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

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Item 8 of the Provisional Agenda: Preferential treatment: addressing imbalances in trade relations and barriers to the mobility of artists and cultural professionals

At its seventh session (Resolution 7.CP 14), the Conference of Parties invited the Intergovernmental Committee to “implement capacity-building activities, advocacy and training programmes related to preferential treatment measures, recognized under the Convention as an innovative mechanism to address the imbalance in trade relations and mobility barriers” in its future activities. This document provides an overall view of activities implemented or currently planned for the future.

Decision required: paragraph 14

1. At its seventh session (Resolution 7.CP 14), the Conference of Parties invited the Intergovernmental Committee to “implement capacity-building activities, advocacy and training programmes related to preferential treatment measures, recognized under the Convention as an innovative mechanism to address the imbalance in trade relations and mobility barriers” in its future activities. This document provides an overall view of activities implemented or currently planned for the future. This programme of work is made possible mainly through the support of the Aschberg Programme for Artists and Cultural professionals. It contributes decisively to the implementation of the 2030 Agenda on Sustainable Development, in particular SDGs 8 A (“Increase Aid for Trade support for developing countries, in particular least developed countries”), 10 A (“Implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with World Trade Organization agreements”), and 17.11 (“Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020”).
2. Preferential treatment is addressed in Article 16 of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. One of the most binding and powerful clauses of the Convention, it stipulates that “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”. Preferential treatment is understood as having both a cultural and a trade component. It creates an obligation for developed countries in favour of developing countries with regard to persons (artists and cultural professionals) and cultural goods and services. The enforcement of Article 16 is intended to contribute directly to one of the core objectives of the Convention: to redress persistent imbalances in the flows of cultural goods and services, facilitate the mobility of artists from the Global South and their capacity to access markets, and increase the enjoyment by audiences around the world of a greater diversity of cultural expressions.
3. The preferential treatment terminology is borrowed from the international trade terminology: the notion of “special and differential treatment” (mentioned in target 10.A of Sustainable Development Goal 10 “Reduce inequality within and among countries”) has been used to refer to the set of clauses included in WTO agreements that grant particular treatment to developing countries and least-developed countries. Special and differential treatment measures in WTO agreements are, in general, non-binding and encompass measures directly aimed at increasing the participation of developing countries in international trade or at enhancing international cooperation and development assistance. In contrast, preferential treatment is understood in the 2005 Convention as a binding commitment for developed countries, i.e. countries with larger market shares in cultural and creative industries that should benefit directly developing countries.
4. As specified in the Operational Guidelines of the Convention on Preferential Treatment for Developing Countries, a wide range of policies and measures are required for developing countries to benefit from preferential treatment or to advocate for its inclusion when they are in a negotiating position at the international, regional and/or bilateral levels. Support to be provided by developed countries goes beyond traditional development assistance and should be designed to effectively facilitate cultural exchanges, i.e. a *cross-border* movement of goods, services and people.
5. The introduction of preferential treatment provisions has also been recognized by the Conference of Parties at its sixth session (2017) as one of the guiding principles for its implementation in the digital environment¹ so that the objective of the Convention to ensure balanced cultural exchanges can be pursued also when artists and cultural professionals use digital technologies to create, produce or distribute their works.

¹ Guidelines on the implementation of the Convention in the Digital Environment (Resolution 6.CP 11), available at <https://en.unesco.org/creativity/publications/digital-guidelines>.

6. While the potential of Article 16 in contributing to dynamic cultural exchanges with long-lasting effects in both developed and developing countries is evident, its actual implementation and impact on the ground remain underdeveloped and underexplored. The decision taken by the Executive Board to redesign the UNESCO-Aschberg Bursaries for Artists (197 Decision 11) has made possible to set up a new programme addressing the needs of Parties to the 2005 Convention in the areas of preferential treatment and artistic freedom, with a view to facilitate the emergence of diverse and strong creative sectors, especially in the Global South. Three types of interventions are pursued within the programme: *development of training materials* and training on their use; *direct assistance* to countries either through technical support or through capacity building; *research and analysis*. In line with the 2030 Agenda, the Aschberg programme's objective contributes to promoting sustained, inclusive and sustainable economic growth and reducing inequality among countries.

Monitoring: research and analysis

7. Monitoring effectively the implementation of Article 16 is required to determine impact and assess challenges. This monitoring is made possible through the periodical reporting obligations of the Parties to the 2005 Convention. Data and information collected through this process, and from other existing sources, is analysed and consolidated since 2015 in the Global Report "Re-Shaping Cultural Policies" series². Analysis reveals, however, that very few preferential treatment measures are effectively designed or implemented. Measures reported also often refer to traditional bilateral cooperation agreements, while preferential treatment rests on the principle of non-reciprocity, or to development assistance measures that do not imply a deliberate facilitation of *cross-border* movement of goods, services and people from the Global South. Data and information collection, as well as capacities to benefit from and advocate for preferential treatment measures remain a key challenge.
8. In order to address the lack of information and data, and analyse trade frameworks that are or could be used by Parties to implement preferential treatment, a first study of 59 bilateral and regional agreements concluded between 2005 and 2017 from all regions of the world was conducted in 2017 and published in the "Policy and Research" series under the title *Culture in Treaties and Agreements*³. The study found that only three agreements⁴ included explicit references to the Convention, granted a particular status to certain cultural services, carried out liberalization through a positive list of commitments and *specifically* granted preferential treatment to the Parties' cultural goods and services, artists and cultural professionals. In other words, only three agreements indicated a clear willingness to implement both Article 16 and Article 21⁵ of the Convention.
9. In order to better assess achievements and challenges in implementing Article 16, a comprehensive impact study⁶ was launched in 2017 on the Economic Partnership Agreement concluded in October 2008 between the CARIFORUM States and the European Community and its Member States ("CARIFORUM-EU EPA" hereafter), one of the first North/South regional trade agreements targeting developing countries and compatible with

² The Global Report series has thus replaced since 2015 the preparation of specific reports on the implementation of Article 16.

³ Available at <https://en.unesco.org/creativity/publications/culture-treaties-agreements>.

⁴ Economic Partnership Agreement between the CARIFORUM States and the European Community and its Member States; Free Trade Agreement between the European Union and its Member States and the Republic of Korea; Agreement establishing an Association between the European Union and its Member States and Central America.

⁵ Article 21 ("International Consultation and Coordination") stipulates that "*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*".

⁶ M. Burri & K. Nurse, *Culture in the CARIFORUM-European Union Economic Partnership Agreement: Rebalancing trade flows between Europe and the Caribbean?* in UNESCO Policy & Research Series, 2019, available at <https://en.unesco.org/creativity/sites/creativity/files/policyresearch-book3-en.pdf>.

WTO rules seeking to effectively improve market access opportunities and ensure wider and more balanced exchanges, with the inclusion of a Protocol on Cultural Cooperation (PCC) largely inspired by the Convention objectives. The study shows that the potential of the PCC remains largely untapped – especially in the areas related to the movement of artists and audio-visual co-productions – and that the expected increase in cultural exchanges has not materialized. The challenges range from institutional and capacity constraints to legal complications and lack of concerted efforts amongst implementing agencies, creative industry organizations and individual artists. This first impact study has shown that, in determining the impact of the implementation of Article 16, adequate benchmarks for evaluation, empirical data and evidence are still lacking. It would be critical, in this regard, that the UNESCO Institute for Statistics (UIS) continues in future its work to monitor the ways in which cultural goods and services are traded globally, through its database on international trade of cultural goods. Disaggregated by cultural sub-sector, the internationally-comparable trade data can be used to help monitor progress towards the Sustainable Development Goals (SDG).

10. In order to improve the monitoring of the implementation of Article 16, the framework for periodic reports has been restructured around the four goals of the Convention. Adopted by the Conference of Parties at its seventh session in June 2019 (Resolution 7.CP 12), it includes a dedicated section under Goal 2 (“Achieve a balanced flow of cultural goods and services and increase the mobility of artists and cultural professionals”), with a series of qualitative and quantitative questions to guide Parties in providing relevant information⁷. The monitoring exercise thus provides an opportunity for developed countries to inform of relevant measures, cultural initiatives and programmes and for developing countries to better identify the type of support needed to benefit from preferential treatment measures. As part of the 2030 Agenda follow-up and review mechanisms, Voluntary National Reviews (VNRs) provide another opportunity to share knowledge and experience on preferential treatment measures⁸. In this regard, the two reporting exercises should be considered in a complementary way. However, out of the 47 countries that presented their VNRs at the High-level Political Forum on Sustainable Development (HLPF) under the auspices of the UN Economic and Social Council in July 2019, only one country highlighted efforts to implement special and differentiated treatment for developing countries, particularly for LDCs, and another one noted the importance of reducing trade barriers for developing countries to facilitate market access⁹.

⁷ Under the section “Mobility of artists and cultural professionals”, Parties “shall provide information on policies and measures, including preferential treatment as defined in Article 16 of the Convention, aimed at promoting the inward and outward mobility of artists and other cultural professionals around the world. They shall also report on operational programmes implemented to support the mobility of artists and cultural professionals, particularly those moving to and from developing countries, including through programmes for South-South and triangular cooperation”. Under the section “Flows of Cultural goods and services”, “Parties shall report on policies and measures, including preferential treatment, as defined in Article 16 of the Convention, that facilitate a more balanced exchange of cultural goods and services globally. Such policies and measures include, inter alia, export and import strategies, North-South and South-South cultural cooperation programmes and aid for trade programmes as well as foreign direct investment for the cultural and creative industries”.

⁸ Voluntary national reviews (VNRs) aim to facilitate the sharing of experiences, including successes, challenges and lessons learned, with a view to accelerating the implementation of the 2030 Agenda. They serve as a basis for the regular reviews by the high-political forum (HLPF), meeting under the auspices of ECOSOC. Regular reviews are voluntary, state-led, undertaken by both developed and developing countries.

⁹ 2019 Voluntary National Reviews Synthesis Report available at https://sustainabledevelopment.un.org/content/documents/252302019_VNR_Synthesis_Report_DESA.pdf.

Capacity-building and training

11. Challenges associated with the implementation of Article 16 can be due to a lack of clarity on its scope both for those who are bound to it (developed countries) and for those who are to benefit from it (developing countries). For the latter, the ability to benefit from or advocate for preferential treatment also rests on the development of strong creative sectors and external market access strategies. At the request of the Intergovernmental Committee and the Conference of Parties¹⁰, the Secretariat developed, in collaboration with the UNESCO Chair on the Diversity of Cultural Expressions (Faculty of Law of Laval University in Quebec, Canada), a first training module on the implementation of Article 16 on Preferential treatment for developing countries. This general module, addressing governmental actors, as well as trade and cultural professionals, is designed as a two-day training to present and discuss the nature and scope of commitments under Article 16. It allows for an examination of the relationship between preferential treatment under Article 16 and other relevant legal instruments, in particular free trade agreements. It also presents a typology of fourteen categories of preferential treatment measures included in existing cultural cooperation arrangements and mechanisms. This categorisation is intended to help better understand what constitutes a preferential treatment measure, discuss expected benefits and possible challenges encountered. It also serves to examine how existing programmes can be adapted, what type of measures can be requested by developing countries when they are in a position to negotiate trade or other agreements that may have a direct or indirect impact on their creative sectors and cultural professionals. A second training module is being currently finalized, targeting specifically trade negotiators to raise awareness about cultural issues arising from the implementation of Article 16 of the Convention in trade fora. This module will help to better understand ways in which cultural goods and services can be provided a special status in trade and investment agreements – including through preferential treatment measures – to which they are signatories or which are under negotiation, and provide information on the introduction of cultural clauses related to e-commerce and digital products, in line with the Operational Guidelines on the implementation of the Convention in the Digital Environment.
12. Based on the training materials produced, a first sub regional workshop entitled “Advancing Preferential Treatment for Culture” was held in Barbados on 6 and 7 November 2019 for the Caribbean region, in partnership with the CARIFORUM Secretariat. Coupled with the public launch of the study *Culture in the CARIFORUM-European Union Economic Partnership Agreement: Rebalancing trade flows between Europe and the Caribbean?*¹¹, this two-day workshop brought together about 30 intergovernmental and governmental officials as well as culture and trade professionals from Barbados, Dominican Republic, Jamaica, Saint Lucia and Trinidad and Tobago. In addition to CARIFORUM and the Delegation of the European Union to Barbados, the Eastern Caribbean States, the OECS and CARICOM/CARIFORUM, several regional intergovernmental agencies participated, such as the Caribbean Development Bank, CARICOM, the Organisation of Eastern Caribbean States (OECS) and the Inter-American Development Bank as well as the Caribbean Export Development Agency. The workshop served to assess and discuss the potentialities and implications of preferential treatment measures for artists and cultural professionals the Caribbean region, within the framework of the implementation of the CARIFORUM-European Union Economic Partnership Agreement. Discussions also revealed the increasing attention given to mobility issues for artists and cultural professionals from the Global South, as related policies are increasingly impacted by security concerns and economic and political constraints. In this context, and as a result of discussions, an outcome document was prepared to inform future discussions on policies and measures required to better activate the Protocol on Cultural

¹⁰ Decisions 8.IGC 11 and 9.IGC 8; Resolutions 5.CP 11 and 7.CP 14.

¹¹ A first public launch of the study had already taken place on the occasion of the 7th session of the Conference of Parties. More information at <https://en.unesco.org/creativity/news/culture-trade-unescos-new-study-cariforum-eu-economic> and https://en.unesco.org/creativity/sites/creativity/files/create_2030_june19_en2905_web.pdf.

Cooperation (especially with regards to audio-visual co-productions and cultural exchanges) as well as the EPA provisions relating to market access for entertainment services. The document was shared with European Union and CARIFORUM authorities ahead of the 9th meeting of the EPA Joint Trade and Development Committee, held in Brussels on 28th and 29th November 2019.

13. Through continued extrabudgetary support, capacity-building activities, advocacy and training programmes related to preferential treatment measures can be further developed. In particular, the Aschberg programme can be further reinforced to respond to on-demand technical assistance and peer-to-peer learning, and help Parties in their efforts to advance the position of culture in trade fora. Enhanced support, with the cooperation of UIS, should also serve to improve capacities for the collection and analysis of data and information, a process that is now well streamlined through the quadrennial periodic reports on the implementation of the Convention and the Global Report “Re-Shaping Cultural Policies” series, and informs usefully the Secretariat’s online Policy Monitoring Platform. This coherent line of activities will raise the capacities for innovative policy making and monitoring at the national and global levels, and demonstrate the relevance of the Convention to the implementation of the 2030 Sustainable Development Goals Agenda.
14. The Committee may wish to adopt the following decision:

DRAFT DECISION 13.IGC 8

The Committee,

1. *Having examined Document DCE/20/13.IGC/8,*
2. *Recalling Resolution 7.CP 14,*
3. *Further recalling that Article 16 on “Preferential treatment for developing countries” creates an obligation for developed countries in favour of developing countries with regards to artists and other cultural professionals and practitioners, and cultural goods and services,*
4. *Takes note with satisfaction of the new research, advocacy and capacity-building activities undertaken by the Secretariat through the Aschberg Programme for Artists and Cultural Professionals, as a key contribution to the advancement of the 2030 Agenda on Sustainable Development;*
5. *Encourages Parties to take appropriate preferential treatment measures that can effectively redress imbalances in the global flow of cultural goods and services and facilitate the mobility of artists and cultural professionals from developing countries, in particular through cultural cooperation agreements and multilateral, regional or bilateral trade frameworks;*
6. *Invites the Secretariat to pursue its efforts towards the monitoring of Article 16, in particular through the quadrennial periodic reports, the Global Report “Re-Shaping Cultural Policies” series, and the Policy Monitoring Platform;*
7. *Further invites Parties to place renewed emphasis on the sharing of information and good practices relating to preferential treatment measures, both through their Voluntary National Reviews and their quadrennial periodic reports on the implementation of the Convention;*
8. *Requests the Secretariat to continue its efforts to support the Parties in the area of preferential treatment and further encourages Parties to support the activities of the Secretariat through voluntary contributions, in order to ensure impact and sustainability of efforts, and better respond to the needs and challenges of developing countries in the area of preferential treatment for culture.*