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Culture in EU external trade: Towards Stronger Digital Cultural Cooperation

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- The EU's external action should be seen as an opportunity for the EU to guide the digital environment and digital media towards legitimate public objectives such as cultural diversity.
- The EU's experience with legal frameworks for cultural cooperation negotiated in parallel to international economic and trade agreements remains a landmark in the implementation of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
- Provisions on digital cooperation negotiated with trade partners of the EU should be complemented with specific legal frameworks aiming to strengthen digital cultural cooperation. Such frameworks could be integrated into a trade agreement or be proposed as a separate set of norms resulting from specialised negotiations by experts of the cultural sector.
- Parties to digital cultural cooperation frameworks and trade agreements should ensure they maintain as much flexibility as possible to design specific cultural policies and measures through cultural exception clauses.
- Stronger digital cultural cooperation should be designed in a participatory manner, involving culture professionals and cultural industries from the EU and its partners and could be inspired by the latest initiatives and experiences regarding digital cultural cooperation.

A renewed approach to international cultural cooperation in the digital era

The goal of the present brief is to propose a new approach for the European Union (EU) with respect to culture and digital technologies and to determine the key steps for stronger digital cultural cooperation in EU external relationships. The brief provides an overview of recent EU external trade action regarding culture and digital

technologies - notably since the last Protocol on Cultural Cooperation was negotiated by the European Commission - and some innovative initiatives in order to put forward external policy tools for stronger digital cultural cooperation.

It aims to complement the current and fundamental EU initiatives to improve the rules governing digital services within the EU through the [Digital Services Act \(DSA\)](#) and the [Digital Markets Act \(DMA\)](#), by promoting a more inclusive and equitable global digital environment with respect to digital cultural content. The brief assumes that, in order to effectively and comprehensively

address the changes brought about by digital technologies and online platforms to the cultural sector, the EU needs to guide future changes towards a digital environment in which fundamental rights (including cultural rights) are clearly respected, and innovation, level-playing field and balanced international cultural exchanges are guaranteed. This also includes the need for the EU to constructively involve in its efforts large tech companies, and notably those acting in the cultural sector - be it through public-private collaborative actions or via the prominence of European content and financial contributions (e.g., obligations enshrined in the EU [Audio-visual Media Services Directive](#) or more general tax contributions, such as the global minimum corporate tax [recently called for by the G7](#) and the ongoing multilateral [discussions](#) on a global tax regime within the Organisation for Economic Cooperation and Development).

The proposal contained in the present brief offers a number of benefits for both the EU and its trading and cooperation partners: a flexible digital cultural cooperation tailored to local realities and institutional environments, respectful of the specificities of each cultural sector, and fostering a climate of mutual understanding. Such an approach proves crucial to the promotion of cultural diversity - recognised as the first guiding principle of the [2016 Joint Communication "Towards an EU strategy for international cultural relations"](#) - in the digital environment. Now that Digital Europe, together with the Green Deal, constitute the two top priorities of the EU, the time is ripe to adapt the implementation of the 2016 Strategy to the digital revolution that it barely mentions. In the complex international context shaped by unprecedented interconnectedness in the face of common challenges, the need for intercultural sensitivity and trust-building is at a peak and the EU has the potential to lead by example, reflecting its unique values in the regulation of international trade ([culture Solutions 2020b](#)).

The brief starts with an outline of the trade and

culture interface in the EU external relations until the negotiation by the EU of frameworks on cultural cooperation with some of its trade partners. It then emphasises the key processes taking place in cultural sectors as a result of digital transformation and briefly examines how the EU deals with culture and digital technologies in its recent trade agreements. It focuses on the EU agreements with Singapore, Vietnam, China, Japan and MERCOSUR, as well as the EU negotiating mandates for future agreements with Australia and New Zealand, and the plurilateral talks on electronic commerce held within the World Trade Organization (WTO). Finally, by highlighting recent endeavours on digital cooperation and cultural diversity, it aims to provide preliminary guidance on how to strengthen international cultural cooperation in the digital field and on policy priorities that the EU could establish to remain a reference in this area.

From cultural exception to frameworks on cultural cooperation

Since the 1980s, increasing financial globalisation, economic integration, as well as liberalisation of trade exchanges and investment have raised major concerns for several national governments and cultural organisations regarding the effects of such new context on cultural diversity. Given the two-fold (economic and cultural) nature of cultural goods and services, which encompass both a symbolic and a material dimension, their legal treatment within international trade agreements became the subject of growing political interest (Vlassis 2015). The need to establish specific international norms governing the exchanges of cultural goods and services clearly manifested in the 1990s, notably through "cultural exceptions" (exceptions culturelles) inserted in multilateral, regional and bilateral economic integration agreements. In parallel to such efforts, debates within the United Nations (UN) progressively

Cultural goods and services have a two-fold (economic and cultural) nature, and encompass both a symbolic and a material dimension.

consolidated an alternative conception of development, going beyond its economic aspects and having, among others, a cultural dimension. By the late 1990s, the term “cultural exception” was gradually replaced with the more inclusive term “cultural diversity”, and discussions led to the decision to pursue the negotiation of an international legal instrument within the UN specialised agency on culture, the UNESCO, which would address the specificity of cultural goods and services, and possibly provide for a counterbalance to trade agreements (Richieri Hanania 2009: 83-250).

Following intense negotiations, the [Convention on the Protection and Promotion of the Diversity of Cultural Expressions](#) (CDCE) was adopted on October 20, 2005 and entered into force extraordinarily fast, in March 2007. The CDCE has become the main multilateral law instrument addressing global and multilevel cultural governance (Vlassis 2011). As of June 2021, the CDCE had received the support of 146 Parties, including the European Union (EU). The CDCE addresses two main facets of action in favour of diversified and more balanced exchanges of cultural goods and services. The first one is the recognition of the specificity of those goods and services and, consequently, of the legitimacy of cultural policies and the need for a specific legal treatment for such goods and services, including in international trade agreements. The second fundamental aspect addressed by the CDCE is cultural cooperation and, in particular, cultural cooperation in favour of development. The CDCE deals directly with the link between culture and development and reiterates the role of culture in sustainable development (e.g., Articles 2.6 and 13 CDCE). In order to strengthen international cultural cooperation, the CDCE proposes several tools, such as information exchange among the Parties (Articles 9 and 19 CDCE), collaborative arrangements (Article 15

CDCE), preferential treatment for developing countries (Article 16 CDCE), as well as an International Fund for Cultural Diversity, a multi-donor voluntary Fund established under its Article 18.

With respect to the EU, the entry into force of the CDCE gave a new impetus to its traditional position in international economic agreements consisting of excluding the sector of audio-visual services from the non-discrimination rules of those agreements. Following the entry into force of the CDCE, the European Commission attempted to overcome this historical opposition

between culture and trade by proposing to address cultural cooperation expressly based on the CDCE when negotiating trade agreements, under a “protocol” (attached to the trade agreement) or an autonomous “agreement” on cultural cooperation (Richieri Hanania 2012: 440-448; Vlassis 2016). Such legal frameworks on cultural cooperation were a new policy tool elaborated by the Commission to promote the CDCE’s implementation in parallel to the negotiation of bilateral and regional trade agreements. Since 2008 and to the present date, the Commission has negotiated in total three main protocols on cultural cooperation: a protocol with the CARIFORUM States, included in the Economic Partnership Agreement between the EU and the [CARIFORUM](#) and signed in 2008; a protocol with [South Korea](#) included in the EU–Korea FTA and concluded in 2009; and a protocol with the countries of [Central America](#) concluded in 2010 and attached to the Association Agreement with those countries signed in 2012 (see Timeline of Trade Agreements). While some of the provisions of these protocols addressed the use of technologies, access to the digital media market was not addressed as an autonomous issue (Richieri Hanania 2019: 143).

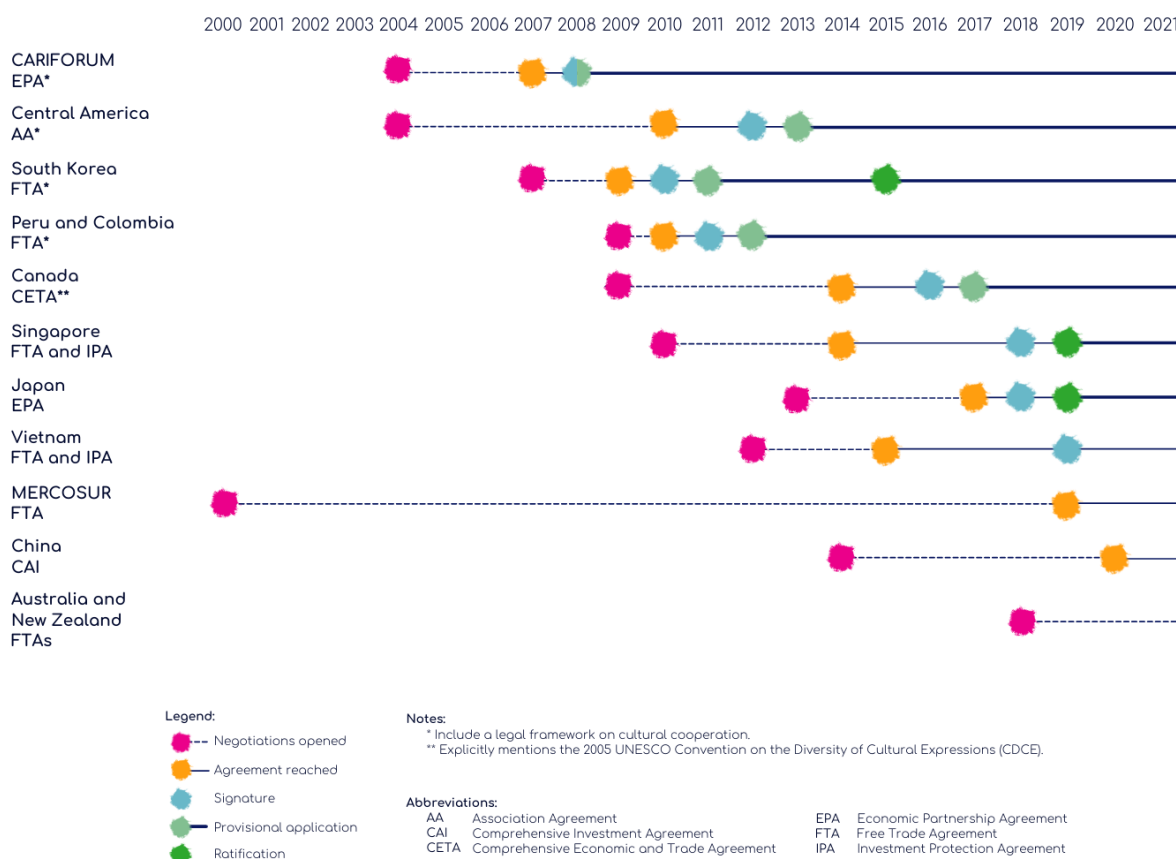
The CDCE has become the main multilateral law instrument addressing global and multilevel cultural governance.

The European Commission attempted to overcome the historical opposition between culture and trade through cultural cooperation.

Despite strong criticism regarding the way those protocols on cultural cooperation were initially negotiated, their top-down design process, and their capacity to satisfyingly implement the CDCE (Richieri Hanania 2012: 440-452; Vlassis 2016; Garner 2017; Richieri Hanania 2019: 140-142), the EU's attempt offered an illustration of a relatively strong political influence of the CDCE and a new standpoint regarding the "trade and culture debate". Based on this experience, cooperation provisions may be seen as allowing

for culturally enriching and balanced cultural exchanges, without challenging the need for a specific legal treatment for cultural goods and services in trade agreements and without requiring market access commitments. States may therefore promote exchanges, interculturality and cultural dialogue, which are essential components of cultural diversity, while maintaining the largest policy space as possible for existing cultural policies and the adoption of new ones (Richieri Hanania 2012: 452). Such flexibility is

Timeline of selected EU Trade Agreements



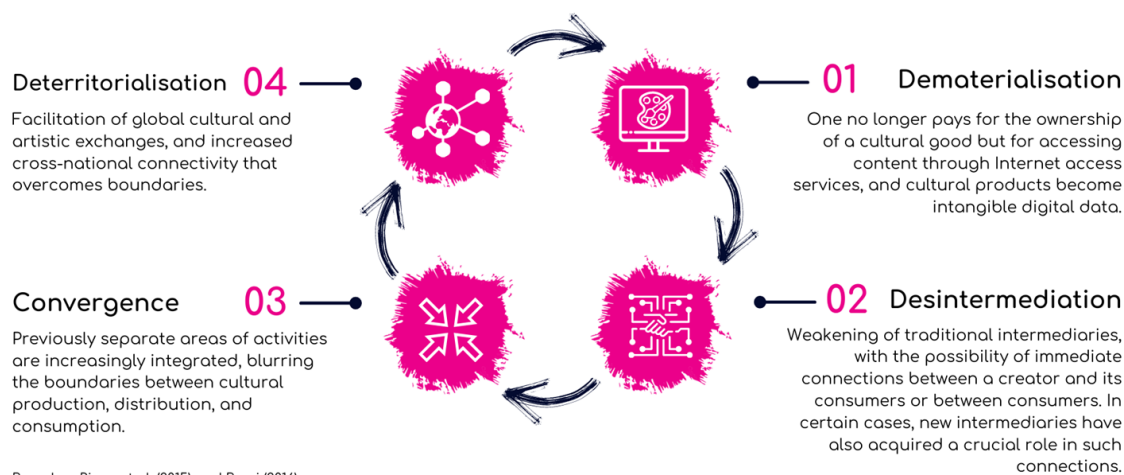
all the more necessary in view of the continuous changes brought about by new technologies.

Digital transformation

Digital technologies have increasingly transformed the whole cultural value chain with unprecedented changes in creation, production,

Digital technologies may have a positive and a negative impact on cultural sectors and they can thus be regarded as both an opportunity and a challenge for cultural industries, according to how they are applied in national and regional contexts. Digital technologies may contribute to a diverse and dynamic cultural economy or amplify the process of concentration in the distribution of cultural content, creating at the same time

Systemic processes in the cultural sectors as a result of the digital revolution



distribution, broadcasting and consumption of cultural goods and services, as well as the remuneration of creators. Such changes go beyond digitisation of content into the realm of cultural engagement and management ([culture Solutions 2020a](#)), forcing cultural industries, such as film, music and book publishing, to reinvent themselves. This results in tremendous challenges for the raison d'être of cultural policies and for international cultural cooperation. As the 2018 United Nations Conference on Trade and Development (UNCTAD) [report](#) on creative industries explicitly pointed out: "digital disruption is the key trend influencing the future of the creative economy, especially in developing economies."

legal and economic uncertainties for creators. In other terms, the digital ecosystem does not automatically generate benefits and opportunities for cultural industries and it does not spontaneously promote the diversity of cultural expressions (Albornoz et Leiva 2019). As stressed by Jeffrey Hart, "political institutions can influence the way in which digital technology is introduced and deployed in a variety of ways" (Hart 2010: 56-62).

The design and implementation of governance arrangements addressing the changes brought about by digital technologies require policymakers with the ability to move the debate forward, to identify and promote new issues, and to make decisions that guide the development of the In-

ternet towards legitimate public objectives such as cultural diversity (Carpenter 2010: 204; Richieri Hanania and Norodom 2016). The EU external action may be regarded as an opportunity for the EU to steer the evolution of digital technologies towards a more culturally diverse environment.

Digital technologies, culture, and EU trade agreements

Given the crucial role of the EU in the implementation and promotion of the CDCE, the EU's commitment towards the specificity of cultural goods and services in trade and economic agreements should be accompanied by continuous efforts for increased international cultural cooperation (Vlassis 2020). This is particularly important today, with the outstanding impact of the COVID-19 pandemic on the cultural sector and the progressive role of digital cultural content for the viability and vitality of cultural expressions. Greater international cooperation involving digital cultural content appears, therefore, as a fundamental issue to be addressed by the EU when strengthening cooperation with its trade partners in the digital environment.

The following paragraphs provide an overview of each of the recent EU trade agreements selected in the present brief and how they reflect the EU commitment towards the safeguard of policy space for its Member States when it comes to certain cultural sectors (and particularly the audio-visual services sector) and the promotion of cooperation with its trade partners in the digital field.

The EU's economic agreements present distinctive general patterns:

1. Among the general principles, cultural diversity is explicitly mentioned under the legitimate public policy objectives that may guide the parties' right to regulate economic activity. Other objectives which may have a direct link with cultural diversity, notably in the digital era, are public morals, consumer protection, privacy, and data protection.
2. The audio-visual sector is excluded from

the provisions regarding investment liberalisation, cross-border trade, and e-commerce. No other cultural sector, despite the specificity recognised by the CDCE to all cultural sectors, is subject to a generally applicable cultural exception in those agreements. Nevertheless, in the schedule of commitments, the EU customarily reserves its right to adopt or maintain any measure regarding services other than audio-visual, namely: libraries, archives, museums and other cultural services; entertainment services, theatre, live bands and circus services; news and press agencies (see Table 1 below).

3. Broadcasting services and cable distribution of radio and television services are excluded from the application of the subsection on telecommunications services.
4. Subsidies for the audio-visual services sector should be accepted by the parties, even if they discriminatorily favour cultural goods and services of one of the parties.
5. Extensive protection is ensured for intellectual property, including with respect to phonogrammes and cooperation on collective management of rights.

EU-Singapore. In addition to the general features highlighted above, in its [Chapter 8](#) on "Services, Establishment and Electronic Commerce", the [Free Trade Agreement](#) with Singapore envisions the adoption of measures "necessary for the protection of national treasures of artistic, historic or archaeological value" (Article 8.62). In its [Schedule of Specific Commitments](#), the EU ascertains its right, to a varying geographical extent, to maintain or adopt new measures relating to recreational, cultural and sporting services (see Table 2 below). This is reciprocated by Singapore's reservations, which in substance only limit market access and national treatment in cross-border supply of sports and recreational services. [Chapter 10](#) on "Intellectual Property" provides for capacity-building and technological cooperation in various fields, among which public-private partnerships to support culture and innovation (Article 10.52). Throughout the text there is no reference to the CDCE, which is to be expected since Singapore is not a party to

Table 1. Standard EU Reservations for Recreational, Cultural and Sporting Services (other than audio-visual services) by country

Sub-sector Country	Entertainment Services (Theatre, Live Bands, Circus and Discotheque)	News and Press Agencies Services	Libraries, archives museums and other cultural services	Sporting services
Belgium (BE)			X	
Bulgaria (BG)	X*	X	X	X
Czechia (CZ)	X	X	X	X
Denmark (DK)			X	
Germany (DE)			X	
Estonia (EE)	X*	X	X	X
Ireland (IE)			X	
Greece (EL)			X	
Spain (ES)			X	
France (FR)		X*	X	
Croatia (HR)			X	
Italy (IT)			X	
Cyprus (CY)	X	X	X	X
Latvia (LV)	X*		X*	X
Lithuania (LT)		X	X*	
Luxembourg (LU)			X	
Hungary (HU)		X	X	
Malta (MT)	X	X	X	X
Netherlands (NL)			X	
Austria (AT)			X*	X*
Poland (PL)	X	X	X	X
Portugal (PT)			X	
Romania (RO)	X	X	X	X
Slovenia (SI)	X	X	X	X*
Slovakia (SK)	X	X	X	X
Finland (FI)	X		X	
Sweden (SE)			X	

* Partial reservation

this UNESCO convention, and it only recently acceded to the 1972 Convention on World Heritage and the 2003 Convention on Intangible Heritage.

EU-Japan. Besides the “cultural exception” contained in [Chapter 8](#) on “Trade in services, liberalisation of investment and electronic commerce”, [Chapter 18](#) on “Good regulatory practices and regulatory protection” of this [Economic Partnership Agreement](#) (EPA) mentions that “nothing in this section shall affect the right of a Party to define or regulate its own levels of protection in pursuit or furtherance of its public policy objectives in areas such as (...) cultural diversity”. In addition, Article 2.10 of [Chapter 2](#) on “Trade in Goods” states that each Party “shall grant duty-free temporary admission into its customs territory” for the following goods: “professional equipment, including equipment for the press or for sound or television broadcasting, cinematographic equipment (...)”, as well as advertising films and recordings. On its side, “Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in [the] broadcasting industry”. Despite the aforementioned “cultural exception” and reservations, no clear reference to the CDCE appears in this agreement (Japan is also not a party to the CDCE) and there is no provision on the promotion of cultural cooperation. Japan’s alignment with the USA not only regarding trade liberalisation in the audio-visual sector but most importantly in digital issues is apparent in their Digital Trade Agreement, signed just a few months after the entry into force of the EPA with the EU and allowing for the free flow of data not envisioned in the e-commerce provisions of the EPA.

EU-Vietnam. Recognising Vietnam’s development needs, the Free Trade and Investment Protection [agreements](#) signed in 2019 grant Vietnam an asymmetric treatment – a longer period for eliminating duties and a wide list of exemptions from national treatment. The first three sectors listed in Vietnam’s exemptions ([Annex 8-C](#)) are dedicated to media and cultural products, including the audio-visual sector. Vietnam reserves its right to adopt measures in the sub-sectors of entertainment and games services, while the EU’s reservations also cover news and press, libraries and museums, as well as sports. Vietnam also negotiated reservations in the sector of telecommu-

nication services, while the EU limited itself to stating that these do not include the provision of content. Digital cultural content is conspicuous by its absence. However, it is worth noting that the trade agreement includes an institutional and legal link to the [Partnership and Cooperation Agreement](#) (PCA) signed in 2012 between the parties, which explicitly mentions the CDCE in its Article 38. Nevertheless, its vague wording and brevity (e.g., “endeavour to take appropriate measures to promote cultural exchanges”) make it a far cry from the protocols on cultural cooperation concluded around the same period, while support for Vietnam’s developing cultural sector could have been strengthened based on Article 16 of the CDCE. Moreover, it would have been interesting to establish a connection between Article 38 on Culture and the ensuing articles on Scientific and Technological Cooperation (Article 39) and Cooperation on ICT (Article 40) in order to more directly link culture to digital issues.

EU-China. The [Comprehensive Agreement on Investment](#) (CAI) drew criticism for being suddenly concluded only twenty days before the inauguration of President Biden and thus potentially endangering Trans-Atlantic ties, and it is currently put on hold by the European Parliament. What is interesting about the CAI is not the exclusion of the audio-visual sector, nor the reservations of the EU, but those of [China](#). The entry on “Press” explicitly prohibits investment in internet information services and limits investment in internet information searching services to 50%. Similarly, the reservation on “Publication” prohibits not only investment in electronic and network publication services but also establishment of representative offices without government approval. Moreover, there is a specific entry entitled “Network Audio-Visual Service, Internet Culture Operation” which excludes investment and sets a maximum volume of imported films and television series used for information networks at 30% of the domestic production. There seems to be, therefore, a clear imbalance created by the EU’s commitment to technology neutrality and China’s awareness of the importance of digital culture. The latter can be attributed inter alia to the high level of digitalisation of China, considering that China counts with almost a billion internet users. All in all,

despite both parties being Parties to the CDCE, the Convention is not explicitly mentioned and access to the Chinese market remains highly restricted, even more so in the audio-visual sector and the digital environment (e.g., European Commission 2013).

EU-MERCOSUR. Unfinished [texts](#) (still under negotiation) of the Trade Part of the agreement between the EU and MERCOSUR were published following the [agreement in principle](#) announced on 28 June 2019. With respect to cultural sectors, the exceptions incorporated in the agreement between the EU and MERCOSUR have strong similarities to those contained in previous EU agreements. In the chapter on [“Trade in Services and Establishment”](#), subsection 6 on e-commerce states that it shall “apply to measures that affect trade by electronic means”, but not to “broadcasting services and audio-visual services” (Article 42). In addition, they recognise the principle of technological neutrality in electronic commerce. In the chapter on [“Intellectual Property”](#), Article X.14 states that “each Party shall provide a right in order to ensure that a remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public”. Moreover, Article X.17 on “Cooperation on collective management of rights” explicitly mentions the digital environment when dealing with the promotion of cooperation, transparency and non-discrimination of collective management organisations.

EU-New Zealand and EU-Australia. Negotiating directives for trade agreements with both [New Zealand](#) and [Australia](#) were established in May 2018. Together with the EU proposed texts (still under discussion between the parties), these directives may provide some understanding on how these negotiations may evolve with respect to the trade and culture debate and notably regarding digital cultural content. Remarkably similar, they address cultural concerns in different sections. First, when they deal with sustainable development as an “overarching objective” of

the future agreements (for instance, pages 3 and 6 of the mandate regarding the New Zealand FTA). Unfortunately, the directives only mention social and environmental issues when explicating such objective, despite the increasing recognition of the cultural dimension of sustainable development in international legal instruments (for instance, the [2001 Universal Declaration on Cultural Diversity](#), the CDCE, the [2030 Agenda for Sustainable Development](#), and the UN General Assembly [Resolution on Culture and Sustainable Development of December 2019](#)). The parties’ intervention in favour of cultural diversity is nevertheless evoked in connection with sustainable development when it is stated that the future agreement should prohibit the parties to “encourage trade or foreign direct investment (...) by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity”. In the “Trade in Services, Foreign Direct Investment and Digital Trade” section of the negotiating directives, the traditional EU “cultural exception” for audio-visual services is put forward with the statement that “[each] Agreement should have no a priori exclusion from its scope other than the exclusion of audio-visual services” (e.g., page 12 of the mandate for the New Zealand FTA). Audio-visual services are indeed excluded from the scope of the proposed EU text on [Digital Trade](#), which recalls in its Article 2 the right to regulate in favour of legitimate public policy objectives, including the promotion and protection of cultural diversity. In addition, considered obligations aim, among others, to ensure data flows to facilitate trade in the digital economy, protect personal data and privacy, ensure the validity of contracts concluded by electronic means, electronic signature, and other electronic authentication services, as well as, more generally, strengthen cooperation among the parties on regulatory issues relating to digital trade. The digital environment should also be the object of attention in the intellectual property rights section of the future agreement, and the latter section should also address, in the negotiations with New Zealand, the issues of traditional knowledge and folklore (pages 14-15 of the mandate for the New Zealand FTA).

FOCUS 1

WTO plurilateral negotiations on e-commerce

WTO plurilateral negotiations on e-commerce. In January 2019, at the World Economic Forum in Davos, 76 members of the WTO, including the EU, the United States (US), China, Japan and Canada, decided to start plurilateral negotiations to establish new international common rules on trade-related aspects of electronic commerce. Today with 86 participating members, the talks cover all e-commerce-related issues, for both goods and services. The objective is to improve consumer trust in the digital environment and to tackle issues such as data flows, customs duties on electronic transmissions, market access in computer and telecommunication services, privacy and data localisation, and software source code. On 20 May 2019, the European Council adopted a negotiating [mandate](#) which explicitly stressed that “the European Union and its Member States

shall maintain the possibility to preserve and develop their capacity to define and implement cultural and audio-visual policies for the purposes of preserving their cultural diversity. The European Union shall not agree to rules or commitments for audio-visual services.” Considering the large number of bilateral and regional FTAs already containing specific chapters devoted to electronic commerce, the way in which WTO Members participating in this negotiation will address trade in cultural goods and services in the final plurilateral agreement on e-commerce may have significant repercussions on the ability of governments and regional entities to develop and implement policies to protect and promote the diversity of cultural expressions in the digital environment.

Potential for deeper digital and culture-related provisions in EU trade agreements. As

the above overview of recent EU trade agreements demonstrates (see also Table 2), digital cultural cooperation could be more strongly integrated into discussions with EU trade partners, especially if such partners are also parties to the CDCE, as is the case of Vietnam, Argentina, Brazil, Uruguay, Paraguay, China, Australia and New Zealand. Formalisation of such cooperation could be enshrined in provisions integrated into the trade agreement (for instance, under complementary provisions in specific chapters on digital cooperation, or as a protocol attached to the agreement) or materialised in a separate agreement concluded by the same parties, following specialised negotiations by experts of the cultural sector and wi-

thout neglecting the need to continue to ensure, in economic and trade agreements, the greatest

Digital cultural cooperation could be more strongly integrated into discussions with EU trade partners, especially if such partners are also parties to the CDCE.

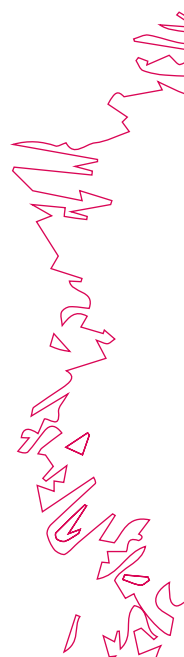
possible flexibility for States to intervene in their cultural sectors through cultural policies and measures. These provisions could be designed in a participatory manner for meeting the challenges of the digital environment and supporting culture professionals, cultural industries and enterprises from the EU and its partners to ensure a culturally-diverse digital ecosystem. In terms of content of the future provisions, digital cultural cooperation promoted by the EU could be inspired by the latest initiatives and experiences regarding digital cultural cooperation examined in the following section, to be adapted to the specificities and priorities of the EU external action.

Table 2. Comparison of the treatment of culture in the EU Trade Agreements analysed in this cS brief

Trade Agreement		Singapore FTA	Japan EPA	Vietnam FTA	MERCOSUR FTA	China CAI
Provisions						
Relevant chapter		8. Services, Establishment and Electronic Commerce	8. Trade in services, investment liberalisation and electronic commerce	8. Liberalisation of Investment, Trade in Services and Electronic Commerce	X. Trade in services and establishment	II. Investment liberalisation
Legitimate policy objectives		Preamble, Article 8.1*	Articles 8.1 and 18.1	Articles 8.1 and 8.53	Article X.1*	Article I.1
E X C L U S I O N S	Investment liberalisation	Article 8.9	Article 8.6	Article 8.3	Not applicable	Article II.1
	Cross-border trade	Article 8.3	Article 8.14	Article 8.9	Article X.1	Not applicable
	Telecommunication services	Article 8.24	Article 8.41	Article 8.26	Article X.24	Not applicable
	E-commerce	No exclusion	Article 8.70	No exclusion	Article X.42	Not applicable
	Subsidies	Annex 11-A	Article 12.3	Article 10.4	No exclusion	Article III.8
Intellectual property protection		Articles 10.6 and 10.8	Article 14.16	Articles 12.6 to 12.10 and 12.16	Articles X.14 and X.17	Not applicable
Convention on the Diversity of Cultural Expressions		No mention	No mention	No mention**	No mention	No mention
Digital cultural content		No mention	No mention	No mention	No mention	Chinese reservations

* No specific mention of the sectors covered.

** Mention of CDCE in PCA.



Key initiatives for stronger digital cultural cooperation

Some recent endeavours may provide guidance on how to strengthen international cultural cooperation in the digital field. Despite the particularities of a future EU approach on this subject, the following may provide some direction for the identification of cooperation paths and priorities.

Operational Guidelines for the Implementation of the CDCE in the Digital Environment. In June 2017, the Parties to the CDCE approved [Operational guidelines](#) to promote and direct the implementation of the CDCE in the digital environment in order to take into account the new economic and industrial environment created by digital technologies and reaffirm the main principles of the CDCE in the digital context (Vlassis 2017: 47-54). These guidelines provide a strategic framework for understanding, interpreting, and implementing the CDCE, including its pillar on international cultural cooperation, in a context in which cultural goods and services are created, produced, distributed, disseminated, consumed and/or stored electronically. In December 2018, UNESCO published an [open road map](#) for the implementation of such guidelines, allowing for a more practical implementation and monitoring among the Parties to the CDCE. Both the Operational guidelines and the roadmaps, in particular those presented by EU negotiating partners, could enrich the EU strategy and allow for an optimum consideration of each of the EU Member States' and EU partners' interests and priorities. Seeking to develop a more focused socialisation of the guidelines with relevant policy-makers, a new EU digital cultural cooperation strategy should have such interests and priorities as their main goals.

Digital Economy Partnership Agreements. In mid-June, ministers from New Zealand, Chile

and Singapore signed the [Digital Economy Partnership Agreement](#) (DEPA), focused solely on the digital economy. Negotiations for the agreement began in May 2019. According to negotiators, this agreement intended to complement the WTO negotiations on e-commerce. In this 63-page DEPA, the signatories stressed that “nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary [...] to support creative arts of national value” (module 15). Also, early August 2020, Singapore and Australia digitally signed the Australia-Singapore Digital Economy Agreement (DEA), following the official conclusion of negotiations at the end of March 2020. The new agreement seeks to upgrade the digital trade arrangements between Australia and Singapore under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Singapore-Australia Free Trade Agreement. The 39-page DEA covers a broad range of issues, such as e-commerce, telecommunications, cross-border transfer of information, data innovation, etc. Article 6, focusing on “Non-Discriminatory Treatment of Digital Products” explicitly stresses that it “shall not apply to broadcasting”. Based on the leadership and political willingness of its parties, the DEPA and the DEA could generate new standards for regulating digital technology and become normative models for bilateral and multilateral trade negotiations, including those conducted by the EU. In fact, the experience with the implementation of the DEPA and the DEA by New Zealand and Australia could provide useful input for the elaboration of provisions on digital cooperation under the free trade agreements currently negotiated by the EU with those two countries, and eventually lead to the development of renewed EU templates for future negotiations. Such provisions could be enriched with specific clauses on digital cultural cooperation, while ensuring the largest policy space as possible in terms of cultural policy for each of the parties.

FOCUS 2

The emergence of new concepts to address the digital environment, such as «creative arts»

According to the DEPA and similarly to previous agreements negotiated by New Zealand, such as the Association of Southeast Asian Nations (ASEAN)-Australia-New Zealand Free Trade Area, the notion of “creative arts” covers:

- performing arts (e.g., theatre, dance, and music),
- visual arts and craft,
- literature,
- film and video,
- language arts,
- creative online content,
- indigenous traditional practice and contemporary cultural expression, and
- digital interactive media and hybrid artwork, including those that use new technologies to transcend discrete art form divisions.

Studies on the discoverability of cultural content. Since 2013 several studies and reports (Guèvremont 2013; RIJDEC 2013; Rioux et al. 2015; Richieri Hanania and Norodom 2016) have addressed the promotion of cultural diversity and the implementation of the CDCE online, including with respect to the “discoverability” of cultural content in a digital context. The notion of discoverability refers to the online availability of a cultural content and its capacity to be found among a large set of other contents, while it was not specifically searched (Rioux et al. 2021). The notion encompasses the set of strategies and practices on the Internet allowing the discovery of content on digital platforms, relying among others on tools and techniques of indexing, referencing or advanced use of metadata, but also on processes of prescription or algorithmic recommendation. The place that local and national cultural content occupies in the digital environment, also from a linguistic diversity standpoint, has become a

The notion of discoverability refers to the online availability of a cultural content and its capacity to be found among a large set of other contents, while it was not specifically searched.

major issue for cultural diversity in a context of concentration of digital platforms, the implementation of new regulations, such as the [European Audiovisual Media Services Directive](#) and the [Directive on copyright in the Digital Single Market](#), as well as the extremely important role of digital consumption in the COVID-19 crisis. The challenge of discoverability is multidimensional, involving a number of strands, such as training the cultural sector, promoting local, national or regional content online and continuously assessing the conditions for discoverability, as well as adapting policies and regulatory frameworks to this new environment. While these aspects are common to all cultural sectors, the challenges of discoverability should be considered in a differentiated way when it comes to audio-visual, music, book sector, performing arts, visual arts, museology, and heritage. Among interesting initiatives, in 2019 Canada launched a [strategy](#) for international mobilisation for the diversity of content in

the digital age. Also, in June 2020 the OIF published an [inventory](#) of discoverability and access to francophone cultural content on the Internet and, at the end of November 2020, France and Quebec unveiled a [joint strategy](#) to improve the online discoverability of francophone cultural content. All these initiatives should guide the EU in the definition of clear and measurable objectives to be pursued in its international cultural cooperation and cultural relations for them to be conducive to greater cultural diversity online.

UNESCO Recommendation on Artificial Intelligence. From 2019 to 2021, UNESCO is carrying out a two-year process to develop the first global standard-setting instrument on ethics of Artificial Intelligence in order to protect and promote human rights. The first version of the Recommendation was developed by 24 experts. During July and August 2020, UNESCO convened a global public online consultation, along with eleven regional and sub-regional virtual consultations, to discuss this first version. Taking into account the feedback received during the [consultation process](#), the ad-hoc expert group revised the first version and produced the [first draft of the Recommendation](#), which was transmitted to Member States for written comments from September to 31 December 2020. The fact that the EU's [Ethics Guidelines for Trustworthy AI](#) and [White Paper on AI](#) precede UNESCO's Recommendation demonstrates the high level of awareness and proactivity of the EU. However, the only references to culture in these two documents are limited to the advice for diverse design teams and the avoidance of cultural harm. Moreover, in the newly unveiled [legislative proposal](#), the EU has adopted a risk-based approach (focusing on sectors such as security, healthcare, transport and energy), while the UNESCO Recommendation emphasises “the profound and dynamic impact of AI on (...) education, human, social and natural sciences, culture, and communication and information”. A promising development in this regard is the European Parliament [resolution](#) of 19 May 2021 on Artificial Intelligence in education, culture and the audio-visual sector which recognises the “issues around data protection, discrimination and cultural and linguistic diversity”. culture Solutions is already looking into the unexplored external cultural ac-

tion dimension of Artificial Intelligence.

A new EU strategy on strengthened digital cultural cooperation, complementing and renewing the already outdated [2016 Joint Communication in international cultural relations](#), should integrate the knowledge developed by the above-mentioned experiences and research. It should incorporate their recommendations and guidance regarding the implementation of the CDCE in the digital field, comprehensive digital cooperation, the pursuit of discoverability of diverse cultural content online, and principles for Artificial Intelligence that may contribute to the objective of cultural diversity online. International digital cultural cooperation should be promoted on the “belief] that culture can benefit from rapid technological change as dynamics of digital transition and culture are interconnected” ([More Europe](#), 2021). Also, initiatives such as the New European Bauhaus ([culture Solutions](#), 2021) should help define an innovative and EU-specific strategy on digital cultural cooperation that promotes the connection among cultural, economic, social and environmental imperatives of the EU and its trade partners.

Towards stronger provisions on digital cultural cooperation

Since the adoption of the CDCE, the EU has sought to include the principles and objectives of this convention among its priorities, including when negotiating international trade and economic agreements. However, in recent agreements with various partners, the EU strategy based on its traditional “cultural exception” does not seem to grant the necessary attention to the challenges and opportunities of the digital environment. The latter could likely be better dealt with through a cooperative and participatory approach involving digital and cultural professionals, as well as partnership arrangements to support the cultural and creative sectors in a culturally-diverse digital ecosystem. By taking into account the recent international developments related to the global governance of digital technologies and culture, the EU could promote new policy tools on digital cultural cooperation in order to further develop

the cultural dimension of the EU external action, strengthen the EU's leading position in international cultural relations and support cultural and creative sectors of both the EU and its partners, strongly impacted by the lockdown measures due to the COVID-19 pandemic.

In this respect, if the EU wishes to reinforce its role as a reference in norms-setting in the digital field, as well as in the implementation of the CDCE, addressing international cultural cooperation in the digital field should be at the heart of its external cultural action. A specific policy agenda could be elaborated for digital cultural cooperation in the EU external action as part of systematic EU cultural strategies already called for by EU Council conclusions, in which a framework for concrete and meaningful action would be defined. When planning to negotiate or when negotiating cooperation provisions with EU partners - integrated into an economic agreement or as a separate set of norms -, attention should be drawn, among others, to the following five main questions:

1. What could be the criteria justifying recourse to a protocol or provision included in a trade agreement or the negotiation of a separate agreement on digital cultural cooperation? For each specific partner, what would be the most appropriate legal framework to contain such new provisions? While previous experiences with the EU frameworks on cultural cooperation would be taken into account, the new provisions on digital cultural cooperation should allow the EU and its partners to overcome obstacles that hindered the effectiveness of those frameworks. The criteria to be defined should also reflect the priorities identified in the “common local cultural strategies and projects in third countries” as recommended by the 2019 [Council conclusions on an EU strategic approach](#)

If the EU wishes to reinforce its role as a reference in norms-setting in the digital field, as well as in the implementation of the CDCE, addressing international cultural cooperation in the digital field should be at the heart of its external cultural action.

[to international cultural relations and a framework for action.](#)

2. How could the EU build upon the CDCE definitions of cultural industries and cultural policies, as well as other concepts specifically used in relation to digital technologies, to both promote the political strength of this convention and effectively contribute to greater balance in the exchange of cultural goods and services in the digital environment? For instance, the Operational guidelines for the implementation of the CDCE in the digital environment use the concept of “networked artistic works” (§24.2). Concepts used by New Zealand and Australia as “creative arts” or “hybrid artwork” could also be a source of inspiration.
3. What would be the added value of increased digital cultural cooperation with each specific EU partner compared to cultural cooperation in existing EU development programs? New provisions on digital cultural cooperation could take into account policy experiences and results from previous and ongoing culture development programs of the EU, such as MEDIA Mundus, EU-MERCOSUR Audio-visual Cooperation, ACP-EU Culture, and European Spaces of Culture. They could build complementarities with the priorities of these programmes and be designed in an informed manner in order to ensure optimum coordination.
4. How could those new provisions effectively address the discoverability of diverse cultural content online and what could be the mechanisms to increase their impact? Practical measures for cultural cooperation in the digital field could be varied and variable according to each partner, going, for instance, from technical and financial assistance, to capacity-building projects in-

volving access and use of digital technologies, online festivals aiming at developing audience for the partners' cultural productions, creation of common platforms for the distribution of content resulting from collaborative projects, partnership with private online platforms (including the "net giants"), collaboration in the preparation of partners' digital strategies, online platforms to promote exchange of knowledge, experiences and best practices, as well as digital collaborative work (Richieri Hania 2019: 144-145).

5. How could the EU effectively involve relevant stakeholders from the cultural and digital sector? Determining the specific tools and mechanisms of cooperation to be sought with each EU partner requires conducting interviews and surveys with cultural and digital professionals and experts in the EU and in partner countries.

The purpose of this wide consultation is to identify priorities and design a customised approach according to the needs and interests in different cultural industries. The new policy tools towards stronger digital cultural cooperation could be designed in a participatory manner in order to adequately support cultural and creative sectors of the EU and its partners in the digital environment. In this regard, independent and neutral organisations such as culture Solutions could have significant added-value in a brokering role.

Our culture Solutions research team has been extensively devoted to the above issues and is enthusiastic about developing future research that will significantly contribute to the definition of a new EU policy agenda on digital cultural cooperation, notably in relation with international economic agreements.

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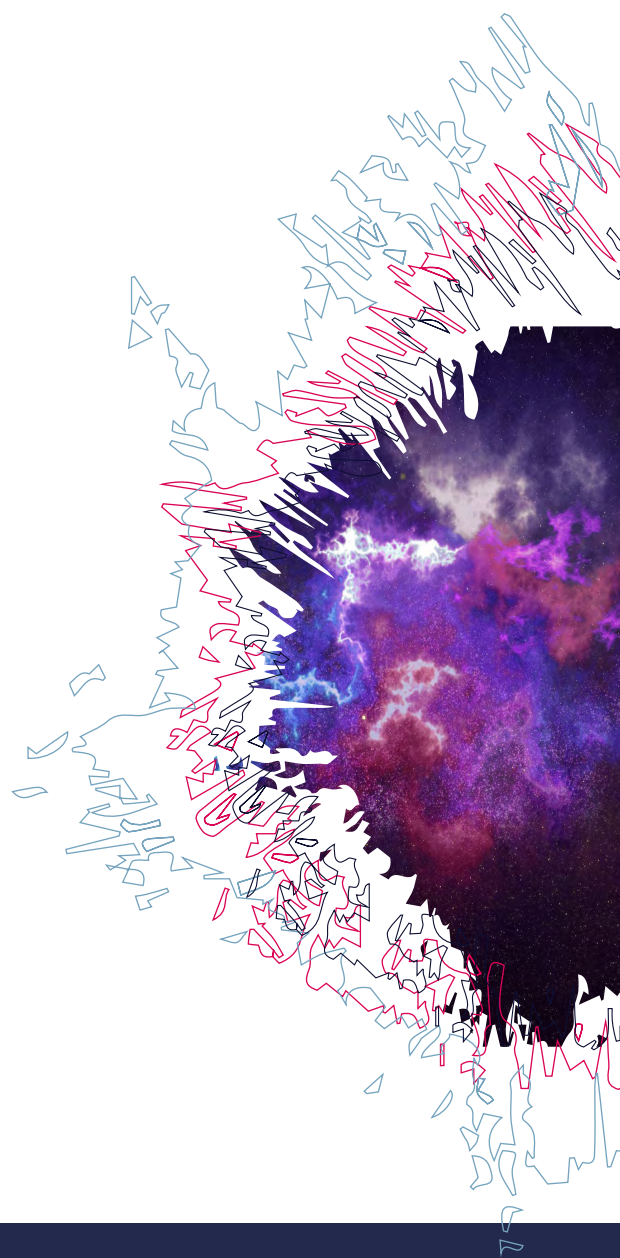
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culture Solutions Europe (cS) is an independent and non-for-profit social innovation group serving all those involved in EU international cultural relations.

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