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منظمة الأمم المتحدة
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Diversity of Cultural Expressions

2 EXT.IGC

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

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Item 4 of the provisional agenda: Draft operational guidelines on Article 16 of the Convention

In accordance with Decision 2.IGC 8, adopted at its second ordinary session, the Committee requested the Secretariat to present to it, at its second extraordinary session (March 2009) a preliminary draft of operational guidelines on Article 16 of the Convention prepared on the basis of the replies to the questionnaire received by the Secretariat. This Document presents in Annex the preliminary draft operational guidelines that the Committee may wish to use as discussion basis.

Decision required: paragraph 11

1. The Conference of Parties, in Resolution 1.CP 6 adopted at its first ordinary session, requested the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Committee”) to prepare the operational guidelines, giving priority attention to, *inter alia*, the provisions of Articles 7, 8 and 11 to 17 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Convention”) and to submit the results of its work to the second ordinary session of the Conference of Parties for consideration and approval.
2. At its first ordinary session in Ottawa in December 2007, the Committee invited the Secretariat to select, in consultation with the Chairperson of the Committee, six qualified experts, representative of the different perspectives relating to preferential treatment (Article 16 of the Convention) and coming from countries in different stages of economic development. Each of the experts was tasked with preparing a factual document on this issue, enumerating definitions, regulations and existing practices (Decision 1.IGC 5B).
3. In order to ensure efficient coordination during the period of preparation of the expert reports, two coordinators were designated: Mr Pierre Defraigne, Executive Director of Madariaga-College of Europe Foundation and former Deputy Director-General for Trade at the European Commission (2002-2005) and Ms Vera Helena Thorstensen, Economic Counsellor at the Permanent Mission of Brazil in Geneva.
4. Pursuant to Decision 1.IGC 7, at the first extraordinary session of the Committee in June 2008 the Chairperson submitted document CE/08/1.EXT.IGC/7, “Selection of experts and terms of reference for the reports on preferential treatment (Article 16 of the Convention): interim report”.
5. Pursuant to Decision 1.EXT.IGC 7, the Secretariat organized on 11 and 12 September 2008 before the completion of the requested reports a working session at UNESCO Headquarters bringing together the experts, the coordinators and the Secretariat.
6. Pursuant to Decision 1.IGC 5B, paragraph 5, the reports prepared by the experts were submitted to the Committee at its second ordinary session in December 2008 (Document CE/08/2.IGC/8 and its Annex), during which one day was devoted to their consideration. The day’s work was divided into two parts. There was, first of all, a technical part in which the coordinators presented the expert reports and answered the questions of the Committee members. This part was followed by a debate in which all the members of the Committee were invited to express their opinions on the notion of preferential treatment within the meaning of Article 16 of the Convention, as well as on the elements to be taken into consideration with a view to its implementation, in order to provide the Secretariat with the information needed for the preparation of a preliminary draft of operational guidelines.
7. With due regard for its debate on this issue at the second ordinary session and underlining the importance of early implementation of preferential treatment for developing countries, the Committee requested the Secretariat to send to the Parties to the Convention, at the latest by **19 December 2008**, a questionnaire concerning the elaboration of the operational guidelines on Article 16 of the Convention, to be completed and returned to the Secretariat before **31 January 2009**. The Committee also requested the Secretariat to consult civil society having interests and activities in the fields covered by the Convention, by sending the questionnaire to the NGO-UNESCO Liaison Committee. The Committee requested the Secretariat to present to it at this second extraordinary session preliminary draft operational

guidelines on Article 16 of the Convention, in the light of the replies to the questionnaire received by the Secretariat (Decision 2.IGC 8).

8. The Secretariat received replies to the questionnaire from the following Parties: Albania, Benin, Brazil, Canada, Chile, China, Cuba, Ethiopia, India, Jamaica, Mauritius, Mexico, Monaco, Mongolia, Peru, Saint Lucia, Senegal and the European Community (hereinafter referred to as “the EC”). The contribution of the EC represents the common position of the EC and the 24 Member States of the European Union, Parties to the Convention: Austria, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. In all, **42 Parties** returned the questionnaire to the Secretariat within the time limit determined by Decision 2.IGC 8. The replies by these Parties have been taken into consideration in the preparation of the working document concerning the draft operational guidelines relating to Article 16 and are contained in the information document CE/09/2.EXT.IGC/208/INF4, which was posted online on the Convention’s website on **6 February 2009**. Four Parties, Burkina Faso, Norway, Switzerland and Tunisia, sent their replies after the deadline set by the decision; their replies were not taken into account in the working document but have been posted online on the Convention’s website.

9. The Secretariat also received replies to the questionnaire from civil society: a consolidated reply from the International Federation of Coalitions for Cultural Diversity (IFCCD), the International Network for Cultural Diversity (INCD) and Traditions for Tomorrow, as well as a reply from the International Theatre Institute. Overall, four civil society bodies replied to the questionnaire within the time limit.

10. Annexed to this document are preliminary draft operational guidelines on Article 16 of the Convention (hereinafter referred to as “the preliminary draft”). This preliminary draft reflects the Committee’s discussions and the replies to the questionnaire.

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

DRAFT DECISION 2.EXT.IGC 4

The Committee,

1. *Having examined document CE/09/2.EXT.IGC/208/4 and Annex,*
2. *Recalling Resolution 1.CP 6 of the Conference of Parties and Decisions 1.IGC 5B, 1.IGC 7, 1.EXT.IGC 7 and 2.IGC 8 of the Committee,*
3. *Adopts the draft operational guidelines relating to Article 16 of the Convention as annexed to this Decision;*
4. *Submits the draft for approval to the Conference of Parties at its second ordinary session as annexed to this Decision.*

Preliminary draft operational guidelines
Preferential Treatment for Developing Countries
Article 16

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.

1. Introduction

- 1.1. In the light of the strategic objectives of the Convention, Article 16 sets the goal of facilitating cultural exchanges between developed and developing countries. Preferential treatment to be granted by developed to developing countries, through appropriate legal and institutional frameworks, is the tool prescribed by Article 16 to achieve this goal and thus foster the emergence of a dynamic cultural sector in developing countries.
- 1.2. Article 16 is to be interpreted and applied in relation to the Convention as a whole. Parties should seek complementarities and synergies with all relevant provisions of the Convention and the various adopted operational guidelines.
- 1.3. The principles and spirit of cooperation and partnership should govern the relations between all Parties in the efficient implementation of preferential treatment within the meaning of Article 16.

2. Role of Parties

- 2.1. Article 16 creates an obligation for developed countries in favour of developing countries with regard to:
 - a) artists and other cultural professionals and practitioners;
 - b) cultural goods and services.
- 2.2. Developed countries should therefore play a pro-active role by putting in place national policies and measures as well as multilateral, regional and bilateral frameworks and mechanisms to implement and operationalize Article 16.
- 2.3. As long as effective cooperation requires interaction between partners, developing countries, as beneficiaries of preferential treatment, are encouraged to act as pro-active partners in the cooperation process with a view to ensuring that their specific needs and priorities are duly taken into account when preferential treatment frameworks and schemes are developed and applied. In addition, the enhancement of developing countries' production and provision of cultural activities, goods and services by putting in place relevant national policies and measures is a key to the efficient implementation of preferential treatment frameworks and schemes.

- 2.4. Whereas Article 16 does not provide an obligation for developing countries to offer preferential treatment to other developing countries, such action may be encouraged, where appropriate and feasible, as it can contribute significantly to the reinforcement of South-South cooperation.

3. Institutional and legal frameworks

- 3.1. The concept of preferential treatment under Article 16 is wider than the narrow trade meaning. It is to be understood as having both a trade and a cultural component.
- 3.2. Legal and institutional frameworks that could be used by the Parties, refer, as the case may be, to the following dimensions:
- the trade dimension;
 - the cultural cooperation dimension,
 - a combination of the trade and cultural cooperation dimensions.

3.3. Trade dimension

3.3.1. Multilateral, regional and bilateral frameworks and mechanisms in the field of trade could be used by Parties to implement preferential treatment in the field of culture, where possible and appropriate and in a coherent manner.

3.3.2. Parties to the Convention that have concluded multilateral, regional and/or bilateral trade agreements may take into account the provisions of these agreements and the respective mechanisms provided by them with a view to offering preferential treatment in favour of developing countries within the meaning of Article 16.

3.3.3. When making use of such frameworks and mechanisms, Parties should keep in mind the objectives and principles of the Convention, in addition to their commitments and obligations under the respective frameworks and mechanisms.

3.4. Cultural cooperation dimension

3.4.1. Cultural cooperation, geared towards sustainable development, is the core element of preferential treatment within the meaning of Article 16 of the Convention. Building on partnerships, Parties are therefore encouraged to develop cultural cooperation mechanisms and expand and diversify their bilateral, regional and multilateral cultural cooperation arrangements, exchange agreements and programmes.

3.4.2. In the light of of the Convention's provisions related to national policies as well as those related to international cooperation and cooperation for development and in conformity with the adopted operational guidelines, measures that could be developed, through cultural cooperation mechanisms for preferential treatment, may include but are not limited to:

a) with regard to artists, cultural professionals and practitioners from developing countries:

- providing support and expertise to developing countries for the development of policies and measures aimed at nurturing and supporting artists and others involved in the creative processes of cultural expressions;
- capacity-building and training through seminars (e.g. residencies for artists and cultural professionals) to help them integrate professional networks of developed countries;
- facilitating mobility, including entry, circulation and temporary stay in developed countries of artists and other cultural professionals and practitioners from developing countries (e.g. for film shooting, live performances, participation at fairs etc.) through, *inter alia*, improved and rapid visa access and lower costs of visas;
- funding arrangements and resource-sharing, including supporting access to cultural resources of developed countries;
- encouraging the creation of networks between civil society actors in developed and developing countries, including partnerships for development;
- providing specific fiscal incentives.

b) with regard to cultural goods and services from developing countries:

- providing support and expertise to developing countries for the development of policies and measures related to the creation, production, distribution and dissemination of domestic cultural goods and services;
- providing special fiscal measures and incentives for cultural enterprises from developing countries, such as tax credits and double taxation avoidance agreements;
- providing technical assistance, including equipment acquisition, technology transfer and expertise;
- providing financial aid to improve access of cultural goods to the markets of developed countries, through support and assistance schemes for the distribution and dissemination of works from developing countries, including support to domestic initiatives in this regard, such as translation/subtitling etc.;
- organizing fairs, exhibitions and other cultural events to promote various types of cultural expressions from developing countries and facilitating participation of developing countries in such events, such as the provision of free booths;
- encouraging the investment of cultural enterprises from developing countries in developed countries through e.g. reduction or elimination of tariffs, reduced office rental rates, information services, legal assistance;
- fostering private sector investment in the cultural industries of developing countries;
- facilitating the temporary access of cultural goods from developing countries for the purposes of cultural production, such as temporary importation of the necessary technical material and equipment;

- integrating cultural sector development projects in development aid public policies.

3.5. Combination of the trade and cultural cooperation dimensions

3.5.1. Trade or economic partnership agreements, and existing multilateral agreements (e.g. Florence Agreement and its Nairobi Protocol, co-production and co-distribution agreements) which include a component concerning cultural goods and services, and artists and other cultural practitioners and professionals, are examples of frameworks that bring together the trade and the cultural cooperation dimensions.

3.6. Criteria

3.6.1. In the trade environment, preferential treatment involves criteria such as eligibility, rules of origin, graduation, reciprocity and conditionality.

3.6.2. Some of these criteria might be considered relevant by Parties for certain frameworks, schemes or measures for granting preferential treatment by developed countries under Article 16. Nonetheless, the specificities of the cultural sector, the specific needs of different developing countries and the specific patterns of cooperation, do not allow for a single and streamlined set of criteria to be elaborated.

3.6.3. Parties may wish therefore to adopt a flexible approach and assess carefully the applicability and selection of criteria to be applied for each specific preferential treatment framework, scheme or measure, on a case by case basis.

4. National policies and measures for the efficient implementation of preferential treatment in developing countries

4.1. For preferential treatment to bring meaningful results, it is essential to enhance the production and provision of cultural activities, goods and services in developing countries, through appropriate policies and measures.

4.2. In the light of of the Convention's provisions related to national policies and to cooperation for development and in conformity with the adopted operational guidelines, such policies and measures to be implemented by developing countries may include, but are not limited to:

4.2.1 providing strategic support to their domestic cultural sectors and cultural industries;

4.2.2. capacity-building, in terms of both artistic and entrepreneurial skills in the cultural field;

4.2.3. actively seeking knowledge and expertise in the areas of enhancement and dissemination of cultural expressions, including traditional cultural expressions.

5. Role of civil society

5.1. In the light of Article 11 of the Convention concerning the participation of civil society and in conformity with the respective operational guidelines, civil society should be encouraged to play an active role with respect to the effective

application of preferential treatment, at all stages of the process - from policy-making to monitoring and reporting, through needs assessment, programme elaboration and networking.

5.2. The role of civil society in facilitating the implementation of Article 16 may include, but is not limited to:

5.2.1. providing information, advice and innovative ideas regarding development, improvement and efficient application of preferential treatment frameworks and schemes;

5.2.2. assisting the respective authorities by associations, unions and other organizations of cultural practitioners and professionals with respect to the evaluation of visa requests of artists and cultural professionals and practitioners of developing countries;

5.2.3. providing feedback to the Parties and the organs of the Convention concerning difficulties and challenges in the implementation of Article 16;

5.2.4. engaging and playing an innovative and pro-active role in the field of research on Article 16 and its implementation as well as in the monitoring process.

6. Coordination

6.1. Effective implementation of preferential treatment under Article 16 implies adoption of consistent policies and approaches in the trade and cultural spheres and therefore, close coordination between the national authorities responsible for culture and trade, in developed and developing countries alike.

7. Monitoring and exchange of information

7.1. Monitoring of the implementation of the Convention, including Article 16, shall be ensured through the application of Article 9 of the Convention (Information-sharing and transparency), in particular through the periodical reporting obligations of the Parties.

7.2. Developed countries, in accordance with the modalities (to be) defined by the operational guidelines on Article 9 of the Convention, will illustrate in their periodical reports to UNESCO, every four years, how the obligations under Article 16 have been implemented. The information provided will be examined by the Committee and the Conference of Parties..

7.3. Parties are encouraged to put in place suitable mechanisms and measures facilitating and enhancing the exchange of information and sharing of expertise and good practices, as provided for by Article 19 of the Convention (Exchange, analysis and dissemination of information).

7.4. Parties recognize the important role of research for the efficient implementation of preferential treatment under Article 16. Research should be conducted by the largest possible number of partners, including actors from the public and private sectors, universities, research centres, experts networks etc. UNESCO's Institute for Statistics and UNESCO Chairs could contribute significantly to research in this area.