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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

LEGAL QUESTIONNAIRE

A General questions

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

PLEASE INSERT YOUR ANSWER HERE:

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

() Yes () No

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.

PLEASE INSERT YOUR ANSWER HERE:

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?

(x) Yes (x) No [PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTION in the civil society questionnaire answered by myself]

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:

P PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTION in the civil society questionnaire answered by myself]

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 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 COMPARE ANSWER TO THE IDENTICAL QUESTION in the civil society questionnaire answered by myself / these principles of Article 2 are considered to be guiding principles for Foreign Relations and Cultural Exchange rather than stipulations to be implemented by legislation

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?

PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTION in the civil society questionnaire answered by myself

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

PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTION in the civil society questionnaire answered by myself

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?

No specific regulation in existence; our assessment is that this would rather be an issue of governance and of coherence of government policies in different line-ministries

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**?

PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTION in the civil society questionnaire answered by myself

*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. PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTION in the civil society questionnaire answered by myself*

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:

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 redress these situations?

PLEASE INSERT YOUR ANSWER HERE:

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?

Periodical consultations upon invitation by the Ministry of Foreign Affairs which is the lead ministry for this 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)?

PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTIONS in the civil society questionnaire answered by myself

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

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

PLEASE NOTE that I am the Head of the National Contact point for the UNESCO Convention (Article 9); PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTIONS in the civil society questionnaire answered by myself

10 Which **best practices** related to the implementation of the UNESCO Convention

does your country identify so far?

PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTIONS in the civil society questionnaire answered by myself

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

11.1 in the best case scenario?

PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTIONS in the civil society questionnaire answered by myself

11.2 in the worst case scenario?

PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTIONS in the civil society questionnaire answered by myself

11.3 in the most likely scenario?

PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTIONS in the civil society questionnaire answered by myself

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

PLEASE COMPARE ANSWER TO THE IDENTICAL QUESTIONS in the civil society questionnaire answered by myself

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 COMPARE ANSWER TO THE IDENTICAL QUESTIONS in the civil society questionnaire answered by myself

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 COMPARE ANSWER TO THE IDENTICAL QUESTIONS in the civil society questionnaire answered by myself

D Identification of respondent to this questionnaire

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