UNIVERSITY OF TURKU
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Cultural and Economic Justifications in the Internal Market

Assessing the Intersection of Cultural Aims and Economic Protectionism in Member State's Measures

The Law of the EU Internal Market/Faculty of Law

Bachelor's thesis

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Abstract page

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Cultural diversity among the Member States remains prominent in the European Union despite extensive economic integration. Cultural measures fall within the scope of EU internal market law when they restrict the fundamental freedoms and are justified on cultural grounds. Yet, such justifications often carry an economic dimension. Many sectors regulated by internal market law intersect with national cultural traditions, making it difficult to draw a clear line between cultural and economic objectives.

This paper examines the tension between prohibited economic aims and potentially permissible cultural aims, asking whether national measures may legitimately pursue both types of objectives while still qualifying as cultural justifications under internal market law. The study employs a doctrinal method complemented by a critical assessment on the case law of the Court of Justice of the European Union. The analysis is carried out by examining the EU's legal framework on culture and cultural competence, the operation of cultural justifications within internal market law, and the case law of the Court of Justice of the European Union on the distinction between cultural and economic objectives.

The findings show that the line between economic and cultural justifications is difficult to define. The Court of Justice has been more likely to accept cultural aims when they have been linked to fundamental rights or have previously been recognised as public interest reasons. The recent case law, especially case Fussl, indicates that cultural and economic objectives may coexist within a single measure and still constitute a cultural justification. Given the Court's increasingly permissive case law, the paper proposes a clearer doctrine on the interface between cultural and economic objectives that would possibly allow intermediate economic objectives as part of cultural justifications.

Key words: restrictions to the free movement, cultural justifications, cultural diversity, proportionality, economic justifications, the internal market, the four freedoms

In writing this paper, artificial intelligence is used only for language editing in accordance with the University of Turku's instructions on using artificial intelligence in teaching and studying.

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List of Abbreviations

AG	Advocate General
The Court	The Court of Justice of the European Union
The Charter	The Charter of Fundamental Rights of the European Union
EEC Treaty	Treaty establishing the European Economic Community
EC Treaty	Treaty establishing the European Community
ECHR	European Convention on Human Rights
EU	European Union
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
ECHR	European Convention on Human Rights
UNESCO Convention	UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)

1 Introduction

Even after the decades-long process of European Integration, the European Union remains internally diverse in both cultural and economic terms. This internal diversity falls within the scope of the EU internal market, when the cultural diversity of the Member States is preserved by means of economic activity that engages the four fundamental freedoms. When this occurs, Member States seek to justify national measures restricting the internal market by invoking cultural policy objectives, as seen in recent case law and several preliminary references, the most recent of which was submitted to the Court of Justice of the European Union in December 2025[1]. While cultural diversity is recognised as a legitimate public interest within the EU legal order, concerns have been raised that cultural justifications may be used to shield protectionist measures that primarily pursue economic aims.

Many sectors in the EU internal market are closely tied to the cultural identity of the Member States, such as the broadcasting industry or the book market. In some cases, the desire to preserve local, traditional shops is linked to the protection of national cultural or linguistic values and heritage. These aims, however, often come into tension with the four freedoms, when Member States seek to safeguard cultural interests through protectionist measures that could end up undermining the internal market. At that point, the objective may no longer be the promotion of cultural diversity as envisaged in the Treaties, but rather the protection of domestic economic operators.

The paper seeks to explore the line between economic and cultural justifications as a restriction on the four freedoms and then analyse, whether economic objectives can also be included in cultural justifications. The research question is formulated as follows: “When can economic objectives be accepted as part of a cultural justifications under internal market law?” In EU internal market law, cultural justifications refer to national measures that restrict market freedoms but are defended on the basis of protecting cultural or linguistic diversity. The freedoms underpinning the internal market, that is, the free movement of goods, the freedom to provide services and the freedom of establishment, the free movement of workers, and the free movement of capital are referred in this paper to as the four freedoms. When protectionism is mentioned in this paper, it refers to policy favouring the use of different kind of restrictions to shield domestic industries from foreign competition[2].

[1] See Case C-780/25 *Desch-Drexler II*
[2] See the definition of protectionism in the Legal dictionary of Cornell Law School’s Legal Information Institute.

There are prior studies on cultural justifications in internal market law[3] and research on economic justifications.[4] Combining the research on cultural justifications to the prohibition on economic justifications and their possible co-existence has, however, been insufficiently addressed especially after the recent developments in the Court's case law.

The research method for this paper is doctrinal research. It means research into law and legal concepts[5] and the systematisation of present law.[6] This approach enables the assessment of new developments such as recent case law against societal change[7] and propositions on the direction the doctrine should take, which this paper does. Systematising the current law is done mainly by examining the Court's case law and drawing conclusions from there. In addition, this paper takes on a critical approach in finding inconsistencies in the current state of law and seeking possible solutions to them. The paper thus seeks to determine, *can* economic and cultural justifications coexist and if so, *should* they coexist in the internal market.

The analysis begins by outlining the role of cultural diversity in the founding treaties of the EU and EU's competence in culture. Then, the framework in which the cultural justifications operate is explained. After that, the analysis moves to examining the distinction between economic and cultural objectives through the Court's case law and other research in the field, before analysing two recent judgments to assess whether measures pursuing both economic and cultural aims may qualify as cultural justifications. Finally, the paper seeks to explore options to address the issues with both cultural and economic objectives.

[3] See Psychogiopoulou 2024 and De Witte 2016.
[4] See Snell 2016 and Arrowsmith 2015.
[5] Hutchinson – Duncan 2012, p. 85.
[6] Smits 2015, pp. 6-7.
[7] Ibid, pp. 7.

2 Cultural diversity within the framework of EU Treaties

Cultural considerations were absent in the founding treaties of European economic integration.[8] Cultural issues, however, were visible in the European Economic Community from early on and especially seen on the creation of the common market for goods, services, persons and capital by the Treaty of Rome in 1957.[9] Nowadays both the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union (the Charter) oblige the EU to take cultural diversity into account and promote it.[10] Article 167 TFEU provides that '[t]he Union 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." This paragraph sets the basis for respecting both national and regional cultural diversity in the EU while limiting the Union's involvement in Member States cultural policies.[11] The Article 167(4) TFEU creates the Union an obligation to take cultural considerations into account in its action under other Treaties, which can be seen to extend cultural considerations to all Union action.[12] Cultural diversity is also mentioned in Article 22 of the Charter which states that the Union shall respect cultural, religious and linguistic diversity. A similar duty is found in Article 3(3) of the Treaty on European Union. It is suggested that Article 167 TFEU, Article 22 of the Charter and Article 3 TEU together make cultural concerns Union's constitutional interest that must be recognised also in the context of the internal market.[13]

Culture is not harmonised area in the EU. The Treaty of Lisbon placed culture in the category of EU's complementary competences under Article 6 TFEU, where the Union cannot enact any harmonisation[14] and its role is to support, coordinate or supplement the actions of the Member States.[15] Therefore, each Member State is free to enact their own laws around culture. The lack of harmonisation is precisely why cultural justifications are important: they balance between the Member States' freedom to create their own cultural policy through laws and the four freedoms concerning the functioning of the whole EU area.

[8] Psychogiopoulou 2024, p. 89.
[9] Psychogiopoulou 2008, pp. 8-9.
[10] Psychogiopoulou 2024, p. 90.
[11] Ibid., 2008, pp. 26- 27.
[12] Ibid., 2008, p. 26. Psychogiopoulou uses the wording "Community", since the source is written before the Treaty of Lisbon has entered into force.
[13] Lang – Lang 2024, p. 125.
[14] De Witte 2016, p. 181.
[15] Psychogiopoulou 2024, p. 89. See also Article 2(5) TFEU.

3 The Legal Framework of Cultural Justifications

This chapter explains the framework where the consideration between Member States' cultural policies and the internal market rules is carried out. Restrictions to the four freedoms can be justified by either express derogations found in the Treaties or by justifications developed in the case law, which allow Member States to continue applying their restrictive measures.[16]

The base for each freedom is laid down in separate Articles of the TFEU. Article 34 TFEU prohibits quantitative restrictions on imports and all measures having equivalent effect between Member States. Article 56 prohibits restrictions on the free movement of services within the Union, while Article 45 and 49 secure free movement of workers and freedom of establishment. Free movement of capital is guaranteed under Article 63 TFEU. If multiple freedoms apply to one case, the Court usually examines the national measure in relation to only one freedom while others are secondary.[17]

3.1 Express derogations

The Treaty of Functioning of the European Union provides certain derogations from each of the four freedoms. In terms of free movement of goods, Article 36 provides a list of derogations, including protection of national treasures possessing artistic, historic or archaeological value and public policy. The former derogation is unique to free movement of goods, but public policy is mentioned as a derogation in terms of all four freedoms in separate articles.[18] Public policy derogation could in principle encompass cultural policy or cultural diversity arguments, but the Court has been strict in its interpretation. As for free movement of goods, for instance, the Court has said that Article 36 TFEU cannot be extended to cover objects not explicitly mentioned in the Article, such as the protection of creativity and cultural diversity.[19] A strict interpretation of what could be an express derogation has been continued in other Treaty freedoms as well.[20] Thus, cultural arguments are not likely to succeed under the express derogations -regime.

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[16] Barnard 2025, p. 591.
[17] This principle is found in Case C-366/24 Amazon EU, para 49 and other case law cited in the paragraph.
[18] Barnard 2025, p. 499 and 579. Public policy appears as an express derogation in each of Treaty freedom in a specific provision (Articles 36, 45(3), 52, 62 and 65(1)(b) TFEU). In free movement of capital, Art 65(1)(b) is distinctive in that it combines the standard public policy and public security derogations with a special taxation-related provisions reflecting the mandatory requirements associated with effective fiscal supervision.
[19] Case 229/83 Leclerc ECLI:EU:C:1985:1, para 30.
[20] See Case C54/99 Eglise de Scientologie (200), paras. 17-18. and Case C-211/91 Commission v Belgium ECLI:EU:C:1992:526.

3.2 Justifications

In addition to express derogations, justifications provide a way for exempting from the four freedoms. Justifications are an evolving list of reasons developed through case law by the Court. They are called mandatory requirements in free movement of goods[21], and overriding reasons relating to public interest in regards of other Treaty freedoms.[22] In this paper, the justifications created in case law are referred generally as public interest reasons. Public interest reasons are accepted in principle in relation to all Treaty freedoms, but since they are formulated in the case law, an identical list of grounds does not apply to all four freedoms. For example, in free movement of goods, the list of mandatory requirements has been enlarged in case law to cover the protection of national or regional socio-cultural characteristics[23], maintenance of press diversity[24] and the protection of books as cultural objects[25]. In terms of the free movement of services, cultural policy is an example of a public interest reason.[26]

The open-ended lists of public interest reasons are subject to some limitations. They are applicable in areas where the legislation has not been harmonised[27], such is the case in culture. In addition, public interest reasons are applied to indistinctly applicable measures and non-discriminatory measures only.[28] Indistinctly applicable measures apply to both domestic and foreign goods, services, establishment, capital and workers alike, but in practice impose a greater burden on foreign actors.[29] Non-discriminatory measures may still fall within the scope of the Treaty when they impede the effective exercise of a fundamental freedom. The terminology between non-discriminatory measures varies between the freedoms, but more general approach was in created in *Gebhard*, where the Court said that public interest justifications are available on measures that are liable to hinder or make less attractive the exercise of fundamental freedoms.[30] Traditionally, distinctly applicable measures have only been subject to express derogations found in TFEU, and other measures also justifiable by public interest reasons. However, the Commission has said that the distinction nowadays less meaningful in practice.[31] Indeed, cultural justifications have largely been examined through

[21] Barnard 2025, p. 177.
[22] Barnard 2013, p. 11. See Case C-154/89 Commission v France EU:C:1991:76
[23] Case C-17/92 Fedicine ECLI:EU:C:1993:172.
[24] Case C-368/95 Familiapress ECLI:EU:C:1997:325
[25] Case C-531/07 LIBRO ECLI:EU:C:2009:276.
[26] Case C-288/89 Gouda ECLI:EU:C:1991:323.
[27] Barnard 2025, p. 94
[28] Ibid., p. 527.
[29] Barnard 2025, pp. 87, 235, 311 and 559-561.
[30] Ibid, p. 528. See Case C-55/94 Gebhard ECLI:EU:C:1995:411, para. 37.
[31] Commission Notice, CELEX:52021XC0323(03), 23.3.2021.

the concept of public interest reasons, especially after the Treaty of Lisbon has entered into force.[32]

Public interest reasons are a convenient framework for cultural justifications also because of their flexible nature. New public interest reasons can be developed continuously in case law, which allows to adjust the four freedoms to societal changes. In addition, if the national measures touch upon sensitive socio-cultural issues, the Court has been flexible in applying public interest reasons at least in the field of services. A wide discretion is left for the national Court in determining the justifiability of the measure because of the distinctive features in their economies, which can be seen particularly in lottery and gambling sectors.[33] If this approach is applied to other culturally sensitive sectors as well, cultural justifications would be relatively easy to accept under the category of public interest reasons.

3.3 The Principle of Proportionality

The final step in justifying cultural objectives is the proportionality test. Public interest reasons and express derogations alike are subject to the principle of proportionality irrespective of the freedom in question. The proportionality is determined either by the Court or the referring court, and the burden of proof is on the Member State.[34]

The proportionality test usually consists of two steps.[35] Firstly, the national measure must be suitable to achieve the interest it pursues. Suitability requires a connection between the means and the ends. Secondly, the measure must be necessary to attain the interest it pursues. The necessity test asks: is there a less restrictive alternative measure which is equally effective in achieving the same objective? If such a measure is found, it must be selected.[36] The Court must weigh competing interests: the importance of the objective on the one hand and the consequences of the national measure for an interest worthy of legal protection.[37] In terms of cultural justifications, the Court thus considers the restrictive effect of the national measure against the measure's ability to promote cultural diversity or other more precisely defined objective of the Member State.

[32] Psychogiopoulou 2024, p. 99.
[33] Barnard 2025, pp. 315-316. See Case C-67/98 Zenatti ECLI:EU:C:1999:514, paras 15 and 33.
[34] Barnard 2025, p. 535.
[35] A three-step test is also used in some occasions. See case C-128/2 Nordic Info EU:C:2023:951, para. 77.
[36] Snell 2002, pp. 196-199.
[37] Barnard 2025, p. 186.

4 Economic and Cultural Justifications in the Case Law

In this chapter, the case law of the Court of Justice on cultural justifications is divided into three categories for the sake of analysing the Court's reasoning. The first category consists of cases where the aim behind the Member State's measure is regarded as purely economic and therefore not justifiable. The second category consists of cases where the aim is seen as cultural, but it fails the proportionality test or where the proportionality assessment is left for the referring court. The final category covers cases where the aim behind a Member State's measure is accepted as cultural one and justified, because it is also proportionate.

4.1 Prohibition on Economic Justifications

Purely economic aims cannot be justified as restrictions, and this applies across all four freedoms.[38] Economic justifications are thus not within the scope of express derogations or public interest reasons. This is especially visible in relation to public interest reasons, where the Court has not established any other limits to the open-ended list the reasons than that they must be non-economic.[39] The prohibition is based on the idea that the purpose of the internal market is to remove economic obstacles that the Member States may have. Allowing economic justifications would contribute to undermining the whole internal market.[40]

Prohibited economic interests relating to cultural considerations are defined on a case-by-case basis by the Court. Case *Fedicine* is an example of a case where the Court has held that national measure pursued a purely economic objective and thus was unjustifiable as cultural policy measure. *Fedicine* concerned the freedom to provide broadcasting services, and the Court’s reasoning focused on express derogations found in Article 52 TFEU. A similar prohibition of an economic objective is also confirmed by the Court in relation to free movement of goods, for example.[41]

In *Fedicine*, Spanish legislation prescribed that dubbing licences for third-country films were to be granted only to those operators who agreed to distribute films in Spanish or other official languages of Spain as well. The Spanish government argued that the measure had a cultural aim: protecting the national film industry. The Court held that the measure had a

[38] Snell 2016, p. 46.
[39] Scott 2003, p. 312.
[40] Arrowsmith 2015, p. 310.
[41] See Case 229/83 Leclerc ECLI:EU:C:1985:1.

protectionist effect, since it favored undertakings producing Spanish films and disadvantaged undertakings from other Member States. The measure was discriminatory, and the objective of the measure was purely economic, which excluded the aim from being a ground of public policy within the meaning of Article 52 TFEU.[42] Since the measure was directly discriminatory, it could not have been justified as a public interest reason either.[43] *Fedicine* shows that the fact that a Member State assumes that protection of some culture-related industry, such as film industry, is justified since the measure has a cultural aim, does not mean that the Court would agree with the aim of the measure.

In *Fedicine,* the Court did not provide any reasons to why public policy derogation or other express derogations cannot encompass cultural policy arguments.[44] The post-Fedicine case law does not clarify the Court's reluctance to include cultural objectives into the express derogations either.[45] Yet, the Court has not entirely excluded the possibility of applying express derogations, which creates legal uncertainty around the Court's approach on cultural justifications.

Consequences of classifying the objective of the measure as economic rather than cultural are very different. If a Member State is trying to justify its restrictive measure through express derogations or public interest reasons, finding that an aim is economic bans the Member State from legally pursuing the aim. Economic means are not perceived as possible restrictions to free movement that can be justified but as directly prohibited. [46] They cannot be justified by some cultural aim or reason relating to public interest, for example. When a measure is deemed to have an economic objective, the proportionality assessment is not carried out either.[47]

Snell has argued that defining the line between non-economic and economic aims is likely to become harder.[48] In drawing the line, Snell categorizes the Court's approach into three groups. One category is borderline cases, where the Court has had genuine difficulties in defining the aim behind the national measure.[49] In cases relating to cultural justifications,

[42] Case C-17/92 Fedicine ECLI:EU:C:1993:74, para. 15-21. At the time of the judgement, Article 52 TFEU was Article 56 EC Treaty.
[43] Barnard 2025, p. 315.
[44] De Witte 2016, p. 187.
[45] Psychogiopoulou 2024, p. 99.
[46] Snell 2016, p. 45.
[47] See Case C-211/91 Commission v Belgium ECLI:EU:C:1992:526.
[48] Snell 2016, p. 45.
[49] Ibid., pp. 48-51.

economic goals have also been present.[50] As seen in *Fedicine*, economic aims and cultural aims have often been blended in the broadcasting industry, for example. Therefore, economic aims can be genuinely hard to distinguish from cultural ones, and the Court faces a hard task in defining the line. The next chapter illustrates the Court's reasoning in separating cultural justifications from economic ones.

4.2 Cultural justifications

When culture is regarded as a possible justification, two lines of case law can be distinguished based on whether the Court holds the measure as proportionate or disproportionate. This chapter outlines the Court's reasoning through case law examples and concludes by linking these examples to the Court's broader interpretative approach to cultural justifications.

4.2.1 Measures Pursuing Cultural Aims but Failing the Proportionality Test

One line of cases concerns situations where the Court recognises the cultural aim of the national measure as a legitimate cultural policy objective yet ultimately finds the measure disproportionate. A recent case example is *Las*, which did not concern cultural diversity directly but rather linguistic diversity and preservation of Member States' national languages. Linguistic diversity can nevertheless be seen as part of cultural diversity, as they are often mentioned together in the Treaties and the Charter.[51] In *Las*, An Act of the Flemish Community of Belgium imposed an obligation to use only Dutch language in private employment contracts, originally enacted because some employers used employment contracts in French instead. The Court was asked if the law constituted a restriction on the free movement of workers, since it might limit the cross-border movement of persons not understanding Dutch.[52]

The Court held that the Belgian measure formed a restriction to Article 45 TFEU, since it can render less attractive the exercise of the free movement of workers by Union nationals.[53] A restriction this kind may, however, be justified on the grounds that promoting and encouraging the use of a Member State's national language can constitute a legitimate public interest reason.[54] The objective of the measure was classified as cultural and not an economic

[50] Psychogiopoulou 2024, p. 97.
[51] See Article 22 of the Charter and Article 3(3) TEU.
[52] Case C-202/11 Las ECLI:EU:C:2013:239, paras 9-15.
[53] Ibid., paras 20 and 22.
[54] Ibid., paras 23, 25 and 27.

one for two reasons. First, the Court noted that previous case law has established that the protection and promotion of Member State's official languages is part of acceptable cultural policy.[55] Secondly, the Union's duty to respect its cultural and linguistic diversity found in Article 3(3) TEU and Article 22 of the Charter was emphasized by the Court.[56]

After finding the measure justifiable, the Court engaged in proportionality assessment. It should be noted that the protection of linguistic values was not the only objective the measure had; the Belgian Government also invoked two additional aims that concerned workers' protection and the efficacy of the employment inspectorate.[57] The Court identified a less-restrictive measure to attain the goal pursued. Instead of adopting the contested measure, the Court said that legislation that would permit the drafting of an authentic version of employment contracts in a language known to all the parties concerned, would secure the same objectives as the contested measure. Therefore, the Court concluded that the measure was not proportionate, since the law exceeded what is strictly necessary to obtain the three objectives the measure had.[58]

The Court's proportionality assessment in *Las* can be criticised in several respects. The national measure had three objectives, but these were not differentiated in the proportionality assessment. Considering that only one of these aims was cultural in nature, assessing all of those together seems imprecise and inadequate to understand the Court's reasoning. In addition, the Court did not systematically follow the separate review of suitability and necessity in its analysis.[59] Against this, demanding that the measure does not go beyond what is "strictly necessary" rather than just necessary appears quite stringent approach on proportionality.

Las is one of the few cases where the Court has engaged in proportionality assessment relating to cultural or linguistic diversity, but it did not offer many guidelines on the balancing between cultural or linguistic values and the four freedoms. Often times, the Court also has tended to leave the proportionality assessment for the referring court in cultural justification cases.[60] The question of whether the proportionality assessment should be left to national

[55] Case C-202/11 Las ECLI:EU:C:2013:239, para 25. See C-379/87 Groener ECLI:EU:C:1989:599, para 19 and C-391/09 Runevič-Vardyn and Wardyn ECLI:EU:C:2011:291, para 85.
[56] Case C-202/11 Las ECLI:EU:C:2013:239, para 26.
[57] Ibid., para 24.
[58] Ibid., paras 32–34.
[59] Cloots 2016, p. 641.
[60] Psychogiopoulou 2024, p. 108. See Case C-87/19 Tv Play Baltic ECLI:EU:C:2019:1063.

court is a contested one. Generally speaking, deciding on the proportionality is essentially applying the law to the facts of the case, which is a task typically left for the national court.[61] It can be argued that as a supranational body, the Court might not understand each Member States' unique cultural elements in their entirety.[62] Thus, conferring the assessment of proportionality to national courts enables Member States to pursue the values they cherish in a national level.[63] This is visible in cultural justifications, where the rules of free movement often touch upon sensitive cultural characteristics of the Member States. The EU's complementary competence in the field of culture and duty to respect cultural diversity highlight this sensitivity. When reflecting these principles, leaving the proportionality assessment to national courts is understandable.

Despite touching upon sensitive areas of Member States primary competence in cultural justifications, there are reasons for the Court to rule on the proportionality. Proportionality assessment is a tool for judges to reconcile conflicting interests in difficult cases,[64] such as in cultural justifications which often also involve economic objectives. If the proportionality assessment is insufficiently executed, as was the case in *Las*, or is left for the referring court, it creates further legal uncertainty around the ultimate acceptability of cultural objectives. When addressing the question about proportionality insufficiently or not at all, the opportunity of developing EU-level guidance on the weighing of the Member States' competing cultural interests and the four freedoms is left unused.

The proportionality assessment is a powerful tool to decide between competing aims. When the Court decides on the proportionality, it can take an "activist" role and promote more integration in the internal market by ultimately deciding on the justifiability of the national measure, while national courts may use proportionality as a tool to restrict the applicability of EU law[65]. The question of who should decide on the proportionality may thus ultimately define, whether to engage in more integration or to leave a room for the Member State's own cultural values at the expense of more unified internal market. Looking at the case law, the latter approach seems to be selected regarding cultural justifications.

[61] Davies 2012, p. 84.
[62] Cloots 2014, p. 641.
[63] Ibid., p. 77.
[64] Sweet and Mathews 2008, p. 145.
[65] Davies 2012, p. 77. Note that the roles of the Court and national court are not always the ones described.

4.2.2 Measures Pursuing Cultural Aims and Passing the Proportionality Test

In some cases, the Court has stated that the national measure had a cultural objective and that it also satisfied the proportionality test. In these cases, the Court has generally agreed on the cultural objective presented by the national government and the measure's necessity and suitability in achieving the objective. An example of this line of case law is case *UTECA*.

In *UTECA*, a Spanish measure imposed an obligation on TV broadcasters to allocate 5 per cent of their revenue to financing European films and 60% of that amount to films originally in Spanish language or other official language of Spain.[66] The measure made it less attractive for foreign producers to offer their film-making services to TV broadcasters in Spain. It also reduced the attractiveness of using foreign personnel in film productions since they often cannot speak Spanish or other Spain's official languages.[67] The freedom in question was thus freedom to provide services.

The Court held that the objective of the national measure was cultural, namely preserving Spanish multilingualism, which constituted a public interest reason.[68] The link between multilingualism and cultural pluralism was reaffirmed and appears to be included in the category of public interest reasons in terms of freedom to provide services. Unlike in some earlier case law, the Court did not assess whether the measure pursued an economic rather than a cultural objective.[69] Although the Spanish government perceived the aim as cultural, the Court could have characterised the measure as economic, as it did in *Fedicine*. This raises the question of what distinguishes the present case, especially since the Court acknowledged that the measure primarily benefitted Spanish companies.

Firstly, the measure in *Fedicine* was directly discriminatory and in *UTECA,* an indirectly discriminatory one. Public interest reasons were not available in *Fedicine*, where the measure could have been justified by one of express derogations only*,* at least according to the Court's strict line of interpretation at that time. Different availability of justifications might thus explain the different outcome. In *UTECA*, the classification of the measure as cultural appears indeed to rest on the fact that the preservation of multilingualism in a Member State was already recognised as a public interest reason.[70] Furthermore, the Court referred to the

[66] Case C-222/07 UTECA ECLI:EU:C:2009:124, para. 10-12.
[67] Opinion of AG Kokott, UTECA, C-222/07, ECLI:EU:C:2008:468, para 78-80.
[68] Case C-222/07 UTECA ECLI:EU:C:2009:124, para. 26-27.
[69] De Witte 2016, p. 191.
[70] Case C-222/07 UTECA ECLI:EU:C:2009:124, para 27. See C-379/87 Groener ECLI:EU:C:1989:599, para 19.

UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), according to which linguistic diversity is a fundamental element of cultural diversity.[71] Existing case law, together with the reference to the UNESCO Convention, may explain why the measure was regarded as cultural rather than economic in nature.

In *UTECA*, the Court also ruled on the proportionality of the Spanish law. The measure was suitable for achieving the aim, which was preserving the official languages of Spain. The Court held that the measure does not go further than necessary to pursue the objective, since the requirement of allocating funds to film production in the official languages of Spain concerns only a small portion of broadcasters' total revenue.[72] The proportionality assessment was thus strongly connected to the economic considerations. An interesting statement by the Court was that the fact that the national measure mainly benefits Spanish film production companies does not render the measure disproportionate.[73] With that, the Court is implying that even a discriminatory nature of the measure does not in itself create an obstacle to the proportionality provided that the aim is cultural.

4.3 The Court's General Approach on Cultural Justifications

Cases that have been examined above are only examples, since there is a considerable amount of case law regarding cultural justifications. The Court has not established a clear doctrine to differentiate national measures having a cultural aim from those having an economic aim,[74] as also evident from *Las* and *UTECA*. A measure intended to pursue a cultural aim might still be protectionist and thus prohibited, as seen in *Fedicine*. When the Court has viewed the objective of the measure as cultural, the aim has had a link to fundamental freedoms on some occasions, like in *Las*. If a cultural aim is already recognised as public interest reason, the measure is more likely to be seen as cultural than economic, which was the case in both *Las* and *UTECA*.

During the decades between *Fedicine* (1993) and *Las (2014)*, the Court's approach to cultural justifications appears to have shifted. Psychogiopoulou observes that at the time of *Fedicine* judgement, the Court tended to treat cultural policy considerations as factors to be "contained and neutralized" rather than as legitimate public policy derogations.[75] The Treaty of Lisbon

[71] Case C-222/07 UTECA ECLI:EU:C:2009:124, para 33.
[72] Ibid., para 29-34.
[73] Ibid., para. 36.
[74] De Witte 2016, pp. 192-193.
[75] Psychogiopoulou 2024, p. 106.

(2009) introduced culture into the sphere of the EU's complementary competences and made respecting cultural diversity a binding obligation imposed by TFEU and the Charter. Consequently, one might have expected that the Court would take a more permissive stance towards national cultural policy measures. Yet, the initial restrictive approach has not developed into a coherent line of reasoning after the Lisbon Treaty. De Witte notes that the post-Lisbon case law at the intersection of cultural policy and internal market rules has remained unpredictable and uncertain.[76] Consequently, the Court's assessment of cultural policy measures that also pursue economic objectives is not straightforwardly more permissive today.

A further source of legal uncertainty is the marginal role that Article 167 TFEU has played in the Court's case law. Advocate General Trstenjak has said that Article 167, which requires promoting Member States' cultural diversity, cannot be relied on as a ground of justification for any national measure in the cultural field that is capable of hindering intra-EU trade.[77] On some occasions, Article 167 TFEU is referred to in the Opinion of Advocate General, but the Court has not mentioned it in its judgment.[78] This reflects a general restrictive attitude towards invoking Article 167 TFEU to justify measures pursuing both economic and cultural objectives. It should be noted that in *Las*, however, the Court gave weight to Article 3(3) TEU and Article 22 of the Charter which have quite similar content to Article 167 TFEU.

Although the Court's attitude towards cultural justifications has not become more permissive because of Treaty amendments, more permissive approach may nevertheless emerge for other reasons. According to Lottini, the so-called economic limit, that is, the distinction between justified restrictions and prohibited economic restrictions, has been approached in a more permissive manner by the Court in a specific areas where the economic interest and non-economic interests are intertwined and the distinction is difficult to make.[79] Overlapping cultural and economic aims can be seen in many areas in which the Member States invoke cultural policy as justification, such as in broadcasting and film industries and the book and publishing industries. Protecting media pluralism or linguistic diversity can be connected to cultural or even human rights conventions,[80] which might explain why they are sometimes accepted as cultural policy grounds.

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[76] De Witte 2016, p. 194.
[77] Opinion of AG Trstenjak, LIBRO, C-531/07 ECLI:EU:C:2008:752, para. 33.
[78] Opinion of AG Kokott, UTECA, C-222/07 ECLI:EU:C:2008:468, para 93.
[79] Lottini 2020, p. 273.
[80] See Cases C-87/19 TV Play Baltic ECLI:EU:C:2019:1063 and C-222/07 UTECA ECLI:EU:C:2009:124.

On the other hand, ensuring diversity in some industry can also be framed as an economic objective, as the Court concluded in *Fedicine*. For instance, the protection of pluralism in the broadcasting industry might have both a cultural aim in the light of media pluralism and freedom of expression, but also an economic aim, like ensuring favourable business conditions to national undertakings. Cultural diversity therefore can therefore to be connected to diversity of undertakings within an industry, which creates a strong economic dimension to Member States' cultural arguments.

5 Measures Pursuing Both Cultural and Economic Objectives

The distinction between measures having a cultural aim and ones having economic aim is often intertwined in cultural industries, as seen from the Court's case law. Economic justifications are prohibited in principle[81], but Member State's cultural measures might also have an economic objective. One might ask, can economic objective and cultural aims exist simultaneously so that the national measure is still perceived as justified restriction to the four freedoms. The question is examined through two recent judgments of the Court concerning pluralism in media and books.

5.1 Case Fussl

Fussl concerned restrictions on television advertising. German law prohibited including television advertising, which was limited to specific regions, in programs broadcasted on a nationwide basis. Fashion retail chain Fussl wanted to advertise its products only within one territory, but a German media company refused to do that in nationwide programmes, referring to the German legislation. The measure hindered the access of foreign undertakings like Fussl to the German market by making regional advertising more difficult. It thus restricted broadcasters' freedom to provide regional advertising services.[82]

The Court held that the Germany's measure had a cultural policy reason.[83] The objective of the measure was the decisive factor. Germany's measure was intended to preserve revenue from regional TV advertising to regional broadcasters and by that, ensuring a source of income and sustainability to the regional and local broadcasters so that they can contribute to the pluralism of television programmes by offering regional and local content.[84] The objective might seem quite economic in nature, namely ensuring local undertakings' financing and survival in the market. The Court held nevertheless that such an objective is sufficient to constitute a public interest reason capable of justifying the restriction to Article 56 TFEU.

The existence of a public interest reason was connected to two grounds. Firstly, cultural nature of this objective was linked to the fundamental rights of the EU. The Court held, referring to case law, that respecting the freedom and pluralism in the media, found in Article

[81] Snell 2016, p. 46.
[82] Case C-555/19 Fussl ECLI:EU:C:2021:89, para. 43-49.
[83] Ibid., para. 54.
[84] Ibid., para. 53.

11 of the Charter, is a legitimate public interest reason.[85] Secondly, the Court said that maintaining pluralism of television programmes connected with freedom of expression may constitute a public interest reason according to settled case law.[86] Thus, such a ”double objective” was accepted primarily because the pluralism of television programmes was connected both to the safeguarding of fundamental rights and had already been included in the public interest list. This shows that fundamental rights might be interests of higher significance than the four freedoms in cultural justification cases.

The Court did not conclude whether restriction to Article 56 TFEU was proportionate. Instead, the Court held that the referring court must review if shifting the demand of regional advertising services and the revenue from them away from regional broadcasters would lead to endangering the financing and survival of regional and local broadcasters.[87] Consequently, the proportionality assessment was connected to the economic objective of the measure. The Court also identified a less restrictive measure that could possibly attain the same objective, which implies that the restriction might not pass the necessity test.[88]

The Court’s judgment in *Fussl* shows that ensuring the viability and survival of local broadcasting undertakings is a legitimate cultural reason to restrict internal market freedoms. In the Court’s earlier case law, objectives of that kind were often rendered as economic and thus unacceptable.[89] The objective accepted by the Court seems to be two-faced: ensuring sustainability of regional and local broadcasters and thereby preserving pluralism in the offer of television programmes. This could be perceived as a “double objective” for its economic and cultural nature, or the economic objective could be an intermediate one while the cultural objective remains as the final goal. This economic nature of an objective appears in any case to be a legitimate one at least if it has a strong link to fundamental rights.

[85] Case C-555/19 Fussl ECLI:EU:C:2021:89, para. 55. The Court held that safeguarding the freedom and pluralism in the media is a legitimate aim in the context of freedom of establishment in this case. See also Case C-719/18 Vivendi ECLI:EU:C:2020:627.
[86] Case C-555/19 Fussl ECLI:EU:C:2021:89, para. 54. The court referred to C-250/06 United Pan-Europe Communications Belgium ECLI:EU:C:2007:783 para 41–42 and C-336/07 Kabel Deutschland ECLI:EU:C:2008:765, para 37-38.
[87] Case C-555/19 Fussl ECLI:EU:C:2021:89, para. 52 and 66.
[88] About the proportionality test, see Snell 2002, pp. 196-199.
[89] De Witte 2016, p. 189. Craufurd Smith 2004, pp. 28-34. See Case C-198/89 Commission v Greece EU:C:1991:79.

5.2 Case Amazon EU

Case *Amazon EU* is very recent case from the field of cultural justifications and offers a topical point of examining the relationship between economic and cultural objectives. In this case, French legislation imposed a minimum delivery fee on books sold online, when the price of the order was under 35 euros. Amazon is competing with ultra-low delivery fees in the EU and therefore challenged the legality of the French law. The referring court asked how to consider free movement rules and cultural policy protecting independent bookstores against the objective of the measure, namely preserving pluralism in the publishing sector and reinforcing books as part of national heritage.[90]

The referring court did not inquire if the measure could be justified but instead required an assessment of which rules should be applied to the legal question.[91] The Court excluded the measure from the scope of the Services Directive (2006/123/EC) and the Electronic Commerce Directive (2000/31/EC).[92] It held that the measure must be evaluated in the context of free movement of goods instead of freedom to provide services, since the minimum delivery fee affects the overall selling price of books.[93] The Court ruled that insofar as the France's measure's objective is to preserve cultural pluralism as the referring court noted, the measure must be reviewed under Article 34 TFEU.[94] The measure was a measure having equivalent effect, that is, indistinctly applicable, since it impeded foreign booksellers, who often engage in distance selling, from accessing to the market of books in France.[95] Thus, the Court brought the justification assessment under TFEU and by that, subject the measure to derogations in Article 36 TFEU and public interest reasons/mandatory requirements.

The opinion of Advocate General Szpunar offers a view on the cultural nature and justifiability of the measure. The AG did not assess the measure's justifiability under Article 34 TFEU but instead analysed it under the Services Directive, which he, unlike the Court, considered to be applicable to the French measure. According to AG Szpunar, Article 1(4) of the Services Directive may be interpreted as introducing a public interest reason, namely the protection of cultural diversity, in addition to those listed in Article 16 (3) of the Services

[90] Hojnik 2025.
[91] Opinion of AG Szpunar C-366/24 Amazon EU, para. 25.
[92] Case C-366/24 Amazon EU, ECLI:EU:C:2025:990, paras 44-45.
[93] Ibid., para. 52.
[94] Ibid., paras 44 and 60.
[95] Ibid., para. 58.

Directive.[96] Similar to public interest reasons under TFEU, this cultural justification must meet the standard of proportionality.[97] By holding that cultural measures are subject to a similar proportionality standard under Services Directive and under TFEU, AG Szpunar may be understood as suggesting that the measure would also fall within the scope of the mandatory requirements under Article 34 TFEU and thus be cultural. However, it should be noted that while Advocate General's Opinions influence and often indicate the Court's judgement, they do not bind the Court.[98] Therefore, Advocate General's Opinions are not sources of law equivalent to the Court's judgments.

The objective of the French measure was to protect independent bookshops, maintain editorial pluralism and strengthen books' position as objects of national heritage. France has a long history of cultural book policies that pursue protecting books as cultural assets[99] and the Court has previously regarded France's attempt to set fixed book prices as economic rather than cultural measures in *Leclerc*.[100] On the other hand, protection of books as cultural objects has previously been identified as public interest reason (mandatory requirement) and thus being a cultural justification in *Libro*.[101] Therefore, if the Court had assessed whether the measure could constitute a cultural justification, an affirmative answer would have been possible in light of previous case law and the Opinion of the Advocate General Szpunar.

While possibly justifiable as cultural, the measure had a clear economic objective as well. The measure intended to protect books from the negative effects of price competition and to rebalance the competitive situation between large online platforms such as Amazon offering free delivery, and smaller bookshops.[102] Measures aimed at shielding domestic undertakings from competition is precisely what protectionism is. Yet in *Amazon EU,* limiting price competition aimed at maintaining diverse network of independent bookstores. Thus, the economic objective appears to have been an intermediate one, since it was a way to achieve the cultural aim.

Intermediate economic objective is indeed what makes *Amazon EU* relevant case in drawing the line between economic and cultural measures. Since the case maintains the question of

[96] Opinion of AG Szpunar C-366/24, Amazon EU, paras 61-66.
[97] Ibid., para. 64.
[98] Craig – de Búrca 2024, p. 344.
[99] Craufurd Smith 2004, p. 62.
[100] Case 229/83 Leclerc ECLI:EU:C:1985:1, paras 30 and 16.
[101] Case C-531/07 LIBRO ECLI:EU:C:2009:276, para. 34.
[102] Opinion of AG Szpunar C-366/24, Amazon EU, para. 30.

intermediate economic objectives visible, it is unfortunate that the Court could not or did not want to, by reformulating the preliminary question, address the issue sufficiently. Even though the case itself did not offer much guidance on the justifiability of this economic objective, it shows that the question may be about intermediate economic objectives as tools to achieve final cultural aims. Further clarification about it would reduce uncertainty around the apparently not fully unambiguous prohibition on economic objectives.

5.3 Key Take-aways and Criticism

The distinction between prohibited economic measures and permissible cultural measures has been further examined in two recent judgments of the Court. In *Fussl*, the Court accepted a measure with both economic and cultural objectives as a cultural justification under Article 56 TFEU. The classification probably resulted from the measure's close connection to fundamental freedoms, particularly freedom of expression and media pluralism. In *Amazon EU*, the double objective concerned balancing competition between large online retailers and small bookshops, aiming at maintaining network of independent books stores. Although the measure's justifiability was ultimately left unsolved, it highlighted the relevance of intermediate economic objectives in Member State's cultural justifications.

Fussl and *Amazon EU* show that economic measures aimed at supporting the survival of local or regional undertakings are not necessarily prohibited restrictions but may be justified as cultural measures when the economic objective contributes to a cultural aim. Acceptability of intermediate economic objective can be sought from other case law. In health care sector, the Court has approach intermediate economic aims in a permissive way. According to Weatherill, in these cases the Court has sometimes "translated" non-recognizable economic justifications into justifications which fall under allowed justifications.[103] This approach could be possible in cultural justifications as well and in fact visible in *Fussl,* where ensuring the viability of local broadcasters ultimately led to preserving pluralism of television programmes.

5.3.1 Criticism and Alternative approaches

Economic aims as intermediate or parallel aims to cultural objectives are visible in *Amazon EU* and accepted in *Fussl*. This raises a question of whether this interpretation leads to Member States framing the support of viability of small businesses or local undertakings as

[103] Weatherill 2017, p. 105.

cultural policy in order to justify them under the free movement rules. This "slippery slope"-approach can be criticised as enabling the inclusion of economic objectives into cultural justifications. Whether this is a desired way of approaching the issue is arguable.

In favour of more permissive approach, Lang and Lang offer an alternative tool to accept economic objective as a part of cultural objective. They argue that cultural justifications should be understood as corrective measures to address market failure caused by limited harmonisation that disturbs the free movement.[104] In these situations, the free movement rules alone will not produce socially optimal outcomes, which depend on multiple cultural factors, such as social cohesion and a sense of national identity.[105] Consequently, the Court should give Member States more leeway in cultural justifications.[106] This would certainly offer a way of creating a doctrine that would widely and openly accept intermediate economic aims as a way to reach cultural goals, but it would also require a complete shift in the Court's approach on cultural justifications.

Other alternative approach to allow more economic grounds in the field of culture is narrowing down the general prohibition on economic justifications. Arrowsmith holds that protectionists measures, should still be prohibited, but economic aims with no intention to shield an industry from competition should be allowed as justifications. This is motivated by the fact that economic objectives differ from case to case and could also be legitimate national interests.[107] Adopting the described approach would mean that almost all restrictions to Treaty freedoms would fall within the Court's scrutiny, leaving the Court with a new task, namely determining whether national measure is protectionist or not.

While the two proposed approaches have their weaknesses, a clearer doctrine should be formed to address the issue. Economic and cultural interests often are so intertwined that rather than classifying them into either prohibited interests or justifications, economic objectives could be assessed as a tools to reach cultural objectives. I propose that this could be done by allowing intermediate economic objectives with non-protectionist goals, as Arrowsmith proposes, and subject them to proportionality assessment. Therefore, the often intertwined cultural and economic interests could be acknowledged while still prohibiting Member States' pure protectionism in the name of cultural diversity. Also, the proportionality

[104] Lang – Lang 2024, p. 128.
[105] Ibid., p. 124.
[106] Ibid., p. 128.
[107] Arrowsmith 2015, pp. 309, 311 and 363.

assessment would allow examining whether intermediate economic objectives truly contribute to preserving cultural diversity mentioned in the Treaties and the Charter. Through the proportionality test, the Court could also identify less-intrusive means to achieve the economic intermediate objective, ensuring that restrictions on the four freedoms would be minimal. The Court has already allowed some intermediate economic objectives in health care sector[108]. In my view, this approach, which was also visible in *Fussl*, could be extended to cultural justifications more generally.

Despite adopting the proposed new approach, the previous case law regarding cultural justifications would most likely not look that different. Allowing non-protectionist intermediate economic objectives would not have changed the outcome of those cases, where the final aim was clearly economic, like in *Fedicine*, or those cases where the economic part of the aim was not protectionist and actually subsumed into the cultural aim, like in *Las* and *UTECA*. However, the facts in cases like Amazon EU, where the objective is to affect the competitive situation in the market, would certainly allow the Court to conclude that the intermediate economic aim is protectionist. Consequently, according to the proposed approach, the final cultural aim in *Amazon EU* could not constitute an express derogation or public interest reason capable of justifying the restrictions on the four freedoms. More generally, the proposed approach would permit a wider range of intermediate economic objectives than the current doctrine and could make cultural justifications with economic aims more acceptable in the future.

Rather than changing the outcomes of previous case law, allowing intermediate economic objectives would mainly affect the formulation of the Court's reasoning. As seen in many cases examined in this paper, references to fundamental rights have contributed to classifying a measure as cultural. If the Court were to begin by defining whether the intermediate economic aim of a cultural measure is protectionist or non-protectionist, these fundamental rights considerations would likely play a smaller role in that stage of the assessment. They could instead be examined more appropriately when assessing whether the intermediate economic aim is justified and proportionate to the final cultural objective.

Fundamental rights-linked proportionality review was already visible in *Fussl*, where the Court held that restrictions on freedom of expression give national authorities a wide margin

[108] Weatherill 2017, p. 105.

of appreciation in terms of proportionality.[109] Such an approach would allow the Court to weigh fundamental rights against the possible economic intermediate aims in more detail. It is evident that extending the proportionality review to economic objectives would significantly change the current doctrine, which prohibits economic objectives and subjecting them to proportionality assessment. It is also a separate question whether conferring the proportionality assessment to the Court instead of the national courts is desirable. Such approach would, however, address the reality of overlapping economic and cultural objectives and allow the Court to clarify the extent to which restrictions on the four freedoms may be justified for the sake of preserving Member State's unique cultural interests.

[109] Case C-555/19 Fussl ECLI:EU:C:2021:89, para. 91.

6 Conclusion

This paper has analysed the distinction between cultural justifications and prohibited economic justifications and examined whether these objectives exist simultaneously. The examination has been conducted by evaluating case law relating to cultural justifications. Two recent cases are examined in detail to construct the Court's current line of interpretation on distinguishing between economic and cultural justifications.

As we have seen, purely economic justifications portrayed as cultural ones are prohibited, as stated in previous research and case law. The prohibition is challenged, since Member States often invoke cultural justifications in industries where the economic aims and cultural aims are blended. That contributes to the difficulty of drawing the line, and the Court's case law has remained incoherent to this day.

Measures that have both economic and cultural dimension appear to be viewed as cultural justifications more easily if the cultural objective, often preserving pluralism in given industry, can be connected to fundamental rights. In rendering a national measure cultural, the Court appears to follow the reasoning that diversity in certain market sector preserves cultural diversity, which in turn contributes to ensuring freedom of expression or media/cultural diversity. Cultural objective is thus achieved through reaching the economic objective.

Economic objective often appears to be an intermediate one. Economic and cultural objectives may therefore coexist within a single measure without excluding its classification as a cultural justification, as seen in *Fussl*. The issue with economic and quite protectionist aims as a intermediate ones to reach cultural objective is highlighted in a timely way also *in Amazon EU.*

The ultimate acceptance of a cultural justification depends on whether the measure is proportionate. That evaluation is often left for the referring court, which highlights the complementary competence of the EU in the field of culture. On the contrary, if the Court finds that the national restrictive measure pursues an economic objective, no proportionality assessment is conducted. Under the current doctrine, economic objectives cannot be justified, even where the measure would otherwise satisfy the elements of the proportionality principle.

The Court's potentially more permissive approach in areas where economic and cultural objectives overlap is reflected in its recent case law, including the case *Fussl*. Based on this

one case it is impossible to say whether a new double objective has emerged in the category of public interest reasons. Rather, the incoherent case law demonstrates of the difficulty of defining how much space the internal market leaves for Member States to protect parts of their economies that have a strong cultural link.

With its recent case law, the Court has left the door open for justifying measures intended to affect competition in the market in the name of protecting Member States' cultural diversity. The question of preserving Member States' own market structures in a time of rising protectionism challenges the functioning of the internal market. That is why a clearer doctrine of the justifiability of measures having both cultural and economic goals or intermediate economic goals leading to cultural ones is urgently needed.

The doctrine of "double objectives" or intermediate economic objectives to reach a final cultural aim is supported by some legal scholars, as seen above. However, adopting this kind of doctrine would not remove the issue of drawing the line between justifiable and prohibited intermediate objectives but would merely reformulate this issue. Despite the difficulties, a more permissive stance towards economic objectives in connection with cultural ones could be a solution.

One alternative would be to allow intermediate economic objectives with non-protectionist goals and subject them to proportionality assessment. Although this would derogate from the current prohibition of economic justifications, it would offer a more realistic framework for determining which economic objectives are allowed for the sake of Member State's cultural considerations. The change in approach would not have affected that much the outcome of the cases examined in this paper, but it would change the structure of the cultural justifications-analysis and result in more permissive stance towards economic objectives. Subjecting intermediate economic objectives to proportionality review would enable the Court to examine whether economic objectives would genuinely contribute to cultural objectives, to identify less-intrusive means to achieve cultural aims and to take links to fundamental rights into account. Allowing intermediate economic objectives in cultural justifications could help strike a balance between the four freedoms and the preservation of cultural diversity of the Member States without completely undermining the internal market.