



## ***Celebrating 10<sup>th</sup> Anniversary of the 2005 Convention***

### ***Debates on the implementation of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions***

## **Preferential treatment, international coordination and consultation**

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The Convention on the Protection and Promotion of the Diversity of Cultural Expressions was negotiated and adopted with the aim to create a favourable environment for the diversity of cultural expressions within and between cultures and states. The Convention reaffirms the sovereign rights of States to retain, adopt and implement policies and measures they consider necessary and appropriate in order to guarantee access to diverse cultural expressions. Provisions of the Convention refer to all those policies and measures that are either focused on culture as such or are designated to have a direct effect on cultural expressions of individuals, groups or societies, including on the creation, production, dissemination, distribution of and access to cultural activities, goods and services (Article 4 (7) of the Convention).

Discourse about the treatment of culture was for many years marked by requests to “exclude culture” from trade agreements and to “guarantee special status of culture” at national and international levels. While these priorities still remain valid and relevant, the Convention brings a twist in this traditional approach as it does no longer insist solely on the exclusion of culture from developments in other policy areas. The Convention borrows language from other fields and disciplines with the aim to promote pro-active approach to policy-making. The introduction of the “preferential treatment” – the concept traditionally reserved for the trade relations, represents new and innovative approach to future development of culture and culture relations.

Ten years after the adoption of the Convention, experts are still discussing legal impact of different provisions of the Convention. This is particularly the case with the legal force of this instrument in the context of global trade negotiations and contemporary policy developments in the field of development cooperation. Through quadrennial reports and exchange of information, Parties are working together with the aim to share experiences on innovative policy-making thus offering numerous examples of policies and measures implemented at local, national, regional and international levels having direct impact on the promotion of the diversity of cultural expressions.

## Implementation of articles 16 and 21 of the Convention

Article 16 on preferential treatment calls for a new approach to international cooperation involving cultural, trade and other policies that all need to be coordinated in order to promote cultural industries, exchange of cultural goods and services and artists at national and international levels. Policy measures include those that:

- Facilitate the mobility of artists and cultural professionals from developing countries, such as the simplification of procedures for obtaining visas for entry, stay and temporary travel, as well as reduction in their cost;
- Build capacities through training, exchanges and orientation activities;
- Introduce specific tax advantages for artists and cultural professionals from developing countries;
- Introduce funding arrangements and resource-sharing schemes.

The Article 21 on international consultation and coordination requires Parties to assume responsibility for promoting the objectives and principles of the Convention in other international forums. While the article 21 is primarily interpreted in the context of reinforcing Article 20 and the relationship between the Convention and other international treaties, the aim of Article 21 is also to promote consultation processes in different international forums and at various levels thus understanding “international forums” in its broad context. When read and analysed together with Article 16 it creates a logical framework put in place in order to address in particular areas of trade, development and international cooperation.

So far, Parties to the Convention have been implementing the two articles in three different areas:

- International cultural cooperation
- International trade agreements
- Culture and development

### *International cultural cooperation*

When implementing the article 16 of the Convention on preferential treatment, Parties reported on two major groups of policies and measures:

- *Individual referring to establishing cooperation among artists and cultural professionals:* building expertise among artists and cultural professionals (i.e. measures to facilitate mobility, capacity building, funding arrangements and sharing of information).
- *Institutional or organizational referring to cultural goods and services:* building capacities of cultural enterprises and organizations in promoting the economic and trade dimension of the sector (i.e. specific support and assistance schemes for the distribution and dissemination of cultural goods and services such as co-production and co-distribution agreements, programmes to support the participation in cultural and trade events; special fiscal measures and incentives including tax credits and double taxation avoidance agreements).

In the context of the implementation of Article 21, countries reported on activities in the area of international cultural cooperation which included making references and using Article 21 during high-level multilateral political debates, influencing and guiding the direction of discussions and including references to the Convention in various declarations, resolutions and other documents. Countries also reported on situations where the reference to the Convention was made when signing different bilateral agreements such as memorandums, cultural agreements or different partnership programmes.

### *International trade agreements*

The report on the application of articles 16 and 21 identified a total of 51 bilateral and regional trade agreements that were concluded since the Convention was adopted<sup>1</sup>. The study identified five main approaches to the treatment of cultural goods and services in bilateral trade agreements:

- Agreements that contain a *cultural cooperation protocol* which refer explicitly to the Convention with the intention to implement both articles 16 and 21
- Agreements that contain a *cultural clause (exemption or exclusion)*
- Agreements that offer the Parties the option to liberalize cultural services using a *positive list of specific commitments*
- Agreements that offer the Parties the option to liberalize cultural goods and services using a *negative list of commitments*
- Agreements that *do not confer any particular status on cultural goods and services*

### *Culture and development*

In the area of culture and development much many activities were happening in the context of the global debate on the revision of the Millennium Development Goals involving UNESCO member states as well as civil society organizations and professional networks. Through the International Fund for Cultural Diversity UNESCO is financing projects promoting culture and development including projects aimed at developing new policies or assisting in reforming existing policies. The implementation of the UNESCO-EU Expert Facility on the Governance of Culture in Developing Countries through capacity-building and policy assistance has also been instrumental for the efforts for adopting adequate policies and frameworks in developing countries thus creating necessary preconditions for the implementation of development policies and projects.

## **Key challenges in implementing articles 16 and 21 of the Convention**

*Achieving effective cooperation between different sectors at national levels* – The implementation of the provisions of the two articles requires cooperation of different sectors. This is particularly the case with the implementation of the provisions on preferential treatment and requirements to adjust national immigration rules including visa regimes (i.e. in order to reduce obstacles to mobility), change customs or tax rules (i.e. in order to assure preferential treatment

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<sup>1</sup> See working document “Preferential Treatment and International Consultation and Coordination: Report on the implementation and impact of Articles 16 and 21 of the Convention”, CE/15/5.CP/11, p. 16.

for import and/or export of cultural goods and services), or include the reference to culture and guarantee special treatment of cultural goods and services in the context of bilateral and regional trade negotiations. For majority of Parties this is a sensitive issue and they will have to invest a lot of efforts in order to achieve the level of coordination which will result with concrete measures and policy changes.

*Setting-up appropriate policy frameworks in developing countries* - In order to implement Article 16 on preferential treatment, it is not enough if developed countries introduce specific policies and measures. It is equally important for developing countries to take proactive approach and put in place adequate policies and frameworks in order to be able to benefit from the offered preferential treatment.

*Going beyond established cooperation frameworks and practices* - The analysis of Parties' reports indicates that preferential treatment tends to be given to countries that are located in the same or near geographic region and to countries with which there exists linkages based on culture, language and/or past. Regardless of the binding nature of the article on preferential treatment, Parties are slow in making visible shifts and turning attention to those countries that they have not had a history of cooperation and cultural exchanges before.

*Taking proactive approach in promoting Convention in other international forums* - Parties opted for the very broad definition of "international forums" and mostly reported on agreements and international documents covering three main areas: trade, international cooperation; and culture and development.

## **Opportunities**

*Introducing new instruments and incentives for mobility* - Parties are reporting on positive changes in particular regarding the issues of visas and the mobility of artists from developing countries. Parties are also reporting on a growing number of coproduction and cooperation agreements in particular in the audio-visual field. The implementation of the Convention stimulates countries to adopt new policies and introduce specific support schemes and incentives for mobility as well as to take necessary measures in order to eliminate and lift obstacles (i.e. visa regime, immigration rules etc.).

*Advancing the position of culture in development strategies* - Findings of the EOS evaluation highlight that culture is increasingly recognized in national and regional sustainable development strategies<sup>2</sup>. In order to implement relevant provisions of the Convention, Parties are stimulated to include culture in the international development agenda such as in the context of the revision of millennium development goals and other initiatives. Developing countries have an opportunity to integrate culture as one of the core priorities when negotiating bilateral or multilateral assistance frameworks with donor countries.

*Advancing the position of culture in the context of international trade negotiations* – So far, Parties reported on taking into account articles 16 and 21 in the context of bilateral trade agreements but there are only few examples where parties refer explicitly to the Convention with the intention to implement articles 16 and 21. Parties need to continue working on building, analysing and promoting the inventory of cases (including monitoring of jurisprudence in

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<sup>2</sup> see Balta, J. Evaluation of UNESCO' Standard-setting Work of the Culture Sector; Part IV 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Final Report, April 2014: p. iv.

international and national courts). In the situation where there is a slowing down of multilateral and promoting bilateral agreements (which is much more difficult to monitor) Parties are invited to discuss the treatment and position of culture in the announced Trans-Pacific partnership (TTP) and the EU-US Transatlantic Trade and Investment Partnership. Relevant provisions of Convention should be evoked in order to question the position of culture and the way the issue of the diversity of cultural expressions is being addressed.

*New opportunities for the treatment and position of cultural goods and services in the digital environment* – At this point, there are still very few references to the treatment of cultural goods and services in the digital environment and in the context of changing realities of cultural markets. In the context of *digitization*, Parties have the ability to integrate Internet service providers and the new means of access to cultural contents among the service areas which can be potentially subject to government regulation in the context of international, regional and bilateral trade agreements which will intensify in the coming years (i.e. future European Digital Single Market and similar activities). Parties will also have to discuss definition of electronic commerce in the framework of free trade agreements and their impact on the status of cultural goods and services. Parties are invited to take into account processes of digitization in the programs providing technical assistance (i.e. the acquisition of equipment and the transfer of technologies and expertise in order to facilitate the movement of cultural goods and services from developing countries to markets in developed countries).

*Developing effective monitoring instruments* - In determining the impact of the implementation of articles 16 and 21, but also in the context of monitoring the achievements of the Convention, there is still the lack of adequate benchmarks available for evaluation and the lack of empirical data and evidence. Whether it is a question of reporting about the Convention and compiling quadrennial reports or it is a question of implementing the Convention and adopting new measures, the Parties must improve coordination at the national level between different ministries and establish functional interdepartmental bodies that will carry on the complex tasks.