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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 and regional organizations, (the ASEAN, the African Union, the Association of Caribbean 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 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.

### **Legal survey**

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

We will attach the replies to this questionnaire to our study 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)**

## **LEGAL QUESTIONNAIRE**

### **A General questions**

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

PLEASE INSERT YOUR ANSWER HERE: **The UNESCO Convention entered into force on 01 August, 2007, by the presidential decree n. 6.177.**

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

Yes  No

The above mentioned provisions are self-executing, since the international treaties that are ratified and approved by Brazilian Congress and enacted by the President, enter into force in the same level as statutes, in accordance with the Brazilian Supreme Court. However, an international treaty concerning human rights, when approved by Congress and enacted by the President, acquires the same status as the constitutional rules.

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

Coalizão Brasileira para a Diversidade Cultural – Brazilian Coalition of Cultural Diversity ([www.diversidadeculturalbrasileira.com](http://www.diversidadeculturalbrasileira.com))

Observatório da Diversidade Cultural

## **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: There is not an implementation law for the Unesco Convention, but there are several laws and regulations that were enacted both before and after the Unesco Convention entered into force, which can implement some of the Convention's objectives.

If the answer is "Yes":

Please reply to the questions as follows that refer to the legal situation as of 1 January 2010, and specify for each of your replies, where applicable, whether the relevant national law existed already prior to the entry into force of the UNESCO Convention in your country:

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

PLEASE INSERT YOUR ANSWER HERE:

Points 4, 7 and 8 of Article 2:

- Brazil permits that public funding destined to support audiovisual productions by national producers also be used for international co-productions, provided that they are in accordance with a co-production international treaty or that at least forty percent of the work's copyright is retained by the Brazilian partner. In this case, the national law existed before the Unesco Convention entered into force (Statute n. 2228/2001).

In addition to that, the Brazilian Government has signed International Cooperation Protocols with several countries (<http://www.cultura.gov.br/site/2010/02/08/atos-bilaterais-assinados-pelo-brasil-no-campo-da-cooperacao-cultural>).

In which concerns the Principle of Equitable Access, Brazilian Government has created a public broadcaster, Brazilian Communication Company, by Statute 11.652/2008 (see comments to item 4.2 below).

- Articles 12 to 17:
- Brazilian government designated the Ministry of Culture as the executive branch responsible for implementing programs and actions to deal with the protection and promotion of cultural diversity. In the structure of the Ministry of Culture, the office responsible for carrying out these matters is the Identity and Diversity Secretary. The actions promoted by this executive branch are focused solely on the national cultural expressions and, therefore, have little, if any, international perspective (See commentary to the Federal Statute 11.653/2008 at item 4.2 below).

Principle of International Solidarity and Cooperation: Brazilian Government has signed International Cooperation Protocols with several countries.

4.2 What **measures** in the sense of articles 6, 7 and 8 of the 2005 UNESCO Convention, including but not limited to measures aimed at protecting and promoting linguistic diversity, were adopted in your country by the implementing national law?

Before the 2005 Unesco Convention entered into force:

- Federal Statute 8313/91: created a governmental program aiming to promote cultural diversity, protect Brazilian cultural expressions, contribute to people's access to cultural activities, stimulate the commercialization and consumption of cultural goods, and protect and encourage artists and creators, by means of:

- - o (a) a Governmental Fund (National Culture Fund): destined for projects by individuals or not-for-profit organizations aiming to promote cultural activity in any kind of artistic expression (Articles 4, 5, 6, 7, and 2 item I);
  - o (b) Fiscal Incentives for the companies that sponsor cultural projects: scholarships for Brazilian and/or foreign resident artists; premiums; courses for professionals working in the cultural sector; production of music, films and other cultural expressions; cultural exhibitions and/or arts festivals and/or presentations and/or shows, in Brazil and abroad, of Brazilian and/or foreign artists; building and providing equipment for Museums, libraries, institutions and other cultural organizations; restorations and conservation of artistic works; protection of folklore, handicraft objects and popular expressions; airline tickets for cultural missions to foreign countries; other cultural activities (Article 3, items I, II, III, IV and V).

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- - Statute 2.228/2001:

- (a) Provides general regulation for audiovisual commercialization and production in Brazil by Brazilian and/or foreign producers;
- (b) Provides fiscal incentives for the production and distribution of Brazilian audiovisual works produced by Brazilians or co-produced with other countries (Articles 39, 43, 44, 45, 47, 48, 50, 52 and 53);
- (c) Establishes a requirement that movie theaters show Brazilian movies on a minimum number of days per year (Article 55);
- (d) Establishes a requirement that home video distributors release a minimum number of Brazilian movies per year (Article 56);
- (e) Establishes that these obligations can be extended to other "audiovisual windows" (Article 57);
- (f) Establishes a requirement that movies produced with fiscal incentives be shown by public broadcasters and TV channels (Article 27);

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- - Federal Statute 8.685/98:

- (a) Provides fiscal incentives for investment in audiovisual productions (Articles 1, 1-A, 3, 3-A);
- (b) Provides tax incentives for foreign distribution companies to co-produce with Brazilian producers (Article 3);

- Federal Statute 8977/1995:

- Establishes general rules for cable TV operators;
- Determines, in article 23, that all cable TV operators must provide a certain number of channels for free viewing produced by: Universities, the governmental branch in charge of cultural and educational affairs, Judiciary power, Legislative power (one for each chamber), and not-for-profit organizations.

- After the 2005 Unesco Convention entered into force:

- Decree n. 3551/2000:

- Creation of a registry of national cultural heritage;

- Federal Statute n. 11.653/2008 (Attached I, Program n. 1355):

- Establishes the federal annual planning for the period of 2008 to 2011 and includes governmental funding for actions regarding cultural diversity. This program is being implemented by the Ministry of Culture and consists of selecting projects proposed by individuals or not for profit institutions and financing some of them. In order to be eligible for this funding the projects must focus on: popular culture; indigenous culture; GBLT initiatives; Gypsy culture; or elderly people. Besides that, in the audiovisual sector, there are several governmental programs supported by budgetary sources. The most important of them is the "Fundo Setorial do Audiovisual" (a public fund for audiovisual production, distribution and commercialization for Brazilian long feature films, independent productions for TV and acquisitions of Brazilian movie's rights for distribution).

- Federal Statute n. 11.652/2008:

- provides general rules for the public broadcasting system and creates a broadcaster for the Federal Government;
- Establish that all public broadcasters shall comply with the production of programs and tv shows that are educative, artistic, culture and informative.

- Establish that all public broadcasters shall stimulate the national culture, the regional production and the independent production (Article, 2, itens III and IV)

Moreover, the Brazilian Government has proposed some legislative drafts in order to modify the Federal Law 8.313/91 (PL 6722/2010) and to create new regulation: Vale Cultura (PL 5.798/2009), which consists of tickets given to the employees for the participation in cultural events; PEC 150 (drafting of a constitutional amendment destining 2% of federal budget, 1,5% of the states budgets and 1% of municipal budgets for culture), PEC 236/2008 (a draft for amending the Constitution in order to establish the right for cultural access as a fundamental right).

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

PLEASE INSERT YOUR ANSWER HERE:

Although Brazil has not enacted rules to implement the 2005 UNESCO Convention, the participation of civil society is established at the Federal Statute n. 8.313/91.

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 national law?

PLEASE INSERT YOUR ANSWER HERE:

The provisions of articles 20 and 21 of the 2005 Unesco Convention are not specifically regulated under the Brazilian legal system.

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



In addition to the Universal Declaration of Human Rights, Brazil has signed the following international treaties on human rights:

*International Covenant on Civil and Political Rights (ICCPR)* – Decree n. 512, July 06, 1992.

*International Covenant on Economic, Social and Cultural Rights (ICESCR)* – Decree n. 591, July 06, 1992 .

*International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* – Decree n. 65.810, December 08, 1969.

*Convention on the Rights of the Child (CRC)* – Decree n. 99.710, November 21, 1990.

*Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* – Decree 4.377, September 13, 2002.

*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* – Decree n. 40, February 15, 1991.

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

5 Does your country intend to ask for a contribution to one or more own projects from the **international fund** for cultural diversity according to article 18 of the UNESCO Convention for the purpose of implementing the UNESCO Convention on the national level?

( ) Yes (X) No

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

n/a

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 (X) No ( )

If "Yes", please describe these special situations, and the measures that your country adopts to redress these situations?

The indigenous culture is considered as a cultural expression at risk in Brazil (according to a recent study, Brazil has 180 languages, and 87% of the indigenous languages are as risk of extinction). The Brazilian government has been addressing this problem by funding civil society initiatives for the preservation of indigenous culture.

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

Brazilian Cultural Ministry and Foreign Affairs Ministry work together regarding the Brazilian participation at the Unesco Convention.

8 How does your country contribute 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)?

Brazil has been reelected to the Intergovernmental Committee of the Unesco Convention. In addition to that, Brazil has promoted international seminars and congresses to exchange experience of cultural policies at the regional level.

### **C Questions on the further implementation of the UNESCO Convention**

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

[www.unesco.org/culture/fr/diversity/convention/3igc/3IGC\\_INF6\\_Points\\_de\\_contact\\_des\\_Parties.pdf](http://www.unesco.org/culture/fr/diversity/convention/3igc/3IGC_INF6_Points_de_contact_des_Parties.pdf)

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

#### **Major problems**

In a legal perspective, Brazil has not enacted a formal rule that gives legal stability to the public policies to foster cultural diversity protection. See my comments about Statute 11.653/08 above.

Brazilian Government believes that the weak presence of popular cultural expressions in the mass communication (specially broadcasters) in Brazil is one of the major problems, although the broadcast activity (radio and TV) is a public concession.

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

**PLEASE INSERT YOUR ANSWER HERE:**

The program "Cultura Viva", which is implemented by the actual Brazilian government according with to the pluriannual planning law for 2008/2011 (see my comments to the item 4.2 above), consists of communitarian cultural initiatives which are funded by the government. This initiative has inspired similar ones in other countries (<http://www.cultura.gov.br/site/2010/02/08/pontos-de-cultura-no-exterior>).

The Identity and Cultural Diversity Secretary, a body of the Brazilian Cultural Ministry, plays an important role in coordinating and implementing cultural diversity governmental policies and programs.

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

11.1 in the best case scenario?

PLEASE INSERT YOUR ANSWER HERE:

International community will recognize the importance of culture and diversity as a development tool and will deter the inclusion of cultural services and goods in the commercial liberalization negotiations.

All nations will respect each country-autonomy for establishing cultural public policies.

Future Brazilian governments will keep fostering public policies for protecting the diversity of Brazilian popular expressions.

11.2 in the worst case scenario?

PLEASE INSERT YOUR ANSWER HERE:

After the conclusion of the Doha round, the next round, about services, will comprise the negotiations for cultural goods and services, such as audiovisual products, which will negatively affect the effectiveness of the 2005 UNESCO Convention.

11.3 in the most likely scenario?

Countries that acts for creating and implementing laws aiming to protect its national cultural diversity will face possible demands at WTO due to the fact that these laws would be contrary to those about commercial liberalization. So, these countries will react forming multilateral alliances and small groups of countries in order strengthen their capacity to achieve theirs common objectives.

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

PLEASE INSERT YOUR ANSWER HERE:

Divulcation of the 2005 UNESCO Convention, making it known by the Brazilian civil society.

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

PLEASE INSERT YOUR ANSWER HERE:

The Brazilian government is working for the passing of laws related to the legislative drafts referred at item 4.2 above.

14 If you have **further comments** on the questions of this survey or **additional information** that is useful for assessing the implementation of the UNESCO Convention in your country, please state them here:

PLEASE INSERT YOUR ANSWER HERE:

These answers were provided by the current Federal Brazilian government in its last year in office. It is not possible to predict whether the public policies implemented by this government will be followed by its successor.

The most consistent action towards cultural diversity seems to be the governmental program of investment in private initiatives, which is established in the annual planning law for the period of 2008-2011 (Lei 11.623). However, this is a temporary law and there is no guarantee that it will contemplate cultural diversity in future periods. Moreover, the criteria by which the Executive branch will select the projects among the ones proposed by civil society are not clearly defined in the law.

**D Identification of respondent to this questionnaire**

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