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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. The third questionnaire shall cover the situation from the angle of a selection of regional organizations. In addition, we shall interview representatives of international organizations that are relevant for the implementation of the UNESCO Convention (UNESCO, WTO and WIPO).

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 insights to compare regulatory practice in a variety of economic and political situations that characterize the selection of countries located in different geographical areas. We will obtain rich data that 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.

Survey on regional organizations

This questionnaire will inform us about the existing and desirable implementation of the UNESCO Convention from the perspective of regional organizations. For this purpose, we invite the ASEAN, the African Union, the Association of Caribbean States, the Commonwealth, the International Organisation of Francophonie, the Council of Europe and the European Union to reply to our survey. The sample of regional organizations shall reflect geographical, economic and political diversity. The objective of this questionnaire is to clarify the perception and evaluation by representatives of regional organizations of the achievements of the UNESCO Convention in their respective territories. The main goal of this survey, beyond an inventory of the current legal and policy related situation, shall reside in exploring emerging best practices to implement the UNESCO Convention from the experience of the selected regional organizations.

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

QUESTIONNAIRE FOR REGIONAL ORGANIZATIONS

A General questions

1 Please list the countries that are members of your organization and that ratified the UNESCO Convention as of 1 January 2010:

PLEASE INSERT YOUR ANSWER HERE: A list of current Commonwealth Foundation members can be obtained at www.commonwealthfoundation.com and this should be cross-checked against most recent ratification data.

2 To what extent is your organization **legally competent** to deal with cultural policies?

PLEASE INSERT YOUR ANSWER HERE: The Commonwealth Foundation has a mandate from Commonwealth Member States to promote culture, but works at the level of offering advice and support rather than having legal authority.

3 Does your organization influence in practice the **cultural policies** of its member states?

(X) Yes () No

If the answer is "Yes", please describe this influence.

PLEASE INSERT YOUR ANSWER HERE: The Foundation seeks to support policy development when requested by its Member States and to respond to civil society requests for participation in policy development. The Foundation has provided advice and given civil society responsive grants in response to a number of requests.

B Questions on the implementation of the UNESCO Convention so far

For the purpose of this questionnaire, "regional law" includes regional legislation, regulations, administrative practice and case law as well as policy statements and guidelines that entered into force before or after the entry into force of the UNESCO Convention in your country.

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

() Yes (X) No

If the answer is "No", please explain the absence of regional law implementing the UNESCO Convention and how this treaty is implemented in your jurisdiction as of 1 January 2010:

PLEASE INSERT YOUR ANSWER HERE: The question is not relevant to the

Foundation, which is an intergovernmental organisation having no role in passing regional law. Nor is it relevant to the Commonwealth as a whole, which is an organisation that promotes dialogue and consensus rather than legally-binding agreements amongst its members.

If the answer is "Yes":

Please reply to the questions below, which refer to the legal situation as of 1 January 2010, and specify for each of your replies, where applicable, whether the relevant regional law existed prior to the entry into force of the UNESCO Convention in your jurisdiction:

4.1 How does your organization comply with points 4, 7 and 8 of article 2 of the 2005 UNESCO Convention ("principle of **international solidarity and cooperation**" 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 regional law?

PLEASE INSERT YOUR ANSWER HERE: The Foundation tries to take account of these in its own work in culture (e.g. promoting south/south and north/south co-operation) and to promote civil society and government actions that

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 jurisdiction by the implementing regional law?

PLEASE INSERT YOUR ANSWER HERE: N/A – see answer above.

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

PLEASE INSERT YOUR ANSWER HERE: The Foundation has worked particularly to support civil society participation in processes around the 2005 Convention and on cultural policy, including working closely with the International Federation of Coalitions for Cultural Diversity.

4.4 How are articles 20 and 21 of the 2005 UNESCO Convention ("**relationship to other treaties**" and "**international consultation and coordination**") regulated in the implementing regional law?

PLEASE INSERT YOUR ANSWER HERE: N/A – again, the Commonwealth is not a law-making body.

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

PLEASE INSERT YOUR ANSWER HERE: The Foundation promotes a rights-based approach to development including a right to cultural expression and the right to access and enjoy a range of cultures and cultural expressions. This perspective can be said to have been influenced by the 2005 Convention.

*As a complement to your replies to questions 4.1 to 4.5, please provide a copy of, or references to, your jurisdiction's implementing **regional law**, if any, together with related commentaries and web site addresses where such regional law and related documentation may be found.*

5 Does your organization intend to ask for a contribution to one or more of your 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 No

If yes, please describe the project(s) for which your organization will ask for funding:

PLEASE INSERT YOUR ANSWER HERE: The Foundation is unlikely to apply to the Fund in its own right, but may support civil society and government partners in applications to the Fund, or support consortia and coalition based applications.

6 Is one or more member states of your organization 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

If yes, please describe these special situations, and the measures that your organization, if applicable, and/or its member states adopt to redress these situations?

PLEASE INSERT YOUR ANSWER HERE: If Member States or civil society in those states identified that they were experiencing a crisis situation and sought the Foundation's help, the Foundation would do its best to respond to requests, including through its grant-making functions.

7 What **institutional measures**, if any, does your organization, if applicable, take to facilitate dialogue and coordinate action between its culture and trade agencies and its other relevant agencies (e.g. its foreign affairs agency or like executive branches) on the regional level in order to meet the objectives of the UNESCO Convention?

PLEASE INSERT YOUR ANSWER HERE: The Foundation is currently trying to promote joined up thinking on culture through its work on culture and development, which calls for closer connection between different wings of government and culture and mainstreaming culture as a civil society issue. The Foundation urges all other Commonwealth organisations to mainstream culture into their analyses and approaches.

8 How do you assess your member states' contribution to meet the objectives of the UNESCO Convention on the **regional and international levels** (e.g. coordination and collaboration with other regional organizations and international 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: Many Commonwealth Member States, particularly its smaller, developing states, have limited capacity for engagement with the Convention, as reflected in low levels of ratification and implementation. International co-ordination is poor and processes in Paris often seem to be dominated by voices of larger countries. There would seem to be a need for active development of government capacity and the active promotion of voices that can speak on behalf of smaller countries.

C Questions on the further implementation of the UNESCO Convention

9 Which **major problems**, if any, related to the implementation of the UNESCO Convention does your organization identify so far?

PLEASE INSERT YOUR ANSWER HERE: The Convention is not well-articulated or explained as a development instrument. Levels of understanding of what the Convention is and what it stands for are very low. UNESCO has not given sufficiently priority of the promotion of the Convention. Little connection has been made to other issues of global social justice, and so the Convention has not won popular support and found itself the focus of advocacy for civil society beyond the cultural sector. The critique of the Convention as a potentially repressive tool – as a promoter of national majority cultures to the detriment of cultural diversity within national borders – has not adequately been addressed.

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

PLEASE INSERT YOUR ANSWER HERE: The Foundation is currently developing a series of case studies on practice in culture and development. These do not link exclusively to the Convention, but early examples can be found on our website.

11 What are your organization's **expectations** regarding the further implementation of the UNESCO Convention in your member states?

11.1 in the best case scenario?

PLEASE INSERT YOUR ANSWER HERE: Implementation in large countries which have ratified but have not played an active role, and a wave of ratification in under-represented regions (Caribbean, Pacific Islands).

11.2 in the worst case scenario?

PLEASE INSERT YOUR ANSWER HERE: Ratification remains static and patchy and the

Convention slips down the political agenda even of its champion countries.

11.3 in the most likely scenario?

PLEASE INSERT YOUR ANSWER HERE: Scenario two, due to persistent low levels of explanation and understanding.

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

PLEASE INSERT YOUR ANSWER HERE: From the Foundation's point of view, patchy ratification needs to be addressed before implementation can really be said to be taking place.

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

PLEASE INSERT YOUR ANSWER HERE: The Foundation will continue to be demand driven here and will support experience-sharing, sharing of practice and provide policy support as required in response to government and civil society needs.

14 What is your organization's **degree of satisfaction** regarding the implementation of the UNESCO Convention by your member states as of 1 January 2010?

Full satisfaction

Limited satisfaction

No satisfaction

No comment

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

PLEASE INSERT YOUR ANSWER HERE: While a potentially landmark piece of the international policy toolkit, patchy ratification and limited engagement, and persistent lack of a strategy to address these, means it is a Convention for only part of the world at present.

15 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

Satisfactory

Not satisfactory

No comment

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

PLEASE INSERT YOUR ANSWER HERE:

16 From the perspective of your organization, how do you evaluate the **quality of the collaboration between civil society and your organization** aiming at the implementation of the UNESCO Convention so far?

Very satisfactory

Satisfactory

Not satisfactory

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

PLEASE INSERT YOUR ANSWER HERE:

17 From the perspective of your organization, how do you evaluate the **degree of the cultural stakeholders' interest** in your jurisdiction in contributing to the implementation of the UNESCO Convention so far?

Very satisfactory

Satisfactory

Not satisfactory

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

PLEASE INSERT YOUR ANSWER HERE: As outlined above, there are limited levels of engagement and understanding of the Convention. It is not seen as a priority amongst the cultural sector in many Commonwealth countries.

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

18.1 Its strengths?

PLEASE INSERT YOUR ANSWER HERE: Its main strengths are that it seeks to define a space for culture in the international policy environment and to recognise the special nature of culture beyond its economic value.

18.2 Its weaknesses?

PLEASE INSERT YOUR ANSWER HERE: It is not well articulated or explained. It also

enshrines too much power at the nation state level, without taking account of the diversity within countries. It is not supported by a body of work in how to develop high standard cultural policy.

18.3 Its threats?

PLEASE INSERT YOUR ANSWER HERE: The main threats to the Convention would be the lack of engagement with it of some global powers, low levels of ratification in some regions and continuing low status of culture at both national and international levels.

18.4 It's opportunities?

PLEASE INSERT YOUR ANSWER HERE: The main opportunity would seem to be the value being given to culture by the EU in current trade negotiations and the recognition it was given in the recent EU-CARIFORUM EPA, which offers an opportunity to explain the Convention and point to its positive value in trade negotiations.

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

Based on data regarding the supply of cultural goods and services.

Based on data regarding the consumption of cultural goods and services (e.g., market shares).

Based on other approaches.

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

PLEASE INSERT YOUR ANSWER HERE:

20 Does your organization, if applicable, and/or your member states have **new ideas** to implement the UNESCO Convention for the near future?

Yes No

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

PLEASE INSERT YOUR ANSWER HERE: Re-articulation of the Convention as a development/social justice instrument and an active attempt to recruit civil society working on development/social justice issues as champions of the Convention in a new advocacy strategy for the Convention, including promoting the Convention in contexts that do not specifically address culture.

21 Does your organization plan to take **specific actions** to implement the UNESCO Convention in the near future?

() Yes () No

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

PLEASE INSERT YOUR ANSWER HERE: The Foundation is currently developing its new workplan. It is likely that further work with civil society to encourage advocacy around the Convention will form part of its workplan.

22 Does your organization expect **specific actions** from certain countries from other regional organizations and/or from the UNESCO in order to implement the UNESCO Convention in the near future?

(X) Yes () No

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

PLEASE INSERT YOUR ANSWER HERE:

23 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 region, please state them here:

PLEASE INSERT YOUR ANSWER HERE:

D Identification of respondent to this questionnaire

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