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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 organizations. In addition, we shall interview representatives of international organizations that are relevant for the implementation of the UNESCO Convention (UNESCO, WTO and WIPO).

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 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 areas. We will obtain rich data that 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.

Survey on regional organizations

This questionnaire will inform us about the existing and desirable implementation of the UNESCO Convention from the perspective of regional organizations. For this purpose, we invite the ASEAN, the African Union, the Association of Caribbean States, the Commonwealth, the International Organisation of Francophonie, the Council of Europe and the European Union to reply to our survey. The sample of regional organizations shall reflect geographical, economic and political diversity. The objective of this questionnaire is to clarify the perception and evaluation by representatives of regional organizations of the achievements of the UNESCO Convention in their respective territories. The main goal of this survey, beyond an inventory of the current legal and policy related situation, shall reside in exploring emerging best practices to implement the UNESCO Convention from the experience of the selected regional organizations.

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

QUESTIONNAIRE FOR REGIONAL ORGANIZATIONS

A General questions

1 Please list the countries that are members of your organization and that ratified the UNESCO Convention as of 1 January 2010:

PLEASE INSERT YOUR ANSWER HERE: Of the 25 Member States that comprise the Association of Caribbean States, only Grenada, Guatemala, Nicaragua, Cuba, Jamaica, St. Lucia, Panama and Mexico have ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, while St. Vincent and the Grenadines, the Dominican Republic, Guyana and Barbados have submitted instruments of accession.

2 To what extent is your organization **legally competent** to deal with cultural policies?

PLEASE INSERT YOUR ANSWER HERE: Under Article XVI Paragraph I of the Convention Establishing the Association of Caribbean States, the Association of Caribbean States has full international legal personality to carry out the functions of the International Organization. The Organization's key focal areas are in trade, transport, Sustainable Tourism and Natural Disasters. This means that the organization is legally competent or it only has legal capacity to act in respect of the key areas relating to trade, transport, sustainable tourism and Natural Disasters under the Convention and as such it is not legally competent to deal with cultural policies.

3 Does your organization influence in practice the **cultural policies** of its member states?

No

If the answer is "Yes", please describe this influence.

PLEASE INSERT YOUR ANSWER HERE:

B Questions on the implementation of the UNESCO Convention so far

For the purpose of this questionnaire, "regional law" includes regional legislation, regulations, administrative practice and case law as well as policy statements and guidelines that entered into force before or after the entry into force of the UNESCO Convention in your country.

4 Does your country have regional law implementing the UNESCO Convention as of 1 January 2010?

No

If the answer is "No", please explain the absence of regional law implementing the UNESCO Convention and how this treaty is implemented in your jurisdiction as of 1 January 2010:

PLEASE INSERT YOUR ANSWER HERE: While Trinidad and Tobago does not have regional law implementing the UNESCO Convention because Trinidad and Tobago has not ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the Association of the Caribbean States as an International Regional Organization has a Draft Cooperation Agreement between the Association of Caribbean States and UNESCO for the promotion and preservation of the Diversity of Cultural Expression. The Agreement is at best a draft agreement and has not been ratified by the Member States of the ACS because of the fact that it was recognized that the objectives of the UNESCO Convention did not correlate to the functions and objectives of the ACS except in the area of linguistics or language learning.

If the answer is "Yes":

Please reply to the questions below, which refer to the legal situation as of 1 January 2010, and specify for each of your replies, where applicable, whether the relevant regional law existed prior to the entry into force of the UNESCO Convention in your jurisdiction:

4.1 How does your organization 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 regional law?

PLEASE INSERT YOUR ANSWER HERE: Again the Association of Caribbean States has a Draft Cooperation Agreement existing between itself and the UNESCO which has not been ratified as yet by the Member States of the Association.

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 jurisdiction by the implementing regional law?

PLEASE INSERT YOUR ANSWER HERE: In Trinidad and Tobago under the University of the West Indies there exists a Centre for Languages and Language Learning, the Government through the Embassy of Venezuela has also encouraged the learning of Spanish as a second language in Trinidad and Tobago. There is also the Alliance Française which encourages the Learning of the French Language. Quite apart from the initiative of the government to encourage linguistic diversity, the Association of Caribbean States (ACS) as an International Regional Organization has also taken the initiative to promote the learning of the languages of the ACS English, Spanish and French. Under Agreement 12/07 of the 12th Ordinary Meeting of the Ministerial Council of the ACS, there is an Agreement Reaffirming support to establish the Centre for the Promotion of Language and Culture and to facilitate language learning

initiatives. In the recent Ministerial Council Meeting concluded in Cartagena of the Republic of Colombia Under Agreement 10/10 it was agreed that the Government of the Republic of Panama would host the Headquarters of the Centre for the Promotion of Languages and Culture of the Greater Caribbean (CPLC) following the signing of the Memorandum of Understanding between the ACS Secretariat and the Government of the Republic of Panama that was held on August 6th 2008.

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

PLEASE INSERT YOUR ANSWER HERE: The Government of the Republic of Trinidad and Tobago has not as yet ratified the UNESCO Convention however it has encouraged the members of civil society to show case aspects of the culture of Trinidad and Tobago by hosting various Cultural Shows, this is especially true during the Carnival Season since Carnival is a large income generator for the country and particularly for its citizens especially in the areas of costuming, the show casing of the musical talent of Soca and Calypso artistes and the national instrument of Trinidad and Tobago, the pan.

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 regional law?

PLEASE INSERT YOUR ANSWER HERE: Again Trinidad and Tobago has not ratified the UNESCO convention and as such Articles 20 and 21 of the Convention would not be applicable to this jurisdiction, however the Association of Caribbean States (ACS) as an International Regional Organization did take steps to incorporate the terms of the Convention having regard to Articles 20-21 of the 2005 Convention by actually formulating a Draft Corporation Agreement between the ACS and the UNESCO, however again as indicated earlier on in this questionnaire, it was realized that the functions and objectives of the ACS and the UNESCO do not really correlate except for the promotion of linguistic diversity and as such the Agreement has remained a Draft Agreement at best, and it has not been signed or ratified by the various Member States of the ACS. Also the majority of States of the ACS have not ratified the Convention as yet and it is uncertain whether they intend to do so or not.

4.5 How does your organization 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: This question is not Applicable for the reasons already stated above.

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

5 Does your organization intend to ask for a contribution to one or more of your 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

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

PLEASE INSERT YOUR ANSWER HERE: For the Centre for the Promotion of Languages and Culture of the Greater Caribbean in Panama this project can be viewed as an attempt by the Association to promote the Cultural diversity of the ACS Membership.

6 Is one or more member states of your organization 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 organization, if applicable, and/or its member states adopt to redress these situations?

PLEASE INSERT YOUR ANSWER HERE:

7 What **institutional measures**, if any, does your organization, if applicable, take to facilitate dialogue and coordinate action between its culture and trade agencies and its other relevant agencies (e.g. its foreign affairs agency or like executive branches) on the regional level in order to meet the objectives of the UNESCO Convention?

N/A

8 How do you assess your member states' contribution to meet the objectives of the UNESCO Convention on the **regional and international levels** (e.g. coordination and collaboration with other regional organizations and international 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: No comment.

C Questions on the further implementation of the UNESCO Convention

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

PLEASE INSERT YOUR ANSWER HERE: As stated earlier on in this questionnaire, one of the major problems of the ACS in implementing the UNESCO Convention is being able to reconcile or coalesce the functions and objectives of the ACS with that of the UNESCO. The ACS is really an organization which focuses on the key focal areas of trade, transport, tourism and natural disasters as opposed to that of promoting cultural expressions, nevertheless there has been some attempt to preserve linguistic

diversity and culture through the creation of the Centre for the Promotion of Languages and Culture of the Greater Caribbean.

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

PLEASE INSERT YOUR ANSWER HERE: The practice of promoting linguistic diversity.

11 What are your organization's **expectations** regarding the further implementation of the UNESCO Convention in your member states?

11.1 in the best case scenario?

PLEASE INSERT YOUR ANSWER HERE: Again since there is no real correlation between the functions or objectives of the ACS and UNESCO except in the area of linguistic expression and since not all the ACS states have ratified this Convention, it is doubtful whether the UNESCO convention can be implemented by the ACS except in the area of linguistics.

11.2 in the worst case scenario?

PLEASE INSERT YOUR ANSWER HERE:N/A

11.3 in the most likely scenario?

PLEASE INSERT YOUR ANSWER HERE:N/A

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

PLEASE INSERT YOUR ANSWER HERE: It is doubtful whether the Convention will be implemented by the organization since there was an attempt to do so in the past which was unfruitful. However should the organization implement the Convention it would have to focus on the key areas of linguistics to promote and preserve cultural expressions.

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

PLEASE INSERT YOUR ANSWER HERE: As stated earlier there is a draft Corporation agreement which was already drafted by the ACS to implement the UNESCO Convention at the international regional level; however this draft agreement was not ratified by all the Member States of the ACS. Any concrete measure that would need to be taken in terms of legal and policy measures to implement the convention would be to get the States to ratify this Corporation agreement.

14 What is your organization's **degree of satisfaction** regarding the implementation of the UNESCO Convention by your member states as of 1 January 2010?

No Comment

If your answer is "Limited satisfaction" or "No satisfaction", please explain:

PLEASE INSERT YOUR ANSWER HERE:

15 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?

No Comment

If your answer is "Not satisfactory", please summarize your critique:

PLEASE INSERT YOUR ANSWER HERE:

16 From the perspective of your organization, how do you evaluate the **quality of the collaboration between civil society and your organization** aiming at the implementation of the UNESCO Convention so far?

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:

17 From the perspective of your organization, how do you evaluate the **degree of the cultural stakeholders' interest** in your jurisdiction in contributing to the implementation of the UNESCO Convention so far?

Not satisfactory

If your answer is "Not satisfactory", please summarize your critique and indicate how this interest could be improved:

PLEASE INSERT YOUR ANSWER HERE: Since the organization does not really focus on cultural expression as one of its key focal areas, the stake holder's interest in preservation of cultural expression is miniscule except for the area of linguistic expression which can be viewed as an attempt to show case the culture of the Greater Caribbean.

18 From the perspective of your organization, how do you assess the **quality of the UNESCO Convention** as a policy instrument in terms of?

18.1 Its strengths?

PLEASE INSERT YOUR ANSWER HERE: As a policy instrument, the Convention's strength lies in the fact that it seeks to promote an area which most of the developing states of the region of the Greater Caribbean can identify since they each share a common history, identity and heritage and preservation of that cultural identity is something with which most of the Caribbean states can easily identify since most of those states depend on their cultural expressions and diversity to generate their economic and social well being, particularly where most of those states are largely dependent on Tourism to generate their economy.

18.2 Its weaknesses?

PLEASE INSERT YOUR ANSWER HERE: As with any other international legal instrument, the UNESCO Convention is only as strong as the force which it is given. This means that if the Convention is not ratified nor is it incorporated into national law, it is without any legal effect and therefore would be useless. In Trinidad and Tobago the Convention is yet to be ratified and incorporated into our legislation at the national level in order to have any legal effect or force. This is therefore a major impediment to implementing the objectives of the Convention and as such is a weakness of the Convention itself.

18.3 Its threats?

PLEASE INSERT YOUR ANSWER HERE: Again one possible threat to the convention would be again where member states have not incorporated the Convention into their municipal law to give it any legal or binding effect. The obvious consequences of this is that the Convention would be without any legal effect and international organizations such as the ACS would not have any legal capacity to carry out the objectives of the Convention.

18.4 It's opportunities?

PLEASE INSERT YOUR ANSWER HERE: The opportunities would certainly come from the promotion of cultural diversity but again this can only be effective if states have not only ratified the convention but have taken the steps to incorporate it in their municipal law.

19 From the perspective of your organization, how should the **degree of cultural diversity** according to the UNESCO Convention be measured in your jurisdiction?

No Comment

If your answer is "Based on other approaches", please explain:

PLEASE INSERT YOUR ANSWER HERE: No Comment.

20 Does your organization, if applicable, and/or your member states have **new ideas**

to implement the UNESCO Convention for the near future?

No

If your answer is "Yes", please summarize these new ideas:

PLEASE INSERT YOUR ANSWER HERE:

21 Does your organization plan to take **specific actions** to implement the UNESCO Convention in the near future?

() Yes () No

If your answer is "Yes", please summarize the action plan:

PLEASE INSERT YOUR ANSWER HERE:

22 Does your organization expect **specific actions** from certain countries from other regional organizations and/or from the UNESCO in order to implement the UNESCO Convention in the near future?

() Yes () No

If your answer is "Yes", please summarize these expectations:

PLEASE INSERT YOUR ANSWER HERE:

23 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 region, please state them here:

PLEASE INSERT YOUR ANSWER HERE:

D Identification of respondent to this questionnaire

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