
Insights into Regional Experiences

Reference Paper

2012
**Introduction and Emphasis**

The present reference paper is elaborated with a target to contribute to the reflection of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (further in the text – the Convention) within the cultural and development policies of the European Union, particularly the Baltic Sea Region. The paper faces experiences of policy-making and provides references to sub-regional and regional policies in the Baltic Sea Region that are linked to the implementation of the 2005 Convention. The main emphasis is put on regional perspective for questioning the significance of the accession of the European Union to the Convention, and its impact on and connections to regional as well as sub-regional policies within the respective domains.

During the last years, growing number of policy documents and research studies are devoted to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (see References). In April 2012 the first quadrennial periodic reports of the Parties to the Convention are submitted to UNESCO for consideration and exchange of experiences on the ways the Convention has been implemented during the first five years since its entering into force in 2007. In this context, the present study is focusing on a set of chosen aspects that are considered to be of particular relevance for the purposes of this paper:

(A) **European Union**

The accession of the European Union (further in the text – EU) to the Convention on 18 December 2006 and its influence on the regional policies and cooperation in the Baltic Sea Region, questioning the parallel accessions by the EU and its Member States;

(B) **Internal Policy**

The 2005 Convention is a subject of consideration both in EU external and internal policies. The present paper will focus mainly on the matters of the EU internal policy that concerns the implementation of the Convention in its sub-regions and Member States;

(C) **Baltic Sea Region**

The characteristics of the cultural and development policies of the Baltic Sea Region within the domain of the Convention, shaped at sub-regional and regional level and reflecting common approaches, co-operation frameworks and instruments;

(D) **Institutions**

Institutional responsibilities and their engagement in the implementation of the 2005 Convention, paying attention mostly to the involvement of sub-regional institutions, and in some respect also national institutions, and the modes of their cooperation.

The analysis refers mainly to the policy documents as well as experiences of institutions involved in the implementation of the 2005 Convention at national and regional level. This determines also the limits of the analysis, that is mainly devoted to policy-making issues. Thus, different methods ought to be applied for investigating the proper outcomes and influence of the application of the 2005 Convention. Legal issues linked to the Convention have been considered by several published studies that are reflected in the present paper as far as they concern the issues to be discussed hereafter. The reference paper is envisaged as a contribution to the ongoing reflection on the implementation of the 2005 Convention. It brings forward issues considered to be relevant, without the target to propose an exhaustive insight. The authors of the present paper believe it may give an input to the continuous reflection on the implementation of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
## Contents of Analysis

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State of the Art</strong></td>
<td></td>
</tr>
<tr>
<td>I Interrelation of UNESCO Normative Instruments</td>
<td></td>
</tr>
<tr>
<td>1. Convention after 2001 UNESCO Universal Declaration on Cultural Diversity</td>
<td>9</td>
</tr>
<tr>
<td>1.1. International Policy-Making: Historical Insights</td>
<td>10</td>
</tr>
<tr>
<td>1.2. Legally Binding Instrument: Responsibilities and Duties</td>
<td>13</td>
</tr>
<tr>
<td>2. 2005 UNESCO Convention among other International Conventions</td>
<td>17</td>
</tr>
<tr>
<td>2.1. Particular Regard to Traditional Cultural Expressions</td>
<td>18</td>
</tr>
<tr>
<td>2.2. Convention and Illicit Trafficking in Cultural Property</td>
<td>20</td>
</tr>
<tr>
<td>2.3. Reference to Intellectual Property and Trade Law</td>
<td>21</td>
</tr>
<tr>
<td>3. Links to the 1980 Recommendation concerning the Status of the Artist</td>
<td>22</td>
</tr>
<tr>
<td>3.1. Status of the Artist in Relation to the 2005 Convention</td>
<td>22</td>
</tr>
<tr>
<td>3.2. European Perspective on the Social Status of Artists</td>
<td>24</td>
</tr>
<tr>
<td>II EU Accession to the 2005 Convention</td>
<td>26</td>
</tr>
<tr>
<td>1. Negotiations and Arguments for the EU Accession</td>
<td>26</td>
</tr>
<tr>
<td>1.1. EU as a Party to International Agreement</td>
<td>28</td>
</tr>
<tr>
<td>1.2. Respect for Cultural Diversity as a Founding Principle</td>
<td>32</td>
</tr>
<tr>
<td>2. Common Action for Implementing the Convention</td>
<td>33</td>
</tr>
<tr>
<td>2.1. Promotion of the Convention in External Relations</td>
<td>33</td>
</tr>
<tr>
<td>2.2. Interpretation of the Convention in Internal Policies</td>
<td>36</td>
</tr>
<tr>
<td>3. Impact of Joint Accession on Regional and Local Policies</td>
<td>37</td>
</tr>
<tr>
<td>3.1. Convention in the EU Cohesion Policy</td>
<td>38</td>
</tr>
<tr>
<td>3.2. Local Responsibilities and Possibilities of Application</td>
<td>39</td>
</tr>
<tr>
<td>III Regional Cooperation Strategies</td>
<td>40</td>
</tr>
<tr>
<td>1. EU Policies for the Baltic Sea Region</td>
<td>41</td>
</tr>
<tr>
<td>1.1. Council of the Baltic Sea States and ARS Baltica</td>
<td>42</td>
</tr>
<tr>
<td>1.2. EU Strategy for the Baltic Sea Region</td>
<td>43</td>
</tr>
<tr>
<td>1.3. The Northern Dimension Partnership on Culture</td>
<td>45</td>
</tr>
<tr>
<td>2. Cooperation in the Nordic Region</td>
<td>46</td>
</tr>
<tr>
<td>2.1. Nordic-Baltic Intergovernmental Cooperation</td>
<td>47</td>
</tr>
<tr>
<td>2.2. Nordic World Heritage Fund</td>
<td>49</td>
</tr>
<tr>
<td>3. Cooperation among the Baltic States</td>
<td>49</td>
</tr>
<tr>
<td>3.1. Baltic Assembly: Parliamantarian Cooperation</td>
<td>50</td>
</tr>
<tr>
<td>3.2. Baltic Intergovernmental Cooperation on Culture</td>
<td>50</td>
</tr>
<tr>
<td>Conclusion and Recommendations</td>
<td>53</td>
</tr>
<tr>
<td>References</td>
<td>56</td>
</tr>
</tbody>
</table>
State of the Art

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions is a legal instrument adopted by the General Conference of UNESCO on 20 October 2005 for shaping cultural policies worldwide with a common objective to promote and defend cultural diversity and assure its appropriate protection. The interest of the world’s countries to access to and implement this Convention is affirmed by the number of Parties that have joined the Convention, at present reaching 1261, including the accession of a regional economic integration organization – the European Union. The 2005 Convention – namely Article 27.c – prescribes that the Convention shall also be open to accession by any regional economic integration organization. This is an important provision for the ways of implementing the Convention, and so far it has been applied in the case of the European Union that accessed to the Convention on 18 December 2006.

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions is significant for both UNESCO and the European Union. The interrelation of the work of two international organizations – UNESCO at the world level and European Union at regional level – within the domain of protecting and promoting the diversity of cultural expressions is a cooperation that is continuously changing and developing and that reflects in a way the interconnection of the cultural and economical arguments both relevant for the undertaking of adopting 2005 Convention. The importance attributed to this cooperation between the two organizations is reflected also by the reciprocal representation units in both organizations: Delegation of the European Union to the OECD and the UNESCO in Paris2, and the UNESCO Liaison office in Brussels, established on 1 October 20103 and inaugurated on 16 February 20114.

The current cooperation between UNESCO and EU is based on the agreement signed on 23 February 20045 that states the forms of cooperation. According to the agreement, both international organizations exchange information within the spheres of their competences, and UNESCO recognises representatives of the European Commission as observers within UNESCO and encourages their participation in technical meetings organised by UNESCO services. The accession of the EU to the 2005 Convention is an initiative that establishes a definite context for the cooperation within the domain of promoting and protecting the expressions of cultural diversity. Though, this path of cooperation involves various levels for decision making and implementation of the Convention. The interrelation among these levels is the core issue of the present paper and the further reflection proposed.

The 2005 Convention is being implemented by adopting global, regional, sub-regional as well as national development and cultural policies, and these various levels all are of importance within the process of its implementation. Baltic Sea Region countries – Estonia, Latvia, Lithuania, Poland, Germany, Denmark, Sweden and Finland – have accessed to the

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2005 Convention, mostly together with the accession of the European Union – on 18 December 2006, only Germany, Latvia and Poland accessed lightly later in 2007. In April 2012 the first quadrennial reports of the Parties to the Convention are being submitted, thus providing comparable insights into the ways how the Convention is being interpreted and implemented at national and regional levels, and this way contributing to an exchange of experiences among Parties to the Convention.

The accession of the EU to the 2005 Convention, in parallel to the accession of its Member States, represent a case of double membership that demands a clear distinction of spheres of competence and mandate for representing positions within the governing bodies of the Convention. In this regard and for defining the competences of the parties involved, the Code of conduct has been adopted by the Council of the European Union in Brussels, on 1 February 2007. It was adopted slightly before the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions came into force on 18 March 2007.

The Code of conduct refers to the “requirement of unity of the international representation of the European Community and its Member States in accordance with the EC Treaty”, and sets out the informal arrangements between the Council, the Member States and the Commission in preparation for the meetings regarding the implementation of the Convention. Despite the fact that the Code of conduct has been adopted, there remain certain lack of clarity on definite division of competences, decision-making process and coordination of positions for the implementation of the Convention. This goes in line with a broader interrogation on the Convention that has become a matter of concern for various EU institutions.

In order to reflect upon possible scenarios, aspects as well as future prospects for implementing the 2005 Convention, the European Parliament ordered a Study “Implementing the UNESCO Convention of 2005 in the European Union” completed in May 2010. The argumentation for such a study was “to be informed about the state of implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005, in particular in fields where the European Union would be expected to provide leadership or coordination”. This undertaking to have a broader understanding of the named legal instrument was carried under the Policy Department B: Structural and Cohesion Policies and witnessed both the interest it represents and the questions it raises on the matters of its practical implementation. The Study carried out touches on external as well as internal policies of the EU providing arguments and ideas for further reflection. Without the ambition to provide definite answers, the study advises on the ways the Convention can be interpreted and implemented in future policies.

In the context of the present paper, a particularly relevant aspect is the development of regional policies within the EU and its cohesion policy. With regard to the further cohesion policy developments within the EU planning process, it has to be noted that culture plays its part within the upcoming planning period 2014-2020, and currently the Member States of the EU are invited to consider investing priorities at national and sub-regional level. On 14 March 2012, the European Commission presented the Common Strategic Framework (CSF)

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which aims to help Member States in preparing the use of Structural Funds for the upcoming period and to elaborate the priorities to be set in the Partnership Contracts\(^9\). The sphere of culture is integrated in the CSF under the thematic objective No. 6 “Protecting the environment and promoting resource efficiency”, stating under “Complementarity and coordination” in particular that –

“the CSF Funds should coordinate closely with ‘Creative Europe’\(^{10}\), which supports the European cultural and creative sectors, in particular by promoting their transnational operations and better access cross-border issues. Cohesion policy resources can be used to maximise the contribution of culture as a tool for local and regional development, urban regeneration, rural development and employability. Examples of potential investments in culture could include investments in research, innovation, SME competitiveness and entrepreneurship in cultural and creative industries under the corresponding thematic objectives”\(^{11}\).

Thus, for the upcoming EU policy planning period, the 'Creative Europe' remains a key programme that provides space for reflecting on the cooperation with UNESCO, the 2005 Convention and its implementation. Within the context of CSE culture is seen as a sphere of investment in local and regional development policies by underlining its potential for the development of cultural and creative industries, but also in a broader perspective on research and innovation. Within the Proposal for a Regulation of the European Parliament and of the Council on establishing the Creative Europe Programme, that serves as a legal basis for the programme, the cooperation with UNESCO and the Convention is referred to at several occasions:

(A) in Preamble – point (5) “The UNESCO Convention on the Protection and the Promotion of the Diversity of Cultural Expressions which entered into force on 18 March 2007, and to which the Union is a party, aims at strengthening international cooperation, including international co-production and co-distribution agreements, and solidarity so as to favour the cultural expression of all countries”, and point (19) “Cooperation between the Programme and international organizations in the field of culture and audiovisual such as UNESCO, the Council of Europe and in particular Eurimages, OECD and the World Intellectual Property Organization (WIPO) needs to be fostered”;

(B) in Article 16 'Provisions concerning non-EU Member States and international organizations' – “1. The Programme shall foster cultural diversity at international level in line with the 2005 UNESCO Convention on the protection and the promotion of the diversity of cultural expressions." and “4. The Programme shall permit cooperation and joint actions with countries not participating in the Programme and with international organizations active in the cultural and creative sectors such as UNESCO, the Council of Europe, OECD or the World Intellectual Property Organization on the basis of joint contributions for the realisation of the Programme's objectives.”\(^{12}\)

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\(^{10}\) COM(2011) 786/2, 'Creative Europe — A new framework program for the cultural and creative sectors (2014-2020)'.


The proposed interpretation for the EU action concerning the implementation of the 2005 Convention is directed mainly towards the external policy of the EU and in particular development cooperation. This is a relevant aspect that goes with the text of the Convention that calls upon Parties “to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries” (Art. 14), and “facilitate cultural exchanges with developing countries” (Art. 16). Thus, the perspective towards development cooperation is a relevant choice to be enhanced within the policy of the EU. Though, the implementation of the 2005 Convention is also a matter of the EU internal policy contributing to the promotion and protection of cultural diversity within the EU, and this aspect is of particular importance and interest for the present paper. This far, the 2005 Convention at large extent has been the object of EU measures oriented towards development cooperation. At present state and in the light of upcoming planning period, a reflection is needed on the possibilities to implement the Convention within the internal policy, including the EU cohesion policy.

I Interrelation of UNESCO Normative Instruments

2005 Convention lies within the history of the normative action of UNESCO and it finds its place in the sequence of decision-making and among other normative instruments already adopted by the organization in the sphere of culture. Within UNESCO, culture is the sector that has the most expanded list of legal instruments starting with the normative action soon after the establishment of the organization, and going on during a half century. Thus, the adoption of the 2005 Convention means an addition to a broad set of normative instruments already adopted, which invites to understand its complementarity as well as specificity in relation to other instruments.

In order to explore the particularities of the Convention, there are several aspects to be considered at this part of the paper: historical roots of the Convention and sequence of decisions leading to its adoption – in order to capture the targets and significance of the Convention in question as well as the specificity of its binding character; its interrelation with other international legal instruments, the possibility of its systemic interpretation and mutually explicit as well as concealed references; and particularly interconnection between the 2005 Convention and the Recommendation concerning the Status of the Artist, adopted 25 years earlier in 1980. These two instruments are relatively distant, however interconnected, thus reflection on their interconnection is of relevance for the current debate.

1. Convention after 2001 UNESCO Universal Declaration on Cultural Diversity

Issues of cultural diversity have been within the competence of UNESCO organization since its foundation. In UNESCO Constitution, Article I ‘Purposes and functions’ provides reference to the concept of “fruitful diversity of the cultures”, and the need to preserve it. Intentions to treat preservation of cultural diversity in the form of normative action, also has a longer history within the organization. The idea of protecting and promoting cultural diversity has continuously been an emphasis within the work of organization. During more than a half of century since 1946 this issue has been shaped within programme planning and

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implementation of activities coordinated and financed by UNESCO. \(^{15}\) During the history of standard setting activities within UNESCO, the intention to preserve cultural diversity in a certain manner has been present in various normative instruments; to mention a few: Declaration of Principles of International Cultural Co-operation of 1966, Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It of 1976, Recommendation concerning the Status of the Artist of 1980, Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, and other.

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in 2005 is a legally binding solution for international cooperation for promoting and protecting cultural diversity. Its direct roots are based in the 2001 UNESCO Universal Declaration on Cultural Diversity, but also in a longer history of defending cultural diversity within the work of UNESCO organization. The mandate for adoption of a legally binding convention concerning the protection of cultural diversity was given by the General Conference of UNESCO in October 2003, and that was a result of previous debates and decisions, as well as contribution of particular Member States of UNESCO and international organizations. Starting more actively with 90s of the 20\(^{th}\) century the issue of preserving cultural diversity in general, and also within the context of the worldwide developments of market economy, became a matter of concern and an object of international discussions followed by standard-setting initiatives. The contribution to the named debates was given by countries from various regions of the world. Although this debate concerned global challenges of cultural and development policies, the main input towards raising wider discussions came from the Northern hemisphere.

1.1. International Policy-Making: Historical Insights

The history of international discussions on policy-making within the sphere of culture that lead to the elaboration of the 2005 Convention is rich. It can be overlooked from various perspectives, thus choosing different sets of sources, documents and relevant materials. Without the pretension to provide an exhaustive insight into the history of the 2005 Convention, the present paper will highlight certain aspects that are of interest within this particular reflection: the impact of the 1980 Recommendation concerning the status of the artist on the discussions leading towards a new convention; and the role of European Union countries\(^{16}\) and particularly countries form the Baltic Sea Region within the advancement of debates on new cooperation models for strengthening cultural policies and the significance of culture within the policies of development and trade.

\(^{(1)}\) The UNESCO Recommendation concerning the status of the artist was adopted in 1980 recalling, among other aspects, “the importance, universally acknowledged both nationally and inter-nationally, of the preservation and promotion of cultural identity”\(^{17}\). The impact of this document was widely debated at the World Congress on the Implementation of the Recommendation Concerning the Status of the Artist that was organized by UNESCO in cooperation with the French Ministry of Culture and Communication and the French National Commission for UNESCO and took place in Paris in June 1997. In its Final Declaration there were several statements that invited to consider eventual standard-setting activities, namely: “14. […] There is consequently a need for legal measures to ensure that artists are better protected and that works of art are preserved in their entirety”; “16. The


\(^{16}\) The impact of the European Union as a regional integration organization within the debates on the elaboration of the 2005 Convention will be highlighted within the Part II of the present paper.

\(^{17}\) Recommendation concerning the status of the artist. General Conference of UNESCO. 27 October 1980.
1980 Recommendation is more relevant than ever. Enriched by new international instruments, it is an indispensable source of inspiration for the State and for society; and particularly the following proposal for the enhanced implementation of the Recommendation: “41. International trade should not undermine cultural diversity. It is also necessary to support the endeavours of developing countries to protect and promote traditional and popular culture through intellectual property”\(^\text{18}\). The growing need to establish an international legal framework that would stand against the subjection of cultural productions to general legal rules of the trade, was considered as the one to be solved urgently.

(2) Another important dimension within these debates culminated in Stockholm, Sweden in spring 1998 when Intergovernmental Conference on Cultural Policies for Development took place. It was convened by the Director-General of UNESCO and hosted by the Government of Sweden. As stated in the Final Report of the Conference, “its point of departure was the new light on the interactions between culture and development shed by the World Commission on Culture and Development in the report entitled Our Creative Diversity which it submitted to UNESCO and the United Nations in November 1995”\(^\text{19}\). The Conference that “brought together some 2,400 participants representing 149 governments, 23 international inter-governmental organizations, some 135 non-governmental organizations, foundations, voluntary associations and other civil society entities, as well as many individual artists, scholars and experts”\(^\text{20}\), adopted an Action Plan on Cultural Policies for Development that included both recommendations to the governments of UNESCO Member States as well as recommendations to the Director-General of UNESCO. At this stage an initiative to elaborate and adopt a special convention was not mentioned among the recommendations for international cooperation; however the content of the recommendations adopted goes in line with the present content of the 2005 Convention. Five years later, in May 2003 Swedish National Commission for UNESCO raised again the issue of the cultural policies for development and organized an expert meeting that focused on four main themes: Cultural Policies and the Eradication of Poverty, Cultural Policies and Cultural Diversity, Cultural Policies and the EFA process, and Cultural Policies in the Information Society. As stated in the report of the meeting, “since culture in its different expressions is a complex and ongoing process it should be the concern of each state to manage diversity”\(^\text{21}\). General conclusions of the expert meeting were particularly devoted to underlining the role of a strong and focused cultural policy in various fields of public development, thus inviting to take this into consideration within further work of UNESCO.

(3) The issue of and concerns on the preservation of cultural diversity within the context of market economy and commercial exchanges of cultural goods was at large extent raised by Francophone governments, particularly France and Quebec. This initiative took the form of various activities. For instance, on 14 and 15 June 1999 a Symposium of experts on culture, the market and globalization, entitled “Culture: A Form of Merchandise Like no Other”, was organized at UNESCO in collaboration with the French National Commission for UNESCO and with the support of the Canadian and French Governments.\(^\text{22}\) The Symposium made clear reference that it continued the work begun by the report Our Creative Diversity

20 Ibid.
by the World Commission on Culture and Development, and the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998). At this occasion, the discussion brought up different points for discussion, including the definition of cultural goods, globalization and promotion of cultural diversity, intellectual property and public policies. Among other conclusions, it was emphasized that “international cooperation and aid for the developing countries must not only focus on the implementation or specific financing of projects such as films, but even more on support for the creation of structuring elements in the respective countries to enable them to build up their own cultural industry”\textsuperscript{23}. The symposium that brought together artists, lawyers, economists, policy-makers, was followed by further steps towards global consensus on these issues of concern.

A working group established in December 1998 by both countries (Groupe de travail franco-québécois sur la diversité culturelle) commanded a feasibility study on eventual adoption of international legal instrument within this particular domain. The study entitled Evaluation de la faisabilité juridique d’un instrument international sur la diversité culturelle was carried out by legal advisors Ivan Bernier and Hélène Ruiz and finalised and published in summer 2002\textsuperscript{24}. In addition, the International Network on Cultural Policy (Réseau international sur la politique culturelle, RIPC) worked on the elaboration of possible solutions for the adoption of an international convention. Initially, the main concern was perceived to be the necessity to have legal basis to elaborate cultural policies that provide direct support for the preservation of cultural diversity and that would stand in front of the international commercial law without being subordinated to it. Support for the adoption of a UNESCO convention on the matters of protection of the diversity of cultural expressions was also adopted at the occasion of the Beirut Summit of La Francophonie that took place on October 18-20, 2002 – “The summit also indicated support for the principle of the adoption by UNESCO of an instrument on cultural diversity that entrenches the right of states and governments to maintain, establish and develop policies in support of culture and cultural diversity”\textsuperscript{25}.

The research carried out by Ivan Bernier and Hélène Ruiz proposed several conclusions and recommendations concerning eventual adoption of a new standard-setting instrument. Authors observed that in what concerned issues of cultural diversity and its protection in the context of global trade, issues linked to culture were mainly dealt by legal instruments that were not binding, like declarations, recommendations and other; on the other side, the cooperation in the field of international trade was mostly regulated by legally binding instruments. This general observation indicated the deficiencies underlined for eventual legal argumentation in favour of particular conditions for cultural productions within the context of international trade. As authors underlined, the approach of complete liberalisation that is dominant within the international trade law, is quite different from the convictions that uphold the sphere of culture where the existence and preservation of different cultures is recognized as crucially important. Thus, in this particular research authors recognised that “there are good reasons to believe that the mediation of inherent tensions between commerce ad culture could in an expedient manner be done by developing an international instrument on the cultural diversity”\textsuperscript{26}. They further recognize that “there is a lack of an instrument that would present a cultural point of view articulated on this problematics, as existing cultural

\textsuperscript{23} Ibid. P. 11.
instruments practically have never paid attention to the problematics trade-culture"\textsuperscript{27}. Thus, the proposed conclusions of this research clearly defended the idea to elaborate a new standard-setting instrument within this particular sphere.

The debates undertaken and recommendations proposed, contributed to a general conviction within UNESCO that a standard-setting activity would be needed in order to protect cultural exchanges in the context of global trade. The same conviction was reaffirmed by the Round Table of Ministers of Culture “Culture and Creativity in a Globalized World” held on the occasion of the 30th session of the General Conference of UNESCO in Paris, 2 November 1999. Within conclusions on the theme “Cultural diversity in a globalized world” ministers recognized that “Culture should not take second place to the economy”\textsuperscript{28}. Referring to the Stockholm Conference of 1998 and the Stockholm Action Plan adopted\textsuperscript{29}, ministers agreed that “all cultural and audiovisual goods and services deserve special treatment, in the context of international commercial negotiations, because they are the reflection of different cultural identities”, and they also underlined “the importance of a draft resolution on cultural diversity which is being submitted to the General Conference”\textsuperscript{30}. At the occasion of its 30\textsuperscript{th} session the General Conference also considered the information provided on the follow-up to the Intergovernmental Conference on Cultural Policies for Development (Stockholm)\textsuperscript{31} where it was stated that culture programs of UNESCO need to be reshaped in the light of the growing challenge of facing the influence of market economy on the preservation of world's cultural diversity.

The named episodes of discussions, that were taking place at the second part of the 90s of the 20\textsuperscript{th} century, characterise the scope that these discussions took and the ambition it had – to set up a common global approach in order to resist economic influences on the diversity of cultural expressions. Without going in detail on the whole range of arguments that were put forward, the first significant outcome of these debates was the adoption of the UNESCO Universal Declaration on Cultural Diversity and its Action Plan, that was adopted by the General Conference of UNESCO on 2 November 2001. Although the form of declaration as a soft-law instrument showed common convictions and an agreement of values and attitudes, it did not put forward any obligations for the states. This was particularly considered in the Action Plan, recommending at its first paragraph “taking forward notably consideration of the advisability of an international legal instrument on cultural diversity”\textsuperscript{32}. Thus, further steps were taken to elaborate a legally binding instrument, that finally was adopted on 20 October 2005 by the General Conference of UNESCO – the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

\textbf{1.2. Legally Binding Instrument: Responsibilities and Duties}

The adoption of the 2005 Convention just four years after adopting the UNESCO Universal Declaration on Cultural Diversity is perceived as a relatively short period of time for shifting

\textsuperscript{27} Ibid. P. 20.
\textsuperscript{31} Follow-up to the Intergovernmental Conference on Cultural Policies for Development (Stockholm). Information document. 30\textsuperscript{th} Session. General Conference of UNESCO. 17 September 1999. 30 C/INF.7.
from a soft-law instrument to a new and legally binding standard-setting instrument in general within the same domain or with similar objectives. Moreover, it has been a complex task taking into account the variety of aspects discussed formerly. After the adoption of the Declaration in 2001 the debates on the elaboration of a new instrument continued, and the first extended analysis at this regard was the evaluation given by Director-General of UNESCO – “Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on cultural diversity” in March 2003. The study suggested four alternatives for further legislative steps: (a) a new comprehensive instrument on cultural rights; (b) an instrument on the status of the artist; (c) a new Protocol to the Florence Agreement; or (d) a new instrument on the protection of the diversity of cultural contents and artistic expressions. These options are of interest in a broader context of existing international law within the domain of culture\textsuperscript{33}, as each of them reveals a particular aspect that is of relevance within the debate on cultural diversity. The Preliminary study was followed by the decision of the Executive Board of UNESCO to put this question on the agenda of the General Conference, which decided at its 32\textsuperscript{nd} session in 2003 to choose the last of the options and to launch the drafting process of a new instrument on the protection of the diversity of cultural contents and artistic expressions.

The process of elaborating the Convention lasted two years\textsuperscript{34} and included various meeting of experts. Three sessions of the Intergovernmental Meeting of Experts on the Preliminary draft International Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions took place during these two years – respectively, on 20–24 September 2004, on 31 January–12 February 2005 and finally on 25 May–4 June 2005. During this process the most visible change that took place concerns the use of terms, as the title of the draft convention was amended, instead of the “diversity of cultural contents and artistic expressions” deciding to use “diversity of cultural expressions” as a more general term that during the drafting was recognised as unifying the meaning of both – “cultural contents” and “artistic expressions”, and finally remained as the leading term. During the drafting process also the scope of annexes of the Convention was diminished, for instance, refusing to integrate the initially planned non-exhaustive lists of cultural goods and services and of cultural policies. Without going in more detail on the discussions and decisions taken during the drafting process, the overall normative result is to be explored to see the outcome in terms of responsibilities and duties stated within the adopted text of the Convention.

The implementation of the Convention starts with its objectives, thus in order to approach particular legal outcomes, the objectives need to be acknowledged first. The Convention as adopted by the General Conference in 2005 states a set of objectives including more general statements, as the objective “(a) to protect and promote the diversity of cultural expressions” or “(g) to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning”, and providing also more focused emphasis on the means and approaches for implementing the Convention at national as well as international level. In this context of the present paper, underlining regional and national perspectives, few of objectives need particular attention.

1) Emphasis on sovereign rights of States and national action / the Convention particularly underlines the role of States in shaping their policies, which is mentioned in the objective – “(h) to reaffirm the sovereign rights of States to maintain, adopt and

\textsuperscript{33} This issue will be raised again in Part I.3 of the present paper when speaking about the link of the 2005 Convention to the 1980 Recommendation concerning the Status of the Artist.

\textsuperscript{34} For the history of drafting process and the decisions taken, see Drawing up of the Convention on the protection and promotion of the diversity of cultural expressions. UNESCO. http://portal.unesco.org/en/ev.php-URL_ID=24129&URL_DO=DO_TOPIC&URL_SECTION=201.html.
implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory”. This emphasis on the national level is also present in objective “(f) […] to support actions undertaken nationally and internationally to secure recognition of the true value of this link [between culture and development]”.

2) *Emphasis on international cooperation and developing countries* / this aspect is reflected particularly in two of the objectives of the Convention, namely, “(f) to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries […]” and “(i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions”.

This perspective on the objectives of the Convention gives certain introduction to the further points of discussion, as (1) the role and capacities of States at national level to implement the Convention is a matter of concern of the present reflection, and (2) within the context of a common action of the European Union as a party to the convention the focus on the development cooperation is a significant aspect to capture. The named considerations both will be further explored in the coming parts of the reference paper.

Coming back to the question of legal responsibilities and duties resulting from the Convention, this mainly refers to the Part IV of the Convention “Rights and obligations of Parties”, but demands also a slightly broader perspective, including, for instance, the guiding principles and certain final clauses of the Convention. The obligations of the Parties of the Convention thus can be structured within several groups that transcend the division established by separate articles of the text:

1) *Respect for the guiding principles of the Convention* (Art. 2) / this concerns the application of any of the duties set further in the Convention, thus giving a general framework for the action of the Parties in respect of the application of the Convention; some of these principles are of particular relevance within the case of the EU being a Party to the Convention – for instance, the Principle of sovereignty (reminding the sovereign right of States to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory), Principle of international solidarity and cooperation (aimed at enabling especially developing countries to create and strengthen their means of cultural expression); and Principle of the complementarity of economic and cultural aspects of development (inviting to consider the role of culture for shaping the policies of economic development – a fundamental competence of the EU as a regional economic integration organization);

2) *Integration of culture in development policies* (Art. 13) / the obligation of Parties to endeavour to integrate culture in their development policies at all levels concerns not only the shaping of cultural policies, but also development policies in general, demanding a general recognition of the role of culture for development; this goes to all levels of policy-making – national, regional as well as global international level; within the reality of sectionally organized policy-making, this also demands a (1) broader developed institutional cooperation in the light of inter-sectoral cooperation within all levels, starting with much closer cooperation among different ministries and other institutions involved at national level, and reaching fruitful inter-sectoral cooperation at regional and global international organizations, and also a (2) better integrated policy at this respect, which directly concerns also the shaping of EU policies, including sub-regional level.
3) **Recognition to the important contribution of artists, cultural communities and organizations** (Art. 7.2) / this particular aspect of the obligations of Parties to the Convention is to be seen in the light of its link to other international agreements, including UNESCO normative instruments, for instance the 1980 Recommendation concerning the Status of the Artist, or 2003 Convention on the safeguarding of the intangible cultural heritage;

4) **Cooperation and exchange of information** / this obligation transcends in general the text of the Convention and thus is reflected in a larger set of articles (particularly Art. 9, 12, 17 and 19, but also 10, 11), special attention is being devoted to the cooperation for development that is directed towards a cooperation between developed and developing countries and inviting to provide assistance to developing countries (Art. 14, 15 and 16), and finally International Fund for Cultural Diversity is also a tool of cooperation inviting voluntary contributions made by Parties for common objectives and priorities set down for the functioning of the Fund (Art. 18).

5) **Education, public awareness and participation of civil society** (Art. 10 and 11) / these obligations of Parties to the Convention are oriented towards better knowledge on the role of this Convention and the significance of cultural diversity, thus also inviting civil society for a more active involvement in the process of implementing the Convention; this part of the obligations of Parties is the one that can be implemented by various institutions involved by civil society at large; in this context also the role of the National Commissions for UNESCO can be seen – working on public awareness raising and encouraging the active participation of civil society.\[35\]

There are also other duties set in the text of the Convention, like the obligation to report to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level (Art. 9 (a)) or designate a point of contact (Art. 9 (b) and Art. 28), that concern management of the implementation of the Convention and cooperation among Parties and between Parties and UNESCO. The major obligations established by the text of the Convention are further developed by the Operational directives that have been adopted gradually for particular articles of the Convention – currently being 11 separate documents adopted by the Conference of the Parties of the Convention at two sessions – in June 2009 and June 2011 (see References, (A)). These guidelines elaborate more precisely on the interpretation and application of the text of Convention, thus in general keeping the same scope of obligations set in the Convention.

Although the Convention is to be considered as a legally binding instrument, it remains open for a variety of concrete approaches in its implementation. Large flexibility is given to each Party to the Convention, in particular in what concerns its implementation at national level (see Art. 5, 6, 7 and 8); and this concerns also a regional level within the European Union, being a Party to the Convention and thus taking decisions on its implementation. Hence, the shift from a declaration to a convention within the domain of preserving cultural diversity, is to be perceived as a shift to wider possibilities to use global agreements as an argument in shaping cultural and development policies. The Convention may remain as an agreement of general convictions on the role of culture for development, human rights and sustainability, without further elaboration on its eventual direct impact on policy-making, but it may as well be used as an appropriate and purposeful argument for defending the implementation of its statements; and this largely depends on the willingness of Parties to the Convention, as well as civil society to rely on the Convention in its action.

\[35\] The named aspects will be further developed in the present paper.
The shift from soft-law instruments towards hard-law solutions is generally observable within the history of cultural sector of UNESCO, as for other examples of similar sequence of decisions, see the interconnection of legal instruments: (1) 1964 Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property and 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; (2) 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore and 2003 Convention for the Safeguarding of the Intangible Cultural Heritage. This sequence of decisions taken thus shows a broader tendency to shift from initially soft-law instruments in a form of recommendations or declarations, and further, in regard to the experience acquired and further steps of cooperation needed, elaborate a convention that would apply to the particular domain of international cooperation. The same sequence of decisions has been followed in the case of 2005 Convention, referring to the 2001 Declaration as its primary precursor.

At present, an undergoing discussion is devoted to modalities of a similar strategy for the UNESCO programme *Memory of the World*, where arguments in favour are put forward, being convinced about the eventual effectiveness of a hard-law instrument to enter into force. However, there exist also opposite opinions that contest the liability of legal instruments to assure a reasonable and resulting implementation of common convictions and initiatives. This largely depends on: first, the fruitfulness of international cooperation also outside specifically elaborated legal framework, and second, the effectiveness of the adopted legal instruments – whether they serve as a strong reference influencing the action of Parties, or they remain a set of declaratory statements that do not reach the needed level of implementation. The same dilemma is still of topicality also in what regards the evaluation of the role of 2005 Convention.

2. 2005 UNESCO Convention among other International Conventions

The broad perspective of the 2005 Convention invites in a way to consider it as a framework instrument that englobes other, more specific legal instruments within the sphere of culture. However, this perception might be misleading, as the Convention adopted in 2005 has its specificity and particularities of interpretation, namely within the perspective of economic growth, advancement of industries and the concept of development. Despite the fact that it is envisaged as an instrument that brings the argument of culture within the discourse on development, it causes also the other direction of interconnection – bringing the economic understanding of development within the discourse on culture. In this respect, the 2005 Convention, while defending the diversity of cultural expressions in general, puts forward the argument of the economic interrelations that transcend a variety of cultural activities, not only within the domain of cultural industries being particularly emphasised within the text of the Convention, but also in a broader perspective of human activities of cultural significance and of economic impact.

Concerning the interconnection between the 2005 Convention and other international legal instruments, including the ones adopted by UNESCO, a general rule is being given in Art. 20 of the Convention speaking on *Relationship to other treaties: mutual supportiveness, complementarity and non-subordination*. According to the named article, “1. Parties

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36 For more detailed insight into the discussions and the arguments provided, see: 4th International Memory of the World Conference “Culture – Memory – Identity” Records of Summary. The Conference took place in May 2011 in Warsaw, Poland, and united experts from 71 country. Records prepared by the Polish National Commission for UNESCO in cooperation with the *Memory of the World* International Advisory Committee, 2012.
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." Thus, the 2005 Convention serves as a reference also within the cases of interpreting and applying other international legal normative instruments, including the ones adopted by UNESCO within the field of culture.

Particular references to other international treaties are given in an explicit manner at several parts of the text of the Convention, both at the Preamble as well as the core text of the Convention. Examining such references given in the text of the Convention, the following international legal instruments are mentioned: (1) Universal Declaration of Human Rights and other universally recognized human rights instruments (Preamble, Art. 2 and 5) in what regards the importance of cultural diversity for the full realization of human rights and fundamental freedoms, (2) Universal Declaration on Cultural Diversity of 2001 (Preamble) referring to the provisions of the international instruments adopted by UNESCO relating to cultural diversity and the exercise of cultural rights; and (3) Charter of the United Nations and the principles of international law (Art. 2 and 5), namely referring to the sovereign rights of States to adopt their policies.

However, some understated links to other domains of international law can be identified and explored, which are of interest (1) concerning the interconnection of international conventions adopted by UNESCO – hence characterising the work within UNESCO; but also touch upon (2) the work of other international organizations and the interconnection among various domains of international law, all of relevance concerning the vast scope of application of the 2005 Convention. In this regard, the following aspects of interest are chosen for further insight.

2.1. Particular Regard to Traditional Cultural Expressions

The concept of cultural diversity as perceived and explained in the 2005 Convention, includes a double emphasis: on the one hand underlining the role of original artistic creativity, and on the other hand recognising the importance of cultural heritage that is being transmitted, recreated and constantly enriched by contemporary cultural expressions recognised as a part of cultural heritage. The text of the convention starts with the statement, that "[..] cultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all". This link between the concepts of cultural diversity and heritage is further explored also within the definition of the cultural diversity given in the Convention, that states: “‘Cultural diversity’ refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used." Thus, a creative expression of the cultural heritage of humanity is within the scope of interest of the Convention.

Within this line of emphasis on the heritage, there are several other references in the text of the Convention that invite to interpret it in the context of another legal instrument adopted by the General Conference of UNESCO – the 2003 Convention for the Safeguarding of the
Intangible Cultural Heritage, and these references are mainly directed towards underlining the need to protect and promote traditional cultural expressions. This is emphasised at several sections within the Preamble of the 2005 Convention.

1) “Recognizing the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion.” / The protection of traditional knowledge has been particularly emphasised within the 2003 UNESCO Convention, where besides recognising knowledge as a part of intangible cultural heritage, knowledge and practices concerning nature and the universe are being highlighted as one of the domains of intangible cultural heritage which needs to be safeguarded and transmitted to future generations. Thus, at this regard, both conventions – 2005 and 2003 – find their direct interconnection.

2) “Recognizing that the diversity of cultural expressions, including traditional cultural expressions, is an important factor that allows individuals and peoples to express and to share with others their ideas and values.” / In this regard the reference to ideas and values present in traditional cultural expressions can be seen, in the light of the 2003 Convention, as representations being a part of intangible cultural heritage, that in this way can serve as a source for a variety of cultural expressions – preserved and promoted under the 2005 Convention.

3) “Taking into account the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, as manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit them for their own development.” / The freedom to create, disseminate and distribute the traditional cultural expressions and to have access thereto reveals another aspect of importance – the general context of international human rights – context that is crucial for the interpretation of both the 2005 and 2003 Conventions of UNESCO. Principle of respect for human rights and fundamental freedoms is the first principle to be mentioned within the 2005 Convention stating that “[..] No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms [..]”, and the reference to human rights form a substantial part of the definition itself of intangible cultural heritage given in the 2003 Convention, “[..] For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments [..]”. Accordingly, human rights is definitely an overall context that invites to apply both conventions in respect of the human rights and freedoms, and also puts limits to the possibilities of the interpretation and application of both legal instruments.

The regard to traditional cultural expressions is linked also to the emphasis that is put upon the preservation and promotion of the cultural expressions of indigenous peoples. Besides the parts of the Preamble already cited, this is explicitly mentioned in two articles of the text of the Convention. (1) As stated in Art. 3. Principle of equal dignity of and respect for all cultures, “The protection and promotion of the diversity of cultural expressions presuppose

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37 It should also be noted that there is a reciprocal connection stated within the text of the 2003 Convention, where in its Preamble a reference is given to the UNESCO Universal Declaration on Cultural Diversity of 2001, recognizing “importance of the intangible cultural heritage as a mainspring of cultural diversity”. The respect for cultural diversity is also underlined within the definition of the intangible cultural heritage, given in the named Convention. See, Convention for the Safeguarding of the Intangible Cultural Heritage, General Conference of UNESCO, 2003.
the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples”. Thus, Parties to the Convention are invited to pay particular attention to the cultural expressions of indigenous people, including their traditional cultural expressions. (2) As stated in Art. 7. Measures to promote cultural expressions. “Parties shall endeavour to create in their territory an environment which encourages individuals and social groups: (a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples [...]. This emphasis on the cultural expressions of minorities and indigenous peoples is also expressed in the light of international human rights law and thus gives a supplementary argument for the application of specific provisions of this branch of international law.

The interconnection between the two UNESCO conventions mentioned – Convention on the Protection and Promotion of the Expressions of Cultural Diversity (2005) and Convention for the Safeguarding of the Intangible Cultural Heritage (2003) thus reveals a common concern on the preservation of traditional cultural expressions and provides different perspectives to the same issue of concern. On the one hand, a general agreement on the necessity to safeguard intangible cultural heritage and thus to develop appropriate policies at this regard, and on the other hand, to protect this heritage and its expressions in particular context of economic relations and general trends of global development.

This leads to the further aspect of interconnections within international law – the links of the 2005 Convention to international trade law and also to the intellectual property law. Both named branches of international law are within the sphere of competence of two different respective intergovernmental organizations – World Trade Organization and World Intellectual Property Organization. The 2005 Convention is to be interpreted in reference to both branches of law and its elaboration and further application is linked to the work of both named organizations. Recalling the history of the elaboration of the Convention in question, the concern of the particular role of culture within global trade relations, has been the major preoccupancy that has provoked various discussions during the 90s of the 20th century and finally has lead to the adoption, within the context of UNESCO, of the 2001 Declaration and 2005 Convention.

2.2. Convention and Illicit Trafficking in Cultural Property

Although the 2005 Convention does not give direct or implicit reference to the issue of preventing and fighting illicit trafficking in cultural property, this shape of interpretation has been clearly distinguished by the European Union at several occasions, mainly within the context of EU external relations. This interpretation of the 2005 Convention gives also a direct reference to the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and proposes to have an integrated view on these international legal instruments that both are of importance for the EU. In regard to concrete decisions taken within the EU institutions, the link between the two UNESCO Conventions has been on the agenda of the Council of the European Union as well as the European Parliament.

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38 However, the issues of illicit trafficking in cultural goods are of significance and concern also within the EU borders. For an extensive analysis of these issues within the EU law and national legal regulations of its Member States, see: Étude sur la prévention et la lutte contre le trafic illicite des biens culturels dans l'Union européenne. Réalisée par le Centre d'Étude sur la Coopération Juridique Internationale CECOJI-CNRS – UMR 6224 (France) pour le compte de la Direction générale affaires intérieures de la Commission européenne dans le cadre du contrat Home/2009/ISEC/PR/019-A2. Rapport final – Octobre 2011.
The Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States\textsuperscript{39}, adopted in June 2008, state that there is a need to strengthen “the protection, preservation and promotion of cultural heritage, both tangible and intangible, and international cooperation, including through the exchange of experience in the light of the above mentioned UNESCO Convention of 1970 [on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property], in the field of the prevention of and the fight against theft and illicit trafficking of cultural goods, in particular those illicitly acquired through illegal excavations or pillaging of monuments.” This is another facet of multiple interconnections that transcend the interpretation and application of UNESCO Conventions and need to be faced also in what concerns the 2005 Convention.

Combating illegal trafficking in cultural assets is also reflected in point 44 of the European Parliament Resolution on the cultural dimensions of the EU’s external actions, adopted on 12 May 2011\textsuperscript{40}, where European Parliament “Encourages the Member States and the Commission to step up their cooperation efforts in order to further improve national legal frameworks and policies for the protection and preservation of cultural heritage and cultural assets, in accordance with national legislation and international legal frameworks, including measures to combat illegal trafficking in cultural assets and intellectual property; encourages them to prevent the unlawful appropriation of cultural heritage and the products of cultural activity, whilst at the same time recognising the importance of copyright and intellectual property in maintaining the livelihood of those involved in cultural creation”.

The issue of illicit trafficking in cultural property, the same as the implementation of the 2005 Convention, concerns both the international as well as national level, depending on the division of competences and the scope of international policy-making. It also witnesses the broad scope of possibilities for the interpretation of the Convention on cultural diversity that at various contexts and on different issues may serve as a complementarity legal argument.

### 2.3. Reference to Intellectual Property and Trade Law

In order to give a brief reference, it should be noted that the 2005 Convention is connected also to international trade law and intellectual property law. These domains of law are in the competence respectively of the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). The Convention touches upon aspects of protecting and promoting the diversity of cultural expressions that enter in the scope of both domains mentioned. The 2005 Convention gives a concise reference to intellectual property, “Recognizing the importance of intellectual property rights in sustaining those involved in cultural creativity” (Preamble) and implicit references to international trade law, when treating the issues of production, dissemination and distribution of cultural activities, goods and services. The relation to the trade law and the work of the WTO has been discussed already before the drafting of the Convention, considering these interconnections as ambiguous and questioning the eventual legal solutions to be proposed for cultural exception within international trade.\textsuperscript{41} The text of the Convention pays particular attention to strengthening


\textsuperscript{41} For elaboration on this aspect, see: Bernier, Ivan. \textit{Un nouvel accord international sur la diversité}
cultural industries and enterprises, elaborating on this also within the Art. 6. Rights of parties at the national level, for instance, inviting Parties to adopt measures “aimed at providing domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services”. The link to international trade regulations is of particular relevance for the argumentation of the European Union for the accession to the 2005 Convention.

3. Links to the 1980 Recommendation concerning the Status of the Artist

Interconnection between the Convention and the 1980 Recommendation concerning the Status of the Artist can be explored from several perspectives. (1) From diachronic perspective, the connection is characterised by certain sequence of decisions taken, Recommendation being adopted twenty-five years before the Convention and the issue of the status of artist being among the core topics debated at the initial stage of the elaboration of the Convention. (2) From synchronic perspective, although at present the Recommendation dates back to more that thirty years, it still remains as a topic within the agenda of general discussions within UNESCO, giving reason for the evaluation and reconsideration of the impact that the Recommendation has given on the conditions of artists worldwide, and raising also the issue of its application in parallel to the application of the 2005 Convention. Besides, within the context of the present study, the European perspective is of interest at this regard, thus giving an insight into certain EU documents of reference dealing with the matters of the social status of artists.

3.1. Status of the Artist in Relation to the 2005 Convention

The adoption of the 1980 Recommendation concerning the Status of the Artist witnessed a global concern to improve the professional, social and economic status of artists through the implementation of policies and measures related to training, social security, employment and tax conditions in particular, for self-employed artists, and through the recognition of the right of artists to be organized in trade unions. As this document was prepared in the form of recommendation, it remained upon the good will of Member States to follow its provisions and to implement it at their national and regional policies. As stated within the Recommendation, the General Conference of UNESCO “recommends that Member States implement the following provisions, taking whatever legislative or other steps may be required [...]”. The Recommendation met initial lack of activity and of manifested interest from the Member States, which motivated UNESCO to hold in 1997 the World Congress on the Status of the Artist.

One of the outcomes of the named Congress was the initiative of launching a World Observatory on the Status of the Artist. It gained visibility straight after the congress and remained a rather widely discussed issue during the coming years. The issue of the status of the artist was constantly a matter of concern within the debates on the protection of cultural diversity. For instance, social dimension of the artistic professions was reconsidered.

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in France in 2003 and in Quebec in 2004. The World Observatory on the Status of the Artist collected data on the definition and protection of the social rights of artists in certain countries, including information on tax systems, employment and international mobility of artists. However, the information collected reflected the situation only in a limited number of UNESCO Member States, and currently large part of this information remains out-of-date, mainly providing responses of the Member States to two questionnaires distributed by UNESCO respectively in 2003 and 2008. The Observatory has had rather poor impact on the exchange of information and experiences on these matters of concern. Nevertheless, the Recommendation has remained of importance over the years, and its interpretation has reached additional contexts. In particular, it has been recognized by UNESCO that "the activities implemented under the Recommendation concerning the Status of the Artist are considered in the framework of UNESCO normative instruments in the field of culture, and in particular of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) and the Convention on the Safeguarding of the Intangible Cultural Heritage (2003)". This statement goes in line with the present reflection on the interrelation among various UNESCO standard-setting instruments, including the 2005 Convention in question.

Returning to the history of the 2005 Convention, as mentioned previously, the initiative to develop standard-setting activities particularly on the matters of the status of artists, was one of the four initial options proposed in 2003 for elaboration of a legal normative act. As recognised in the Preliminary Study prepared by UNESCO, this option " [...] would have the advantage of regulating internationally the professional status of creators and artists, whose recognition is at present more theoretical than real. As matters stand, only the protection of copyright and neighbouring rights is provided for in binding normative instruments to which many States are party." It was also suggested that such approach perhaps could be implemented in cooperation with the International Labour Organization (ILO), and would deal with such matters as the freedom of artists to create, their international mobility, their social benefits, their right to employment, their conditions of remuneration, their tax status, training, health, reintegration of artists due for retirement into the labour market, together with support for creative activities, financing of the arts etc. However, the Study concluded that for some States it might be “very difficult to accept such an instrument for want of appropriate national legislation and the financial resources to meet the new international commitments. Some of these difficulties might be resolved by an instrument with a broader scope [...]”, which finally was the option chosen – the one to agree on a broader scope of the new normative instrument as was adopted in 2005.

The last overall evaluation of the 1980 Recommendation is given by UNESCO in 2011, providing Consolidated Report on the Implementation by Member States of the 1980 Recommendation concerning the Status of the Artist. This document pays particular

44 Diversité culturelle : La longue marche vers une convention internationale. Mme Line Beauchamp, ministre de la Culture et des Communications du Québec – Rythmes, no 26, 1er trimestre 2004, pp. 4-5.
46 By reason of reminding, four alternatives were suggested for further legislative steps: (a) a new comprehensive instrument on cultural rights; (b) an instrument on the status of the artist; (c) a new Protocol to the Florence Agreement; or (d) a new instrument on the protection of the diversity of cultural contents and artistic expressions. See: Preliminary Study on the Technical and Legal Aspects Relating to the Desirability of a Standard-setting Instrument on Cultural Diversity. Executive Board of UNESCO. Paris, 12 March 2003. 166 EX/28. http://unesdoc.unesco.org/images/0012/001297/129718e.pdf
48 Ibid.
attention to issues like legislative frameworks, employment, working and living conditions, professional representation and the rights of artists' associations, social security, health insurance and retirement benefits, taxation and transnational mobility. Though, the limited scope of the document has given a possibility to provide very general statements, that miss deeper analysis and exploration of concrete solutions found, that has remained a target of other studies\(^\text{49}\). As a general conclusion, the Report recognised that “further work is required to implement the Recommendation on the Status of the Artist fully as a means to ensure that the legal, social and economic conditions necessary for the exercise of artist's creative work are provided. Particular attention is required to address the atypical conditions of performing artists that result form their mobility, for example, visa and security issues, double taxation, unemployment benefits and disability insurance plans, early retirement and re-training, etc.”\(^\text{50}\) These issues are not explicitly solved by the 2005 Convention, thus they still remain a topic of discussions at international level.

(2) Having a look at the present text of the 2005 Convention, a reference to the status and conditions of artist in a rather derivative way is incorporated in Art. 7, at its second part stating that “Parties shall also endeavour to recognize the important contribution of artists, others involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions”. The text thus invites to pay attention to the consideration that the recognition of important contribution of artists shall be followed by appropriate means witnessing this recognition – that may find its form in decisions adopted on the social conditions of artists and others involved in the creative process. These solutions namely are to be found at national or regional level.

3.2. European Perspective on the Social Status of Artists

With regard to the European perspective, the issue of the social status of artists has been raised in July 2003, when a Report of the Committee of Culture, Youth, Education, the Media and Sport of the European Parliament called on the Commission, its Member States and the regions to: “develop a European legal framework with a view to creating an all-embracing ‘statute of the artist’ intended to afford appropriate social protection, which would include legislation regarding author’s intellectual property rights”\(^\text{51}\). Further, the European Parliament requesting a study on the issue, and finally proposed its position in a form of a European Parliament Resolution on the social status of artists adopted in May 2007\(^\text{52}\). Besides, this resolution was giving a direct reference to the 2005 Convention of UNESCO.

The study that has been carried out witnessed a large variety of solutions that at this respect have been found at national level within the European Union. The emphasis on the national level of solutions is indicated at the very beginning of the executive summary of the study, stating that “This report presents innovative national measures and models aimed at improving the socioeconomic status of authors (e.g. writers or visual artists) and performing

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artists in Europe. It addresses five main areas: individual working and contract relations; professional representation; social security; taxation; and aspects of trans-national mobility." This study provides detailed insights into national experiences of the EU Member States. In addition to the core text of analysis it gives a range of valuable annexes that specify either national examples or regional perspectives within Europe. In this context also the so called “Nordic model” has gained particular attention, which thus refers partly to the Baltic Sea Region in Europe. Without going in more detail in the present reference paper, it has to be underlined that the study provided recommendations for a common EU action in this field. Several options were proposed.

(1) The first option proposed was to develop an EU Directive on the Status of the Artist, introducing specific legal provisions to be harmonized across all EU Member States. As acknowledged, this would be very difficult to achieve for legal reasons, “the status of the artist is a transversal issue and draws on several legal areas and numerous institutional competences: free movement of citizens and workers, taxation and social security legislation, the Internal Market, etc.”, and as harmonization process could risk eliminating the positive and innovative measures implemented to date in some of the Member States. Thus, it might be highly difficult to find a single overall solution within a form of an EU Directive. (2) The second option proposed was the adoption of European Parliament Resolution on the Status of Artists, and to address both: EU Member States and the European Commission, inviting to solve relevant aspects at national and regional level. Finally (3) the last option was set to remain with the current status quo, which was suggested as irrelevant as the existing situation is not favourable to the socioeconomic status of artists and there are new challenges with the growing mobility of artists.

The decision was taken to adopt a European Parliament Resolution on the Social Status of Artists, and it was adopted in May 2007. The Resolution was drafted having regard to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, recognizing that “the above-mentioned UNESCO Convention provides an excellent basis for recognition of the importance of the activities of professional creative artists”. The Resolution proposed a set of further steps to be considered by the European Commission and the Member States. Along with general statements concerning the improvement of the situation of artists in Europe, where the European Parliament "calls on the Member States to develop or implement a legal and institutional framework for creative artistic activity through the adoption or application of a number of coherent and comprehensive measures in respect of contracts, social security, sickness insurance, direct and indirect taxation and compliance with European rules"; there were also more elaborate proposals addressed towards the European Commission in what concerns, for instance, an initiative to introduce European electronic social security card specifically intended for European artists, to introduce a Europass-type ‘European professional register’ of artists, and other aspects.

57 Ibid.
In general, what concerns the 1980 Recommendation concerning the Status of the Artist and the implementation of the 2005 Convention at this regard, it certainly ought to be emphasized that this sphere of policy-making and legislation relies mainly within national competence. Thus, at this regard, the 2005 Convention needs to perceived mainly as a legal instrument that needs to find its solutions of being applied at national level. This clearly indicates one of the spheres where international cooperation is insufficient for having a significant impact of the Convention. Currently, there is an ongoing exchange of experience on the ways how European countries solve the issue of the social status of artists, and these exchanges need to be continued in order to reach more coherent approaches within the European Union.

II EU Accession to the 2005 Convention

European perspective within the global discussions on the protection and promotion of the diversity of cultural expressions has given various contributions. Before active involvement of the European Union, the issue of cultural diversity was put on the agenda of the Council of Europe. It is to be mentioned as it characterises the relevance of the issue in Europe. “Recalling that cultural diversity has always been a dominant European characteristic and a fundamental political objective in the process of European construction, and that it assumes particular importance in the building of an information and knowledge based society in the 21st Century”, the Council of Europe adopted on 7 December 2000 the Declaration on Cultural Diversity. One of the emphasis of the Declaration was put on promoting “[..] media freedoms and media pluralism as a basic precondition for cultural exchange, and affirming that media pluralism is essential for democracy and cultural diversity”\(^{58}\). The Declaration was rather concise, however put some basic accents that are maintained also in further related international legal instruments, like the declared statement that “Cultural diversity has an essential economic role to play in the development of the knowledge economy. Strong cultural industries which encourage linguistic diversity and artistic expression, when reflecting genuine diversity, have a positive impact on pluralism, innovation, competitiveness and employment”\(^{59}\). Economic dimensions of cultural diversity are reflected further in the Convention adopted by UNESCO in 2005.

As for the European Union as regional economic integration organization, its active involvement in international debates on the protection of cultural diversity continued the same reflection but with a more focused emphasis on the economic perspective and trade relations. The issue of preserving and promoting cultural diversity within the context of economic relations is seen in the light of EU external and internal policies that contribute to development cooperation as well as sub-regional and local development. In order to capture the interest and role of the EU within the process of adopting and applying the 2005 Convention, further attention will be paid to its involvement in the drafting process, and some of the aspects of interpretation of the Convention present at the EU policies.

1. Negotiations and Arguments for the EU Accession

The European Union, after signing a cooperation agreement with UNESCO in 2004\(^{60}\) got involved in the process of negotiations on drafting the Convention on the issues of protecting

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59 Ibid.
cultural diversity. The mandate to negotiate the Convention was given to the European Commission by the Council of the European Union in November 2004, and the Executive Board of UNESCO was further asked by the EU Member States to authorise the European Commission to participate at the negotiations with additional rights to take the floor at drafting meetings and submit proposals and amendments for the draft, to participate at drafting committees and working groups, formal and informal meetings, without the right to vote. This was so decided by the Executive Board of UNESCO at its 171st session in April 2005. European Commission became observer at UNESCO with the particular right to participate at the negotiation process. It has been acknowledged that this particular position of the EU in the negotiation process did not have any precedent in the normative action of UNESCO.\(^61\)

European Commission represented the European Union and negotiated alongside its Member States represented by the Presidency of the Council, the three successive Presidencies being the Netherlands, Luxembourg and the United Kingdom. “This classic \textit{modus operandi} is used whenever the competences at stake in given international negotiations are shared between the Community and the Member States. The European Community’s involvement in negotiations on a normative text at UNESCO was the first of its kind. The European Union was able to participate for the first time and speak with a single voice as a key player in the UNESCO negotiations.”\(^62\)

The EU has taken an active role within the negotiation process, and the text of the Convention clearly indicates that the accession of the EU was envisaged prior to the adoption of the Convention (see in particular Art. 27.3 and 29). For the European Commission it was important to negotiate the appropriate provisions in order to ensure that the European Union as a regional economic integration organization could become a party of this Convention. “Consequently, Article 27 of the Convention establishes the possibility for the European Community to become a contracting party and play an active role in the organs of the Convention, in particular the Conference of the Parties established by Article 22 of the Convention.”\(^63\) The consideration of regional cooperation is present also in other parts of the text of the Convention, for instance in the provisions on education and public awareness (Art. 10), promotion of international cooperation (Art. 12) or cooperation for development (Art. 14). The regional perspective has been well integrated during the drafting of the Convention.

The European Community accessed to the Convention on 18 December 2006, together with 12 of its Member States: Finland, Austria, France, Spain, Sweden, Denmark, Slovenia, Estonia, Slovakia, Luxembourg, Lithuania and Malta. Also other EU Member States have accessed to the Convention, except Belgium that is in the process of accession and envisage to join the Parties to the 2005 Convention. The accession of the EU as a regional economic integration organization certainly invites to search for the legal considerations and frameworks for such initiative, and also the argumentation for such decision, raising the question of the founding principles and values of the EU, as well as its ambitions for the global governance and developing relations to third-countries worldwide. These aspects


\(^{63}\) Ibid.
concern different facets of the EU accession – formal considerations as well as arguments of substance, and both of them are interconnected in EU policies. They concern the division of competences between EU institutions and Member States and also the considerations for the common EU in regards to international agreements.

1.1. EU as a Party to International Agreement

Referring to the Treaty on the Functioning of the European Union (TFEU, i.e. primary EU law), namely its Article 3.2, the European Union has the right to conclude international agreements as follows: “The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope”. Although the European Union does not have an exclusive competence that would be specifically linked to cultural issues, at certain respect they belong to some of the EU exclusive competence areas, as establishing competition rules necessary for the functioning of the internal market, or common commercial policy (Art. 3.1 of the TFEU). The initiative of the EU to get involved in the negotiation process for adopting the 2005 Convention, can be seen namely in this context of EU competences.

The 2005 Convention, from the perspective of the EU law, is considered to be a “mixed agreement”, which means that the Convention “covers some areas which fall under the exclusive competence of the EU, but it also covers other subjects that remain part of the Member States’ competence. Then there are issues with respect to which the EU and its Member States have shared competence.” Hence, such agreement is ratified by both and is to be implemented by the EU and its Member States. This way “the implementation of the Convention at the EU level can only proceed in fields within the EU's competences, as defined in the Declaration annexed to the concluding Decision 2006/515/EC, in compliance with the principle of conferral and with the principle of subsidiarity”.

The exclusive competences of the European Community are explicitly named in the Declaration of the European Community in application of Article 27(3)(c) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which is Annex 1(b) to the Council Decision of 18 May 2006 on the Conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2006/515/EC). As it is clearly stated, “this Declaration indicates the competences transferred to the Community by the Member States under the Treaties, in the areas covered by the Convention”. Alongside the list of exclusive competences as common commercial policy, development cooperation policy and a policy of cooperation with industrialised countries, and other; the Declaration indicates also the spheres of shared competences at the respect of the 2005 Convention, as free movement of goods, persons, services and capital, competition and the internal market, including intellectual property. Inter alia, shared competence is also in the area of social policy, which leads to the issue of the social status of artists, raised previously in this paper.


The accession of the EU to the Convention on 18 December 2006 affirmed the importance of the Convention for this regional economic integration organization and for its Member States. The accession to the Convention of both EU and its Member States reaffirmed the significance of the Convention for the EU, but also created a particular and inter-connected position of the EU and its Member States in the work of implementing the Convention. These issues have been formally acknowledged in the explicit Code of Conduct adopted on 1 February 2007 by the Council of the European Union concerning the membership and representation of national and regional interests within the governing bodies of the Convention\textsuperscript{67}, however these interconnections and the decision-making need to be reflected.

The 2005 Convention of UNESCO, as stated previously, within the EU perspective is a “mixed agreement” that involves the competences of both EU as organization and its Member States. Hence, for the Member States it means contributing actively to common decisions on the EU positions and policies (through respective EU institutions), and shaping the interpretation and implementation of the Convention at national level. This demands prioritising the issues of the Convention and setting policy objectives to be reached either at national or regional level. Bearing in mind the EU legal framework, certain issues can not be treated at national level and need a common decision taken at the level of the organization.

Concerning the issue of coordination of positions within the EU, “so as to ensure good cooperation between the Council, the Commission and the Member States in the preparation of meetings regarding the implementation of the Convention, the Cultural Affairs Committee has developed a Code of Conduct\textsuperscript{68}. It is a document that explicitly describes the spheres of competence for representing the positions of the EU within the bodies of the Convention and thus in its implementation at UNESCO. The Code was adopted before the Convention entered into force and was supposed to guide the cooperation, decision-making and representation of the EU positions. Although it has been said that “this Code of Conduct sets out the informal arrangements”, it remains as a document of reference for “meetings organized within the framework of UNESCO which are relevant for the implementation of the Convention, in particular to meetings of the Conference of Parties and the Intergovernmental Committee”. However, being devoted namely to common action within UNESCO framework of meetings and debates, it covers just one part of the whole undertaking to implement the Convention within EU. The other part of the EU decision-making remains subject to general rules of the functioning of the EU institutions.

While the accession to the 2005 Convention is done by the EU and its Member States, it is supposed that the EU Member States will speak in one voice within the scene of UNESCO work. As particularly emphasised within the Code of Conduct, the opinions of the EU Member States shall be expressed either by (1) the Presidency (providing coordinated positions on matters falling within the competence of the EU Member States or on some matters where the competences of Member States and the EU are interlinked) or by (2) the European Commission (on matters falling within exclusive or shared competence of the EU).

(1) The role of Presidency remains significant both at the inner discussions within the EU, as well as on the global scene of debates within UNESCO. Thus, it invites to bring the agenda of implementing the 2005 Convention within the area of particular attention of the EU Presidencies, taking into account that the EU is a Party to the UNESCO Convention,


\textsuperscript{68} Ibid.
which makes the implementation of this Convention to be in a unique position in comparison to other UNESCO conventions in the domain of culture.

Within EU the Presidency has a substantial impact on the agenda of the Council of the European Union. Thus, it may bring forward the issues that are of relevance for the field of culture, including the ones linked to the 2005 Convention. For example, in regard to the issue of cultural diversity, the German Presidency of the Council of the EU has been particularly active in 2007. At this occasion, there were significant set activities organised, including international debates\textsuperscript{69}, networking, and publications\textsuperscript{70} etc. This definitely raised a wider awareness on the issue itself in general and the UNESCO Convention in particular, and had a continuous follow-up in further activities, particularly carried out by the German Commission for UNESCO. One of continuously ongoing activities is the U-40 – International Capacity Building Programme “Cultural Diversity 2030”\textsuperscript{71}, launched in 2007 at the occasion of the German Presidency and still implemented worldwide.

A notable example of the impact of EU Presidency on the emphasis on the role of culture within development strategies, has been also the Slovenian Presidency at the first half of 2008. It made the external dimension of culture a priority and emphasised the need for a comprehensive European Strategy on External Cultural Policy, which would take into account the UNESCO Convention\textsuperscript{72}. This emphasis witnessed certain continuity of the priorities of the German Presidency, and it further served as reference for future conclusions to be adopted by the Council of the European Union – for instance, Council conclusions on the contribution of culture to local and regional development, adopted in May 2010\textsuperscript{73} where a reference was given to the Presidency conclusions of the European Council (March 2008).

Putting the 2005 Convention on the agenda of the EU Council discussions is at large extent the responsibility and possibility of the Presidency. The same is for the coordination of Member States’ opinions within the debates at UNESCO. Thus, the role of EU Presidency manifests at two levels of shaping the discussions on the Convention – 1) within the EU debates, in particular in the Council, and 2) within the debates at UNESCO, in particular at the Conference of Parties of the Convention.

The divided competences of the Presidency and the Commission have been further concretised in the Code of Conduct, “The Presidency and the Commission will agree on which of them will be delivering any statement to be made on behalf of the Community and its Member States in cases where the respective competencies are inextricably linked. The Commission will present the common position when the preponderance of the matter concerned lies within the competence of the Community, and the Presidency will present the common position when the preponderance of the matter concerned lies within the competence of the Member States”.


In view of the Presidency having the key role in the coordination of the opinions of the Member States to be expressed at UNESCO concerning the implementation of the Convention in their territories at national level, the question may be asked what is the position of Member States in respect to the agreed principles of representing their position within UNESCO. At this regard, two aspects of the Code of Conduct are to be mentioned. First, Member State may take the floor to support and/or develop the Community or the common position or, after having informed the Presidency, on issues related to the information and reporting on national measures of implementation. Second, Member States may speak and vote on matters falling clearly within their competence on condition that the position will be coherent with Community policies and in conformity with Community law. Thus the rights of Member States to represent their national positions remain limited by the overall coordination framework of the EU, and their interventions within UNESCO meetings are subject to preliminary coordination with the Presidency.

In what concerns the action of the EU and its Member States within the framework of UNESCO, there are still difficulties concerning the practical application of the Code of Conduct, and the coordination of positions among the EU Member States. For instance, the Code of Conduct does not raise the issue of the institutions representing Member States in the process of coordinating opinions – whether the issue is dealt at the level of the respective Ministries that are engaged in implementing the Convention, or the institutions to be involved are Permanent Delegations of Member States to UNESCO, or National Commissions for UNESCO that on daily basis are working with the UNESCO normative instruments at national level. The variety of institutions involved makes the coordination of positions a complex process; and more transparent structuring of coordination would be needed, acknowledging the institutions involved and their responsibilities. This aspect of concern is linked to the issue of institutions working on the Convention at national level, their competences and cooperation. Although Member States have the leading institutions responsible for the implementation of the Convention nationally, mainly the Ministries of Culture, the implementation of the Convention involves much broader set of stakeholders (which becomes even larger when involving civil society organizations), thus the productivity and consistence of the coordination of positions at the EU level depends very much on the awareness and clear positions concerning the Convention at national level.

Moreover, the same reflection is to be followed with the concern, that is among the key issues of the present paper, on the national and sub-regional levels of implementing the Convention within the EU Member States. If the exclusive competences of the EU are rather clear at this respect, then the competences at national level remain vastly captured by the Member States. Either the position is to interpret the Convention as an umbrella document that may serve as an argument when necessary but which does not demand a particular implementation at national level, or Member States are looking for the most appropriate ways to undertake its implementation and interpret the text of the Convention for their national policies.

There is a need to strengthen the Convention at national level within the EU Member States in order to apply it to the spheres of competence that are not directly covered by the EU common action, and where the Convention can be applied. Regarding the EU action in its own policy-making process, it currently is very much oriented towards development.

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cooperation and external policies. This direction of action is of relevance for the Convention, however it obscures those aspects of the Convention that may be relevant to be implemented in the EU internal policies, in its sub-regional cooperation policies and, finally, at national level within Member States.

1.2. Respect for Cultural Diversity as a Founding Principle

Preservation and promotion of cultural diversity is considered as being among the founding principles of the European Union enshrined in the Treaty, in Article 151 where it is stated: “The Community 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.”

The European Union as an international organization is directly facing the situation of diversity as a form of cooperation among its Member States bringing with them the diversity of cultural heritage, languages, traditions, historical links and more. As it has been stated by the Commission, “The Convention’s overall objective is to take into account cultural diversity when developing other policies, by ensuring that cultural policies support fair access to both local cultures and other world cultures. The Commission therefore sees the UNESCO Convention as an adaptation of Community principles at international level, in particular Article 151.4, which requires the Community to take cultural aspects into account under other provisions of the Treaty.”

The continuous exchange of experiences has also been emphasised, “The ratification of the Convention paves the way for enhanced cultural cooperation at international level, notably through exchanges of views and best practices in public policies in favour of cultural diversity.”

In 2005 the European Commission adopted a proposal for a Council decision on the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions where the main arguments were stated in favour of the accession by the European Union to the Convention. “The full participation of the European Community and its Member States in implementing the Convention will in particular contribute to: establishing a new pillar of world governance with the aim of ensuring protection and promotion of cultural diversity; emphasizing the specific and dual (cultural and economic) nature of cultural goods and services; recognizing the role and legitimacy of public policies in the protection and promotion of cultural diversity; recognizing the importance of, and promoting, international cooperation to respond to cultural vulnerabilities, in particular with regard to developing countries; defining appropriate links with other international instruments that enable the Convention to be implemented effectively.”

The previously cited Declaration of the European Community in application of Article 27(3) (c) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which is Annex 1(b) to the Council Decision of 18 May 2006 on the Conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2006/515/EC), provides an important statement that can be interpreted in a rather broad manner – “Community takes cultural aspects into account in its action under other provisions

77 Ibid.
of the Treaty, in particular in order to respect and to promote the diversity of its cultures”. Referring to Art. 167 TFEU, cultural diversity is a cross-cutting concern of the European Union, that shall be respected at various domains of policy-making. This leads to consider the relevance of the 2005 Convention within the European Union.

It can be observed how the interest of the EU was shaped, namely, highlighting the focus on cultural goods and services, particular regard to developing countries, and proper links to other international legal instruments. All these aspects are of relevance when considering the specificity of the EU as regional economic integration organization that shapes policies within its boarders but also acts as a single moral person on broader international level.

2. Common Action for Implementing the Convention

One could certainly agree that “the implementation of the UNESCO Convention by the EU implies a solid understanding of what is required by the Convention itself, of the scope of the Convention, and of the EU legal framework”\(^{79}\). The Convention, its potential domain of application as well as the range of possible interpretations, still have not been sufficiently explored, and five years after the Convention entered into force in 2007, it is still early to judge its real impact within the outcomes of the policy-making. However, certain tendencies of its interpretation, as well as certain deficiencies, can already be indicated in order to estimate the current direction of its application.

2.1. Promotion of the Convention in External Relations

Besides the interest of EU to become a Party to the 2005 Convention and thus implement its provisions, the EU is actively acting also in order to promote the accession to the Convention worldwide. This is a continuous process, that can be witnessed particularly at the occasion of the political decisions taken within the EU, as well as at international forums and discussions where the position of the EU is stated at this regard. Position of the EU is explicitly manifested in several documents adopted. The following documents will be explored more closely: (1) Conclusions of the Council [..] on the promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States (June 2008) and (2) Resolution of the European Parliament on the cultural dimensions of the EU’s external actions (May 2011).

(1) In June 2008 the promotion of the Convention was considered in the form of Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States\(^{80}\). The named document reflects important decisions taken in what regards the position of the EU on the implementation of the 2005 Convention. The Conclusions recognise that “culture, an essential component of the knowledge-based economy, is also a sector with strong economic potential, in particular with respect to cultural and creative industries and sustainable cultural tourism” and set three policy objectives: (1) “strengthening the place and


the role of culture in the policies and programmes conducted within the framework of external relations [...] (2) “promoting the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005 [...]”, and (3) “promoting intercultural dialogue [...].” Alongside the means of promotion of the Convention set in the Conclusions, namely outside the EU and in the EU external relations, there are several aspects in this document that are worth paying attention to.

The Conclusions present an exclusive emphasis on external relations, ignoring the implementation of the 2005 Convention within the EU, or in the EU internal policies. The document puts emphasis almost exclusively on external relations which is manifested in all the policy objectives defined and accordingly – approaches, working methods and instruments chosen. The Convention is perceived as “one of the pillars of global governance”, thus inviting the EU for the action at a global scale. These Conclusions also envisage strengthening the support for “the international promotion of European cultural activities, goods and services, including those of an audiovisual nature, such as external audiovisual services, and the mobility of European artists and cultural professionals outside the Union”, this emphasis again excludes the issues of internal mobility, thus perceiving the EU as a single and united entity. Also, a connection to the UNESCO 1970 Convention is to be mentioned, and this aspect of interest goes back to the issue of the existing links among various UNESCO international legal instruments in the sphere of culture.

(2) Another, more recent initiative of promoting the 2005 Convention by the EU was performed by the European Parliament in its Resolution on the cultural dimensions of the EU’s external actions, adopted on 12 May 2011, where the organization invited third countries to access to the Convention and among other issues underlined the role of cultural diplomacy within the EU external relations and in the work of the European External Action Service (EEAS). The Resolution proposes concrete measures and suggestions for further action of the EU within the cultural field, and as already indicates the title of the document, it is entirely concentrated on the external policies of the EU, which goes also to the implementation of the 2005 Convention. Regarding specifically the position concerning the 2005 Convention, European Parliament calls on third countries to ratify and implement the UNESCO Convention, which is a general position regarding the Convention. More specifically, the Convention is seen in the light of various aspects, linked to the previously mentioned points of consideration: development cooperation, negotiations on bilateral and multilateral trade agreements, international promotion of European cultural activities and programmes, as well as combating illegal trafficking in cultural assets, explored previously in this reference paper.

1) Development cooperation / this aspect continues the previously cited point of the Resolution, that can be supplemented also with the call on the EEAS to encourage third countries to develop policies on culture, point 40 of the Resolution.

2) Negotiations on bilateral and multilateral trade agreements / as mentioned in the Resolution, point 42, the European Parliament “Calls on the Commission to take proper account of the dual nature of cultural goods and services when negotiating bilateral and multilateral trade agreements and concluding cultural protocols and to grant preferential treatment to developing countries, in accordance with Art. 16 of the UNESCO Convention”. With a general emphasis, the European Parliament “Recalls the importance of the cultural cooperation protocols and their added value in bilateral

agreements on development and trade” (point 5) and for these purposes mentions also particular measures “such as the European instruments for Development Cooperation, for Stability, for Democracy and Human Rights and for Pre-Accession, the European Neighbourhood Policy (ENP), the Eastern Partnership, the Union for the Mediterranean and the European Instrument for Democracy and Human Rights (EIDHR), which all allocate resources to cultural programmes” (point 6);

3) **International promotion of European cultural activities and programmes** / this particular aspect is linked to EU external relations and development cooperation, as European Parliament “Calls for a coherent EU strategy for the international promotion of European cultural activities and programmes based on the protection of diversity and the dual nature of cultural goods and activities, which covers, inter alia, the more effective coordination of existing EU external policy programmes with cultural components and their implementation in agreements with third countries, and consistency with the cultural compatibility clauses included in the Treaties, the subsidiarity principle and the UNESCO Convention” (point 45).

Besides the attention paid to the 2005 Convention, there are some other decisions of this Resolution to be mentioned in the context of the present study:

4) **Support for the mobility of artists** / as stated in the point 37 of the Resolution, the European Parliament “Proposes the creation of specific information systems to support the mobility of artists and other professionals in the cultural field, as envisaged by the study entitled ‘Information systems to support the mobility of artists and other professionals in the culture field: a feasibility study’ [DG Education and Culture of the European Commission, March 2009]; also the interconnected initiative of creation of a cultural visa – in addition to the named support for the mobility of third-country artists and other professionals within the cultural field. As the Resolution states in point 15, the European Parliament “Calls for the creation of a cultural visa for third-country nationals, artists and other professionals in the cultural field, along the lines of the existing Scientific Visa Programme in force since 2005”;

5) **Cooperation with cultural institutes** / the Resolutions pays attention to the existing networks of institutes of cultural relations that may be a valuable partner for the EU activities devoted to the promotion of cultural diversity; and this aspect might be of relevance also within the internal policies, although not explicitly said so in the Resolution. Referring to the text of the Resolution, point 33, the European Parliament “Encourages the EEAS, when developing its resources and competences in the cultural sphere, to cooperate with networks such as EUNIC83 in order to draw on their experience as independent links between the Member States and cultural mediation organizations and create and exploit synergies”.

The emphasis put forward for the implementation of the 2005 Convention clearly states the interest of the EU refer to the Convention mainly in what concerns its external relations – cultural diplomacy for promoting European culture beyond the EU boarders and stimulating intercultural dialogue and development cooperation at this regard, and also economic undertakings mainly in what concerns the negotiations on the bilateral trade agreements and development of economic cooperation with third countries, where culture can be perceived both as a cultural exception in trade relations and as an initial stage for developing cooperation that may outgrow in economic relations.

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83 More on the European Union National Institutes for Culture, see: http://www.eunic-online.eu/.
Regardless the direction that the interpretation of the 2005 Convention takes in the EU policies, its implementation rests on shoulders of both EU institutions and the Member States – as the accession to the 2005 Convention has been a double sided – as Parties to the Convention are EU as organization and also its Member States. This situation demands a closer look at the decision-making process within the EU and in relation to the positions of its Member States, in what concerns the 2005 Convention.

2.2. Interpretation of the Convention in Internal Policies

Within the action of the EU Council, the 2005 Convention has been explored both in the EU external and internal policies. The Conclusions of the Council adopted in June 2008 on the promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States emphasised the potential of the Convention in the EU external cooperation, however some of the recent Council conclusions pay more attention to the creativity within and for the Europe, thus more elaborating internal aspects of the application of the Convention. For instance:

1) Council conclusions on the contribution of culture to the implementation of the Europe 2020 strategy, adopted in June 2011 – without giving direct reference to UNESCO convention, recognises that “Culture can contribute to inclusive growth through promoting intercultural dialogue in full respect for cultural diversity”, and invites Member States and the Commission, within their respective competences, for “promoting and preserving cultural diversity and multilingualism”. Member States are particularly invited to “take into consideration the cross-cutting character of culture when formulating relevant policies and national reform programmes regarding the achievement of the targets of the Europe 2020 strategy and to share good practices in relation to the tools and methodologies to measure the contribution of culture to these targets”; and the Commission has been invited to “consider, without prejudice to the upcoming negotiations on the new multiannual financial framework, how its proposals for future EU policy and financial instruments can fully take into account the contribution of culture to the targets of the Europe 2020 strategy”. Thus, these provisions integrated in the Council conclusions has certain financial implications to follow.

2) Yet, another example of Council conclusions provides a direct reference to UNESCO Convention, and it is within the Council conclusions on mobility information services for artists and for culture professionals, adopted also in June 2011. Having regard to the duties of the Parties to the Convention, that “they are hence committed to ensuring that artists, culture professionals and citizens worldwide can create, produce, disseminate and enjoy a broad range of cultural activities, goods and services, including their own”, the Council calls on the Member States and the Commission, within their respective spheres of competence and with due regard to the principle of subsidiarity, to “facilitate the provision by mobility information services

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85 For instance, Council conclusions on the contribution of culture to the implementation of the Europe 2020 strategy (June 2011), Council conclusions on mobility information services for artists and for culture professionals (June 2011), and also Council conclusions on cultural and creative competences and their role in building intellectual capital of Europe (December 2011), which are the most recent Council conclusions within the field of culture. See: lex.europa.eu.
of comprehensive and accurate information to artists and culture professionals seeking to be mobile within the EU”. This measure is oriented towards efficient and effective functioning of information services for artists and culture professionals, thus supporting their mobility facilities. Thus, in a certain way it continues the debate on the UNESCO 1980 Recommendation concerning the Status of the Artist and its implementation in context of the 2005 Convention.

The named two examples of Council conclusions witness the position taken by the Council within the domain of the Convention, be it with or without direct reference to this UNESCO normative instrument. This also invites to acknowledge that the implementation of the 2005 Convention is much broader within EU than the activities carried out in a manifested way of being linked to the objectives of the Convention. The recent course of decisions within the Council animates a more balanced impact of the 2005 Convention – being a valuable instrument within external as well as internal policies of the EU.

3. Impact of Joint Accession on Regional and Local Policies

Although the implementation of the 2005 Convention is subject to both EU external and internal policies, it has been acknowledged that “the EU has timidly started the process of implementation of the UNESCO Convention in its internal policies”86. It means that certain initiatives have been taken at this regard, however more attention would need to be paid at the impact of this Convention on the developing internal policy strategies.

In May 2010 the Council of the European Union adopted its Conclusions on the contribution of culture to local and regional development87. With an overall objective to explore the role of culture to attain the objectives of the “Europe 2020” strategy for smart, sustainable and inclusive growth, the Conclusions recall “the contribution of culture and the cultural and creative industries to local and regional development through making European regions more attractive and developing sustainable tourism, creating new employment opportunities and innovative products and services, and helping develop new skills and competences”. The Council gives direct reference to UNESCO 2005 Convention as a background of the adopted Conclusions, which is the only external reference to a document adopted outside the EU framework. It is to be noted that these Conclusions also refer to the Presidency conclusions of the European Council (13–14 March 2008) “which recognised that a key factor for future growth was the full development of the potential for innovation and creativity of European citizens built on European culture and excellence in science (7652/08)”88.

The Council in its Conclusions identified five major priority areas with due regard to the principle of subsidiarity: (1) Mainstream culture in local and regional development policies, (2) Stimulate a favourable environment at local and regional level for a better development of cultural and creative industries, especially SMEs, (3) Deepen the contribution of culture to sustainable tourism, (4) Promote creativity in education and training with a view to developing new skills, improving human capital and fostering social cohesion, (5) Reinforce cross-border, transnational and interregional cultural cooperation. Each of these areas was duly explored, indicating the spheres of further action for Member States, the Commission or both. A general position was taken to advance strengthening “the role of culture in integrated

88 Ibid.
local and regional development policies including infrastructure, urban regeneration rural diversification, services, entrepreneurship, tourism, research and innovation, human capital improvement, social inclusion and interregional cooperation”. Finally, the Council invited the Member States and the Commission, to “take these priorities into consideration when drawing up and implementing current and future local and regional development policies, and when implementing European cohesion policy in accordance with their respective competences”.

3.1. Convention in the EU Cohesion Policy

It has been recognized by the European Commission that “the regional level is the one best situated to promoting creativity and innovation”\(^90\). In the Commission green Paper “Unlocking the potential of cultural and creative industries”\(^91\) it has also been acknowledged that these industries “often contribute to boosting local economies in decline, contributing to the emergence of new economic activities, creating new and sustainable jobs and enhancing the attractiveness of European regions and cities”. This far, the potential of EU regional policy and EU cohesion policy has not been explored, and there are possibilities to better respond to the needs of regional cooperation and strengthening the cultural dimension within regional development strategies.

The role of the Convention now is to be perceived in regard to the upcoming discussions and decisions on further priorities of the EU cohesion policy. As already mentioned at the State of the Art of the present paper, the European Commission has adopted a draft legislative package for framing the Cohesion Policy for 2014–2020, and culture may become a significant and cross-cutting domain therein. The European Commission states: “the new proposals are designed to reinforce the strategic dimension of the policy and to ensure that EU investment is targeted on Europe’s long-term goals for growth and jobs ("Europe 2020")”\(^92\).

From the perspective of the European Commission, the role of culture within regional development strategies remains at large extent the responsibility of respective regions and Member States in setting their own priorities for accessing EU Funds. “EU Member States and regions are invited to use Structural Funds to finance their own strategies in this field through investment priorities [...]”\(^93\). When speaking about the upcoming access to EU Structural Funds, the European Commission mentions also the responsibility of regions and Member States to integrate cultural and creative sectors into regional innovation strategies for “smart specialisation”, where regions “have to fully take into consideration the complex links between traditional cultural assets (cultural heritage, dynamic cultural institutions and services) and the development of creative businesses or tourism”\(^94\). In this respect, culture is among the spheres of interest for investment priorities, recognising that “investment in

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89 Ibid.
93 Ibid.
94 Ibid.
culture/cultural and creative sectors may have a significant impact on smart, sustainable and inclusive growth.  

Thus, currently it is up to regions and Member States to explore the domain of culture in their envisaged development strategies, paying attention to prioritising the access to EU Structural Funds, where in what concerns cohesion policy the potential of culture for development is recognized.

3.2. Local Responsibilities and Possibilities of Application

The implementation of the 2005 Convention within the Member States of the European Union, is shaped by both the principles and provisions stated in the Convention, and the legislative framework of the EU. It means, that the national policies in regard to the Convention can be based on sovereign decisions as far as it does not concern the exclusive competences of the EU and the principle of subsidiarity, or the implementation of some international agreements, like the ones within the field of human rights. Thus, having a look on the outcomes of what we might call “double accession” of EU Member States and EU as a regional economic integration organization, and the impact on national policies within the respective domain, the following aspects may be taken into consideration:

1) Regional perspective / the accession of the EU to the Convention gives to the organization in a certain manner a stronger argument to integrate cultural aspects within its development policies, to negotiate cultural protocols in international agreements and to bring forward cultural exceptions in international trade law. This certainly affects both sub-regional and local levels within the EU, as far as the EU action concerns its exclusive competences or shared competences.

2) Sub-regional perspective / there are various instruments that contribute to sub-regional development strategies within the EU, thus the accession of the EU as organization contributes to the possibility to integrate the reference to 2005 Convention and particularly its principles and provisions within EU sub-regional development policies and programmes. This directly affects the development policies of the Baltic Sea Region.

3) Local perspective / taking into account that the 2005 Convention covers competences that are the ones of the EU exclusively as well as its Member States, the becoming of a party to the Convention means that the respective State can use the reference to the 2005 Convention directly in their territories in the domains that remain the competence of the States, for instance, the tax law where particular regulations for the sphere of culture, including the matter of the status of artists, can be integrated.

Thus, the implementation of the Convention may take place at various levels of decision-making, and all of them may bring forward appropriate measures. This explains the reasons behind the “double accession”, and invites to establish as clear as possible the division of competences in what regards the implementation of the 2005 Convention at all the different levels mentioned.

The Convention can be interpreted in fairly different manners and with different scopes of application, it means that at national level it may be implemented in rather distinct ways. The significant differences of interpretation can be characterised for instance with two

95 Ibid.
approaches: (1) the one being reduced to the protection of the production and dissemination of cultural goods and services, however (2) the other opening the Convention for the protection and promotion of “different cultures in terms of individual and community cultural practices, thus addressing the diversity of producers and of productions as well as the diversity of supply and demand together with the defence of cultural identities and cultural groups”\(^{96}\). This wider scope of interpretation invites to acknowledge that “the Convention encompasses the promotion of all cultural expressions through a “preferential” economic treatment, and through national policies promoting cultural identities”\(^{97}\). This approach would mean that the Convention would have its impact on “a wide range of policy fields: external relations, education and culture, trade, language and competition, but also immigration, citizenship and human rights”\(^{98}\). The insight into two different approaches witnesses that there is no unitary interpretation existing, and Parties to the Convention may choose different approaches in what regards the implementation of the Convention in their territories – of course, in due respect to other international agreements in force. Concerning the European Union, this independence of interpretation goes as far as the exclusive or shared competences of the EU are not concerned. When a common policy-making is involved, then Member States are invited to take common positions and decisions.

The just mentioned aspect of contributing to strengthening cultural identity as one of possible interpretations of the Conventions, also goes in line with various policies that States Parties to the Convention, including EU Member States, may take in regard to strengthening cultural identities in their respective territories, be it the level of national identity or local identities of cultural communities within the State. This aspect goes back to the debate of interconnection among various UNESCO legal instruments, and particularly the links between 2005 Convention and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage.

The wide scope of interpretation is possible due to the weak establishment of obligations within the Convention. The wording of the Convention is broad and the monitoring mechanisms for its implementation are called “toothless”\(^{99}\). It might be seen as a deficiency of the legal instrument. However, it may be perceived also as a strength that, as far as the principles of the Convention are followed, may be interpreted in the way that is the most fruitful for particular Parties to the Convention and particular levels of interpretation. Thus, the Convention is as useful and influential, as Parties and civil society wish it to be.

**III Regional Cooperation Strategies**

Focusing on the implementation of the 2005 Convention within the EU, a worthwhile attention is to be directed towards implementation at sub-regional level and, within the interest of the present study, particularly in the Baltic Sea Region. During last decades, and in the case of Nordic cooperation even longer before, culture has become a substantial part of sub-regional cooperation. The number of networks and programmes established are growing, thus also the concrete initiatives of cooperation supported by sub-regional cooperation instruments, including financial measures introduced. The cooperation within the Baltic Sea Region, in respect to the sphere of interest of the 2005 Convention, takes various shapes.


\(^{97}\) Ibid.

\(^{98}\) Ibid, p. 218.

1) First, it can be noted that a large part of cooperation that is directed towards protecting and promoting the diversity of cultural expressions, take place consciously implementing the principles of the Convention, however without direct reference to it. This may be explained that certain part of the cooperation programmes and frameworks have been established long before the 2005 Convention was debated and drafted. This means that the issue of cultural diversity has much longer history within the Baltic Sea Region, than the history of the Convention. Though, currently some of the programmes refer to this international legal instrument adopted.

2) Certain initiatives of cooperation within the Baltic Sea Region cover both EU internal as well as external policies, as the States involved are both EU Member States as well as neighbouring countries, which is the case in networks that involve for instance Russian Federation, Norway or Iceland. Thus, this sub-regional level may reflect the relevance of the 2005 Convention and its principles in an integrated approach that serves for both internal as well as external policy purposes.

3) Overall, it can be noted that the field of culture becomes a substantial part in the sub-regional development policies within the Baltic Sea Region. This may be witnessed at the occasion of initially economic cooperation growing into cultural field as well, which is for example the case of the development of the Norther Dimension policy.

To give a closer insight into various networks and programmes developed for the Baltic Sea Region development and cultural policies, the sub-regional level will be explored at various levels, starting with the sub-region as a whole, even transcending the EU borders, and further having a look into Nordic and Baltic cooperation practices, that are of relevance for the discussion on the 2005 Convention.

1. EU Policies for the Baltic Sea Region

The Baltic Sea Region cooperation is one of the existing sub-regional cooperation forms within the European Union. "The Baltic Sea cooperation does not focus on integration but on concrete, flexible and selective co-operation under the expanding umbrella of the EU. It does not present an alternative to EU integration," however it has become an important component in the implementation of EU policies.

Currently, a particular emphasis can be put on several initiatives that all cover the Baltic Sea Region, including the EU Member States of this sub-region and in certain perspective also non-Members of the EU, as Russian Federation, Norway and Iceland. The attention will be paid to the following frameworks of cooperation, following a chronological criteria of their establishment: (1) ARS Baltica and the Council of the Baltic Sea States (CBSS), dating back to the beginning of 90's of the 20th century, as well as more recent initiatives as (2) EU Strategy for the Baltic Sea Region (EUSBSR) and (3) the Northern Dimension Partnership on Culture (NDPC), both dating from 2009. The named networks and programmes thus have been established in different historical contexts and with different objectives, besides either specifically oriented to cultural issues, or shaping the cultural cooperation as a contribution to broader political objectives to strengthen the cooperation within the sub-region and with the neighbouring countries of the EU.


1.1. Council of the Baltic Sea States and ARS Baltica

This initiative of cooperation among the Baltic Sea States within the field of culture, has emerged from a willingness of the region's countries to advance cooperation and develop common measures for promoting cultural cooperation. Reflecting on the perspectives within this field of cooperation, “the Ministers agreed that a fundamental purpose of cooperation in the cultural area, including science and information, is to strengthen the idea of regional identity. They noted that a shared basis of cultural heritage – but with different expressions – binds the countries surrounding the Baltic Sea together and forms a fertile starting point for the further development of cultural ties between the participating countries. They expressed their commitment to improve the conditions for reviving former cultural ties and to establish new cultural relations, taking full account of other existing initiatives intended to strengthen the cultural relations in the Baltic Sea area. By its nature, cultural relations should be the result of free and open interchange between individuals and governmental and non-governmental organizations.”

The Council of the Baltic Sea States (CBSS) was founded in 1992 as “an overall political forum for regional inter-governmental cooperation. The Members of the Council are the eleven states of the Baltic Sea Region as well as the European Commission. The states are Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russia, Sweden and a representative from the European Commission.” Thus, this network of cooperation is developed at least partly as an EU initiative and with the EU involvement. Cooperation in the field of culture was mentioned among the six areas of cooperation highlighted in the CBSS foundation document, which were namely: 1. Assistance to new democratic institutions, 2. Economic and technological assistance and cooperation, 3. Humanitarian matters and health, 4. Protection of the environment and energy, 5. Cooperation in the field of culture, education, tourism and information, and 6. Transport and communication. It has been recognized by the Council, that “education and culture are important parts of regional cooperation for the continued development of the Baltic Sea Region. [...] The field of culture may include cultural heritage, contemporary culture and the promotion of regional identity.”

As this context indicates, the newly established network of cooperation was at large extent oriented towards reinforcing the democratic processes within the region that had recently, at the end of 80’s and the beginning or 90’s, experienced major political changes – the collapse of the Soviet Union and the German reunification. Besides, it is to be noted that at this moment most of the involved countries, that are currently EU Member States, did not have this status at that moment, namely, Estonia, Finland, Latvia, Lithuania, Poland as well as Sweden.

Currently, the CBSS is also taking care about an initiative named ARS Baltica that was established even shortly before the official launching of the CBSS. “Created in 1991 on the initiative of the Ministries of Culture of the Baltic Sea Region, ARS Baltica is an international cultural network. Its aim is to extend and further develop infrastructure for heightened cultural cooperation in the Baltic Sea Region. Its power and uniqueness lies in combining cultural policy development and close cooperation with cultural operators.” Thus, cultural

cooperation has been one of the initial domains of cooperation within the region, after the historical political shifts of that time. As it has been recognized, “ARS Baltica network advocates for the significance of arts and culture on the political level and promotes the cultural life around the Baltic Sea outside the own core region. It understands itself as a cultural think tank offering information on different aspects of the field of arts and culture and assisting project leaders in implementing multilateral projects.”

The main goals of the network ARS Baltica are: (1) supporting the implementation of artistic/cultural projects of high-quality with a strong focus on the Baltic Sea Region; (2) offering platforms for the exchange of knowledge and experience in the field of (cross)cultural co-operation; (3) adding value to already existing projects and co-operation models through active networking from a higher perspective; (4) advocating culture at the meetings of other organisations of the region in order to increase the significance of the cultural sector; (5) developing contacts and collaboration with other regional networks and strengthening regional co-operation; (6) promoting the Baltic Sea cultural life outside the own core region; (7) co-operating with other leading European cultural organisations; (8) giving input to a common Baltic Sea cultural policy.

With the variety of its projects ARS Baltica is a good example of visible and tangible support to promote and protect the cultural diversity in the Baltic Sea Region. Although it has been developed more than a decade before the 2005 Convention, it is certainly to be linked to the objectives and principles of the Convention. Besides, in the context of the CBSS the reference to the 2005 Convention has been explicitly emphasised in 2008 at the occasion of the ministerial meeting in Riga, Latvia. Within the so called Riga Declaration, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) has been mentioned and taken into account in the CBSS cooperation perspectives. Promoting cultural diversity, intercultural dialogue and exchange, as well as enhancing the impact of cultural sectors on the development of the creative economy both have become long-term objectives for intergovernmental cooperation on cultural issues among the Baltic Sea States. This way, the impact of the 2005 Convention is experienced during the evolvement of the Council of the Baltic Sea States and its programmes.

1.2. EU Strategy for the Baltic Sea Region

EU Strategy for the Baltic Sea Region (EUSBSR) was adopted by the European Commission in June 2009 and endorsed by the European Council in October 2009. Its main emphasis, within the context of Europe 2020, has been the reinforcement of the EU integration within the Region following enlargement, and giving particular contribution to facilitating the development of markets across borders, addressing environmental challenges, dealing with transport and energy interconnection issues, as well as advancing networks for research, innovation and enterprise. One of the 15 priority areas highlighted in the Strategy is “to maintain and reinforce the attractiveness of the Baltic Sea Region in particular through education and youth, tourism, culture and health.” There are 14 flagship projects:

112 Commission Staff Working Paper on the implementation of the European Union Strategy for the
projects under this Priority Area. Currently only one is dedicated specifically to culture – “12.9 Tourism and culture: Promote the cultural and natural heritage”. Overall, strategic investments in culture, as well as in cultural and creative industries, are seen as vital for strengthening a dynamic creative society in the European Union and enabling the fulfillment of the Lisbon goals.

The EU Strategy for the Baltic Sea Region builds on the more coordinated use of existing resources. Although the Strategy does not have any funding of its own, financing is available in the Baltic Sea region via the EU Cohesion Fund and other EU financing that can be used to help implement the Strategy. There are examples for EU Programmes that refer to the importance of culture in their vision, strategy, objectives or indicative actions. For instance, The Central Baltic INTERREG IV A Programme 2007-2013 states that “Co-operation in the field of culture should both preserve traditional cultural values and be a dynamic, innovative force.” Among indicative actions listed in the programme there are: incorporation of culture and cultural products/activities in local economic activities, especially tourism; cultural co-operation aiming at strengthening cultural exchange and the area’s togetherness; cross border cultural events, activities and people-to-people co-operation and co-operation in the field of handicraft. The Southern Baltic Sea Region Programme ensures that “the support will thus focus on increasing the awareness of the economic, social and cultural diversities in order to improve the cross-border identity, the intercultural dialogue and understanding”.

The EU Strategy for the Baltic Sea Region is a reference for the regional cooperation in different areas; however the European Council has particularly highlighted the importance of enabling sustainable environment. Field of culture has more the background and supportive role in the EU Strategy for the Baltic Sea Region, as in the Strategy itself and in the main communication documents “the word “culture” does not appear”. This is the case also in the most recent document – Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions concerning the European Union Strategy for the Baltic Sea Region.
The Northern Dimension Partnership on Culture (NDPC) is an initiative that was launched in 2009 as a complementary programme to the Northern Dimension policy. The named policy was established in 1999 as “a common policy shared by four equal partners: the European Union, Norway, Iceland and the Russian Federation”. Within the context of this paper, it is to be noted that in addition to the four partners, there are also other participants in the Northern Dimension policy, including the Council of the Baltic Sea States (CBSS). The policy is implemented under the European Union External Action, thus mainly being part of the EU external policy. However, it is envisaged to strengthen also the internal cooperation among the respective EU Member States. As stated, “the policy’s main objectives are to provide a common framework for the promotion of dialogue and concrete cooperation, to strengthen stability and well-being, intensify economic cooperation, and promote economic integration, competitiveness and sustainable development in Northern Europe”\textsuperscript{121}. Thus, the overall objective to advance dialogue within the region, gradually has lead to developing also the cultural aspect within this framework of cooperation.

In this policy context, the Northern Dimension Partnership on Culture was initiated with a focus “on cultural co-operation in the Northern Dimension area. One of its objectives is to bridge the gap between public and private funding. NDPC is an extensive cultural co-operation tool which reaches out to cultural operators, creative entrepreneurs and to the business communities throughout the entire Northern Dimension area.”\textsuperscript{122} As acknowledged by the Nordic Council of Ministers, “the aim is to find areas of common interest and to focus on the development of the creative economy. The NDPC will give input to national and international work by developing financial instruments to support the creative industries. Northern Europe has rich cultural assets, interesting cultural heritage, cultural diversity and a dense cultural and artistic productivity which offers good possibilities to develop creative economy. But Northern Europe has also its weak points – the cultural production is often fragmented and works on short term basis.”\textsuperscript{123} The evaluation of this initiative has been more broadly developed in the study – \textit{Examining the desirability of a Northern Dimension Partnership on Culture}\textsuperscript{124} published in 2010. The named document in its conclusions acknowledged that “the establishment of a Northern Dimension Partnership on Culture is highly desirable and timely”\textsuperscript{125} and among other aspects emphasised the role of culture for economic development, saying that the initiative ought “facilitate a dialogue between cultural actors and the business community in order to seek areas of mutually beneficial cooperation and the development of the creative economy”\textsuperscript{126}. This conclusion also goes in line with some of the emphasis of the 2005 Convention.

Thus, this framework of cooperation is oriented towards the issues of cultural diversity, even if not explicitly making reference to the 2005 Convention. As stated at the Final Report of

\begin{footnotesize}
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\item Ibid, p. 23.
\item Ibid.
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International Forum held in Saint Petersburg in May 2010. “While often cultural concepts are becoming global it is very important to strengthen also the local base to maintain the cultural diversity and the wealth that it brings to the global systems.”\textsuperscript{127} This aspect has been emphasised also previously, in studies published in 2009. (1) In the \textit{Creative Economy in the Implementation of the Northern Dimension Policy} it was recognized that “Increased diversity is not only a challenge. Diversity is also an opportunity – a knowledge resource – that can deliver profit, if businesses and political decision-makers seize the opportunity in the right way. Diversity can be a central source of innovation and renewal, which are essential factors in globalisation.”\textsuperscript{128} (2) In \textit{A brief study on creative economy in Northern Europe} – “The initiative to establish a Northern Dimension Partnership on Culture is desirable and in line with the international efforts to develop the creative economy to a vehicle towards growth and international cooperation in the sphere of culture in all its diversity.”\textsuperscript{129} In this context, the issues of cultural diversity are integrated in the Northern Dimension Partnership and European Union External Action, as a part of a broader initiative to develop cooperation with Russian Federation, Iceland and Norway. Thus, cultural cooperation serves as a contribution to overall objectives of strengthening regional cooperation within the Northern Europe, and it continuously remains a relevant field for shaping development policies.

The Northern Dimension Partnership on Culture at large extent has taken the direction towards the development of cultural and creative industries, thus underlining a direct and visible interconnection between the domains of culture and economy. This can be observed also in what concerns the current debates and events to take place. For instance, the (a) Open Innovation in Creative Industries Conference in November 2012 in Germany, (b) NDPC Cultural Forum in December 2012 in Poland dealing with the issue of “Discussing financial possibilities for Cultural and Creative Industries in the Northern Dimension Area”, or (c) Cultural Entrepreneurship Conference in Finland in December 2012\textsuperscript{130}. The named events witness of the existing and spreading interest in the cultural economy and namely the development of cultural and creative industries, which among other options is an eventual direction of interpreting and implementing the 2005 Convention.

\section*{2. Cooperation in the Nordic Region}

Nordic region has long experience of various forms of intergovernmental cooperation. Among other issues, this continuously covers also the sphere of culture and, particularly, the implementation of common cultural policies and the application of international legal instruments. There are several platforms of cooperation to be highlighted within the context of implementing 2005 Convention at present, as well as having regard to its potential implementation modes in the future. First, the intergovernmental cooperation among the Nordic countries and the so called Nordic-Baltic cooperation platform. Second, concerning the implementation of UNESCO culture conventions in the Nordic region, it is pertinent to have a look at the work and ambition of the Nordic World Heritage Fund.


\textsuperscript{130}Northern Dimension Partnership on Culture. Events. http://www.ndpculture.org/events.
2.1. Nordic-Baltic Intergovernmental Cooperation

As stated by the Nordic intergovernmental cooperation platform Norden, “the formal cooperation between the Nordic countries is amongst the oldest and most extensive regional co-operation in the world”\(^{131}\) involving Denmark, Finland, Iceland, Norway, Sweden, and three autonomous areas: the Faroe Islands, Greenland, and Åland. In addition to the conviction that “the political co-operation is built on common values and a willingness to achieve results that contribute to a dynamic development and increase Nordic competencies and competitiveness,”\(^{132}\) particular attention has been paid to the role of culture within the development policies. As officially recognised, “Nordic cultural co-operation forms a strong whole in which art and culture make up the cornerstone of the community spirit that binds the Nordic countries together. This cultural co-operation greatly influences the world around it and reflects the foundation of the common values that we stand for in the Nordic countries.”\(^{133}\) This direction of policy-making has been followed by particular programmes and initiatives.

The Treaty of Co-operation between Denmark, Finland, Iceland, Norway and Sweden (Helsinki Treaty\(^{134}\)), that is the basis for the Nordic intergovernmental cooperation platform, entered into force on 1 July 1962. To highlight more the importance of culture in a regional co-operation a separate Agreement concerning cultural co-operation\(^{135}\) was signed and came into force on 1 January 1972 affirming the importance of cultural diversity in the sense that it is revealed by the UNESCO 2005 Convention. The named Agreement encouraged the cooperation on: (1) artistic and other cultural exchanges between two or more Nordic countries; (2) activities within the media, which comprise radio, television, film, video and other electronic media, including production and distribution, with regard to cultural archive, library, museum and other cultural service activities; (3) activities for the protection of culture; (4) promoting the activities of associations and organizations with general cultural aims, including youth and sports work (Agreement thus amended in 1989/90); (5) establishing conditions favourable to creative work in and the practice of all branches of the arts (amended 1989/90); (6) improving facilities for artists and cultural workers to carry on their activities in the Nordic countries (amended 1989/90).\(^{136}\) The named spheres of action go in line with the 2005 Convention as well as contribute to dealing with issues of work and status of artists, facilitating their mobility and working conditions.

This aspect of cooperation is particularly emphasised by focusing “the overriding responsibility for cultural co-operation within the Nordic Council of Ministers. The overall goal includes encouraging diversity of cultural expression and promoting artists and their work.”\(^{137}\) Currently, in the sphere of culture the following strategy is applied – the Nordic Cultural Co-operation 2010-2012 – Aims and Vision\(^{138}\). Among six prioritised themes there are, for

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132Ibid.


134The Helsinki Treaty (Article 13 in particular). 1996.  

135Agreement concerning cultural co-operation. The Governments of Denmark, Finland, Iceland, Norway and Sweden (the latest amendment in 1990).  

136Ibid.


138Nordic Cultural Co-operation 2010-2012 – Aims and Vision. Nordic Council of Ministers,
example, the creative Nordic region – response to the challenges posed by globalisation; Nordic language understanding and cultural diversity, with an emphasis that this co-operation needs to be linked more closely to the international UNESCO conventions on cultural diversity, cultural relics and cultural heritage.

Among the financial instruments that are used for implementing the goal of the Nordic Council of Ministers working in line with the Nordic Co-operation (Norden) agreements, there are various programmes and funds, e.g., Culture and Art Programme, Mobility Funding, Nordic Film & TV Fund’s funding scheme, Nordic Culture Fund: Project Funding. Besides the funding available for various cooperation initiatives, there are certain activities organised directly by Nordic co-operation, as for instance Nordic Culture Forum. Under this heading the Nordic Council of Ministers organises conferences, seminars and workshops. As stated, “The Culture Forum allows for a reciprocal exchange of ideas and information between the Council of Ministers and those involved in cultural and artistic life. In addition, any challenges can be highlighted and brought up at the Culture Forum. The Nordic Culture Forum is the Council of Ministers’ most important information channel with regard to ensuring the development of programmes and future cultural initiatives in the Region.”

Since January 2012 the Nordic Culture Point, that operates as major player within the Nordic cultural cooperation, obtained a new form, resulting from the fusion of the Nordic Institute in Finland (Nifin) and the former Nordic Culture Point. In this form, it has become a new cultural institute, working on a variety of issues of significance for protecting and promoting cultural diversity, and with operations in the Nordic but also Baltic countries. Thus, it covers a larger region, advancing Nordic-Baltic cooperation.

In addition to the Nordic intergovernmental cooperation platform, the Nordic-Baltic co-operation is established as a multilateral co-operation between eight countries (the NB8), i.e. the Nordic countries, working within the framework of the Nordic Council of Ministers, together with Estonia, Latvia and Lithuania. This scope of cooperation network has been chosen in order to serve as a “political co-operation that generates Nordic–Baltic benefit.” It remains open to the proposals of various initiatives and the exchange of best practices in order to accomplish shared goals. The common values stated within this platform of cooperation are the following: “democracy, good governance, equality, freedom of speech and tolerance,” and these are the values that in this context are taken also as the basis for cultural co-operation building Nordic–Baltic relationships. One of the ways to implement the approach of this cooperation is through projects supported by funding and programmes, namely Nordic-Baltic Mobility Programme for Culture 2012-2014. The programme focuses on mobility for artists and professionals within the field of art and culture, network building and artist residences.

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Copenhagen 2010.

144Ibid.
Nordic-Baltic cooperation traditions in the field of culture are witnessed in various ways, and one of the most speaking concrete examples is the tradition of Nordic-Baltic Choral Festival that witnesses the traditions of choral singing of the whole region. In 2012 the 7th Festival took place in Helsinki, Finland\textsuperscript{146}. The festival is also supported by Norden Nordic Culture Point. The first such Festival took place in Riga, Latvia in 1995, and it is an ongoing tradition well appreciated by Nordic-Baltic countries.

As the Nordic and Baltic countries have strong cultural and historical bonds, NB8 countries have taken decision to “strive at further developing these bonds and this identity in order to fully harvest the potential of the region in a longer-term perspective”\textsuperscript{147}. This in general witnesses the interest of the Nordic Region to broaden its cooperation platform and also to strengthen a wider region of Europe in regard to cultural cooperation, including artistic creativity, mobility of artists, innovation and creative economy.

2.2. Nordic World Heritage Fund

The Nordic World Heritage Foundation (NWHF) is a category II centre, working under the auspices of UNESCO, namely with the aim to support the implementation of UNESCO Convention for the Protection of the World's Cultural and Natural Heritage (1972). The Foundation is working in close cooperation with the World Heritage Centre\textsuperscript{148}, in some aspects serving as a focal point for the issues related to the Nordic-Baltic region. Despite the fact that NWHF has been created to support the preservation of the World’s Cultural and Natural Heritage, its scope is broadened by the Alternative Strategy 2010-2014 that has stated that “NWHF’s mandate covers a number of international conventions which may be used to leverage the overall objectives of the Foundation, such conventions include the Convention for the Safeguarding of the Intangible Cultural Heritage, the Convention on the Protection and the Promotion of the Diversity of Cultural Expressions, the Convention on Biological Diversity, and the United Nations Framework Convention for Climate Change”.\textsuperscript{149}

It has to be recognised that the Foundation this far has been mainly concentrated still on the 1972 Convention and its implementation within the region. However, it has a good potential to bring forward the broader ambition and to serve as a focal point also concerning other UNESCO conventions in the field of culture. Namely, the 2005 Convention would be a good instrument to be treated and advanced by the NWHF. Moreover, it could advance a closer look at the interconnection of various UNESCO instruments within the field of culture and their synergies for shaping regional and sub-regional cultural policies. This is of particular relevance for the 2005 Convention that allows broad interpretations and thus established interconnections with other international as well as regional and national legal instruments.

3. Cooperation among the Baltic States

Baltic cooperation in the field of culture presently has taken active forms and particular intensity after the reestablishment of independence of the Baltic States – Estonia, Latvia and Lithuania – at the beginning of 1990’s. It soon was recognised that there are reciprocal benefits of cultural cooperation, and the role of culture was integrated into parliamentarian as well as intergovernmental cooperation strategies that foster and advance also a direct cooperation among the representatives of other institutions and civil society.

\textsuperscript{146} 7th Nordic-Baltic Choral Festival. http://nbchoir.net.
3.1. Baltic Assembly: Parliamentary Cooperation

The decision on the formation of the Baltic Assembly was taken in 1991 in Tallinn, Estonia. The Baltic Assembly was established as an international organisation for coordinating parliamentary cooperation among the Baltic States on the matters and projects of common interest, and “to address joint problems and to express a joint position regarding international, economic, political and cultural issues”\textsuperscript{150}. Thus, the importance of cultural cooperation is entirely and directly acknowledged within this platform of Baltic cooperation. The trilateral cooperation hence is applied as a tool for dealing with internationally, regionally as well as locally important affairs. The willingness to cooperate in the cultural field is particularly reflected at the Baltic Assembly Statutes\textsuperscript{151}, as one of the committees established by the Baltic Assembly is responsible particularly for Education, Science and Culture. With regard to recent documents, the importance of culture is acknowledged both at the Report of the activities of the BA Education, Science and Culture Committee in 2011, as well as in stating the Priorities of the Baltic Assembly for 2012.

As for recently implemented activities, the Committee has been working to support qualified research and creative entrepreneurship in order to contribute to human capital that is forming the basis for the development of a country. The Committee also has recognised that there is a growing need to foster the regional development and competitiveness at the global level, stating that “more emphasis should be put on developing policy tools that address the Baltic Sea region as a whole”\textsuperscript{152}. This suggestion mainly has been addressed towards setting the EU policies. It also has to be noted that the major attention of the Committee lately has been concentrated towards common issues of concern in the domain of research and innovation. In this context, the cultural dimension could be more broadly dealt in what concerns the strengthening of human capital within the Baltic states.

The priorities for further work of the Baltic Assembly highlights the so called Baltic-Nordic Idea: cultural integration of the region. It is one of the four major priorities, that can be seen also in line with other priorities set, for instance the one focused on the developing innovative and competitive economy of the Baltic States\textsuperscript{153}. These two priorities interconnected go in line with the scope of application of the 2005 Convention that among other issues deal with the economic aspects of the preservation and promotion of culture.

3.2. Baltic Intergovernmental Cooperation on Culture

Baltic intergovernmental cooperation was reestablished in 1990, during the process of regaining the independence of Estonia, Latvia and Lithuania, and this cooperation obtained the current institutional shape in 1994 within the work of the Baltic Council of Ministers. It brings together representatives of the three governments in order to discuss common issues of cooperation within various domains of governance. Currently, culture is not among the underlined topics of cooperation\textsuperscript{154}, even not in the context of economical development, however the intergovernmental cooperation in the field of culture is actively taking place among the Ministries of Culture, being based on inter-ministerial cooperation agreements.

The cooperation among the Ministries of Culture of Estonia, Latvia and Lithuania supports
development of cultural policies in the Baltic States by adopting common cultural policy
documents, advancing best practices' and information sharing, and providing financial
resources for common cultural events and more. On the level of regional cooperation among
three Baltic States, in 2009 the Ministries of Culture agreed on a common programme of
cultural cooperation for the period 2009-2011. The programme of cultural cooperation was
signed in order to improve cooperation on the regional level, and among other issues dealt
also directly with the domain of protecting and promoting cultural diversity. As stated in the
programme (article 15), “the Parties shall exchange information about the implementation of
the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural
Expressions (2005)”\textsuperscript{155}. In addition, particular attention has been paid to creative industries,
stating that “the Parties shall encourage cooperation in the field of creative industries and
shall promote education and exchange of information and experts in this field”\textsuperscript{156}.

The domain of creative industries has been and continue to be a focus of interest of the
Ministries of Culture of the Baltic States. The state of the art of this domain has been
reflected within some lately published reports, i.e. \textit{Creative Industries in Estonia, Latvia and
Lithuania} (2010\textsuperscript{157} and 2011\textsuperscript{158}) were elaborated to promote and support entrepreneurship in
cultural and creative industries. The named reports give an insight into both cultural policies
developed within the Baltic States as well as concrete examples of creative industries
flourishing in each country. The interest in developing creative industries is also one of the
major focuses of the Baltic States in the reflection on the implementation of the 2005
Convention. However, this aspect could be enriched by other perspectives of interpretation
previously highlighted at the present reference paper.

Intergovernmental cooperation of the three Baltic States has resulted in a number of
concrete initiatives that continue to contribute to the cultural development at various
domains. For instance, the following initiatives of education are of particular importance: (1)
\textit{the Baltic Film and Media School} – “opened at Tallinn University (Estonia) in 2006 and its
launch was supported by the ministries of culture of all three Baltic countries (Latvia,
Lithuania, Estonia), and the Nordic Baltic Film Fund etc.; the Baltic Film and Media School is
an innovative educational centre for the audiovisual sector in the Baltic Region”\textsuperscript{159}; (2) \textit{the
Baltic Museology School} – The establishment of the school was supported by the Ministries
of Culture of Latvia, Lithuania and Estonia, its idea supported by International Council of
Museums (ICOM) Regional Organisation for Europe, and it is administrated by the Society of
Promotion of Museology in the Baltics\textsuperscript{160}. This school has taken a form of annual summer
courses for museum employees as well as all interested person, and covering a variety of
aspects, including, for instance, intangible cultural heritage in 2011 or museum
communication in 2012. This initiative thus in certain respect also contribute to a wider
scope of implementing the 2005 Convention.

In addition to the named instruments supported by the ministries, particular attention has
been paid to the audiovisual media industry, establishing (3) \textit{Baltic Films} – “a cooperation
platform that comprises the three film bodies of Estonia, Latvia and Lithuania and it functions

\textsuperscript{155}Programme of Cultural Cooperation between the Ministry of Culture of the Republic of Latvia, the
Ministry of Culture of the Republic of Lithuania and the Ministry of Culture of the Republic of
\textsuperscript{156}Ibid.
\textsuperscript{158}Creative Industries in Estonia, Latvia and Lithuania. Estonian Ministry of Culture, 2011.
\textsuperscript{159}Ibid. See also: Tallinn University Baltic Film and Media School. http://www.bfm.ee/.
as an umbrella organisation promoting films from these countries internationally”\textsuperscript{161}. Thus, a particular sphere of concern both in respect of the creative industries and the protection and promotion of the diversity of cultural expressions more broadly, is the domain of audiovisual media. In this regard, a detailed evaluation of the situation as well as recommendation has been proposed by the research report \textit{Business Models and Value Chains in Audiovisual Media}. It examines the existing situation in the audiovisual industry in the Baltic States and inspects possibilities of development of the audiovisual media sector. The research has been supported by the Baltic Sea Region Programme FIRST MOTION 2007–2013\textsuperscript{162} dealing with major issues of concern for the audiovisual media industry in the Baltic States. The recommendations of the named research on the audiovisual media industry in the Baltic States, devotes due attention to both quality education and continuous cooperation among the Baltic States. As stipulated in the recommendations: (1) “Within limits of accessibility, state funding should be increased for the development of audiovisual arts study programmes and production of audiovisual works, thus ensuring financial opportunities in producing high-quality national and coproduction feature films, short films, student and experimental films, as well as developing new inter-industry products”; and (2) “Co-operation on the Baltic level should be encouraged both in common film productions and in the development of a common distribution system, thus rousing the interest of both local and foreign audiences in Baltic films. A discernible brand of Baltic films should be promoted, for example, \textit{Baltic Films}, thus popularizing the films made in the Baltic States and widening the territory of their distribution”\textsuperscript{163}.

The Ministries of Culture being the main institutions for implementing the 2005 Convention, their interest in continuous cooperation and exchange of information on the implementation practices is of importance. Further, depending on the structure of national administration of each of the Baltic States as well as the cultural policies developed at national level\textsuperscript{164}, a set of governmental institutions as well as civil society organisations are involved in the implementation process. Active involvement of different organisations and individuals are of crucial importance for thoughtful implementation of the 2005 Convention, and the role of civil society within the process is widely recognised and should be continuously strengthened.


\textsuperscript{163}Ibid, p. 18.

Conclusions and recommendations

The present insight into the experiences of the Baltic Sea Region within the European Union on the implementation of the 2005 Convention leads to the following general conclusions on the present state of the art of the implementation process and its practices, as well as eventual future prospects for policy development:

1. UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions as a global instrument of cultural and development policies has gained a due regional attention within the European Union as a Party to the Convention. It has highlighted the interest in it as a global reference to regional cultural and development policies of various scale. Referring to the examples covered at this paper, the implementation of the Convention is of relevance within the EU internal and external policies, as well as at more restricted regional scale – within the Baltic Sea Region as well as within the regional cooperation modes of the Nordic countries or the Baltic States.

2. The regional cooperation in the field of culture and, in particular, cooperation to promote the diversity of cultural expressions has continuous traditions in the Baltic Sea Region. For decades it is reflected in national policy documents and instruments of their implementation. However, diversity of cultural expressions as a concept has specifically been outlined in the cooperation documents and the exchange of best practises after the adoption of the UNESCO Convention and its entering into force.

3. While important part of national and sub-regional cultural and development policies within the Baltic Sea Region go in line with the principles and objectives of the 2005 Convention, the impact of the Convention on shaping these policies remains of minor significance. In other words, this far the Convention rarely has served as an argument for policy-making, but rather as a supplementary reference to fortify the existing policy objectives and instruments.

4. The emphasis on the creative industries as an important focus for interpreting and applying the 2005 Convention within the Baltic Sea Region, can be explained by the continuous interest in the direct contribution of culture to economic development. However, this line of action would need to be enriched with some broader perspectives, for instance paying attention to the interconnection between the concern on the diversity of cultural expressions and the preservation of various forms of cultural and natural heritage, or the establishment and protection of the status of artists and their social conditions.

5. The implementation of the Convention and the directions it takes at large extent depend on the activity of civil society, using the Convention as an argument for initiating policy changes, defending rights, establishing cooperations and obtaining support. In this respect, deficiencies of awareness-raising on the Convention can be observed, and this merits particular attention in order to shape a thoughtful interpretation and application of the Convention.

6. There is a continuous need to advance exchange of good practices and developing research on the impact of cultural policies on the economic as well as social and cultural development of societies within the Baltic Sea Region. Timely analysis and evaluation would contribute to the adoption of the most effective instruments in order to protect and promote the expressions of cultural diversity.
The following recommendations are to be addressed for consideration to various institutions, stakeholders and civil society involved in the process of implementing 2005 Convention:

(A) To the development of UNESCO programmes /

1. Within the continuous monitoring of the implementation of the 2005 Convention, UNESCO is encouraged to bring forward regional perspectives of implementation that may enrich the exchange of experiences. Although the EU is the only regional integration organisation that is Party to the 2005 Convention, UNESCO may consider fostering the exchange of experiences also among other regions of the world, thus besides national practices also regional cooperations and synergies would be dealt.

2. The EU policy documents dealing with the interpretation of the 2005 Convention, slightly points out its interconnection to other policy instruments, including other UNESCO legal instruments in cultural sector. In this line of thinking, UNESCO is encouraged to continue its action for better capturing and applying the various links and interconnections among UNESCO instruments of cultural policy. For instance, broader and closer exploration of the interconnection between the 2005 and 2003 Conventions would be needed.

3. It would be advisable to advance comparative analysis of various regional practices and perspectives for the implementation of the 2005 Convention. The continuous research would need to address the existing implementation challenges and propose eventual solutions, where all levels of implementation – be it global, regional or national – would be pertinent for their evaluation.

(B) To the elaboration of the EU policies /

1. For future action on the implementation of the 2005 Convention, more attention shall be paid to its implementation within the internal policy – particularly exploring its interconnections to other legal or policy instruments within the domain of culture, as well as for the sustainable development. The named Convention is to have its due attention within, for instance, the EU cohesion policy instruments.

2. The implementation of the 2005 Convention is of importance within the EU as a whole, as well as within its sub-regional development policies. Referring to the suggestion already expressed by the Baltic Assembly, “more emphasis should be put on developing policy tools that address the Baltic Sea region as a whole”\textsuperscript{165}. This suggestion is addressed towards setting the EU policies, thus there is a continuous necessity to advance and develop the policy for the Baltic Sea Region that would address regional needs and contribute to regional development, be it in terms of economy or culture.

(C) To the cooperation within the Baltic Sea region /

1. Although the cooperation within the Baltic Sea region is rather developed in the field of cultural development, the strongest networks of cooperation being among the Nordic countries and the Baltic States, it is advisable to have broader attention paid to cultural issues within the EU Baltic Sea Region Programme and regional cooperation and development priorities and policies.

2. The cooperation on the issues of cultural diversity within the Baltic Sea region is managed by various platforms and networks of cooperation, each of them contributing to some of the aspects relevant for the 2005 Convention. However, the regional view on the implementation of the 2005 Convention might be strengthened by the involvement of the Nordic World Heritage Fund, thus broadening its scope of action in order to cover also the 2005 Convention, that is already envisaged in its Alternative Strategy 2010-2014. This would also contribute to a concrete position on the interconnection between the two conventions, namely UNESCO 1972 and 2005 Conventions and their implementation.

3. In regard specifically to the cooperation among the Baltic States, broader attention of the Baltic Assembly would need to be paid to the role of culture within the processes of sustainable development of the region. The concern on a better development of human capital and the advancement of research and innovation is also to be addressed towards the concern of local cultural identities as well as intraregional cultural cooperation.

(D) To institutions and policy-making at national level /

1. There is an existing need to broaden the scope of interpretation of the 2005 Convention in order for it to serve as an instrument for various policy-making goals. For instance, it is a valuable instrument that may contribute to the policy in the domain of intangible cultural heritage, or in the field of fighting illicit trafficking in cultural goods.

2. The references to the 2005 Convention currently are well incorporated in the national cultural policy documents within the countries of the Baltic Sea region. However, the potential of implementing the Convention is not yet sufficiently explored. It is advisable to acknowledge the importance of contributing to shaping common EU policies and giving a regional framework for its implementation. On the other hand, the implementation of the Convention is of importance at regional, but also and in particular at national level, where national policy-making may be of crucial importance for its thoughtful implementation.

(E) To civil society members and organizations /

1. There is an existing necessity to raise awareness of the 2005 Convention in order to use it as a valuable tool for defending the interests of cultural development at national as well as regional and global cooperation level. Taking into consideration the wide possibilities of interpretation of the 2005 Convention, it may be used more actively as a reference for various civil society initiatives in the domain of the diversity of cultural expressions.

2. The civil society with its active position may advance a broader interpretation and application of the 2005 Convention, for instance underlining its links also to 2003 Convention and the Recommendation Concerning the Status of the Artist. Thus, civil society member may contribute to changing and broadening its interpretation at national as well as regional level.

References

(A) UNESCO documents


167A selection of relevant documents is proposed in the Reference part of the paper. In each section or subsection of References, except in the last part, documents are listed chronologically starting with the most recent. By 30 April 2012 the first reports of Parties to the 2005 Convention will be submitted to UNESCO. These reports are not included among the references.


Other UNESCO documents


(B) European Union documents


(C) Sub-regional co-operation documents


168Including EU documents on sub-regional co-operation in the Baltic Sea Region.


(D) Study reports and papers


Country profile Latvia. Last profile update: January 2011. COMPRENDIUM. Cultural policies
and trends in Europe. [http://www.culturalpolicies.net/down/latvia_012011.pdf]


*Diversité culturelle : La longue marche vers une convention internationale.* Mme Line Beauchamp, ministre de la Culture et des Communications du Québec – *Rythmes*, no 26, 1er trimestre 2004, pp. 4-5.

**(E) Research articles and monographs**


Bernier, Ivan et Hélène Ruiz Fabri. *Evaluation de la faisabilité juridique d’un instrument international sur la diversité culturelle.* Groupe de travail franco-québécois sur la diversité 169

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169This part of references is listed in an alphabetic order according to the names of authors.


