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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. 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](http://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?

( x ) Yes ( ) No

If "Yes", please send a request for assistance to [info@germann-avocats.com](mailto:info@germann-avocats.com)

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

PLEASE INSERT YOUR ANSWER HERE: 16.10.2008

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

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: very broad NGO-membership, no govt. reps. Within organization, no financial dependency.

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: very broad NGO-membership, no private corp. reps. within organization, no financial dependency.

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: Swiss Coalition for Cultural Diversity/Swiss Commission for UNESCO: La diversité culturelle – plus qu'un slogan. 2009. [www.diversiteculturelle.ch](http://www.diversiteculturelle.ch)

## **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: Govt. doesn't think that special law is necessary. The duty to protect and promote cultural diversity can already be found in the Constitution (Art. 2).

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:

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:

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:

*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.*

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: We don't see any proactive engagement of our govt. in the areas mentioned above for the time being.

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: The wide-spread thinking that there aren't any real problems that need to be addressed by implementing the Convention.

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: The fact that civil society contributions are not explicitly encouraged but neither discouraged, i.e. art. 11 is kind of working already.

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?

PLEASE INSERT YOUR ANSWER HERE:

- Increased diversity of cultural expressions in all sectors (including media) with respect to production, distribution/dissemination and offer/access of the general public.
- Increased involvement of civil society in all decisions regarding the subject.
- That all legal projects in all political fields are examined for their compatibility with the Convention.

10.2 in the worst case scenario?

PLEASE INSERT YOUR ANSWER HERE: That nothing is done and the Convention put into the drawer.

10.3 in the most likely scenario?

PLEASE INSERT YOUR ANSWER HERE: A mix of the above, depending highly on civil society pressure.

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: Not to implement any other policies that aren't compatible with the principles and goals of the convention.

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: New policy on cultural statistics (non-existing at the moment), clear policy regarding trade negotiations that fully respects provisions of Convention.

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: Mainly not enough respect to the Convention when deliberating/implementing policies in other fields.

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

**PARTLY** 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: Many artists and cultural practitioners still don't really bother, although their number is decreasing.

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: very rapid and broad ratification created great political/symbolic strength.

17.2 its weaknesses?

PLEASE INSERT YOUR ANSWER HERE: Very few binding obligations stand for legally weak instrument.

17.3 its threats?

PLEASE INSERT YOUR ANSWER HERE: Many people haven't yet fully understood the difference between this Convention and the one for the protection of the intangible heritage. Many people are mixing the concepts of "cultural diversity" and "diversity of cultural expressions" which often creates problems when assessing the Convention's real purpose.

17.4 its opportunities?

PLEASE INSERT YOUR ANSWER HERE: To become the basis of a new way to look at cultural issues in politics world-wide.

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: Many artists and cultural practitioners still don't really bother, although their number is decreasing.

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: By creating a new set of indicators for cultural statistics with respect to diversity.

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: see report "Diversité culturelle –plus qu'un slogan" mentioned above.  
We will be working towards a new set of cultural statistics in favor of diversity (see above)

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: see report "Diversité culturelle –plus qu'un slogan" mentioned above.  
We will be working towards a new set of cultural statistics in favor of diversity (see above)

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:

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**

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