

Concern: EU / KOREA – FTA - Protocol on Cultural Cooperation

A first assessment of EU-KOREA Foreign Trade Agreement Protocol on Cultural Cooperation (PCC)

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As you know it, Coalitions for cultural diversity has strongly opposed this agreement (see paper enclosed).

I am myself very reserved on the Protocol as it is drafted for the moment. Some reasons are clearly linked to the European competence (Art. 3 – Committee on cultural cooperation), but some other need to be assessed by the entire cultural diversity community as this PCC is an attempt to enforce the UNESCO Convention on the protection and promotion of the diversity of cultural expressions

My first critic is that the actual draft is unbalanced (on 10 articles, 3 articles are devoted to audiovisual matters for which 96 lines (Treaty language redaction) are devoted.

Important questions like the scope (article 1) (22 lines), the cultural exchanges and dialogue (article 2) (9 lines) are clearly neglected, although cultural exchanges are one of the main tool actually existing in bilateral relationships to address cultural cooperation¹.

Article 2 - Cultural exchanges and dialogue - is even reducing the scope of current policies under cultural exchanges (C.Ex) as here C.Ex are only addressing cultural industries, cultural goods and services and good practices in IPR.

Conclusion: the notion of cultural exchanges referred here is much narrowed to trade facilities and is not addressing the current practices of cultural exchanges, based on exchanges of performing artists, in order to facilitate mutual access to spectacle vivant, traditional culture, literature, dance, music, theater, plastic arts.

Article 4 – Artists and other cultural professionals and practitioners - is designed to facilitate entrance of performing artists and other cultural professionals to EU internal market. It is designed as a kind of mode 4 WTO. But, this article 4 is not addressing the visa question for which EU has no competency. Visa attribution is a matter related to EU Member States.

Work contract are also often a prerequisite to access to EU market and even in the case of a work contract, discrimination on contractual remuneration for artists from South (pension schemes, social protection not available for nonresident artist...) exist. These two questions (Visa and work conditions affecting the stay of non European artists in the EU) are not addressed here in order to solve problems.

Article 5 – Audiovisual co-productions, article 6 and article 7

These 3 articles are devoted to audiovisual matters including coproductions for which a whole article is dedicated.

The problem is that there is no funding, no competency for coproduction in the European framework. Cinematographic or audiovisual co-productions remain an exclusive competence on EU-Member States (legality of co-productions agreements on regard of EC law can even be questioned!). So, in reality, EU as such, has no control of the decision process to implement (or not) a co-production agreement. The only way, much narrow to provision in EC law related to co-production is in article 1, 2) n) iii) which includes co-production with third countries in the definition of European works under "the condition defined in each of these agreements" (Audiovisual Media Services directive). I see the

¹ In total, other items than AV cooperation are treated in 100 lines. Opponents to the PCC say that AV matters presented in such attractive and exhaustive way is only to give AV matters some attractive seduction to the entire Free Trade Agreement to which PCC is link in order to "catch" Korea through the net, to the entire profit of the EU.

introduction of this disposition in the body of AMS directive as a way to "reward" EU Member States who will enforce coproduction works with third countries and not as a tradable tool. The level of coproduction with third countries is very low (see European Audiovisual Observatory's report on coproductions).

I wonder if all this very precise disposal devoted to audiovisual is really credible. My opinion is all the audiovisual material in PCC is only there to "attract" Korea, giving the impression that the PCC will give huge benefits to Korea in access to EU audiovisual market.

I defined in my book² the audiovisual European market as solvable, stable, "non satur  ", the "3S" pattern. Solvable: distributors and networks are paying the rights (this is not the case in a lot of third countries). The European Film Export Association (EFEA) has settled a list of bad payers for film rights; Korea is on this black list, for instance. Stable: The audiovisual market is predictable and the money for payment ( ) is very strong. "Non Satur  ": The growth of audiovisual European market is still up and the need for audiovisual programs never ending.

These "3S" are acting as very attractive, not only for US film industry [for which access to European market is a substantive condition to, at least, amortize the works (US Internal market as such is not enough large to amortize the films costs due to the cost of works. For example, the Life of Benjamin Button, cost 350 million dollars!)], but also for a lot of third countries.

Although, despite the fact that works of third countries are very few (public TV, commercial TV having a very short interest for non national content, either European or from third countries), EU market is more open than US, China, Japan and Brazil...markets (who, for different reasons seem very closed).

Article 8 – Performing artists. The article is very poor, also limiting the eventual measures':

- "to appropriate programs" to increased contacts between practitioner of performing artists;
- "joint production in the field of performing artists;
- The development of International theatre technologies, which is a prerequisite for better theatre cooperation but not a cultural expression of theatre as such.

Article 10 – Protection of cultural heritage sites and historic monuments - , is also very poor

Conclusion

To end, on this short forcut look, audiovisual is addressing half of the PCC draft, other issues are reduced to very short and poor criteria in comparison with the CARIFORUM PCC linked to the EPA EU-CARIFORUM where provisions are much more developed and creative as such.

To conclude, the PCC EU/Korea cannot serve as a model for cultural cooperation and needs to be refurbished. Next agreements of that type are scheduled very soon with Canada and India.

So it is desirable to get your views in order to prepare a "true" PCC model and I would be very happy if you could accept to contribute.

Enclosure:

- European Coalitions for Cultural Diversity - Comments of the European Coalitions for Cultural Diversity on the Concept Paper on the draft Cultural Cooperation Protocol with Korea (18.03.09)

² Existe-t-il un mod  le audiovisuel europ  en ?, Fr  d  ric Sojcher, Pierre-Jean Benghozi (ouvrage collectif), l'Harmattan, Paris, 2001.