

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 Carribean 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: **March 18, 2007**

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%

() Between 50% and 75%

(X) 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

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?

() Yes (X) No

If "Yes", please list these organizations:

PLEASE INSERT YOUR ANSWER HERE:

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
- 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 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: [The French Coalition benefits from financial support of the French Government. However, the French Coalition freely decides on the actions to be undertaken. There are no representatives of the government in the Coalition's BOD. However, for some international activities, the Coalition looks for coordination with the government to ensure the efficiency of its actions.](#)

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

- 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?

- 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 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: *As the members of the Coalition are already independent from private corporations that have a dominant position in the market of cultural goods and services in France, the French Coalition is protected from such influence.*

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?

Yes No

If "Yes", please list these organizations:

PLEASE INSERT YOUR ANSWER HERE:

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

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: *In 2008, the French Coalition published a document on the various cultural policies existing in all creation sectors. The document "Cultural policies in France" can be downloaded from our website : http://www.coalitionfrancaise.org/actus/doc/brochure_coal_eng0509.pdf*

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 () 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:

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: [the implementation of the UNESCO Convention into French law did not lead to the adoption of specific measures. As it appears from our publication "cultural policies in France", a vast array of cultural policies already existed in France in all cultural sectors. As for the implementation decree of the Convention, it contains no specific provisions on these articles.](#)

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: [it is not regulated. No specific provision.](#)

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: [France already complied with human rights obligations before implementing the UNESCO Convention. There is no specific provision in the law implementing the 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.*

[- Law 2006-792 of July 5, 2006 authorizing the signature by France of the Convention](#)

- *Implementation decree: Decree n°2007-376 of March 20, 2007*
Both instruments can be found at: www.legifrance.gouv.fr

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 (probably not) 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 ()

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: [France has contributed to the International Fund on Cultural Diversity on a regular basis \(4 instalments since June 2008\) for a total of almost 447 000 USD. It is the second contributor to the Fund, after Canada. France is a member of the Intergovernmental Committee. It plays an active role in meetings of the IGC and also is a major player in sub-groups of the IGC such as the European and the Francophone groups. In addition, France is paying a great attention to the use of the Convention by the European institutions and in particular continues to defend the exclusion of cultural and audiovisual market access measures from trade negotiations.](#)

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:

[Before speaking of implementation of the UNESCO Convention, one should consider](#)

the adoption of the operational guidelines. The IGC has not finalized this step yet, which we consider being a major problem.

Secondly, the question of articles 20 and 21 (relation of the Convention with other international instruments) has not been clarified.

Thirdly, the signatory countries should all contribute to the International Fund on Cultural diversity, on a regular basis. The Fund almost reaches 2 M USD, which is far from being sufficient.

In our view, another major problem is the alleged use of the Convention by the European Commission to **systematically** offer cultural cooperation protocols (CCP) attached to trade agreements to its economic partners, notwithstanding the level of development of the cultural sector of a said country. As a consequence, it has contrary effects and may put cultural diversity at stake. The French Coalition therefore holds serious reservations about such protocols for the following reasons :

- Being attached to a trade agreement, the CCP becomes a bargaining chip to secure gains in other economic sectors.
- Trade negotiators are not the appropriate specialists to handle discussions on CCP.
- Neither an assessment of the cultural situation of the economic partner (cultural policies, level of development of the cultural sector) nor an assessment of the cultural links between the European Union and said country has been undertaken before offering and negotiating CCP.
- The ratification of the Convention UNESCO by the economic partner before the implementation/ negotiation of the CCP was not part of the original conditions asked for by the European Commission.
- CCP which provides for preferential treatment to developed countries (South Korea CCP for instance) do not respect the spirit of the art.16 of the UNESCO Convention which calls for these measures in order to facilitate cultural exchanges with developing countries.

For these reasons, the French Coalition considers that the negotiation of Cultural cooperation protocols diverts the very spirit of the Convention and has negative effects on cultural diversity.

The French coalition has been invited to participate to a working group set up by the French government on the treatment of cultural and audiovisual products in trade agreements. This working group, composed of professionals and representatives of various French administration services, wrote a document mapping out a global strategy for the treatment of the cultural sector in economic and/or trade agreements between the EU and third countries. This document entitled "Communication by France : For a new European Union cultural external strategy" has been transmitted to the European Commission, the European Parliament and the present and future EU presidencies as well as our European partners (http://www.coalitionfrancaise.org/eng/actus/doc/comm_fr_strat_culturelle_ext_eng.pdf).

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?

The best practices are not specifically related to the implementation of the Convention as, as explained above, a vast array of cultural policies already existed in France in all cultural sectors before the implementation of said Convention. Please refer to our

publication http://www.coalitionfrancaise.org/actus/doc/brochure_coal_eng0509.pdf

Another best practice worth mentioning is Gallica, the French contribution to Europeana. The European model of European digital libraries is based on a stakeholders dialogue, public/ private partnerships, the respect of copyright and business models. The experimentation for integration of in-copyright content within the French branch of the European Digital Library, Gallica, is based on a strong respect of the copyright principle.

In Gallica, the library plays the role of a portal providing direct access to public domain books. For in copyright books, the library redirects users to commercial websites where in copyright books can be searched online and accessed under conditions determined by the publisher and the e-distributor.

Gallica currently provides access to 22.000 e-books in copyright. In designing this project, it was important to maintain the role of libraries and booksellers. A variety of business models and pricing systems are being explored such as: purchase of an e-book for download, rental or subscription services through publishers', libraries' or associated booksellers' websites.

French public authorities established a real public policy based on the allocation of specific financial resources to libraries and publishers. This has helped finance the digitization activities of the French National Library (5.8M€ in 2008) as well as individual digitization of in-copyright books by publishers (1,5M € granted to 60 publishers since 2008). More recently, the French Minister of Culture and the French Secretary of State for Strategic Studies and the Development of the Digital Economy proposed to use the bond that the French government intends to issue soon with a view of boosting the economy in order to finance the accelerated digitisation of the French written cultural heritage in particular out-of-print works.

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

The French Coalition expects an exclusion of cultural discussions from all trade negotiations, i.e. the renunciation by the European Commission on the negotiation of Cultural cooperation protocols attached to trade agreements for the reasons explained in our answer to question 8.

And when separate negotiations (out of trade-related matters) on cultural aspects are taking place, impact studies on local cultural areas/industries and on cooperation between the EU and its partner should be conducted.

Civil society also wants to play an active role in the implementation of the Convention; civil society organisations could for instance usefully contribute to the assessment of the projects submitted to the Fund and can play an active role in increasing the visibility of the Convention.

10.1 in the best case scenario?

R ANSWER HERE:

10.2 in the worst case scenario?

PLEASE INSERT YOUR ANSWER HERE:

10.3 in the most likely scenario?

PLEASE INSERT YOUR ANSWER HERE:

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:

A vast array of cultural policies already exists in France. They must not be called into question in the future on the basis of non-cultural criteria. Cultural cooperation with third countries, particularly from the developing world, should be increased.

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:

Cultural cooperation agreement should be negotiated distinctly from trade agreements by France and Europe. The attachment of cultural agreements to trade agreements should be stopped, so that culture is no longer a bargaining chip for trade-related matters.

Other concrete actions identified by our organization are :

1. to continue the financial support for digitization which created a real impetus among publishers
2. to allow reduced VAT rates for electronic publications. Disparate VAT rates in Europe between electronic and printed books are one of the hindrances for the development of content online. If discrimination between electronic and paper publications continues, it will inevitably have an influence on the newly-born online publishing market and will seriously threaten the EU's stated objective of encouraging Europe to become a centre for e-commerce. VAT rates for online publications should be lowered while ensuring that printed publications are not in danger of losing reduced rates.
3. to encourage public bodies to acquire digital content, in particular educational and scientific works in collaboration with publishers.

The French market of electronic textbook is developing very slowly because of significant barriers, such as the lack of public budget to acquire digital content, the lack of training of teachers and the lack of broadband Internet equipment and maintenance of the infrastructure. At school level, there are 2 licences of electronic textbooks sold for every 1000 paper textbooks sold. The equipment in electronic whiteboards remains modest with 20.000 whiteboards among the 66.000 French

schools in 2009. At higher education level, the budget for material acquisition of university libraries remains dramatically insufficient in comparison with their European and North-American counterparts.

Public authorities should therefore set up appropriate public policies of acquisition of digital educational and scientific content, in partnership with publishers.

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

Limited satisfaction

No satisfaction

No comment

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

PLEASE INSERT YOUR ANSWER HERE:

We consider this question not very relevant on our country's level. In our view, the implementation also has to be considered on a global level and due to the reservations we have detailed above (insufficient contributions to the Fund, existence of cultural protocols attached to trade agreements, implementation of Convention not finalized at UNESCO level), our degree of satisfaction shall be limited.

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

Satisfactory

Not satisfactory

No comment

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

PLEASE INSERT YOUR ANSWER HERE:

Article 11 on the participation of civil society is unique and the Coalition considers this article to be of a great importance and leads to high expectations on the concrete participation of civil society in the implementation of the Convention. The operational guidelines for article 11 are a good step forward in the involvement of civil society in the implementation of the Convention. In the future, we hope these

guidelines can be improved and become more precise on the various roles that members of the civil society could play. For instance, organisations from the civil society could actively participate in the assessment of the projects submitted to the Fund.

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 is the first international instrument which recognizes the specificity of culture and the legitimate right of States to adopt and implement their own cultural policies.](#)

17.2 its weaknesses?

PLEASE INSERT YOUR ANSWER HERE:

The relation of the UNESCO Convention with other international instruments (art. 20 and 21) has not been clarified and there is still a risk that States make commitments in other international – multilateral, regional or bilateral - arenas that may affect their domestic cultural sector.

Moreover, the UNESCO Convention is not fully implemented yet; operational guidelines still have to be finalized.

17.3 its threats?

PLEASE INSERT YOUR ANSWER HERE:

The very spirit of the Convention is being diverted by some States and groups of States that propose to attach cultural cooperation protocols to their trade agreements, thus putting cultural diversity at stake because the cultural protocol becomes a bargaining chip to secure gains in other economic sectors.

17.4 its opportunities?

PLEASE INSERT YOUR ANSWER HERE:

The main opportunity could be the development of cultural cooperation between States and the adoption and implementation of new cultural policies in the States parties to the Convention.

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?

Based on data regarding the supply of cultural goods and services

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

Based on other approaches

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

PLEASE INSERT YOUR ANSWER HERE:

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

Yes No

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

PLEASE INSERT YOUR ANSWER HERE:

The Coalition mainly works on raising awareness on cultural diversity matters, on the Convention and on the development of Coalitions for Cultural diversity abroad. It shall act whenever cultural diversity is endangered.

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 No

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

PLEASE INSERT YOUR ANSWER HERE:

Cf answer to Q 21

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?

() Yes () No

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

PLEASE INSERT YOUR ANSWER HERE:

[Continuous involvement in the defence and strengthening of cultural diversity in France and abroad.](#)

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:

D Identification of respondent to this questionnaire

Name: [Loulergue](#)

Organization: [French Coalition for Cultural Diversity](#)

Position (title) within the organization: [coordinator](#)

Postal address: [11 bis rue Ballu – 75009 Paris](#)

Phone: [+33.1.40.23.45.14](#)

Fax: [+33.1.40.23.45.89](#)

Email: contact@coalitionfrancaise.org

Website: www.coalitionfrancaise.org

Date and place: [Paris, February 8, 2010](#)