



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

**on the conclusion of the UNESCO Convention on the Protection and Promotion
of the Diversity of Cultural Expressions**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

In October 2003 the General Conference of UNESCO decided unanimously to open negotiations on a convention on protecting the diversity of cultural contents and artistic expressions. Negotiations on a preliminary draft convention started in September 2004.

The Presidency and the Commission jointly forwarded a communication from the Community and its Member States to UNESCO on 15 November 2004, and the Council of Ministers adopted a Decision authorising the Commission to participate in negotiations on behalf of the Community on 16 November 2004.

Three sessions of negotiations involving government experts took place between September 2004 and June 2005, resulting, at the third session, in the adoption of a revised preliminary draft convention. In September 2005 the Executive Council of UNESCO adopted a decision recommending the adoption of the draft convention at the General Conference in October 2005.

The Convention was adopted by the General Conference of UNESCO on 20 October 2005.

The Council of Ministers, in authorising the Commission to negotiate on behalf of the Community in November 2004, handed down negotiating directives calling on it to ensure that the Convention included the necessary clauses for the Community to become party to it. Consequently, Article 27 of the Convention establishes the possibility for the European Community to become a contracting party and play an active role in the organs of the Convention, in particular the Conference of the Parties established by Article 22 of the Convention.

It is therefore important for the European Community to become a party to the Convention, together with the Member States of the European Union.

The purpose of the present proposal, which follows the approach taken in the negotiations, is therefore to authorise the approval of the UNESCO Convention by the European Community.

- **General framework**

The conditions for preserving and promoting cultural diversity in Europe and the world depend not only on economic conditions, but also on a multitude of other structural factors. The size of markets, the presence (or not) of linguistic minorities, territories with less widely spoken languages, links with national or regional identities, the material or non-material nature of traditions and cultural heritage, and historical links with other countries are also elements which influence the conditions for cultural expression, culture consumption and cultural exchanges.

At European level this diversity of situations is already the dominant reality and has been enriched by the recent historic enlargement, which brought in ten new Member States. Globalisation, although it introduces new possibilities for exchanges between cultures, can also threaten the more vulnerable cultures and give rise to standardisation

phenomena which are likely to jeopardise cultural diversity.

The European Union has long recognised the dual nature — cultural and economic — of cultural goods and services, and Article 151(4) of the Treaty establishing the European Community requires the Community to take cultural aspects into account in its overall action. Yet at international level there is no legally binding instrument recognising the specific nature of cultural expressions.

The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in Paris on 20 October 2005, aims to fill a legal vacuum in world governance by establishing a series of rights and obligations, at both national and international levels, with a view to the protection and promotion of cultural diversity. This instrument should play a similar role for cultural diversity — at the same normative level — as World Intellectual Property Organisation conventions, World Trade Organisation agreements, World Health Organisation agreements and Multilateral Environment Agreements.

The full participation of the European Community and its Member States in implementing the Convention will in particular contribute to:

- o establishing a new pillar of world governance with the aim of ensuring protection and promotion of cultural diversity;
- o emphasising the specific and dual (cultural and economic) nature of cultural goods and services;
- o recognising the role and legitimacy of public policies in the protection and promotion of cultural diversity;
- o recognising the importance of, and promoting, international cooperation to respond to cultural vulnerabilities, in particular with regard to developing countries;
- o defining appropriate links with other international instruments that enable the Convention to be implemented effectively.

- **Existing provisions in the area of the proposal**

As this is a procedural proposal, there are no provisions in force in the area of the proposal.

- **Consistency with other policies and objectives of the Union**

The UNESCO Convention is consistent with the obligation placed on the Community by Article 151(4) of the EC Treaty to take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures.

The objectives of the proposal are consistent with the objectives of other Union policies such as external cooperation policy (especially development policy), the common commercial policy, completion of the internal market (particularly as regards intellectual property), audiovisual and information society policy, and cultural action.

The objectives of the proposal are also consistent with the Charter of Fundamental Rights, especially the principle of promoting cultural diversity (Article 22).

2) CONSULTATION OF THE STAKEHOLDERS

The stakeholders, in particular European cultural and audiovisual sector representatives, have had regular exchanges with the Commission throughout the convention negotiation process at UNESCO.

A consultation meeting was organised by the Commission on 4 July 2005 following the third session of negotiations between government experts, to discuss the revised preliminary draft convention.

In the course of the negotiations at UNESCO, a large number of stakeholders informed the Commission of their full support for the common standpoints of the European Union expressed at UNESCO and explicitly recommended the adoption of the Convention by the General Conference of UNESCO in 2005.

Consequently, following the negotiations on whether the Community should become party to the Convention, no additional consultation appeared necessary, as there had been no changes in the situation since the July consultation. The text adopted on 21 October by the UNESCO members is almost identical (apart from changes made by the lawyer-linguists) to the revised preliminary draft resulting from the third negotiation session.

- **Obtaining and using expertise**

No recourse to external expertise was necessary.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Proposal for a Council Decision on the conclusion of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

- **Legal basis**

Articles 89, 133, 151, 181 and 181a in conjunction with Article 300 of the Treaty establishing the European Community.

- **Principle of subsidiarity**

The principle of subsidiarity applies, owing to the mixed nature of the powers assigned by the UNESCO Convention.

As both Community and Member States' powers are concerned, joint ratification of the Convention by the Community and the Member States is required.

The proposal is therefore consistent with the principle of subsidiarity.

- **Principle of proportionality**

As it is a question of a procedural act, the principle of proportionality is not relevant.

- **Choice of instruments**

Proposed instrument(s): proposal for a Council Decision

Other means would not have been adequate for the following reason:

As it is a question of the ratification by the Community of an international normative text, a Council decision is the only appropriate legal instrument.

4) BUDGETARY IMPLICATIONS

The proposal has no implications for the Community budget.

5) ADDITIONAL INFORMATION

- **European Economic Area**

This draft act does not come under the EEA Agreement.

Proposal for a

COUNCIL DECISION

**on the conclusion of the UNESCO Convention on the Protection and Promotion
of the Diversity of Cultural Expressions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 89, 133, 151, 181 and 181a in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) In November 2004 the Council authorised the Commission to participate, on behalf of the European Community, in negotiations at UNESCO concerning a Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The Commission participated in these negotiations, together with the Member States.
- (2) The Convention on the Protection and Promotion of the Diversity of Cultural Expressions was adopted at the General Conference of UNESCO in Paris on 20 October 2005.
- (3) The Convention constitutes a relevant and effective pillar for promoting cultural diversity and cultural exchanges, to which the European Community and its Member States attach the greatest importance. It contributes towards ensuring mutual respect and understanding between cultures at world level.
- (4) The Convention should be approved as soon as possible.
- (5) Both the Community and its Member States have competence in the fields covered by the Convention. The Community and the Member States should therefore become contracting parties to it, so that together they can fulfil the obligations laid down by the Convention and exercise the rights invested in them by the Convention in

¹ OJ C , , p. .

² OJ C , , p. .

situations of mixed competence — the objective being to ensure the uniform application of the Convention,

HAS DECIDED AS FOLLOWS:

Article 1

1. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions is hereby approved on behalf of European Community.
2. The text of the Convention is reproduced in Annex 1(a) to this Decision.

Article 2

1. The President of the Council is authorised to designate the person or persons empowered to deposit the instrument of accession on behalf of the European Community with the Director-General of UNESCO, in accordance with Article 27(4) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
2. The President of the Council is authorised to designate the person or persons empowered to deposit on behalf of the European Community the declaration of responsibilities reproduced in Annex 1(b) to this Decision, in accordance with Article 27(3)(c) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
3. The President of the Council is authorised to designate the person or persons empowered to issue the Unilateral Declaration reproduced in Annex 2 to this Decision at the time of the deposition of the instrument of accession.

Article 3

The Commission shall represent the European Community at meetings of the bodies created by the Convention, in particular the Conference of the Parties, and shall negotiate on its behalf concerning questions falling within the remit of those bodies.

Done at Brussels,

*For the Council
The President*

ANNEX 1(a)

CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

PREAMBLE

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 3 to 21 October 2005 at its 33rd session,

1. *Affirming* that cultural diversity is a defining characteristic of humanity,
2. *Conscious* that cultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all,
3. *Being aware* that cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations,
4. *Recalling* that cultural diversity, flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, is indispensable for peace and security at the local, national and international levels,
5. *Celebrating* the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments,
6. *Emphasizing* the need to incorporate culture as a strategic element in national and international development policies, as well as in international development cooperation, taking into account also the United Nations Millennium Declaration (2000) with its special emphasis on poverty eradication,
7. *Taking into account* that culture takes diverse forms across time and space and that this diversity is embodied in the uniqueness and plurality of the identities and cultural expressions of the peoples and societies making up humanity,
8. *Recognizing* the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion,
9. *Recognizing* the need to take measures to protect the diversity of cultural expressions, including its contents, especially in situations where cultural expressions may be threatened by the possibility of extinction or serious impairment,
10. *Emphasizing* the importance of culture for social cohesion in general, and in particular its potential for the enhancement of the status and role of women in society,
11. *Being aware* that cultural diversity is strengthened by the free flow of ideas, and that it is nurtured by constant exchanges and interaction between cultures,

12. *Reaffirming* that freedom of thought, expression and information as well as diversity of the media enable cultural expressions to flourish within societies,

13. *Recognizing* that the diversity of cultural expressions, including traditional cultural expressions, is an important factor that allows individuals and peoples to express and to share with others their ideas and values,

14. *Recalling* that linguistic diversity is a fundamental element of cultural diversity, and reaffirming the fundamental role that education plays in the protection and promotion of cultural expressions,

15. *Taking into account* the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit from them for their own development,

16. *Emphasizing* the vital role of cultural interaction and creativity, which nurture and renew cultural expressions and enhance the role played by those involved in the development of culture for the progress of society at large,

17. *Recognizing* the importance of intellectual property rights in sustaining those involved in cultural creativity,

18. *Being convinced* that cultural activities, goods and services conveying identities, values and meanings have both an economic and a cultural nature, and must therefore not be treated as solely having commercial value,

19. *Noting* that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, also represent a challenge for cultural diversity, namely in view of risks of imbalances between rich and poor countries,

20. *Being aware* of UNESCO's specific mandate to ensure respect for the diversity of cultures and to recommend such international agreements as may be necessary to promote the free flow of ideas by word and image,

21. *Referring* to the provisions of the international instruments adopted by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity of 2001,

Adopts, this Convention on this 20th of October 2005.

I. OBJECTIVES AND GUIDING PRINCIPLES

Article 1 – Objectives

The objectives of this Convention are:

- (a) to protect and promote the diversity of cultural expressions;
- (b) to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;
- (c) to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace;
- (d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples;
- (e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels;
- (f) to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;
- (g) to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;
- (h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;
- (i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

Article 2 – Guiding Principles

1. Principle of respect for human rights and fundamental freedoms

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law or to limit the scope thereof.

2. Principle of sovereignty

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.

3. Principle of equal dignity of and respect for all cultures

The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.

4. Principle of international solidarity and cooperation

International cooperation and solidarity should be aimed at enabling countries, especially developing countries, to create and strengthen their means of cultural expression, including their cultural industries, whether nascent or established, at the local, national and international levels.

5. Principle of the complementarity of economic and cultural aspects of development

Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy.

6. Principle of sustainable development

Cultural diversity is a rich asset for individuals and societies. The protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations.

7. Principle of equitable access

Equitable access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding.

8. Principle of openness and balance

When States adopt measures to support the diversity of cultural expressions, they should seek to promote, in an appropriate manner, openness to other cultures of the world and to ensure that these measures are geared to the objectives pursued under the present Convention.

II. SCOPE OF APPLICATION

Article 3 – Scope of application

This Convention shall apply to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions.

III. DEFINITIONS

Article 4 – Definitions

For the purposes of this Convention, it is understood that:

1. Cultural diversity

“Cultural diversity” refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies.

Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment of cultural expressions, whatever the means and technologies used.

2. Cultural Content

“Cultural content” refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities.

3. Cultural expressions

“Cultural expressions” refers to those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.

4. Cultural activities, goods and services

“Cultural activities, goods and services” refers to those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services.

5. Cultural industries

“Cultural industries” refers to industries producing and distributing cultural goods or services as defined in paragraph 4 above.

6. Cultural policies and measures

“Cultural policies and measures” refers to those policies and measures related to culture, whether at the local, national, regional or international level that are either focused on culture as such or are designed 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.

7. Protection

“Protection” means the adoption of measures aimed at the preservation, safeguarding and enhancement of the diversity of cultural expressions.

“Protect” means to adopt such measures.

8. Interculturality

“Interculturality” refers to the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect.

IV. RIGHTS AND OBLIGATIONS OF PARTIES

Article 5 – General rule regarding rights and obligations

1. The Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention.

2. When a Party implements policies and takes measures to protect and promote the diversity of cultural expressions within its territory, its policies and measures shall be consistent with the provisions of this Convention.

Article 6 – Rights of Parties at the national level

1. Within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.

2. Such measures may include the following:

(a) regulatory measures aimed at protecting and promoting diversity of cultural expressions;

(b) measures that provide opportunities in an appropriate manner for domestic cultural activities, goods and services among the full range of cultural activities, goods and services available within the national territory with regard to the creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, including provisions relating to the language used therefor;

(c) measures aimed at providing domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services;

(d) measures aimed at providing public financial assistance;

(e) measures aimed at encouraging non-profit organizations, as well as public and private institutions and artists and other cultural professionals, to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities;

(f) measures aimed at establishing and supporting public institutions, as appropriate;

(g) measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions;

(h) measures aimed at enhancing diversity of the media including through public service broadcasting.

Article 7 – Measures to promote cultural expressions

1. Parties shall endeavour to create in their territory an environment that encourages individuals and social groups:

(a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples;

(b) to have access to diverse cultural expressions from within their territory as well as from other countries of the world.

2. Parties shall also endeavour to recognize the important contribution of artists, others involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions.

Article 8 – Measures to protect cultural expressions

1. Without prejudice to the provisions of Articles 5 and 6, a Party may determine those special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding.

2. Parties may take all appropriate measures to protect cultural expressions in situations referred to in paragraph 1 in a manner consistent with the provisions of this Convention.

3. Parties shall report to the Intergovernmental Committee all measures taken to meet the exigencies of the situation, and the Committee may make appropriate recommendations.

Article 9 – Information sharing and transparency

Parties shall:

(a) provide appropriate information in their reports to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level;

(b) designate a point of contact responsible for information sharing in relation to this Convention;

(c) share and exchange information relating to the protection and promotion of the diversity of cultural expressions.

Article 10 – Education and public awareness

Parties shall:

- (a) encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, *inter alia*, through educational and greater public awareness programmes;
- (b) cooperate with other Parties and international and regional organizations in achieving the purpose of this article;
- (c) endeavour to encourage creativity and strengthen production capacities by setting up educational, training and exchange programmes in the field of cultural industries. These measures should be implemented in a manner that does not have a negative impact on traditional forms of production.

Article 11 – Participation of civil society

Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention.

Article 12 – Promotion of international cooperation

Parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions, taking particular account of the situations referred to in Articles 8 and 17, notably in order to:

- (a) facilitate dialogue among Parties on cultural policies and measures;
- (b) enhance public sector strategic and management capacities in cultural public sector institutions, through professional and international cultural exchanges and sharing of best practices;
- (c) reinforce partnerships with and among civil society, non-governmental organizations and the private sector in fostering and promoting the diversity of cultural expressions;
- (d) promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions;
- (e) encourage the conclusion of co-production and co-distribution agreements.

Article 13 – Integration of culture in sustainable development

Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.

Article 14 – Cooperation for development

Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector by, *inter alia*, the following means:

1. The strengthening of the cultural industries in developing countries through:
 - (a) creating and strengthening cultural production and distribution capacities in developing countries;
 - (b) facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services;
 - (c) enabling the emergence of viable local and regional markets;
 - (d) adopting, where possible, appropriate measures in developed countries with a view to facilitating access to their territory for the cultural activities, goods and services of developing countries;
 - (e) providing support for creative work and facilitating the mobility, to the extent possible, of artists from the developing world;
 - (f) encouraging appropriate collaboration between developed and developing countries in the areas, *inter alia*, of music and film.
2. Capacity-building through the exchange of information, experience and expertise as well as the training of human resources in developing countries, in the public and private sector relating to, *inter alia*, strategic and management capacities, policy development and implementation, promotion and distribution of cultural expressions, small-, medium- and micro-enterprise development, the use of technology, and skills development and transfer.
3. The transfer of technology and know-how through the introduction of appropriate incentive measures, especially in the areas of cultural industries and enterprises.
4. Financial support through:
 - (a) the establishment of an International Fund for Cultural Diversity as provided in Article 18;
 - (b) the provision of official development assistance, as appropriate, including technical assistance, to stimulate and support creativity;
 - (c) other forms of financial assistance such as low interest loans, grants and other funding mechanisms.

Article 15 – Collaborative arrangements

Parties shall encourage the development of partnerships, between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions. These innovative partnerships shall, according to the practical needs of

developing countries, emphasize the further development of infrastructure, human resources and policies, as well as the exchange of cultural activities, goods and services.

Article 16 – Preferential treatment for developing countries

Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.

Article 17 – International cooperation in situations of serious threat to cultural expressions

Parties shall cooperate in providing assistance to each other, in particular to developing countries, in situations referred to under Article 8.

Article 18 – International Fund for Cultural Diversity

1. An “International Fund for Cultural Diversity”, hereinafter referred to as “the Fund”, is hereby established.

2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.

3. The resources of the Fund shall consist of:

(a) voluntary contributions made by Parties;

(b) funds appropriated for this purpose by the General Conference of UNESCO;

(c) contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or individuals;

(d) any interest due on resources of the Fund;

(e) funds raised through collections and receipts from events organized for the benefit of the Fund;

(f) any other resources authorized by the Fund’s regulations.

4. The use of resources of the Fund shall be decided by the Intergovernmental Committee on the basis of guidelines determined by the Conference of Parties.

5. The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by the Intergovernmental Committee.

6. No political, economic or other conditions that are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.

7. Parties shall endeavour to provide voluntary contributions on a regular basis towards the implementation of this Convention.

Article 19 – Exchange, analysis and dissemination of information

1. Parties agree to exchange information and share expertise concerning data collection and statistics on the diversity of cultural expressions as well as on best practices for its protection and promotion.

2. UNESCO shall facilitate, through the use of existing mechanisms within the Secretariat, the collection, analysis and dissemination of all relevant information, statistics and best practices.

3. UNESCO shall also establish and update a data bank on different sectors and governmental, private and non-profit organizations involved in the area of cultural expressions.

4. To facilitate the collection of data, UNESCO shall pay particular attention to capacitybuilding and the strengthening of expertise for Parties that submit a request for such assistance.

5. The collection of information identified in this Article shall complement the information collected under the provisions of Article 9.

V. RELATIONSHIP TO OTHER INSTRUMENTS

Article 20 – Relationship to other treaties: mutual supportiveness, complementarity and nonsubordination

1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, without subordinating this Convention to any other treaty,

(a) they shall foster mutual supportiveness between this Convention and the other treaties to which they are parties; and

(b) when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.

2. Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.

Article 21 – International consultation and coordination

Parties undertake to promote the objectives and principles of this Convention in other international forums. For this purpose, Parties shall consult each other, as appropriate, bearing in mind these objectives and principles.

VI. ORGANS OF THE CONVENTION

Article 22 – Conference of Parties

1. A Conference of Parties shall be established. The Conference of Parties shall be the plenary and supreme body of this Convention.
2. The Conference of Parties shall meet in ordinary session every two years in conjunction with the General Conference of UNESCO to the extent possible. It may meet in extraordinary session if it so decides or if the Intergovernmental Committee receives a request to that effect from at least one third of the Parties.
3. The Conference of Parties shall adopt its own rules of procedure.
4. The functions of the Conference of Parties shall be, *inter alia*:
 - (a) to elect the Members of the Intergovernmental Committee;
 - (b) to receive and examine reports of the Parties to the Convention transmitted by the Intergovernmental Committee;
 - (c) to approve the operational guidelines prepared upon its request by the Intergovernmental Committee;
 - (d) to take whatever other measures it may consider necessary to further the objectives of this Convention.

Article 23 – Intergovernmental Committee

1. An Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Intergovernmental Committee”) shall be established within UNESCO. It shall be composed of representatives of 18 States Parties to the Convention, elected for a term of four years by the Conference of Parties upon entry into force of this Convention pursuant to Article 29.
2. The Intergovernmental Committee shall meet annually.
3. The Intergovernmental Committee shall function under the authority and guidance of, and be accountable to the Conference of Parties.
4. The Members of the Intergovernmental Committee shall be increased to 24 once the number of Parties to the Convention reaches 50.
5. The election of Members of the Intergovernmental Committee shall be based on the principles of equitable geographical representation as well as rotation.
6. Without prejudice to the other responsibilities conferred upon it by this Convention, the functions of the Intergovernmental Committee shall be:
 - (a) to promote the objectives of this Convention and to encourage and monitor the implementation thereof;

(b) to prepare and submit for approval by the Conference of Parties, upon its request, the operational guidelines for the implementation and application of the provisions of the Convention;

(c) to transmit to the Conference of Parties reports from Parties to the Convention, together with its comments and a summary of their contents;

(d) to make appropriate recommendations to be taken in situations brought to its attention by Parties to the Convention in accordance with relevant provisions of the Convention, in particular Article 8;

(e) to establish procedures and other mechanisms for consultation aimed at promoting the objectives and principles of this Convention in other international forums;

(f) to perform any other tasks as may be requested by the Conference of Parties.

7. The Intergovernmental Committee, in accordance with its rules of procedure, may invite at any time public or private organizations or individuals to participate in its meetings for consultation on specific issues.

8. The Intergovernmental Committee shall prepare and submit to the Conference of Parties, for approval, its own rules of procedure.

Article 24 – UNESCO Secretariat

1. The organs of the Convention shall be assisted by the UNESCO Secretariat.

2. The Secretariat shall prepare the documentation of the Conference of Parties and the Intergovernmental Committee as well as the agenda of their meetings and shall assist in and report on the implementation of their decisions.

VII. FINAL CLAUSES

Article 25 – Settlement of disputes

1. In the event of a dispute between Parties to the Convention concerning the interpretation or the application of this Convention, the Parties shall seek a solution by negotiation.

2. If the Parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. If good offices or mediation are not undertaken or if there is no settlement by negotiation, good offices or mediation, a Party may have recourse to conciliation in accordance with the procedure laid down in the Annex of this Convention. The Parties shall consider in good faith the proposal made by the Conciliation Commission for the resolution of the dispute.

4. Each Party may, at the time of ratification, acceptance, approval or accession, declare that it does not recognize the conciliation procedure provided for above. Any Party having made such a declaration may, at any time, withdraw this declaration by notification to the Director-General of UNESCO.

Article 26 – Ratification, acceptance, approval or accession by Member States

1. This Convention shall be subject to ratification, acceptance, approval or accession by Member States of UNESCO in accordance with their respective constitutional procedures.
2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director-General of UNESCO.

Article 27 – Accession

1. This Convention shall be open to accession by all States not members of UNESCO but members of the United Nations, or of any of its specialized agencies, that are invited by the General Conference of UNESCO to accede to it.
2. This Convention shall also be open to accession by territories which enjoy full internal selfgovernment recognized as such by the United Nations, but which have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.
3. The following provisions apply to regional economic integration organizations:
 - (a) This Convention shall also be open to accession by any regional economic integration organization, which shall, except as provided below, be fully bound by the provisions of the Convention in the same manner as States Parties;
 - (b) In the event that one or more Member States of such an organization is also Party to the Convention, the organization and such Member State or States shall decide on their responsibility for the performance of their obligations under the Convention. Such distribution of responsibility shall take effect following completion of the notification procedure described in sub-paragraph (c). The organization and the Member States shall not be entitled to exercise rights under the Convention concurrently. In addition, regional economic integration organizations, in matters within their competence, shall exercise their rights to vote with a number of votes equal to the number of their Member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice-versa;
 - (c) A regional economic integration organization and its Member State or States which have agreed on a distribution of responsibilities as provided in subparagraph (b) shall inform the Parties of any such proposed distribution of responsibilities in the following manner:
 - (i) in their instrument of accession, such organization shall declare with specificity, the distribution of their responsibilities with respect to matters governed by the Convention;
 - (ii) in the event of any later modification of their respective responsibilities, the regional economic integration organization shall inform the depositary of any such proposed modification of their respective responsibilities; the depositary shall in turn inform the Parties of such modification;
 - (d) Member States of a regional economic integration organization which become Parties to this Convention shall be presumed to retain competence over all matters in respect of which

transfers of competence to the organization have not been specifically declared or informed to the depositary;

(e) “Regional economic integration organizations” means an organization constituted by sovereign States, members of the United Nations or of any of its specialized agencies, to which those States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to become a Party to it.

4. The instrument of accession shall be deposited with the Director-General of UNESCO.

Article 28 – Point of contact

Upon becoming Parties to this Convention, each Party shall designate a “*point of contact*” as referred to in Article 9.

Article 29 – Entry into force

1. This Convention shall enter into force three months after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession, but only with respect to those States or regional economic integration organizations that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

2. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by Member States of the organization.

Article 30 – Federal or non-unitary constitutional systems

Recognizing that international agreements are equally binding on Parties regardless of their constitutional systems, the following provisions shall apply to Parties which have a federal or nonunitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those Parties which are not federal States;

(b) with regard to the provisions of the Convention, the implementation of which comes under the jurisdiction of individual constituent units such as States, counties, provinces, or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform, as necessary, the competent authorities of constituent units such as States, counties, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 31 – Denunciation

1. Any Party to this Convention may denounce this Convention.
2. The denunciation shall be notified by an instrument in writing deposited with the Director-General of UNESCO.
3. The denunciation shall take effect 12 months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the Party denouncing the Convention until the date on which the withdrawal takes effect.

Article 32 – Depositary functions

The Director-General of UNESCO, as the Depositary of this Convention, shall inform the Member States of the Organization, the States not members of the Organization and regional economic integration organizations referred to in Article 27, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 26 and 27, and of the denunciations provided for in Article 31.

Article 33 – Amendments

1. A Party to this Convention may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all Parties. If, within six months from the date of dispatch of the communication, no less than one half of the Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the Conference of Parties for discussion and possible adoption.
2. Amendments shall be adopted by a two-thirds majority of Parties present and voting.
3. Once adopted, amendments to this Convention shall be submitted to the Parties for ratification, acceptance, approval or accession.
4. For Parties which have ratified, accepted, approved or acceded to them, amendments to this Convention shall enter into force three months after the deposit of the instruments referred to in paragraph 3 of this Article by two thirds of the Parties. Thereafter, for each Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that Party of its instrument of ratification, acceptance, approval or accession.
5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article 23 concerning the number of Members of the Intergovernmental Committee. These amendments shall enter into force at the time they are adopted.
6. A State or a regional economic integration organization referred to in Article 27 which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered to be:
 - (a) Party to this Convention as so amended; and

(b) a Party to the unamended Convention in relation to any Party not bound by the amendments.

Article 34 – Authoritative texts

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, all six texts being equally authoritative.

Article 35 – Registration

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.

ANNEX

CONCILIATION PROCEDURE

Article 1 – Conciliation

A Conciliation Commission shall be created upon the request of one of the Parties to the dispute. The Commission shall, unless the Parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2 – Members of the Commission

In disputes between more than two Parties, Parties in the same interest shall appoint their members of the Commission jointly by agreement. Where two or more Parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3 – Appointments

If any appointments by the Parties are not made within two months of the date of the request to create a Conciliation Commission, the Director-General of UNESCO shall, if asked to do so by the Party that made the request, make those appointments within a further two-month period.

Article 4 – President of the Commission

If a President of the Conciliation Commission has not been chosen within two months of the last of the members of the Commission being appointed, the Director-General of UNESCO shall, if asked to do so by a Party, designate a President within a further two-month period.

Article 5 – Decisions

The Conciliation Commission shall take its decisions by majority vote of its members. It shall, unless the Parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the Parties shall consider in good faith.

Article 6 – Disagreements

A disagreement as to whether the Conciliation Commission has competence shall be decided by the Commission.

ANNEX 1(b)

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

The current members of the European Community are the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

This Declaration indicates the responsibilities transferred to the Community by the Member States under the Treaties, in the areas covered by the Convention.

The Community has exclusive responsibility for the common commercial policy (Articles 131-134 of the Treaty). It conducts a development cooperation policy (Articles 177-181 of the Treaty) and a policy of cooperation with industrialised countries (Article 181a of the Treaty) without prejudice to the respective competences of the Member States. It has shared competence as regards the free movement of goods, persons, services and capital (Articles 23-31 and 39-60 of the Treaty), competition (Articles 87-89) and the internal market, including intellectual property (Articles 94-97 of the Treaty). Pursuant to Article 151 of the Treaty, in particular paragraph 4 thereof, the Community takes cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures.

The Community acts listed below illustrate the extent of the area of competence of the Community in accordance with the provisions establishing the European Community.

Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) (*OJ L 336, 23.12.1994*).

Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004 - Statements on a Council Regulation applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004 (*OJ L 346, 31.12.2001, p. 0001 – 0060*)

Council Decision 2005/599/EC of 21 June 2005 concerning the signing, on behalf of the European Community, of the Agreement amending the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (*OJ L 203 11.08.2005, p. 26-27*).

Council Regulation (EC) No 2698/2000 amending Regulation (EC) No 1488/96 on financial and technical measures to accompany the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (MEDA) (*OJ L 311, 12.12.2000, p. 0001-0008*).

Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic, and subsequent amendments, still applicable to Bulgaria and Romania (*OJ L 375*, 23/12/1989 P. 0011 – 0012)

Council Regulation (EC) No 2666/2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia and repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC (*OJ L 306*, 7.12.2000, p. 0001-0006)

Council Regulation (EEC) No 443/92 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America (*OJ L 52*, 27.2.1992, p. 0001-0006)

Council Regulation (EC, Euratom) No 99/2000 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia (*OJ L 12*, 18.1.2000, p. 0001-0009)

Decision No 792/2004/EC of the European Parliament and of the Council establishing a Community action programme to promote bodies active at European level in the field of culture (*OJ L 138*, 30.04.2004, p. 40)

Decision No 508/2000/EC of the European Parliament and the Council, establishing the Culture 2000 programme (*OJ L 063*, 10.03.2000, p. 1)

Decision No 1419/1999/EC of the European Parliament and of the Council of 25 May 1999 establishing a Community action for the European Capital of Culture event for the years 2005 to 2019 (*OJ L 166*, 01.07.1999, p. 1)

Council Decision of 22 September 1997 regarding the future of European cultural action (*OJ C 305*, 07.10.1997, p. 1)

Council Decision of 22 September 1997 on cross-border fixed book prices in European linguistic areas (*OJ C 305*, 07.10.1997, p. 2)

Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (*OJ L 298*, 17.10.1989, p. 23). Directive amended by Directive 97/36/EC of the European Parliament and of the Council (*OJ L 202*, 30.07.1997, p. 60)

Council Decision 2000/821/EC on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus - Development, Distribution and Promotion) (2001-2005) (*OJ L 336*, 30.12.2000, p. 0082-0091)

Decision No 163/2001/EC of the European Parliament and of the Council of 19 January 2001 on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA-Training) (2001-2005) (*OJ L 026*, 27.01.2001, p. 0001-0009)

Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (*OJ L 083*, 27/03/1999, p. 1)

Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (*OJ L 83 27.03.1999, p.1*), relating to State aid

Directive 2004/48/EC on the enforcement of intellectual property rights (*OJ L 157, 30.04.2004, p. 0045 – 0086*)

Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society (*OJ L 167, 22.6.2001, p. 0010-0019*)

Directive 2001/84/EC of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art (*OJ L 272, 13.10.2001, p. 0032-0036*)

Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (*OJ L 248, 06.10.1993, p. 0015-0021*)

Council Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights (*OJ L 290, 24.11.1993, p. 0009-0013*)

Council Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property (*OJ L 346, 27.11.1992, p. 0061-0066*)

The exercise of Community competence is, by its nature, subject to continuous development. In this respect, therefore, the Commission reserves the right to notify other future declarations.

ANNEX 2

UNILATERAL DECLARATION ON BEHALF OF THE COMMUNITY IN CONNECTION WITH DEPOSITION OF THE INSTRUMENT OF ACCESSION

“As regards the Community responsibilities described in the Declaration pursuant to Article 27(3)(c) of the Convention, the Community is bound by the Convention and will ensure its due implementation. It follows that the Member States of the Community which are party to the Convention do not apply the provisions of the Convention and cannot rely on the rights or obligations ensuing from the Convention in their mutual relations in as far as Community provisions exist in the fields covered by the Convention. However, the Convention is applicable to relations between the Community and its Member States on the one side and the other parties to the Convention on the other.”