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para la Educación,
la Ciencia y la Cultura

Организация
Объединенных Наций по
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منظمة الأمم المتحدة
للتربية والعلم والثقافة

联合国教育、
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36 C/57

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CONSOLIDATED REPORT ON THE IMPLEMENTATION BY MEMBER STATES OF THE 1980 RECOMMENDATION CONCERNING THE STATUS OF THE ARTIST

OUTLINE

Source: 34 C/Resolution 87 and 187 EX/Decision 20 Part VI.

Background: In accordance with the new procedures adopted in 2007 for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided (177 EX/Decision 35 Part I), the Executive Board has adopted a multi-stage procedure for the monitoring of the implementation of these standard-setting instruments, including the 1980 Recommendation concerning the Status of the Artist (34 C/Resolution 87).

The Director-General hereby transmits to the General Conference a consolidated report on the implementation of this Recommendation, which has also been examined by the Executive Board at its 187th session.

Purpose: This document presents the status of implementation of this Recommendation and provides information on the measures taken by Member States for its promotion and application.

Decision required: paragraph 11.

INTRODUCTION

1. The Executive Board adopted, at its 177th session, a multi-stage procedure for the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided, including the 1980 Recommendation concerning the Status of the Artist (hereinafter referred to as “the Recommendation”) (177 EX/Decision 35 (I)). In compliance with the 2009-2013 timetable for the work of the Committee on Conventions and Recommendations (hereinafter referred to as “the CR Committee”) on the implementation of these standard-setting instruments for whose monitoring the Board is responsible (182 EX/Decision 31, 184 EX/Decision 20 and 186 EX/Decision 19), a consolidated report on the implementation of this Recommendation was examined by the Executive Board at its 187th session (187 EX/20 Part VII) and is submitted consequently to the General Conference at its present (36th) session.

2. Adopted by the UNESCO General Conference in 1980, this Recommendation calls upon Member States to improve the professional, social and economic status of artists through the implementation of policies and measures related to training, social security, employment and tax conditions in particular, for self-employed artists. It also recognizes the right of artists to be organized in trade unions or professional organizations that can represent and defend the interests of their members.

3. At its 34th session (2007), the General Conference considered that, of the Organization’s 31 recommendations, this Recommendation should be monitored as a matter of priority (34 C/Resolution 87).

REPORT

4. The document 187 EX/20 Part VII contained in the annex, presents to the General Conference the consolidated report prepared by the Secretariat on trends on the implementation of the Recommendation.

5. In his introduction on this point to the CR Committee at the 187th session of the Executive Board, the Assistant Director-General for Culture recalled that Part VII of document 187 EX/20 provided a consolidated report of the implementation of this Recommendation based on the replies of the 55 Member States that had responded to the questionnaire. The questionnaire was designed to collect basic information on legislation, international standards and national laws; employment and social welfare systems; freedom of association and trade union rights; tax status and taxation; and the international mobility of artists. The nature of the replies varied considerably, from a cursory overview to a detailed analysis of relevant legislation and public policy measures. The replies are available on the website of the World Observatory on the Social Status of the Artist. The document also refers to the previous exercises conducted by the Secretariat to monitor the implementation of the Recommendation.

6. During the CR Committee’s debate on this item, Members expressed appreciation of the information gathered, analysed and presented in the document by the Secretariat.

7. A Committee member emphasized that the subject was at the core of current debates, but that the real problem was the lack of training for young people in the field of artistic creation. Dialogue between UNESCO and political leaders was therefore necessary for the training of those active in the artistic sphere.

8. Another Committee member indicated that the number of responses to the questionnaire, 55 States, was excellent for such a process and commended the Secretariat, because in 1983, only 29 States had replied. The member recognized that half of the replies were from European countries and inquired about how the replies would be distributed and whether a summary of the reports was planned.

9. In his response, the Assistant Director-General for Culture reiterated that the replies by Member States are available on the website of the World Observatory on the Social Status of the Artist and that 187 EX/20 Part VII presents a survey of the reports. No further activity in this regard has been foreseen. He also took the opportunity to inform the CR Committee that a problem would soon arise concerning the funding of the Observatory, which had been established to monitor the implementation of the Convention, as there was no budgetary provision for its operation. He said that discussions were under way with the International Federation of Arts Councils and Culture Agencies (IFACCA) in order to continue the very important work of the Observatory.

10. After examining document 187 EX/20 Part VII and the report of the CR Committee thereon (document 187 EX/50, paragraphs 29 to 34), the Executive Board invited the Director-General to transmit to the General Conference, at its 36th session, the consolidated report on the measures taken by Member States to implement this Recommendation, together with the comments by the Board as presented above.

PROPOSED RESOLUTION

11. After examining this document, the General Conference may wish to adopt the following resolution:

The General Conference,

1. Recalling 187 EX/Decision 20 Part VI,
2. Also recalling 177 EX/Decision 35 (I) and 34 C/Resolution 87 on the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided,
3. Having examined document 36 C/57 and its Annex,
4. Noting that 55 Member States have submitted reports for the consultation,
5. Recalling that the submission by Member States of periodic reports on the implementation of recommendations adopted by the General Conference is an obligation under Article VIII of UNESCO's Constitution and Article 17 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution,
6. Further recalling that the periodic consultation of Member States on the implementation of the Recommendation is intended to enable the Organization to assess both the extent to which Member States are implementing that instrument and the obstacles that they encounter,
7. Reaffirming the importance of the Recommendation and its implementation by Member States,
8. Invites those Member States which have not taken measures to implement the Recommendation to do so, and to provide the required reports;
9. Invites the Director-General to transmit to it at its 38th session the next consolidated report on the implementation of this recommendation and decides to inscribe this item in the agenda of its 38th session.



United Nations
Educational, Scientific and
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Executive Board
Hundred and eighty-seventh session

187 EX/20
Part VII

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Item 20 of the provisional agenda

IMPLEMENTATION OF STANDARD-SETTING INSTRUMENTS

**APPLICATION OF THE 1980 RECOMMENDATION
CONCERNING THE STATUS OF THE ARTIST**

SUMMARY

In accordance with the new procedures adopted in 2007 for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided (177 EX/Decision 35 (I)), the Executive Board has adopted a multi-stage procedure for the monitoring of the implementation of these standard-setting instruments, including the Recommendation concerning the Status of the Artist (1980).

In compliance with the 2009-2013 timetable of work of the Committee on Conventions and Recommendations on the implementation of these standard-setting instruments (182 EX/Decision 31, 184 EX/Decision 20 and 186 EX/Decision 19), the Director-General submits the present report to the Executive Board, on the basis of the information collected from Member States, and before its transmission to the 36th session of the General Conference.

No financial and administrative implications are anticipated from the proposed decision.

Action expected of the Executive Board: decision in paragraph 36.

INTRODUCTION

1. The Executive Board adopted, at its 177th session, a multi-stage procedure for the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided, including the 1980 Recommendation concerning the Status of the Artist (hereinafter referred to as “the Recommendation”) (177 EX/Decision 35 (I)). In compliance with the timetable for 2009-2013 of work of the Committee on Conventions and Recommendations on the implementation of these standard-setting instruments for whose monitoring the Board is responsible (182 EX/Decision 31, 184 EX/Decision 20 and 186 EX/Decision 19), a report on the implementation of this Recommendation is submitted to the present session of the Board.

2. Adopted by the UNESCO General Conference in 1980, the Recommendation calls upon Member States to improve the professional, social and economic status of artists through the implementation of policies and measures related to training, social security, employment and tax conditions in particular, for self-employed artists. It also recognizes the right of artists to be organized in trade unions or professional organizations that can represent and defend the interests of their members.

3. Some of the issues addressed by the Recommendation are the subject of other international instruments of the United Nations (the International Covenant on Economic, Social and Cultural Rights), and of the International Labour Organization (ILO) as well as of the World Intellectual Property Organization (WIPO).

IMPLEMENTATION REPORT

4. In 1983, reports provided by twenty-nine Member States on action taken to implement the Recommendation were submitted to the General Conference (22nd session) and transmitted to Member States (22 C/Resolution 26).

5. In 1997, UNESCO held the World Congress on the Status of the Artist to assess progress and to continue dialogue on the future implementation of the Recommendation. Delegates observed that the Recommendation “is more relevant than ever and is an indispensable source of inspiration for the state and for society”. They “regretted” that it had been implemented by only a limited number of Member States. One outcome of the Congress was that it called upon UNESCO to launch a World Observatory on the Status of the Artist to provide information about the situation of artists worldwide and to highlight best practices.

6. In June 2003, Member States and relevant non-governmental organizations were invited to complete a questionnaire which sought to investigate the current status of artists and the impact of the Recommendation in their countries (Ref.: CLT/ACE/ACS1/PJ/088). The questionnaire was designed to collect basic information on legislation, international standards and national laws; employment and social welfare systems; freedom of association and trade union rights; tax status and taxation; and the international mobility of artists.

7. On the occasion of the 32nd session of General Conference in October 2003, the World Observatory on the Social Status of the Artist was launched online and the results of the questionnaire were made available through this platform in English, French and Spanish.

8. At its 34th session (2007), the General Conference considered that, of the Organization’s 31 recommendations, this one should be monitored as a matter of priority (34 C/Resolution 87). In this context, the questionnaire was resent to UNESCO Member States in 2008.

9. In total, 45 States have responded to the questionnaire. The nature of the responses provided varies considerably, from a cursory overview to a detailed analysis of relevant legislation and public policy measures. There is a geographical imbalance in the response rate; 45% are from countries located in Europe and North America.

10. For the purpose of analysing the information received from Member States and highlighting best practices, this report is organized according to the following issues that correspond to those addressed by the Recommendation: legislative frameworks; employment, working and living conditions; professional representation and the rights of artists' associations; social security, health insurance and retirement benefits; taxation; and transnational mobility.

Legislative frameworks

11. The Recommendation calls upon Member States to take whatever legislative or other steps that may be required to apply the principles and norms set forth in the Recommendation within their respective territories. It also encourages Member States to make the necessary arrangements for artists and their organizations to participate in discussions and decision-making processes on policies and measures to enhance the status of artists in society.

12. The results of the questionnaire demonstrate that few Member States have fully adopted the Recommendation into national law. Those Member States that have done so have tailored the focus of their legislation on a specific issue addressed by the Recommendation. For example, Canada's Status of the Artist Act operative provisions regulate the collective bargaining relationship between artists' associations and engagers (cultural producers/distributors) operating in the federal jurisdiction (broadcasting and national institutions).

Employment, working and living conditions

13. Paragraph VI.2 of the Recommendation encourages Member States to extend legal protection concerning conditions of work and employment according to internationally recognized standards that are mainly defined through employment or engagement contracts.

14. One of the main challenges to take into consideration is that many creative artists work on a project basis and may have several contracts simultaneously, or none at all. In addition, while employed artists usually receive equivalent treatment to other workers, those who are intermittent, self-employed, independent contractors, or casual, fall outside these norms.

15. From the responses provided, a number of different models exist to address these challenges. For example, in some countries, self-employed performers and other artists are presumed to be in an employment situation or have quasi-employed status in order to have access to social security schemes (Belgium, Burkina Faso, France, Germany). In other countries, support is provided to artists whose income falls below the minimum wage (Luxembourg, Netherlands).

Professional representation and the rights of artists' associations

16. The Recommendation states that "Member States should ensure, through appropriate legislative means when necessary, that artists have the freedom and the right to establish trade unions and professional organizations of their choosing and to become members of such organizations ..." (paragraph III.4).

17. One of the challenges facing artists' trade unions is that because of the intermittent nature of artists' work, or the fact that some create their works before entering into a business relationship with an engager, they have difficulty concluding agreements with engagers. In many common law countries, "collective bargaining" by organizations of individuals who are freelancers, independent contractors or self-employed may be in violation of competition laws as "combinations in restraint of trade". Typically, only unions of employees are exempt from such laws. It is for this reason that the laws adopted in Canada and several of its provinces introduce special provisions to cover the collective bargaining activities of artists' associations.

18. In many parts of Asia, the rights of all worker organizations are beginning to change with the effects of economic globalization and associations representing artists are starting to emerge throughout the region. As this transformation continues, these associations begin to experience the

challenges that have confronted similar unions and professional organizations elsewhere in the world.

19. In most of Latin America, artists' trade unions and professional associations are considered to be the same as all other worker organizations, and union agreements are more widespread. The primary challenge for these unions is to exercise their rights successfully in an environment in which there is a considerable imbalance of economic power.

Social security, health insurance and retirement benefits

20. The Recommendation urges Member States to “endeavour to take the necessary steps to see that ... self-employed artists enjoy, within reasonable limits, protection as regards income and social security” (paragraph V.3).

21. Where artists are employed, they typically enjoy benefits the same as other employed workers for purposes of health care, insurance, income interruption and pensions. Employed artists tend to be interpretive artists in the performing arts and recorded media (such as orchestras, choirs, television series, theatres and dance).

22. In most UNESCO Member States, the number of self-employed artists is much higher than those employed. Some countries have introduced schemes to provide social security insurance packages designed for artists and their needs. For example, in France, self-employed performers and certain other artists enjoy minimum pay rates and a comprehensive benefits system providing medical care, protection for workplace accidents, wage continuation in the case of illness or disability, unemployment benefits, professional training, holidays and vacations, maternity leave and a retirement plan.

23. Different constellations of cooperation between employers, employees, the government and private enterprises have been formed in some countries to provide social insurance packages for self-employed artists. For example, in Germany, the *Kunstler Sozialkasse* (KSK) was established to provide independent artists with some social security protection including health insurance and pensions, but not unemployment benefits. The artist contributes 50% of the premium, the government pays 20% and enterprises “regularly using artists' work” pay 30%.

24. Several Member States from all regions of the world reported that they provide pension schemes for artists (e.g. Argentina, Azerbaijan, Croatia, Egypt, Switzerland) or special medical insurance programmes and/or access to medical services to artists (Pakistan through the Artists Relief Fund of the Ministry of Culture, Morocco and Tunisia). Providing access to unemployment insurance is less common among the Member States who responded to the questionnaire. Exceptions exist in China, Denmark and Slovenia.

25. In a number of countries, artists have organized their own social insurance plans through their unions and associations of artists, or other non-profit societies. For example, in a number of West African countries (Burkina Faso, Senegal, Togo) social benefits have been organized for certain professional artists by their associations, collecting societies and others. In Australia, Canada and the United States of America, some artists unions have developed extensive programmes which provide health care, insurance and pensions for their members.

Taxation

26. The Recommendation states: “Convinced of the uncertainty of artists' incomes and their sudden fluctuations, and of the special features of artistic activity ... Member States are invited ... to take into account in their taxation system the particular conditions of artists' work and activity” (paragraph VI.7 (a)).

27. One of the main factors determining artist social security and tax status is the level and flow of their income. The possibility for great fluctuations in their income often leads to lower levels of

pension, sick-leave compensation or unemployment insurance. Some countries provide professional self-employed artists with the possibility to average their income on certain creative works over a specified period of time. This is particularly important for certain artists, authors or composers who work for longer periods of time on an individual piece of work and are paid lump sums once their work has been produced. Income averaging is a widely used mechanism to support artists and other independent contractors in Australia and several European countries such as Bulgaria, Denmark, Germany, Netherlands, Norway, Sweden and United Kingdom of Great Britain and Northern Ireland.

28. Tax exemptions have been reported on by several Member States on income earned from copyright or neighbouring rights royalties (Canada, Montenegro) or arts grants (Australia, Denmark, Finland, Kenya, Latvia, Russian Federation and United Kingdom of Great Britain and Northern Ireland). Creative artists (visual artists, writers and composers) resident in Ireland are income tax exempt. In Mexico, a recognized professional artist may pay taxes with works of art.

29. Tax deductions are available from the sale of artistic works in several countries such as Bulgaria, Croatia, Poland, Romania and Slovenia where artists may deduct 25-50% of earnings generated from their artistic work without documenting or detailing expenses. A number of countries have preferential rules regarding the deduction of material expenses including, for example, the cost of musical instruments as well as reduced consumption tax rates (Value Added Tax, Goods and Services Tax, etc.).

Transnational mobility

30. The Recommendation calls upon Member States to "... 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 ..." and urges Member States to "take measures to encourage international travel and exchange by artists" (paragraph iV.1 (K)).

31. Some successful artists are able to cross borders easily while others may be unable to obtain the necessary permission or visa to enter into another country even if they are an established professional. When artists do tour, they may be confronted with other challenges such as withholding taxes, double taxation, lack of social security benefits, etc. These problems are particularly challenging in regions with a common labour market. Many of these problems have become worse with rising security concerns since 2001 and are not just limited to the travel of artists from developing countries to developed countries, but also between developed countries as well.

32. One of the means to address this important challenge has been through the conclusion of bilateral and multilateral agreements. For example, the European Union/CARIFORUM Economic Partnership Agreement signed in 2008 provides for a special visa for Caribbean artists to facilitate mobility, although it is premature to assess its impact. A number of Member States responding to the questionnaire have indicated that bilateral cultural exchange programmes that include the movement of artists are accompanied by funding programs to assist, for example, touring initiatives.

33. There are also some impediments which restrict the circulation of cultural goods including high tariffs and customs duties. The development of digital technologies is, however, helping to make it possible for more artists to reach markets outside their home region.

CONCLUSION

34. The importance of the system of reporting on the implementation of this Recommendation has yet to be fully taken into account by all Member States and there is a marked imbalance of responses between the regions. It is therefore important to underscore that in order for the reporting mechanism to become an effective means of collecting information and sharing best

practices, it is indispensable to increase the number of all Member States participating in the reporting process.

35. The reports submitted by Member States leads to the conclusion that further work is required to implement the Recommendation on the Status of the Artist fully as a means to ensure that the legal, social and economic conditions necessary for the exercise of artist's creative work are provided. Particular attention is required to address the atypical conditions of performing artists that result from their mobility, for example, visa and security issues, double taxation, unemployment benefits and disability insurance plans, early retirement and re-training, etc. Calls have been made to encourage the development of structures and agencies that can offer management services and provide advice to artists on issues related to contracts, income tax, insurance, copyright, social security, project administration, etc. as a means to help them navigate the complex procedures resulting from their precarious working conditions and fluctuating levels of income.

ACTION EXPECTED OF THE EXECUTIVE BOARD

36. After examining this document, the Executive Board may wish to adopt the following decision:

The Executive Board,

1. Recalling 177 EX/Decision 35 (I), in which it approved a specific multi-stage procedure for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided and 184 EX/Decision 20,
2. Having examined document 187 EX/20 Part VII and the report of the Committee on Conventions and Recommendations thereon,
3. Regrets that only 55 Member States submitted reports for its consultation;
4. Recalls that the submission by Member States of periodic reports on the implementation of recommendations adopted by the General Conference is an obligation under Article VIII of UNESCO's Constitution and Article 17 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution;
5. Further recalls that the periodic consultation of Member States on the implementation of the Recommendation is intended to enable the Organization to assess both the extent to which Member States are implementing that instrument and the obstacles that they encounter;
6. Reaffirms the importance of the Recommendation and its implementation by Member States;
7. Recommends that the General Conference invite those Member States which have not taken measures to implement the Recommendation to do so, and to provide the required reports;
8. Invites the Director-General to transmit to the General Conference at its 36th session the report on the measures taken by Member States to implement this Recommendation, together with its observations, and any observations or comments that the Director-General may wish to make.