

**INTERGOUVERNEMENTAL COMMITTEE FOR THE PROTECTION AND PROMOTION OF THE DIVERSITY OF  
CULTURAL EXPRESSIONS**  
**Second extraordinary session**  
**Paris, UNESCO**  
**23-25 of March 2009**

Draft operational guidelines on Article 16 are the result of the contributions of 42 Parties at the Convention, and 4 civil society organizations.

The amendments, transmitted to the Secretariat before the extraordinary session, have been submitted by several groups of countries:

- India
- Saint Lucia and Tunisia
- A group of 16 States (Albania, Austria, Burkina Faso, Canada, Croatia, Finland, France, Germany, Greece, Lithuania, Luxemburg, Mali, Senegal, Slovenia)
- Member States of the European Union, Members of the Committee on behalf of the European Community and its Members States (Germany, Austria, Croatia, Finland, France, Greece, Lithuania, Luxemburg, Slovenia)

The discussions on the draft operational guidelines on Article 16 of the Convention highlighted different issues. They tackled, among others, the question of the presence or not in some provisions of a certain form of “conditionality”, firmly rejected by developing countries. The delicate issue of visas for artists and other cultural professionals and practitioners from developing countries has been largely debated. A compromise wording finally arose.

Point 4 on the agenda : **Draft operational guidelines on Article 16 of the Convention.**

**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 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, inter alia, the emergence of a dynamic cultural sector in developing countries and wider and more balanced cultural exchanges.**

- ⇒ *An EU amendment suggested the deletion of the initial sentence (“... is the tool prescribed by Article 16 to achieve this goal and thus foster the emergence of a dynamic cultural sector in developing countries.”), in order to stick as close as possible to the letter of the Convention.*
- ⇒ *After discussions, the delegations agreed on the wording of France (aiming at fostering “wider and more balanced cultural exchanges”) provided that this mention of goals was not exhaustive.*

**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 operational guidelines.**

**1.3 The principles and spirit of cooperation should govern the relations between all Parties in the efficient implementation of preferential treatment within the meaning of Article 16.**

- ⇒ *The amendment presented by India has been adopted, after a large debate on the initial term “partnership” (finally abandoned). The delegation of India considers that the notion of “partnership” means bilateral relations with reciprocal commitments. India and other delegations such as Brazil and South Africa wish to avoid any kind of reciprocity in the*

*implementation of preferential treatment as far as Article 16 of the Convention is concerned.*

⇒ *Delegations agreed on the wording of India. The efficient implementation of preferential treatment should be governed by the principles and spirit of cooperation.*

## 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 shall therefore play a pro-active role by putting in place national policies and measures at the appropriate institutional level, as well as multinational, regional and bilateral frameworks and mechanisms to implement and operationalize Article 16.**

⇒ *An EU amendment suggested to replace “should” by “shall”. It was adopted.*

**2.3 Developed countries are encouraged to provide opportunities to developing countries, which are beneficiaries in the preferential treatment framework and schemes, to articulate their own needs and priorities, which should be duly taken into account when putting in place such frameworks and schemes. Developing countries are encouraged to put in place national policies for the efficient implementation of preferential treatment, it being understood that the implementation of the preferential treatment is not conditional on the implementation of these national policies. Towards this end developed countries should also assist in putting in place national policies and measures in developing countries beneficiaries to enable them to benefit from an efficient implementation of the preferential treatment frameworks and schemes.**

⇒ *India and the EU presented amendments, which objectives were quite convergent.*

⇒ *Nevertheless, a large discussion emerged on the text formulation due to a potential link between implementation of national policies by developing countries and the efficiency of the implementation of preferential treatment. India and Burkina Faso, among others, pointed out the risk of introducing conditionality if the implementation of preferential treatment had to be conditioned by the existence or the absence of national policies.*

⇒ *The final text adopted specifies clearly the absence of conditionality in the implementation of preferential treatment.*

**2.4 Whereas Article 16 does not provide an obligation for developing countries to offer preferential treatment to other developing countries, developing countries are encouraged to offer a preferential treatment to other developing countries, in the framework of South-South Cooperation.**

⇒ *This provision has been unanimously supported and encouraged.*

## 3. Institutional and legal frameworks

**3.1 Preferential treatment as defined by Article 16 is wider than the narrow trade meaning. It is understood as having both a cultural and a trade component.**

⇒ *16 States amendment (wording modification). Adopted*

**3.2 Legal and institutional frameworks that could be used by the Parties are organized, as the cases may be, around the following dimensions:**

- the cultural dimension;
- the trade dimension;
- a combination of the trade and cultural dimensions.

### 3.3 Cultural dimension

**3.3.1 Cultural cooperation, in the context of sustainable development, is a core element of the preferential treatment within the meaning of Article 16 of the Convention. Parties are therefore encouraged to develop their existing cultural cooperation arrangement and put in place mechanisms of cultural cooperation that expand and diversify their bilateral, regional and multilateral exchange agreements and programmes.**

⇒ *Deletion of “building notably on partnerships” proposed by India. Amendment adopted.*

**3.3.2 In the light of the Convention’s provisions (Articles 6, 7, 12 and 14) related to national policies as well as those related to international cooperation and cooperation for development and in conformity with their respective operational guidelines, measures that shall be developed, through cultural cooperation mechanisms for preferential treatment, may include but are not limited to:**

⇒ *16 States amendment suggesting a reference to the Convention’s provisions naming the Articles.*

**a) with regard to artists and other professionals and practitioners from developing countries:**

**i) 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 process;**

**ii) sharing of information on existing legal frameworks and on the best practices;**

**iii) capacity-building, notably by means of training, exchanges and orientation activities (*for example*, residencies for artistes and cultural professionals) to help them integrate professional networks of developed countries;**

**iv) taking measures to facilitate the mobility of artists, other cultural professionals and practitioners, and, in particular, to favour those from developing countries who need to travel to developed countries for professional reasons. These measures should include, in conformity with the applicable provisions in this respect, for example: simplification of procedures for issue of visas regarding entry, stay and temporary travel; lower cost of visas;**

⇒ *Regarding the mobility of artistes and other professionals and practitioners and the visas issue, a consensus has finally been reached, after informal consultations. These complex and delicate questions led to intense consultations between delegations.*

⇒ *The text provides for example simplification of procedures for issue of visas regarding entry, stay and temporary travel, and lower cost of visas.*

⇒ *Canada did not want to block the consensus but wished to make a declaration and asked the Secretariat to put it in the final report of the session. It states that, recognizing the importance of facilitating mobility of artists, Canada is not able to implement all measures included in this provision, for the time being and due to his actual national legislation.*

**v) funding arrangements and resource-sharing, including supporting access to cultural resources of developed countries;**

**vi) encouraging the creation of networks between civil society actors in developed and developing countries, including partnerships for development;**

- vii) **providing specific fiscal incentives for artists and other cultural professionals and practitioners from developing countries within the framework of their activities related to the present Convention.**

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

- i) **providing support and expertise to developing countries for the elaboration of policies and measures related to the creation, production, distribution and dissemination of domestic cultural goods and services;**
- ii) **providing special fiscal measures and incentives for cultural enterprises from developing countries, such as tax credits and double taxation avoidance agreements;**
- iii) **providing technical assistance, including equipment acquisition, technology transfer and expertise;**
- iv) **improving access of cultural goods and services of developing countries through specific support and assistance schemes for the distribution and dissemination of such goods and services to the markets of developed countries, notably through co-production and co-distribution agreements or support to domestic initiatives in this regard;**
- v) **providing financial aid which may take the form of direct or indirect assistance;**

⇒ *New provision presented by an amendment of Saint-Lucia and Tunisia. Adopted.*

- vi) **facilitating the participation of developing countries in cultural and trade events to promote various cultural goods and services from developing countries;**
- vii) **encouraging the presence and the initiatives, as well as the investment of cultural enterprises from developing countries in developed countries through e.g. information services, assistance and appropriate measures of fiscal or legal nature;**
- viii) **fostering private sector investment in the cultural industries of developing countries;**
- ix) **fostering the access of cultural goods and services from developing countries through facilitating temporary importation of the necessary technical material and equipment for the purposes of cultural creation, production and distribution from developing countries;**

⇒ *Large discussion on the necessary distinction between two aspects of preferential treatment with regard to cultural goods and services: on one hand, facilitating access of cultural goods from developing countries to developed countries markets, and on the other hand, facilitating importation of the necessary technical material and equipment for the purposes of cultural creation, production and distribution from developing countries.*

⇒ *The debate also tackled the temporary aspect or not of access and importation.*

⇒ *A consensus has been reached and led to a simplified text.*

- x) **ensuring that development aid public policies of developed countries also give adequate attention to cultural sector development projects in developing countries.**

### 3.4 Trade dimension

- 3.4.1 **Multilateral, regional and bilateral frameworks and mechanisms belonging to the field of trade can be used by Parties to implement preferential treatment in the field of culture.**
- 3.4.2 **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.**
- 3.4.3 **When making use of such frameworks and provisions for preferential treatment, Parties shall take into account the relevant provisions of the Convention, pursuant to its Article 20.**

⇒ *Indian amendment adopted. ("frameworks and provisions for preferential treatment" instead of "frameworks and mechanisms" + addition of the reference to Article 20 of the Convention)*

### 3.5 Combination of the trade and cultural dimensions

- 3.5.1 **Parties may develop and implement specific agreements bringing together trade and cultural dimensions which concern notably cultural goods and services, and/or artists and other cultural professionals and practitioners (e.g. Florence Agreement and its Nairobi Protocol).**
- ⇒ *The Secretariat proposal referred to the Florence Agreement (1950) and its Nairobi Protocol (1976). The European Commission representative doubted on the pertinence of the agreements.*
- ⇒ *The reference remains in the text but the new wording suggests the importance of using innovative frameworks in order to combine harmoniously trade and cultural dimensions and thus improve the effectiveness of the Convention objectives.*

*The Secretariat draft proposal of operational guidelines contained a chapter on criteria for the implementation of preferential treatment. Amendments and comments made by members of the Committee highlighted the complexity of the issue and the difficulty to implement such criteria. The Committee decided to delete the whole chapter on criteria.*

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

4.1 **In light of the articles of the Convention related to national policies and to cooperation for development (articles 6, 7, and 14), developing countries are encouraged to implement, where possible, policies and measures designed to enhance their benefit from preferential treatment. Such policies and measures may include, but are not limited to:**

- 4.1.1 **fostering an enabling environment for the emergence and development of a cultural sector and cultural industries at national levels;**
- 4.1.2 **enhancing the production and provision of cultural activities, goods and services;**
- 4.1.3 **providing strategic support to their domestic cultural sectors and cultural industries;**
- 4.1.4 **capacity-building and strengthening of competences, in terms of both artistic and entrepreneurial skills in the cultural field;**
- 4.1.5 **actively seeking knowledge and expertise in the areas of enhancement and dissemination of all cultural expressions.**

- ⇒ *Informal consultations have been necessary with regard to the wording “traditional cultural expressions”. The members of the Committee recognized the importance of traditional cultural expressions but this specific notion is not defined and does not appear in the Convention.*
- ⇒ *A wider wording has been found, respecting the letter of the Convention: “all 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 implementation of Article 16.**

**5.2 Civil society in order to facilitate the implementation of Article 16 may, without being limited to:**

- 5.2.1 contribute to needs assessment and provide information, advice and innovative ideas regarding elaboration, improvement and efficient application of preferential treatment frameworks and schemes;**
- 5.2.2 provide, upon request by the competent authorities, consultative information of visa requests of artists and other cultural professionals and practitioners from developing countries;**
- 5.2.3 provide feedback to the Parties and in its capacity as observer, to the organs of the Convention, concerning difficulties and challenges in the implementation of Article 16, notably in the filed;**
- 5.2.4 engage and play an innovative and pro-active role in the field of research on the implementation and the monitoring of Article 16 at the national level.**

## **6. Coordination**

**6.1 In view of the effective implementation of preferential treatment under Article 16 Parties are invited to adopt consistent policies and approaches in the trade and cultural spheres. Parties are furthermore invited to seek close coordination between the national authorities responsible for culture and trade as well as other public authorities concerned, 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 should put in place mechanisms and measures facilitating and enhancing the exchange of information and sharing of expertise and best 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 concluded by the largest number of partners, where possible. To this end, Parties shall seek to compile and share the results of any relevant research relating to Article 16.**

**ANNEX:** Annex to Decision 2.EXT.IGC 4 – Draft operational guidelines. Preferential Treatment for Developing Countries. Article 16 (*UNESCO: CE/09/2.EXT.IGC/208/Dec – page 8*)