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## **Public Consultation on a future trade policy**

### **Reply by ARD and ZDF**

#### **Question 1:**

Now that the new Lisbon Treaty has entered into force, how can we best ensure that our future trade policy is coherent with the EU's external action as a whole and notably in relation to the EU's neighbouring countries?

In regard to the European Union's future trade policy, ARD's and ZDF's main focus of attention lies with actions concerning the cultural and audiovisual sector. Concerning these matters, the new Lisbon Treaty does not bring about fundamental change. However, the new Treaty has further recognised and strengthened the principles of pluralism and cultural diversity as core principles and values of the European Union (Art. 2 and 3 TFEU). The main regulatory guideposts remain

- the obligation of the European Union to take into account cultural aspects in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures (Art. 167 (4) TFEU);
- the need for the Council to act unanimously for the negotiation and conclusion of agreements in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity (Art. 207 (4) TFEU);
- the fact that the exercise of the competences conferred to the European Union by Article 207 TFEU in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonisation (Art. 207 (6) TFEU);
- the Conclusions adopted by the General Affairs Council of 26 October 1999, which form the negotiating mandate for the European Commission for the WTO negotiations. As far as culture and audiovisual services are concerned, these conclusions specify that "the Union will ensure, as in the Uruguay

Round, that the Community and its Member States maintain the possibility to preserve and develop their capacity to define and implement their cultural and audiovisual policies for the purpose of preserving their cultural diversity”;

- the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005, of which the EU is a signatory, next to the Member States.

Any future trade policy will have to respect the rules, guidelines and principles laid down in the abovementioned provisions.

**Question 2:**

Given the importance of boosting growth, creating more jobs and ensuring a more resource efficient and greener economy, how can EU trade policy help? What should the new trade priorities be in the light of the Europe 2020 Strategy?

In its Communication on a European agenda for culture in a globalizing world (COM/2007/0242 final) the European Commission states that “Europe’s cultural richness and diversity is closely linked to its role and influence in the world. The European Union is not just an economic or a trading power, it is already widely - and accurately - perceived as an unprecedented and successful social and cultural project. The EU is, and must aspire to become even more, an example of a “soft power” founded on norms and values such as human dignity, solidarity, tolerance, freedom of expression, respect for diversity and intercultural dialogue, values which, provided they are upheld and promoted, can be of inspiration for the world of tomorrow. Europe’s cultural richness based on its diversity is also, and increasingly so, an important asset in an immaterial and knowledge-based world. The European cultural sector is already a very dynamic trigger of economic activities and jobs throughout the EU territory. Cultural activities also help promoting an inclusive society and contribute to preventing and reducing poverty and social exclusion. As was recognised by the conclusions of the 2007 Spring European Council, creative entrepreneurs and a vibrant cultural industry are a unique source of innovation for the future. This potential must be recognised even more and fully tapped. Awareness is growing that the EU has a unique role to play in promoting its cultural richness and diversity, both within Europe and world-wide. There is also acknowledgement that culture is an indispensable feature to achieve the EU’s strategic objectives of prosperity, solidarity and security, while ensuring a stronger presence on the international scene.”

When negotiating trade agreements, these realizations, as well as the fact that the overall growth of the cultural sector in 1999 – 2003 was 12,3 % higher than the growth of the general economy and contributed to 2,6 % of EU GDP in 2003 should be taken into account.

The success story of Europe’s cultural richness must not be jeopardized. This requires that the European Commission and the Member States remain true to their commitments in the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the 1999 WTO negotiating mandate.

**Question 3:**

In addition to continuing to push for a successful conclusion to the Doha Round, how can the EU best pursue overall EU trade policy objectives in the WTO?

In addition to refraining from making any liberalisation commitments on cultural and audiovisual services, this pledge to ensure maintaining the Community's and Member States possibilities to preserve and develop their capacity to define and implement their cultural and audio-visual policies for the purpose of preserving their cultural diversity, needs to be supplemented by a cautious monitoring of liberalization activities in the sectors neighbouring audiovisual and cultural services. The principle of technological neutrality must be a guiding principle. As most audiovisual services (and more and more cultural services) increasingly reach their audience via electronic communication platforms, it is of utmost importance to ensure that developments in the telecommunications sector and computer related services sector do not undermine but rather support and facilitate the European Union's negotiation principles in regard to cultural diversity. Particular attention should be paid to any endeavours to revise existing classification schedules, that might impact on the way Europe defines cultural and audiovisual services. Looking at the Internet, the European Community defends the concept, that all products delivered electronically should be classified as services. It insists on the principle of technological neutrality. This means that the technology used to transmit an audiovisual programme does not make any difference with respect to the content and the rules governing this content. In other words, whether a film is shown in the cinema or broadcast on television or transmitted online via the Internet to a multitude of users does not change the character of the service as an audiovisual production which carries cultural significance. This approach for the WTO negotiations is essential, if countries want to keep their regulatory options open in the digital information society, which is increasingly influenced and characterised by multiplatform delivery systems and search engine technologies.

**Question 4:**

Do our current FTA negotiations provide the right geographic and substantive focus for our bilateral trade relationships in the context of the Europe 2020 strategy?

While ARD and ZDF do not find themselves in a position to comment on the validity of the geographic and substantive focus in the EU's bilateral trade relationships, we would like to take this opportunity to make a general comment on the recently established Commission practice to include Protocols on Cultural Cooperation in Economic Partnership Agreements (EPAs), Free Trade Agreements (FTAs) and Association Agreements (AAs). ARD and ZDF generally welcome that the European Commission has developed this approach to implement the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and strengthening the international cooperation in the field of culture. We appreciate that the protocols are based on the principles and definitions of the UNESCO Convention and highlight the dual nature of cultural goods and services that are at the same time tradable but are not comparable to other goods and services due to their cultural value. Nevertheless, ARD and ZDF would like to reiterate, that the protocols need to be adapted to each specific bilateral agreement, taking into account the needs and interests of the cultural and audiovisual sector on both sides. Finding ideal solutions for both partners of an agreement must include an open and extensive consultation

process of the cultural and audiovisual stakeholders affected by the agreement, well in advance of the commencement of the negotiations and throughout the process until its conclusion.

**Question 5:**

Should the EU now try for closer economic integration and cooperation with such partners? What is the best way to further facilitate trade and investment, overcoming regulatory differences that may have the effect of barriers to trade and deepening our trade relationships with these important economies?

While in principle, closer economic integration, overcoming regulatory differences can have positive effects for both economies, a cautious approach is needed when it comes to cultural and audiovisual goods and services. In these sectors, regulatory differences are a natural consequence of the fact that the Community respects Member States competence to tailor their respective regulatory frameworks for cultural and audiovisual activities to the specific needs of their societies. Thus, any attempts to overcome existing legislative differences must be limited to areas where competences of the Member States are not harmed and the EU can actually contribute to its aim to respect and to promote the diversity of its cultures (Art. 167 (4) TFEU).

**Question 6:**

How can the EU improve the effectiveness of regulatory dialogues? How can the EU promote the establishment of and greater recourse to international standards without compromising legitimate public policy choices?

Audiovisual policies and productions will increasingly be influenced or determined by globally acting electronic libraries, delivery platforms and search engines, extending to the complex financial streams underpinning audiovisual production. This aspects must fully be taken into account when entering negotiations.

**Question 7:**

How can the EU, and in particular trade policy, help to secure a reliable and sustainable supply of raw materials by third countries?

No reply.

**Question 8:**

Should the EU aim for more trade in services, and if so, how?

ARD and ZDF are not opposed to a future EU trade policy that aims for more trade in services, as long as the specific concerns of the cultural and audiovisual sector as described in the answers to questions 1 – 5 are adequately integrated into such a policy.

**Question 9:**

Given that the Lisbon Treaty gives the EU greater competences in international investment policy, how should we contribute to facilitating crossborder direct investment (both outward and inward)? What are the key issues to be addressed in agreements governing investment?

From the perspective of ARD and ZDF the issue of investment and trade policy requires special caution, due to the following aspects: Investment agreements can force the re-evaluation of a significant number of cultural policies, including prohibitions, limits or restrictions on foreign ownerships in the cultural industries. Public service broadcasters and other public cultural institutions might be perceived as unfair competitors for private foreign investors. Co-production treaties and subsidy programs could be considered discriminatory against foreign firms or individuals. Should direct foreign investment clauses or agreements include an investor-state dispute settlement system that permits individual firms to sue foreign governments, the potential for challenges by multinational firms in the entertainment business would be great. Thus any agreement governing investment would have to make sure, that measures of Member States in regard to their audiovisual and cultural policies would not be harmed.

**Question 10:**

How can trade policy best support green and inclusive growth around the globe including through Sustainability Impact Assessments?

While ARD and ZDF greatly welcome the European Commission's efforts to support green and inclusive growth, it seems to us that the concept of sustainability is still often used in a too restrictive way. Until recently, it was recognised that sustainability of our planet, the goal to preserve our planet in a way to make it liveable also for future generations, had three dimensions: environmental, social and economic sustainability. In the meantime, this has been extended to include a fourth dimension: cultural diversity. We would like to use the opportunity to draw attention to the Council of Europe's 2000 Declaration on Cultural Diversity which states: "Sustainable development as defined in relation to cultural diversity, assumes that technological and other developments, which occur to meet the needs of the present, will not compromise the ability of future generations to meet their needs with respect to the production, provision and exchange of culturally diverse services, products and practices. Cultural and audiovisual policies, which promote and respect cultural diversity, are a necessary complement to trade policies; Cultural diversity has an essential economic role to play in the development of the knowledge economy. Strong cultural industries which encourage linguistic diversity and artistic expression, when reflecting genuine diversity, have a positive impact on pluralism, innovation, competitiveness and employment;". The UNESCO Convention confirms this by stating that "cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations" Thus, if the European Commission wants to promote inclusive growth, it should attach greater importance to promoting and safeguarding cultural diversity.

**Question 11:**

Given the forthcoming revision of the Common Agricultural Policy and the continuing need to foster a sustainable agricultural sector in Europe, how should EU trade policy develop in this area consistently with the overall objectives of the Lisbon Treaty?

No reply.

**Question 12:**

How can EU trade policy ensure that the benefits of global value chains are shared by European producers, consumers and jobholders?

ARD and ZDF are convinced, that as far as cultural and audiovisual services are concerned, the best way to ensure that the benefits of global value chains are shared by European producers, consumers and jobholders is to adhere to the pillars of trade policy in regard to cultural and audiovisual services mentioned in our answer to question 1, in particular the UNESCO Convention. Such a policy is in no way protectionist but rather helps to sustain local, regional and national cultural expressions and creativity while at the same time encouraging the richness of Europe's cultural diversity with the rest of the world. The result is a vibrant European cultural industry that fosters values such as human dignity, solidarity, tolerance, freedom of expression and respect for diversity. All this results in strong democracies which are the foundation of vibrant economical development.

**Question 13:**

Are existing 'flanking' policies sufficient to ensure that the benefits of trade are shared among different people and across different regions and markets in the EU? And how can the EU best ensure, where necessary, that trade and other policies play their part in helping people, sectors and communities adjust?

No reply.

**Question 14:**

How can the EU best strengthen the issue of trade and development in its trade policy? Should the EU pursue a more differentiated approach in its trade relations to reflect the level of development of particular partners? How should the EU approach the issue of trade preferences in relation to the generally low level of EU Most Favoured Nation (MFN) tariffs, which will further be eroded following the possible conclusion of the Doha Round?

For once, ARD and ZDF support the measures taken by the European Commission's Directorate General in regard to Cultural Cooperation Protocols (c.f. our answer to question 4). In addition the UNESCO Convention's chapter on cooperation for development should be the guideline for any Commission approach in this sector.

**Question 15:**

What initiatives could the EU take and which EU trade policy instruments could we mobilise to complement and reinforce the 'smart' dimension of the Europe 2020 strategy and facilitate trade in high-tech goods and services?

No reply.

**Question 16:**

How can the EU best safeguard its firms or interests against trading partners who do not play by the rules? Are the existing tools and priorities sufficient to address unfair competition from third countries?

No reply.

**Question 17:**

How can the EU best safeguard its firms or interests against major trading partners who maintain an asymmetric level of openness and resort to protectionist measures? Are the existing tools and priorities sufficient to address practices such as keeping EU suppliers out of government procurement markets, market access restrictions, restricted and insecure access to energy and raw materials?

A good example for a way to shield European interests against undue influence from major trading partners without resorting to protectionist measures is the "principle of equitable access" laid down in the preamble and article 2.7 of the UNESCO Convention. This principle ensures that cultural diversity is not misunderstood as an excuse to erect barriers for free cultural exchange. Instead of barring entry of cultural goods and services from other countries, the idea is to be open to cultural exchanges but to also create space for indigenous cultural products. The EU always applied that principle of a balanced policy. US audiovisual productions for example were never banned or restricted from entering European markets, where they largely dominate the box office. On the other hand, the EU uses subsidy schemes for European productions and a quota system imposing, "where practicable", a majority of European works (51 percent) on certain programming genres of European television channels, and thereby ensures that its citizens have a choice whether they want to watch audiovisual content of non-European origin or works with European topics, actors, and narratives. Concerning effective, de facto or "invisible" barriers, ARD and ZDF think that the EU should intensify talks with the US authorities and the US production and distribution sector in order to identify those barriers as well as possibilities to develop a more equitable exchange between the world's two largest AV markets.

**Question 18:**

What else can EU trade policy do to further improve the protection of IPR in key markets?

No reply.

**Question 19:**

What more should the Commission do to ensure that trade policy becomes more transparent and to ensure that a wide variety of views and opinions is heard in the policy-making process?

While ARD and ZDF appreciate the existing platforms of exchange and have regularly participated in stakeholder dialogue, we would appreciate a more active and continuous approach by the Commission towards establishing a dialogue with actors in the audiovisual and cultural services sector.

**Question 20:**

Are there additional priorities in relation to trade policy that the Commission should pursue?

In general, we think that the EU could more vocally and systematically place trade policy in its wider democratic, social, societal, and cultural context. In an increasingly globally integrated economy, all aspects of life, not “just” the economic ones, are affected by liberalisation treaties whose technicalities have far reaching consequences.

In working on horizontal rule making in the trade context, the Commission should refrain from envisaging the application of those rules on non-committed sectors.

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