

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 of Germann Avocats and its interdisciplinary research team are completing a study for the European Parliament's Committee on Culture and Education (CULT). The overall objective of the study 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 (2005), in particular in fields where the European Community would be expected to provide leadership or co-ordination.

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 have drafted three sets of questionnaires. The first questionnaire will allow us to gather legal data. The second questionnaire will inform us about the implementation of the UNESCO Convention from the perspective of representatives of civil society. The third questionnaire will cover the situation from the perspective of a selection of regional organizations (African Union, Association of Caribbean States, Association of Southeast Asian States, Commonwealth, Council of Europe, European Union, International Organization of la Francophonie, League of Arab States, and Organization of American States).

Expected results from the surveys

We expect to collect valuable information on public measures that are specifically undertaken to protect and promote cultural diversity on the national level in different jurisdictions. We shall 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 for our conclusions and recommendations to the European Parliament.

Legal survey

The legal questionnaire will focus on legal aspects of the implementation of the Convention. We have sent our survey to law firms specializing in international public law in Canada, Brazil, China and Senegal. In Europe, we will directly investigate the legal situation in Italy (as a larger jurisdiction) and Switzerland (as a smaller jurisdiction). In addition, we will send the legal questionnaire to a selection of UNESCO National Commissions, which will reflect geographic, political and economic diversity. This legal survey will allow us to assess the current state of implementation of the UNESCO Convention in these countries in terms of regulations and administrative practice.

We will attach the replies to this questionnaire to our study, which 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

LEGAL QUESTIONNAIRE

A General questions

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

On its publication in the Official State Gazette dated February 12th, 2007 ("Boletín Oficial del Estado" number 37).

2 Are those provisions of the UNESCO Convention that are precise and clear directly applicable ("**self-executing**") in your country?

(X) Yes () No

3 Please list any **non-governmental organizations** that deal with cultural diversity concerns and that represent a substantial part of the stakeholders concerned by cultural policies in your country.

<http://www.canalsolidario.org/directorio-ong>

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?

() 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:

There is the political will to solve the problems required by the implementation of the Diversity Convention and these will be materialized in appropriate instruments over the coming months.

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 How does your country comply with points 4, 7 and 8 of article 2 of

the 2005 UNESCO Convention (“principle of **international solidarity and co-operation**” and “principle of **equitable access**” and “principle of **openness and balance**”) and with articles 12 to 17 of the 2005 UNESCO Convention (“promotion of international cooperation”) in its implementing national law?

4.2 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?

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

PLEASE INSERT YOUR ANSWER HERE:

4.4 How are articles 20 and 21 of the 2005 UNESCO Convention (“**relationship to other treaties**” and “**international consultation and co-ordination**”) regulated in the implementing national law?

PLEASE INSERT YOUR ANSWER HERE:

4.5 How does your country assess and ensure the compliance of its efforts to implement the UNESCO Convention with respect to its **human rights obligations**?

PLEASE INSERT YOUR ANSWER HERE:

*As a complement to your replies to questions 4.1 to 4.5, 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.*

5 Does your country 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 at the national level?

() Yes (X) No

If yes, please describe the project(s) for which your country 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 redress these situations?

PLEASE INSERT YOUR ANSWER HERE:

7 What **institutional measures**, if any, does your government take to facilitate dialogue and co-ordinate action between culture and trade ministries and other relevant ministries (e.g. foreign affairs ministry) at the national level in order to meet the objectives of the UNESCO Convention?

The main organ for cultural collaboration (and for co-operation and development) between the various Spanish Ministries is the "Plan Anual de Cooperación Internacional" (Annual International Co-operation Plan, PACI), co-ordinated by the Ministry of Foreign Affairs and Co-operation (MAEC in its Spanish acronym) and also containing representatives of the civil society. Another example of a co-ordination action between Spanish Ministries is the project entitled "Alliance of Civilizations" which has been materialized in a National Plan that includes among its goals the encouragement of "intercultural dialogue". Finally, at the end of last year, an Agreement was signed between the Ministry of Foreign Affairs and Co-operation and the Ministry of Culture with the aim, among others, of strengthening the ties between Spanish society and the international sphere.

8 How does your country contribute to meeting the objectives of the UNESCO Convention at the **regional and international levels** (e.g. co-ordination 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)?

The goals and guidelines given by UNESCO are channelled by the Kingdom of Spain through a variety of actions in different geographical settings. Particularly sensitive for Spain in the light of our history is the area of Ibero-America where an effective instrument has been created under the name "Ibero-American Cultural Charter". Its implementation has entailed the holding of several "Conferences on Ibero-American Culture" which have contributed to the praxis in many of UNESCO's goals. Similarly, within the bodies that Spain belongs to actions have been undertaken to strengthen

the UNESCO guidelines; for example, within the European Union, Spain took part in EUROMED. Spain has also had a prominent role in the International Network on Cultural Policy (INCP) which has held one of its congresses in the city of Granada.

C Questions on the further implementation of the UNESCO Convention

To reply to the following questions, you may consult with the competent agency within the Ministry of Culture of your country, or with your national contact point for the UNESCO Convention (articles 9, letter b, and 28) as listed in

www.unesco.org/culture/fr/diversity/convention/3igc/3IGC_INF6_Points_de_contact_des_Parties.pdf

9 Which **major problems**, if any, related to the implementation of the UNESCO Convention has your country identified so far?

The main problems for implementing the guidelines for the Diversity Convention stem from co-ordination difficulties, mostly with emerging countries, and those derived from the current economic crisis.

10 Which **best practices** related to the implementation of the UNESCO Convention does your country identify so far?

The Ministry of Foreign Affairs and Co-operation forms part of the Agencia Estatal de Cooperación Internacional y al Desarrollo (State Agency for International Co-operation and Development, AECID), in charge of implementing best practices through numerous offices abroad. Its functions include the subsidizing of projects and accompanying their follow-up. It channels the various types of financial aid to NGOs and carries out on-going humanitarian action as well as times of special need. The Ministry of Culture co-operates with various countries in the implementation of best practices, mainly through UNESCO. One example is subsidies for projects by the World Heritage Centre.

11 What are the **expectations** of your country regarding the further implementation of the UNESCO Convention

11.1 in the best case scenario?

The expectations for better co-operation stem from the creation of a Contact Point following the guidelines of the UNESCO Convention on Diversity. Contact is currently being made with other (regional) administrations of the State and the Civil Society in order to institutionalize the Contact Point.

11.2 in the worst case scenario?

The worsening of the economic crisis and the ensuing problems to co-ordinate and implement various actions.

11.3 in the most likely scenario?

The proper operation of the Contact Point, the ability to convey to the civil society the importance of the philosophy underlying the "Convention on Diversity" and an improvement in the international political situation would be the best possible scenario.

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

Establishment of the UNESCO Convention National Contact Point to co-ordinate all the stakeholders

13 Which concrete actions in terms of **legal and policy measures** does your country contemplate taking in order to implement the UNESCO Convention in the near future?

The most important political measure is that of continuing to foster and develop all those actions currently being carried out by the Kingdom of Spain.

14 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:

D Identification of respondent to this questionnaire

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