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INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

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Item 8 of the Provisional Agenda: Preferential treatment, International consultation and coordination (Articles 16 and 21 of the Convention): status of consultations, sharing of knowledge and good practices

At its fifth ordinary session (June 2015), the Conference of Parties requested the Committee to continue its analysis of the information on the implementation of Article 21 and to share its findings at its sixth ordinary session (Resolution 5.CP11). During its eighth ordinary session (December 2014), the Committee requested the Secretariat to continue developing the online platform and database by including Article 16 (Decision 8.IGC11). This document presents a summary of the status of the consultations conducted since 2011, the work regarding the sharing of knowledge and good practices, and the activities planned for 2015-2017.

Decision required: paragraph 15.

1. In 2011, during its third ordinary session, the Conference of Parties to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Convention”), invited the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Committee”) to focus on the implementation of Article 21 which concerns international consultation and coordination, deeming the drafting of operational guidelines premature at this stage (Resolution 3.CP 11). The Committee thus debated these questions during its four most recent ordinary sessions (from 2011 to 2014) and the Conference of Parties at its two most recent ordinary sessions in 2013 and 2015¹. Since 2013, Article 16 on preferential treatment for developing countries has been added to this discussion.
2. In accordance with the mandate given by the Convention's governing bodies, the Secretariat presented six reports on the implementation of Article 21², two of which also included that of Article 16. The sixth report and the most comprehensive to date, giving an overview of the way in which the Parties have applied these two articles and the resulting impact, was presented at the fifth ordinary session of the Conference of Parties (June 2015). It provides *detailed information on the activities conducted by the Secretariat* concerning the collection of information (three consultation exercises, systematic analysis of periodic reports, research and analyses) and the sharing of information and good practices (online platform providing access to relevant documents, reports from the Secretariat, targeted studies and case studies). It also provides statistics on stakeholders' participation in consultation exercises, including the involvement of Parties, which represent 41% of stakeholders.
3. The 2015 report also summarizes the *observations made by the Parties* during the consultations which can be summed up as follows:
 - Monitoring the implementation and impact of Articles 16 and 21 is complex given that the Convention is relatively new and its implementation even more recent.
 - The implementation of Articles 16 and 21 has an impact on various areas and themes which are interlinked but which have different objectives including international trade, digital technology and migration-related issues.
 - It is still too early to evaluate the full impact of Articles 16 and 21, which depend on long-term effects resulting in major but gradual modifications at institutional and governance level.
 - Although the Parties have their own approaches to the implementation of Article 21, three common fields of interest emerge: trade, international cooperation, and the theme of culture and development, with digital technology as a cross-cutting issue.
 - There are two main challenges with regard to measuring the impact of Articles 16 and 21: the lack of evidence required to evaluate the impact of these Articles, and the sensitive political issues that they might raise in other forums.

¹ See Decisions 5.IGC 8, 6.IGC 11, 7.IGC 12 and 8.IGC 11 and Resolutions 4.CP 13 and 5.CP 11.

² See the documents presented to the Committee:

- Document CE/11/5.IGC/213/8REV2, "International consultation and coordination: current status of Article 21 of the Convention";
- Document CE/12/6.IGC/11, "International consultation and coordination: taking stock of Article 21 of the Convention";
- Document CE/13/7.IGC/12 "International consultation and coordination: report on the impact of Article 21 of the Convention";
- Document CE/14/8.IGC/11 "Preferential treatment and International consultation and coordination: report on the implementation and impact of Articles 16 and 21 of the Convention";

Documents presented to the Conference of Parties:

- Document CE/13/4.CP/11 "International consultation and coordination: report on Article 21 of the Convention (2011-2013)";
- Document CE/15/5.CP/11 "Preferential treatment and International consultation and coordination: report on Articles 16 and 21 of the Convention".

4. The 2015 report also presents a summary of the *in depth and constructive debates within the governing bodies* thus making it possible to draw the lessons learned from this information collection exercise. Overall, the Parties have adopted a very broad definition of the notion of "international forums" and use and invoke the Convention, for example to:
- intervene in international forums, whether or not they advance cultural objectives;
 - strongly affirm the objectives and principles of the Convention in cultural and trade agreements (whether they be bilateral, regional or multilateral);
 - consult other Parties when signing new bilateral agreements that address the objectives and principles of the Convention;
 - engage in dialogue with States not Party to the Convention to encourage ratification;
 - take into account the Convention within the framework of discussions on the link between culture and development.
5. Finally, the 2015 report on the Parties' application of these two articles examines the *results achieved* to date in the short and medium term (the "outputs" and "outcomes") noting what has happened and how things have developed notably in the fields of international trade and particularly in bilateral agreements, in international cooperation, and in the results achieved within the framework of the debates on the 2030 Sustainable Development Agenda adopted in September 2015. The challenges posed by digital technology in these areas are also addressed. The report contains a background summary of the *raison d'être* of Articles 16 and 21 in the Convention, in other words, what was the objective of the Member States when they negotiated these provisions, thus making it possible to understand their origin. The review on the implementation and impact of preferential treatment and international consultation and coordination makes it possible to draw lessons learned ten years after the adoption of the Convention:
- Indeed, the Convention has influenced public policies regarding cultural goods and services, via the revision or adoption of public policies on a national level. The question is whether this influence had the desired outcome.
 - In the field of international cooperation, nascent change on the issue of visas and the mobility of artists from developing countries, together with the growing number of cinematographic and audiovisual co-production agreements, would suggest that this short-term result is a first step, the foundations of which could have a real impact in the future.
 - In trade, five culture-trade agreements took into account Articles 16 and 21 simultaneously, three of which in the form of a new tool (cultural protocol). The Parties also use in their bilateral trade relations legal means that existed (cultural clause and reservations, commitments according to positive and negative lists). Jurisprudence, for its part, is still in its infancy. These results bear witness to the opportunities and challenges related to the implementation of these two articles in trade fora.
 - With regards to culture and development, the Parties have amended or adopted new policies that draw on the Convention, thus placing it at the heart of discussion that led to the adoption in September 2015 of the United Nations 2030 Agenda for Sustainable Development. These short-term results demonstrate that the application of Article 21 in the field of development makes it possible to achieve the desired outcome.
6. Other lessons can be drawn, relating more specifically to the challenges regarding the application of Articles 16 and 21, in particular:
- the application of Articles 16 and 21 is a slow process whose impact will only be possible to confirm in the long-term and which will involve major changes to institutions and governance systems.

- the proliferation of bilateral trade agreements in recent years and complex negotiations between major economic players could provide the Parties with an opportunity to use the Convention as an instrument to influence their trade and cultural policies.
 - the new ways of accessing culture in the digital age and the major impact on production and broadcasting channels, and the approach used to address digital cultural goods and services in national public policies and during trade negotiations.
 - the collection of national data, since such an exercise requires complex interdepartmental cooperation due to the issues raised by the application of Articles 16 and 21 including cultural policies, trade policies, and immigration and employment policies.
 - the absence of coordination on a national level between different ministries for the purposes of periodic reporting. One solution could be to create a working group or interministerial committee comprised of public officials from relevant ministries, with the point of contact of the Convention as coordinator.
7. The results of the consultations analysing the implementation and impact of Articles 16 and 21 were received with satisfaction by the governing bodies, the Committee at its eighth ordinary session in December 2014³ and the Conference of Parties at its fifth ordinary session in June 2015. At its most recent session, the Conference of Parties invited the Committee to continue its activities monitoring policies and the impact of the Convention by collecting and analysing the data, information and good practices presented in the quadrennial reports of Parties and in other documents, the results of which will be published in the biennial monitoring report of the Convention and the knowledge management system, paying particular attention to the monitoring of the impact of Articles 16 and 21 (Resolution 5.CP 14). Furthermore, the Conference:
- requested the Committee to continue its reflection on the implementation and impact of Articles 16 and 21, by introducing a digital dimension, among others;
 - requested the Secretariat to continue consultations with Parties, international organisations and civil society, on a biannual basis, in order to collect and analyse information on the implementation and impact of Articles 16 and 21;
 - requested the Secretariat to develop a training module for the implementation of Articles 16 and 21 within the framework of its overall capacity-building strategy;
 - called on the Parties to transmit to the Secretariat all relevant information and to use the online platform to share documents and events, and requested them to support the work of the Secretariat by providing extrabudgetary resources. (Resolution 5.CP 11)
8. The Committee, for its part, invited the Secretariat to continue the development of the online platform, by including Article 16, and to organize an exchange session with high-level experts leading up to the Conference of Parties in June 2015 on Articles 16 and 21 (Decision 8.IGC 11).
9. In accordance with these decisions, the Secretariat conducted various activities to raise awareness, exchange information and share good practices. It organized an *exchange session* on "Preferential treatment, international coordination and consultation - The Convention at the crossroads of international cooperation and trade", ahead of the fifth ordinary session of the Conference of Parties on 9 June 2015 at UNESCO Headquarters, thanks to the support of the Spanish Government. This meeting made it possible to highlight that the implementation of this

³ See draft summary record of the eighth ordinary session of the Committee, para. 279 to 304.

new international instrument, combined with bilateral/multilateral trade agreements relating to culture, had a certain impact albeit without reaching its initial objective as five agreements concluded to date contain provisions relating to both Article 16 and Article 21. The session also raised awareness of the challenges that the Parties must overcome in implementing Articles 16 and 21⁴. Several key messages emerge from the session:

- the context of free trade in which the Convention was negotiated and its *raison d'être* must not be forgotten;
- the difficulty for a Party to take into account the various public policies required to implement Articles 16 and 21 thus ensuring cultural governance within the meaning of the Convention;
- the application of preferential treatment is not limited to trade but also concerns international cooperation and the existing link between culture and sustainable development;
- there is still much to do in terms of capacity building for developing countries in order to establish appropriate mechanisms, policies and strategies that will allow these countries to benefit from preferential treatment;
- ensure greater transparency in all trade negotiations;
- address new emerging challenges resulting from new technologies within the framework of trade/cultural agreements;
- the need for more information and research to expand the analysis of the implementation and impact of these two articles.

10. The Secretariat also included in the first edition of the *Monitoring Report* on the implementation of the Convention a chapter on Article 21 and two concerning preferential treatment which address trends in the exchange of cultural goods and services and the question of the mobility of artists and cultural professionals. The chapter on Article 21 gives an overview of the application of this provision by the Parties and underlines that since 2005, 50 Parties are involved in seven trade agreements concluded by the European Union which incorporate one or several references to the Convention. The chapter strengthens the idea that promoting the objectives and principles of the Convention in international forums is not limited exclusively to trade. One of the chapters on preferential treatment, which, although unsurprisingly mentions that the exchange of cultural goods and services are not always balanced in the world, provides interesting data on the global export of cultural goods, which increased from USD \$108.4 billion in 2004 to \$212.8 billion in 2013. As for the chapter on the mobility of artists and cultural professionals, it underlines the challenges to mobility including increasing security, economic and political constraints. Furthermore, it underlines the importance of access to international markets for artists and cultural professionals, in order to ensure the sustainable promotion of cultural and creative industries and their potential contribution to human, social and economic development, particularly in the South.

11. The knowledge management *platform dedicated to Articles 16 and 21* was created in November 2012 and is regularly updated. The Secretariat has merged the spaces and reorganized the content and information available to ensure better dissemination and understanding of the evidence (see in Annex screenshot of the platform). In addition, a study and 17 cases on the application of Articles 16 and 21 and their impact on bilateral and regional trade fora has been published and is available on the platform. This comprehensive study presents trends and preliminary conclusions on the application of Articles 16 and 21 and is based on research conducted in 2014 and 2015 on 51 bilateral and regional trade agreements,

⁴ See information document CE/15/9.IGC/INF.6 "Report on the exchange session - The Convention at the crossroads of international cooperation and trade", presented at the ninth ordinary session of the Committee in November 2015. The video recording of the session and a concept note (in French, English and Spanish) are available: <http://fr.unesco.org/creativity/convention/r%C3%A9unions-organes-convention/cp/5os>.

representing all of the world regions and concerning 87 Parties to the Convention⁵. As a reminder, the goal of this research was to examine the impact of the Convention on the content of bilateral and regional agreements and to evaluate the implementation of Articles 16 and 21. In order to do so, the methodology used for the research consisted of determining whether the agreements contained:

- 1) references to the Convention;
- 2) treatment of cultural goods and services;
- 3) preferential treatment clauses concerning cultural goods and services;
- 4) a status for electronic commerce;
- 5) other provisions pertaining to culture.

12. The research also identified 17 case studies which illustrate the approaches developed by one or several Parties when concluding bilateral and regional trade agreements. For example, one of the case studies analyses the three free trade agreements with a cultural cooperation protocol concluded by the European Union since the adoption of the Convention in October 2005, namely: 1) the Economic Partnership Agreement with the Cariforum States, 2) the Free Trade Agreement with the Republic of Korea, 3) the Association Agreement with Central America. These case studies thus provide additional and detailed information as well as specific examples of the way in which the Parties implement Articles 16 and 21, including the status of electronic commerce. Furthermore, the research made it possible to produce 51 technical fiches for each of these agreements. They are currently being finalised and will be disseminated in the 2016-2017 biennium.

13. Moreover, the database listing the documents directly related to the application of Articles 16 and 21 has been entirely reorganized and updated. In November 2015, over 250 references, documents and events were recorded. Most of these documents are available to download in French, English and Spanish. They are categorised according to: international agreements, declarations/resolutions, speeches/addresses, and academic literature/research/studies. The events are classified by ministerial meetings, international/regional/national meetings and seminars/conferences. Finally, following the adoption of Decision 197 EX/11, the implementation of the global capacity-building strategy is reinforced with extra-budgetary funds, that will contribute to the development of a training module on preferential treatment.

14. In 2016, the Secretariat will continue to implement the Work Plan approved by the Conference of Parties during its fifth ordinary session (Resolution 5.CP 11). To do so it will:

- consult the Parties on Articles 16 and 21;
- produce a revised global report to illustrate the application of Articles 16 and 21 which will be submitted to the Committee at its tenth ordinary session;
- develop a training module on preferential treatment within the framework of the overall capacity building strategy;
- continue research on the application of Articles 16 and 21 and their impact on bilateral and regional trade forums;
- continue its efforts to update and manage the online platform on Articles 16 and 21.

⁵ See the summary presented in June 2015 at the Conference of Parties: Annex "Report on the implementation and impact of Articles 16 and 21 of the Convention" to Document CE/15/5.CP/11, June 2015, p. 16 to 19.

15. The Committee may wish to adopt the following decision:

DRAFT DECISION 9.IGC 8

The Committee,

1. *Having examined Document CE/15/9.IGC/8 and its Annex;*
2. *Recalling Resolutions 3.CP 11, 4.CP 11 and 5.CP 11 of the Conference of Parties and its Decisions 5.IGC 8, 6.IGC 11, 7.IGC 12 and 8.IGC 11;*
3. *Takes note of the information regarding the status of the consultations on the application and impact of Articles 16 and 21 of the Convention and the work conducted on the platform and the database concerning the sharing of knowledge and best practices;*
4. *Requests the Secretariat to consult the Parties, international organisations and civil society in 2016 in order to collect and analyse the information on the implementation and impact of Articles 16 and 21, including digital technology, and to update the report and submit it at its next ordinary session;*
5. *Also requests the Secretariat to develop a training module on preferential treatment;*
6. *Requests the Parties to consult the online platform and support the work of the Secretariat by providing extrabudgetary resources.*