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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: **October 16, 2008**

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

() Yes (**X**) 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: The Swiss Coalition for Cultural Diversity, an umbrella organisation that unites professional cultural organisations, non-governmental organisations and influential people. About 80 organisations and influential individuals are members of the Coalition, which was founded on September 28th, 2005. **Coalition suisse pour la diversité culturelle, association faitière qui réunit des organisations professionnelles de la culture, des organisations non gouvernementales et des personnalités. Environ 80 organisations et personnalités sont actuellement membres de la Coalition, constituée le 28 septembre 2005**

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 (**X**) 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:

The Confederation has sufficient legal bases at its disposal to fulfill the duties stemming from the ratification of the Convention.

1) Constitutional mandate (Federal Constitution of the Swiss Confederation of April 18th, 1999, RS 101)

- Art. 2, al. 2 Goal : The Confederation "promotes communal prosperity, sustainable development, internal cohesion and the cultural diversity of the country."

-Art. 63, al. 3 Culture: "In accomplishing its tasks [the Confederation] takes into account the cultural and linguistic diversity of the country."

-Art. 70, al. 3 Languages: "The Confederation and the cantons encourage understanding and exchanges between the linguistic communities."

- Art. 71, al. 2 Film: The Confederation "can legislate to encourage a diverse and high-quality body of cinematographic work."

-Art. 93, al. 2 Radio and television: "Radio and television contribute to cultural creation and development, to the free formation of opinion and entertainment. They take the particularities of the country and the needs of the cantons into account. They represent events in good faith and reflect diverse opinions equally."

-Concerning the principle of cultural diversity, we again note the prohibition on discrimination (Art. 8, al. 2, Cst.), the guarantee of political rights (art. 32 Cst.) and the regulation of their exercise (art. 39 Cst.). All these constitutional provisions oblige the Confederation to take the principle of cultural diversity fairly into account, not only in cultural policies, but also in the regulation of other domains.

2) Legislative measures

-The federal law of December 11th, 2009 on the promotion of culture (cf. p. ex. Art. 3 Goals: "The promotion of culture by the Confederation has the goals of: a. reinforcing the cohesion and cultural diversity of Switzerland")

-The federal law of December 14th, 2001 on culture and cinematographic production (cf. p. ex. Art. 1 Goal: "The present law has the goal of promoting cultural diversity and the quality of the cinematographic supply as well as the creation of films and to develop the cinematographic culture"; art. 4 Diversity and quality of the cinematographic supply: "The Confederation can, to promote the cultural and linguistic diversity and quality of the cinematographic supply, allocate funds or provide other forms of support, in particular in the distribution sector, in public screenings and distribution.")

-Federal law of March 24th, 2006 on radio and television

La Confédération dispose des bases légales suffisantes pour

s'acquitter des obligations découlant de la ratification de la Convention.

1) Mandat constitutionnel (Constitution fédérale de la Confédération suisse du 18 avril 1999, RS 101)

- **Art. 2, al. 2 But : La Confédération « favorise la prospérité commune, le développement durable, la cohésion interne et la diversité culturelle du pays. »**
- **Art. 63, al. 3 Culture : « Dans l'accomplissement de ses tâches, [la Confédération] tient compte de la diversité culturelle et linguistique du pays. »**
- **Art. 70, al. 3 Langues : «La Confédération et les cantons encouragent la compréhension et les échanges entre les communautés linguistiques. ».**
- **Art. 71, al. 2 Cinéma : La Confédération « peut légiférer pour encourager une offre d'oeuvres cinématographiques variée et de qualité ».**
- **Art. 93, al. 2 Radio et télévision : « La radio et la télévision contribuent à la formation et au développement culturel, à la libre formation de l'opinion et au divertissement. Elles prennent en considération les particularités du pays et les besoins des cantons. Elles présentent les événements de manière fidèle et reflètent équitablement la diversité des opinions ».**
- **Concernant le principe de la diversité culturelle, on notera encore l'interdiction de discriminer (art. 8, al. 2, Cst.), la garantie des droits politiques (art. 34 Cst.) et la réglementation de leur exercice (art. 39 Cst.). Toutes ces dispositions constitutionnelles obligent la Confédération à tenir compte équitablement du principe de la diversité culturelle non seulement dans sa politique culturelle, mais aussi dans la régulation d'autres domaines.**

2) Mesures législatives

- **Loi fédérale du 11 décembre 2009 sur l'encouragement de la culture (cf. p.ex. art. 3 Buts : « L'encouragement de la culture par la Confédération a pour buts: a. de renforcer la cohésion et la diversité culturelle de la Suisse »)**
- **Loi fédérale du 14 décembre 2001 sur la culture et la production cinématographiques (cf. p.ex. art. 1 But : « La présente loi a pour but de promouvoir la diversité et la qualité de l'offre cinématographique ainsi que la création cinématographique et de développer la culture cinématographique » ; art. 4 Diversité et qualité de l'offre cinématographique : « La Confédération peut, pour promouvoir la diversité culturelle et linguistique ainsi que la qualité de l'offre cinématographique, allouer des aides**

financières ou fournir d'autres formes de soutien, en particulier dans les secteurs de la distribution, de la projection publique et de la diffusion. »)

- **Loi fédérale du 24 mars 2006 sur la radio et la télévision**

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:

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 INSERT YOUR ANSWER HERE:

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:

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:

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 INSERT YOUR ANSWER HERE:

*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:

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?

PLEASE INSERT YOUR ANSWER HERE:

-Consultation procedures for offices and departments: During consultations with offices, the office in charge of a proposing a project to the Government submits it to the relevant services (federal offices, the general secretariat, the federal Chancellorship). It takes into account their advice before forwarding the proposal to the department to be signed. The consultation with offices and departments serves to: assure adequate preparations have been made before decisions are taken by the Government; permit recourse to specialists knowledge of different services; permit the elimination of

eventual differences of opinion from within the Executive. In other words, the two procedures serve to coordinate the acts of the administration, on the one hand, and those of the Government, on the other.

- Accompanying group "Services": The multilateral negotiations that are at the heart of the GATS and the bilateral negotiations of free trade agreements are conducted by the Federal Department of Economic Affairs (represented by the SECO). They are organized by an interdepartmental structure, bringing together all the implicated offices and services of the Confederation, including the Federal Office of Culture. The Cantons are also represented. This accompanying group prepares the Swiss stance and participates in negotiations.

-Pentapartite: The Department of Foreign Affairs ensures the coordination of active partners in cultural relations with the Swiss and abroad through the working group named Pentapartite. Notably, amongst the members is the Director of Development and Collaboration, the agency that encourages local cultural diversity as part of development cooperation.

- **Procédure de consultation des offices et des départements :**

Au cours de la consultation des offices, l'office chargé d'un projet de proposition au Gouvernement le soumet aux services intéressés (offices fédéraux, secrétariats généraux, Chancellerie fédérale). Il prend en compte leurs avis avant d'adresser la proposition au département pour signature. La consultation des offices et des départements sert à : assurer une préparation adéquate des décisions à prendre par le Gouvernement; permettre de recourir aux connaissances des spécialistes des différents services ; permettre d'éliminer d'éventuelles divergences de vue au sein de l'Exécutif. En d'autres termes, les deux procédures servent à coordonner l'action de l'administration, d'une part, et celle du gouvernement, d'autre part.

- **Groupe d'accompagnement « Services » : Les négociations multilatérales au sein du GATS et les négociations bilatérales d'accords de libre-échange sont conduites par le Département fédéral de l'économie (représenté par le SECO). Elles sont organisées selon une structure interdépartementale, regroupant tous les offices et services concernés de la Confédération, ci-inclus l'Office fédéral de la culture. Les Cantons y sont également représentés. Ce groupe d'accompagnement prépare la position suisse et participe à la négociation.**

- **Pentapartite : Le Département des Affaires Etrangères assure la coordination entre les partenaires actifs dans les relations culturelles de la Suisse avec l'étranger par le biais du groupe de travail appelé Pentapartite. Parmi les membres figure notamment la Direction du développement et de la collaboration, agence qui encourage la diversité des cultures locales comme un élément de la coopération au développement.**

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 INSERT YOUR ANSWER HERE:

- Coordination from within the International Network on Cultural Policy (the INCP is an informal international forum where national ministers responsible for culture can explore and exchange views on new and emerging cultural policy issues and to develop strategies to promote cultural diversity)
- Coordination of the Swiss within the Francophone group of UNESCO
- Collaboration between the Swiss Commission for UNESCO and other National UNESCO Commissions within the Germanophone countries ("Vierer-Ausschuss")
- Ad hoc cooperation between the Swiss Commission for UNESCO with other European National UNESCO Commissions
- **Coordination au sein du Réseau international pour la politique culturelle (le RIPC étant une tribune internationale informelle où les ministres nationaux responsables de la culture explorent et échangent des idées sur les nouveaux enjeux en matière de politique culturelle et élaborer des stratégies de promotion de la diversité culturelle)**
- **Coordination de la Suisse au sein du groupe francophone à l'UNESCO**
- **Collaboration de la Commission suisse pour l'UNESCO avec les autres Commissions Nationales UNESCO entre les pays germanophones (« Vierer-Ausschuss »)**
- **Coopération ad hoc de la Commission suisse pour l'UNESCO avec les autres Commissions Nationales UNESCO européennes.**

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 INSERT YOUR ANSWER HERE: Concerning question 9: we don't see any major obstacles in implementing the convention in Switzerland.

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

PLEASE INSERT YOUR ANSWER HERE:

-Project "Cultural diversity – More than a Slogan"
-Worried that cultural diversity would remain merely a slogan, the Swiss Commission for UNESCO and the Swiss Coalition for Cultural Diversity invited sixty actors from civil society to review the state of affairs in different cultural domains and to make proposals for the future.

The results of their work and their recommendations led to, one year after the Swiss Convention entered into force, a presentation of the report "Cultural Diversity – More than a Slogan", which proposes a series of measures for a Swiss cultural policy on cultural diversity.

The project is noted in the key layout of the Convention on the active role of civil society (art. 11). It was financed principally by the Federal Office for Culture.

<http://www.diveriteculturelle.ch/visio.php?fr,0>

Projet « La diversité culturelle – plus qu'un slogan »

Soucieuses que la diversité culturelle ne reste pas qu'un slogan, la Commission suisse pour l'UNESCO et la Coalition suisse pour la diversité culturelle ont invité une soixantaine d'acteurs de la société civile à dresser un état des lieux dans les différents domaines de la culture et à faire des propositions pour l'avenir.

Les résultats de leurs travaux et leurs recommandations ont abouti, une année après l'entrée en vigueur de la Convention en Suisse, dans la présentation du rapport « La diversité culturelle – plus qu'un slogan » qui propose une série de mesures pour une politique culturelle suisse de la diversité culturelle.

Le projet s'inscrit dans la disposition clé de la Convention sur le rôle actif de la société civile (art. 11). Il a été financé principalement par l'Office fédéral de la culture.

<http://www.diversiteculturelle.ch/visio.php?fr,0>

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:

We confirm that our office does not wish to comment on question 11.1/2/3.

11.2 in the worst case scenario?

PLEASE INSERT YOUR ANSWER HERE: –

11.3 in the most likely scenario?

PLEASE INSERT YOUR ANSWER HERE: –

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:

The importance and the clout of the Convention in international legal relations will depend on the number of states that ratify it. In other words, the more states there are that ratify it, the more likely it is that the goals of the Convention and the measures taken to achieve them will be legitimized. From this perspective, the mobilization of countries in order to accelerate ratification of the Convention has to be a priority in the implementation of the Convention.

L'importance et le poids de la Convention dans les relations juridiques internationales dépendent du nombre de ratifications qui auront été réunies. En d'autres termes, plus le nombre de ratifications ne sera élevé, plus les objectifs de la Convention et les mesures prises pour les atteindre se trouveront légitimés. Dans cette optique, la mobilisation des pays afin d'accélérer le nombre de ratifications de la Convention doit être une priorité dans la mise en œuvre de la Convention.

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 ratification of the Convention implies, in the first place, that cultural policies are recognized as an essential task and a priority of the state. The

Swiss Constitution accords a privileged place to cultural diversity (see answer to question 4).

The Federal Office for Culture is committed to developing an expansive Swiss cultural policy, integrating protection and promotion of the diversity of cultural expression. It wants to be a guarantor so that the promotion of culture is present in all regions of the country, its concepts speak to all generations and social groups, measures concerning cultural creation occur in all genres and disciplines and down the entire production line.

The Federal Office for Culture interprets the UNESCO Convention as a global mandate for the promotion of diversity in the spirit of openness and exchange. By running and supporting museums, collections, libraries and archives, the Federal Office for Culture intends to safeguard and make known the Swiss cultural heritage. Through these measures that favour the promotion of artistic and cinematographic endeavours, the Federal Office for Culture supports new artistic currents. Its new basic law (Federal law on the promotion of culture) hinges on the principle of cultural diversity.

La ratification de la Convention implique, en premier lieu, que la politique culturelle soit reconnue comme une tâche primordiale et prioritaire de l'Etat. La Constitution suisse accorde une place privilégié à la diversité culturelle (voir réponse é la question 4).

L'Office fédéral de la culture s'engage pour développer une politique culturelle suisse d'envergure, intégrant la protection et la promotion de la diversité des expressions culturelles. Il se veut être un garant pour que la promotion de la culture soit présente dans toutes les régions du pays, que ses concepts s'adressent à toutes les générations et couches sociales, que ses mesures concernent la création culturelles dans tous les genres et disciplines et sur toute la chaîne de production.

L'OFC comprend la convention de l'UNESCO comme un mandat global de promotion de la diversité dans un esprit d'ouverture et d'échange. En gérant et soutenant des musées, des collections, des bibliothèques et des archives, l'OFC entend sauvegarder et faire connaître le patrimoine culturel suisse. Par ses mesures en faveur de la promotion artistique et cinématographique, l'OFC soutient les nouveaux courants artistiques. Sa nouvelle loi de base (loi fédérale sur l'encouragement de la culture) s'articule autour du principe de la diversité culturelle

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: –

D Identification of respondent to this questionnaire

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