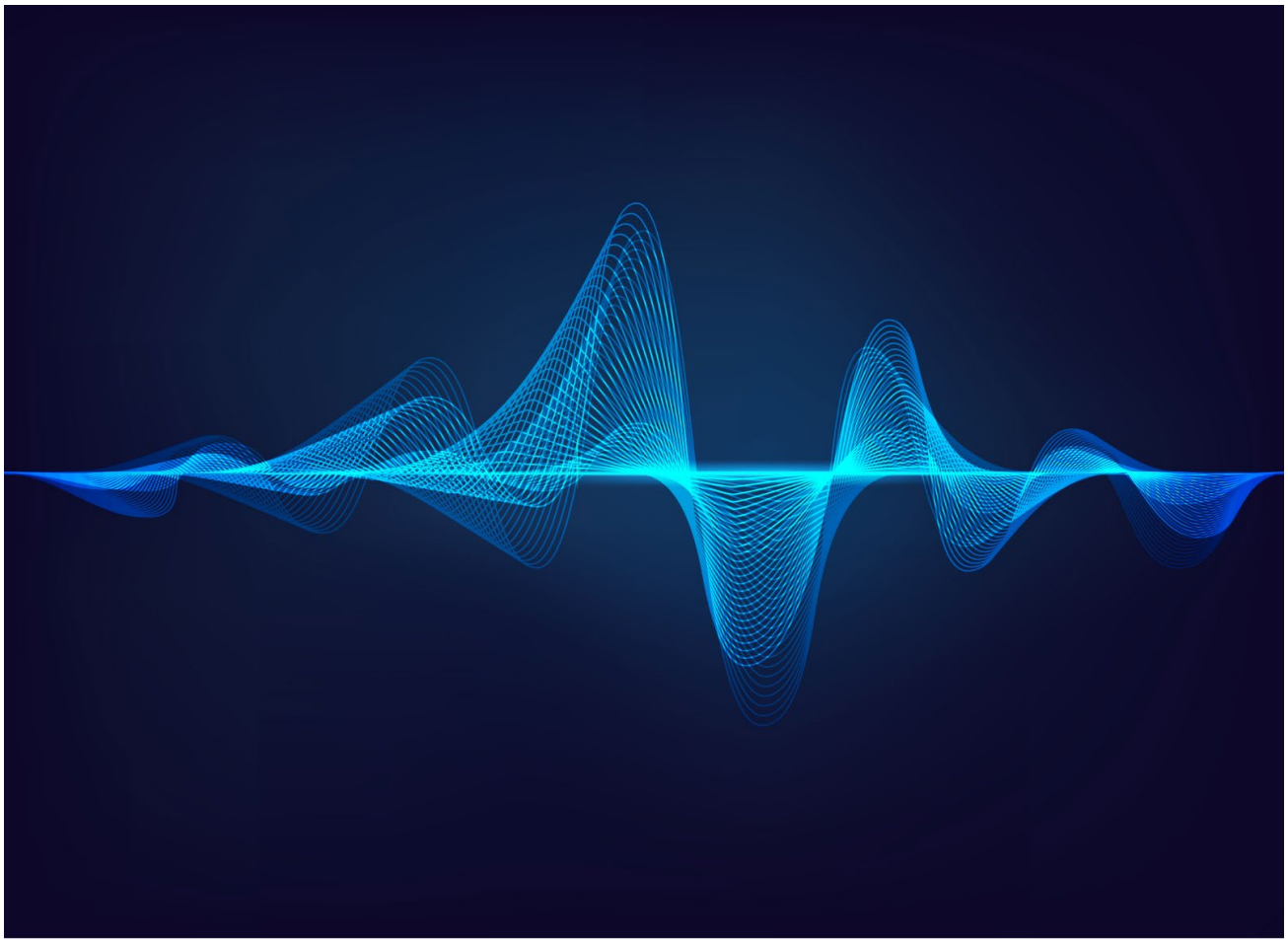


D2.1 – Music Diversity and Circulation: Novel Data Collection Methods and Indicators

OpenMusE

An open, scalable data to-policy pipeline for European music ecosystems

Funded by the European Union

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Glossary

AGCM Italian Competition Authority

AVMSD 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 (Audiovisual Media Services Directive)

BC Berne Convention

BER 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 (Block Exemption Regulation)

CCI **Creative and cultural industry -** Cultural and creative industries are comprised of all sectors whose activities are based on cultural values, or other artistic individual or collective creative expressions and are defined in the legal basis of the Creative Europe Programme

CESCR Committee on Economic, Social and Cultural Rights

CD **Cultural diversity** – represents the different forms of culture that emerge in time and space. Cultural diversity manifests itself in the originality and multiplicity of identities, as well as in the cultural expressions of peoples and societies representing humanity. At the same time, cultural and linguistic diversity contributes to the dissemination and consolidation of the European values of democracy, tolerance and equality.

CDC UN Cultural Diversity Convention

CDSMD Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

CEDAW UN Convention on the Elimination of All Forms of Discrimination against Women

CJUE Court of Justice of the European Union

CMO **Collective Management Organisations** - are, in most cases, not-for-profit entities, whose legal form can be either private or public. Their key function is to ensure the smooth enforcement, licensing, collection and distribution of revenues among stakeholders, thus allowing the effective remuneration of all creators with lower transaction costs and increased market efficiency.

CoE Council of Europe

DDEX **Digital Data Exchange** – is a persistent identifier used in the digital environment.

DG **Data granularity** - refers to a measure of the level of detail in a data structure.

DOM Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities)

ECC European Cultural Convention

ECHR European Convention for the Protection of Human Rights and Fundamental Freedoms

ECRML European Charter for Regional or Minority Languages

ESC European Social Charter

EOA European Audiovisual Observatory

EU European Union

Ethnicity describes the culture of people in a given geographic region, including their language, heritage, religion and customs

FRBR **Functional Requirement for Bibliographic Records –** is a persistent identifier used in the digital environment

FCNM Framework Convention for the Protection of National Minorities

FCVCHS Framework Convention on the Value of Cultural Heritage for Society

GATS General Agreement on Trade in Services

GATT General Agreement on Tariffs and Trade

GBR Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (Geoblocking Regulation)

ICESCR UN Covenant on Economic, Social and Cultural Rights

ICERD International Convention on the Elimination of All Forms of Racial Discrimination

IP Intellectual Property

ISRC **International Standard Registration code** – is the globally recognised standard numbering system for audio and music video recordings. It comprises a 12-digit alphanumeric code and functions as a universal identification number for each sound recording.

ISWC **International Standard Musical Work Code**. is a unique, permanent, and internationally recognised reference number for the identification of musical works.

LFM-1b public dataset that consists of more than one billion listening events created by over 120,000 users of the music streaming platform

LFM-1K public dataset, which includes historical listening sessions of nearly 1,000 users between 2005 and 2009.

LFM-360K public dataset which consists of approximately 360,000 users' listening histories from Last.fm

MusicBrainz a persistent identifier used in the digital environment for music.

MD **Music diversity** - is part of the cultural diversity and refers to the variety and range of musical styles, genres, traditions, and cultures present within a particular musical context, community, or industry. It encompasses the inclusion of different musical forms, voices, and expressions, and it often promotes the celebration and recognition of various cultural and artistic contributions to music

Metadata (or metainformation) is data that provides information about other data, but not the content of the data itself, such as the text of a message or the image itself. There are many distinct types of metadata, including descriptive metadata (the descriptive information about a resource, used for discovery and identification), structural medatata (indicates how compound objects are put together), administrative metadata (information that helps managing a resource, such as permissions, date of creation, type), reference metadata (information about contents and quality of statistical data), statistical or process data (describing the process that collects, processes or produces statistical data), legal metadata (information about creator(s), rightsholders, eventual public licensing.

MFN Most Favoured Nation

PR Regulation on Cross-Border Portability of Online Content Services (2017/1128) (Portability Regulation)

Qualitative indicators used to refer to concepts and definitions of music diversity that are included in legislative (binding) and policy (non-binding) sources, which are not directly referred to specific data sources to be collected.

Quantitative indicators as opposed to qualitative indicators, in D2.1 "quantitative indicators" are used to identify statistical/policy indicators that directly targets specific and measurable data, regardless of the source introducing or requiring their implementation.

Race Declaration Declaration on Race and Racial Prejudice

SatCab II Directive Directive on Certain Aspects Concerning Contracts for the Supply of Digital Content (2019/770/EU)

SROI **Social Return on Investment** – SROI assesses changes that are important to the community - the individuals or entities involved. It describes the narrative of change by quantifying social, environmental, and economic consequences and employs monetary figures to represent these outcomes. This approach allows for the computation of a benefits-to-cost ratio.

RC Rome Convention

TDM **Text and data mining** - is the process of deriving information from machine-read material. It works by copying large quantities of material, extracting the data, and recombining it to identify patterns (source: UK government)

TFUE Treaty of the Functioning of the European Union

TRIPS Agreement in Trade-Related Aspects of Intellectual Property Rights

UCC Universal Copyright Convention

UDCD Universal Declaration on Cultural Diversity

UDHR Universal Declaration of Human Rights

UN United Nations

UNESCO United Nations Economic Social Cultural Organisation

WCT WIPO Copyright Treaty

WIPO **World** Intellectual property Organisation

WP Work Package

WPPT WIPO Performances and Phonograms Treaty

WTO World Trade Organisation

Executive Summary

The goal of D2.1 - “Music diversity and circulation: Novel data collection methods and indicators” - is the identification of critical research questions, data sources and gaps, and data collection methods, and the co-development of indicators capable of measuring music diversity and circulation in Europe. Indicator candidates will be later reviewed and selected to be added to the Open Music Observatory (D5.1).

To pursue these goals with scientific rigorousness, the research conducted under Task 2.1 and channelled in D2.1 has been structured around **five main steps**.

To lay the groundwork of the research, T2.1 kicked off with the **identification of relevant research questions**, and started exploring different **regulatory definitions of cultural diversity**, in order to **streamline** them and adopt an all-encompassing notion that could be used as a paradigm for the entire course of the project. This entailed a thorough and updated **literature review** of two major issues affecting music industry diversity. The findings resulting from the literature review and the cultural diversity-oriented analysis of existing provisions go beyond T2.1, as they also serve as a basis for the work to be conducted under WP4.

As a second step, again to ensure the correct definition of the scope of the analysis, also for the benefit of other research activities conducted within the framework of WP1, WP3, WP4 and WP5, T2.1 **conducted a comprehensive mapping of international, EU and national regulatory sources** that either define cultural and creative diversity, have diversity as a fundamental objective, or employ diversity indicators in their implementation. The research went beyond state-of-the-art mappings and traditional classifications to also encompass **sources that may indirectly impact** on music diversity – with particular regard to the EU regulatory and policy framework. Great attention was also paid to **verifying** whether and to which extent lower-level sources (EU and national) **correctly embed definitions and policy objectives** in line with the definition of cultural diversity mandated by higher-level sources (international and EU). **As a result, the analysis allowed the identification of existing policy domains and objectives** of music diversity as defined by law, and the description of **measurable target objectives that are still missing** and must be introduced in order to correctly map music diversity in line with the international, EU and national definitions and rules currently in force. In light of the strict interaction between this step and the work currently conducted under WP1 and WP3, **this part was updated from M10 to M12** to encompass other regulatory domains (audiovisual, international trade agreements, competition), as well as an overview of cultural policies and best practices from other countries and music-stakeholders, and included in this updated version of D2.1. The results of the mapping also constitute a large backbone for the development of T2.2, **and will be fed into D2.2,** which will include the “policy context regarding music diversity and circulation in the target countries in particular, and in Europe in general” (as described in the GA).

The **third step** of T2.1 – **economic analysis** – conducted **a literature review of social and economic aspects of cultural diversity, and related data availability and gaps**. As the main goal of EU policies is economic growth and at the same time the cohesion of the Union, cultural policies must be aligned and be intertwined with employment policy to contribute to the development of dignified, respectful and inclusive cultures. The value of cultural industries is generated by creative human capital, which is the basis for generating economic growth in any sector. Against the background of such considerations, the goal of the third step of T2.1 was **to identify existing indicators of music diversity beyond traditional direct parameters**, with the aim to **include also a measurement of diversity in the human capital**

employed in the sector and of its impact on the economic performance of the music industry, as already elaborated in WP1. The theme of cultural and musical diversity and circulation (WP2) creates a knowledge bridge between the economic performance of the music industry, the valuation of intangible assets and their monetisation, elaborated in WP1, and the theme of sustainability in WP3 Music, society, and citizenship. In light of the strict interaction between this step and the work currently conducted under WP1 and WP3, **this part was updated from M10 to M12** and included in this updated version of D2.1.

The **fourth step** of T2.1, which **was carried out in M10-M12** of the project in order to align its activities and results to the work conducted in WP1 and WP3 and other tasks in WP2, merges current and proposed/new **diversity policy objectives and measures taken** from regulatory sources, streamline them in a consistent and unitary set and translate them, to the extent possible, in measurable quantitative indicators.

On the basis of the results of these four steps, which are described in this deliverable, the **fifth step** of T2.1 entailed the identification of data sources and gaps, with a focus on the EU (Eurostat) and Slovakia as paradigmatic case study, and the devising of data collection methods to fill in the gaps. Information on data availabilities and gaps in other countries covered by OpenMusE will be added during the data collection phase of WP2, following the example of Slovakia. As this information is sometimes not publicly available, the extent of this work will be determined by the feasibility of cooperation with relevant authorities.

This deliverable summarises the research conducted within Task 2.1. Compared to the previous version of D2.1, which was submitted as a living document on 30 September 2023, this updated version expands on other regulatory domains within step 2 to align with the needs of WP1 and WP3, and embeds the results of steps 4 and 5 of the analysis, streamlining them with the research results obtained in the meantime in the context of T1.1 and T3.1. The mapping was supplemented with the inclusion of:

- other topical domain and countries in the legal mapping (e.g. competition law, international IP law, WTO law, audio-visual law), in light of their indirect impact and/or constraining effect on the implementation of diversity-oriented policies;
- other policy documents from the EU and selected countries;
- a survey of diversity-oriented policies and measurements implemented by representative organisations of collecting societies;
- a supplementary review of academic literatures and other studies previously conducted on music diversity, if not already covered by other WPs, which define or functionally conceptualise diversity within the music context;
- the analysis of best practices developed by countries, also expanding the geographical approach within and outside the EU, CMOs and other industry-related stakeholders to be used as a model for the development of policy recommendations;
- a more developed analysis of existing quantitative indicators which may interplay with music diversity, also in line with the findings of other WPs (especially WPs 1, 3 and 4).

This supplemental analysis allowed for refining the outcomes of the first four steps of the research and laid the groundwork for the proposal of introduction/amendment of quantitative indications and the

identification of data gaps and data collection methods under step 5, to be carried also during the collection phase.

Table of Contents

1 Research Questions and Structure of the Deliverable 20
2 Literature Review 22
2.1 Defining Cultural Diversity in the Music Industry 22
2.1.1 Diversity of Subjects 22
2.1.2 Diversity of Content 23
2.1.3 Diversity of Subjects and Content in Studies on the Music Industry 24
2.1.4 Toward a Functional Definition of “Diversity” in Music Ecosystems 28
2.2 Challenges to Music Diversity 29
2.2.1 Algorithmic Recommendation Systems 29
2.2.2 Data Infrastructure 33
3 Mapping Policy Objectives and Measures on Diversity in International and EU Legal Framework 36
3.1 United Nations Framework 37
3.1.1 UN Instruments Having Gender Equality as a Diversity Objective 38
3.1.2 UN Instruments Having Race and Ethnicity as a Diversity Objective 39
3.1.3 Instruments Having Cultural Expressions and Linguistic Minorities as a Diversity Objective 41
3.2 Council of Europe Framework 44
3.2.1 European Cultural Convention (1954) 44
3.2.2 European Social Charter (1960) 45
3.2.3 European Charter for Regional or Minority Languages (1992) 45
3.2.4 Framework Convention for the Protection of National Minorities (1995) 46
2.3.5 Framework Convention on the Value of Cultural Heritage for Society (2005) 49
3.3 Measures Adopted by the European Union 50
3.3.1 EU Competences in Cultural Policies 50
3.3.2 Industry-Focused Policy Actions: Creative Europe, Music Moves Europe 54
3.3.3 The Feasibility Study for the Establishment of a European Music Observatory 57
3.3.4 Interim Conclusions 61
3.4 EU-Level Legislation Impacting on Music Diversity 62
3.4.1 Article 17(4)(b) CDSMD 62
3.4.2 Article 18 CDSMD 64
3.4.3 Article 19 CDSMD 65
3.4.4 Article 3 Portability Regulation (PR) 67
3.4.5 Articles 3, 4 and 5 Geo-Blocking Regulation (GBR) 69
3.4.6 Article 3 SatCab Directive II 70

3.5 Other Regulatory Frameworks Impacting Music Diversity: Enablers & Disablers 72
3.5.1 Legislative Measures Adopted within the Audiovisual Sector and its Potential application to the Music Industry 72
3.5.2 The Role of Competition Law for the Music Industry 77
3.5.3 International IP Framework: The Principles of National Treatment and of Most Favoured Nation 84
3.6 Circulation 90
3.7 Measures Adopted in Selected OpenMusE Target Countries 93
3.7.1 Bulgaria 94
3.7.2 Lithuania 96
3.7.3 Hungary 97
3.7.4 Slovakia 98
3.7.5 Ukraine 99
3.8 Best Practices from other States 100
3.8.1 Australia 100
3.8.2 Canada (Québec) 101
3.8.3 Sweden 105
3.8.4 United Kingdom 105
3.8.5 Overview of “Diversity” in Various EU Member States’ Cultural Policies 105
3.9 Measures Adopted by CMOs and other Industry Stakeholders 108
3.9.1 WIPO Toolkit for CMOs (2021) 109
3.9.2 WIPO Collecting Societies Study (2022) 124
3.9.3 Independent Music Companies Association (IMPALA) Best Practices Survey (2022) 124
3.10 Interim Conclusions on Existing Diversity Objectives and Measures and Reform Proposals 125
4 Data Availability and Gaps 128
4.1 Relevant Data Availability and Gaps in EU-level Cultural Statistics 128
4.2 Other Data Availability and Gaps on the EU Level 129
4.3 Data Available on a National Basis – Selected Examples 134
4.3.1 Bulgaria 135
4.3.2 Germany 135
4.3.3 Hungary 135
4.3.4 Italy 135
4.3.5 Slovakia 135
5 Data Sources and Collection Methods 137
5.1 Cross-WP Data Sources and Collection Methods 137
5.1.1 Secondary Survey Data 137
5.1.2 Administrative Data Sources 137

5.1.3 Primary Data Collection 137
5.2 WP2-Specific Data Sources and Collection Methods 138
5.2.1 Data Reuse and Collection 138
5.2.2 Data Generation 139
6 Indicator Candidates 140
6.1 EU-Level Indicator Candidates 140
6.2 National-Level Indicators Candidates 141
6.2.1 Bulgaria 141
6.2.2 Germany 141
6.2.3 Hungary 141
6.2.4 Italy 141
6.2.5 Slovakia 141
7 Conclusion and Outlook 150
Annex 1: Mapping of Legal Instruments Addressing Diversity 163
Annex 2: Survey of Measures Adopted by Selected Countries 163
Annex 3: Overview of Diversity in Selected EU Member State Cultural Policies 163

Introduction

Culture is essential to Europe and at the heart of its identity. It contributes to prosperity, social cohesion, and the well-being of Europeans; it reinforces Europe's image and influence in the world,[1] as emphasised in the New Strategic Agenda for the EU 2019-2024.[2] On the 60th anniversary of the Treaties of Rome, the leaders of the 27 Member States and EU institutions marked their ambition for a Union "which preserves our cultural heritage and promotes cultural diversity" and "where citizens have new opportunities for cultural and social development and economic growth."[3] In 2022, the European Council adopted the Resolution on the EU Work Plan for Culture 2023-2026.[4]

The EU Work Plan for Culture is based, *inter alia,* on the guiding principle that "Cultural and linguistic diversity are fundamental assets of the EU and are to be respected, promoted and enhanced, including through mobility and the circulation of works." In this context, the Work Plan identifies a priority area to target the issue of discoverability concerning diverse European cultural content in the digital realm. The crux of the matter lies in the methods employed for producing and documenting data and the role of major digital platforms, acting as gatekeepers in determining the visibility of this content. According to the Work Plan, the goal is to ensure that European cultural content not only exists online but is also readily discoverable. Thus, a deeper understanding of the policies and laws influencing cultural and linguistic diversity, including regulating algorithmic recommendations to enhance exposure to diverse content, is essential.

Specifically to the music sector, the European Commission started a discussion with members of the European music industry in 2015 to identify the main issues and potential solutions, including those that the EU might assist with.[5] This discussion served as the catalyst for the creation of the Music Moves Europe framework,[6] which now serves as the focal point for all EU initiatives and actions aimed at increasing the variety and competitiveness of the music industry in Europe through legislative and financial measures. Along the same lines, as part of the 2018 Preparatory Action titled "Music Moves Europe: Boosting European Music Diversity and Talent," the EU commissioned the development of the Feasibility Study for establishing a European Music Observatory (EMO Feasibility Study). The Horizon Europe project Open Music Europe is organised around the four pillars identified in the EMO Feasibility Study.

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[1] Culture is defined by UNESCO as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, that encompasses not only art and literature but lifestyles, ways of living together, value systems, traditions and beliefs." Universal Declaration on Cultural Diversity 2001.

[2] European Council of the European Union, 'A New Strategic Agenda for Europe 2019-2024' <https://www.consilium.europa.eu/en/press/press-releases/2019/06/20/a-new-strategic-agenda-2019-2024/> accessed 22 September 2023.

[3] European Council of the European Union, 'European Council Meeting Conclusions, 14 December 2017' <https://www.consilium.europa.eu/en/press/press-releases/2017/12/14/european-council-conclusions-external-relations/> accessed 22 September 2023.

[4] European Council of the European Union, 'Council Resolution on the EU Work Plan for Culture 2023-2026 - 15381/22' <https://culture.ec.europa.eu/node/2887> accessed 22 September 2023.

[5] European Commission, 'Music Moves Europe - Preparatory Action 2019' <https://culture.ec.europa.eu/sites/default/files/library/mme_2019_brochure_final-web.pdf>.

[6] European Parliament. (2018). Research for CULT Committee - Music Moves Europe: Boosting European music diversity and talent. Retrieved from: https://culture.ec.europa.eu/calls/music-moves-europe-boosting-european-music-diversity-and-talent-call-on-professionalisation-and-training; European Commission - Directorate-General for Education, Youth, Sport and Culture, *Projects and Studies (2018-2020) Funded under the Preparatory Action: "Music Moves Europe : Boosting European Music Diversity and Talent"* (Publications Office of the European Union 2022) <https://data.europa.eu/doi/10.2766/24018> accessed 23 September 2023.

WP2 on Music Diversity and Circulation, in particular, focuses on two important music industry policy issues: i) how to measure and foster cultural diversity within European musical repertoires, taking into due account its multifaceted dimensions and definitory problems (on which see more infra, Section 2.1); ii) how to measure and foster the diversity of representation across music distribution channels and the international flows of repertoires and artists. In this sense, D2.1 makes a step forward compared to the EMO Feasibility Study, where the "diversity" assessment is limited to the analysis of cross-border movements of works and artists. The results of the research conducted under T2.1 and conveyed in this deliverable intend to assist in designing and monitoring policies that advance these goals, using a multi-disciplinary approach that brings together the consortium expertise in law, economics and data science to devise a comprehensive set of diversity policy objectives and measures and quantitative indicators of music diversity in the creation and distribution phases.

The goal of D2.1 - "Music diversity and circulation: Novel data collection methods and indicators" - is the identification of critical research questions, data sources and gaps, and data collection methods, and the co-development of indicators capable of measuring music diversity and circulation in Europe. Indicator candidates will be later reviewed and selected to be added to the Open Music Observatory (D5.1). This objective stems from the consideration that, over the past decade, there has been a notable surge in the adoption of evidence-based policy approaches in both European and global contexts. The key objective of this movement has been to enhance the rigorousness of legislative and other policy activities by means of a wider use of previously collected and verified data.[7] Since evidence-based policies frequently rely on scientific findings, this movement has been closely intertwined with endeavours to enhance the transparency and replicability of scientific research.[8] Against this background, gaining a comprehensive normative view of music industry performance to support evidence-based policymaking is of paramount importance. This requires the development of a coherent system of evaluation indicators, capable of embedding the often insulated legal and economic benchmarks into a holistic set. Indicators that have not yet been measured and tracked due to the absence of data or their unavailability but are nevertheless essential to fully capture diversity as defined in binding legal sources, should be mapped and collected from already identified stakeholders from the cultural and creative sectors and industries (CCSIs).

To pursue these goals with **scientific rigorousness**, the research conducted under Task 2.1 and channelled in D2.1 has been structured **around five main steps**.

(1) To lay the groundwork of the research, T2.1 kicked off with the **identification of relevant research questions,** and started exploring **different regulatory definitions of cultural diversity**, in order to **streamline** them and adopt an all-encompassing notion that could be used as a paradigm for the entire course of the project. This entailed a **thorough and updated literature review** of two major issues affecting music industry diversity. The findings resulting from the literature review and the cultural diversity-oriented analysis of existing provisions go beyond T2.1, as they also serve as a basis for the work to be conducted under WP4.

(2) As a second step, again to ensure the correct definition of the scope of the analysis, also for the benefit of other research activities conducted within the framework of WP1, WP3, WP4 and WP5, T2.1 **conducted a comprehensive mapping of international, EU and national regulatory**

[7] Marcus R Munafò and others, 'A Manifesto for Reproducible Science' (2017) 1 Nature Human Behaviour 0021.

[8] Directorate-General for Research and Innovation (European Commission) and others, *Reproducibility of Scientific Results in the EU: Scoping Report* (Publications Office of the European Union 2020) <https://data.europa.eu/doi/10.2777/341654> accessed 22 September 2023.

sources that either define cultural and creative diversity, have diversity as a fundamental objective, or employ diversity indicators in their implementation. The research went beyond state-of-the-art mappings and traditional classifications to also encompass **sources that may indirectly impact on music diversity** – with particular regard to the EU regulatory and policy framework. Great attention was also paid to **verifying** whether and to which extent lower-level sources (EU and national) **correctly embed definitions and policy objectives** in line with the definition of cultural diversity mandated by higher-level sources (international and EU). **As a result, the analysis allowed the identification of existing policy domains and objectives** of music diversity as defined by law, and the description of **measurable target objectives that** were further introduced within **M10-M12** in order to correctly map music diversity in line with the international and rules currently in force, including the review of diversity definition and approaches adopted in previous studies. The results of the mapping also constitute a large backbone for the development of T2.2, and will be fed into D2.2, which is planned to include "the policy context regarding music diversity and circulation in the target countries in particular, and in Europe in general."

(3) The **third step** of T2.1 – **economic analysis** – conducted **a literature review of social and economic aspects of cultural diversity, and related data availability and gaps**. As the main goal of EU policies is economic growth and at the same time the cohesion of the Union, cultural policies must be aligned and be intertwined with employment policy to contribute to the development of dignified, respectful and inclusive cultures. The value of cultural industries is generated by creative human capital, which is the basis for generating economic growth in any sector. Against the background of such considerations, the goal of the third step of T2.1 was **to identify existing indicators of music diversity beyond traditional direct parameters**, with the aim to **include also a measurement of diversity in the human capital** employed in the sector and of its impact on the economic performance of the music industry, as already elaborated in WP1. The theme of cultural and musical diversity and circulation (WP2) creates a knowledge bridge between the economic performance of the music industry, the valuation of intangible assets and their monetisation, elaborated in WP1, and the theme of sustainability in WP3 Music, society, and citizenship. In light of the strict interaction between this step and the work currently conducted under WP1 and WP3, **this part was updated from M10 to M12** and included in this updated version of D2.1.

(4) The **fourth step** of T2.1, which **was carried out in M10-M12** of the project in order to align its activities and results to the work conducted in WP1 and WP3 and other tasks in WP2, merges current and proposed/new **diversity policy objectives and measures taken** from regulatory sources, streamline them in a consistent and unitary set and translate them, to the extent possible, in measurable quantitative indicators.

(5) On the basis of the results of these four steps, which are described in this deliverable, the **fifth step** of T2.1 entailed the identification of data sources and gaps, with a focus on the EU (Eurostat) and Slovakia as paradigmatic case study, and the devising of data collection methods to fill in the gaps. Information on data availabilities and gaps in other countries covered by OpenMusE will be added during the data collection phase of WP2, following the example of Slovakia. As this information is sometimes not publicly available, the extent of this work will be determined by the feasibility of cooperation with relevant authorities.

This deliverable summarises the research conducted within Task 2.1. Compared to the previous version of D2.1, which was submitted as a living document on 30 September 2023. This updated version expands on other regulatory domains within step 2 to align with the needs of WP1 and WP3 and embeds the results of steps 4 and 5 of the analysis, aligning them with the research results obtained in the meantime in the context of T1.1 and T3.1. The mapping was supplemented with the inclusion of:

- other topical domain and countries in the legal mapping (e.g. competition law, international IP law, WTO law, audio-visual law), in light of their indirect impact and/or constraining effect on the implementation of diversity-oriented policies;
- other policy documents from the EU and selected countries;
- a survey of diversity-oriented policies and measurements implemented by representative organisations of collecting societies;
- a supplementary review of academic literatures and other studies previously conducted on music diversity, if not already covered by other WPs, which define or functionally conceptualise diversity within the music context;
- the analysis of best practices developed by countries, also expanding the geographical approach within and outside the EU, CMOs and other industry-related stakeholders to be used as a model for the development of policy recommendations;
- a more developed analysis of existing quantitative indicators which may interplay with music diversity, also in line with the findings of other WPs (especially WPs 1, 3 and 4).

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1 Research Questions and Structure of the Deliverable

Task 2.1 – "Music diversity and circulation: Novel data collection methods and indicators" aims at answering the following research questions, in accordance with the needs of both cultural policymakers and diverse market actors in the music industry.

- What are the European competencies and policies that may pertain to the definition and implementation of cultural diversity in the music industry?
- How can diversity be defined in the context of the music industry?
- Which policy objectives, measures, and forms of measurement thereof can be derived from international, EU and national legislative sources?
    - Are they consistent and, if not, how can they be streamlined?
- Which policy objectives, measures, and forms of measurement thereof can be derived from EU and national policy documents on the matter?
    - Are they consistent with each other and with the policy objectives, measures, and forms of measurement thereof identified by legislative sources? If not, how can they be streamlined?
- Which other quantitative indicators may directly or indirectly affect music diversity? Where are they mapped?
- What are the data gaps impairing the correct verification of qualitative and quantitative indicators, as identified and streamlined in the context of this research?
- Which data collection methods may be devised to fill in these gaps?

To answer such questions, the research conducted in Task 2.1 was articulated around five main steps, as described in the Introduction. **D2.1 summarises its research results**.

D2.1 starts delving into and embracing a definition of "cultural diversity", which includes a literature review of the operational (and functional) definition and approach to the notion concept of cultural diversity within the music industry. To align with the objectives of WP4, D2.1 literature review addresses two major issues impacting diversity within the music industry: i) algorithm recommender systems and ii) data infrastructure issues in the sector.

Employing a comprehensive approach to cultural diversity, this report thus offers an exhaustive analysis of international, EU and selected Member States' legal and policy sources having the direct goal or potential indirect effect of promoting cultural diversity in the EU digital music market. More specifically, the mapping covered measures and provisions directly or indirectly serving not only to promote diversity of musical **content** (languages and artistic expressions) and the characteristics of **artists** or stakeholders (producers, performers, songwriters, etc.) - including the related demographic or anthropological aspects – but also those directly or indirectly impacting on the flow of such repertoires, artists and stakeholders involved in the distribution channel. To ensure the most encompassing coverage possible, the analysis of key sources was supplemented with the inclusion of side topical domain (e.g. competition law, international IP law, WTO law, audio-visual law), in light of their indirect impact and/or constraining effect on the implementation of diversity-oriented policies); a wide array of policy documents from the EU and selected countries; a survey of diversity-oriented policies and measurements implemented by representative organisations of collecting societies; a supplementary

review of academic literatures and other studies previously conducted on music diversity, if not already covered by other WPs, which define or functionally conceptualise diversity within the music context; and the analysis of best practices developed by countries, also expanding the geographical approach within and outside the EU, CMOs and other industry-related stakeholders to be used as a model for the development of policy recommendations.

The geographical scope of the analysis at a national level was first based on the countries represented by WP2 partners, in light of the fact that the scope of D2.1 was originally conceived to support the pilot project to be later conducted by WP2 in Slovakia, Lithuania, Ukraine and Bulgaria by SOZA, MXF, MEU and MUSICAUTOR. However, in light of the results of the ongoing OpenMusE research, the study was later complemented in **M10-M12** to also cover countries that have developed relevant diversity laws and policies (e.g. Canada), which may be used as a benchmark for EU-based proposals of reform.

The report then proceeds to review quantitative indicators used for assessing music diversity. This assessment serves to develop, in the following months, a comprehensive set of indicators that integrates existing policy objectives, measures and forms of measured thereof, derived from regulatory and policy sources, with existing and proposed quantitative indicators drawn from economic analyses. The proposed novel approach is twofold. First, it elucidates commonalities and disparities between the two categories and strives for a cohesive and unified set of indicators. Second, it juxtaposes this newly formulated set with presently employed indicators, identifying areas of alignment, discrepancies, and areas where additional indicators may be needed.

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2 Literature Review

The following pages will offer a concise overview of the main arguments advanced by the literature on the definition of cultural diversity in the music industry and on the challenges raised against its proper implementation by the evolution of markets and technologies. Particular attention will be paid to some of the most debated issues, such as, for instance, the obstacles raised by algorithmic recommendation systems and the technical and regulatory flaws affecting copyright data infrastructures.

2.1 Defining Cultural Diversity in the Music Industry

The objective of achieving cultural diversity is often proposed as a policy goal.[9] However, this notion lacks a precise definition. Where should the boundaries of a particular community be drawn, and what features characterise the shared culture of such a community? Individuals in various roles, such as politicians, citizens, and States, have differing opinions about whether and how cultural policies should support such an identity, but there is also ambiguity regarding the best strategies that should be adopted as to define the latter. [10] In turn, this makes it difficult to delineate and apply the notion from a legal standpoint. In addition, the very same label "cultural diversity" is used with different meanings in different policy documents and by different entities and organisations, or sometimes interchangeably to refer to the diversity of sub-groups of natural persons involved in culture (**diversity of subjects**) and the diversity of cultural works themselves (**diversity of content**), thus increasing the problems raised by the semantic conundrum and challenging the overall feasibility of any attempt to streamline the various concept into a minimum common definition.

2.1.1 Diversity of Subjects

At a very general level, cultural diversity is commonly understood as applying to groups of natural persons,[11] and entails the variegated array of traditions and values that can be found within different communities or parts thereof.[12] The notion of "culture" implies a multi-level approach that embeds sociological, economic, historical, political and legal aspects.[13] The **UNESCO Convention on Cultural Diversity** broadly labels as "cultural diversity" "the manifold ways in which the cultures of groups and societies find expression" (Article 4(1)(2)), whereas "cultural content" is defined as the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities". As noted by **Jacques et al**., this definition adopts a multi-dimensional approach to variety, balance and disparity.[14]

[9] European Commission, 'Music Moves Europe, Commission Communication on a European Agenda for Culture in a Globalising World - COM(2007) 242' <https://eur-lex.europa.eu/TodayOJ/> accessed 22 September 2023.

[10] European Commission, Sport Directorate-General for Education Youth, and Culture, *The AB MUSIC Working Group Report* (Publications Office of the European Union 2016).

[11] "Coexistence within society of culturally differentiated groups which maintain separate ways of life", see http://vocabularies.unesco.org/thesaurus/concept7021 accessed 22 September 2023.

[12] Barbara Oomen and Sasja Tempelman, 'The Power of Definition' in Yvonne Donders, Kristin Henrard and Anna Meijnecht (eds), *Law and cultural Diversity* (Netherland Institute of Human Rights 1999).

[13] ibid.

[14] Sabine Jacques and others, 'An Empirical Study of the Use of Automated Anti-Piracy Systems and Their Consequences for Cultural Diversity' (2018) 15 SCRIPTed: A Journal of Law, Technology and Society 277. A similar approach is taken in the literature in Françoise Benhamou and Stéphanie Peltier, 'How Should Cultural Diversity Be Measured? An Application Using the French Publishing Industry' (2007) 31 Journal of Cultural Economics 85..

In addition, while the acknowledgement of diversity is briefly mentioned in the preamble of the **European Union Treaty**,[15] the same is explicitly endorsed and strengthened in the **Charter of Fundamental Rights of the European Union**. The Charter provides additional hints of the diversity criterion, whereby Article 21 states that "any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited". In addition, in stating that "the Union shall respect cultural, religious and linguistic diversity" Article 22 explains the importance of ensuring linguistic diversity in Europe.

2.1.2 Diversity of Content

The notion of cultural diversity can vary depending on how one defines "culture." This notion can encompass a wide range of aspects, from intellectual and artistic achievements, such as arts and literature, to the broader anthropological or demographic concept of culture, which includes ethnicity, gender, origin, shared beliefs, language, traditions, and customs of individuals and communities.[16] Consequently, cultural rights encompass various rights, including those related to creativity and, consequently, pertaining to the protection of cultural producers, including copyright, and the safeguarding of cultural products and expressions, such as cultural heritage.

A crucial component of European culture is music. Beyond its economic significance, the music sector is essential to nurture Europe's cultural diversity, advancing social inclusion, and boosting its soft power diplomacy — all while bringing about positive changes in the various societal spheres.[17] In this field, beyond the demographic or anthropologic elements of cultural diversity, the essence of such concept **lies in creating and distributing varied musical content**. As already spelled out in a previous study focused on diversity and the role of music distribution stakeholders, the notion mainly revolves around the production and diffusion of diverse cultural expressions.[18]

Thus, in broad constructs, diversity may be also related to identifying **content** (languages and artistic expressions) as well as the characteristics of **artists** or stakeholders (producers, performers,

[15] Consolidated version of the Treaty on European Union (2012) OJ C326/13. Retrieved from: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

[16] Yvonne Donders, 'Cultural Rights in the Convention on the Diversity of Cultural Expressions: Included or Ignored?' in Toshiyuk Kono and Steven Van Uyysel (eds), *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation of international law?* (Cambridge-Antwerp-PortlandIntersentia 2012) <https://pure.uva.nl/ws/files/1820360/124893_SSRN_id2015258_1_.pdf> accessed 23 September 2023.The author categorises cultural rights into two overarching classifications: cultural rights in a narrow context and cultural rights in a broad context. The former encompasses entitlements such as the right to access and appreciate one's culture for members of minority groups, whereas the latter refers to those rights and norms that possess a significant connection with culture cultural rights in a broader context.

[17] "Music Moves Europe," European Commission, accessed June 2, 2022, https://ec.europa.eu/programmes/creative-europe/actions/music-moves-europe_en; European Commission, *Call for Proposals: Music Education and Learning*, Ref. EAC/S53/2019 (Brussels, 2019).

[18] Hellenic Foundation for European and Foreign Policy and others, 'Collecting Societies and Cultural Diversity in the Music Sector' (European Parliament 2009) Study European Parliament's Committee on Culture and Education IP/B/CULT/IC/2008_136 <https://www.europarl.europa.eu/RegData/etudes/etudes/join/2009/419110/IPOL-CULT_ET(2009)419110_EN.pdf> accessed 23 September 2023.

songwriters, etc.), also including the related demographic or anthropological aspects.[19] These indicators might include, *inter alia,* information about gender, race, ethnicity, language, nationality and genre.[20]

2.1.3 Diversity of Subjects and Content in Studies on the Music Industry

As the following table shows, various studies on the music industry approach the concept of cultural diversity through distinct lenses. The **2006 UNESCO Study on the Protection and Promotion of Musical Diversity**[21] emphasises freedom of musical expression, pluralism of musical structures, and the existence of different groups making music. The **2009 Study Collecting Societies and Cultural Diversity in the Music Sector**[22] adopts a functional approach, tying cultural diversity to producing and distributing varied musical content; the **2022 WIPO Study on Collective Management Rights**[23] adds the need to supply diverse creative content. Similarly, the **Study on the Place and Role of Authors and Composers in the European Music Streaming Market, Legrand Network/GESAC (2022)**[24] takes a functional approach related to streaming and AI algorithms. From several statements it can be inferred that cultural diversity is related to "The **various forms of expression** – music genres, languages, origin of performers and songwriters", the "**diversity of the catalogues CMOs represent**, with compositions in all music genres, from the most popular to the most experimental genre, written by authors and composers of all origins," a "**wider diversity of authors**, **composers** and **repertoires**" (and not just the most popular ones), and the "**presence**, **visibility** and **discoverability** of European authors on digital services", also suggesting that "the notion of discoverability should be connected to transparency". The same can be said for the **UNESCO Revenue Distribution and Transformation in the Music Streaming Value Chain (2022),**[25] which builds upon the definition laid in the **2005 UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions** to argue that more action is needed to ensure that a **diverse range of actors** (especially in terms of size, geographical location and gender) can participate in the digital creative economy. These emphasise the need to ensure **diversity of creators** by making them able to participate in the streaming environment, and the **diversity of platforms and their ability to represent a wide variety of cultural expressions**.

Undoubtedly, the convergences across the various studies lie in consistently recognising the importance of the artistic dimension and cultural values originating from or expressing cultural identities as a crucial

[19] Youth Directorate-General for Education and others, *Feasibility Study for the Establishment of a European Music Observatory: Final Report* (Publications Office of the European Union 2020) <https://data.europa.eu/doi/10.2766/9691> accessed 23 September 2023. According to the Feasibility Study (page 23), one of the drawbacks of elaborating data on diversity in the music industry is related to the diversity and fragmentation of the actors involved.

[20] ibid., See, for instance, the parameters suggested in the Feasibility Study, p. 29-35. These include the country of production and the country of origin of the artists (differentiated from the origin of the production), as well as disability and/or vulnerable groups, p.35.

[21] UNESCO and Richard Letts, 'The Protection and Promotion of Musical Diversity' (UNESCO; International Music Council 2006) Study Commissioned by UNESCO <https://unesdoc.unesco.org/ark:/48223/pf0000215412> accessed 23 September 2023.

[22] Hellenic Foundation for European and Foreign Policy and others, 'Collecting Societies and Cultural Diversity in the Music Sector' (European Parliament 2009) Study European Parliament's Committee on Culture and Education IP/B/CULT/IC/2008_136 <https://www.europarl.europa.eu/RegData/etudes/etudes/join/2009/419110/IPOL-CULT_ET(2009)419110_EN.pdf> accessed 23 September 2023.

[23] World Intellectual Property Organization (WIPO) (2022). Collective Management of Copyright and Related Rights, third edition. Geneva, < https://www.wipo.int/edocs/pubdocs/en/wipo-pub-855-22-en-collective-management-of-copyright-and-related-rights.pdf >

[24] Legrand Network, *Study on the place of authors and composers in the European music streaming market*, GESAC, European Grouping of Societies of Authors and Composers, 2022. Retrieved from: https://authorsocieties.eu/content/uploads/2022/09/music-streaming-study-28-9-2022.pdf

[25] UNESCO, Revenue Distribution and Transformation in the Music Streaming Value Chain (2022), < https://www.unesco.org/creativity/sites/default/files/medias/fichiers/2023/01/2-policy_perspectives_music_en-web.pdf >.

component of cultural diversity. In this sense, most of these studies underscore the idea that a diverse range of musical repertoires and a diverse range of authors, groups, and societies contribute to cultural diversity. The importance of fair representation both off-screen, in terms of workforce representation, and on-screen, in the portrayal of diverse perspectives is only highlighted in discussions related to the audiovisual sector.

The following table summarises explicit and implicit definitions of diversity in the above studies.

Table 1: Overview of Definitions of Diversity adopted in Previous Studies. Source: SSSA. (2023).

Study	Definition / Approach to Cultural Diversity
Study UNESCO: The Protection and Promotion of Musical Diversity **(2006)**	Triple definition of musical diversity: 1. Musical diversity exists if there is **freedom of musical expression**. Although freedom of musical expression includes the freedom to refrain from expressing diversity, this understanding of the term is helpful since it is relatively easy to decide what interferes with the freedom of musical expression. **2.** Musical diversity exists if there is a **pluralism of musical structures (musical repertoires, musical forms, a wealth of traditions, hybrid forms etc.)**. Although this definition may appear technical in the sense that it employs technical terms of the academic musicological discourse, it does not provide objective means to decide which structures are more diverse than others. Similar concepts have been applied by evolutionist approaches in musicology since Darwin. Such approaches have often been criticised as ethnocentric and, thus, the corresponding criteria seem problematic in the context of the cultural relativism of UNESCO's understanding of cultural diversity. **We still use a diversity of musical structures as an indication for diversity.** **3.** Musical diversity exists if there are **different groups of people making music separately or together.** To assume that different groups of people *naturally* or *automatically* have different music seems to be an outdated concept in the academic discourse. This does not say that different groups of people *cannot* have different music, of course. But it has been shown that music and people are two different spheres just as languages and the people speaking them. Discussions of musical diversity often treat the fact of coexistence of music of different populations and social groups as an indication for musical diversity. In fact, such a situation refers to diversity, but it is by no means certain, since many groups can make the same uniform kind of music – at least theoretically.

Study Collecting Societies and Cultural Diversity in the Music Sector **(2009)**	**No definition adopted.** It adopts a functional approach by affirming that "Central to the notion of cultural diversity is the **production** and **diffusion** of **diverse cultural expressions**. Specifically in the field of music, the essence of cultural diversity lies in the **creation and distribution of varied musical content**. Proper rewards for creators and access to a wide range of music repertoires are sine qua non conditions for the preservation and further stimulation of Europe's cultural wealth." Accordingly, the Study builds on the premise that "music rights management may have major repercussions on creative activity and the **market availability of diversified musical content.**
CEMMID (2020)	No definition of diversity. The main focus of the report is "CEEMID was designed to create economic evidence on royalty pricing, private copying compensation and the creation of economic value added in the industry"
Report Diversity and Inclusion in the European Audiovisual Sector **(2021)** ***Audiovisual**	The Study builds upon the definition laid in the **2005 UNESCO Convention on the Protection and Promotion of Diversity of** Cultural Expressions to argue that **in the audiovisual sector,** diversity would be achieved insofar as (1) a fair representation of society integrates the group of professionals and decision-makers at each stage of the production of audiovisual works (off-screen diversity); and (2) the plurality of a society is accurately portrayed in them, both quantitatively and qualitatively (on-screen diversity). *(*) the study addresses the issue of the access of minority cultural groups (linguistic, ethnic, etc.) to the workforce and their appropriate and fair portrayal on screen, but not the protection of expressions of cultural diversity as such.*
White Paper, Artificial Intelligence Music Recommendation and the Curation of Culture, CIFAR, Canada **(2021)**	No definition. It adopts a functional approach (definition in relation to AI Algorithms) and suggest that: "it is more productive to think of diversity in AI and algorithmic music technologies along **four interwoven lines**: 1) the **social dimension of AI production** and the need to diversify the demographic makeup of those responsible for the design of recommendation systems; 2) the question of **whose music and which music is made visible** and audible on digital music platforms; 3) the nature of the interaction between global services and **local musical cultures**, **traditions** and practices; and 4) the challenge of incorporating into the design and affordances of recommendation systems **diverse conceptions of both listening subjects and communities of use**, so as to combat the extreme uniformities currently built into system design and **better nurture the diverse musical subjectivities** and **musical cultures** engaging with the technologies.
UNESCO Revenue Distribution and Transformation in the Music	**No definition adopted**. The Study builds upon the definition laid in the **2005 UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions** to argue that more action is needed to ensure that a **diverse range of actors** (especially in terms

Streaming Value Chain **(2022)**	of size, geographical location and gender) can participate in the digital creative economy. It adds that t the core of the discussion on streaming revenue redistribution is the issue of diversity – **the diversity of creators** who are able to participate in the streaming environment, and the **diversity of platforms and their ability to represent a wide variety of cultural expressions**.
Study WIPO Collective Management Rights **(2022)**	**No definition adopted.** The section of the study builds upon the provisions laid in the **2001 UNESCO Universal Declaration on Cultural Diversity** and the **2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions**. that the former requires that "particular attention must be paid to the diversity of the **supply** of creative works and the UNESCO Convention, in which these principles have been transformed into binding norms, further emphasises the importance of preserving national culture in adopting norms and measures for the protection of cultural diversity as a key vector of national identity. Accordingly, it builds upon the premise that because under **article 167 TFUE**, where the E.U. bodies have exclusive or shared competence (in areas such as competition and the internal market) they must take into account cultural aspects, this obligation applies also to the regulation of the collective management of copyright.
Study on the Place and Role of authors and composers in the European Music Streaming Market, Legrand Network/GESAC (2022)	**No definition adopted.** However, from several statements it can be inferred that cultural diversity is related to: ○ "The **various forms of expression** – music genres, languages, origin of performers and songwriters" ○ "**Diversity of the catalogues CMOs represent**, with compositions in all music genres, from the most popular to the most experimental genre, written by authors and composers of all origins." ○ "**Wider diversity of authors**, **composers** and **repertoires**" (and not just the most popular ones) ○ "Diversity in digital services is connected to "**presence**, **visibility** and **discoverability** of European authors on digital services" – also suggesting that "the notion of discoverability should be connected to transparency"
The Impact of Algorithmically Driven Recommendation Systems on music consumption and production - a literature review, UK (**2023**)	No definition of "cultural diversity". It adopts a definition of "**diversity**" for the purposes of AI recommendation systems, **from a computer science perspective:** "Distinctions have been made between **diversity of source**, **content**, and **exposure diversity**": ○ Source diversity measures the number and variety of **culture-producing actors** in a media environment and often takes into consideration ownership (e.g. corporate or shareholder-controlled versus family and co-operatively owned) and workforce structures. The degree to which

	producers might be considered diverse by measures such as age, race, education, gender, nationality, religion, sexuality, physical abilities, etc has also been a key concern. o Content diversity measures the **availability of different types of media content,** such as the ideas and narratives that are conveyed; the perspectives that are used; the characters that are portrayed; or the artistic styles that are apparent. o **Exposure diversity** measures how individual users select and are **exposed to source or content diversity** via a set of media outlets over a period of time.

2.1.4 Toward a Functional Definition of "Diversity" in Music Ecosystems

Despite the convergences of usage in the preceding studies, differences emerge in the specific dimensions and criteria used to define and measure diversity. Only recent studies - starting with the **2009 Study Collecting Societies and Cultural Diversity in the Music Sector -** adopt a functional approach by acknowledging both the artistic and economic dimensions of music diversity. These studies concentrate on creating and disseminating diverse cultural expressions in the music industry, also considering the impact of technological developments.

Without attempting a definition that would anyway prove incomplete and flawed, **this deliverable adopts a functional approach towards the definition of diversity in the music industry**. The dimensions of diversity that align most closely with **D2.1** goals are rooted in the foundational "common element," which underscores the significance of freedom of expression as an integral aspect of cultural diversity, as articulated in the **2006 Report**, also including the related demographic or anthropological aspects (gender, race, ethnicity, language, nationality and genre), as suggested by the **2005 UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions** and **Charter of Fundamental Rights of the European Union**.

Additionally, for the objectives of this report, the definition of cultural diversity in the music industry also builds upon the economic facets intricately linked to the creation and dissemination of content, drawing insights from the findings of the **2009 Study Collecting Societies and Cultural Diversity in the Music Sector**, and of the **2020 Feasibility study for the establishment of a European Music Observatory,** where "diversity" is mostly used to refer to the "cross-border movements of works and artists", i.e. it is tightly bound to "circulation" (p.114). Finally, it is imperative to underscore that a comprehensive understanding of cultural diversity cannot overlook the impact stemming from ongoing technological advancements, as suggested in recent studies, such as the **Study on the Place and Role of Authors and Composers in the European Music Streaming Market, Legrand Network/GESAC (2022) UNESCO Revenue Distribution and Transformation in the Music Streaming Value Chain (2022).** Section 2.2.1 and 2.2.2 delve into especially relevant topics in technology and music diversity: the impact of recommender systems and of data infrastructures, respectively.

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2.2 Challenges to Music Diversity

Challenges to music diversity come from a variety of factors. As noted in a 2006 UNESCO Study of Diversity in the Music Industry,[26] globalisation, particularly within the music industry, contributed to the widespread prevalence of highly standardised music genres sponsored by the West and backed by significant marketing resources. This section aims to provide an updated literature review of (new) challenges to cultural diversity in light of technological advancements. Specifically, it considers the influence and role of algorithmic recommendation systems in the music industry and the data infrastructure problem featuring this industry field. Although this latter issue is not new, the analysis is justified by the exacerbation of existing challenges due to the complexity of a highly multilayered environment and the emergence of new actors brought by technological advancements. Lastly, this overview is functional to WP4.

2.2.1 Algorithmic Recommendation Systems

The rapid development of the internet and other digital technologies brought new players in the music distribution channels, such as music service providers, radio streaming and platforms streaming.[27] Music streaming provides consumers with unlimited access to a curated audio library and other content. As a result, both the music market and the way people interact with music have undergone substantial changes. Today, audio streaming services account for the most popular channel for people to listen to music in many parts of the world.[28]

Academics have looked into the effects of streaming on artists,[29] the economy of the music industry,[30] music preferences,[31] and the types of music produced.[32] The shifting power dynamics between major record labels, independent labels, and their artists have also been the subject of extensive research in both academic and industry circles.[33] There has recently been an increasing shift in the attention towards the social and cultural impact of streaming platforms.[34] In this sense, **Nieborg & Poell** have explored the pivotal role that platforms play in influencing the industries they penetrate and the goods

[26] UNESCO and Richard Letts, 'The Protection and Promotion of Musical Diversity' (UNESCO; International Music Council 2006) Study Commissioned by UNESCO <https://unesdoc.unesco.org/ark:/48223/pf0000215412> accessed 23 September 2023.

[27] Hellenic Foundation for European and Foreign Policy and others (n 17).

[28] IFPI. (2023). *IFPI Global Music Report 2023 - State of the Industry.* Retrieved from: https://ifpi-website-cms.s3.eu-west-2.amazonaws.com/GMR_2023_State_of_the_Industry_ee2ea600e2.pdf

Legrand Network, *Study on the place of authors and composers in the European music streaming market*, GESAC, European Grouping of Societies of Authors and Composers, 2022. Retrieved from: https://authorsocieties.eu/content/uploads/2022/09/music-streaming-study-28-9-2022.pdf

[29] Lee Marshall, '"Let's Keep Music Special. F—Spotify": On-Demand Streaming and the Controversy over Artist Royalties' (2015) 8 Creative Industries Journal 177.

[30] Daniel Nordgaard, 'Lessons From the Worlds Most Advanced Market for Music Streaming Services' in Patrik Wikström and Robert DeFilippi (eds), *Business Innovation and Disruptions in the Music Industries* (Edward Elgar Publishing 2016).

[31] Jack Webster, 'Taste in the Platform Age: Music Streaming Services and New Forms of Class Distinction' (2020) 23 Information, Communication & Society 1909.

[32] Keith Negus, 'From Creator to Data: The Post-Record Music Industry and the Digital Conglomerates' (2019) 43 Media, Culture and Society 367.

[33] Patrick Burkart, 'Music in the Cloud and the Digital Sublime' (2014) 37 Popular Music and Society 393; Marshall (n 23).

[34] José van Dijck, 'Platform Mechanisms' in José van Dijck, Thomas Poell and Martijn de Waal (eds), *The Platform Society* (Oxford University Press 2018) <https://doi.org/10.1093/oso/9780190889760.003.0003> accessed 23 September 2023.David Hesmondhalgh and Leslie M Meier, 'What the Digitalisation of Music Tells Us about Capitalism, Culture and the Power of the Information Technology Sector' (2018) 21 Information, Communication & Society 1555; David Hesmondhalgh, 'Streaming's Effects on Music Culture: Old Anxieties and New Simplifications' (2022) 16 Cultural Sociology 3.

and services they exchange,[35] while **Peoples** has highlighted platform's power to influence the process of music discovery and consumption of new songs and artists.[36]

These concerns have been heightened with the emergence of AI, which is frequently employed by audio streaming platforms for content management and recommendation purposes. These systems can influence the variety of options available to consumers and impact creators who do not possess complete control over their works.[37] The strong market power of some platforms might increase this influence.[38] Accordingly, **Pret et al**. pointed out at design choices of the algorithm made by platforms such as Spotify, that appear to favour playlists owned by the platform itself, while diminishing the visibility of third-party playlists and other formats like albums and individual tracks.[39]

Several prior studies have consistently revealed that algorithmic recommender systems exhibit biases towards certain artist groups, content or regions regardless of the specific streaming platform. **Ferraro et. al**, have indicated that most recommendation algorithms tend to treat female users unfairly, resulting in less accurate music recommendations to their detriment.[40] These authors also hinted that one reason for this is, that female artists face challenges such as reduced visibility in charts and awards nominations and limited radio airplay, which then extends to streaming services. Some research has delved into bias related to nationality, with findings indicating that algorithms can perpetuate geographic advantages and disadvantages present in the music industry, potentially favouring local content.[41] Such geographical biases can perpetuate the dominance of local or regional music scenes, potentially limiting the discovery of music from other parts of the world and hindering cross-cultural exchange and the acknowledgement of diverse musical traditions. By way of contrast, **Hesmondhalgh et al**., found that in-depth studies examining demographic bias in music recommendation systems for additional aspects, such as race, ethnicity, social class, and sexual orientation are still lacking.[42] They also explored the "popularity bias" (i.e., characterised by a preference for recommending the most popular items), showing that they often lead to the over-recommendation of already popular songs and

[35] David B Nieborg and Thomas Poell, 'The Platformization of Cultural Production: Theorizing the Contingent Cultural Commodity' (2018) 20 New Media & Society 4275.

[36] Glenn Peoples, 'What Happens When Spotify Gets Behind an Artist? A Case Study of Hozier and Major Lazer' (*Billboard*, 7 August 2015) <https://www.billboard.com/pro/spotify-spotlight-support-major-lazer-hozier/> accessed 23 September 2023; Robert Prey, Marc Esteve Del Valle and Leslie Zwerwer, 'Platform Pop: Disentangling Spotify's Intermediary Role in the Music Industry' (2022) 25 Information, Communication & Society 74.

[37] Marcus O'Dair and Andrew Fry, 'Beyond the Black Box in Music Streaming: The Impact of Recommendation Systems upon Artists' (2020) 18 Popular Communication 65; Heritiana Ranaivoson, 'Online Platforms and Cultural Diversity in the Audiovisual Sectors: A Combined Look at Concentration and Algorithms' in Luis A Albornoz and Maria Trinidad Garcia Leiva (eds), *Audio-Visual Industries and Diversity* (1st edn, Routledge 2019) <https://www.taylorfrancis.com/chapters/edit/10.4324/9780429427534-6/online-platforms-cultural-diversity-audiovisual-sectors-heritiana-ranaivoson?context=ubx&refId=374835e0-44bf-4584-bb53-c8fae1ef9075>; Marc Bourreau, François Moreau and Patrik Wikström, 'Does Digitization Lead to the Homogenization of Cultural Content?' (2022) 60 Economic Inquiry 427.

[38] Janet Wasko, 'From Global Media Giants to Global Internet Giants - Reflections on Media Diversity' in Luis A Albornoz and Maria Trinidad Garcia Leiva (eds), *Audio-Visual Industries and Diversity* (1st edn, Routledge 2019) <https://www.taylorfrancis.com/chapters/edit/10.4324/9780429427534-4/global-media-giants-global-internet-giants-janet-wasko>; Hellenic Foundation for European and Foreign Policy and others (n 17).

[39] Prey, Esteve Del Valle and Zwerwer (n 30).

[40] Andres Ferraro, Xavier Serra and Christine Bauer, 'Break the Loop: Gender Imbalance in Music Recommenders', *Proceedings of the 2021 Conference on Human Information Interaction and Retrieval* (Association for Computing Machinery 2021) <https://dl.acm.org/doi/10.1145/3406522.3446033> accessed 23 September 2023.

[41] David Hesmondhalgh and others, 'The Impact of Algorithmically Driven Recommendation Systems on Music Consumption and Production: A Literature Review' (9 February 2023) <https://papers.ssrn.com/abstract=4365916> accessed 23 September 2023.

[42] ibid.

artists, which makes it challenging for emerging or lesser-known musicians to gain visibility.[43] In this vein, **Oliveira et al.** have delved into the impact of music recommender systems on music content. They explored genre diversity within music recommendations by categorizing artists based on their types (e.g., "band", "orchestra," "solo," etc.) as a proxy for gender, evidencing how certain types of music are privileged over others.[44] The following table provides an overview of other previous studies, the focus of the study and the databases used for conducting the research:

Table 2: Overview of Previous Studies. Source: adapted from Bauer et al. (2022).

Overview of Previous Studies			
Reference	**Focus**	**Indicator Considered**	**Dataset Source**
Bauer et al. (2017)	Negative impact for non-superstar artists	Popularity	n/a
Bauer and Schedl (2018)	Improving accuracy by considering country	User country	LFM-1b
Boratto et al. (2022)	Reproducing and comparing unfairness mitigation strategies	User age, user gender	LFM-1K
Epps-Darling et al. (2020)	Analysis of gender distribution across popularity levels	Artist gender, popularity	Proprietary (Spotify)
Ferraro et. al (2020)	Evaluating the influence of recommendation bias on artist exposure	Country, gender, type of content	LFM-360K
Ferraro et. al (2021a)	Improving gender fairness	Artist gender	LFM-360K, LFM1b
Ferraro et al. (2021b)	Impact of recommender systems on artists	Age, contemporaneity, country, diversity, gender, popularity (all artist attributes)	n/a
Shakespeare et al. (2020)	Investigating gender fairness	Artist gender	LFM-360K, LFM-1b, simulated data

[43] ibid.

[44] Ricardo S Oliveira and others, 'A Multiobjective Music Recommendation Approach for Aspect-Based Diversification.' (Suzhou, China, 23 October 2017) <https://zenodo.org/record/1417000/export/xd> accessed 23 September 2023.

According to a **2022 Study**,[45] biases in recommendations can originate from different sources. These can stem from the datasets used to train the algorithms – for instance – if there is more consumption or more data on a specific group of users or artists. They may also originate from the way algorithms are designed. In this sense, recommendation systems can be calibrated to serve various goals, such as meeting consumers' needs regarding content, creators' needs to reach new audiences, or distributors' aim to gain revenues. **Anderson et. al.**[46] further emphasised the role of the social dimension in algorithm design. They suggested that the lack of diversity among engineers designing AI-based recommendation systems affects the types of music that align with users' tastes, needs, and preferences in design practices, which in turn is exacerbated by the goals of the specific platform or company involved, such as pursuing advertising revenue or increasing subscriptions. On this basis, they advocated for greater diversity among the community of designers within prominent commercial streaming services, and proposed the expansion of non-profit and publicly oriented recommendation systems that aim to enhance human musical discovery and well-being in ways that extend beyond the profit-driven motives of existing services.

Algorithmic biases, whether related to popularity, gender, nationality, or the algorithmic design itself may contribute to a lack of diversity in the music users are exposed to and consume. Likewise, intensified bias may also shape creative patterns in the long term, as they influence creators' incentives to create content that will more likely reach greater visibility among consumers. Furthermore, the interpretation of individual preferences by algorithms and data, devoid of the broader cultural and social contexts, favours a culturally detached curation, overlooking the socially embedded essence of musical experiences. These processes have far-reaching implications on a broader scale, influencing populations, regions, and cultures in automating the cultural and musical landscape through personalised tracking, tailored recommendations, and the profiling of social identities.[47]

There is consensus among stakeholders and scholars about the opacity in how these recommendation systems strike a balance among competing objectives.[48] Against this, **Burri**[49] advocated for stronger governance tools of algorithms as a form of public interest mediation within the digital realm, with the primary goal of enhancing visibility, discoverability and accessibility to diverse types of content. This includes – for instance – the curation of playlists as a joint effort between humans and algorithms and the introduction of tools designed to incentivise exposure to diverse content, involving guidance for users concerning local, regional, or national content to effectively encourage the consumption of a wider range of content. Similarly, **Born et. al.** suggested tailoring algorithmic model design to fine

[45] Hesmondhalgh and others (n 35). The Study has been conducted for the UK Government, Centre for Data Ethics and Innovation.

[46] Georgina Born and others, 'Artificial Intelligence, Music Recommendation, and the Curation of Culture: A White Paper' (Schwartz Reisman Institute 2021) White Paper <https://static1.squarespace.com/static/5ef0b24bc96ec4739e7275d3/t/60b68ccb5a371a1bcdf79317/1622576334766/Born-Morris-etal-AI_Music_Recommendation_Culture.pdf>.

[47] ibid. (Noting that media scholars, with a historical perspective, have consistently expressed apprehension about cultural uniformity, particularly in the context of mass culture production, and arguing that algorithmic recommendation systems, in the contemporary era, amplifies the trend towards cultural standardisation and fragmentation.). On a more cautious approach, see: Bourreau, Moreau and Wikström (n 31); Judith Möller and others, 'Do Not Blame It on the Algorithm: An Empirical Assessment of Multiple Recommender Systems and Their Impact on Content Diversity' (2018) 21 Information, Communication & Society 959.

[48] Commission, Directorate-General for Education, and Culture (n 10); Hesmondhalgh and others (n 35); Karlijn Dinnissen and Christine Bauer, 'Fairness in Music Recommender Systems: A Stakeholder-Centered Mini Review' (2022) 5 Frontiers in Big Data <https://www.frontiersin.org/articles/10.3389/fdata.2022.913608> accessed 23 September 2023.

[49] Mira Burri, 'Cultural Diversity Policy in the Age of AI', *Artificial Intelligence in the Audiovisual Sector* (European Audiovisual Observatory 2020).

nuances of diverse music traditions, integrating cultural contexts and demographics, as well as cultural contexts and communities.

In a recent report, **UNESCO**[50] instead suggested the development of a specialised streaming platform as to promote lesser-known artists working in niche genres or regions. Yet, it also cautioned that audience fragmentation might entail a significant risk that should be further explored. Finally, introducing regulatory tools in the media arena has also been advanced.[51] These include the devising of international frameworks and standards to guide governments in developing or revising legislation to achieve more transparent algorithms, and the introduction of norms that incentivise exposure to diverse content. This latter is not a novel approach, as the Audiovisual Media Service Directive (AVMSD) includes measures to promote and enhance the visibility of "European" content.

2.2.2 Data Infrastructure

The structural problem of low diversity in creation, accessibility and delivery of cultural, as well as music, contents is exacerbated by the lack of accurate and integrous data and metadata within the music industry. As illustrated above, algorithmic recommendation systems deployed by digital platforms such as Spotify tend to favour their own playlists, simultaneously diminishing the visibility of albums, individual tracks and works owned by third parties. The algorithmic bias generated by the use of "unfair" recommendation systems leverages on several features, such as the gender of the artist, the age and country of residence of the user, the popularity of the song at stake and so forth. As demonstrated by a Study of 2022, these biases, having a negative impact on cultural diversity, also stem from the inaccuracy of the datasets on which algorithms rely.[52]

Therefore, the lack of a robust music data infrastructure is part of the problem and must be addressed as to increase diversity of copyrighted music contents uploaded on digital aggregators on a daily basis. Vast literature underlined that a "metadata gap problem" affects the music industry.[53] Metadata is commonly defined as "structured information that describes, explains, locates, or otherwise makes it easier to retrieve, use, or manage an information resource."[54] "Descriptive metadata" is particularly lacking alongside the music value chain. This type of metadata concerns contents of a recording, including the song title, the performing artists and the year of release.

The music value chain is complex. Each song or lyrics is made of a plethora of rights, associated with a payment flow. These rights are variously entitled to musicians, performers, producers, publishers, record labels, distributors, rights management organisations and physical retailers. National copyright laws and licensing schemes vary from one country to another. Consequently, if metadata about music files are missing or provided in an incomplete form, the legal scenario becomes therefore complicated and highly fragmented, having an impact on competition within the music market, with the effect of

[50] UNESCO (2022), Revenue distribution and transformation in the music streaming value chain. Retrieved from: https://www.unesco.org/creativity/sites/default/files/medias/fichiers/2023/01/2-policy_perspectives_music_en-web.pdf

[51] Ibid; Burri (n 43).

[52] Hesmondhalgh and others (n 35).

[53] Tony Brooke, 'Descriptive Metadata in the Music Industry: Why It Is Broken and How to Fix It — Part One' (2014) 2 Journal of Digital Media Management <https://hstalks.com/article/3494/descriptive-metadata-in-the-music-industry-why-it-/> accessed 23 September 2023; Tony Brooke, 'Descriptive Metadata in the Music Industry: Why It Is Broken and How to Fix It — Part Two' (2014) 2 Journal of Digital Media Management 359.

[54] Jenn Riley, 'Understanding Metadata: What Is Metadata, and What Is It For? A Primer' <https://groups.niso.org/higherlogic/ws/public/download/17446/Understanding%20Metadata.pdf> accessed 23 September 2023.

discriminating between more and less popular artists.[55] Hence, this, in turn, influences the degree of diversity of music contents flowing across Europe. In fact, if metadata regarding the song title, performing artists and the year of release with regard to a digital music file are not properly collected and accessible in a centralised manner, it is also difficult to develop specialised platforms which aim at promoting unknown and local artists to a greater extent.

Metadata are organised alongside "silos," which can be exchanged and from which value can be extracted through the form of "schemata". "Schemata" are "languages" through which metadata can be communicated. In the case of music, there is no recognised standard schemata as to exchange descriptive metadata. In this sense, the music market would benefit from a "persistent identifier" (PID),[56] which is an alphanumeric sign which should be given to each audio recording. Such identifier is unique worldwide, ensuring that items are not confused. PIDs are part of an "abstract model," a hierarchical infrastructure where each item has an identifier alongside the value chain. Thanks to identifiers, it would be easier to extract value from each part of the hierarchical structure. The music value chain can be summarised through an abstract model, where every digital music file containing the related sound recording is identified via PIDs. Creative works have been tentatively put within an organisational scheme thanks to the various identifiers elaborated for this purpose, such as the DDEX (Digital Data Exchange), MusicBrainz, FRBR (Functional Requirements for Bibliographic Records).[57] However, these initiatives are privately owned, nation-based and never evolved into a common standard for music data.[58]

The complexities of music industry's business model and the lack of transparency risk provoking structurally low remuneration for authors and performers, at the expense of those who lack the bargaining power to embark on individual licensing or gaining sufficient visibility according to biased recommendation systems.

Accessing "clean data" is essential to solve the problem, helping with attributing songs and calculating remuneration.

On the contrary, inaccurate metadata about songs risk creating a situation where it is not clear who owes what (and how much) to whom, jeopardizing royalty share attribution and discriminating among contents in a non-transparent manner. It may occur that digital platforms extract unfairly high value and erode market share entitled to record labels, distributors and authors, also preventing the appearance of less popular artists and performers on the platform. As a consequence, this market area is characterised by a general lack of trust towards royalty calculation systems and criteria adopted to apportion market share, with a negative impact on market contestability.

AI models mostly rely on robust and accurate datasets, and their elaboration, based on TDM and related techniques, risks being discouraged by the fact that the general exception for TDM (Article 4 CDSMD) is contractually overridable (see below — EU sources). Thus, the payment of a license fee as to make use of a dataset via TDM is an additional cost to be priced into which negatively impacts on the competitiveness of the EU AI-driven music industry. Moreover, as existing data, metadata and information about the music licensing system is inaccurate, incomplete and to be collected in a uniform

[55] Brooke, 'Descriptive Metadata in the Music Industry' (n 47).

[56] Ibid, 54 et seq.

[57] Frank Lyons and others, 'Music 2025 – The Music Data Dilemma: Issues Facing the Music Industry in Improving Data Management' (15 August 2019) <https://papers.ssrn.com/abstract=3437670> accessed 23 September 2023.

[58] Ibid, 45 et seq.

way, the very same development of AI models for music can be overly difficult for the lack of input data. This, in turn, can contribute with reducing the diversity of AI creative contents in the EU digital market.

Addressing the issue, music stakeholders have attempted to build a common dataset containing accurate information about the music value chain. As an example, the Global Repertoire Database is an initiative embraced with the aim of implementing metadata standards and elaborating protocols. Two standards for the identification of music contents have been elaborated until now. The first is ISRC and relates to sound recordings. Instead, ISWC concerns underlying works. Several initiatives have also been embraced at the national level, with the help of local CMOs.[59]

For all the reasons explained above, the creation of a well-functioning data infrastructure would be useful to bolster market contestability and correct inequalities in bargaining power among stakeholders. Furthermore, the establishment of a data infrastructure based on commonly accepted standards and PIDs will also help with streamlining the licensing proceedings and increasing awareness about less popular songs.

[59] Martin Senftleben and others, 'Ensuring the Visibility and Accessibility of European Creative Content on the World Market: The Need for Copyright Data Improvement in the Light of New Technologies and the Opportunity Arising from Article 17 of the CDSM Directive' (2022) 13 JIPITEC <https://www.jipitec.eu/issues/jipitec-13-1-2022/5515>.

3 Mapping Policy Objectives and Measures on Diversity in International and EU Legal Framework

Following this encompassing approach towards cultural diversity, the analysis conducted under T2.1 allowed for the identification of **existing policy domains and objectives** of music diversity as defined by law, and the description of **measurable target objectives** to promote diversity in the broad sense referred above. These can influence the music industry and ensure an equal representation of the various actors involved and of the related cultural expressions. Several legal and policy instruments might contribute to fostering diversity in music.

Among them, the following sources have been mapped:

Source	Status
International Instruments addressing cultural matters (Section 3, Annex I)	**mapped**
Copyright and Intellectual Property Laws (**Section 3, Annex I)**	**mapped**
Public Broadcasting, Audio-Visual and Media Regulations having a direct or indirect positive impact or constraining effect on the implementation of diversity-oriented policies **(Section 3, Annex II)**	**parts mapped**
Other regulations in non-related subject matters (e.g. competition law, international IP law), to the extent that may have a constraining impact on the implementation of diversity-oriented policies **(Section 4, Annex II)**	**mapped**
Policy (i.e. non-binding) documents	**mapped**
Best practices developed by States outside the geographical scope of T2.1 which may be used as benchmark of successful best practices in measuring and fulfilling music diversity goals, to be used as a model for the amendment of existing and/or development of new indicators, and related policy recommendations **(Section 4, Annex II)**	**partially mapped (only available data)**

Since the 1950s, numerous international organisations have addressed discrimination based on various factors, including sex, race or ethnicity, religion or belief, disability, age, or sexual orientation. Over the years, major conventions and declarations that signified significant strides toward a more varied society were approved. These conventions have Member States as their primary beneficiaries or recipients, which are responsible for implementing the measures requested therein. This section looks at some of the relevant declarations and conventions to examine how cultural diversity is addressed. The section does not provide an exhaustive account of all legal texts, but attention is given to those norms that contribute to fostering cultural diversity or have diversity as an underlying goal. As these provisions serve the objective of achieving greater diversity in the music sector, the aim is to extrapolate the objectives, measures and forms of measurement thereof used in the legal norms to achieve such a purpose. The analysis of each mapped source is complemented by an easy-to-read chart that translates

into measurable quantitative indicators the **diversity domains, objectives and criteria** suggested by the provision(s).

A closer look into the evolution of international legal framework addressing diversity through the UNESCO Conventions reveals a notable shift from initially focusing on the diversity of natural persons or groups to a broader consideration of the diversity of forms of expression. The early conventions, dating back to the 1950s, primarily targeted discrimination against individuals based on factors such as sex, race or ethnicity, religion or belief, disability, age, or sexual orientation. Over time, there has been a growing understanding that fostering cultural diversity requires addressing not only the diversity within communities (i.e., based on demographic criteria of individuals) but also the range of cultural expressions and manifestations themselves.

This shift is particularly significant in the context of the music sector, as it recognises that diversity is not only about the demographic composition of musicians or musical groups but also about the multitude of genres, styles, and content artistic expressions within the industry. This expansive and all-encompassing approach to diversity provides a more feasible and actionable way for those involved in the music industry to implement and integrate diversity considerations into their practices. It allows for developing measures and indicators that go beyond demographic considerations and focus on promoting diverse artistic expressions, namely, emphasizing the content of the music itself. As the findings of this deliverable and D3.1 demonstrate, this could involve measures and indicators that range from the adoption of policies that support specific content and education programs that raise awareness about diverse musical traditions to promoting cross-cultural collaborations and providing opportunities for artists from underrepresented communities, among others.

3.1 United Nations Framework

The formal establishment of the right to participate in cultural life within the scope of human rights can be traced back to 1948. Article 27 of the Universal Declaration of Human Rights (UDHR)[60] emphasises the right of everyone "freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits". Additionally, according to Articles 2 and 7 UDHR, every individual is entitled to these cultural rights and freedoms "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The language of the UDHR, born as a non-binding document but subsequently accepted as part of customary international law,[61] was later specified by Article 15 of the UN Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966,[62] a binding text. Article 2 ICESCR further prohibits direct and indirect discrimination. It imposes on the States Parties to the Covenant to guarantee that such rights will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Notably, as the Committee on Economic, Social and Cultural Rights (CESCR)[63] underlined, State obligations have

[60] UN General Assembly, Universal Declaration of Human Rights (UDHR), 10 December 1948, 217A (III), Article 27.

[61] Caterina Sganga, 'Right to Culture and Copyright: Participation and Access', *Research Handbook on Human Rights and Intellectual Property* (Edward Elgar Publishing 2015) <https://www.elgaronline.com/display/edcoll/9781783472413/9781783472413.00044.xml> accessed 23 September 2023; Hurst Hannum, 'The UDHR in National and International Law' (1998) 3 Health and Human Rights 144.

[62] International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, 993 UNTS 3.

[63] Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013) A/RES/63/117; The CESCR has been established on the basis of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

multiple addressees.[64] They are directed not only to legislators but also to administrative bodies and courts. Moreover, they overstep national boundaries and require states to comply with them when operating in international l.[65]

Thus, the relationship between cultural diversity and the right to culture in the UDHR is interconnected and significant. The UDHR emphasises the importance of respecting cultural diversity, protecting minority cultures, and ensuring equality and non-discrimination for all, regardless of their cultural backgrounds. The interplay between cultural diversity and the right to culture underscores the Declaration's commitment to fostering a society where cultural diversity is valued, and universal human rights are maintained. The United Nations (UN), especially since the establishment of United Nations Educational Scientific Cultural Organisation (UNESCO) in 1945, [66] has been actively involved in promoting diversity as a cultural right, focusing on a range of issues, including gender equality and the elimination of gender-based discrimination, affirming the rights of all cultures to coexist, fostering multilingualism, and defending different cultural expression. In this section are highlighted a few of the crucial declarations and conventions pertinent to these fields. References and details to these and other norms are included in **Annex I**

3.1.1 UN Instruments Having Gender Equality as a Diversity Objective

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the UN General Assembly in 1979, is often referred to as a global charter of women's rights.[67] The Convention officially entered into force on September 3, 1981. Almost all countries of the world have ratified it and are bound by its provisions.[68] The CEDAW defines what constitutes discrimination against women and provides a framework for domestic actions to eradicate it. Article 1 CEDAW states that discrimination against women is "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." By ratifying the Convention, States commit to incorporate the principle of gender equality into their legal frameworks, repeal discriminatory laws, and enact appropriate legislation prohibiting discrimination against women in areas of economic and social life in order to ensure, on the basis of equality of men and women, the same rights, including the right to take part in cultural life.

[64] In ECOSOC, Committee on Economic, Social and Cultural Rights, General Comment no. 3, The Nature of State Parties' Obligations (Article 2, Paragraph 1, of the Covenant), UN Doc. E/1991/23, 14 December 1990, paras 5–6.

[65] In this wake, the CESCR explicitly requested by the UN Sub-Commission on Human Rights to assist WTO, WIPO and national governments "to integrate into their national and local legislations and policies, provisions, in accordance with international human rights obligations and principles, that protect the social function of intellectual property", and to compel international organizations to "take fully into account the existing State obligations under international human rights instruments". See: ESOSOC, Sub-Commission on Promotion and Protection of Human Rights, Intellectual Property Rights and Human Rights (Resolution 2000/7), Resolution 2000/7, UN Doc. E/CN.4/Sub.2/RES/2000/7, 17 August 2000, para. 11. For details, see: Sganga (n 55).

[66] Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO Constitution), 16 November 1945, 4 UNTS 275, Article 1(1).

[67] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. Retrieved from: http://www.un.org/womenwatch/daw/cedaw/cedaw.htm.

[68] Including Bulgaria, Hungary, Lithuania, Slovakia and Ukraine. See: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en

Table 3: Diversity objectives and monitoring measures. Source: Compiled by SSSA (2023)

Diversity Objectives and Monitoring Measures	
Diversity Objectives	**Measures to Monitor their Implementation**
Gender	Legal standing of the principle of non-discrimination based on gender Gender Equality Plans across the music industry Quota for women in repertoires Gender Balance in performances, including festivals and events Gender balance/ representation in media streaming platforms Gender balance in engagement in cultural activities e.g. gender demographic of audiences at music events and festivals Gender balance in decision-making processes within organisations and policymaking shaping the sector Equal opportunities for collaboration with other musicians, producers and industry professionals Gender distribution in educational training, workshops and initiatives Gender distribution in grants and funding

3.1.2 UN Instruments Having Race and Ethnicity as a Diversity Objective

The main UN treaty that promotes equality and the abolition of racial discrimination is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),[69] which was adopted by the UN General Assembly in 1965 and entered into force in 1969.[70] Article 1 ICERD defines racial discrimination "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The non-exhaustive list of rights in Article 5 includes, among others, a number of economic, social and cultural rights. The principle of non-discrimination established in the Convention does not mean that everyone must receive identical treatment. Policies such as affirmative action, referred in the Convention to as "special measures," may be required in order to the achieve the equality purposes pursued. Article 2(2) obliges State Parties to take special measures when the circumstances so warrant, for example, in the case of persistent disparities.[71] Such special measures aim to secure the full and equal enjoyment of human rights and

[69] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD).

[70] For an overview of the ratifications, see: https://indicators.ohchr.org/

[71] UN Committee on the Elimination of Racial Discrimination (CERD), 'Report of the Committee on the Elimination of Racial Discrimination (2001) UN Doc A/56/18 para 399.

fundamental freedoms for disadvantaged groups.[72] They may benefit any group or person covered by Article 1 ICERD. However, as clarified in Article 1(4) ICERD, they should not lead to the maintenance of separate rights for different racial groups and should not be continued after the objectives for which they were taken have been achieved.

Another relevant instrument is the Declaration on Race and Racial Prejudice (Race Declaration), adopted by the UNESCO General Conference at its 27th session in November 1978.[73] Although the Declaration is not binding, it received substantial international endorsement.[74] As such, it is the most extensive global instrument addressing group identity, particularly in areas where the latter and cultural spheres intersect. Article 1(2) of the Race Declaration emphasises the value of differences and the right of individuals and groups to be different,[75] the right for human beings to maintain cultural identity,[76] as well as the right of groups to their own cultural identity and the development of their distinctive cultural life.[77] With this document, States acknowledge the diversity of cultures and reaffirm that different communities should be able to decide on the development and expression of their cultures.[78] Accordingly, Article 3 of the Declaration prohibits "any distinction, exclusion, restriction or preference based on race, colour, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and the right of peoples to self-determination".

Table 4: Diversity objectives and monitoring measures. Source: Compiled by SSSA (2023)

Diversity Objectives and Monitoring Measures	
ICERD / Race Declaration Diversity Objectives	**Measures to monitor their implementation**
Gender Colour Language Ethnicity Religion Nationality	Ethnic representation in repertoires of artists from diverse racial and ethnic backgrounds Audience diversity, including in festival, events, and concerts to ensure access and participation of different racial-ethnic groups Inclusive programming of live events, festivals and performances to ensure that music from diverse ethnic and religious groups and backgrounds is represented

[72] UN Committee on the Elimination of Racial Discrimination (CERD), 'Report of the Committee on the Elimination of Racial Discrimination (2001) UN Doc A/56/18 para 399.

[73] Declaration on Race and Racial Prejudice, 27 November 1978. Retrieved from: https://unesdoc.unesco.org/ark:/48223/pf0000039429 .

[74] Medes Malaihollo, 'The International Convention on Elimination of All Forms of Racial Discrimination – Reviewing Special Measures Under Contemporary International Law' (2017) 5 Groningen Journal of International Law 135.

[75] Article 1(2) Race Declaration. Retrieved from: https://unesdoc.unesco.org/ark:/48223/pf0000039429 .

[76] Article 1(3) Race Declaration. Retrieved from: https://unesdoc.unesco.org/ark:/48223/pf0000039429 .

[77] Article 5(1) Race Declaration. Retrieved from: https://unesdoc.unesco.org/ark:/48223/pf0000039429 .

[78] UNESCO, GENERAL CONFERENCE (20th session), "Draft Declaration on Race and Judicial Prejudice", Doc. 20 C/18, Annex, Explanatory Report, § 5 (25 September 1978); UNESCO, "Working Paper of the Meeting of Government Representatives to Prepare a Draft Declaration on Race and Racial Prejudice", Doc. SS- 77/CONF.201/1, at 18-9 (18 August 1977), both reported in: Natan Lerner, 'New Concepts in the UNESCO Declaration on Race and Racial Prejudice' (1981) 3 Human Rights Quarterly 48.

Territory Nationality of establishment Cultural identity	Monitoring religious music genres associated with different religious traditions Ensuring the presence of venues dedicated to religious music performances and events Measures to preserve and promote traditional religious music practices Language and lyrics: monitoring the use of different languages and cultural references in music produced and promoted Promotion: assessing measures to enhance the production and distribution of music content from artists with different nationalities, religion, colour and ethnic backgrounds Promotion of cultural sensitivity, including educational training to ensure respect and mutual understanding, to avoid stereotypes Monitoring and assessing representation in awards Equal access to opportunities and funding, also based on nation of establishment

3.1.3 Instruments Having Cultural Expressions and Linguistic Minorities as a Diversity Objective

In 1992, the General Assembly of the UN adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities or DOM), which, however, is not a binding document.[79] According to article 2 DOM, the beneficiaries of the declaration are persons belonging to national or ethnic, religious, and linguistic minorities in the territory of a contracting Member. These minority groups are entitled to all human rights and fundamental freedoms, without discrimination, and full equality before the law. Article 1 DOM impose States to promote the preservation of the ethnic, national, linguistic and religious identity of the minority. Individuals belonging to a minority can freely practice their own culture, religion, and language and participate in the life of the society, in legislation concerning them as well as the whole society. Article 4 DOM does not only guarantee rights for the individual but also for the minority as a group. States should take appropriate measures to enable the members of the minority to learn their mother tongue, history, culture, tradition and customs, except for those practices which violate international standards or national law. Articles 5-7 DOM requires States to cooperate to protect minorities and to plan national policies and programs to ensure their rights.

Almost ten years later, in 2001, the General Conference of UNESCO adopted the Universal Declaration on Cultural Diversity (UDCD).[80] It is not a legally binding agreement, but it does incorporate principles that all Member States must follow. The UDCD elevates cultural diversity to the status of "the shared heritage of humanity", rendering its defence an ethical imperative.[81] This imperative implies a commitment to human rights and fundamental freedoms, particularly concerning the rights of persons

[79] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, GA Res. 47/135, 18 December 1992.

[80] Universal Declaration on Cultural Diversity, 2nd of November 2001. Retrieved from: https://www.unesco.org/en/legal-affairs/unesco-universal-declaration-cultural-diversity

[81] Ibid, Article 4.

belonging to minorities and those of indigenous peoples. The Declaration furthermore creates "cultural rights," which pursuant to Article 5 UDCD include the right of all persons to express themselves and to create and disseminate their work in the language of their choice, particularly in their mother tongue, and the right to participate in the cultural life of their choice. Additionally, the Declaration states that access for all cultures to means of expression and dissemination shall be guaranteed through freedom of expression, media pluralism, multilingualism. States shall also ensure, in face of the technological change, diversity of the supply of creative work, and should grant due recognition to the rights of authors and artists and to the specificity of cultural goods and services which, as vectors of identity, values and meaning, should not be treated as mere commodities or consumer goods.[82] Lastly, while ensuring the free circulation of ideas and works, cultural policies must create conditions for producing and disseminating diversified cultural goods and services. Yet, the Declaration makes it clear that each State remains free to define its cultural policy and to implement it through the means it considers more appropriate.[83]

After the Cultural Diversity Declaration, Member States wished to adopt a legally binding instrument on cultural diversity – a process that resulted in the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Cultural Diversity Convention, CDC).[84] The preamble of the Convention explains that the rationale behind its adoption is that "cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value". Accordingly, the core of CDC is acknowledging the significance of the variety and plurality of identities and cultural manifestations of individuals and society, including those belonging to minorities and indigenous peoples.[85]

The Convention is the first international agreement with legal force that acknowledges the State's sovereign right to maintain, adopt, and implement policies to protect and promote cultural diversity within its territory.[86] Such measures may include, among others, regulatory efforts aimed at protecting and promoting diversity of cultural expressions, measures that provide opportunities for domestic cultural activities, including for the creation, production, dissemination, distribution and enjoyment of cultural activities, goods and services, and measures aimed at enhancing the diversity of the media, including through public service broadcasting. Accordingly, the Convention further establishes the principle of equitable access to a rich and diversified range of cultural expressions worldwide, and access of cultures to appropriate means of expression.

Despite being all-encompassing and innovative, the CDC has been criticised for its scarce impact on Member States' laws and policies. In fact, it is not immediate to track direct connections between regional/national provisions and actions and the Convention's mandate. This does not have to suggest, however, that its role has been minimal or negligible. Its text has been used as a benchmark for several interventions, and its language, definitions and range of suggested actions find numerous matches, for instance, in EU legislative and policy sources, as it will be better outlined below.

[82] Ibid, Article 8.

[83] Ibid, Article 9

[84] Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20 October 2005, U.N. Doc. CLT-2005/CONVENTION DIVERSITE-CULT REV. Retrieved from: https://www.unesco.org/creativity/en/2005-convention

[85] Ibid, Article 2. The Convention defines cultural diversity in Article 4(1), as "the many ways in which the cultures of groups and societies find expression." See above Section 2.1.

[86] Ibid, Article 6-7. The Convention does not contain substantive cultural rights for individuals or communities, but only recognise States' possibility to take measures to protect cultural diversity.

Table 5: Diversity objectives and monitoring measures. Source: Compiled by SSSA (2023)

Diversity Objectives and Monitoring Measures	
DOM / UDCD Diversity Objectives	**Measures to monitor their implementation**
Nationality Territory Ethnicity Language Minority groups Religion Indigenous Groups Language Creators (authors, artists) Diversified supply of creative work Diversified circulation of works Diversified production of works	Legal standing for minority ethnic, indigenous and linguistic groups Evaluation and monitoring the existence of policies and initiatives that support identity preservation of ethnic, indigenous and linguistic groups Representation of artists from minority ethnic, religious and linguistic backgrounds Assess the diversity and preservation measures for linguistic tradition and music styles or content associated with minority communities, including instrumental music Ensuring the production and distribution of repertoires representing minority ethnic, indigenous and linguistic groups Minority ethnic, religious, indigenous and linguistic balance/ representation in media streaming platforms; tracking the reach of them in various international markets by collecting data on the export through sales, streaming and licensing agreements Minority ethnic, religious, indigenous and linguistic balance/ representation in performances, including festivals, events and awards Equal access to funding for minority ethnic, religious, indigenous and linguistic groups Monitoring audience diversity, including in festivals, events, and concerts, to ensure access and participation of minority ethnic, religious, indigenous and linguistic groups Implement export programs and initiatives that support ethnic, indigenous and linguistic groups or content associated with minority communities, including instrumental music in expanding their presence in international markets. Monitor the number of artists and repertoires benefiting from these programs. Ensuring presence of venues and other live events or festivals dedicated to the promotion of minority ethnic, religious, indigenous and linguistic groups and content associated to them Tracking collaborations between musicians from minority and majority backgrounds, fostering cross-cultural exchange.

3.2 Council of Europe Framework

The Council of Europe has taken initiatives in various sectors, including gender equality, national minority protection, and regional and minority language preservation, to promote diversity. For instance, the Council adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1950.[87] The ECHR addresses cultural diversity by broadly promoting the principles of non-discrimination. Article 14 ECHR provides that the rights and freedoms outlined in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. It further guarantees the respect of the freedom of thought, conscience, and religion in Articles 9 ECHR and 10 ECHR, including the right to choose and change these ideas as well as the freedom to express these beliefs both publicly and privately. Including these fundamental freedoms in the Council of Europe Convention laid the groundwork for recognizing the importance of diversity.

To map normative indicators of cultural diversity, this section conducts a historical assessment of some other documents of the Council from its foundation onwards. Further references and details are included in Annex I. Since most of these documents pose significant emphasis on linguistic diversity, they will be presented in chronological order.

3.2.1 European Cultural Convention (1954)

In 1954, the Council of Europe adopted the European Cultural Convention (ECC)[88] to promote cultural understanding among its Member States. The Convention is in force since 1995.[89] Article 1 ECC requires Member States to adopt suitable measures to preserve and encourage their national contribution to Europe's "common cultural heritage". The Convention does not define that notion. However, its provisions are addressed to foster cross-cultural exchange, suggesting an advance towards cultural diversity. As per Article 2 ECC, the Convention largely focus on language diversity. This provision requires States to implement – with the caveat "to the extent possible" – measures to encourage the study by its own language, history and civilisation of other contracting States, also in the territory of such States.

Table 6: Diversity objectives and monitoring measures. Source: Compiled by SSSA (2023)

Diversity Objectives and Monitoring Measures	
Diversity objectives	**Measures to monitor their implementation**
Language	Language quota in repertoires Monitoring the use of different languages and cultural references in music produced and promoted

[87] Council of Europe (1950) Convention for the Protection of Human Rights and Fundamental Freedoms (including all Protocols), ETS No.: 005. Council of Europe, London. The European Convention is an heir to the Universal Declaration of Human Rights (United Nations, 1948). The Convention has been ratified by several States, including Bulgaria, Hungary, Lithuania, Slovakia and Ukraine. For a detailed list of the ratifications, see: https://www.coe.int/en/web/conventions/recent-changes%20. .

[88] Council of Europe (1954) European Cultural Convention, CETS No.: 018. Council of Europe. Retrieved from: https://www.coe.int/en/web/conventions/full-list

[89] The Convention has been ratified by several States, including Bulgaria, Hungary, Lithuania, Slovakia and Ukraine. For a detailed list of the ratifications, see: https://www.coe.int/en/web/conventions/recent-changes-for-treaties

	Equal opportunities for collaboration with other musicians, producers and industry professionals Assessing measures to enhance the production and distribution, also in streaming venue of music content in different languages Monitoring and assessing representation in awards, festivals and events of repertoires in different languages Implement export programs and initiatives that support cross-cultural exchange, and the production / distribution of repertoires in different languages.

3.2.2 European Social Charter (1960)

Notably, the European Social Charter (ESC), [90] approved in 1960, does not contain references to cultural diversity. While the Charter reinforces the principle of non-discrimination laid in the ECHR, improves gender equality, and ensures better maternity and social protection of mothers, it does so only with reference to employment conditions. Other references to cultural transmissions are included with regard to the rights of migrants following the Charter's amendment in 1996.[91] For instance, the ESC provides that States commit to supporting immigrants and their families in learning the language of the host country, while also encouraging the preservation of their mother tongue.

3.2.3 European Charter for Regional or Minority Languages (1992)

The European Charter for Regional or Minority Languages (ECRML), approved in 1992 and in force since 1998, focuses on protecting and promoting minority languages. Article 1 ECRML defines regional or minority language that is traditionally used within a given territory of a State by nationals of that State, and that forms a group that is numerically smaller than the rest of the national population. That language shall also differ from the State's official language and it does not include dialects of the official language or language of migrants. While this Charter is praised for recognizing the value of linguistic diversity, it comes with the caveat that it gives the States the power to decide which languages deserve protection "according to the situation of each language".[92] The Charter then includes several provisions that serve as the basis for the State's policy options and law-making. Relevant to the music industry Are article 11 ECRML and 12 ECRML. The former imposes, inter alia, the obligation to promote Minority or Regional languages in radio stations, and in other cultural activities such as festivals and the use of new technologies. National interventions shall be in accordance with the objectives laid down in Article 7 ECRML, which includes the recognition of regional or minority languages as an expression of cultural wealth, the encouragement to mass media to promote and recognise mutual understanding between all linguistic groups, and the elimination of any unjustified distinction, restriction or preference relating to the use of a regional or minority language.

[90] Council of Europe (1961) European Social Charter, ETS No.: 163. Council of Europe. Among the national countries under the scope of this report, only Hungary, Slovakia and Ukraine have ratified the Convention. For a detailed list of the ratifications, see: https://www.coe.int/en/web/conventions/recent-changes-for-treaties

[91] Council of Europe (1996) European Social Charter revised version, ETS No.: 163. Council of Europe. Available at https://www.coe.int/en/web/conventions/full-list .

[92] For a reference to the list of languages covered by the Charter, see: https://rm.coe.int/november-2022-revised-table-languages-covered-english-/1680a8fef4

Table 7: Diversity objectives and monitoring measures. Source: Compiled by SSSA (2023)

Diversity Objectives and Monitoring Measures	
Diversity objectives	**Measures to monitor their implementation**
Regional or Minority Language Non-territorial Language	Legal standing for Regional or Minority and non-territorial language Ensuring and measuring Regional or Minority and non-territorial language in decision-making processes within organisations and policymaking shaping the sector Monitoring the use of Regional or Minority and non-territorial languages and cultural references in music produced and promoted Language for Regional or Minority and non-territorial language Quota in repertoires Assess and monitor the presence of music streaming and distribution platforms that offer content in multiple languages, catering to Regional or Minority and non-territorial language Equal opportunities for collaboration for artists belonging to Regional or Minority and non-territorial language groups with other musicians, producers and industry professionals Assessing measures to enhance the production and distribution, of music content associated to Regional or Minority and non-territorial language Monitoring and assessing representation in awards, festivals and events of repertoires in different languages Implement export programs and initiatives that support cross-cultural exchange, and the production / distribution of repertoires in different languages; track collaborations between artists from Regional or Minority and non-territorial language and those of majority or official language.

3.2.4 Framework Convention for the Protection of National Minorities (1995)

Approved in 1995 and in force since 1998, the Framework Convention for the Protection of National Minorities (FCNM)[93] is the most comprehensive text among those protecting the rights of persons belonging to national minorities. Its preamble places a strong emphasis on the need of safeguarding diversity, including the importance of nurturing cultural distinctions as “a source of enrichment of each society.” In this context, IT also acknowledges that "a pluralistic and truly democratic society should not only honour the ethnic, cultural, linguistic, and religious identity of every individual belonging to a national minority but also establish suitable conditions that allow them to express, safeguard, and cultivate this identity."

[93] Council of Europe (1995) Framework Convention for the Protection of National Minorities, CETS No 157. Strasbourg: Council of Europe. Retrieved from: https://www.coe.int/en/web/minorities

The FCNM does not contain a definition of "national minority." There is, therefore, a certain flexibility, or a margin of appreciation, for States to decide who falls under the protection of the Framework Convention. Some Member States have notified their understanding of the terms "national minorities" upon ratification of the instrument.[94] Importantly, Article 3 FCNM establishes that the determination of "national minorities" shall be made based on the principles of free self-identification. This principle means that individuals have the right to decide themselves whether they wish to be identified as belonging to a national minority, and to which one. In addition, as suggested by the Advisory Committee on the FCPNM, their decision must be based on objective criteria connected with their identity, such as their religion, language, traditions and cultural heritage.[95]

Other than this, the FCNM lays down principles as well as goals to be achieved by the states to ensure the protection of national minorities. Amongst them, Article 4 FCNM requires that Parties to the Framework Convention undertake to promote the full and effective equality of persons belonging to minorities in all areas of economic, social, political, public and cultural life, together with the conditions that will allow them to express, preserve and develop their culture, religion, language and traditions (including the access to and the use of the media). In this sense, the provisions in Articles 5 FCNM and 6 FCNM are particularly relevant. The former requires Parties to facilitate that persons belonging to national minorities maintain and develop their culture and preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage. The latter establishes that Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of their ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. In addition, Article 9 FCNM deals with the interplay between the rights of minorities and media services. According to this rule, Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media. In the legal framework of sound radio and television broadcasting, States Parties to the Framework Convention shall ensure – with the caveat "as far as possible" – that persons belonging to national minorities are granted the possibility of creating and using their own media. Lastly, its preamble acknowledges "cultural diversity" as a source of enrichment for each society.

Table 8: Diversity objectives and monitoring measures. Source: Compiled by SSSA (2023)

Diversity Objectives and Monitoring Measures	
Diversity objectives	**Measures to monitor their implementation**
National Minority Religion Language Tradition / Cultural Heritage	Legal standing for National Minority; implementation and monitoring of policies and initiatives that support ethnic, religious, linguistic and minorities/indigenous groups or content associated with those groups for promoting the production, distribution and presence in international markets; monitor the number of artists and repertoires benefiting from these programs

[94] The Convention has been ratified by several States, including Bulgaria, Hungary, Lithuania, Slovakia and Ukraine. For a detailed list of the ratifications, see: https://www.coe.int/en/web/conventions/recent-changes-for-treaties

[95] Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe (2012), Thematic Commentary No.3 – The Language Rights of Persons Belonging to National Minorities Under the Framework Convention adopted on 24 May 2012, ACFC/44DOC(2012)001 rev. Retrieved from: https://rm.coe.int/16800c108d

Race/ Ethnicity	Monitor the presence and operation of media outlets, such as radio stations, owned and operated by national minority communities, different racial and ethnic backgrounds or associated with traditional-music related objects (repertoires, instruments) Monitoring the use of different languages and minority groups, traditions, and religious references in repertoires and artists in broadcasting activities; Assessing and monitoring the presence of music streaming and distribution platforms that offer content in multiple languages, support the supply of content from ethnic, religious, linguistic and minorities/indigenous groups, including content associated with those groups Monitoring and assessing representation in awards, festivals and events of national minority communities, different racial and ethnic backgrounds or content associated with traditional-music related objects (repertoires, instruments) Ensuring the presence of venues dedicated to religious music performances and events Measures to preserve and promote traditional religious or ethnic music practices Language quota in repertoires; monitoring the use of different languages and cultural references in music produced and promoted Equal opportunities for collaboration among musicians, producers and industry professionals with different linguistic backgrounds Implement export programs and initiatives that support cross-cultural exchange, and the production/distribution of repertoires in different languages. Assessing measures to enhance the production and distribution of music content in different languages; assess and monitor the presence of music streaming and distribution platforms that offer content in multiple languages Monitoring and assessing representation in awards, festivals and events of repertoires in different languages Promotion of language sensitivity, including educational training to ensure respect and mutual understanding, to avoid linguistic stereotypes Monitoring audience diversity, access and engagement in cultural activities and music consumption from broad ethnic, religious and linguistic audiences Equal opportunities for collaboration and funding access Ethnic, gender, linguistic and religious balance in decision-making processes

2.3.5 Framework Convention on the Value of Cultural Heritage for Society (2005)

The Framework Convention on the Value of Cultural Heritage for Society (FCVCHS) was adopted in 2005.[96] It entered into force in 2011, but only a few countries have ratified it.[97] Article 5 FCVCHS acknowledged the significance of cultural heritage located within territories under the State's Member jurisdiction, irrespective of its source. That provision also acknowledges the essential role of "European Cultural Heritage" and it states that "the ideals, principles and values, derived from the experience gained through current and past conflicts, which foster the development of a peaceful and stable society, founded on respect for human rights, democracy and the rule of law should be considered". Despite this, the Convention lacks a definition of "European" Cultural Heritage. Article 2 only refers to "Cultural Heritage" groups or communities as a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. The notion includes all aspects of the environment and values resulting from the interaction between people and places through time, to sustain and transmit to future generations.

The Framework Convention does not create specific obligations but only suggests possible intervention areas. In this context, particularly relevant is Article 14 FCVCHS, dealing with cultural heritage and the information society. Under this provision, Parties undertake to develop the use of digital technology to enhance access to cultural heritage and the benefits which derive from it. To this end, the provision suggests States encouraging initiatives which promote the quality of content and endeavour to secure diversity of languages and cultures in the information society. This includes the suggestion of adopting initiatives seeking to resolve obstacles to access to information relating to cultural heritage, particularly for educational purposes, whilst protecting intellectual property rights.

Table 9: Diversity objectives and monitoring measures. Source: Compiled by SSSA (2023)

Diversity Objectives and Monitoring Measures	
Diversity objectives	**Measures to monitor their implementation**
Language	Language quota in repertoires Monitoring the use of different languages and cultural references in music produced and promoted Equal opportunities for collaboration among musicians, producers and industry professionals with different linguistic backgrounds; Implement export programs and initiatives that support cross-cultural exchange, and the production/distribution of repertoires in different languages. Assessing measures to enhance the production and distribution of music content in different languages; assess and monitor the

[96] Council of Europe (2005) Council of Europe Framework Convention on the Value of Cultural Heritage for Society, CETS No.: 199. Faro: Council of Europe. Retrieved from: https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=199

[97] Among the countries under the scope of this report, only Hungary, Slovakia and Ukraine have ratified the instrument. For a detailed list of the ratifications, see: https://www.coe.int/en/web/conventions/recent-changes-for-treaties.

	presence of music streaming and distribution platforms that offer content in multiple languages Monitoring and assessing representation in awards, festivals and events of repertoires in different languages Promotion of language sensitivity, including educational training to ensure respect and mutual understanding, to avoid linguistic stereotypes Monitoring audience diversity, access and engagement in cultural activities and music consumption from broad linguistic audiences

3.3 Measures Adopted by the European Union

For the purpose of this study, a focus on the measures adopted by the European Union to foster – directly or indirectly – cultural diversity, with particular regard to the music ecosystem, is of paramount importance. The goal of this section is (a) to outline the competence of the EU in the cultural field, which will help understanding how far the Union may go in adopting measures directed to foster diversity in the cultural and creative industries, along and eventually beyond Member States' laws; and (b) to provide a functional analysis of the EU provisions which may play a role in fostering cultural diversity, in line with the direction indicated by the instruments of international human rights soft law mentioned above. Each provision will be assessed with the aim of understanding whether and to which extent it may be used to prevent discriminations among artists and further diversify the array of copyright-protected contents uploaded on digital platforms. Particular attention will be devoted to the Directive on Copyright in the Digital Single Market Directive (CDSMD), the Portability Regulation (PR), the Geo-Blocking Regulation (GBR) and the SatCab II Directive.

3.3.1 EU Competences in Cultural Policies

Since the early stages of the European Community (European Union) formation, it was clear that Member States had divergent viewpoints on if and how cultural policies should promote a shared cultural identity. Most Member States highlighted the need to protect national sovereignty, arguing that cultural matters should remain outside the EU's purview.[98] As a result, a legislative framework for supranational initiatives aiming at promoting culture was not included in the initial Treaty establishing the European Economic Community (Treaty of Rome),[99] and the EU had to adopt a cautious and gradual approach to address cultural industries.[100] However, at the beginning of the 1970s, there was a rising

[98] Tobias Theiler, *Political Symbolism and European Integration* (Manchester University Press 2005). Retrieved from: https://d-nb.info/1241194262/34 Tobias Theiler, *Political Symbolism and European Integration* (Manchester University Press; Distributed exclusively in the USA by Palgrave 2005) <https://d-nb.info/1241194262/34>.

[99] The Rome Treaty contained a few provisions related to culture, (Article 36, which permitted member states to impose restrictions on imports and exports to safeguard their national cultural treasures, and article which outlined the Community's responsibility to support the cultural development of third countries). As regards the role of the EC institutions on cultural matters prior to its adoption with Article 128, see Rachael Craufurd Smith, 'Community Intervention in the Cultural Field: Continuity or Change?' in Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004) <https://doi.org/10.1093/acprof:oso/9780199275472.003.0002> accessed 23 September 2023.

[100] This process was referred by Bjarki Valtysson as a "discursive journey". See: Valtysson Bjarki, 'Camouflaged Culture: The "Discursive Journey" of the EU's Cultural Programmes' (2018) 24 Croatian International Relations Review 14.

understanding of the need for government intervention in the cultural realm.[101] The expansion of cultural industries, the rise in the consumption of cultural goods and services, and the fact that the Treaty of Rome also had implications for the trade in cultural goods contributed to highlighting how trade and culture are interconnected and that actions in trade policies can influence cultural aspects or industries.[102] Such an understanding led to progressively abandoning the view of culture as an "isolated" phenomenon and paved the way for Community law, such as competition law, intellectual property law and tax law to affect the cultural field profoundly.

The starting point is the Maastricht Treaty of 1992, which officially made culture an EU concern for the first time by including cultural policies within the scope of Article 128 EC.[103] The most important aspect of this article lies in the explicit articulation of cultural policy goals, guiding principles for community involvement in this field, specific areas covered, and the legislative procedure that should be followed for their implementation. Yet, as a rule, Member States still have complete sovereignty over the cultural sphere. The two core principles inspiring European cultural policies are subsidiarity[104] and preservation of the diversity of the national cultures (principle of no harmonisation).

Indeed, Article 128 EC did not give the Community a legal mandate to undertake legally binding actions or to control policies in the cultural sectors, but only a role to encourage cultural cooperation between Member States, to support and supplement their actions only if necessary and only in those areas indicated in Article 128(2) EC. These include contributing to the flowering of national cultures, respecting Member States' national and regional diversity while bringing common cultural heritage to

[101] See, for instance: See: European Communities Commission, *Stronger Community Action in the Cultural Sector. Communication from the Commission to the Council and the Parliament, Transmitted on 12 October 1982. Supplement 6/82 Bulletin of the European Communities* (Office for Official Publications of the European Communities 1982) <https://repositori.uji.es/xmlui/handle/10234/50544> accessed 23 September 2023.

[102] Craufurd Smith (n 93).

[103] Article 128, Maastricht Treaty on the European Union, Official Journal C 191, 29 July 1992. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:191:FULL .The basis of this article shall be sought in article 3, which broadened the then Community's application to include cultural matters, thus laying the basis for the EU's competence in the field of culture. Article 128 EC was renumbered to became article 151 after the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (OJ C 340, 10.11.1997, pp. 1-144) (1997), and article 167 after the Lisbon Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 (*OJ C 306, 17.12.2007, p. 1–271)* (2007). The first version of the article included in the Treaty of Maastricht states:

"1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- improvement of the knowledge and dissemination of the culture and history of the European peoples;

- conservation and safeguarding of cultural heritage of European significance;

- non-commercial cultural exchanges;

- artistic and literary creation, including in the audiovisual sector.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of culture, in particular the Council of Europe.

4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty.[…]"

Subparagraph 5 established a decision-making procedure to be used in the cultural policy. Remarkably, it required a co-decision procedure combined with unanimity in the Council of Ministers. This unanimity requirement was later eliminated with the adoption of the Treaty of Lisbon in 2007.

[104] The principle of subsidiarity covers areas which do not fall within the EU's exclusive competence. Its legal basis is article 5(2) of the Maastricht Treaty (ECC), which declares that "the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects of the proposed action, be better achieved by the Community".

the fore, encouraging cooperation between Member States and, if necessary, supporting and supplementing their action to foster cooperation with third countries and international organisations acting in the sphere of culture, especially with the Council of Europe.[105] Most importantly, by requiring to "take cultural aspects into account in its action under other provisions of this Treaty", Article 128(4) EC establishes a formal link between culture and several other aspects of European policies, while imposing a rigorous analysis of how choices made in other areas such as trade, employment, and development could potentially harm cultural interests. As such, this paragraph legitimated EU interventions on cultural matters and highlighted the need for a more systematic approach to the field within the EU framework.[106]

The 1997 Amsterdam Treaty, other than renumbering Article 128 EC as Article 151 EC, further strengthened the limitations to EU competences. When taking cultural aspects into account in its action under other provisions of the Treaty, the Community shall "respect and promote the diversity of its cultures." [107] Thus, Article 151 EC serves two purposes.[108] First, it defines the EC responsibility in furthering culture, also through partnerships with other nations. Using the plural form "cultures" also served a broader horizontal purpose, which is to portray the Community as a body tasked with balancing the cultural variety of Member States while preserving a common cultural heritage.[109]

The apparent cultural differences among Member States became the cornerstone for encouraging cooperation between these countries and conceiving a common European identity. Diversity as a cultural characteristic in itself was included within the "unity in diversity" framework as the chosen motto for cooperation among European nations.[110] Thus, despite Member States' reservations about the principle of subsidiarity, in the mid-2000s the EU's role in cultural and creative industries continued to expand, as there was a convergence of ambitions that accelerated the gradual development of EU cultural policies.[111]

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[105] On the Council of Europe's cultural action see Christoph Gordon and Simon Mundy, 'Cultural Policy Reviews: Some General and Methodological Reflections on the Council of Europe's Programme of Reviews in Member States, 1985-99', *European Perspectives on Cultural Policies* (UNESCO Publishing 2001) <https://unesdoc.unesco.org/ark:/48223/pf0000124309> accessed 23 September 2023.

[106] In this sense, Article 128/ 151 EC is designed as a programmatic rule, which does not grant the Community the authority to establish an independent cultural initiative, but it does not preclude Community actions under alternative legal basis. See: Evangelia Psychogiopoulou, 'The Cultural Mainstreaming Clause of Article 151(4) EC: Protection and Promotion of Cultural Diversity or Hidden Cultural Agenda?' (2006) 12 European Law Journal 575.

[107] Council and Commission of the European Communities, "Article 151," in Treaty Establishing the European Community, Amsterdam consolidated version, CELEX 11997E/TXT (Luxembourg: Office for Official Publications of the European Communities, 1997). See also:Theiler, *Political Symbolism and European Integration* (n 92)., 68–70. (asserting that the revision of Article 151 served as a reminder to the Community that its authority remained considerably limited).

[108] Marilù Marletta, "Art. 151", in Antonio Tizzano (eds.), Trattati dell'Unione Europea e della Comunità Europea (Giuffrè editore, Milano, 2004), 808-811.

[109] The concept of "European identity" will be introduced later, in the in the preamble of the Lisbon Treaty on the European Union (EU). By adding in article 3 that (the EU) "shall respect its rich cultural and linguistic diversity and shall ensure that Europe's cultural heritage is safeguarded and enhanced", the Lisbon Treaty includes a reference to the notion of a "European Identity", which is intended to foster a sense of shared belonging among its inhabitants.

[110] The EU Motto," European Union, retrieved from: https://european-union.europa.eu/principles-countries-history/symbols/eu-motto_en#:~:text=%22United%20in%20diversity%22%2C%20the,different%20cultures%2C%20traditions%20and%20languages. . See also: Monica Sassatelli, 'The Logic of Europeanizing Cultural Policy' in Ulrike Hanna Meinhof and Anna Triandafyllidou (eds), *Transcultural Europe: Cultural Policy in a Changing Europe* (Palgrave Macmillan UK 2006) <https://doi.org/10.1057/9780230504318_2> accessed 23 September 2023.

[111] Yudhishthir Raj Isar, '"Culture in EU External Relations": An Idea Whose Time Has Come?' (2015) 21 International Journal of Cultural Policy 494.(Highlighting how stakeholders such as European Cultural Fundation and Culture Action Europe, advocated for specific EU actions and funding for the creative and cultural sectors).

With the 2007 Lisbon Treaty, Article 151 was transformed into Article 167 TFEU. This Treaty granted the EU full legal personality[112] and replaced the requirement of unanimity vote by the European Council with the qualified majority principle for decisions adopted in the cultural field.[113] This effectively expanded the scope for EU-wide initiatives in the cultural domain. Following the Lisbon Treaty, the EU significantly increased its involvement in the cultural and creative sectors. This shift in focus is exemplified by the 2007 communication "A European Agenda for Culture in a Globalizing World",[114] which is the first comprehensive policy document on culture at the EU level, and by the active negotiations that led to the EU participation as single signatory to the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.[115]

Notably, because the cultural field interacts by its very nature with other areas of EC competence, creating cultural policies and initiatives was no longer just the main goal; it was also a way for the EU to address other issues. European legislation, policies and programmes in a wide range of domains directly or indirectly impact the cultural and creative sectors. The EU was, thus, able to gain more prominence and power over policies by establishing "a persuasive link between economic "issues" in the EU and culture as a potential "solution." As such, numerous aspects of public policy have been intertwined with cultural policy. Particularly worth mentioning are the European activities in the fields of the internal market, competition and commercial policies. The instrumentalisation of culture, also known as "policy attachment" [116] i.e. the use of culture for goals other than those of culture, increased the influence of cultural policymakers while also reshaping EU cultural policy. It is obvious that the implementation of these rules, when coupled with the existence of very diverse and even opposing interests, may frequently lead to conflicts and tensions.[117] There is thus an inherent necessity for the EU institutions to constantly strike a balance and attempt to reconcile competing policy ambitions and Treaty objectives. This task is, however, challenged with intricate and divisive positions, such as regarding the

[112] Its preamble states that the Treaty is inspired by "Europe's cultural, religious and humanistic legacies, from which the universal values of inviolable and inalienable human rights, freedom, democracy, equality and the rule of law have developed"

[113] Council and Commission of the European Communities, "Article 167," in *Treaty on European Union and the Treaty on the Functioning of the European Union*, CELEX 12007L/TXT (Luxembourg: Official Journal of the European Union, 2007).

[114] European Commission, 'Music Moves Europe, Commission Communication on a European Agenda for Culture in a Globalising World - COM(2007) 242' (n 9).

[115] European Commission, Inventory of Community Actions in the Field of Culture, Accompanying Document to the Communication on a European Agenda for Culture in a Globalizing World, SEC(2007) 570, 10 May 2007. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52007SC0570&from=GA. Notwithstanding the actions undertaken, some scholars asserted that despite the rhetoric about the value of culture at the European level and the compelling evidence that these sectors significantly advance the Lisbon Agenda in terms of economic and social welfare, culture has remained at the bottom of the Commission's list of priorities, and that some issues remained unaddressed by the main institutions. See in this regard: Psychogiopoulou (n 100).. See also: European Parliament, Briefing Paper on the Implementation of Article 151.4 of the EC Treaty, IP/B/CULT/FWC/2006_169, 18 June 2007, at p. iii. Retrieved from: https://www.europarl.europa.eu/thinktank/en/document/IPOL-CULT_ET(2007)389585

[116] Annabelle Littoz-Monnet, 'Encapsulating EU Cultural Policy into the EU's Growth and Competitiveness Agenda: Explaining the Success of a Paradigmatic Shift in Brussels' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union: Protecting and Promoting Cultural Diversity in Europe* (Palgrave Macmillan UK 2015) <https://doi.org/10.1057/9781137453754_3> accessed 23 September 2023.

[117] The evaluation of national film support programs' compliance with EC state aid rules, the issue of territoriality requirements in copyright exercise, the standing of cultural goods and services in multilateral trade negotiations, the status of public service broadcasting, or the evaluation of market concentration in the cultural sector are a few examples of situations involving stakeholders and/or policies with conflicting interests. The Economy of Culture in Europe: A Study for the European Commission's Directorate-General for Education and Culture, KEA European Affairs, October 2006, p. 198. Retrieved from: https://ec.europa.eu/assets/eac/culture/library/studies/cultural-economy_en.pdf

concepts of national and European identity, Europeanisation, and culture, which has made finding solutions extremely political and sometimes emotionally fraught. [118]

3.3.2 Industry-Focused Policy Actions: Creative Europe, Music Moves Europe

Creative Europe[119] represents a substantial shift in the EU involvement in cultural policy, which point out at economic factors as main driving force. The program introduces a new support program and advocates for a new perspective on culture that assesses its value using market mechanisms. This transition necessitates a reformulation of cultural identity and diversity, bringing them into line with the objective of boosting competitiveness. Creative Europe reflects this change: economic objectives, such as competitiveness, growth and employment, have taken a centre stage now, whereas they were previously delicately incorporated into the social component.[120] As such, the program embraces the dual function of the cultural and creative industries in supporting both sociocultural and economic goals in order to increase competitiveness and promote economic growth.[121]

Nonetheless, the "one-size-fits-all" approach adopted by the Creative's Europe scheme fell short of meeting the unique needs of each creative sector. This was the case in the music industry, which felt that Creative Europe favoured economic goals over industry needs.[122] Over the past few decades, there have been substantial changes in the music ecosystem, including its patterns of music creation, consumption, and dissemination. Stakeholders asserted that the support mechanisms laid in the program were insufficient to meet such changes of paradigm and the unique and growing needs of the sector. In response, the Commission acknowledged the need for EU actions in the music industry and started looking into the possibility of creating a music-specific program tailored in 2015.[123] Yet, in line with the EU Treaty obligations, any expansion of the EU policy in the cultural realm shall abide by the principles of subsidiarity and proportionality. This meant that the EU had to advance persuasive arguments to demonstrate that an EU intervention was necessary in light of the fact that the transnational features of the matter made it go beyond the competence of EU Member States, and , and an EU action could bring clear benefits to national communities.

Traces of this could be found in subsequent documents that explained the need for a European-wide music program on the ground of the same economic rationale featuring the Creative Europe program

[118] Sophie De Vinck and Caroline Pauwels, 'Cultural Diversity as the Final Outcome of EU Policy-Making in the Audiovisual Sector: A Critical Analysis.' in P Van Den Bossche and H Schneider (eds), *Protection of Cultural Diversity from an International and European Perspective* (2008)., pp. 263-316. The authors argue that the EU policy, in particular in the field of audiovisual media, led to the emergence of the notion of "cultural diversity".

[119] European Parliament, and European Council, *Regulation Establishing the Creative Europe Programme (2014 to 2020*), CELEX 32013R1295 (Luxembourg: Official Journal of the European Union, 2013), 347/226. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1295 The program came into force on 1st, 2014, with €1.46 billion budget spread over seven years. Actions include joint initiatives with international organizations, a network to boost internationalism and competition in the cultural and creative industries, and platforms to support emerging artists and "European programming."

[120] Cornelia Bruell, *Creative Europe 2014-2020: A New Programme - A New Cultural Policy As Well?* (ifa (Institut für Auslandsbeziehungen) 2013) <https://www.ssoar.info/ssoar/handle/document/54757>. (Arguing that where policy documents for the earlier culture programs listed transnational circulation, intercultural dialogue, and cross-border mobility as primary objectives, *Creative Europe* redirected the focus towards competitiveness, growth, and employment).

[121] Littoz-Monnet points out that several Member States were particularly dissatisfied with the economic nature of *Creative Europe*. Littoz-Monnet (n 110).

[122] ibid. (Reporting that French policy makers objected that cultural policy should allow for a diverse range of cultural expressions and that these do not always contribute to economic targets and the global market).

[123] Commission, Directorate-General for Education, and Culture (n 10).

and its link to culture.[124] According to the Commission, the music industry faces unique problems because of changing consumption patterns. Artists and producers frequently claim they are not fairly compensated when their creative work is used online. Furthermore, European content, especially that from smaller countries, has difficulty becoming visible on big streaming services.[125] The EU aimed to effectively adjust to this shifting environment by taking a music-industry-specific approach,[126] justified by the connection between the music industry and the EU's overall cultural agenda, which emphasised the potential of music to strengthen European identity and close gaps between the Member States, and by the role played by music as a source of creativity, competitiveness and economic growth.

To "identify and quantify the actions and policy initiatives at national level which would gain by being complemented at EU level, and possibly, formulate and invent the new ones which should and could be undertaken"[127] the Commission created a dialogue platform for a selected group of stakeholders representing the needs and interests of "the European music industry."[128] The Commission ultimately tabled three topics for discussion - "cross-border circulation and cultural diversity;" "support, professionalisation and remuneration of music creators;" and "reinventing the music experience in the digital age, [129] covering numerous measures and issues related to the ongoing copyright reform discussions and other policy topics; the empowerment of music creators and SMEs; cultural diversity; artist mobility and the cross-border circulation of European repertoire; the struggle of music start-ups and emerging artists to survive and thrive in a challenging context; the rights of musicians; and the importance of data and metadata in a functioning music economy.

The extensive agenda-setting process resulted in the establishment of **Music Moves Europe** through **Preparatory Actions.**[130] The Music Moves Europe website details the primary structure and accomplishments of this strategic initiative, which comprises four key dimensions: policy, funding, legislation, and dialogue. The interdependence of these four pillars is illustrated in the policy dimension, since the legislative and funding components are fundamentally shaped and enabled by policies, while the dialogue pillar plays a vital role in shaping and assessing policy initiatives.

As delineated within its framework, the policy dimension of Music Moves Europe primarily involves engagement with formal regulations and legislative frameworks. This encompasses two key facets. The first one related to the specific policy procedures and guidelines that Music Moves Europe must adhere to, including the operational EU treaties, international commitments outlined in the previous sections, and various EU policies, regulations, and directives. Notably, the Commission's webpage for Music Moves Europe highlights the Commission's New **European Agenda for Culture** (2018) as a seminal

[124] See, European Commission, "Music Moves Europe", retrieved from: https://culture.ec.europa.eu/cultural-and-creative-sectors/music/music-moves-europe: "Music is one of the most popular forms of art, widely consumed, and a vibrant expression of Europe's cultural diversity. It also contributes significantly to Europe's economy. […] Technological change has brought about radical shifts in the music field and the music industry is busy exploring new business opportunities. Digitization and online distribution have altered revenue streams, reshaped business models and led to new consumption patterns).

[125] Ibid, Commission, Directorate-General for Education, and Culture (n 10).

[126] European Commission, 'A New European Agenda for Culture. CELEX 52018DC0267.' (*European Commission*, 2018) <https://eur-lex.europa.eu/TodayOJ/> accessed 22 September 2023.

[127] Commission, Directorate-General for Education, and Culture (n 10).

[128] Ibid, the report documents these proceedings and formally states the Commission's two-fold objectives behind the scheme.

[129] Youth Directorate-General for Education, *AB Music Working Group Report* (Publications Office of the European Union 2016) <https://data.europa.eu/doi/10.2766/450111> accessed 22 September 2023.

[130] See, European Commission, "Music Moves Europe", retrieved from: https://culture.ec.europa.eu/cultural-and-creative-sectors/music/music-moves-europe.

document in the cultural domain.[131] This updated version, building upon the initial European Agenda for Culture (2007),[132] actively underscores the role of culture in fostering a more inclusive and equitable Union while supporting innovation, creativity, sustainable employment, and economic growth. Furthermore, Music Moves Europe must align with the economic objectives outlined in the policy frameworks established by the Europe 2020 strategy and the overarching Creative Europe program.[133] Consequently, Music Moves Europe operates within a broader, intricate policy landscape delineating its scope.

The second facet of the policy pillar is that Music Moves Europe seeks to implement **its own policy initiatives.** The specific music-related action within the Council Work Plan for Culture 2019-22[134] illustrates this dimension. This action, entitled "**Diversity and Competitiveness of the Music Sector,"** responds to the recognition that the digital transformation, particularly the emergence of music streaming, and intensified competition from global players, have induced fundamental shifts in music creation, production, performance, distribution, consumption, and monetisation.

The funding aspect constitutes the second pillar of Music Moves Europe, and it directly addresses the financing of music-related projects and initiatives through two primary channels. The first channel involves funding for music projects facilitated via the Creative Europe program. As a strategic initiative, Music Moves Europe does not possess its independent funding structure; instead, it predominantly relies on the overarching Creative Europe program. In this context, the proposal for the new Creative Europe program for the period 2021-2027 formally introduced a sectoral initiative dedicated to music.[135] The primary objective of this initiative is to advance diversity, creativity, and innovation within the realm of music, with a particular focus on enhancing the distribution of musical content across Europe and beyond. This support encompasses a range of activities, including training initiatives, audience development strategies for European music repertoire, and the collection and analysis of sector-specific data.

The third dimension of Music Moves Europe pertains to the legal framework. Although the EU lacks direct legal jurisdiction in the cultural sphere, as established in the previous section, EU legislation in various other policy areas significantly influences the music industry, encompassing aspects such as mobility, financial matters, and working conditions. Through its legislative pillar, Music Moves Europe endeavours to £ensure that the interests of the [music] sector are considered in other policy domains where the EU wields legislative authority. As per the Music Moves Europe website, the 2019 Copyright Directive (CDSM Directive) exemplifies music-focused legal initiatives that Music Moves Europe seeks to support. In fact, the 2019 Copyright Directive and the Guidance on the implementation of its article 17 is the sole illustration of the legislative pillar. Specific measures adopted with the CDSM Directive in response to the profound changes in the digital landscape are addressed in **Section 3.4.2 below.**

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[131] European Commission, 'CELEX 52018DC0267.' (n 120).

[132] European Commission, 'Music Moves Europe, Commission Communication on a European Agenda for Culture in a Globalising World - COM(2007) 242' (n 9).

[133] European Commission. *Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth*, /* COM/2010/2020 final */, CELEX 52010DC2020. Brussels, 2010. Available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52010DC2020

[134] Council of the European Union, 'Council Conclusions on the Work Plan for Culture 2019-2022' (2018) OJ C Official Journal of the European Union 12.

[135] European Commission, *The CulturEU Funding Guide EU Funding. Opportunities for the Cultural and Creative Sectors 2021-2027* (Publications Office of the European Union 2021) <https://ec.europa.eu/culture/sites/default/files/2021-11/cultureu-funding-guide.pdf> accessed 10 January 2022.

Several interactions with the music sector have been coordinated regarding the fourth pillar, related to dialogue. These interactions primarily encompassed discussions concerning the Preparatory Action on music in February 2018, music diversity in Europe and the industry's competitiveness during the First Structured Dialogue in May 2019, [136] and discussions on the outcomes of the Music Moves Europe call pertaining to offline-online distribution during the Second Structured Dialogue in December 2019.[137] The outcomes of the First Structured Dialogue, which focuses on music diversity, are relevant to this deliverable. [138] They primarily stress the need for a more precise definition of "diversity" concerning EU-level initiatives in the field of music. Stakeholders reached a consensus that addressing this question could serve as a topic for discussion within the framework of the Music Moves Europe initiative. In a broader context, participants emphasised the importance of instilling awareness of cultural diversity and equality from a young age and further nurturing these values through education. There was also a shared view that supporting the discoverability of artists should be a multi-level endeavour. During the discussions, an idea was proposed, drawing inspiration from the Audiovisual Media Services Directive (AVMSD), suggesting the consideration of introducing quotas for EU repertoire on playlists and music services. Furthermore, within this exchange, participants underscored the significance of effectively implementing the CDSM Directive. The primary follow-up actions identified as the next steps to be taken included: a) Investigating the role of streaming services in promoting cultural diversity; b) establishing a more precise definition of terms like "diversity" and "national and EU repertoire" to facilitate evidence-based policymaking for EU-level music initiatives and c) Enhancing data collection and monitoring efforts within the music sector to explore opportunities for targeted measures aimed at fostering diversity, drawing inspiration from strategies employed in the audio-visual services sector.

3.3.3 The Feasibility Study for the Establishment of a European Music Observatory

In a study commissioned by the EU in 2015, the EU had investigated alternative methods for gathering data in creative industries beyond audiovisual sectors.[139] The findings from this study, shared during AB Music dialogue sessions, proposed the establishment of a European Music Observatory as one of three viable options. Other suggestions included enhancing the sustainability of Eurostat's existing efforts, creating a CCS Virtual Platform, and forming a Creative Leadership Board to assist in data collection. The already cited AB Music Working Group Report, issued by the Commission in 2016, summarises that participant in the dialogue overwhelmingly favoured a comprehensive update of Eurostat's data collection methods over creating a music observatory. The Commission itself expressed reservations about the observatory, citing its ambitious nature and the inevitable challenges related to human resources and budget constraints. Nevertheless, the primary objective remained the improvement of trend detection in the music industry and the facilitation of evidence-based policymaking.

[136] European Commission. *Music Moves Europe: First Dialogue Meeting Final Report*. Brussels 2019. Available at: Council of the European Union, 'Council Conclusions on the Work Plan for Culture 2019-2022' (2018) OJ C Official Journal of the European Union 12..

[137] European Commission, Directorate-General for Education, Youth, Sport and Culture, Boudillet, Y., *Music moves Europe – A EU support to innovative online & offline music distribution – Contribution of EU funded projects to promoting music diversity*, Publications Office, 2021, **https://data.europa.eu/doi/10.2766/680192**

[138] European Commission, Directorate-General for Education, Youth, Sport and Culture, *Report from the Conference "Diversity and Competitiveness of the European Music Sector" with EU Member States' Experts (4-5 March 2021)*, Publications Office of the European Union, 2022, **https://data.europa.eu/doi/10.2766/65755**

[139] KEA. *Feasibility Study on Data Collection and Analysis in the Cultural and Creative Sectors in the EU*. Brussels, 2015. Retrieved from https://ec.europa.eu/assets/eac/culture/ library/studies/ccs-feasibility-study_en.pdf.

Within the framework of the 2018 Preparatory Action known as "Music Moves Europe: Enhancing Diversity and Talent in European Music,"[140] initiated with a funding allocation of 1.5 million EUR from the European Parliament, the Directorate for Culture and Creativity under the Commission's EAC took action in the spring of 2018 by launching four calls for proposals. One of these calls focused on The feasibility Study for the Establishment of a European Music Observatory (EMO) and an analysis of the funding requirements gap within the music sector.[141] The study aimed at exploring the workability of a European Music Observatory, envisaged as a data collection organisation, which would serve as a resource for future policy actions in the field of music. Specifically, the study assessed various scenarios for setting up and operating the Observatory, drawing insights from models employed by other European cultural observatories while considering the unique characteristics and requirements of the European music industry. To achieve this goal, the study focuses on several tasks, including defining the scope of the future Observatory regarding data coverage, and identifying gaps in data availability.

To assess the primary data requirements of the music sector, the study carried out extensive desk research to examine the current status of data related to the music sector in Europe, as well as on various types of observatories, both within the cultural and non-cultural domains. In addition, an extensive consultation took place in 2019 involving a wide range of participants, including music industry stakeholders, data providers, and policymakers. This involved conducting in-depth interviews with individuals across the music sector value chain, encompassing national and pan-European industry and civil society organisations, as well as including three in-depth interviews with representatives from the European Audiovisual Observatory and Commission representatives from involved in Commission-run Observatories. Moreover, a stakeholder survey was launched and distributed among EU-based music sector stakeholders between March and May 2019, reaching approximately 100 respondents, coupled with a policymaker consultation conducted among representatives from Ministries of Culture in eight different EU Member States, representatives from four regions and cities that had implemented distinctive music policies as part of their cultural programs. Lastly, preliminary negotiations with providers of music sector data were conducted to gather insights into data accessibility and potential acquisition costs.

As a result of this comprehensive effort, a “Four Pillar Model” emerged (see, graphic below), representing the diverse data needs identified in collaboration with stakeholders and policymakers and intended to serve as the basis for the data collection architecture. These pillars encompass key policy-related concerns that are prominently discussed between EU institutions and music sector representative organisations at the European level, thereby reflecting the most critical issues on the policy agenda.

[140] European Commission. *Music Moves Europe: Enhancing Diversity and Talent in European Music. Preparatory Action 2018-2020*. Brussels, 2018. Available at: https://culture.ec.europa.eu/cultural-and-creative-sectors; European Commission - Directorate-General for Education, Youth, Sport and Culture (n 6).

[141] European Commission, Directorate-General for Education and others (n 18).

Table 10: Four pillar model proposed in the Feasibility Study (2020)

The economy of music in Europe	Music diversity and circulation	Music, society and citizenship	Innovation and future trends
• **A) Macro-economic patterns and trends** • employment, revenue, competition • **B) Value chain mapping and analysis** • characteristics of music companies, copyright collection, collective management, remuneration of artists, spill-over effects • **C) Legal aspects** • tax, labour laws, social security, contracts, case law • **D) Business regulations** • live music regulations, consumer protection, licensing, anti-piracy rules	• **A) Cross-border circulation of works/repertoire** • building common definition and indicators, mapping of cross-border access, sales and consumption flows • **B) Cross-border mobility of artists and professionals** • cross-border live performances, mobility of professionals, international music events • **C) Cultural diversity aspects** • languages, genres, types of productions • **D) Legal aspects** • freedom of movement, state aid, etc.	• **A) Education, training, personal development** • **B) Audiences** • music consumption, interaction, participation to music events • **C) Music and society** • not-for-profit sector, associations, social inclusion, amateur music, heritage • **D) Normative and legal aspects** • broadcasting quota rules, diversity promotion schemes, freedom of speech rules • **E) Environmental aspects** • Environmental impact of the sector	• **A) Technological evolutions** • A. I, Blockchain • **B) Future business models** • distribution platforms, branding, monetisation, fair remuneration, authors rights collection mechanisms, legal innovations • **C) New policies, support schemes and legislative responses** • policy "think-tank" department

A primary finding from the Study underscores the fragmented, limited, and uncoordinated state of data collection within the music domain. The Study highlights that in contrast to Northern and Western European Member States, Eastern and Southern Europe lags in data collection, with smaller EU Member States often lacking developed music sectors and the necessary tools and procedures for gathering economic, cultural, and social data related to music. The study utilises these data shortcomings and the resultant difficulties in efficient management and policy development as the primary justification for supporting the creation of a European Music Observatory.

Regarding the pillar on circulation and diversity, which the Feasibility Study[142] constructs on page 29 as the monitoring of **cross-border flows of repertoire, the mobility of artists and diversity** (national, linguistic, genre-based). The main justification for Pillar 2 is derived from the European Union's mandate to implement, within the limits of the subsidiarity principle, policies and financial measures through programs such as the Creative Europe Programme and the European Agenda for Culture. Robust systems for monitoring and evaluating international music repertoire flows, artist movements, and the global success of European music are conspicuously lacking. By creating a European Music Observatory with an emphasis on cross-border movements and by offering impartial and transparent data, Pillar 2 seeks to close this gap. The pillar identifies as main data-collection and research areas the following: i) Cross-border circulation of works/repertoire (e.g. building common definition and indicators, mapping of cross-border access, sales and consumption flows); ii) Cross-border mobility of artists and professionals (e.g. cross-border live performances, mobility of professionals, international music events), iii) Cultural diversity aspects (e.g. languages, genres, types of productions) and iv) Legal aspects (freedom of movement, state aid, etc.)

Accordingly, the EMO Feasibility Study enumerates as a key limitation that many data providers do not include information about the nationality of artists in their dataset. The Study points out that these may be because the International Recording Codes (ISRC) does not include that information. The task becomes even more complex when determining the origins of songwriters and producers because such details are rarely found in data logs. Therefore, lacking information about nationality origin, the European Music Observatory may need to input these data points manually. An additional gap envisaged is the lack of an operational definition of "European repertoire," which considers aspects such as language, origin, nationality, country of production, and genre. The Study points out that such a

[142] ibid.

definition should not be limited solely to the language sung in a given song. Finally, data gaps exist in the dissemination of European music repertoire, both at the song and artist levels, across various mediums such as live performances, radio broadcasts, and digital platforms. Indeed, data regarding the live music sector is largely absent, except for certain countries like France, which possesses the most comprehensive dataset on live music within Europe. Gaps within the live sector encompass issues like audience diversity regarding accessibility and participation, support for emerging artists, competition dynamics, gender equality, and sustainability. The main problem for gathering and collecting such data stems from the different models of the music industry, which includes not only for-profit activities but also those based on non-commercial aims.

Table 11: Overview of Data Availability and Data Gaps
Pillar 2: Music Diversity and Circulation identified in the Feasibility Study (2020)

Pillar 2: Music Diversity and Circulation		
Cross-border circulation of works/repertoire (e.g. building common definition and indicators, mapping of cross-border access, sales and consumption flows)		
Data available	**Sources**	**Availability**
Airplay monitoring	RadioMonitor, SoundCharts, Yacast.	Subject to contractual agreement with supplier.
Cross border streaming activity	Nielsen, Gfk, SoundCharts.	Subject to contractual agreement with supplier.
Best-selling music	National charts	Subject to contractual agreement with suppliers.
Data Gaps	**Issues**	**Solutions**
Cross-border activity on radio stations	No on-going assessment of the circulation of repertoire on European radio.	Step 1: agreement with supplier to set up tools to monitor circulation of repertoire, Step 2: on-going analysis of circulation of repertoire on radio.
Cross-border activity on streaming platforms	No on-going assessment of the circulation of repertoire on streaming platforms.	Step 1: agreement with supplier to set up tools to monitor circulation of repertoire, Step 2: on-going analysis of circulation of repertoire on DSPs.
Origins of songwriters behind the most popular songs	No on-going assessment of the origins of songwriters behind the music	Tie the research on diversity of songwriters' origin to the above research on circulation of music on radio and DSPs.
Cross-border circulation of artists via live shows.	Some data is available through Live DMA or ETEP, but no overall picture of the cross-borders circulation of artists.	Partner with sub-sector and commission a research of how to improve data standards in the live sector.
Cross-border mobility of artists and professionals (e.g. cross-border live performances, mobility of professionals, international music events)		
Data available	**Sources**	**Availability**
Live music	Liveurope, Etep	Partnership with suppliers

Data Gaps	Issues	Solutions
Cross-borders activity of live performances	Some data is available through Liveurope or ETEP, but no overall picture of the cross-borders circulation of live music in Europe.	Step 1: improve data standards (see above); step 2: set up tools to monitor circulation of repertoire in the live sector; step 3: analysis of circulation of repertoire in the live sector.
Mobility of professionals	No on-going assessment of the circulation of music professionals in Europe.	Set up tool with trade organisations to monitor the circulation of professionals.
Cross-border analysis of flows of authors' rights in the EU	No aggregated data on the cross-borders streams of authors' rights between countries.	Partner with GESAC and CISAC to develop tools to monitor cross-borders flows of rights.
Cross-border analysis of flows of neighbouring rights in the EU	No aggregated data on the cross-borders streams of NR between countries.	Partner with AEPO-ARTIS and SCAPR to develop tools to monitor cross-borders flows of rights.
Gender and diversity gaps in employment in the music sector	No assessment of the gender and diversity gaps in the music sector.	Partnering with trade bodies and advocacy organisations to monitor gender and diversity gaps in the music sector.
Cultural diversity aspects (e.g. languages, genres, types of productions)		
Data Gaps	**Issues**	**Solutions**
Diversity of languages in music	No assessment of the diversity of languages in music circulating in EU.	Tie the research on languages in songs to the above research on circulation of repertoire.
Diversity of music genres streamed or played on radio	No assessment of the diversity of music genres in streaming and on radio.	Tie the research on languages in songs to the above research on circulation of repertoire.
Share of local vs international repertoire	No assessment of the share of local vs international repertoire in EU.	Tie the research to the above research on circulation of repertoire.
Legal aspects (freedom of movement, state aid, etc.)		
Data Gaps	**Issues**	**Solutions**
Promotion of circulation of music professionals in the EU	No data on schemes to promote the circulation of professionals in the EU.	Partner with trade organisations to assess the schemes available and make recommendations on how to improve circulation of professionals.
Promotion of circulation of artists, songwriters, producers in the EU	No data on schemes to promote the circulation of artists in the EU.	Partner with trade organisations to assess the schemes available and make recommendations on how to improve circulation of artists.

3.3.4 Interim Conclusions

This section traced the legislative developments that prompted the EU to establish cultural policies within its framework. It outlines how EU competencies in the cultural domain have transformed across the primary EU Treaties. The analysis aims to demonstrate how strategic framing and agenda-setting

processes led to the emergence of an "attachment" policy that positioned culture as a response to trade issues. Although the exclusive competence of the EU in the cultural domain appears constrained by the EU Treaties, by leveraging the economic goals of the EU, the EU has progressively expanded its role in cultural policymaking through mainstreaming culture in all relevant policies. Thus, without contesting the principle of subsidiarity in the cultural sphere laid in the TEU and the TFEU, European legislation in other spheres of EU competence, including intellectual property, significantly impacts the cultural and creative sectors.

Specifically to the music industry, shortcomings within the Creative Europe scheme, particularly its inadequacy in addressing the specific requirements of the music industry due to its predominant economic focus, created an additional opportunity to introduce a specialised approach to music within the EU's policy agenda. Policy advocates from the DG EAC successfully established a link that positioned a new music program, Music Moves Europe, as the suitable policy stream to address the music industry's needs and align it with the overarching goals of the Economic Europe 2020 objectives.

3.4 EU-Level Legislation Impacting on Music Diversity

Objectives and methodology of the section

As illustrated above, the following provisions have the policy goal of bolstering, maintaining and obliging States to protect and enhance cultural diversity across and beyond EU. These regulations serve as a framework for copyright protection, licensing, and facilitate cross-border circulation of works across Member States. As such, also they serve to prompt wider access to cultural content, simultaneously enhancing cultural diversity. In this sense, international human rights soft law instruments are held as interpretative guidelines useful to read EU copyright law provisions in a way compliant with the policy goal of ensuring a higher level of diversity of music contents. Although most of the following provisions analysed are not specific and tailormade for the music sector, they are likely to impact on it as well.

The following section describes some of these norms, whereas further details and sources are included in **Annex I**.

3.4.1 Article 17(4)(b) CDSMD

The first provision which may play a role in this respect is **Article 17 CDSMD**. Accordingly, Online Content Sharing Service Providers (OCSSPs) are expected to undertake acts to avoid primary and secondary liability for copyright infringement in relation to the unauthorised uploading of copyrighted contents.

As outlined by Senftleben et al.,[143] this provision imposes a "content moderation obligation on OCSSPs." In fact, Article 17(4)(b) states that "in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject-matter for which the rightsholders have provided the service providers with the relevant and necessary information". The lack of provision of such information deprives rightsholders of the possibility of benefitting from the content moderation obligation, avoiding that copyrighted contents entitled to them are uploaded and become available on digital platforms on a free-of-charge basis. In this sense, Article 17(4)(a) CDSMD

[143] Senftleben and others (n 53).

constitutes an incentive to improve the quality of information, as well as data integrity and accuracy, in respect to copyrighted contents, also including music files.

In this regard, the EC Guidelines on Article 17 CDSMD specify that the best efforts-standard does not imply that rightsholders are requested to proactively search for rightsholders "not easily identified by any reasonable standard".[144] This rule has been criticised as favouring "big" rightsholders at the expense of small SMEs holding copyright in the EU, having a negative impact on competition, market contestability and, indirectly, cultural diversity.[145]

By the same token, the EC Guidelines promote the adoption of a registry which implies the recognisability of digital copyrighted contents that, as illustrated in 2.2.2 (see above — Data infrastructure), is not the case for music files. Along the same lines, it is relevant that the Guidance, recalling the text of Recital 61, obliges OCSSPs to negotiate licenses with "fair terms", so as they are compelled to be transparent about the criteria adopted to identify and remunerate works, also clarifying the recognition technology that has been used.[146]

When the threshold for a founded and substantiated notice is not respected, also due to the lack of sufficient information to individuate the content to be removed, copyright enforcement is weak and rightsholders are deprived of substantial revenues. This also creates a competition-related conundrum, because very few music stakeholders can afford litigation for data-related issues, being able to sustain transaction costs related to lack of interoperability among data management standards. This, in turn, contributes to augmenting economic concentration within the market of digital aggregators of music files, also reducing market contestability and cultural diversity.[147] The problem is likely to be exacerbated with the rise of AI-trained models, also developed in order to operate within the music field.

Senftleben et al. read the text of Article 17(4)(b) CDSMD as promoting a cooperation between rightsholders and OCSSPs, based on an exchange of information.[148] Rightsholders are required to disclose "identity, address and contact details", also including "the nature and (territorial scope of the rights that are asserted". Under Article 17(8) CDSMD, OCSSPs are requested to provide rightsholders with adequate information about the "functioning of their practices with regard to the cooperation referred to in paragraph 4". The provision is clear in stating that, without the contact information, OCSSPs cannot operate. In this light, Article 17 CDSMD can be intended as incentivizing the creation of data repositories about EU copyright licensing and contents, pursuant to the data exchange duties inferable from Paragraphs 4 and 8. In this respect, OCSSPs are incentivised to become the superior acknowledged entities, capable of distinguishing founded from groundless notices thanks to the possibility of consulting an EU-wide repository of copyright data.

In this way, the structural opacity of music recommendation systems can be mitigated. As a result, less popular and often discriminated copyrighted contents might become more visible, increasing the

[144] João Pedro Quintais, 'Commission's Guidance on Art. 17 CDSM Directive: The Authorisation Dimension - Kluwer Copyright Blog' (*Kluwer Copyright Blog*, 10 June 2021) <https://copyrightblog.kluweriplaw.com/2021/06/10/commissions-guidance-on-art-17-cdsm-directive-the-authorisation-dimension/> accessed 23 September 2023.

[145] Martin Husovec and João Pedro Quintais, 'Too Small to Matter? On the Copyright Directive's Bias in Favour of Big Right-Holders' in Tuomas Mylly and Jonathan Griffiths (eds), *Global Intellectual Property Protection and New Constitutionalism: Hedging Exclusive Rights.* (Oxford University Press 2021) <https://eprints.lse.ac.uk/110326/> accessed 23 September 2023.

[146] EU Commission Communication, "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market", COM(2021) 288 final, 10. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0288

[147] Senftleben and others (n 53).

[148] Ibid, 81-82.

diversity of music contents. Thus, Article 17(4)(b) CDSMD may contribute to ensuring higher visibility of copyrighted contents, because rightsholders are obliged to provide information about the nature and type of content of the work in order to have it finally removed.

Cultural diversity and Article 17(4)(b) CDSMD

Evaluating this provision in the light of the indicators of cultural diversity mentioned above, it can be fairly said that the evolutionary reading of Article 17(4)(b) CDSMD promoted by Senftleben et al. might have an impact on cultural diversity intended as a right to culture for national minorities, as well as for categories of less popular and niche artists. Although the CDSMD does not contain provisions specifically addressing the non-discriminatory principle and transposing it within the field of copyright management, Article 17 CDSMD might be paramount in enhancing cultural rights and affecting the degree of diversity of distribution channels within the meaning of Article 5 UDCD. In addition to that, Article 17 CDSMD promotes the virtuous interaction between a higher quality of copyrighted contents uploaded on digital platforms and a greater level of cultural diversity, removing obstacles created by IPRs, in line with the objectives of Article 14 FCVCHS. In fact, as noted by Senftleben et al., Article 17(4)(b) and (8) CDMSD prescribe a "certain manner to exercise copyright", which may be interpreted as also implicitly taking into the account the policy goal of prompting cultural diversity.

3.4.2 Article 18 CDSMD

Article 18 CDSMD sets the general principle of "proportionate" and "appropriate" remuneration, generally known as the principle of fair remuneration. As also clarified by the European Copyright Society (ECS),[149] the term "appropriate" refers to the fairness standard inferred from the "objective and usual practices in cultural sectors."

The rationale of Article 18 CDSMD lies in the need to recalibrate the lack of bargaining power defying the position of authors and performers in their contractual relationship with distributors, record labels, publishers and digital platforms. Relevantly, despite the introduction of such general principle and other contractual adjustment tools, the CDSMD provisions do not guarantee the maximal harmonisation of EU copyright contract law rules. For this reason, some Member States enacted provisions as to guarantee a higher level of protection against abuses of contractual power at the expense of authors and performers. In this sense, modes of remuneration, the geographical scope of the license, the type and length of rights and exclusionary prerogatives conferred is fixed or are subject to legal constraints under national copyright statutory laws.[150]

Along these lines, Recital 76 CDSMD affirms that Member States are free with introducing rules which, in compliance with EU law, aim at increasing transparency in the mode of remuneration of authors and performers. Following the rationale underlying Recital 76 CDSMD, France is a virtuous example of how to ensure a transparent legal environment for authors and performers through contract law mandatory provisions. According to Article L131-4 of the *Code de la Propriété Intellectuelle*, the amount of remuneration due to authors and performers does not take into consideration costs sustained and the policy embraced by the intermediary, thus allowing authors and performers to receive an amount of

[149] The European Copyright Society and The European Copyright Society, 'Comment of the European Copyright Society Addressing Selected Aspects of the Implementation of Articles 18 to 22 of the Directive (EU) 2019/790 on Copyright in the Digital Single Market' (2020) 11 JIPITEC <https://www.jipitec.eu/issues/jipitec-11-2-2020/5105>.

[150] Extensively, European Parliament and others, 'Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive' (European Parliament 2017) Study European Parliament's Policy Department for Citizens Rights and Constitutional Affairs at the request of the JURI Committee <https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2017)596810.> accessed 23 September 2023.

remuneration which directly stems from net revenues extracted through the exploitation of their works.[151] This criterion has been tested on and further refined in case law.[152]

It should not remain unnoticed that the lump sum-based mode of remuneration, although disfavoured, is not outright banned. Recital 73(3) CDSMD allows to resort to it in five "exceptional circumstances", that is when (a) it turns out to be impossible to calculate a "proportionate" remuneration for authors and performers; (b) information about revenues is unavailable; (c) fair remuneration can be ensured by bearing overly burdensome bureaucratic costs; (d) the contribution of the author or performer in question is ancillary; and when (e) exploitation concerns a limited part of the work. Nevertheless, resorting to a lump-sum remuneration is rare and generally disfavoured by EU courts. To give but one example, in 1996 the French Supreme Court held null and void the licensing term which extends the lump-sum method of royalty calculation outside from the closed list of exceptional circumstances listed in Recital 73(3) CDSMD.[153] In this respect, the lack of sufficient or clear metadata about music files would not exceed such list, falling under the circumstances where royalty calculation is outright impossible or related information cannot be accessed. The French Court added that the lack of compliance with the Recital 73 CDSMD implies the necessity of compensating rightsholders for the losses suffered due to the adoption of the lump sum method.

Cultural diversity and Article 18 CDSMD

Article 18 CDSMD plays only a limited and indirect role in boosting cultural diversity. In fact, the text of the provision does not contain any reference to the necessity of avoiding discriminations based on the origin and language of the content at stake. However, as spelled out in the previous sections, the lack of criteria useful to individuate rightsholders and apportion remuneration, which is also particularly relevant within the music industry, may have an indirect impact on diversity of contents displayed by the digital platform. In fact, as music recommendation systems are both highly sophisticated and obscure in their way of functioning, there might also be some level of opacity in the way royalty shares are calculated and distributed among rightsholders, with the effect of automatically privileging most popular authors and performers at the expense of less known, niche and local artists. These artists, as well as the related publishers, small record labels and niche producers, may be indirectly discriminated in light of the language of their songs and recordings, since they are unable to generate high revenues via streaming due to the limited audience, mainly constituted by a language, ethnic or national minorities. In this respect, Article 18 CDSMD can be a fruitful instrument to push both legislators and courts of the various EU Member States so as to ensure an adequate level of remuneration to these small and niche artists as well, avoiding that they are forced to leave the market.

3.4.3 Article 19 CDSMD

As with Article 17 CDSMD, **Article 19 CDSMD** may also give an impulse to the creation and exchange of information and metadata about music contents by setting out a transparency obligation. According to this provision, authors and performers are entitled to receive all the information related to the revenues

[151] See also Agnès Lucas-Schloetter, Carine Bernault and Andre Lucas, *Traité de la propriété littéraire et artistique* (5th edn, LexisNexis 2017) <https://www.lgdj.fr/traite-de-la-propriete-litteraire-et-artistique-9782711026548.html> accessed 23 September 2023., p. 523-592.

[152] TGI Paris, 3e ch., 17 December 1990.

[153] Cass. 1re civ., 9 January 1996, 92-19.080, 92-20.436, 92-20.489; CA Versailles, 1re ch., 22 June 2000, 97-8.924.

generated through the exploitation of their works and performances. To this end, they shall receive, on an annual basis, all the up to date, relevant and comprehensive information about the yearly earnings.

However, Article 19 suffers from several drawbacks. First, this rule is not flanked by any EU-wide harmonised system of penalties and sanctions for failure to meet the transparency threshold. Yet, Member States, such as in the case of Italy,[154] are free with going beyond the minimum harmonisation standard set with the EU Directive. It follows that the entities called to intervene in the first place are CMOs, that — in line with the text of Recital 77 — can give effect to Article 19 by negotiating informatory duties within the stipulation of contracts for the transferal of economic rights, also looking at the specificities of each sector, as well as of the music industry.

Unfortunately, the absence of common standards for music data and identifiers is likely to thwart the role of CMOs as well. Impacting on the overall music value chain, the insufficiency and contradictory nature of existing datasets is likely to create a situation where CMOs, as well as authors and performers, may receive incomplete, missing or inaccurate data, due to the fact that the same have not been properly collected on a large scale in first instance. The situation is worsened by the fact that Article 19 CDSMD only mandates a formal requirement of transparency, consisting of information to be delivered in compliance with several formalities. At the same time, obtaining this information gives no warranty of the quality, accuracy and integrity of the data contained therein. This, in turn, frustrates the rationale of the provision and serves no purpose in understanding whether the amount of remuneration agreed on should be revised thanks to the ex-post judicial adjustment system devised under Article 20 CDSMD.

Further, it is noteworthy that Article 19(3) CDSMD contains a derogation under which information duties are not required when the contribution to the work has been limited or ancillary, as well as when obtaining information is burdensome due to administrative obstacles. These derogations hinder the effectiveness of the provision to a significant extent. In fact, gaining information about music files, due to the lack of standardised formats for music metadata and recognised identifiers, is nearly always "burdensome" from an administrative standpoint. For this reason, the applicability of Article 19 CDSMD to the music field might be put into severe discussion. It is also relevant that the understanding of whether a contribution of an author or a performer to an overall work might be problematic from a data law perspective.

All in all, it can be said that Article 19 CDSMD risks being inapplicable in the music sector, where rightsholders are always borne with high transaction costs and struggle to receive sufficient information about the data infrastructure and the music payment flows. Were this rule to be fully effective, there are still obstacles preventing the provision from having an impact on cultural diversity. By the same token, implementation of this rule risk amounting to apparent compliance, exacerbated by the lack of an EU-wide harmonised apparatus of sanctions and penalties.

Cultural diversity and Article 19 CDSMD

Also Article 19 CDSMD may have a merely indirect impact on cultural diversity. Its role in incentivizing an exchange of information between stakeholders on one hand, and authors and performers on the other, is functional to achieving a higher level of transparency as to the methods of remuneration, royalty rates and actual exploitation of copyrighted music works. However, this instrument is too weak from the perspective of cultural diversity. Although granting proper remuneration is particularly important for niche, small and less known artists, guaranteeing a flow of information in this regard does

[154] Ludovico Bossi and Jacopo Ciani Sciolla, 'The Transposition of the Transparency Obligation Pursuant to Article 19 Directive (EU) 790/2019: An Italian Perspective' (2022) 17 Journal of Intellectual Property Law and Practice 457.

not amount to a clear-cut proactive legislative measure as to ensure a sufficient variety in the type of music contents uploaded on digital platforms. In this sense, Article 19 CDMSD only serves the purposes of **Articles 5 UDCD** and **Article 14 FCVCHS**, which promote initiatives that aim at changing the structure of distribution channels of cultural goods also relying on IP law. In this case, the EU policymaker intervened on methods of remuneration, as to improve regulation in the field and lessen contractual freedom, with a view to preventing that some artists are remunerated in a disproportionately low manner.

Diversity objectives and methods of measurement under the CDSMD are/shall encompass:

- Data enhancement efforts, to measure the efforts made by rightsholders and OCSSPs to enhance the accuracy and completeness of data regarding works.
- Interoperability in data management standards, to monitor their progress
- Visibility of less popular and nice copyright-protected content, to monitor the eventual positive impact of the implementation of Article 17(4) CDSMD
- Non-discrimination in the distribution of content, to monitor and assess the impact of Article 17 CDSMD in this respect
- ~~E~~stablishment of data repositories regarding EU copyright licensing practices and their impact on diversity, particularly in the context of music recommendation systems
- Price and payment conditions for authors, to monitor the implementation and enforcement of the principle of "proportionate" and "appropriate" remuneration
- Remuneration disparities and discrimination practices against less-known, niche, and local artists based on language or origin
- CMOs practices to enhance transparency, in order to monitor compliance with the their transparency obligations under Article 19 CDSMD and its eventual impact on diversity
- Adoption of common standards in the identification of works and rightsholder, in order to monitor its impact on diversity

3.4.4 Article 3 Portability Regulation (PR)

The Portability Regulation has been enacted with a view to ensuring that online contents made available by subscription are also fully accessible by subscribers when the same are temporarily present in a Member State other than their country of residence. The impact of this overall piece of regulation on cultural diversity can be inferred if sufficient attention is paid to the principle of non-discrimination looming in the background of the Regulation. In this sense, Recital 12 PR speaks clearly about the underlying rationale of the act, which coincides with, on one hand, the objective of removing barriers to cross-border portability of protected contents for the benefit of subscribers (Article 3 imposes an obligation in this regard), while, on the other, discouraging unrestricted geo-blocking.

The core of the regulation lies in the cross-border portability obligation sculpted in Article 3 PR. Accordingly, providers of online content services, including copyrighted music contents, such as Spotify and Pandora, are compelled to ensure access to paid subscription services also when subscribers are temporarily located in a Member State other than the one of residence, when the license was primarily

obtained. Article 4 extends the rule to free-of-charge subscription services, although on an optional basis.

As noticed by scholars,[155] this Regulation has many backlashes. In the first place, verification of temporary residence is not always so easy, as also compliance with EU data protection law is required and means adopted should be "reasonable" and "proportionate," in line with the text of Article 5 PR. Moreover, as noticed by Trimble, geo-blocking is not negative from the perspective of cultural diversity. Rather, it allows to prevent losses and preserves the principle of copyright territoriality, from which the Portability Regulation partially deviates or, at least, mitigates. It is also relevant that the length of the physical permanence in a Member State other than that of residence is not clarified. This paves the way to abuses on the side of subscribers, hampering cultural diversity, because many rightsholders may be incentivised to revoke the authorisation if the revenues lost due to the application of the portability obligation enshrined in Article 3 PR are overly consistent.

As the merits and impact of geo-blocking on cultural diversity is unclear and debated, the overall influence of Articles 3-4 PR on cultural diversity is difficult to be evaluated. In general, it ought to distinguish between the impact of these rules on diversity of contents, thus analysing the specific position of rightsholders vis-à-vis the enactment and implementation of these EU provisions. On a different level, the position of subscribers in relation to the principle of non-discrimination should be investigated.

Cultural diversity and Article 3 Portability Regulation
Article 3 PR has an unclear impact on cultural diversity. Weiss argues that the artificial portioning of digital creative markets in the EU can be held as beneficial for cultural diversity. It allows preserving the specificities of national markets and offer cultural contents specific for the legal traditions, language and content preferences of a nation-based audience. This runs contrary to the freedom of circulation of goods and services and the freedom of movement enshrined in Article 36 TFEU, as well as with the objective of creating an EU market for audiovisual services, cultural and creative contents. Yet, the pursuit of such aim risks eroding the freedom of national legislator with promoting their cultural values and identities through nation-based distribution channels and consumption of cultural goods. In line with this trend of erosion of copyright territoriality, as well as of promoting of multi-territorial licensing, Article 3 PR may constrain freedom of contract, preventing rightsholders with tailoring contents to the specificities of national audiences and thus contributing to homogenizing of cultural contents offered via digital platforms. From an opposite perspective, subscribers are provided with broader access to contents regardless of whether they are located.

Thus, it can be concluded that, on the side of rightsholders, diversity of contents can be reduced if the concept of temporary residence is interpreted in an extensive way. On a different note, it must be observed that cross-border availability of contents allows avoiding discriminations among consumers based on language and nationalities.

Diversity objectives and methods of measurement under the Portability Regulation are/shall encompass:

- List of streaming services implementing the Regulation provisions
- Domestic and foreign uses of musical content, to monitor eventual increases in access and consumption of music content abroad

[155] Extensively, Sebastian Engels and Jan Bernd Nordemann, 'The Portability Regulation (Regulation (EU) 2017/1128): A Commentary on the Scope and Application' (2018) 9 JIPITEC <https://www.jipitec.eu/issues/jipitec-9-2-2018/4728>.

- Audience diversity of local content (e.g. from country x) abroad (e.g. in country Z)
    - Coupled with the indicators stemming from international sources, the monitoring and measuring regarding consumption and access should also cover specific groups (e.g. minority linguistic, ethnic-related content);
- Presence of technical measures (e.g. DRM, technical tools to verify requirements for portability (Member State of residence)) which hinder access to content
- Measures implemented by streaming services to overcome barriers created by technical measures
- Measures adopted to clear rights and ensure visibility of all rightsholders represented.

3.4.5 Articles 3, 4 and 5 Geo-Blocking Regulation (GBR)

As also hinted at while analysing the Portability Regulation, geo-blocking measures undertaken by online platforms as to avoid copyright infringement and preserve copyright territoriality are looked with suspicion in EU forums. In this respect, Reda outlined that, especially in the digital era, massive implementation of geo-blocking measures may produce a situation where consumers have limited money to spend on cultural contents, as they have to sustain additional costs such as access to VPN services, which, in turn, can reduce subscription to streaming services and number of downloads of copyright contents. This can seriously impair the position of creators of the online cultural content itself. This is particularly detrimental for music creators, as the "music sector relies more heavily on the global licensing of repertoire, which seems to be more closely aligned to user expectations".[156] Moreover, as exclusive licensing is rare within the music field, there is a concrete risk that streaming services offer the same music catalogues, impairing fringe artists who are not assisted by a record label. Their position would be severely underpinned by geo-blocking, as these niche artists have few occasions to become reachable by a wider audience.

In line with the considerations made above, the Geo-blocking Regulation aims at repealing market fragmentation created by geo-blocking practices. Going in parallel with the objectives of international human rights law instruments prompting cultural diversity, Recital 5 of the Regulation sets out the aim of ensuring access and free movement of goods and services across EU as to avoid discriminations based on nationality, place of residence and establishment of consumers.

Specifically, Recital 15 asserts that the Regulation seeks to abolish restrictions and discriminatory treatments based on payment and delivery conditions, also reasserting such prohibition within Article 5 GBR. In this respect, conditions of trade and access should be respectful of the principle of non-discrimination, with particular regard to the customer's nationality, place of residence and of establishment. The same principle is translated into an obligation under Article 4 GBR.

[156] European Commission. (2015a). Impact assessment accompanying the document "Proposal for a regulation of the European Parliament and of the council to ensure the cross-border portability of online content services in the internal market. (COM(2015) 627 final). Commission Staff Working Document. Retrieved from: https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX:52015SC0270 See also, extensively, Julia Reda, 'Geoblocking: At Odds with the EU Single Market and Consumer Expectations' in Petr Szczepanik and others (eds), *Digital Peripheries: The Online Circulation of Audiovisual Content from the Small Market Perspective* (Springer International Publishing 2020) <https://doi.org/10.1007/978-3-030-44850-9_5> accessed 23 September 2023.

Equal conditions of trade shall also be ensured by avoiding technical measures which may hamper equal access to online interfaces, also in the form of online applications. Such principles are advanced in Article 3, setting an obligation in this regard. Yet, Article 3(3) GRB contains a derogation, allowing to block or limit access when such practice is necessary to ensure compliance with requirements set in other EU laws. In this sense, the Geo-blocking Regulation can be read as a "toothless tiger," whose effectiveness can be frustrated if it is demonstrated that geo-blocking is applied as to avoid infringement under Article 17(4) CDSMD.

Cultural diversity and the Geo-blocking Regulation
Articles 3, 4 and 5 GBR constitute the bulk of this piece of EU law. The impact of the Regulation on cultural diversity is hotly debated. On one hand, classification of markets allows to model price setting on the specificities, ability to pay and content preferences of nation-based audiences. On the other, geo-blocking creates additional costs and entry barriers at the expense of secondary creators, especially in the case of the music industry, where dubbing and language minorities are not always taken into consideration by large online platforms operating in the EU.

Yet, at least abstractly, being a reflection of the principle of non-discrimination, Articles 3, 4 and 5 GRB undoubtedly go hand in hand with international soft law instruments which prohibit discriminations based on nationality, place of residence and establishment. The abolishment of local or place-based restrictions, resulting in differentiated trade conditions, goes in parallel with legal tools oriented to prompting cultural diversity. The necessity of avoiding barriers on this basis is recalled in multiple provisions, such as Article 2(1) of the Race Declaration, Articles 14, 9 and 10 ECHR, Article 2 DOM, also emphasizing the necessity of equalizing individuals before the law. Articles 11 and 12 ECRML are also relevant in this respect, as they specifically refer to the need to preserve media pluralism.

Diversity objectives and methods of measurement under the Geo Blocking Regulation are/shall encompass:

- Prices and payment/delivery conditions for accessing online music services, in order to verify the presence of discriminations based on users' nationality, place of residence or establishment;
- Equality in accessing same musical content, including regional or national music catalogues, regardless of their nationality, residence or place of establishment;
- Presence of discriminatory registration and verification requirements imposed by online music platforms which may disproportionately affect users and discriminate them on the basis of based on their geographical indication
- Imposition of technical measures which may hinder equal access to online interfaces, streaming services or content
- Presence of audience complaints related to discriminatory practices related to payment, delivery or technical access

3.4.6 Article 3 SatCab Directive II

The SatCab Directive II addresses rights of broadcasting organisations, related to online programs transmitted via tv or radio. The same has some relevance for the interplay between copyright matters affecting the music industry and cultural diversity because broadcasts organisations daily transmit programs containing a vast array of copyrighted contents, also including, inter alia, musical works.

Above the others, the SatCab Directive sets the country of origin principle, although limited to certain types of programs, in line with Recitals 10 and 11. It is also relevant that Recital 15 refers to the principle of appropriate remuneration as to overcome disparities among national laws with regard to retransmission services and related rules. In this sense, the license fee should be calculated in relation to the value allocated to the means of retransmission, without limitations on collective management of rights and prejudice to the ability of rightsholders to decide how to manage their prerogatives.

The Directive addresses "online ancillary services," consisting in acts of retransmission of protected contents, including online music contents, in radio and tv broadcasts, by broadcasting organisations. It is worth noting that this Directive only cursorily touches the music industry, by targeting music works contained in and transmitted together with television and radio broadcasts.

Article 3 SatCab II sets the country of origin principle, resting on a legal fiction according to which acts implicating reproduction, retransmission and broadcasting of copyrighted contents takes place only within the territory of the Member State where the broadcaster has the principal establishment. However, considering that "broadcasting organisations" are not defined within the text of the Regulation, it is not clear whether pay-tv platforms can be included in the definition. Extending the definition as to cover platforms whose business model is akin to that of digital aggregators, the country of origin principle might be applied in an overly extensive manner, carrying with it the risk of superseding copyright territoriality.

Yet, it ought to consider that the notion of "ancillary service" included in Article 2 SatCab II is narrow, for it includes only a restricted array of contents (news, current affairs programs and broadcasters' own contents), with the effect of introducing a derogation to copyright territoriality on a highly content-specific basis. Moreover, if the broadcaster licence the content to a different platform, the principle seems not to be applicable.[157]

Article 4 SatCab II sets the rule under which acts of retransmission of programs must take place upon authorisation of the rightsholder, although consent or refusal can only be granted via CMO. In this way, clearance of rights and licensing practices are streamlined, with the effect of ensuring higher visibility to copyrighted contents via cable retransmission and broadcasting. Article 5 SatCab II contains the exception under which Article 4 SatCab II does not apply if copyright is entitled to broadcasting organisations themselves.

Cultural diversity and the SatCab Directive II

The Directive has only a limited impact on cultural diversity. By setting the country of origin principle, Article 3 SatCab II creates a legal fiction which reminds of the non-discrimination principle. In fact, it facilitates the obtaining, retransmission and broadcasting of a broad array of copyrighted contents (as well as digital music files) without the need to seek prior authorisation in each Member State. This ensures higher visibility of online music contents and can enhance both secondary creation and cultural diversity. In fact, for those programs which have limited audience for being tailored to the specificities of a local audience, it may become inconvenient and too expensive, from the perspective of the broadcasting organisation to clear rights in each Member State of retransmission. In this way, over-homogeneity of cultural contents is avoided thanks to the streamlining of licensing practices and, as a consequence, the reduction of related transaction costs. Yet, the text of the Directive does not contain

[157] Ted Shapiro, 'Comment on the EU's Update of the "SatCab" Directive: A Brave New Digital World for the Audiovisual Sector?' (*Wiggin LLP*) <https://www.wiggin.co.uk/insight/comment-on-the-eus-update-of-the-satcab-directive-a-brave-new-digital-world-for-the-audiovisual-sector/> accessed 23 September 2023.

any direct reference to the non-discrimination principle as articulated in the various international human rights soft law provisions extensively discussed above.

Diversity objectives and methods of measurement under the SatCab II Directive are/shall encompass:

- Use by broadcasting organisations of the principle of origin for retransmission of content and its impact on the circulation of repertoires
- Transaction costs for cross-country licensing, to monitor if it has led to increased access to a diverse range of content, including local and minority groups
- Audience engagement across the EU, to monitor whether the directive's implementation has led to higher and diversified audience engagement with music content from different Member States
- Variety of content retransmitted by broadcasting organisations, in order to monitor whether the Directive has contributed to avoiding homogeneity of music content by enabling broadcasting organisations to retransmit diverse content tailored to specific local audiences.

3.5 Other Regulatory Frameworks Impacting Music Diversity: Enablers & Disablers

3.5.1 Legislative Measures Adopted within the Audiovisual Sector and its Potential application to the Music Industry

Recital 69 of the **Audiovisual Media Service Directive**[158] (AVMSD) recognises the significance of promoting European content in Video on Demand (VOD) services in order to encourage cultural diversity. **Article 1(1)(n)** and **paragraphs 3 and 4 AVMSD** define "European works" as content originating in Member States, European third states, or through specific agreements with the EU or co-productions with EU-based co-producers. The works must also be created by authors and workers who are citizens of one or more relevant States (EU Member States and States that have ratified the Convention), provided that the producer is established in a Member State or that, in the case of co-productions, co-producers from such States contribute the majority of the total co-production costs. According to these provisions, Member States may adopt their definitions of "European works" for audiovisual media services (AVMS) as long as they comply with EU law and AVMSD objectives.[159] However, Member States have limited flexibility to prioritise their domestic content over others, as EU law prohibits discrimination against AVMS from other Member States.

Compared to the 2010 version, the 2018 **AVMSD** revision introduced a significant change. The promotion of European works in on-demand **AVMSD** is now a mandatory obligation (**Article 13(1) AVMSD**), requiring providers to allocate at least 30% of their catalogue to European works. This quantitative threshold is combined with the obligation to give prominence to such European works. **Recital 35 AVMSD** provides insights into the definition of "prominence", clarifying that this "entails the promotion of European works by making it easier for viewers to access and choose these works,

[158] 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 (Audiovisual Media Services Directive), *OJ L 95, 15.4.2010, p. 1–24*

[159] For an overview of the transposition of the definition of European Work in the EU Member States see: Jean-François Furnémont, *Mapping of the regulation and assessment of the nationality of European audiovisual works,* European Audiovisual Observatory, Strasbourg, 2020 < https://rm.coe.int/mapping-of-the-regulation-and-assessment-of-the-nationality-of-europea/16809ebe39 >

essentially increasing their visibility." To accomplish this goal, the 2018 **AVMSD** revision recommends, as specified in **Recital 35**, the use of metadata tagging for audiovisual content that meets the criteria of a European work, and to make such an information available to media service providers. These measures may also include having a dedicated section for European works on the service homepage, the possibility to search for European works in the search tool available thereon, the use of European works in advertisement campaigns, or the promotion of a minimum percentage of European works on the service's catalogue, for example by using banners or similar tools.

Although the Directive offers a number of tools to improve the visibility of European Works, it still features a number of gaps and shortcomings.[160] First, the solutions suggested in the Recital have limited effectiveness when it comes to many on-demand services, where viewer recommendations are tailored to individual consumption patterns, often determined by the service's algorithm. Second, the range of measures for ensuring the visibility of European works remains relatively extensive, and so Member States maintain considerable freedom in determining which measures to implement. Third, the Directive does not entrust the European Commission with drafting guidelines for a more precise definition of the criteria for prominence, a circumstance that might lead to a lack of uniformity among national measures.

According to a study of the **European Audiovisual Observatory** (EAO) from 2020, only a few Member States have published information about their initiatives to use metadata labelling for works created in Europe and made it available to media service providers.[161] **Best Practices** reported by the EAO include, *inter alia,* indicating the country of origin or the language while using "European Works" tags in a separate, organised section (Belgium and the Netherlands); providing the International Standard Audiovisual Number (ISAN) (France) when requesting contributions from the national fund to digitally convert or repair works, to ensure that the latter contain all the metadata required for distribution across many digital platforms. Challenges reported by stakeholders include the difficulty in determining the author's nationality or who the majority co-producer was. **Best Industry Practices** reported by VoD providers to assess the nationality of works include the use of standard identifiers such as ISAN or EID, and of databases of national film centres or of EU-funded databases, such as those provided by Cineuropa or Europa Cinemas.

Article 13(2) AVMSD allows Member States to require financial contributions from media service providers to support European production, which must be proportional and non-discriminatory. These may be direct contributions to European works' production or levies payable to a national fund, based on AVMS revenues in their territory. Although these investments may primarily benefit domestic productions, the rule deviates from the country-of-origin principle, for it permits media service providers targeting audiences in a specific Member State but established in other Member States to benefit from these financial contributions. Member States are required to report every two years on the state of implementation of the AVMSD to the Commission (**Article 13 (4) AVMSD**), which should then provide a summary of national transpositions to the European Parliament and the Council,

[160] Apa, Ernesto, and Giovanni Gangemi. "The new audiovisual media services directive and the promotion of European works by on-demand media service providers." *Media Laws, Rivista di Diritto dei Media* 2 (2019): 93-127; Mazzoli, Eleonora Maria (2020), 'Online content governance: Towards a framework for analysis for prominence and discoverability', *Journal of Digital Media & Policy*, 11:3, pp. 301–19; García Leiva, M. Trinidad and Albornoz, Luis A. (2021), 'VOD service providers and regulation in the European Union: an audiovisual diversity approach', *International Journal of Cultural Policy*, 27:3, pp. 267–81.

[161] Jean-François Furnémont, *Mapping of the regulation and assessment of the nationality of European audiovisual works,* European Audiovisual Observatory, Strasbourg, 2020 < https://rm.coe.int/mapping-of-the-regulation-and-assessment-of-the-nationality-of-europea/16809ebe39 >

considering market and technological developments and cultural diversity objectives (**Article 13 (5) AVMSD**).

Article 13 (6) AVMSD exempts providers with limited turnover or a small audience from the 30% obligation imposed under **Article 13(1) AVMSD** and the financial contribution requirements under **Article 13(2) AVMSD**. Member States may also waive these obligations if they deem them impractical or unjustified in light of the nature or thematic focus of the given audiovisual media services. Furthermore, **Article 13(7) AVMSD** mandates the European Commission to issue guidelines regarding how the 30% of European Works is calculated and on the definition of "low turnover" and "low audience" referred in **Article 13(1)** and **Article 13(6) AVMSD**. These guidelines, issued in 2020 upon consultation with the Contact Committee,[162] suggest calculating the 30% share of European works in on-demand catalogues based on the total number of titles in the catalogue. The Guidelines also clarify what a title is, how to calculate the percentage when VOD providers have multiple national catalogues, and how to account for the possibility of daily catalogue variations. In addition, the Commission provides recommendations on assessing low audience and turnover. While national authorities are ultimately responsible for implementing **Article 13 AVMSD**, the Commission notably states that national authorities are urged to actively collaborate with their counterparts in other Member States in the aspects covered by the Guidelines.

Interestingly, the way these policy mechanisms operate within the EU is different. While the requirement for a quota of European works and the emphasis on prominence are guided by the country-of-origin principle (**Article 13(1) AVMSD)**, Member States have the power to impose financial obligations on media service providers that operate within their territory (**Article 13(2) AVMSD).**

The AVMSD also imposes quota obligations for European works for broadcasters. **Article 16 AVMSD** (unchanged in the 2018 revision) requires Member States to ensure that, where practicable and by appropriate means, broadcasters reserve a majority proportion of their transmission time to European works, with the exclusion of certain categories of works such as news, sports events, games, advertising, teletext services and teleshopping. This obligation is complemented by **Article 17 AVMSD** (unchanged in the 2018 revision), which states that 10% of the transmission time (or alternatively 10% of the programming budget) shall be reserved to European works created by producers who are independent from broadcasters. In this sense, the introduction of the mandatory content quotas for VoD in **Article 13 AVMSD** aligns with the content quota obligation set out in **Article 16 AVMSD** for television broadcasters.

Yet, as noted by commentators,[163] the fulfilment of these obligations varies depending on whether the service is linear or non-linear. As linear services have less time for content, the impact of programming requirements on their activities is greater than the one suffered by on-demand providers, which are not restricted by time limits and can thus balance European and non-European works in their catalogues. At the same time, however, broadcasters may rely on repeats to fulfil this requirement, while on-

[162] Communication for the Commission, Guidelines pursuant to Article 13(7) of the Audiovisual medial Services Directive on the Calculation of the Share of European Works in On-Demand Catalogues and on the Definition of Low Audience and Low Turnover, I.J 2020/C 223/03, 7.07.2020 < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0707(03)&from=EN >.

[163] Apa, Ernesto, and Giovanni Gangemi. "The new audiovisual media services directive and the promotion of European works by on-demand media service providers." *Media Laws, Rivista di Diritto dei Media* 2 (2019): 93-127.

demand providers cannot. Additionally, as evidenced by a Study conducted by the EOA, methods and practices for calculating compliance with the content obligation vary across EU Member States.[164]

- **Rationale and Significance for the Music Industry**

The content quotas imposed by the **AVMSD** primarily apply to audiovisual services and their content. While they may indirectly affect music content that is part of audiovisual programming, playlists themselves are not constrained by quotas or specific requirements. In this sense, a **2022 GESAC Study** on the Place and Role of Authors and Composers in the European Music Streaming Market[165] highlighted that in the EU audio streaming services are currently in a regulatory gap, because the AVMSD does not cover them, and they do not fall under the Digital Services Act either.

As evidenced in a briefing prepared by the **Research CULT Committee of the European parliament in 2023** regarding **Cultural Diversity and the Conditions for Authors in the European Music Streaming Market**,[166] there is a growing discussion about introducing similar quotas on streaming services as a potential issue for developing local artists and cultural diversity. Previously, the cited **2022 GESAC Study** pointed out that music streaming services should be encouraged to promote cultural diversity and ensure the prominence and discoverability of European musical works and repertoires akin to the audiovisual sector. The suggestion of introducing content quotas for the music industry was furthermore advanced during the **2021 Stakeholder Conference on Diversity and Competitiveness of the European Music Sector,** organised by the European Commission within the framework of the Council Work Plan for Culture 2019-2022.[167]

Expanding on this approach, in September 2023 the EU rapporteur Ibán García Del Blanco presented a **Report to the European parliament on Cultural diversity and the conditions for authors in the European music streaming market** (2023/2054(INI))[168] which, amongst other, calls on the Commission to reflect on the possibility of imposing quotas on European works on music streaming platforms, and of introducing new provisions to ensure the prominence and discoverability of European works on music streaming platforms. The report has received motion for amendments and is waiting for the Committee decision (expected in 2024).

Justifications made in support of audiovisual quotas have often been grounded either on the protection of national culture or European Diversity (cultural objective) or the protection of the audiovisual sector

[164] The EAO mapping of the adopted methods for compliance can be found at: Jean-François Furnémont, *Mapping of national rules for the promotion of European works in Europe*, European Audiovisual Observatory, Strasbourg, 2019 < https://rm.coe.int/european-works-mapping/16809333a5 >

[165] Emmanuel Legrand, Study on the place and role of authors and Composers in the European Music Streaming Market, European Grouping of Societies of Authors and Composer (GESAC) (2022) < https://authorsocieties.eu/content/uploads/2022/09/music-streaming-study-28-9-2022.pdf >.

[166] European Parliament, Research for CULT Committee, Cultural Diversity and the Conditions for Authors in the European Music Streaming Market: a Bibliographical Review (2023) < https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747252/IPOL_BRI(2023)747252_EN.pdf >.

[167] European Commission, Report from the Conference Diversity and Competitiveness of the European Music Sector with EU Member States Experts (2021), < https://cnm.fr/wp-content/uploads/2021/09/Final-Report-EU-Music-conference-2021-march.pdf >.

[168] The procedure is available at the following link: https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2023/2054(INI)&l=en

(economic value).[169] Prior to the 2018 revision of AVMSD, commentators[170] moved concerns about the economic and cultural impact of content quotas, their effectiveness in achieving these policy goals, and the potential side-effects of their implementation. In this sense, **Micova** concluded[171] that content quotas seem to be not much of a burden commercially and have rather limited benefit. She added, however, that quotas may encourage the distribution of more national content, which probably contributes in some way to preserving national culture and to maintaining the presence of the national language(s) on television. Other authors questioned their suitability in light of technological advancement, suggesting that the quota system is destined to be re-placed due to the emergence of new types of services and the increasing possibilities for consumers to choose content according to their individual preferences.[172] In the **2015,** the results of the **Public Consultation** conducted by the **European Commission**[173] revealed diverging viewpoints on the policies adopted to promote European works. Eleven Member States and twelve regulatory authorities expressed their support for maintaining the status quo on audiovisual content quotas, while six Member States and three national authorities favoured increasing the regulatory burden for on-demand services to avoid a distortion of competition among providers.

Scholars, including **Apa et al**,[174] have emphasised the value of quotas in pursuing cultural policy objectives, asserting that their role extends beyond merely proposing European works, but should also encompass their active promotion. Similarly, **Bernier**[175] concluded that under appropriate conditions and subject to monitoring their actual effectiveness, content quotas may play a decisive role in preserving and promoting threatened cultural expression. Regarding the impact of new technology on quotas, **Bernier** stressed the need to adopt new approaches capable of offering similar guarantees.

It shall be noted that the newly introduced content obligations for VoD are still in its infancy to assess the outcome and measurements of this policy. EU Member States had until 19 September 2020 to implement the AVSMD into their national legislation. While all Member States have followed suit with

[169] Ivan Bernier, *Local content requirements for film, radio, and television as a means of protecting cultural diversity: theory and reality (Section II) (2003)*< https://www.unescodec.chaire.ulaval.ca/sites/unescodec.chaire.ulaval.ca/files/update040103section2.pdf >.

[170] See: Micova, Sally Broughton. "Content quotas: What and whom are they protecting?" In Donders, Karen, Pauwels, Caroline and Loisen, Jan, (eds.) (2013) *Private television in Western Europe: Content, markets, policies*. London: Palgrave Macmillan UK, 2013. 245-259, and literature therein cited.

[171] Micova, Sally Broughton. "Content quotas: What and whom are they protecting?" In Donders, Karen, Pauwels, Caroline and Loisen, Jan, (eds.) (2013) *Private television in Western Europe: Content, markets, policies*. London: Palgrave Macmillan UK, 2013. 245-259.

[172] See: Apa, Ernesto, and Giovanni Gangemi. "The new audiovisual media services directive and the promotion of European works by on-demand media service providers." *Media Laws, Rivista di Diritto dei Media* 2 (2019): 93-127., citing G. Guglielminetti, *La promozione delle opere europee*, in *AIDA. Annali Italiani del Diritto d'Autore, della Cultura e dello Spettacolo*, XVII, Milano, 2009, 93 ss. (Noting that the cited author echoes the argument put forward by the Motion Picture Association of America (MPAA) before the United States Congress on May 22, 2001, according to which in today's world, with multiplex cinemas and multi-channel television, the justification for local content quotas is much diminished).

[173] Synopsis of the Public Consultation on Directive 2010/13/EU on Audiovisual Media Services (AVMSD) – A media framework for the 21st century, 2015. < https://digital-strategy.ec.europa.eu/en/consultations/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st >.

[174] Apa, Ernesto, and Giovanni Gangemi. "The new audiovisual media services directive and the promotion of European works by on-demand media service providers." *Media Laws, Rivista di Diritto dei Media* 2 (2019): 93-127

[175] I. Bernier, *Local content requirements for film, radio, and television as a means of protecting cultural diversity: theory and reality (Section II)*.

the transposition, the actual enforcement of the AVSMD provisions is yet to be monitored.[176] The EC is due to issue an evaluation report in December 2026.

3.5.2 The Role of Competition Law for the Music Industry

Competition law plays an essential role in creating a barrier-free internal market while maintaining a level-playing field for all market actors. By preventing national authorities from creating or maintaining obstacles to trade, it allows businesses and private entities to compete with minimal interference from the government. Competition law aims at consumer choice maximisation, by ensuring the commercialisation of better quality goods and services at better prices. In this sense, it has the potential to contribute to fostering cultural activity in Europe.

In this sense, competition law could have a significant impact on the circulation of works within the EU internal market. As noted by **Graber**,[177] an essential requirement of cultural diversity policy is to secure the supply of diverse cultural content by the market beyond mainstream offers. This emphasises the importance of actively supporting and promoting a diverse array of cultural expressions, ensuring that the cultural landscape is not dominated solely by mainstream or widely accepted content. As previously noted (See, section 3.2.1), cultural policies is primarily a competence of EU Member States. Nevertheless, the EU is mandated by **Article 167(4) TFUE**, to consider aspects of cultural diversity whenever it engages in activities under other provisions of the treaties. Accordingly, on the one side, when the Union aims to establish an internal market for the exploitation of rights protected under (national) copyright law, it should consider policy decisions made at the Member State level in the field of culture. This constitutes a limit on the applicability of competition law, justified and in favour of cultural polices. On the other, competition law could intervene to recalibrate circulation obstacles an agreement between undertakings might produce. This could be the case where CMOs engage in practices that restrict competition, where exclusive licensing agreements or adopt discriminatory practices, or music streaming industry engages in practices that limit interoperability or hinder fair access for competitors, among others. These types of agreements and practices, where harm competition, constitute an obstacle from competition.

Against this background, this section analyses whether cultural aspects, specifically those delineated in **Article 167(4) TFUE** (See section 3.3.1), are incorporated or embedded into the assessment and application of competition law. The focus is, in this sense, on antitrust rules and state aid.

- **State Aid and the Cultural Exemption**

Article **107 (1) TFUE** states that aids granted by Member States or through state resources, which distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, are incompatible with the internal market where they affect trade between Member States and are thus prohibited**.** However, **Article 107(2) TFUE** provides for exemptions in specific cases, listed in **Article 107(3) TFUE** lists. Exemptions are based on the premise that markets may not always function effectively without intervention, and a certain degree of governmental involvement might be necessary to enhance consumer well-being or protect specific rights or principles.

[176] The EAO maintains an updated track of the implementation, available at: https://www.obs.coe.int/en/web/observatoire/avmsd-tracking

[177] Graber, Christoph B. "Collective rights management, competition policy and cultural diversity: EU lawmaking at a crossroads.", (2012) 4 W.I.P.O.J, Issue 1 p-35-43.

Article 107(3)(c) TFUE includes aids directed to "encourage the growth of specific economic activities", which is designed to enhance access to cultural goods and services and, more broadly, to promote cultural diversity, [178] and to "promote cultural and heritage preservation", also known as the industrial state aid derogation, which signifies the recognition of Member States' common practice of offering financial support to cultural initiatives. This approach seeks to strike a balance between the EU goals of fostering the internal market and protect fundamental freedoms, while taking into account national inclinations and cultural considerations, in line with the emphasis on the subsidiarity principle enshrined in Article 167 TFEU.

As noted by **Psychogiopoulou**,[179] **Article 107(3)(c) TFEU** allows Member States considering cultural policy objectives when assessing the legitimacy of state aid measures. This is particularly important in the audiovisual sector, where Member States have long-standing traditions of supportive policy measures directed to promote the commercial exhibition of audio-visual works, for instance via subsidies for dubbing and subtitling operations and for improving cinema infrastructures and accessibility.[180] Conversely, **Article 107(3)(d) TFEU** has been commonly used to authorise aid in the audiovisual sector. **Ferri**[181] also noted that when evaluating state aids under **Article 107(3)(d) TFEU** for the publishing sector, it has considered that aid programs supporting the creation and dissemination of literary works in minority languages are clearly defined cultural goals. According to the author, an illustrative example in this context is the Slovakian direct grant to selected publishers for the publication of newspapers, magazines, books and the maintenance of websites edited in the Hungarian language, for which the Commission did not raise any objection due its clear cultural goal. In such a case, when assessing the measure, the Commission expressly acknowledged that the aid was addressing the needs of the Hungarian minority in Slovakia.

Also, the publishing sector often benefits of various state aid measures. Financial assistance, frequently in the form of direct grants, is usually provided to promote cultural publications, translate literary works into languages other than the original, organise book fairs and literary festivals, and support the press.[182] The EC has primarily examined state aid initiatives directed at the publishing sector within the framework of **Article 107(3)(d) TFEU**), while support programs for the press have been assessed under **Article 107(3)(c) TFEU**.[183]

The EU oversight of state aid operates through a system of prior approval by the EC under Article 108(1)-(3) TFEU, which is granted according to the principles enshrined in **Article 107(2) or (3) TFEU**. Articles 108-109 TFEU allows secondary legislation providing provides exceptions to mandatory notification. One of the most relevant sources in this respect is the **Block Exemption Regulation** or BER[184] as

[178] Ferri, Delia. "Cultural diversity and state aids to the cultural sector." *Cultural Governance and the European Union: Protecting and Promoting Cultural Diversity in Europe* (2015): 119-131; Ferri, Delia, and Francesco Palermo. *La costituzione culturale dell'Unione Europea*. Padova: Cedam, 2008, p. 88.

[179] Psychogiopoulou, Evangelia. "EC state aid control and cultural justifications." *Legal Issues of Econ. Integration* 33 (2006): 3.

[180] See E. Psychogiopoulou, The 'Cultural' Criterion in the European Commission's Assessment of State Aids to the Audio-Visual Sector, 37 *Legal Issues of Economic Integration* 4, 2010, p. 274.

[181] Ferri, Delia. "Cultural diversity and state aids to the cultural sector." *Cultural Governance and the European Union: Protecting and Promoting Cultural Diversity in Europe* (2015): 119-131;

[182] Psychogiopoulou, Evangelia. "EC competition law and cultural diversity: The case of the cinema, music and book publishing industries." *European Law Review* 30.6 (2005): 838-861.

[183] Psychogiopoulou, Evangelia. "State Aids to the Press." *European State aid Law Quarterly* 11.1 (2012): 57-72.

[184] 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 OJ *L 187, 26.6.2014, p. 1–78.* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710 >.

amended in 2017, [185] which explicitly provides conditions for Member States to give state aid for culture and heritage conservation (**Article 53 BER**) and the audiovisual sector (**Article 54 BER**) without being obliged to notify the Commission. **Article 53 BER** covers aid schemes for cultural purposes activities such as "museums, archives, libraries, artistic and cultural centres or spaces, theatres, cinemas, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions" (**Article 53(2)(a) BER)**, "cultural events and performances, festivals" **(Article 53(2)(b) BER)**, cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies" **(Article 53(2)e) BER)**, and "writing, editing, production, distribution, digitisation and publishing of music and literature, including translations" (**Article 53(2)(f) BER).** Within the threshold and conditions indicated in the provision, these aids may take the form of investments, such as those covering the costs for digitisation and the use of other new technologies, or for improving accessibility for persons with special needs, and the form of operating aids, such as for the promotion of the diversity of cultural expressions through educational and greater public awareness programs.

- **Significance for the Music Industry**

As noted by **Psychogiopoulou,** [186] within the realm of their domestic cultural policies, EU Member States use a range of financial instruments to promote cultural activities, stimulate the creation and widespread distribution of cultural products, and safeguard cultural heritage. These measures, which may take various forms, including direct grants, tax incentives, screen quotas, licensing constraints, could fall under the scope of EU state aid regulations if they meet the conditions outlined in **Article 107(1) TFEU**. This means that such measures could be considered as constituting state aid and, as such, would need to comply with the regulatory framework set by the EU to ensure fair competition and prevent distortion of the internal market. Within the context of music industry, the applicability **Article 107(1) TFUE** would not only translate into additional administrative burdens, reporting requirements, and adherence to specific conditions to ensure fair competition, but it could result in an obstacle or restriction of the financial support or incentives that Member States can offer to domestic businesses for cultural purposes. In fact, public funding for cultural activities rarely qualifies as state aid under the TFEU. This suggests that the Commission does not interfere with domestic cultural policies and national "cultural sovereignty."

The relevance for the music industry is significant as regards the introduction of "cultural derogations," including those specifically tailored to the music industry under **Article 53** BER. Unlike other branches of competition law, these provisions represent the only instance where there is a specific and explicit acknowledgment of cultural matters incorporated directly into competition law. This acknowledgement not only could be viewed as a practical implementation of **Article 167(4) TFUE**, which requires the EU to consider cultural matters in its actions, but also reflects a response to the a well-rooted tradition of Member States of resorting to aid exemption in the audiovisual, publishing and press sectors, as the literature explored in this section suggests. The explicit consideration under **Article 53 BER** of specific

[185] Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, *OJ L 156, 20.6.2017, p. 1–18*

[186] Psychogiopoulou, Evangelia. "EC competition law and cultural diversity: The case of the cinema, music and book publishing industries." *European Law Review* 30.6 (2005): 838-861; Psychogiopoulou, Evangelia. "Cultural Mainstreaming in EC Anti-Trust and Merger Control." *The Integration of Cultural Considerations in EU Law and Policies*. Brill Nijhoff, 2008. 241-291.

exemptions for the music industry allows Member States to align their cultural strategies with targeted support and promotion for the music industry. By giving Member States the possibility to pursue their cultural strategies, both the cultural state aid derogation and the BER embed the consideration of – and require the Commission to take into account - national or regional cultural policies and goals in the assessment of the legitimacy state aid. In essence, the provisions strike a balance between the principles of the common market and national cultural prerogatives.

- **Antitrust**

Whereas in the field of state aids cultural policies are specifically taken into account, antitrust and merger control rules lack similar considerations. Despite this gap, however, provisions concerning the evaluation of the legitimacy of restrictive practices, strategic alliances, and price arrangements could impact or accommodate cultural goals and diversity. In this sense, it has been argued[187] that the goals of competition law and those pursued by EU cultural policy complement each other, for a competitive model based on the principles of consumer welfare and economic efficiencies has the potential to promote the production and distribution of cultural goods and services on a larger scale for European consumers.

Articles 101-**102 TFEU** lay the basis of EU antitrust law. **Article 101(1) TFEU** prohibits agreements among undertakings, decisions by associations of undertakings, and concerted practices (collectively referred to as agreements in this context) that aim to prevent, restrict, or distort competition within the internal market. For instance, in *Ministère Public v Tournier*[188] *and Lucazeau v SACEM*,[189] the CJUE held that a reciprocal representation agreement providing (directly or indirectly) that users established in Member State B are prevented from having direct access to the repertoire of a CMO in Member State A may fall under the "concerted practice" within the meaning of **Article 101(1) TFEU**, if it alters the normal conditions of competition. By contrast, such an agreement would not infringe **Article 101(1) TFEU** if justified by legitimate reasons, including the need to ensure a more effective monitoring of repertoire exploitations.

Article 101(3) TFEU lifts these restrictions when an agreement between companies positively affects the production and distribution of goods and/or supports technical and economic development. In *Simulcasting*,[190] the EC was requested to analyse the compatibility with **Article 101(1) TFUE** of a model reciprocal agreement concluded between the International Federation of the Phonographic Industry (IFPI) and several CMOs acting on behalf of record companies. The agreement aimed at facilitating the grant of multi-territorial licenses to radio and TV broadcasters willing to simultaneously transmit on the Internet sound recordings included in their programming (simulcasting). By virtue of the simulcasting agreement, each participating CMO could grant the other participating CMOs simulcasting licenses for its repertoire(s). Although it prohibited price competition, the Commission exempted the agreement under **Article 101(3) TFUE**, but it requested CMOs to clearly separate copyright royalties from

[187] Psychogiopoulou, Evangelia. "Cultural Mainstreaming in EC Anti-Trust and Merger Control." The Integration of Cultural Considerations in EU Law and Policies. Brill Nijhoff, 2008. 241-291. See also Frank L. Fine, The Impact of EEC Competition Law on the Music Industry, 12 Nw. J. Int'l L. & Bus. 508 (1991-1992).

[188] Judgment of 13 July 1989, Ministère Public v Tournier, C-395/87, ECLI:EU:C:1989:319. See also: Graber, Christoph B. "Collective rights management, competition policy and cultural diversity: EU lawmaking at a crossroads.", (2012) 4 W.I.P.O.J, Issue 1 p-35-43.

[189] Judgment of 13 July 1989, François Lucazeau and others v Société des Auteurs, Compositeurs et Editeurs de Musique (SACEM) and others, Joined cases C-110/8, C-241/88 and C-242/88, ECLI:EU:C:1989:326

[190] Commission Decision of 8 October 2002 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No COMP/C2/38.014 — IFPI "Simulcasting"), 2003/300 EC, O.J. L107/58.

administrative fees, making them more transparent. In the EC view, such a transparency measure could enhance competition between CMOs, rendering the agreement in line with antitrust considerations. In addition, the EC noted that introducing a multi-territorial licence would improve music distribution, increase availability of sound and video recordings online, and would place new artists on equal terms with more powerful rivals *vis-a-vis* the terms and price conditions of a simulcasting service. Ultimately, this would lead to a greater benefit for consumers, who could get broader and easier access to a wide range of content.

Although the *Simulcasting* decision did not explicitly mention the protection and advancement of cultural diversity, the EC admitted its indirect influence on the matter. In granting the exemption, in fact, the EC considered as a positive element the fact that the agreement ensured an increased circulation of diverse content and improved its distribution, in this way proving that cultural factors play a relevant role when evaluating the compliance of restrictive agreements with EU competition law.

Article 102 TFUE governs the behaviours of companies that are inherently immune from typical competitive market conditions ("dominant undertakings"), and prohibits abuses of such dominant positions. Determining whether an undertaking holds a dominant position may be a difficult endeavour, as it depends on several criteria such as the definition of the relevant market and of the undertaking's market share. **Article 102 TFUE** provides an exemplificative list of abuses. They cover practices that directly harm consumers, such as when a dominant undertaking charges prices above the competition level (known as "exploitative abuses"), or excludes competitors or other undertakings from the market (known as "exclusionary practices").

Recent cases investigated by the EC under **Article 102 TFEU** and reviewed by the CJEU identified as abusive practices, *inter alia*, i) self-preferencing, ii) data leveraging, iii) naked restrictions and iv) excessive pricing.

Self-preferencing encompasses cases where a dominant and vertically integrated business favours the positioning or selling of its own products or services to the detriment of competitors by using its own platform. In June 2017, the EC ruled[191] that *Google's* preferential positioning and display of its own comparison-shopping service in its general search results pages over rival services was against **Article 102 TFUE**. On appeal, the CJUE made clear that **Article 102 TFEU** did not automatically forbid self-preferencing but found that Google's actions did not constitute merit-based competition in this particular instance and held that "the list of abusive practices contained in **Article 102 TFEU** is not exhaustive." [192] Similarly, *in App Store Music Streaming*,[193] the EC held that by forcing consumers to use its in-app purchasing system and restricting developers' ability to notify iPhone and iPad users of cheaper alternatives to in-app purchases, Apple used its App Store to abuse its dominant position in the market for distribution of music streaming apps. This constituted a violation of **Article 102 TFUE**, for Apple stifled competition by driving up prices for rival music streaming app providers, which in turn drives up prices for customers. Whether Apple's actions qualify as self-preferencing or some other type of abuse is still under review.[194]

[191] Judgment of 10 November 2021, Google and Alphabet v Commission (Google Shopping), T-612/17, ECLI:EU:T:2021:763.

[192] *ibid*, § 154.

[193] Case AT.40437, Apple App Store Practices Music Streaming (*App Store Music Streaming*).

[194] Ibid.

In *Servizio Nazionale Elettrico*[195] the question was whether a company's practice to restrict access to data it held as a result of its dominant position, in order to benefit its own products or services at the detriment of its rivals breached **Article 102 TFUE**. The case revolved around the attempt of ENEL to counterbalance the upcoming liberalisation of the Italian electricity market with an attempt to maintain SEN's customers by manipulating their consent to receive commercial offers, making them believe it was mandatory for ENEL and voluntary for other suppliers. This led to fewer consents in favour of ENEL's competitors, which limited their availability of customer data. ENENEL then used SEN's customer information to customise marketing offers in an effort to lure clients away from SEN. The CJUE ruled that the practice of **data leveraging** is anticompetitive when carried out by a dominant company, if it results in foreclosing effects, but the highest Italian administrative court (*Consiglio di Stato*) ruled that the unlawfulness of the conduct was not proven in the specific case.[196]

Naked restrictions encompass practices that a dominant company engages in with the sole purpose of excluding its rivals. For instance, in *Qualcomm*[197], the EC declared in violation of **Article 102 TFEU** Qualcomm's offer to Apple of exclusivity fees on the condition that Apple refrained from buying baseband chipsets from other companies, for it hindered not just its rivals' attempts to compete for Apple's business, but also other potential business opportunities with other customers. In another case, the EC imposed fines on Google for exclusivity agreements related to its Android operating system,[198] which included paying mobile network operators and original equipment manufacturers (OEMs) if they refrained from pre-installing rival general search services on devices within an agreed portfolio. According to the EC, these actions harmed competition because they decreased the incentives for users to pre-install rival search apps and prevented rival search engines from competing.

Charging **excessive prices** is another behaviour falling under the screening of antitrust law. It consists of a situation where a dominant company sets excessively high prices on customers. Setting prices that are significantly higher than the competitive market level has the effect of exploiting or excluding consumers from accessing or benefitting certain goods or services.[199] In the SABAM case,[200] the CJEU held that if a CMO based the increase of its tariffs for certain concerts and music festivals on gross receipts from ticket sales, without deducting all expenses associated with organising these events, there was no abuse of dominant position for excessive pricing in violation of Article 102 TFEU. The Court also stated that the CMO would not abuse its dominant position by implementing a tariff structure system to determine the musical works falling under its jurisdiction, provided that no other method is available to safeguard artists' rights without imposing disproportionate costs on the CMO.

In an earlier case – B*RT v SABAM* –[201] the Court recognised that CMOs hold *de facto* monopolies, for they occupy a dominant position in a substantial part of the common market. As such, the fair trade

[195] Judgment of 12 May 2022, Servizio Elettrico nazionale SpA e a., C-377/20, ECLI:EU:C:2022:379.

[196] Laura Zoboli, Much Ado About Nothing? Italy's SEN Antitrust Saga Comes to an End (13 February 2023), Kluwer Competition Law Blog, <https://competitionlawblog.kluwercompetitionlaw.com/2023/02/13/much-ado-about-nothing-italys-sen-antitrust-saga-comes-to-an-end/ >.

[197] Case AT.40220, *Qualcomm*, 24/01/2018.

[198] Case AT.40099, *Google Android*, 18/07/2018 (*Google Android*).

[199] Communication from the Commission – Guidance on the Commission's Enforcement Priorities in Applying Article 82 of the EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings, O.J 2009/CDd 45/02, 24.2.2009, < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC0224(01) >. (Article 102 TFUE is the former Article 82 RC).

[200] Judgment of 25 November 2020, Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v. Weareone.World BVBA and Wecandance NV (*SABAM v Weareone.World)*, C-372/19, ECLI:EU:C:2020:959.

[201] Judgment of 30 January 1974, Belgische Radio en Televisie and société belge des auteurs, compositeurs et éditeurs v SV SABAM and NV Fonior (*BRT v SABAM)*, C-127/73, ECLI:EU:C:1974:6.

obligations deriving from **Article 102 TFUE** required that contracts concluded between a CMO and its individual members could limit the freedom of the latter only to the extent this is necessary for effective rights management by such CMO. In several cases involving CMOs, their practices have been found to be in breach of **Article 102 TFUE**. In *GEMA* and *GVL (West German CMO)*,[202] the practice of both German CMOs of refusing to conclude management agreements on grounds of nationality, excluding foreign authors not being domiciled in Germany was deemed contrary to **Article 102 TFUE** (formerly, article 82 EC Treaty). Whereas the Commission did not explicitly rely on cultural arguments in support of these decisions, **Psychogiopoulou**[203] correctly pointed put that the rationale behind these decisions had implicit cultural considerations. In this sense, she noted that the economic discrimination faced by foreign artists translated in reduced cross-border exploitation of their rights and reduced cross-border consumption of foreign works, ultimately hindering the circulation of diverse music content across Europe.

Although falling outside the scope of this analysis, two recent cases at the national level are worth mentioning. In 2022, the *Amsterdam Court of Appeal*[204] ruled that applying unequal conditions to streaming services amounted to an abuse of the dominant position where no measures to remove that inequality have been put in place. The case involved Bruna/Stemra, a Dutch CMO and Association of Background Music Distributors (ABMD), an association of companies that offer background music for business users, such as the hospitality industry, shops or fitness centres. ABMD filed a lawsuit, alleging Buma/Stemra's policy of charging of different license fees for private and business use, as well as the policy of charging lower fees to streaming services constituted an abuse of dominant position. The court ruled in favour of ABMD, finding that Buma/Stemra applied unequal conditions to streaming services, allowing commercial use of private subscriptions without taking corrective measures, and ordered Buma/Stemra to change its licensing policy and take measures to prevent commercial use of music from streaming services meant for private use only (e.g., Spotify). The case shows that measures and policies that result in a discrimination between CMOs‘ members and streaming services are prohibited under competition law.

In 2020, the Italian Competition Authority (AGCM) imposed a €10.9 million fine on CTS Eventim for employing an unlawful exclusive strategy in the Italian pop music events ticket market.[205] TicketOne, holding a dominant position in pop and rock concert ticketing, was investigated for its agreements with event organisers since 2013. The AGCM found that TicketOne and CTS Eventim engaged in a complex exclusive strategy that could have foreclosed competing ticketing operators from selling, by any means and through any channel, a particularly high proportion of tickets for live pop music events, thus limiting market access for new entrants. Additionally, TicketOne's higher fees were found to harm both rival ticket sellers and consumers, leading to reduced quality and variety of ticket-selling services. Due to the number of involved operators and the duration and gravity of the abusive conduct, the Italian Authority not only imposed a fine but also required the group to ensure that competing ticket sellers have the possibility to sell, in any way and through whichever channel at fair, reasonable and non-discriminatory

[202] Commission Decision 82/204/EEC of 4 December 1981 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.971—GEMA statutes), OJ L 94, 8/4/1982, p. 12, and Commission Decision 81/1030/EEC of 29 October 1981 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.839—GVL), OJ L 370, 28/12/1981, p. 49. See also: Mihály Ficsor, Collective Management of Copyright and Related Rights – Third Edition (2022), WIPO < https://www.wipo.int/publications/en/details.jsp?id=4645&plang=EN >.

[203] Psychogiopoulou, Evangelia. "EC competition law and cultural diversity: The case of the cinema, music and book publishing industries." *European Law Review* 30.6 (2005): 838-861;

[204] Gerechtshof Amsterdam, 200,256,847/01, 24.05.2022, ECLI:NL:GHAMS:2020:2583.

[205] See website AGCOM: https://en.agcm.it/en/media/press-releases/2021/1/A523

(FRAND) conditions, at least 20% of the total amount of pop and rock music events tickets distributed by the event promoters or ticket sellers bound by the agreements concluded by Eventim-TicketOne. Nevertheless, in 2022 the fine was annulled by the Italian Administrative Court,[206] on ground of lack of sufficient evidence on the alleged abuse.

- **Significance for the Music Industry**

The practice of the EC and EU and national courts show that, even if in the absence of explicit recognition, cultural policy elements are considered in the application of **Articles 101** and **102 TFEU** as a factor that could outweigh anti-competitive effects of private agreements or practices. In the Simulcasting decision, for instance, the Commission openly acknowledged the relevance of the positive impact the restrictive agreement had on the availability and dissemination of works for consumers. Similarly, the *App Store Music Streaming case* showcases that antitrust law could favour cultural diversity by prohibiting practices that may impede the market entry and expansion of smaller or diverse music streaming services. The SABAM cases also suggest that competition law could intervene to enhance cross-border circulation of works within EU Member States. However, it is essential to acknowledge a nuanced perspective, which seems to be overlooked by the Commission: an increase in the quantity of disseminated musical works does not always guarantee genuine content diversification, especially when different operators offer identical or similar content. In such cases, consumers might be presented with a virtual rather than a real substantive choice. In this sense, the Commission approach to antitrust law is rather focused on economic aspects and seems to neglect concerns about cultural diversity in content origin and type. As noted by some scholars,[207] while an increased number of market players and works can contribute to the preservation and promotion of cultural diversity through enhanced availability of cultural content, **Article 167(4) TFUE** may have limited practical significance in certain situations where competition pertains to access to the same cultural assets. This is because the Treaty provision does not demand an absolute prioritisation of cultural matters but requires, instead, cultural considerations to be given due weight within other policy frameworks. In this sense, competition law, while indirectly could impact on cultural policies and in the circulation of works, may have inherent constraints in fully safeguarding and promoting cultural diversity. The cases discussed reveal that competition law, primarily designed to ensure fair competition, may not be the optimal tool for achieving specific cultural diversity goals. The focus on consumer welfare and economic efficiencies within the internal market may not always align with broader cultural objectives. Consequently, competition law could represent an “external enabler” with “internal constraints” for music diversity, suggesting that a nuanced and integrated approach is necessary to balance both competition and cultural considerations effectively.

3.5.3 International IP Framework: The Principles of National Treatment and of Most Favoured Nation

The principles of national treatment and most-favoured-nation (MFN) are often considered within the broader framework of trade agreements and are designed to promote non-discrimination among trading partners. They have also been included in WIPO-administered treaties. While granting equal market access conditions to nations and foreign creators could enhance the circulation of works, these principles may collide with national cultural policies designed to benefit domestic works and own cultural identity. Balancing national treatment and MFN principles with cultural diversity objectives can

[206] TAR Lazio, sentenza n. 3334 del 24 marzo 2022

[207] Psychogiopoulou, Evangelia. "Cultural Mainstreaming in EC Anti-Trust and Merger Control." *The Integration of Cultural Considerations in EU Law and Policies*. Brill Nijhoff, 2008. 241-291.

be complex. Nations aim to preserve and promote their own cultural identities, yet international trade obligations often require equal treatment for foreign cultural products. This tension underscores the need for countries to craft cultural policies that navigate these principles while safeguarding their cultural heritage and diversity. In the European context, these principles come into play as the European Union adheres to international trade agreements involving cultural products and services and the WIPO-copyright administered treaties. The following section delves into these principles as outlined in the international trade and copyright agreements and their possible implications for music cultural diversity.

- **WIPO-administered Treaties**

The principle of national treatment, which is the most favourable to foreigners, requires States to grant protection to non-nationals in the same terms as it does to its own nationals. This obligation is enshrined in most multilateral treaties concerning copyright and related rights, including the **BC** (**Articles 5(1), 5(3)**), the **RC** (**Articles 2, 4, 5, 6**) the **WCT** (Article 3) and the **WPPT** (**Article 4**). The Paris Convention also relies on the principle of national treatment, enshrined in **Article 2 (1)**.

In the BC, the principle is framed as a ban to discrimination against foreign authors. Beneficiaries of national treatment are either nationals of or having their habitual residence in one of the countries of the Berne Union, or those whose works have first been published in one of those countries (or simultaneously in a country outside and within the Union).[208] Compared to other international treaties, the BC extends the scope of protection offered by the principle of national treatment also to works published within the Union, regardless of the nationality or domicile of their authors[209][210]

The WCT simply incorporates the national treatment provisions of the BC, while the WPPT requires its Contracting Parties to "accord to nationals of other Contracting Parties . . . the treatment it accords to its own nationals." By contrast, the Rome convention formulates different points of attachment for national treatment, which go beyond the nationality criterion, such as the place of the performance or the place of its first fixation. As noted by **Brauneis**,[211] nationality has not been chosen for practical reasons. Very often, in fact, performing ensembles such as orchestras, bands or choirs include performers of different nationalities, which would render the application of nationality as a point of attachment too difficult and/or ineffective. With respect to phonogram producers, the points of attachment are the country of first fixation and first publication (**Article 6 RC**).[212] Accordingly, any discrimination against a work based on foreign first publication – offering higher protection to works first published domestically than those first published in the territories of other treaty members – would violate national treatment obligations. This holds true even where nationals first published abroad and non-nationals did it domestically, as the **RC** explicitly prohibits discrimination against phonograms on the basis of their foreign publication **(Article 2(1)(b) RC).**

[208] Berne Convention Art. 3(2). "[a]uthors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country."

[209] Kur, Annette, Thomas Dreier, and Stefan Luginbuehl. European intellectual property law: text, cases and materials. Edward Elgar Publishing, 2019.

[210] ibid.

[211] Brauneis, Robert, "National Treatment in Copyright and Related Rights: How Much Work Does it Do?" (2013). GW Law Faculty Publications & Other Works. 810 <https://scholarship.law.gwu.edu/faculty_publications/810 >

[212] Fundamentals of Protection (Articles 3–6 and 18–20), Ricketson, S., & Ginsburg, J. C. (2022). International copyright and neighbouring rights : the Berne Convention and beyond. (3rd ed. / Sam Ricketson and Jane C. Ginsburg). Oxford University Press.

According to **von Lewinski**,[213] the national treatment principle is a manifestation of the principle of non-discrimination envisaged in nearly all international law treaties on human rights, which include special provisions on non-discrimination and add different grounds on which discrimination may not be made, such as race, colour, religion, national or social origin, and the like.[214]

Once a person is eligible for national treatment under one of the Conventions, determining whether the work at issue is protected, whether copyright has been infringed and what remedies are available depends on the law of the country where the protection is sought.[215]

The principle of national treatment is subject to a number of exceptions, concerning terms of protection (**Article 7(8) BC**), resale right (**Article 14$^{ter(}$2) BC**), the application in time (**Article 18 BC**) and the reservation of the ten-year-period regarding translations (**Article 30.2(b), part 2 BC**). The RC permits the application of reservations, which results in exceptions, with respect to certain rights, as **Articles 16.1(a)(iii) RC** and Article **16.1(a)(iv) RC** do with regard to secondary uses of phonograms for broadcasting and communication to the public, and **Article 16.1(b) RC** with regard to the communication right for broadcasting organisations.

- **WTO Treaties**

WTO Treaties feature the principle of national treatment (**Article 3 GATT**, **Article 17 GATS** and **Article 3 TRIPS**). The approach differs from the one adopted by intellectual property conventions, including the WPO TRIPS Agreement. In the context of **GATT**,[216] but primarily deals with non-discrimination in trade in (physical) goods, ensuring that imported and domestically produced goods are treated equally once they enter a country's market. As explicitly stated in **Article 3 GATT,** the main purpose of this provision is to avoid protectionism in the application of internal taxes and regulatory measures. To this end, the rule sets out three distinct obligations: one with respect to internal taxation of 'like products' (**Article 3(2**), first sentence **GATT**); one with respect to internal taxation of 'directly competitive or substitutable' products (**Article 3(2),** second sentence **GATT**); and one with respect to internal regulation regarding 'like products' (**Article 3(4) GATT**).

GATS concerns the supply of services. In line with the **GATT** provisions, the **GATS** obligation requires that Member States do not implement discriminatory measures benefiting domestic services or service suppliers.

[213] Dr. Silke von Lewinski, Intellectual Property, Nationality, and Non-Discrimination, WIPO-UNHCHR/IP/PNL/98/6, WIPO (1998) <https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=7609>.

[214] For example, some of the most important provisions on non-discrimination are Article 2 of the UDHR, Article 2.2 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR), Article 2.1 of the International Covenant on Civil and Political Rights (the ICCPR), Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of the American Declaration of the Rights and Duties of Man, Article 1.1 of the American Convention on Human Rights and Article 2 of the African Charter on Human and Peoples' Rights. Equality before the law has been laid down as a human right in Article 7 of the UDHR, Articles 14.1 and 26 of the ICCPR. See in detail Section 3.2 (UNESCO Framework).

[215] Fundamentals of Protection (Articles 3–6 and 18–20), Ricketson, S., & Ginsburg, J. C. (2022). International copyright and neighbouring rights : the Berne Convention and beyond. (3rd ed. / Sam Ricketson and Jane C. Ginsburg). Oxford University Press.

[216] This section deals with the GATT 1994, which is the most important international agreement pertaining to trade in products. There are, however, twelve more WTO multilateral accords that deal with trade in products in addition to it, amongst them the Agreement on Technical Barriers to Trade, the Agreement on Subsidies and Countervailing Duties, the Anti-Dumping Agreement, the Agreement on Trade-Related Investment Measures, and the Agreement on Safeguards, which might apply to policies pertaining to cultural goods. A detailed analysis of these agreements exceeds the scope of this analysis.

By contrast, **TRIPS** and other IP conventions forbid discriminations against natural and legal persons, by requiring that foreign and domestic rightsholders are treated equally.[217] **Article 3 TRIPS** demands each Member to "accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property." "Nationals" are "those natural or legal persons that would meet the criteria for eligibility for protection provided for in . . ." the relevant Conventions, " . . . were all Members of the WTO members of those Conventions." (**Article 1.3, para. 2 TRIPS**).

WTO treaties complements this principle with the MFN obligation, according to which every time a Member State improves the benefits that it gives to one trading partner, it has to give the same 'best' treatment to all other WTO members, so that they remain equal. Countries are to grant equal treatment to goods and services from all WTO members. The MFN aims to replace the frictions and distortions inherent in power-based (bilateral) policies with the assurances of a rules-based framework, ensuring that everyone benefits from concessions agreed upon by major trading partners, eliminating the need for additional negotiations. The principle is enshrined in **Article 1 GATT**, **Article 2 GATS** and **Article 4 TRIPS**, albeit with some slight differences.[218] Whereas the national treatment principle aims at achieving non-discrimination between individuals, the MFN principle aims at non-discrimination between trading partners.

For instance, in the c In the **TRIPS** Agreement, the MFN treatment obligation is modelled on **Article 1 GATT**. **Article 4 TRIPS** requires that "any advantage, favour, privilege or immunity' that is granted with respect to the protection of intellectual property to nationals of any country shall be extended immediately and unconditionally to nationals of all Members ". For instance, excluding intellectual property protection for CDs imported from certain countries while granting such protection to CDs from other countries would undoubtedly be considered an advantage under **Article 4 TRIPS**, for the intellectual property rights holders from the latter countries.[219]

All three agreements contain exceptions to the national treatment and MFN obligations. In addition to the general exceptions of Article **20 GATT** and the economic emergency exception under **Article 19 GATT**, the GATT Agreement provides for three other derogations which may be of specific relevance for measures related to cultural policies. These are the exception related to screen quotas for cinematograph films (**Article 4 GATT**), the exception related to government procurement (**Article 3(8)(a) GATT**), and the exception related to the payment of subsidies exclusively to domestic producers (**Article 3(8)(b) GATT**). Under **Article 4 GATT,** Member States may maintain or adopt screen quotas that require the exhibition of cinematograph films of a specific origin during a certain proportion of screen time, thus derogating from the principle of national treatment.

Article 3(8)(a) GATT allows Member States to issue laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes, which give preference to domestic products when purchasing them for its own use or benefit. This excludes the application of the national treatment principle to subsides exclusively provided to domestic producers

[217] Brauneis, Robert, "National Treatment in Copyright and Related Rights: How Much Work Does it Do?" (2013). GW Law Faculty Publications & Other Works. 810. <https://scholarship.law.gwu.edu/faculty_publications/810 >

[218] See: Brauneis, Robert, "National Treatment in Copyright and Related Rights: How Much Work Does it Do?" (2013). GW Law Faculty Publications & Other Works. 810. https://scholarship.law.gwu.edu/faculty_publications/810

[219] Burri-Nenova, Mira. "Trade and culture: making the WTO legal framework conducive to cultural considerations." *Manchester J. Int'l Econ. L.* 5 (2008): 2. (Citing the example but referred to books).

of cultural goods. However, the WTO DSB decision in *Canada – Periodicals*[220] WTO shows that the exemption is rather limited in scope. In this instance, Canada supported its domestic periodicals through various means, including subsidised postal rates. It invoked **Article 3(8)(b) GATT** in its defence when the US challenged the measure before the WTO. Nevertheless, the WTO Appellate Body determined that **Article 3(8)(b) GATT** was designed to exempt from the obligations of **Article 3 GATT** only the payment of subsidies which involves the expenditure of revenue by a government.[221] Ultimately, Canada withdrew the contested measure.

GATS permitted Members to introduce exemptions from the MFN treatment obligation in specific service sectors. Members could list measures in the Annex on **Article 2 GATS** Exemptions *until* the date of entry into force of the *WTO Agreement*, i.e. 1 January 1995. Subsequently, requests for exemptions from **Article 2 GATS** (MFN) can only be granted under the waiver procedures of the Marrakesh Agreement.[222]

Most WTO Members have listed MFN exemptions. They mainly focus on transport (especially maritime), communications (mostly audiovisual), financial and business services. For instance, the EU included the following exemptions with regard to audiovisual services (production and distribution of television programmes and cinematographic works)*:*[223]

- Measures granting a benefit for any program (such as the Action Plan for Advanced Television Services, MEDIA and EURIMAGES) that provides support for audiovisual works and suppliers of such works that meet certain European origin criteria. As the Annex states, the measure is justified by "the aim of preserving and promoting the regional identity of countries within Europe which have long-standing cultural links."
- Measures which define works of European origin, in such a way as to extend national treatment to audiovisual works which meet certain linguistic and origin criteria regarding access to broadcasting or similar forms of transmission. As the Annex states, the measure is justified by "the aim to promote cultural values both within the EU Member States (Formerly EC) and with other countries in Europe, as well as achieving linguistic policy objectives."

The lists of measures which individual Members have included in the *Annex of Article II Exemptions* can be found on the WTO's website.[224]

It is worth noting that according to **Paragraph 6** of the **Annex on Article II Exemptions**, in principle, exemptions should not exceed ten years (I.e. ending in January 2005). In practice, however, many Members continue to apply the exemptions they listed in the Annex on Article II Exemptions by relying on the lexeme "in principle" used by paragraph 6.

Article 3(1) TRIPS introduces a provision allowing an exemption from the national treatment obligation concerning the rights of performers, producers of phonograms, and broadcasting organisations, allowing not to give to WTO Members additional rights granted by other international agreements (such as the WPPT) when such Member is not parties to that agreement. This means that, for the beneficiaries

[220] *Canada -Periodicals,* WT/DS31/AB/R. For a full overview of the case, see: WTO-DS31: Canada – Certain Measures Concerning Periodicals. Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds31_e.htm

[221] *Canada -Periodicals,* WT/DS31/AB/R, 34.

[222] WTO: https://www.wto.org/english/tratop_e/serv_e/guide1_e.htm

[223] See European Communities and their Member States, *Final List of Article II (MFN) Exemptions*, GATS/EL/31, dated 15 April 1994. < https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/SCHD/GATS-EL/EL31.pdf&Open=True>.

[224] See WTO Website: < https://www.wto.org/english/tratop_e/serv_e/serv_commitments_e.htm >.

of related rights, there is no obligation to extend to non-nationals the same treatment granted to nationals**.** Any protection that goes beyond the mandatory minimum standard can be denied to foreigners or made it subject to reciprocity.[225] In addition, **Article 4 TRIPS** outlines several exemptions to the MFN obligation. **Article 4(b) TRIPS** exempts Members from the MFN treatment if the Berne Convention permits differentiated treatment of foreign nationals, contingent on reciprocity (see, e.g., the restriction of the term of protection of a work of foreign origin to the term granted in the country of origin). **Article 4(c) TRIPS** recognises the rights of performers, producers of phonograms, and broadcast organisations under other international agreements, without mandating parties to those agreements to universally grant the same rights to all WTO Members. Last, **Article 4(d) TRIPS** addresses rights granted by international agreements that were in effect before the entry into force of the WTO Agreement which, if notified to the TRIPS Council, shall not be extended to all WTO Members. The EU has construed this exemption quite broadly, as covering both the Treaty establishing the European Community and the Agreement establishing the European Economic Area, and all future acts following the process of regional integration.[226]

- **Significance for the Music Industry**

The national treatment obligation enhances domestic exposure to foreign works. From the author's standpoint, national treatment could not only serve to facilitate circulation and protection of their works in foreign countries but also incentive creation of new works. As noted by **von Lewinski**,[227] a common cultural argument put forward for introducing the principle is that an author who could not benefit from the exploitation of his work abroad would have less incentive to create new works, so that cultural diversity both in their country and abroad would decline.

However, it should be noted that national treatment obligations in copyright law entail advantages and disadvantages. On the positive side, it fosters equal treatment of foreign and domestic creators. This ensures that musicians from different countries receive comparable protection for their works, promoting international circulation of their works and, ultimately, enhancing cultural exchange in the music sector due to the enhancement of consumer choices. Nevertheless, careful consideration should be given to the limits and conflicting objectives of the international instruments where the national treatment principle is framed. In that regard, the economic and cultural interests benefitting from national treatment violations under copyright treaties may differ from those benefiting from national treatment violations involving goods under GATT. Differential overregulation of imported *products* will presumably increase their cost, thus harming domestic consumers and benefiting domestic producers. By contrast, differential under-protection of foreign *authors* is likely to reduce the cost of consuming their works, thus benefiting domestic consumers and harming domestic authors. This implies that if imported products, such as devices, encounter more stringent regulations than domestic ones, it could lead to increased costs for them, adversely impacting domestic consumers. However, it may favour domestic producers as stricter regulations might create a more advantageous market for their products. Conversely, if foreign authors receive less protection than domestic ones, the cost of consuming their

[225] Jörg Reinbothe and Silke von Lewinski (2002). *The WIPO Treaties 1996: The WIPO Copyright Treaty and The WIPO Performances and Phonograms Treaty – Commentary and Legal Analysis*. London, Butterworth Lexis Nexis.

[226] See: EC notification under Article 4(d) of the Agreement, European Communities and their Member States, IP/N/4/EEC/1, 29 January 1996, < https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/N/4EEC1.pdf&Open=True >.

[227] Dr. Silke von Lewinski, Intellectual Property, Nationality, and Non-Discrimination, WIPO-UNHCHR/IP/PNL/98/6, WIPO (1998) <**https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=7609**>.

works may decrease, benefiting domestic consumers. Yet, this situation could potentially harm domestic authors who face heightened competition without equivalent safeguards.

From another perspective, granting protection to foreign authors could lead to the unintended effect of strengthening or favouring larger companies, some artists, certain languages or genres, potentially to the disadvantage of local authors. This scenario may arise when authors from one country ("X") hardly distribute their works in country ("B"), while authors that country ("B") are broadly distributed in the former country ("X"). In such cases, offering equal protection to foreign authors would benefit countries with a strong economic interest in safeguarding their own authors abroad, compared to countries that, from an economic or business point of view, may not have such interests. Indeed, for the latter country, granting equal protection to foreign authors translates in licensing fees for using foreign works, while their own authors would hardly exploit their works abroad and will face increased competition domestically. Against this, **von Lewinski** pointed out the recommendation or obligation by public authorities of quota referring to the minimum national content of programs as a possible instrument to diminish such economic imbalance, used in the field of broadcasting. By contrast, other commentators[228] argues that such measures would run counter the principle of national treatment and free trade outlined in the WTO Agreements, and should thus be banned.

3.6 Circulation

Within the framework of **Music Moves Europe** and the **New Creative Europe Programme**[229] (see above, Section 3.3.2), the **2020** "**European Music Export**"[230] emerges as a crucial pillar in shaping a European sectoral approach to music. It intersects with various EU policy objectives, particularly those outlined in the **2018 New European Agenda for Culture**.[231] This agenda seeks to advance the cultural dimension of the EU and to tackle key societal and economic challenges through more integrated cultural policies. The New Agenda encompasses three objectives at the EU level that are inherently tied to activities related to music export: economic, external relations, and social dimensions. Economically, the focus is on supporting the CCS by enhancing mobility for cultural operators, strengthening the Creative Europe Guarantee Facility, fostering skill development, and promoting innovation. Regarding external relations, the strategy aims to increase cooperation with global institutions like UNESCO and Cultural Institutes, aligning with the **Joint Communication of the EU Parliament and the Council "Towards an EU Strategy**

[228] Hazucha, Branislav. "7 Cultural diversity and intellectual property rights." Cultural Diversity in International Law: The Effectiveness of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Routledge, 2014; Hazucha, Branislav. "Intellectual Property and Cultural Diversity: Two Views on the Relationship between Market and Culture." Intellectual Property Law and Policy Journal 26 (2010).

[229] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013", European Commission 2018 < https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0818 >; Music Moves Europe", European Commission, 2017, < https://ec.europa.eu/programmes/creative-europe/actions/music-moves-europe_en >.

[230] European Commission, Directorate-General for Education, Youth, Sport and Culture, Smidt, P., Sadki, C., Winkel, D. et al., Music moves Europe – A European music export strategy – Final report, Publications Office, 2020,< https://data.europa.eu/doi/10.2766/40788 >. See also: European Commission, Directorate-General for Education, Youth, Sport and Culture, Sadki, C., Hergovich, F., Sillamaa, V. et al., Implementing steps to develop and promote European music export – Final report, Publications Office of the European Union, 2023, <https://data.europa.eu/doi/10.2766/298177 >.

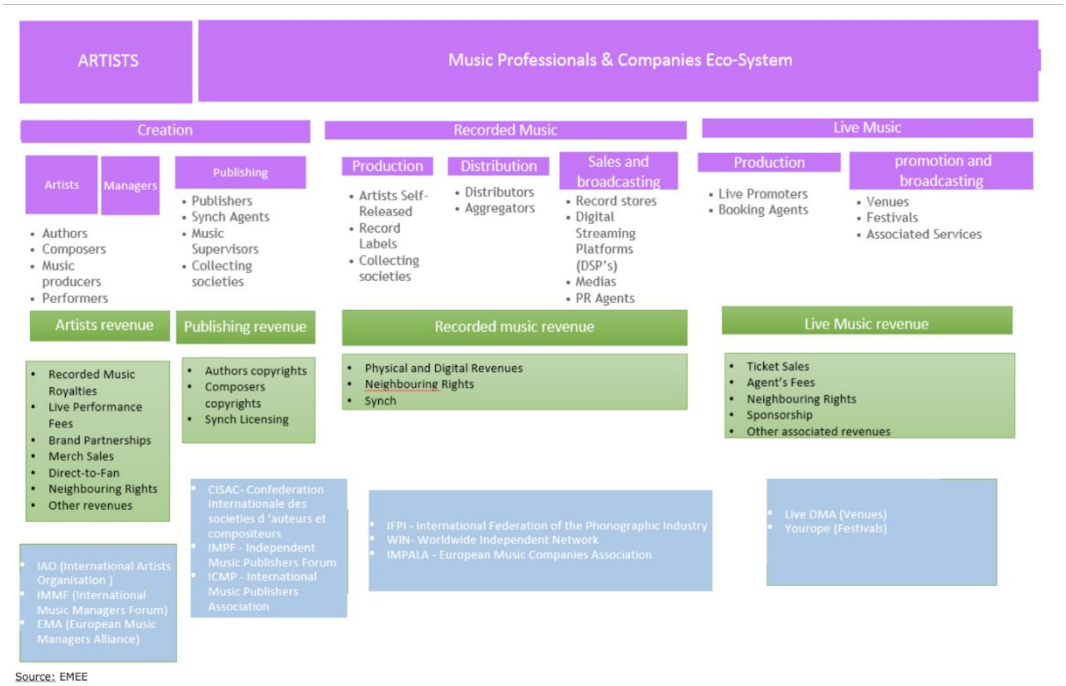
[231] European Commission, 'A New European Agenda for Culture. CELEX 52018DC0267.', - SWD(2018) 267 final (European Commission, 2018) https://culture.ec.europa.eu/document/a-new-european-agenda-for-culture-swd2018-267-final >.

for International Cultural Relations."[232] Lastly, the social dimension leverages on culture and cultural diversity for achieving social cohesion and well-being. This involves a particular emphasis on the role of music as a mean of communication across language barriers.

Additionally, other policy documents envision the international dimension of cultural policymaking at the EU level, highlighting the significant role of music export. For instance, the **2019 Council Conclusions on an EU Strategic Approach to International Cultural Relations**[233] provide a framework for key international actions by EU Member States and the Commission. As pointed out by the **European Music Export** report, music export not only enhances cultural diversity and promotes economic collaboration among cultural operators, but it also serves as an effective means to advance the European single market. This is achieved by creating incentives for EU **circulation of artists, professionals, audiences, and repertoires.** Against this, the report conducts a comprehensive and evidence-based study to formulate a European Music Export Strategy. The strategy aims to showcase and boost the diversity and talent within Europe's music scene on a global scale while simultaneously strengthening the competitiveness of the European music sector in the international market.

In the context of **European Music Export**, music export is defined as the process by which artists, their representative professional teams, and music companies generate revenue by selling their music in various forms beyond their national borders. Therefore, "music export" focuses on *artists* and *repertoire* crossing borders and the *revenue streams* generated through these activities. The sub-sectors that the **European Music Export** report focuses on are music publishing, recorded music, and live music. This approach aligns with the definition of the music industry adopted **in D1.1 Economy of Music in Europe**

Table 12: Overview of the Different Actors of the Music Market Ecosystem involved in Export Activities. Source: European Music Export (2020); EMEE.



[232] JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Towards an EU strategy for international cultural relations, JOIN/2016/029 final, 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN%3A2016%3A29%3AFIN >.

[233] Council Conclusions on an EU Strategic Approach to International Cultural Relations, ST/8361/2019/INIT, *OJ C 192, 7.6.2019,* < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0607(01) >.

Within the **Open Muse Europe Project**, the social dimension affecting the circulation of artists and talents is investigated within the framework of **WP3**, which deals with social and environmental sustainability, and the aspects related to the revenue streams pertains to the objectives of **WP1**, dealing with the economy of music in Europe. While both factors could indirectly influence and contribute to boosting diversity in the music industry, relevant to the goals of **WP2** - **D2.1. Music Diversity and Circulation** are the legal challenges associated with the circulation of *works*/*repertoires* and the activities of artists.

In this sense, the **European Music Export** points out at the following pieces of legislation as highly relevant for the circulation in the music sector:

- **CDSM Directive**. This directive addresses the challenges posed by the digital environment and introduces measures to ensure fair remuneration for artists and creators. It impacts on the circulation of repertoires/works online. The directive also enhances protection for individual creators, such as authors and performing artists, in their contracts with commercial partners such as producers, publishers, broadcasters, and record labels. In addition, the principle of appropriate and proportionate remuneration allows creators access to transparent information regarding the exploitation of their works, complemented by mechanisms facilitating fairer negotiations and distribution of revenues in future contracts. Overall, these measures aim to create a more balanced and transparent environment for creators within the digital landscape.
- **CMO Directive.** This directive establishes rules for the collective management of copyright and related rights, and the multi-territorial licensing of rights in musical works for online use within the internal market. The directive seeks to improve the overall efficiency of CMOs by implementing governance rules, transparency, and fiscal management practices. Additionally, it establishes uniform standards for the multi-territorial licensing of rights in musical works for online applications within the internal market. Consequently, the directive is designed to streamline and improve the circulation of *repertoires/works*, by promoting consistent and transparent practices in both collective management and multi-territorial licensing across the European Union.
- **Portability Regulation**. This regulation facilitates the accessibility of online content services, including music streaming services, for consumers travelling within the EU, ensuring cross-border portability. It positively impacts the circulation of *repertoires/works* by eliminating barriers related to geographical restrictions.
- **SatCab Directive II.** This directive facilitates the licensing of copyright and related rights in works and other protected subject matter applicable to online transmissions of broadcasting organisations and the retransmissions of television and radio programs. It seeks to contribute to the proper functioning of the internal market by allowing wider dissemination of television and radio programmes that originate in one Member State throughout other Member States, for the benefit of users across the EU. In doing so, it contributes to the facilitation and broader circulation of creative works within the digital broadcasting landscape.

In addition to these frameworks, this report has demonstrated that other legal frameworks could impact the circulation of works and that could act both as enablers or obstacles to it:

- **AVMSD**. This directive primarily focuses on regulating audiovisual media services, including television broadcasts and on-demand services, within the European Union (EU). However, even if the primary scope of the directive is on audiovisual content, it may have some indirect effects

on the **circulation** of music *works/repertoires* within Europe, especially in the context of audiovisual services that include music content. Music videos, concerts, or other music-related audiovisual content that are part of on-demand services may be subject to quota and other obligations.

- **Competition law**. **Articles 101 and 102 TFUE** carefully scrutinise how works circulate vis-à-vis the internal market goals. Competition law intervenes to recalibrate circulation obstacles an agreement between undertakings might produce. This could be the case where CMOs engage in discriminatory practices which limit the cross-border exploitation of foreign works/repertoires and the cross-border consumption of foreign content, ultimately impeding the circulation of diverse music content across Europe. Similarly, competition law could facilitate cross-border circulation by banning practices that limit interoperability between streaming providers or the setting of excessive prices for the consumption of repertoires, including the participation to live events.
- **International WTO/WIPO frameworks**. WTO members must adhere to national treatment and MFN principles, as outlined in the **GATS**, **GATT** and **TRIPS**. These principles call for non-discrimination between domestic and foreign authors, producers of goods or service providers. Within these agreements, cultural and media services often receive special consideration within trade agreements. Accordingly, different exceptions, commitments and exemptions apply. Countries must ensure that their measures, such as radio quotas, export restrictions and related export/import regulations, align with their international trade commitments and the limits given by the national treatment and MFN obligations.

These regulations collectively shape the legal landscape for music circulation in Europe, addressing various aspects from copyright protection and licensing to competition and international commitments. Developing any music export and EU-circulation strategy needs to consider such regulatory frameworks. As the **Europe Music Export** report advocates for the development of indicators, data collection mechanisms, and measurement frameworks (*Step 6*),[234] it underscores the importance of monitoring the actual effects of these norms in the circulation of works/repertoires and artist's activities. These would enable the design of export policies tailored to the music industry, providing a more accurate assessment of existing economic and cultural parameters, challenges, opportunities and areas of progress in the field of music export.

3.7 Measures Adopted in Selected OpenMusE Target Countries

This section provides an overview of regulatory tools enacted by selected Member States to enhance diversity in the circulation of musical repertoires, with a particular focus on provisions and initiatives that may influence the circulation and dissemination of musical content in three venues (radio stations, live performances, and streaming platforms), and on other measures that may contribute to achieving the same goal. To this end, a survey has been administered to partners of the consortium situated in

[234] European Commission, Directorate-General for Education, Youth, Sport and Culture, Smidt, P., Sadki, C., Winkel, D. et al., *Music moves Europe – A European music export strategy – Final report*, Publications Office, 2020,< https://data.europa.eu/doi/10.2766/40788>.

Bulgaria, Hungary, Lithuania, Slovakia and Ukraine. The focus is functional to the implementation of the pilot study in T2.3.[235] In M9-M12, this sub-section was complemented with the inclusion of:

- other topical domain and countries in the legal mapping (e.g. competition law, audio-visual law and international trade instruments), in light of their indirect impact and/or constraining effect on the implementation of diversity-oriented policies;
- other policy documents of the EU;
- best practices of diversity-oriented policies and measurements adopted by collecting societies (CMOs) and other industry-related stakeholders;
- overview of "diversity" in cultural policies of other EU and non-EU countries.

This supplemental analysis will allow refining the outcomes of the first four steps of the research and will lay the groundwork for the proposal of introduction/amendment of quantitative indications, and the identification of data gaps and data collection methods under step 5, to be carried also during the data collection phase for each targeted country.

In this sense, also the geographical scope of the analysis was broadened in M9-M12 to cover other countries not included in the original list devised for WP2, which have developed policies and practices that can be used as a benchmark and paradigm for devising new indicators and data collection methods capable of grasping and quantitively measure music diversity in a more effective fashion.

The following paragraph describes the main finding of the surveys conducted so far, and covering Bulgaria, Lithuania, Slovakia, Hungary and Ukraine, which were selected in light of their direct involvement in the pilot studies that will be conducted within WP2 in subsequent phases of the project. Further details on the sources mapped and analysed are included in **Annex II**.

3.7.1 Bulgaria

Bulgaria has no legal instrument introducing content obligation for radio broadcasts ("**radio quotas**").[236] However, in 2020, the Bulgarian Party „VMRO" ("ВМРО" in Bulgarian) put forward a proposal for amending the **Radio and Television Act (BRTA).**[237] This law has been in force since 1998 and regulates, among others, the activities of the public radio broadcaster in Bulgaria (**Bulgarian National Radio**).

The proposal introduced the obligation of broadcasting a minimum of one-third of all musical content broadcasted on radio and television**, either in Bulgarian language or** from a Bulgarian author. The amendment was ultimately rejected by the Parliament. It is worth mentioning that the proposal did not receive widespread support from stakeholders. Several entities, including the Association of Bulgarian Radio and Television Broadcasters (ABBRO), the national radio and television broadcasters, and the Council for Electronic Media voiced their opposition to the implementation of content quotas. Additionally, certain artists and musicians conveyed their dissenting perspectives on the matter.

[235] Specifically, to further pilot project to demonstrate the feasibility of increasing local artist representation in radio and streaming via trustworthy AI and evidence-based regulatory policy in a pilot project conducted in Slovakia, Lithuania, and non-EU country Ukraine (W7 – OEI requirement 1).

[236] Nevertheless, following the implementation of the Directive 2010/13/EU concerning the provision of audiovisual media services (Audiovisual Media Services Directive – "AVMSD"), under the Bulgarian Radio and Television Act, there are specific requirements for media service providers of on-demand audiovisual media services, and in the content of the television programmes.

[237] ЗАКОН ЗА РАДИОТО И ТЕЛЕВИЗИЯТА от 24.11.1998 г.138. The amendment proposal was formulated upon suggestion of MUSICAUTOR.

The Bulgarian Commission on Protection of Competition also reviewed the draft amendment. It concluded that the proposed amendment may restrict competition on the following grounds:[238]

- It may limit radio and television broadcasters in independently defining the music content broadcasted, and thus their concept and strategy to attract a larger audience;
- It may lead to a homogenisation of the radio and music TV programs, with those forced to change their concept to broadcast more Bulgarian music being exposed to the risk of losing their traditional audience, which may cause a drop in advertising revenues and their exit from the market;
- It may put Bulgarian artists in a privileged position compared to foreign ones and create geographical barriers to the free movement of goods and services;

The Bulgarian Commission on Protection of Competition also highlighted that the approval of the proposal would guarantee that the number of Bulgarian artists whose music is broadcast would increase. On the contrary, it maintained that it would be likely that the same artists would continue to be broadcast. It also expressed concerns that introducing such an amendment would redirect the audience towards foreign radio and TV programs or streaming platforms, and it would reduce incentives for Bulgarian artists to improve the quality of their music and, accordingly, their chances of entering international markets.

In 2022, the Bulgarian pro-Russian nationalist party "Vazrazhdane" introduced a fresh proposal to amend the same law.[239] The proposal stipulated that at least 60% of the Bulgarian National Radio airtime between 6 a.m. and 8 p.m. must be reserved for music in Bulgarian language created by Bulgarian composers and lyricists. According to the draft proposal, works in other languages would not fall within that obligation, even if created by Bulgarian authors. However, again, the Bulgarian Parliament rejected the proposal.

Bulgaria currently lacks a legal framework that imposes content obligations for **live performances or festivals**, and there have been no discussions or proposals regarding introducing such an obligation to date. Nevertheless, it is worth mentioning that Bulgaria contains some incentives for the **creation** and **performance** of music. These are contained in the Law on Radio and Television. In particular, Article 46(3) **BRTA** requires the Bulgarian National Radio to establish and maintain music bands which pursue sound recording and concert activities. Accordingly, Article 71(1) **BRTA** stipulates that the Bulgarian National Radio shall allocate no less than 5% of the subsidy from the state budget and the "Radio and Television" fund for the creation and performance of Bulgarian musical and radio drama works. Similarly, Article 71(2) **BRTA** demands to **the** Bulgarian National Radio to allocate up to 10% of the State budget subsidy and the financing from the Radio and Television Fund for the overall support of related music bands.

In Bulgaria, there is neither a content obligation in place nor a proposal for its introduction with regard to **streaming services**.

[238] The decision of the Commission on Protection of Competition (in Bulgarian only) is attached along with the survey (Annex II).

[239] The draft text of the amendment of the Bulgarian Radio and Television Act imposing quotas for Bulgarian music is available (in Bulgarian) at: https://www.parliament.bg/pub/plenary_documents/47-254-01-66_ZID%20ZRT.pdf

Interestingly, access to culture and participation in cultural life in accordance with one's own language, nation and ethnic origin enjoy a constitutional status in Bulgaria. The **Bulgarian Constitution**[240] establishes in Article 54(1) that "everyone has the right to benefit from **national** and universal cultural values, as well as to develop their culture in accordance with their **ethnic** affiliation, which is recognised and guaranteed by law". Furthermore, Article 36(2) recognises the right of citizens for whom the Bulgarian language is not their **mother tongue**, along with the mandatory study of the Bulgarian language, to study and use their own language.

In addition, music, songs and dances, including folk music, are protected as cultural heritage under the Bulgarian Cultural Heritage Law (BCHL). [241] Article 6 BCHL, in fact, includes under the scope of "cultural heritage" oral tradition and tongue, music songs and dances and folk music.

3.7.2 Lithuania

Lithuania has no legal instrument introducing a content obligation on radio broadcast ("**radio quotas**"). However, an attempt to introduce content quotas was made in 2018 by the conservative parliamentarian Vytautas Kernagis.[242] The draft proposal established the obligation to broadcast 35% of music in Lithuanian language or authored by Lithuanian residents. The proposal also required that at least 25% of that quota be produced in the previous three years. The draft also provided for a definition of "Lithuanian" content, which encompassed content that fulfilled any of the following criteria: a) performed in Lithuanian language; b) created or recorded in Lithuania, c) involves at least one main artist based in Lithuania, or d) pertains to works of special Lithuanian cultural context, that is, relates to the preservation and fostering of national and ethnic cultural identity.

This legislative initiative gained endorsement from parts of the creative industries, yet it encountered great resistance from commercial music stations predominantly featuring foreign music. In addition, Russian and Polish language stations questioned the rationale behind incorporating Lithuanian music into their programming, with the prescribed 35% quota being viewed as excessively stringent. An intense debate revolved around the definition of the notion of "Lithuanian" work. Furthermore, there were uncertainties surrounding the technical implementation of this proposal. Ultimately, the bill failed to secure the approval of the Parliament.

Lithuania currently lacks a legal framework that imposes content obligations for **live performances or festivals**. Likewise, there is neither a content obligation in place nor a proposal for its introduction with regards to **streaming services**.

Last, it shall be mentioned that Lithuania also holds several norms to protect and foster music-related cultural heritage objects. For instance, Article 37 of the Lithuanian Constitution[243] recognises the right of citizens who belong to ethnic communities to foster their language, culture and customs. Accordingly, the Professional Performance Art Law (2004)[244] preamble states that "Lithuanian's and other ethnicities'

[240] Bulgarian Constitution, *promulgated in 1991 and last amended in 2015*. Available at: https://www.parliament.bg/en/const

[241] Bulgarian Cultural Heritage Act *promulgated Prom. SG. 19/13 Mar 2009 and last amended amend. SG. 17/26 Feb 2021*). *Text of the Law is available in English at: https://mc.government.bg/files/3696_CulturalHeritageAct-Bulgaria.pdf*

[242] Lietuvos nacionalinių kūrinių kvotų įstatymo projektą (Lithuanian National Creative Works Quota Law). The proposal never reached the parliamentary discussion stage, but signatures in support of its discussion were collected.

[243] Lithuanian Constitution. Retrieved from: https://www.lrs.lt/home/Konstitucija/Konstitucija.htm

[244] Lithuanian Professional Performance Art Law. Retrieved from: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.235372/asr

cultural traditions should be cherished". The National Library's encyclopaedia holds a list of "ethnic Lithuanian instruments," though no specific measure for their protection could be traced.

3.7.3 Hungary

Sections 21-22 of Act CLXXXV of 2010 on Media Services and on the Mass Media regulates content obligations on radio broadcasts ("**radio quotas**"),[245] requiring linear radio media services to allocate to Hungarian musical works at least 35% of the transmission time dedicated to music. Out of this quota, at least 25% shall be from musical works released or produced within five years from the date of transmission, including musical recordings made before 1990 that have been remastered digitally within the same timeframe. Section 22 outlines exceptions to the radio quota obligation, which includes, for instance, the case of broadcasters operating in a language other than that of the Member States of the European Union, where its programs are broadcast in such language/s for the majority of the transmission time, and only to this extent.

For the purpose of the Media Services and Mass Media Act, Hungarian works are defined under Section 37 on the basis of a) the Hungarian national origin of production, b) the presence of one national composer or performer, c) is based on the minority population languages. These encompass all languages of nationalities recognised by Hungary, i.e. Romani people, Bulgarians, Greeks, Croatians, Poles, Germans, Armenians, Romanians, Rusyns, Serbians, Slovakians, Slovenians, and Ukrainians. To fall under the provision, the work or subject matter shall concern the life or culture of the given nationality in Hungary. Other criteria for defining "Hungarian" musical works refer to the case of instrumental musical program, which forms part of Hungarian cultural heritage or the culture of any of the nationalities recognised by Hungary, musical works with lyrics and instrumental musical works, which are recognised as Hungarian, and works originally produced in several languages, to the extent the parts originally produced in Hungarian are longer than any other parts produced in the other language(s).[246]

Hungary lacks a legal framework that imposes content obligations for **live performances or festivals**. The same can be said for **streaming services**. Indeed, music streaming services, like Spotify, Apple Music, Deezer, Tidal, YT Music etc. are not considered as Media Services by the act on Media Services and Mass Media.[247] Neither content sharing services like YouTube, Vimeo, Tik-Tok also do not fall under the scope of the act. TV channels and **Radios** on the other hand **are deemed as media services**, therefore national quotas do apply to them, even if they are solely broadcasted online. The same applies to SVOD services, like Netflix, HBO Max etc. According to the definition in the act, media services, be it linear or on demand, must provide edited programs to the viewers/listeners. Content sharing services or music streaming services are not conveying programs, but individually accessibly works.

[245] Act CLXXXV of 2010 - on Media Services and on the Mass Media Act entered into force on 1st of January 2011. Retrieved from: https://net.jogtar.hu/jogszabaly?docid=a1000185.tv.

[246] See details in articles §37 and §38 of the Media Services and Mass Media Act.

[247] The Media Services and Mass Media Act defines Media service' as an economic service defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, pursued commercially on own account - performed on a regular basis under economic exposure with a view to making a profit -, where the principal purpose of the service or a dissociable section thereof is devoted to providing programs, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks.

Hungary also features a provision that protects music-related cultural heritage objects. The Act on Hungarian National Values and Hungarikums[248] particularly refers to folk-dance house methods, Hungarian operetta, Traditional Hungarian folk songs, Budapest Gypsy Symphony Orchestra (the world-renowned artistic and tradition-preserving practice of the orchestra), Tárogató (special Hungarian woodwind musical instrument), Hungarian dulcimer, Kodály Concept.

3.7.4 Slovakia

Act. No. 264/2022 Coll. on media services and amendments to certain laws (Act on Media Services),[249]regulates in Sections 215-217 content obligations on radio broadcasts ("**radio quotas**"). These provisions distinguish between a "general quota" and a "public service" quota, the former requiring that at least 25% of the music broadcasted each calendar month from 6 am to 12am is reserved to Slovak musical works, the latter increasing the quota to 35% in case of public service broadcaster (public service quota). Out of these quotas, in both instances, at least 20% should be reserved to "new" "Slovak" musical works, which is defined as such within five years of its publication. The law defines "Slovak" a work where: a) at least one author of the music or at least one author of the text has or had a permanent residence in the territory of the Slovak Republic, or b) the text is in Slovak. It has been suggested that when it comes to the practical assessment on what is considered a Slovak musical work, ascertaining the permanent residency of authors within the Slovak Republic can be challenging. Thus, more legislative guidance in this regard would be welcome.

A caveat that has been outlined within the provision on radio quotas is the lack of alignment between the Law on the Protection of Languages of National Minorities **ACT No. 184/1999 Coll.)**,[250] and the Act on Media Services. The provisions of radio quotas enshrined in the latter do not apply to the broadcasting of a radio program service by a public broadcaster, when this is intended exclusively for national minorities and ethnic groups living in the territory of the Slovak Republic. However, the protection of the language rights of national minorities in the Slovak Republic is ensured by the Office of the Government of the Slovak Republic, which, in accordance with the Law on the Use of the Languages of National Minorities, provides professional and methodical assistance to public administration bodies and organisational units of the security and rescue forces in the implementation of the law (§7a), and also decides on administrative offences committed in the support for the use of languages of national minorities (§7b). According to §1(2), the **language of a minority** is a codified or standardised language traditionally used in the territory of the Slovak Republic by citizens belonging to a national minority, which is different from the state language. The same article specifies that the minority languages are Bulgarian, Czech, Croatian, Hungarian, German, Polish, Romani, Ruthenian, and Ukrainian.

[248] Act XXX of 2012 on Hungarian national values and hungarikums, entered into force on 1st of July 2012. Retrieved from: http://www.hungarikum.hu/sites/default/files/hungarikumok-lista_2021.01.22.pdf

[249] *Zákon č. 354/2022 Z.z. o mediálnych službách a o zmene a doplnení niektorých zákonov (zákon o mediálnych službách).* This Act transposes the 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 (Audiovisual Media Services Directive – "AVMSD") into the Slovak legal order.

[250] *ZÁKON č.184/1999 Z. z. z 10. júla 1999 o používaní jazykov národnostných menšín (*ACT No. 184/1999 Coll. from July 10, 1999 on the use of languages of national minorities).

Slovakia currently lacks a legal framework that imposes content obligations for **live performances or festivals**. Likewise, there is neither a content obligation in place nor a proposal for its introduction with regards to **streaming services**.

Slovakia features some measures designed to offer support to the creative sector, encompassing the music-related industry. However, this measure is of an indirect nature, for it bolsters the overall music industry rather than exclusively promoting individual "Slovak" musical artists or content.[251] Amongst them, it is worth mentioning the **Fund for the Support of the Culture of National Minorities,**[252] which provides economic support for activities such as the development of the use of the languages of national minorities, also in the artistic creation and musical arena.

3.7.5 Ukraine

With Law on Media No. 2849IX, in force since 31 March 2023,[253] Ukraine has introduced content obligations on radio broadcast ("**radio quotas**"). The law has been implemented following to the European Union – Ukraine Association Agreement.[254] Specifically, its article 40(3) requires all broadcasters to broadcast a minimum of 40% of the daily number of musical compositions within the timeframes 7am-2pm and 3pm-22 pm in Ukrainian language. In addition, the law states that radio stations operating upon a license that mandates that 60% of their broadcasted music is in any EU official language must ensure that at least 25% of the daily number of songs is reserved to works in Ukrainian language. The National Council of Television and Radio Broadcasting is entrusted with the monitoring and evaluation of the radio stations' compliance with the quotas.

It is worth noting that the law strongly focuses on the linguistic factor. Instrumental music is not included in the content quota, even when it has been released by an artist bearing Ukrainian nationality. Likewise, the law does not contemplate any gender or genre quota, neither is there an obligation to broadcast content made in the language of indigenous people.

Despite their exclusion, however, certain works can qualify for other types of economic incentives and support schemes for their production, managed by the Ukrainian Cultural Foundation. More specifically, Law No. 2310-IX "On amendments to some laws of Ukraine regarding the support of the national musical product and the restriction of public use of the musical product of the aggressor state"[255], in force since 31 March 2023, introduces economic support for artists creating "national music product". According to Section 15, this term encompasses a work, such as a phonogram, including video grams and video-clips, which contains a musical work in Ukrainian language or any other language of

[251] *In Slovak – Zákon č. 13/1993 Z.z. z 21. decembra 1992 o umeleckých fondoch* (Act No. 13/1993 from December 21, 1992 on Art Funds), *ZÁKON č. 284/2014 Z. z. z 12. septembra 2014 o Fonde na podporu umenia a o zmene a doplnení zákona č. 434/2010 Z. z. o poskytovaní dotácií v pôsobnosti Ministerstva kultúry Slovenskej republiky v znení zákona č. 79/2013 Z. z* (Act No. 284/2014 from September 12, 2041 on the Fund for the Support of Art and on Amendments to Act No. 434/2010 Coll. on the provision of subsidies within the purview of the Ministry of Culture of the Slovak Republic as amended by Act No. 79/2013 Coll.), *ZÁKON č. 189/2015 Z. z. z 1. júla 2015 o kultúrno-osvetovej činnosti* (Act No. 189/2015 Coll. from July 1, 2015 on cultural and educational activities).

[252] *ZÁKON č. 138/2017 z 10. mája 2017 o Fonde na podporu kultúry národnostných menšín a o zmene a doplnení niektorých zákonov (*Act No. 138/2017 Coll. from May 10, 2017 on the Fund for the Support of the Culture of National Minorities and on Amendments to Certain Laws).

[253] Law of Ukraine "About media" № 2849-IX. Retrieved from: https://zakon.rada.gov.ua/laws/show/2849-20#Text

[254] Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, *OJ L 161, 29.5.2014.*

[255] Law No. 2310-IX, "On amendments to some laws of Ukraine regarding the support of the national musical product and the restriction of public use of the musical product of the aggressor state" of 31 March 2023. Retrieved from: https://ips.ligazakon.net/document/view/T222849?bl=

indigenous peoples in the Ukrainian territory, or a musical work without a text, as long as: a) at least one of the performer is a Ukrainian citizen, or a foreign natural person temporarily or permanently residing in Ukraine, b) the work belongs to a legal entity registered according to Ukrainian law.

It has been reported that it is still too soon for an in-depth analysis of the effect of the content quota requirements. However, an analysis of the New Music Friday playlist on Spotify in Ukraine in August 2023 conducted by Music Export Ukraine, shows that fifty-seven per cent of all playlists are in Ukrainian language. In terms of gender distribution, of the above percentage, the majority of songs are performed (53%) and written (58%) by males. The gap between gender is narrower in performance than in songwriting. Indeed, women accounts for thirty-eight percent of performances against twenty-four percent in songwriting. The remaining amount refers to mixed contributions (9% for performances, 18% for songwriters). As to genre, pop-genre predominates (63,7%).

Ukraine currently lacks a legal framework that imposes content obligations for **live performances or festivals**. Likewise, there is neither a content obligation in place nor a proposal for its introduction with regards to **streaming services. Nevertheless, it shall be noted that due to the ongoing conflict between Ukraine and Russia,** the broadcast of Russian music has been banned. This measure affects only public spaces, such as bars, restaurants, theatres and shops, but it does not affect streaming services. Streaming services are, however, required to take down music content from the Ukrainian territory where the performer artist is under Ukrainian sanctions.[256] A public debate is currently taking place in Ukraine about the opportunity to prohibit of Russian music on streaming sites.

Ukraine also holds a provision which protects music-related cultural heritage objects as cultural heritage. For instance, the Order of Ministry of Culture of Ukraine no. 1319 of 11 November 2017 (“On the approval of the Procedure for maintaining the National List of Elements of the Intangible Cultural Heritage of Ukraine”) protects as cultural heritage objects Cossack songs of Dnipropetrovsk region, Song tradition of Luka village of Kyiv-Sviatoshyn district, Kyiv region, the art of making a sound clay toy "Valkivsky fistula". Protection also encompasses the performing klezmer music of the Podilskyi (Kodimskyi) district of the Odesa region and Kobzarstvo, which is a singing tradition with national instruments.

3.8 Best Practices from other States

In order to lay the groundwork for the development of policy recommendations on the amendment of existing indicators and the introduction of new ones, the analysis conducted under T2.1 has been expanded in M10-M12 to include also (a) the analysis of best practices developed by countries also outside the EU to be used as a model for the development of policy recommendations; and (b) a survey of diversity-oriented policies and measurements implemented by representative organizations of collecting societies (CMOs) and, where available, by CMOs in specific countries, which should be highlighted for their originality and success in fulfilling music diversity, and may thus be used, again, as a model for the development of policy recommendations.

3.8.1 Australia

Australia, Canada (Québec), Sweden, and the UK have comparatively well-developed national music diversity, circulation, and export agendas. Practices in Canada are analysed below. Attention will be

[256] The full list of these artists is available here: https://sanctions.nazk.gov.ua/en/sanction-person/?country=ua&date_from=06-25-1033&date_to=07-28-2023#filters

paid to good practices in Australia during the data collection phase of the work package, following this example.

3.8.2 Canada (Québec)

- **Overview of Canada's Policy Model**

In Canada, cultural governance is a collaborative effort among different government levels. While the federal government exclusively deals with national cultural policies, this does not hinder the concurrent development and execution of cultural initiatives by provincial, territorial, and municipal authorities within their respective boundaries and areas. This decentralised approach fosters active participation in culture and citizenship across governmental tiers. The country's cultural policies are structured into three main levels: federal, provincial, and municipal, each demonstrating varying degrees of involvement and distinct priorities, particularly in response to digital shifts.

While Canadian cultural policy lacks a singular statement of objectives, the federal government backs two key outcomes: the expression and sharing of diverse cultural experiences among Canadians and globally, and the cultivation of an inclusive society grounded in inter-cultural understanding and citizen participation. The Department of Canadian Heritage and the Federal Cultural Portfolio are driven by a mission to contribute to a united and creative Canada, where all citizens can engage in cultural and civic life. The first objective, centred on cultural expression, encompasses four key activities: creating Canadian content and promoting performance excellence, ensuring the sustainability of cultural expression and participation, preserving Canada's heritage, and facilitating access to and participation in the nation's cultural life. The second objective focuses on inclusion, promoting intercultural understanding, community development, capacity-building, and community engagement. Notably, a common thread across both objectives and activities is the emphasis on participation, be it civic or cultural.[257]

Canada has a long history of relying on communications media as a tool for nation-building and cultural development. **Canadian Radio-television and Telecommunications Commission (CRTC)** policies and regulations help to maintain a French-language presence on radio and provide exposure for francophone artists. For example, under the **Broadcasting Act (1991)**,[258] each licensed French-language station must devote at least 35% of the popular music of its weekly music broadcasting to Canadian content and the French language. The required amount depends both on the type of radio station and the type of music it broadcasts: French-language radio stations must devote at least 65% of all popular music broadcasts each week to French-language selections. Commercial radio stations also must ensure that at least 55% of the Popular Music broadcast between 6:00 a.m. and 6:00 p.m. Monday to Friday consists of French-language selections.

In April 2023, the Canadian government enacted legislation amending the **Broadcasting Act 1991** to encompass internet video and digital media. The newly approved **Online Streaming Act** (2022)[259] aims to prioritise accessibility, promote Canadian content and cultural diversity, and enhance the CRTC authority. A core objective of the Act is to safeguard and boost Canadian content and cultural diversity in the realm of online streaming. Accordingly, the law requires utilising Canadian content and improving the discoverability of such content on streaming platforms. The bill requires the CRTC's to engage with

[257] Based on information provided by the Compendium of Cultural Policies (2019) <https://www.culturalpolicies.net/country_profile/canada-1-1/ >.

[258] Broadcasting Act (S.C. 1991, c. 11), < **https://laws-lois.justice.gc.ca/eng/acts/b-9.01/** >.

[259] Online Streaming Act (S.C. 2023, c. 8), <https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2023_8/ >.

minority and Indigenous communities to foster the creation, availability, and discoverability of programming from these groups. Furthermore, the legislation requires streaming platforms to incorporate features like closed captioning and audio descriptions to support diverse and disabled communities. This includes focusing on providing options in English, French, and Indigenous languages.

Notably, indigenous artists from **Québec** have been currently advocating for CRTC and cultural institutions in Québec and Canada to implement a 5% minimum quota for Indigenous music content on commercial radio in the country.[260] This demand aligns with the **Broadcasting Regulatory Policy CRTC 2022-332,**[261] issued on December 7, 2022. While this policy encourages but does not mandate, commercial radio broadcasters to incorporate Indigenous music into their playlists and report annually on the quantity of Indigenous content aired, in the policy document, the CRTC acknowledged its responsibility in ensuring increased support and representation of Indigenous content and voices within mainstream radio broadcasting. The CRTC is committed to gathering information on various funds and initiatives supporting, promoting, and ensuring the sustainability of the Indigenous broadcasting content sector. This commitment involves launching a follow-up proceeding to explore implementing a tailored contribution system.

- **Québec**

The province of Québec stands out from the other provinces due to the breadth of its cultural intervention. Québec has its own bodies of cultural governance, including the **Ministère de la Culture et des Communications** (**MCCQ**). The paramount role of language in society, particularly the recognition of French as the exclusive official language of the Québec government, serves as a key driver for the robust and active support extended by successive Quebec administrations across the cultural sector.

Québec's cultural policies were first developed around heritage and the arts and then were extended to other areas, such as education and community development, but also – and increasingly since the 1980s – cultural industries and digital technologies. Québec's engagement extends globally through active collaboration with la Francophonie and UNESCO.[262] The province distinguishes itself by maintaining a sustained strategy for supporting the international tours of performing arts, a unique approach compared to sporadic support from some other provinces. Support for performing and visual arts organisations and festivals is notable in major urban centres like Montreal, Toronto, and Vancouver, as well as other locations throughout Canada.

In 2014, the MCCQ issued its **Digital Cultural Plan**,[263] funded with CA$100 million over seven years. This strategy was partly implemented by the ministry and its regional branches (51 of them), but beyond that, the policy brought together 121 targeted measures deployed from 2014 to 2019.[264] Quebec's Digital Cultural Plan was focused mainly on developing the cultural offer (production, visibility, and influence of Quebec-made content in Québec, Canada, and internationally). Specifically for the music

[260] Marie-Ève Marte, Une pétition pour un quota de musique autochtone en ondes, L'actialité (august 2023), <https://lactualite.com/actualites/une-petition-pour-un-quota-de-musique-autochtone-en-ondes/ >.

[261] Broadcasting Regulatory Policy CRTC 2022-332 (7 December 2022), < https://crtc.gc.ca/eng/archive/2022/2022-332.htm >.

[262] UNESCO, Government of Québec Cultural Policies and Measures (2012), < https://es.unesco.org/creativity/policy-monitoring-platform/government-quebec-cultural-0 >.

[263] UNESCO, Québec's Digital Cultural Plan (2016) < https://es.unesco.org/creativity/policy-monitoring-platform/quebecs-digital-cultural-plan >.

[264] UNESCO, Québec's Digital Cultural Plan (2020), < https://es.unesco.org/creativity/policy-monitoring-platform/quebecs-digital-cultural-plan-0 >.

industry sector, the Action Plan aimed to increase support for businesses adapting to digital technologies and enhancing content.

In 2018, the MCCQ promulgated a new cultural policy, the **2018-2023 Culture Action Plan**[265] that, among others, places cultural participation at the core of its strategy. The **2018-2023 Culture Action Plan** also devotes significant attention to promoting and highlighting the French language. It furthermore aims to support the cultural sector by facilitating its adoption of digital technology, including developing a strategy to enhance the visibility and discoverability of Francophone content from Québec on digital networks.

These three main groups of goals are summarised in the table below.

Table 16: Goals and Facets of 2018-2023 Cultural Action Plan
Source: SSSA Adaptation (2023)

	Goal	Facets Covered
1	**Produce and Disseminate National Cultural Content**	○ Crowdfunding platforms (public as producers) ○ Visibility in social media (public as promotional agents) ○ Micro-targeting and taste prediction (public as data suppliers)
2	**Promote Cultural Equity and Diversity**	○ Democratisation of culture ○ Cultural democracy
3	**Promote Digital Equity**	○ Access to internet connection ○ Digital literacy ○ Diversity of platforms uses

The second and third goals, focused on encouraging equity and cultural diversity and encouraging digital equity, refer to the social and political dimensions of participation. These objectives are addressed at both provincial and local levels. Pertinent to this report is the first goal of the **Action Plan**: **produce and disseminate national cultural content.** It builds on a proposal initially advanced by stakeholders from the audiovisual sector. It seeks to promote the production, market presence, and discoverability of Québec content by actively involving online audiences. This form of governmental action aims to support, mainly from an economic perspective, the development of skills and tools within local professional circles to help them increase their online presence and encourage the public to support them. Actions are concentrated around three main mechanisms: crowdfunding of cultural productions, social or relational marketing, and online micro-targeting.

[265] Parti Libéral Québec, Québec New Cultural Policy - Making Culture more rooted in Everyday Life (2018) <https://plq.org/en/press-release/quebec-new-cultural-policy/ >.

- **Crowdfunding**: This measure seeks to rely on the public through crowdfunding for supporting cultural projects and as a means of self-production for artists and diversifying revenue sources for cultural organisations. Returns of investments for contributors might range from free tickets, albums, or promotional materials such as posters and t-shirts, premium access to the beta version of a video game, exclusive props in the game, or a share in the profit on sale, depending on the financial contribution and the kinds of compensation offered in the specific scheme. Some authors[266] have pointed out that even if few successful examples of implementation exist, particularly in the book-publishing, visual art, dance and theatre sectors, these funding campaigns demand substantial effort in terms of time and skills. In some cases, the associated costs may exceed the revenues generated, and there appears to be a relatively high dropout rate among participants.
- **Social Media**: This measure builds on the premise that the visibility of cultural content published in news feeds, recommendation lists, and search results depends on users' engagement rates and exposure rates on these platforms. Accordingly, the **Québec Action Plan** actively promotes enhancing communication and marketing skills on social-digital platforms, particularly on platforms like Facebook. Within this measure, cultural professionals are provided with training modules that guide them on communication strategies, audience targeting or profiling, online advertising procurement, and understanding how the content-display algorithms that govern online visibility plans operate. This initiative aims to empower creators and authors with the tools to effectively navigate and leverage digital networks, ensuring their content receives optimal exposure and engagement. Specifically, strategies for increasing visibility involve replicating content on socio-digital networks through likes, content sharing, comments, and user tagging. They also include skills and competencies for engaging the audience in subscribing to artists' profiles and curating reading lists on music and video streaming sites, live sharing and using like livestreaming video game segments on Twitch, creating ephemeral 'stories' on platforms such as Instagram, and engaging in live conversations on WhatsApp during TV programs. Lastly, strategic areas involve learning to engage in reviews in various formats such as videos, podcasts, or blog posts.
- **Micro-targeting:** this measure aims to capture traces of human activity using Internet-connected tools (mobile phones, computers, watches, and other items on the Internet of objects) to produce digital data subsequently gathered in aggregated databases. Mechanisms may include integrating sociodemographic data about audiences (such as age, gender, location, and income) with behavioural data, including cultural tastes and preferences (such as online consumption of cultural content categorised by gender, ticket sales for different types of shows, and records of borrowed library books). They can also extend to gathering from the online browsing the types of devices used for cultural content consumption (such as phones, tablets, and computers), real-time consumption facilitated by GPS data from phones and RFID chips, and the modes of transportation used to access cultural venues (covering factors like parking payments, self-serve bicycle rentals, and public transit usage) to infer purchase intentions.

[266] Nathalie Casemajor, Guy Bellavance and Guillaume Sirois, 'Cultural Participation in Digital Environments: Goals and Stakes for Quebec Cultural Policies' (2021) 27 International Journal of Cultural Policy 650.

3.8.3 Sweden

Attention will be paid to good practices in Australia, Sweden, and the UK during the data collection phase of the work package, following the example of Canada above.

3.8.4 United Kingdom

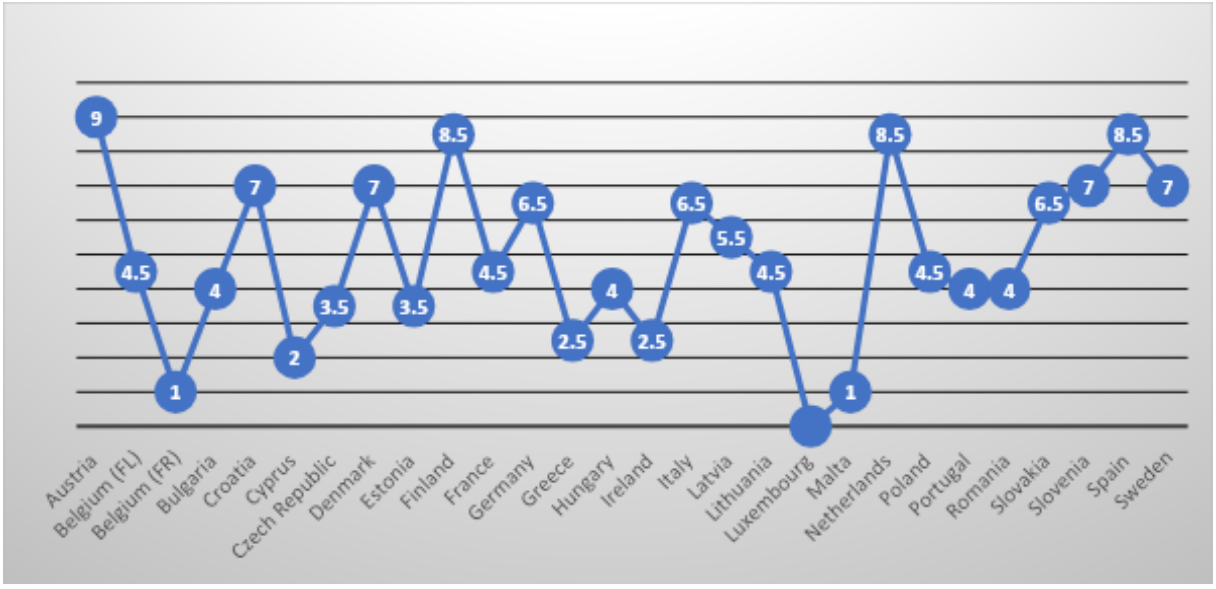
Attention will be paid in Australia, Sweden, and the UK during the data collection phase of the work package, following the example of Canada above.

3.8.5 Overview of "Diversity" in Various EU Member States' Cultural Policies

In addition to the measures of the selected countries enshrined in the previous sections, **Annex III** provides an overview of the cultural policies adopted in various EU Member States.[267] This mapping is functional to understand the state of cultural policies across the EU, as the scarcity of data on music diversity might be linked to scarce cultural policies. The data, updated until 2018, stems from the Compendium of Cultural Policies & Trends (*Compendium)*,[268] which is a comprehensive database managed by a multi-stakeholder's association. The *Compendium* generates and reviews policy standards in areas of concern to governments and society by providing knowledge, statistics, comparisons, resources, thematic sections which derives from a variety of sources including research studies, governmental documents and reports by ministers and other key representatives, reports or manifestos of lobby and advocacy groups, important statements from artists and cultural producers, from political campaigns or the media.

For the purposes of D2.1., the data related to four macro-areas: 1) Cultural policies for gender equality; 2) Intercultural education, 3) Laws and policies to support main national minority groups and 4) linguistic media and programming have been selected and indexed into a single table.

Table 13: Index EU Countries Policy
Source: SSSA Adaptation (2023)

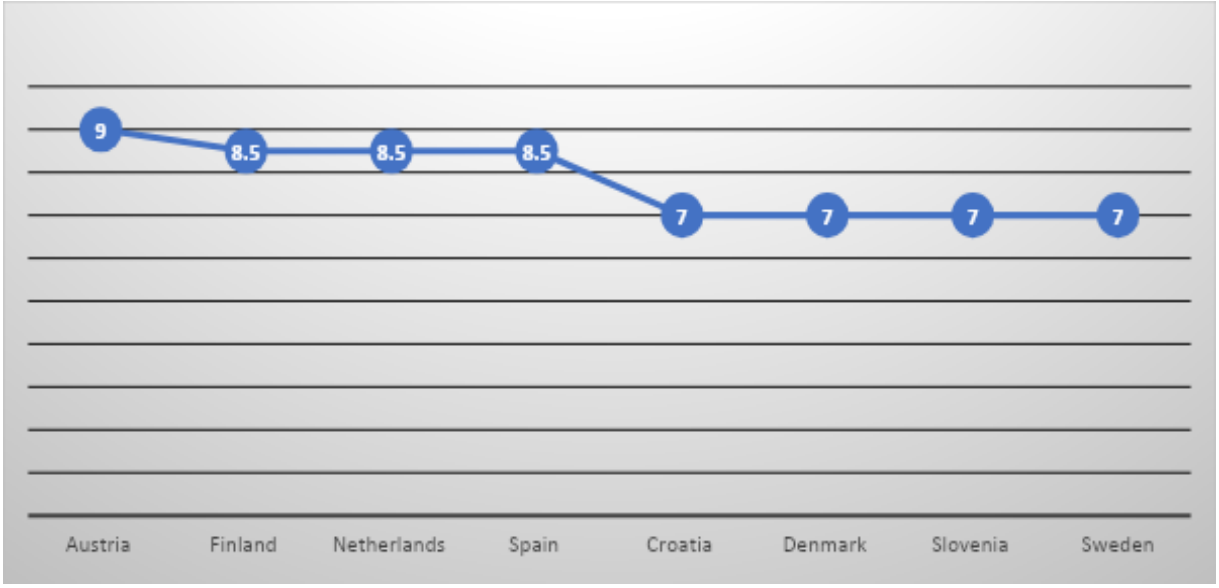


The results show that Austria, Finland, the Netherlands, Spain, Croatia, Denmark, Slovenia and Sweden rank among the countries with more robust cultural policies covering those areas:

[267] There is no data available relating to Luxembourg.

[268] Available at: < https://www.culturalpolicies.net/statistics-comparisons/comparisons/diversity/#1563299350066-531a3aea-5d18 >.

Table 14: Top five Index EU Countries Policy
Source: SSSA Adaptation (2023)



However, when analysing in detail the macro-area related to laws and policies to support main national minority groups, of the "top five," only Austria, Finland, Slovenia and Sweden maintain their primacy. Other countries adopting measures targeting minority groups are Belgium, Estonia, Latvia, Lithuania, and Slovakia:

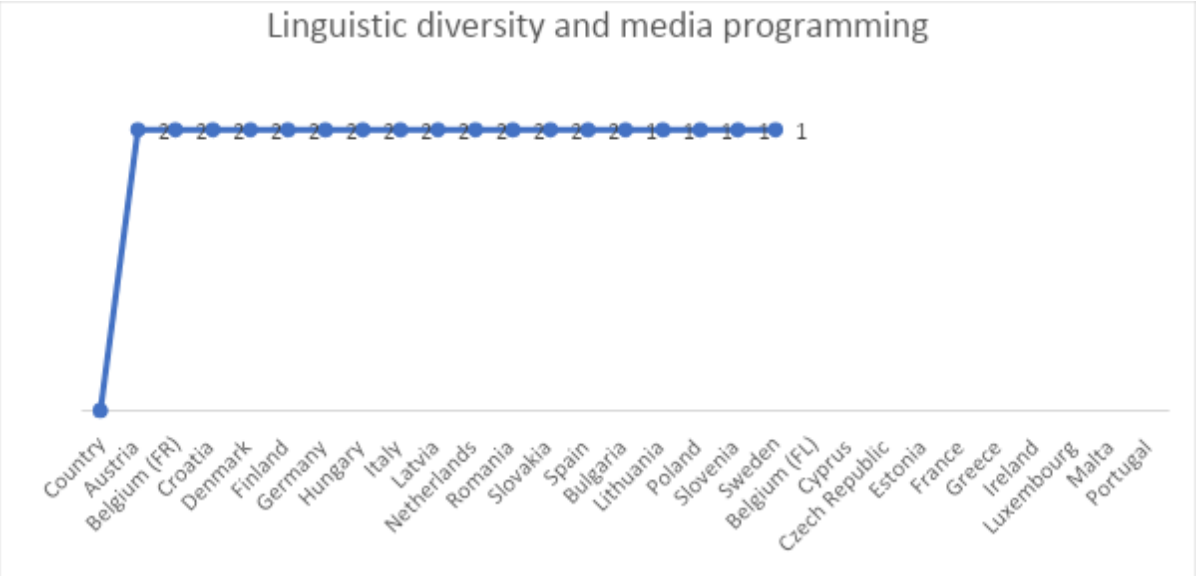
Table 15: Index Laws & Policies for Cultural Minority Groups
Source: SSSA Adaptation (2023)



Looking specifically measures relating to linguistic diversity and media programming, results are polarised between those countries which have adopted some type of measures (Austria, Belgium (FR), Croatia, Denmark, Finland, Germany, Hungary, Italy, Latvia, the Netherlands, Romania, Slovakia and

Spain) and those which have no measures of any kind (Belgium (FL), Cyprus, Czech Republic, Estonia, among other):

Table 16: Index Linguistic Diversity and Programming
Source: SSSA Adaptation (2023)



Details for each country are available in **Annex III.**

3.9 Measures Adopted by CMOs and other Industry Stakeholders

The exclusive rights of authors to use their works and to authorise others to do so are fundamental elements of copyright and related rights. Rooted in the premise that, in some instances, it would be highly complex – if not impossible– for individual authors to effectively enforce their rights, the idea of collective rights management originated in France at the end of the 18th century, when playwrights organised themselves against theatres for the recognition of their economic and moral rights.[269] This led to the establishment of the *Bureau de Legislation Dramatique* – later to become the *Société des auteurs et Compositeurs Dramatiq*ues (SACD) – as the first society to deal with the collective management of authors' rights. The early French CMOs served as a model for a network of national authors' societies, which eventually spread throughout large parts of the world.

Whereas rights holders are, in principle, free to decide whether to exercise their rights individually or collectively, in specific instances, mandatory collective rights management is prescribed by copyright legislation.[270] CMOs are, thus, valuable to authors and rights holders. They deal with royalty payments, including administration, monitoring, collection, and distribution for all rights holders the CMO directly or indirectly represents. For users, CMOs facilitate clearance of rights, making it easier to access works through one or a small number of sources, usually at a lower transaction cost compared to the sums they would need to invest if they would deal with each rightsholder separately.

Beyond economic functions, CMOs also have significant cultural and social roles. As a 2009 **Study on Collecting Societies and Cultural Diversity in the Music Sector**[271] noted, music rights licensing might affect cultural diversity. This suggestion is based on the premise that music rights management may have significant repercussions on creative activity and the market availability of diversified musical content. It has been noted that the business model used for collecting and distributing revenues to right holders can affect the volume of creative output and condition the presence of different types of music repertoire in the market. At the same time, **Graber**[272] maintained that the cultural and social funds that most CMOs have established resemble trade union practices. These funds are sustained by deducting approximately 10% from the total revenues of a CMO and are used to subsidies creative projects, especially those of young artists, or to provide assistance to members in need of economic aid.[273]

[269] For an illustrative account of the history of collecting societies, see Mihály Ficsor, *Collective Management of Copyright and Related Rights* (Geneva: World Intellectual Property Organization, 2002), pp.18–19, 57–58.

[270] While international treaties on copyright and related rights do not explicitly mention collective management, the diplomatic conferences considered the collective management of rights related to broadcasting, secondary uses of broadcast works, and the "mechanical right" in musical works. This consideration is evident in the adoption of the provisions of Articles 11bis (2) and 13(1) of the Berne Convention, which permit the application of compulsory licensing and mandatory collective management for these specific rights. See: World Intellectual Property Organization (WIPO) (2022). Collective Management of Copyright and Related Rights, third edition. Geneva, < https://www.wipo.int/edocs/pubdocs/en/wipo-pub-855-22-en-collective-management-of-copyright-and-related-rights.pdf >.

[271] Hellenic Foundation for European and Foreign Policy and others, 'Collecting Societies and Cultural Diversity in the Music Sector' (European Parliament 2009) Study European Parliament's Committee on Culture and Education IP/B/CULT/IC/2008_136 https://www.europarl.europa.eu/thinktank/en/document/IPOL-CULT_ET(2009)419110 .

[272] Graber, Christoph B. "Collective rights management, competition policy and cultural diversity: EU lawmaking at a crossroads.", (2012) 4 W.I.P.O.J, Issue 1 p-35-43.

[273] Graber, Christoph B. "Collective rights management, competition policy and cultural diversity: EU lawmaking at a crossroads.", (2012) 4 W.I.P.O.J, Issue 1 p-35-43. (noting that the CISAC model contract for reciprocal representation agreements between CISAC members provides the possibility to reserve up to 10 per cent of the collections for social or cultural ends. See below, best practices, CISAC model)

This section looks at best practices suggested or adopted by CMOs or representative associations that could impact on cultural diversity. The analysis is based on publicly available documents prepared by major international organisations such as WIPO, and international organisations representing rightsholders such as CISAC and GESAC. To the extent these documents provide insights into measures adopted with CMOs in EU Member States, these will be reported with a specific focus on national practices adopted by the countries covered in this study.

3.9.1 WIPO Toolkit for CMOs (2021)

In September 2021, WIPO published a new version of its **Good Practice Toolkit for Collective Management Organisations** (Toolkit). The new edition embeds the contributions of WIPO Member States and other stakeholders, collected during a consultation process in 2021. It aims to compile "examples of legislations, regulations and codes of conduct in the area of collective management of copyright and related rights from around the world and distil them into examples of good practice." The toolkit has no normative nature. Member States and other stakeholders may "choose an appropriate approach in view of their country's particular circumstances and decide on their own infrastructure for collective management".

The first section looks at the role of CMOs. Whilst recognising that their primary function is rights management, the document highlights their role in promoting culture and education. The relationship with members is explored in more detail in later chapters, which strongly emphasise the need for openness, non-discrimination, and transparency. According to the Toolkit, CMOs should restrict authors' freedom to decide how to exercise their rights only when it is objectively justified. It suggests that members ought to have a voice in the CMO governance, and on matters such as the selection of the board, salary scales, and terms of calculation of their remuneration. The Toolkit also recommends cooperation amongst CMOs to ensure transparency and fair terms of remuneration, invites CMO to provide a wide range of information to users and licensees, suggests best practices - including license pricing -, and emphasises the importance of establishing complaint mechanisms. The document's final section, comprising six chapters, focuses on good governance practices related to decision-making and regulation.

Specifically, the Toolkit contains recommendations related to the supervision and monitoring of CMOs (Section 13), transparency in revenue distribution (Good Practice Tool 9), and compliance with national treatment obligations (Good Practice tool 16 and 17). It also contains new recommendations on providing information to potential licensees (Good Practice Tool 63), and the need for evidence to support assertions such as the effect of CMO activities on national economies and cultural diversity (Good Practice Tool 4 and 8). Additionally, there is a handy new glossary of international identifiers (such as ISBN and ISSN), exchange formats and protocols, and industry IT standards to help document and manage the licensed repertoire and revenue distribution (Appendix 1).

Table 17: Best Practices CMO
Source: SSSA Adaptation (2023)

Aspect Covered	Recommended Best Practice	Examples of Best Practices
(Cultural) Role of CMOs	**Best practice n. 4** Acknowledge in CMOs and Stakeholders statues the objective and role of promoters of culture, by providing social, cultural and	**European Union, Recital 3, Directive 2014/26/EU on collective rights management and multi-territorial licensing of rights in musical works for online uses (EU Directive 2014/26/EU):**

	educational services for the benefit and welfare of right holders. **Best practice n. 8** CMOs engagement in activities aimed at increasing public awareness about copyright and related rights, collective rights management and CMOs, highlighting evidence of their positive effect on the national economy and on cultural diversity, including its cultural and social activities. These activities shall be done within the limits of the CMOs mandates and in the interest of the Rightsholders it represents.	"Collective management organisations play, and should continue to play, an important role as promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market and by providing social, cultural and educational services for the benefit of their right holders and the public."
Acceptance of Members	**Best practice n. 14** Membership criteria should be **objective**, **transparent** and **non-discriminatory**. **Best practice n. 15** Refusal of a request for membership shall be only done on the basis of **objectively justifiable criteria**. **Grounds for refusal should be provided** to the applicant in writing within a reasonable period.	**Article 6, EU Directive 2014/26/EU** 2. A collective management organisation shall accept rightsholders and entities representing rightsholders, including other collective management organisations and associations of rightsholders, as members if they fulfil the membership requirements, **which shall be based on objective, transparent and non-discriminatory criteria.** Those membership requirements shall be included in the statute or membership terms of the collective management organisation and shall be made publicly available. In cases where a collective management organisation **refuses** to accept a request for membership, it shall provide the rightsholder with a **clear explanation of the reasons** for its decision. 3. The statute of a collective management organisation **shall provide for appropriate and effective mechanisms for the participation of its members in the organisation's decision-making process**. The **representation** of the different categories of members in the **decision-making** process shall be **fair** and **balanced**. **Belgian Code of Economic Law, Book XI, Title 5** "CMOs shall accept rightsholders as members if they fulfil the membership requirements which shall be based on **objective**, **transparent and non-discriminatory criteria**. They may only **refuse** a request for membership on the basis of **objective criteria**."

		CISAC, *Professional Rules (music)* "Each Member shall at all times be open to Creators and, where relevant, publishers of **all nationalities**." **IFPI, Code of Conduct for Music Industry MLCs** "Each MLC is to accept as members and/or provide services to all sound recording rightsholders **on non-discriminatory basis and according to principles of equal treatment**, unless the MLC has **objectively justified reasons to refuse** its services or differentiation is absolutely necessary and based on justified and objective criteria (**for example**, where an applicant/member is proven to be engaging in piracy or other illegal practices or where an applicant/member manages rights in sound recordings that are of a type that does not fall within the MLC's scope of activity (such as, for example, library music or jingles)).
Non-Discrimination between Rightsholders	**Best practice n. 16** No discrimination between rightsholders, either directly or indirectly, on the basis of: a) nationality or place of residence or establishment; b) gender, origin, religion, disability, age or sexual orientation **Best practice n. 17** Fair and equal representation of all rightsholders	**Recital 18, EU Directive 2014/26/EU** "[...] a collective management organisation **should not**, when providing its management services, **discriminate** directly or indirectly between rightsholders **on the basis of their nationality, place of residence or place of establishment."** **Belgian Code of Economic Law, Book XI, Title 5** "(...) the administration shall be carried out in a reasonable and **non-discriminatory manner**." **CISAC, Professional Rules** "Each Member shall at all times **refrain from discriminating** between Creators and, where relevant, publishers or between Sister Societies in any manner which is legally unjustifiable, or which cannot be objectively justified" **IFPI, Code of Conduct for Music Industry MLCs** "Each MLC is to accept as members and/or provide services to all sound recording rightsholders on **non-discriminatory basis** and according to principles of **equal treatment**, [unless the MLC has objectively justified reasons to refuse its services or differentiation is absolutely necessary and based on justified and objective criteria (for example, where an applicant/member is proven to be engaging in piracy or other illegal practices or where an applicant/member manages rights in sound

		recordings that are of a type that does not fall within the MLC's scope of activity (such as, for example, library music or jingles))].” **IFRRO Code of Conduct** “[CMOs] maintain fair, equitable, impartial, honest, and non- discriminatory relationships with rightsholders, users and other parties.” **Article 8 and 12, SCAPR Code of Conduct** “Distribution of remuneration to all performers shall be based on the principle of **equal treatment**.” […] “Based on the principle of **equal treatment**, PMOs shall identify all protected right owners involved, both **national** and **foreign**.”
Governance	**Best practice n. 38** Fair and balanced representation of the different categories of members in the board.	**Article 9(2), EU Directive 2014/26/EU** “There shall be fair and balanced representation of the different categories of members of the CMO in the body exercising the supervisory function.” **Article 6(3), EU Directive 2014/26/EU** “The statute of a CMO shall provide for appropriate and effective mechanisms for the participation of its members in the collective management organisation's decision-making process. The **representation** of the different categories of members in the **decision-making** process shall be **fair** and **balanced**.” **Article 162 of the amended text of the Intellectual Property Law, approved by Royal Legislative Decree 1/1996 on 12 April 1996 (incorporating article 9 of Directive 2014/26/EU) (*Spain*)** 2. The composition of the internal oversight body and the procedure for the election of its members by the general assembly shall be determined by the statutes of the management organisation and in any event shall meet the following criteria: a) the body shall be composed of three or more members of the management organisation, ensuring fair and **equal representation** of the different member categories. None of its members may have a de facto or de jure relationship, whether direct or indirect, with natural or legal persons that form part of or are

		represented in the governing and representative bodies of the management organisation […] **CISAC Professional Rules** "(Where the Board is composed of Creators and publishers) [Each Member shall at all times] maintain a **fair balance** on its Board between Creators on the one hand and publishers on the other hand; maintain a fair balance on its Board between the various categories of Creators." **Article 4, SCAPR Code of Conduct** "PMOs shall act under the democratic control of their members. Members be represented in a fair and balanced way in the decision-making process of their PMO." **IFRRO Code of Conduct** "[CMOs] have open representation for all eligible rightsholders in accordance with applicable national and supranational laws, including competition law." **IFPI Code of Conduct for Music Industry MLCs** "Unless prohibited by applicable legislation, each MLC is to provide right holders the opportunity for a fair and balanced representation in the governing bodies taking into account the direct economic interest a member has in the functioning of the MLC."
Transparency and Accountability regarding Split Accounts	**Best practice n. 44** Prohibition of using Rights Revenue and any income from the investment of Rights Revenue for any purposes other than Distributions to Rightsholders or, if so decided by the General Meeting, social, cultural, educational, or cost reduction.	**Article 11(3), EU Directive 2014/26/EU** "The CMO shall manage and **keep separate the rights revenue** and any **income** derived from its investment from its own assets, the income derived from its management services or the **income** derived **from** any **other activities**." **Belgian Code of Economic Law, Book XI, Title 5** "The [...] CMO (...) will **administer the deductions** [for *social, cultural and educational aims*] in accounts separate from the CMO's principal account, and the board of directors will report annually about the deducted sums and their expenditure."

		CISAC Professional Rules "At least once in every calendar year, each Member shall make available to each of its Affiliates and Sister Societies, a description of the Member's internal Rules concerning financial and other non-copyright related income. This description shall also address the use made by the Member of this income."
Annual Report	**Best practice n. 46** Indicate in the Annual report a breakdown of deductions for the purposes of social, cultural and educational services in the financial year and an explanation of the use of those amounts, with a breakdown per social, cultural and educational expenditure	**Article 28, Law-Decree No. 35/2017 (Italy)** "1. [...] collective management organisations shall draw up an annual transparency report, including the special report referred to in subparagraph 3, for each financial year, no later than eight months following the end of that financial year. The report shall be published on the website of each collective management organisation where it shall remain publicly available for at least five years. […] 3. The special **report** shall **address** the possible **use** of the **amounts deducted** for the purposes of social, **cultural and educational services** and shall contain at least the information indicated on the subject referred to in point 3 of the Annex.
Revenue Deductions for Cultural Purposes	**Best practice n. 53** Include in the annual report the amounts deducted from the Rights Revenue for the purposes of social, cultural and educational purposes in the financial year and an explanation of the use of those amounts should be included in the annual report. **Best practice n. 56** Ensure that each Rightsholder it represents – whether directly through a membership contract or through a Representation Agreement is entitled to apply for its social, cultural or educational services provided deductions were made on Rights Revenue attributed and distributed to such Rightsholder.	**Article 12 and Annex, EU Directive 2014/26/EU** […] 12(4). Where a collective management organisation **provides social, cultural or educational services** funded through deductions from rights revenue or from any income arising from the investment of rights revenue, **such services** shall be **provided** on the basis of **fair criteria**, in particular as regards **access** to, and the **extent** of, those services." […] "The following information shall be provided [annually] [in the annual transparency report]: the **amounts collected for the purposes of social, cultural and educational services in the financial year**, with a breakdown per category of rights managed and per type of use; the explanation of the use of those amounts, with a **breakdown per type of purpose**." **Belgian Code of Economic Law, Book XI, Title 5** "The **general meeting** of a Belgian CMO shall **decide** with a two/third majority about a deduc**tion for social, cultural and educational aims**. The deduction **shall not be higher than 10%**. CMOs in other countries may deduct a maximum of 10% from revenues accrued in

		Belgium. The Belgian CMO, and the non- Belgian CMO for Belgian revenues, will administer the deductions, in accounts separate from the CMO's principal account, and the boards of directors will report annually about the deducted sums and their expenditure." **IFPI Code of Conduct for Music Industry MLCs** "Each MLC is to deduct from the collected sums only the appropriate costs of operating the MLC. No additional deductions for whatever reason should be made unless the right holders have agreed to such deductions or they are stipulated by law. MLCs are to provide details of such deductions to members and indicate whether these are statutory or voluntary." **Article 7, SCAPR Code of Conduct** "**Deductions** from the remuneration collected by a PMO (or from income from any investment of that remuneration by or on behalf of that PMO) **may also be made for purposes intended to promote the general interests of performers**." **IFRRO Code of Conduct** "[CMOs] **deduct from collections**, if authorised by national law and/or their statutes and/or distribution plan rules so to do, **allocations for social and/or cultural purposes**; and whenever they do so, the authorisation for, as well as the amount and nature of the allocation, is clearly explained to the rightsholders concerned. RROs **avoid discrimination** on **grounds of nationality** or otherwise."
Relationships Between CMOs (non-Discrimination and Transparency)	**Best practice n. 57** No discrimination in the distribution formula and/or payment for works and other subject matter of Members of other CMOs represented via a Representation Agreement. **Best practice n. 58** Transparency by providing information to the other CMO that is complete, consistent, clear and easy to understand.	**Section 44 and 45, German Collecting Societies Act, 2017** "Where a collecting society mandates another collecting society with managing the rights it manages (**representation agreement**), the mandated collecting society may **not discriminate against** the rightsholders whose rights it manages under the representation agreement." §45: "The mandated collecting society may make deductions from the revenue from rights it manages under a representation agreement other than in respect of management fees only where the mandating collecting society has explicitly consented thereto".

	Best practice n. 59 Transparency by providing other CMO with the most recent Annual Report and other relevant information including data-management information.	**Article 14, EU Directive 2014/26/EU** "Rights managed under **representation agreements**: Member States shall ensure that a collective management organisation **does not discriminate** against any rightsholder whose rights it manages under a representation agreement, in particular with respect to applicable tariffs, management fees, and the conditions for the collection of the rights revenue and distribution of amounts due to right holders." **Article 27, Law-Decree no. 35/2017 (Italy)** 1. On the basis of an appropriately justified request, collective management organisations and independent management entities [...] shall make available to collective management organisations on behalf of which they manage rights under a representation agreement or any right holder or any user, by electronic means and promptly, at least the following information: a) the works or other materials they manage, the rights they represent, directly or on the basis of representation agreements, and the territories covered by such agreements; b) where it is not possible to determine such works or other protected materials because of the context of the activity of the collective management body, the types of works or other subject- matter they represent, the rights they manage and the territories referred by those agreements."
Principles Governing Licensing of Users/Licensees	**Best practice n. 65** Treat potential users in an objective, fair and non-discriminatory manner, taking into account national copyright law, including applicable limitations and exceptions; ensure non-discriminatory and fair pricing and prohibition of unreasonable contractual terms.	**Article 16(2), EU Directive 2014/26/EU** "Licensing terms shall be based on objective criteria [in particular in relation to tariffs]." **CISAC, Professional Rules** "Each Member shall: grant licenses on the basis of objective criteria and, when applicable, meet the requirements to operate as set by the national legislation, provided that a Member shall not be obliged to grant licenses to users who have previously failed to comply with such Musical Society's licensing terms and conditions; and not unjustifiably discriminate between users."
Transparency in the fulfilment of obligations with	**Best practice n. 74** Use of agreed format for the obligation of information and data by users to CMOs regarding the use	**Article 17, Directive 2014/26/EU** **"**Member States shall adopt provisions to ensure that users provide a collective management organisation, within an **agreed or pre-established**

Users and Licensees	of their works to allow CMOs to calculate the fee	time and in an agreed or **pre-established format**, with such relevant information at their disposal on the use of the rights represented by the collective management organisation as is necessary for the collection of rights revenue and for the distribution and payment of amounts due to rightsholders. When deciding on the **format** for the provision of such information, collective management organisations and users shall take into account, as far as possible, **voluntary industry standards**." **Article 23, Law-Decree no. 35/2017 (Italy)** 1. Unless otherwise agreed between the parties, within ninety days of use, users must provide collective management organisations, as well as independent management entities, with the relevant information at their disposal, necessary for the collection of rights proceeds and for the distribution and payment of amounts due to rights holders, relating to the use of protected works. **The information includes, in particular:** a) Regarding the identification of the protected work: the original title; the year of production or distribution within the territory of the State, the producer, and the overall duration of the work; b) Regarding the use of the protected work: all aspects related to dissemination, such as the date or period of communication, broadcasting, representation, distribution, or commercialisation, or any public disclosure. The right of collective management organisations and independent management entities to request additional information, if available, remains unaffected. 2. If necessary to fulfil their obligations, users promptly exercise the right of information under Article 27, clearly indicating to collective management organisations and independent management entities the information not in their possession. In this case, the 90-day period is suspended until the date of receipt of correct, complete, and consistent information. 3. Collective management organisations must in good faith agree on the information to be provided, the methods, and the timing in contracts with users, also taking into account the **standards voluntarily adopted** by the sector […] **Article L324-8, Intellectual Property Code (France)**

		When an exploitation authorisation is granted, the user is obliged to communicate to the collective management organisation, in a **format and within a time limit agreed between the parties or pre-established**, the relevant information on the use he has made of the rights, so that the organisation is in a position to ensure the collection and distribution of the revenues deriving from the exploitation of those rights. In defining the format in which this information is to be communicated, organisations and users shall, as far as possible, take into account **voluntary industry standards**, in particular standard identifiers for works and other protected subject matter. In the absence of agreement between the parties within a reasonable period of time, this information will be that defined by an order of the minister responsible for culture for the sector of activity concerned. **Article 12, SCAPR Code of Conduct** "PMOs shall concurrently register the uses of both national and foreign performers' performances subject to the rights in their respective territories of operation, mainly based on the following **sources**: **Reports from users providing comprehensive play lists or from reliable surveys".** **IFPI Code of Conduct for Music Industry MLCs** "Each Music Licensing Company is to require users to report the use of all sound recordings promptly and accurately using a **standardised electronic format** and where possible using **industry standard recording identifiers**, unless reporting would be commercially unreasonable and economically unviable considering in particular the value of the license in question."
Processing personal data	**Best practice n. 76** Keep updated record of each rightsholder a CMO represents so that it can be accurately identified and located **Best practice n. 77**	**Recital 52, EU Directive 2014/26/EU** "It is important for collective management organisations to respect the rights to private life and personal data protection of any rightsholder, member, user and other individual whose personal data they process. Directive 95/46/EC governs the processing of personal data carried out in the Member States in the context of that Directive and under the supervision of the Member States' competent authorities, in particular the public independent authorities

	Adoption of measures to protect privacy and personal data.	designated by the Member States. […]. In particular, unique identifiers which allow for the indirect identification of a person should be treated as personal data within the meaning of that Directive." **Belgian Code of Economic Law, Book XI, Title 5** "Employees of the collecting society and all other persons who participate in the collection of remunerations due under chapters 5 or 9 shall be under an obligation of professional secrecy with respect to all information of which they obtain knowledge in or on the occasion of the exercise of their functions." **CISAC Professional Rules** "Each Member shall refrain from disclosing any Confidential Information." **IFRRO Code of Conduct** "[A CMO] deals with confidential information appropriately, respecting agreements and applicable laws while respecting privacy rights of right holders and users."
IT Infrastructure and data management	**Best practice n. 79** Use of a proper functional data model, which caters for the needs to document, identify, collect, allocate and distribute the Rights Revenue for the rights represented by the CMO in the respective territory and in relation to other territories the CMO cooperates with.	**Article 24, EU Directive 2014/26/EU** "Capacity to process multi-territorial licences 1. Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works has sufficient capacity to **process electronically**, in an **efficient** and **transparent manner**, d**ata needed for the administration of such licences,** including for the purposes of identifying the repertoire and monitoring its use, invoicing users, collecting rights revenue and distributing amounts due to rightsholders. 2. For the purposes of paragraph 1, a collective management organisation shall comply, at least, with the following conditions: (a) to have the ability to **identify accurately the musical works**, wholly or in part, which the collective management organisation is authorised to represent; (b) to have the ability to **identify accurately**, wholly or in part, with respect to each relevant territory, the **rights** and their corresponding rightsholders for each musical work or share therein which the collective management organisation is authorised to represent;

		(c) to make use of **unique identifiers** in order to identify rightsholders and musical works, taking into account, as far as possible, **voluntary industry standards** and practices developed at international or Union level; (d) to make use of adequate means in order to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi- territorial licences for online rights in musical works." **CISAC Professional Rules and Binding Resolutions** "A CISAC Member shall [..] have at its disposal effective machinery for the collection and distribution of Income to Creators and, where relevant, publishers (...)." **Binding Resolutions on the use of common information system (e.g. CIS-Net) and identifiers (e.g. IPI and ISWC)** **o IPI** "Each Member shall: a. ensure that it enters Affiliate Information in respect of each of its Affiliates into the **IPI System** and that such Affiliate Information is comprehensive, accurate and up-to- date; b. ensure that it enters the **IPI Number** in respect of the Affiliates of its Sister Societies into its Database; c. use the IPI Number contained within the IPI System as the basis of any Documentation and Affiliate Information exchange between it and each Sister Society; d. refrain from allocating a new IPI Number to any Interested Party who already has an existing IPI Number contained within the IPI System; and e. use the IPI System in accordance with the IPI General Description and Business Rules." **o ISWC "Where:** a. a CISAC Member administering the performing right makes Documentation of a Musical Work which falls within its Repertoire available to a Sister Society; and b. a Creator of such Musical Work is one of such Member's Affiliates, or c. a CISAC Member administering the mechanical right makes Documentation of a Musical Work

		which falls within its Repertoire available to a Sister Society, providing that (i) there is no Member administering the performing right, or (ii) the Member administering the performing right either does not have the means to assign an ISWC or has simply not assigned an ISWC at the point when all creators in the work can be identified; and d. The CISAC Member is able to identify all Creators associated with such Musical Work, then such CISAC Member shall: e. ensure that an ISWC has been assigned to such Musical Work; and f. abide by the ISWC Business Rules." **o Contribution to CIS-Net** "Where a Member is in possession of Minimum Mandatory Information on a Musical Work which either falls within its Repertoire, or has been used within its territory, it shall ensure that: a. it enters such Minimum Mandatory Information into CIS- Net; and b. such Minimum Mandatory Information is comprehensive, accurate and up to date." **Article 12, SCAPR Code of Conduct** "PMOs shall continually strive for the development of systems for the identification of right owners and uses and for the trans-border exchange of information and data enabling individual distribution according to the principles mentioned above."

- **Best Practices related to relevant International Identifiers (WIPO Toolkit for CMOs 2021)**

Table 18: Best Practices for International Identifiers
Source: SSSA Adaptation (2023)

Abbreviation	Full Name	Details
IPI	Interested Party Information	Globally unique identification of a natural person or legal entity with an interest in an artistic work across all categories of works, different roles in relation to a work (composer, arranger, publisher, etc.) and the corresponding rights in a work.
IPI System	*n/a.*	System and database are administered by the Swiss CMO SUISA in accordance with the CIS guidelines and standards established by **CISAC**. IPI System contains the names of all the Rightsholders in both of copyright protected works and public domain works. The collation and presentation of the information is standardised according to CIS regulations and supports the documentation, distribution and accounting processes of the member CMOs linked to the IPI system.
IPN	International Performer Number	Unique identifier assigned to a performer registered in the IPD.
ISBN	International Standard Book Number	Product identifier used by publishers, booksellers, libraries, internet retailers and other supply chain participants for ordering, listing, sales records and stock control purposes. The ISBN identifies the registrant as well as the specific title, edition and format.
ISNI	International Standard Name Identifier	**ISO standard**, in use by numerous libraries, publishers, databases, and CMOs. It is used to uniquely identify persons and organisations involved in creative activities, as well as public personas of both, such as pseudonyms, stage names, record labels or publications.
ISRC	International Standard Recording Code	Built by **IFPI**, enables recordings to be uniquely and permanently identified. ISRC helps to avoid ambiguity and simplifies the management of rights when recordings are used across different formats, distribution channels or products. The ISRC for a recording remains a fixed point of reference when the recording is used across different services, across borders, or under different licensing deals.
ISWC	International Standard Musical Work Code	**ISO standard**, and a unique, permanent and internationally recognised reference number for the identification of musical works.
VRDB.ID	n/a.	Unique identifier assigned to a sound recording or an audiovisual work in VRDB.

- **Best Practices Related to Relevant Exchange Formats and Protocols (WIPO Toolkit for CMOs 2021)**

Table 20: Best Practices for Exchange Formats
Source: SSSA Adaptation (2023)

Abbreviation	Full Name	Details
CRD	Common Royalty Distribution	**CISAC** standard reporting format. It is an Electronic Data Interchange format designed to facilitate the reporting of distributed royalties for CMO-to-CMO and CMO-to-members.
CWR	Common Work Registration	**CISAC** standard format for the registration and revision of musical works. It is built for the communication data relating to musical works and specifically collection shares between publishers and composers in those works.
DDEX	Digital Data Exchange	Developed by a not-for-profit, membership organisation, and is focused on the creation of digital music value chain standards. DDEX was established by a consortium of leading media companies, music licensing organisations, Rightsholders, digital service providers and technical intermediaries.
SDEG	SCAPR Data Exchange Guidelines	Protocol to allow two CMOs to exchange between them metadata for the transfer of performer's remuneration abroad.

- **Best Practices Related to Relevant Exchange Formats and Protocols (WIPO Toolkit for CMOs 2021)**

Table 21: Best Practices for Protocols
Source: SSSA Adaptation (2023)

Abbreviation	Full Name	Details
Cis-Net	n/a	Network of databases built upon the **CISAC's** Common Information System (CIS)Standards. Each database constitutes a node within the overall network. There are three types of nodes: (i) Local nodes, maintained by individual CISAC member CMOs; (ii) (ii) Regional nodes, developed by regional groups of member CMOs; and (iii) (iii) WID Center, the CISAC database of musical works used by many CMOs. The network can be accessed from a web-based search engine.
IPD	International Performers Database	**SCAPR** tool to register individual performers and to assign a unique ID (the IPN) for the purpose of identifying individual performers in sound recordings and audio-visual works. Furthermore, the IPD contains information about a performer's mandates to CMOs on a territory, period and use type basis.

VRDB	n/a	Centralised system to enable **SCAPR**-members to identify recordings, audio-visual works, usage of both and Performers' information necessary to properly run distributions locally more efficiently and accurately. VRDB maximises the flow of royalties exchanged between the member societies of SCAPR.

3.9.2 WIPO Collecting Societies Study (2022)

Table 22: Best Practices for Policy Makers
Source: SSSA Adaptation (2023)

Area	Best Practice (for Countries/ Policymakers)
Revenue Deductions for Cultural Purposes	○ Prescribe in specific (and not generally) deductions from payments for cultural and social purposes. ○ Clearly define "cultural purposes" as activities that promote national creativity, including but not limited to prizes, competitions, and fellowships; provide a comprehensive list of examples under each category ○ Specify that "social purposes" should be directed towards supporting health insurance or pension funds. ○ Set a reasonably low percentage per deduction to ensure compliance with competition laws and international norms (e.g., national treatment, minimum standard of protection) ○ Consider the possibility of using a certain percentage of remuneration, particularly for statutory rights such as the right to remuneration for private copying. ○ Encourage transparent and accountable mechanisms for managing deductions and allocating funds to cultural and social purposes. ○ Monitor and assess the impact of such deductions on cultural development and the interests of rights holders.

3.9.3 Independent Music Companies Association (IMPALA) Best Practices Survey (2022)

Table 23: Best Practices Diversity Survey
Source: SSSA Adaptation (2023)

Area	Aspects Covered by the Survey
Membership Criteria	○ Criteria for becoming a member ○ Presence of online tools for membership and rights management
Governance	○ Fairness of boards
Transparency and Accountability	○ Transparency measures in reporting payments ○ Distribution policies (transparency in terms of incomes streams, proxies used)

IT Infrastructure and Data Management	○ Instruments for registering data ○ Use of International Identifiers ○ Providing information to members about protocol and standard developments (e.g. DDEX)

3.10 Interim Conclusions on Existing Diversity Objectives and Measures and Reform Proposals

The mapping of regulatory and policy tools from international, EU and selected countries sources show a **general convergence around a number of diversity objectives and measures**, summarised in the chart below.

Table 24: Diversity objectives and measures. Source: SSSA (2023).

Diversity Objectives	Measurable Dimensions
Demographic	Gender, Colour, Race, Sex/Sexual Orientation, Language, Regional or Minority Language, Indigenous Groups, Ethnicity, Nationality, Territory (residence)
Content	Works (genre, type), Other subject matter (phonogram, sound recording), Traditional Expression
Stakeholder	Creators (authors, interpreters), Rightsholders (producers), Distributors (licensing authority, CMOs)

While the attempts made by legislators to ensure and foster cultural diversity in the music sector constitute valid starting points, they still present an array of gaps and flaws which may require intervention in order to fully achieve this policy goal. The analysis of selected countries shows that the position of stakeholders and policymakers with regard to the positive outcomes of regulatory intervention such as content quotas diverges. In that context, monitoring the impact of those effects in terms of diversity should be explored to provide evidence-based suggestions. In addition, in those countries that have implemented content quotas based on selected demographic indicators (e.g. gender, origin), there is a lack of alignment between media regulation and other rules that protect cultural heritage objects, including minority languages, groups or music-related instruments or content.

On the basis of our findings and of the considerations already advanced by the literature, legislators may need to consider introducing or amending the **following objectives and measures**.

Variety of origin. In order to ensure diversity, it would be advisable to require broadcasters to provide a periodical detailed overview of the percentage of works broadcasted in each language and/or from authors "anchored" to each Member States, on the basis of the reference points indicate below (see "protection of national authors"), in accordance with the national treatment requirement. Quantitative indicators framed as minimum threshold per each category in a given, long enough timeframe may

effectively help guaranteeing cultural diversity not only across the EU but also in regional and national contexts, with much more effective aggregated results. Minimum quota shall be defined upon stakeholders' dialogue and taking into due account the need for an overall EU harmonisation, and the limits stemming from international trade agreements (GATT, GATS).

Broader notion of diversity. In order to streamline the notion of cultural diversity in music with the broader umbrella concept of cultural diversity in supranational sources, it is advisable to devise measures and indicators that are able to also grasp the nature (qualitative) and quantity (quantitative) of the music broadcasted on radio and television and streamed on platforms available in each Member States. This shall include, for instance, works created by female authors or authors belonging to specific minorities or other vulnerable groups. Demographic indicators should be broadly construed to encompass age, minority language or groups (see, table demographic indicators). They should furthermore include a point of attachment to content and stakeholders, including those involved in the circulation (CMO, platforms) as increasingly devised in European and international norms.

Adaptation of indicators to new channels and geographical scope. Music rights management may have major repercussions on creative activity and the market availability of diversified musical content. As such, CMOs represent a relevant point of attachment to diversity. In this context, new channels have been established to provide EU-wide licenses. What is indeed important is gathering and monitoring how these cross-EU license results in a broad availability and access to a variety of repertoires, including small and specialised repertoires (see, table content indicators) and creators (demographic criteria), as well as compliance with competition law (antitrust).

Protection of national authors and performers. The points of attachment used to define the provenience of the author or the performer (language used, place of origin, nationality, place of operation) are, if adopted alone, all unable to properly identify national music creations which may deserve protection and reserved quota to guarantee the preservation of Member States' cultural identity while fostering cultural diversity. This is particularly true in those countries featuring diverse minorities and/or being characterised by the production of music in non-local languages, but it may also be the case where (a) the outcomes of the application of different points of attachment are divergent; or (b) the use of a given point of attachment leads to false positives/negatives.

Extension of indicators to streaming platforms. No cultural diversity policies can produce effective results without covering also new and ever more dominating consumption channels, and chiefly streaming platforms. Due to the on-demand nature of such services, simple quotas may not be enough to properly implement cultural diversity policies. This implies that, along with the adaptation of traditional provisions to the streaming sector (e.g. different quotas and/or relevant timeframe, different definition of relevant public), other measures may need to be devised to intervene on key mechanisms such as automated content recommendations and users' profiling. These algorithms have faced criticism due to their lack of transparency and inherent biases. Further research is thus essential to ascertain its impact and determine the metrics necessary for its quantification. Additionally, there exists an opportunity to investigate the development of a regulatory framework for algorithms at the policy level, potentially encompassing guidelines for quotas (pertaining to demographic - gender, language, origin- and non-demographic indicators), and drawing inspiration from measures employed by some public broadcasting services.

Extension of indicators to offline activities. A number of research findings indicate that lack of diversity in the streaming sector partially stems from the lack of diversity offline (from production to distribution, advertising, presence in music festivals and other venues, etc). This circumstance may suggest the need

to extend indicators traditionally devised for radio and tv broadcast to the offline environment, for instance by incorporating diversity by design in the strategies and market behaviours of actors within the music industry, and devising monitoring tools to ensure that diversity indicators are streamlined and correctly applied all throughout the lifespan of a musical work.

4 Data Availability and Gaps

Considering D2.1 employs a broad definition of cultural diversity (see Section 2.1) encompassing the diversity of cultural works and diversity of sub-groups of natural persons involved in culture, several indicators can be used to measure the different policy objectives identified in Section 3. The following subsections provide an overview of the currently available quantitative data to measure such policy objectives related to music diversity consumption and production at the European level.

4.1 Relevant Data Availability and Gaps in EU-level Cultural Statistics

Eurostat is the statistical office of the European Union responsible for collecting, compiling, analysing, and disseminating statistical information at the European level. It primarily focuses on providing harmonised and comparable statistical data for EU member states to support decision-making at the European level. Eurostat collects data directly from national statistical institutes and relevant authorities in EU member states. It ensures that the data collected adhere to common European standards and definitions to enable cross-country comparisons.

Official cultural statistics in Europe are collected in accordance with the domains, functions, and dimensions defined in the *ESSnet-Culture Final Report* (2012). However, "there is no single European survey dedicated to culture" (Eurostat 2018, p. 6): rather, data on culture are extracted from a wide range of more general data that are regularly collected on labour, business activity, trade, education, individual and household economic activity, etc.[274] Similarly, as noted in OpenMusE D1.1, there is no standardised statistical measurement of the "music industry" within the system of national accounts (or most current satellite accounts, at least within the EU, to our knowledge).[275]

The ability to disaggregate cultural statistics and data by domain – e.g., music – is determined by the classification systems or other variable schemas used in the various data collection instruments. The relevance of such data to the topic of diversity of musical subjects is determined by whether the data is collected from natural persons to whom relevant sociodemographic factors apply (such as age, gender, ethnicity, etc.), and whether the data is disaggregated by such factors.

In brief, the following EU-level data collection programmes and/or datasets offer data collected from natural subjects on cultural and/or specifically musical practices, disaggregated by sociodemographic factors. These data are thus relevant to the topic of diversity of subjects:

- EU Labour Force Survey (EU-LFS): data on cultural and in some instances musical employment.
- Adult Education Survey (AES) (2007, 2011): data on active and passive participation in performing arts (though not specifically music).

[274] Classification systems used to identify cultural activities within statistical data include Nomenclature of Economic Activities (NACE), International Standard Classification of Occupations (ISCO), Balance of Payments and International Investment Position Manual (BPM6) and Extended Balance of Payments Service Classification (EBOPS 2010), Combined Nomenclature (CN) , four-digit Classification of Individual Consumption by Purpose (COICOP) and extended five-digit European Classification of Individual Consumption by Purpose (ECOICOP), and Classification of the Functions of Government (COFOG).

[275] As suggested by the Open Muse D.1.1 "Economy of Music in Europe: Methods and Indicators", there are several reasons for this: most immediately, the "music industry" is not considered as such in statistical systems. Even after the significant revision of NACE in 2006, neither classification system considers music – or other CCIs, such as film – as "industries" per se. Rather, the individual economic activities that make up these "industries" are split over numerous domains, each designated by unique classifiers. A related problem is the high level of informality in the music sector (see Section 1.7, D1.1.), which consistently poses both theoretical and practical problems for measuring the economic performance of music.

- EU Survey on Income and Living Conditions (EU-SILC) ad-hoc modules (2006, 2015) : data on passive participation in performing arts (though not specifically music).
- Eurobarometer 67.1 (2007), 79.2 (2013), 88.1 (2017): data on active and passive participation in music.
- Community survey on information and communication technologies (ICT) usage in households and by individuals: data on ICT use for music.
- Harmonised European Time Use Survey (HETUS): data on time spent at theatres/concerts and listening to radio or recordings (though not specific to music).
- Household Budget Surveys (HBS): data on money spent on musical goods and services.

A more comprehensive list of which EU-level statistical and quasi-statistical data relate fully or partially to music is provided in OpenMusE D3.1. The extent of disaggregation by sociodemographic factors possible will be explored in the data collection phase of the project.

With regard to the diversity of musical content, current cultural statistics do not appear to encompass relevant data. However, alternative data sources exist, as detailed in the following sections.

4.2 Other Data Availability and Gaps on the EU Level

The *EMO Feasibility Study* started a discussion on how to collect data on music to go beyond the limited coverage provided by Eurostat. The study identifies a range of data availabilities, gaps, and potential sources. Section 3.3.3 reports the data availabilities and gaps identified in pillar 2 on music diversity and circulation.

Following the comprehensive mapping of international, EU and national regulatory sources that define cultural and creative diversity (see Section 3), existing policy domains and objectives of music diversity as defined by law and the description of measurable target objectives have been identified. Table 24 consolidates the regulatory mapping, summarizing **three macro diversity objectives: demographic, contents and stakeholders**. To identify available data and gaps, these objectives need to be empirically operationalised and confronted with potential data sources.

Demographic diversity relates to the diversity of subjects (i.e., natural persons). Table 27 summarises measurable target objectives identified for assessing the level of demographic diversity in music. Columns represent different features of the diversity of subjects (natural persons) as identified in policy and legislative documents, whereas rows represent different areas of practice in the music industry/sector. Note that the policy relevance of each cell is not a given; rather, this question should be addressed in discourse with stakeholders across government, civil society, industry, and the scientific community.

Table 27 - Overview of the demographic diversity objectives. Source: SSSA. (2023).

Areas of Practice		Demographic Diversity Target Objectives				
		Gender **a**	**Ethnicity and Minorities** **b**	**Religion** **c**	**Language** **d**	**Nationality** **e**
1	**Staff Regulations**	Gender Equality Plans across the music industry	Equality Plans across the music industry	Presence of religion in equality plans	Presence of language in equality plans	Presence of nationality in equality plans

				across the music industry	across the music industry	across the music industry
2	**Repertoire**	Variety in repertoires with respect to gender	Variety in repertoires with respect of minorities and ethnic groups	Variety in repertoires with respect to religions	Variety in repertoires with respect to language	Variety in repertoires with respect to nationality
3	**Concert**	Gender balance in performances, including festivals and events	Ethnic and minority balance in performances, including festivals and events	Religions balance in performances, including festivals and events	Language balance in performances, including festivals and events	National balance in performances, including festivals and events
4	**Streaming Service**	Gender balance representation in media streaming platforms	Ethnic and minority balance representation in media streaming platforms	Religions balance representation in media streaming platforms	Language balance representation in media streaming platforms	National balance representation in media streaming platforms
5	**Audience**	Gender balance in engagement in cultural activities e.g. gender demographic of audiences at music events and festivals	Ethnic and minority balance in engagement in cultural activities e.g. gender demographic of audiences at music events and festivals	Religions balance in engagement in cultural activities e.g. gender demographic of audiences at music events and festivals	Language balance in engagement in cultural activities e.g. gender demographic of audiences at music events and festivals	National balance in engagement in cultural activities e.g. gender demographic of audiences at music events and festivals
6	**Decision-Making Process**	Gender balance in decision-making processes within organisations and policymaking shaping the sector	Ethnic and minority balance in decision-making processes within organisations and policymaking shaping the sector	Religions balance in decision-making processes within organisations and policymaking shaping the sector	Language balance in decision-making processes within organisations and policymaking shaping the sector	National balance in decision-making processes within organisations and policymaking shaping the sector
7	**Collaboration**	Equal opportunities for collaboration with other musicians, producers and industry professionals	Equal opportunities for collaboration with other musicians, producers and industry professionals	Equal opportunities for collaboration with other musicians, producers and industry professionals	Equal opportunities for collaboration with other musicians, producers and industry professionals	Equal opportunities for collaboration with other musicians, producers and industry professionals
8	**Music Education**	Gender distribution in educational training, workshops and initiatives	Ethnic and minority distribution in educational training,	Religions distribution in educational training, workshops and initiatives	Language distribution in educational training, workshops and initiatives	National distribution in educational training, workshops and initiatives

			workshops and initiatives			
9	**Funding**	Gender distribution in grants and funding	Ethnic and minority distribution in grants and funding	Religions distribution in grants and funding	Language distribution in grants and funding	National distribution in grants and funding

Table 27 can be used to deduce a schema for the assessment of data availabilities and gaps. As an example, consider *ethnicity* as demographic diversity policy objectives. Exploring this dimension within the proposed schema allows the identification of numerous potential data sources beyond the Eurostat cultural statistics. Note that the actual availability of the data specified in each cell is not a given, but must be assessed together with stakeholders:

Table 28 - Overview of potential data points and data sources for the demographic characteristic "Ethnicity and minority groups". Source: SSSA. (2023).

	Areas of practice	Objectives	Potential data points	Potential data sources
1	**Staff Regulations**	Equality Plans across the music industry	Diffusion of Equality Plans across the music industry	Music industry firms' websites; Survey of music industry firms and professionals
2	**Repertoire**	Variety in repertoires with respect of minorities and ethnic groups	Presence of quota for minorities and ethnic groups in repertoires	Legislative documents
			Share of played music related to minorities and ethnic groups	IFPI; National CMOs; CISAC; GESAC
3	**Concert**	Ethnic and minority balance in performances, including festivals and events	Share of live performances related to minorities and ethnic groups	Events themselves; Live music trade organisations; Local and national governments; Liveurope; CNV (for France)
4	**Streaming Service**	Ethnic and minority balance representation in media streaming platforms	Share of streamed music related to minorities and ethnic groups	Spotify; Alpha Data (with some additional data); Other streaming platforms
5	**audience**	Ethnic and minority balance in engagement in cultural activities	Share of participants at festivals and concerts by minorities and ethnic groups	Events themselves; Live music trade organisations; Local and national governments; National/regional administrative data; Household Budget Survey (HBS); CNV (for France)
			Share of music consumption by minorities and ethnic groups	National/regional administrative data; Household Budget Survey (HBS); Consumers surveys
6	**Decision-Making Process**	Ethnic and minority balance in decision-making processes within organisations and policymaking shaping the sector	Presence of governmental agency targeting ethnic and minority balance	Legislative documents
			Share of workers by minorities and ethnic groups	Labour Force Survey; national/regional administrative data; Survey of music industry firms and professionals
			Share of managerial employees by minorities and ethnic groups	Labour Force Survey; national/regional administrative data; Survey of music industry firms and professionals
7	**collaboration**	Equal opportunities for collaboration with other musicians, producers and industry professionals	Number of collaborative projects (e.g. songs) with other musicians, producers and industry professionals	National CMOs; CISAC; GESAC

			by ethnic and minority group	
			Barriers to collaborative projects with other musicians, producers and industry professionals by ethnic and minority group	Survey of music industry professionals
8	**Music Education**	Ethnic and minority distribution in educational training, workshops and initiatives	Person with formal music education by ethnic and minority groups	National/regional administrative data; Labour Force Survey
			Distribution of formal educational faculty and staff employed per ISCED level, sub-field, and ethnic and minority groups	Labour Force Survey [NACE Rev. 2 85.52]; national/regional administrative data
9	**Funding**	Ethnic and minority distribution in grants and funding	Distribution of grants and funds by ethnic and minority groups	National funding agencies; Grant awarding foundations
			Barriers to grants and funding by ethnic and minority groups	Survey of music industry professionals

Similar tables could be elaborate for all the other demographic characteristics highlighted in Table 24 and used to build Table 27 and 28 (i.e. gender, religion, language, and nationality). Interestingly, the potential data sources for analysing demographic diversity are mostly the same but analysed with a different focus. For instance, once events data are collected, they can be used for measuring the share of live performance by ethnic and minority groups, languages, and nationality.

The second diversity objective relates to music content diversity, that is the availability and variety of different types of media content, such as genres, nationality, and languages. Table 29 classifies the objectives related to the concept of content diversity and relate them to potential data points and sources. Again, the policy relevance of any given cell may appear different from different stakeholders' perspectives:

Table 29 - Overview of potential data points and data sources for the content diversity objective. Source: SSSA. (2023).

Content Diversity Concept	Objective	Potential Data Point	Potential Data Sources
Content	Variety and balance of music consumption	Consumers' choice in term of genre	Consumers' survey; Nielsen; Alpha Data
		Consumers' choice in term of nationality (domestic vs. foreign)	
		Consumers' choice in term of language (domestic vs. foreign)	
		Consumers' reliance on proposed playlists while streaming	Consumer survey; Music streaming services
	Variety and balance in available repertoires	Share of available repertoire by genre	National CMOs; CISAC; GESAC
		Share of available repertoire by gender	
		Share of available repertoire by language	
		Share of available repertoire by nationality	

		Share of available repertoire by minorities and ethnic groups	
Consumption Channels	Variety and balance in music consumption channels	Consumers' choice in term of different channels of music consumption (live shows, streaming, vinyl...)	
		Consumers' choice in term of different channels of legal vs illegal consumption	Specific consumer survey (Global Online Piracy Study); Piracy data specialist MUSO
Content and Consumption Channel	Variety and balance of the most streamed songs	Genre of the most streamed songs in Europe and outside Europe by calendar year	Spotify; Nielsen; Alpha Data
		Language of the most streamed songs in Europe and outside Europe by calendar year	
		Nationality of the most streamed songs in Europe and outside Europe by calendar year	
	Variety and balance of the songs most played on air	Genre of the most radio airplayed songs in Europe and outside Europe by calendar year	Radio Monitor; BMAT
		Language of the radio songs most played on air in Europe and outside Europe by calendar year	
		Nationality of the radio songs most played on air in Europe and outside Europe by calendar year	
Content and Circulation	Variety and balance in music circulation	Genre of the cross-border streaming activities	Radio Monitor; BMAT
		Nationality of the cross-border streaming activities	
		Language of the cross-border streaming activities	
		Genre of the cross-border radio airplay	
		Nationality of the cross-border radio airplay	
		Language of the cross-border radio airplay	
		Genre of the cross border live shows	Events themselves; Live music trade organisations; Liveurope
		Nationality of the cross border live shows	
		Language of the cross border live shows	
Content	Other subject matter (phonogram, sound recording)	To be determined	To be determined
	Traditional Expression	To be determined	To be determined
	Transparency	To be determined	To be determined

Regarding the last three rows, content factors that are potentially of interest to certain specific stakeholder groups – such as cultural heritage institutions and the bearers of national musical traditions

– were not identified during the literature review stage, but will be discussed with stakeholders during forthcoming workshops and other dissemination and communication activities (see OpenMusE 5.2).

The last identified dimension for music diversity relates to the different stakeholders involved along the whole music value chain.

Table 30 - Overview of potential data points and data sources for the stakeholders' diversity objective. Source: SSSA. (2023).

Stakeholder Diversity	Objective	Potential Data Point	Potential Data Sources
Creators (authors, interpreters)	Diverse participation and circulation in the music industry	Share of CMO's membership by gender	National CMOs; CISAC; GESAC
		Share of CMO's membership by nationality	
		Mobility of music professional	National CMOs; CISAC; GESAC; Surveys
	Economic sustainability of music profession	Share of income derived from creative activities.	Surveys
		Type of tax regimes	Legal documents
		Welfare access (health insurance and retirement benefits)	Surveys; National trade union organisations;
Distributors (licensing authority, CMOs)	Economic sustainability of a diverse music profession	Share of revenues by genre	National CMOs; CISAC; GESAC
		Share of revenues by gender	
		Share of revenues by language	
		Share of revenues by nationality	
		Share of revenues by minorities and ethnic groups	
Rightsholders (producers)	To be determined	To be determined	To be determined

Certain data points that are potentially of interest to specific stakeholder groups – such as rightsholders – were not identified during the literature review stage, but will be discussed with representatives of those stakeholder groups during forthcoming workshops and other dissemination and communication activities.

4.3 Data Available on a National Basis – Selected Examples

As emerged from the analysis of the previous sections of this report (Sections 1-3) to measure cultural diversity in the music industry, it is necessary to develop new indicators. These quantitative indicators should align with diversity policy objectives, reflecting the notion of diversity derived from the international and EU texts, as elucidated in the previous sections of this report (Sections 1-3).

To this end, a crucial aspect of our pilot-project-driven research agenda involves analysing data gaps on the national level. As indicated in Open Music Europe D1.1, cultural policies predominantly take shape at the national or sub-national levels in certain European Union member states. Furthermore, addressing European-level data gaps necessitates the existence of (interoperable) statistical processes at the individual member state level for data collection. Identifying data availability and gaps on the

national level requires engaging in extensive dialogue with local governmental and scientific stakeholders. Given the robust Open Music Europe partner networks in Slovakia, the consortium initiated this process there. The precision with which data availability and gaps at the national level can be defined in other target countries will depend on the replicability of this dialogue process.

4.3.1 Bulgaria

Information on data availabilities and gaps in Bulgaria will be added during the data collection phase of the work package, following the example of Slovakia below. As this information is sometimes not publicly available, the extent of this work will be determined by the feasibility of cooperation with relevant authorities.

4.3.2 Germany

Information on data availabilities and gaps in Germany will be added during the data collection phase of the work package, following the example of Slovakia below. As this information is sometimes not publicly available, the extent of this work will be determined by the feasibility of cooperation with relevant authorities.

4.3.3 Hungary

Information on data availabilities and gaps in Hungary will be added during the data collection phase of the work package, following the example of Slovakia below. As this information is sometimes not publicly available, the extent of this work will be determined by the feasibility of cooperation with relevant authorities.

4.3.4 Italy

Information on data availabilities and gaps in Italy will be added during the data collection phase of the work package, following the example of Slovakia below. As this information is sometimes not publicly available, the extent of this work will be determined by the feasibility of cooperation with relevant authorities.

4.3.5 Slovakia

In March 2023, members of the Open Music Europe Consortium signed a Memorandum of Understanding with the Ministry of Culture of the Slovak Republic. This paved the way for intensive dialogue on data availabilities and gaps on culture, and more specifically music, within the surveying programme of the Statistical Office of the Slovak Republic (SOSR). The Statistical Office oversees the Slovak implementations of European Statistical System surveying programmes mentioned in Section 4.2, as well as a range of national-level surveys and administrative data collection.

With regard to ESS-mandated data collection, as noted in OpenMusE D1.1, the SOSR uses certain programmes such as the Labour Force Survey to populate a cultural and creative sectors and industries satellite account; this leads us to believe that our Slovak partners have overcome certain obstacles to using the LFS for this purpose, such as the lack of domain-specific disaggregation and lack of coverage of domain-specific occupations within the NACE and ISCO classifications. As the LFS is disaggregated by sociodemographic factors such as age and gender, this would be relevant to the exploration of diversity issues such as representation and wage gaps within music-related occupations. The Consortium plans to review Slovak practices and their suitability for transfer to the other OpenMusE target countries.

With regard to national-level data collection, as also noted in OpenMusE D1.1, the SOSR conducts a number of surveys that could shed additional light on the music sector, including with regard to the diversity and circulation of both natural persons and musical works. Surveys that are potentially relevant to OpenMusE WP2 include:

- 50.1 Kult (MK SR) 3-01 Annual report on cultural and educational activities, which includes data on cultural and social activities for disadvantaged groups of the population.
- 52.1 Kult (MK SR) 5-01 Annual report on the musical ensemble and the artistic ensemble, which includes economic indicators for the area of music ensembles and art ensembles, potentially disaggregated by sociodemographic factors. This is relevant to both the diversity of subjects (e.g., earnings by gender) and diversity of content (e.g., representation of different genres within the Slovak musical economy).
- 54.1 Kult (MK SR) 7-01 Annual report on radio broadcasting services, which includes the time span of broadcasting in the languages of national minorities. However, it is not yet clear whether this could further be broken down to time span of broadcasting of music-specific radio programmes in the language of national minorities.
- 55.1 Kult (MK SR) 8-01 Annual report on television broadcasting services, which also includes broadcasting time in languages of national minorities. However, as above, it is not yet clear whether this can be broken down to time span of broadcasting of music-specific television programmes in the languages of national minorities.
- 62.1 Kult (MK SR) 16-01 Annual report on public events in the area of professional music culture. This is relevant to the diversity of content (e.g., representation of different genres on Slovak stages).
- 64.1 Kult (MK SR) 19-01 Annual statement on the production and distribution of sound records of musical works. This is relevant to the diversity of content (e.g., representation of different genres in the Slovak repertoire and their economic profile).
- 1108.1 NM (MK SR) 1-01 Annual report on the culture of national minorities. Funding for the cultures of national minorities is a topic relevant to both the diversity of subjects and the diversity of content.
- National Public Educational Centre (Národné osvetové centrum, NOC) study on the culture and value orientation of the Slovak population (2018), which includes public attitudes toward other cultures and interculturalism.
- National Public Educational Centre (Národné osvetové centrum, NOC) study on the consumption of culture (2019), which includes public opinions on the inclusion of a mandatory quota of Slovak music in radio, as well as data on cultural participation broken down by sociodemographic factors.

A more detailed table of these and other potentially relevant surveys and their topic areas will be included in OpenMusE D3.1, Section 3.3.5.

One aim of the ongoing dialogue between the Open Music Europe project team and Slovak governmental and scientific stakeholders is to dive further into the precision of data available in these and other surveys. Throughout this process, a continual assessment will be conducted and made available as a living document “Dn.1_OpenMusE_SK_IKP_2030_indicator_candidates.xlsx” under the public link https://cloud.sinus-institut.de/public/b7465b

5 Data Sources and Collection Methods

5.1 Cross-WP Data Sources and Collection Methods

5.1.1 Secondary Survey Data

As mentioned above in Section 4, certain survey data relevant to the WP2 topics of music diversity and circulation (e.g., on the diversity of natural persons active in the music sector and the diversity of music audiences) exist on both the EU and national levels. Some data are openly available to the public (e.g., Eurobarometer), whereas other data require formal procedures or other legal agreements for access (e.g., Eurostat survey microdata, data held by national statistics institutes). A summary is provided in D3.1, Section 4.1.1.

When relevant, aggregated Eurostat data will be accessed via the *eurostat* package and processed using R. Survey microdata will be imported into R and processed.

5.1.2 Administrative Data Sources

As noted in OpenMusE D6.3, in WP2, we will create administrative record microdata datasets from various sources, mainly from royalty accounting. For example, the royalty accounts of ALOADED will be used for this purpose with code generated by REPREX. Because these administrative records contain personal information and business confidential information, the statistical processing (which will make direct or indirect identification impossible) will take place on the IT system of ALOADED. The Consortium will only receive indicator datasets that contain no business-sensitive information or personal data.

5.1.3 Primary Data Collection

The OpenMusE partners will conduct a range of primary data collection activities. Specifically:

- A music professional, music organisation, and music MSME survey will be conducted under the auspices of WP1 and WP2, with scientific assistance from WP3 and technical assistance from WP4 and WP5. Details on the survey objectives and contents are provided in D3.1, Section 4.3.1. A primary objective of the survey is to fill data gaps relevant to both the diversity and circulation of subjects (e.g., informal music employment and income disaggregated by sociodemographic factors, data on performances abroad, etc.) and the diversity and circulation of content (e.g., languages used in works, genre/style affiliations, etc.).
- A cultural access and participation sample survey representative of the general population (natural persons) will be conducted under the auspices of WP3, with scientific assistance from WP1 and technical assistance from WP4 and WP5. Details on the survey objectives and contents are provided in D3.1, Section 4.3.1. The survey is primarily intended to fulfil WP3 objectives, however, may also shed light on topics relevant to WP2 (e.g., attendance at cross-border performances, attitudes toward cross-cultural interaction, etc.).
- Records will be kept of stakeholder workshops and/or interviews conducted on a cross-WP basis. These may include audio recordings, transcripts, and memos. Records will also be kept of stakeholder contact information: e.g., mailing lists, etc. These activities will aim to refine and validate the indicators developed in WP1-3.
- As part of the Listen Local pilot project conducted in T2.3, data will be collected from musical artists on an opt-in basis. Details on the survey objectives and contents are provided in Section 5.2 below.
- Qualitative interviews may be conducted with musical artists and other stakeholders. While not part of the original Description of Action, such interviews could meaningfully augment the

quantitative data collection on topics relevant across WP1-3, while also proving useful for communication and dissemination purposes.

Ethical and data protection considerations on these data collection activities are provided in D6.2 and D6.3, respectively.

5.2 WP2-Specific Data Sources and Collection Methods

5.2.1 Data Reuse and Collection

T2.3, the Listen Local project, will define the Slovak Comprehensive Music Database and the Bulgarian Demo Music Database. In simple terms, these databases intend to provide a human- and machine-readable answer to whether a musical work, its recording, performer or composer is Slovak or Bulgarian from a cultural policy point of view. The database will include all artists and groups, ensembles, and orchestras, who consider themselves Slovak/Bulgarian (people can opt-in) or who are considered Slovak by the rights management mandate of SOZA/MusicAutor and the mission of Hudobné centrum (write-in by representative institutions).

These databases follow linked open data specifications and aim to create a database of three datasets:

- A comprehensive inventory dataset of Slovak, an extensive list of Bulgarian recordings (identified with their ISRC identifier) and various descriptive, musicological and rights management metadata. The expected size of this dataset is up to 200,000 observations for Slovakia. Later versions of the DMP will contain data size estimates (or actual sizes) for Bulgaria, Lithuania and Ukraine.
- A comprehensive inventory dataset of Slovak and an extensive list of Bulgarian music works (identified with a URI), which is linked to the non-public ISWC codes, to the known recordings of these works, and various other descriptive, musicological and rights management metadata. The expected size of this dataset is up to 150,000 observations for Slovakia. Later versions of the DMP will contain data size estimates (or actual sizes) for Bulgaria, Lithuania and Ukraine.
- A comprehensive inventory dataset of Slovak composers, an extensive list of Slovak performers, and an extensive list of Bulgarian composers and performers identified by a persistent ID and connected to their known works and recordings. The expected starting size of this dataset is 100 observations for Slovakia (pilot phase), which will be scaled up throughout the project.

The Slovak Comprehensive Music Database is designed to be a linked open data database, which means that it will be made available publicly and in machine-readable and machine-actionable formats. The aim of using linked open data technology is to create a clear division between data and metadata. We will provide a public dataset that contains URIs for datasets which will have different access rights and legal statuses. For example, the comprehensive inventory dataset of Slovak composers contains data about living and deceased persons who are authors of music or lyrics. Different legal rules apply to the data of living and deceased persons (for example, GDPR.) The Slovak Comprehensive Music Database will make some data public with a clear legal mandate and contain a data map as metadata for further data that may not be made public. The three datasets aim to provide keys to further datasets managed by the Open Music Europe Consortium or its partners. They contain further musicological, engineering, rights management metadata, biographical and locational information about the recorded performances, the provenance of works, and the composers and performers.

T2.1 will create algorithms to select ‘representative recordings’ for Slovakia, Bulgaria and other countries. This dataset (“index datasets”) will provide a list of ISRC codes for recordings that well represent some market properties for a given territory (with a focus on Bulgaria, Hungary and Slovakia)

from a revenue or quantity point of view for every royalty payment period (typically a month.) T2.2 will create these datasets.

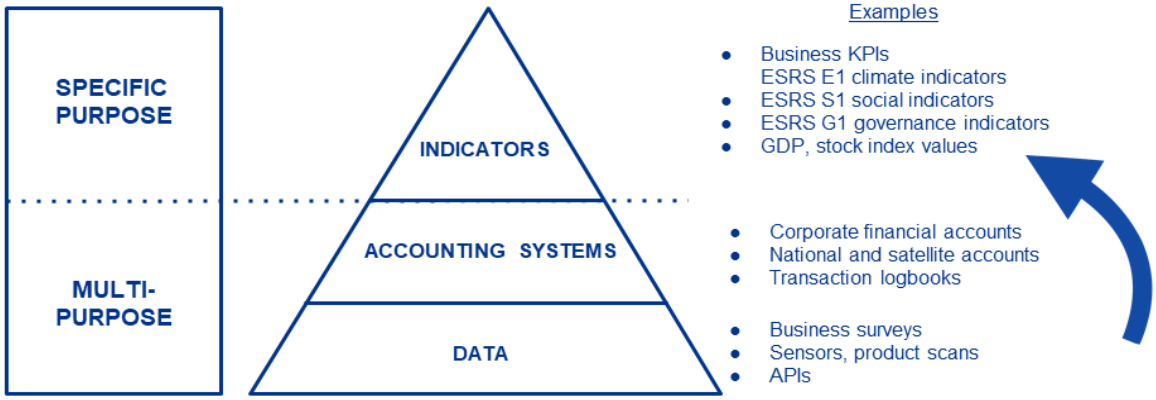
5.2.2 Data Generation

The Slovak Comprehensive Music Database can be used as an auxiliary data source (metadata from the indicator's point of view) to create the process of Slovak national diversity and circulation indicators (about market shares and concentration.)

Open Music Europe will contribute to this data generation to create a cost/benefit model and a model to utilise public documentation services (for example, documentation services of public music libraries) and in-house data generation of the Consortium members.

6 Indicator Candidates

As described in D1.1, Open Music Europe intends to build an open statistical infrastructure that is compatible with the national statistical infrastructures of the EU/EEA/candidate member states, but which is based on voluntary industry cooperation. The **statistical infrastructure of indicators** serves as a guideline for our pursuit of mixed data sources. In brief, indicators are distillations of policy-relevant data (see Figure 7 below; DOI: https://doi.org/10.6084/m9.figshare.23600571):



Good indicators match **actionable objectives** to **accessible data** that describe the extent to which these objectives have been achieved.

6.1 EU-Level Indicator Candidates

To develop a holistic set of indicators stemming from the findings reached so far, it is necessary to align current and proposed/new policy objectives with current and proposed/new data sources.

The previous version of D2.1, submitted on 30 September 2023, focused on the identification of policy objectives, as well as policy-relevant concepts and definitions as established in international law and industry good practices. With regard to the EU level, these objectives, concepts, and definitions are provided in Sections 3.1, 3.2, 3.3, 3.4, and 3.5.

This new version of D2.1 adds work done on schemas for the systematic identification of data availabilities and gaps. A preliminary schema for the identification of data availabilities and gaps on the diversity and circulation of subjects and content on the EU level is provided in Section 4.2. This schema constitutes the comprehensive basis for identifying data relevant to the policy objectives presented in Section 3. This closes the loop on the pathway to good indicators, which match actionable policy objectives to accessible data that describe the extent to which these objectives have been achieved.

The next step is to determine, through dialogue with stakeholders, which cells in the schema point toward effective indicators. Here, the S.M.A.R.T. guideline could be of assistance; this well-known mnemonic holds that effective indicators should be:

- Specific
- Measurable
- Achievable
- Relevant
- Time-bound

Note here that WP1, WP2, and WP3, while working from a similar conceptual basis, have proposed slightly different schemata, which must be aligned prior to extensive stakeholder interaction.

6.2 National-Level Indicators Candidates

6.2.1 Bulgaria

Indicator candidates for France will be identified during the data collection phase of the work package, following the example of Slovakia below. The precision at which this is possible will depend upon the extent of cooperation possible with local stakeholders.

6.2.2 Germany

Indicator candidates for Germany will be identified during the data collection phase of the work package, following the example of Slovakia below. The precision at which this is possible will depend upon the extent of cooperation possible with local stakeholders.

6.2.3 Hungary

Indicator candidates for Hungary will be identified during the data collection phase of the work package, following the example of Slovakia below. The precision at which this is possible will depend upon the extent of cooperation possible with local stakeholders.

6.2.4 Italy

Indicator candidates for Italy will be identified during the data collection phase of the work package, following the example of Slovakia below. The precision at which this is possible will depend upon the extent of cooperation possible with local stakeholders.

6.2.5 Slovakia

The Slovak Institute for Cultural Policy (IKP) has worked extensively in recent years to develop a comprehensive strategy for the development of the CCSIs in accordance with the 2030 Agenda for Sustainable Development. As noted in OpenMusE D1.1, one landmark in this process was the first edition of *Set of Goals and Measurable Indicators for Cultural Policies in Slovakia* (IKP 2022), which developed draft objectives and indicator candidates for the umbrella cultural policy, 13 sub-sectoral cultural policies (including for music) and two cross-cutting cultural policies. Another landmark was the publication of the *Culture Strategy and Creative Industries of the Slovak Republic 2030* (2023). The first three columns of Table 31 summarise indicators identified in the latter IKP report. The fourth column proposes music-specific sub-indicators when appropriate. Table 32 then explains the potential relevance of each indicator to OpenMusE WP2.

Table 31 - Overview of indicators defined in the Culture Strategy and Creative Industries of the Slovak Republic 2030 (2023), with proposed music-specific sub-indicators.

KPI ID	Measurable indicator	Source of Target Values	Proposed Music-Specific Sub-Indicator
1a	Satisfaction of actors in culture with the activities of the Ministry of Culture	Unavailable	Satisfaction of actors in the music industry with the activities of the Ministry of Culture, both in general and with regard to music-specific activities.

1b	Proportion of indicators for which the target is reached in 2030 Value	Unavailable	Proportion of music-specific sub-indicators for which the target is reached in 2030 Value
1c	MK SR (Ministry of Culture of the Slovak Republic) expenditure as a share of GDP	RIS (expenditures of the Ministry of Culture of the Slovak Republic), SO SR (GDP)	MK SR (Ministry of Culture of the Slovak Republic) expenditure on music organisations and activities as a share of GDP
1d	Proportion of investment actions financed from the state budget without delay and within the planned costs compared to the investment plan	Unavailable	Proportion of investment actions specific to music financed from the state budget without delay and within the planned costs compared to the investment plan
1e	Proportion of investment actions financed by EU funds without delays and within planned costs compared to plan	Unavailable	Proportion of investment actions specific to music financed by EU funds without delays and within planned costs compared to plan
1f	Amount of EU-funded investment actions to be repaid to the EU budget because of unduly spent	Unavailable	Amount of EU-funded investment actions specific to music to be repaid to the EU budget because of unduly spent
1g	Percentage of institutions established by the Ministry of Culture of the Slovak Republic with their own published strategy	Websites of institutions established by the Ministry of Culture of the Slovak Republic	Percentage of music institutions established by the Ministry of Culture of the Slovak Republic with their own published strategy
1h	Percentage of selection procedures for directors of organisations of the Ministry of Culture of the Slovak Republic carried out through an open selection procedure	Website of the Ministry of Culture of the Slovak Republic	Percentage of selection procedures for directors of music-related organisations of the MK of SR carried out through an open selection procedure.
1i	Proportion of concepts and action plans for each cultural area policies	MK SR	Proportion of concepts and action plans for music policies
2a	Share of value added of culture and creative industries in the value added of the economy	KKP SR Satellite Account 2019	Share of value added of the music industry in the value added of the cultural and creative industries as a whole; share of value added of the music industry in the value added of the economy as a whole
2b	Share of public spending on culture (COFOG)	Eurostat - Total general government expenditure (COFOG 082-086) / Total general government expenditure	Share of public spending on domains of culture, as defined in the ESSnet-Culture Final Report (2012); share of public spending on functions of culture, as defined in the ESSnet-Culture Final Report (2012)
2c	Share of own revenue in total revenue in collecting institutions [museums, libraries]	KULT 9, KULT 6	Not applicable -- KULT 9 and 6 cover museums and libraries, respectively

2d	Share of own income in total income in performing arts institutions	KULT 12, KULT 5	Share of own income in total income in music performance institutions
2e	Reduction of investment debt in the culture sector compared to investment needs at baseline	November 2022 Investment Inventory	Reduction of investment debts in the music sector compared to investment needs at baseline; reduction of investment debts in the music sector compared to investment needs at average cultural sector baseline
2f	Number of national cultural monuments reconstructed with EU funds that will meet the target visitor numbers after reconstruction	Unavailable	NA
2g	Share of subsidies paid directly to MK in the total amount of subsidies Department	Subsidies of the Ministry of Culture of the Slovak Republic (without covid) / budgets of funds + subsidies of the Ministry of Culture of the Slovak Republic (without covid) COVID)	NA
3a	Share of employment in culture and creative industries in the total economy	KKP SR Satellite Account 2019	Share of employment in the music industry in the total economy; share of employment in the music industry in the cultural sector
3b	Number of male and female employees in the cultural and creative industry	KKP SR Satellite Account 2019	Number of male and female employees in the music industry
3c	Number of self-employed persons in the culture and creative industries	data from eurostat as the quantified share of self-employed workers in the KKP	Number of self-employed persons in the music industry
3d	Average income in culture and creative industries - number of industries lagging behind the national average economy	KULT (3-12, 14, 16, 17 , 19, 20, 21)	Average income in the music industry; number of music sub-sectors lagging behind the national average and the CCSI average; size, business model, legal form of the enterprises lagging behind
3e	Average wages of professional men and women in the CCSIs as a proportion of the national average wage of university-educated men and women in the national economy	KULT (3-12, 14, 16, 17 , 19, 20, 21)	Average wages of professional men and women in the music industries as a proportion of the national average wage of university-educated men and women in the national economy, and as a proportion of the national average wage of university-educated men and women in the CCSIs
4a	Percentage of high school and university graduates in the humanities, linguistics and arts	Eurostat Skills mismatch indicator, "Humanities, languages and arts"	Percentage of high school and university graduates **in music** who are employed in the music

	who are employed in the humanities, linguistics and arts disciplines		industry; percentage of high school and university graduates i**n other fields** who are employed in the music industry
4b	Percentage of female graduates of secondary schools with a focus on culture and creative industries working in the field	Only conservatories, SUS and SUS without non-arts disciplines from uplatnenie.sk (Ministry of Labour and Social Affairs)	Percentage of female graduates of secondary schools with a focus on music and related matters working in the music industry
4c	Percentage of graduates from universities with a focus on culture and creative industries working in the field	Employees Bc. and Mgr. from uplatnenie.sk (Ministry of Labour and Social Affairs) targets for 4.1 and 4.2 on on the basis of overall employment in the field in SK	Percentage of graduates from university with a focus on the music industry working in the field
4d	Number of continuing education outreach activities offered	NOC Educational Activities - NOC Annual Report	Number of continuing education outreach activities offered related to music
4e	Number of works or authors who have been successful in international competitions (cultural heritage, literature, audiovisual and design)	Internal search	Number of works or authors of musical compositions who have been successful in international competitions
4f	Share of viewers at the premieres of Slovak films compared to the total to the Slovak film market	Share of the audience at the premieres of Slovak films (also in coproduction) compared to the total Slovak film market according to the annual report of the Slovak Film Institute	Not applicable
4g	Share of culture and creative industries exports in total exports	KKP SR Satellite Account 2019	Share of music goods and services exported in total exports; share of music goods and products exported in total CCSI exports; ratio between music services exported (performances, digital platforms) and music goods (CD, vinyl, etc.)
4h	Number of translations of Slovak authors published abroad	SLC - support via SLOLIA	Not applicable
5a	Percentage of MK SR organisations with physical debarring of the interior of buildings	Questionnaire on the state of physical and information debarring in organisations under the competence of the Ministry of Culture of the Slovak Republic (2022); question C148	Percentage of MK SR music organisations with physical debarring of the interior of buildings
5b	Percentage of organisations of the Ministry of Culture of the Slovak Republic with a website that meet the Web Accessibility Standards	Questionnaire on the state of physical and information debarring in organisations under the competence of the Ministry of Culture of the Slovak Republic (2022); question B31	Percentage of music organisations of the Ministry of Culture of the Slovak Republic with a website that meet the Web Accessibility Standards

5c	Number of visitors to events aimed at disadvantaged groups in libraries	KULT 10	Not applicable
5d	Share of broadcasting for national minorities in public service media	KULT 7 and 8	Share of music-related broadcasting for national minorities in public service media
5e	Proportion of districts that have at least one of each type of institution surveyed (theatre, gallery, cinema, library, cultural and recreational facilities, museum, independent cultural centres)	KULT 12, 6, 9, 3 Cinemas	Proportion of music-related institutions relative to institutions in general per district
6a	Active cultural participation of the population/interested artistic activity	Eurostat - Frequency of practising artistic activities, 2015 (%, share of population aged ≥16 years)	Active musical participation/interest of the population
6b	Passive cultural participation of the population	Eurostat - Frequency of participation in cultural or sport activities in the last 12 months by sex, age, educational attainment level and activity type, 2015	Passive musical participation of the population
6c	Public perception of the importance of culture	It is not	Public perception of the importance of music
6d	Attendance at collecting institutions	KULT 9 and 6	Not applicable
6e	Percentage of citizens with a reading card	KULT 10	Not applicable
6f	Attendance at performing arts institutions	KULT 12 and 5	Attendance at music performance institutions
6g	Attendance at festivals (theatre, music, film festivals, shows, nonprofessional culture competitions, etc.)	KULT 16, 17, 3 and 11	Attendance at music festivals
6h	Aggregate attendance at cultural institutions	KULT aggregate	Proportion of attendance at music institutions relative to cultural institutions in general
6i	Number of published works of fiction and literature by Slovak authors	Slovak National Library	Not applicable
7a	Quality of life index results	OECD Better Life Index	Not applicable
7b	Media freedom index results	2021 - RSF Index	Not applicable

7c	Percentage of citizens who trust the media	Eurobarometer "Trust index" - Media Use in the European Union, % share with relates to "high trust" + "medium trust", for 5 media types (radio, tv, print, internet, online social networks)	Not applicable
7d	Percentage of the population that has no reservations about a neighbour from another culture	2017 - European Values Research	Not applicable
7e	Participation in the elections to the National Assembly of the Slovak Republic	2020 - OECD Better life index	Not applicable
7f	A positive relationship with the environment	2019 - Eurobarometer (environmental awareness)	Not applicable
7g	Percentage of the population who agree that other people can be trusted	2017 - European Values Research	Not applicable

As noted, Table 33 below explains the potential relevance of each indicator to the OpenMusE WP2 topics of the diversity and circulation of: 1) subjects (natural person); 2) content (works of particular genre/style, national origin, language content, etc.).

Table 32 -Relevance to OpenMusE WP2 of indicators defined in the Culture Strategy and Creative Industries of the Slovak Republic 2030 (2023).

KPI ID	Potential Relevance to the Diversity and Circulation of Subjects	Potential Relevance to the Diversity and Circulation of Musical Content
1a	Satisfaction disaggregated by sociodemographic factors (e.g. age, gender), as well as occupation, career stage, etc.	Satisfaction with measures to promote specific types of content.
1b	"Meta-indicator"	"Meta-indicator"
1c	Expenditure on music organisations and activities with diversity and inclusion as stated goals (etc.)	Expenditure on music organisations and activities disaggregated by the types of musical content on which they focus
1d	NA	NA
1e	NA	NA
1f	NA	NA
1g	Percentage of published strategies that include diversity and inclusion objectives and measures	Percentage of published strategies that recognise the importance of promoting a diverse range of musical content
1h	NA	NA

1i	Percentage of concepts and action plans for music policies that include diversity and inclusion objectives and measures	Percentage of concepts and action plans for music policies that recognise the importance of promoting a diverse range of musical content
2a	NA	NA
2b	NA	NA
2c	NA	NA
2d	NA	NA
2e	NA	NA
2f	NA	NA
2g	NA	NA
3a	Share of employment in the music industry disaggregated by sociodemographic factors, in comparison to the cultural sector and the total economy	NA
3b	Number of male and female employees in the music industry, further disaggregated by other sociodemographic factors	NA
3c	Number of self-employed persons in the music industry disaggregated by sociodemographic factors, in comparison to the cultural sector and the total economy	NA
3d	Average income in the music industry disaggregated by sociodemographic factors	NA
3e	Average wages of professional men and women in the music industries, further disaggregated by other sociodemographic factors	NA
4a	Percentage of male and female high school and university graduates in music who are employed in the music industry, disaggregated by sociodemographic factors	NA
4b	As above	NA
4c	Percentage of graduates from university with a focus on the music industry working in the field, further disaggregated by other sociodemographic factors	NA
4d	Number of continuing education outreach activities in music targeted to disadvantaged population groups; existence of incentive schemes to enable members of disadvantaged population groups to take advantage of such activities	NA

4e	Number of successful works or authors disaggregated by sociodemographic factors	Number of successful works disaggregated by genre/style, etc.
4f	NA	NA
4g	Share of music goods exported, disaggregated by sociodemographic attributes of authors	Share of music goods exported, disaggregated by genre/style, etc.
4h	NA	NA
5a	Directly relevant	NA
5b	Directly relevant	NA
5c	NA	NA
5d	Directly relevant	Directly relevant
5e	NA	NA
6a	Active musical participation/interest of the population disaggregated by sociodemographic factors	Active participation/interest of the population in specific musical genres/styles, etc.
6b	Passive musical participation of the population disaggregated by sociodemographic factors	Passive participation of the population in specific musical genres/styles, etc.
6c	Public perception of the importance of music disaggregated by sociodemographic factors	Public perception of the importance of access to a diverse range of musical contents
6d	NA	NA
6e	NA	NA
6f	Attendance disaggregated by sociodemographic factors	Attendance disaggregated by type of musical content on which music institutions focus
6g	Attendance at music festivals disaggregated by sociodemographic factors	Attendance at music festivals disaggregated by genre/style, etc.
6h	As above, relative to cultural institutions in general	As above, relative to cultural institutions in general
6i	NA	NA
7a	NA	NA

7b	NA	NA
7c	NA	NA
7d	NA	NA
7e	NA	NA
7f	NA	NA
7g	NA	NA

The next steps are to determine which of these sub-indicators can be assessed using the current sources of target values identified in the strategy document, and which require finding new data sources and/or collecting primary data. For the latter, data collection methods must be proposed. An expanded spreadsheet documenting this process is provided as a living document on the SINUS cloud at the following link: https://cloud.sinus-institut.de/public/b7465b

7 Conclusion and Outlook

The mapping of regulatory tools from international, EU, and selected Member States sources reveals a convergence around various diversity policy objectives and their components. While legislative efforts to promote cultural diversity in the music sector provide a solid foundation, gaps and shortcomings may require further intervention to achieve this policy goal fully. A key observation from the analysis of selected countries is that stakeholders and policymakers have diverging views on the effectiveness of regulatory interventions, such as content quotas. Therefore, it is essential to carefully monitor the impact of each regulatory/policy intervention on diversity, in order to produce data that may support evidence-based policy recommendations. Furthermore, in countries that have implemented content quotas based on demographic indicators (e.g., gender, origin), there is a lack of alignment between media regulation and other rules protecting cultural heritage, including minority languages, groups, and music-related elements. This suggests the need for exploring alignment methods between these indicators.

Another significant gap refers to indicators that capture the qualitative and quantitative aspects of music broadcasted on radio, television, and streaming platforms in each Member State. This includes works created by female authors, authors from minority or vulnerable groups, and demographics like age. A broader understanding of demographics should encompass aspects such as minority languages and groups. Again, while qualitative indicators for gender representation exist, little evidence exists so far in quantitative terms. In addition, indicators should combine various points of attachment, such as (minority) language, place of origin, nationality, and place of operation. These indicators should be used in relation to creators (e.g., authors) and other actors across the whole value chain (e.g., producers, distributors)., and type of works (sound recordings, instrumental content, lyrics).

In addition, the deliverable shed light into good practices in music stakeholders (e.g., CMOs, cultural statistics, and EUROSTAT statistics), thus, interconnecting exemplary practices of diversity indicators and measures that align with current policy priorities. This serves deriving a framework for the collection of data on demographic dimensions of creators, consumers, as well as the diversity dimensions of content and stakeholders.

Following an extensive examination of scientific literature, the deliverable provides an initial mapping of data availabilities, gaps, sources, and collection methods at both the EU and Slovak levels. This methodology is designed to be adaptable to any other EU member state. Additionally, it delves into existing indicators developed in Slovakia and puts forth a framework for the development of indicators at the EU level, contributing to a more comprehensive understanding of the diverse dimensions of music ecosystems and their sustainability.

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Annex 1: Mapping of Legal Instruments Addressing Diversity

This document *"D2.1_OpenMusE_Annex1_Mapping_of_legal_instruments_addressing_diversity.xlsx"* is not suitable for transfer into PDF form and therefore available on the SINUS Cloud under the public link https://cloud.sinus-institut.de/public/4a39b5

Annex 2: Survey of Measures Adopted by Selected Countries

Please see pages 164 onwards.

Annex 3: Overview of Diversity in Selected EU Member State Cultural Policies

This document "*D2.1_OpenMusE_Annex3_Overview_of_diversity_in_selected_EU_member_state_cultural_policies.xlsx"* is not suitable for transfer into PDF form and therefore available on the SINUS Cloud under the public link https://cloud.sinus-institut.de/public/329580

Internal Questionnaire for partners contributing to WP2, Task 2.1

Dear partners,

This survey is part of Work Package 2 of the Horizon Europe research project Open MusE. Task 2.1, led by Scuola Superiore Sant'Anna, aims to identify and map legal indicators about diversity in the circulation of musical repertoires. The present questionnaire is meant to identify national rules or initiatives that affect the circulation of musical content in three venues: a) radio stations, b) live performances, and c) streaming platforms.

The questionnaire entails a set of specific questions, followed by an open answer section (in case you would like to share more details with us). The indication of the source is a **mandatory field** for verification purposes.

Please return the questionnaire and any attachments (supplementary documents, links, etc.) by **Monday, 28 August 2023** to the following e-mails: m.contardi@santannapisa.it and caterina.sganga@santannapisa.it.

1. PARTNER DETAILS	
Name of the partner contributing:	
People involved and position:	
Country for which you are providing information:	

2. BROADCASTING CIRCULATION	
a) Does the country for which you are providing information impose content obligations on **radio play** ("radio quotas")?	Yes ☐ No ☐

If the answer to the previous question 2.a) is **YES**, please indicate:

2.a.1 Quotas adopted on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____

	Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
2.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., public broadcasters only, or all broadcasters) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
2.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
2.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links: **Please specify if the indicated laws refers to the national transposition of the 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 (Audiovisual Media Services Directive – "AVMSD")**	
2.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 2.a) is **NO,** please indicate:

2.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose radio quotas.	Yes ☐ No ☐
2.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	

3. LIVE PERFORMANCES	
a) Does the country for which you are providing information provide for **LIVE PERFORMANCES** any content obligation ("quotas")?	Yes ☐ No ☐

If the answer to the previous question 3.a) is **YES**, please indicate:

3.a.1 Specify for which types of events:	
3.a.2 Quotas or other measures adopted based on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____

3.a.3 Please provide any further details on the above measures. This could include, for example: - Nature of the measure (economic incentive, mandatory requirement) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
3.a.4 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
3.a.5 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
3.a.6 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 3.a) is **NO,** please indicate:

2.a.7 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in live performances/festivals.	Yes ☐ No ☐
2.a.8 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	

4. STREAMING	
a) Does the country for which you are providing information provide any content obligation ("quotas") for **STREAMING SERVICES**?	Yes ☐ No ☐

If the answer to the previous question 4.a) is **YES**, please indicate:

4.a.1 Measure adopted:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
4.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., which platforms or which types of platforms) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
4.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender,	

nationality, genre, etc.), and which institutions are responsible for that task?	
4.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
4.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 4.a) is **NO,** please indicate:

4.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in:	Yes ☐ No ☐
4.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details :	

5. OTHERS	
a) Besides the measures indicated above, are there any minority languages, traditional musical genres, traditional musical instruments, or other music-related cultural heritage objects (tangible or intangible) protected in the country you are reporting?	Yes ☐ No ☐ **If yes, please specify:** _____ **and** provide the name of the original source (law) where the measure is contained, the date it entered into force, with a link to it:
b) Which are the institution(s) responsible for establishing cultural policies in the reported country?	
c) Please add here any further comment that you deem appropriate:	

Thank you for your contribution!

Internal Questionnaire for partners contributing to WP2, Task 2.1

Dear partners,

This survey is part of Work Package 2 of the Horizon Europe research project Open MusE. Task 2.1, led by Scuola Superiore Sant'Anna, aims to identify and map legal indicators about diversity in the circulation of musical repertoires. The present questionnaire is meant to identify national rules or initiatives that affect the circulation of musical content in three venues: a) radio stations, b) live performances, and c) streaming platforms.

The questionnaire entails a set of specific questions, followed by an open answer section (in case you would like to share more details with us). The indication of the source is a **mandatory field** for verification purposes.

Please return the questionnaire and any attachments (supplementary documents, links, etc.) by **Monday, 28 August 2023** to the following e-mails: m.contardi@santannapisa.it and caterina.sganga@santannapisa.it.

1. PARTNER DETAILS	
Name of the partner contributing:	**ARTISJUS**
People involved and position:	**Two, Head of legal, legal counsel**
Country for which you are providing information:	**Hungary**

2. BROADCASTING CIRCULATION	
a) Does the country for which you are providing information impose content obligations on **radio play** ("radio quotas")?	Yes ☒ No ☐

If the answer to the previous question 2.a) is **YES**, please indicate:

2.a.1 Quotas adopted on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☒ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☒ **If yes, which one: Hungarian Minority population language ☒

	**If yes, which one: all languages of nationalities recognized by Hungary. Recognized nationalities of Hungary are Romani people, Bulgarians, Greeks, Croatians, Poles, Germans, Armenians, Romanians, Rusyns, Serbians, Slovakians, Slovenians, Ukrainians. Provided that the subject matter of the work concerns the life or culture of the given nationality in Hungary, or its subject matter concerns the culture of the given nationality in relation to Hungary. Other ☒ **If yes, please specify the type of quota: In linear radio media services at least thirty-five percent of the transmission time dedicated to broadcasting musical works shall be allocated to broadcasting Hungarian (which includes all minority languages referred above) musical works. In linear radio media services at least twenty-five percent of the Hungarian (which includes all minority languages referred above) musical works to be broadcast shall be from musical works released within five years or produced within five years. Those musical recordings made before 1990, that has been remastered digitally within not more than five years from the date of publication, shall be construed as sound recordings made within not more than five years ago.
2.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., public broadcasters only, or all broadcasters) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other	See summary: https://english.nmhh.hu/stakeholders/media-supervision/programme-quota-obligations?_gl=1*4x0qzv*_ga*MTI5NDA5ODg4MS4xNjkzOTg5OTQy*_ga_D5LQSMBZTF*MTY5Mzk4OTk0MS4xLjAuMTY5Mzk4OTk0MS4wLjAuMA..*_ga_9TVCG3TVNV*MTY5Mzk4OTk0MS4xLjAuMTY5Mzk4OTk0MS4wLjAuMA.. Detailed: Act CLXXXV of 2010 - on Media Services and on the Mass Media Section 1 (1) The Act shall apply to the media services provided and the press products published by media content providers established in Hungary. (2) For the purposes of this Act, a media content provider shall be deemed to be established in the territory of Hungary in the following cases: a) the media content provider uses a frequency appertaining to Hungary for the dissemination of analogue media services, or the media product is accessible through an electronic communications identification code designated primarily for users from Hungary; b) the media content provider has its head office in the territory of Hungary and the editorial decisions on the media service, press product are taken in the territory of Hungary; c) the media content provider has its head office in the territory of Hungary but editorial decisions are taken in another country, or vice versa, provided that a significant part of the workforce involved in the pursuit of the media content service activity - in the case of media service providers in the pursuit of program-related media service activity - operates in the territory of Hungary;

measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	d) if a significant part of the workforce involved in the pursuit of the media content service activity - in the case of media service providers in the pursuit of program-related media service activity - operates in the territory of Hungary and in other States as well, the media content provider shall be deemed to be established in the territory of Hungary if it has its head office there; or e) if a significant part of the workforce involved in the pursuit of the media content service activity - in the case of media service providers in the pursuit of program-related media service activity - does not operate in Hungary, the media service provider shall be deemed to be established in Hungary if it first began in the territory of Hungary, provided that it maintains a stable and effective link with the Hungarian economy. (3) This Act shall also apply to media services provided by a media content provider that is not deemed to be established in Hungary on the basis of Subsections (1)-(2), and that is not deemed to be established in another Member State either, if it uses a satellite up-link situated within the territory of Hungary, or it uses the satellite capacity appertaining to Hungary. (4) If, on the basis of Subsections (1)-(3), it cannot be established whether a media content provider falls within the jurisdiction of Hungary or another Member State, the media content provider shall be deemed to fall within the jurisdiction of the Member State in which it is deemed to be established within the meaning of Articles 49-55 of the Treaty on the Functioning of the European Union. (5) This Act shall apply to media services and press products which are not covered by Subsections (1)-(4), and which are directed towards the territory of Hungary, or distributed or published in the territory of Hungary subject to the conditions set out in Sections 176-180. (6) This Act shall apply to the media services and press products which are directed towards the territory of Hungary or which are distributed or published in the territory of Hungary by a media content provider that is not deemed to be established in any Member State and the media services or press products of which are not subject to the jurisdiction of any of the Member States. (6a) Where, in applying Sections 176-180, Hungary and another Member State do not agree on which Member State has jurisdiction, the Media Council of the Nemzeti Média- és Hírközlési Hatóság (National Media and Infocommunications Authority) (hereinafter referred to as "Media Council") shall bring the jurisdiction dispute to the European Commission's attention without undue delay. (7) This Act shall apply to media content providers rendering media services or publishing press products that fall under the scope of the Act pursuant to Subsections (1)-(6). Section 21 (1) In linear radio media services at least thirty-five percent of the transmission time dedicated to broadcasting musical works shall be allocated to broadcasting Hungarian musical works. (2) *In linear radio media services at least twenty-five percent of the Hungarian musical works to be broadcast shall be from musical works released within five years or produced within five years. (3) Those musical recordings made before 1990, that has been remastered digitally within not more than five years from the date of publication, shall be construed as sound recordings made within not more than five years ago having regard to Subsection (2).

	Section 22 (1) The provisions set out in Sections 20-21 shall not apply to: a) media services used exclusively for advertising purposes and media services for broadcasting teleshopping; b) media services used exclusively for promoting the media service provider or another media service of the media service provider; c) the media service which broadcasts its service exclusively in a language other than that of the Member States of the European Union; where programs are broadcast in this language or languages in the majority of the transmission time, the provisions shall not apply to the given part of transmission time; d) local media services with the exception of community media services; e) any media service that is broadcast exclusively in states outside the European Union. (1a) The provisions set out in Subsection (2) of Section 20 relating to European works shall not apply to media service providers with a low turnover or a low audience. (1b) The definition of low audience and low turnover shall be determined uniformly by the Media Council in its recommendation based on the guidelines issued by the European Commission on the subject. (2) Media service providers may, upon request addressed to the Media Council, also attain the ratios defined in Section 20-21 gradually, in a manner laid down in a public contract with the Media Council. Such exemption granted in a public contract may only be authorized for a maximum of three calendar years on condition that the media service provider shall gradually increase the ratio of Hungarian and European works it has broadcast and works produced by an independent producer until it reaches the prescribed ratios. (3) The public contract entered into with a service provider offering radio media services and on-demand media services may, in justified cases, permit a long-term or permanent deviation from the ratios defined in Sections 20-21. The public contract entered into with the media service provider offering linear audiovisual thematic media services may, in justified cases, permit the media service provider to fulfill its obligation under Paragraph b) of Subsection (1) of Section 20 and Paragraph c) of Subsection (3) of Section 20 with works produced over five years ago. (4) Save for the case stipulated under Subsection (3), no general exception may be granted from the provisions relating to program quotas. (5) The percentage requirements under Subsection (1) of Section 21, and the percentage requirements laid down in the public contracts concluded under Subsections (2)-(3) hereof - having regard to Subsection (1) of Section 21 - shall also be satisfied during the transmission time of media services between 5:00 hours and 24:00 hours. (6) Media service providers providing more than one service shall meet the percentage requirements defined in Sections 20-21 on average in the consolidated transmission time of all of their media services, where the ratio of Hungarian musical works shall be at least twenty per cent in each media service in order to meet the requirement set out in Subsection (1) of Section 21. This provisions applies solely to those program quota requirements from which the media service provider has not been exempted under the public contracts entered into on the basis of Subsections (2)-(3) of Section 22.

	(7) For the purposes of Sections 20-21, transmission time allocated to news programs, sports programs, games, commercials, teleshopping, political advertisements, public service announcements, sponsorship announcements, community facility advertisements and videotext shall not be included to comprise a part of total transmission time. (8) Media service providers shall supply data to the Media Council on a monthly basis for verification of compliance with the provisions concerning program quotas. The reasoned request for exemption under Subsections (2)-(3) for the upcoming year shall be submitted to the Media Council on or before 30 September each year. In connection with a new media service, the request may be submitted at the same time when the registration procedure is initiated.
2.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	Act CLXXXV of 2010 - on Media Services and on the Mass Media Section 203 9. 'European works' shall mean the following: a) works originating in Hungary; b) works originating in any Member State of the European Union; c) works originating in any European third state that is a party to the Agreement on the European Economic Area and to the European Convention on Transfrontier Television signed in Strasbourg on 5 May 1989 and promulgated by Act XLIX of 1998; d) works that are produced within the framework of co-production agreements concluded between Member States of the European Union and non-member States, provided that the co-producers from the Member State supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States; or e) works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements. The works referred to in Paragraphs b)-c) are works mainly made with authors and workers residing in one or more of the States referred to in those provisions provided that they comply with one of the following three conditions: 1. they are made by one or more producers established in one or more of those States, 2. production of the works is supervised and actually controlled by one or more producers established in one or more of those States, 3. the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States. The works referred to in Paragraphs c) and e) shall be recognized as European works if the works originating in Member States are not being the subject of discriminatory measures in the non-member State concerned. 37. 'Hungarian works' shall mean: a) works originally produced in Hungarian in their entirety;

	b) works originally produced in several languages, however, in terms of time, the parts originally produced in Hungarian are longer than any other parts produced in any other language; c) works originally produced in the languages of any of the nationalities recognized by Hungary, provided that their subject matter concerns the life or culture of the given nationality in Hungary; d) any musical program performed in Hungarian or performed in the language of any of the nationalities recognized by Hungary, provided that its subject matter concerns the culture of the given nationality in relation to Hungary; e) any instrumental musical program, which forms part of Hungarian cultural heritage or the culture in relation to Hungary of any of the nationalities recognized by Hungary. f) any musical works, one of the composers of which is Hungarian; g) any musical program, which was produced in cooperation with Hungarian performers; h) any cinematographic works, which is treated as Hungarian in accordance with the MPA. 38. 'Hungarian musical works' shall mean any musical works with lyrics and instrumental musical works, which are recognized as Hungarian.
2.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links: **Please specify if the indicated laws refers to the national transposition of the 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 (Audiovisual Media Services**	Act CLXXXV of 2010 - on Media Services and on the Mass Media Act entered into force on 1st of January 2011. https://net.jogtar.hu/jogszabaly?docid=a1000185.tv Act CLXXXV of 2010 - on Media Services and on the Mass Media Act Section 183 (2) The implementation of Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No. 2006/2004 (hereinafter referred to as "Regulation 2017/2394/EU") shall be conferred upon the Media Council with a view to any intra-Community infringements of national laws on the transposition of Articles 19-26 of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. In connection with the implementation referred to above, as regards mutual assistance the Media Council shall proceed in accordance with Commission Decision 2007/76/EC.

Directive – "AVMSD")	
2.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	https://musichungary.hu/wp-content/uploads/2022/09/Magyar-zene-re%CC%81szara%CC%81nya%CC%81nak-no%CC%88vele%CC%81se-Teljes-jelente%CC%81s.pdf https://dalszerzo.hu/2022/12/06/a-magyar-zene-aranya-a-radiokban-tevekben-stream-oldakon-es-hatterzeneben-mindenhol-vannak-problemak/

If the answer to question 2.a) is **NO,** please indicate:

2.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose radio quotas.	Yes ☐ No ☐
2.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	

3. LIVE PERFORMANCES	
a) Does the country for which you are providing information provide for **LIVE PERFORMANCES** any content obligation ("quotas")?	Yes ☐ No ☒

If the answer to the previous question 3.a) is **YES**, please indicate:

3.a.1 Specify for which types of events:	
3.a.2 Quotas or other measures adopted based on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐

	Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
3.a.3 Please provide any further details on the above measures. This could include, for example: - Nature of the measure (economic incentive, mandatory requirement) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
3.a.4 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
3.a.5 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
3.a.6 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 3.a) is **NO,** please indicate:

2.a.7 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in live performances/festivals.	Yes ☐ No ☒
2.a.8 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	

4. STREAMING	
a) Does the country for which you are providing information provide any content obligation ("quotas") for **STREAMING SERVICES**?	Yes ☒ No ☐

If the answer to the previous question 4.a) is **YES**, please indicate:

4.a.1 Measure adopted:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☒ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☒ **If yes, which one: _____ Minority population language ☒ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
4.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., which	Act CLXXXV of 2010 - on Media Services and on the Mass Media Section 1

platforms or which types of platforms) - Percentages required - Details on how “gender” is determined (e.g., self-identification or other measures) - Details on how “national origin” is determined - Details on how “genre” is determined - Etc.	(1) The Act shall apply to the media services provided and the press products published by media content providers established in Hungary. (2) For the purposes of this Act, a media content provider shall be deemed to be established in the territory of Hungary in the following cases: a) the media content provider uses a frequency appertaining to Hungary for the dissemination of analogue media services, or the media product is accessible through an electronic communications identification code designated primarily for users from Hungary; b) the media content provider has its head office in the territory of Hungary and the editorial decisions on the media service, press product are taken in the territory of Hungary; c) the media content provider has its head office in the territory of Hungary but editorial decisions are taken in another country, or vice versa, provided that a significant part of the workforce involved in the pursuit of the media content service activity - in the case of media service providers in the pursuit of program-related media service activity - operates in the territory of Hungary; d) if a significant part of the workforce involved in the pursuit of the media content service activity - in the case of media service providers in the pursuit of program-related media service activity - operates in the territory of Hungary and in other States as well, the media content provider shall be deemed to be established in the territory of Hungary if it has its head office there; or e) if a significant part of the workforce involved in the pursuit of the media content service activity - in the case of media service providers in the pursuit of program-related media service activity - does not operate in Hungary, the media service provider shall be deemed to be established in Hungary if it first began in the territory of Hungary, provided that it maintains a stable and effective link with the Hungarian economy. (3) This Act shall also apply to media services provided by a media content provider that is not deemed to be established in Hungary on the basis of Subsections (1)-(2), and that is not deemed to be established in another Member State either, if it uses a satellite up-link situated within the territory of Hungary, or it uses the satellite capacity appertaining to Hungary.

	(4) If, on the basis of Subsections (1)-(3), it cannot be established whether a media content provider falls within the jurisdiction of Hungary or another Member State, the media content provider shall be deemed to fall within the jurisdiction of the Member State in which it is deemed to be established within the meaning of Articles 49-55 of the Treaty on the Functioning of the European Union. (5) This Act shall apply to media services and press products which are not covered by Subsections (1)-(4), and which are directed towards the territory of Hungary, or distributed or published in the territory of Hungary subject to the conditions set out in Sections 176-180. (6) This Act shall apply to the media services and press products which are directed towards the territory of Hungary or which are distributed or published in the territory of Hungary by a media content provider that is not deemed to be established in any Member State and the media services or press products of which are not subject to the jurisdiction of any of the Member States. (6a) Where, in applying Sections 176-180, Hungary and another Member State do not agree on which Member State has jurisdiction, the Media Council of the Nemzeti Média- és Hírközlési Hatóság (National Media and Infocommunications Authority) (hereinafter referred to as "Media Council") shall bring the jurisdiction dispute to the European Commission's attention without undue delay. (7) This Act shall apply to media content providers rendering media services or publishing press products that fall under the scope of the Act pursuant to Subsections (1)-(6). Section 20 (2) Thirty per cent of the total sum of the length of the programs made available in a given calendar year in the program schedule of on-demand audiovisual media services shall be composed of European works, and at least ten per cent shall be composed of Hungarian works. Media service providers of on-demand audiovisual media services shall ensure prominence of European works in their catalogues. (2a) The Media Council shall report to the European Commission on the implementation of

	the provisions set out in Subsection (2) relating to European works every two years. concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements. The works referred to in Paragraphs b)-c) are works mainly made with authors and workers residing in one or more of the States referred to in those provisions provided that they comply with one of the following three conditions: 1. they are made by one or more producers established in one or more of those States, 2. production of the works is supervised and actually controlled by one or more producers established in one or more of those States, 37. 'Hungarian works' shall mean: a) works originally produced in Hungarian in their entirety; b) works originally produced in several languages, however, in terms of time, the parts originally produced in Hungarian are longer than any other parts produced in any other language; c) works originally produced in the languages of any of the nationalities recognized by Hungary,
4.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	Act CLXXXV of 2010 - on Media Services and on the Mass Media Section 203 9. 'European works' shall mean the following: a) works originating in Hungary; b) works originating in any Member State of the European Union; c) works originating in any European third state that is a party to the Agreement on the European Economic Area and to the European Convention on Transfrontier Television signed in Strasbourg on 5 May 1989 and promulgated by Act XLIX of 1998; d) works that are produced within the framework of co-production agreements concluded between Member States of the European Union and non-member States, provided that the co-producers from the Member State supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States; or

	e) works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements. The works referred to in Paragraphs b)-c) are works mainly made with authors and workers residing in one or more of the States referred to in those provisions provided that they comply with one of the following three conditions: 1. they are made by one or more producers established in one or more of those States, 2. production of the works is supervised and actually controlled by one or more producers established in one or more of those States, 3. the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States. The works referred to in Paragraphs c) and e) shall be recognized as European works if the works originating in Member States are not being the subject of discriminatory measures in the non-member State concerned. 37. 'Hungarian works' shall mean: a) works originally produced in Hungarian in their entirety; b) works originally produced in several languages, however, in terms of time, the parts originally produced in Hungarian are longer than any other parts produced in any other language; c) works originally produced in the languages of any of the nationalities recognized by Hungary, provided that their subject matter concerns the life or culture of the given nationality in Hungary; d) any musical program performed in Hungarian or performed in the language of any of the nationalities recognized by Hungary, provided that its subject matter concerns the culture of the given nationality in relation to Hungary; e) any instrumental musical program, which forms part of Hungarian cultural heritage or the culture in relation to Hungary of any of the nationalities recognized by Hungary. f) any musical works, one of the composers of which is Hungarian; g) any musical program, which was produced in cooperation with Hungarian performers;

	h) any cinematographic works, which is treated as Hungarian in accordance with the MPA. 38. 'Hungarian musical works' shall mean any musical works with lyrics and instrumental musical works, which are recognized as Hungarian.
4.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	Act CLXXXV of 2010 - on Media Services and on the Mass Media Act entered into force on 1st of January 2011. https://net.jogtar.hu/jogszabaly?docid=a1000185.tv
4.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	https://musichungary.hu/wp-content/uploads/2022/09/Magyar-zene-re%CC%81szara%CC%81nya%CC%81nak-no%CC%88vele%CC%81se-Teljes-jelente%CC%81s.pdf https://dalszerzo.hu/2022/12/06/a-magyar-zene-aranya-a-radiokban-tevekben-stream-oldakon-es-hatterzeneben-mindenhol-vannak-problemak/

If the answer to question 4.a) is **NO,** please indicate:

4.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in:	Yes ☐ No ☐
4.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details :	

5. OTHERS	
a) Besides the measures indicated above, are there any minority languages, traditional musical genres, traditional musical instruments, or other music-related cultural heritage objects (tangible or intangible) protected in	Yes ☒ No ☐ **If yes, please specify:** Hungarian national values and hungarikums, namely

the country you are reporting?	- The folk dance house method as the Hungarian model of perpetuation of cultural heritage - Hungarian operetta - Traditional Hungarian folk song - Budapest Gypsy Symphony Orchestra – The worldrenowned artistic and tradition preserving practice of the orchestra - Tárogató (special Hungarian woodwind musical instrument) - Hungarian dulcimer - Kodály Concept **and** provide the name of the original source (law) where the measure is contained, the date it entered into force, with a link to it: Act XXX of 2012 on Hungarian national values and hungarikums, entered into force on 1st of July 2012. http://www.hungarikum.hu/sites/default/files/hungarikumok-lista_2021.01.22.pdf
b) Which are the institution(s) responsible for establishing cultural policies in the reported country?	Parliament of Hungary, Government of Hungary, National Media and Infocommunications Authority, National Cultural Fund, Local Governments of Hungary
c) Please add here any further comment that you deem appropriate:	

Thank you for your contribution!

Internal Questionnaire for partners contributing to WP2, Task 2.1

Dear partners,

This survey is part of Work Package 2 of the Horizon Europe research project Open MusE. Task 2.1, led by Scuola Superiore Sant'Anna, aims to identify and map legal indicators about diversity in the circulation of musical repertoires. The present questionnaire is meant to identify national rules or initiatives that affect the circulation of musical content in three venues: a) radio stations, b) live performances, and c) streaming platforms.

The questionnaire entails a set of specific questions, followed by an open answer section (in case you would like to share more details with us). The indication of the source is a **mandatory field** for verification purposes.

Please return the questionnaire and any attachments (supplementary documents, links, etc.) by **Monday, 28 August 2023** to the following e-mails: m.contardi@santannapisa.it and caterina.sganga@santannapisa.it.

1. PARTNER DETAILS	
Name of the partner contributing:	**Music Export Ukraine NGO**
People involved and position:	**Alona Dmukhovska, Head of organisation**
Country for which you are providing information:	**Ukraine**

2. BROADCASTING CIRCULATION	
a) Does the country for which you are providing information impose content obligations on **radio play** ("radio quotas")?	Yes ■ No ☐ 1) Quota of the songs (musical compositions with text) in government language (Ukrainian) should be not less than 40% of the overall daily number of songs and also between timeframes 7 am - 2 pm and 3 pm - 22 pm. 2) Quota of the songs in Ukrainian should be not less than 25% of the overall daily number of songs for the radio stations that have a license, which obliges them to play at least 60% of the songs in any official language of the European Union. Source: Law of Ukraine "About media" № 2849-IX, Article 40, Clause 3. Dated 31st March 2023 https://zakon.rada.gov.ua/laws/show/2849-20#Text

	which was adopted according to the requirements of The European Union–Ukraine Association Agreement

If the answer to the previous question 2.a) is **YES**, please indicate:

2.a.1 Quotas adopted on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ■ **If yes, which one: **Ukrainian** Minority population language ■ **If yes, which one: **There are radio stations with license to play at least 60% of music with the language in any official language of European Union, then quota for Ukrainian-speaking music is at least 25%. Instrumentals are not included into quota even if they have been released by Ukrainian artists, there is only one factor - language.** Other ☐ **If yes, please specify the type of quota:_____

2.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., public broadcasters only, or all broadcasters) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	- **By this measure affected all broadcasters** - **Gender is not regulated at all** - **'National origin' is not determined, only Ukrainian language is concerned** - **Genre is not determined, quotas are applicable to every genre. Instrumentals are outside of the quota as they don't have any lyrics.** **Along with that, we have a clear definition of the 'national music product' - musical product (phonogram, videogram, video clip), which contains a musical work in Ukrainian language or any other language of indigenous peoples in Ukrainian territory or a musical work without a text, which has all of the mentioned components:** - **performer or one of the performer is Ukrainian citizen or a natural person - a foreigner, a stateless person who permanently or temporarily resides in Ukraine** - **phonogram, videogram or video clip producer or one of the producers is Ukrainian citizen or a natural person - a foreigner, a stateless person who permanently or temporarily resides in Ukraine, OR a legal entity registered according to Ukrainian law** - **Source: Law of Ukraine "On amendments to some laws of Ukraine regarding the support of the national musical product and the restriction of public use of the musical product of the aggressor state" № 2310-IX, Clause15. Dated 31st March 2023** **The definition of 'national music product' helps artists apply or get state grants from institutions such as Ukrainian Cultural Foundation.**
2.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	**The National Council of Television and Radio Broadcasting is responsible fo monitoring and checking of meeting the quota criteria on the radio, to all the broadcasting companies who have got a license for broadcasting.**

2.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links: **Please specify if the indicated laws refers to the national transposition of the 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 (Audiovisual Media Services Directive – "AVMSD")**	**Source: Law of Ukraine "About media" № 2849-IX, Article 40, Clause 3. Dated 31st March 2023** https://zakon.rada.gov.ua/laws/show/2849-20#Text **Yes, this new law was adopted according to the requirements of Directive 2010/13/EU of the European Parliament**
2.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	**There is still too little time to analyse the affect of a new Law, because it was adopted in 2023. Quotas on the radio was adopted** **Some take aways:** - **at the very beginning, radios were playing the same big UA names and often it happened that the same Ukrainian songs were played over and over again. Over the next 5 years, the repertoire significantly grew and gave the opportunity even for small Ukrainian-singing artists to be on the radio** - **because of quotas, some radios launched special programs for emerging artists, which gave them opportunity to growth** - **some radio stations had up to 52% Ukrainian-speaking songs, much higher than then needed quota** - **Many Ukrainian artists started singing in Ukrainian or translated their songs into Ukrainian (mainly from russian)** - **Already established Ukrainian artists got even more radioplay, which helped them to grow the fanbase and do sold-out shows on arenas and stadiums, which was rarely the case before**

	Sourse: **https://www.radiosvoboda.org/a/jak-kvoty-na-radio-vplynuly-na-ukrainsku-muzyku/30430947.html** **http://nrcu.gov.ua/news.html?newsID=82332** **https://www.ukrinform.ua/rubric-society/2816437-so-dali-kvoti-ukrainskij-muzici-za-tri-roki.html**

If the answer to question 2.a) is **NO,** please indicate:

2.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose radio quotas.	Yes ☐ No ☐
2.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	

3. LIVE PERFORMANCES	
a) Does the country for which you are providing information provide for **LIVE PERFORMANCES** any content obligation ("quotas")?	Yes ☐ No ■

If the answer to the previous question 3.a) is **YES**, please indicate:

3.a.1 Specify for which types of events:	
3.a.2 Quotas or other measures adopted based on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐

	Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
3.a.3 Please provide any further details on the above measures. This could include, for example: - Nature of the measure (economic incentive, mandatory requirement) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
3.a.4 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
3.a.5 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
3.a.6 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 3.a) is **NO,** please indicate:

2.a.7 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in live performances/festivals.	Yes ☐ No ■
2.a.8 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	**N/A**

4. STREAMING	
a) Does the country for which you are providing information provide any content obligation ("quotas") for **STREAMING SERVICES**?	Yes ☐ No ■ No, streaming services and digital music in general are excluded from the recent ban of russian music (which concerns only public places, such as bars, restaurants, theaters, shops, etc). However, if an artists is under Ukrainian sanctions, DSPs are obliged to takedowm their music on the Ukrainian territory. The full list is being currently updated and can be found here.

If the answer to the previous question 4.a) is **YES**, please indicate:

4.a.1 Measure adopted:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____

	Other ☐ **If yes, please specify the type of quota:_____
4.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., which platforms or which types of platforms) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
4.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
4.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
4.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 4.a) is **NO,** please indicate:

4.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in:	Yes ■ No ☐ Yes, there is a public discussion about the possibility to ban russian music in Ukraine on the streaming services in general. No clear instrument suggested so far, so it's at the early

	stage of discussion. Quotas regarding gender or style are not discussed at this moment.
4.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details :	

5. OTHERS	
a) Besides the measures indicated above, are there any minority languages, traditional musical genres, traditional musical instruments, or other music-related cultural heritage objects (tangible or intangible) protected in the country you are reporting?	Yes ■ No ☐ **If yes, please specify:** _____ **and** provide the name of the original source (law) where the measure is contained, the date it entered into force, with a link to it: The following intangible cultural heritage objects are protected by law: ● Cossack songs of Dnipropetrovsk region ● Song tradition of Luka village of Kyiv-Sviatoshyn district, Kyiv region ● The art of making a sound clay toy "Valkivsky fistula" ● Peculiarities of performing klezmer music of the Podilskyi (Kodimskyi) district of the Odesa region ● Kobzarstvo (singing tradition with national instruments) Source: Order of Ministry of Culture of Ukraine "On the approval of the Procedure for maintaining the National List of Elements of the Intangible Cultural Heritage of Ukraine" dated 11.12.2017 № 1319
b) Which are the institution(s) responsible for establishing cultural policies in the reported country?	● Ministry of Culture and Informational Policy of Ukraine ● Parliament and humanitarian committees there

c) Please add here any further comment that you deem appropriate:

Over ⅔ of all authors/performers are men. In general, such a gender imbalance is typical of the world music industry which is dominated by men; in Ukraine, the number of female authors/performers is even higher. For instance, there are only 19.69% of female artists in UK, and 21.7% of female artists[57] in the USA[57].

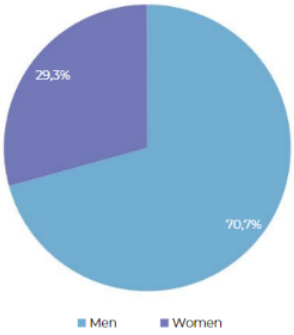


Fig. 2.3 Gender of respondents

Page 45
Study of the music market of Ukraine and its prospects in the International economy, 2020

https://issuu.com/soundbuzz/docs/study_of_the_music_market_of_ukraine_and_its_prosp

As for genre distribution, almost half of the authors/performers (48.5%) in total work in three directions: rock, pop-music, and electronic music[60]. In general, this correlates with the musical preferences of the audience[61]: the top genres in Ukraine are pop-music, classical music[62], folk music, chanson (local genre similar to bard music, sometimes referred to as Russian chanson), and rock music. But with young people aged 18-35[63] being the main consumers, the genre distribution of the market fully correlates with the top musical preferences of this segment. At the same time, the Ukrainian market differs from the world market, with hip-hop not being in the top 3.

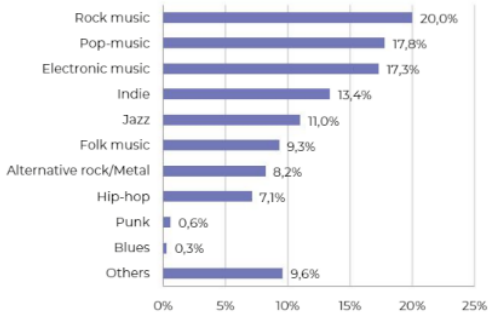


Fig. 2.5 Genre distribution

Page 46
Study of the music market of Ukraine and its prospects in the International economy, 2020

https://issuu.com/soundbuzz/docs/study_of_the_music_market_of_ukraine_and_its_prosp

	We have also analyzed New Music Friday playlist on Spotify in Ukraine in August 2023 in terms of diversity. Some stats: 57% of all playlists songs are in Ukrainian, the rest - in other languages Performers of those songs: 38% female 53% male 9% mix Songwriters of those songs: 24% female 58% male 18% mix Genres: 1,8% alternative 21,8% hip-hop 1,8% house 1,8% jazz 63,7% pop 1,8% punk 1,8% r&b/soul 5,5% rock Source: analyzed by a MEU team in August 2023

Thank you for your contribution!

Internal Questionnaire for partners contributing to WP2, Task 2.1

Dear partners,

This survey is part of Work Package 2 of the Horizon Europe research project Open MusE. Task 2.1, led by Scuola Superiore Sant'Anna, aims to identify and map legal indicators about diversity in the circulation of musical repertoires. The present questionnaire is meant to identify national rules or initiatives that affect the circulation of musical content in three venues: a) radio stations, b) live performances, and c) streaming platforms.

The questionnaire entails a set of specific questions, followed by an open answer section (in case you would like to share more details with us). The indication of the source is a **mandatory field** for verification purposes.

Please return the questionnaire and any attachments (supplementary documents, links, etc.) by **Monday, 28 August 2023** to the following e-mails: m.contardi@santannapisa.it and caterina.sganga@santannapisa.it.

1. PARTNER DETAILS	
Name of the partner contributing:	**Muzikos eksporto fondas**
People involved and position:	**Mark Adam Harold, Director**
Country for which you are providing information:	**Lithuania**

2. BROADCASTING CIRCULATION	
a) Does the country for which you are providing information impose content obligations on **radio play** ("radio quotas")?	Yes ☐ No ☒

If the answer to the previous question 2.a) is **YES**, please indicate:

2.a.1 Quotas adopted on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____

	Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
2.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., public broadcasters only, or all broadcasters) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
2.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
2.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links: **Please specify if the indicated laws refers to the national transposition of the 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 (Audiovisual Media Services Directive – "AVMSD")**	
2.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 2.a) is **NO,** please indicate:

2.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose radio quotas.	Yes ☒ No ☐
2.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	**In 2018 there was an attempt by conservative parliamentarian Vytautas Kernagis to impose a quota for Lithuanian music on radio stations. The proposal was 35% "lithuanian or lithuanian authored" music, of which at least 25% must have been created in the last three years.** **"lithuanian" means either:** **Performed in Lithuanian language or** **Created or recorded in Lithuania or** **At least one of the main artists is based in Lithuania or** **Works of special Lithuanian cultural context (for the preservation and fostering of national and ethnic cultural identity)** **The initiative gained support from the creative industries but was strongly opposed by commercial music stations playing mostly foreign music. There were many arguments about what is "Lithuanian", Russian and Polish language stations didn't see why they should play Lithuanian music, 35% was seen as too high anyway and it was uncertain how to technically realise the idea. The law died in parliament.** **There are still many who would like to try again but they have no better solution than the first time, so nothing new to offer. I have talked with Kernagis about OpenMuse and Listen Local how we might be able to find a way to boost Lithuanian music or even come up with a better quota law solution. He is of course interested.**

3. LIVE PERFORMANCES

a) Does the country for which you are providing information provide for **LIVE PERFORMANCES** any content obligation ("quotas")?	Yes ☐ No ☒

If the answer to the previous question 3.a) is **YES**, please indicate:

3.a.1 Specify for which types of events:	
3.a.2 Quotas or other measures adopted based on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
3.a.3 Please provide any further details on the above measures. This could include, for example: - Nature of the measure (economic incentive, mandatory requirement) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	

3.a.4 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
3.a.5 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
3.a.6 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 3.a) is **NO,** please indicate:

2.a.7 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in live performances/festivals.	Yes ☐ No ☒
2.a.8 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	

4. STREAMING	
a) Does the country for which you are providing information provide any content obligation ("quotas") for **STREAMING SERVICES**?	Yes ☐ No ☒

If the answer to the previous question 4.a) is **YES**, please indicate:

4.a.1 Measure adopted:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐

	National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
4.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., which platforms or which types of platforms) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
4.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
4.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
4.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 4.a) is **NO,** please indicate:

4.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in:	Yes ☐ No ☒
4.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details :	

5. OTHERS	
a) Besides the measures indicated above, are there any minority languages, traditional musical genres, traditional musical instruments, or other music-related cultural heritage objects (tangible or intangible) protected in the country you are reporting?	Yes ☒ No ☐ **If yes, please specify:** **2004 Professional Performance Art Law preamble states that "Lithuania's and other nations' cultural traditions" should be cherished.** **https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.235372/asr** **1992 Article 37 of the Constitution: Citizens who belong to national communities have the right to foster their language, culture and customs.** **https://www.lrs.lt/home/Konstitucija/Konstitucija.htm** **The national library's encyclopaedia has a list of "ethnic lithuanian instruments" but I can't find anything about specific "protections"** **https://www.vle.lt/lietuviu-muzikos-instrumentai/2/?raide=**

	and provide the name of the original source (law) where the measure is contained, the date it entered into force, with a link to it:
b) Which are the institution(s) responsible for establishing cultural policies in the reported country?	Culture Ministry https://lrkm.lrv.lt/lt/veiklos-sritys/muzika
c) Please add here any further comment that you deem appropriate:	

Thank you for your contribution!

Internal Questionnaire for partners contributing to WP2, Task 2.1

Dear partners,

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The questionnaire entails a set of specific questions, followed by an open answer section (in case you would like to share more details with us). The indication of the source is a **mandatory field** for verification purposes.

Please return the questionnaire and any attachments (supplementary documents, links, etc.) by **Monday, 28 August 2023** to the following e-mails: m.contardi@santannapisa.it and caterina.sganga@santannapisa.it.

1. PARTNER DETAILS	
Name of the partner contributing:	**SOZA**
People involved and position:	**Tomáš Mikš** – lead project manager **Richard Demčák** – project manager **Dominika Semaňáková** – project manager
Country for which you are providing information:	**Slovak Republic**

2. BROADCASTING CIRCULATION	
a) Does the country for which you are providing information impose content obligations on **radio play** ("radio quotas")?	Yes ☒ No ☐

If the answer to the previous question 2.a) is **YES**, please indicate:

2.a.1 Quotas adopted on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☒ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☒

	**If yes, which one: Slovak Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
2.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., public broadcasters only, or all broadcasters) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	- Whole legal text attached separately - Public radio broadcasters are affected only - 25 % of the time of broadcasting of music for the calendar month from 06:00 hour to 24:00 (general quota) - 35% of the time of broadcasting of music for the calendar month from 06:00 hour to 24:00 specifically for public service broadcaster (public service quota) - From the broadcasting time reserved for Slovak musical works the broadcaster of the radio program service is obliged to reserve at least 20% for the broadcasting of new Slovak musical works; a new Slovak musical work is considered to be a musical work broadcast within five years of its publication. - For the purposes of this Act, a Slovak musical work is a musical work a) of which at least one author of the music or at least one author of the text has or had a permanent residence in the territory of the Slovak Republic, or b) with text in Slovak.

2.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	As to a practical assessment on what is considered a Slovak musical work, when a text is in Slovak language is self-evident. It can be a practical issue for radio stations to determine which author has a permanent residency in Slovak Republic.
2.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links: **Please specify if the indicated laws refers to the national transposition of the 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 (Audiovisual Media Services Directive – "AVMSD")**	Act. No. 264/2022 Coll. on media services and on amendments to certain laws (Act on Media Services) *In Slovak - Zákon č. 354/2022 Z.z. o mediálnych službách a o zmene a doplnení niektorých zákonov (zákon o mediálnych službách)* - Sections 215, 216, 217 This Act was passed with the intent to transpose the AVMSD in the Slovak legal order
2.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	**https://moja.soza.sk/magazin/389/slovensku-hudbu-uz-bude-po%C4%8Du%C5%A5-menej** **https://okulture.sk/hudba/zaujem-slovakov-o-slovensku-hudbu-neklesa-ani-5-rokov-po-zavedeni-kvot/**

If the answer to question 2.a) is **NO,** please indicate:

2.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose radio quotas.	Yes ☐ No ☐
2.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	

3. LIVE PERFORMANCES	
a) Does the country for which you are providing information provide for	Yes ☐ No ☒

LIVE PERFORMANCES any content obligation ("quotas")?	

If the answer to the previous question 3.a) is **YES**, please indicate:

3.a.1 Specify for which types of events:	
3.a.2 Quotas or other measures adopted based on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
3.a.3 Please provide any further details on the above measures. This could include, for example: - Nature of the measure (economic incentive, mandatory requirement) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
3.a.4 Which criteria or sources are used for the assessment of the measures indicated in	

question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
3.a.5 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
3.a.6 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 3.a) is **NO,** please indicate:

2.a.7 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in live performances/festivals.	Yes ☐ No ☒
2.a.8 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	

4. STREAMING	
a) Does the country for which you are providing information provide any content obligation ("quotas") for **STREAMING SERVICES**?	Yes ☐ No ☒

If the answer to the previous question 4.a) is **YES**, please indicate:

4.a.1 Measure adopted:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐

	**If yes, please specify age range: _____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
4.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., which platforms or which types of platforms) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
4.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
4.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
4.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 4.a) is **NO,** please indicate:

4.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in:	Yes ☐ No ☒
4.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details :	

5. OTHERS	
a) Besides the measures indicated above, are there any minority languages, traditional musical genres, traditional musical instruments, or other music-related cultural heritage objects (tangible or intangible) protected in the country you are reporting?	Yes ☒ No ☐ **If yes, please specify:** When taking to account only the Act on Media Services, the provisions of radio quotas do not apply to the broadcasting of a radio program service broadcast by a public broadcaster, if it is intended exclusively for the broadcasting of programs for national minorities and ethnic groups living in the territory of the Slovak Republic. Protection of linguistic rights of national minorities The protection of the language rights of national minorities in the Slovak Republic is ensured by the Office of the Government of the Slovak Republic, which, in accordance with the law on the use of the languages of national minorities, provides professional and methodical assistance to public administration bodies and organizational units of the security and rescue forces in the implementation of the law (§7a), and also discusses administrative offenses committed in the area of support for the use of the languages of national minorities (§7b). There are some acts in effect that should provide some support for the creative sector (that includes music related) that we share below, but the support is indirect in a way that

	it supports the musical sector as a whole and it is not strictly to promote "Slovak" musical artists per se. **and** provide the name of the original source (law) where the measure is contained, the date it entered into force, with a link to it: - **ACT No. 184/1999 Coll. from July 10, 1999 on the use of languages of national minorities** *In Slovak - ZÁKON č.184/1999 Z. z. z 10. júla 1999 o používaní jazykov národnostných menšín* https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1999/184/ - **Act. No. 264/2022 Coll. from June 22, 2022 on media services and on amendments to certain laws (Act on Media Services)** *In Slovak - Zákon č. 264/2022 Z.z. z 22. júna 2022 o mediálnych službách a o zmene a doplnení niektorých zákonov (zákon o mediálnych službách)* https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/264/20230101 - **Act No. 13/1993 from December 21, 1992 on Art Funds** *In Slovak – Zákon č. 13/1993 Z.z. z 21. decembra 1992 o umeleckých fondoch* https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1993/13/20230701

	- **Act No. 284/2014 from September 12, 2041 on on the Fund for the Support of Art and on Amendments to Act No. 434/2010 Coll. on the provision of subsidies within the purview of the Ministry of Culture of the Slovak Republic as amended by Act No. 79/2013 Coll.** *In Slovak - ZÁKON č. 284/2014 Z. z. z 12. septembra 2014 o Fonde na podporu umenia a o zmene a doplnení zákona č. 434/2010 Z. z. o poskytovaní dotácií v pôsobnosti Ministerstva kultúry Slovenskej republiky v znení zákona č. 79/2013 Z. z.* https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2014/284/20220801 - **Act No. 189/2015 Coll. from July 1, 2015 on cultural and educational activities** *In Slovak - ZÁKON č. 189/2015 Z. z. z 1. júla 2015 o kultúrno-osvetovej činnosti* https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/189/20220501 **- Act No. 138/2017 Coll. from May 10, 2017 on the Fund for the Support of the Culture of National Minorities and on Amendments to Certain Laws** *In Slovak – ZÁKON č. 138/2017 z 10. mája 2017 o Fonde na podporu kultúry národnostných menšín a o zmene a doplnení niektorých zákonov* https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2017/138/20200521

b) Which are the institution(s) responsible for establishing cultural policies in the reported country?	Ministry of Culture, Institute for Cultural Policies, Slovak arts Council
c) Please add here any further comment that you deem appropriate:	

Thank you for your contribution!

Internal Questionnaire for partners contributing to WP2, Task 2.1

Dear partners,

This survey is part of Work Package 2 of the Horizon Europe research project Open MusE. Task 2.1, led by Scuola Superiore Sant'Anna, aims to identify and map legal indicators about diversity in the circulation of musical repertoires. The present questionnaire is meant to identify national rules or initiatives that affect the circulation of musical content in three venues: a) radio stations, b) live performances, and c) streaming platforms.

The questionnaire entails a set of specific questions, followed by an open answer section (in case you would like to share more details with us). The indication of the source is a **mandatory field** for verification purposes.

Please return the questionnaire and any attachments (supplementary documents, links, etc.) by **Monday, 28 August 2023** to the following e-mails: m.contardi@santannapisa.it and caterina.sganga@santannapisa.it.

1. PARTNER DETAILS	
Name of the partner contributing:	**MUSICAUTOR**
People involved and position:	**Rosina Petrova** – project manager **Efrossina Sarakinova** - legal
Country for which you are providing information:	**BULGARIA**

2. BROADCASTING CIRCULATION	
a) Does the country for which you are providing information impose content obligations on **radio play** ("radio quotas")?	Yes ☐ No ☒

If the answer to the previous question 2.a) is **YES**, please indicate:

2.a.1 Quotas adopted on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____

	Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
2.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., public broadcasters only, or all broadcasters) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
2.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
2.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links: **Please specify if the indicated laws refers to the national transposition of the 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 (Audiovisual Media Services Directive – "AVMSD")**	
2.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 2.a) is **NO,** please indicate:

2.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose radio quotas.	Yes ☒ No ☐
2.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	Back in 2020, the Bulgarian Party „VMRO" ("BMPO" in Bulgarian) proposed an amendment to the Radio and Television Act to impose at least 1/3 of all musical content broadcasted on radio and television to be in Bulgarian or created by a Bulgarian author. The amendment was made at the suggestion of MUSICAUTOR but, was not passed by the Parliament in the end. There was a tremendous public outcry, and many organisations, such as the representative branch Association of the Bulgarian Radio and Television Broadcasters (ABBRO), the national radio and the national television, and the Council for Electronic Media, spoke out against the adoption of such quotas. Some artists and musicians also expressed disagreements. The Bulgarian Commission on Protection of Competition also reviewed the draft amendment. It concluded that the proposed amendment restricts the competition because: - Would limit radio and television broadcasters to define the music content themselves and, accordingly, their concept and strategy to attract a larger audience; - would lead to a homogenization of the radio and music TV programs, and those forced to change their concept to broadcast more Bulgarian music would risk losing their traditional audience, leading to a drop in advertising revenues and to their exit from the market; - would put Bulgarian artists in a privileged position compared to foreign ones and create geographical barriers to the free movement of goods and services; - At the same time, there is no guarantee that the number of Bulgarian artists whose music is broadcast will increase, as it is

	possible that the same artists will continue to be broadcast, but more often; - may lead to the redirection of the audience to foreign radio and TV programs or streaming platforms; - Will reduce incentives for Bulgarian artists to improve the quality of their music and, accordingly, their chances of breaking into markets outside Bulgaria since competition is the main driver of innovation and continuous improvement; The decision of the Commission on Protection of Competition (in Bulgarian only) is attached. In 2022 Bulgarian pro-Russian nationalist party 'Vazrazhdane' proposed a new draft law for an amendment of the Bulgarian Radio and Television Act. The proposal stipulated that at least 60% of the Bulgarian National Radio airtime between 6 am and 8 pm must be reserved for music in Bulgarian created by Bulgarian composers and lyricists. The party further proposed that works in other languages created by Bulgarian authors would not fall within the protection of the Radio and Television Act. However, the proposal was not passed by the Bulgarian Parliament. The draft text of the amendment of the Bulgarian Radio and Television Act imposing quotas for Bulgarian music is available (in Bulgarian) at: https://www.parliament.bg/pub/plenary_documents/47-254-01-66_ZID%20ZRT.pdf

3. LIVE PERFORMANCES	
a) Does the country for which you are providing information provide for **LIVE PERFORMANCES** any content obligation ("quotas")?	Yes ☐ No ☒

If the answer to the previous question 3.a) is **YES**, please indicate:

3.a.1 Specify for which types of events:	
3.a.2 Quotas or other measures adopted based on:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐ **If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
3.a.3 Please provide any further details on the above measures. This could include, for example: - Nature of the measure (economic incentive, mandatory requirement) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
3.a.4 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
3.a.5 Please provide the name of the original sources (laws) in which the measures are	

contained, the date they entered into force, and links:	
3.a.6 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 3.a) is **NO,** please indicate:

2.a.7 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in live performances/festivals.	Yes ☐ No ☒
2.a.8 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details:	

4. STREAMING	
a) Does the country for which you are providing information provide any content obligation ("quotas") for **STREAMING SERVICES**?	Yes ☐ No ☒

If the answer to the previous question 4.a) is **YES**, please indicate:

4.a.1 Measure adopted:	Gender ☐ National origin (e.g., music of any genre, made by an artist from the nation) ☐ National genre (e.g., music of genres specifically associated with the nation) ☐ Young talents ☐ **If yes, please specify age range: ____ Majority population language ☐ **If yes, which one: _____ Minority population language ☐

	**If yes, which one: _____ Other ☐ **If yes, please specify the type of quota:_____
4.a.2 Please provide any further details on the above measures. This could include, for example: - Who is affected by the measure (e.g., which platforms or which types of platforms) - Percentages required - Details on how "gender" is determined (e.g., self-identification or other measures) - Details on how "national origin" is determined - Details on how "genre" is determined - Etc.	
4.a.3 Which criteria or sources are used for the assessment of the measures indicated in question 2.a.2 (e.g., determination of gender, nationality, genre, etc.), and which institutions are responsible for that task?	
4.a.4 Please provide the name of the original sources (laws) in which the measures are contained, the date they entered into force, and links:	
4.a.5 Please provide any reliable sources (scientific literature, policy documents, white papers, news media, etc.) that reflect the impact of the above measures in the country reported.	

If the answer to question 4.a) is **NO,** please indicate:

4.a.6 Whether there have ever been, or are currently under consideration, legislative initiatives to impose quotas in:	Yes ☐ No ☒
4.a.7 Where applicable, please provide the source of information on the past and/or proposed measures and a summary of details	

:	

5. OTHERS	
a) Besides the measures indicated above, are there any minority languages, traditional musical genres, traditional musical instruments, or other music-related cultural heritage objects (tangible or intangible) protected in the country you are reporting?	Yes ☒ No ☐ **If yes, please specify: _____please see below_____** **and** provide the name of the original source (law) where the measure is contained, the date it entered into force, with a link to it: 1. Music, songs and dances are protected as cultural heritage under the **Bulgarian Cultural Heritage Law (***promulgated Prom. SG. 19/13 Mar 2009 and last amended amend. SG. 17/26 Feb 2021*) In particular, Art. 6 of the latter defines the scope of cultural heritage and states that: *Art. 6. Cultural heritage shall be:* *1. ground, underground and underwater archaeological sites and reserves;* *2. historical sites and complexes;* *3. architecture sites and complexes;* *4. ethnographic sites and complexes;* *5. models of park art and landscape architecture;* *6. (suppl. –SG 54/11) natural heritage(landmarks), including anthropological remains,discovered during field research, and remains of paleozoology and cultivated plants;* *7. industrial heritage;* *8. works of art and applied arts;* *9. folk crafts;* *10. documentary heritage;* *11. audio-visual heritage;* *12. oral tradition and tongue;* *13. literary and fiction heritage;* *14. customs, rituals, feasts, rites and beliefs;* *15. music, songs and dances;* *16. folk music;* *17. cultural ethnologic traditions;* *18. folk games and sports.*

	Text of the Law is available in English at: https://mc.government.bg/files/3696_CulturalHeritageAct-Bulgaria.pdf 2. **Bulgarian National Radio**. Bulgarian National Radio is the public radio broadcaster in Bulgaria. Its activity is regulated by the Law on Radio and Television. Several provisions provide for creation and performance of music, in particular: • Under Article 46, paragraph 3: The Bulgarian National Radio shall establish and maintain music bands which pursue sound recording and concert activities; • Under Art. 71, paragraph 1. The Bulgarian National Radio allocates no less than 5% of the subsidy from the state budget and the "Radio and Television" fund for the creation and performance of Bulgarian musical and radio drama works; • Under Art.71, paragraph 2: The Bulgarian National Radio shall allocate up to 10% of the State budget subsidy and the financing from the Radio and Television Fund for the overall support of the music bands thereof Link to the text of the law (in English) is available at: https://www.cem.bg/files/1684834811_radio_and_television_act.pdf 3. **The Bulgarian Constitution** (*promulgated in 1991 and last amended in 2015*) recognizes the right of the citizens for whom the Bulgarian language is not their mother tongue, along with the mandatory study of the Bulgarian language, to study and use their own language (Bulgarian Constitution, Art. 36, para 2 in force. Under Art. 54. (1) from the Bulgarian Constitution: “Everyone has the right to benefit from national and universal cultural values, as well as to develop

	their culture in accordance with their ethnic affiliation, which is recognized and guaranteed by law". Text of the Bulgarian Constitution in English is available at: https://www.parliament.bg/en/const
b) Which are the institution(s) responsible for establishing cultural policies in the reported country?	In Bulgaria, several institutions are responsible for establishing cultural policies and overseeing cultural matters. Here are some key institutions involved: 1. **Ministry of Culture (https://mc.government.bg/index.php?l=2)** The Ministry of culture is the primary government body responsible for formulating and implementing cultural policies in Bulgaria. It develops strategies, programs and initiatives to support and promote various aspects of culture, including heritage preservation, arts, cultural diversity, and cultural industries: • "**Regional Cultural Activities" Directorate** is a section in Ministry of Culture's structure, which implements state's cultural policy. Some of its activities include: development of strategies and programmes, concerning cultural activities in cultural clubs (chitalishta); cultural integration of the minorities, as well as the implementation of measures for protection of gifted children in the field of arts. 2. **The National Culture Fund (NFC) (https://ncf.bg/en)** The National Culture Fund is created on the base of the Law for protection and development of culture and starts functioning in November, 2000. The National Culture Fund supports the development of Bulgarian culture, by subsidizing different arts, cultural activities and authors. The governing body of the National Culture Fund is The Board of

	Managers. At the beginning of each financial year The Board of Managers approves a plan for subsidizing particular areas of culture by different programmes. The National Culture Fund was established by the virtue of Culture Protection and Development Act and its activity started in November 2000. Its main objective is to support the development of culture by raising, managing and spending funds for the purpose of pursuing the national policy in the field of culture as set forth in the Program of the Government of the Republic of Bulgaria for the respective period and in the Culture Protection and Development Act. The priorities in NCF activity are also in compliance with the criteria set forth in Chapter "Culture & Audio-visual Policy" of the EU Accession Treaty of Bulgaria. The managing body of the National Culture Fund is a Managing Board chaired by the Minister of Culture. The members of the Managing Board are some renowned cultural figures, representatives of artistic unions and one representative of Municipalities, Ministry of Culture and Ministry of Finance. Financial resources for the fund are raised by a subsidy as set forth in the State Budget of the Republic of Bulgaria Act for the respective budget year and other sources of funding as set forth in article 31 of the Culture Protection and Development Act. Funds are predominantly granted for artistic projects aiming at development of cultural sector. The artistic projects are funded after announcement of competitions under a program prepared and approved in advance by the Managing Board. At the beginning of each year the Managing Board of the National Culture Fund outlines the directions of priority for which financial support is to be granted. The underlying principles of NC Fund's work are transparency and competition.

	Individual artists, private, municipal and state cultural organizations are equally eligible to participate in competitions. 3. **National Institute of Cultural Heritage** (http://ninkn.bg/) The National Institute of Cultural Heritage is responsible for the preservation, protection and management of Bulgarian cultural heritage. It conducts research, documentation, and conversation activities related to archaeological sites, historic buildings, monuments and other cultural assets; 4. **National Palace of Culture** (https://www.ndk.bg/About+Us/About+NDK-55EN.html) The National Palace of Culture is a major cultural institution in Sofia, Bulgaria's capital. It serves as a venue for various cultural events, including concerts, exhibitions, conferences, and festivals. It also hosts international cultural exchanges and collaborations. 5. **State Institute for Culture at the Ministry of Foreign Affairs** (https://www.culture-mfa.bg/content/ABOUT-US_2100.html). Institute's aims are set as follows: • To take part in creating a positive image of Bulgaria as a modern country with a wealth of ancient and a vibrant contemporary culture, as well as of a country with potential to contribute to global intercultural dialogue. • To work towards and contribute to the promoting the significance and role of Bulgaria as an active partner in international cultural cooperation. • To support the efficient use of resources deriving from Bulgaria's increased international reputation towards expanding the country's cultural presence abroad. • To support the implementation of regional foreign policy priorities.

6. Please add here any further comment that you deem appropriate:	Regarding the transposition of the Directive 2010/13/EU concerning the provision of audiovisual media services (Audiovisual Media Services Directive – "AVMSD") in Bulgaria: Under the Bulgarian Radio and Television Act, there are specific requirements for **media service providers of on-demand audiovisual media services, and in the content of the television programmes**. In particular, the following articles implementing AVMSD Directive were introduced in the Radio and Television Act: **Article 19.** (Supplemented, SG No. 93/2005, amended, SG No. 12/2010, SG No. 109/2020, effective 22.12.2020) (1) Media service providers of on-demand audiovisual media services shall secure at least a 30% share of European works in the catalogues thereof and shall ensure prominence of those works. (2) Prominence shall involve presenting European works in an accessible and attractive way by means such as a dedicated section for European works that is accessible from the service homepage, the possibility to search for European works in the search tool available as part of that service, the use of European works in campaigns of that service or a minimum percentage of European works promoted from that service's catalogue, for example by using banners or similar tools. (3) The obligations referred to in Paragraph (1) shall not apply to any providers which are micro enterprises within the meaning given by Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422), as well as with regard to any providers with a share-of-audience which is less than 1% of the total audience of all on-demand audiovisual media services offered within the territory of the Republic of Bulgaria. (4) The obligation under Paragraph (1) shall furthermore be waived where it would be

	impracticable or unjustified by reason of the nature or theme of the audiovisual media services. (5) The Council for Electronic Media shall prepare annual statements on the European works in on-demand services and shall publish the said statements as part of the annual report thereof. The Council for Electronic Media shall report to the European Commission on the implementation of the measures referred to in Paragraph (1). (6) The share of European works in the catalogues of on-demand media services shall be calculated on an averaged annual basis and on the basis of the number of titles in the catalogue of the service. 14 (7) The Council for Electronic Media shall adopt rules on determining the relative weight of the separate types of titles in the catalogues of the on-demand media services when the share of European works is calculated, as well as regarding the measurement of the share-of-audience of the on-demand audiovisual media services, taking into consideration Communication from the Commission (OJ, C/2020/4291 of 2 July 2020). **Article 19a**. (New, SG No. 12/2010) (1) At least 50% of the total annual transmission time of the television programme services, excluding the time appointed for news and sports programmes and television games, advertising, teletext and teleshopping, must be reserved for European works, where practicable. (2) At least 12% of the transmission time referred to in Paragraph (1) must be reserved for European works created by producers who are independent of broadcasters. Meeting this proportion shall not include repeats. (3) The proportion referred to in Paragraph (2) must be achieved progressively by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of the production thereof. (4) The production and distribution of European works in the radio programme services shall be encouraged. (5) The requirements of Paragraphs (1), (2) and (3) shall not apply to programme services that are intended for local audiences and are

	distributed by one broadcaster who or which does not form part of the national network. (6) The Council for Electronic Media shall prepare annual statements on the European works in the linear audiovisual media services and shall publish the said statements as part of the annual report thereof. § 1. Within the meaning given by this Act: 7. (Amended, SG No. 79/2000, SG No. 12/2010) **"European works"** shall be: (a) works originating in Member States of the European Union, mainly made with authors and workers residing in one or more of those States, provided that they comply with at least one of the following three conditions: (aa) they are made by one or more producers established in one or more of those States, or (bb) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States; (cc) the contribution of co-producers of those States to the total co-production costs is preponderant and the said co-production is not controlled by one or more producers established outside those States; (b) works originating in third European countries, which are States Party to the European Convention on Transfrontier Television, compiled in Strasbourg on 5 May 1989 (ratified by an Act [promulgated in the] State Gazette No. 117 of 1997) ([Convention promulgated in the] State Gazette No. 32 of 1999), mainly created by authors and workers residing in one or more of those States, provided that they comply with at least one of the following three conditions: (aa) they are made by one or more producers established in one or more of those countries, or (bb) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States; (cc) the contribution of co-producers of those countries to the total co-production costs is preponderant and the said co-production is not controlled by one or more producers

	established outside those countries, provided that works originating in Member States of the European Union are not the subject of discriminatory measures in the third countries concerned; (c) works co-produced within the framework of agreements related to the audiovisual sector, concluded between the European Union and third countries and fulfilling the conditions defined in each of these agreements, provided that works originating in Member States are not the subject of discriminatory measures in the third countries concerned. Works that are not European works within the meaning given by Litterae (a), (b) or (c) but are produced within the framework of bilateral co-production treaties concluded between Member States of the European Union and third countries shall be deemed to be European works, provided that the coproducers from the European Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States. The Council for Electronic Media' reports are available on the following link (in Bulgarian only): https://www.cem.bg/activitiesbg/16 However, the reports are mainly on whether the quota requirements are fulfilled rather than their impact.
	Attachments: 1. Bulgarian Copyright and Related rights Act 2. Bulgarian Radio and Television act 3. Bulgarian Cultural Heritage Act 4. Decision 788 from 01.10.2020 of the Commission on Protection of Competition on the 2020 Draft amendment to the Radio and Television Act to impose at least 1/3 of all musical content broadcasted on radio and television to be in Bulgarian or created by a Bulgarian author.

Thank you for your contribution!