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*Committee on Culture, Youth, Education, the Media and Sport*

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## **WORKING DOCUMENT**

on safeguarding (and promoting) cultural diversity

Committee on Culture, Youth, Education, the Media and Sport

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## 1. Introduction

Cultural diversity has become a central political issue within the global context. In the internal EU debate a relative consensus has been prevailing, i.e. to safeguard cultural diversity. The focus has mainly been on the way the Union comes to the forefront in international trade discussions, in particular in multilateral trade negotiations within a WTO framework. Establishing a fair and transparent multilateral system whereby cultural diversity is recognised and safeguarded, can not be expected from the sole functioning of the market forces.

## 2. General principles

Diversity of languages and cultural backgrounds is a common feature in the Member States of the European Union. In virtually all circumstances, this cultural diversity is being recognised, respected and, very often, promoted. Cultural diversity is the positive pendant of the - defensive - objective to prevent the development of a uniform world by promoting and supporting all cultures and by considering the dynamic process of cultural diversity. Preservation of cultural diversity is sometimes perceived as a nasty obstacle to 'free' trade, rather than as a value worthwhile protecting in itself.

### 2.1 Definitions

In confronting the challenge of **cultural diversity**, nationally and internationally, it is quite difficult to agree upon a common definition for the subject, also because this is just as complicated as that of culture - where numerous contents have been suggested and, often, national traditions prevail. **Cultural diversity** has replaced the wording of "cultural exception" which was linked to the WTO agreements and referred to a failed attempt for excluding the audio-visual sector within GATS in the Uruguay round.

However, stimulating definition attempts without the connotation of protectionism have been made. The *Council of Europe* considers "cultural diversity is expressed in the co-existence and exchange of culturally different practices and in the provision and consumption of culturally different services and products."<sup>1</sup>

In *UNESCO's* words, "Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognised and affirmed for the benefit of present and future generations."<sup>2</sup>

### 2.2 Legal basis

Article 151 TEC, introduced by the Maastricht Treaty in 1992, is entirely devoted to culture. The article should be better exploited in all its aspects. (Paragraph. 3 - cooperation with third countries, stimulate exchange and dialogue, Paragraph 4 - horizontal aspect of cultural policy, to respect and promote cultural diversity in fostering cultural exchange, dialogue ...)

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<sup>1</sup> Article 1.1, Declaration of the Committee of Ministers on cultural diversity, 7.12.2000.

<sup>2</sup> Universal Declaration on Cultural Diversity, Article 1, adopted by UNESCO General Conference on 2.11.2001

The EU Charter on Fundamental Rights, Article 22, states that *'the Union shall respect cultural, religious and linguistic diversity'*

### **3. Convention**

Art. 1-3 (*objectives*) of the Draft Constitution confirms that *"The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced."*

Art. 16 ranges culture among the areas for supporting, coordinating or complementary action. Harmonisation measures remain excluded. Majority voting has been adopted for decisions to be taken on cultural matters in the Council, which - if confirmed by the IGC - would be introducing a major change in comparison to the present-day situation.

The Committee on Culture expresses concerns on the fact that neither culture nor the active support of creativity are set out as priorities. It also regrets "the fact that the Convention has not been used as an opportunity to balance relations between culture and competition" and "that the State's public supports to culture are still subordinated to exceptional, precarious and reversible authorisations".

### **4. Culture and competition**

The EU has established a single European market since 1993, which ensures the free movement of cultural goods and services throughout the Union. Competition is free and subject to control by the appropriate EU authorities. There is a wide consensus among European decision-makers that cultural goods and services cannot be considered as goods or services 'like any other', able to be governed only by the laws of the market and of competition.

### **5. Cultural diversity in a regional context**

In view of the fact that, in many EU Member states, the competence for cultural (and educational) matters resides with local, regional or subnational authorities, represented in the Committee of the Regions, the Committee takes an active interest in matters related to cultural diversity, where the complementarity and subsidiarity rule apply.

### **6. Cultural diversity in an international context**

Initiatives to correct asymmetries can be deployed by making better use of international organisations. In the international trade field, the key question for regions and local authorities is how to secure a proper balance between the ground rules of liberalisation and the principles and safeguards underpinning regional and local self-government<sup>1</sup>.

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<sup>1</sup> Committee of the Regions, Draft Opinion on the impact on local and regional authorities of the negotiations on the GATS, CdR 103/2003 rev.1, 2.6.2003, p. 6.

## 6.1 Council of Europe

Their Declaration on cultural diversity<sup>1</sup> reflects a thoroughly European, inter-cultural viewpoint on this issue. Favourable to sustainable development<sup>2</sup>, the Declaration emphasises the importance of free creative expression<sup>3</sup>, of education and training of professionals<sup>4</sup> and of public service broadcasting<sup>5</sup> in a cultural diversity context, and it is stated that cultural and audio-visual policies, which promote and respect cultural diversity, are a necessary complement to trade policies<sup>6</sup>.

Worthwhile mentioning is the Declaration's explicit appeal to all Council of Europe's Member States "to pay particular attention to the need to sustain and promote cultural diversity, in line with the relevant Council of Europe instruments, in other international fora where they might be called on to undertake commitments which might prejudice these instruments"<sup>7</sup>.

## 6.2 UNESCO

UNESCO plays an important role in reflecting on cultural diversity, increase efforts to enhance awareness, and provide technical assistance to developing countries while encouraging cooperation for development.

### 6.2.1 Universal Declaration on cultural diversity

The Universal Declaration, adopted on 2 November 2001, confirms the specific character of cultural goods and services (Art. 8), stating that "*since they are indicators of identity, values, and meaning, they must not be treated as mere merchandise or consumer goods.*"

### 6.2.2 Global Alliance for cultural diversity

The Global Alliance was launched by UNESCO in February 2002 with the aim of uniting partners from public, private and non-governmental sectors to work on projects fostering growth in local cultural industries (140 partners and a number of pilot projects differing in scope and nature).

### 6.2.3 New international instrument

The action plan accompanying the Universal Declaration is intended to ensure its implementation and "speed up...reflections on the feasibility of an international legal instrument on cultural diversity." To this end, since fall 2002, a number of international forums (International Organisation of the Francophonie/55 countries, International Network on Cultural Policy -INCP/47 countries) have been actively promoting the idea of establishing a new international instrument, possibly of a binding nature, to protect and promote cultural diversity, and have looked to UNESCO to take responsibility for such an instrument. At a

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<sup>1</sup> Council of Europe, Declaration of the Committee of Ministers on cultural diversity, 7.12.2000

<sup>2</sup> Article 1.3

<sup>3</sup> Article 1.2

<sup>4</sup> Article 2.6

<sup>5</sup> Article 2.5

<sup>6</sup> Article 2.1

<sup>7</sup> Article 3.2

recent session of UNESCO's Executive Board<sup>1</sup>, a majority of delegates expressed their preference for a new international instrument on cultural content to fill the gap in the existing international law. The General Conference, scheduled for autumn, is to take further action on this, but any tangible result in terms of a new instrument is not to be expected until the end of 2005, at the earliest.

## 6.3 WTO

### 6.3.1 Legal base

The EU has the ability to negotiate with its trade partners as a single entity. Article 133 TEC attributes this role to the Commission on the basis of specific mandates given by the Council 1999: "The Union will take care to guarantee during the next WTO negotiations, as in the Uruguay round, the possibility for the Community and its Member States to preserve and develop their cultural and audio-visual policies for the preservation of their cultural diversity".

### 6.3.2 "exception"

The World Trade Organisation (WTO), founded in 1995, incorporates within one structure trade negotiations on goods (GATT), services (GATS) and intellectual property (TRIPS). It fully supports the objective of liberalising world trade and develops initiatives to obtain an ambitious and balanced outcome. It has taken a key role in the defense of measures intended to protect and promote national cultural interests and values. A firm EU stand in multilateral trade negotiations in 1993 has led to a refusal to liberalisation, allowing the EU to retain its national and European policies of broadcasting quotas and financial aid in particular to protect the European film industry. This is what used to be known as the "cultural exception", although cultural goods and services were not excluded from the area of negotiation. This notion being considered by most as too negative and restrictive, it has gradually been replaced by that of 'cultural diversity'.

### 6.3.3 GATS

The GATS is the first multilateral agreement to provide legally enforceable rights to trade in all services including cultural ones. The EU is the world leader in the extremely diversified services sector, and the Commission's initial offer on GATS was seen as a positive signal to WTO members that the EU supports a non-discriminatory, regulated system. However, no offers of liberalisation are proposed in the health, education and audio-visual sectors, and the EP called upon the Commission to maintain this position throughout the GATS negotiations<sup>2</sup>. Member States must have the legal flexibility to take all necessary measures in the areas of cultural and audio-visual policy so as to preserve and promote cultural diversity.

**A cultural good** is a physical support containing cultural content (CD, CD-ROM, tape, book etc)

**A cultural service** is any other form for providing cultural content (e.g. broadcasting, individual download over communication networks, live theatre, museum, library etc.)

Precise definitions are requested in order to guarantee the correct implementation of trade

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<sup>1</sup> 166th Session, April 2003

<sup>2</sup> Resolution on the GATS within the WTO, including cultural diversity, 12.3.2003, unpublished.

agreements concerning cultural services within the GATS and of the agreements on cultural goods within the GATT. Both, cultural services and cultural goods need a particular attention.

#### **6.4. Assembly of European Regions**

The AER, comprising 250 regions of 28 countries, has been most active in dealing with the touchy issue of cultural diversity and GATS. In the Brixen/Bressanone Declaration on Cultural diversity and GATS<sup>1</sup>, while demanding that regional governments should be included in any further negotiations touching on culture, education and media<sup>2</sup>, the regional Ministers requested "that the fields of education, culture and media are excluded from further negotiations under GATS (...) "<sup>3</sup>, showed concern "that the European Commission (...) is actively pursuing a strategy of promoting liberalisation"<sup>4</sup> and "opposition to any change of the EU treaties which would transfer competences for education, culture and media to the European level with the implication of qualified majority voting."<sup>5</sup>

#### **Conclusion**

Globalisation can have both positive and negative effects on cultural life. Positive, by multiplying exchanges of goods and services and a broader access to cultural goods. Negative, in so far as the market is being deregulated and economic concentration leads to dominating positions. Globalisation should not necessarily be equivalent to destruction of culture and social progress, if accompanied by a set of conditions favourable to promoting cultural diversity. The European Union is in favour of an intercultural dialogue and of cultural exchange. In our view, cultural diversity is in fact the key to sustainable development.

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<sup>1</sup> adopted by the European Regional Ministers for Culture and Education on 18.10.2002

<sup>2</sup> Paragraph 8

<sup>3</sup> Paragraph 22

<sup>4</sup> Paragraph 23

<sup>5</sup> Paragraph 24