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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

Introduction

The Geneva based law firm 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 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 (African Union, Association of Caribbean States, Association of Southeast Asian States, Commonwealth, Council of Europe, European Union, International Organization of the 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 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 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, 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

CIVIL SOCIETY QUESTIONNAIRE

A General questions

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

Yes 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 7 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%

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?

Yes No

Our membership includes the Federation of Entertainment Unions which combines the membership across the creative arts. It should be noted that the term cultural diversity is not always interpreted/operated in the same way as the term "diversity of cultural expressions" implies in the 2005 Convention. Cultural Diversity in the UK has particular connotations/practices and is largely interpreted/implemented through mainstreaming policies in cultural institutions which encourage awareness and proportional representation in gender, ethnic and sexual diversity. There is clearly an overlap but the objectives of the Convention have a wider, national and international focus.

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.

No

If "Yes", please list these organizations:

There are no other organisations which specifically represent the Covention,2005, and diversity of expressions in the precise terms which it is applied. Key organisations that would have cultural diversity agendas would include Visiting Arts; Arts Council of England (independent of Gov); Creative Partnerships; Independent Cinema Office; National Campaign for the Arts

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.

We have raised funds independently. We lead in terms of interpreting the aims of the Convention and promoting them as the government is not proactive. Representatives from the Department of Culture, Media and Sport sometimes attend meetings as observers and are invited to participate in seminars/events

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.

Our members do not thus far include corporate organisations although through the Federation of Entertainment Unions and other craft based member organisations we seek to track corporate interests and act accordingly in the interest of the articles of the convention.

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 not that I am aware of

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:

We are in the process of putting together partners to undertake a "White Book" survey and assessment of the current situation in the UK, similar to that undertaken by the French, Swiss and German Coalitions for Cultural Diversity.

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:

From the Government's point of view the Convention was implemented as there was no need to create new law or adapt existing law.

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?

None

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

There is no specific legislation addressing article 11. The government assumes that it is implicit in the laws it currently operates with regard to culture and the arts.

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

UKCCD does not have the resources to answer this question in its legal detail. You might address yourself to the International Office of the Department for Culture Media and Sport

*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 -probably () No () Confidential

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

It is too early to give details but this would involve a project to support greater collaboration with developing countries in line with articles 14 & 16.

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)?

The only actions which UK government has taken is to sign up to the Convention, to appoint a point of contact (article 28) and to agree to the European Contribution to the Cultural Fund. UK is not intending to contribute individually. There have been no actions taken to promote the Convention (article 10). The Department for International Development which funds the National Commission for Unesco has no strategy to promote the Convention and is very weak in making the link between culture and development. The National Commission of Unesco is only just beginning to build Convention, 2005 into its next strategy documents/ business plan

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?

Current controversy over the future of the BBC and the Digital Economy Bill, drafted jointly by the DCMS (responsible for the Convention) and BIS (department of trade). Monitoring of its articles and implementation with regard to the Convention is necessary.

In general, there is inactivity at Governmental and Unesco National Commission level to identify areas for development and/or be proactive in promoting awareness of 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?

UKCCD Conference Series intended to raise awareness amongst stakeholders. The last in association with the Commonwealth Foundation which has subsequently set up a Culture and Development Group

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?

A programme of activities to alert stakeholders and mainstream the objectives of the organisation into the leading cultural institutions and local government practice
An audit of best cultural practice informed by civil society with recommendations for policy change
Leadership through the strength of our existing institutions – BBC, National Opera, Arts Council of England etc – in developing policy and funding to implement articles 14- 17 of the Convention

10.2 in the worst case scenario?

The continuation of the Government and National Commission's passive, reactive stance towards the Convention and its relegation to secondary status with regard to the World Heritage Convention around which most funding/activity is mobilised. Failure to invite civil society organisations to advise on policy development with regard to the Convention. Withdrawal of support for existing institutions, particularly those working internationally, due to reduction in public sector funding and policies taken in response to the economic crisis.

10.3 in the most likely scenario?

Progressive awareness building amongst stakeholders according to available funds; increased profile of the Convention in UK National Commission business plan; incentivisation through articles of independent cultural institutions to take more proactive interest in mainstreaming objectives of Convention with their own. Whether under Conservative or Labour leadership the delivery of a token assessment of cultural best practice and measures taken when required in 2012.

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

Promotional strategy under Article 10, targeted both at interdepartmental level in government, and at key civil society and cultural institution stakeholders.

Survey of institutions and policies to develop policy to take a more leading role in furthering articles 14 – 17, and building awareness of the role of creative industries in development with regard to the Department of International Development.

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?

We do not have the resources to answer this question in detail. However, we are supporting interventions in relation to the proposed new Digital Economy Bill.

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:

To date, the 2 key agencies responsible for its implementation –Government & National Commission - have failed to prioritise the Convention and offered no resources to UKCCD initiatives, though benefiting from them. There is some evidence that the next 2 years might see a shift from the National Commission's point of view.

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:

Greater financial support from the Cultural Secretariat in Paris is vital

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:

There has been no initiative by government to invite participation. Independent advocacy work, thus far taken solely by the UKCCD, has not been supported with funds to facilitate action. However, key civil servants in the DCMS have been relatively accessible

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:

Few stakeholders are aware of it and without lead from the government are unlikely to prioritise it.

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?

Providing basis for shift in normative frameworks for greater exchange between developed and developing world and with regard to monitoring trade initiatives in terms of their cultural impact. On the basis of citations encouraging a change in understanding of the importance of the creative industries and access to creative expression for development, both national and international

17.2 its weaknesses?

Until articles 20 & 21 are addressed by the Conference of Parties and Intergovernmental Committee, the process of addressing the promotion of and interrelation between this Convention and existing international Treaties cannot advance.

In the case of dispute, the disputes procedure is weak in comparison with that set out, and likely to become operative ,at the WTO where test cases may present themselves in future.

17.3 its threats?

None unless used in contravention of the objectives outlined in the preamble and articles of the Convention

17.4 it opportunities?

The chance for developed countries to take a more proactive role in stimulating greater exchange with the developing world, and to support stronger infrastructure for the creative industries (articles 12 – 17)

The incentive to include cultural agendas in trade priorities

The framework to encourage a shift in the limited economic imperatives which govern strategy for development, and to link the diversity of cultural expressions with essential policy change regarding climate change and the environment (article 13)

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:

It should obviously include data on supply and consumption but should also include qualitative data to measure policy/strategies/awareness/best practice within creative & cultural organisations, local, regional and national government

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:

1. Developing a strategy for the promotion of the Convention (Article 10) and the facilitation of civil society input with adequate resources (Article 11). This might include convening a meeting in 2010 for key stakeholders (from arts, local & national government, cultural institutions, and academia) to inform and consider implementation. It could be played out with regional partners e.g. in Scotland
2. Convening an intersectoral meeting of UK NatCom to build awareness and to consider implementation of Convention
3. Ensure Convention is given intersectoral consideration in the programme for the forthcoming meeting of Nat Coms in London, June 2010
4. Urging Government to meet its immediate obligations e.g. to inform Cultural Secretariat of a point of contact (art 28) and to consider making a contribution to the Cultural Fund now the guidelines are in place (art 18)
5. Supporting Government in preparation of a "White Book" (review of cultural policy and best practice) in key sectors of arts and creative industries as has been done in France, Switzerland & Germany. This to include civil society and develop markers for 2012 report, (Article 9)
6. Building and resourcing an extension of German National Commission U40 Programme which supports and capacitates young people to mobilise in support of the Convention

7. Initiating events to promote May 21st International Day of Cultural Diversity
8. Setting up a Culture and Development group to liaise with the Department for International Development and other partners such as the Commonwealth in advancing policies for development which observe the obligation of greater cultural exchange with the developing world (arts 12 – 16)
9. Recording instances/citations of the Convention in British trade and legal negotiations, and ensuring that key players in Department of Industry,(currently BIS), are aware of provisions of the Convention
10. Urging UK delegation to support greater allocation of resources for this Convention, both to publicise and to support role of civil society

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:

Initiatives to inform stakeholders. Initiatives to gather information on cultural best practice. Advocating implementation of recommendations above. Monitoring UK government and Nat Com compliance with Convention and offering stakeholders specialist consultancy services .

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:

Increased resources to civil society for the promotion of the Convention (article 10) from Unesco National Commission. Inclusion of the Convention at meeting of the Regional National Commissions in London in June. Increased activity from Department of Culture Media and Sport to promote awareness of Convention in other government departments. Progressively, reference to the Convention in strategies of key stakeholders as they are approached and become aware of its existence.

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:

To assist communication, there should be key points of contact on the Convention between national commissions for Unesco.
 The Convention has been groundbreaking in the space given at Intergovernmental Committee level to civil society. Without the expertise of civil society it is impossible for governments to implement this Convention.
 Funding to the Cultural Secretariat should include provision for civil society initiatives around the Convention

An annual conference should be supported, whether regionally or internationally, to share best practice, legal citation and developments with regard to this convention.

D Identification of respondent to this questionnaire

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