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Diversity of
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**INTERGOVERNMENTAL COMMITTEE
FOR THE PROTECTION AND PROMOTION
OF THE DIVERSITY OF CULTURAL EXPRESSIONS**

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Item 12 of the provisional agenda: Progress report on the implementation of Article 16
on preferential treatment for developing countries

In accordance with Decision 13.IGC 8, this document constitutes the progress report on the implementation of Article 16 on preferential treatment for developing countries, requested by the Committee at its thirteenth session.

Decision required: paragraph 18

I. Background

1. At its thirteenth session, the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter “the Committee”) requested the Secretariat to continue its efforts to support Parties in the area of preferential treatment and to submit to it, at its fourteenth session, a progress report on the implementation of Article 16 on preferential treatment for developing countries ([Decision 13.IGC 8](#)). Previously, at its seventh session, the Conference of Parties had 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” ([Resolution 7.CP 14](#)).
2. Preferential treatment is enshrined in Article 16 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. One of the most binding clauses of the 2005 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. 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 persons. The implementation of Article 16 thus aims to contribute directly to one of the fundamental objectives of the Convention, namely to redress persistent imbalances in the flow of cultural goods and services, to facilitate the mobility of artists from the South and their capacity to access markets, and to increase opportunities for audiences worldwide to access a greater diversity of cultural expressions.
3. As specified in the Operational Guidelines 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 negotiating at the international, regional and/or bilateral level.
4. The introduction of preferential treatment provisions was also recognized by the Conference of Parties, at its sixth session in 2017, as one of the guiding principles for the implementation of the Convention in the digital environment to ensure that balanced cultural exchanges could also be pursued when artists and cultural professionals used digital technologies to create, produce and distribute their works¹.

II. Modest capacity-building and training opportunities

5. As already mentioned in [Document DCE/20/13.IGC/8](#), despite its clear potential for contributing to dynamic cultural exchanges with long-term effects in both developed and developing countries, the implementation of Article 16 and its actual impact on the ground remain insufficient and underexplored. The decision taken by the Executive Board to redesign the UNESCO-Aschberg Bursaries for Artists ([197 EX/Decision 11](#)) allowed for the creation of a new programme addressing the needs of Parties to the Convention in the areas of preferential treatment and artistic freedom, with a view to facilitating the emergence of strong, diverse creative sectors, especially in the South. Three types of interventions are pursued within the programme: *the development of training materials* and training on their use; *direct assistance* for countries, either through technical support or capacity building; *research and analysis*. The Secretariat’s efforts in 2020, which are mentioned in this document, have therefore been made possible by the UNESCO-Aschberg Programme for Artists and Cultural

1. Operational guidelines on the implementation of the Convention in the digital environment (Resolution 6.CP 11), available at: https://en.unesco.org/creativity/sites/creativity/files/digital_guidelines_en_full-3.pdf.

Professionals, the aim of which, in accordance with the 2030 Agenda, is to help promote sustained, inclusive and sustainable economic growth and to reduce inequalities between countries².

6. Difficulties 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. As already reported in Document [DCE/20/13.IGC/8](#), the Secretariat developed, in 2019 and at the request of the Committee and the Conference of Parties³, the first training module on the implementation of Article 16 on preferential treatment for developing countries, in collaboration with the UNESCO Chair on the Diversity of Cultural Expressions (Faculty of Law at Université Laval in Quebec City, Canada). This general module, which addresses government actors as well as trade and cultural professionals is designed as a two-day course in which the nature and scope of commitments under Article 16 are presented and discussed. It also studies the relationship between preferential treatment under Article 16 and other relevant legal instruments, particularly free trade agreements. In addition, it presents 14 categories of preferential treatment measures included in existing cultural cooperation arrangements and mechanisms. This typology is intended to help participants better understand what constitutes a preferential treatment measure so they can discuss expected benefits and the possible challenges in its application. It also serves to examine how existing programmes can be adapted and what types 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.
7. On the sidelines of the thirteenth session of the Committee, the Secretariat held an information meeting on the results of the first sub-regional training module, held in Barbados in November 2019 in partnership with the CARIFORUM Secretariat and on the basis of the training materials and methodologies developed in collaboration with the UNESCO Chair on the Diversity of Cultural Expressions. In addition to the educational purpose of the workshop, at the request of CARIFORUM and the European Union (EU) delegation to Barbados, the Organization of Eastern Caribbean States (OECS) and the CARICOM/CARIFORUM, it also resulted in the elaboration of a final document intended to inform future discussions on policies and measures needed to better implement the Protocol on Cultural Cooperation attached to the EU-CARIFORUM Economic Partnership Agreement (EPA). The document was shared with EU and CARIFORUM authorities ahead of the ninth meeting of the EPA Joint Trade and Development Committee, held in Brussels on 28 and 29 November 2019. The Secretariat has not obtained any feedback from the Parties to the Agreement.
8. At the same session of the Committee, on the sidelines of the Committee's work, the UNESCO Chair on the Diversity of Cultural Expressions presented a guide to the negotiation of cultural clauses in trade agreements⁴. This guide, the development of which was supported by the government of Quebec, is primarily intended to make States aware of the possible implications of trade negotiations for the cultural sector and to help them develop their capacities to make informed choices in the context of such negotiations. It describes four steps necessary for the negotiation and integration of cultural clauses in trade agreements.

2. The UNESCO-Aschberg Programme contributes particularly to targets 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").

3. Decisions [8.IGC 11](#) and [9.IGC 8](#); Resolutions [5.CP 11](#) and [7.CP 14](#).

4. V. Guèvremont & I. Bernier, *Guide to the Negotiation of Cultural Clauses in Trade Agreements*, UNESCO Chair on the Diversity of Cultural Expressions, 2020, available at: http://www.unescodec.chaire.ulaval.ca/sites/unescodec.chaire.ulaval.ca/files/guide_-_6_fevrier_2020_-_eng_-_final.pdf.

9. Finally, on the occasion of the thirteenth session of the Committee, the Secretariat issued an information leaflet on preferential treatment⁵, providing a brief overview of preferential treatment for the purposes of the Convention and a list of conditions to be met by any preferential treatment measure adopted in the context of trade or other agreements.
10. However, despite the availability of the tools described above, 2020 was marked by the COVID-19 pandemic and the many ensuing restrictions, and as such, the Secretariat has not been able to deploy them for preferential treatment training or to respond to the very low number of requests for technical assistance or capacity building that it has received.

III. Monitoring the implementation of preferential treatment measures

11. The Framework for Quadrennial Periodic Reporting, adopted by the Conference of Parties at its seventh session in June 2019 ([Resolution 7.CP.12](#)), is structured around four of the Convention's objectives. It thus includes a section devoted to 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 assist Parties in providing relevant information. This monitoring exercise should thus provide an opportunity for developed countries to provide information on relevant cultural measures, initiatives and programmes and for developing countries to better identify the type of preferential treatment measures from which they could benefit.
12. However, as preferential treatment measures are reported as measures to promote the mobility of artists and cultural professionals and the exchange of cultural goods and services⁶, an in-depth analysis by the Secretariat of the quadrennial periodic reports submitted in 2020 would be required to determine which preferential treatment measures were reported by Parties. However, as the submission date for the quadrennial periodic reports was postponed to 1 November 2020 due to the difficulties encountered by Parties in fulfilling this obligation in the context of the global health crisis, the Secretariat was not in a position to conduct such an analysis at the time of the preparation of this document.
13. Furthermore, since 2015, the data and information collected through the quadrennial periodic reports, as well as from other sources, has been analysed and consolidated in the "Reshaping Cultural Policies" global report series⁷. The preparation of the third edition, to be published in February 2022 on the occasion of the fifteenth session of the Committee, is under way. It provides a preliminary indication that none of the bilateral and regional trade agreements signed between 2017 and 2020, involving at least one Party to the Convention, contain a provision falling within the scope of Article 16. It must therefore be noted that some Parties are still reluctant to offer preferential treatment to artists and cultural professionals, as well as in favour of cultural goods and services, from developing countries in the framework of their trade agreements. However, preliminary research for the third edition reveals that in three of the trade agreements signed between 2017 and 2020, Parties made reservations to preserve their

5. Available in German, English, French and Spanish at: <https://en.unesco.org/creativity/publications/preferential-treatment>.

6. 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 "Flow 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; foreign direct investments for the cultural and creative industries*".

7. Since 2015, the global report series has thus replaced specific reports on the implementation of Article 16.

right to conclude and implement cultural cooperation or audiovisual co-production agreements, notwithstanding their most-favoured-nation treatment commitment⁸.

14. In addition to difficulties that may be due to a lack of understanding of the scope of Article 16 by Parties reporting measures considered to be preferential treatment, effective monitoring of its implementation requires the availability of solid data on the mobility of artists, cultural professionals and the flow of cultural goods and services from developing countries. The lack of adequate data and benchmarks is a major obstacle to measuring the effective implementation of preferential treatment in developing countries and its impact on the availability and access to a diversity of cultural expressions worldwide. The Committee thus requested the Secretariat and the UNESCO Institute for Statistics (UIS) to continue their work with the Parties with a view to collecting and analysing data on the international trade of cultural goods and services, including, if possible, disaggregated data by cultural domains ([Decision 13.IGC 8](#)). This work will start in 2021, as part of the preparation for the third edition and with the support of the UNESCO-Aschberg Programme for Artists and Cultural Professionals.

IV. Challenges aggravated by the COVID-19 pandemic

15. One of the guiding principles of the Convention is that of “openness and balance”, which calls on Parties to ensure a balance between the promotion of their cultural expressions and those of “other cultures of the world” (Article 2.8). The granting of preferential treatment to artists, cultural professionals, and cultural goods and services from developing countries is one of the measures provided for in the Convention that responds to this principle with a view to “ensuring wider and balanced cultural exchanges” (Article 1.c). However, in a context of closed borders, the Parties’ leeway in implementing Article 16 should be questioned, particularly with regard to the mobility of artists and cultural professionals. As well as the pre-existing challenges, there is a need to devise alternative regimes for the international mobility of artists and cultural professionals to stimulate the circulation of diverse cultural expressions and the promotion of international cooperation. The ResiliArt debate organized by the International Conference for the Performing Arts (CINARS), in partnership with UNESCO, on 9 November 2020 opened initial avenues for reflection on this subject.
16. The impact of the crisis on the capacity to produce cultural goods and services and the restrictions on international travel are likely to have had a negative impact on the trade of cultural goods. At the same time, the use and exchange of digital cultural services have accelerated. Such an intensification of the creation, production and dissemination of and access to digital cultural services is concomitant with the increasingly frequent adoption of trade agreements that include chapters on digital and/or e-commerce, and even with the emergence, in 2019, of a generation of trade agreements exclusively dedicated to e-commerce. In order to ensure that the digital shift of all stages of the cultural value chain, accelerated by the COVID-19 pandemic, is not to the detriment of the diversity of cultural expressions both nationally and internationally, Parties will need to understand the legal implications of the e-commerce provisions they negotiate on the cultural and creative sector. Particularly regarding the implementation of Article 16, the provisions of the Operational Guidelines on the implementation of the Convention in the digital environment aimed at rebalancing the flow of cultural goods and services will require a strong and sustained commitment from the Parties in the context of the crisis and recovery⁹.

8. Regional Comprehensive Economic Partnership (see <https://rcepsec.org/legal-text/>), Peru-Australia Free Trade Agreement (see <https://www.dfat.gov.au/trade/agreements/in-force/pafta/pafta-outcomes/Pages/pafta-outcomes>) and Chile-Brazil bilateral free trade agreement (see <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5821/download> in Spanish).

9. In particular, paragraph 18 calls on Parties to, on the one hand, “improve the distribution of cultural goods and services in the digital environment produced by artists and cultural professionals, enterprises and independent organizations from developing countries, including through artistic and cultural collaboration, co-production and co-distribution agreements” and, on the other, to “take into account the provisions of international trade agreements they have concluded and will conclude, and their respective mechanisms with a view to offering preferential treatment in favour of cultural goods and services from developing countries in the digital environment”.

17. In declaring 2021 the International Year of Creative Economy for Sustainable Development¹⁰, the General Assembly of the United Nations acknowledged that creative industries could “enhance developing countries’ participation in” and help them “benefit from new and dynamic growth opportunities in world trade”. The implementation of preferential treatment measures under Article 16 is one of the key means of achieving such an aspiration. However, while prior to the COVID-19 pandemic, Article 16 was already suffering from a lack of implementation by developed countries Parties to the Convention on the one hand, and, from the limited capacities of developing countries Parties to the Convention to take advantage of it and advocate for it on the other, these difficulties have now been exacerbated. The capacity-building, technical assistance and awareness-raising activities that the Secretariat is able to deploy, with the support of the UNESCO-Aschberg Programme, building on the materials and methodologies already developed, could therefore prove highly relevant in such a context.
18. The Committee may wish to adopt the following decision:

DRAFT DECISION 14.IGC 12

The Committee,

1. *Having examined Document DCE/21/14.IGC/12,*
2. *Recalling Decision 13.IGC 8 and Resolution 7.CP 14 of the Conference of Parties,*
3. *Recalling also that, in declaring 2021 the International Year of Creative Economy for Sustainable Development, the General Assembly of the United Nations recognized the potential of creative industries to strengthen the participation of developing countries in world trade and enable them to benefit from new and dynamic growth opportunities,*
4. *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,*
5. *Takes note of the progress report prepared by the Secretariat as well as the challenges faced by Parties in the implementation of Article 16, which have been aggravated by the COVID-19 pandemic;*
6. *Encourages Parties to take appropriate preferential treatment measures to effectively redress imbalances in the global flow of cultural goods and services, particularly in the framework of multilateral, regional or bilateral trade agreements, paying particular attention, where appropriate, to chapters or sections dealing with e-commerce;*
7. *Invites the Secretariat to continue its efforts to monitor the implementation of Article 16 by Parties, in particular through the quadrennial periodic reports, the Policy Monitoring Platform and the “Reshaping Cultural Policies” global report series;*
8. *Requests the Secretariat to continue its efforts to support Parties in the design and implementation of preferential treatment measures and further requests the Secretariat to report to it at its fifteenth session as part of the report on its activities (2020-2021).*

10. Resolution A/RES/74/198 available at: <https://undocs.org/A/Res/74/198>.