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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Promoting a fair and efficient European copyright-based economy in the Digital Single  
Market**

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## **I. WORKING TOWARDS A MODERN, MORE EUROPEAN COPYRIGHT FRAMEWORK**

The Commission's Digital Single Market (DSM) Strategy<sup>1</sup> adopted in May 2015 identified the need to reduce differences between national copyright regimes, as well as to allow for wider online access to content across the EU.

As a first step to implement the DSM Strategy in the area of copyright, the Commission proposed a Regulation on cross-border portability of online content services<sup>2</sup> in December 2015, aiming to allow EU residents to travel with the digital content they have purchased or subscribed to at home.

In the Communication "Towards a modern, more European copyright framework"<sup>3</sup> adopted at the same time, the Commission presented a plan for the modernisation of EU copyright rules, including targeted actions and a long-term vision.

The legislative measures proposed today, together with this Communication, put these targeted actions in practice and represent an important step towards realising the long-term vision. They contribute to achieve the objectives defined in the December 2015 Copyright Communication in three areas: (i) online access to content in the EU; (ii) exceptions in the digital and cross-border environment and (iii) functioning of the copyright marketplace.

### **1.1. Measures to ensure wider access to content across the EU**

Digital technologies have transformed the distribution of and access to copyright-protected content through a growing variety of online services. However, the availability of online content differs from one Member State to another and citizens are often not able to access content across borders.

In its Copyright Communication of December 2015, the Commission announced a gradual approach to remove the obstacles to cross-border access to content and to the circulation of copyright-protected works. This approach focused on targeted actions in relation to the online cross-border distribution of television and radio programmes, the licensing of European audiovisual works on video-on-demand (VoD) platforms, as well as efforts to digitise out-of-commerce works and make these more widely available. These targeted actions are addressed today through a set of legislative proposals:

- First, a proposal for a Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes aims at creating favourable conditions for the cross-border distribution of television and radio programmes online. The new rules, inspired by the ones existing in the Satellite and Cable Directive,<sup>4</sup> will make the clearance of rights simpler and faster for certain online services by broadcasters as well as IPTV and similar re-transmission services. These rules should be seen as a facilitating mechanism to help the evolution of the market and provide better access to works across borders in order to promote consumer choice, dissemination of European productions as well as cultural diversity.

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<sup>1</sup> Commission Communication "A Digital Single Market Strategy for Europe", 6 May 2015, COM(2015) 192 final.

<sup>2</sup> COM(2015) 627 final.

<sup>3</sup> COM(2015) 626 final.

<sup>4</sup> Directive 93/83/EEC.

- The proposal for a Directive on Copyright in the Digital Single Market also includes measures to improve the online availability of European audiovisual works and to facilitate online and cross-border access to cultural heritage. A new negotiation mechanism will make it easier to conclude agreements to make more audiovisual works available on video-on-demand (VoD) platforms. This negotiation mechanism will be complemented by a stakeholder dialogue aiming to improve the online availability and visibility of European audiovisual works proposed in the context of the 'Creative Europe' MEDIA programme (see Section 2). In addition, the already adopted proposal to amend the Audiovisual Media Services Directive (AVMSD)<sup>5</sup> introduces a reinforced requirement to promote European works in VoD services, by ensuring their presence and visibility, as this can contribute to increase their circulation and consumption. Thus, the negotiation mechanism would complement this measure, as successful negotiations facilitating licensing would contribute to reach or to go beyond the required minimum share of European works in catalogues of VoD platforms.
- The proposal for a Directive on Copyright in the Digital Single Market will also allow cultural heritage institutions to benefit from easier licensing solutions for digitising and disseminating works that are out of commerce but still hold great cultural value.

The combination of measures to facilitate the licensing of rights and to support the availability, visibility and circulation of European works online will ensure an easier and better access to content by citizens across the EU.

## 1.2. Measures to adapt exceptions to digital and cross-border environments

Copyright exceptions allow the use of protected works without the authorisation of right holders. Such exceptions play a central role in achieving important public policy objectives at EU level. However, at present most exceptions in EU law are optional and do not have cross-border effect. Furthermore, some of them need to be re-assessed in light of today's technological realities. The current situation holds back digital innovation in the areas of education, research and preservation of cultural heritage.

In the Copyright Communication of December 2015, the Commission announced action to make the EU framework on exceptions effective in the digital age and across borders. The legislative measures proposed today contribute to achieve this objective, by introducing new mandatory exceptions in the areas of education, research, preservation of cultural heritage and for the benefit of people who are blind or have other print disabilities:

- The proposal for a Directive on Copyright in the Digital Single Market will provide full legal certainty for the use of protected content in digitally-supported and online teaching activities, including across borders, as well as for text and data mining carried out for the purposes of scientific research, and for digital preservation by cultural heritage institutions.
- The two proposals adopted to ensure the EU implementation of the Marrakech Treaty<sup>6</sup> will allow people with print disabilities to access books and other print

<sup>5</sup> COM(2016) 287 final.

<sup>6</sup> Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the infor-

material in formats that are accessible to them. The proposal for a Directive will ensure the functioning of copyright exceptions for the making and exchange of accessible formats in the EU and the proposal for a Regulation will permit the cross-border exchange of such formats between the EU and third countries having ratified the Marrakech Treaty.

The Commission will continue to assess a number of other issues related to exceptions identified in the Copyright Communication of December 2015. Some of these issues may need to be reconsidered, at a later stage, in light of the outcome of cases currently pending before the CJEU. This includes the exception authorising libraries and other institutions to allow on-screen consultation of works for research and private study on their premises<sup>7</sup>.

Following up on the analysis of the results of the public consultation on the "panorama exception"<sup>8</sup>, the Commission confirms the relevance of this exception. Under EU legislation, Member States enjoy a large margin of maneuver to lay down such exceptions at national level. Directive 2001/29/EC specifically allows Member States to provide for exceptions or limitations concerning the use of works, such as works of architecture or sculpture, made to be located permanently in public places.<sup>9</sup> Nearly all Member States have incorporated such an exception in their national legislation. The Commission strongly recommends all Member States to do so.

### **1.3. Measures to achieve a well- functioning marketplace for copyright**

In recent years, the internet has become the main marketplace for accessing and distributing copyright-protected content. Online services now represent a major source of revenues for copyrighted material, but there is a growing concern about equitable sharing of the value generated by some of the new forms of online content distribution. Right holders report difficulties faced when seeking to control and monetize the use of their content online, in particular in relation to online services distributing content uploaded by end-users, news aggregators, social media, and other online services enabling access to their content. In addition, creators are often unable to negotiate an appropriate remuneration in exchange for the rights for the exploitation of their works and performances, notably because of the lack of transparency in their contractual relationships with those to which they assign their rights.

The need to address issues related to the sharing of value in the online environment and the remuneration of creators was highlighted in the Copyright Communication of December 2015, and confirmed in the Communication on online platforms of May 2016.<sup>10</sup>

The legislative measures proposed today will contribute to a copyright marketplace that works efficiently for all parties' and gives the right incentives for investment in, and dissemination of, creative content in the online environment:

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mation society, COM(2016) XXX; and Proposal for a Regulation of the European Parliament and of the Council on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled, COM(2016) XXX.

<sup>7</sup> Case C-174/15. Vereniging Openbare Bibliotheken vs Stichting Leenrecht.

<sup>8</sup> Insert link

<sup>9</sup> Article 5.3 (h) of Directive 2001/29/EC.

<sup>10</sup> Communication on Online Platforms and the Digital Single Market Opportunities and Challenges for Europe, COM(2016) 288 final.

- The proposal for a Directive on Copyright in the Digital Single Market will give news publishers legal certainty and additional bargaining power in relation to online services using and enabling access to their content. It will also reinforce the position of right holders to negotiate and be remunerated for the online exploitation of their content by online services storing and giving access to large amounts of content uploaded by their users. Finally, authors and performers will benefit from increased transparency on the exploitation of their works and performances and from improved capability to receive appropriate remuneration, which should lead to a better functioning framework for all players: legal clarity for those acquiring the rights and higher trust for authors and performers, including in the online environment.

#### 1.4. Measures to provide an effective and balanced enforcement system

With regard to the protection of intellectual property rights (IPR), the Copyright Communication of December 2015 stated that "the Commission will take immediate action to engage, with all parties concerned, in setting up and applying 'follow-the-money' mechanisms in a self-regulatory approach". Accordingly, on 20 June 2016, the Commission adopted a Declaration on the facilitation and monitoring of memoranda of understanding seeking to dissuade commercial scale intellectual property infringing activities in the internal market, endorsing the conclusion of voluntary cooperation agreements involving different types of intermediary service providers in the protection of IPR.<sup>11</sup> A new Memorandum of Understanding (MoU) on the online sale of counterfeit goods was opened for signature on 21 June 2016. It builds and expands on the previous version signed in 2011 between internet platforms, brand owners and trade associations and now includes new indicators to track the impact and to objectively measure the impact of the agreement on counterfeiting activities. The Commission furthermore launched the dialogue on IPR protection with online advertising, payments and shipping services with the aim to sign new voluntary cooperation agreements in these three areas in the coming years.

As regards the legal framework for the enforcement of IPR, including copyright, the Communication announced that the Commission will assess options and consider by autumn 2016 the need to amend the legal framework focussing on commercial-scale infringements. The Commission is therefore carrying out an evaluation of the overall functioning of the current legal enforcement framework, also responding to the call for a thorough evaluation by the European Parliament and the Council.

The contributions to the public consultation on the evaluation and modernisation of the legal framework for the enforcement of intellectual property rights,<sup>12</sup> launched in support of the evaluation, have shown that the occurrence of IPR infringements is a major problem. More than three-quarters of the responding rightholders and public authorities observed that IPR infringements have increased over the last 10 years. While the majority of respondents were of the opinion that the existing rules have helped effectively in protecting IP and preventing IP infringements, many rightholders and intermediaries in particular consider that the measures and remedies provided for by the IPR enforcement directive are not applied in a homogeneous manner across the Member States. This could result in different level of protection in the Member States and suggests that the IPR en-

<sup>11</sup> MoU and Commission Declaration: <http://ec.europa.eu/DocsRoom/documents/18023/>

<sup>12</sup> [For more information see summary of responses].

enforcement directive did not fully eliminate the disparities at national level as regards the means of enforcing IPR. A significant number of respondents also identified a need to adjust some of these measures, in order to ensure legal certainty and enhance their effectiveness, such as the rules on evidence, the right of information, the setting of damages and the reimbursement of costs and the rules for provisional and precautionary measures and for injunctions. The Commission will present the final results of the evaluation in an evaluation report in autumn 2016 and then propose, on this basis, the necessary amendments to the legislative framework.

## **2. MAKING EUROPEAN WORKS MORE WIDELY ACCESSIBLE AND INCREASING AUDIENCES**

An important objective of the European Commission's copyright policy is to significantly improve access to European audiovisual works across borders, increasing the availability and visibility of works online, and to reach more audiences across borders. These objectives are now being implemented through the measures, including some first results, as set out below.

### **2.1. Wider online dissemination of European works**

European works are typically produced by small production companies and are distributed territory by territory. However, European films are significantly less widely distributed online across the EU than US films. On average, European films only reach 2.8 EU Member States compared to 6.8 EU Member States for US films.<sup>13</sup> In cinemas, the gap between European films (2.6) and US films (9.7) is even wider. In territories where no agreements have been signed with local distributors, European citizens do not have any possibility to legally access such films.

This is a missed opportunity both in terms of competitiveness for the EU media sector, as well as for promoting the cultures of the Member States, and bringing the EU's common cultural heritage to the fore.

As a complement to the legal proposals previously described, the following measures are intended to widen the geographical scope of exploitation of European audiovisual works online:

#### *More efficient funding for subtitling and use of dubbing*

Investing in a minimum number of language versions is a necessity for cross-border distribution of audiovisual works and facilitates their presence on global Video-on-Demand (VoD) services.<sup>14</sup> Both the Creative Europe MEDIA programme<sup>15</sup> as well as other public funds co-finance dubbing/subtitling. To increase the efficiency in public funding and use, the Commission is now experimenting possibilities of innovative cost-effective ways to obtain subtitling.<sup>16</sup> The Commission will also launch, by the end of 2016, a prototype of an online repository tool for subtitling/dubbing in order to allow easy access to and reuse of existing subtitling/dubbing by operators wherever they are established in the

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<sup>13</sup> 47% of EU films released in EU cinemas between 2005 and 2014 are available on at least one VOD service (5046 films out of 10.828), while 87% of US films released in the same period in EU cinemas are available on at least one VOD service (2,404 films out of 2.748).

<sup>14</sup> For some audiovisual works, global platforms require a minimum number of language versions.

<sup>15</sup> [https://ec.europa.eu/programmes/creative-europe/media\\_en](https://ec.europa.eu/programmes/creative-europe/media_en)

<sup>16</sup> Three projects were selected in 2015 and are now being implemented. Results will be made public in 2017.

EU.<sup>17</sup> Finally, the Commission will work with European Film Agency Directors (EFADs) towards concrete solutions for more transparency of public funding and for complementarity between the different sources of public funding notably to avoid risks of double funding for dubbing or subtitling.

#### *Ready to offer catalogues of European works*

In the online environment, quality curation and making full use of an existing catalogue is extremely important alongside the production and release of new audiovisual works. As VoD services do not deal on an individual basis with small producers, the Commission financially supports the activity of aggregating European works coming from different producers to allow for the creation of curated catalogues of audiovisual works ready to be offered to VoD service providers. This facilitates work for VoD services by ensuring that they have easy access to works that are ready to be offered in an attractive form to their subscribers<sup>18</sup>. The budget of this action has been increased in 2016, amounting to 1.3 million euros and is intended to be further increased in 2017.

#### *Licensing hubs and structured stakeholder dialogue on licensing issues*

To widen the possibilities of access to the rich and diverse offer of European audiovisual works that are produced each year, the Commission promotes the development of licensing hubs i.e. online tools that allow the digital distribution of European works also in countries where they have not been released in cinemas or where there is no national distributor. Together with stakeholders, the Commission will also explore ways to incentivise rights holders to make available works receiving support for distribution through the Creative Europe MEDIA programme to be made available in territories where no distribution agreement has been signed.

Furthermore, in 2016, the Commission will lead a structured multi-party stakeholder dialogue to examine licensing issues and related legal and contractual obstacles hindering the exploitation of European audiovisual works on VoD services. It will regularly gather together industry actors along the value chain (producers, authors, sales agents, distributors, broadcasters, aggregators, VoD platforms), who typically do not enter directly into commercial agreements with each other. The negotiating mechanism introduced by the copyright measures will also be relevant to the issues to be addressed in the dialogue. The latter will aim to contribute to streamline licensing practices and reach industry agreements for a more sustained exploitation and wider availability of European works. The Commission will report on the results of this structured dialogue by end of 2018.

## **2.2. Making search and access to European works online easier**

European audiovisual works suffer from a relatively weak brand identity, due in part to small promotion budgets and small scale of releases. Potential viewers experience difficulties to find content they would like to watch, or indeed to identify platforms where this content could be accessed legally. European works are also less promoted and visible

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<sup>17</sup> For example, a VODVOD service provider in Germany should be able to use the English subtitling co-financed for the distribution of a film in Ireland. See notably the project "Walk this way" [www.ipeda.eu](http://www.ipeda.eu) After a first successful experience, Walk this Way which will distribute 50 films coming from several production and sales companies (Gaumont, Pathé, Film Distribution, Memento Film International, etc.) in more than 15 territories requiring the creation of 400 subtitling. The films will be released on global platforms (iTunes, Google Play, Netflix, Amazon, Sony, Xbox) as well as on local VoD services (TF1, Universcine, Filmin, Flimit, etc.)

than US ones on VoD platforms.<sup>19</sup> Therefore, increasing the visibility and prominence of European works is a key condition for enabling users to find and access European audiovisual productions online. The measures explained below will go hand in hand with the reinforced requirement to promote European works in VoD services foreseen in the AVMSD proposal.

#### *Use of a common standard identifier*

Unlike in the book sector where works are identified by an ISBN number, no universal system of identification to which comprehensive sets of metadata are associated is used in the audiovisual sector. Instead, two standard identifiers coexist on the market, namely ISAN (International Standard Audiovisual Number) and EIRD (Entertainment Identifier Registry) and the sector remains hesitant to use them as they are not interoperable. Concretely, this means that licensing activities are burdensome and cannot be easily automated. To facilitate the deployment of standard identifiers on the market and a more efficient rights management, exploitation and research of European works, the organisations responsible for ISAN and EIRD are presently working with the Commission towards full interoperability of their databases and identifiers. By the end of 2016, the Commission will also propose the use of a common standard identifier as a requirement for the support through the Creative Europe MEDIA programme.

#### *Online search tools and EU aggregator*

An online search tool would allow viewers to quickly find a legal offer on the internet of the film or audiovisual work they want to watch. Different solutions are emerging in several Member States with or without public funding. At EU level, the European Union Intellectual property Office (EUIPO) is developing a search tool (Agorateka - the European online content portal) as well as a toolkit for creating national search tools, which will be fully operational by 2017. The Commission encourages Member States to link the national search tools they see appropriate to the EU portal. Where no appropriate national search tools exist, Member States will have the possibility to create their own national search tool with the help of a toolkit made available to them, free of charge, by the EUIPO.

More widely, promoting legal offers and improving discoverability of European films are key challenges on which the Commission has had discussions with the European Film Directors Association (EFADs) and the film industry in different events this year. Cooperation will be intensified still in 2016, also to accompany the AVMSD proposals on reinforced prominence of European works online, notably by facilitating dialogues and exchanges of best practices.<sup>20</sup> Given the potential of films produced as co-productions to travel across Europe and beyond,<sup>21</sup> the Commission will explore, in 2017, the development of joint promotion strategies for European co-productions, together with the EFADs.

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<sup>19</sup> On findability/prominence: European films account for 30% (UK) or 35% (FR) of the films on the landing page and are less promoted than US films: 21% (UK) and 33% (FR) of the promotional spots, EAO June 2016.

<sup>20</sup> Currently, where it took place at national level in countries where the provision on prominence in the existing AVMSD has been implemented (e.g. Belgium), such a cooperation between regulators and film agencies has proved useful and resulted in a higher share of consumption of European works.

<sup>21</sup> According to a recent report by European Audiovisual Observatory "How do films travel on VOD and in cinemas in the European Union European", May 2016, co-productions circulate better than average European films. European films are in average available in 2.8 countries while European co-productions are available in 3.6 countries.



### **2.3. Towards a more competitive and sustainable European audiovisual industry**

Europe's film diversity and creativity is praised worldwide but at the same time there are challenges that need to be addressed to ensure that the sector becomes more competitive globally. Reaching new audiences within the EU and beyond should have a virtuous impact on the development of new business models and new forms of monetisation, and feed into the financing of new productions.

#### *Exploring alternative models of financing, production and distribution*

Typically, existing models are based on minimum guarantees in exchange for exclusive territorial rights. The Commission will encourage the development of alternative models of financing, production and distribution based notably on a greater collaboration along the value chain. Support policy will be adapted for this purpose, within the frame of the Creative Europe MEDIA programme, so as to incentivise the involvement of all relevant industry players in promotion, distribution and marketing strategies. This should help European works to reach a wider audience and, at the same time, maximise the revenues generated from their exploitation.

Initially, particular focus will be placed on the European animation sector. Story-telling is of particular importance in this sector and works travel across borders more easily because the audience is clearly defined. Producers of animation tend to work on different projects at the same time (for television and film) and also may co-operate with other studios on separate projects. Special schemes to consider, in the frame of the existing Creative Europe MEDIA programme, are support for collaborative partnerships for the cross-border distribution of a slate of European animation films and for all cross-border promotional and social media activities that this requires. The Commission will launch in 2016 a dialogue with the major European animation studios to discuss how the sector can scale up and to identify the specific needs of the sector from reducing brain drain to helping animation films and television animation to travel better. The aim would be to agree on a joint action plan for the sector by June 2017, the ultimate objective being the development of a vibrant and internationally competitive European animation industry.

More generally, new financial instruments are being developed to enable the sector to develop a more entrepreneurial approach: the Cultural and Creative Sectors Guarantee Facility launched this year, with its €121 million budget will help more than ten thousands of SMEs to access more than €600 million worth of bank loans by 2022. The facility will provide guarantees and counter-guarantees and facilitate the development of diversified and risk-mitigated portfolios of loans to financial intermediaries wishing to engage with creative SMEs active in sectors such as film production, distribution or exhibition, television, video games or multimedia. This Guarantee Facility may benefit at a later stage from co-investment with this Fund as it pursues the same objective as the SME window of the European Fund for Strategic Investments (EFSI). To speed up the delivery of the Guarantee Facility, EFSI might be used to reinforce the budgetary envelope of the financial instrument for cultural and creative sectors, either by making budgetary funds available more quickly or, subject to a market demand, even by topping-up original budgetary envelope of the Guarantee Facility.

Some of the companies in the cultural and creative sectors would develop more rapidly with investment in the form of the equity financing. The Commission will launch in 2016 a reflection with the European Investment Fund and equity investors on the possibility of developing a dedicated co-investment platform for creative companies to cover their financing needs through capital injections.

The Commission will also facilitate closer interactions and collaborations amongst public funding bodies and financial institutions (like equity financiers, promotional banks, loan providers, micro-financing institutions or grant schemes), with a view to identifying financing opportunities in the audiovisual sector and optimising different funding streams. To this end, the Commission is already exploring the potential of crowdfunding to increase the security of investment and volume of projects in the audiovisual and creative sectors.

#### *More sustained exploitation of existing works*

Together with the film heritage institutions, the national film funds and the European audiovisual industry, the Commission will promote strategies for a more sustained commercial exploitation of existing audiovisual works on the different channels of distribution available (cinema, VOD, catch-up TV, linear broadcasting). This should lead to concrete cooperation actions and more transnational projects.<sup>22</sup>

Besides commercial exploitation, a key objective is to better exploit non-commercial rights in European films. These rights cover use by educational organisations, like schools, public libraries and other non-theatrical venues (e.g. hospitals). If their exploitation is optimised through better and more centralised licensing and remuneration systems, such non-commercial rights have the potential to create new demand for European films. The Commission is exploring together with the EFADs and the audiovisual industry the possibility of creating in 2017 a catalogue of European films for educational purposes. The films could be chosen among MEDIA supported projects and/or LUX Prize winners. Educational licenses would need to be secured and distribution should be as wide as possible, including online. This would be a useful pilot project to present the diversity and quality of European films to young audiences. Funding could be provided through the MEDIA sub-programme scheme dedicated to film education.

### **3. CONCLUSION**

The Commission is implementing an ambitious agenda to both modernise the EU copyright framework for the benefit of all stakeholders and to support enhanced availability and visibility of European content, including across borders. Legislative initiatives and financial support measures are mutually supportive and reinforce one another. The Commission will monitor the impact of all these measures and will follow-up on the efforts made by the industry to embrace its objectives in their business models.

Eventually, the ability of the European copyright industries to adapt and innovate in the digital environment will be crucial for their success and to secure global competitiveness. Enhanced and easier access to copyright content will translate into more audiences and users for a sector so crucial for Europe's innovation and creativity potential and the richness of European cultures.

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<sup>22</sup> The funding to film education through Creative Europe MEDIA programme has thus been increased from 0.9 MEUR to 1.4 MEUR to support more transnational projects.