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United Nations  
Educational, Scientific and  
Cultural Organization

Diversity of  
Cultural Expressions

Organisation  
des Nations Unies  
pour l'éducation,  
la science et la culture

Diversité  
des expressions  
culturelles

Organización  
de las Naciones Unidas  
para la Educación,  
la Ciencia y la Cultura

Diversidad  
de las expresiones  
culturales

Организация  
Объединенных Наций по  
вопросам образования,  
науки и культуры

Разнообразие форм  
культурного  
самовыражения

منظمة الأمم المتحدة  
للتربية والعلم والثقافة

تنوع أشكال التعبير  
الثقافي

联合国教育、  
科学及文化组织

文化表现形式  
多样性

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CONFERENCE OF PARTIES TO THE  
CONVENTION ON THE PROTECTION AND PROMOTION OF THE  
DIVERSITY OF CULTURAL EXPRESSIONS

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**Item 11 of the provisional agenda:** Updated progress report on the implementation of Article 16 on "Preferential treatment for developing countries"

In accordance with Decision 14.IGC 12 and as part of the activities of the Committee as decided by the Conference of Parties at its seventh session (Resolution 7.CP 14), this document provides an updated progress report on the implementation of Article 16 on "Preferential treatment for developing countries".

**Decision required:** paragraph 21

## I. Background

1. At its seventh session, the Conference of Parties invited the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter “the Committee”) to include in its activities for the period 2020-2021 the implementation of “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](#)). At its thirteenth and fourteenth sessions, the Committee took note of the progress reports prepared by the Secretariat at its request on the implementation of Article 16 on “Preferential Treatment for Developing Countries” (Decisions [13.IGC 8](#) and [14.IGC 12](#), respectively). At its fourteenth session, the Committee further requested the Secretariat to provide an updated report on the implementation of Article 16 to the eighth session of the Conference of the Parties. The following report therefore provides a synthesis of the two reports previously submitted to the Committee.<sup>1</sup>
2. Preferential treatment is enshrined in Article 16 of the Convention. This provision – one of the most binding clauses of the Convention – 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”. It creates an obligation for developed countries in favour of developing countries with regards” to persons (artists and cultural professionals) and cultural goods and services.
3. Support to be provided by developed countries goes beyond traditional development assistance and should be designed to effectively facilitate cultural exchanges, namely the *cross-border* movement of goods, services and people from developing countries. As specified in the Operational Guidelines on “Preferential Treatment for Developing Countries”, a wide range of policies and measures can also be implemented *by developing countries* in order 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 level. The implementation of Article 16 is thus aimed at contributing directly to one of the fundamental objectives of the Convention: to redress persistent imbalances in the circulation 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.
4. The Guidelines also state that “preferential treatment as defined by Article 16 is wider than the narrow trade meaning”. Consequently, the existing or future institutional frameworks developed by Parties may be built around the trade dimension, the cultural dimension, or a combination of the two. Preferential treatment can be granted under a free trade agreement as well as under other initiatives, including cultural cooperation agreements that do not include any trade-related provisions, the key factor being that the benefit granted by a developed country to a developing country should not be subject to reciprocity.
5. 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 may also be pursued when artists and cultural professionals use digital technologies to create, produce, and distribute their works.<sup>2</sup>

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1. “Preferential treatment: addressing imbalances in trade relations and barriers to the mobility of artists and cultural professionals” ([DCE/20/13.IGC/8](#)) and “Progress report on the implementation of Article 16 on preferential treatment for developing countries” ([DCE/21/14.IGC/12](#)).

2. Operational 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>

## II. Monitoring the implementation of preferential treatment measures

6. Effective monitoring of the implementation of Article 16 at the global level is essential to assess its impact on the rebalancing of cultural exchanges and to assess the challenges faced by both developed and developing countries Party to the Convention in fulfilling their common but differentiated responsibilities in this regard.
7. Adopted by the Conference of Parties at its seventh session in June 2019 ([Resolution 7.CP 12](#)), the periodic reporting framework has been restructured around the Convention's four goals. It thus includes a section devoted to Goal 2 of the Convention's [Monitoring Framework](#) ("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.<sup>3</sup> This monitoring exercise should thus have provided an opportunity for developed countries to share information about relevant cultural measures, initiatives and programmes, and for developing countries to better identify the type of assistance they may need in order to benefit from preferential treatment measures.
8. As part of the follow-up and review mechanisms of the 2030 Agenda for Sustainable Development, Voluntary National Reviews<sup>4</sup> could provide another opportunity to share knowledge and experience on preferential treatment measures, for instance with regards to Sustainable Development Goal 10, "Reduce inequality within and among countries", and in particular target 10.a, "Implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with World Trade Organisation agreements". In this regard, the two monitoring exercises should be considered in a complementary way. Of all the latest Voluntary National Reviews available on the Sustainable Development Knowledge Platform in December 2020, nine countries, all Parties to the Convention,<sup>5</sup> mentioned "differential treatment" to highlight the importance of either the provision of preferential market access for least developed countries or the role of regional trade agreements such as the African Continental Free Trade Area (AfCFTA) and the Southern African Development Community Free Trade Area (SADC FTA) to promote sustainable economic growth and achieve the Sustainable Development Goals. However, these references do not relate specifically to cultural goods and services, but rather to free trade in environmental goods to facilitate the introduction of new environmental technologies in developing countries.
9. Within the framework of quadrennial periodic reports, since preferential treatment measures are reported under the umbrella of measures to promote the mobility of artists and cultural professionals and the exchange of cultural goods and services, only an in-depth analysis conducted by the Secretariat of the reports submitted in 2020 will determine which measures reported by Parties correspond to preferential treatment. As the submission date for the quadrennial periodic reports was postponed to 1 November 2020 due to the difficulties

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3. 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, to facilitate a balanced exchange of cultural goods and services throughout the world. 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 into the cultural and creative industries*".
  4. Voluntary National Reviews (VNRs) are aimed at facilitating 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 United Nations High-level Political Forum on Sustainable Development (HLPF), which meets under the auspices of ECOSOC. They are conducted by States on a voluntary basis in both developed and developing countries.
  5. Azerbaijan, Bangladesh, Cambodia, Finland, Gambia, Guyana, Ireland, Malta and Seychelles.

encountered by Parties in fulfilling their reporting obligation in the context of the global health crisis, this analysis is still in progress at the time of writing this document. Preliminary results indicate, however, that no more than 5% of the quadrennial periodic reports submitted since the seventh session of the Conference of Parties have included measures which the Parties themselves have described as preferential treatment. This low rate might suggest a lack of adequate understanding of the scope of Article 16, as some Parties may have relevant measures in place, but do not report on them in their quadrennial periodic reports.

10. Moreover, the ongoing elaboration of the third edition of the Global Report *Re/Shaping Cultural Policies*,<sup>6</sup> to be published in February 2022, provides a preliminary indication that none of the bilateral and regional trade agreements signed between 2017 and 2020 and involving at least one Party to the Convention contains a provision falling within the scope of Article 16. It should therefore be noted that some Parties are still reluctant to offer preferential treatment to artists and cultural professionals and/or cultural goods and services from developing countries in the framework of their trade agreements. However, in three of the trade agreements signed between 2017 and 2020, Parties made reservations to preserve their right to conclude and implement cultural cooperation or audio-visual co-production agreements, notwithstanding their most-favoured-nation treatment commitment.<sup>7</sup>
11. In addition to the difficulties that may arise from a lack of understanding of the scope of Article 16 or a lack of commitment, the effective monitoring of Article 16's implementation requires solid data on the mobility of artists, cultural professionals and cultural goods and services from developing countries. The lack of adequate data and benchmarks is still a major obstacle to measuring the effective implementation of preferential treatment in developing countries and its impact on the availability of and access to diverse cultural expressions worldwide. The Committee thus requested the Secretariat and the UNESCO Institute for Statistics (UIS) to continue their work with Parties in order to collect and analyse data on the international trade of cultural goods and services, including, if possible, disaggregated data by cultural domains ([Decision 13.IGC 8](#)). This work started in the first months of 2021, as part of the preparation of the third Global Report and with the support of the UNESCO-Aschberg Programme for Artists and Cultural Professionals.

### III. Modest capacity-building and training opportunities

12. Despite the clear potential of Article 16 to contribute to dynamic cultural exchanges with long-term effects both in developed and developing countries, its actual implementation and impact on the ground thus remain insufficient and underutilised. The decision taken by the Executive Board to re-design the UNESCO-Aschberg Bursaries for Artists ([Decision 197 EX/11](#)) led to the establishment of a new programme that addresses 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 and diverse creative sectors, especially in developing countries. Three types of interventions are pursued within the programme: the development of training materials and training on their use; direct assistance to countries, either through technical assistance or capacity-building; and research and analysis. The efforts deployed by the Secretariat since the seventh session of the Conference of Parties, which are reported in this document, have therefore been made possible by the UNESCO-Aschberg Programme for Artists and Cultural Professionals and the voluntary contributions made to it by the Government of Norway.
13. Insufficient implementation of Article 16 is observed both in Parties that are bound by it (developed countries) and in those that should benefit from it (developing countries). For the

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6. Since 2015, the Global Report series has thus replaced specific reports on the implementation of Article 16.

7. 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).

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. In 2019, at the request of the Committee and the Conference of Parties,<sup>8</sup> the Secretariat, in collaboration with the UNESCO Chair on the Diversity of Cultural Expressions (Laval University's Law Faculty in Quebec City, Canada), developed the first training module on the implementation of Article 16 on preferential treatment for developing countries. This general module, which is targeted to government actors and trade and cultural professionals, is a two-day course designed to analyse and provide an understanding of the nature and scope of countries' commitments under Article 16. It also explores the relations between preferential treatment under Article 16 and other relevant legal instruments, particularly free trade agreements. In addition, it presents a typology of 14 categories of preferential treatment measures included in existing cultural cooperation agreements and mechanisms. This typology is intended to help participants better understand what constitutes a preferential treatment measure, so that they may discuss its expected benefits and the possible challenges in its application. It also examines 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.

14. On the basis of these training materials, 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. Held in conjunction with the public launch of a study titled [Culture in the CARIFORUM-European Union Economic Partnership Agreement: Rebalancing trade flows between Europe and the Caribbean?](#),<sup>9</sup> the two-day workshop brought together more than 30 officials from intergovernmental and governmental agencies and cultural and trade professionals from Barbados, the Dominican Republic, Jamaica, Saint Lucia and Trinidad and Tobago. In addition to CARIFORUM and the European Union delegation to Barbados, the Eastern Caribbean States, the Organisation of Eastern Caribbean States (OECS), and CARICOM/CARIFORUM, several regional intergovernmental bodies participated, including the Caribbean Development Bank, CARICOM, OECS, the Inter-American Development Bank, and the Caribbean Export Development Agency. The workshop assessed the potential and examined the implications of preferential treatment measures for artists and cultural professionals from the Caribbean region in the context of the implementation of the CARIFORUM-European Union Economic Partnership Agreement (EPA). In this context, and as a result of the discussions, an outcome document was prepared to inform future discussions on policies and measures required to better implement the Protocol on Cultural Cooperation, especially with regard to audio-visual co-productions and cultural exchanges, and the provisions of the EPA in relation to market access for entertainment services. The document was shared with the European Union 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. However, it will ensure that the European Union-funded programmes in the sub-region, "Transcultura: Integrating Cuba, the Caribbean and the European Union through Culture and Creativity"<sup>10</sup> and "Creative Caribbean: An Ecosystem of 'Play' for Growth and Development", build on existing dynamics and strengthen the capacity of Caribbean countries to make the most of the Protocol on Cultural Cooperation.
15. Furthermore, on the occasion of the thirteenth session of the Committee, the Secretariat issued an information leaflet on preferential treatment,<sup>11</sup> providing a brief overview of the meaning of

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

9. A first public launch of the study had already taken place on the occasion of the seventh session of the Conference of Parties, as part of a Create|2030 Talk on "Rebalancing trade: culture and preferential treatment", and its report is contained in document DCE/21/8.CP/4.

10. More information is available in English and Spanish at <https://en.unesco.org/fieldoffice/havana/transcultura>

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



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.

16. However, despite the tools available and the positive experiences described above, the Secretariat has not been able to deploy further preferential treatment training or to respond to the very low number of requests it has received for technical assistance or capacity-building. It should be noted that the training tools developed by the Secretariat were not designed to be used without specialised support, particularly from members of the Convention's Expert Facility<sup>12</sup> who are trained to use them. Parties wishing to benefit from technical assistance in this area are encouraged to approach the Secretariat to determine together the most appropriate arrangements for their specific needs, especially in light of existing legal and cooperation frameworks.

#### IV. Challenges and opportunities

17. 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, it is important to question Parties' leeway in implementing Article 16, particularly in relation to the mobility of artists and cultural professionals. In addition to the pre-existing challenges, there is a need to devise alternative regimes for the international mobility of artists and cultural professionals in order to encourage the circulation of diverse cultural expressions and the promotion of international cooperation.
18. The impact of the current pandemic on the capacity to produce cultural goods and services combined with 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. This intensification in 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 dedicated exclusively to e-commerce. To ensure that the digital shift, which has an impact on all stages of the cultural value chain and has been accelerated by the COVID-19 pandemic, does not occur at the expense of the diversity of cultural expressions both nationally and internationally, Parties will need to understand clearly the legal implications of the e-commerce provisions they negotiate on the cultural and creative sectors. *A fortiori*, the implementation of the Convention in the digital environment will require a strong and sustained commitment from Parties to ensure that post-pandemic recovery efforts are not made at the expense of rebalancing trade in cultural goods and services.<sup>13</sup>
19. In declaring 2021 the International Year of Creative Economy for Sustainable Development, the United Nations General Assembly acknowledged that creative industries can “enhance developing countries' participation in, and help them benefit from, new and dynamic growth opportunities in world trade”.<sup>14</sup> The implementation of preferential treatment measures under

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12. More information is available at: <https://en.unesco.org/creativity/partnerships/expert-facility>

13. In particular, paragraph 18 of the Operational Guidelines on the implementation of the Convention in the digital environment calls on Parties to “improve the distribution of cultural goods and services in the digital environment produced by artists and cultural professionals, enterprises and independent organisations from developing countries, including through artistic and cultural collaboration, co-production and co-distribution agreements” and also 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”.

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

Article 16 is one of the key ways to achieve this aspiration. However, while prior to the COVID-19 pandemic, Article 16 was already suffering from a lack of implementation by developed Parties on the one hand, and the limited capacity of developing Parties to take advantage of it and advocate for it on the other hand, these difficulties have now been exacerbated.

20. In this context, the capacity-building, technical assistance, and awareness-raising activities that the Secretariat is able to deploy, with the support of the UNESCO-Aschberg Programme for Artists and Cultural Professionals and on the basis of existing training materials and methods, could prove highly relevant. The Secretariat will therefore continue to report on its activities in this area in its regular reports to the Committee and the Conference of Parties, and to provide a comprehensive analysis of the measures put in place by Parties to facilitate a balanced exchange of cultural goods and services and to promote the mobility of artists and cultural professionals worldwide, in its quadrennial Global Reports. If a specific report on the implementation of Article 16 by Parties were to be submitted to the Convention's Governing Bodies, in line with [Decision 14.IGC 12](#), it would perhaps be appropriate present it to the Conference of Parties to allow the Secretariat sufficient time to collect and analyse a reasonable amount of information, particularly through Parties' quadrennial periodic reports. A proposal to this effect is included in the draft resolution.
21. The Conference of Parties may wish to adopt the following resolution:

#### **DRAFT RESOLUTION 8.CP 11**

*The Conference of Parties,*

1. *Having examined Document DCE/21/8.CP/11,*
2. *Recalling Decisions 13.IGC 8 and 14.IGC 12 and 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 of the report on the implementation of Article 16 prepared by the Secretariat as well as of the challenges faced by Parties in this regard, which have been aggravated by the COVID-19 pandemic,*
5. *Takes note with satisfaction of the research, awareness-raising and capacity-building activities carried out by the Secretariat in the framework of the UNESCO-Aschberg Programme for Artists and Cultural Professionals and their contribution to the advancement of the 2030 Agenda for Sustainable Development, and requests the Secretariat to continue its efforts to support Parties in the design and implementation of preferential treatment measures,*
6. *Encourages Parties to take appropriate preferential treatment measures that 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 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 2005 Convention,*
8. *Further requests the Secretariat to submit to it at, its ninth session, a progress report on the implementation of Article 16 by Parties based, inter alia, on a targeted analysis of the quadrennial periodic reports submitted between 2020 and 2022.*