

Cultural Heritage in the New Generation of EU Preferential Trade Agreements

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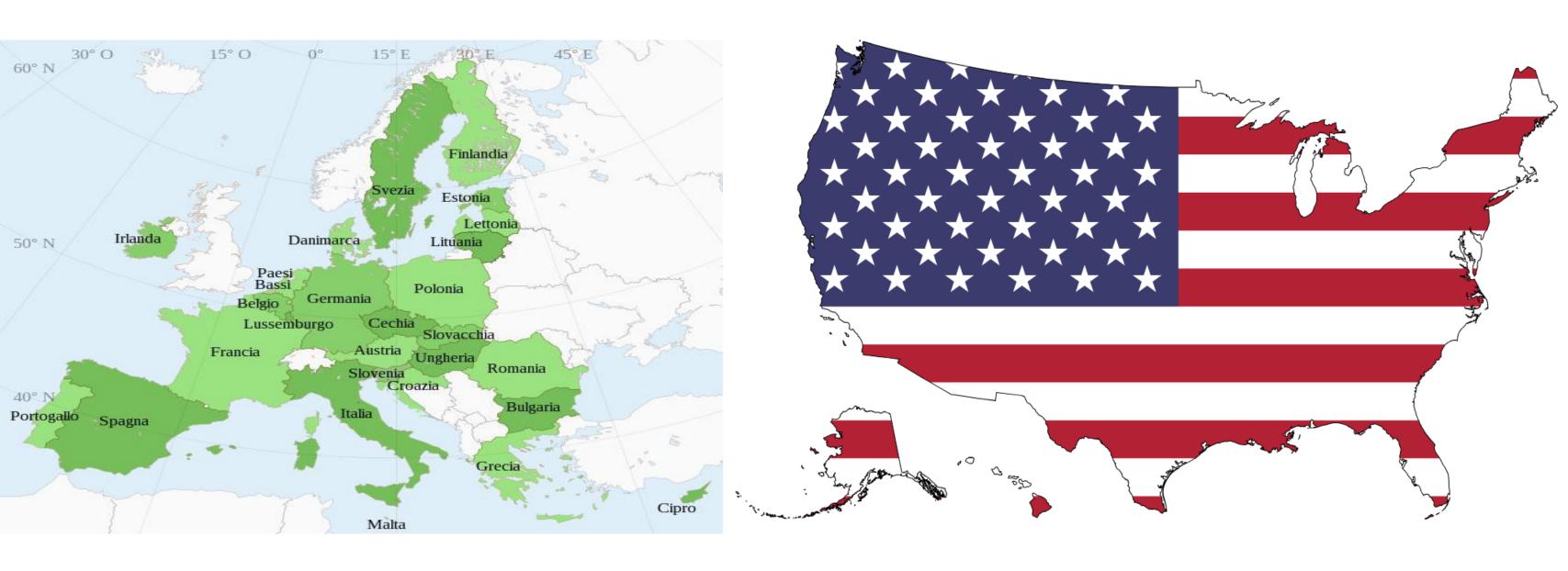
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Topics of the lecture

- Definition of cultural heritage
- Trade and culture dilemma
- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)
- Dual nature of cultural goods/services
- EU cultural competence
- EU FTAs
- SDGs



Definition of Cultural Heritage





Trade and Culture Dilemma









UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, CPPDCE (2005)

Role of European Union

Cultural diversity

Guiding principles: Article 2 paragraphs 5 and 6 CPPDCE

• Articles 12, 13, 16, 20 CPPDCE

Cultural Cooperation Protocol



Guiding Principles (Art. 2 CPPDE)

Article 2

- 1. Principle of respect for human rights and fundamental freedoms
- 2. Principle of sovereignty
- 3. Principle of equal dignity of and respect for all cultures
- 4. Principle of international solidarity and cooperation
- 5. Principle of the complementarity of economic and cultural aspects of development
- 6. Principle of sustainable development
- 7. Principle of equitable access
- 8. Principle of openness and balance



Article 2 Guiding Principles n. 5 and 6 CPPDE

- 5. Principle of the complementarity of economic and cultural aspects of development: Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy.
- 6. **Principle of sustainable development**: Cultural diversity is a rich asset for individuals and societies. The protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations.



Article 12 - Promotion of international cooperation (CPPDE)

Parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions, taking particular account of the situations referred to in Articles 8 and 17 notably in order to: a) facilitate dialogue among Parties on cultural policy; b) enhance public sector strategic and management capacities in cultural public sector institutions, through professional and international cultural exchanges and sharing of best practices; c) reinforce partnerships with and among civil society, non governmental organizations and the private sector in fostering and promoting the diversity of cultural expressions; d) promote the use of **new** technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions; e) encourage the conclusion of co-production and co-distribution agreements.



Article 13 - Integration of culture in sustainable development (CPPDE)

Parties shall endeavour to integrate **culture** in their development policies at all levels for the creation of conditions conducive to **sustainable development** and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.



Article 16 – Preferential treatment for developing countries (CPPDE)

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.



Article 20 - Relationship to other treaties: mutual supportiveness, complementarity and non subordination (CPPDE)

1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly without subordinating this Convention to any other treaty (a) they shall foster mutual supportiveness between this Convention and the other treaties to which they are parties and (b) when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention. 2. Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.



Table 7.1

Promoting the Convention in trade agreements, 2015–2017

	Title of agreement	Parties	Signature	Entry into force
1	Free Trade Agreement Between New Zealand and the Republic of Korea	New Zealand Rep. of Korea	23 March 2015	20 December 2015
2	Korea-Viet Nam Free Trade Agreement	Rep. of Korea Viet Nam	5 May 2015	20 December 2015
3	Tratado de Libre Comercio Perú¦Honduras	Peru Honduras	29 May 2015	-
4	Free Trade Agreement Between the Government of the People's Republic of China and the Government of the Republic of Korea	China Rep. of Korea	1 June 2015	20 December 2015
5	Free Trade Agreement Between the Government of Australia and the Government of the People's Republic of China	Australia China	17 June 2015	20 December 2015
6	European Union-Viet Nam Free Trade Agreement	European Union Viet Nam	1 February 2016	-
7	Canada-Ukraine Free Trade Agreement (CUFTA)	Canada Ukraine	11 July 2016	1 August 2017
8	Canada-European Union Comprehensive Economic and Trade Agreement (CETA)	European Union Canada	30 October 2016	21 September 2017 Provisional application

Table taken from the UNESCO Report: RE|SHAPING CULTURAL POLICIES. Advancing creativity for development (2018)



EU competence in the field of culture

Article 6 TFEU: The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health; (b) industry; (c) culture; (d) tourism; (e) education, vocational training, youth and sport; (f) civil protection; g) administrative cooperation.

Culture is a supporting competence ≠ Trade is an exclusive competence



EU competence in the field of culture

Article 167 TFEU: 1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore. 2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas: — improvement of the knowledge and dissemination of the culture and history of the European peoples, conservation and safeguarding of cultural heritage of European significance, — non-commercial cultural exchanges, — artistic and literary creation, including in the audiovisual sector.



3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe. 4. The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures. 5. In order to contribute to the achievement of the objectives referred to in this Article: — the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States, — the Council, on a proposal from the Commission, shall adopt recommendations.



EU FTAs Pre-Lisbon Treaty

 Role of European Commission and Council; what about the European Parliament?

ECJ

Trade policy (or CCP) need unified approach

Regulation > liberalization

 Treaty of Amsterdam (1997) and Treaty of Nice (2001)→ services and intellectual property included in trade policy



FTAs Pre-Lisbon Treaty

European Economic Community and the Swiss Confederation > 1973

European Community and Palestine Liberation Organization (PLO) -> 1997

European Communities and their Member States and the Kingdom of Morocco → 2000

European Communities and their Member States, of the and the State of Israel → 2000



Agreement between the European Economic Community and the Swiss Confederation (1973)

Art. 20: The Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, law and order or public security, the protection of life and health of humans, animals or plants, the protection of national treasures of artistic, historic or archaeological value the protection of industrial and commercial property, or rules relating to gold or silver Such prohibitions or restrictions must not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties.



Agreement between the European Economic Community and the Palestine Liberation Organization (1997)

Art. 56: The Parties shall **promote cooperation in the audiovisual sector** to their mutual benefit The Parties shall seek ways of associating the Palestinian Authority with Community initiatives in this sector, thus enabling cooperation in areas such as co-production, training, development and distribution.

Art. 57: The Parties shall **promote cultural cooperation.** The area of cooperation may include Community activities concerning, in particular, translation, exchange of works of art and artists, conservation and restoration of historic and cultural monuments and sites, training of persons working in the cultural field, the organization of European oriented cultural events, raising mutual awareness and contributing to the dissemination of information on outstanding cultural events.



Agreement between European Communities and their Member States and the Kingdom of Morocco (2000)

Art. 28: This Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security the protection of health and life of humans, animals or plants; the protection of national treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property or rules relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.



European Communities and their Member States, of the and the State of Israel (2000)

Art. 27: Nothing in this Agreement shall preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security the protection of health and life of humans, animals or plants the protection of national treasures possessing artistic, historic or archaeological value the protection of intellectual, industrial and commercial property or rules concerning gold and silver Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.



EU FTAs Post-Lisbon Treaty

• Broader Action \rightarrow EU Parliament

DG Trade > DG Education and Culture

Crisis of WTO system

UNESCO CONVENTION 2005



EU FTAs Post-Lisbon Treaty

 CARIFORUM States and the European Community and its Member States → 2008

• European Union and its Member States and the Republic of Korea \rightarrow 2010

• European Union and its Member States and Central America \rightarrow 2012

• Comprehensive Economic and Trade Agreement (between Canada and the European Union and its Member States, of the other part) \rightarrow 2017



CARIFORUM States and the European Community and its Member States (Preamble of Protocol III on Cultural Cooperation)

THE PARTIES AND THE SIGNATORY CARIFORUM STATES,

Having ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in Paris on 20 October 2005 which entered into force on 18 March 2007 or intending to do so promptly; [...]

Recognising that the regional integration process supported by this Agreement forms part of a global strategy aimed at **promoting equitable growth** and the reinforcement of economic, **trade** and **cultural cooperation between the Parties;** [...]



CARIFORUM States and the European Community and its Member States

Art. 5 (Cult. Prot.): [...] 2. The Parties and the Signatory CARIFORUM States, in conformity with their respective legislation, shall facilitate the access of co-productions between one or several producers of the EC Party and one or several producers of Signatory CARIFORUM States to their respective markets including through the granting of preferential treatment, and subject to the provisions of Article 7 of this Agreement, including by facilitating support through the organisation of festivals, seminars and similar initiatives.



European Union and its Member States and the Republic of Korea (Preamble of protocol on Cultural cooperation)

The Parties, AFTER HAVING RATIFIED the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in Paris on 20 October 2005 (the 'UNESCO Convention'), which entered into force on 18 March 2007 according to the procedure set in Article 15.10.3 (Entry into force), intending to effectively implement the UNESCO Convention and to cooperate within the framework of its implementation, building upon the principles of the Convention and developing actions in line with its provisions; [...]

RECOGNISING that the process supported by this Agreement adds up to a global strategy aimed at promoting equitable growth and the reinforcement of economic, trade and cultural cooperation between the Parties; [...]



Committee on Cultural Cooperation

Art. 3: 1. No later than six months after this Protocol is applied, **a Committee on Cultural Cooperation shall be established.** The Committee on Cultural Cooperation shall comprise senior officials from within the administration of each Party who have expertise and experience in cultural matters and practices [...]

3. By derogation from the institutional provisions of Chapter Fifteen (General and Final Provisions), the **Trade Committee shall have no jurisdiction over this Protocol and the Committee on Cultural Cooperation shall exercise all functions of the Trade Committee as regards this Protocol**, where such functions are relevant for the purposes of implementing this Protocol.



Audiovisual Co-production

- **Art. 5:** 1. For the purposes of this Protocol, a **co-production means an audiovisual work produced by producers of both Korea and the EU** Party into which those producers have invested in accordance with the terms of this Protocol [...]
- 3. The Parties, in conformity with their respective legislation, **shall facilitate co productions** between producers from the EU Party and Korea, including through entitlement for co productions to benefit from respective schemes for the promotion of local/regional cultural content.



European Union and its Member States and Central America(Preamble of Protocol on Cultural Cooperation)

Whereas, AS SIGNATORIES to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in Paris on 20 October 2005 (hereinafter referred to as the "UNESCO Convention"), which entered into force on 18 March 2007 the Parties intend to effectively implement the UNESCO Convention and to cooperate within the framework of its implementation, building upon the principles of the Convention and developing actions in line with its provisions, notably its Articles 14, 15 and 16; [...]



European Union and its Member States and Central America(Preamble of Protocol on Cultural Cooperation)

[...] NOTING the establishment of a **Co-operation Sub-Committee** in paragraph 7 of Article 8 of Title II (Institutional Framework) of Part I of this Agreement, should include **officials who have competence in cultural matters and practices, when dealing with the implementation of this Protocol**.



Audio-Visual, including Cinematographic, Cooperation

- **Art. 5:** 1. The Parties shall **encourage the negotiation of new** and **implementation of existing coproduction agreements** between one or several Member States of the European Union and one or several Republics of the CA Party.
- 2. The Parties, in conformity with their respective domestic legislation, **shall facilitate the access of coproductions** between one or several EU Party producers and one or several producers from the Republics of the CA Party to their respective markets, through appropriate measures including by facilitating support through the organisation of festivals, seminars and similar initiatives.



COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (2017) - Preamble

[...] AFFIRMING their commitments as parties to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions done at Paris on 20 October 2005 and recognising that states have the right to preserve, develop and implement their cultural policies, to support their cultural industries for the purpose of strengthening the diversity of cultural expressions, and to preserve their cultural identity, including through the use of regulatory measures and financial support; [...]



COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (2017)

Article 28.9 (Exceptions applicable to culture): The Parties recall the exceptions applicable to culture as set out in the relevant provisions of Chapters Seven (Subsidies), Eight (Investment), Nine (Cross-Border Trade in Services), Twelve (Domestic Regulation) and Nineteen (Government Procurement).

Annex II of CETA contains the list of sectoral reservations, where each party (both Canada and the European Union) lists the sectors that will not be fully liberalized or will be subject to restrictions. In this section, both Canada and several EU Member States, such as France, explicitly maintain reservations on cultural goods and services, in particular the audiovisual industry, media and other cultural expressions.



COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (2017)

Article 7.7. (Exclusion of subsidies and government support for audio-visual services and cultural industries): Nothing in this Agreement applies to subsidies or government support with respect to **audio-visual services** for the European Union and to **cultural industries** for Canada.



FREE TRADE AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF SINGAPORE (2018) ARTICLE 8.62 - General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures: (a) necessary to protect public security or public morals or to maintain public order; (b) necessary to protect human, animal or plant life or health; (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic entrepreneurs or on the domestic supply or consumption of services;

(d) necessary for the protection of national treasures of artistic, historic or archaeological value; [...]



European Union and its Member States and the Republic of Korea

Cross-border supply of services

Article 7.4 Scope and definitions: 1. This Section applies to measures of the Parties affecting the cross-border supply of all service sectors with the exception of:

- (a) audio-visual services;
- (b) national maritime cabotage; and
- (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related

to the exercise of traffic rights, other than: (i) aircraft repair and maintenance services; (ii) the selling and marketing of air transport services; (iii) CRS services; and (iv) other services auxiliary to air transport services, such as ground handling services, rental service of aircraft with crew and airport management services. [...]



Table 2. Comparison of the treatment of culture in the EU Trade Agreements analysed in this cS brief

Pre	Trade Agreement ovisions	Singapore FTA	Japan EPA	Vietnam FTA	MERCOSUR FTAA	China CAI
Relevant chapter		8. Services, Establishment and Electronic Commerce	8. Trade in services, investment liberalisation and electronic commerce	8. Liberalisation of Investment, Trade in Services and Electronic Commerce	X. Trade in services and establishment	II. Investment liberalisation
Legitimate policy objectives		Preamble, Article 8.1*	Articles 8,1 and 18,1	Articles 8.1 and 8.53	Article X.1*	Article L1
E × c l	Investment liberalisation	Article 8.9	Article 8.6	Article 8.3	Not applicable	Article II.1
	Cross-border trade	Article 8.3	Article 8.14	Article 8.9	Article X.1	Not applicable
u s	Telecommunication services	Article 8.24	Article 8.41	Article 8.26	Article X.24	Not applicable
0 n	E-commerce	No exclusion	Article 8.70	No exclusion	Article X.42	Not applicable
S	Subsidies	Annex 11-A	Article 12.3	Article 10.4	No exclusion	Article III.8
Intellectual property protection		Articles 10.6 and 10.8	Article 14.16	Articles 12.6 to 12.10 and 12.16	Articles X.14 and X.17	Not applicable
Convention on the Diversity of Cultural Expressions		No mention	No mention	No mention**	No mention	No mention
Digital cultural content		No mention	No mention	No mention	No mention	Chinese reservations

^{*} No specific mention of the sectors covered.

Table from: Culture in EU external trade: Towards Stronger Digital Cultural Cooperation (Antonios Vlassis, Lilian Richieri Hanania & Ina Kokinova)



^{**} Mention of CDCE in PCA.

he belief in the harmonious and fruitful coexistence of a plurality of cultures that inspired the 2005 Convention has been since the very beginning – and remains to this day – at the heart of the European project. It will be vital in building the future of Europe.

The new EU strategy for international cultural relations reiterates our commitment to the Convention and to international cultural relations based on long-term engagement, mutual understanding, direct contacts between people and collaborative creation.

The EU strongly supports the diversity of cultural expressions in its trade, economic and political agreements with third countries, both bilaterally and multilaterally. Between 2012 and 2016 the EU signed seven new agreements containing clauses on the diversity of cultural expressions or explicitly referencing the Convention: with the Economic Partnership Agreement group of States of the Southern African Development Community (Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland); with Colombia and Peru; and with Georgia, Republic of Moldova, Viet Nam, Kazakhstan and Mongolia.

The EU is working to implement the 2030 Agenda for Sustainable Development and is adjusting its copyright framework to the digital age. The reform of EU copyright proposed last year by the European Commission ensures fair remuneration of authors and artists, greater transparency in contractual arrangements between creators and online platforms and broader availability of copyright-protected content in the EU and across borders.

Promoting cultural diversity is the best way to fight prejudice, cross language barriers and bring communities together.

Tibor Nauracsics

European Commissioner for Education, Culture, Youth and Sport

Image taken from the UNESCO Report: RE|SHAPING CULTURAL POLICIES.
Advancing creativity for development (2018)



SDGs and Agenda 2030









































THEMATIC INDICATORS FOR CULTURE IN THE 2030 AGENDA

ENVIRONMENT & RESILIENCE

- 1 Expenditure on heritage
- 2 Sustainable management of heritage ♀
- 3 Climate adaptation 8 resilience ♥
- 4 Cultural facilities ♥
- 5 Open space for culture ♀

Unisco Criture

















- 2.4 Sustainable foodways & agriculture
- 6.6 Water related ecosystems
- 9.1 Quality infrastructure 11.4 Cultural & natural heritage
- 11.7 Inclusive public spaces
- 12.b Sustainable tourism management
- 13.1 Climate & disaster resilience
- 14.5 Marine areas conservation
- 15.1 Sustainable terrestrial ecosystems
- 16.4 Recovery of stolen assets

PROSPERITY & LIVELIHOODS

- 6 Culture in GDP
- 7 Cultural employment 🗳 😃
- 8 Cultural businesses ♀
- 9 Household expenditure
- 10 Trade in cultural goods & services 😃
- **11** Public finance for culture ♀
- **12** Governance of culture ♀

UNISCO Culture Conventions











- 8.3 Jobs, entrepreneurship & innovation
- 8.9 Policies for sustainable tourism
- 8.a Increase Aid for Trade
- 10.a Differential treatment on trade 11.4 Cultural & natural heritage

KNOWLEDGE & SKILLS

- 13 Education for Sustainable Development 💇 😃
- **14** Cultural knowledge ♀
- **15** Multilingual education ♀
- **16** Cultural & artistic education ♂
- 17 Cultural training 💇

UNISCO Culture Conventions



- **18** Culture for social cohesion *♂*
- **19** Artistic freedom ♀ ?
- 20 Access to culture ♀
- **21** Cultural participation \mathcal{Q}
- 22 Participatory processes 💸

UNISCO College S S S S











- 9.1 Quality infrastructure/equitable access
- 9.c Access to information technologies
- 10.2 Social inclusion
- 11.7 Inclusive public spaces
- 16.7 Participatory decision-making
- 16.10 Fundamental freedoms
- 16.a Prevention of violence
- 16.b Non-discriminatory policies

ALSO CONTRIBUTE TRANSVERSALLY TO:



4.4 Skills for employment

12.a Sustainable consumption

4.7 Skills for sustainable development

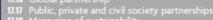
8.3 Jobs, entrepreneurship & innovation

9.c Access to information technologies

13.3 Education on climate adaptation









(1)

UNESCO World Conference on Cultural Policies and Sustainable Development (MONDIACULT, 28-30 Sept. 2022) - Preamble

[...] Commending the new impetus given to the role of culture for sustainable development, peace and stability, as a force for resilience, social inclusion and cohesion, environmental protection and sustainable and inclusive growth, and fostering a human-centred and contextspecific development, which supports the foundations of multicultural human societies, while also reaffirming the power of culture to renew and broaden bilateral and multilateral cooperation, promote multilingualism and a culture of peace, and enable dialogue and solidarity within and between countries, including through cultural diplomacy, as reflected by the growing engagement towards culture within the framework of the United Nations system, including at the country level, and further recalled by the relevant UN General Assembly resolutions and related reports of the UN Secretary-General on culture and development, the UNESCO Meetings of Ministers of Culture (2019, 2020), as well as the historical integration of culture in several political, economic and social fora at the global, regional and interregional levels;



UNESCO World Conference on Cultural Policies and Sustainable Development (MONDIACULT, 28-30 Sept. 2022)

We call on the UN Secretary General to firmly anchor culture as a global public good, and to integrate it as a specific goal in its own right in the development agenda beyond 2030 and, to this end, we ask the Director-General of UNESCO to launch a broad consultation involving Member States, civil society, academia and the private sector on the multidimensional impact of culture in our societies as a global public good, and to strengthen advocacy for the inclusion of culture in the United Nations Future Summit, scheduled in 2024, echoing UNESCO's founding mandate to "build peace in the minds of men and women" through social justice and human dignity;

20. To support the positioning of culture as a global public good, advance the implementation of the Our Common Agenda report and the Declaration on the commemoration of the seventy-fifth anniversary of the United Nations adopted by the UN General Assembly, and inform future cultural and public policies and strategies, as well UNESCO's programmatic action, we underline the need to coordinate, strengthen and develop instruments and mechanisms for the integrated analysis, monitoring and measurement of culture and its impact on sustainable development [...]



Concluding Remarks

- Trade/culture dilemma → challenges arising from the new developments that globalization brings.
- EU's traditional position in FTAs → widest possible cultural policy space for the audiovisual sector by including a cultural exception in these agreements.
- UNESCO Convention → important legal framework for coherent EU action in favor of cultural diversity.
- UNESCO World Conference on Cultural Policies and Sustainable Development (MONDIACULT '22) → "We call on the UN Secretary General to firmly anchor culture as a global public good, and to integrate it as a specific goal in its own right in the development agenda beyond 2030".







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