

# IN TRANSIT

a study on international law and the  
mobility of artists, art works, cultural  
goods and services

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The research for this study was conducted in early 2009. The ideas and opinions expressed in this study are those of the authors and they do not necessarily reflect UNESCO's views.

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## Executive summary

This study was commissioned by UNESCO (Section for the Diversity of Cultural Expressions) in the framework of additional assistance to the *Intergovernmental Committee for the Protection and Promotion of Diversity of Cultural Expressions*<sup>1</sup> as established by the 2005 *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*<sup>2</sup> and as part of the follow-up of the 1980 UNESCO *Recommendation concerning the Status of the Artist*<sup>3</sup>.

The aim of the *IN TRANSIT* study is to provide an overview of the main international legal instruments which impact on the mobility of artists, art works, cultural goods and services. Case studies of bilateral and multilateral legal agreements give practical insight into how legal instruments are used by countries across the world to enhance cross-border mobility.

The research was carried out in early 2009 and included a consultation with organizations across the world representing artists and cultural professionals in the audiovisual sector, performing arts, literature, music, visual arts and heritage. Feedback from professionals provides a valuable picture of the difficulties which exist in implementing the legal instruments and of the obstacles professionals face when crossing borders or moving cultural goods and providing services abroad.

*IN TRANSIT* refers to the patterns of cross-border cultural mobility, frequently temporary and short-term. The title of the study also captures some of the problems encountered in setting up, ratifying and implementing supportive legal instruments and ensuring that the intended effects of the legislation are experienced on the ground by artists and cultural operators.

An impressive international legislative framework promoting cultural mobility is described in the study. Nevertheless, many obstacles still exist, often due to non-compliance with existing legislation. There are important gaps in terms of insufficient protection and promotion of artists, art works, cultural goods and services and cultural industries. Persistent difficulties with visas and work permits and a lack of transparency on applicable rules also hinder cross-border mobility.

A number of recommendations are put forward to improve cross-border mobility. Proposals also include a common *Action Plan for Cross-Border Mobility for Cultural Diversity* which could be set up and implemented by UNESCO, in partnership with States, other international organizations, and in association with civil society organizations representing professionals in the cultural sector. Such an *Action Plan* could help address many of the obstacles, build on existing good practices (which are numerous) and support cross-border mobility as an efficient means of promoting diversity of cultural expressions.

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<sup>1</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=33058&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=33058&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>2</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=33232&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=33232&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>3</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13138&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13138&URL_DO=DO_TOPIC&URL_SECTION=201.html)

## Introduction

1. This study was commissioned by UNESCO (Section for the Diversity of Cultural Expressions) in the framework of additional assistance to the *Intergovernmental Committee for the Protection and Promotion of Cultural Diversity*<sup>4</sup> as established by the 2005 *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*<sup>5</sup> and as part of the follow-up of the 1980 UNESCO *Recommendation concerning the Status of the Artist*<sup>6</sup>.
2. The aim of the study is to provide an overview of the main international legal instruments which have an impact on the mobility of artists, art works, cultural goods and services. The report reviews the main universal legal instruments as well as the instruments adopted by international organizations at regional and sub-regional level of the five UNESCO world regions (Africa, Arab States, Asia and the Pacific, Europe and North America, Latin America and the Caribbean). A series of case studies of bilateral and multilateral legal agreements complete this insight into how legal instruments are used across the world to enhance cross-border cultural mobility.
3. The research was carried out in early 2009 and includes the results of a consultation of around 50 organizations across the world representing artists, cultural workers, operators and professionals of all forms of artistic expression: audiovisual, performing arts, literature, music, visual arts and heritage. The feedback gathered from professionals complements the research on legal instruments and provides a valuable picture of the difficulties which exist in implementing them and the obstacles artists and cultural operators face when crossing borders or moving cultural goods and providing services abroad. Existing good practices are also highlighted to illustrate the richness of initiatives which actively help to ease cross-border mobility.
4. The study concludes with recommendations and proposals for strategies on how to improve international cross-border cultural mobility, in particular in relation to the international legal instruments, and addresses international organizations and countries across the world.
5. International professional mobility is an everyday reality for many artists, cultural operators and workers across the world, thus contributing to inter-cultural dialogue and the promotion of cultural diversity:
  - *artists* are invited to perform, exhibit and make new work abroad and get their work known to a foreign public. They may be engaged by international festivals, venues and companies for co-productions, be hired for film productions or travel to other countries to get trained, acquire professional experience and take advantage of professional opportunities not available at home,
  - *art works* cross borders for international exhibitions, for restoration and study purposes, sometimes as a loan or temporary exhibition, sometimes for sale purposes,
  - *cultural goods* are produced, sold and distributed worldwide, including books, magazines, films and sound recordings,
  - *cultural services* includes a variety of services linked to the creation, distribution, exhibition and preservation of artworks and cultural goods and covers all forms of

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<sup>4</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=33058&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=33058&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>5</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=33232&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=33232&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>6</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13138&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13138&URL_DO=DO_TOPIC&URL_SECTION=201.html)

artistic expressions. Cross-border service provisions can include the production of films, the organization of visual arts exhibitions, the projection and distribution of films, the broadcasting across borders of TV programmes or the setting up of a music performance or cultural tourism to visit cultural heritage sites.

6. Patterns of mobility in the cultural sector are often unpredictable, especially as regards mobility of artists. Opportunities to work cross-border can appear or disappear suddenly. However, cross-border mobility for artists is often short-term: artists and cultural workers return to their home country once an exhibition is launched, a film shoot is finished or a live performance tour completed. Artworks return home after restoration or exhibitions and service provision is by its very nature limited in time.
7. For this reason the report is called *IN TRANSIT* as it describes the often temporary nature of cross-border mobility<sup>7</sup> but also because today there is a constant flow movement of cultural goods, services and artists around the world – despite important difficulties and obstacles.
8. The international legal frameworks put in place to support the mobility of artists, art works, cultural goods and services can also be described as *IN TRANSIT*. As this study shows, many international conventions and agreements supporting cross-border cultural mobility have been developed. However, the ratification process of legal instruments often has many stages of approval, creating sometimes different levels of application between countries. In spite of specific articles supporting cultural mobility, the difficulties artists and cultural operators face when crossing borders may not necessarily disappear immediately. The moment between the setting up of a legal instrument and its real effect on the ground for mobile artists and cultural operators can sometimes be long. The supportive provisions of legal instruments are therefore often ‘in transit’ until they are effectively applied.
9. The study does not claim to examine all existing legal instruments supportive of cross-border mobility. It only outlines those instruments which appeared to be most relevant. Due to the high number of instruments which were included, the authors decided to present the instruments in a succinct way, highlighting the main points of each instrument and how far they enhance cross-border cultural mobility.
10. Obviously a strong focus has been put on instruments developed within UNESCO which aim primarily at cultural diversity, cultural cooperation or mobility of cultural goods and artists. However, many instruments at universal, regional, sub-regional and multilateral and bilateral level which do not primarily focus on culture do have a real positive impact and make cross-border cultural mobility smoother.
11. This is particularly true for regional groupings and economic communities around the world. With their basic emphasis on free trade and movement of labour, persons and capital within a region or sub-region, they prove to be a crucial source of support for mobility in the cultural sector. Although primarily of a purely economic nature, some of these regional groupings have over time developed enhanced exchange and cultural cooperation between their Member States and beyond with third countries through multi-lateral conventions. Cultural exchange is sometimes also mentioned in founding treaties of regional communities but it can take many years to develop specific legal instruments to support cultural mobility.
12. Other legal instruments in the field of labour standards and intellectual property rights applicable to artists, artworks, cultural goods and services prove to be crucial to make cross-border movements “safe” for the key players of mobility and to protect their rights.

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<sup>7</sup> Of course, some cultural goods and services are imported into countries on a permanent basis.

13. Historically, as recent studies have noted<sup>8</sup>, mobility in the cultural sector is nothing new. Artists, like art itself, know no boundaries and they have moved from country to country for hundreds of years. In former times, international travel was for the few and talented artists found that the recommendations of their patrons helped them gain entry to other countries and cultural environments.
14. Now international travel is much more accessible, our knowledge about the rest of the world is immediate and infinite through media and telecommunications but, at the same time, international borders have become much more tightly controlled. Although statistics for cultural mobility are not widely available, the general patterns of international mobility of people and obstacles to that mobility are influenced by economic disparities, war, political upheaval, migration and security concerns. These global issues can create both incentives and barriers to professional cultural mobility.
15. At the same time, due to increased liberalisation of international trade in recent years, there is a "hyper-mobility" of certain cultural goods, especially in the audiovisual and publishing sectors. On one level, this provides people with choices of culturally diverse expressions but, on another level, because of disparities in distribution and production markets, this has given rise to a type of monoculture where the same cultural products (e.g. films, music & books) dominate the market around the world.
16. This review of the international legal frameworks which underpin cultural mobility provides a new angle on the support for cultural mobility. While other studies have concentrated on the provision of funding schemes and information to support mobility, this study commissioned by UNESCO considers the legal basis for supporting cross-border cultural mobility and examines how this has been implemented, what obstacles persist in terms of regulations and applications of existing legal instruments and what more needs to be done to provide artists and cultural operators with the necessary instruments to enable them to be cross-border mobile and to promote cultural diversity.

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<sup>8</sup> Poláček, Richard: *Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions*, Pearle\*/Finnish Theatre Information Centre, 2007: [http://www.ietm.org/upload/files/2\\_20070326111816.pdf](http://www.ietm.org/upload/files/2_20070326111816.pdf)  
ERICarts: *Mobility Matters – Programmes and Schemes to support the mobility of artists and cultural professionals*, 2008, <http://www.mobility-matters.eu/web/index.php>

## Section 1. Universal multilateral legal instruments and international cultural mobility

17. This section gives an overview of the main universal multilateral legal instruments which have an impact on international cultural mobility<sup>9</sup>. These legal instruments which directly promote cultural co-operation or pursue primarily other objectives (e.g. the promotion of trade or labour standards) all contribute directly or indirectly to improved cross-border mobility.
18. The legal instruments are described in a succinct way highlighting their main aims and objectives and how far they enhance cross-border mobility for the cultural sector.

### **1. Cultural mobility as integral part of international human rights protection**

19. International instruments concluded under the auspices of the United Nations do not mention explicitly the mobility of artists, artefacts, cultural goods and services as a human right in itself nor do they refer to the term "cultural mobility". However they establish a close link between human rights and cultural mobility.
20. The *International Covenant on Economic, Social and Cultural Rights*<sup>10</sup> of 1966 refers most directly to key elements of cultural mobility. The Covenant states that in order to achieve the right of everyone to take part in cultural life, all States Parties to the covenant shall take necessary steps for "the conservation, the development and the diffusion of culture"<sup>11</sup>. This Covenant further acknowledges that States Parties recognise the "benefits from international contacts and co-operation in the cultural field"<sup>12</sup> and that they undertake the necessary to "respect the freedom indispensable for creative activity"<sup>13</sup>.
21. Other international human rights instruments such as the 1948 *Universal Declaration of Human Rights*<sup>14</sup> and the 1966 *International Covenant on Civil and Political Rights*<sup>15</sup> include the essential human rights to enable cultural activity and cross-border cultural mobility:
  - The respect of the right of freedom of movement within the territory of a State, the freedom of residence, the right to leave any country, including his own and the right to enter his own country<sup>16</sup>.
  - The right of everyone to hold opinions without interference<sup>17</sup> and the right of everyone to expression<sup>18</sup>.
22. The respect of these human rights is particularly important to enable artistic creativity, to allow artists to be physically cross-border mobile and to express

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<sup>9</sup> The list of instruments described in this section is not exhaustive and other universal instruments may have an impact on mobility.

<sup>10</sup> <http://www2.ohchr.org/english/law/cescr.htm>

<sup>11</sup> Article 15.2 of the International Covenant on Economic, Social and Cultural Rights.

<sup>12</sup> Article 15.4 of the International Covenant on Economic, Social and Cultural Rights.

<sup>13</sup> Article 15.3 of the International Covenant on Economic, Social and Cultural Rights.

<sup>14</sup> <http://un.org/Overview/rights.html>

<sup>15</sup> <http://www2.ohchr.org/english/law/ccpr.htm>

<sup>16</sup> Article 13 of the Universal Declaration of Human Rights, article 12, paragraphs 1, 2 and 4 of the International Covenant on Civil and Political Rights.

<sup>17</sup> Article 19, paragraph 1 of the International Covenant on Civil and Political Rights.

<sup>18</sup> Article 19 of the Universal Declaration of Human Rights, Article 19, paragraph 2 of the International Covenant on Civil and Political Rights.

themselves freely regardless of frontiers and make their artworks known to a foreign public.

23. At the same time cultural mobility of artists, artworks and cultural goods and services also helps people to defend their human rights. This concerns many human rights such as freedom of opinion and expression, which concerns the right to receive and impart information and ideas through any media and regardless of frontiers<sup>19</sup>, the right of everyone to participate in the cultural life of the community<sup>20</sup> and the right to enjoy arts<sup>21</sup>.
24. To attend the performance of a foreign music or theatre ensemble, to watch a film produced in another country of the world, to attend an exhibition of artworks from overseas, all this helps people to express themselves, form their own opinions, take part in the cultural life of their community and enjoy the arts.
25. Cultural mobility, whatever form it takes, is therefore intrinsically linked to human rights, in a close, reciprocal and mutually enforcing relationship.

## **2. Universal legal instruments promoting cultural diversity and cultural mobility**

26. Many legal instruments developed by UNESCO explicitly or indirectly promote cultural mobility.
27. This includes key conventions and agreements which are binding for those Member States who have ratified them, for example the recent groundbreaking *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* which encourages explicitly cross-border cultural mobility. The Florence Agreement, equally binding for Contracting States who have ratified it, proves to be an important instrument to ease cross-border mobility of cultural goods, although it was adopted initially more than 50 years ago.
28. UNESCO has also adopted several Recommendations and Declarations which, although legally non-binding, are nonetheless of crucial importance as they encourage cultural exchange and set important standards for cross-border cultural mobility.
29. International organizations have also developed a set of specific instruments which prevent the "illicit" import, export and transfer of cultural goods. These instruments are analysed separately in the next section.
30. The following list is not an exhaustive analysis of all UNESCO legal instruments in the field of culture. It highlights some of the most important aspects of key legal instruments that are related to cultural mobility. The instruments are presented in reverse chronological order.

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<sup>19</sup> Article 19 of the Universal Declaration of Human Rights, Article 19, paragraph 2 of the International Covenant on Civil and Political Rights.

<sup>20</sup> Article 27 of the Universal Declaration of Human Rights and Article 15.1 (a) of the International Covenant on Economic, Social and Cultural Rights.

<sup>21</sup> Article 27 of the Universal Declaration of Human Rights.



⇒ **Convention on the Protection and Promotion of the Diversity of Cultural Expressions<sup>22</sup>, 2005 - UNESCO**

31. The Convention was adopted in 2005 and entered into force on 18 March 2007. As of 25 May 2010, there were 111 Parties to the Convention (110 States and the European Community as a regional economic integration organization). It aims at protecting and promoting the diversity of cultural expressions, creating conditions for cultures to flourish and interact, fostering interculturality and strengthening international co-operation. Guiding principles are set out for the protection and promotion of cultural diversity, as well as the rights and obligations of the States Parties. The Convention also establishes permanent bodies to ensure its implementation.
32. This Convention is one of the key international legal instruments which are binding for States Parties and explicitly promote cultural cross-border mobility. It is therefore an important step forward to foster cultural mobility which is recognised as a crucial means to enhance the diversity of cultural expressions. Four elements in this Convention are particularly important for cultural mobility:

**Main provisions relevant for cultural mobility:**

33. **(1) Autonomy of national cultural policies to support artists and national cultural industries**

The Convention clearly supports the autonomy of States Parties to give support to artists and of national cultural industries to encourage the diversity of cultural expressions.

According to Article 6 of the Convention<sup>23</sup>, each States Parties can adopt measures aimed at protecting and promoting the diversity of cultural expressions in its territory within the framework of its cultural policies and measures. This concerns policies and measures relating to culture at all levels (local, national, regional or international) that are either focused on culture or are designed to have a direct effect on the cultural expressions of individuals, groups or societies, including on the creation, production, dissemination, distribution of and access to cultural activities, goods and services<sup>24</sup>.

34. States Parties can adopt the following measures to support national cultural industries and artists<sup>25</sup>:
- measures aimed at providing domestic independent cultural industries and activities in the informal sector providing effective access to the means of production, dissemination and distribution of cultural activities, goods and services<sup>26</sup>;
  - measures aimed at encouraging non-profit organizations, as well as public and private institutions and artists and other cultural professionals, to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities<sup>27</sup>,
  - measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions<sup>28</sup>.

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<sup>22</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=31038&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>23</sup> Article 6 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>24</sup> Article 4.6 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>25</sup> See the full list in Article 6 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>26</sup> Article 6.2 (c) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>27</sup> Article 6.2 (e) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>28</sup> Article 6.2 (g) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

35. **(2) States Parties' actions in favour of artistic production and dissemination**

Article 7 the Convention clearly states what measures promoting cultural expressions the States Parties commit to adopt. States Parties "endeavour to create in their territory an environment which encourages individuals and social groups":

- 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;
- to have access to diverse cultural expressions from within their territory as well as from other countries of the world<sup>29</sup>.

This is a key part of the Convention as it directly addresses important aspects of cross-border cultural mobility.

36. **(3) Preferential treatment to support mobility of cultural goods, services and artists from developing countries**

A very important provision for increased cultural mobility of goods and services and artists from developing countries towards developed countries can be found in Article 16 of the Convention on "preferential treatment for developing countries". According to this article "developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries".

37. This provision raises big questions in terms of currently applicable trade agreements and existing visa restrictions for artists especially for mobility towards the Europe and North America region.

38. **(4) Commitment to reinforced bi-lateral, regional and international cultural cooperation**

Finally, another important provision of the Convention concerns the commitment of the States Parties to set up educational, training and exchange programmes in the field of cultural industries, to strengthen their bilateral, regional and international cooperation conducive to the promotion of the diversity of cultural expressions and to encourage the conclusion of co-production and co-distribution agreements<sup>30</sup>.

## **Implementation**

39. Following the entry into force of the Convention, active implementation of the Convention started in 2008. The *Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions* was set up according to the Convention<sup>31</sup>. It has the task to promote the objectives of this Convention, to encourage and monitor the implementation of the Convention and to prepare the Operational Guidelines for the implementation and application of the provisions of the Convention<sup>32</sup>. The *Committee* has already drafted a set of guidelines linked to the

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<sup>29</sup> Article 7 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>30</sup> Article 12 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>31</sup> Article 23 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>32</sup> Article 23.6 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

implementation of several articles of the Convention. These Operational Guidelines were approved by the Conference of Parties in June 2009.

40. The Guidelines regarding the implementation of Article 7 which relate to States Parties' actions in favour of artistic production and dissemination<sup>33</sup> are particularly interesting for cross-border mobility. The *Intergovernmental Committee* proposes that cultural policies and measures developed by Parties to promote the diversity of cultural expressions should:
- "take into account the provisions of other international legal instruments in the field of culture which are applicable thereto<sup>34</sup>"
  - "aim more specifically to:
    - at the stage of creation, support artists and creators in their efforts to create cultural activities, goods and services;
    - at the stage of production, support the development of cultural activities, goods and services by promoting access to production mechanisms and encouraging the development of cultural enterprises;
    - at the stage of distribution/dissemination, promote the opportunity of access in the distribution of cultural activities, goods and services through public, private or institutional channels at the national, regional and international level;
    - and at the stage of access, provide information about available domestic or foreign cultural activities, goods and services by making the appropriate incentives available, and develop the capacity for the public to avail itself of such access<sup>35</sup>."
41. Further recommendations encourage the States Parties to develop and implement legislative instruments relating for example to the establishment of structuring legislation in the cultural field (for example, legislation on broadcasting, copyright, status of the artist, etc.).
42. The Convention came into force only recently and it is certainly too early to draw any conclusions as regards its implementation and possible positive effects on increased cross-border cultural mobility. However, the provisions and instruments put in place by this Convention are a major step forward to be able to tackle some of the biggest obstacles to mobility (see section 6 of this study) – provided that States Parties adopt the measures that are needed and that implementation of the Convention is effective.
- ⇒ ***Universal Declaration on Cultural Diversity<sup>36</sup>, 2001 - UNESCO***
43. This Declaration going back to 2001 recognises that cultural diversity is the common heritage of humanity and reaffirms the intrinsic commitment of cultural diversity to the defence and respect of human dignity and human rights<sup>37</sup>.
44. Based on the Declaration, since 2001 UNESCO has actively promoted cultural diversity in a number of important actions<sup>38</sup> and proved to be an important step in the elaboration of the 2005 Convention on the protection and promotion of the diversity cultural expression.

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<sup>33</sup> Decision 1.EXT.IGC 3: <http://unesdoc.unesco.org/images/0016/001611/161119E.pdf>

<sup>34</sup> Principle 1.4 of the Intergovernmental Committee Decision 1.EXT.IGC 3.

<sup>35</sup> Principle 1.6 of the Intergovernmental Committee Decision 1.EXT.IGC 3.

<sup>36</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13179&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>37</sup> Article 1 and article 4 of the Universal Declaration on Cultural Diversity.

<sup>38</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=35260&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=35260&URL_DO=DO_TOPIC&URL_SECTION=201.html)

45. The Declaration clearly underlines that cultural pluralism is conducive to cultural exchange<sup>39</sup> and that particular attention must be paid to the diversity of the supply of creative work<sup>40</sup>. The specificity of cultural goods and services is explicitly stated and it concludes that they should not be treated as mere commodities or consumer goods<sup>41</sup>.
46. The Declaration supports the free movement of ideas and works, points to the imbalances in flows and exchange of cultural goods at the global level and calls for international cooperation and solidarity to build up and support strong cultural industries in particular in developing and transition countries<sup>42</sup>.
47. An Action Plan joined to the Declaration lists all objectives to which Member States have committed to implement this Declaration. Amongst these commitments is a clear engagement to foster the mobility of creators, artists, researchers, scientists and intellectuals<sup>43</sup> and to support building and consolidating cultural industries in the developing and transition countries and facilitating access of their cultural products to the global market and international distribution networks<sup>44</sup>.

⇒ ***Recommendation concerning the Status of the Artist***<sup>45</sup>, 1980 - UNESCO

48. This Recommendation of 1980 sets out a certain number of rights of artists and calls upon Member States to protect, defend and assist artists and their freedom of creation. It is one of the key legal instruments developed by UNESCO and the respect of its provisions is certainly an important pre-condition to ensure that cultural mobility of artists is respectful of their rights as artists and human beings.
49. In relation to cultural mobility the 1980 Recommendation clearly states that Member States should:
  - recognise that artistic life and the practice of the arts have an international dimension and consequently provide artists with all means and in particular travel and study grants, likely to enable them to establish lively and far-reaching contacts with other cultures,
  - take all appropriate steps to promote the free international movement of artists, and not to hinder the freedom of artists to practice their art in the country of their choice, while ensuring that these do not prejudice the development of endogenous talents and the conditions of work and employment of national artists,
  - give special attention to the needs of traditional artists, in particular facilitating their travel inside and outside their own country<sup>46</sup>,
  - assist free movement of works of art by, inter alia, flexible customs arrangements and concessions in relation to import duties, particularly as regards temporary importation and take measures to encourage international travel and exchange by artists, giving due attention to visiting artists<sup>47</sup>.
50. It is also worth mentioning that the Recommendation invites Member States to make the necessary arrangements for artists and their organizations to participate in discussions, decision-making processes and the subsequent implementation of measures aimed at the encouragement of international cultural cooperation, for

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<sup>39</sup> Article 2 of the Universal Declaration on Cultural Diversity.

<sup>40</sup> Article 8 of the Universal Declaration on Cultural Diversity.

<sup>41</sup> Article 8 of the Universal Declaration on Cultural Diversity.

<sup>42</sup> Articles 9 and 10 of the Universal Declaration on Cultural Diversity.

<sup>43</sup> Point 15 of the Action Plan, Annex II of the Universal Declaration on Cultural Diversity.

<sup>44</sup> Point 17 of the Action Plan, Annex II of the Universal Declaration on Cultural Diversity.

<sup>45</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13138&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13138&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>46</sup> Section IV, The vocation training of the artist, paragraph 1 (j)-(l) of the Recommendation concerning the Status of the Artist.

<sup>47</sup> Section VI, Employment, working and living conditions of the artist; professional and trade union organizations, paragraphs 8 (a) and (b) of the Recommendation concerning the Status of the Artist.

example measures relating to the dissemination and translation of works, to the exchange of works and of persons, and to the organization of regional or international cultural events<sup>48</sup>.

51. A first evaluation of the implementation of the UNESCO Recommendation concerning the Status of the Artist was published in a report established in 1997<sup>49</sup>. Although the Recommendation had been in place for more than 15 years, the report concluded that the recommendation needed to be better recognised and applied in Member States.
52. Following the final declaration of the 1997 *World Congress on the Implementation of the Recommendation concerning the Status of the Artist*<sup>50</sup>, UNESCO was invited to establish a periodic review mechanism to monitor the progress achieved in the various States and propose new initiatives to implement the Recommendation. The *World Observatory on the Social Status of the Artist*<sup>51</sup> has been created to gather all the information sent by UNESCO Member States and NGOs concerning key aspects of the life and work of artists, such as social benefits and taxes, allowances and fellowships, networks and partners, and copyright and neighbouring rights. The Observatory has also put in place a directory of the measures already existing in Member States to promote the mobility of artists<sup>52</sup>.
53. Today a number of important issues raised in the 1980 Recommendation have still not been sufficiently addressed by Member States. Many problems for artists remain unsolved, including the potential negative effects of mobility on artists' rights and their social situation. In 2008 the *International Federation of Actors* (FIA) and the *International Federation of Musicians* (FIM) adopted a *Manifesto on the Status of the Artist* asking amongst others to renew and revisit the 1980 Recommendation<sup>53</sup>.

⇒ **Recommendation for the Protection of Movable Cultural Property<sup>54</sup>, 1978 - UNESCO**

54. This Recommendation of 1978 aims to protect movable cultural objects against any risks of damage, deterioration or loss. The long list of objects covered by this instrument includes products of archaeological exploration, antiquities, items from historical monuments, paintings and drawings, material of anthropological and ethnological interest, items of furniture, musical instruments, and many other cultural objects<sup>55</sup>.
55. Member States are asked to take necessary steps for the prevention of risks for movable cultural objects, such as encouraging the systematic inventorying, cataloguing and standardized identification of movable cultural property and urging museums to reinforce prevention of risks through practical security measures<sup>56</sup>.

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<sup>48</sup> Section VII, Cultural policies and participation, point (c) of the 1980 Recommendation concerning the Status of the Artist.

<sup>49</sup> 1997 Report on the progress of the implementation of the Recommendation concerning the Status of the Artist: <http://unesdoc.unesco.org/images/0011/001114/111479Fb.pdf>

<sup>50</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=14126&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=14126&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>51</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=36942&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=36942&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>52</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=32972&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=32972&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>53</sup> [http://www.fia-actors.com/uploads/manifesto\\_EN.pdf](http://www.fia-actors.com/uploads/manifesto_EN.pdf)

<sup>54</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13137&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13137&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>55</sup> Section I Definitions, paragraph 1 (a)-(xi), Recommendation for the protection of movable cultural property.

<sup>56</sup> Section III Measures recommended - Measures for the prevention of risks, paragraph 12 (a)-(c), Recommendation for the Protection of Movable Cultural Property.

56. The protection of cultural objects during transport and temporary exhibitions is specifically targeted<sup>57</sup>. In the case of international cultural exchange, the Recommendation asks Member States to encourage cultural institutions to ensure that cultural property is transported, packed and handled in accordance with the highest standards and to take appropriate measures to prevent any direct or indirect damage which might arise from the temporary or permanent overcrowding of the exhibition premises<sup>58</sup>.
57. The Recommendation also asks Member States to simplify the administrative formalities relating to the lawful movement of cultural property, to accelerate customs procedures and to protect cultural property in transit or temporarily imported for the purpose of cultural exchange. Member States are also asked to facilitate rapid customs clearance in suitable premises<sup>59</sup>.
58. To follow up the implementation of this Recommendation, UNESCO has developed several actions in the field of movable heritage and museums<sup>60</sup>.

⇒ ***Recommendation concerning the International Exchange of Cultural Property<sup>61</sup>, 1976 - UNESCO***

59. This Recommendation of 1976 is particularly important for cross-border mobility of cultural goods as it explicitly aims to encourage the movement of cultural property between UNESCO Member States. It recommends Member States to adapt their national regulations on inheritance, taxation and customs duties to enable and ease the transfer of ownership of cultural property as well as the temporary and permanent import or export of cultural property.
60. The Recommendation also asks Member States to give special attention to the risks to which cultural property is exposed during loans and when being transported. Member States are further invited to launch a campaign encouraging cultural institutions and professionals to develop international circulation of cultural property. In addition the Recommendation asks the *International Council of Museums* (ICOM) to produce practical handbooks describing every possible form of circulation of cultural property, including model contracts and insurance contracts.
61. Member States are also encouraged to disseminate the offers and requests for the exchange of cultural property and distribute publications produced by custodian institutions of cultural property.
62. Finally the Recommendation asks Member States to reinforce actions against all forms of illicit trading in cultural property.

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<sup>57</sup> Section III Measures recommended, paragraph 16, Recommendation for the protection of movable cultural property.

<sup>58</sup> Section III Measures recommended, paragraph 16 (a), (b), Recommendation for the protection of movable cultural property.

<sup>59</sup> Section III Measures recommended, paragraph 16 (c), (d), (e), Recommendation for the protection of movable cultural property.

<sup>60</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=34324&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=34324&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>61</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13132&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13132&URL_DO=DO_TOPIC&URL_SECTION=201.html)

⇒ ***Declaration of guiding principles on the use of satellite broadcasting for the free flow of information, the spread of education and greater cultural exchange*<sup>62</sup>, 1972 - UNESCO**

63. According to this Declaration, satellite broadcasting for the promotion of cultural exchange aims to foster greater contact and mutual understanding between peoples by permitting audiences to enjoy programmes on each other's social and cultural life, including artistic programmes<sup>63</sup>. For this reason broadcasters and their national, regional and international associations should be encouraged to cooperate in the production and exchange of programmes<sup>64</sup>.

⇒ ***Declaration of Principles of International Cultural Cooperation*<sup>65</sup>, 1966 - UNESCO**

64. This Declaration states that the aims of international cultural cooperation are to enable everyone to have better access to knowledge and enjoy the arts of all people, to share advances made in science in all parts of the world and to contribute to the enrichment of cultural life<sup>66</sup>. It also affirms that broad dissemination of ideas and knowledge, based on the "freest exchange and discussion", is essential to creative activity<sup>67</sup>.

⇒ ***Convention for the Protection of Cultural Property in the Event of Armed Conflict*<sup>68</sup>, 1954 - UNESCO**

65. This Convention of 1954, which came into force in 1956, provides special rules on the transport under special protection of protected cultural property in the event of armed conflicts.

⇒ ***Agreement on the importation of educational, scientific and cultural materials*<sup>69</sup>, 1950 ("*Florence Agreement*", modified and completed by the "*Nairobi Protocol*"<sup>70</sup>, 1976) - UNESCO**

66. This Agreement was adopted in Florence in 1950 and came into force in 1952. It was amended and completed by a Protocol adopted in Nairobi in 1976. It has become a cornerstone amongst those international legal instruments facilitating the cross-border circulation of cultural goods and artworks.

67. The Agreement aims to lower customs barriers and reduce economic restrictions that impede the exchange of educational, scientific or cultural material. Contracting States agree to grant licences and to not apply customs duties or other charges on a wide range of cultural goods such as printed books, newspapers, periodicals, manuscripts, catalogues of books, music in manuscript or printed form, paintings, drawings, sculptures, collectors' pieces and objects of art, antiques and films and sound recordings<sup>71</sup>.

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<sup>62</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=17518&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=17518&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>63</sup> Article VII of the Declaration of guiding principles on the use of satellite broadcasting for the free flow of information, the spread of education and greater cultural exchange.

<sup>64</sup> Article VIII of this Declaration.

<sup>65</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13147&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13147&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>66</sup> Article IV of the Declaration of Principles of International Cultural Cooperation.

<sup>67</sup> Article VII of this Declaration.

<sup>68</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13637&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html#ENTRY](http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html#ENTRY)

<sup>69</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=12074&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=12074&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>70</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=15224&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=15224&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>71</sup> Article I of the Florence Agreement, annexes A, B and C of the Florence Agreement.

68. Member States that signed the Florence Agreement are still allowed to impose internal taxes on imported materials provided they do not exceed those applied to domestic products.
69. The Protocol completing the Florence agreement, which was adopted in Nairobi in 1976 further extends the list of materials covered by the Florence agreement (in particular to cover books and publications consigned to libraries serving the public interest). It also states that Contracting States must not levy any duties or taxes on exported material<sup>72</sup>.
70. UNESCO has adopted a Guide for the application of the Florence Agreement and its Protocol<sup>73</sup> to help Contracting States to better implement the Agreement. Currently some 100 countries are Contracting States (with different status according to ratification or notification of succession)<sup>74</sup>.

⇒ ***Agreement for facilitating the international circulation of visual and auditory materials of an educational, scientific and cultural character<sup>75</sup>, 1948 (Beirut Agreement) - UNESCO***

71. This Beirut Agreement was adopted in 1948 and came into force in 1954. It promotes the free flow and exchange of certain audio-visual materials worldwide. Thirty eight States have signed this agreement so far. It provides an exemption of import duties, import licences, special taxes, quantitative restrictions and other restraints and costs on imported films and sound-recordings of an educational, scientific or cultural character<sup>76</sup>. The Agreement explicitly safeguards the right of the Contracting States to censor imported audiovisual material for reasons of public security or order<sup>77</sup>.
72. The main beneficial impact of this Agreement on cross-border cultural mobility is that the Contracting States agree that they will not impose higher internal taxes or any other fees and charges on imported audiovisual material of educational, scientific and cultural character than on similar national products<sup>78</sup>. To obtain an exemption from customs duties a certificate confirming the educational, scientific or cultural value of the imported audiovisual material is shown to the customs authorities of the entry country. Such a certificate is issued by a governmental agency of the country where the audiovisual material has been produced<sup>79</sup>.

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<sup>72</sup> Articles III and IV of the Nairobi Protocol to the Florence Agreement.

<sup>73</sup> [http://portal.unesco.org/culture/en/files/24430/11018963553guide\\_florence\\_en.pdf/guide\\_florence\\_en.pdf](http://portal.unesco.org/culture/en/files/24430/11018963553guide_florence_en.pdf/guide_florence_en.pdf)

<sup>74</sup> <http://erc.unesco.org/cp/convention.asp?KO=12074&language=E>

<sup>75</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=12064&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=12064&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>76</sup> Article III, paragraph 1 of the Beirut Agreement.

<sup>77</sup> Article V of the Beirut Agreement.

<sup>78</sup> Article III, paragraph 3 of the Beirut Agreement.

<sup>79</sup> Article IV of the Beirut Agreement.



### **3. Universal legal instruments preventing and fighting “Illicit” mobility of cultural goods**

73. Several universal legal instruments specifically tackle the question of “illegal” mobility of cultural goods:

⇒ ***UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects*<sup>80</sup>, 1995**

74. The International Institute for the Unification of Private Law (UNIDROIT)<sup>81</sup> is an independent intergovernmental organization set up in 1926 studying the needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States. The UNIDROIT Convention of 1995 has 30 Contracting States and came into force in 1998<sup>82</sup>.

75. The Convention’s overall aim is the preservation and protection of cultural heritage in the interest of all by facilitating the restitution and return of stolen or illegally exported cultural objects between Contracting States.

76. The Convention describes what is to be understood by an “illegally exported cultural good”. This includes a cultural object which has been temporarily exported from the territory of the claimant State for a purpose such as exhibition or restoration under a permit issued and which has not been returned in accordance with this permit. It is deemed to have been illegally exported<sup>83</sup>.

77. The Convention sets up a specific mechanism to ensure the return of stolen or illegally exported cultural objects: a Contracting State may request a court of another Contracting State to order that an illegally exported cultural object is returned to its territory. A claim between Contracting States to give back a stolen cultural object can be brought within a period of up to 75 years<sup>84</sup>. The possessor of a stolen or an illegally exported cultural object must receive fair and reasonable compensation, provided s/he did not know that the object was stolen or illegally exported<sup>85</sup>.

⇒ ***Convention on the Means of Prohibition and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*<sup>86</sup>, 1970 - UNESCO**

78. This Convention has been signed by 119 States Parties and came into force in 1972. It aims to ensure that the cultural property of States Parties is protected against illicit import, export and transfer of ownership.

79. Several measures have been agreed amongst States Parties, including the setting up of national services for the protection of the cultural heritage, to be in charge of establishing and updating a list of important public and private cultural property.

80. States Parties also agreed to introduce a certificate for cultural goods to be exported and which declares that the exporting of the cultural property in question is authorised. The exporting of cultural property which has no such certificate is prohibited. In addition, museums from States Parties will be prevented from buying

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<sup>80</sup> <http://www.unidroit.org/english/conventions/1995culturalproperty/main.htm>

<sup>81</sup> <http://www.unidroit.org/>

<sup>82</sup> <http://www.unidroit.org/english/implement/i-95.pdf>

<sup>83</sup> Article 5, UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects.

<sup>84</sup> Article 3, UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects.

<sup>85</sup> Articles 4 and 6, UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects.

<sup>86</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13039&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html)

cultural property from another State which has been exported illegally. States Parties further commit to prohibit the import or export of stolen cultural property and to do everything necessary to recover and return illegally imported and exported cultural goods.

81. In terms of implementation, UNESCO has adopted several actions to help prevent the illicit import, export and transfer of ownership of cultural property. Amongst them is the creation of an *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in the case of Illicit Appropriation*. The committee was set up following the UNESCO Resolution adopted at the 20th Session of the UNESCO General Conference in 1978<sup>87</sup> and comprises 22 Member States, which meet every two years and can also organize extraordinary sessions.
82. Based on the UNESCO and UNIDROIT Conventions, the *International Council of Museums* (ICOM) has adopted a set of measures to fight the illicit traffic of cultural property.
83. Finally, it is also important to mention in this context that the ***International Criminal Police Organization – Interpol*** has signed ***several international co-operation agreements*** with other international organizations like UNESCO (1999) and ICOM (International Council of Museums) (2000)<sup>88</sup>. These agreements aim to foster cooperation in combating, among other things, theft and illicit traffic in cultural property. They provide for mutual consultation, exchange of information and technical cooperation.

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<sup>87</sup> <http://unesdoc.unesco.org/images/0011/001140/114032e.pdf#page=92>

<sup>88</sup> <http://www.interpol.int/Public/ICPO/LegalMaterials/cooperation/AgrList.asp>

#### **4. Universal legal instruments easing international cross-border trade in goods and services**

⇒ ***Customs Convention on the ATA carnet for the temporary admission of goods***<sup>89</sup>

84. The *World Customs Organization* (WCO) is the intergovernmental organization related to customs matters. It works in areas covering the development of global customs standards, the simplification and harmonisation of customs procedures, trade supply chain security, the facilitation of international trade, the enhancement of customs enforcement and anti-counterfeiting and piracy initiatives.
85. Several Conventions have been adopted by the WCO, including the 1961 *ATA Convention* (also called *Brussels Convention*) which is of particular importance for cross-border mobility of cultural goods. It came into force in 1963 and has 63 Contracting Parties<sup>90</sup>.
86. The Convention established a system, called the "ATA system", which considerably facilitates customs formalities and allows the free movement of goods across frontiers and their temporary admission into a customs territory without any duties or taxes. To benefit from the "ATA system" the goods entering a territory temporarily must be covered by a single document known as the "ATA carnet"<sup>91</sup>. This "carnet" serves as a goods declaration at export, transit and import and is secured by an international guarantee system: "ATA carnets" are only issued by national associations which are approved by customs and are affiliated to an international guaranteeing chain administered by the *ICC World Chambers Federation* (ICC/WCF).
87. Artworks temporarily imported for exhibition purposes or cultural goods which only transit a country and which are covered by an "ATA carnet" are not liable for any import duties or taxes. For this reason the ATA system proves to be of crucial help to ease cross-border mobility and facilitate cultural exchange.

⇒ ***Trade liberalisation agreements under the World Trade Organization***<sup>92</sup>  
**(WTO)**

88. As successor to the 1947 *General Agreement on Tariffs and Trade* (GATT), the *World Trade Organization* (WTO) is an international organization which was set up in 1995 through the *Marrakesh Agreement* and has 153 members, representing more than 95% of total world trade. The organization is currently working with its members on a new trade negotiation called the *Doha Development Agenda* (Doha round), launched in 2001.
89. The WTO aims at the liberalisation of international trade and sets a common framework for negotiating and implementing trade agreements amongst its members. Therefore the work of the WTO can have considerable impact on cultural cross-border mobility worldwide.
90. The trade agreements developed within the WTO framework all follow several basic principles of trade, which include first of all the principle of "non-discrimination". This implies first that a WTO member has to grant the most favourable conditions under which it allows trade in a certain product type or service to all other WTO members

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<sup>89</sup> [http://www.wcoomd.org/home\\_wco\\_topics\\_pfoverviewboxes\\_tools\\_and\\_instruments\\_pfatasystemconven.htm](http://www.wcoomd.org/home_wco_topics_pfoverviewboxes_tools_and_instruments_pfatasystemconven.htm)

<sup>90</sup> <http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Conventions/P0135E1.pdf>

<sup>91</sup> The term "ATA" is a combination of the initial letters of the French words "Admission Temporaire" and the English words "Temporary Admission".

<sup>92</sup> <http://www.wto.org/>

(called the “most favoured nation” rule). It further implies that a WTO member must ensure that imported and locally-produced goods and services are treated equally once they have entered the market (national treatment).

91. Another important principle of the WTO agreements is transparency, as WTO members are required to publish their trade regulations, to maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to the WTO.
92. In 1994, the WTO members also agreed on the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) which allows WTO members to bring disputes to the WTO if they think their trade rights under the WTO agreements are being infringed.
93. Several WTO agreements are also of importance for cross-border mobility of cultural goods and services, including artists:
94.     • The **General Agreement on Tariffs and Trade**<sup>93</sup> (**GATT**) of 1947 which is the WTO's umbrella treaty for trade liberalisation in goods. GATT explicitly states that Member States cannot be prevented from adopting measures aiming to protect copyrights and national treasures of artistic, historic or archaeological value<sup>94</sup>.
95.     • The **Agreement on Trade Related Aspects of Intellectual Property Rights**<sup>95</sup> (**TRIPS**) sets down minimum standards which WTO members must guarantee for the protection of copyright rights when trading amongst themselves. This also includes the rights of performers, producers of phonograms (sound recordings) and broadcasting organizations.
96.     • The **General Agreement on Trade in Services**<sup>96</sup> (**GATS**) covers trade liberalisation in services. GATS distinguishes between four types of supplying services: cross-border trade, consumption abroad, commercial presence, and presence of natural persons. WTO members are free to choose which sectors are to be progressively liberalised, under which type of service and to what extent. The list of all sectors which can be negotiated under the GATS<sup>97</sup>, also covers **audiovisual services**, which include motion picture and video tape production and distribution services, motion picture projection services, radio and television services, radio and television transmission services, sound recording. Finally, GATS also covers the **“movement of natural persons”**, referring to the entry and temporary stay of persons for the purpose of providing a service. It does not cover persons seeking citizenship, permanent employment or permanent residence in a country. This also concerns artists who cross borders to provide cultural services.
97. The three above-mentioned WTO agreements can certainly contribute to smoother cross-border mobility of cultural goods, services and cultural service providers. However, the question remains as to how far on-going trade liberalisation in goods and services may ultimately endanger the cultural diversity of goods and services, in particular in those countries which do not, at present, have strong cultural industries.
98. While most countries refused to make commitments in the field of audiovisual services within GATS, some have and others intend to make commitments in new

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<sup>93</sup> [http://www.wto.org/english/docs\\_e/gattdocs\\_e.htm](http://www.wto.org/english/docs_e/gattdocs_e.htm)

<sup>94</sup> Article XX of the GATT, 1947, 1994: [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm#gatt47](http://www.wto.org/english/docs_e/legal_e/legal_e.htm#gatt47)

<sup>95</sup> [http://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/trips_e.htm)

<sup>96</sup> [http://www.wto.org/english/tratop\\_e/serv\\_e/serv\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/serv_e.htm)

<sup>97</sup> [http://www.wto.org/english/tratop\\_e/serv\\_e/serv\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/serv_e.htm)

services negotiations which began in 2000. As a result these countries may be precluded from introducing measures that favour their own cultural industries or from concluding bi-lateral co-production treaties as these may not comply with basic WTO principles like the “most-favoured-nation rule” or the principle of “national treatment”.

99. New negotiations within WTO aiming at liberalising audiovisual services and the “movement of natural persons” are still ongoing.

## **5. Universal legal instruments on social and labour standards and the protection of intellectual property rights**

100. Several universal legal instruments aiming to protect copyright, related rights and setting labour standards are of crucial importance to cross-border cultural mobility.

### **5 a. Labour standards of the International Labour Organization<sup>98</sup> (ILO)**

101. The International Labour Organization (ILO) is the global body responsible for drawing up and overseeing international labour standards. Working with Member States (183 countries), the ILO develops labour standards and ensures their respect in practice as well as in principle.

102. International labour standards<sup>99</sup> are legal instruments drawn up by the ILO and setting out basic principles and rights at work. They are either *Conventions*, which are legally binding international treaties that may be ratified by Member States, or *Recommendations*, which serve as non-binding guidelines.

103. Numerous ILO Conventions and Recommendations refer to rights which are crucial to all workers, including artists and cultural workers - be they mobile or not<sup>100</sup>. They concern rights such as the freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation. All these rights are part of the 1998 ***ILO Declaration on Fundamental Principles and Rights at Work***<sup>101</sup> which is an expression of commitment by governments, employers' and workers' organizations to uphold basic human values. Many countries have implemented these rights at national level - but many other countries have not, or do not ensure proper enforcement of these rights.

104. This study cannot give an exhaustive description of all ILO Conventions and Recommendations which are of importance to artists and cultural workers, including those working across borders. The following ILO instruments are of particular relevance for mobile artists:

⇒ ***ILO Convention concerning Migration for Employment, 1949***<sup>102</sup>

105. Under this Convention, each Member State ensures equal treatment between its own nationals and lawfully residing immigrants without discrimination in respect of nationality, race, religion or sex. This applies to a long list of issues, amongst which

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<sup>98</sup> <http://www.ilo.org>

<sup>99</sup> <http://www.ilo.org/ilolex/english/subjectE.htm#s15>

<sup>100</sup> Some of these crucial instruments cover ILO conventions such as the 1952 Convention concerning Minimum Standards of Social Security, the 1944 Recommendation concerning Income Security and many others: see <http://www.ilo.org/ilolex/english/subjectE.htm#s16>

<sup>101</sup> <http://www.ilo.org/declaration/lang--en/index.htm>

<sup>102</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>

are remuneration, hours of work, overtime arrangements, holidays with pay, minimum age for employment, membership of trade unions and enjoyment of the benefits of collective bargaining, social security, etc.<sup>103</sup>.

106. This Convention of 1949 has been ratified by 48 countries (2009). It explicitly states that it does not concern the short-term entry of members of the liberal professions and artists<sup>104</sup>. The ***ILO Recommendation concerning Migration for Employment*** (Revised 1949)<sup>105</sup> also explicitly excludes the short-term entry of artists.

⇒ ***Recommendation concerning Migrant Workers, 1975***<sup>106</sup> - ***ILO***

107. This Recommendation of 1975 does not exclude the short-term entry of artists. It asks Member States to ensure that lawfully residing migrant workers and their family members should enjoy effective equality of opportunity and treatment with nationals of the Member State concerned in respect of the following rights: remuneration for work of equal value, conditions of work (including hours of work, rest periods, annual holidays with pay), occupational safety and occupational health measures, social security measures, membership of trade unions, exercise of trade union rights, living conditions (including housing and the benefits of social services and educational and health facilities), etc.<sup>107</sup>

## **5 b. International legal instruments on the protection of copyrights and related rights**

108. The World Intellectual Property Organization<sup>108</sup> (WIPO), as the specialized agency of the United Nations dedicated to developing an international system of intellectual property (IP), has adopted several international conventions which are important for cross-border mobile cultural goods and services and artists.

109. Amongst the most important Conventions are the following:

⇒ ***Berne Convention for the Protection of Literary and Artistic Works, 1886*** (last amended in 1979)<sup>109</sup> - ***WIPO***

110. The Berne Convention recognises (among others) the following exclusive rights of authorization which are subject to certain permitted reservations, limitations or exceptions: the right to translate, the right to make adaptations and arrangements of the work, the right to perform in public dramatic, dramatico-musical and musical works, the right to recite in public literary works, the right to communicate to the public the performance of such works, the right to broadcast, the right to make reproductions in any manner or form, the right to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work.
111. The Convention also provides for moral rights and provides that protection must be granted until the expiration of the 50th year after the author's death.

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<sup>103</sup> Article 6 of the 1949 ILO Convention concerning Migration for Employment.

<sup>104</sup> Article 11, paragraph 2 of the 1949 ILO Convention concerning Migration for Employment.

<sup>105</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R086>

<sup>106</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R151>

<sup>107</sup> Section 1, 2 of the ILO Recommendation concerning Migrant Workers.

<sup>108</sup> <http://www.wipo.int>

<sup>109</sup> <http://www.wipo.int/treaties/en/ip/berne/>

⇒ **Universal Copyright Convention<sup>110</sup>, 1952 - UNESCO**

112. This Convention is another international Convention for copyright protection of literary, scientific and artistic works. First created in 1952 and revised in 1971, the objective of this Convention was to establish a common legal denominator so that countries, differing widely in regard to civilization, culture and economic development, may become part of an international system of copyright.

⇒ **The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, 1971<sup>111</sup>**

113. The Convention provides for the obligation of each Contracting State to protect a producer of phonograms who is a national of another Contracting State against the making of duplicates of phonograms, their importation and distribution to the public without the consent of the producer. A "phonogram" according to this Convention means an exclusively aural fixation (i.e. recording), whatever its form (disc, tape or other). Protection must last for at least 20 years from the first fixation or the first publication of the phonogram.

⇒ **The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961<sup>112</sup> - Rome Convention**

114. This Convention secures protection of performances of performers, phonograms of producers of phonograms and broadcasts of broadcasting organizations.
115. The protection must last at least until the end of a period of 20 years. However, national laws ever more frequently provide for a 50-year term of protection, at least for phonograms and for performances.
116. The respect and enforcement of all these international Conventions by Member States across the globe is a crucial precondition to make sure that the intellectual property rights of artists and of right holders of cultural goods and services (phonograms, audiovisual works, books, etc.) are respected when they cross borders.

## **6. Other universal legal instruments**

117. To avoid double taxation of income from cross-border investment and service provision, many countries have signed bilateral tax treaties. Many of them are based on the **OECD Model Tax Convention<sup>113</sup>** of the *Organization for Economic Co-operation and Development* (OECD). This Convention is to be understood rather as a recommendation on how countries should draw up their bilateral tax treaties.
118. Under article 17 of the *OECD Model Tax Convention*, a withholding tax can be deducted from the performance fees of non-resident artists (both self-employed and employees) who work temporarily across borders. As explained in 1987 by the OECD<sup>114</sup>, this particular rule has been designed as an anti-avoidance measure to prevent highly mobile artists who claim to live in tax havens from taking gross self-

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<sup>110</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=1814&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=1814&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>111</sup> <http://www.wipo.int/treaties/en/ip/phonograms/>

<sup>112</sup> <http://www.wipo.int/treaties/en/ip/rome/>

<sup>113</sup> See the 2008 Update of the OECD Tax Model Treaty: <http://www.oecd.org/dataoecd/20/34/41032078.pdf>

<sup>114</sup> "Taxation of Entertainers, Artistes and Sportsmen", in *Issues in International Taxation* n° 2 (Paris: OECD, 1987), Articles 6 and 7.

employed income without paying taxes in any country and artists from not reporting their foreign income in their home country.

119. Following the *OECD Model Tax Convention*, many countries in the world have signed bilateral treaties which also include the provisions of Article 17 and therefore authorise national tax authorities to charge a withholding tax on the fee of foreign, non-resident artists and cultural organisers when performing in their country on a temporary basis. As a result these foreign artists who have been taxed abroad must take the necessary steps in their home countries to avoid double payment of taxes.



## Section 2. Regional and sub-regional legal instruments and cultural mobility

120. This section details the main regional and sub-regional legal instruments which have an impact on cultural mobility<sup>115</sup>. The UNESCO-defined regional divisions<sup>116</sup> are used throughout.

### I. Africa region

#### 1. Organization of African Unity (OAU) / African Union

121. At pan-African level, the *Organization of African Unity* (OAU) and since 1999 its successor the *African Union*<sup>117</sup> have set up a number of legal instruments which are of importance to cross-border mobility in the field of culture.

⇒ **Pan-African Cultural Manifesto of Algiers, 1969**<sup>118</sup>

122. This manifesto of 1969 contains a set of recommendations which are important to foster cross-border cultural mobility. Member States of the OAU are called upon to hold inter-regional cultural seminars and increase cultural exchanges through such means as exhibitions, conferences, seminars and meetings of young people, women and workers, intellectuals, militants and officials for a greater mutual understanding.

⇒ **Cultural Charter for Africa, 1976**<sup>119</sup> - African Union

123. The Cultural Charter for Africa was adopted in 1976 and ratified by 53 African Member States<sup>120</sup>. It came into force in 1990. Amongst the objectives of this Charter is the encouragement of international cultural co-operation<sup>121</sup>.
124. The fact that the Charter enumerates a certain number of principles to which African States subscribe is of particular importance to cross-border cultural mobility, for example: the access of all citizens to education and to culture<sup>122</sup>, respect of the freedom to create<sup>123</sup>, as well as the exchange and dissemination of cultural experience between African countries<sup>124</sup>.
125. In order to achieve the principles and objectives of the Charter, African States are asked to support the establishment of appropriate institutions for the development, preservation and dissemination of culture<sup>125</sup> and to organise national and pan-African

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<sup>115</sup> The list of instruments described in this section is not exhaustive and is limited to publicly available information sources accessible in English, French and Spanish.

<sup>116</sup> [http://portal.unesco.org/geography/en/ev.php-URL\\_ID=2297&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/geography/en/ev.php-URL_ID=2297&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>117</sup> <http://www.africa-union.org/>

<sup>118</sup> [http://ocpa.irmo.hr/resources/docs/Pan\\_African\\_Cultural\\_Manifesto-en.pdf](http://ocpa.irmo.hr/resources/docs/Pan_African_Cultural_Manifesto-en.pdf)

<sup>119</sup> [http://www.africa-union.org/root/au/Documents/Treaties/Text/Cultural\\_Charter\\_for\\_Africa.pdf](http://www.africa-union.org/root/au/Documents/Treaties/Text/Cultural_Charter_for_Africa.pdf)

<sup>120</sup> <http://www.africa-union.org/root/au/Documents/Treaties/List/Cultural%20Charter.pdf>

<sup>121</sup> Article 1 (e) and (f), Cultural Charter for Africa.

<sup>122</sup> Article 2 (a), Cultural Charter for Africa.

<sup>123</sup> Article 2 (b), Cultural Charter for Africa.

<sup>124</sup> Article 2 (e), Cultural Charter for Africa.

<sup>125</sup> Article 6, section 2 (c), Cultural Charter for Africa.

cultural festivals<sup>126</sup>. These measures are obviously all favourable to cultural cross-border mobility.

126. Furthermore, the Charter encourages African States to foster inter-African cultural cooperation<sup>127</sup>. In particular, African States agree to consolidate their cooperation by way of joint cultural activities<sup>128</sup>. They also agree to develop the exchange of information, documentation and cultural material, notably by exchange and meetings between young people, the organization of joint cultural events such as festivals, symposia and art exhibitions, the establishment of cultural research centres on national, regional and pan-African level and the creation of an inter-African Fund for the support and promotion of cultural studies and programmes<sup>129</sup>. The Charter also encourages Member States to create regional specialized institutions for the training of specialized cultural cadres<sup>130</sup>.
127. Finally the Charter also insists on the need to prepare a pan-African convention on copyright to guarantee the protection of African works<sup>131</sup>. African States are called upon to take steps to put an end to the despoliation of African cultural property and ensure that cultural assets which have been removed from Africa are returned there<sup>132</sup>. African States are also asked to support the efforts of UNESCO and ensure the implementation of the *UN resolution on the restitution of works of art removed from their country of origin*<sup>133</sup>.

⇒ **Charter for African Cultural Renaissance, 2006<sup>134</sup> - African Union**

128. This Charter was adopted in 2006 and replaces the 1976 Cultural Charter for those African States who had ratified it.
129. The 2006 Charter confirms many of the provisions of the 1976 Charter, but is much more explicit as regards cross-border cultural mobility. The encouragement of cultural cooperation between Member States and at international level is again explicitly stated amongst the objectives of the Charter<sup>135</sup>.
130. The Member States make a certain number of commitments which all have beneficial effects on cross-border cultural mobility. They agree, among others, to:
- foster mutual understanding and coordinate inter-cultural and inter-generational dialogue at national level<sup>136</sup>
  - protect and promote the freedom of artists, intellectuals and men and women of culture<sup>137</sup>
  - protect and develop tangible and intangible cultural heritage<sup>138</sup>
  - financially and materially support cultural initiatives in all strata of society<sup>139</sup>
  - facilitate access to education and culture for all segments of the population<sup>140</sup>

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<sup>126</sup> Article 6, section 2 (j), Cultural Charter for Africa.

<sup>127</sup> Article 30, Cultural Charter for Africa.

<sup>128</sup> Article 31 (a), Cultural Charter for Africa.

<sup>129</sup> Article 31 (b), Cultural Charter for Africa.

<sup>130</sup> Article 31 (d), Cultural Charter for Africa.

<sup>131</sup> Article 24, Cultural Charter for Africa.

<sup>132</sup> Article 28, Cultural Charter for Africa.

<sup>133</sup> Idem.

<sup>134</sup> [http://www.africa-union.org/root/au/Documents/Treaties/text/Charter%20-%20African%20Cultural%20Renaissance\\_EN.pdf](http://www.africa-union.org/root/au/Documents/Treaties/text/Charter%20-%20African%20Cultural%20Renaissance_EN.pdf)

<sup>135</sup> Article 3 (f) and (h), Charter of African Cultural Renaissance.

<sup>136</sup> Article 6, Charter for African Cultural Renaissance.

<sup>137</sup> Article 10, Charter for African Cultural Renaissance.

<sup>138</sup> Article 10, Charter for African Cultural Renaissance.

<sup>139</sup> Article 10, Charter for African Cultural Renaissance.

<sup>140</sup> Article 10, Charter for African Cultural Renaissance.

- use information and communication media to promote African culture, including new information<sup>141</sup>
- promote the establishment of publishing and distribution houses for books, textbooks, children's books and audiovisual works, particularly in African languages<sup>142</sup>
- create an enabling environment that will enhance the creation, protection, production and distribution of cultural works<sup>143</sup>.

131. As with its predecessor, the 2006 Charter calls upon African States to take the necessary measures to protect African cultural goods and services, including measures aimed at the protection of copyrights and measures to put an end to the despoliation and illicit traffic of African cultural property.

132. The 2006 Charter also contains significant provisions for Member States to encourage and foster intra- and inter-African cultural cooperation<sup>144</sup>. Many provisions stem from the 1976 Charter, but it is worthwhile mentioning that, in addition to their commitments in 1976, Member States agree to establish cultural research centres and encourage cultural exchange programmes<sup>145</sup>.

⇒ ***Declaration of the Heads of State and Government of the Organization of African Unity on the Cultural Aspects in the Lagos Plan of Action, 1985***<sup>146</sup>

133. Following the 1980 Lagos Plan of action<sup>147</sup> on the economic development of Africa, in 1985 the Heads of State and Government of the OAU adopted a declaration on the cultural aspects in the Lagos Plan of Action. The aim of this declaration is to incorporate social and cultural factors within the development strategies.

134. Member States of the OAU promise to ensure cultural exchange and the development of cultural tourism and to take the necessary steps to promote cooperation for cultural development at inter-African level and at international level<sup>148</sup>. Member States also decided to implement integrated programmes of activities in these fields<sup>149</sup>.

⇒ ***Nairobi Plan of Action for Cultural Industries in Africa, 2005***<sup>150</sup>

135. In December 2005, the Ministers of Culture of the Member States of the African Union met in Nairobi, Kenya and adopted an action plan for cultural industries in Africa. In view of the full establishment of the African Economic Community by 2025 and to reverse the one-way flow (North-South) of international exchange of cultural products, the action plan proposes that African leaders put in place immediately "on an experimental basis a legal and institutional framework for the development of cultural products and their free movement in all African countries as a prelude to the full implementation of the African Economic Community"<sup>151</sup>.

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<sup>141</sup> Article 20 and 21 (a), Charter of African Cultural Renaissance.

<sup>142</sup> Article 21 (b), Charter for African Cultural Renaissance.

<sup>143</sup> Article 21 (c), Charter for African Cultural Renaissance.

<sup>144</sup> Article 30 and 31, Charter for African Cultural Renaissance.

<sup>145</sup> Article 31, Charter for African Cultural Renaissance.

<sup>146</sup> [http://ocpa.irmo.hr/resources/docs/Cultural\\_Aspects\\_Lagos\\_Action\\_Plan-en.pdf](http://ocpa.irmo.hr/resources/docs/Cultural_Aspects_Lagos_Action_Plan-en.pdf)

<sup>147</sup> [http://www.uneca.org/itca/ariportal/docs/lagos\\_plan.pdf](http://www.uneca.org/itca/ariportal/docs/lagos_plan.pdf)

<sup>148</sup> Point 7 (e) and (f), Declaration of the Heads of State and Government of the OAU on the Cultural Aspects of Lagos Plan of Action for the Economic Development of Africa.

<sup>149</sup> Point 4 Declaration of the Heads of State and Government of the OAU on the Cultural Aspects of Lagos Plan of Action for the Economic Development of Africa.

<sup>150</sup> [http://ocpa.irmo.hr/resources/docs/AU\\_POA\\_Industries\\_2005-en.pdf](http://ocpa.irmo.hr/resources/docs/AU_POA_Industries_2005-en.pdf)

<sup>151</sup> Page 12, Nairobi Action Plan for Cultural Industries in Africa.

136. The Action Plan includes a clear commitment towards the establishment of an African Cultural Common Market, the development of intra-African cooperation and the improvement of national capacities for creating, producing, distributing and exhibiting cultural goods. It sets out a clear strategy, timeframes, recommendations and indicative measures.
137. Amongst the measures that Member States adopted the following are of particular importance for cross-border mobility<sup>152</sup>. They agreed to:
- facilitate significant access of cultural products and the movement of artists from Africa to regional and international markets
  - create mobility funds and other mechanisms to promote and facilitate the movement of artists, designers, managers, works, goods and services
  - support artists and their associations to establish networks in the region to integrate diasporas and link up with large global networks
  - support artists to form unions and associations to serve as forums for meetings and exchanges of experience between artists at national, sub-regional and continental level
  - encourage and support co-productions between artists from different countries
  - encourage the signing of bilateral co-production agreements (North-South and South-South) in order to ensure that the co-produced films acquire dual nationality and enjoy subsequent advantages including the facilitation of movement of African artists and works within the African continent and between African countries and the EU and other markets in accordance with the Cotonou Agreement
  - implement measures that will facilitate unrestricted distribution as well as the co-production and co-publishing of books and to grant subsidies to pay for transport and exchange between member countries.

## **2. Sub-regional economic communities in Africa**

138. Many sub-regional agreements in the Africa region have established **Regional Economic Communities**. These agreements often have a primarily economic dimension and deal with cross-border trade in services and goods. Sometimes the free movement of people is also included. Amongst them are the following:
- The *Economic Community of West African States* (ECOWAS)<sup>153</sup>
  - The *West African Economic and Monetary Union* (UEMOA)<sup>154</sup>
  - The *Common Market for Eastern and Southern Africa* (COMESA)<sup>155</sup>
  - The *Southern African Development Community* (SADC)<sup>156</sup>
  - The *East African Community* (EAC)<sup>157</sup>
  - The *Economic Community of Central African States* (ECCAS)<sup>158</sup>
  - The *Community of Sahel-Saharan States* (CEN-SAD)<sup>159</sup>
139. Many of their founding treaties make no explicit reference to cultural cooperation or exchange in cultural goods and services. However, some do refer explicitly to culture, like for example the **Treaty establishing the Common Market for Eastern and Southern Africa** (COMESA). This agreement states that COMESA aims to promote cooperation between its Member States in social and cultural affairs and the exchange

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<sup>152</sup> Page 19, section of "indicative measures to be taken", Nairobi Plan of Action for Cultural Industries.

<sup>153</sup> <http://www.ecowas.int/>

<sup>154</sup> <http://www.uemoa.int/index.htm>

<sup>155</sup> <http://www.comesa.int/>

<sup>156</sup> <http://www.sadc.int/>

<sup>157</sup> <http://www.eac.int/>

<sup>158</sup> <http://www.ceeac-eccas.org/>

<sup>159</sup> <http://www.cen-sad.org/>

of cultural groups among Member States in order to develop social and cultural tourism<sup>160</sup>.

140. The **West African Economic and Monetary Union** (UEMOA) has developed specific instruments promoting cultural co-production and movement of cultural goods and services.

*A detailed case study on the "Agreement on West African Economic and Monetary Union's Programme of Common Actions for the Production, Circulation and Conservation of the Image between UEMOA Member States" can be found in Section 3, case study n° 3.*

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<sup>160</sup> [http://about.comesa.int/attachments/comesa\\_treaty\\_en.pdf](http://about.comesa.int/attachments/comesa_treaty_en.pdf)

## II. Arab States region

### 1. Pan-Arab States level

141. Since its beginning in 1945, the *Arab League*<sup>161</sup> has fostered cultural dialogue and exchange between Member States. Several legal instruments have been put in place which are of importance for cross-border cultural mobility:

⇒ ***Cultural Treaty between the Arab States, 1945***<sup>162</sup>

142. This treaty was signed in 1945, came into force in 1957 and contains several provisions relevant for cultural mobility.
143. It states in particular that the Member States of the *Arab League* will encourage cultural visits between Arab countries, in areas which the Governments allow, and the holding of cultural and educational meetings for students. Facilities will be given for this purpose, particularly in respect to travelling arrangements<sup>163</sup> and Member States will “encourage and organise the translation of all foreign masterpieces, whether classical or modern” and “encourage all intellectual output in the Arab countries”<sup>164</sup>.
144. Member States also agree to consolidate contacts between libraries and museums, whether scientific, historical or artistic, “by such means as the exchange of publications, indexes and duplicating antiquities, as well as by the exchange of technical officials”<sup>165</sup>.
145. Finally Member States “agree to consolidate relations and facilitate cooperation between scientists, literary men, journalists, members of the professions, those connected with art, the stage, the cinema and broadcasting, where available, by organising visits for them between one country and another” and by encouraging cultural conferences<sup>166</sup>. Member States will also encourage the establishment of Arab social and cultural clubs in their respective countries<sup>167</sup>.

⇒ ***The Arab Cultural Unity Charter, 1964***<sup>168</sup>

146. This Charter is at the origin of the *Arab League Educational, Cultural and Scientific Organization (ALECSO)*<sup>169</sup> which was set up in 1970. ALECSO works within the Arab League and aims to enhance and coordinate educational, cultural and educational activities in the Arab world.

⇒ ***ALECSO future plan of action in the field of culture (2005-2010)***<sup>170</sup>

147. For the period 2005-2010, ALECSO developed a plan of action<sup>171</sup> which also details guidelines in the field of culture. Amongst the objectives outlined the following are particularly relevant for cross-border cultural mobility in the region and beyond:

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<sup>161</sup> [http://www.arableagueonline.org/las/index\\_en.jsp](http://www.arableagueonline.org/las/index_en.jsp)

<sup>162</sup> *Idem*

<sup>163</sup> Article 4, Cultural Treaty of the Arab League.

<sup>164</sup> Article 7, Cultural Treaty of the Arab League.

<sup>165</sup> Article 10, Cultural Treaty of the Arab League.

<sup>166</sup> Article 11, Cultural Treaty of the Arab League.

<sup>167</sup> Article 14, Cultural Treaty of the Arab League.

<sup>168</sup> <http://www.alecso.org.tn>

<sup>169</sup> <http://www.alecso.org.tn>

<sup>170</sup> [http://www.alecso.org.tn/lng/images/stories/fichiers/en/Future\\_Plan\\_Action%202005\\_2010/Chap%20IV%20Culture.pdf](http://www.alecso.org.tn/lng/images/stories/fichiers/en/Future_Plan_Action%202005_2010/Chap%20IV%20Culture.pdf)

- The reinforcing of Arab-African, Arab-European, Arab-Asian and Iberian-American dialogue,
- The promotion of cultural industries and the setting up of a common Arab cultural market,
- The promotion of cultural tourism in the Arab world,
- The promotion of authors' copyright in the Arab world and the protection of intellectual copyright in accordance with the world trade agreement,
- The setting up of a database on Arab cultural achievements, movable property and real estate.

⇒ ***Charter of the Islamic Educational, Scientific and Cultural Organization (ISESCO)***<sup>172</sup>

148. This Charter established in May 1979 the *Islamic Educational, Scientific and Cultural Organization (ISESCO)* between the Member States of the Organization of the Islamic Conference (OIC)<sup>173</sup>.
149. The Charter is of crucial importance for cultural mobility in the Arab States region and beyond as it provides that the role of ISESCO is to strengthen, promote and consolidate cooperation between the Member States in the fields of education, science, culture and communication<sup>174</sup>. It must also “publicize the correct image of Islam and Islamic culture, promote dialogue among civilisations, culture and religions”<sup>175</sup> and encourage cultural interaction and “support the aspects of cultural diversity in the Member States”<sup>176</sup>. The Charter further details how these objectives are to be achieved.
150. In particular, ISESCO has to develop “plans and support appropriate projects to develop Islamic culture and publicize it” and disseminate the teaching of Arabic to non-Arabic speakers around the world<sup>177</sup>. ISESCO also holds cultural competitions and forums in cooperation with the specialized institutions in the Member States<sup>178</sup>.
151. ISESCO’s action plan in the area of culture and communication mentions amongst other points the need to further strengthen inter-cultural and inter-civilisational dialogue and highlight the different aspects of cultural diversity<sup>179</sup>.
152. Of particular relevance for cross-border cultural mobility is the fact that ISESCO has also signed several international agreements with international organizations such as UNESCO, WIPO, and ALECSO<sup>180</sup>.

## **2. Sub-regional level**

153. Many sub-regional initiatives and legal instruments have been developed in the Arab States region, with the aim of achieving regional economic integration. They also contain measures and enable initiatives which directly and indirectly support cross-border cultural mobility.

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<sup>171</sup> [http://www.alecso.org.tn/lng/index.php?option=com\\_content&task=view&id=8&Itemid=9&lang=en](http://www.alecso.org.tn/lng/index.php?option=com_content&task=view&id=8&Itemid=9&lang=en)

<sup>172</sup> <http://www.isesco.org.ma>

<sup>173</sup> <http://www.oic-oci.org>

<sup>174</sup> Article 4, Charter of ISESCO.

<sup>175</sup> Article 4 (c), Charter of ISESCO.

<sup>176</sup> Article 4 (d), Charter of ISESCO.

<sup>177</sup> Article 5 (a), Charter of ISESCO.

<sup>178</sup> Article 5 (g), Charter of ISESCO.

<sup>179</sup> <http://www.isesco.org.ma/english/actionPlan/action.php?page=/Home/Action%20Plans>

<sup>180</sup> <http://www.isesco.org.ma/english/cooperation/cooperation.php?page=/Home/Cooperation%20and%20Partnership>

154. Amongst these organizations is the *Council of Arab Economic Unity* (CAEU)<sup>181</sup>, which was created in 1964 to implement the **Arab Economic Unity Agreement** (AEUA) in order to achieve complete economic unity among the Member States. The AEUA agreement was ratified by several Member States of the *Arab League* and stipulates among other rights for citizens the freedom of movement, the right to exchange domestic and foreign goods, the freedom of residence, work employment, and the practice of economic activities<sup>182</sup>.
155. The *Arab Maghreb Union* (UMA)<sup>183</sup> is another example of sub-regional economic integration which has an important impact on cross-border mobility in the cultural field. In 1992 UMA adopted a **Convention on Cultural Cooperation between Member States of UMA**<sup>184</sup>.
156. Another example is the *Gulf Cooperation Council for the Arab States* (GCC)<sup>185</sup> which has established a free trade area and a customs union between its Member States. The **Charter establishing the GCC**<sup>186</sup> was signed in 1981 and states that the GCC also aims to deepen cooperation in the field of education and culture. The Charter itself does not detail the areas of cooperation in the field of culture, but the GCC has helped to develop intense cooperation between Member States in the field of media and has adopted a detailed joint cultural action plan.

*For more detailed information of the GCC initiatives supporting cross-border cultural mobility, please refer to Section 3, case study n° 4.*

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<sup>181</sup> <http://www.arableagueonline.org/las/index.jsp>

<sup>182</sup> Idem.

<sup>183</sup> <http://www.maghrebarabe.org/en/>

<sup>184</sup> <http://www.maghrebarabe.org/fr/conventions.cfm?type=1>

<sup>185</sup> <http://www.gcc-sg.org/eng/>

<sup>186</sup> <http://www.gcc-sg.org/eng/index.php?action=Sec-Show&ID=1>



### III. Latin America and Caribbean region

157. Several legal instruments developed in the Latin America and Caribbean region have directly beneficial effects on cultural cross-border mobility. They have been adopted within the framework of major organizations of this region. Some of these focus specifically on cultural cooperation, like the *Organization of Ibero-American States for the Education, Science and Culture* (OEI) whereas the majority are general economic integration organizations.
158. The list of legal instruments listed is not exhaustive but indicates only those instruments which are particularly supportive of cross-border mobility in the cultural sector.

#### 1. Organization of Ibero-American States<sup>187</sup> (OEI)

159. The *Organization of Ibero-American States for the Education, Science and Culture* (OEI) was set up in 1949. The regulation<sup>188</sup> and the statutes<sup>189</sup> adopted in Panama in 1985 describe the main objectives and principles of the OEI and cultural cooperation is an important objective and field of action. The main legal instruments adopted by the OEI which are of importance for cross-border cultural mobility include the following:

⇒ **Lima Declaration, 2001**<sup>190</sup>

160. The Lima Declaration was adopted in 2001 and provides for the creation of an *Ibero-American Cultural Cooperation Agenda* for the first decade of this century. It encourages the creation of an Ibero-American book market and an Ibero-American audiovisual industry market. The declaration also urges OEI Member States to implement IBERESCENA<sup>191</sup>, a programme aiming at mobility within the live performance sector in the region.

⇒ **Ibero-American Cultural Charter, 2006**<sup>192</sup>

161. The declaration of Cordoba<sup>193</sup>, adopted in 2005, is at the origin of the creation of the *Ibero-American Cultural Charter*. The Charter was adopted in 2006 and calls on Member States to facilitate exchange of cultural goods and services within the Ibero-American cultural space. It also introduces mechanisms to enable the free transit of cultural goods and impede the illegal traffic and export of cultural goods.

More detailed information about the "OEI Ibero-American Cultural Charter" can be found in Section 3, case study n° 2.

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<sup>187</sup> <http://www.oei.es>

<sup>188</sup> <http://www.oei.es/reglamento.htm>

<sup>189</sup> <http://www.oei.es/estatutos.htm>

<sup>190</sup> <http://www.oei.es/agendacultural/declaracion.htm>

<sup>191</sup> <http://www.iberescena.org/noticias/noticias.asp>; Iberescena has been ratified by 8 Member States at present.

<sup>192</sup> [http://www.oei.es/cultura/carta\\_cultural\\_iberamericana2.htm](http://www.oei.es/cultura/carta_cultural_iberamericana2.htm); <http://www.oei.es/cultura/Montevideo-ing.pdf>

<sup>193</sup> <http://www.oei.es/viicultura.htm>

## 2. Latin American Integration Association<sup>194</sup> (ALADI/ LAIA)

162. The *Latin American Integration Association* (ALADI) was created in 1980 by the treaty of Montevideo<sup>195</sup> with the aim to create a common economic area for South America. *ALADI* is the institutional and normative "umbrella" of regional integration that also covers agreements at sub-regional level, like the *Andean Community* and *MERCOSUR*. The following agreement adopted by *ALADI* Member States is specific to mobility of cultural goods and services and artists:

⇒ ***Agreement on regional cooperation and exchange of goods in the area of culture, education and science***<sup>196</sup>, 1989 - *ALADI*

163. This agreement was signed in 1989 and creates a common market for cultural goods and services between the signatory countries. It aims to facilitate the free movement of cultural goods and services through several measures, including the exemption from taxes and customs duties for cultural goods from *ALADI* countries<sup>197</sup>. Further provisions stipulate that Member States will ease the free transit and temporary stay of artistic and cultural professionals, and the free dissemination of audiovisual material, and will encourage more media co-productions<sup>198</sup>.

## 3. MERCOSUR<sup>199</sup>

164. MERCOSUR is the common market of the South set up between four Latin American countries: Argentina, Brazil, Uruguay and Paraguay, and based on the *Treaty of Asuncion*<sup>200</sup> signed in 1991. MERCOSUR aims to set up a common market with free movement of goods and services, the elimination of customs duties and the coordination of a set of macroeconomic and sector policies. Several legal instruments which are relevant for cross-border mobility have been adopted by MERCOSUR:

⇒ ***Protocol on cultural integration of the MERCOSUR***<sup>201</sup>, 1996 (Decision n° 11/96)

165. This protocol of 1996 came into force in 1999<sup>202</sup> and aims to create common cultural spaces and foster the promotion of co-productions. It further seeks to increase the number of cultural programmes and projects within the MERCOSUR area and improve cooperation between Member States' institutions responsible for culture.
166. Other measures include support to facilities for the exchange of artists and cultural researchers and the setting up of a MERCOSUR cultural heritage archive with harmonised criteria for archives at national level.

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<sup>194</sup> <http://www.aladi.org/>

<sup>195</sup> [http://www.sice.oas.org/trade/Montev\\_tr/indexe.asp](http://www.sice.oas.org/trade/Montev_tr/indexe.asp)

<sup>196</sup> <http://www.aladi.org/nxfaladi/textacdos.nsf/60607224b27658de0325749000762545/e03b4d6028c18b1003256825006ef32f?OpenDocument>

<sup>197</sup> Article 6 of the ALADI agreement on regional cooperation and exchange of goods in the area of culture, education and science.

<sup>198</sup> Article 8 of the ALADI agreement on regional cooperation and exchange of goods in the area of culture, education and science.

<sup>199</sup> <http://www.mercosur.int/>

<sup>200</sup> <http://www.mercosur.int/msweb/portal%20intermediario/es/index.htm>

<sup>201</sup> <http://www.portalargentino.net/leyes/mercult.htm>

<sup>202</sup> <http://www.mre.gov.py/dependencias/tratados/mercosur/registro%20mercosur/mercosurprincipal.htm>

⇒ **Resolution on the "MERCOSUR cultural seal"**<sup>203</sup>, 1996 (Resolution n° 122/96)

167. Through a standard customs form, this resolution aims to facilitate the free movement of goods, within MERCOSUR, that are part of cultural projects.

⇒ **Resolution on a certificate for MERCOSUR cinematographic works**<sup>204</sup>, 2006 (Resolution n° 27/06)

168. This resolution aims to identify MERCOSUR-produced cinematographic works, by harmonising the national criteria for the identification of such works. Those works labelled as MERCOSUR Cinematographic Works will receive the same treatment in any MERCOSUR country. With the purpose of facilitating this mutual recognition, the Resolution includes a standard MERCOSUR cinematographic certification form.

*More detailed information about these culture-specific initiatives and legal instruments of MERCOSUR can be found in Section 3, case study n° 1.*

169. Several other of MERCOSUR's legal instruments which are not specific to the cultural sector are also worthwhile mentioning as they foster cross-border mobility in the culture field:

⇒ **Protocol of Montevideo on commerce in services between MERCOSUR countries**<sup>205</sup>, 1997

170. This protocol aims to promote the free trade of services between MERCOSUR countries. The same treatment should be given to national service providers as to those from other MERCOSUR Member States. Furthermore, professionals from MERCOSUR countries can benefit from the mutual recognition of their education, experience, diplomas, registrations and certificates. This protocol is of crucial importance for cross-border mobility in the cultural sector in the region.

⇒ **Agreement on the extension of visas between countries of MERCOSUR**<sup>206</sup>, 2000

171. This agreement was adopted in 2000 and allows the temporary entrance of MERCOSUR citizens without a visa into other MERCOSUR countries. It is valid for particular categories of persons, including artists, and applies to stays of less than 90 days with possible extension up to a total of 180 days. Undeniably this is a crucial instrument for the movement of artists and cultural workers between MERCOSUR countries. Ratification is pending in several MERCOSUR countries<sup>207</sup>.

172. MERCOSUR has also signed several agreements within the Latin America region concerning cultural cooperation. For example, a **Protocol of intentions between**

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<sup>203</sup> [http://www.recam.org/files/documents/dec\\_033\\_2008\\_es\\_sello\\_msur\\_cultural\\_c\\_anexos\[1\].pdf](http://www.recam.org/files/documents/dec_033_2008_es_sello_msur_cultural_c_anexos[1].pdf)

<sup>204</sup> [http://www.mercosur.int/msweb/Normas/normas\\_web/Resoluciones/ES/GMC\\_2006\\_RES-027\\_ES\\_CertifObrasCinemat.pdf](http://www.mercosur.int/msweb/Normas/normas_web/Resoluciones/ES/GMC_2006_RES-027_ES_CertifObrasCinemat.pdf)

<sup>205</sup> [http://www.recam.org/files/documents/mercosur\\_prot\\_montevideo.pdf](http://www.recam.org/files/documents/mercosur_prot_montevideo.pdf)

<http://www.mre.gov.py/dependencias/tratados/mercosur/registro%20mercosur/mercosurprincipal.htm>

<sup>206</sup> <http://www.migraciones.gov.ar/pagina4/espanol/pdf/regionales-%20MERCOSUR/48-00.pdf>

<sup>207</sup> <http://www.mre.gov.py/dependencias/tratados/mercosur/registro%20mercosur/mercosurprincipal.htm>

**MERCOSUR and OEI** (protocol n° 16/08)<sup>208</sup> was signed in 2008 and aims to formalise cooperation in education, science and culture between the two organizations. They both agree to put in place procedures guaranteeing the development of concrete common initiatives in these fields, including programmes and common projects.

#### **4. Andean Community**<sup>209</sup>

173. The *Andean Community* was set up in 1969 by the Cartagena agreement<sup>210</sup> establishing a free trade area and co-operation for border integration between the Member States and in the field of economic and social policies. Several legal instruments have been developed which are of importance for cultural cross-border mobility:

⇒ **Decision 593 on the Creation of the Andean Council of Education Ministers and Principals in Charge of Cultural Policies**<sup>211</sup>, 2004

174. This Decision was adopted in 2004 and seeks to strengthen Andean cultural identity and to promote cultural integration among Andean citizens. It aims at constituting a mechanism for closer coordination between the Andean communities, within the education and cultural sectors. The Decision creates the *Andean Council of Ministers of Education*. Among other objectives, the Council will also encourage the free movement of people.

⇒ **Decision 588, on the protection and recovery of cultural heritage goods between members of the Andean Community**<sup>212</sup>, 2004

175. This Decision updates a previous decision of 1999<sup>213</sup> and aims to protect the cultural heritage of the *Andean Community*. It encourages the implementation of instruments for the identification, registration, conservation and protection of cultural heritage goods. Mobility of protected goods is limited, since they are allowed to travel only in very specific circumstances: when promoting the country's cultural heritage, for restoration or for scientific investigation purposes. All exchanges of these cultural goods must be supervised by the *Andean Committee for fighting against illicit traffic of cultural goods*<sup>214</sup>.

⇒ **Decision 504 for the creation of the Andean Passport**<sup>215</sup>, 2001

176. This Decision was adopted in 2001 to facilitate the creation of the Andean Common Market by 2005. The Andean Passport is to be used by citizens of Member States of the *Andean Community* when moving across borders between Member States of the *Andean Community*.

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<sup>208</sup> <http://www.mre.gov.py/dependencias/tratados/mercosur/registro%20mercosur/Acuerdos/2008/espa%20ol/116.%20Protocolo%20de%20Intenciones%20MERCOSUR-OEI.pdf>

<sup>209</sup> <http://www.comunidadandina.org/endex.htm>

<sup>210</sup> [http://www.comunidadandina.org/INGLES/normativa/andean\\_passport.htm](http://www.comunidadandina.org/INGLES/normativa/andean_passport.htm)

<sup>211</sup> <http://www.comunidadandina.org/ingles/normativa/D593e.htm>

<sup>212</sup> <http://www.comunidadandina.org/normativa/dec/D588.htm>

<sup>213</sup> Decision 460 on the protection and recovery of cultural heritage goods (1999).

<sup>214</sup> Article 8 of the Decision 588 on the protection, recovery of cultural heritage goods between members of the Andean Community.

<sup>215</sup> <http://www.comunidadandina.org/ingles/normativa/D504e.htm>

## 5. Caribbean Community (CARICOM)<sup>216</sup>

177. The *Caribbean Community* (CARICOM) was established in 1973 and was transformed into a single market and economy in 2001 with the *Revised Treaty of Chaguaramas*<sup>217</sup>. This single market enables in particular the free movement of goods and services, capital and some categories of "skilled" labour.
178. Amongst more specific measures which come in support of cross-border cultural mobility it is worthwhile mentioning that CARICOM adopted a specific intra-regional *Double Taxation Agreement* in 2000 to protect self-employed CARICOM nationals from paying taxes twice on the same earnings<sup>218</sup>.
179. CARICOM also adopted an *Agreement on Social Security*, which came into effect on April 1st, 1997<sup>219</sup>. It protects all entitlements to long-term benefits by recognising all contributions paid by cross-border CARICOM workers to the respective Social Security Organizations in CARICOM Member States.
180. Special rules have also been adopted on the "free movement of skills" through the setting up of certificate of recognition of CARICOM skills qualification, in order to facilitate the free movement of artists, musicians, media workers and support staff.

*More detailed information about this specific measure of CARICOM encouraging cross-border mobility for "skilled" workers, including artists, musicians and media workers can be found in Section 3, case study n° 6.*

## 6. Union of South American Nations (UNASUR)

181. The Constitutive Treaty<sup>220</sup> establishing the *Union of South American Nations* (UNASUR) was signed in Brazil in May 2008 and will come into force after it has been ratified by nine Member States. As part of a continuing process of South American integration, the Constitutive Treaty creates one South American Union, integrating MERCOSUR and the *Andean Community*.
182. The treaty emphasises the general objective of UNASUR as "building, in a participative and consensual manner, an integration and union process among its peoples in the cultural, social, economic and political dimensions". The promotion of cultural diversity is also mentioned among UNASUR's objectives<sup>221</sup>.
183. Ultimately, UNASUR might have a positive impact also in the field of cultural cross-border mobility in the whole of Latin America, in particular as regards the free movement of people, through a uniform internal visa regime and the free movement of cultural goods and services.
184. Other regional economic integration organizations like the **Central American Integration System**<sup>222</sup> (SIECA) also aim to establish customs unions and the free movement of goods, services and people. This is potentially also beneficial to improved cross-border mobility in the cultural field.

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<sup>216</sup> [http://www.caricom.org/jsp/community/community\\_index.jsp?menu=community](http://www.caricom.org/jsp/community/community_index.jsp?menu=community)

<sup>217</sup> [http://www.caricom.org/jsp/community/revised\\_treaty-text.pdf](http://www.caricom.org/jsp/community/revised_treaty-text.pdf)

<sup>218</sup> [http://www.caricom.org/jsp/single\\_market/taxation.jsp?menu=csme;](http://www.caricom.org/jsp/single_market/taxation.jsp?menu=csme;)

<http://www.caricomlaw.org/docs/cap056.pdf>

<sup>219</sup> [http://www.caricom.org/jsp/single\\_market/social\\_security.jsp?menu=csme;](http://www.caricom.org/jsp/single_market/social_security.jsp?menu=csme;)

<http://www.caricomlaw.org/docs/agreement-socialsecurity.htm>

<sup>220</sup> <http://www.comunidadandina.org/ingles/csn/treaty.htm>

<sup>221</sup> Article 3 pp of the UNASUR Constitutive Treaty.

<sup>222</sup> <http://www.sieca.org.gt/site/>

## IV. Asia and Pacific region

185. In the Asia-Pacific region, several regional organizations have been set up which have adopted legal instruments directly or indirectly promoting cross-border mobility in the field of culture.

### 1. Association of Southeast Asian Nations (ASEAN)

186. Economic integration has been at the forefront of the *Association of Southeast Asian Nations* (ASEAN) since its setting up in 1967. In 1992 ASEAN countries signed the **ASEAN Free Trade Area Agreement**<sup>223</sup> which also benefits the free movement of cultural goods and services.
187. The **ASEAN vision 2020**<sup>224</sup> declaration adopted in 1997 declares that by 2020 ASEAN shall become an Economic and Socio-Cultural Community and a single market. An important step in this direction was the adoption in 2007 of the **ASEAN Charter**<sup>225</sup> which turns ASEAN into a legal entity and aims to create a "single free-trade area". The Charter also states that ASEAN's objective is to "promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region"<sup>226</sup>.
188. In 1978 ASEAN set up a *Committee on Culture and Information* which aims to "promote effective cooperation in the fields of culture and information"<sup>227</sup>. The same year, ASEAN countries also agreed to establish the *Asian Cultural Fund*<sup>228</sup>.
189. Although many ASEAN agreements have been concluded outside the field of culture they contribute strongly to cross-border cultural mobility between ASEAN countries. This includes agreements and initiatives taken in the field of customs<sup>229</sup>, trade in goods and services<sup>230</sup>, intellectual property protection<sup>231</sup> and the protection and promotion of the rights of migrant workers<sup>232</sup>.
190. The following list of agreements fostering cultural cross-border mobility is therefore not exhaustive:
- ⇒ **ASEAN Agreement for the Promotion of Cooperation in Mass Media and Culture Activities**<sup>233</sup>, 1969
191. Under this agreement of 1969 ASEAN Member States agree to encourage the exchange of artists in the field of visual, performing arts and film, and to organize cultural events, film festivals, seminars in mass media and joint film productions<sup>234</sup>.

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<sup>223</sup> <http://www.worldtradelaw.net/fta/agreements/afta.pdf>

<sup>224</sup> <http://www.aseansec.org/1814.htm>

<sup>225</sup> <http://www.aseansec.org/publications/ASEAN-Charter.pdf>

<sup>226</sup> Article 1, point 14 of the 2007 ASEAN Charter.

<sup>227</sup> <http://www.asean-infoculture.org/>

<sup>228</sup> ASEAN Agreement establishing the ASEAN Cultural Fund: <http://www.aseansec.org/8218.htm>;

<http://www.asean-infoculture.org/>

<sup>229</sup> ASEAN agreements in the field of customs: <http://www.aseansec.org/19046.htm>

<sup>230</sup> ASEAN Free Trade Area: <http://www.aseansec.org/4920.htm>; ASEAN Framework agreement on trade in services: <http://www.aseansec.org/6628.htm>

<sup>231</sup> ASEAN agreements in the field of intellectual property rights: <http://www.aseansec.org/6414.htm>

<sup>232</sup> <http://www.ilo.org/public/english/region/asro/bangkok/events/sis/download/paper20.pdf>

<sup>233</sup> <http://www.aseansec.org/8217.htm>

<sup>234</sup> Articles 1-3 of the Agreement for the Promotion of Cooperation in Mass Media and Culture Activities.

⇒ **ASEAN Programme for the Enhancement of ASEAN Cooperation in the Television, Radio, Film and Video Areas<sup>235</sup>, 1989**

192. This programme was adopted in 1989 and sets out the cooperation between ASEAN countries in the field of television, radio and film and video. Measures include in particular the exchange of television programmes between ASEAN countries<sup>236</sup>, the production of specific radio programmes on ASEAN countries<sup>237</sup>, the facilitation of work of TV production crews from ASEAN member countries on location in any ASEAN member country<sup>238</sup> and the exchange of TV personnel.
193. As regards the film and video sector, ASEAN Member States agree to encourage the promotion and dissemination of ASEAN films, the exchange of training programmes in the field of film and video, the facilitated telecasting of ASEAN films over the ASEAN national TV networks, the constant exchange of special film production services, equipment and facilities and the periodic exchange of film catalogues and film clips among the ASEAN countries<sup>239</sup>.

⇒ **ASEAN Framework Agreement on Visa Exemption, 2006<sup>240</sup>**

194. This agreement exempts citizens of ASEAN member countries from visa requirements for a social visit of up to 14 days from the date of entry. For visits exceeding 14 days, ASEAN Member States decide individually if they will provide visa-free entry for citizens of other ASEAN Member States.
195. ASEAN states also signed several international agreements on cultural cooperation with other countries in the Asia Pacific region and beyond.

*More detailed information about the international agreements concluded by ASEAN can be found in Section 3, case study n° 5.*

## **2. Other sub-regional economic cooperation organizations in the Asia-Pacific region**

⇒ **South Asian Association for Regional Cooperation<sup>241</sup> (SAARC)**

196. The *South Asian Association for Regional Cooperation*<sup>242</sup> (SAARC) was established in 1985 between eight countries in Southern Asia. SAARC aims to accelerate the process of economic and social development in its Member States. An **Agreement establishing the South Asian Free Trade Area** was signed in 2004<sup>243</sup> and came into force in 2006. This agreement abolishes customs duties on the trade of practically all products in the region by end 2016. Cross-border mobility of cultural goods and services between SAARC countries should therefore also be made easier.

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<sup>235</sup> <http://www.aseansec.org/8222.htm>

<sup>236</sup> Section II. of the Programme for the Enhancement of ASEAN Cooperation in the Television, Radio, Film and Video Areas.

<sup>237</sup> Section III. of the Programme for the Enhancement of ASEAN Cooperation in the Television, Radio, Film and Video Areas.

<sup>238</sup> Section V. 1 of the Programme for the Enhancement of ASEAN Cooperation in the Television, Radio, Film and Video Areas.

<sup>239</sup> Section VI of the Programme for the Enhancement of ASEAN Cooperation in the Television, Radio, Film and Video Areas.

<sup>240</sup> <http://www.aseansec.org/18570.htm>

<sup>241</sup> <http://www.saarc-sec.org/>

<sup>242</sup> <http://www.saarc-sec.org/>

<sup>243</sup> <http://www.saarc-sec.org/userfiles/saftaagreement.pdf>

197. SAARC has also adopted a number of recommendations on cultural tourism in the Member States<sup>244</sup> and initiated several cultural cooperation projects in the region including the **Audio-Visual Exchange (SAVE) Programme**, common festivals, exhibitions, workshops and conferences<sup>245</sup>.
198. The **SAARC Visa exemption scheme**<sup>246</sup> facilitates cross-border mobility of persons between SAARC countries. However, professionals from the cultural sector are not in the current named categories for visa exemption.

⇒ **Asia-Pacific Economic Cooperation (APEC)**

199. *Asia-Pacific Economic Cooperation (APEC)* brings together 21 countries from the Asia-Pacific region. It is "the premier forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific region" established to "further enhance economic growth and prosperity for the region and to strengthen the Asia-Pacific community."<sup>247</sup>
200. Although primarily focusing on trade and investment, APEC also established the **Cultural Focal Point Network**<sup>248</sup> (CFPN) in 2005. The broad goal of this network is to provide linkages between APEC economies on cultural exchange for the benefit of enhancing mutual understanding in the APEC region. Main actions include collecting and sharing good practices in cultural exchanges, exchanging information on culture between members' experts, organizing common APEC Cultural Cooperation Events, and exchange programmes among artists and young people, and organising events and festivals.

⇒ **Eurasian Economic Community**

201. The *Eurasian Economic Community*<sup>249</sup> (EurAsEC) was established in 2000<sup>250</sup> to promote the creation of a Common Economic Space by 2010 with a free trade regime and a common customs area. An intergovernmental agreement provided that citizens of the EurAsEC Member States, regardless of their place of permanent residence, have the right to enter, exit, transit, move and stay on the territory of EurAsEC states without visas. This should also have beneficial effects on the cross-border movement of artists between EurAsEC countries.

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<sup>244</sup> <http://www.saarc-sec.org/?t=2.10>

<sup>245</sup> <http://www.saarc-sic.org/>

<sup>246</sup> <http://www.saarc-sec.org/?t=2.11.1>

<sup>247</sup> [http://www.apec.org/apec/about\\_apec.html](http://www.apec.org/apec/about_apec.html)

<sup>248</sup> [www.apec.org/apec/apec\\_groups/som\\_special\\_task\\_groups/cultural\\_focal\\_point.MedialibDownload.v1.html?url=/etc/medialib/apec\\_media\\_library/downloads/som/mtg/2005/pdf.Par.0036.File.v1.1](http://www.apec.org/apec/apec_groups/som_special_task_groups/cultural_focal_point.MedialibDownload.v1.html?url=/etc/medialib/apec_media_library/downloads/som/mtg/2005/pdf.Par.0036.File.v1.1)

<sup>249</sup> <http://www.mpa.eurasec.ru/>

<sup>250</sup> <http://www.worldtradelaw.net/fta/agreements/eaecfta.pdf>



## V. Europe and North America region

### 1. North America

202. In 1993 the governments of the United States, Canada, and Mexico signed the **North American Free Trade Agreement**<sup>251</sup> (NAFTA). As part of the agreement, the free movement of goods and services between these three countries was to be facilitated. However, the agreement includes an important exemption clause for cultural industries which are specifically defined in the NAFTA agreement and refer to the USA-Canada trade agreement<sup>252</sup>.
203. The agreement also creates a special non-immigration status for “business persons” who are citizens of the United States, Canada and Mexico. It allows American, Canadian and Mexican citizens the opportunity to work in each other's countries in certain professional occupations<sup>253</sup>. However, cultural workers are not listed amongst those professionals to whom this particular status is granted.
204. It is also important to mention that trade agreements are negotiated within the *Free Trade Area of the Americas* (FTAA)<sup>254</sup> which concerns North American countries and Latin American countries.

### 2. Council of Europe<sup>255</sup>

205. Founded in 1949, the *Council of Europe* currently has 47 member countries. It seeks to develop throughout Europe common and democratic principles based on the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and other reference texts on the protection of individuals. The current priorities of the *Council of Europe* in the field of culture include intercultural dialogue and the value of cultural heritage for society<sup>256</sup>.
206. Several Conventions of importance for cross-border cultural mobility have been adopted within the *Council of Europe*. Member States decide individually if they wish to ratify a Convention.

#### ⇒ **European Cultural Convention**<sup>257</sup>, 1955

207. The *European Cultural Convention*, signed in 1954, came into force in 1955 and currently has 50 Contracting Parties
208. The aims of this Convention include the safeguard of Europe's common cultural heritage<sup>258</sup>, the promotion of mobility of people and cultural objects, including students<sup>259</sup>. Signatory countries also agree to encourage a wide range of cultural cooperation across the continent<sup>260</sup> and encourage respect for cultural diversity while developing shared values.

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<sup>251</sup> <http://www.nafta-sec-alena.org>

<sup>252</sup> Articles 2106 and 2107 and Annex 2106 of the NAFTA Agreement

<sup>253</sup> Chapter 16 of the NAFTA agreement

<sup>254</sup> <http://www.ftaa-alca.org>

<sup>255</sup> <http://www.coe.int>

<sup>256</sup> <http://www.coe.int/T/DG4/cultureHeritage/>

<sup>257</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/018.htm>

<sup>258</sup> Articles 1 and 5 of the European Cultural Convention.

<sup>259</sup> Articles 2 and 4 of the European Cultural Convention.

<sup>260</sup> Articles 3 of the European Cultural Convention.

209. In 2004 the Contracting Parties celebrated the 50<sup>th</sup> anniversary of the Convention<sup>261</sup> and analysed the results achieved so far. As regards mobility, Contracting Parties agreed that until now action for mobility was mainly targeted of students and other young people, the encouragement of bilateral and multilateral programmes and general measures for freedom of movement. The *Declaration of Wroclaw*<sup>262</sup> adopted during the celebration calls upon the States Parties to develop further mobility for artists, cultural professionals and works of art.

⇒ ***European Convention on Transfrontier Television*<sup>263</sup>, 1989**

210. This Convention was opened for signing in 1989 and has been ratified by 34 Council of Europe Member States. It has been in force since 1993. A *Protocol amending the European Convention on Transfrontier Television* was drafted in 1998 and has been in force since 2002.
211. The aim of this Convention is to facilitate, among the Member States Parties to this Convention, the transfrontier transmission and the retransmission of television programme services. This includes any programme service transmitted or retransmitted by entities or by technical means within the jurisdiction of a Member State, whether by cable, terrestrial transmitter or satellite, and which can be received, directly or indirectly, in one or more other Member States.
212. The Convention contains important provisions on the freedom of reception and retransmission of TV programmes: the Parties must ensure freedom of expression and information (in accordance with the *European Convention for the Protection of Human Rights and Fundamental Freedoms*), and freedom of reception, and must not restrict the retransmission on their territories of programme services which comply with the terms of this Convention. The Parties also promise to respect media pluralism.
213. Finally, of importance to cross-border mobility of cultural goods and services is the fact that Member States Parties to this Convention agree to ensure that broadcasters established on their territory reserve a major part of their transmission time for European works.

⇒ ***European Convention on Cinematographic Co-Production*<sup>264</sup>, 1992**

214. This Convention of 1992 came into force in 1994 and has been ratified by 42 Member States. It governs the relations between the Parties in the field of multilateral film co-productions made in the Member States.
215. According to this Convention, films defined as "European cinema films" are entitled to the same benefits and advantages (including financial advantages) as national cinema films produced by individual member countries, provided certain conditions are respected. As a result film producers of European co-productions have access to subsidies in most countries of Europe, when making a film under the conditions listed in this Convention.
216. These conditions also include measures supporting cross-border cultural mobility of goods, services and cultural workers. For example, the technical and craft team involved in filming "European films" must be made up of nationals of the States which

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<sup>261</sup> [http://www.coe.int/t/dq4/CulturalConvention/Source/Bilan50\\_EN.pdf](http://www.coe.int/t/dq4/CulturalConvention/Source/Bilan50_EN.pdf)

<sup>262</sup> [http://www.coe.int/t/dq4/culturalconvention/Declaration\\_en.asp](http://www.coe.int/t/dq4/culturalconvention/Declaration_en.asp)

<sup>263</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/132.htm>

<sup>264</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/147.htm>

are partners in the co-production, and post-production must normally be carried out in those States<sup>265</sup>,

217. According to this Convention, each Party must facilitate entry and residence, as well as the granting of work permits in its territory, of technical and artistic personnel from other Parties participating in the co-production of a "European film". Parties must also permit the temporary import and re-export of equipment necessary for the co-production and distribution of cinematographic works<sup>266</sup>.
218. This Convention has encouraged the conclusion of many bi- and multilateral co-production agreements between European countries and between European countries and third countries. The *European Audiovisual Observatory* has published information about all bilateral European co-production agreements existing between the various countries in Europe<sup>267</sup>. The Observatory has also published several studies providing exhaustive information on the circulation in Europe of European co-productions, national films from European countries and films and audiovisual works from third countries<sup>268</sup>.

⇒ ***Convention for the Protection of the Archaeological Heritage***<sup>269</sup>, 1992

219. This Convention of 1992 came into force in 1995 and has been ratified by 38 Member States. It contains important provisions related to the prevention of illegal circulation of artefacts. It provides specific co-operation mechanism between Member States Parties to this Convention, informing each other when a suspect object appears on the market.
220. The Convention points out that the best way to guard against trading in items from illegal excavations is to educate the public, and show that removing an item from its context destroys the scientific value of the object itself as well as damaging the site from which it came.
221. Other important Conventions relevant for cross-border cultural mobility have been developed within the *Council of Europe*. Amongst them are the 1985 *Convention for the Protection of the Architectural Heritage*<sup>270</sup>, the 2001 *European Convention for the Protection of the Audiovisual Heritage*<sup>271</sup> and the 2005 *Convention on the Value of Cultural Heritage for Society*<sup>272</sup>.

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<sup>265</sup> Article 8, European Convention on Cinematographic Co-Production.

<sup>266</sup> Article 11, European Convention on Cinematographic Co-Production.

<sup>267</sup> See the IRIS MERLIN database of the European Audiovisual Observatory: <http://merlin.obs.coe.int>

<sup>268</sup> <http://www.obs.coe.int/medium/film.html#menu14>

<sup>269</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/143.htm>

<sup>270</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/121.htm>

<sup>271</sup> <http://conventions.coe.int/Treaty/EN/Treaties/Html/183.htm>

<sup>272</sup> <http://conventions.coe.int/Treaty/EN/Treaties/Html/199.htm>

### 3. European Union

222. The 1957 **Treaty of Rome**<sup>273</sup> established the **European Community (EC)** between 6 European countries. It set up between its Member States a common customs union (effectively established since 1968) and a common market with freedom of movement of goods, people, services and capital.
223. In 1992 the **Treaty of Maastricht (EU Treaty)**<sup>274</sup> was signed creating the **European Union (EU)**<sup>275</sup> which encompasses the *European Community* and set up between 12 EU countries a common framework for cooperation in a set of policy areas including foreign security, justice and police. In addition the common market was further developed into a "single European market" with more integrated economic and monetary policies. In 2002 the EU's common currency (the *euro*) was adopted by 12 of the then 15 Member States. In 2009 the EU has 27 Member States and the euro is the single currency of 16 of them.
224. In parallel in 1994 the **European Economic Area**<sup>276</sup> (EEA) was created between the EU and three countries of the *European Free Trade Area*<sup>277</sup> (EFTA) (Norway, Iceland and Liechtenstein, but not Switzerland). The objective of the EEA was to allow these EFTA States to participate in the EU internal market without joining the EU. The EU has concluded a series of bilateral agreements with Switzerland.
225. The EU internal market has undeniably positive effects on the free movement of cultural goods and services and artists across EU countries. Several legal instruments have been developed to make the four freedoms operational for individuals and undertakings. Many of these instruments favour directly also cross-border cultural mobility:

#### 3 a. EU legal instruments to ensure the intra-EU mobility of EU nationals

226. The freedom of movement of EU nationals is enshrined in the EC treaty<sup>278</sup> and was initially made conditional on the fact that an EU national take up an employment or deliver a service in another EU country. Although since the Maastricht Treaty in 1992 all EU citizens can circulate and reside freely in any EU country<sup>279</sup> without any professional aim, several regulations and directives specify the right of free movement of EU nationals:
- ⇒ **Regulation 1612/68 on the freedom of movement for workers within the Community**<sup>280</sup> and **Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States**<sup>281</sup>
227. These two instruments describe precisely the rights of mobile EU citizens when taking up an employment in another EU country. This includes the right to look for a job in another country, the right to work there without needing a work permit, the right to

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<sup>273</sup> <http://eur-lex.europa.eu/en/treaties/index.htm>

<sup>274</sup> <http://eur-lex.europa.eu/en/treaties/index.htm>; EU treaty, consolidated version of 2006: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:pdf>

<sup>275</sup> <http://europa.eu>

<sup>276</sup> <http://www.efta.int/content/legal-texts/eea/>

<sup>277</sup> <http://www.efta.int/>

<sup>278</sup> Articles 39, 43 and 49 of the Treaty establishing the European Community.

<sup>279</sup> Article 17 of the Treaty establishing the European Community, as modified by the Treaty of Maastricht.

<sup>280</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1968R1612:20060430:EN:PDF>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20040430:EN:PDF>

<sup>281</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20040430:EN:PDF>

live there for that purpose, the right to stay there even after the employment has finished, the right of equal treatment with nationals in access to employment, working conditions and all other social and tax advantages that may help the EU citizen to be integrated in the host country.

228. All these rights concern EU migrant workers of all professional categories, including workers in the cultural field who may take up short-term or long-term employment in another EU country. Family members of an employed migrant EU worker - whatever the nationality - are also entitled to reside and take up work in the host EU Member State.

229. There has been a series of transitional arrangements applicable to citizens of new EU Member States, with different arrangements and timetables for integration to full freedom of movement rights.

⇒ ***EU regulation 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community***<sup>282</sup>, 1971

230. This Regulation allows EU citizens, when they move within the EU, regardless of their status (employees, self-employed workers, civil servants, students and pensioners or non-active persons) to keep their social benefit entitlements and enjoy equal treatment in social protection the same as any national of the host EU Member State. This applies to all the traditional branches of social security: sickness, maternity, accidents at work, occupational diseases, invalidity benefits, unemployment benefits, family benefits, retirement and pre-retirement benefits, and death grants.

231. Since 2003, third-country nationals and their family members and survivors are also covered by these rules, provided they are legally resident in the territory of an EU Member State and are in a cross-border situation.

232. This Regulation also established the ***European Health Insurance Card***<sup>283</sup> which helps people from the EEA to access health care services during a short visit to other EEA countries, including holidays, business trips, studies. Charges for public sector health care are reimbursed either immediately, or after the citizens have returned to their own country. The card does not cover private sector health-care providers.

233. Other important legal instruments have been developed, which encourage cross-border mobility of persons inside the EU:

234. Amongst them is the 2005 ***Directive 2005/36/EC***<sup>284</sup> ***on the recognition of professional qualifications*** which helps EU nationals (and legally residing non-EU nationals) to practise a regulated profession in an EU Member State other than that in which they obtained their professional qualifications.

235. Under the 1998 ***Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the EC***<sup>285</sup> Member States must ensure the preservation of vested pension rights for

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<sup>282</sup> Council Regulation (EC) No 408/7 of 4 June 97 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community : <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1971/R/01971R1408-20070102-en.pdf>;

This regulation shall be replaced by Regulation (EC) No 883/2004 of the European Parliament and the Council of 29 April 2004. See also Regulation 574/72 implementing Regulation 1408/71: <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1972/R/01972R0574-20070412-en.pdf>

<sup>283</sup> <http://ec.europa.eu/social/main.jsp?catId=509&langId=en>

<sup>284</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:0142:EN:PDF>

<sup>285</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:209:0046:0049:EN:PDF>

persons who have left a supplementary pension scheme as a consequence of going to work in another Member State.

236. **Directive 96/71/EC dated 16 December 1996, of the European Parliament and the Council on the posting of workers in the framework of the provision of services**<sup>286</sup> applies to persons employed in one EU Member State but sent by their employer to another EU Member State to carry out their work on a temporary basis. The Directive guarantees that the rights and working conditions of a posted worker are protected throughout the European Union.

### **3 b. Legal instruments to ensure access to the EU of non-EU nationals and intra-EU mobility**<sup>287</sup>

237. Several legal instruments regulate the entry and free movement of non-EU nationals within the EU. These rules are also applicable to non-EU artists and service providers who wish to enter the EU and work there either on a short-term or a long-term basis.

#### ⇒ **Schengen cooperation: legal rules for non-EU nationals to enter the EU**

238. The *Schengen Agreement* of 1985 and the *Schengen Convention* in 1990 abolished border checks at the internal borders between a first group of five EU countries. The Schengen provisions do not regulate the right to long-term residence and work, either for EU citizens or for third-country nationals. They allow visas for non-EU nationals to travel freely within the Schengen area for up to three months (within a six-month period) without being submitted to border checks between Schengen Member States.

239. Since December 2008, 22 EU and the 4 EFTA Member States are in the Schengen area without internal border controls. EU Member States that are outside the Schengen area (Ireland, the United Kingdom, Bulgaria, Romania and Cyprus) maintain border checks and may require non-EU nationals to have a separate entry or transit visa.

#### ⇒ **Legal instruments on non-EU national rights to reside and work in the EU**

240. Non-EU nationals have the right to work in an EU country or be treated equally with EU nationals as regards conditions of work, depending on their nationality and their status.

241. This is determined by **different international agreements concluded between the European Community and Switzerland, Turkey, Mediterranean countries, countries of the Western Balkans and the African, Caribbean and Pacific Group of States**. Under these agreements, nationals of these countries working legally in an EU country are entitled to the same working conditions as the nationals of that EU country.

242. However, **common EU rules** cover the following areas for workers from all non-EU countries: for non-EU nationals who are long-term residents in the EU<sup>288</sup>, the right to family reunification<sup>289</sup>, admission for non-EU researchers<sup>290</sup>, admission for students, exchange pupils, unpaid training or voluntary service<sup>291</sup>.

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<sup>286</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:EN:HTML>

<sup>287</sup> <http://ec.europa.eu/social/main.jsp?catId=470&langId=en>

<sup>288</sup> [http://ec.europa.eu/justice\\_home/fsj/immigration/residents/fsj\\_immigration\\_residents\\_en.htm](http://ec.europa.eu/justice_home/fsj/immigration/residents/fsj_immigration_residents_en.htm)

<sup>289</sup> [http://ec.europa.eu/justice\\_home/fsj/immigration/family/fsj\\_immigration\\_family\\_en.htm](http://ec.europa.eu/justice_home/fsj/immigration/family/fsj_immigration_family_en.htm)

<sup>290</sup> [http://ec.europa.eu/justice\\_home/fsj/immigration/training/fsj\\_immigration\\_training\\_en.htm](http://ec.europa.eu/justice_home/fsj/immigration/training/fsj_immigration_training_en.htm)

<sup>291</sup> [http://ec.europa.eu/justice\\_home/fsj/immigration/training/fsj\\_immigration\\_training\\_en.htm](http://ec.europa.eu/justice_home/fsj/immigration/training/fsj_immigration_training_en.htm)

243. Currently the EU is also adopting new rules on entry procedures and rights for highly-skilled workers from outside the EU (EU blue card scheme)<sup>292</sup> and entry procedures and rights for all non-EU migrant workers<sup>293</sup>.
244. These new rules may also have an impact on the entry conditions for non-EU nationals working in the field of culture who wish to work as employees in the cultural sector in EU countries.

### **3 c. Specific legal instruments supporting intra-EU cross-border cultural mobility of goods, services and people**

245. The EU has adopted a set of legal instruments which are specifically related to the free movement of cultural goods, services and people:

⇒ **Directive 93/7/EEC<sup>294</sup> on the return of cultural objects unlawfully removed from the territory of a Member State, 1993** (amended by Directive 2001/38/EC<sup>295</sup>)

246. This Directive secures the return of national treasures of artistic, historic or archaeological value that have been unlawfully removed from the territory of an EU Member State and are on the territory of another EU Member State.

247. A European Commission report of 2005 covers the application of this Directive during the period 1999-2003. It reveals that the Directive has been applied in only a handful of cases.

⇒ **Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods<sup>296</sup>**

248. This Regulation (amended several times<sup>297</sup>) lays down the principle of prior export licensing of certain categories of cultural goods defined in the Annex to the Regulation.

249. According to this Regulation an export licence must be presented for the export of cultural goods outside the EU's customs union. The licence is issued by the competent authorities of the Member States at the request of the exporter and is valid throughout the EU. The licence must be presented together with the export declaration during the completion of customs formalities at the competent customs office.

250. EU Member States may refuse to accept an export licence when the cultural goods in question are covered by legislation protecting national treasures of artistic, historical or archaeological value in the EU Member State concerned.

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<sup>292</sup> Proposal on rights of high-skilled non-EU national workers (EU Blue Card) (COM(2007)637) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0637:FIN:EN:PDF>

<sup>293</sup> Proposal on a simplified procedure and a common set of rights for all non-EU migrant workers (COM(2007)638): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0638:FIN:EN:PDF>

<sup>294</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0007:EN:HTML>

<sup>295</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0038:EN:HTML>

<sup>296</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992R3911:EN:HTML>; see also Commission Regulation (EEC) No 752/93 of 30 March 1993 laying down implementing provisions for Council Regulation (EEC) No 3911/92 on the export of cultural goods: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0656:EN:HTML>

<sup>297</sup> See in particular: Council Regulation (EC) No 974/2001 of 14 May 2001 amending Regulation (EEC) No 3911/92 on the export of cultural goods: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R0974:EN:HTML>

*More detailed information about this specific instrument on the export of cultural goods from EU countries to third countries can be found in Section 3, case study n° 7.*

⇒ **EU Directive 89/522/EEC on "television without frontiers", 1989**<sup>298</sup>

251. The "Television Without Frontiers" Directive (TVWF Directive) was adopted in 1989 and rests on two basic principles: the free movement of European television programmes within the EU internal market and the requirement for TV channels to reserve, whenever possible, more than half of their transmission time for European works ("broadcasting quotas"). The Directive also safeguards certain important public interest objectives, such as cultural diversity and the protection of minors.
252. The Directive was updated in 1997 and will be replaced soon by the new **Audiovisual Media Services Directive**<sup>299</sup>. This new Directive adapts the old Directive to the new audiovisual environment and services like on-demand films. The underlying goal of this new Directive remains the same: providing a single market for audiovisual content with European standards for "traditional" and new services. It must be applied by EU governments by 19 December 2009 at the latest.

⇒ **Legal instruments related to the protection of intellectual property rights**

253. The EU has adopted a set of legal instruments in the field of intellectual property rights which are all relevant for smoother EU internal cross-border mobility of cultural goods and services:
- *Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society*<sup>300</sup>,
  - *Directive 2006/116/EC on the term of protection of copyright*<sup>301</sup>,
  - *Directive 2004/48/EC on the enforcement of intellectual property rights*<sup>302</sup>,
  - *Directive 93/83/EEC on copyrights and related rights applicable to satellite broadcasting and cable retransmission*<sup>303</sup>,
  - *Commission Recommendation 2005/737/EC on collective cross-border management of copyright and related rights for legitimate online music services*<sup>304</sup>.

<sup>298</sup> <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1989/L/01989L0552-19970730-en.pdf>

<sup>299</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007L0065:EN:NOT>

<sup>300</sup> This directive aims to adapt legislation on copyright and related rights to technological developments and particularly to the information society. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

<sup>301</sup> This directive aims to harmonise the term of protection for copyright and related rights in the EU. It sets the term of protection for copyright at 70 years and for related rights at 50 years. [http://eur-lex.europa.eu/smartapi/cgi/sqa\\_doc?smartapi!celexplus!prod!DocNumber&lq=en&type\\_doc=Directive&an\\_doc=2006&nu\\_doc=116](http://eur-lex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexplus!prod!DocNumber&lq=en&type_doc=Directive&an_doc=2006&nu_doc=116)

<sup>302</sup> This directive requires all Member States to apply effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting and piracy and so create a level playing field for right holders in the EU. It means that all Member States will have a similar set of measures, procedures and remedies available for right holders to defend their intellectual property rights if they are infringed. [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R(01):EN:NOT)

<sup>303</sup> This directive aims to promote the free cross-border satellite broadcasting of programmes and their cable retransmission from other Member States, and in particular to remove the obstacles arising from disparities between national provisions on copyright and from the legal uncertainty that exists in this field. [http://eur-lex.europa.eu/smartapi/cgi/sqa\\_doc?smartapi!celexplus!prod!DocNumber&lq=en&type\\_doc=Directive&an\\_doc=1993&nu\\_doc=83](http://eur-lex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexplus!prod!DocNumber&lq=en&type_doc=Directive&an_doc=1993&nu_doc=83)

<sup>304</sup> This recommendation proposes measures to improve the licensing of online music across the EU. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:276:0054:0057:EN:PDF>



⇒ **Other instruments related to cross-border mobility**

254. Since the 1990s, the EU (including the European Parliament) has adopted a wide range of Recommendations, Resolutions, Communications and Action Plans to foster cross-border mobility in the field of culture inside and outside the EU<sup>305</sup>.
255. In 2007 the European Commission proposed a **European Agenda for Culture**<sup>306</sup> which has been endorsed by the Council of the EU<sup>307</sup>. Promotion of cultural diversity and intercultural dialogue are explicitly mentioned as a policy objective for the coming years.
256. The Agenda also draws **a clear link between cultural diversity and intercultural dialogue and cross-border mobility** and states that in order to enhance cultural diversity and intercultural dialogue the EU and their Member States must:
- promote the mobility of artists and professionals in the cultural field and the circulation of all artistic expressions beyond national borders,
  - mobilise public and private resources in favour of the mobility of artists and workers in the cultural sector within the EU,
  - promote the mobility of works of art and other artistic expressions,
  - improve European coordination for aspects affecting mobility of cultural workers within the EU in order to take into account the needs resulting from short term and frequent mobility between Member States.
257. Last but not least, at the end of 2007 the European Parliament voted for an additional budget line on the 2008 budget of the EU dedicated to supporting the environment for the mobility of artists through new pilot projects<sup>308</sup>.

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<sup>305</sup> See in particular:

- Resolution of the Ministers for Culture meeting within the Council of 7 June 1991 on the development of the theatre in Europe: [http://eur-lex.europa.eu/smartapi/cgi/sqa\\_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=41991X0719\(02\)&model=guichett&lq=en](http://eur-lex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=41991X0719(02)&model=guichett&lq=en)
- Resolution of the Ministers for Culture meeting within the Council of 7 June 1991 on the temporary access of artists of European Community origin to the territory of the United States of America: [http://eur-lex.europa.eu/smartapi/cgi/sqa\\_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=41991X0719\(01\)&model=guichett&lq=en](http://eur-lex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=41991X0719(01)&model=guichett&lq=en)
- Council Resolution of 17 December 1999 on the promotion of the free movement of persons working in the cultural sector: [http://eur-lex.europa.eu/smartapi/cgi/sqa\\_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=32000Y0112\(01\)&model=guichett&lq=en](http://eur-lex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=32000Y0112(01)&model=guichett&lq=en)
- Council Resolution of 25 June 2002 on a new work plan on European cooperation in the field of culture: [http://eur-lex.europa.eu/smartapi/cgi/sqa\\_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=32002G0706\(03\)&model=guichett&lq=en](http://eur-lex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=32002G0706(03)&model=guichett&lq=en)
- European Parliament Resolution of 7 June 2007 on the social status of artists: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0236+0+DOC+XML+V0//EN>
- European Parliament Resolution on the situation and role of artists in the European Union of 9 March 1999: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1999:175:0042:0048:FR:PDF>

<sup>306</sup> [http://eur-lex.europa.eu/smartapi/cgi/sqa\\_doc?smartapi!celexapi!prod!DocNumber&lq=en&type\\_doc=COMfinal&an\\_doc=2007&nu\\_doc=0242&model=guicheti](http://eur-lex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexapi!prod!DocNumber&lq=en&type_doc=COMfinal&an_doc=2007&nu_doc=0242&model=guicheti)

<sup>307</sup> [http://ec.europa.eu/culture/our-policy-development/doc399\\_en.htm](http://ec.europa.eu/culture/our-policy-development/doc399_en.htm)

<sup>308</sup> [http://ec.europa.eu/culture/our-programmes-and-actions/doc417\\_en.htm](http://ec.europa.eu/culture/our-programmes-and-actions/doc417_en.htm)

### Section 3. Case studies of multilateral legal instruments fostering cross-border cultural mobility

258. Multilateral agreements play a significant role in the facilitation of mobility of artists, art works, cultural goods and services. Such legal instruments take various forms at regional, sub-regional and inter-regional level.
259. In general, multilateral agreements that support cultural mobility often derive from the establishment of economic communities with a basic principle of free movement of people, goods and services between member states (e.g. regional economic communities in Africa, European Union, ASEAN, MERCOSUR).
260. Inter-regional agreements have evolved from shared histories or linguistic communities (e.g. Commonwealth, Francophonie, Iberoamerica).
261. At sub-regional level, multilateral agreements can be found with specific mechanisms to support cultural mobility (e.g. Nordic cultural cooperation<sup>309</sup> and Visegrad<sup>310</sup> cooperation).
262. The following case studies provide more in-depth analysis of a small sample of multilateral agreements. Particularly interesting examples of regional, sub-regional and inter-regional multilateral agreements have been selected, taking into account coverage of all UNESCO regions. Due to the brief nature of this study, the list is intended as indicative only of the type and scope of multilateral agreements that support the mobility of artists, artworks, cultural goods and services around the world.

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<sup>309</sup> <http://www.norden.org/en/nordic-council-of-ministers/council-of-ministers/nordic-council-of-ministers-for-culture-mr-k/the-nordic-council-of-ministers-for-culture-mr-k>

<sup>310</sup> <http://www.visegradgroup.eu/>

**Multilateral case study n° 1: Legal instruments established under MERCOSUR<sup>311</sup> to facilitate the free movement of audiovisual works and other cultural goods**

263. In 1991 Argentina, Brazil, Paraguay and Uruguay signed the *Treaty of Asunción* establishing a 'Southern Common Market' – MERCOSUR. The aim was to create an integrated market based on the free movement of people, goods and services. Venezuela applied to join MERCOSUR in 2005. Bolivia, Chile, Colombia, Ecuador and Peru have Associate Member status. MERCOSUR Ministers of Culture first met in 1996 and deal with protocols concerning cultural integration<sup>312</sup>. Several important Resolutions have been agreed with direct impact on cultural mobility within the MERCOSUR region, including the following examples:

⇒ **Resolution (N° 122/96) on the "MERCOSUR cultural seal"**<sup>313</sup>

264. This mechanism agreed in 1996 sets out special procedures for customs treatment to facilitate the movement of goods which are part of approved cultural projects<sup>314</sup>. The circulation permit (the MERCOSUR cultural seal) is a standard form. It applies to the temporary export and import of approved cultural goods, for example for a touring exhibition. Under the MERCOSUR cultural seal regime, customs inspections take place where the cultural goods are physically located. The cultural goods are then packed and marked with the MERCOSUR cultural seal, which protects them until they reach their destination, where they are inspected by customs and cultural officials of the importing country. It avoids the need for inspection at border customs posts – places where the temperature or humidity might cause damage – and saves time by direct transportation from origin to destination. Competent bodies are authorised to approve the cultural goods for export.

265. Approval of customs authorities in the Member States was required for full implementation of the MERCOSUR cultural seal. However, in June 2008 customs authorities in Brazil and Uruguay still had to approve it<sup>315</sup>. In July 2008 the Presidents of the States Parties of MERCOSUR issued a joint communication requesting the rapid implementation of the MERCOSUR cultural seal. In December 2008, the logo for the seal was approved (DEC. N° 33/08), concluding the technical specifications necessary for implementation. The mechanism is due to come into force in the States Parties by July 2009 at the latest.

266. Despite the fact that it was launched in 1996 the cultural seal has only been used a few times, mainly due to the lack of approval by customs authorities of MERCOSUR States Parties but also because it requires top level Ministry authorisation. The Argentinean national cinema institute INCAA used it to send work to a 2004 festival in Brazil but found the process complicated, notably because it required authorisation from the Secretary of State for Culture.

<sup>311</sup> <http://www.mercosur.int>

<sup>312</sup> <http://www.cultura.gov.br/mercosur/?p=395>

<sup>313</sup> [http://www.recam.org/files/documents/dec\\_033\\_2008\\_es\\_sello\\_msur\\_cultural\\_c\\_anexos\[1\].pdf](http://www.recam.org/files/documents/dec_033_2008_es_sello_msur_cultural_c_anexos[1].pdf)

<sup>314</sup> *Tratamiento Aduanero para la Circulación en los Países del MERCOSUR de Bienes Integrantes de Proyectos Culturales Aprobados por los Órganos Competentes.*

<sup>315</sup> <http://recursosculturales.com.ar/blog/?p=320>

⇒ **Resolution (Nº 49/03) to set up RECAM**<sup>316</sup>

267. In 2003 it was agreed to set up RECAM (*Specialist Meeting of Cinema and Audiovisual Authorities*), a sub-sector consultative group under the GMC (*Common Market Group*), with various objectives including the promotion of free movement of cinematographic goods and services in the region and harmonisation of legislative aspects. RECAM's activity concerning audiovisual markets and legislative issues covers the four MERCOSUR countries. A larger working group includes Venezuela, Bolivia, Chile and Ecuador. RECAM is active in promoting collaboration between public authorities in order to facilitate intra-regional mobility.

⇒ **Resolution (Nº 27/06) on a certificate for MERCOSUR cinematographic works**<sup>317</sup>

268. This 2006 Resolution aims to identify cinematographic works produced in the MERCOSUR region by harmonising national criteria for their identification. Works labelled as '*MERCOSUR Cinematographic Works*' should receive the same treatment in any MERCOSUR country. To facilitate mutual recognition, the Resolution includes a standard MERCOSUR cinematographic certification form. RECAM reports that the Resolution is the basis for future regional public policy and is consulting with other MERCOSUR bodies to determine how the certificate can be recognised by customs authorities.
269. RECAM states that some of the older bilateral and Latin American regional cinema co-production and distribution agreements are also important factors for mobility in the audiovisual sector. They include *Acuerdo Latinoamericano de Coproducción Cinematográfica*<sup>318</sup> (agreed in 1989 through FTAA/ALCA – Free Trade Area of the Americas), which covers ten countries of Latin America & the Caribbean.
270. In conclusion, RECAM notes that within the MERCOSUR region there is at present a low level of intra-regional mobility of cinematographic works. In some cases distributors have problems sending works and the market is dominated by US cinema products. RECAM also reports that Latin American festivals prefer to send works through diplomatic channels and using bilateral cultural cooperation conventions. It is hoped that full implementation of these MERCOSUR Resolutions will start to improve mobility of cultural goods in the audiovisual and other sub-sectors in the region.

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<sup>316</sup> <http://www.recam.org> - Reunión Especializada de Autoridades Cinematográficas y Audiovisuales.

<sup>317</sup> [http://www.recam.org/files/documents/gmc\\_certificado\\_obra.pdf](http://www.recam.org/files/documents/gmc_certificado_obra.pdf)

<sup>318</sup> [http://www.ftaa-alca.org/wgroups/wgsv/sagreem/Spanish/sv\\_7a1.asp](http://www.ftaa-alca.org/wgroups/wgsv/sagreem/Spanish/sv_7a1.asp)

**Multilateral case study n° 2: The Ibero-American Cultural Charter<sup>319</sup>, 2006**

271. The Ibero-American Cultural Charter was launched in Montevideo in 2006 by the Heads of State and Government of the Ibero-American countries (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Puerto Rico, Spain, Uruguay and Venezuela). It was drawn up under the OEI<sup>320</sup> (*Organización de Estados Iberoamericanos para la Educación, la Ciencia y la Cultura/Organization of Ibero-American States for Education, Science and Culture*). The Charter was approved in Valparaiso in 2007 at the X Ibero-American Conference of Culture Ministers, together with an *Action Plan* for its dissemination and implementation<sup>321</sup>.
272. The goals of the Charter include the facilitation of exchanges of cultural goods and services in the Iberoamerican cultural space. A series of measures under 'Cultural and Creative Industries' aims to guarantee more democratic access to cultural goods and services and to support cultural diversity. It proposes cooperation mechanisms to promote distribution of cultural goods and services "in the Ibero-American space and abroad" (especially audiovisual works, cinema, music and books); in the non-commercial field it aims to enable the free transit of cultural goods in the region with exchanges of exhibitions; it also mentions preferential treatment to support countries with emerging cultural and creative industries.
273. The 2007 *Action Plan* seeks to disseminate the Charter and promote it as the first major regional agreement which is a development of the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. A detailed development plan will be drawn up for the implementation of the various elements of the Charter, through existing funds and programmes such as Ibermedia<sup>322</sup> and Iberescena<sup>323</sup>. Networks and working groups will support the implementation of the Charter.

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<sup>319</sup> <http://www.oei.es/cultura/Montevideo-ing.pdf>

<sup>320</sup> <http://www.oei.es>

<sup>321</sup> [http://www.oei.es/cultura/carta\\_cultural\\_iberamericana2.htm](http://www.oei.es/cultura/carta_cultural_iberamericana2.htm) & <http://www.oei.es/cultura/Plandeaccio.pdf>

<sup>322</sup> <http://www.programaibermedia.com/>

<sup>323</sup> <http://www.iberescena.org/>

**Multilateral case study n° 3: Programme of Common Actions for the Production, Circulation and Conservation of the Image between WAEMU Member States<sup>324</sup>, 2004 and other actions affecting cultural mobility in WAEMU region**

274. UEMOA/WAEMU (*Union Économique et Monétaire Ouest Africaine/West African Economic and Monetary Union*) is one of the regional economic communities of Africa, grouping eight West African countries: Benin, Burkina Faso, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal and Togo. WAEMU objectives include the free circulation of people, goods and services.
275. The Council of Ministers of WAEMU agreed in Lomé on 17 September 2004 a *Programme of Common Actions for the Production, Circulation and Conservation of the Image between WAEMU Member States* (Decision n°06/2004/CM/UEMOA). This aims to improve the capacity of Member States for the production and dissemination of high quality African images in television, cinema and video. It seeks to create the basis for a shared, harmonised, dynamic audiovisual and cultural space. Four priority actions were outlined, all affecting mobility:
- improvements in/harmonisation of the regulatory environment
  - financial support for the creation, dissemination and free movement of images
  - adoption of fiscal and customs measures to improve market development
  - support for professional training
276. Several studies were commissioned in 2008 and 2009. A study on training needs in the audiovisual sector was presented at the meeting of Cultural Ministers in October 2008, with recommendations to establish a regional training centre for artistic, technical and management skills in the audiovisual sector. Ministers voiced their concerns at the delay in the implementation of the Programme and underlined the need for rapid action. The study was approved and new regional audiovisual training courses are planned to start in 2009-2010.
277. Several other multilateral initiatives are in progress within the WAEMU region affecting the mobility of artists, artworks, cultural goods and services – within, into and out of the region:
278. In 2006, the European Commission and WAEMU signed a financing agreement (9/ACP/ROC/018) to set up a *Regional Fund for the Promotion of Co-operation and Cultural Exchanges in West Africa*<sup>325</sup> to cover ECOWAS (Economic Community of West African States: Benin, Burkina Faso, Cabo Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo) & Mauritania. The Regional Fund addresses a number of issues, including the lack of dialogue and exchanges in the region, low levels of mobility of works, artists and cultural operators. A lack of organised information about cultural sector players has been identified as an obstacle to mobility in the region. A call was made in early 2009 to research and publish a directory of cultural organizations in West Africa “to meet the needs of the sector with a pedagogical and information tool”.
279. A meeting of Ministers for Foreign Affairs, Security and Tourism in November 2008<sup>326</sup> approved a programme to set up a single visa regime by 2011 for foreign visitors to the eight WAEMU countries. This will offer positive opportunities for mobility and cultural cooperation between the Union and third countries.

<sup>324</sup> [http://www.uemoa.int/actes/2004/CM/DEC\\_6\\_2004\\_CM.htm](http://www.uemoa.int/actes/2004/CM/DEC_6_2004_CM.htm)

<sup>325</sup> <http://www.uemoa.int/FCulture/Default.htm>

<sup>326</sup> <http://www.uemoa.int/>

**Multilateral case study n° 4: Gulf Cooperation Council Joint Cultural Action<sup>327</sup> arising from the Cultural Development Plan, 1987**

280. The Gulf Cooperation Council<sup>328</sup> (GCC) was established in 1981 and is the Cooperation Council for the Arab States of the Gulf (United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait). The Charter establishing the GCC mentions education and culture amongst the areas for cooperation between the Member States.
281. The 1987 plan on *Joint Cultural Action* is based on the objectives of the *GCC Cultural Development Plan* and includes cultural mobility between the GCC States as an important element of joint action. The Plan mentions the need for developing dialogue with other cultures.
282. Areas of joint action in the field of culture which support the mobility of artists, cultural professionals, art works, cultural goods and services include:
- exchange visits of staff and specialists from museums and antiquities
  - adoption of Common Copyright Law
  - organization of book fairs, coordination of collective participation of GCC States in book fairs abroad
  - organization of forums, festivals and exhibitions (poetry, folklore, drama, calligraphy)
  - organization of a Cultural Week in Beijing (1997)
283. In addition to the *Joint Cultural Action*, there is a *programme of Media Cooperation*<sup>329</sup> between the GCC States which focuses on the unification of media policies and fosters coordination and interconnection among the media agencies.

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<sup>327</sup> <http://www.gccsg.org/eng/index.php?action=Sec-Show&ID=76&W2SID=22841>

<sup>328</sup> <http://www.gccsg.org/>

<sup>329</sup> <http://www.gccsg.org/eng/index.php?action=Sec-Show&ID=76&W2SID=337>

**Multilateral case study n° 5: Cultural cooperation agreements between ASEAN countries and third countries**

⇒ **Agreements between ASEAN countries and the European Union, creating the Asia-Europe Foundation<sup>330</sup> (ASEF)**

284. The Asia-Europe Meeting (ASEM) is an informal process of dialogue and cooperation between Asia and Europe whose membership has grown since it was set up in 1996<sup>331</sup>. Today it brings together the 27 European Union Member States and the European Commission<sup>332</sup> with 16 Asian countries and the ASEAN Secretariat.
285. In 1996 ASEAN and EU leaders signed up to the *Dublin Principles* which set out the agreement to found the *Asia-Europe Foundation*<sup>333</sup> (ASEF). ASEF was set up in Singapore in 1997 and is the only permanent physical institution of ASEM.
286. Cultural mobility is central to ASEF's mission as it aims "to promote greater mutual understanding between the peoples of Asia and Europe through intellectual, cultural and people-to-people exchanges".
287. ASEF organizes cultural exchange through the following instruments: *Young Artists' Exchange* (forums, art camps and meetings that bring together young artists from Asia and Europe), *Platforms for Exchange* (cultural networks and web portals to support cultural cooperation) and *Dialogue on Policy and Culture*<sup>334</sup>.
288. ASEF has become an active international player in supporting the mobility of artists, art works, cultural goods and services between Europe and Asia as well as between countries in Asia.

⇒ **Agreements between ASEAN and other countries in the Asia-Pacific regions**

289. ASEAN has also signed a number of legal instruments with other countries from the Asia-Pacific region. Most of them are primarily trade agreements, but some also refer to cross-border cooperation and exchange in the field of culture.
290. This is the case of the **ASEAN-Japan Action Plan 2003**<sup>335</sup> which is to implement the *Framework for Comprehensive Economic Partnership between Japan and ASEAN*<sup>336</sup>. The Action Plan lays down concrete actions between ASEAN and Japan in the field of cross-border cultural mobility. The two sides agree in particular to actively promote cultural exchanges such as organising and conducting various cultural and art events with funding assistance through the *Japan Foundation* and to cooperate in the preservation and restoration of cultural heritage<sup>337</sup>. The Parties also agree that Japan will send experts to look into ASEAN's technical assistance needs for the preservation of cultural heritage, and arrange activities such as training, study tours in Japan for officials and other specialists from ASEAN Member Countries<sup>338</sup>.

<sup>330</sup> <http://www.asef.org/>

<sup>331</sup> [http://ec.europa.eu/external\\_relations/asem/docs/aecf\\_2000\\_en.pdf](http://ec.europa.eu/external_relations/asem/docs/aecf_2000_en.pdf)

<sup>332</sup> [http://ec.europa.eu/external\\_relations/asem/index\\_en.htm](http://ec.europa.eu/external_relations/asem/index_en.htm)

<sup>333</sup> [http://www.asef.org/images/stories/aboutus/080501\\_asef%20dublin%20principles.pdf](http://www.asef.org/images/stories/aboutus/080501_asef%20dublin%20principles.pdf)

<sup>334</sup> [http://www.asef.org/index.php?option=com\\_department&Itemid=70](http://www.asef.org/index.php?option=com_department&Itemid=70)

<sup>335</sup> <http://www.aseansec.org/15502.htm>

<sup>336</sup> <http://www.aseansec.org/15274.htm>. The framework led to the adoption in 2008 of the Agreement on the comprehensive economic partnership between ASEAN Member States and Japan:

<http://www.aseansec.org/AJCEP-Doc-1150.pdf>

<sup>337</sup> Point D. 5 and 6 of the ASEAN-Japan Plan of Action.

<sup>338</sup> idem



291. The 2005 **Agreement between ASEAN Member States and the Russian Federation on Economic and Development Cooperation**<sup>339</sup> states that “the parties shall actively promote greater awareness, understanding and appreciation of each other's arts and culture through artistic collaboration, joint research and study, training and education, exchange of information, and people-to-people exchange and contacts”.
292. The 2005 **Framework Agreement on Comprehensive Economic Cooperation between ASEAN countries and the Republic of Korea** puts a strong focus on the film sector. The two sides agree to increased cooperation in the form of exchange of experts on film, exchange of information and cooperation in holding and participating in film festivals.
293. The 2005 **Memorandum of Understanding between ASEAN countries and the Government of the People's Republic of China on Cultural Cooperation**<sup>340</sup> provides for the promotion of exchange and cooperation through programmes in cultural heritage management, protection of intellectual property rights and networking and exchange among cultural heritage agencies and organizations.

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<sup>339</sup> <http://www.aseansec.org/18023.htm>

<sup>340</sup> <http://www.aseansec.org/17842.htm>

**Multilateral case study n° 6: Free Movement of Skills in the CARICOM Single Market and Economy (CSME)<sup>341</sup>**

294. The Caribbean Community (CARICOM) covers 15 Member States and five Associate Members<sup>342</sup>. The origins of the Caribbean Community, including the Caribbean Common Market, lie in the 1974 *Treaty of Chaguaramas*, signed by four countries. In 1989 the *Grand Anse Declaration*<sup>343</sup> set out a work programme to deepen the integration process and strengthen the Caribbean Community by, among other things, making arrangements “for the free movement of skilled and professional personnel”. As a result, the *CSME Free Movement of Skills Initiative* was presented; it has been modified over the years. Unusually, for this type of legislation, artists, musicians and media workers are specifically mentioned, alongside defined criteria to determine their status and eligibility for free movement rights.
295. In 1996 the CARICOM Conference of Heads of Government expanded the categories of persons allowed free movement for work purposes to include artists, sports persons, musicians and media workers. Criteria were devised to determine eligibility and form part of the legislation.
296. A central requirement is a ‘Certificate of Recognition of CARICOM Skills Qualification’, obtainable from the designated Ministry of the home or host country. The criteria for artists and musicians are that they have an impact in their area of activity at community or national level, that they have a record of awards from professional or national bodies and that they have a record of employment in the field.
297. Other criteria apply to technicians, support staff and arts educators. The media worker category includes camera operators, graphic artists and photographers, and such workers must draw their primary source of income from media work.
298. In order to implement the free movement rights, Member States had to enact or amend legislation and put in place the necessary administrative and procedural framework. Free movement of artists, musicians and media workers is currently in place in all Member States except Antigua and Barbuda, Barbados, Montserrat and St. Kitts and Nevis.
299. Taxation and social security arrangements are also part of the CSME legislation. The intra-regional *Double Taxation Agreement* protects self-employed CARICOM nationals from paying taxes twice on the same earnings<sup>344</sup>. This measure applies to self-employed artists on short-term mobility contracts within the region, for example, musicians or performers or performers on tour.
300. A 2006 study on *The Cultural Industries in CARICOM*<sup>345</sup> underlines the need to further improve the intra-CARICOM freedom of movement for cultural workers and equipment and to expand the preferential treatment to other professionals in the arts sector. Severe problems are also mentioned as regards movement of visual art for trade and exhibition purposes and for performing arts.

**Multilateral case study n° 7: Multilateral agreements concluded between the European Union and third countries**

<sup>341</sup> [http://www.caricom.org/jsp/single\\_market/skill.jsp?menu=csme](http://www.caricom.org/jsp/single_market/skill.jsp?menu=csme)

<sup>342</sup> [http://www.caricom.org/jsp/community/member\\_states.jsp?menu=community](http://www.caricom.org/jsp/community/member_states.jsp?menu=community)

<sup>343</sup> [http://www.caricom.org/jsp/communications/meetings\\_statements/grand\\_anse\\_declaration.jsp?menu=communications](http://www.caricom.org/jsp/communications/meetings_statements/grand_anse_declaration.jsp?menu=communications)

<sup>344</sup> [http://www.caricom.org/jsp/single\\_market/taxation.jsp?menu=csme](http://www.caricom.org/jsp/single_market/taxation.jsp?menu=csme)

<sup>345</sup> <http://www.acpcultures.eu/pdf/The%20Cultural%20Industries%20in%20CARICOM.pdf>

301. This case study highlights some of the many EU multilateral agreements with third countries which affect cultural mobility:

⇒ ***The Cotonou Agreement***<sup>346</sup>: **ACP-EC-Partnership Agreement, 2000**

302. This *Partnership Agreement between the African, Caribbean and Pacific Group of States and the European Community and its Member States* was signed in Cotonou, Benin in 2000 and came into force in 2003. The global multilateral partnership involves 106 countries.

303. Culture is included in the Social and Human Development strand of the Agreement (Article 27). The aim of this cultural cooperation with the ACP countries is to promote cultural identities, to encourage creativity and to set up the production and distribution infrastructures necessary to foster this creative spirit. In an effort to meet these objectives, the *European Development Fund*<sup>347</sup> finances an array of activities, including projects promoting cultural heritage and providing training in the arts, feature film co-productions, and festivals and conferences relating to culture.

304. The implementation of the cultural cooperation aspects takes place through the EU-ACP Support Programme to ACP Cultural Industries<sup>348</sup>. The first call for cultural cooperation projects was announced in 2008. One of the three objectives concerned cultural mobility: "Support and consolidate exchanges, develop cooperation and economic linkages between ACP cultural actors/operators".

⇒ ***EU-Russia Cooperation - Four Common Spaces***<sup>349</sup>, **2005**

305. At the St. Petersburg Summit in May 2003, the EU and Russia agreed to reinforce their cooperation by creating in the long term four 'Common Spaces' in the framework of the 1994 *EU-Russia Partnership and Cooperation Agreement*<sup>350</sup> and on the basis of common values and shared interests. Later on, at the Moscow summit in May 2005, EU and Russia agreed on concrete roadmaps<sup>351</sup> to act as the short and medium-term instruments for the implementation of the four Common Spaces.

306. *The Common Space on Research, Education and Culture* (the 4<sup>th</sup> Common Space) aims to promote scientific, educational and cultural cooperation, particularly through exchange programmes. This is intended to help strengthen the combined economic and intellectual capacities of the two parties while at the same time fostering people-to-people ties and better understanding.

307. Cultural cooperation projects between the Russian Federation and EU Member States have been funded under the *Tacis Institution Building Partnership Programme* (IBPP)<sup>352</sup> where "cultural mobility of artists and artistic production" was one of four priorities for the 2008 call. Several projects are funded which support cross-border cultural mobility and aim to establish lasting cooperation between cultural institutions and performing arts organizations from Russia and EU countries.

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<sup>346</sup> [http://www.acpcultures.eu/?page=accord\\_cotonou&lang=uk](http://www.acpcultures.eu/?page=accord_cotonou&lang=uk)  
[http://ec.europa.eu/development/geographical/cotonouintro\\_en.cfm](http://ec.europa.eu/development/geographical/cotonouintro_en.cfm)  
[http://ec.europa.eu/culture/portal/action/relations/relation\\_third\\_acp\\_en.htm](http://ec.europa.eu/culture/portal/action/relations/relation_third_acp_en.htm)

<sup>347</sup> [http://ec.europa.eu/development/index\\_en.cfm](http://ec.europa.eu/development/index_en.cfm)

<sup>348</sup> <http://www.acpcultures.eu/>

<sup>349</sup> [http://ec.europa.eu/external\\_relations/russia/common\\_spaces/index\\_en.htm](http://ec.europa.eu/external_relations/russia/common_spaces/index_en.htm)

<sup>350</sup> [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21997A1128\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21997A1128(01):EN:NOT)

<sup>351</sup> [http://www.delrus.ec.europa.eu/en/images/pText\\_pict/494/road%20maps.pdf](http://www.delrus.ec.europa.eu/en/images/pText_pict/494/road%20maps.pdf)

<sup>352</sup> [http://www.delrus.ec.europa.eu/en/p\\_634.htm](http://www.delrus.ec.europa.eu/en/p_634.htm)

308. In 2007 the European Commission Delegation to Russia published *Moving Art*<sup>353</sup> - a guidebook to the import and export of cultural goods between Russia and the EU.

⇒ ***Euro-Mediterranean Strategy on Culture***<sup>354</sup>, 2008

309. The Euro-Mediterranean Strategy on Culture has evolved from the Euro-Mediterranean Partnership<sup>355</sup>. Known as the Barcelona Process, it was launched by Euro-Mediterranean Foreign Ministers in November 1995, an innovative alliance based on the principles of joint ownership, dialogue and co-operation. It brings together the 27 Members of the European Union and 16 Southern Mediterranean states.

310. Activities in the cultural field take place under the *Euro-Mediterranean Social, Cultural and Human Partnership*<sup>356</sup>. The 3<sup>rd</sup> Euro-Mediterranean Conference of Ministers of Culture in Athens in 2008 marked the starting point of a fully-fledged EuroMed Strategy on Culture to cover two dimensions: Dialogue between Cultures and Cultural Policy, each with specific references to mobility:

311. *Dialogue between Cultures*

- Ministers acknowledge that the mobility of artists, intellectuals, academicians and cultural workers and trainers, works of art, knowledge and creativity, including within the framework of cultural exchange, significantly contributes to dialogue between cultures and further emphasise that they are committed to encouraging it. In this context, Ministers stress the need for simplification of visa procedures for artists<sup>357</sup>.

312. *Cultural policy*

- The Euro-Mediterranean Strategy on Culture should also aim at establishing more balanced cultural exchanges<sup>358</sup>.
- Ministers consider the exchange of people, in particular young people, ideas and cultural activities as a common denominator for future projects, especially through networking between cultural players at the Euro-Mediterranean level, which is a major factor in promoting exchange of experience, transfer of know-how and the emergence of joint projects<sup>359</sup>.
- Mobility of cultural workers and operators is listed as one of the areas of action to be given consideration and explored further<sup>360</sup>.

313. Progress towards implementation will involve the establishment of a follow-up mechanism to draw up a Euro-Mediterranean Cultural Strategy with concrete proposals to be endorsed by the next meeting of Ministers of Culture in the first semester of 2010.

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<sup>353</sup> *Moving Art – A guide to the export and import of cultural goods between Russia and the European Union*, researched and written by Judith Staines and Julio Piñel, Delegation of the European Commission to Russia, 2007: [http://www.delrus.ec.europa.eu/en/p\\_630.htm](http://www.delrus.ec.europa.eu/en/p_630.htm)

<sup>354</sup> [http://ec.europa.eu/external\\_relations/euromed/docs/culture\\_concl\\_0508\\_en.pdf](http://ec.europa.eu/external_relations/euromed/docs/culture_concl_0508_en.pdf)

<sup>355</sup> [http://ec.europa.eu/external\\_relations/euromed/index\\_en.htm](http://ec.europa.eu/external_relations/euromed/index_en.htm)

<sup>356</sup> [http://ec.europa.eu/external\\_relations/euromed/social/social\\_en.htm](http://ec.europa.eu/external_relations/euromed/social/social_en.htm)

<sup>357</sup> Point 23, *Agreed Conclusions of the Third Euro-Mediterranean Conference of Ministers of Culture, Athens, 29-30 May 2008*, [http://ec.europa.eu/external\\_relations/euromed/docs/culture\\_concl\\_0508\\_en.pdf](http://ec.europa.eu/external_relations/euromed/docs/culture_concl_0508_en.pdf)

<sup>358</sup> Point 36, *idem*

<sup>359</sup> Point 38, *idem*.

<sup>360</sup> Point 45, *idem*.

⇒ **Council Regulation (EEC) N° 3911/92 on the export of cultural goods**<sup>361</sup>

314. An important element in the international mobility of cultural goods is the implementation of appropriate control mechanisms for the protection of national heritage and the prevention of illicit export of cultural goods outside the EU. *Council Regulation 3911/92* is not an international agreement signed between the EU and third countries, but an EU regulation which applies to EU Member States in their relations with third countries.
315. The Regulation was adopted by Member States of the European Union in 1992 and sets out an Annex of cultural goods which cannot leave the territory of the European Community without a minimum degree of control applied by every Member State, through the issuing of an EU export licence. Export controls apply to the movement of cultural goods between the EU and third countries, whether for temporary or definitive export. The use of a common licence form facilitates standardised checks on the export of cultural goods.
316. The Regulation acts as a minimum level of control and, in most cases, Member States' national heritage legislation provides additional measures and definitions. The cultural objects covered by the Regulation are defined by category, age and/or value.
317. The EU Export Licence is widely used by museums and antique dealers moving cultural goods around the world for exhibition, restoration or sale purposes. It also applies to older musical instruments above a certain value. Therefore some musicians, agents and orchestra managers who organise touring between the EU and third countries must also apply the Regulation.

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<sup>361</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992R3911:EN:HTML>

## Section 4. Case studies of bilateral legal instruments fostering cross-border cultural mobility

318. Bilateral agreements play a significant role in the facilitation of mobility of artists, art works, cultural goods and services across the world. The most visible face of cultural cooperation between two countries is generally the bilateral cultural cooperation agreement, a legal instrument which is a standard vehicle for cultural diplomacy. Bilateral agreements may arise from a variety of existing connections or interests: e.g. a shared history, geographical, linguistic or cultural proximity, post-colonial relations, meetings between leaders, political or commercial interests. There are various different names and formats, such as agreement, treaty, convention, memorandum of understanding, cooperation protocol, bilateral funds etc. Some are binding and some non-binding. Bilateral cooperation agreements frequently link culture and education.
319. Any review of bilateral agreements that impact on cultural mobility must also take into account those which exist in other fields, e.g. trade agreements<sup>362</sup>, tax and social security treaties, international aid partnerships, culture and development agreements, visa facilitation.
320. Bilateral agreements involve an accord between two sides or 'parties'. The parties may both be countries (their size, status and GDP may be broadly similar or very unequal) or regions, cities or institutions. The two parties do not need to be of the same type: for example, bilateral agreements can be between a city and a region or between a country and an institution. Some bilateral agreements involve reciprocal arrangements for implementation, on a more-or-less equal basis, whereas others (e.g. international aid treaties) can be essentially one-way agreements with most of the financial and executive responsibility on one side only.
321. Important points in reviewing the implementation of bilateral agreements include:
- **Content** (whether the agreement includes a priority action list or specific programme involving reciprocity in exchange of artists and art projects, facilitation of visas, easier access to funding etc.)
  - **Duration** (for a fixed period, auto-renewing or indefinite)
  - **Responsibility** (typically a bilateral cultural cooperation agreement may be signed by the Ministry of Foreign Affairs and executed by the Ministry of Culture, Arts Council or cultural institutes abroad, although there are many variations)
  - **Budget** (some have specific budgets, others constitute a broad expression of intent with no designated funding)
322. This section includes a sample of bilateral agreements that demonstrate a range of interventions in terms of the mobility of artists, art works, cultural goods and services. Such a list is not intended to be exhaustive but aims to provide a broad overview of bilateral legal instruments that impact on this area, taking into account coverage of all UNESCO world regions.

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<sup>362</sup> *Overview of bilateral free trade and investment agreements:*  
<http://www.twinside.org.sg/title2/FTAs/info.service/fta.info.service039/777158075453899d75cc70.pdf>

**Bilateral case-study n°1: 'ART MADA 2' Support for Cultural Development in Madagascar<sup>363</sup>, 2009**

323. On January 13<sup>th</sup> 2009 the Minister of Foreign Affairs of Madagascar and the French Embassy in Madagascar signed a convention<sup>364</sup> to finance a Priority Solidarity Fund project (FSP) entitled 'Support for Cultural Development in Madagascar'. The FSP is a bilateral instrument used in French development aid<sup>365</sup>. The ART MADA 2 agreement is planned to last for three years and provides a budget of one million euros.
324. The project is a continuation of the first Franco-Madagascan cultural cooperation project ART MADA, a four-year project (2003-2007) with over 100 activities that reached 3,000 beneficiaries in all arts disciplines. ART MADA 2 doubles the previous budget and aims to raise the role of culture in development by supporting the creation of a cultural economy in Madagascar. Existing and emerging cultural operators in Madagascar will be helped to position themselves within a Madagascan cultural sector seen as a significant cultural player in the Indian Ocean.
325. The project will be implemented by the Ministry of Youth, Sport and Culture of Madagascar, in association with the French Embassy and its cultural network on the island, public authorities and cultural networks on the island of Réunion, Antananarivo University and other Madagascan partners. Coordination, management and development of the project will be provided by a mixed French-Madagascan administration team.
326. ART MADA supported the mobility of some 30 Madagascan artists, enabling them to attend major cultural events in the Indian Ocean, Europe and Africa (e.g. Bamako Photography Biennial, Montpellier Danse, Avignon Festival). It set up a partnership between French and Madagascan authors' rights associations to improve intellectual property rights. It enabled ten Madagascan artists to take long-term training courses abroad. ART MADA also supported the strengthening of cultural relations between Madagascar and Réunion, as well as across the Indian Ocean region, including some African countries.
327. Mobility of artists and artworks has been an important element in building up the cultural sector in Madagascar. In the second phase ART MADA 2 will continue to strengthen the infrastructure and the cultural 'offer', developing, for example, major cultural events in different disciplines intended to attract inward mobility from the Indian Ocean region and beyond.

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<sup>363</sup> [http://www.ambafrance-mada.org/ambafrance-mada/IMG/pdf/Document\\_de\\_presentation\\_du\\_FSP\\_ART\\_MADA\\_bis-2.pdf](http://www.ambafrance-mada.org/ambafrance-mada/IMG/pdf/Document_de_presentation_du_FSP_ART_MADA_bis-2.pdf)

<sup>364</sup> <http://www.ambafrance-mada.org/ambafrance-mada/spip.php?article534>

<sup>365</sup> *Le Fonds de Solidarité Prioritaire est l'instrument privilégié de coopération institutionnelle avec les États et avec les sociétés civiles* (France-Diplomatie: [www.diplomatie.gouv.fr](http://www.diplomatie.gouv.fr)).

**Bilateral case-study n°2: Cultural cooperation agreements between China and South Africa, including the "Implementing Programme" under the "Agreement of Cooperation in the Fields of Culture and Arts between the Government of the People's Republic of China and the Government of the Republic of South Africa" for the Years 2001 –2004<sup>366</sup>**

328. China has concluded many bilateral agreements around the world<sup>367</sup>, including in the field of cultural cooperation. Cooperation with South Africa is part of a wider framework of partnership between China and Africa under the Forum on China-Africa Cooperation (FOCAC)<sup>368</sup>. A 2006 article on cultural cooperation on the FOCAC<sup>369</sup> website reports that China had entered into 62 inter-governmental agreements on cultural exchanges and cooperation with 45 African countries, under which the two sides had organised over 200 cultural exchange delegations and hosted hundreds of cultural or art exchange events.
329. Governments of China and South Africa have signed agreements on Cultural, Scientific and Technological Cooperation. Mobility of artists, art works and cultural goods is integral to this cooperation. Cultural groups and artist troupes from the two countries have exchanged visits and held regular exhibitions in the past years. The *Implementing Programme under the Agreement of Cooperation in the Fields of Culture and Arts between the Government of the People's Republic of China and the Government of the Republic of South Africa for the Years 2001 –2004* was an example of this bilateral cooperation. An extensive range of cultural exchanges and activities in both countries over the period is documented on the website of the Embassy of the People's Republic of China in South Africa<sup>370</sup>.
330. On the State Visit of the Chinese President to South Africa in 2007, a Joint Communiqué emphasised the need, among others, for increased cultural cooperation – described as 'Culture and People-to-People Interaction'<sup>371</sup>. A programme of culture, economic, social, sport, diplomatic and academic events during 2008 celebrated 10 years of diplomatic relations between South Africa and the People's Republic of China.
331. An important expression of Chinese cooperation is the rapidly expanding worldwide network of *Confucius Institutes*<sup>372</sup>. These cultural and educational institutes have been set up "with the purpose of enhancing intercultural understanding in the world by sponsoring courses of Chinese language and culture, so as to promote a better understanding of the Chinese language and culture among the people of the world". As of December 2008, 249 *Confucius Institutes* and 56 *Confucius Classrooms* had been established around the world, with four in South Africa.

<sup>366</sup> <http://www.chinese-embassy.org.za/eng/znil/t177583.htm>

<sup>367</sup> <http://www.fmprc.gov.cn/eng/qjhda/>

<sup>368</sup> <http://www.focac.org/eng/>

<sup>369</sup> <http://www.focac.org/eng/zfqx/t463750.htm>

<sup>370</sup> <http://www.chinese-embassy.org.za/eng/znil/t177583.htm>

<sup>371</sup> <http://www.fmprc.gov.cn/eng/wjb/zzjg/fzs/qjlb/3094/3095/t298180.htm>

<sup>372</sup> <http://www.confuciusinstitute.net/>



**Bilateral case-study n°3: Memorandum of Understanding on Cultural Cooperation between Ireland and Singapore<sup>373</sup>, 2003**

332. A Memorandum of Understanding (MoU) signed in 2003 established a *Singapore-Ireland Co-operation Programme* to last until 2006. Under the terms of the MoU, the two sides agreed to encourage the promotion of cultural cooperation between Singapore and Ireland through cultural exchanges. Sharing experience in the promotion of culture and promoting cultural and artistic training opportunities to artists and administrators on both sides were also part of the agreement. The executing authorities for the MoU were the *Arts Council of Ireland* and the *National Arts Council of Singapore*.
333. Examples of the types of projects that took place in 2003 under the MoU were the exhibition of works by artist *Brother Joseph McNally* in Dublin and a showcase of work by the Singapore theatre company *The Necessary Stage* at the Dublin Fringe Festival<sup>374</sup>.
334. The Ireland-Singapore MoU has now formally ended although cultural cooperation continues in various forms.
335. The *National Arts Council of Singapore* has a rolling programme of MoUs<sup>375</sup> (currently with Arts Councils in Victoria - Australia, England, Mexico, Philippines, Scotland and South Korea as well as a long-standing indefinite MoU with the Hong Kong Arts Festival Society established in 1993). It has also signed several cultural agreements with key foreign cities and cultural institutions to promote cultural exchanges and open new markets for Singapore arts and artists.

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<sup>373</sup> <http://www.arts-sport-tourism.gov.ie/publications/release.asp?ID=238>

<sup>374</sup> <http://www.nac.gov.sg/static/doc/Annual%20Report%202003-04%20full%20version.pdf>

<sup>375</sup> <http://www.nac.gov.sg/int/int01.asp>

**Bilateral case-study n°4: Agreement between the Government of New Zealand and the Government of the Republic of Korea Concerning the Co-Production of Films<sup>376</sup>, 2008**

336. In 2003 a New Zealand film industry delegation accompanied the Prime Minister on her visit to Korea with the aim of showcasing New Zealand as a potential film location and as a post-production hub. In 2005 the Prime Minister, her counterpart Minister from the Ministry of Culture and Tourism, and the Chairperson of the Korea Broadcasting Commission signed the bilateral *Audiovisual Cooperation Arrangement* which seeks to facilitate cooperation in a range of areas, including training. Two groups of Korean technicians subsequently attended specially designed training courses in New Zealand.
337. Following the organization of the first Korean film festival in New Zealand in 2004 and the first New Zealand film festival in Korea in 2005, there was increasing collaboration between the two industries in making feature films and TV dramas. Several Korean films have been partially made or post-produced in New Zealand.
338. The *Film Co-Production Agreement* was signed on 29 September 2008. The agreement allows films from both countries to enjoy the same benefits for financing, incentives and support programmes. It also provides for the import of film equipment and visas for location shoots. Production of the first joint co-production film 'Soul Mate' was due to start in January 2009.
339. This *Film Co-Production Agreement* is the 10<sup>th</sup> such bilateral treaty which New Zealand has concluded (Australia, Canada, France, Germany, Ireland, Italy, Singapore, Spain, and the United Kingdom being the others). For Korea, it was its 2<sup>nd</sup> such treaty, after a 2006 agreement with France.

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<sup>376</sup> <http://www.nzfilm.co.nz/RegulatoryApprovals/CoProductionTreaties.aspx>

**Bilateral case-study n°5: Film Co-Production Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India<sup>377</sup>, 2008**

340. The 2008 film co-production agreement concluded between the UK and India builds on shared interests in film production and distribution. For the UK, this is the seventh such bilateral film co-production agreement<sup>378</sup> (others with Australia, Canada, France, Jamaica, New Zealand and South Africa) and negotiations are underway to establish new bilateral treaties with China and Morocco. India already has bilateral film co-production agreements with Germany, Italy and Brazil and a protocol with France. It is currently negotiating treaties with France and China<sup>379</sup>.
341. The *India-EU Film Initiative* reported<sup>380</sup> that the treaty “took three years of tough negotiations and more than 15 overseas visits by the film and government officials from the two countries”. It welcomed the Indian approval saying that the treaty will encourage a large number of Indian film producers to benefit from tax incentives and film schemes in the UK. Every year, about 60 Indian films are released in the UK and some of them are shot in Britain, generating revenues between £16- £18 million for the Indian film industry.
342. The decision whether to grant a film approved “UK-India co-production status” will be made jointly by the *Department of Culture, Media and Sport* in the UK and the *Ministry of Information and Broadcasting* in India. The benefit of qualifying as an official co-production is that the film qualifies as a national film in both countries. This enables access to tax benefits, public funding, import/export free movement of equipment and enables cast and crew to enter and remain in the countries for the purposes of filming. In the UK obtaining approval is a condition for making a claim to the revenue authorities there for film tax relief. In India whilst there is no tax relief available, the import and export of equipment would be duty & tax free. If a film wins a *National Award* in India the Government has discretionary power to enable tax-free tickets and other tax-free revenue benefits.

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<sup>377</sup> [http://www.ukfilmcouncil.org.uk/media/pdf/0/1/UK-India\\_2008.pdf](http://www.ukfilmcouncil.org.uk/media/pdf/0/1/UK-India_2008.pdf)

<sup>378</sup> <http://www.ukfilmcouncil.org.uk/coproduction>

<sup>379</sup> <http://businessofcinema.com/news.php?newsid=8326>

<sup>380</sup> <http://www.iefilmi.com/content/indian-cabinet-approves-uk-india-film-co-production-treaty>

**Bilateral case-study n°6: Agreement between the Government of the United States of America and the Government of the Republic of Mali concerning the imposition of import restrictions on archaeological material from Mali from the Palaeolithic Era (Stone Age) to approximately the mid-eighteenth century<sup>381</sup>, 1997**

343. This Agreement between the USA and Mali was agreed in 1997, extended in 2002 and again extended and amended in 2007. It was established pursuant to the 1970 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, to which both countries are States Parties. It concerns "certain categories of irreplaceable archaeological material representing a continuum of civilisations from the Neolithic period to the colonial occupation".
344. The Agreement sets out import restrictions for a designated list of archaeological material and the conditions under which any such illicitly imported material must be returned to Mali by the US authorities.
345. In terms of cultural mobility, this Agreement also makes statements on training and education programmes, promotion of professional exchanges, technical assistance and other support resources. As regards implementation, the obligations of both Governments are subject to the "availability of funds". The regular revision and extension of this Agreement every five years has ensured that it remains in force and is updated to reflect the current situation.
346. This is one of thirteen current cultural property agreements or other emergency actions taken by the United States to protect archaeological and/or ethnological materials<sup>382</sup>. The most recent **bilateral agreement** was signed in January 2009 **between the United States of America and China** and imposes import restrictions on categories of archaeological material from the Palaeolithic period through the Tang dynasty (75,000 B.C. – A.D. 907), and monumental sculpture and wall art at least 250 years old. The agreement also aims to further the international interchange of such materials for cultural, educational and scientific purposes.
347. Other examples of bilateral agreements signed across the world aiming to protect cultural heritage include the ***Convention between the Republic of Peru and the Republic of Bolivia for the recovery of cultural and other goods which have been stolen, imported or exported illegally (1998)***<sup>383</sup>. This is one of seventeen listed bilateral heritage protection conventions which the Republic of Peru has concluded, mainly with countries in the Latin American region. Members of **the Andean Community** have also signed many **multilateral agreements** on cultural heritage protection<sup>384</sup> among themselves. They have also created new Community mechanisms to protect and recover goods belonging to the cultural heritage of the Member Countries.

<sup>381</sup> <http://culturalheritage.state.gov/mlfact.html> & <http://culturalheritage.state.gov/Mali2007MoU.pdf>

<sup>382</sup> <http://culturalheritage.state.gov/overview.html> ; Additional information on bilateral agreements which the US has signed to safeguard cultural heritage can be found on the website of SAFE<sup>382</sup> (Saving Antiquities for Everyone - a non-profit US organization dedicated to preserving cultural heritage worldwide): <http://www.savingantiquities.org/safemou.php>

<sup>383</sup> <http://www.rree.qob.pe/portal/cultural.nsf/C04F68E40CD4043C05256E3D0005D1D0>

<sup>384</sup> <http://www.comunidadandina.org/ingles/culture.htm>

**Bilateral case-study n°7: "Louvre Abou Dabi" - Agreement between the Government of the French Republic and the Government of the United Arab Emirates<sup>385</sup>, 2007**

348. This intergovernmental cooperation agreement between France and the United Arab Emirates (UAE) was signed in Abu Dhabi in March 2007 and sets out the terms by which the new Louvre Abou Dabi universal museum will be set up, financed and managed.
349. The agreement goes into considerable contractual details including the size of the new museum, architect, number of objects to be loaned, security conditions (including immunity from seizure), fees for loan of objects from national and regional museums in France (including the Louvre), support for a new French agency to oversee the project, fees for temporary exhibitions, purchase budget for new acquisitions and conditions for the use of the name "Louvre". The agreement specifies the duration of the project and sets out a payment schedule over the next fifteen years.
350. The agreement represents an investment by the UAE of around one billion euros over thirty years which is due to benefit the Louvre and other museums in France. The Louvre Abou Dhabi is scheduled to open in 2012 as part of a planned cultural district in Abu Dhabi which includes a Guggenheim Museum and other cultural institutions by major world architects.

**Bilateral case-study n°8: Cultural Co-operation Agreement between the Government of Quebec and the Government of the Kingdom of Morocco<sup>386</sup>, 1989**

351. Since 1964, Quebec has made international commitments in areas within its constitutional jurisdiction, including economic development, social security, culture, education, health, employment and communications<sup>387</sup>. Fifty international agreements that concern culture are in force between Quebec and other countries or international organizations.
352. This example is one of several bilateral agreements in various fields between Quebec and Morocco. The two countries undertook to encourage cultural cooperation and exchanges, notably in the fields of archaeology and heritage, archives, libraries, museums, books and publishing, visual arts and arts education. Both countries agreed to share the costs of cultural exchanges.
353. The agreement also sets out the terms for establishing a joint cultural cooperation committee to meet biannually, alternating between Quebec and Morocco in order to study and agree implementation.

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<sup>385</sup> *Accord entre le Gouvernement de la République française et le Gouvernement des Emirats Arabes Unis*  
<http://www.culture.gouv.fr/culture/actualites/index-aboudabi.html>

<sup>386</sup> <http://www.mri.gouv.qc.ca/fr/informer/ententes/pdf/1989-11.pdf>

<sup>387</sup> <http://www.mri.gouv.qc.ca/en/informer/ententes/engagements.asp>

**Bilateral case-study n°9: Bilateral cultural cooperation agreements between Chile and Cuba<sup>388</sup>, 2009**

354. On the occasion of the official visit of the President of Chile to Cuba in February 2009, a number of bilateral agreements were signed between the two countries which aim to further cultural mobility and cooperation through exchanges. This includes a bilateral cooperation agreement in the field of film production and a bilateral agreement on heritage.

**Bilateral case-study n°10: Agreement between the Government of the Kingdom of Thailand and the Government of the United Mexican States on Cultural and Educational Cooperation<sup>389</sup>, 2003**

355. Thailand has several cultural cooperation agreements in force, including with Chile, Greece, Italy and Peru. The agreement with Mexico is designed to strengthen bilateral relations through cultural exchanges and technical assistance. It covers both culture and education and reinforces student mobility.

**Bilateral case-study n°11: Agreement of Information and Cultural Cooperation between the Hashemite Kingdom of Jordan and the Great Arab Socialist People's Republic of Libya<sup>390</sup>, 2000**

356. Jordan has concluded a several bilateral agreements which relate to cultural cooperation. The agreement with Libya lists many elements, including cooperation between news agencies, exchange of educational audio-visual programmes concerned with culture and heritage, cooperation between research centres in the fields of information and culture, special film weeks, organization of exhibitions, exchanges of performing arts groups and the establishment of cultural centres in each other's countries.
357. In order to implement the agreement, a follow-up committee meets twice yearly in both countries.

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<sup>388</sup> [http://www.minrel.gov.cl/prontus\\_minrel/site/artic/20090216/paqs/20090216155422.php](http://www.minrel.gov.cl/prontus_minrel/site/artic/20090216/paqs/20090216155422.php)  
<http://www.cubaminrex.cu/English/Actualidad/2009/Febrero/Bachelet.html>

<sup>389</sup> [http://122.0.0.22/treaty/cgi-bin/SearchSeparate/SearchBi/Search\\_Document.asp](http://122.0.0.22/treaty/cgi-bin/SearchSeparate/SearchBi/Search_Document.asp)

<sup>390</sup> [http://www.jedco.gov.jo/jedcod/agreement/agree\\_text?agree\\_type=05&d\\_no=702](http://www.jedco.gov.jo/jedcod/agreement/agree_text?agree_type=05&d_no=702)

**Bilateral case-study n°12: USA – Belgium Bilateral Tax Treaty<sup>391</sup>**

358. Bilateral tax treaties exist around the world. Tax provisions are generally reciprocal and apply to both treaty countries. They basically aim to avoid double taxation of foreign investments and income of cross-border service providers.
359. Following provisions in the *OECD Model Convention*<sup>392</sup>, many countries conclude bilateral tax treaties which allow them to apply a withholding tax to non-resident artists who have made earnings in their country (see Section 1 point 6 of this study). In practice this often gives rise to double taxation where artists (often performing artists and visual artists) are taxed for the same income earned abroad in the country of performance and in their own country<sup>393</sup>.
360. The USA has income tax treaties with a number of countries. Under these treaties residents of foreign countries are taxed at a reduced rate, or are exempt from U.S. income taxes on certain income they earn within the USA. These reduced rates and exemptions vary among countries and specific items of income.
361. The bilateral tax treaty between the USA and Belgium has been modified recently as regards the level which allows the USA to levy a withholding tax on non-resident artists from Belgium. In February 2008 the annual exemption for income of “public entertainers (such as theatre, motion picture, radio or television artists, musicians...)” from Belgium working in the United States went up from \$3,000 to \$20,000. As a result many artists from Belgium working temporarily cross-border do not have to pay withholding tax any more, provided their income remains under this new threshold. This important modification brought the exemption level for Belgian performing artists working in the USA up to the level of several other European countries and Australia.

**Bilateral case-study n°13: Bilateral Social Security Agreement between the United States of America and Australia<sup>394</sup>, 2002**

362. Bilateral social security agreements are concluded between many countries in the world and aim to improve social protection for people who spend part of their working lives in both countries, as can be the case with artists who are internationally mobile for part of their careers. Such agreements can help people who would otherwise not be eligible for monthly retirement, disability or other benefits under the social security system of one or both countries. They further aim to avoid double payments of social security contributions to both countries on the same earnings<sup>395</sup>.
363. The agreement between the USA and Australia is one such social security agreement and sets out the terms and benefits. In this case, employees sent to work in the second country are covered by social security contributions in their own country if the period of work is five years or less. Above this period, employees move across to the social security system of the country where they are working. Other conditions apply to self-employed workers.

<sup>391</sup> <http://www.irs.gov/pub/irs-pdf/p901.pdf>

<sup>392</sup> <http://www.oecd.org/dataoecd/14/32/41147804.pdf>

<sup>393</sup> <http://www.allarts.nl/articles/2009/Artist%20and%20Sportsman%20Tax%20Rules%20-%20EN%20-%202009%20-%20AA.pdf>

<sup>394</sup> [http://www.ssa.gov/international/Agreement\\_Pamphlets/austria.html](http://www.ssa.gov/international/Agreement_Pamphlets/austria.html)

<sup>395</sup> It is also worthwhile mentioning that the *Council of Europe* has drawn up a model bilateral agreement on social security:

[http://www.coe.int/t/e/social\\_cohesion/strategic\\_review/publications/social\\_protection\\_network/06\\_Model%20Provisions%20for%20a%20Bilateral%20Social%20Security%20Agreement%20and%20Explanatory%20Report.asp](http://www.coe.int/t/e/social_cohesion/strategic_review/publications/social_protection_network/06_Model%20Provisions%20for%20a%20Bilateral%20Social%20Security%20Agreement%20and%20Explanatory%20Report.asp)

**Bilateral case-study n°14: British Museum Memoranda of Understanding with partner museums worldwide<sup>396</sup>**

364. In common with other museums and cultural institutions, the *British Museum* works with partners worldwide who want to collaborate on exhibitions, skills-sharing and research for mutual benefit.
365. Over recent years the *British Museum* has initiated a series of reciprocal agreements with cultural organizations and governments worldwide, concentrating on research, mutual loans and professional exchanges. These agreements have in many cases been formalised in Memoranda of Understanding (MOU), signed documents which express the desire of both parties to work together in particular areas for worldwide public benefit. Current MOU exist between the *British Museum* and the following parties:
- Golden Stool (Asantehene) in Kumasi, Ghana
  - Institute of Ethiopian Studies in Addis Ababa, Ethiopia
  - Ministry of Youth, Sports and Culture and the National Museum of the Federal Democratic Republic of Ethiopia
  - Ministry of Culture of Ghana
  - Ministry of Culture of the Republic of Mali
  - Ministry of Education and Culture of the Republic of Mozambique
  - National Museum of China
  - National Museums of Kenya
  - National Museums of Zimbabwe (NMZ) in Harare
  - Palace Museum, China
  - Shanghai Museum, China
  - University of Ghana at Legon
  - West African Museums Programme, Senegal
366. These agreements can be considered interesting examples of bilateral cultural cooperation which bring benefits in terms of mobility of cultural goods (loans from museum collections), professionals and knowledge.

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<sup>396</sup> [http://www.britishmuseum.org/the\\_museum/museum\\_in\\_the\\_world/memoranda\\_of\\_understanding.aspx](http://www.britishmuseum.org/the_museum/museum_in_the_world/memoranda_of_understanding.aspx)



## Section 5. Good practices promoting cross-border cultural mobility – selected examples

367. The previous case studies of multilateral and bilateral agreements across the world provide examples of good practice where specific legal instruments have an impact on the mobility of artists, art works, cultural goods and services.
368. Research among stakeholders reveals many more good practices, some at bilateral or multilateral level and others involving national laws. Many good practice initiatives have also been developed by professional organizations as a response to obstacles to mobility experienced by their members.

### 1. Good practices in bilateral or multilateral agreements

#### ⇒ Visa agreements

369. Visa exemptions are often agreed as part of free movement rights within economic groupings in various parts of the world. For example, visas are not required for travel by citizens of **ASEAN** member countries within the ASEAN region<sup>397</sup>, following an agreement in 2006. Culture professionals report that as a result there is more artistic exchange and collaboration within the region. Visa exemptions apply within regional economic communities in Africa, e.g. between countries of **CEDEAO/ECOWAS**<sup>398</sup>.
370. Visa exemptions may also be part of bilateral agreements. As a potential candidate country to the EU, the **Republic of Serbia** came under the visa facilitation regime in 2008<sup>399</sup>. People participating in cultural and artistic activities, including exchange programmes, must provide a written request from the host organization with their visa application to travel to the EU. The visa fee is waived for participants in cultural and artistic exchange activities and those participating regularly in artistic activities abroad can receive multiple-entry visas.
371. There have been calls for several years for a '**Francophone** visa' for professionals from French-speaking African countries (on short-term mobility for work, study, cultural projects, etc.). In February 2009 a working group at ministerial level started to draft a proposal for a directive establishing a "Francophone visa"<sup>400</sup>.

#### ⇒ Free movement rights for workers

372. Free movement rights within the **European Union** and the EU Schengen area enable visa-free short-term and longer-term mobility of EU cultural workers along with other rights as described above.
373. In the Caribbean **CARICOM Single Market Economy (CSME)**, free movement of skills allows designated 'skilled' citizens to work in other Member States without work permits or residency requirements. Since 1996 the categories of CARICOM nationals allowed free movement include artists, musicians and media persons<sup>401</sup>.

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<sup>397</sup> [http://english.peopledaily.com.cn/200607/26/eng20060726\\_286552.html](http://english.peopledaily.com.cn/200607/26/eng20060726_286552.html)

<sup>398</sup> <http://www.ecowas.int/>

<sup>399</sup> <http://www.europa.org.rs/code/navigate.php?Id=199>

<sup>400</sup> <http://lefaso.net/spip.php?article30759&rubrique62>; [http://www.chanson.ca/fr\\_FR/news/detail/id/143](http://www.chanson.ca/fr_FR/news/detail/id/143)

<sup>401</sup> [http://www.caricom.org/jsp/single\\_market/skill.jsp?menu=csme](http://www.caricom.org/jsp/single_market/skill.jsp?menu=csme)

⇒ **Travel facilitation agreements**

374. Within the **APEC** Asia-Pacific region, the Business Mobility Group<sup>402</sup> (a working group under the APEC Committee on Trade and Investment) works to enhance the mobility of business people. Business travellers can apply for an 'APEC Business Travel Card'<sup>403</sup>. This provides cardholders with pre-cleared, multiple entry to participating APEC economies for short-stay business visits, access to express immigration processing within the APEC region and fast-track entry to the USA and at major international airports in Canada. An online travel handbook gives information on visa and entry requirements. It is not known how many culture professionals from the region have applied or been approved for an APEC Business Travel Card. This initiative demonstrates the existence of an inter-regional pre-screening process which identifies bona fide professionals and facilitates their mobility. Its application to artists and other professionals in the cultural industries on short-term mobility for work purposes could be of benefit.

⇒ **Bilateral cultural cooperation agreements**

375. These are often quoted as helpful in facilitating mobility. Cultural cooperation carried out under bilateral agreements generally involves high-level official invitations for visiting artists or cultural delegations. Such invitations make it easier to secure visas, where required. Sometimes valuable art works for exhibitions can be transported through diplomatic channels.
376. Bilateral cultural cooperation agreements which have defined programmes, budgets, responsibilities and a timetable for implementation are a serious commitment to concrete action on cultural mobility. Agreements with more general expressions of intent may be a necessary first step in the process.

⇒ **Bilateral film co-production agreements**

377. Bilateral cinema co-production agreements include clauses which aim to facilitate the temporary mobility of artists, technicians and other production staff, as well as equipment import or hire and access to other production and post-production facilities.
378. Where specific co-production agreements are not in place, countries which are in demand as film locations have often made arrangements with customs authorities. In the **CARICOM** Caribbean region, it is noted that most countries facilitate the temporary import of film equipment through their film commissions or tourist boards without the need to pay duties, VAT or bond, provided that the equipment is exported on completion of the production. **Argentina's** cinema law is recognised as having a role in facilitating international film co-productions.

⇒ **The "ATA Carnet"**

379. The ATA<sup>404</sup> system set up under the 1961 *WCO Brussels Convention* (see section 1, point 4 of this study) allows the free movement of goods across borders and their temporary admission into a customs territory with relief from duties and taxes. The goods are covered by a single document known as the "ATA carnet" that is secured by an international guarantee system. It is used by artists and cultural managers

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<sup>402</sup> <http://www.businessmobility.org/key/index.html>

<sup>403</sup> <http://www.businessmobility.org/key/abtc.html>

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[http://www.wcoomd.org/home\\_wco\\_topics\\_pfoverviewboxes\\_tools\\_and\\_instruments\\_pfatasystemconven.htm](http://www.wcoomd.org/home_wco_topics_pfoverviewboxes_tools_and_instruments_pfatasystemconven.htm)

transporting art works for exhibition and performance equipment (e.g. contemporary art works and other cultural goods not covered by cultural heritage export controls). The ATA carnet is currently used in around seventy countries.

#### ⇒ **Controls on the export and import of cultural heritage goods**

380. These are necessary to deter the illegal movement of cultural heritage and trade in stolen cultural goods. The **European Union** Export Licence for cultural goods provides a standardised form for the export of cultural goods (defined as certain categories of valuable and/or old objects, such as art works, antiques and musical instruments) from the European Union to any third country. The EU-wide legislation is applied in conjunction with national heritage protection legislation which often provides additional measures.
381. Bilateral agreements also exist around the world to provide controls and mechanisms for the return of illegally imported cultural heritage (see section 4 of this study).
382. Education campaigns can help reinforce the legal instruments. In **Argentina**, for example a national media campaign was launched in 2007 at airports and border crossings, combining powerful visual imagery and humour, aimed at raising awareness and preventing the traffic in illegal cultural goods<sup>405</sup>.

## **2. Good practices in national law and policy frameworks**

383. Several good practices that depend on national laws have been identified through research and as reported by consulted stakeholders.

#### ⇒ **Special visa regimes for artists and cultural workers**

384. **Brazil** offers short-term visas to artists and professionals on a 'cultural mission'.
385. **Cuba** has a low-cost cultural visa available for foreign artists and intellectuals who are invited by a recognised Cuban institution.
386. **Peru** has a 'Visa de Artista', which covers a maximum 15-day stay in the country - the standard visa application form has a section for artists and artistic groups. Artists working in Peru have to provide a contract and a recognised trade union membership document (Pase Intersindical).
387. Such initiatives can be extremely helpful in identifying artists and cultural workers as part of a defined sector where international mobility is a professional reality, particularly if they are accompanied by fast-track application procedures and reduced fees. Adequate border controls are also required to enforce the legislation.

#### ⇒ **Status of the artist legislation**

388. **Morocco** has introduced a law on the status of the artist<sup>406</sup>, inspired by legal measures in **France, Tunisia** and **Egypt**. Artists who are approved under the law are provided with a 'Professional Card' which gives access to basic social security protection and other benefits. It gives the artist the right to put 'artist' as their profession on their passport or identity card. This professional identification and

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<sup>405</sup> <http://www.cultura.gov.ar/programas/index.php?info=detalle&id=61>

<sup>406</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=37295&URL\\_DO=DO\\_PRINTPAGE&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=37295&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html)

validation process can also be helpful in order to obtain a visa as an artist in other countries of the region.

⇒ **Integration of cultural mobility in international policy**

389. National governments have many occasions to develop opportunities for cultural mobility and cooperation alongside international policy and major events. Examples in the case studies include **New Zealand** where a visit by the Prime Minister to **South Korea** in 2003 was the opportunity to invite a film industry delegation, leading to a film co-production agreement between the two countries.
390. An official visit by the President of **Chile** to **Cuba** in 2009 involved a large delegation with a strong cultural representation, and several bilateral cultural cooperation agreements were signed.
391. **Vietnam** has designated 2009 as the Year of Cultural Diplomacy<sup>407</sup>. Plans for the year include the organization of Vietnam Days in a number of countries and completing legal foundations and coordination mechanisms needed to support cultural diplomacy.

⇒ **Tax law – abolition of withholding tax for non-resident artists**

392. The government of the **Netherlands** decided to abolish the taxation of non-resident artistes and sportsmen from 2007<sup>408</sup>. This radical change attracted special attention, because the Netherlands had the right to levy a source tax from non-resident artists and sportsmen under existing bilateral tax treaties. However, after evaluation, the government was convinced that the tax revenue from this special group of taxpayers was too low and the administrative burden too high to justify a source tax. The government of the Netherlands believes that their action removes an obstacle for international performing artists and sportsmen and leads to fairer taxation. On OECD and EU level the Netherlands asked other countries to follow this initiative. The end of the non-resident artist and sportsman taxation in the Netherlands only applies to artists and sportsmen living in a country with a bilateral tax treaty with the Netherlands (in 2009, there were 90 such countries<sup>409</sup>).
393. The *Deutscher Kulturrat* (German Cultural Council) started action at the end of 2007 against the problematic tax rules for non-resident artists in **Germany**. It released a press statement<sup>410</sup> in which it urged the politicians to copy the new Dutch artist tax rules.

⇒ **Cultural sponsorship legislation**

394. Fiscal incentives for cultural sponsorship can be beneficial to cultural mobility. The *Lei de Incentivo à Cultura*<sup>411</sup> in **Brazil** is quoted by cultural operators in **Argentina** as a good mechanism for encouraging sponsorship of cultural exchanges between the two countries. The law forms part of the Rouanet Law and other legal frameworks for the support of the cultural sector in Brazil<sup>412</sup>.

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<sup>407</sup> <http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns081210093000>

<sup>408</sup> <http://www.allarts.nl/articles/2006/End%20of%20Artiste%20and%20Sportsman%20Taxation%20in%202007%20-%20AA.pdf>

<sup>409</sup> [http://www.allarts.nl/articles/2008/90 countries - 2008-12-15.pdf](http://www.allarts.nl/articles/2008/90%20countries%20-%202008-12-15.pdf)

<sup>410</sup> <http://www.allarts.nl/articles/2008/DK%20-%20Pressemitteilung%2026-12-2007.pdf>

<sup>411</sup> <http://www.minc.gov.br/projs/projsb.htm>

<sup>412</sup> [http://www.ifacca.org/national\\_agency\\_news/2009/01/05/minc-2008-highlights-and-perspectives-2009/](http://www.ifacca.org/national_agency_news/2009/01/05/minc-2008-highlights-and-perspectives-2009/)

⇒ **Culture and development policy**

395. National policy and international aid budgets can be a source of support for culture and development projects. Many NGOs, agencies and foundations have developed good practice in the management and evaluation of cultural projects as part of sustainable development strategies<sup>413</sup> in countries of the South and elsewhere. The strategy of the Ministry of Foreign Affairs in **Norway** for cooperation in culture and sport with countries of the south<sup>414</sup> is one example.
396. Another indicator of good practice is the extent to which a country's national policy on culture and development reflects current global needs or merely follows post-colonial patterns of engagement.

⇒ **Immunity from seizure legislation**

397. Loans of valuable national heritage such as museum objects must often be agreed at bilateral level between institutions or governments. An essential requirement for some such loans is immunity from seizure – to be provided by national law or government guarantee.
398. In the **United Kingdom**, for example, immunity from seizure is provided under Part 6 of the *Tribunals, Courts and Enforcement Act 2007*. This Act provides protection from seizure for cultural objects from abroad on loan to temporary exhibitions in approved museums and galleries in the United Kingdom, provided certain conditions are met<sup>415</sup>.

### **3. Good practices developed by professional organizations**

⇒ **Campaign on visa obstacles for artists**

399. **Freemuse**, *the world forum on music and censorship*, launched a white paper on visa issues, Europe and artists' mobility<sup>416</sup> in 2008 and has followed this up with a campaign to bring visa problems, particularly for musicians from third countries entering the European Union, to the attention of politicians. A broadcast discussion with the Swedish Minister of Immigration<sup>417</sup> and a hearing with a Danish parliamentary committee on cultural diversity have further raised debate on the visa issue.

⇒ **Systems for visa guarantees for arts professionals**

400. Various procedures are reported that involve professional arts organizations and national bodies providing guarantees or references for artists and cultural operators to obtain visas for short-term mobility:
401. The Ministry of Culture in **Croatia** reports that art agencies, cultural managers and festival organizers usually seek their assistance in the form of recommendation letters in order to facilitate the approval of visas. It is suggested by others that such a system might be more widely developed to provide visa guarantees for artists invited to international festivals, conferences or other major cultural events.

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<sup>413</sup> <http://www.powerofculture.nl/en>

<sup>414</sup> [http://www.regjeringen.no/upload/UD/Vedlegg/Kultur%20og%20profilering/kulturogidrett\\_2utg\\_eng.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/Kultur%20og%20profilering/kulturogidrett_2utg_eng.pdf)

<sup>415</sup> <http://www.nationalgallery.org.uk/about-us/organisation/policies/immunity-from-seizure/>

<sup>416</sup> <http://freemuse.synkron.com/graphics/Activities/Campaigns/PDF/VisaWhitePaper.pdf>

<sup>417</sup> <http://www.freemuse.org/sw31581.asp>

402. In **Norway** several major cultural employers (e.g. the National Opera, Philharmonic orchestras, Bergen International Festival) are authorised to apply for visas on behalf of individual performing artists and musicians.<sup>418</sup>
403. In the **Netherlands SICA**, the Dutch institute for international cultural policy, acts as the entry point to the Dutch cultural sector for Dutch Embassies and foreign cultural organizations<sup>419</sup>. It invites foreign culture professionals through the Foreign Visitors' Programme. In 2003 SICA brought together an Artists and Visa Taskforce<sup>420</sup>, inviting collaboration between the cultural sector and immigration and employment authorities. As a result, it has published a manual in Dutch on the rules and regulations for visa and work permits that apply to artists.
404. In spite of reporting many difficulties in obtaining visas for delegates to their World Congress, the **International Theatre Institute** (ITI) notes that in certain countries visa difficulties have been eased through the excellent relationship their national representative has developed with embassies and consulates in their country. Such a relationship of trust can ensure that, with a letter of recommendation, visas can be obtained rapidly for incoming and outgoing artists. ITI observes that "if the authorities in a country are sensitive to the needs of artists to travel, they are of assistance and can help quickly".
405. The **American Federation of Musicians of the United States and Canada** (AFM) has been recognised by both United States Citizenship and Immigration Services (USCIS) and Citizenship and Immigration Canada as an authorised petitioner for temporary work permits on behalf of AFM member musicians<sup>421</sup>.
406. The **Musicians' Union in Nigeria** (PMAN) reports that, after many meetings, it has established an excellent working relationship with the Federal Immigration Services. PMAN now offers a fee-based service to music promoters to verify the status of artists invited to perform in Nigeria and negotiate the issuing of visas and temporary work permits through the Immigration Services and the Nigerian Embassy abroad. For the MTV Base Awards in 2008, PMAN cleared about sixty artists invited to Nigeria within ten days without any delays or problems.
407. The **Musicians' Union in Jamaica** is a point of reference for visa facilitation for incoming foreign artists.

⇒ **Inter-trade union agreements on mobility of artists**

408. In Latin America there have been a number of initiatives to agree the conditions for mutual recognition of proof of status of musicians and other artists who work in another country. In **Argentina**, musicians found themselves unable to work in **Brazil** because of employment law which required proof of professional registration under the Brazilian system. The **Argentinean Musicians' Union** held a series of meetings with their counterparts in Brazil and plans a bilateral agreement to approve the recognition in Brazil of Argentinean professional registration documents ('Matricula Profesional') for musicians. Such agreements not only enhance the mobility of artists but also play an important role in raising the status of the artist, regulating conditions of work, encouraging registration and union membership, legal employment and other contractual and social benefits.

⇒ **Action on transport of musical instruments**

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<sup>418</sup> <http://www.udi.no/templates/Tema.aspx?id=7404#musician>

<sup>419</sup> [http://www.sica.nl/pdf/081014\\_factsheet\\_uk.pdf](http://www.sica.nl/pdf/081014_factsheet_uk.pdf)

<sup>420</sup> <http://www.sica.nl/>

<sup>421</sup> <http://www.afm.org/departments/touring-travel-theatre-booking-immigration/visa-questions-and-answers>

409. In recent years, airport security and airline regulations have become much tighter. After September 11 2001, emergency regulations limiting cabin baggage created new obstacles to mobility for musicians who take their musical instruments on the plane with them (for reasons of security, insurance and atmospheric conditions). The **American Federation of Musicians (AFM) of the United States of America and Canada**<sup>422</sup> negotiated a commitment from the *Transportation Security Administration* (TSA) to process musical instruments without any difficulties. Members of the AFM can get a copy of the TSA letter 'Musical Instruments as Carry-on Luggage'<sup>423</sup>. Nevertheless, the AFM reports that some of its members have had limited success with the letter since it only applies to the TSA-managed security screening.
410. Individual airlines make their own carry-on luggage policy which has many variations. In the United Kingdom, the **British Musicians' Union** has been active to negotiate agreement<sup>424</sup> for musicians to be allowed to take their instruments onto airlines following the cancellation of international concert appearances due to emergency airline security measures which banned carry-on luggage.

⇒ **International Association of Art (AIAP/IAA) Customs Certificate**

411. In 1975 the **International Association of Art** (IAA) devised a *Certificate for the Customs Authorities* which was circulated to its national committees. The Certificate, authorised by UNESCO, quotes the relevant international agreements which allow the free movement of works by living artists across borders (1950 *UNESCO Florence Agreement* and 1961 *Brussels Customs Convention*). It is designed to be delivered by the IAA National Committees (numbered, signed and stamped) to individual artists and exhibition organisers in order to facilitate the passage of art works through customs. The IGBK (German National Committee of the IAA, representing over 14,000 visual artists in Germany) notes that the Certificate only has recommendatory status but that feedback from artists who use it suggests that it is sometimes quite helpful with customs authorities.

⇒ **EuroFIA Dance Passport**<sup>425</sup>

412. The European group of the **International Federation of Actors** (FIA) facilitates the mobility of dancers in Europe through the *EuroFIA Dance Passport*. The reciprocal solidarity service is open to members of one of FIA's affiliated unions. With the *EuroFIA Dance Passport*, dancers working or seeking work temporarily in another Member State in the *European Economic Area* can benefit from the services of the union in their country of destination. The European FIA group has also developed a *model contract for dancers working abroad* to inform dancers about minimum statutory working conditions.

⇒ **Information & support for incoming artists**

413. Providing a supportive framework for incoming artists can be facilitated by initiatives from the sector. Examples of good practice include:
- Specialist information aimed at artists abroad who want to work in the **United Kingdom**<sup>426</sup> has been provided by **Visiting Arts** for many years.

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<sup>422</sup> <http://www.afm.org>

<sup>423</sup> <http://www.afm.org/departments/legislative-office/instruments-as-carry-on>

<sup>424</sup> <http://www.musiciansunion.org.uk/site/cms/contentviewarticle.asp?article=653>

<sup>425</sup> [http://www.fia-actors.com/en/eurofia\\_dance\\_passport.html](http://www.fia-actors.com/en/eurofia_dance_passport.html)

<sup>426</sup> [http://www.visitingarts.org.uk/info\\_resources/index.html](http://www.visitingarts.org.uk/info_resources/index.html)

- In **France**, information aimed at French cultural employers on the regulatory systems for non-resident artists is provided through a specialist website<sup>427</sup>. A bureau for organizations inviting visiting artists has opened for the Paris region<sup>428</sup>.
- In the **USA**, the **League of American Orchestras and Association of Performing Arts Presenters** has created a website<sup>429</sup> aimed at foreign guest artists, managers and performing arts organizations to inform them about tax requirements and immigration procedures.

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<sup>427</sup> <http://www.artistes-etrangers.eu>

<sup>428</sup> <http://www.ciup.fr/baape.htm>

<sup>429</sup> <http://artistsfromabroad.org/>



## Section 6. Obstacles to international cross-border cultural mobility

414. Despite many supportive international legal instruments at universal, regional, sub-regional and bilateral level which favour cross-border mobility, too often artworks, cultural goods and services and artists face serious obstacles or difficulties when crossing borders.
415. Obstacles to cross-border mobility have been identified through answers collected through the survey undertaken as part of this study and review of research undertaken previously<sup>430</sup>.
416. Five areas have been identified where obstacles occur and make it sometimes impossible but often just difficult, time-consuming and expensive for cultural operators and artists to cross borders:

### **1. Obstacles to the free movement of artists: visas and work permits**

417. National rules on visas and work permits are frequently quoted as one of the major obstacles artists face when being cross-border mobile. This is particularly true for artists from the regions of Africa, Arab States, Latin America and Caribbean and Asia and Pacific who wish to be mobile and enter countries in Europe and North America.
418. The trend is towards the adoption of increasingly restrictive rules as is the case for example in the new United Kingdom visa legislation which has tightened up the requirements for all professionals travelling to Britain from outside the EU, including professionals who wish to perform or take part in an arts event. As a result artists who wish to go to the United Kingdom must now not only show proof of their identity, including fingerprints, but also show they have an established sponsor willing to take full financial responsibility for them and to vouch for all their activities while on British soil. This new legislation has already had a huge negative impact on the cross-border mobility of artists, including internationally recognised artists. It also puts huge financial burden on smaller hosting organizations in particular in the United Kingdom. Similar restrictive rules exist in other EU countries, but also in North America and Australia<sup>431</sup>.
419. Regional agreements between countries to ease free movement of people (EU-Schengen area, ASEAN, WAEMU, CARICOM, MERCOSUR, Andean Community) often make it easier for artists and cultural workers to cross borders within that region. These are important achievements. However, obstacles to person mobility between countries inside one region very often still exist, for example between certain countries within the Africa region or the Asia Pacific region.
420. In addition, frequent difficulties in getting a visa and a work permit occur for artists and cultural workers and operators who wish to enter countries from other world

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<sup>430</sup> See in particular:

- Judith Staines, *From pillar to post - a comparative review of the frameworks for independent workers in the contemporary performing arts in Europe*, IETM, On-the-move.org, 2004, 2007: [http://www.ietm.org/upload/files/16\\_20061123164008.pdf](http://www.ietm.org/upload/files/16_20061123164008.pdf)
- Richard Poláček, *Study on impediments to mobility in the EU live performance sector and on possible solutions*, published by Pearle\*, TINFO - Finnish Theatre Information Centre, IETM, on-the-move.org, 2006: [http://www.ietm.org/upload/files/2\\_20070326111816.pdf](http://www.ietm.org/upload/files/2_20070326111816.pdf);
- ERICarts Institute, *Mobility Incentives for Cultural Professionals in Europe*, 2008: <http://www.mobility-matters.eu/web/index.php>

<sup>431</sup> For more information on obstacles regarding visas to Europe, see: *Visas – the discordant note. A White Paper on visa issues, Europe & artists' mobility* by Freemuse, the European Council of Artists and the European Live Music Forum and the European Forum of Worldwide Music Festivals: <http://freemuse.synkron.com/graphics/Activities/Campaigns/PDF/VisaWhitePaper.pdf>

regions. Some countries (e.g. in the Asia region) also levy relatively high taxes when people (including artists) enter or leave a country.

421. National rules and procedures on visas prove to be ill-adapted to the mobility patterns in the cultural sector, in particular short-term mobility: for example, performing artists who wish to perform cross-border for a very short period (e.g. just one day) and have to face long and inflexible application procedures for visas and work permits. Rules and applicable procedures on visas and work permits are often described as non-transparent, burdensome, time-consuming and sometimes expensive. Persistently late decisions on visas and the reasons given (or not given) for refusal of visas have been described as “humiliating” by culture professionals, including artists and organisers of major world cultural congresses.

## **2. Lack of compliance with international legal instruments related to cross-border mobility**

422. Many international legal instruments as described in sections 1-4 of this study address cross-border mobility of people, goods and services, including in the field of culture. Some of these instruments are explicitly designed for cultural cooperation and propose mechanisms to ease and encourage cross-border cultural mobility (e.g. the 1950 *Florence Agreement* or the 1961 *Brussels Convention*).
423. However, not all countries in the world have signed up and ratified the legally binding agreements. In addition, very often these instruments are not applied in reality in the Contracting States. Cultural operators, service providers and artists and cultural workers therefore face difficulties and obstacles to mobility which are addressed in legal texts that are not enforced by competent national authorities or to which States have simply not signed up.
424. Very often the non-compliance with international obligations goes hand-in-hand with non-transparency about national and international applicable rules and procedures and poor knowledge about these rules – on the part of cultural operators and also the national public authorities in charge of implementing the international rules.
425. The situation of non-compliance with legal instruments is particular worrying in the following areas:

### **⇒ Cross-border mobility of cultural goods**

426. Many organizations in the audiovisual, literature and visual arts sectors report that the provisions of the *Florence Agreement* and the *Nairobi Protocol* are often not implemented by the customs authorities in various Contracting States. Customs duties and charges are therefore levied for imported cultural goods despite the fact that they are covered by these agreements. This makes the free movement of cultural goods and services, including for artists, very difficult and sometimes unpredictable. This problem concerns all regions of the world.
427. Difficulties also occur as regards the application of the *Brussels Customs Convention* (ATA Carnet) and the temporary admission of goods and artworks. In particular visual arts organizations and artists frequently report problems in countries which have ratified this agreement: very often customs authorities do not know the applicable rules or do not apply them.

⇒ **Respect of artists' social rights**

428. Organizations representing artists in the performing and visual arts report that despite clear international binding ILO labour standards, artists who work across borders are often not protected in the host countries by basic social security and employment legislation, including against risks of work accidents and unacceptable working conditions. The absence of work inspections and unpaid work relationships make this problem even more acute.
429. This problem is particularly serious and of concern in countries worldwide. It is closely linked to efficient implementing of ILO standards and the follow-up to the 1980 *UNESCO Recommendation concerning the Status of the Artist*.

⇒ **Respect for intellectual property rights**

430. In particular editors and phonogram producers report serious problems with the application of international legally binding instruments on the protection of copyrights and related rights as developed by WIPO. The non-application of these rules on the protection of copyright and related rights is a serious obstacle to cross-border mobility as many producers and editors refrain from importing cultural goods to countries which have not signed up to these agreements or which do not apply or enforce them. Problems with non-application occur frequently in various countries of the regions of the Arab States, Africa, Latin America and Asia.
431. Another frequent problem is the lack of efficient enforcement of intellectual property rights for cross-border mobile artists, including long procedures for the payment of foreign right holders by foreign collecting societies. This concerns many countries across all regions of the world.
432. Another problem of particular importance for phonogram producers and right holders like artists, composers, and producers is the protection of content in the digital world which is very mobile across borders. It remains unclear how international rules apply, especially in countries which have less efficient IPR protection mechanisms in place, in countries of the Africa region, for example.

**3. Difficulties to access national markets**

433. Cultural goods and services linked to the audiovisual sector, literature and visual arts often also have difficulties to enter national markets, despite expanding international, regional and bilateral trade rules across the world.
434. In this somewhat paradoxical situation trade regulations, including rules on customs, allow in principle the import and export of cultural goods and services, but obstacles persist which result in the fact that these goods and services cannot reach the end users in foreign countries.
435. This is the case when access to national markets and distribution channels for foreign cultural goods and services is too severely controlled by public authorities for various reasons. Artworks and cultural goods like phonograms, books and films have difficulties to enter these countries and can only use "official" distribution channels. This concerns various countries especially in the regions of the Arab States, Asia and Africa.
436. In addition, cultural operators and producers, especially in the phonogram and editing sector, report severe difficulties to have their intellectual property rights respected especially when entry of cultural goods through "official" distribution channels is

refused. Frequent problems occur especially in Asia for cultural goods such as phonograms and films which have not been officially released on the market but where counterfeit copies circulate.

437. Trade disputes between countries related to restricted access of cultural goods and failure to guarantee intellectual property rights are regularly brought before the WTO dispute settlement body<sup>432</sup>.
438. Another serious problem concerns the severe market distortion in some cultural markets, and the restrictive business practices of some transnational companies (especially in the markets for audiovisual goods and services, including phonograms). This results in a limited access of cultural goods and services in particular from the "South" towards the "North". Smaller and medium-sized "independent" cultural operators also have difficulties to enter markets and in particular national distribution channels.
439. Audiovisual goods and services are particularly affected by this obstacle. As reported in several studies at regional and international level, the presence of films from third countries on the European Union market is still modest (although increasing slightly) and European markets are still polarised between domestic, European films and US titles<sup>433</sup>. In particular audiovisual products from Africa reach European cinemas and television only with difficulty. Co-production between EU and non-EU Member States facilitates access to EU markets, but "purely" African products have huge difficulties to enter the market.
440. The situation in other regions of the world is hardly better. In the USA some 90% of the films distributed on the national market are produced in the USA. USA films dominate the market in many countries around the world, including Canada, Latin America, Australia and many countries in Asia<sup>434</sup> while the share of films produced in other countries (or in the country itself) can remain quite low.
441. As regards "independent" producers of phonograms in all regions of the world, they often have difficulties to access foreign markets due to closed distribution channels which are *de facto* reserved to major international phonogram producer companies.
442. Market distortions due to closed distribution channels raise serious concerns not only in terms of "fair competition", but also as regards cross-border cultural mobility and ultimately cultural diversity.

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<sup>432</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm)

See in particular the recent report of the WTO dispute settlement body concerning two complaints lodged by the United States against China, one over deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks on a wide range of products, and the other over China's barriers to trade in books, music videos and movies: [http://www.wto.org/english/news\\_e/news09\\_e/362r\\_e.htm](http://www.wto.org/english/news_e/news09_e/362r_e.htm)

In 2007, the United States also started a WTO dispute settlement procedure against China with respect to trade restrictions and restricted market access (including distribution services) for imported films for theatrical release, audiovisual home entertainment products (e.g. video cassettes and DVDs), sound recordings and publications (e.g. books, magazines, newspapers and electronic publications). The procedure is on-going: [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds363\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds363_e.htm)

<sup>433</sup> See in particular several studies conducted by the European Audiovisual Observatory: <http://www.obs.coe.int/about/oea/org/index.html>; M. Kanzler and A. Lange, *The Place of Third Country Film and Audiovisual Works in European Markets*, European Audiovisual Observatory, 2008: [http://www.obs.coe.int/online\\_publication/reports/thirdcountry\\_av\\_works.pdf.en](http://www.obs.coe.int/online_publication/reports/thirdcountry_av_works.pdf.en)

<sup>434</sup> World Film Market Trends, Focus 2008, publication of the [http://www.obs.coe.int/online\\_publication/reports/focus2008.pdf](http://www.obs.coe.int/online_publication/reports/focus2008.pdf)

#### **4. Ill-adapted national and international rules for cultural cross-border mobility**

443. Many obstacles are due to national and international rules which are either ill-adapted to cross-border cultural mobility or do not create favourable conditions for artists and cultural industries to develop nationally and across borders.

##### **⇒ Rules on withholding taxes for cross-border mobile artists**

444. National rules and bilateral tax agreements on withholding taxes act as an obstacle and a strong disincentive to cross-border mobility. As mentioned in previous sections, bilateral tax agreements in many countries across the world are based on the *OECD Model Tax Convention* and include rules on withholding taxes for income of temporary cross-border mobile artists. Despite some very encouraging changes in bilateral tax agreements introduced by some countries (e.g. the Netherlands, USA, Belgium, see Section 5 of this study on “good practices”) too many countries still apply too strict rules for withholding taxes.

445. As a result, to avoid double payment of taxes or excessive taxation in the host country where the non-resident artist provided a service, artists are often confronted by a huge amount of paperwork linked to a lack of clear and accessible information about applicable rules, and long and burdensome procedures. This is particularly acute for individual artists who do not have high earnings from cross-border cultural mobility.

##### **⇒ Lack of enabling regulatory environment for national cultural industries**

446. In many countries small and medium-sized enterprises (SME) and micro-enterprises in the cultural sector operate in a regulatory environment which does not enable them to develop their full potential at national level and access to foreign markets<sup>435</sup>.
447. Many countries across the world have not (yet) developed and implemented policies which would deliver such an enabling environment. This includes targeted policies, regulations and enforcement of regulations for the sector on trade, access to finance and credits, taxation and intellectual property rights protection and other issues.
448. The lack of an enabling environment for cultural industries heavily affects the cross-border mobility of goods and services carrying diverse cultural content. Sectors particularly affected concern the audiovisual sector (in particular enterprises producing films and phonograms), but also the literature and editing sector.

##### **⇒ Insufficient protection of artists’ rights at national and international level**

449. In many countries across the world artists still do not have a recognised status in national laws or a national legal and institutional framework that takes into account

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<sup>435</sup> See in particular:

- Keith Nurse et al, *The Cultural Industries in CARICOM – Trade and Development Challenges*, Report prepared for the Caribbean Regional Negotiating Machinery, 2006 : [http://www.carib-export.com/SiteAssets/Cultural\\_Industries\\_Report\\_Final\\_Jan07.pdf](http://www.carib-export.com/SiteAssets/Cultural_Industries_Report_Final_Jan07.pdf).
- Francisco d'Almeida and Marie Lise Alleman: *Les industries culturelles des pays du sud : enjeux de l'adoption de la Convention internationale sur la Diversité culturelle*, Report of the International Organization for Francophonie, 2004: [http://agence.francophonie.org/diversiteculturelle/fichiers/aif\\_etude\\_almeida\\_alleman\\_2004.pdf](http://agence.francophonie.org/diversiteculturelle/fichiers/aif_etude_almeida_alleman_2004.pdf)
- Alessandra Quartesan, Monica Romis, Francesco Lanzafame, *Cultural Industries in Latin America and the Caribbean: Challenges and Opportunities*, study of the Inter-American Development Bank: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1152852>

the specific working conditions of artists and ensures minimum employment rights regardless of status. Often artists still do not have adequate access to social security, health insurance, fair and flexible taxation and pension schemes<sup>436</sup>. Although cross-border mobility is part of the everyday work of many artists in the world, the lack of appropriate protection of artists' rights makes mobility more difficult for them and sometimes even dangerous. The lack of rights and the lack of efficient enforcement of basic labour standards at national level put artists too often in precarious situations.

450. Due to the lack of efficient coordination of social security systems between countries, mobile artists (especially when crossing borders frequently for longer periods) are often penalised as pension contributions made across a range of countries may leave them with a pension that is impossible to calculate and collect. This can be the case in regions or between countries which have established the coordination of social security schemes (e.g. the EU). It is even more difficult in regions where countries have not set up such coordination schemes.
451. Finally, the absence of the recognition of intellectual property rights at national and international level (e.g. the absence of intellectual property rights of audiovisual performers) and the absence of efficient protection of existing rights at national level causes serious problems for artists, and even more for those who are active across borders. Mobile artists often have to struggle hard to have their rights respected for work accomplished abroad or cultural goods and services used abroad and which contain their intellectual property rights.

## **5. Lack of transparency and accessible information about applicable rules and procedures**

452. Artists, cultural operators and workers around the world have huge difficulties to access information on relevant international and national regulations and administrative procedures that need to be observed when being mobile across borders.
453. The lack of transparency also concerns the availability of key national regulations and related administrative procedures on visas, social security, working conditions, tax and customs in international languages.

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<sup>436</sup> See in particular:

- Judith Staines, *From pillar to post - a comparative review of the frameworks for independent workers in the contemporary performing arts in Europe*, IETM, On-the-move.org, 2004, 2007: [http://www.ietm.org/upload/files/16\\_20061123164008.pdf](http://www.ietm.org/upload/files/16_20061123164008.pdf)
- FIA, *FIM - Manifesto on the Status of the Artist*, 2008: [http://www.fia-actors.com/en/news\\_1356-1109-19781.html](http://www.fia-actors.com/en/news_1356-1109-19781.html)
- Yohann Floch, *Street Artists in Europe*, report of Circostrada for the European Parliament, 2007: [http://circostrada.org/IMG/file/PUBLICATIONS/ExSum\\_Street%20Artists\\_EN.pdf](http://circostrada.org/IMG/file/PUBLICATIONS/ExSum_Street%20Artists_EN.pdf)
- Suzanne Capiau, Andreas Johannes Wiesand, in cooperation with Danielle Cliché, report of the European Institute for Comparative Cultural Research (ERICarts), study for the European Parliament's committee on Culture and Education, 2006: <http://www.europarl.europa.eu/activities/committees/studies/download.do?file=13248>
- Elena Di Federico, Judith Neisse, *Study on Artistic and Cultural Professional Profiles in non-European Mediterranean Countries*, Study of the Roberto Cimetta Fund, 2007: <http://www.cimettafund.org/documents/EN/Short%20version%20EN.pdf>
- *Derechos Sociales de los Artistas del MERCOSUR Cultural*, study of the National Council for Culture and Arts in Chile, with the support of Unesco, 2004: <http://unesdoc.unesco.org/images/0015/001583/158349s.pdf>
- Richard Poláček, *Study related to the various regimes of employment and social protection of workers in the European media, arts and entertainment sector in five EU applicant countries*, study carried out by the European Trade Union Confederation (ETUC) and the European Arts and Entertainment Alliance (EAEA), 2003: [http://portal.unesco.org/culture/fr/ev.php-URL\\_ID=33789&URL\\_DO=DO\\_PRINTPAGE&URL\\_SECTION=201.html](http://portal.unesco.org/culture/fr/ev.php-URL_ID=33789&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html)
- Jean Vincent, *The social situation of musical performers in Africa, Asia and Latin America*, study commissioned by the ILO's Sectoral Activities Department, 2001: [http://portal.unesco.org/culture/en/file\\_download.php/f705d6007bacdf685c63988f37d1ef07situation\\_musical\\_performers2001.pdf](http://portal.unesco.org/culture/en/file_download.php/f705d6007bacdf685c63988f37d1ef07situation_musical_performers2001.pdf)

## **Section 7: Recommendations and strategies to improve international cross-border cultural mobility**

454. As outlined in the previous sections, there is already an impressive legislative framework promoting cross-border mobility in the cultural sector at universal, regional, sub-regional and national level.
455. Obstacles are mainly due to non-compliance with existing legal instruments – either because countries have not signed and ratified these instruments or because of ineffective implementation by Contracting States. There are also some important gaps in terms of insufficient protection and promotion of artists, artworks, cultural goods and services and cultural industries. In addition access to some markets is closed due to market distortions or severe control by the public authorities.
456. To tackle these obstacles and create favourable conditions for artists and cultural operators to be strong key players of cross-border mobility promoting cultural diversity, the authors put forward the following open list of recommendations<sup>437</sup>. A key principle of these recommendations is that cultural mobility should not come at any price. Cultural mobility is not an aim in itself and must respect the rights of artists and intellectual property rights linked to artworks, cultural goods and services. It must also promote cultural diversity as clearly set out in the 2005 UNESCO Convention:

### **1. Key recommendations**

#### **Recommendation n° 1:**

#### **Promoting the accession of countries to universal legal instruments**

457. Many international legal instruments, and particularly those which are legally binding, make cross-border mobility easier. Amongst them are core instruments at universal level:
- the 1950 *Florence Agreement* (including the 1976 Nairobi Protocol),
  - the 1961 *Brussels Customs Convention* on the ATA Carnet,
  - the WIPO intellectual property treaties,
  - the 1995 *UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects*,
  - the 1970 *UNESCO Convention on the Means of Prohibition and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and
  - the 2005 *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*.
458. Countries which have not yet signed up to these agreements should be encouraged to sign and ratify them.

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<sup>437</sup> Many of these recommendations reflect proposals made in previous studies and policy documents at regional and international level:

*Action Plan for the EU promotion of Museum Collections' Mobility and Loan Standards:* <http://www.nemo.org/index.php?id=104>

*Lending to Europe: recommendations on collection mobility for European museums:* <http://www.nba.fi/mobility/background.htm>

*Study on Impediments to Mobility in the EU Live Performance Sector:* [http://www.ietm.org/upload/files/2\\_20070326111816.pdf](http://www.ietm.org/upload/files/2_20070326111816.pdf)

**Recommendation n° 2:  
Ensuring the efficient implementation of international legal instruments**

459. The effective implementation of binding international agreements (at all levels) is crucial to overcome obstacles. This is particularly true for all the above-mentioned instruments and especially for all international instruments related to intellectual property rights and the rights of artists.
460. **More efficient monitoring tools** need to be designed by international organizations (UNESCO, WCO, UNIDROIT, WIPO and others) to report regularly on the effective implementation of these agreements and their effect on cross-border cultural mobility with the possibility for cultural operators and artists to inform competent authorities about cases of non-compliance.
461. Efficient implementation of international agreements in particular in the field of **international trade** is needed as well as a meaningful coordination with the provisions and aims of the UNESCO Convention on Cultural Diversity. This implies setting up tools to ensure that national markets are not clustered and dominated by a few transnational operators and producers but that micro-enterprises and SMEs can receive the national support they need, access foreign markets and foreign distribution channels and thus disseminate their products and services which carry the content of cultural diversity.
462. This includes setting up tools for “fair competition” which take into account the need to support the dissemination of products and services of **micro and SME cultural industries in developing countries**. It also includes putting the **promotion of cultural diversity** as an integral part of sustainable development **at the core of trade rules** across the world.
463. Equally, follow-up of the implementation of non-binding legal instruments like the 1980 **UNESCO Recommendation concerning the Status of the Artist** or the 1976 **UNESCO Recommendation concerning the International Exchange of Cultural Property** needs to be continued and reinforced: more regular up-dates informing a wider public about initiatives taken by UNESCO Member States to conform to these recommendations can help promote good practices and inspire other countries to follow them.

**Recommendation n° 3:  
Adapting and developing international legal instruments to better meet the needs of mobile artists, artworks and the mobility of cultural goods and services promoting diversity**

464. Despite the already efficient legal instruments that are in place there is an obvious need to make sure that new international rules are developed, especially at regional, sub-regional, multi-lateral and bi-lateral level to meet the needs of mobile artists and operators wishing to move services and goods across borders. Regional and international organizations and States should go further and:
465.
  - Set up regional areas for **free movement of persons** similar to the ones set up in Europe, in West Africa, between ASEAN countries and elsewhere. This also includes setting up regional, multi-lateral and bi-lateral agreements aiming specifically at the free movement of artists and cultural operators. Favourable visa and work permit conditions must be ensured for third-country artists and cultural operators.



466.     ▪ Establish binding **trade rules** at regional, international and multi-lateral level **promoting specifically the free movement of goods and services of micro and small and medium-sized cultural enterprises** carrying cultural diversity content, with specific attention to rules and mechanisms supporting import and export of cultural goods and services to and from **developing countries**.
467.     ▪ Adopt common agreements **enhancing coordination of social security schemes** at international and regional level to ensure that artists who live and work in different countries during their career receive the right level of pension.
468.     ▪ Set up binding rules and procedures at international and regional level, in line with ILO standards and existing recommendations and conventions, targeting specifically the **social rights of artists** working across borders, in order to ensure a high level of social protection, regardless of the period of time artists work across borders. This also includes a revisiting and renewal of the 1980 *UNESCO Recommendation on the Status of the Artist*.
469.     ▪ Set up binding rules at regional and international level relating to the **protection of artists' intellectual property rights** for all their works, including audiovisual works.
470.     ▪ Establish rules, policies and procedures necessary to **improve the free movement of museum collections**, aiming in particular to promote the use of codes of ethics (like the ICOM Code of Ethics), to create inventories, to adopt appropriate customs and border procedures and rules on insurance, to establish indemnity schemes, to develop immunity from seizure systems, to promote appropriate policies on loan fees, and to foster digitalisation of museum collections.
471.     ▪ Conclude further **bilateral and multilateral cultural cooperation agreements**.
472.     The good practices and case studies mentioned in this study can be of inspiration to the development of further legal instruments at regional and multilateral level.

**Recommendation n° 4:**

**Creating a supportive national legislative environment for cultural industries promoting cultural diversity, for artists and for cross-border mobility of goods and services**

473.     International legal instruments alone are not sufficient. The major responsibility for promoting cross-border cultural mobility lies in the hands of States.
474.     Countries across the world need to make serious commitments and **adopt binding national rules and regulations to significantly improve:**
475.     ▪ The **regulatory environment for micro and small and medium-sized enterprises**. This includes appropriate national regulations and policies in the areas of trade, competition, state aid, taxation and intellectual property rights. It also implies efficient rules (and their effective enforcement) in the field of intellectual property.
476.     ▪ The **rights and the social status of artists**, geared towards the atypical situation of working conditions of artists and including intellectual property protection, rules promoting working conditions and employment rights for all artists (regardless of their employment status), freedom of association and

collective bargaining rights, social security and in particular pensions for all artists, with particular attention to the needs of cross-border mobile artists.

477. Finally States should also improve rules and procedures to avoid double taxation: this means either **abolishing withholding taxes** for foreign artists working temporarily on the national territory or at least **considerably lowering the level of income applicable for withholding taxes**.

**Recommendation n° 5:**

**Setting up and supporting innovative solutions at national and international level to ease visa procedures for foreign artists**

478. Particular attention must be given to **flexible visa and work permit** schemes at national level which allow for better and easier access of **foreign artists** and cultural operators to national territory.
479. Good practices as highlighted above, including already existing national recommendation schemes, can help countries to adopt appropriate systems which meet their security concerns while at the same time introducing flexible rules for foreign artists and cultural operators.
480. As already mentioned above, countries should be encouraged to conclude **regional free movement areas which facilitate intra-regional movement of workers**, and in particular rules on free movement of artists and cultural operators. Particular attention must be paid to avoid establishing national or regional fortresses making access to the region more difficult for artists from other world regions.

**Recommendation n° 6:**

**Increasing transparency on applicable rules and making them accessible to artists**

481. Artists and cultural operators need clear and comprehensive information regarding mobility and applicable rules in different countries. States across the world have to make significant efforts to **make applicable rules and procedures accessible**, in particular as regards customs, rules on the distribution of cultural goods and services, taxation, intellectual property, visas and work permits, and social security and employment rights for foreign artists.
482. Information needs to be brought together **in a readily accessible way** and the main information should be **accessible in foreign languages**, including Arabic, Chinese, English, French, Russian and Spanish.
483. As already mentioned, this list is an open list of recommendations and certainly more specific recommendations can be made reflecting the needs of each sub-sector of the cultural sector and the particular needs of developing countries.
484. Work at international level on available data to measure international flows of cultural goods, services and cross-border mobility of artists is essential in this respect<sup>438</sup>.

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<sup>438</sup> The UNESCO Institute for Statistics and the UNESCO Sector for Culture have already done important work in these areas which needs to be encouraged and further developed. See in particular: *International Flows of Selected Cultural Goods and Services, 1994-2003*, UNESCO report, 2005: [http://www.uis.unesco.org/template/pdf/csc/IntlFlows\\_EN.pdf](http://www.uis.unesco.org/template/pdf/csc/IntlFlows_EN.pdf)  
Other important statistical work has been done by regional organizations like the Council of Europe. This work at regional and sub-regional level needs to be actively promoted as part of policy-making.

## **2. Strategies for coherent action to improve cross-border cultural mobility**

485. The above-mentioned recommendations are complementary and mutually reinforcing. It would therefore make sense to ensure their follow-up within a single framework. The working structures and mechanisms established with the UNESCO Convention on Cultural Diversity would seem the most appropriate place for this.
486. The following steps could be part of a strategy to ensure that cross-border mobility receives the attention it deserves in order to be an efficient instrument to promote cultural diversity:
487.     ▪ Setting up a common **Action Plan for Cross-Border Mobility for Cultural Diversity**, including a detailed strategy with a timetable and concrete actions in order to achieve the objectives set out in the recommendations and tackle existing obstacles. This Action Plan could be designed by the *Intergovernmental Committee* of the 2005 UNESCO convention and approved by the Conference of Parties. Such a plan would define quantitative and qualitative targets with timetables which will help measure progress achieved over time.
488.     ▪ Regional and sub-regional actions plans for cross-border mobility for cultural diversity could be developed, based on a global UNESCO action plan. They would also define specific regional quantitative and qualitative targets.
489.     ▪ **Strategic partnerships** could be established with other international organizations like WCO, WIPO, WTO, ILO to make sure the objectives of the action plan on mobility can be met with joined forces. UNESCO Member States need to be closely involved.
490.     ▪ **Civil society organizations** and in particular those representing professionals from the cultural sectors, artists, cultural operators (such as trade unions, employers' organizations and others) must be closely associated in all phases of the action plan to make sure proposed solutions are respectful of their needs and rights. Strong support must be given to ensure participation of representative organizations of micro-enterprises and SMEs from developing countries.
491.     ▪ Within the framework of the follow-up to the **1980 UNESCO Recommendation concerning the Status of the Artist**, particular measures focusing on international mobility could be designed supporting the overall strategy and the work done to implement the 2005 UNESCO Convention. This could include further data collection on national rules applicable to mobile artists (to complement what has already been done), providing operational information regarding applicable regulations in the fields of taxation, social security, visas and work permits, and practical tools to help artists overcome obstacles. It could also include work on a revised and renewed version of the Recommendation taking into account the specific needs of mobile artists.