



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 31 January 2005

5768/05

LIMITE

CULT 4

NOTE

from : the Presidency
to : the delegations

No. prev. doc. : 5518/05 CULT 3

Subject : Code of conduct between the Council, the Member States and the Commission on the UNESCO negotiations on the draft Convention on the protection of the diversity of cultural contents and artistic expressions

Delegations will find enclosed the text of the above code of conduct as agreed by the Permanent Representatives Committee (Part 1) on 28 January 2005, as well as the statements to the minutes entered by the UK, Irish and Greek delegations (annex 1) and the Commission (annexes 2 et 3).

Code of conduct
between the Council, the Member States and the Commission on the UNESCO negotiations
on the draft Convention
on the protection of the diversity of cultural contents and artistic expressions

Pursuant to the decision of the Council of the European Union of 16 November 2004 authorising the Commission to participate, on behalf of the Community, in the negotiation within UNESCO on the convention on the protection of the diversity of cultural contents and artistic expressions hereinafter the negotiating directives, bearing in mind the obligation of unity of the international representation of the European Community and its Member States in accordance with the EC Treaty and the case law of the European Court of Justice, the principles listed in the present code of conduct will apply in the conduct of the negotiation.

In conformity with Article 5 TEC, the following distribution of tasks cannot be read as affecting in any way the respective competences of the Community and the Member States and is without prejudice to the negotiating directives or any other ongoing or future negotiations in other international fora.

1. The Presidency will:

- Negotiate and express on behalf of Member States common positions reached in the coordination process in particular on the following matters:
 - Aspects of cultural policies within the competence of the Member States;
 - Public awareness and education;
 - Issues concerning international cooperation in the field of culture, in particular with developing countries (except for trade related issues);

- Issues related to human rights;
 - Follow-up bodies and mechanisms;
 - Any other matters falling exclusively or primarily within the competence of the Member States.
- Convene, on its own initiative or at the request of the Commission or a Member State, coordination meetings of EU Member States' delegations in Paris before, during and after each negotiating session;

2. The Commission will:

- Negotiate on behalf of the Community, and express Community positions in any negotiating or discussion forum on matters falling within Community competence, pursuant to the negotiating directives and especially its points 2 and 4, in particular in relation to:
 - Free movement of goods (Art. 23-31 of the EC Treaty), persons, services and capital (Art. 39 to 60 EC);
 - Common rules on competition, in particular concerning aids granted by states (Art. 87 EC);
 - Internal market (Art. 94-97 EC);
 - Community measures taken within the sphere of intellectual property (Art 95 and 308);
 - Common commercial policy, including the commitments taken by the Community in relation to other international organisations, in particular WTO (Art. 131 to 134 EC);
 - Legislative Acts taken under title IV on Visas, Asylum, Immigration (Art. 61-69 EC);

- Community measures taken in the sphere of development cooperation (Art. 177 to 181 EC);
- Any other matters falling exclusively or primarily within Community competence.

3. 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. Common statements shall be circulated among Member States beforehand.
4. a) In the case the Presidency is not represented in the Drafting Committee on the Convention and the UNESCO Executive Board, the position of the Community and its Member States reached in the coordination process on matters covered by paragraph 1 is presented in such Committee and Board by the delegate of the Member State represented which comes first in the list of rotation for the EU Presidency.

b) In the case that the European Community does not enjoy the status of full participant in the above-mentioned Committee and Board, the Presidency or the delegate acting will give the floor to a representative of the Commission for matters which are not covered by paragraph 1¹.

In the case that the European Community request for full participation is accepted, the Commission will speak for matters not covered by paragraph 1 under the nameplate of the European Community¹.

¹ This is without prejudice to EC participation in a possible diplomatic conference on the draft convention if held outside the auspices of UNESCO.

5. Without prejudice of paragraph 7, exceptionally, and after due coordination, a Member State other than the one holding the Presidency or representing it may take the floor during the negotiations in so far as its contribution is limited to supporting the agreed common position.

6. Subject to paragraph 7, Members States will exert all their voting rights together on the basis of common positions reached in the coordination process.

7. The Commission and the Member States will use all best endeavours in coordination meetings on the spot to agree a common position. If no agreement can be reached, the matter will be referred without undue delay to the relevant Council bodies, pursuant to para 4 of the negotiating directives.

If necessary, after having followed the procedures provided for in the preceding sub-paragraph, the Member States may, in relation to those areas covered by paragraph 1, express their point of view.

STATEMENT FROM THE UK, IRISH AND GREEK DELEGATIONS
concerning paragraph 7

The United Kingdom, supported by Ireland and Greece, notes that the procedure envisaged in the first sub-paragraph of paragraph 7 of the Code of Conduct, and in particular the circumstances in which matters will be referred to the appropriate Council body for consideration, must be applied with regard to what is practicable in the context of the negotiations and ensuring that the Community and Member States are best able to promote and defend their interests in those negotiations.

DÉCLARATION DE LA COMMISSION
concernant le paragraphe 5

La Commission prend note du libellé du paragraphe 5 sur la possibilité d'un Etat membre autre que celui qui assume la présidence ou la représente de prendre la parole au cours de négociations pour soutenir la position commune convenue. Toutefois elle regrette qu'une telle possibilité soit prévue ce qui risque de mettre en péril l'unité de représentation de la CE et de ses Etats membres au sein de l'UNESCO. Elle tient en conséquence à souligner, d'une part, le caractère exceptionnel du recours à cette possibilité et, d'autre part, la nécessité d'une coordination communautaire préalable en bonne et due forme. La coordination communautaire suppose, en particulier, un accord de la Présidence et de la Commission tant sur l'opportunité d'interventions au soutien de la position commune que sur les modalités et le contenu de telles interventions.

DÉCLARATION DE LA COMMISSION
concernant le paragraphe 7

La Commission prend note du libellé de la deuxième phrase du paragraphe (7) sur la possibilité pour les États membres d'exprimer, seulement après avoir épuisé tous les moyens nécessaires afin de pouvoir établir une position commune, leur point de vue dans le cadre de leurs compétences exclusives. Toutefois, elle tient à rappeler que toute intervention des États membres dans un contexte de négociation internationale affectant à la fois les compétences communautaires et nationales doit faire l'objet d'une coordination en bonne et due forme, conformément aux obligations découlant de l'acquis communautaire.
