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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND
THE EUROPEAN PARLIAMENT**

Towards an international instrument on cultural diversity

1. CONTEXT

Cultural diversity has become one of the major issues of the international debate taking place among international and regional organisations since 1998. A number of bodies have examined this issue: the G8 (Okinawa, 2000), the Council of Europe (Declaration on cultural diversity, December 2000), UNESCO (Universal Declaration and Action Plan on Cultural Diversity, November 2001, for which the European Community and its Member States expressed their support), and currently the United Nations and International Telecommunication Union (ITU) through the World Summit on the Information Society (WSIS), to be held in Geneva in 2003 and in Tunisia in 2005. Furthermore, cultural diversity has been the subject of discussions of other international and regional fora, including the civil society¹.

Such progressive affirmation of cultural diversity at international level is a contributing answer to growing concerns of civil society and governments regarding the preservation of cultural diversity (as a common heritage of humankind, in a similar manner to biodiversity) as well as the promotion of living cultures and creative capacity. In both dimensions, cultural diversity tends to integrate global strategies of sustainable development. Public authorities are increasingly sensitive to the need to develop intercultural dialogue, with a view to foster peace, security and stability at global level.

The Universal Declaration on Cultural Diversity and the supporting Action Plan, adopted unanimously by UNESCO in November 2001, met with the European Community and its Member States' approval. The latter broadly endorsed the values and principles enshrined in these texts, which were adopted by most of the international community. The first item under the Action Plan mentions the objective of "(...) *taking forward notably consideration of the opportunity of an international legal instrument on cultural diversity.*"

In April 2003, UNESCO's Executive Board recommended by consensus that the organisation's General Conference, which is to meet early this Autumn (29 September – 17 October), "*that it take a decision to continue action aimed at drawing-up a new standard-setting instrument on cultural diversity and to determine the nature of that instrument.*"

The forthcoming General Conference will thus take a decision on the opportunity of an international instrument on cultural diversity as well as on the nature of such instrument.

¹ The Organisation Internationale de la Francophonie (OIF), and the International Network on Cultural Policy (INCP), as well as the International Network for Cultural Diversity (INCD) as far as civil society is concerned. Within the context of their discussions on cultural diversity, some organisations focused more specifically on the question related to an international instrument. The INCP produced a draft global convention, approved by the Ministers in Cape Town in October 2002. In parallel with the meetings of the INCP, a coalition of professionals representing civil society and meeting within an International Network for Cultural Diversity (INCD) has also produced a draft international instrument. In addition, the SAGIT – Sectoral Advisory Group on International Trade on cultural industries, which advises the Canadian government on matters related to trade, produced a draft instrument.

2. COMMUNITY INVOLVEMENT

Preservation and promotion of cultural diversity are among the founding principles of the European model. They are enshrined in the Treaty, in Article 151²; in the Charter of Fundamental Rights of the European Union, under Article 22³, and will figure prominently in our future Constitution.

In terms of internal policies, Article 151, which has permitted the development of cultural actions, notably through the Culture 2000 Programme, requires in addition the taking into account of the cultural dimension in other Community policies – as it is the case for industrial policy as far as the MEDIA Plus Programme is concerned, and for freedom of movement of services within the internal market with regards to the Television Without Frontiers Directive.

Such principle also applies to the external dimension of the Community action, and Article 151 requires the EC and its Member States to promote this model in its international relations, as a contribution to a world order based on sustainable development, peaceful coexistence and dialogue between cultures. With regards to international co-operation, the key provision is Article 151.3: *“The Community and the Member States shall foster co-operation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.”*

The Community is involved in cultural policies and actions which require it to strengthen these aspects within its borders and in its relations with third countries and international organisations. The Community has elaborated an ambitious development policy which includes a cultural component with certain regions of the world, particularly the African, Caribbean and Pacific (ACP) region and the Mediterranean⁴. The Community external action in the field of culture finds its legitimacy and added value in its natural vocation to foster an intercultural dialogue and establish the conditions of its equality.

In the field of Information Society, the Community has developed actions and programmes – such as the eEurope initiative – aiming notably the promotion of cultural diversity through the use of information and communication technologies (ICTs). These actions constitute a framework for dialogue and co-operation with third countries.

² In particular Article 151.1: *“The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.”* And Article 151.4: *“The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.”*

³ Article 22: *“The Union shall respect cultural, religious and linguistic diversity”.*

⁴ See Article 27 on “Cultural development” of the Cotonou Agreement and Chapter III on “Partnership in social, cultural and human affairs: developing human resources, promoting understanding between cultures and exchanges between civil societies” of the 1995 Barcelona Declaration founding the new Euro-Mediterranean Partnership.

The Treaty and the Community instruments call on the Community and its Member States to address jointly certain of the issues which are of relevance to a discussion on an international instrument. The EC and its Member States would have to ensure coherence between internal and external EU policies and multilateral agreements, notably under the auspices of the World Trade Organisation (WTO) and the World Intellectual Property Organisation (WIPO). On this latter forum, the instrument should neither interfere nor prejudice with on-going discussions notably within the WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore/Traditional Cultural Expressions.

Within the context of the launch of multilateral trade negotiations in WTO, the EU General Affairs Council stressed the importance of the objective of preservation of cultural diversity, in 1999 conclusions⁵, which are still valid for the ongoing negotiations.

Moreover, given the importance of international cultural and audio-visual co-operation in these debates, the Community and its Member States, with its important instruments of co-operation, must participate in these debates in a way that it is commensurate with its contribution to co-operation and development. European policies support and implement certain specific objectives of the UNESCO Universal Declaration, such as developing viable local cultural industries and improving the distribution of cultural works at global level, particularly works from developing countries.

The negotiations, at the forthcoming UNESCO General Conference, with a view to a decision on the opportunity and the nature of a possible future international instrument on cultural diversity, clearly cover matters with regard to which rules and instruments exist at the Community level.

Culture Ministers meeting in Thessaloniki in May 2003 debated on a possible international instrument on cultural diversity, with the following conclusions:

« 7. Europe as a continent of culture can neither accept the threat of cultural homogeneity, nor the threat of the clash of civilisations. The European answer to all this is to insist on safeguarding and promoting cultural diversity.

8. This basic political pursuit needs the appropriate legal basis. On the international level, the latter may be expressed under the aegis of UNESCO in the form of a multilateral convention on the protection and promotion of cultural diversity, taking into account the preparation already done in the framework of the Council of Europe and the International Network of Cultural Policy. The basic international forum for cultural policies cannot be the WTO. »

5 Council Conclusions of 25 October 1999: "During the forthcoming WTO negotiations, the Union will ensure, as in the Uruguay Round, that the Community and its Member States maintain the possibility to preserve and develop their capacity to define and implement their cultural and audio-visual policies for the purpose of preserving their cultural diversity."

3. ADDED VALUE OF A NEW INSTRUMENT

The growing debate at international level, as illustrated by the previous developments, confirms the interest in cultural diversity, specifically on a normative framework to ensure the preservation and promotion of cultural diversity.

In its document *“Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on cultural diversity”* (166 EX/28 of 12 March 2003), elaborated for the Executive Board, the UNESCO Secretariat lists existing international instruments relating to cultural diversity, under the global umbrella of the United Nations. Its analysis is that *“several aspects of cultural diversity are already governed by international standards, some binding, some non binding.”* It identifies nevertheless a gap in international law which an instrument could fill, which is cultural diversity in the context of globalisation, with the following specific objectives:

“To establish a link between the preservation of cultural diversity and the goals of development, notably through the promotion of creative activity and the cultural goods and services through which such activity is expressed. This means in particular, fostering States’ capacity to define their cultural policies (...).”

On this starting point, the Secretariat then lists four possible areas or options which might benefit from standard-setting efforts by UNESCO⁶. Amongst those four options, a clear majority of UNESCO’s Executive Board Members favoured the last one, consisting in *“protection of the diversity of cultural contents and artistic expressions reflected in cultural industries, which aspects appear to be particularly threatened by globalisation”*.

The Secretariat specifies as follows the objectives underlying normative work under this option: *“(...) to guarantee protection for cultural diversity within a variety of forms of expression of cultural activity; promote a dynamic interaction among the different cultural contents and artistic expressions and between them and other closely related domains (multilingualism in relation to cultural expression, development of local contents, participation in cultural life, opportunities for access to multiple source cultures and through a variety of media, digital included); respect the individual rights of creators and artists and facilitate the circulation of individuals, goods, services and knowledge linked to cultural activity while preserving stable areas of identity and creativity. The preservation of cultural diversity would thus be linked to the objectives of sustainable development and intercultural dialogue through the promotion of creative activity and artistic expression. Such an instrument should also ensure that each State is free to define its cultural policies, its co-operation agreements and its partnership initiatives in a global world (...).”*

⁶ These four areas or options are: (a) a new comprehensive instrument on cultural rights (i.e. participation to cultural life, freedom to engage in creative activity, right to education etc); (b) an instrument on the status of the artist; (c) a Protocol to the Florence Agreement (about the circulation of cultural goods) and (d) the protection of the diversity of cultural contents and artistic expressions. The Secretariat indicates in its comments related to the first 3 options, and for distinct reasons, that they may not be the most appropriate or feasible to address – thereby favouring option (d).

4. GUIDING PRINCIPLES FOR A FUTURE INSTRUMENT

At this stage the shape and content of the envisaged instrument have not been addressed. Discussion is under way about this and several options could be considered.

The Commission considers that a legally binding instrument to preserve and promote cultural diversity would be necessary, in order to consolidate certain cultural rights⁷, commit Parties to international co-operation, create a forum for debate on cultural policies and establish a global monitoring on the state of cultural diversity world-wide. Such an approach should recognise the need for a balanced understanding of both the opportunities offered and threats posed by globalisation and the development of ICTs.

In order for an international instrument on cultural diversity to gather the EC support and reflect the European approach, the Commission considers that the instrument should be based on and fully respect human rights. Beyond the recognition of cultural rights⁸, notably the right to participate freely in the cultural life of the community, the Universal Declaration of Human Rights establishes an approach on culture based on the concepts of human dignity, equality and freedom. Such principles are developed in the UNESCO Universal Declaration on Cultural Diversity, forming both its foundations and its boundaries⁹. Within the EU, the Treaty (Article 151) constitutes the legal basis for the promotion of cultural diversity, notably through the obligation to the Community to take into account culture in its action, including in international co-operation.

The concept of culture which constitutes the basis for the Community action, notably at international level, is understood in the anthropologic and social sense, embracing all of which concurs to the identity and dignity of people. Such concept enables one to fully grasp cultural diversity in a dynamic way in its relation to the Other.

In addition, the instrument should have the following objectives and meet the following conditions:

- Promote cultural diversity;

⁷ Cultural rights in this context are to be understood in the meaning of the Universal Declaration of Human Rights and the UNESCO Declaration on Cultural Diversity, Article 5:

“Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons should therefore be able to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons should be entitled to quality education and training that fully respect their cultural identity; and all persons should be able to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms”. The term “cultural rights”, as referred to in this Article, must be understood to be without any prejudice to intellectual property rights and their exploitation.

⁸ See Article 22 of the Declaration : “Everyone (...) is entitled to realisation of the economic, social and cultural rights indispensable for his dignity and the free development of his personality », and Article 27 of the Declaration : “1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

⁹ The UNESCO Universal Declaration on cultural diversity states in Article 4 : « No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope. »

- Contribute to the dialogue between cultures and to mutual understanding and respect;
- Develop international cultural co-operation, aimed at boosting the exchanges of cultural goods and services, including those in provenance of developing countries. In this respect, regular meetings between professionals of Parties should take place in order to contribute to the definition and elaboration of instruments and frameworks of co-operation at international level (regional and/or bilateral). The cultural dimension of co-operation actions will be promoted, including the need through education to foster mutual knowledge of cultural identities as a condition for the intercultural dialogue;
- Favour the development of cultural policies and instruments at national, regional and international level;
- Provide a focal point and a forum for Members to discuss and debate cultural policies, increase knowledge in this respect and exchange best practices;
- Provide technical assistance and expertise to the Members, with a view to the development of cultural policies adapted to each specific situation;
- Establish an institutional framework to monitor the state of cultural diversity in the world, e.g. an international observatory or monitoring mechanism of cultural diversity and cultural exchanges, and engage in the elaboration and definition of indicators and international standards in the field of cultural diversity. Such structure could for example prepare a yearly “state of cultural diversity” report, on the basis of each Party’s report.

Furthermore, such instrument would not affect and be without prejudice to the international legal framework applicable to exchanges of cultural goods and services – in particular as regards their trade and intellectual property rights aspects.

In view of the above, it is important and useful to develop an international instrument on cultural diversity. The preservation and promotion of cultural diversity is a fundamental principle that must be reflected in international law and policy. All stakeholders, including professional organisations in the cultural field, should be fully involved into the process of the development of the legally binding instrument.

5. CONCLUSIONS

In light of the above, and without pre-empting any substantive discussion, an international discussion on cultural diversity requires a common response from the EC and its Member States.

Most recently, Culture Ministers meeting in Thessaloniki stressed the need to safeguard and promote cultural diversity, and mentioned in this respect the fact that an international instrument in UNESCO may be the appropriate legal answer at international level.

The Commission considers important that the European Community and its Member States confirms at international level their commitment towards cultural diversity – the core of which is a shared commitment by all Member States.

It is therefore the Commission's intention that the EC play an active role in the forthcoming UNESCO General Conference, notably with regards to exploratory discussions concerning the drawing-up an international standard-setting instrument on cultural diversity. The Commission will seek consistency between European internal and international action regarding cultural diversity, and in doing so will fully reflect the existing EC *acquis*.

The Commission will co-operate with the Member States and develop common positions in order for the EC to be united in its proposal and conduct at the General Conference. To this end, some initial elements for a declaration on behalf of the European Community and its Member States are proposed in annex, with a view to the presentation, by the Commission, of a common position on the issue related to the international instrument on cultural diversity, at the General Conference in UNESCO.

Should the General Conference result in the launch of negotiations on an international instrument on cultural diversity, the Commission would propose in a timely manner a recommendation to the Council for a decision to authorise the Commission to negotiate in UNESCO on the issue related to an international instrument on cultural diversity, and conduct these negotiations on behalf of the EC and its Member States.

INITIAL ELEMENTS FOR A DECLARATION ON BEHALF OF THE EUROPEAN COMMUNITY AND ITS MEMBER STATES WITH A VIEW TO THE PRESENTATION OF A COMMON POSITION ON THE ISSUE RELATED TO THE DRAWING-UP OF A STANDARD-SETTING INSTRUMENT ON CULTURAL DIVERSITY, FOR THE FORTHCOMING UNESCO GENERAL CONFERENCE

The European Community and its Member States would like to recall their intervention made at the 166th session of the UNESCO Executive Board, on the issue of the international instrument on cultural diversity. At this occasion, the European Community and its Member States welcomed the work of the organisation towards the elaboration of a Convention on cultural diversity, and noted that such work should be based on and be envisaged as the follow-up of the Declaration on cultural diversity. Following the Executive Board's recommendation to “*take a decision to continue action aimed at drawing-up a new standard-setting instrument on cultural diversity and to determine the nature of that instrument*”, the discussion on the international instrument on cultural diversity at the present session of the General Conference gives the European Community and its Member States the opportunity to reaffirm their commitment to cultural diversity at international level.

The European Community and its Member States would like to express their support for a standard-setting instrument on cultural diversity, which would be a new step as a follow-up to the Universal Declaration on cultural diversity, in a necessary added-value perspective.

Such instrument, based on human rights and on a balanced understanding of both the opportunities offered and the threats posed by globalisation and the development of ICTs, would preserve and promote cultural diversity by *inter alia*:

- consolidating certain cultural rights;
- committing Parties to international co-operation;
- creating a forum for debate on cultural policies and
- establishing a global monitoring on the state of cultural diversity world-wide.

Such an instrument should have the overall objective of promoting cultural diversity, contributing to the dialogue between cultures and fostering mutual understanding and respect.

To this end, the negotiations on the instrument could take into account the following specific objectives:

- To develop international cultural co-operation, aimed at boosting the exchanges of cultural goods and services, including those in provenance of developing countries, in particular through the development of instruments and frameworks of co-operation at international level (regional and/or bilateral). The cultural dimension of co-operation actions will be promoted, including the need through education to foster mutual knowledge of cultural identities as a condition for the intercultural dialogue;
- To favour the development of cultural policies and instruments and to strengthen intercultural dialogue at national, regional and international level. To this end, to provide technical assistance and expertise to the Members, for the development of cultural policies adapted to each specific situation;

- To provide a focal point and a forum for Members to discuss and debate cultural policies, increase knowledge in this respect and exchange best practices;
- To establish a framework to monitor the state of cultural diversity in the world, which would engage in the elaboration and definition of indicators and international standards in the field of cultural diversity and could for example produce a yearly “state of cultural diversity” report.

Such instrument would not affect and be without prejudice to the international legal framework applicable to exchanges of cultural goods and services – in particular as regards their trade and intellectual property rights aspects.

The European Community and its Member States consider that the preservation and promotion of cultural diversity is a fundamental principle that must be reflected in international law and policy. All stakeholders, including civil society, should be fully involved into the process of the development of the legally binding instrument under the aegis of the UNESCO.