

www.germann-avocats.com

Study on the Implementation of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions for the European Parliament

BACKGROUND INFORMATION

Introduction

The Geneva based law firm Germann Avocats and its interdisciplinary research team is completing a study for the European Parliament's Committee on Culture and Education (CULT) whose overall objective is to provide a summary of the state of implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005, in particular in fields where the European Community would be expected to provide leadership or coordination.

This study shall give assistance and long-term guidance to the EU on implementing the UNESCO Convention by carrying out a detailed analysis of the obligations set out by this international treaty. In particular, we shall gather information on the various practices in implementing the UNESCO Convention, from a legal and practical viewpoint, and identify challenges and measures to help achieve the objectives of this instrument.

For these purposes, we drafted three sets of questionnaires. The first questionnaire shall allow us to gather legal data. The second questionnaire shall inform us about the implementation of the UNESCO Convention from the perspective of representatives of civil society. Eventually, the third questionnaire shall cover the situation from the angle of a selection of regional and international organizations (the ASEAN, the African Union, the Association of Caribbean States, the Commonwealth, the International Organisation of La Francophonie, the Council of Europe, the European Union, UNESCO, WTO and WIPO).

Expected results from the surveys

We expect to collect valuable information on the public measures that are specifically undertaken to protect and promote cultural diversity on the national level in different jurisdictions. We shall obtain insights to compare regulatory practice in a variety of economic and political situations that characterize the selection of countries located in different geographical area. We will obtain rich data which will allow us to compare regulatory practice in varying economic and political situations. We shall use and compare this information in our subsequent analysis that will eventually provide the basis of our conclusions and recommendations to the European Parliament.

Civil society survey

This questionnaire addresses the implementation of the UNESCO Convention from the perspective of the civil society. For this purpose, we invite 14 National Coalitions for Cultural Diversity to reply to our survey. The sample of Coalitions shall reflect geographical, economic and political diversity. The objective of this questionnaire is to clarify the perception and evaluation by representatives of civil society of the achievements of the UNESCO Convention in their respective countries. The main goal of this survey, beyond an inventory of the current factual situation, shall reside in understanding the various national civil societies' expectations and their demands vis-à-vis regulators.

We will attach the replies to this questionnaire to our study that will be available over the internet.

For the text of the Convention and other useful documents, please consult:

www.unesco.org/culture/en/diversity/convention

CIVIL SOCIETY QUESTIONNAIRE

A General questions

1 Do you need **assistance** in providing the information requested in this questionnaire?

() Yes (x) No

If "Yes", please send a request for assistance to info@germann-avocats.com

2 When did the UNESCO Convention enter into force in your country?

PLEASE INSERT YOUR ANSWER HERE: The rules and regulations of the UNESCO Convention have been legally binding for Federal government, the Länder and the municipalities since March 12, 2007 (deposit of ratification at UNESCO Paris) ; the timeline allowed Germany to participate in the First Conference of Parties and present a candidacy for the Intergovernmental Committee; in June 2007, Germany was elected member of the Intergovernmental Committee with a mandate until summer 2011 (Third conference of Parties)

3 **Representativity and independence** of your umbrella organization:

3.1 What approximate percentage of all non-governmental individuals and/or organizations professionally engaged in cultural activities, including cultural policies, does your umbrella organization represent in your country?

() Less than 25%

() Between 25% and 50%

(x) Between 50% and 75%

() More than 75%

3.2 Does your umbrella organization represent a large part of civil society of your country regarding cultural diversity concerns?

(x) Yes () No

The process to develop a *UNESCO* Convention on the Protection and Promotion of the Diversity of Cultural Expressions as an international legal instrument has been supported by the German Commission for *UNESCO* since 2001, and especially after the October 2003 decision by *UNESCO*'s General Conference to embark on the drafting and negotiation process. In June 2004, the German Commission convened the kick off meeting for building a Federal Coalition for Cultural Diversity. This was done with active support from civil society actors, the German *Bundestag* and the Federal Commissioner for Cultural and Media Affairs. The initiative was paramount in raising awareness of the inherent dangers to public support for culture which could arise from WTO international trade agreements (e. g. GATS) or the EU Services Directive. The

Federal Government of Germany signed the convention in September 2006. The German Parliament passed the convention on 1 February 2007.

From June 2004 to May 2010, eight meetings of the "*Federal Coalition for Cultural Diversity*" ("Bundesweite Koalition Kulturelle Vielfalt") took place. This expert group first discussed the draft Convention from a German and European perspective and, following its ratification, addressed the implementation of the Convention into German cultural policy and connected policy fields (international cooperation, media policy, arts education, trade) as well as the establishment of indicators / case studies for the ongoing monitoring of this process.

3.3 Are there other organizations than yours in your country that are not members of your umbrella organization and that represent a large part of civil society in your country regarding cultural diversity concerns?

(x) Yes () No

If "Yes", please list these organizations:

PLEASE INSERT YOUR ANSWER HERE: a very large number of cultural (often local or regional) organisations of the different migrant communities, technical bodies of private sector cultural producers, private grant making foundations youth organisations, the Federal Action Alliance for Diversity [which does not deal specifically with the diversity of cultural expressions but rather with diversity management and inclusion], the federal forum of Human Rights organisations [however, the German Commission for UNESCO participates actively in this platform, based on UNESCO's program mandate in HR], specific language societies (Frisian, Sorbian etc) and heritage associations (re linguistic diversity)

3.4 How do you assess the independence of your umbrella organization and its non-governmental members engaged in cultural activities, including cultural policies, vis-à-vis the government of your country?

() Full independence

(x) Substantial independence

() Fair independence

() Little independence

() No independence

() No comment

3.5 Does the government of your country influence the activities of your umbrella organization and its non-governmental members related to their cultural policies?

() Yes (x) No

If "Yes", please describe this influence:

PLEASE INSERT YOUR ANSWER HERE:

If "No", please indicate how these activities are protected from governmental influence.

PLEASE INSERT YOUR ANSWER HERE: Through inclusion of the maximum of stakeholders (i.e. involving parliamentarians and their advisors as well as NGOs, civil society, academia, interested civil servants in a personal capacity), very thorough analysis of the issues, very active and sustained dialogue and communication, and above all transparency.

[comment:the verb "protection" does not really seem adequate in our context; there was never felt an explicit need to "PROTECT" these activities from "GOVERNMENTAL INFLUENCE" as the language of this particular question suggests]

3.6 Do you qualify your umbrella organization as a "non-governmental organization" in your country?

(x) Yes () No

3.7 How do you assess the independence of your umbrella organization and its members engaged in cultural activities vis-à-vis private corporations that have a dominant position in the market of cultural goods and services of your country?

(x) Full independence

() Substantial independence

() Fair independence

() Little independence

() No independence

() No comment

3.8 Do private corporations that have a dominant position in the market of cultural goods and services of your country influence the activities of your umbrella organization and/or its members related to their cultural policies?

() Yes (x) No

If "Yes", please describe this influence:

PLEASE INSERT YOUR ANSWER HERE:

If "No", please indicate how these activities are protected from such influence.

PLEASE INSERT YOUR ANSWER HERE: Corporations don't take specific advocacy actions vis-à-vis the Federal Coalition for Cultural Diversity or vis-à-vis the German Commission for UNESCO, hence there is no identified need for "protecting" our

activities hitherto. On the contrary, over the last decade, we have a couple of substantial co-operations, e.g. on Building Learning Societies, on Education for Sustainable Development and on Water issues with private sector partners. The strategy for choosing those partners is carefully developed and monitored. Most of them are part of the Global Compact of the United Nations or otherwise fully subscribe to the international human rights standards, and more specifically, to the specific mandate and objectives of UNESCO.

3.9 Are there organizations other than yours that deal with cultural diversity concerns and that represent private corporations having a dominant position in the market of cultural goods and services of your country?

(x) Yes () No

If "Yes", please list these organizations:

PLEASE INSERT YOUR ANSWER HERE: e.g. German Association of publishers and bookseller, German association of private broadcasters, film producers, large international firms such as Bertelsmann, Sony, Random House (non-exhaustive list)

3.10 Did your organization or another organization recently assess the situation of cultural diversity in your country?

(x) Yes () No

If "Yes", please indicate the author, title, scope, place and date of this assessment and specify where written documentation on this assessment, if any, can be consulted:

PLEASE INSERT YOUR ANSWER HERE:

1) Whitebook / Cultural Diversity in practice. Recommendations from civil society for the implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) in and by Germany, White Book Version 1.0, December 2009, A project of the Federal Coalition for Cultural diversity –, published by the German Commission for UNESCO. (download under www.unesco.de; English language version due early March 2010, German language .pdf annexed).

This version 1.0 of the White Book "Cultural Diversity in practice", drafted by sixty experts of the Federal Coalition for Cultural diversity over a period of seven months, contains six thematic chapters resulting in political recommendations for action for German and European cultural policies, for the level of municipalities, for international co-operation, for the independent cultural and creative industries, for media diversity and for Arts education. Strengthening public and institutional awareness, with a focus on education and training of the relevant professional staff particularly at management levels is vital; interdisciplinary research and the sharing of knowledge, i.a. through the network of the UNESCO chairs, through cultural policy knowledge networks like Compendium (for the region of Europe) and IFACCA (global scale) as well as empirically grounded monitoring of the general conditions of cultural diversity are essential in all these fields of action in order to implement the objectives of the Convention.

2) Survey of the Enquête Commission "Culture in Germany" of the German Bundestag (2004-2007, print version of the final report 2008).

The 2007 final report of the Commission of Enquiry "Culture in Germany", set up by the German Bundestag, resulted in many debates about cultural policy at the federal level in subsequent years. Eleven members of the Bundestag and eleven experts in cultural policy had produced a comprehensive report, which runs to more than 500 pages, based on numerous expert reports, opinions and hearings (Deutscher Bundestag Press 16/7000, available under:

<http://dip21.bundestag.de/dip21/btd/16/070/1607000.pdf>.

Along with a status description of the arts, of support for culture and of the position of artists in Germany, the report contains over 400 recommendations for improving cultural support and the legal framework for the various cultural fields and the various stakeholders in cultural policy. Cultural Diversity issues and in particular the 2005 UNESCO Convention were an orientating framework of the final report, with specific reference in the chapter "Global issues and European perspectives".

3) The Media and Communications report of the Federal government (Federal Government Commissioner for Culture and the Media, December 2008), addressing issues of content diversity in the age of digitisation and increasing convergence of providers and technologies. One of the main conclusions of this report is that (sectoral) concepts and instruments of cultural and media policies developed so far are becoming obsolete very fast, given the pace of change, including in policy making on the European level (e.g. European Union, Television Without Frontiers revised, e.g. Council of Europe, CDMM study on content delivery -state of the art 2008).

4) The Research Survey of the Initiative Kultur- und Kreativwirtschaft /culture and creative industries initiative of the Federal government (March 2009). Research Report commissioned by the Federal Ministry of Economics and Technology. Initiative Culture and Creative Industries of the German Federal Government. (Federal Ministry of Economics and Technology and Federal Government Commissioner for Culture and the Media)

The study introduces two important new focal points to the discussion which were not included in earlier culture industries reports. Internal segmentation is newly introduced as a basic element for the investigation of culture and creative industries. This means that the complex of branches is determined by the fundamentally different types of enterprises it contains and their specific structural characteristics. Internal segmentation breaks up branches into major companies, small and medium enterprises and micro enterprises or freelance workers. Each of these actors is analysed with respect to empirical data as well as to its structural characteristics.

B Questions on the implementation of the UNESCO Convention so far

*For the purpose of this questionnaire, "**national law**" includes national legislation, regulations, administrative practice and case law that entered into force before or after the entry into force of the UNESCO Convention in your country.*

4 Does your country have national law implementing the UNESCO Convention as of 1 January 2010?

(x) Yes (x) No

If the answer is "No", please explain the absence of national law implementing the

UNESCO Convention and how this treaty is implemented in your jurisdiction as of 1 January 2010:

PLEASE INSERT YOUR ANSWER HERE: We would distinguish between *legislation* in the sense proper on the Federal and the State level, and *policy* leading to administrative practice enhancing the diversity of cultural expressions, including regulations and by-laws of public grant making foundations. This distinction is extremely important as the decision making and the stake holders involved would be absolutely non-identical given the complex architecture of cultural policy in Germany.

When preparing the ratification of the 2005 UNESCO Convention in 2006/2007, both government and Parliament came to the conclusion that it was highly unlikely that implementing the Convention would require substantial new legislation. Rather, it was assessed, the Convention called for a thorough and systematic review of existing legislation, policy frameworks and program tools, including through involvement of civil society expertise.

To our knowledge, there is no case law as yet on the national or state level. The only – and pertinent – case is the March 2009 verdict of the European Court in Luxemburg, regarding the case raised by private Spanish television producers. This case was studied by experts in media law. We played a very active role in distributing this information and alerting relevant experts to this very important case.

If the answer is "Yes":

Please reply to the questions as follows that refer to the legal situation as of 1 January 2010, and specify for each of your replies, where applicable, whether the relevant national law existed already prior to the entry into force of the UNESCO Convention in your country:

4.1 What **measures** in the sense of articles 6, 7 and 8 of the 2005 UNESCO Convention, including but not limited to measures aimed at protecting and promoting linguistic diversity, were adopted in your country by the implementing national law?

PLEASE INSERT YOUR ANSWER HERE: see also answer above!

Most of the legislation and cultural policy measure presented here existed prior to the entry into force of the UNESCO Convention. However, they are vital to understand as they build the solid basis for the impressive diversity of the cultural landscape in Germany. This body of legislation and policy measures is also the benchmark against which to assess the impact of the Convention in the future, including in the monitoring reports to UNESCO due 2012 ff.

The legislation and measures described below are quoted from the ERICarts/Council of Europe Compendium on Cultural Policies; the bulk of the text is taken from the Country profile Germany.

[*NB: profiles exist for 44 European countries; a knowledge platform highly recommended for use and reference for your compilation and report*].

In addition, as the international framework conditions have been changing rapidly since the entry into force of the Convention (GATS, Lisbon treaty, the new generation of EPAs with the inclusion of a chapter on cultural cooperation, the EU Cultural

Agenda), those existing pieces of legislation, regulations and cultural policy measures need to be reassessed through the lens of the objectives of the Convention and, since June 2009, through the implementation orientation given in the first set of Operational Guidelines adopted by the 2nd Conference of Parties.

Some more recent initiatives (i.e. initiated in 2007/2008) happened chronologically *after* the entry into force of the UNESCO Convention. However, in addition to the new UNESCO framework, these were equally motivated by the very active European debate on creative and cultural industries e.g. or by the European Year of Intercultural Dialogue (2008) with the substantial action plans by both the European Union and the Council of Europe (White Book on Intercultural Dialogue), the EU debate on creative industries (KEA study of 2006 and resulting debates) as well as the method of open co-operation agreed upon by the EU member states (EU Agenda on Culture, government expert groups and civil society platforms).

The December 2009 White Book "Kulturelle Vielfalt gestalten" (Cultural Diversity in Practice) by the Federal Coalition for Cultural Diversity is the first broader effort to combine these different fields of expertise, also in view of informing newly elected MPs and new office holders, following the general elections of September 2009 which led to a rather substantial turn over in both Parliament and Government.

Other measures de facto tune perfectly well into implementing the Convention's objectives but were rather inspired by the broader UN human development agenda on achieving a more humane stage of globalisation and to implementing the Millennium Development Goals (i.e. regarding the focus Africa initiative of the German Foreign Office which included substantial cultural cooperation in the sense of the UNESCO Convention).

"A "New Cultural Policy" emerged in the 1970s as part of a general democratisation process within society, the thrust of which was expanded to encompass everyday activities. The arts were to be made accessible to all members of society if at all possible. In the 1970s, the call for "culture for everyone" and for a "civil right to culture" led to a tremendous expansion of cultural activities, the further development of cultural institutions and the emergence of numerous new fields of cultural endeavour financed by increasing public expenditure. This growth was matched by continuously rising popular demands for a variety of cultural goods and services.

The reform-oriented cultural policy objectives of the 1970s were replaced in the 1980s by new priorities which saw culture as a factor enhancing Germany's attractiveness as a location for business and industry.

The 1990s were profoundly influenced by the unification of Germany. In the new eastern Länder, adoption of the administrative structure of the "old" Federal Republic and its approach to cultural policy prompted a restructuring of and radical changes in the cultural landscape. The collapse of the system in Eastern Europe and the unification of Germany in 1989/90 produced new cultural tasks, both within the Federal Republic of Germany and in its relations with European neighbours. These years have also been marked by austerity measures and budgetary constraints and by the increasingly evident structural problems of the major traditional cultural institutions.

In the early years of the following decade, cultural policy in Germany stabilised in comparison to the changes of the 1990s. However, cultural policy still faces great challenges and requires a constant re-orientation. The main issues are financial, particularly as the negative consequences of

the recent global financial crisis on local and regional public budgets become more visible.

On the other hand, some of these problems are structural in nature and concern the conceptual basis of cultural policy. Despite a substantially increased state budget on the national level and in some of the *Länder* (e.g. North-Rhine Westphalia, with a population of 18 mio inhabitants) there is ongoing pressure on cultural institutions to increase their economic equity-ratio, to lead their institutions more economically, as well as to obtain funds from other non-public sources such as sponsorship, patronage and marketing. In particular, the structural problems require a readjustment of the relationship between the state, market and society concerning the financing of cultural institutions, among other methods, through public private partnership models and a stronger integration of civic commitments.

In addition, the conceptual basis of past cultural policies has been challenged by the diversification process of German society, especially through migration processes, rapid media development and a substantial change in the composition of audiences (a decreasing total population and an increasing number of older people). Currently (i.e. since 2008/2009), intensive discussion is taking place in Germany on the requirements of cultural policies, due to these societal changes.

The difficult financial situation of all public funds has been a determining factor in cultural policy discussions on the municipal and *Länder* level since the mid-1990s, and increasingly so since the turn of the century. From the very beginning, the "New Cultural Policy" of the 1970s and 1980s reflected the priorities put forward by the Council of Europe on issues related to cultural identity, cultural heritage, cultural diversity and participation in cultural life. Today, one of the main objectives of cultural policy in the Federal Republic of Germany is to make the arts and cultural events accessible to as many people as possible.

In recent years, there has also been acknowledgment in the cultural field that Germany is a country of immigration. It has also been recognised that cultural policy - particularly at the municipal level - has to take this issue into consideration, which means taking multicultural diversity as a given, integrating the culture of immigrants into cultural policy and for cultural policy to take account of the cultural needs of people with immigrant backgrounds.

In 1998, the Federal Government set out to consolidate its (still limited) competencies in the field of culture through the creation of a Federal Commissioner for Cultural and Media Affairs and a corresponding Parliamentary Committee. This was followed in 2002 by the establishment of a *Kulturstiftung des Bundes* (Federal Cultural Foundation).

In the past five years, discussions and action (on the part of both public and private actors) have focused on:

- support for culture institutions in the new capital city Berlin;
- giving greater competence for cultural affairs to the Federal Government;
- streamlining and optimising cultural funding among the different levels of government;
- passing of new laws in the fields of copyright and taxation for foundations as well as re-enforcing social insurance provisions for self-employed artists;
- repatriation of unlawfully seized cultural assets;
- the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
- constitutional protection for culture;
- greater civic commitment to culture;
- responding to a cultural public with increasingly diversifying needs

- migrants, cultural diversity, intercultural co-operation; Particular attention is currently focused on the importance of school and pre-school education in the development of intercultural competence and the acceptance of cultural diversity.
- outsourcing public sector tasks.
- Cultural economy and creative industries.

Legal regulations

Since 1998, the Federal Government has launched legal reforms in the area of *Foundation Law* (especially with regard to taxation), *Copyright Law* and the *Law Governing Social Insurance for Artists*. In summer and autumn 2006, a *Draft Bill for New Regulations on Copyright Law*, submitted by the Federal Government, caused a great deal of debate with respect to payments to artists.

The Federal Government has also enacted the legislation to safeguard the system of fixed book prices and has extended support to the film sector under the *Federal Film Promotion Act*. In 2006, the Federal Government agreed on a new measure of support for the film industry, providing 60 Million € per annum; this came into effect at the beginning of 2007. In November 2008, the German Bundestag ratified the amendment to the *Film Support Act* (see in detail below).

The Federal Government has broadened the scope of support for: research on German culture and history in Eastern and Central Europe under section 96 of the *Federal Expellees Act* and memorials commemorating the victims of dictatorship.

5.1. General legislation [for easier reference, I have kept the numeration of the chapters on legislative and other measure, following the Compendium grid, CMM]

5.1.7 Copyright provisions

Along with the *Copyright Law*, the introduction of a standard levy on audio equipment was passed in 1965 which was to be administered and distributed by the collecting societies. A levy on audio and video recording equipment was added in 1985. This applies to recording and reproduction equipment with a certain playing time and capacity. Since the form of reproduction is irrelevant in this regulation, authors and performing artists also receive levies on digital reproductions, including computer related technology. These standard levies are collected by the collecting societies and distributed to professionals. Public lending rights were first introduced to the general *Copyright Law* in 1972 (*Article 27*).

The *Amending Law on Copyright* came into effect on the 10th September 2003, which began to implement the European guidelines on "Copyright in the Information Society" (2001/29/EU). It makes, *inter alia*, the evasion of copyright for commercial and private purposes a punishable offence (§§ 95 a ff. *UrhG*). Further elements of the revision are the clear definition of "*Internet Law*", in terms of "*Right of Public Accessibility*" in § 19 *UrhG*, and the retention, in principle, of the system of payment for private copying. It also contains adjustments to take account of the new technological developments, in particular of the digital use and distribution of artistic, literary and scholarly and scientific works.

A new reform of *Copyright Law* (the so-called second tranche) was passed by the Bundestag in July 2007 and continued the work on fully implementing the EU guidelines on *Copyright in the Information Society* (2001/29/EU). After long and intensive arguments between artists' representatives, the users, as well as the appliance industry, a compromise was reached. The lump-

sum payment system, which adjusts charges to include a levy for private copying, will be reformed so that in the future, the rate of duty will be independently negotiated by the collecting societies and appliance industries (see: <http://www.urheberrechtsbuendnis.de/>)

5.1.9 Language laws / Linguistic diversity:

German is the official language in the Federal Republic of Germany and the language used in schools, the media and other forms of communication. Cultivating the use of the German language is the task of all groups in society. Learning the German language is also an important prerequisite for the integration of foreigners living in Germany. Improvement of the language skills of immigrants and foreign residents is, therefore, a focus of efforts to further their integration. In addition to programmes of the Länder and the municipalities, the Federal Government funds a multitude of measures to promote language learning. A broad range of language courses are also offered by the private sector.

Dialects of the German language are cultivated and promoted on a regional and local basis. *The European Charter for Regional or Minority Languages* entered into force in Germany on 1 January 1999. Under this Charter, *Niederdeutsch* is protected as a regional language, and funding is provided to further its use in the Länder where it is spoken. Minority languages that are protected benefit from funding provided by the Federal Government and the Länder in which they are spoken. Languages of the minorities traditionally residing in Germany (i. e. autochthonous minorities) are protected under the *Framework Convention for the Protection of National Minorities* including Danish, North Frisian, Sater Frisian, Sorbian and the Romany language spoken by German Sinti and Roma.

There are no general regulations governing the representation of languages in the media. In areas with official ethnic minorities, such as Saxony, Brandenburg and Schleswig-Holstein, the languages of these minorities are represented in the media. In larger cities, especially in Berlin [which is also a State], in addition to single foreign-language radio channels (*RFI* and *BBC*); some programmes for ethnic minorities are produced by public broadcasters (such as *SFB/Berlin Multikulti* (discontinued in 2009) or *WDR 5/Cologne*) in alternating foreign languages. In addition, private radio and television stations feed foreign-language programmes into the cable network.

5.2 Legislation on culture

Legal aspects of cultural policy are governed by related provisions in constitutional and administrative law. These provisions, however, are not codified in a single text; they consist of a host of constitutional and statutory provisions, above all the Federal Constitution and the constitutions of the Länder, the municipal and county codes, a few specialised statutes of the Länder relating to cultural affairs, federal legislation such as the *Act on the Protection of German Cultural Heritage against Removal Abroad*, the *Copyright Law*, the *Federal Film Promotion Act* and the *Artists' Social Insurance Act*, and various provisions relating to cultural matters in legislation such as the *Federal Building Act*, the *Federal Regional Planning Act* and the *Federal Act for the Expellees*. In addition, German cultural policy is bound by the provisions of international legal instruments such as the United Nations Universal Declaration of Human Rights, which includes the stipulation that "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts ..." .

Moreover, the federal authorities - based on the constitution and on the jurisdiction of the Federal Constitutional Court - lay a claim to competence originating "in the nature of the matter" where the matters in question are tasks that in a federally structured union are peculiar to the national level

and cannot be effectively handled or regulated by a Land. In practice, the Federal Government and parliament derive their competence on these grounds when functions of significance for the state as a whole are at stake, such as representing the country in its entirety. This includes concrete activities in the area of promoting culture, whereby the Federal Government - aside from exceptions such as its contractual commitment to fund cultural institutions in the capital, the city of Berlin - generally only acts together with one or more Länder or with a municipality. Prior to unification, cultural matters relating to both German states fell within the remit of the national government. Upon unification, the aspect "promotion of unity" as expressed in *Article 35 of the 1990 Unification Treaty* took centre stage.

The cultural competence of the Länder is limited by the tasks of the federal authorities defined in the Federal Constitution and by the responsibilities transferred to the municipalities within the framework of "local self-government" (*Article 28.2 GG*), as well as by the obligation of the municipalities under many Land constitutions to cultivate and promote cultural life. In contrast to the other two levels, the competence of the Länder is more precisely defined by provisions in their constitutions and by individual laws. In 2008, an attempt by some Länder to abolish social security for artists failed as there was broad advocacy and protest against such plans both from politicians of all political parties as well as from culture and arts associations and their umbrella platforms, in particular the German Arts Council (Deutscher Kulturrat).

5.3.1 Visual and applied arts

As is the case in other artistic fields, visual and applied art activities are covered under the *Freedom of Art Guarantee* of the Federal Constitution (*Article 5.III GG*). This provision guarantees everyone the right to freely work in the artistic domain and to strive for recognition of his / her work by the public, that is: the guarantee includes not only the "sphere of the creative work", but also the "sphere of impact" of that work via its publication and distribution.

With regard to the dissemination and use of artistic works, the frequently amended *Copyright / Authors' Rights Law* dating from September 9, 1965 (UrhG) is particularly relevant. The law includes regulations for publication, exhibition and transfer or granting the right of utilisation (e. g. via loans to museums) of artistic work. Other clauses clarify that the creator is entitled to economic returns from the use of his works (*§11.2 UrhG*). However, an exhibition royalty demanded by artists' organisations similar to the existing public lending right is not included in the present *Copyright Law*.

The *Artists' Social Insurance Act* is important for all independent artists and for companies exploiting their works, by which the latter is required to pay a levy on all fees ("employer's share").

5.3.2 Performing arts and music

Apart from the general constitutional regulations and from the *Labour Law*, there are no separate legal provisions for the fields of music and theatre. The practical organisation of work in this domain is regulated through individual contracts between the authorities in charge of a facility or company and its manager ("Intendant"). Contracts are then drawn up between the facilities and the artistic and other staff members along the lines of general wage agreements such as the "Normal Contract Stage", which summarises the main terms of employment of the different artistic groups working in a theatre.

For music schools, the state's supervision of educational matters is based on a general legal

guideline, with special definitions existing in six of the 16 Länder. Only Brandenburg has a special *Law for Music Schools*.

5.3.4 Literature and libraries

Article 5.1 of the Federal Constitution guarantees the freedom of expression of opinion and is, therefore, an important legal prerequisite for the development of free and lively literature. Furthermore, this Article stipulates that everybody has the right "to inform him / her unhindered from generally accessible sources". This could be interpreted as a duty for the state and its public facilities, in particular libraries, to provide an "unhindered" access to the literary resources administered by them. However, the right to participate in state services and educational supplies cannot be brought to court.

For a long time, only one of the German states (Baden-Wuerttemberg) had a *Library Law* which regulates the public provision of suitable facilities. One of the key recommendation of the 2007 final report of the Commission of Enquiry "Culture in Germany" of the German Bundestag was that all Länder should introduce *Library Laws* which should regulate the public provision of library facilities as a compulsory task on State level. Since July 30, 2008, Thuringia has a *Library Law*, but without concrete regulations on public funding. The states of Hessen and Saxony-Anhalt are about to finalise the vote on their respective library laws (as of Jan 15, 2010). Other Länder are expected to follow suit. Without a library law, the general legal background for public library services must be derived from the Federal Constitution (see above), the respective Länder constitutions as well as from regulations existing on the level of counties and other local communities.

On 1 July 2007, the *Act on the German National Library* came into force with a stretching of the collection on the internet. In December 2009, *the German Digital Library* was adopted in Parliament.

The *Copyright / Authors' Right Law* of 1965 (UrhG) is another legal instrument of importance in the literature and library sector. Among other items, the law regulates the rental, duplication and copying of printed products and media. *Article 27 UrhG* tries to balance the interests by introducing a *public lending right*: a library royalty paid by state authorities to authors' societies (*VG Wort, GEMA, VG Bild-Kunst*), which then compensate the authors as appropriate. For copying machines, *Article 54 UrhG* foresees a royalty both for the individual machine and for those operators which regularly use them for copying protected works. The *VG Wort* collects these duties from importers/ traders, commercial operators and, as regards the libraries, from the Länder.

The *Law on Fixed Book Prices* (BuchPrbG), of 2nd September 2002, is also an important piece of legislation for literature and its dissemination. Publishing companies are obliged to fix the retail prices for their new books. This regulation is meant to safeguard a stable book market and with it a diverse supply structure, from which both the authors and readers should benefit. With the exception of the UK, Ireland and Finland, all member states of the European Union have introduced, or are preparing, laws supporting a fixed book price.

5.3.5 Architecture and environment

As early as 1950, a federal *Law on Art for Public Buildings* ("Kunst am Bau") was passed to promote visual artists and to bring art into public spaces (actually, a regulation of the same name for the Reich, the Länder and the towns already existed in 1934). The law foresaw that 1 percent -

later 2 percent - of the construction budget of public buildings should be spent on works of art connected with the architecture. This regulation was reworked several times and is known today as the "K7" component of the "Guidelines for the Realisation of Construction Assignments of the Federal Government" (RBBau K7). At the beginning of the 1990s, the 2 percent rule was taken out of the regulation.

The RBBau K7 applies only to constructions carried out on the federal level. The Länder introduced similar regulations for constructions carried out under their responsibility, some of them with the same name "K7", others under the title "Art in the Public Space". Some local authorities also developed similar guidelines.

More general definitions relating to architecture and town-planning are laid down in the *Federal Construction Code* and in building regulations, above all at state level.

In 2005, the Bundestag / Federal Parliament decided unanimously to establish a *National Foundation for Architecture (Stiftung Baukultur)*. However, this plan failed because of the resistance of the Bundesrat (Chamber of the Länder in the Parliament) and because some Länder feared too much influence from the national authorities.

5.3.6 Film, video and photography

Both the Federal Government and the Länder provide support for film. National film support has its legal base in the *Federal Film Promotion Act* (FFG) which is constantly being updated. The most important instrument of film promotion on the national level is the *Film Promotion Agency (FFA)*. Its task is to provide "measures for the promotion of German films as well as for the improvement of the structure of the German film economy" and to support the overall interests of the film economy, e. g. through marketing research and the protection of copyright. The FFA is financed via a "film levy" raised from all industries involved in the utilisation of films: cinemas, the video industry and broadcasting companies (§ 66 following FFG). The annual budget of the FFA amounts to 77.4 million Euro (2005) and is used, among other things, to support productions, scripts, the rental and distribution of films, cinemas and video stores.

In November 2008, the German Bundestag passed the amendment to the Film Support Act (the version valid from 2004 through 2008). In this, the areas of support are weighted in a different way: the funds to support rental and distribution are increased significantly in order to facilitate the marketing of German films in cinemas, the support for project films and for film scripts are increased and the cinema charge is reduced. The new *Film Support Act* came into force on 1 January 2009.

In addition to the FFA, the German film industry is also supported by the *Federal Commissioner for Cultural and Media Affairs* (BKM). Every year, more than 130 million € in total flows into awards (for example, the German Film Award) and promotion programmes (support for productions, scripts, cinemas, etc.). Since 2005, the German Film Award with prize money of 3 million € is organised by the German Film Academy, founded in 2003. Furthermore, film festivals and symposia (for example, The International Film Festival Berlin), international film productions (through bilateral film agreements), as well as institutions dedicated to the restoration and preservation of film cultural heritage (for example Stiftung Deutsche Kinemathek in Berlin and the

Deutsche Filminstitut in Frankfurt am Main) are also supported by the BKM.

In co-operation with the German Federal Cultural Foundation (Kulturstiftung des Bundes) the Berlin International Film Festival has set up the World Cinema Fund (WCF) since 2004 to support filmmakers from transition countries. Developing co-operation strategies reflecting cultural identities is the main thrust of this facility. The aim of the World Cinema Fund is to help the realization of films which otherwise could not be produced, i.e. feature films and creative feature-length documentaries with a strong cultural identity. Another important goal is to strengthen the profile of these films in German cinemas. The World Cinema Fund has an annual budget of about 500,000 Euros at its disposal and provides support in the fields of production and distribution.

Until 2007, the geographical focus has been on Latin America, Africa, the Middle East and Central Asia. Since summer 2007, film projects from South East Asia and the Caucasus are also eligible for support from the WCF.

One out of many successful WCF funded projects is Hany Abu-Assad's *Paradise Now*. The gripping drama ran in the Competition of the Berlinale 2005, won the Blue Angel prize for Best European Film endowed by Agicoa, and was then shown in more than 50 countries. In January 2006 the film won the Golden Globe for Best Foreign Language Film.

Eligible for funding are production companies with directors from the above mentioned regions as well as German production companies working with a director from these regions. The maximum amount which can be granted to a film for production is 100,000 Euros. In order to receive such funds, a German partner is required. However, the film does not necessarily have to be a co-production. German distributors can apply for distribution support. The maximum amount that can be granted to a film for distribution is 15,000 Euro.

Under the authority of the *Federal Commissioner for Cultural and Media Affairs* (BKM, on January 1st 2007, a new support model under the heading "Encouragement and consolidation of film production in Germany" came into force, which offers film producers a reimbursement of 15 to 20 % of production costs, spent in Germany, on the production of a cinema film. 60 million € per annum have been provided. The intention is to increase Germany's attraction as a production location for large-scale international productions.

In addition to support measures for the improvement of the artistic quality of films, federal policies in this domain include regulatory measures, e.g. concerning taxation and copyright frameworks. In that context, tax shelters for film funds were abolished in November, 2005.

Film promotion programmes also exist at the Länder level. These differ considerably in scope and are funded by a variety of sponsors and bodies. In order to coordinate the film policies of the Länder with the Federal Government, the *Standing Conference of the Ministers of Education and Cultural Affairs of the Länder* in the Federal Republic of Germany (KMK) established a *Film Committee of the Länder* in 1994, which involves the participation of the respective state chancelleries and economic ministries.

5.3.7 Culture industries

The German cultural sector can be subdivided into three areas:

- the publicly funded and maintained cultural institutions;
- the activities and facilities funded and run by voluntary non-profit organisations ("third sector"); and
- the private or commercial culture industries, notably the book, film, music and fine arts market, as well as the communication and information systems on the Internet associated with all three areas.

In general there are no special statutory provisions or forms of state support for the culture industries that would set it apart from other sectors of the economy, aside from the aforementioned lower rates of VAT for some products. Exceptions to this rule are film promotion and the areas in which public and private providers are both active, such as radio, television and the computer-based communication media.

The statutory basis for the public radio and television corporations (financed mainly by licence fees) and the private (commercial) television broadcasters (financed by advertising revenue and subscriptions) is the *Interstate Broadcasting Agreement* concluded among the Länder. On the basis of this Agreement and within the framework of their responsibilities for radio and television broadcasting, the individual Länder have enacted detailed provisions in their respective *Land Broadcasting Acts*.

The legal framework for the new information and communications technologies is defined by the *Telecommunications Act*, which entered into force on August 1st, 1996, the *Federal Information and Communication Services Act*, which entered into force on August 1st, 1997, and the essentially identically worded *Interstate Agreement on Media Services* concluded among the Länder.

The national system of fixed prices for books, formerly a self-imposed obligation of the parties engaged in the book trade, was safeguarded through the adoption of an Act that entered into force on October 1st, 2002.

Below the statutory level there are numerous forms of public support for the culture industries, such as special measures for music companies or, in the case of individual artists and small institutions, support for business start-ups in some of the Länder.

Culture industries: policies and programmes [compendium section 4.2.6.]

The culture industries are a separate and autonomous pillar of cultural life in the Federal Republic of Germany.

Generally, the cultural field is divided into three sectors: private cultural enterprises, state or municipal publicly financed institutions or activities like theatre, cultural heritage, monuments, libraries, museums, etc. and not-for-profit, intermediary organisations, foundations, associations etc.

Kulturwirtschaft refers to all private businesses and independent contractors operating in the different fields of the cultural sector such as: music markets; film and other audio-visual productions; the distribution of books; literature and art markets; craft persons / artisans; freelance artists; private theatre and musical enterprises. Between 1991 and 2000, the real value created by the cultural sector and the publishing sector together rose from 29 billion € to 32.7 billion € (at constant prices). This amounts to 4/5 of the value created by the chemical industry and is about equal to that of the food industry (see Michael Söndermann: "Zur Lage der Kulturwirtschaft in

Deutschland 1999/2000" in: *Jahrbuch für Kulturpolitik 2001*).

In addition to the culture industries, in the narrower sense, the internationally more commonly used term "creative industries" is now also becoming more significant in Germany. The latter also includes advertising (2003: approx. 13.7 billion €) and software / games (2003: approx. 21.4 billion €) and, in 2003, had a total turnover of 117 billion €.

According to the current statistics of the Arbeitskreis Kulturstatistik (ARKStat e.V.), as of November 2006, the turnover of the culture industries in Germany fell by 11.8% between 2000 and 2003 (inclusive), from 92.8 billion € to 81.5 billion €. In the same period, the creative industries (see above) saw a drop of 7.8 %. Among the losers in the sector were, in particular: the film industry / TV-production (-31.0%) and publishing and recording (-10.0%). Architecture (-18.6%) and Design (-12.7%) also experienced decreases in turnover. Only the software / games branch, which is not included in the culture industries definition above, was able to show an impressive increase in turnover from 17.7 billion euros to 21.5 billion euros (+21.6%). In 2003, with real value creation of 35 billion euros, that is 1.6% of the gross national product, the culture industries achieved a larger share than the software or energy industries at around 30 billion euros each. Despite the falls in turnover in the period 2000-2003 which have been noted, the culture industries were able to achieve higher growth (+39%) than the economy as a whole (+27%) over a longer ten year period from 1994-2003. (See Michael Söndermann: "Kulturwirtschaft", in: *Kulturpolitische Mitteilungen*, Nr. 116 (I/2007), p. 64-67)

Several Länder have commissioned and published reports on the state of the cultural industries: North Rhine-Westphalia has produced five reports; others come from Berlin, Hessen, Mecklenburg-Western Pomerania, Lower Saxony and Saxony-Anhalt. Some cities have also published cultural industries reports, e.g. Aachen, Dortmund and Dresden.

As in other countries, strategic partnerships are increasingly being formed in Germany between the public and private sectors (public-private partnerships) in order to fund cultural projects and institutions. These strategic partnerships are expected to proliferate in the future. Even during periods of sluggish economic activity, the culture industries have been determined as an economic growth factor.

Culture industries have been increasingly supported through cultural policy measures: indirectly through measures like tax exemptions and more directly e.g. through support to a music export office.

In 2007, i.a. in the context of the German EU-presidency, intense discussions were held on the relevance of culture and creative industries for economic development and the employment situation in Germany. Several large congresses took place. In April and October 2007, the Bundestag held two debates on this topic and passed an application on "Culture and Creative Industries as an Engine for Growth and Employment in Germany and Europe" at the end of October. The Federal Government, in particular the Ministry of Economic Affairs and the Federal Commissioner for Cultural and Media Affairs, introduced the programme "Culture Initiative and the Creative Industries" as a method of optimising the framework for their growth and to support financially and infrastructure wise the "Music Initiative", a core area of the Creative Industries.

In the report of the commission of enquiry of the German Bundestag "Streamlining and optimising cultural funding", cultural industries occupy a prominent position and represent a key point in the report. The "Yearbook for Cultural Policy 2008" ("Jahrbuch für Kulturpolitik 2008") of the

Institute of Cultural Policy of the Society for Cultural Policy (Institut für Kulturpolitik der Kulturpolitischen Gesellschaft) is likewise dedicated to this subject.

There are special training and in-service training programmes for professionals in the culture industries, but the overall current position is unclear. At the higher education level, a number of cultural management and cultural marketing courses have been set up in the last ten years, which also provide qualifications for the culture industry sphere (e.g. the Institute for Culture Management at Ludwigsburg College of Education, the Academy of Music and Theatre, Hamburg, Passau University); they concentrate, however, on management and marketing methods. There are more concrete efforts to provide training - organised by private business - in the individual industry sectors and also, for example, within publicly financed small business start up programmes for art and the culture industries. Exemplary in this area, has been StartART, which forms part of the North Rhine-Westphalia start-up network Go!nrw (<http://www.gib.nrw.de/de/job/existenz-kultur.htm>), and, within that, the Start Up Centre Culture Industry Aachen (Gründerzentrum Kulturwirtschaft Aachen). In 2007, the Ministry of Economic Affairs of North-Rhine-Westphalia started a new programme in this field, particularly for young cultural entrepreneurs and artists with "create.nrw" (<http://www.kreativwirtschaft.nrw.de/>).

Main sources:

Cultural Policies Compendium, ERICarts/Council of Europe

<http://www.culturalpolicies.net/web/germany.php>;

www.kulturwirtschaft.de

http://www.berlinale.de/en/das_festival/world_cinema_fund/wcf_profil/index.html

4.2 How is article 11 of the 2005 UNESCO Convention ("**participation of civil society**") regulated in the implementing national law?

PLEASE INSERT YOUR ANSWER HERE:

As explained above, there is no such thing as *directly* implementing national law which was drafted specifically following the ratification of the 2005 UNESCO Convention in March 2007.

There is general legislation granting civil society the right to organize freely (with favorable conditions, tax exemptions etc). There are also specific public support schemes for civil society organizations in the field of culture as well as for their umbrella organizations.

However, often funding is provided on a annual project base, which is a certain limitation to participation in thorough policy analysis and/or networking at the national as well as the EU/European level, or in following a complex process like the 2005 UNESCO Convention and its implementation in a sustained and systematic way.

The funding for cultural institutions and general cultural activities supported by the federal and Länder authorities is regulated via the annual parliamentary budget appropriations. The same procedures apply for most of the Länder allocations to local cultural institutions and for the cultural budgets of cities and counties. In this process, civil society has an advocacy voice and is often consulted by parliamentarians and government alike.

Regarding the participation of civil society since the inception of the 2005 Convention (2003 onwards), the process to develop a *UNESCO* Convention on the Protection and Promotion of the Diversity of Cultural Expressions as an international legal instrument had been supported by the

German Commission for UNESCO with active support from civil society actors, the German *Bundestag* and the Federal Commissioner for Cultural and Media Affairs. The initiative to create a Federal Coalition for Cultural Diversity in 2004 was paramount in raising awareness of the inherent dangers to public support for culture which could arise from WTO international trade agreements (e. g. GATS) or the EU Services Directive.

From June 2004 to May 2010, eight consultation meetings of the "*Federal Coalition for Cultural Diversity*" ("Bundesweite Koalition Kulturelle Vielfalt") took [will take] place. This expert group first discussed the draft Convention from a German and European perspective and, following its ratification, addresses the implementation of the Convention into German cultural policy and connected policy fields (international cooperation, media policy, arts education, trade) as well as the establishment of indicators / case studies for the ongoing monitoring of this process.

In 2007, i.a. in the context of the German EU-presidency, Germany hosted the first major international civil society conference on "Bringing the Cultural Diversity Convention to Life", in April in Essen/Ruhr.2010, only a couple of weeks after its entry into force. Assembling 500 participants from 60 countries / all continents strengthened civil society analysis and networking both in Germany and internationally. The Essen conference gave civil society knowledge organisation a major boost.

As a consequence, the pivotal role of the Federal Coalition for Cultural Diversity was recognised in the 2007 final report of the Commission of Enquiry "Culture in Germany", set up by the German *Bundestag*, who recommended that this platform should continue its important work as a key contribution to implementing the 2005 Convention. The Federal Government and the *Länder* designated the German Commission for UNESCO in June 2007 at the point of contact responsible for information sharing (Article 9 of the Convention) for this very reason.

4.3 How does your organization assess your country's compliance with **human rights obligations** when implementing the UNESCO Convention?

PLEASE INSERT YOUR ANSWER HERE:

In general, all legislation in Germany, and specifically legislation in culture, is drafted in compliance with human rights obligations on UN and European level (Council of Europe).

For the assessment of specific items (e.g. freedom of expression, cultural practice), both the annual reports and specific thematic reports e.g. ,by Amnesty International, Human Rights Watch Reporters sans Frontieres and IFEX are key sources for consultation.

Recently, some international human rights monitoring projects like FREEMUSE, or the foundation 'Freedom to create' have come into being which provide additional sources for information.

We follow very attentively the work of the UN Human Rights Council, including the nomination in October 2009 of the Pakistani scholar/writer Fareeda Shaheed from Women Living Under Muslim Laws as independent expert on cultural rights.

At this point in time, no specific human rights issues have emerged in Germany when

implementing the UNESCO Convention. .

*As a complement to your replies to questions 4.1 to 4.3, please provide a copy of, or references to, your country's implementing **national law**, if any, together with related commentaries and web site addresses where such national law and related documentation may be found.*

Main Source: Cultural Policies Compendium, ERICarts/Council of Europe
<http://www.culturalpolicies.net/web/germany.php>

Germany/ 9. Sources and Links

9.2 Key organisations and portals / Cultural policy making bodies

Federal Commissioner for Cultural and Media Affairs

<http://www.kulturstaatsminister.de/>

Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany (KMK)

<http://www.kultusministerkonferenz.de/>

German Association of Cities, German Association of Towns and Municipalities, Association of German Counties

<http://www.kommunale-spitzenverbaende.de/>

Goethe-Institut Inter Nationes

<http://www.goethe.de/>

Professional associations

Bundesvereinigung Kulturelle Jugendbildung e. V. [BKJ] (Federal Government of Youth Cultural Associations)

<http://www.bkj.de/>

Deutscher Bibliotheksverband e. V. [dbv] (German Library Association)

<http://www.bibliotheksverband.de/>

Deutscher Bühnenverein - Bundesverband deutscher Theater (German Theatre Association)

<http://www.buehnenverein.de/>

Deutscher Kulturrat (German Arts Council)

<http://www.kulturrat.de/>

Deutscher Volkshochschulverband (German Adult Education Association)

<http://www.dvv-vhs.de/>

Kulturpolitische Gesellschaft e. V.

<http://www.kupoge.de/>

Verwertungsgesellschaft Bild-Kunst (Copyright Society)
<http://www.bildkunst.de/>

Grant-giving bodies

Cultural Foundation of the Länder
<http://www.kulturstiftung.de/>

Federal Cultural Foundation
<http://www.kulturstiftung-bund.de/>

Cultural research, advices and statistics

Cultural Contact Point Germany
<http://www ccp-deutschland.de/>

Institut für Kulturpolitik der Kulturpolitische Gesellschaft e. V.
<http://www.kupoge.de/>

Zentrum für Kulturforschung
<http://www.kulturforschung.de/>

Culture / Arts portals

Kulturportal of the Federal Government and the Länder
<http://www.kulturportal-deutschland.de/>

Portal of the culture servers of the Länder
<http://www.kulturserver.de/>

Das KulturinformationsZentrum
<http://www.nmz.de/kiz/>

Deutscher Bildungsserver [DBS] (German education server)
<http://www.bildungsserver.de/>

Deutscher Museumsbund e. V. (Federal Government of German Museums)
<http://www.museumsbund.de/>

WebMuseen
<http://www.museen.de/>

The Council of Europe/ERICarts "Compendium of Cultural Policies and Trends in Europe, 10th edition", 2009

5 Does your country or your organization or any of its members intend to ask for a contribution to one or more own projects from the **international fund** for cultural diversity according to article 18 of the UNESCO Convention for the purpose of implementing the UNESCO Convention on the national level?

() Yes (x) No () Confidential

If "Yes", please describe the project(s) for which your country or your organization will ask for funding:

PLEASE INSERT YOUR ANSWER HERE:

6 Is your country affected by **special situations** contemplated under articles 8, 12 para. 1, 17 and 23, point 1 of the UNESCO Convention ("special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding")?

Yes () / No (x)

If yes, please describe these special situations, and the measures that your country adopts to address these situations?

PLEASE INSERT YOUR ANSWER HERE:

7 From the perspective of your organization, how do you assess your country's contribution to meet the objectives of the UNESCO Convention on the **regional and international levels** (e.g. coordination and collaboration with regional organizations, promotion of exchanges between National UNESCO Commissions, involvement in negotiating the operational Guidelines of the UNESCO Convention, activities within the Intergovernmental Committee)?

• PLEASE INSERT YOUR ANSWER HERE:

a) There is active coordination and sustained collaboration with both the European Union (CAC, Culture and Development, 133 Committee) and the Council of Europe (CD CLT) on the government and expert level; German MEPs and MPs have been instrumental to put and keep the Convention on the regional and international agenda.

To our knowledge, there is not necessarily – or not yet – an integrated and coherent action plan with some explicit objectives regarding possible German contributions both on a national and on a regional/international level to meet the objectives of the UNESCO Convention. The abovementioned White book project of the Federal Coalition "Cultural Diversity in Practice" (launched December 2009) aims to stimulating a more pro-active approach in a structured way.

In addition, there has been ongoing participation in the working group on Cultural Diversity of the International Network on Cultural Policy (INCP), the Asia-Euro meetings (ASEM) both on government and expert level and in the Euro-African Campus for cultural cooperation (2009, expert and civil society level); the global networks of Goethe institutes as well as of development

organisations and a multitude of co-operations by artistic organisations and cultural producers, including festival organisers, also assure a structured professional presence at the international level.

The assessment is that we are still in the first stage for key players in the cultural field to develop their own understanding of the complexity of this 2005 UNESCO Convention and to gain more clarity how they might be able to contribute to its implementation, including on the regional and international level.

b) exchanges between National UNESCO Commissions:

b.1. There have been **specific co-operation workshops** on matters related to the Convention. There has been and continued to be bilateral cooperation and exchange in situations of beginning ratification, in order to encourage the ratification process and for sharing lessons learned on how to embark on the implementation process, e.g.

2006 (August) Bratislava, Central-Eastern workshop in cooperation with the UNESCO Venice Office and the Finnish presidency of the EU, organised by the Sloval National Commission in cooperation with the Slovak Coalition for Cultural Diversity

2008 (May), London, United Kingdom workshop, initiated by the UK Coalition for Cultural Diversity and London Metropolitan university, in cooperation with the UK National Commission

2008 (December) Hanoi,Vietnam, ASEM dialog meeting on policies for cultural diversity, involving National Commissions from Vietnam, Thailand, Cambodia, Philippines (in the context of the Asia-Europe meeting attended by ca 120 experts from both regions)

2009 (March) Istanbul/Turkey, initiative of the Turkish collecting societies with the support of the Turkish Cultural Ministry, in cooperation with the Turkish National Commission, to be continued in 2010

2010 (July) London; the UK NatCom will be hosting the bi-annual statutory regional consultation Europa/Northamerica on the overall strategic orientation of UNESCO's work (i.e. ALL five major programmes, not only Culture, and not specifically on the 2005 Convention). Program details are currently under development, including possibly an exchange session on the 2005 Cultural Diversity Convention (working title "state of play – culture and sustainable development" / with a focus on Article 13 and Articles 12 through 18) and specifically the U40 capacity building program for the next generation of cultural diversity experts (see below).

-

b.2. **All European National Commissions** were invited to and participated at the 2007 April Essen/Germany three day international Conference " Cultural Diversity – Europe's Wealth. Bringing the Convention to Life", as part of the work program of the German presidency of the European Union . Equally invited were all CAC members, all members of the Culture Committee of the Council of Europe and all Coalitions for Cultural Diversity. The Essen/RUHR2010 conference was attended by 500 participants from 60 countries/all continents), involving European policy makers, the EU Commission and Parliamentarians; convened by German Commission for UNESCO with the support of the Ministry of Foreign Affairs, the government of North-Rhine Westphalia, the Federal Foundation for Culture (Halle) and the European Commission.

b.3. **Capacity Building Programm for young(er) experts** in cultural policy and cultural diversity ("Under 40"), initiated by the German Commission for UNESCO in 2006, expanded step-by-step: 2007 Germany (especially North-Rhine Westphalia) and Europe (10+10 fellows); 2008-2010 Europe (20 fellows+10 Catalunya); 2009-2011 World Wide (50 fellows). Especially the most recent program phase since 2008 has been implemented in cooperation with the International Federation of Coalitions for Cultural Diversity (IFCCD) and National Commissions for UNESCO. The call for participation was launched both through Headquarters Homepage / the Global Alliance for Cultural Diversity, the IFCCD and directly through the world wide network of National Commissions for UNESCO. Based on the feedback of participation, the network of NatComs was a very efficient channel to pass this information on and help to identify high calibre young experts.

The program proper (World Forum June 2009) was funded i.a. thanks to the support of the Finnish, the Canadian and the Austrian Commissions for UNESCO (i.a.).

Among the fifty U40 fellows identified (for the period 2009 through 2011) are staff from the National Commissions of Mauretania and Bangladesh and members of the NatComs of Canada and the Netherlands.

b.4. In addition, the statutory regular regional meetings of the National Commissions in the Europe region (2002, 2004, 2006, 2008, July 2010) addressed the 2005 Convention as part of their overall agenda on priorities and will be expected to continue to do so.

c) **Operational guidelines, Intergovernmental Committee:**

c.1. Germany has been elected **member of the IGC** in 2007, with a mandate **until 2011**. Germany assured very active participation in all ordinary and extraordinary sessions, combining government and expert level (=myself as head of the national contact point), replying to all questionnaires and, in addition, tabling working papers with proposals in the drafting process on Articles 11, 13 and 15 and seeking consultation both with civil society and with the European partners very actively.

c.2. In November 2007, as a preparation for the constitute first IGC meeting in December 2007 in Ottawa/Canada, Germany convened the one-day **Roundtable and Chatham House Consultation** "Cultural Diversity in Practice", in UNESCO Headquarters in Paris with substantial input by policy makers from Brazil, South Africa, Senegal, the European Commission, the European Parliament, the German Bundestag (Enquête Commission "Culture in Germany") and the participation of all permanent delegations at UNESCO as well as resource persons from Coalitions for Cultural Diversity, National Commission for UNESCO and other relevant civil society organisations and networks (see results under www.unesco.de). The main issues were doables for implementing the Convention on the national level, i.e. articles 6, 7, and for the involvement of the European Union). The Roundtable was an initiative of the German permanent delegate to UNESCO, in cooperation with the German National Commission.

- c.3. **Cultural Diversity 2030 / Capacity Building Program for young(er) experts** in cultural policy and cultural diversity ("Under 40"), initiated by the German Commission for UNESCO in 2006. This initiative was brought to world level at the occasion of the 2nd Conference of Parties (June 2009) and at the Third Ordinary IGC session Dec 2009. Fifty fellows for the period 2009-2011 were identified world wide, participating as observers in both government and civil society delegations. In their own national and regional contexts, these U40 fellows are already now playing a very role in promoting the

objectives of the Convention, and in working towards meaningful implantation and monitoring. A key project in 2010 will be a first joint publication on good and interesting implementation practice around the globe, coordinated by the German Commission for UNESCO and the Asia-Europe foundation (Singapur). The fifty U40 fellows will be invited authors and trend scouts. Results are expected to inform the 2010/2011 agenda of the Intergovernmental Committee, especially the drafting of Operational guidelines on Articles 9 and 19 (knowledge sharing, clearing house functions). More details under www.unesco.de

8 From the perspective of your organization, which **major problems**, if any, related to the implementation of the UNESCO Convention do you identify so far for your country?

PLEASE INSERT YOUR ANSWER HERE: Given the complexity of the Convention and the necessity to develop an effective and integrated vision of its implementation from the point of government/Parliament, we are still at very early days.

Two major challenges: Leadership, developing a political vision how Germany would like to contribute to implementing this Convention in the five and ten years to come. There have been regular inter-ministerial coordination meetings on working level regarding the drafting and adoption of the Operational Guidelines. Very valid initiatives as the joint initiative on Creative economy and cultural industries don't have an explicit and results based approach to implementing the 2005 Convention. There is no clear political signal as yet whether the Ministry for Foreign Affairs and the Ministry for Development Cooperation will work on a joint programme framework for implementing Art. 12-18. At this point in time, Germany has not yet contributed to the (voluntary) International Fund for Cultural Diversity (according to the list published by UNESCO in December 2009).

Governance: Develop a pragmatic and effective coordination/governance platform/mechanism which brings the many actors in cultural policy and cultural diversity issues towards a more synergistic way of using their scarce resources, and develop a professional understanding how their activities contribute to achieving the objectives of this Convention.

The EU Commission has set a good example with creating the Inter-Service group, to ensure the involvement of all relevant seven DGs. In Germany, there is no similar governance mechanism as yet. The White Book recommends introducing such a mechanism, both for the Federal and for the Länder level.

9 From the perspective of your organization, which **best practices** related to the implementation of the UNESCO Convention do you identify so far for your country?

PLEASE INSERT YOUR ANSWER HERE:

There is a multitude of best practice, and of good practice which might even become better. We start working on collecting good practice examples from spring 2010 onwards, preparing a joint public with the Asia-Europe foundation.

See some examples above,

e.g. North-Rhine Westphalia, since 2006, systematic empirical studies and appraisal

of state of diversity in small/medium size/large cities, analysis and development of working with a substantially changing basics for cultural policy making and especially regarding the place and perspective of public cultural institutions,
e.g. Berlinale, World Cinema Fund
e.g. music competition 'Creole', since 2006, on State level and on Federal level
e.g. initiatives to create new permanent structures of learning in the perspective of cultural diversity (Global Music Academy Berlin, GlobalFlux Cologne/Bonn)
e.g. Culture and Development initiative, Goethe institute, offering cultural management programs for African professionals, in cooperation with InWEnt
e.g. the Under40 capacity building program
e.g. Berlin, Gartenstadt Atlantic, a multiethnic residential area, annual activities celebrating World Day for Cultural Diversity and Development
e.g. Hamburg, 2010, first action week on Cultural diversity (May)

10 From the perspective of your organization, what are civil society's **expectations** in your country regarding the further implementation of the UNESCO Convention

10.1 in the best case scenario?

Best case scenario would be that the recommendations of the White Book of Civil Society (Dec 2009) are taken as a rational for orchestrated implementation action. Time horizon 2 to 5 years.

Summary of the recommendations inserted here in German. English language version will be provided as soon as available (probably early March, complete text currently at the translator's).

Kulturelle Vielfalt gestalten

Handlungsempfehlungen auf einen Blick

Das UNESCO-Übereinkommen zur Vielfalt kultureller Ausdrucksformen betritt in völkerrechtlicher Hinsicht Neuland. Es gestaltet die „Spielregeln“ der Globalisierung mit und ist wegweisend für die Sicherung eines vielfältigen Kulturangebots und -austauschs im 21. Jahrhundert. Seine Zielsetzungen und Instrumente sind durch den Beitritt der Bundesrepublik Deutschland im März 2007 für Bund, Länder und Kommunen verbindlich. Der interdisziplinäre Charakter des Übereinkommens erfordert eine integrierte und ressortübergreifende Herangehensweise, die Förder- und Ordnungspolitik verbindet.

Die Handlungsempfehlungen des Weißbuchs richten sich an Akteure und Partner, die für Schutz und Förderung der Vielfalt kultureller Ausdrucksformen politische Verantwortung tragen und/ oder besondere Handlungsmöglichkeiten haben. Neben jeweils mehreren Ressorts auf der Ebene des Bundes und der Länder, der Kommunen – einschließlich der Fördereinrichtungen – sind dies Parlamentarier in Bund, Land und Europa, die organisierte Zivilgesellschaft (u. a. Bundeskulturverbände), Partner der nicht in Verbandsform organisierten Zivilgesellschaft, Forschung und Wissenschaft sowie die Fachöffentlichkeit (u. a. Fachkräfte der politischen Bildung/ Journalistennetzwerke/ kulturelle Einrichtungen).

Diese Version 1.0. des Weißbuchs „Kulturelle Vielfalt gestalten“ enthält sechs thematische Kapitel, an deren Ende politische Handlungsempfehlungen für deutsche und europäische Kulturpolitik, für die kommunale Ebene, für internationale Zusammenarbeit, für die unabhängige Kultur- und Kreativwirtschaft, für Medienvielfalt sowie für kulturelle Bildung stehen. Öffentliche und institutionelle Bewusstseinsbildung, Aus- und Fortbildung von einschlägigem Fachpersonal, einschließlich der Leitungsebenen, interdisziplinäre Forschung und Wissensaustausch (u. a. durch das Netzwerk der UNESCO-Lehrstühle) sowie empiriegestütztes Monitoring der Rahmenbedingungen Kultureller Vielfalt sind in all diesen Handlungsbereichen wesentlich, um die Ziele des Übereinkommens umzusetzen.

Eine Auswahl der wichtigsten Empfehlungen auf einen Blick

Kohärenz auf Bundesebene sichern: Eine kohärente Umsetzung des UNESCO-Übereinkommens in und durch Deutschland setzt ressortübergreifende Zielsetzungen und Abstimmung voraus. Dazu zählt auch die Bund-/ Länderabstimmung für eine neue Praxis des Zusammenwirkens von nationaler und europäischer Ebene im Deutschen Bundestag und in den Ländern. Eine angemessene Mitwirkung der großen nationalen Kultur- und Dachverbände und europäischer Netzwerke der Zivilgesellschaft sollte auch finanziell gestützt werden.

Doppelcharakter von Kulturgütern und kulturellen Dienstleistungen beachten – interministeriell kooperieren: Das natürliche Interesse an der wirtschaftlichen Verwertung von Kulturgütern und -dienstleistungen und ihrer Bedeutung für die Werte und den kreativen Freiraums einer Gesellschaft stehen in einem Spannungsfeld, das fortlaufend austariert werden muss. Dieser Doppelcharakter verlangt nach einer interministeriellen Kooperation mit dem Ziel, die UNESCO-Konvention kohärent und ressortübergreifend in den nationalen und europaweiten Zuständigkeitsfeldern umzusetzen. Das ist angesichts der dynamischen Prozesse des digitalen Zeitalters und der strukturellen Schwäche der Kulturpolitik in Europa eine nicht zu unterschätzende Aufgabe. Bund und Länder sind im Rahmen der Schaffung europäischer Richtlinien am Zug (BVG-Urteil vom Juni 2009).

Ressorts internationalisieren: Die Bundesregierung sollte die Zielsetzungen der Konvention ressortübergreifend in Programmen verankern, sowohl in der internationalen Zusammenarbeit, u. a. mit dem Akzent „Kultur und Entwicklung“, als auch in der developmentspolitischen Kultur- und Bildungsarbeit in Deutschland (Globales Lernen, Bildung für nachhaltige Entwicklung).

Kultur- und Kreativwirtschaftsinitiative nutzen: Die für die Kultur- und Kreativwirtschaftsinitiative der Bundesregierung verantwortlichen Ressorts und Personen sollten Vorschläge entwickeln, wie sie in diesem Zusammenhang zur Umsetzung des UNESCO-Übereinkommens in Deutschland beitragen können (Exportförderung, Minikredite, Entwicklungshilfepolitik, Kultauraustausch).

Neue Allianzen im nationalen und europäischen Mediensystem bilden: Moderne Regulierungsformen im Rahmen einer Medien- und Kulturordnungspolitik sind Selbstbindungsvereinbarungen, wie sie sich etwa für Online-Angebote auf nationaler wie transnationaler Ebene herausbilden oder die Entwicklung und Durchsetzung von Qualitätsmaßstäben für Telemedien als Beitrag zum Gemeinwohl einer künftigen Wissensgesellschaft (Selbstbindung und regulierte Selbstregulierung).

Länder bewegen: Auf Landesebene sollte eine Koordinationsgruppe nach dem Beispiel der Inter-Service Arbeitsgruppe der Europäischen Kommission eigene Eckpunkte und Zielsetzungen zur Umsetzung der UNESCO-Konvention entwickeln. Sinnvoll wäre, dass die KMK aus den einschlägigen Ausschüssen eine Arbeitsgruppe bildet, die Analoges für die Gesamtorganisation der Länder voranträgt. Die Zivilgesellschaft ist auf Länderebene einzubeziehen.

Städte vernetzen: Eine inter-kommunale Arbeitsgruppe „Interkulturelles Stadtprofil“ mit anfangs ca. 15-20 Städten (klein/ mittel/ groß) sollte unter Beteiligung des Deutschen Städtetages eingerichtet werden. Diese kann u. a. eine Sammlung guter Praxisbeispiele veröffentlichen und einen „Vitalitätsindex Kulturelle Vielfalt“ entwickeln (Monitoring).

Europafähig werden: Die Ausschüsse „Kultur“ und „Außenhandel“ des EU-Ministerrates und des Europaparlaments müssen zu Fragen der neuen Generation von Handelsabkommen der EU (mit Kulturzusatzprotokollen) regelmäßige Arbeitsbeziehungen entwickeln, damit in den anstehenden Verhandlungsrunden Konformität mit Geist und Buchstabe des UNESCO-Übereinkommens gewährleistet werden kann. Bund und Länder sollten dies stringent verfolgen. Zudem sollten die zuständigen Ressorts der Bundesregierung sowie die einschlägigen Ausschüsse des Deutschen Bundestages das europäische Arbeitsfeld „Kultur und Entwicklung“ aktiv unterstützen.

Europäische Union nutzen: Als Vertragspartner des Übereinkommens sollte die Bundesregierung auf die anderen EU-Mitgliedstaaten dahingehend einwirken, dass ab 2013 ein EU-Gemeinschaftsprogramm „Kulturelle Bildung für Kulturelle Vielfalt“ eingerichtet wird, das die Bereiche Kultur, Bildung und Jugend innovativ miteinander verknüpft. Die Bundesregierung und die Länder werden weiterhin aufgefordert, darauf hinzuwirken, dass auch in der nächsten Generation der Strukturfonds (Europäischer Fonds für regionale Entwicklung und Europäischer Sozialfonds) Projektförderungen im Bereich Kultur, Jugend und Bildung möglich sind.

Kultur von Anfang an anbieten: Wenn von Kultur die Rede ist, sind meistens nicht Kinder und Jugendliche gemeint; wenn von Kindern und Jugendlichen gesprochen wird, geht es meist nicht um Kultur. Eine Quote für Kinder- und Jugendkultur sollte geprüft werden. Die Vielfalt des Publikums muss ernst genommen werden. Die Bundesländer sollten sich verpflichten, die Marginalisierung der (wenigen) künstlerischen Schulfächer umzukehren.

Existenzsicherung für Künstler verbessern: Die Studie zur sozialen und wirtschaftlichen Lage der Tanz- und Theaterschaffenden (Herbst 2009) offenbart erneut die prekäre Lebenssituation von Künstlern in Deutschland. Künstler sind eine der zentralen gesellschaftlichen Gruppen, die zur Kulturellen Vielfalt beitragen. Optionen eines Grundeinkommens sind zu prüfen.

Künstlermobilität ermöglichen: Gesteigerte Mobilität von Künstlern und Kulturvermittlern fördert auf vergleichsweise unkomplizierte Art die Vielfalt kultureller Ausdrucksformen. Die Erteilung von Visa an Künstler und Kulturvermittler muss deshalb transparent gestaltet, durch klare Vorgaben an Botschaften und Konsulate vereinfacht und idealerweise im Schengenraum vereinheitlicht werden.

Förderpraxis überprüfen: Durch einen Fachworkshop der Kulturstiftung des Bundes und einschlägiger Kulturstiftungen der Länder zu Zielen des UNESCO-Übereinkommens und Umsetzung in Förderstrukturen unter Berücksichtigung des Lebensweges der Kulturgüter könnten die vorhandenen Förderinstrumente – besonders unter dem Aspekt der Kulturvermittlung und der interkulturellen Öffnung von Strukturen – auf den Prüfstand gestellt werden.

Öffentliches Bewusstsein fördern – institutionelles Bewusstsein bilden: Festivals und Wettbewerbe müssen genutzt werden, um die Zielsetzungen der Konvention bei den beteiligten Künstlern, Produzenten und Kulturvermittlern aus dem In- und Ausland und dem Publikum bekannt(er) zu machen. Mittler- und Durchführungsorganisationen können mit Hilfe ihrer internationalen Netzwerke eine flankierende Rolle spielen. Wesentlich ist die Fortbildung von Führungskräften und Mitarbeitern in allen Bereichen von Bildung, Kultur, Medien und Forschung, insbesondere in den Mittlerorganisationen der Auswärtigen Kultur- und Bildungspolitik sowie den Durchführungsorganisationen der Entwicklungszusammenarbeit zu Zielsetzungen, Ausrichtung und Umsetzung des UNESCO-Übereinkommens.

UNESCO-Welttag der Kulturellen Vielfalt – 21. Mai – nutzen: Bibliotheken, Musikschulen, Museen, Theater, Kinos, Kunstmuseen, Schulen u. a. können öffentlich wirksame Programme und Aktivitäten anlässlich des UNESCO-Welttags der Kulturellen Vielfalt anbieten.

PLEASE INSERT YOUR ANSWER HERE:

See essentials of the White Book (inserted here in German, English language version will follow ASAP)

10.2 in the worst case scenario?

PLEASE INSERT YOUR ANSWER HERE: fragmented action by government at different levels, no political leadership, no effort to assure coherence; no clear action plan for articles 12 through 18 and 20/21; no progress on Article 16/ "a business as usual" attitude;

continue to being unable to contribute to the International Fund for Cultural Diversity

10.3 in the most likely scenario?

PLEASE INSERT YOUR ANSWER HERE: very likely a mix of both paths, some good and clear action points, some good examples of innovative practice while lacking a

bigger picture;

11 From the perspective of your organization, what should be the **priorities** when implementing the UNESCO Convention in your country in the near future?

PLEASE INSERT YOUR ANSWER HERE: see above, White Book recommendations,

- 1) use the already existing good initiatives on the national (Cultural economy), State / municipal (film support schemes, governance of public cultural structures,) international cooperation (global/German partners) and European level (Culture and development, cultural policy knowledge system like compendium) and re-energize them through the lens of the 2005 Convention, including a certain results based perspective (Art, 6,7,12 ff).
- 2) invest in systematic capacity building of key decision makers, opinion leaders and thought changers in the professional sectors and in the ministries involved, national and state level (Art. 10)
- 3) prepare a European program for the next culture program cycle 2013 ff "Cultural education (for all) for Cultural Diversity" (Art. 10)
- 4) invest in already existing knowledge structures as Compendium for the Europe region, assure strategic partnership between EU and Council of Europe (no duplication of efforts), connect with similar developments in other regions (African Union, Organisation of American States) and with global players (e.g. International Federation of Arts Councils, IFACCA) (Art. 9, 19)
- 5) invest conceptually in the Article 13 perspective, cultural diversity as a cornerstone of sustainable development strategies – IN all our countries as well as on EU level
- 6) get Culture and Trade Ministry as well as Foreign Office and Development Cooperation involved in a strategic dialogue (Art 16, 15, 12-18), leading to policy action plans on preferential treatment and on international cooperation for cultural diversity
- 7) start working on Art 21 / 23.6-e
- 8) organise the debate how digitisation will require a completely new type of cultural policy

12 From the perspective of your organization, which concrete actions in terms of **legal and policy measures** should your country's government take in order to implement the UNESCO Convention in the near future?

PLEASE INSERT YOUR ANSWER HERE: re legal measures, we are still in the process of analysis; does not seem a priority at this point in time; re policy measures, there is a lot of scope for action, see list above (priorities)e

13 From the perspective of your organization, what is the **degree of satisfaction** regarding the implementation of the UNESCO Convention by your country as of 1 January 2010?

() Full satisfaction

(x) Limited satisfaction

() No satisfaction

No comment

If your answer is "Limited satisfaction" or "No satisfaction", please summarize your critique:

PLEASE INSERT YOUR ANSWER HERE: mixed picture, very energetic and exceptionally successful period between 2004/2007/2009, less clarity at this point in time who in government will be ready to take a lead regarding the substance of an implementation strategy in and by Germany, given the high complexity of cultural governance in Germany

14 From the perspective of your organization, how do you evaluate the **UNESCO Convention's Guidelines addressing the civil society's participation** that were contemplated and/or adopted as of 1 January 2010?

Very satisfactory

Comment: Since the first IGC meeting in Ottawa in Dec. 2007, I have been involved in drafting the OpGuis on Article 13 myself; we started with a German non-paper as a backgrounder, and finalized/amended the draft which was then put forward successfully through and by the EU group, with broad support from other UNESCO regions.

My assessment is that the text adopted was the maximum achievable at this point in time. The provisions – even before they were formally adopted in June 2009! – led to strong civil society participation and input in writing into the crucial discussions on Article 16 and others.

The readiness of thirty partners around the globe and of more than a dozen governments to include civil society U40 observers in their delegations to the second Conference of Parties in June 2009 was another unexpected feedback that spirit and letter of the Convention has the potential for making a difference.

Satisfactory

Not satisfactory

No comment

If your answer is "Not satisfactory", please summarize your critique:

PLEASE INSERT YOUR ANSWER HERE:

15 From the perspective of your organization, how do you evaluate the **quality of the collaboration between civil society and government** aiming at the implementation of the UNESCO Convention in your country during the relevant period?

Very satisfactory

Satisfactory

Not satisfactory

No comment

If your answer is "Not satisfactory", please summarize your critique and indicate how this collaboration could be improved:

PLEASE INSERT YOUR ANSWER HERE:

16 From the perspective of your organization, how do you evaluate the **degree of the civil society's interest** in your country in contributing to the implementation of the UNESCO Convention during the relevant period?

Very satisfactory

Satisfactory

Not satisfactory

No comment

If your answer is "Not satisfactory", please summarize your critique and indicate how this interest could be improved:

PLEASE INSERT YOUR ANSWER HERE:

17 From the perspective of your organization, how do you assess the **quality of the UNESCO Convention** as a policy instrument in terms of

17.1 its strengths?

PLEASE INSERT YOUR ANSWER HERE: it's a great instrument and a tool for a Copernican turn in development discourse and practice; the most important of the seven UNESCO Conventions; a Cultural Kyoto protocol. Even before it had entered into force, the mere existence of the instrument already influenced agenda setting both in the WTO and in the EU substantially. The process of drafting and negotiating the Convention has constituted culture as a pillar of global governance; it has mobilised and organised the current generation of cultural policy decision makers and analysts. As a result, there is the urgently needed global constituency ready to 'put culture first' in the making..

The biggest surprise was the verdict of the European Court in Luxemburg on the Spanish case as early as March 2009; I guess nobody wouldn't have dared to predict that case law would start that early

17.2 its weaknesses?

PLEASE INSERT YOUR ANSWER HERE: As other Conventions, too, and International Law in general, successful implementation will result from the political will, the skill and resolve by a critical mass of countries ready to stay with it for a substantial number of years; it is a very complex instrument; this does not allow easily for a clear understanding / for simple messages / for an easy to grasp imagery how a vigorous implementation will make a positive difference in our societies / politicians

minds and planning horizons necessarily focus on the time span from election to election; this is a certain dilemma -

17.3 its threats?

PLEASE INSERT YOUR ANSWER HERE: dissipation; risk that it might be used in an 'a la carte' fragmented way; risk of disorientation [e.g. all of a sudden there is a lot of talk that schoolchildren should be taught about the Convention; of course they should; but there are many much more obvious target groups at hand who have great options for action and could make a big difference for a vibrant art and culture sector)

17.4 its opportunities?

PLEASE INSERT YOUR ANSWER HERE: preparing the minds of the XXIth century; enrich the lives of many who will enjoy a vibrant and contagious artistic / cultural life; new thinking and practice

18 From the perspective of your organization, how do you assess the **strength and influence of non-governmental organizations lobbying for cultural interests** in comparison to non-governmental interest groups lobbying for trade interest in your country in matters affecting cultural policies?

- Cultural interest groups are more effective than trade interest groups
- Cultural interest groups are less effective than trade interest groups
- Cultural interest groups and trade interest groups are equally effective
- The respective effectiveness depend on the concrete matters at stake
- Other

If your answer is "Other", please explain:

PLEASE INSERT YOUR ANSWER HERE:

19 From the perspective of your organization, how do you rank the priority given **by the civil society** of your country to policies aimed at protecting and promoting cultural diversity?

- High priority
- Medium priority
- Low priority
- No priority

If your answer is "low priority" or "No priority", please explain:

PLEASE INSERT YOUR ANSWER HERE:

20 From the perspective of your organization, how should the **degree of cultural diversity** according to the UNESCO Convention be measured in your country?

(x) Based on data regarding the supply of cultural goods and services

(x) Based on data regarding the consumption of cultural goods and services, for example market shares

x Based on other approaches

If your answer is "Based on other approaches", please explain:

PLEASE INSERT YOUR ANSWER HERE:

Supply and consumption data are needed but much too narrow; the Convention offers the full chain of the life cycle of the diversity of cultural expressions, i.e. creation, production, distribution, dissemination, enjoyment/audience participation.

Relevant indicators will have to build on this comprehensive perspective; compare the substantial OECD/UNESCO/UNCTAD debate of 2006/2007 on the same issue, as well as earlier debates on measuring the diversity of cultural expression and measuring the impact of the cultural and development nexus, i.e. the papers for the 1999 Florence "Culture Counts" conference and also the Anheier/Isar series on Culture and Globalization since 2007 and the 60 odd indicators they have identified.

Invest in already existing knowledge structures such as Compendium for the Europe region; this knowledge platform already includes 44 countries from the Europe region; the expert network has been built over ten years; it is under-resourced and understaffed and merits being strengthened and supported. Assure strategic partnership between EU and Council of Europe (no duplication of efforts); The Compendium format is highly appreciated and praised internationally. It is worthwhile connecting with similar developments in other regions (African Union, Organisation of American States) and with global players (e.g. International Federation of Arts Councils, IFACCA) (Art. 9, 19).

Invest conceptually in the Article 13 perspective, cultural diversity as a cornerstone of sustainable development strategies, including the development of indicators.

Learn from the Convention on Biodiversity and the indicator work done there.

Learn from the Harvard Case study approach and adapt it for reporting relevant development trends in cultural diversity;

A second edition approximately in the year 2013/2014 of the 2004 UNDP Human Development Report on Cultural Liberty would be a perfect opportunity for comparing notes, ten years after the first attempt to gather and organise all relevant data, and would contribute to the perspective of the Millennium Development Goals beyond 2015.

21 Does your organization and/or its member organizations have **new ideas** to implement the UNESCO Convention in your country in the near future?

(x) Yes () No

If your answer is "Yes", please summarize these new ideas:

PLEASE INSERT YOUR ANSWER HERE: seek public private partnership and develop an overall communication strategy / promote the "Fair Culture" perspective and involve major private players / take more time and learning to connect the issue of diversity in digitised (mass) media / start a platform of small/medium size/large cities // produce a bibliophilic edition of the Convention text as a welcome present to all foreign and local artists participating in festivals in Germany

22 Does your organization and/or its member organizations plan to take **specific actions** to implement the UNESCO Convention in your country in the near future?

() Yes (x) No

If your answer is "Yes", please summarize the action plan:

PLEASE INSERT YOUR ANSWER HERE:

23 Does your organization and/or its member organizations expect **specific actions** from your government, from regional organizations and/or from the UNESCO in order to implement the UNESCO Convention in your country in the near future?

(x) Yes () No

If your answer is "Yes", please summarize these expectations:

PLEASE INSERT YOUR ANSWER HERE: see above, orchestrated communication strategy in the 1st half of 2010, to promote the White Book recommendations vis-à-vis all government levels and get structured feedback on its impact

24 If you have **further comments** on the questions of this survey or **additional information** that is useful for assessing the implementation of the UNESCO Convention in your country, please state them here:

PLEASE INSERT YOUR ANSWER HERE: Most questions on implementation were directed almost exclusively towards the national level; action by EU – and joint decisions by the EU Member States – have been and are very important; there were not questions to that end.

The questions on national law seemed too global and a bit far from of cultural policy processes.

The convention is a very ambitious and complex instrument. It connects trade and cultural policy, development strategies and international cooperation, professional capacity building and sector development, Arts and learning and public awareness rising, cultural rights and copy rights issues and more.

Producing relevant answers required a very advanced overview and an impact

assessment, which barely exists at this point in time.

The wording of some questions seemed a bit biased, as commented in the replies given.

I would be interested to know the Terms of References for this study as developed by the Culture Committee of the European Parliament. In the end, I decided to go into the full substance, in light of the crucial and strategic role the European Parliament has played during the negotiations of this Convention, together with the Commission, and has been playing since.

We have a substantial content interest that this report will fulfil its function.

This electronic form was unfortunately very instable; the text of the questions hadn't been cleared which created a bit of confusion [I cleared it myself for easier reference].

D Identification of respondent to this questionnaire

Name: Christine M Merkel

Organization: German Commission for UNESCO

Position (title) within the organization: Head, Division for Culture, Memory of the World; National Contact Point for the 2005 UNESCO Convention; Executive Coordinator of the Federal Coalition for Cultural Diversity;

Postal address: Colmantstr. 15, 53115 Bonn, Germany

Phone:+49-228-60497-0

Fax:+49-228-60497-30

Email: merkel@unesco.de

Website:www.unesco.de

Date and place: 7.2.2010, Cologne/Hamburg/Bonn