of intellectual property within the multilateral trading system and has significant implications for the audiovisual sector. It establishes minimum standards of protection that all WTO members must provide for a range of intellectual property rights, including copyright and related rights, trademarks and certain categories of patents. Rather than fully harmonising national laws, the TRIPS sets baseline obligations while allowing members a degree of flexibility in implementation.

In the audiovisual context, the TRIPS is particularly relevant through its incorporation and reinforcement of international copyright norms, notably those reflected in the Berne Convention for the Protection of Literary and Artistic Works[120] and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.[121] Audiovisual works such as cinematographic productions are protected as copyrighted works, while performers, producers and broadcasting organisations benefit from related (or neighbouring) rights. These protections ensure that rightsholders have exclusive rights over the reproduction, distribution and communication to the public of their works, subject to permitted limitations and exceptions. The framework has been

[119] WTO, *Agreement on Trade-Related Aspects of Intellectual Property Rights* (unamended), signed on 15 April 1994.
[120] World Intellectual Property Organization (WIPO), *Berne Convention for the Protection of Literary and Artistic Works*, adopted on 9 September 1886.
[121] WIPO, *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, adopted on 26 October 1961.

further developed in the digital environment by the WIPO Copyright Treaty[122] and the WIPO Performances and Phonograms Treaty,[123] which clarify and extend the application of copyright and related rights to online uses, including the "making available" of works and performances over digital networks.

By establishing enforceable minimum standards, the TRIPS contributes to reducing legal uncertainty in cross-border trade and supports investment in audiovisual production and distribution. It requires members to provide effective enforcement mechanisms, including civil and, in certain cases, criminal procedures, thereby strengthening the ability of rightsholders to act against infringement, including piracy. At the same time, the TRIPS recognises the need for balance between rights protection and public interest considerations, allowing members to adopt limitations and exceptions, provided they comply with the so-called three-step test.[124]

From a public policy perspective, the TRIPS has significantly influenced domestic copyright frameworks, particularly in areas such as rights clearance, licensing systems and enforcement practices. While it does not create a unified global copyright system, it establishes a common legal baseline that facilitates international exploitation of audiovisual works and supports the functioning of global media markets.

In conclusion, the TRIPS does not directly regulate trade in audiovisual services or goods as such, but it provides the essential legal infrastructure for the protection and commercialisation of audiovisual content. By securing intellectual property rights across jurisdictions, it underpins the economic viability of the audiovisual sector while leaving members a degree of regulatory flexibility in the design of their domestic cultural and copyright policies.

3.2.4. Other WTO agreements relevant to the audiovisual sector

Several additional WTO agreements indirectly affect trade in the audiovisual sector by shaping the broader regulatory environment:

- **Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement):**[125] This agreement allows members to impose anti-dumping measures on imported goods sold below normal value where this causes harm to domestic industries. Although rarely applied to audiovisual goods, it remains a potential instrument where imports of physical media (e.g. films on tangible carriers) are alleged to distort market conditions.

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[122] WIPO, *WIPO Copyright Treaty* (WCT), adopted on 20 December 1996.
[123] WIPO, *WIPO Performances and Phonograms Treaty* (WPPT), adopted on 20 December 1996.
[124] The three-step test, as articulated in Article 13 of the TRIPS Agreement, permits limitations and exceptions to copyright and related rights only where such exceptions: (1) are confined to certain special cases, (2) do not conflict with a normal exploitation of the work, and (3) do not unreasonably prejudice the legitimate interests of the rightsholder. See: WTO, *TRIPS Agreement*, Article 13.
[125] WTO, *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.

- **Agreement on Trade-Related Investment Measures (TRIMS Agreement):**[126] The TRIMS Agreement prohibits investment measures that are inconsistent with GATT obligations, in particular local content requirements and trade-balancing measures. In the audiovisual sector, this limits the use of certain performance requirements imposed on foreign investors, thereby constraining how cultural or industrial policy objectives may be pursued through investment regulation.

- **Agreement on Technical Barriers to Trade (TBT):**[127] The TBT Agreement governs technical regulations, standards and conformity assessment procedures. In the audiovisual field, it is primarily relevant to equipment and technological standards (e.g. broadcasting devices, digital interfaces and interoperability requirements) that may affect market access and the distribution of content.

Taken together, these agreements contribute to a multilayered legal framework within which members must balance trade obligations with cultural, industrial and technological policy objectives.

3.2.5. The WTO Dispute Settlement Body

The WTO Dispute Settlement Body (DSB)[128] is the central organ that administers the dispute settlement system established under the WTO Dispute Settlement Understanding (DSU).[129] It is responsible for establishing panels, adopting reports and authorising countermeasures in cases of non-compliance. The DSB oversees a formal adjudicatory process that begins with consultations and may proceed to panel review and, where available, appellate review.

For the audiovisual sector, the DSB constitutes the principal forum in which WTO members may challenge trade-restrictive measures such as discriminatory taxation, quantitative restrictions or regulatory conditions affecting market access. This is particularly relevant where cultural policy instruments intersect with WTO obligations and the limits of regulatory autonomy are tested.

WTO jurisprudence has addressed such tensions in several cases. In the China, Publications and Audiovisual Products case (DS363),[130] the United States successfully challenged various Chinese restrictions on the importation and distribution of audiovisual goods and services. The Panel and WTO Appellate Body found violations of both GATT and GATS obligations, while confirming that general exceptions (e.g. public morals under GATT Article XX) remain subject to strict necessity and non-discrimination requirements.[131]

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[126] WTO, *Agreement on Trade-Related Investment Measures*.
[127] WTO, *Agreement on Technical Barriers to Trade*.
[128] See the WTO website, *Dispute Settlement Body* (DSB) (consulted on 8 June 2026).
[129] US Department of Commerce, *WTO Dispute Settlement Understanding*.
[130] WTO, *China – Publications and Audiovisual Products* (DS363).
[131] WTO, *DS363 Appellate Body Report*.

Similarly, in the case of Canada – Certain Measures Concerning Periodicals (DS31),[132] measures designed to protect domestic magazine publishers were found to be inconsistent with the GATT, underscoring that cultural policy objectives do not exempt members from core trade disciplines.

Since 2019, however, the functioning of the system has been significantly affected by the paralysis of the WTO Appellate Body following the United States' blockage of new appointments. In response, a group of members, including the EU and China, established the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) under Article 25 DSU, providing an alternative appellate mechanism among its participants.[133] As this arrangement is not multilateral, non-participating members may still "appeal into the void," delaying dispute resolution. These developments have reduced the predictability and coherence of WTO dispute settlement, including in sensitive sectors such as audiovisual services.

3.3. Regional and plurilateral trade agreements

Regional and preferential trade agreements, in particular Free Trade Agreements (FTAs), complement the multilateral trading system by establishing commitments that often go beyond those undertaken within the WTO framework. FTAs typically provide for the reduction or elimination of tariffs and may address non-tariff barriers, regulatory cooperation and service liberalisation, thereby granting preferential treatment among the parties. Under Article XXIV of the GATT and Article V of the GATS, such agreements must be notified to the WTO and must not raise overall barriers to trade with third countries.[134]

The EU provides a prominent example, with an extensive network of FTAs, including the Comprehensive Economic and Trade Agreement (CETA)[135] with Canada and the EU–Japan Economic Partnership Agreement (EPA).[136] Such agreements frequently preserve regulatory space for sensitive sectors, notably audiovisual services, through reservations and specific commitments that limit liberalisation. This reflects the EU's longstanding approach to safeguarding cultural policy objectives, including the use of quotas, subsidies and other support measures, within its trade policy framework.

At the regional level, the EU itself represents an advanced form of economic integration, characterised by the internal market and the free movement of goods, services, persons and capital, supported by harmonised rules and supranational institutions. This level of integration goes significantly beyond typical FTAs.

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[132] WTO, Canada — Certain Measures Concerning Periodicals (DS31).
[133] Geneva Trade Platform, *Multi-Party Interim Appeal Arbitration Arrangement* (MPIA).
[134] See the WTO website, GATT 1994 Art. XXIV; GATS Article V; *WTO Transparency Mechanism for Regional Trade Agreements*, WT/L/671 (2006).
[135] European Union, *Comprehensive Economic and Trade Agreement (CETA) between Canada, of [sic] the one part, and the European Union and its Member States, of [sic] the other part*, *EUR-Lex*, *JO* L 11, 14 January 2017.
[136] European Union web site, *Economic partnership agreement between the EU and Japan*, *EUR-Lex*, (last updated on 11 July 2024).

Despite the proliferation of FTAs, recent developments indicate a more complex global trade environment. Since the global financial crisis, the expansion of preferential liberalisation has been accompanied by an increase in trade-restrictive measures, often targeted at specific partners or sectors, reflecting a shift towards greater state intervention and strategic trade policy.[137]

Bilateral and plurilateral agreements may also take more limited forms than comprehensive FTAs. Such instruments often focus on specific issues, such as regulatory cooperation, mutual recognition or sectoral access, allowing parties to pursue incremental liberalisation where broader agreements are politically or economically difficult to achieve.

3.4. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

Against the background of WTO trade disciplines and regional agreements, cultural policy objectives are further articulated in international public law, notably through the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Adopted in 2005 and in force since 2007, the Convention constitutes the principal international instrument recognising the legitimacy of public intervention in support of cultural diversity, including in the audiovisual sector.

The Convention recognises audiovisual works as "cultural activities, goods and services" that embody or convey cultural expressions as set out in Article 4.2, encompassing creative outputs that reflect identities, values and meanings, and that combine economic value with cultural significance (Article 4.4). This dual character forms the legal and policy rationale for targeted support, expressly acknowledged by Article 1(g). The notion of "cultural policies and measures" (Article 4.6) is formulated in broad terms, comprising a range of actions at any level of government that directly affect the creation, production, dissemination, distribution of and access to such expressions.

Article 6 of the Convention is particularly significant, affirming the sovereign right of parties to adopt measures aimed at protecting and promoting the diversity of cultural expressions within their territories, including public financial support (Article 6.2(d)). The Convention's Operational Guidelines further clarify that such measures may include subsidies, low-interest loans, guarantee funds, microcredit, technical assistance, tax benefits (Operational Guidelines, Article 6.4.2), and fiscal incentives to increase private sector contributions to technological innovation and the culture sector (Operational Guidelines, Article 6.4.3).[138]

For the EU and its member states, the Convention provides an important normative reference supporting policies aimed at promoting cultural diversity, including in the audiovisual field. While the Convention complements the internal EU legal order by grounding cultural support in international law, it does not take precedence over EU

[137] WTO, *World trade report 2022: climate change and international trade*, *United Nations Digital Library*, 2022.
[138] UNESCO, *Operational Guidelines on the Implementation of the Convention in the digital environment*, 2017.

competition and state aid rules. In this regard, Article 107(3)(d) TFEU specifically provides for state aid to promote culture, ensuring that cultural objectives are taken into account in compatibility assessments alongside the discipline of state aid control.

3.5. The OECD and UN international tax frameworks

The Organisation for Economic Co-operation and Development (OECD) plays a central role in shaping international tax standards relevant to cross-border audiovisual and digital activities. Through standard-setting and policy coordination, notably with the G20, it has sought to address the tax challenge arising from an increasingly digitalised economy. These efforts have also become a source of transatlantic tensions, especially between the EU and the United States.

The OECD Model Tax Convention on Income and on Capital ("OECD Model")[139] provides the principal template for the negotiation, interpretation and application of bilateral tax treaties. Within this framework, business profits are generally taxable in the source state only where the enterprise has a permanent establishment (PE) (Articles 5 and 7), while income from intellectual property is addressed under the royalties provision (Article 12). In practice, this allocation has distributional consequences that are central to EU-US tensions. By relying on physical presence as the primary nexus for taxation, the OECD Model generally favours residence jurisdictions, where many multinational enterprises are headquartered, such as the United States, over market jurisdictions where audiovisual content is consumed and monetised, including many European states. This imbalance is particularly evident in the audiovisual and digital sectors, where value creation increasingly depends on users and intangible assets rather than physical presence.[140]

Furthermore, the OECD/G20 Base Erosion and Profit Shifting (BEPS) initiative, launched in 2013, marked a significant step towards multilateral coordination in international taxation through the Inclusive Framework on BEPS[141] and the subsequent "two-pillar solution". While Pillar One seeks to reallocate certain taxing rights to market jurisdictions, Pillar Two establishes a 15% global minimum tax for large multinationals.[142] However, uneven implementation has led several jurisdictions, particularly in Europe, to adopt unilateral measures such as Digital Services Taxes (DST),[143] generating trade tensions, particularly with the United States.[144]

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[139] OECD, *Model Tax Convention on Income and on Capital 2017*, 25 April 2019.
[140] See OECD website page on *Cross-border and international tax* (consulted on 2 June 2026). See also OECD, *Tax Challenges Arising from Digitalisation -Report on Pillar One Blueprint*, 14 October 2020.
[141] See OECD website page on *Base erosion and profit shifting* (consulted on 8 June 2026).
[142] For more details on the Inclusive Framework on BEPS, please refer to Chapter 4 of this report.
[143] For more details on DSTs, please refer to Chapter 4 of this report.
[144] Brosy T., *A primer on digital services taxes and the OECD's two pillars*, *Urban-Brookings Tax Policy Center*, 6 May 2025.

These developments illustrate the increasingly close relationship between international tax and trade policy.[145] For the audiovisual sector, this evolution is particularly significant. The globalisation of content production and distribution, combined with the growing role of digital platforms, places the sector at the intersection of tax, trade and cultural policy. The OECD framework, through both the Model Convention and BEPS, helps define the international tax parameters within which states design measures affecting audiovisual activities, including levies, investment obligations and support schemes. At the same time, disagreements over the allocation of taxing rights reflect broader divergences between the EU and the United States regarding the regulation of digital markets and cultural industries.[146] While the OECD process aims to stabilise the system through multilateral coordination, its partial and uneven implementation means that taxation remains a source of strategic tension, shaping the broader landscape of trade relations in the audiovisual sector.

Alongside the OECD process, the United Nations has been developing an optional model provision for taxing digital services, aimed in particular at strengthening the taxing rights of market countries, especially developing economies. The key provision is Article 12B of the 2021 update of the UN Model Double Taxation Convention,[147] which allows states to include in bilateral treaties a provision permitting source taxation of income derived from automated digital services. Unlike the OECD's two-pillar proposals, the UN approach relies on source taxation, typically through withholding tax on gross payments, rather than through reallocating a portion of multinational companies' residual profits to market jurisdictions.

Together, the OECD and UN initiatives illustrate the continuing evolution of international tax governance in response to digitalisation. They also highlight the persistent challenge of balancing taxing rights, market access and regulatory sovereignty, issues that increasingly shape international economic relations, including in the audiovisual sector.[148]

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[145] Parrinello Q., Barake M., Pouhaer E., *The Long Road to Pillar One Implementation: Impact of Global Minimum Thresholds for Key Countries on the Effective Implementation of the Reform*, *EUTax Observatory*, July 2023.
[146] U.S. Trade Representative, *Section 301 Reports on Digital Services Taxes*. See also *Globaltaxnews.EY, US initiates review of other countries' imposition of Digital Services Taxes on US companies and opens comment period on nonreciprocal trade arrangements*, 25 February 2025; U.S. Trade Representative, *Section 301 –Digital Services Taxes*.
[147] United Nations, *UN Model Double Taxation Convention between Developed and Developing Countries*, 2021.
[148] For more details on the UN approach to digital taxation, please refer to Chapter 4.

4. Digital taxation and trade disputes in the global digital economy

As explained in Chapter 1 of this report, the notion of cultural exception has been a longstanding specificity and guiding principle of the EU's approach to culture and international trade. However, the deliberate exclusion of cultural goods and services from liberalisation commitments in international treaty or agreement, based on the belief that they possess intrinsic value beyond their commercial dimension, has been a recurrent source of friction with the US. Such a deep opposition between cultural sovereignty and market liberalisation highlights the fundamental issue of promoting national or European culture against the influence of other market powers. These tensions have increased in recent years due to globalisation and the growing influence of AI, data-driven platforms, market concentration and the EU's adoption of rules to regulate these digital services.

This trend has therefore also heightened concerns about economic coercion, in which countries may face pressure to make certain policy choices, through the imposition or threat of trade or investment measures. One example is the debate over the introduction of taxes on digital value generated in Europe by foreign companies, a move which may affect major tech firms such as Meta, Apple and Google that generate significant revenues within European markets. Such measures have the potential to provoke responses from other states, underscoring the complex interplay between national policymaking and international economic relations. These digital services taxes (DSTs) are typically applied in the country where the service is consumed or where users create value (most often in Europe), even if the company providing the service is based abroad. The adoption of DSTs has been a point of contention with the US administration, leading to accusations of protectionism. While some countries who had implemented DSTs, including Austria, France, Italy, Spain, Denmark, Hungary, Poland and Portugal, have held their ground, others, such as Canada and India, have given in.

Meanwhile, since 2019, the Organisation for Economic Cooperation and Development (OECD) has been negotiating a global tax reform involving over 140 countries to adapt the international tax system.[149] If adopted, this proposal and the related two-pillar solution would require the largest multinational companies to pay income taxes in the jurisdictions where consumers are located, thereby repealing national DSTs. However, despite ongoing negotiations, no common ground has yet been found.[150]

[149] OECD website, *Base erosion and profit shifting (BEPS)*.
[150] For more information on the OECD reform, refer to Chapter 3 of this publication.

4.1. Digital services taxes

4.1.1. History and background

Taxes were originally designed around physical presence, i.e. corporate income tax was only paid where the tax-payer had a presence or where production took place. However, the rise of digital services and the digitalisation of the economy have shifted market power and the way business works. Digital services do not only deploy in and function thanks to the country(ies) in which they are based. Conversely, markets and businesses in the digital sector have become much more complex, leading to intangible and much more variable success that depends not only on local presence but potentially also on worldwide reach. Companies such as Google, for example, can therefore earn millions worldwide without a physical presence across the world, thanks to revenue streams generated where consumers and users are based. This context has also exacerbated other existing challenges, such as the reduction of tax revenues due to abusive tax avoidance and tax evasion.

In this context, and with a view to stopping digital companies benefiting from local markets, certain countries have started implementing new fiscal tools. These take the form of DSTs that enable so-called "market" countries to tax the profits of tech-based multinational companies that sell into their local market, collect data from and target advertising at local audiences, regardless of any physical presence in the area concerned. Taxes on selected gross revenue streams of large digital companies can therefore constitute a way of allowing fair revenue distribution among players in the market.

The objectives behind the imposition of DSTs are generally three-fold:

- To level the playing field for traditional local companies that pay taxes
- To limit tax avoidance
- To raise new revenue streams

4.1.2. National implementation

As Chapter 3 of this report further explains, the EU has exclusive competence over trade, including the trade of goods and services. It is managed by the European Commission through trade and investment policies, but also through international agreements that it negotiates and concludes. On the contrary, direct taxation is a national prerogative of EU member states. National fiscal sovereignty gives them the power to determine which taxes to levy, which entities or activities to tax and which rates and exemptions to apply.

Certain EU member states, as well as some third countries, have therefore implemented or announced the intention to implement taxes targeting the digital economy. India became the first country to impose DSTs in 2016, with an "equalisation levy" on online advertisements. The latter was extended in 2020 to also cover e-commerce supply and services made, provided or facilitated on or after April 2020. It is worth noting that India withdrew this tax after the US issued tariff threats in 2025.[151]

The first EU member state to introduce a DST was France, which imposed a large-scale DST through Law no. 2019-759 in 2019.[152] The 3% tax applies to annual revenues above a certain threshold generated by intermediary services provided through a digital interface and targeted advertising services provided in France. In 2025, the French DST came under close scrutiny when Digital Classifieds France challenged its constitutionality. In the course of the proceedings, the Constitutional Council (*Conseil Constitutionnel*) was asked to rule on a "*question prioritaire de constitutionnalité*" (QPC) by the Council of State (*Conseil d'Etat*). The company argued that the DST's scope and thresholds violated equality and fairness principles. However, on 12 September 2025, the Constitutional Council issued a decision upholding the constitutionality of the DST provisions in the General Tax Code.[153] The DST rate itself has also been a topic of discussion since late 2025. During budget debates, the French Parliament considered raising it from 3% to 6%, and up to 15%, which sparked immediate concern in the US.[154] However, the 3% rate currently remains in force.

Seven other EU member states have introduced DSTs (Austria, Italy, Spain, Denmark, Hungary, Poland and Portugal), while others are planning to follow suit. In January 2026, for example, in addition to the tax already in place in Poland since 2020, a motion for a bill for a compensatory tax on certain digital services to ensure equitable taxation of revenues generated in Poland's digital market was proposed.[155] In Germany, while an initial proposal to withhold tax on payments relating to digital advertising was repealed in 2020, the country recently announced its intention to implement a 10% DST on digital advertising.[156] Similarly, Czechia has proposed a DST based on targeted advertising on digital interfaces, the transmission of user data and data generated from users' activities on digital interfaces, and the making available to users of a multi-sided digital interface which may facilitate the provision of goods and services among users.[157] However, these discussions are currently at a standstill. Although less advanced, Belgium[158] and Slovakia[159] have also expressed an

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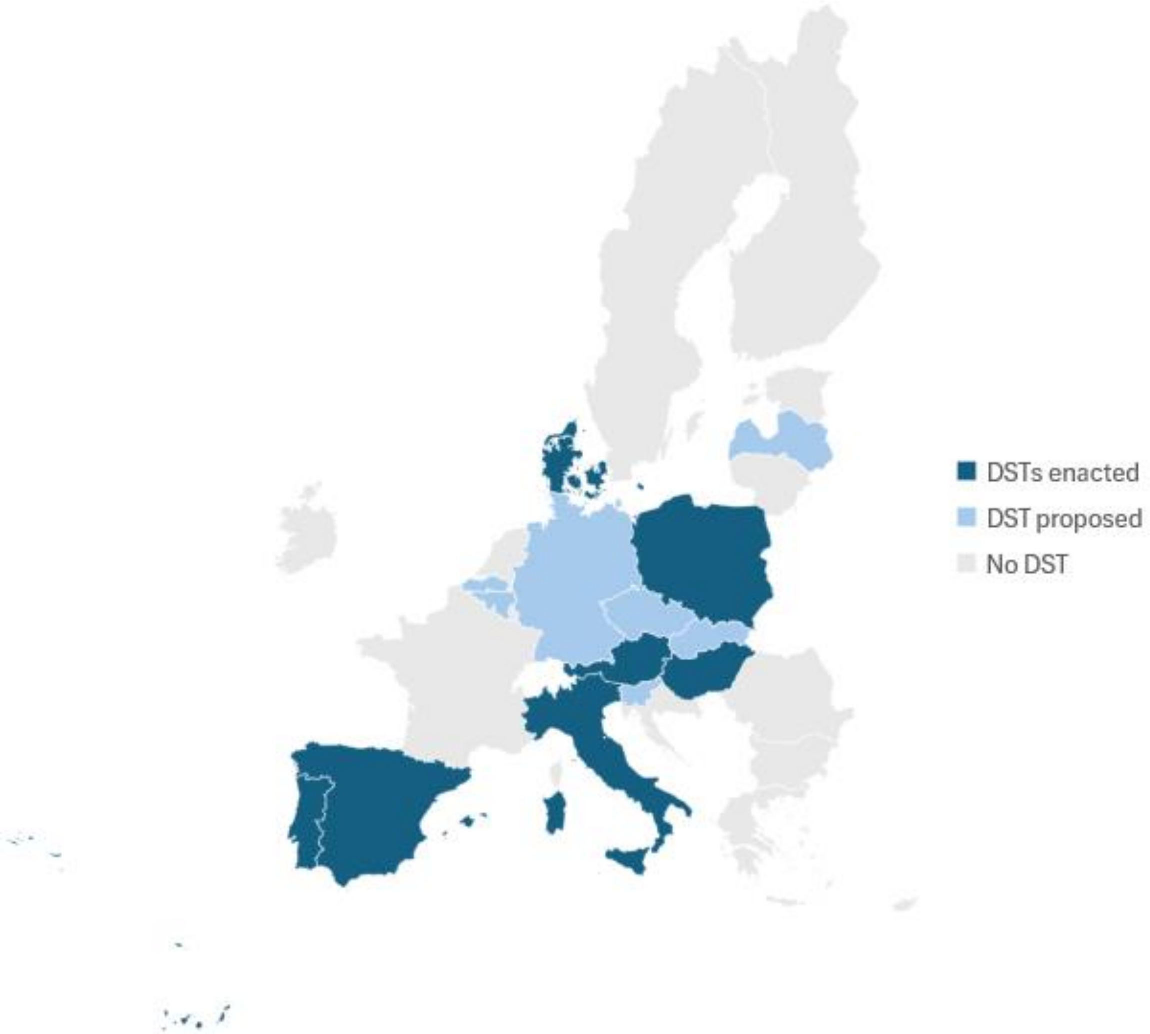
[151] Government of India, Ministry of Finance, Tax Department website, *Equalisation Levy*, last reviewed and updated on 4 August 2026.
[152] *Loi n° 2019-759 du 24 juillet 2019 portant création d'une taxe sur les services numériques et modification de la trajectoire de baisse de l'impôt sur les sociétés* (in French)[Law No. 2019-759 of 24 July 2019 establishing a digital services tax and modifying the schedule for reducing corporate income tax], *Legifrance.gouv.fr*.
[153] Constitutional Council (*Conseil Constitutionnel*), *Decision no. 2025-1157 QPC - Taxe sur certains services fournis par les grandes entreprises du secteur numérique* (in French) [Tax on certain services provided by large companies in the digital sector], 12 September 2025.
[154] U.S. Chamber of Commerce, *U.S. Chamber Urges French Lawmakers to Drop Digital Services Tax Proposal*, 24 October 2025.
[155] Ministry of Digital Affairs of Poland website, *Usługi cyfrowe w Polsce mają być opodatkowane na równych zasadach* [Digital services in Poland are to be taxed on an equal footing], 27 January 2026.
[156] German Parliament (*Deutscher Bundestag*) website, *Einführung einer Digitalabgabe oder einer Digitalsteuer* [Introduction of a digital levy or digital tax], 2025.
[157] Ministry of Finance of the Czech Republic website, *Návrh zákona o digitální dani míří do Sněmovny* [Digital tax bill heads to the House of Representatives], 18 November 2019.
[158] Belgian Chamber of Representatives, *Proposition de loi modifiant le Code des droits et taxes divers, instaurant une taxe sur les services numériques* (in French) [Bill amending the Code of Miscellaneous Duties and Taxes and establishing a digital services tax], 17 April 2026.
[159] Asquith R., *Slovakia Digital Services Tax proposal*, *VATCalc*, 21 August 2025.

interest in establishing a DST. Likewise, Latvia[160] and Slovenia[161] both showed interest in implementing a national DST in 2019 but nothing has happened since.

Figure 5. Implementation of DSTs across the EU



Source: European Audiovisual Observatory

Many other countries outside the EU, including Argentina, Columbia, Ethiopia, Nepal, Tunisia and Türkiye, have implemented such measures,[162] while others such as Brazil in 2025, have announced a possible intention to do so. The tax in Brazil would consist of a 7% digital social contribution on major platforms' gross revenue from Brazilian users.[163] Earlier DST proposals were not pursued. In contrast, Switzerland, for example, has indicated that it is looking at long-term solutions and has no plans to introduce interim measures. It

[160] KPMG, *Taxation of the digitalized economy*, 14 August 2026, p.58.
[161] Ibid., p.71.
[162] KPMG, *Taxation of the digitalized economy*, 14 August 2026.
[163] Boulos G., *Projeto de Lei Complementar* (in Portuguese) [Complentary Bill], PLP 157/2025.

should also be noted that certain countries that had originally implemented DSTs have subsequently repealed them. This was the case in India, as mentioned above, and Canada, where the 3% federal tax on revenues of certain domestic and foreign digital service activities generated through Canadian users was repealed less than two years after it was introduced. The implementation of the Canadian DST damaged diplomatic relations with the US, who announced in the United States Trade Representative (USTR) report that it discriminated against US companies and was perceived as a breach of the United States-Mexico-Canada Agreement (USMCA). In its annual budget implementation bill of November 2025, Canada introduced the formal retroactive repeal of the DST, and the legislation repealing the Digital Services Tax Act received royal assent on 26 March 2026.[164]

Since taxes are a national prerogative, DSTs can vary widely from one country to another. Their three main characteristics relate to their scope, revenue threshold and tax rate. In terms of scope, "digital services tax" is a broad concept, since digital services can operate in various areas such as online marketplaces, online advertising, social media services, streaming services and the sale of user data. DSTs can therefore be targeted at specific services or have a broader reach, applying to all services. They can either take the form of direct taxes imposed on a company's revenues or profits, or indirect taxes, which affect more specific services and are borne by consumers. For example, VOD services can collect and remit VAT on subscription fees paid by users.

DSTs can be imposed on online advertising services (AT) or revenues (HU), the taxation of streaming services (DK), other specific services such as social media platforms, internet search engines and online marketplaces (UK), or a combination of specific services and audiovisual commercial communications (PL, PT). Some have a broader scope, with taxes applicable to a variety of digital services (IT, ES). France's DST has the broadest reach, as it applies to providers of "digital interfaces" in general and to advertising services based on user data. Companies subject to such taxes can therefore face double taxation. They can be taxed in their country of residence under corporate income tax rules, while the same revenue is also taxed in another jurisdiction under a DST. Double taxation may also arise where two or more countries apply DSTs based on different criteria.

4.1.3. DSTs at EU level

Digital taxation has been on the EU's agenda for a decade now, with a view to improving the fairness of tax systems, promoting economic growth and adapting tax policies to the digital age. Back in December 2015, a European Parliament resolution[165] called on the European Commission to adjust the definition of "permanent establishment" and introduce a definition of minimum "economic substance". According to the Parliament, these updates were needed "to ensure that taxation takes place where economic activity takes place and

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[164] Parliament of Canada, *Bill C-15, Chapter 3, Royal Assent*, House of Commons, 26 March 2026.
[165] European Parliament, *Resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union* (2015/2010/INL), *Publications Office of the European Union*, 16 December 2015.

value is created". In view of this, the Parliament further called for "minimum binding criteria to determine whether economic activity has sufficient substance to be taxed in a Member State in order to avoid the problem of 'letterbox companies', in particular regarding the challenges posed by the digital economy".

The European Parliament's proposal consisted of the following recommendations, which were designed to form part of a concrete ban on so-called "letterbox companies":

- "adjust the definition of "permanent establishment" so that companies cannot artificially avoid having a taxable presence in Member States in which they have economic activity. This definition should also address situations in which companies which engage in fully dematerialised digital activities, are considered to have a permanent establishment in a Member State if they maintain a significant digital presence in the economy of that country;
- introduce a Union definition of minimum "economic substance" covering also the digital economy so as to ensure that companies are genuinely creating value and adding to the economy of the Member State in which they have a taxable presence."

In response, the European Commission published a proposal on the taxation of a significant digital presence in 2018, as part of the "digital taxation package".[166] The proposal was accompanied by a Communication entitled "Time to establish a modern, fair and efficient taxation standard for the digital economy", which identified the challenges of the outdated corporate tax rules and the need for an international solution.[167] The proposal notably suggested a Directive on a common system of a digital services tax on revenues resulting from the provision of certain digital services. Revenues falling within the scope of the proposal included those created from the sale of online advertising space, digital intermediary activities between users for facilitating the sale of goods and services and the sale of data generated from user-provider information. A single 3% tax rate across the Union (Article 8) would apply to companies with total worldwide revenues above EUR 750 million and EU revenues above EUR 50 million (Article 4).

In January 2019, the European Commission reinforced its position in a Communication "Towards a more efficient and democratic decision making in EU tax policy".[168] However, despite months of negotiations, no political agreement could be reached, leading to the failure to adopt a new taxation system in April 2019.[169]

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[166] European Commission, *Proposal for a Council Directive 2018/0073 (CNS)* on the *common system of a digital services tax on revenues resulting from the provision of certain digital services*, *EUR-Lex*, 21 March 2018.
[167] European Commission, *Communication from the Commission to the European Parliament and the Council, Time to establish a modern, fair and efficient taxation standard for the digital economy*, COM(2018) 146 final, *Publications Office of the European Union*, 21 March 2018.
[168] European Commission, *Communication from the Commission to the European Parliament, the European Council and the Council*, Towards a more efficient and democratic decision making in EU tax policy, *EUR-Lex*, COM/2019/8 final, 15 January 2019.
[169] European Parliament, Verbatim report of proceedings, Strasbourg, 15 April 2019.

EU negotiations therefore stalled and left the OECD negotiations continue. In the aftermath, certain countries adopted national DSTs as interim solutions until a global one was reached.

However, discussions about a European DST were put back on the agenda more recently, following tensions with the US concerning its tariff strategy in 2025. DSTs are now linked to a broader transatlantic trade conflict instead of a national tax issue. Indeed, the European Commission (again) raised the possibility of imposing a tax on the advertising revenues of American companies if negotiations with the US fail. While a European tax would act as a retaliatory measure against the US, it would also compromise a wider global agreement that is still being discussed by the OECD.

Following negotiations, an agreement on trade between the EU and the US was finally reached in Scotland in July 2025. However, all plans for a European DST have since been dropped, with no impact on existing national DSTs. The deal is outlined in a joint statement dated 21 August 2025, which the parties intended to document through their internal procedures.[170] It resulted in the conclusion of an Agreement on Reciprocal, Fair, and Balanced Trade (Framework Agreement) and the Commission later published two legislative proposals aimed at implementing the tariffs: one for preferential access for US goods to the EU[171] and the other extending the existing zero-tariff regime on imports of certain types of lobster.[172] This deal therefore only applies to goods, excluding services and, most importantly, digital ones. Furthermore, the Framework Agreement acknowledges US concerns and commitments made by both sides. However, since its announcement, questions have been raised regarding its non-legally binding nature and interference with EU norms and sovereignty. Since then, the US Supreme Court has ruled that the US President had exceeded his authority by imposing a 15% tariff on most EU exports to the US.[173] After the European Parliament suspended ratification in February 2026, it issued conditional approval with safeguards such as suspension, sunrise and sunset clauses on 26 March 2026.[174]

As described in Chapter 3, through Regulation 2023/2675, the EU has been equipped with an anti-coercion instrument since 2023.[175] This allows the European Commission to adopt EU response measures in the event of economic coercion by a third

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[170] Directorate-General for Trade and Economic Security, *Joint Statement on a United States-European Union framework on an agreement on reciprocal, fair and balanced trade*, 21 August 2025.
[171] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the adjustment of customs duties on the import of certain goods originating in the United States of America and opening of tariff quotas for imports of certain goods originating in the United States of America*, 28 August 2025.
[172] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the non-application of customs duties on imports of certain goods*, COM(2025) 472 final, 28 August 2025.
[173] Supreme Court of the United States, *Learning Resources, Inc. et al. v. Trump*, Supreme Court of the United States, 20 February 2026.
[174] A suspension clause was introduced in case the US introduced new tariffs. In addition, the new tariffs would only become effective if the US respected its commitments (sunrise clause) and will expire by 31 March 2028, unless renewed (sunset clause).
[175] *Regulation (EU) 2023/2675* of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries, *EUR-Lex*, *OJ* L, 2023/2675.

country, with the aim of inducing its cessation. These measures may include restrictions on access to the EU market and other economic disadvantages.

In the meantime, on 9 February 2026, the EU Tax Commissioner told the Economic and Monetary Affairs Committee of the European Parliament that he was not yet prepared to advance an EU level digital services tax despite slow progress on the OECD's Pillar One discussions. He emphasised the need to exhaust all options for preserving the two-pillar solution before reopening the possibility of a DST.

4.2. US investigations into DSTs

4.2.1. Section 301 investigations

Under Section 181 of the 1974 US Trade Act,[176] USTR must identify and analyse barriers to or distortion of market access and unfair treatment of US goods and services, and publish annual reports on the analysis and estimates made. These reports, known as National Trade Estimate (NTE) reports, aim to signal to other countries the acts, policies or practices of foreign countries that are being monitored and may lead to further investigation.

More commonly referred to as Section 301 investigations, this practice derives from Title III, Section 301 of the Trade Act: "Relief from Unfair Trade Practices". Under this provision, the US Congress grants USTR powers to conduct investigations and take action in order to protect US rights that may be denied under trade agreements, and deter certain foreign trade practices, acts or policies that burden or restrict US commerce (encompassing both services and investments, for example by imposing or threatening to impose tariffs or taxes on imports from other countries).

USTR investigations may be self-initiated after consultation with public and private stakeholders, but may also be requested by any interested person who files a petition. Investigations are then conducted by a Section 301 Committee, which recommends potential actions to the Trade Policy Staff Committee (TPSC). Based on the TPSC's recommendations and having consulted the jurisdictions being investigated, USTR determines whether retaliatory measures must be taken against any harmful or unfair trade practices that were identified. Such measures decided by USTR can be mandatory in case of violation of a trade agreement or if an act, policy or practice of a foreign government is "unjustifiable and burdens or restricts" US commerce. Retaliatory measures can also be discretionary if USTR determines that an act, policy or practice of a foreign government is "unreasonable or discriminatory" and "burdens or restricts" US commerce.

Retaliatory measures may take the form of tariffs or other import restrictions, withdrawal or suspension of trade agreement concessions, or signature of a binding agreement with the foreign government concerned, in which it promises to either cease the

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[176] *Trade Act of 1974*, as amended and enacted on 3 February 2026, U.S. Government Publishing Office.

conduct in question or compensate the US. Such actions may be modified or terminated after they are reported to Congress.

Section 301 actions terminate after four years unless USTR receives a request for continuation and conducts a review of the case. In some instances, USTR may reinstate a previously terminated Section 301 action.

4.2.2. USTR investigations into digital trade barriers

The first 301 investigations into DSTs took place in 2019 and 2020, initially in France and then in 10 other jurisdictions that had also implemented DSTs or considered doing so. USTR found that the DSTs in France, Austria, India, Italy, Spain, Türkiye and the UK discriminated against US firms and announced 25% tariffs on imports from those countries worth around USD 3.4 billion, suspended pending OECD and G20 negotiations on a global tax framework. By autumn 2021, nine countries had agreed to withdraw DSTs and the US had terminated the suspended tariffs.

In February 2025, the US announced its "fair and reciprocal plan"[177] and issued a memorandum entitled "Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties",[178] directing USTR to consider renewing Section 301 investigations into the DSTs of France, Austria, Italy, Spain, Türkiye and the UK, and examine whether other foreign policies constituted barriers to US trade. One month later, USTR issued its 2025 NTE report describing foreign trade barriers.[179]

It is against this backdrop that the US responded with retaliatory tariff threats that have had a wide-ranging impact on foreign exporting countries, the US, its local businesses, workers and consumers in general: rising prices, less variety, change in consumer choices, risk of loss of trade and higher costs for local businesses. These measures are said to retaliate against protectionist measures taken by countries that set up barriers to global trade, favouring local companies. However, this is also what the US administration is doing by imposing tariffs that deter foreign companies from competing with local industry and protect the US's strategic control.

In March 2026, USTR published an updated version of its report,[180] which identified DSTs in the EU as trade barriers. It also examined the cases of France, Austria, Italy and Spain in particular, following the 2025 instruction to examine whether to renew investigations into DSTs in these countries. The full report also covered DSTs in nine other jurisdictions: Canada, Colombia, the EU, India, Kenya, Nigeria, Pakistan, Türkiye and the UK.

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[177] US White House website, *Fact Sheet: President Donald J. Trump Announces "Fair and Reciprocal Plan" on Trade*, 13 February 2025.
[178] US White House website, *Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties*, 21 February 2025.
[179] United States Trade Representative, *2025 National Trade Estimate Report on foreign trade barriers of the President of the United States on the Trade Agreements Program*, 1 March 2025.
[180] United States Trade Representative, *2026 National Trade Estimate Report on foreign trade barriers of the President of the United States on the Trade Agreements Program*, 31 March 2026.

It should be noted that, when the UK's annual DST collection amounts were published on 23 April 2026, the US voiced concern and recalled its opposition to the UK DST. The UK tax, a 2% levy on revenues from social media platforms, search engines and online marketplaces that derive value from UK users, was introduced in 2020 pending the approval of an international agreement to reform the tax framework.

4.3. New initiatives and impact on DSTs

DST-related tensions have prompted certain organisations to take action and develop proposals that would address the current digital environment more efficiently. The OECD has been working on reforming the international tax system for over a decade. If adopted, this reform could directly impact national DSTs. More recently, the United Nations launched a new initiative to reform the international taxation of the digital economy.

4.3.1. The OECD's Base Erosion and Profit Shifting initiative

As outlined in Chapter 3, trade and taxation are two of the OECD's main areas of action, including the growing issue of digital trade.

Since 2013, the OECD has been working with the G20 on an overarching framework to address tax avoidance by multinationals: the Base Erosion and Profit Shifting (BEPS) initiative. Multinational companies have been using base erosion and profit shifting practices to exploit gaps in tax rules, ultimately leading to tax avoidance, for example by moving profits to countries with low or no taxes while having little or no economic activity there. In 2016, the two organisations launched the Inclusive Framework on BEPS[181] to address the challenges related to the taxation of digital trade through a two-pillar proposal.

Pillar 1 intends to move taxing rights from headquarter-based taxation to market country taxation. In other words, it sets out rules for the reallocation of taxing rights among countries in which multinational companies have a significant customer base and earn profit, regardless of physical presence. Based on this pillar, countries in which customers and users are located would be allowed to tax part of the profits derived on their territory. The rules established under Pillar 2 set a global minimum tax, ensuring that the profits made by multinational companies with a turnover of at least EUR 750 million are taxed at an effective rate of at least 15%. These rules intend to prevent profits being parked in countries with low tax rates.

This international solution aims to provide greater legal certainty regarding the application of tax rules, thereby avoiding the possibility of double taxation, rate differences between countries and tax avoidance issues. These challenges notably arose with the implementation of national DSTs, the scope of which is based on the specific needs of

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[181] OECD website, *Base erosion and profit shifting*.

individual countries and which are often said to be interim measures pending an international agreement. In 2025, India, the first country to set a DST, withdrew its 6% equalisation levy, signalling alignment with the Inclusive Framework. However, this withdrawal also coincided with the US threatening the use of such DSTs.

The objective of this global framework is to encourage jurisdictions to abandon their national DSTs upon its approval. Over 140 countries have already agreed to Pillar 2, while the first pillar is still being negotiated. This has raised many technical complexities and political disagreements, since finding a "one size fits all" solution is difficult due to conflicting national interests.

In January 2025, however, the US changed its stance with regard to the Inclusive Framework. A Memorandum for the Secretary of the Treasury explicitly stated that the framework had no force or effect in the US without the adoption of an Act by the US Congress adopting and implementing its provisions.[182] The US also invoked Section 891 of the Internal Revenue Code, which allows it to raise the tax rate in countries that apply "discriminatory or extraterritorial" taxes.[183]

4.3.2. The United Nations approach

In parallel to the OECD Inclusive Framework, the United Nations (UN) Tax Committee has been developing another solution to reform international taxation of the digital economy. The UN's proposal was set out in Article 12B of the 2021 update of the UN Model Double Taxation Convention.[184] It addresses in particular the issue of multinationals paying little tax in market countries and is therefore meant to give market countries, especially developing countries, more taxing rights. This approach focuses on the taxation of income from automated digital services in bilateral situations, therefore applying to treaty parties who agree to its inclusion. "Automated digital services" is meant to cover any service provided on the internet or another electronic network, in either case requiring minimal human involvement from the service provider. In other words, these services include online advertising services, supply of user data, online search engines, online intermediation platform services, social media platforms, digital content services, online gaming, cloud computing services and standardised online teaching services.

The terms of reference were approved in November 2025, launching negotiations for a treaty aimed at enhancing tax cooperation that is expected to be finalised in 2027.

Unlike the OECD proposals, the UN project would involve source countries withholding tax on gross payments. The OECD, on the other hand, aims to reallocate the residual profits of multinational companies to market jurisdictions.

[182] US White House website, Memorandum for the Secretary of the Treasury, *The Organization for Economic Co-operation and Development (OECD) Global Tax Deal (Global Tax Deal)*, 20 January 2025.
[183] *U.S. Code: Title 26 - Internal Revenue Code*, *Cornell Law School*, Legal Information Institute, 1986.
[184] United Nations, *UN Model Double Taxation Convention between Developed and Developing Countries*, 2021.

In summary, the debate over DSTs has become a central point of friction in the broader context of international trade, technological change, and the assertion of cultural and economic sovereignty. As the digital economy blurs traditional borders and challenges established tax and trade frameworks, the EU, the US and other global actors continue to seek common ground, often with difficulty, in the face of competing interests and priorities. While multilateral initiatives led by the OECD and the United Nations aim to deliver long-term solutions through international consensus, the persistence of national DSTs and retaliatory measures underscores the complexity of reaching fair and effective taxation of digital activities. Ultimately, the outcome of these debates will shape not only future transatlantic relations and global market dynamics but also the capacity of individual states and regions to regulate, innovate and safeguard their cultural and economic interests in the digital age.

5. Concluding remarks

The international legal and policy landscape governing audiovisual and digital goods and services is particularly articulated. This complexity stems from the dual nature of the audiovisual sector, which encompasses both marketable goods or services and vehicles for cultural expression. The persistence of "cultural" carve-outs in trade agreements reflects the continuing tension between trade liberalisation and the preservation of cultural sovereignty in the audiovisual domain. At the same time, the digitalisation of the industry has fundamentally reshaped traditional market structures and business models, introducing further complexity to the regulation of digital services.

In this context, cultural policy, digital governance and international trade rules are becoming increasingly intertwined, with objectives pursued in one area often counterbalancing or constraining developments in another. Within the EU, this is further compounded by an intricate framework for the protection of cultural diversity coupled with a multilayered international trade framework. Audiovisual media services are primarily regulated by the AVMSD, whereas digital services fall under a broader range of horizontal legislative instruments, including the DSA, DMA, GDPR and AI Act. Together, these frameworks seek to regulate platforms, enforce accountability, protect users and promote European audiovisual works. At the same time, some of these rules also affect the cross-border flow of content and data. The accumulation of these intertwining legal frameworks has led the EU to pursue simplification through initiatives such as the Digital Omnibus package, although streamlining this legal landscape remains a significant challenge. On the trade side, multilateral treaties, regional agreements, cultural conventions and tax treaties make the accommodation of the specificities of cultural and digital sectors even more complex. As a result, trade agreements frequently contain explicit or implicit sectoral exclusions (carve-outs) for culture and for audiovisual services, reflecting the continued willingness of states and regional organisations to preserve policy space for cultural objectives.

This intricate balance is further compounded by the structure of the market. Despite the European audiovisual sector representing a major component of the global media industry, market power remains concentrated among a relatively small number of largely non-European firms. The evolution of market dynamics, in particular in relations between the EU and the US, has thus intensified concerns regarding market concentration and the influence of large online platforms, including those designated as gatekeepers under the DMA. In this context, the EU pursues several concurrent objectives, seeking to protect and promote cultural diversity and identity while ensuring a high level of protection for users in the internal market. At the same time, it also aims to capitalise on the economic value and attractiveness of its market, strengthening its regulatory capacity and asserting both its cultural and digital sovereignty.

While the notion of cultural sovereignty has long been established, digital sovereignty has gained increasing prominence in EU policy discourse in recent years amidst efforts to achieve greater control over data, foster innovation, and reinforce the Union's ability to shape and enforce legislation in the digital environment.[185] These concerns were later reaffirmed by European Commission President Ursula von der Leyen in her 2025 State of the Union address, which emphasised the importance of tech sovereignty to strengthening competitiveness, resilience and strategic autonomy in a fast-changing digital world.[186] In June 2026, the European Commission advanced this agenda through a series of initiatives, including the Chips Act 2.0, the Cloud and AI Development Act, the EU Open Source Strategy, and a Strategic Roadmap for Digitalisation and AI in Energy.[187] Cultural and digital sovereignty are therefore increasingly framed in EU policy discourse as ways of reducing strategic dependencies, fostering European alternatives and preserving the Union's capacity to regulate in the public interest, although their implications for trade and market openness remain subject to debate. Although not specifically addressed in this report, similar concerns also extend to adjacent sectors such as video games, which constitute an increasingly important part of the broader cultural and digital ecosystem.[188] Recent calls from the industry to strengthen European digital and cultural sovereignty, particularly by reducing dependencies on non-European digital infrastructures and technologies, illustrate that many of the same trade, regulatory and strategic challenges are equally relevant in this sector.

The debate surrounding trade in audiovisual and digital goods and services is therefore far from settled. Until broader international consensus is reached, tensions between trade liberalisation, public policies promoting cultural diversity and digital sovereignty are likely to persist.

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[185] Madiega T., *Digital sovereignty for Europe*, *European Parliament Research Service*, July 2020.
[186] European Commission, *2025 State of the Union Address by President von der Leyen*, 10 September 2025.
[187] European Commission, policies page, *Strengthening Europe's Tech Sovereignty*, 3 June 2026 (consulted on 7 August 2026).
[188] European Commission, ECORYS, KEA, *Understanding the value of a European Video Games Society*, *EU Publications Office*, Luxembourg, 2023.

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