

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:

Romania 20/07/2006
Finland 18/12/2006
Austria 18/12/2006
France 18/12/2006
Spain 18/12/2006
Sweden 18/12/2006
Denmark 18/12/2006
Slovenia 18/12/2006
Estonia 18/12/2006
Slovakia 18/12/2006
Luxembourg 18/12/2006
Lithuania 18/12/2006
Malta 18/12/2006
Bulgaria 18/12/2006
Cyprus 19/12/2006
Ireland 22/12/2006
Greece 03/01/2007
Italy 19/02/2007
Germany 12/03/2007
Portugal 16/03/2007
Latvia 06/07/2007
Poland 17/08/2007
United Kingdom of Great Britain and Northern Ireland 07/12/2007
Hungary 09/05/2008
The Netherlands 09/10/2009

European Community 18/12/2006

It has to be noted that the ratification process is underway and still ongoing in the remaining EU Member States, i.e. Belgium and the Czech Republic.

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

See ANNEX 1(b) of the Council Decision on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 11 May 2006, "DECLARATION OF THE EUROPEAN COMMUNITY IN APPLICATION OF ARTICLE 27(3)(C) OF THE CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS".

<http://ec.europa.eu/culture/portal/action/diversity/pdf/st08668.EN06.pdf>

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

() Yes

Because of their cross-cutting nature, cultural policies of the EU Member States can be affected by different European Community¹ policies, such as e.g. internal market, competition or taxation.

In some relevant sectors, certain aspects of cultural policies are coordinated at Community level through specific regulations, such as in the case of audiovisual policies, with the Audiovisual Media Services Directive (see point 4.1.).

Furthermore, the European Commission² launched the European Agenda for Culture in 2007, with the Communication from the Commission on "*A European Agenda for culture in a globalizing world*" (May 2007) - the first comprehensive policy document on culture at EU level.

The Agenda and its working methods, in particular the work undertaken by the experts working groups chaired by EU Member States, linked to the five priority areas agreed by the Council of Ministers³ (see question 4), create a framework at EU level for addressing policy recommendations in the area of cultural policies, which have a direct consequence on the formulation, conduct and development national policies of the Member States.

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?

() Yes

Legal status of the UNESCO Convention in the EC legal order

The UNESCO Convention was approved by the Council on behalf of the Community by means of Decision 2006/515/EC (18/5/2006). The Council decision is based on the procedural legal basis of Article 300(2) and (3) EC⁴. According to paragraph 7 of Article 300 EC, agreements concluded

¹ Hereafter "the Community"

² Hereafter "the Commission"

³ Hereafter "the Council"

⁴ Articles 218 and 4 of the consolidated version of the Treaty on European Union

under the conditions set out in Article 300 EC shall be binding on the institutions of the Community and on the Member States.

The UNESCO Convention is thus binding on the Community, and forms part of EC legal order.

The Community is duty-bound to implement the UNESCO Convention when exercising the competences it enjoys in policy areas which are covered by the Convention. According to Annex 1(b) to the Council decision on the conclusion of the Convention (the Community's declaration of competence), these areas are: the common commercial policy, development cooperation policy, economic, financial and technical cooperation with third countries, free movement of goods, persons, services and capital, competition, and the internal market, including intellectual property. Pursuant to Article 167(4) of the Treaty⁵, the Community also needs to take cultural aspects into account in its action overall in order to respect and promote the diversity of its cultures.

The implementation of the Convention in these areas entails that Community measures need to conform to the Convention.

With respect to Article 167(4) in particular, the Council Decision 2006/515/EC stipulates that 'the UNESCO Convention constitutes a relevant and effective pillar for promoting cultural diversity and cultural exchanges, to which both the Community, as reflected in Article 167(4) of the Treaty, and its Member States attach the greatest importance. Concerned to ensure a broader consideration of cultural diversity in the development of state policies, it could be argued that in effect, the Convention replicates the cultural mainstreaming obligation of Article 167(4) at the international level. From this perspective, it strengthens the need to make more explicit and visible the implementation of Article 167(4).

As far as internal EC policies are concerned, this strengthening of Article 167(4) through the ratification of the Convention by the EC has allowed e.g. the references to the UNESCO Convention in cases related to competition and internal market law and relevant texts since 2007. A few notable examples are quoted in annex to this document.

The European Agenda for Culture, overarching framework for the implementation of the UNESCO Convention at EU level

The Communication on "*A European Agenda for culture in a globalizing world*" (May 2007) was the first comprehensive policy document on culture at EU level. It had three shared strategic objectives:

- cultural diversity and intercultural dialogue,
- culture as a catalyst for creativity and innovation, and
- culture in international relations.

The Agenda triggered a debate on the role of culture for the European integration process. The Agenda was endorsed by the first European Culture Forum in September 2007 and by the Council in November 2007.

⁵ Previously Article 151.4 of the EC Treaty

⁶ http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/educ/94291.pdf
http://ec.europa.eu/culture/our-policy-development/doc/CONS_NATIVE_CS_2009_08749_1_EN.pdf

The Agenda also introduced the Open Method of Coordination (OMC) and a reinforced structured dialogue with civil society.

Five priority areas, articulated around the three objectives of the Agenda, were set by the Council in November 2008 as suitable for the implementation of the OMC. These areas provide the basis for the Work Plan 2008-2010 through which the Agenda for culture becomes operational:

- Improving the conditions for the mobility of artists and other professionals in the cultural field;
- Promoting access to culture, especially through the promotion of cultural heritage, cultural tourism, multilingualism, digitisation, synergies with education (in particular arts education) and greater mobility of collections;
- Developing data, statistics and methodologies in the cultural sector and improving their comparability;
- Maximising the potential of cultural and creative industries, in particular that of Small and Medium Size Enterprises;
- Promoting and implementing the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

In order for Member States to move ahead in these priority areas and deliver concrete results by the end of 2010, four experts' working group have been set up.

- Expert group on mobility of artists and other cultural professionals (Chair: FI)
- Expert group on cultural and creative industries (Co-chairs: NL, PT)
- Expert group on synergies between education and culture (Chair: FR)
- Expert group on mobility of collections (Co-chairs: IT, UK)

Furthermore, an ESSnet (network of national statistical offices) on Cultural statistics has been set up in September 2009 for a period of two years under the auspices of Eurostat. It will work on the refinement of statistical methodologies in the following four fields:

- Framework and definitions of the cultural economy;
- Cultural financing and expenditures;
- Cultural industries; and
- Cultural practices and social aspects.

The culture sector set up two civil society platforms gathering around 40 civil society organisations each:

- Access to culture, and
- Cultural and creative industries.

These platforms complement the existing Platform for Intercultural Europe (ex-"Rainbow Platform") created ahead of the 2008 European Year on Intercultural Dialogue.

The platforms develop policy recommendations to be discussed with the broader culture sector during the European Culture Forums, one of which was held on 29-30 September 2009.

As foreseen in the European Agenda, a progress report will be drafted by the Commission on the basis of voluntary contributions by the Member States. The report is foreseen to be finalised in the

summer 2010 and will provide the basis for a discussion at the Council about priorities for the next Work plan for culture 2011-2013.

The Council also contributes to shaping the EU approach to cultural policies through conclusions dedicated to specific objectives, such as the Council Conclusions on the contribution of the cultural and creative sector to the Lisbon Strategy of May 2007, and the Council Conclusions on culture as a catalyst for creativity and innovation of May 2009⁶.

As far as external policies are concerned, the Council Conclusions on the promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States of November 2008, outline a strategic approach for culture and intercultural dialogue in the context of external relations and set out a number of fundamental principles regarding the role of cultural cooperation and intercultural dialogue in fostering reconciliation, democratisation as well as economic development. The document outlines basic pointers for the implementation of the UNESCO Convention on Cultural Diversity and calls for a follow up of the 2008 European Year of Intercultural Dialogue. It calls on Member States and the European Commission to define comprehensive and consistent approaches by drawing up a European strategy for incorporating culture in external relations as well as specific strategies for regions and countries outside the Union. They give guidelines also with regard to financial instruments and the active involvement of civil society. Finally, the document also specifies that the experience of Member States should be used by encouraging synergies with a view to contributing to the complementarity of the activities undertaken by the Union with those of its Member States and initiating more activities and joint cultural projects at international level. Overall, these Conclusions represent an important step forward in providing both the European Commission as well as Member States with a general framework for implementing the third objective of the European Agenda for culture, dedicated to making culture a vital element of EU's external relations.

In conclusion, the previous considerations point out to the fact that the implementation of the UNESCO Convention within the EU is not a strict legislative activity as such but rather the pursuit of policy developments, both in internal and external policies, which might take the form of legislative action in specific instances.

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?

- "Principle of international solidarity and cooperation"

The EU has an extensive practice of development cooperation with third countries, and is in fact the first provider of development cooperation in the world.

In the cultural area, both the Community and EU Member States have numerous policies and programmes which fund cultural cooperation, capacity building in Developing countries and illustrate the principles of international solidarity and cooperation.

(see more details below under **Implementation of Articles 12 to 17 of the 2005 UNESCO**

Convention)

- “Principle of equitable access”

The EU must "*contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore*" (Article 167 (1)).

This entails ensuring the access to a diversified range of cultural expressions within the European Union, including a diversified range of European cultural expressions.

The EU implements specific measures in the audiovisual sector including support measures aiming at strengthening its competitiveness (MEDIA Programmes), thus also enabling the sector to promote intercultural dialogue and increase its cultural potential, as well as a legal framework for the free circulation of European audiovisual content within the EU (Audiovisual Media Services Directive, see below).

Furthermore, both the structured dialogue with civil society stakeholders (through the platform "access to culture") and the objectives of the European Agenda for Culture seek ways to ensure a better access to culture for all Europeans within the EU.

- “Principle of openness and balance”

The EU market is one of the most open markets in the world, including for cultural goods and services.

Where the EU and/or its Member States have implemented measures regarding the protection and promotion of the diversity of cultural expressions, those measures intend to correct situations of imbalances with the view to achieve more diversity of cultural expressions while ensuring at the same time that the European market remains open for access of other non-European cultural expressions.

This is for example the case of EU audio-visual regulatory framework, lately revisited through the adoption of the Audiovisual Media Services Directive⁷. The latter Directive maintains pre-existing promotion measures for European and independent productions in traditional TV broadcasting and requires Member States to ensure that production of and access to European works is promoted also in on-demand services, while discretion is left to the EU Member States as to the means. For example, on-demand media service providers can be obliged to invest a certain percentage of turnover in European audiovisual production, reserve a certain share of the catalogue for European works, and present European works prominently in catalogues. These measures foster cultural diversity by strengthening the economic basis of Europe's production industries and encouraging the circulation of European works⁸.

⁷ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Text with EEA relevance)

⁸ Additional measures contribute to the promotion of cultural diversity in the new Directive such as modernized TV advertising rules safeguarding the integrity of cinematographic films or clearer product placement rules which should help stimulate sources of funds for audiovisual production in Europe, thereby strengthening Europe's film industry.

- Implementation of Articles 12 to 17 of the 2005 UNESCO Convention

Culture is an important sector of cooperation, both with developed and developing countries. Many programmes and policies focus on international cultural cooperation.

In the following sections, it is intended to provide an overview of cultural cooperation with the specific countries or regions mentioned, while more background information is provided through links referred to in the footnotes. The annex to the 2007 Communication on "*A European Agenda for culture in a globalizing world*" (*Inventory of Community action in the field of culture*) also provides a good overview of policies and programmes in the external field⁹.

- **Article 12**

Cultural cooperation with developed countries and emerging countries takes place within specific frameworks.

Since the adoption of the European Agenda for Culture, a new strategic framework for culture in the EU's external relations is emerging: culture is perceived as a strategic factor of political, social and economic development and not exclusively in terms of isolated cultural events or showcasing.

- Culture and EU enlargement

The main focus of the Commission's political dialogue with and financial assistance of candidate and potential candidate countries (Western Balkan countries and Turkey) is on the so called Copenhagen criteria: political and economic criteria as well as alignment with the 'Community acquis', including in the field of culture¹⁰.

- The "broad neighbourhood" of the EU¹¹

The European Neighbourhood Policy (ENP) was developed in 2004, with the objective of avoiding the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all concerned.

The central elements of the European Neighbourhood Policy are the bilateral [ENP Action Plans](#)

⁹ http://ec.europa.eu/culture/pdf/doc1163_en.pdf

¹⁰ http://ec.europa.eu/culture/our-policy-development/doc1743_en.htm

¹¹ http://ec.europa.eu/culture/our-policy-development/doc1745_en.htm

¹² http://ec.europa.eu/culture/our-policy-development/doc1747_en.htm

¹³ [Bilateral Cultural Cooperation and Structured Policy Dialogue with China](#), European Union-China Cultural Cooperation, February 2009.

¹⁴ http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145194.pdf

¹⁵ http://ec.europa.eu/culture/our-policy-development/doc1749_en.htm

http://ec.europa.eu/development/policies/9interventionareas/humandev/humandevculture_en.cfm

http://ec.europa.eu/europeaid/what/culture/index_en.htm

¹⁶ http://ec.europa.eu/culture/our-policy-development/doc/cultural_cooperation_protocol.pdf

¹⁷ http://ec.europa.eu/development/policies/9interventionareas/humandev/humandevhealth7_en.cfm

¹⁸ http://ec.europa.eu/europeaid/documents/aap/2009/af_aap_2009_dci-people.pdf

agreed between the EU and each partner. These set out an agenda of political and economic reforms, including also cultural provisions, with short and medium-term priorities.

In the regional dimension, culture and dialogue between cultures have enjoyed an increasing importance in the EuroMed Partnership in recent years. Among the many successful joint actions and cooperation programmes are:

- The EuroMed Audiovisual and the EuroMed Heritage programmes
- The Anna Lindh Foundation contributes to these efforts by its networks which bring people and organizations from both sides of the Mediterranean closer together
- 2008 has been designated as both the [European Year of Intercultural Dialogue](#) and also as the Euro-Mediterranean Year of Intercultural Dialogue.
- 2008 saw the [third meeting of Euro-Med Ministers of Culture](#) in May 2008 in Greece, calling for a for a new Euro-Mediterranean Cultural Strategy
- The launching of the Barcelona Process – Union for the Mediterranean in the first half of 2008, including also objectives in the field of culture

The European Neighbourhood and Partnership Instrument (ENPI) which covers neighbourhood countries (Eastern Europe and the Mediterranean partners), as well as Russia, aims inter alia to “promote multicultural dialogue” and to “support cooperation aimed at protecting historical and cultural heritage and promoting its development potential, including through tourism”.

Following the Commission Communication of December 2008, the Eastern Partnership was officially launched at the Prague Summit meeting on 7 May 2009. The multilateral framework of the Eastern Partnership will provide for cooperation activities and open and free dialogue serving the objectives of the Partnership. In this framework, 4 Platforms have been set up.

The Platform on Contacts between people – covering inter alia the field of culture - met on 10 June and on 26 November 2009, when it adopted its work programme for 2009-2011.

- Cooperation within the framework of strategic bilateral partnerships¹²

The European Union maintains an ever closer relationship with emerging global partners of the EU, including China, India, Brazil, Mexico or Russia.

In each case the action of the EC is focused on the following elements:

- the presence of cultural provisions in international agreements , e.g in Partnership and Cooperation Agreements, Association Agreements, Free Trade Agreements (FTAs) and long-term strategic programming tools (e.g. Country Strategic Papers or Action Plans)
- the establishment of sustainable policy dialogues on culture with emerging partners of the EU (e.g. on the legal and regulatory environment for the emergence of creative industries in those countries). Such policy dialogues on cultural policies, including exchanges on the implementation of the UNESCO Convention, have been initiated with certain partners who are Parties to the UNESCO Convention, such as Brazil, Mexico and China¹³.
- the use of existing cooperation mechanisms for the benefit of culture, via e.g. the setting up of the "Indian Culture for Development Fund, the EU-Mexico Cultural Fund, or the ENPI ,in the case of Russia, which support cultural projects.

As regards bi-regional cooperation the European Commission is a member of the Asia-Europe Meeting (ASEM) and a contributor to the Asia-Europe Foundation (ASEF), located in Singapore. Both organisations are active in the field of culture and in particular as regards the fostering of cultural diversity and intercultural dialogue.

- Protocol on Cultural Cooperation

A new instrument, the so-called "Protocol on Cultural Cooperation", was specifically developed to promote the principles of the Convention and its implementation in the context of bilateral trade negotiations. The possibility to negotiate such a Protocol with developed and emerging countries is considered on a case by case basis, based on its Articles 12 and 20 (see also under "Article 16" for Protocols with developing countries based on preferential treatment).

Following more than two years of negotiations, the EU and South Korea initialled in October 2009 a bilateral Free Trade Agreement - the first one negotiated by the EU with a country in Asia. This FTA contains in Appendix a Protocol on Cultural Co-operation¹⁴. This Protocol sets a framework to engage in policy dialogue on culture and audiovisual issues, and cooperate in facilitating exchanges regarding cultural activities, including the audiovisual sector. It is based on strict reciprocity and balance - compared to the Protocol with Cariforum countries which is asymmetrical in nature. The Protocol illustrates EU's commitment to actively promote and implement the 2005 UNESCO Convention on the protection and promotion of the diversity of cultural expressions. It will enter into force upon Korea's ratification of the Convention.

- **Articles 13-15**

Culture and Development¹⁵

Culture is an important sector of cooperation with developing countries, which contributes to identity-building and self-esteem, fosters economic growth and social cohesion, and helps to promote political participation and ownership. In its mainstreaming sense it is defined by specific values, traditions and behavioural patterns that need to be considered in all sectors of development when working with partner countries.

For the period 2007-2013, the EU's development action in this field is financed through two types of instruments:

- the implementation of the policy at national and regional level is supported by geographical instruments, such as the [European Development Fund](#) (in the ACP countries), the [Development Co-operation Instrument](#) (in Latin America, Asia and South Africa), and the [European Neighbourhood & Partnership Instrument](#) (in the [neighbouring regions](#));
- the thematic programme [Investing in people](#), where 50 million € are allocated to the culture strand under the heading "Access to local culture, protection and promotion of cultural diversity", focuses on the development of policies that allow better access to and preservation of local culture and on offering opportunities for cultural exchange and strengthening contacts between cultural actors as a way of allowing multicultural and multiethnic dialogue aimed at the improvement of mutual understanding and respect, and preservation of local and indigenous culture and values.

Culture in EU's development cooperation seeks in particular to:

- give consideration to local and regional cultural specificities when designing and implementing development cooperation programmes and projects. Particular attention is given to targeting cultural aspects under specific sector programmes to accompany partners for a smooth evolution, where certain traditions and behaviours are damaging and jeopardise attempts to reduce inequalities and poverty;
 - encourage its partners to include culture in their own poverty reduction strategies and national development plans;
 - promote the conservation, dissemination and promotion of cultural diversity at local and national level;
 - stimulate the access of local people to their own culture and to income generating activities based on the dissemination of culture and traditional heritage;
 - promote intercultural dialogue at all levels and South-South cooperation;
 - support the establishment of networks for exchanges of expertise and good practice, as well as training and professionalization of the sector.
- **Article 16**

The first initiative of implementation of the Convention undertaken by the EC/EU, even before the EC ratification of the Convention and its entry into force, has been related to Article 16 on preferential treatment and led to the conclusion of a Protocol on Cultural Cooperation with the Cariforum countries in 2008 in the context of the Economic Partnership Agreement¹⁶.

This Protocol aims at implementing in particular Article 16 of the Convention regarding preferential treatment for developing countries' cultural goods, services and cultural practitioners, outside of the provisions on trade liberalisation of the general trade agreement which they are attached to. It sets a framework to engage in policy dialogue on culture and audiovisual issues, and cooperate in facilitating exchanges regarding cultural activities, including the audiovisual sector. Commitments are asymmetrical favouring the development of the cultural industries in the Cariforum countries.

This Protocol is a new formula for addressing cultural capacity building and cultural exchanges in a trade agreement, as it does not consist of traditional trade commitments but rather cooperation through concrete means which have the effect of improving cultural exchanges between Europe and the countries concerned while preserving the capacity to develop cultural policies.

The Preamble is based on the principles and definitions of the UNESCO Convention and highlights the dual nature of cultural goods and services that are at the same time tradable but are not comparable to other goods and services due to their cultural value. It also reiterates the need to address the structural imbalances of cultural development.

Horizontal provisions cover issues that are important for promoting cooperation in all cultural fields taking into account the particular character of cultural goods and services, such as exchange of best practices, creation of a relevant Dialogue as well as increase of contacts and facilitation of training opportunities. The question of temporary entry for cultural practitioners is also addressed. Sectoral provisions address the particularities of some specific sectors such as audiovisual cooperation and co-productions as well as cooperation in relation to publications, performing arts and protection of heritage sites. The provisions on audiovisual co-productions are based on the Audiovisual Media Services Directive and provide for enhanced cultural diversity through the extension of the definition of European works to certain audio-visual co-productions with the partner countries under specific conditions which are specified in the Protocol and differ depending on the country, in order to take into account asymmetries (in the case of developing

countries facing difficulties in the area of cultural industries) or reciprocity (in the case of partner countries which have developed cultural industries).

Negotiations on a third Cultural Cooperation Protocol are underway with Colombia and Peru.

Extensive literature is available on the Cariforum Protocol on Cultural Cooperation, notably the report of the expert Edouard Bourcieu realised within the framework of the experts group on Article 16 set up by the Intergovernmental Committee of the Convention.

The full Bourcieu report as well as the summary powerpoint presentation are available on the UNESCO website:

<http://unesdoc.unesco.org/images/0017/001779/177924F.pdf>

(See report on pages 57-97)

<http://unesdoc.unesco.org/images/0018/001803/180342E.pdf>

(See power point presentation on pages 21-27)

- **Article 17**

No experience of implementation so far, but it is worth noting than cooperation geared towards the protection of heritage in danger is explicitly foreseen in the list of actions under the thematic funding instrument of the Commission "Investing in People"¹⁷:

In this respect, the thematic programme funded in 2009 such a heritage in danger project in Cuba, regarding the rehabilitation of cultural heritage in old Havana (Palacio del Segundo Cabo)¹⁸.

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?

The Commission has an active policy of promotion of linguistic diversity.

It does so by promoting the language teaching and learning, as a way of enhancing mutual understanding among Europeans from different countries and regions. This is why it has funded projects to protect and promote regional and minority languages¹⁹.

The EU also adopted a policy line aiming at ensuring that as many European as possible to speak two languages in addition to their own – an ambitious goal that is fully integrated in education and training Community policies. According to the most recent figures on European language usage, some 28% of Europeans claim to know their own language and two others. The challenge for the EU is to expand this base as quickly and sustainably as possible.

Multilingualism's importance is fully recognized not only for initial education and lifelong learning but also for economic competitiveness, employment, justice, liberty and security.

The Commission adopted in 2008 a Communication on multilingualism²⁰. The Council

¹⁹ http://ec.europa.eu/education/languages/languages-of-europe/doc139_en.htm

²⁰ http://ec.europa.eu/education/languages/news/news2853_en.htm

conclusions of May 2009 on a strategic framework for European cooperation in education and training²¹ invited the Commission to pursue work to enable citizens to communicate in two foreign languages, to promote language teaching, where relevant, in vocational education and training and for adult learners, and to provide migrants with opportunities to learn the language of the host country.

More information on EU language training policy:
http://ec.europa.eu/education/languages/index_en.htm

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

The participation of civil society in the implementation of the UNESCO Convention is specifically organised and structured through the civil society platforms set up by the European Agenda for Culture as part of the new working methods brought by the Agenda (see question 4).

More generally, the Commission has a long standing open policy of consultations and interaction with civil society in all areas of intervention.

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?

- Article 20

In the framework of the World Trade Organization (WTO) the European Union has preserved the capacity, for itself and for the Member States, to define and implement cultural policies for the purpose of preserving cultural diversity; in this respect it has taken relevant Most Favoured Nation exemptions, covering national (such as cinema co-production agreements) and EU measures (such as the "Television Without Frontiers" Directive – now "Audiovisual Media Services Directive"). Such position, allowing for the preservation of existing as well as future measures, has been confirmed in 1999 by the EU Council in its conclusions²², which have been confirmed also for the current WTO/Doha Development Agenda (DDA) negotiations.

In bilateral trade negotiations, the same general principles apply and the EU also excludes certain services, notably audiovisual services, from liberalisation commitments. At the same time, the EU does not request commitments in these services from its trading partners either.

Since 2006, the Commission has engaged in negotiations on Protocols on Cultural Cooperation based on Article 16 of the Convention with certain Developing partners, which led to the conclusion of the Protocol with CARIFORUM countries in 2007.

²¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:119:0002:01:EN:HTML>

²² "During the forthcoming WTO negotiations, the Union will ensure, as in the Uruguay Round, that the Community and its Member States maintain the possibility to preserve and develop their capacity to define and implement their cultural and audiovisual policies for the purpose of preserving their cultural diversity."

A Protocol on Cultural Cooperation, based this time on Article 12 of the Convention - which requires Parties to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions - was concluded with the Republic of Korea in 2009.

These Protocols fully implement Article 20 of the Convention, insofar as they take into account the principles and provisions of the Convention.

(see question 4.1.)

- Article 21

The Commission/EU takes every opportunity to promote the Convention in other international fora.

The Commission/EU will use the full potential of Article 21 for concerted action at international with other Parties to the Convention whenever appropriate.

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**?

Human rights, democracy and the rule of law are core values of the European Union. Embedded in its founding treaty, they have been reinforced by the adoption of a Charter of Fundamental Rights. Countries seeking to join the EU must respect human rights. So must countries with whom the EU concludes trade and other agreements.

The European Union sees human rights as universal and indivisible. It therefore actively promotes and defends them both within its borders and in its relations with outside countries. At the same time, the EU supports the efforts of the Member States in this area, while respecting competences and prerogatives of the national governments.

The focus of the Union's human rights policy is on civil, political, economic, social and cultural rights. It also seeks to promote the rights of women and of children as well as of minorities and displaced persons.

To name one particular action aiming at promoting human rights around the world, the EU funds the European Initiative for Democracy and Human Rights. The initiative, with a €1.1 billion budget for 2007-2013, puts respect for human rights and democracy into a global context and focuses on four areas:

- strengthening democracy, good governance and the rule of law (support for political pluralism, a free media and sound justice system);
- abolishing the death penalty in countries which still retain it;
- combating torture through preventive measures (like police training and education) and repressive measures (creating international tribunals and criminal courts);
- fighting racism and discrimination by ensuring respect for political and civil rights.

The initiative also funds projects for gender equality and the protection of children. In addition, it supports joint action between the EU and other organisations involved in the defence of human rights, such as the United Nations, the International Committee of the Red Cross, the Council of Europe and the Organisation for Security and Cooperation in Europe.

The entry into force of the Treaty of Lisbon legally opens up the possibility for the European

Union as such to ratify the [European Convention on Human Rights](#), which is already ratified by all EU Member States.

*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.*

Communication from the Commission on "*A European Agenda for culture in a globalizing world*", May 2007

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!DocNumber&lg=en&type_doc=COMfinal&andoc=2007&nu_doc=0242&model=guicheti

European Agenda for Culture

http://ec.europa.eu/culture/our-policy-development/doc399_en.htm

Council Conclusions on the promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States of November 2008

http://ec.europa.eu/culture/our-policy-development/doc/ICD_external_relations_en.doc.pdf

Audiovisual Media Services Directive 2007/65/EC

http://ec.europa.eu/avpolicy/reg/avms/index_en.htm

Culture in EU development cooperation

http://ec.europa.eu/culture/our-policy-development/doc1749_en.htm

http://ec.europa.eu/development/policies/9interventionareas/humandev/humandevculture_en.cfm

http://ec.europa.eu/europeaid/what/culture/index_en.htm

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?

No

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")?

No

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?

The Commission has a long standing policy of enforcing systematic inter-departmental/ inter-services consultation and coordination.

Within the framework of the European Agenda for Culture, this coordination has been strengthened and forms an integral part of one of the priorities of the Agenda, which is the mainstreaming of culture in other EC policies, based on the Treaty obligation (Article 151, paragraph 4) for the Union to take culture into account in all its actions so as to foster intercultural respect and promote diversity. It is also relevant and thus applied as a working method to the other priorities of the Agenda, internal and external.

An inter-services group (GIS) on culture, which gathers all Directorate General within the Commission for which culture has a direct or indirect relevance, has been set up and meets regularly since 2007. It succeeded to the inter-services group on cultural diversity set up internally for the preparation, conduct and conclusion of the negotiations on the UNESCO Convention.

As far as culture and trade is concerned, the main Directorate Generals involved (i.e. DG TRADE, DG EAC and DG INFSO) are associated in all trade negotiations where cultural issues might be discussed, and especially in the negotiations of the Protocols of Cultural Cooperation with certain third countries. (see question 4.1.)

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)?

The EC/EU has been very active in the implementation of the Convention since even before its entry into force.

The UNESCO Convention, at regional level, is systematically promoted and forms part of the overarching framework of guiding principles for the EC/EU action in cultural matters.

Cooperation is notably important with and within the Council of Europe, which has integrated the Convention in its Compendium on Cultural Policies.

Cooperation with and within UNESCO is also strong.

Within the Intergovernmental Committee of the Convention, EU Member States have always been well represented and played an active role in meetings and in the negotiation of operational guidelines (8 EU Member States members of the Committee - Austria, Finland, France, Germany, Greece, Luxembourg, Lithuania and Slovenia - in the first and transitional Intergovernmental Committee (2007-2009), and 6 EU Member States - France, Germany, Greece, Luxembourg, Bulgaria and Lithuania- as well as 1 EU candidate country (Croatia) in the newly elected Intergovernmental Committee (2009-2013).

As far as the Commission is concerned, specific cooperation with UNESCO Secretariat has developed in the framework of the preparation of the future Joint Project financed by the Commission, to be implemented by the Secretariat from Spring 2010 onwards, for the implementation of the Convention, on the reinforcement of governance in the cultural sector in developing countries.

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?

NONE

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

Two sets of best practices emerge at this stage:
- structured mechanisms of internal/inter-ministerial consultations at Parties' internal level;
- structured links and consultation with civil society
Both elements are instrumental for the development of coherent and consensual implementation measures.

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?

The Commission expects EU Member States to continue their promotion of the Convention so as to further increase the number of its Parties, thus reaching towards a quasi universal coverage, and is actively implemented by the Parties across the world.

The Convention will shape a new role for culture and cultural diversity in global governance, being recognized as the cultural pillar at global level, thus mirroring the achievements made by environmental issues and treaties in the area of climate change and biodiversity.

In Europe, the Convention as well as Community and Member States policies will increase opportunities for cultural expressions – both in terms of creation/production and circulation/distribution/access by Europeans – thus providing for a wide variety of European and non-European cultural expressions.

11.2 in the worst case scenario?

There is no worst case scenario as the Union and the Member States have obligations under the EU Treaty as well as under the Convention to implement the UNESCO Convention.

11.3 in the most likely scenario?

See 11.1.

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

Beyond the promotion and implementation of the Convention in itself, the priorities for the implementation of the Convention at EU level are closely linked to the main priorities established within the framework of the European Agenda for Culture, which provide the basis for the Work Plan 2008-2010:

- Improving the conditions for the mobility of artists and other professionals in the cultural field;
 - Promoting access to culture, especially through the promotion of cultural heritage, cultural tourism, multilingualism, digitisation, synergies with education (in particular arts education) and greater mobility of collections;
 - Developing data, statistics and methodologies in the cultural sector and improving their comparability;
 - Maximising the potential of cultural and creative industries, in particular that of SMEs;
- (see Question 4)

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?

See question 21 below.

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?

The European Commission/Community is not entrusted with monitoring the implementation of international obligations contracted by EU Member States.
However, the legal context created by the EU Treaties as well as EU secondary legislation (EC policies) and the European Agenda for Culture, forms a general framework which is conducive to establishing a highly favourable context for Member States to fully implement the Convention.

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?

Satisfactory

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?

Very satisfactory

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?

Very satisfactory

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?

The coherence and clarity of the objectives as well as the scope (i.e. the diversity of cultural expressions, which are clearly defined and enshrined in cultural goods and services).
The presence of binding language in certain key provisions (e.g. Articles 9, 11, 16, 20, 21...).The clear articulation with the international framework in the field of human rights.

18.2 Its weaknesses?

The presence of best endeavour language in most of the provisions.

18.3 Its threats?

NONE

18.4 It's opportunities?

The capacity and empowerment of stakeholders, including Parties to the Convention, to raise issues regarding the diversity of cultural expressions at all levels of governance: internally, at regional level and at international level - including in other fora than UNESCO.
The vast and diverse membership of the Parties to the Convention which maximises the efficiency of the Convention as the cultural pillar in global governance.

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

() Based on other approaches.

The measurement of cultural diversity and more generally of the cultural sector is one of the areas of priority of the Commission in the forthcoming years.

A network of national statistical offices on cultural statistics (ESSnet) has been set up in September 2009 for a period of two years under the auspices of Eurostat. It will work on the refinement of statistical methodologies in the following four fields:

- Framework and definitions of the cultural economy;
- Cultural financing and expenditures;
- Cultural industries; and
- Cultural practices and social aspects.

Engaging in statistical work in the area of culture is a very complex enterprise. Many different parameters have to be taken in to account; an in-depth reflection on methodology prior to any work is necessary and complex as such. This is because the objective of statistical work in this area

should be to capture key data regarding the conditions of creation, production, distribution and dissemination, including consumption and use for a wide range of cultural goods, services and activities.

In sectors affected by the digital shift, the traditional concepts of users and producers are being challenged by new functionalities and business models, and the frontier between the two is increasingly blurred, which is an additional complexity to capture in statistical methodology.

20 Does your organization, if applicable, and/or your member states have **new ideas** to implement the UNESCO Convention for the near future?

The Community will continue its active promotion of the Convention, which is fully integrated in the internal and external policies frameworks.

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

The European Community will continue its promotion of the Convention within the EU as well as at international level, which is fully integrated in the European Agenda for Culture (see question 4).

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

The European Community has high expectations regarding the perspective of additional ratifications of the Convention.
We also expect renewed debates on cultural policies worldwide, at all levels of governance.
Finally, the Community is counting on the cooperation of the UNESCO Secretariat for the successful and efficient implementation of the joint project (see question 8) financed by the European Commission from 2010.

D Identification of respondent to this questionnaire

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ANNEX: EXAMPLES OF IMPLEMENTATION OF THE UNESCO CONVENTION IN INTERNAL POLICIES

COMPETITION

- Case C39/1996 Centre d'exportation du livre français (CELF)

§ 72: "La préservation et la promotion de la diversité culturelle figurent parmi les principes fondateurs du modèle européen. Ils sont inscrits au traité, à l'article 151, paragraphe 1, qui dispose que « La Communauté contribue à l'épanouissement des cultures des Etats membres, dans le respect de leur diversité nationale et régionale, tout en mettant en évidence l'héritage culturel commun », ou encore à l'article 151, paragraphe 4, qui dispose que « La Communauté tient compte des aspects culturels dans son action au titre d'autres dispositions du traité, afin notamment de respecter et de promouvoir la diversité de ses cultures ». La Commission note d'ailleurs que la Communauté est partie à la Convention de l'UNESCO sur la protection et la promotion de la diversité des expressions culturelles. Les autorités françaises, en favorisant et en soutenant financièrement la diffusion d'ouvrages francophones, ont mis en œuvre une politique culturelle qui correspond aux objectifs fixés par le traité".

- Case C47/2006(ex. N648/2005) Crédit d'impôt pour la création de jeux vidéo - FR

§ 63: "Sur la question générale de savoir si les jeux vidéo peuvent être considérés comme des produits culturels, la Commission note que l'UNESCO reconnaît le caractère d'industrie culturelle de l'industrie des jeux vidéo, ainsi que son rôle en matière de diversité culturelle¹⁴. Elle prend aussi note des arguments avancés par certains tiers et par les autorités françaises, notamment ceux selon lesquels les jeux vidéo peuvent véhiculer des images, des valeurs, des thèmes qui reflètent l'environnement culturel dans lesquels ils sont créés et peuvent agir sur les modes de pensée et les références culturelles des utilisateurs, et tout particulièrement sur les jeunes classes d'âge. La Commission note aussi dans ce contexte que l'UNESCO a adopté une convention sur la protection et la promotion de la diversité des expressions culturelles.¹⁵ (...)"

¹⁵ Convention adoptée par la Conférence générale de l'UNESCO le 20 octobre 2005 et introduite en droit communautaire par la décision 2006/515/CE du Conseil du 18 mai 2006 relative à la conclusion de la Convention sur la protection et la promotion de la diversité des expressions culturelles (JO L 201 du 25.7.2006, p. 15) (dont le texte peut être consulté grâce au lien suivant <http://unesdoc.unesco.org/images/0014/001429/142919f.pdf>).

- Case E 4/2008, Sweden, Aid to the press

§ 63: "The Commission should assess whether the cultural derogation of article 87(3)(d) EC which concerns "*aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest*" is applicable to the press aid scheme. Furthermore, according to Article 151 (4) EC, the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures, and the Community ratified the UNESCO Convention on the promotion and the protection of the diversity of cultural expressions".

- Communication from the Commission on the application of State aid rules to public service broadcasting, Official Journal C 257 , 27/10/2009 P. 0001 - 0014

§ 13: "The role of public service broadcasting in promoting cultural diversity was also recognised by the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural

Expressions, which was approved by the Council on behalf of the Community and thus forms part of EC law.¹ The Convention states that each Party may adopt “measures aimed at protecting and promoting the diversity of cultural expressions within its territory”. Such measures may include, among others, “measures aimed at enhancing diversity of the media, including through public service broadcasting”.²

1 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, approved by Council decision 2006/515/EC of 18.5.2006. In accordance with Annex 2 to of the Council decision, “the Community is bound by the Convention and will ensure its implementation.”

2 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Article 6 (1) and (2) h).

AUDIOVISUAL

- Judgment of the Court in Case C-222/07, REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal Supremo (Spain), made by decision of 18 April 2007, received at the Court on 3 May 2007, in the proceedings - Unión de Televisiones Comerciales Asociadas (UTECA)

33: "Since language and culture are intrinsically linked, as pointed out by, inter alia, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted at the General Conference of UNESCO in Paris on 20 October 2005 and approved on behalf of the Community by Council Decision 2006/515/EC of 18 May 2006 (OJ 2006 L 201, p. 15), which states in paragraph 14 of its preamble that ‘linguistic diversity is a fundamental element of cultural diversity’, the view cannot be taken that the objective pursued by a Member State of defending and promoting one or several of its official languages must of necessity be accompanied by other cultural criteria in order for it to justify a restriction on one of the fundamental freedoms guaranteed by the Treaty. Indeed, in the present proceedings, the Commission has been unable to state precisely what those criteria should actually be".

- Proposal for a Decision of the European Parliament and of the Council establishing an audiovisual cooperation programme with professionals from third countries MEDIA Mundus, January 2009

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0892:FIN:EN:HTML>

OTHER INTERNAL POLICIES

Culture in other EU policies

http://ec.europa.eu/culture/our-policy-development/doc405_en.htm