



**Implementation of the 2005 UNESCO Convention in the European Union
Culture Committee – European Parliament
Conference – June 2nd 2010**

Report

Mrs Doris Pack, Chair of the European Parliament's Committee on Culture and Education, gives a brief review of the fight of the cultural sector to obtain an instrument to protect and promote the diversity of cultural expressions. She insists on the fact that culture and cultural diversity have already been integrated into European policies via article 167.4 of the Treaty on the Functioning of the European Union (TFEU)¹.

She introduces three guest speakers :

- Mr Germann, lawyer, in charge of the study commissioned by the Committee on Culture and Education on the subject;
- Mr Jordi Baltà Portolés, from the Interarts Foundation in Barcelona², who dealt with subjects related to the implementation of the UNESCO Convention in EU's external policies ;
- Ms Mira Burri from the World Trade Institute at the University of Bern, Switzerland, who examined questions related to the implementation of the UNESCO Convention in EU's internal policies.

**I. THE STUDY ON IMPLEMENTATION OF THE UNESCO CONVENTION IN THE EUROPEAN UNION
(C. GERMANN)**

General points and contents of study

The study has 5 main chapters:

1. Analysis of the implementation of the UNESCO Convention based on the answers to the questionnaire addressed to civil society, regional organizations, UNESCO national commissions and private experts (law firms and consultants)
2. New ideas put forward for the implementation of the Convention
3. Implementation of the UNESCO Convention in the EU's external policies
4. Implementation of the UNESCO Convention in the EU's internal policies
5. Conclusions and recommendations.

¹ Article 167.4 in the treaty - Lisbon version – corresponds to article 151.4 in the previous Nice version: *The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures*

² Consulting firm, specialized in cultural policies (cultural policies implementation, management and organization of international projects, training): <http://www.interarts.net/en/interarts.php>

Originality of the study

M. Germann points out that the study develops a critical approach to:

→ *Selective State aid systems*

The study underlines the lack of objectivity of this system since it provides no mechanism to challenge grants decisions and it is open to possible oriented favouritism and censorship. It sets bad example for authoritarian governments.

→ *Copyright*

The study points out the excessive importance given to copyright, whose main objective is to protect and remunerate creation but which ends up contributing more to financing marketing activities: in a Hollywood film, 60% of the budget goes to promotion and only 40% to production. This overbearing copyright dogma is threatening for cultural diversity since films from other countries are totally unable to compete with Hollywood movies when they benefit from such promotion budgets.

The study therefore suggests retaining the gist of copyright in order to protect authors' freedom of creation but to set up efficient rules to ensure competition³ is fair, mostly in developing countries. C. Germann also suggests applying non discriminating principles to culture, such as « Cultural Treatment » and « Most Favoured Culture »³

EU challenges in implementing the UNESCO Convention

- legal weakness of the Convention, « soft law » instrument, and its dispute settlement scheme. The study however stresses that it provides tools with strong potential;
- consultation of civil society on these subjects: the EU recently sided with the United States against China in a WTO case on cultural industries, without consulting the sector concerned;
- no formal discussions on these subjects at the WTO;
- the need for the various cultural cooperation tools (CCP) offered by the EU to third countries should be coherent : could a multilateral framework be envisaged on the subject?
- the need for institutions to adapt to these issues (developing synergies, setting up new institutions, etc.);
- the need to draw lessons from existing cultural cooperation programs, such as the ACP film fund⁴.

³ **Most Favoured Culture Treatment** : With respect to any measure covered by this Agreement, each public, private or mixed-economy factor of commercial distribution and exhibition (marketing) of cultural goods and services from a cultural origin having a dominant market position shall accord immediately and unconditionally to cultural goods and services and to the factors of cultural creation and production of another cultural origin treatment no less favourable than that it accords to like cultural goods and services and their suppliers of any other cultural origin.

Cultural Treatment : Each public, private or mixed-economy factor of commercial distribution and exhibition (marketing) of cultural goods and services from a cultural origin having a dominant market position shall accord to cultural goods and services and to factors of cultural creation and production of any other cultural origin, in respect of all measures affecting the distribution and exhibition (marketing) of cultural goods and services, treatment no less favourable than that it accords to its own like cultural goods and services and like factors of cultural creation and production. (cf. p.37 of the short version of the study)

⁴ The study concentrates on this particular case (cf p.60 and after, in the English shorter version)

II. IMPLEMENTATION OF THE UNESCO CONVENTION IN EU'S EXTERNAL POLICIES (J. BALTA PORTALES)

General framework

Several provisions of the UNESCO Convention deal directly with international relations:

- article 12, regarding promotion of international cooperation;
- article 14, regarding cooperation for development and article 16 regarding preferential treatment for developing countries;
- article 18, regarding the International Fund for Cultural Diversity;
- articles 20 and 21, regarding the relationship between the Convention and other forums.

The European Union has integrated the UNESCO Convention and its vocabulary into various documents:

- the European Agenda for Culture (may 2007);
- the working program of the Culture Council (2008-2010) ;
- the Council's conclusions (November 2008) on *the promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States* which call the Commission and the Member States to draw up a European strategy for incorporating culture consistently and systematically in the external relations of the Union and contributing to the complementarity of the Union's activities with those of its Member State or the establishment of specific strategies with regions and countries outside the Union.

Areas of impact of the UNESCO Convention

→ *Trade*

Recognition of the double nature of cultural goods and services has led to the negotiation of the UNESCO Convention. However, no progress has been registered so far in obtaining a specific treatment for culture in international trade.

The development of bilateral trade relations has limited the capacity of the weakest States at the WTO to adopt an exception to the clause of the Most Favoured Nation in the cultural sector.

Cultural cooperation protocols (CCP) based on articles 12 and 14 of the Convention are a means to implement the UNESCO Convention. However, France and the International Federation of Coalitions for Cultural diversity have criticized the fact that this has also resulted in bringing back Culture into Trade negotiations again.

On the basis of information provided by DG Culture, Mr Baltà indicates that a strategy to clarify the contents and procedures to be applied to CCP is now being drafted by the Commission (*concept paper*).

→ *Development*

Quite often development policies make no reference to culture whatsoever (nothing is mentioned in the Millennium Development Goals (MDGs)). However, some organizations (United Nations Development Program) have demonstrated what impact culture can have on human development. The European Union has integrated a cultural dimension into its initiatives, particularly in favour of ACP countries, and to a lesser extent of the Euro-Mediterranean region.

→ *Human rights and fundamental freedoms*

Culture carries little weight in these fields where most importance is given to media, freedom of speech, etc.

→ *Other policy fields*

The issues of culture and media have recently been discussed between the European Union and its main economic partners (dialogue is opened with China for example).

Conclusions and recommendations

1. Developing a cohesive strategy: this means developing a European strategy for external relationships in order to foster synergies and cooperation between the EU and Member States, to develop regional strategies with third countries, etc. The European Parliament should play a central role in this.

2. Making a stand on the international trade scene: establishing clearly the double nature of cultural goods and services at the WTO, when the weakest countries have to face intense pressure during bilateral negotiations.

3. Clarifying the role of Protocols on Cultural Cooperation and place them in a broader context: The European Commission's forthcoming *concept paper* should provide procedures and guarantee that the cultural sectors will be consulted on this. With regards to the developing countries, this cooperation should be part of a broader development scheme.

4. Integrating culture in the Millenium Development Goals (to be revised by September 2010)

5. Fostering long-term development

6. Facilitating mobility (no visas for example)

7. Addressing the domestic implications of the UNESCO Convention in third countries (impact on development of cultural diversity, independent media, etc.)

8. Improving and transferring cultural knowledge to developing countries

9. Encouraging contributions to the International Fund for Cultural Diversity

10. Fostering ratifications of the UNESCO Convention

III. IMPLEMENTING THE UNESCO CONVENTION IN EU'S INTERNAL POLICIES (MS BURRI)

In the absence of sanction-backed obligations, violations of the UNESCO Convention only result in political (reputation) damages. Article 6 of the Convention gives a non exhaustive list of measures aiming to protect and to promote cultural diversity.

Once ratified by the EU, the implementation of the Convention did not result in a rapid set of measures: it is rather a long term action, already initiated before the writing of this instrument.

One has to take into account the measures taken within the cultural sector itself – which obviously are of limited scope considering the Commission only has a secondary competence, so called “supporting

competence” in these matters - and also the integration of the cultural aspect in various policies, as per article 167.4 of the TFEU, and the impact that these policies have on the cultural sector.

The Commission insists on the integration of Culture in other European policies – particularly in the May 2007 European Agenda for Culture which lists in annex all the relevant policies in favour of Culture: the Culture program, the regional policy, sustainable development, the audiovisual sector, information society, competition, internal market (intellectual property), etc. The European commission’s initiatives affecting the cultural sector are extremely diverse and varied in scope. This raises the question of good governance and coordination.

Generally speaking, evaluation of the UNESCO Convention implementation is positive: by and large it has fulfilled its commitments. However, there could be some improvements in order to set up more efficient, and better targeted and coordinated policies. For instance, priorities should be identified more clearly in the internal market and causal links between measures and objectives of cultural diversity should be more obvious.

The digital revolution should be an opportunity to amend these policies, particularly in order to:

- facilitate access to cultural contents (numerous obstacles remain: infrastructures, DRM, poor media education, legal difficulties, etc);
- encourage the development of high quality contents;
- limit existing conflicts between cultural diversity and authors’ rights;
- encourage creation as a dynamic component of cultural diversity.

DEBATES

→ Several MEPs asked Mr Germann to clarify his understanding of authors’ right and to specify what practical tools he would recommend to improve the situation.

Mr Germann stressed the necessity to implement the article 7 of the UNESCO Convention in favour of creation, circulation, distribution and access to a diversity of cultural expressions. Indeed, a mono culture prevails in the United States and in the developing countries, whereas in South Korea and in France, where support systems have been set up in favour of local production, two cultures coexist next to foreign films (market share under 10%).

According to C. Germann, this could change with the use of modern tools provided by competition law, particularly the essential facilities theory in order to give various cultural sectors the ability to promote their works. Similarly, the research, in its full version, puts forward some contract law tools (guarantees for young creators’ copyright transfer contracts).

→ A socialist MEP, Mme Costa, mentioned her attachment to the system of selective aids because it helps develop high quality products.

→ Xavier Troussard from DG Culture points out how difficult it is for the WTO to take into account culture specificity: the Canadian suggestion to deal with the subject at the WTO has been rejected and, today, countries concerned with commercial issues still hesitate to ratify the Convention. The EU-Korea CCP had positive consequences since it resulted in the Korean ratification of the UNESCO Convention. According to X. Troussard, the objective is to keep on gaining more ratifications of the Convention in order to be able to address the issue at the WTO one day.