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Concerns: Note on the 'Cultural Heritage and the EU' - Conference planned on occasion of the Belgian EU Presidency in 2010: Current State of Affairs – March 2010

1. Introduction

Within the context of the EU Presidency to be assumed by Belgium in the second semester of the year 2010, the Immovable Heritage Policy Area is planning to organize a European Conference for the purpose of having the Heritage topic, which at the EU level is given but slight exposure, placed on the European agenda as a point for discussion and debate.

This conference fits well within the general objectives aimed at under Flanders' EU Presidency. In the course of its Presidency, the Flemish Government plans to advance four major challenges that will be confronting the member states and regions in the foreseeable future: globalisation, demographic changes, climate, and energy. These challenges demand both a coordinated approach and specifically designed plans on the part of the other administrative levels. Aside from these four major themes, Flanders will likewise draw the focus on horizontal points of attention: sustainable development and the role of the regions within the European Union with an eye on achieving a policy that promotes closer affinity with the citizenry.

Heritage plays a crucial role in the areas of sustainable development, cultural diversity, and contemporary creativity. In order to foster and achieve sustainable heritage development, not merely on-going advances in knowledge and policy instruments are required. Equally important at least is a proper and solid embedment of such attributes into European legislation and policy implementation.

The English language uses the term '*Cultural Heritage*' for monumental architectural patrimony, landscapes, and archaeology as well as for museum and archival collections, traditions and accepted customs. The equivalent Flemish term 'cultureel erfgoed' as used in Flanders pertains only to movable and immaterial heritage goods and assets. The initiative for this conference has been undertaken from within the Immovable Heritage Policy Area, although the topic has been broadened to include the entire patrimony and heritage domain. Some of the problems or certain given aspects between the two heritage areas do, in fact, run a parallel course. In fine, sufficient care is exercised to ensure that typical spatial aspects of the immovable heritage be adequately covered.

2. Cultural heritage and the European Union: current regulation

In Europe, the protection and restoration of cultural heritage, especially for what concerns immovable heritage, is conceived as a national concern. In Belgium, this falls within the regional purview. The relevant legislation is in many instances inspired by, or based on, international treaties, charters, and recommendations concluded by international organisations such as Unesco and the Council of Europe. At first sight, the European Union does not play a notably active role in this process. Nonetheless, the day-to-day management and conservation of the heritage often finds itself confronted by decision-making on the E.U. plane. This 'confrontational' aspect will be adopted as the guiding thread and theme of the conference. To clarify this, we shall first sketch out the current European regulation in casu.

Within the European Union, cultural heritage falls largely and generally under the cultural policy area. However, there exist contact points with other policy areas as well, especially where it pertains to spatial heritage values (for instance, landscapes) such as the environment, agriculture, ... (see infra). Until the Maastricht Treaty (1992), a separate chapter on culture was absent from the European Treaties. The original article 36 of the Treaty of Rome provided in the possibility of restricting the free movement of goods in the interest of '*national artistic, historical, and archaeological ownership*'. In the mid-eighties, the concept of 'culture' capitals of Europe was instituted. This fit into the 'Europe for Citizens' theme. In terms of cultural heritage, things started moving as of the mid-seventies: in 1974, the European Parliament voted for the first resolution around the topic of cultural heritage; 1975 was proclaimed as the European Year of Architectural Heritage; in 1983, financial support for the restoration of the Acropolis in Athens and Mount Athos in Greece was provided.

Already at that time, the guiding thread was the subsidiarity principle: the member states themselves are undertaking actions; Europe supports collaboration, the exchange of competencies and knowledge, enhances the platform for professionals and the public at large, and ensures better access to heritage sites. This was followed later by pilot projects towards the conservation of the European architectural heritage of exceptional cultural or technical merit and value.

For the rest, it was accepted that cultural products (books, films, television programmes, ...) are part of the internal market project. The concerns within the cultural sector grew as the national support measures became increasingly subjected to heavier European criticisms. Hence, protection against ill-considered economic integration into the area of culture became a ground for the incorporation of a paragraph on culture into the Maastricht Treaty. The subsidiarity principle did remain the guiding thread to identify the responsibilities of the member states and determine where the responsibility of the Union started. The implementation of a cultural policy was in the first place assigned to the member states, albeit with the entry of a new article in the Treaty: article 128 EC Treaty (following amendment 151 EC). This article was subsequently adopted in toto in the new Treaty on the Functioning of the European Union (article 167).

1. *The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.*
2. *Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:*
 - *improvement of the knowledge and dissemination of the culture and history of the European peoples*
 - *conservation and safeguarding of cultural heritage of European significance,*
 - *non-commercial cultural exchanges,*
 - *artistic and literary creation, including in the audiovisual sector.*
3. *The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.*
4. *The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.*
5. *In order to contribute to the achievement of the objectives referred to in this Article:*
 - *the European Parliament and the Council acting in accordance with the ordinary*

legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,

- *the Council, on a proposal from the Commission, shall adopt recommendations.*

With this article, Europe could promote the cultural diversity within the Union while, at the same time, emphasize the common cultural heritage. The Directorate General of Education and Culture then undertook a number of initiatives in the area of cultural heritage. The Raphaël subsidy programme (1995-1999) specifically focused on cultural heritage needs with a budget of 30 million ecu at its disposal. The next subsidy programme 'Culture 2000' devoted 34% of its budget to cultural heritage (some 167 million euro). In addition, extra resources were provided for cultural heritage laboratories. The current Culture 2007-2013 programme emphasizes collaboration (for instance, the project Art Nouveau Network). In addition, Europe awards the annual EU Prize for cultural heritage and supports the annual Open Monument Days (in cooperation with the Council of Europe).

In May 2007, the European Commission launched a new strategic document '[A European agenda for culture in a globalizing world](#)'. This document was underwritten by the [Council of the European Union on 16 November 2007](#). With this communication, the European Union wants to place the topic of Culture more prominently on the European agenda and demand greater attention for culture in other EU policy areas. Three main objectives are aimed for: (1) the promotion of cultural diversity and intercultural dialogue, (2) the promotion of culture as catalyst for economic growth and employment in adherence to the Lisbon strategy and (3) the promotion of culture as a vital element in European international relations. The contribution by cultural heritage and research in this field can be complementary and a significant factor towards the realisation of these objectives.

As mentioned earlier, cultural heritage is likewise a subject within other EU competence domains. In this connection, a lot of funds are devoted to cultural heritage by institutions that, at first glance, have little to do with cultural heritage per se: the European Fund for Regional Development, the European Social Fund, the DG Information Company and Media, the DG Research, the European Agricultural Fund for Rural Development, ... In addition, it happens more than once that a new directive or measure has unwelcome effects on cultural heritage. These directives are concluded in policy areas where the European Union possesses full competence: international trade, health care, security, environment, For example: guidelines around safety directives whereby machines, even those within museum context, would no longer be allowed to operate (restrictions on the operation of machines with a drive belt propulsion, although this is the principle of old machine mechanics), the regulation pertaining to food safety (with consequences for artisanal preparation and production of regional produce and products), ...

An important objective forthflowing from the 4th article of the Culture Title (see excerpt supra) is the horizontal integration of *mainstreaming* of culture into other policy areas. In practice, this process of *mainstreaming* means that the EC DG Education and Culture attempts to coordinate the initiatives around cultural heritage with those other policy areas. It is unclear to what degree it is successful in this, but "mainstreaming" could go much further than that.

According to T. Nypan of the European Heritage Legal Forum, the biggest problem is that this EU legislation is based on modern industrial needs. Often, it excludes (implicitly or explicitly) recourse to traditional materials and methodologies. For modern buildings, this presents no difficulty, but for older constructions this may threaten their *authenticity*. Yet, this authenticity has been entered as an important principle in international charters and policy documents concerning cultural heritage management. T. Nypan likewise points out that the problem is frequently to be found on the national plane when these directives are being transposed into national or regional legislation. It may often even happen that exceptions pertaining to cultural heritage entered into the EU directives are subsequently excluded from the national legislation.

During the past five years, the European Union has become more and more conscious of this problem. EU Commissioner for Culture, Jan Figel, stated in 2005: "*a common vision for cultural heritage is an absolute necessity, especially in the light of art. 151.4 of the Treaty, which calls for*

*the general inclusion of cultural aspects in all Community policies*¹. The European Parliament stated in September 2006 that it wants greater attention to be paid to cultural heritage in the EC policy. Parliament requested the European Commission “[to implement effectively the horizontal clause of Article 151\(4\) of the EC Treaty \(...\) considering in depth the implications of the proposed legislation for culture and the cultural heritage](#)”. One of the measures undertaken by the European Commission in order to anticipate on the consequences upon cultural heritage was the incorporation of cultural heritage into the handbook of the revised version of the Impact Assessment (more on this infra).

Until today, there is thus no systematic reflex with respect to the concern that calls for the integration of cultural heritage, or of a broader culture, into other policy areas. Professor H. Vos, amongst other voices, is of the opinion that the European Union is focused on economy and trade, less so on environment, and still less on culture. It is, as such, not a simple task to achieve horizontal integration into European policy. The vertical structure of European decision-making, with its numerous separate circuits spread out across various institutions, renders it difficult to integrate concerns from one policy area into other domains. Article 167, point 4, although it advises horizontal integration, in the actual practice remains until today largely a dead letter: with the exception of some ad hoc measures, a clear strategy is lacking.

Yet, H. Vos notes that within the European Treaties there exist enough contact points and even obligations for such a horizontal integration of culture. According to him, there is therefore no need to adapt the treaty texts. He likewise does not consider it an impediment or a negative factor that the texts about the cultural horizontal integration carry less political weight than comparable texts about the environmental policy. In the treaty texts, those environmental texts are allowed a prominent position within the principles, but for cultural heritage that principle is stated only in article 167. Furthermore, there is a nuancial difference in the text that also points to a difference in political relevance: the environmental demands *must* be integrated, whereas for culture it mentions that they ought to *be taken into account* ...

3. Objectives, level of ambition of the conference

The European Heritage Legal Forum and other international organisations (Unesco, Europe Nostra, ICOMOS, ...) have conducted extensive and serious research into these conflict lines existing between cultural heritage and the European Union. Through our conference, it will be our aim to place the challenges and the problems experienced within the cultural heritage sector at the European level as weighty aspects on the political agenda. In addition, we want to propose a number of long-term solutions.

The conference will conclude with a Declaration of Intent wherein Flanders, joined by the European policy makers, engages itself to supporting serious efforts to resolve these problems. As such, Flanders is the first region to undertake this task, thus to assume a pioneering role.

It is still being examined what, *in concreto*, will be the content of this declaration, what its scope, and who will become involved (only the Flemish Minister G. Bourgeois, or the entire Belgian Presidency body, or a number of House Representatives, or, effectively, also a number of representatives from other member states?) In addition, it will be examined how this declaration of intent can be used during a subsequent phase as a basis for a more formal political engagement by the European institutions.

In this context, it is important that examination of this question be taken up and continued by the future presidencies in order that it become accepted as an embedded issue for long term consideration. In this respect, we are endeavouring to have the issue carried over into the scheduled presidencies of, in this instance, Hungary and Poland. Poland (2nd semester of 2011)

¹ Mr. Ján Figel, speech during “Cultural Heritage Counts for Europe”. Brussels, 7 December 2005, Organized by Europa Nostra, in collaboration with the European Economic and Social Committee, from : Ronchi, A.M., Nypan, T., *European legislation and cultural heritage*, Milan, 2006.

might well organize a follow-up conference one year after the Flemish event. To that end, we have already established contacts with both these nations. This idea needs to be pursued further as soon as we have more definitely worked out the organisation and planning of our own conference (beginning March). Likewise, it seems advisable to take contact with nations that have a long tradition in the area of cultural heritage management, such as France and Great Britain. It goes without saying that the other regions and communities in Belgium will not be ignored either.

During our conference we intend to proffer instruments that will ensure a sustainable management and conservation of cultural heritage in the European decision-making processes. A few points worthy of consideration:

1. Impact Assessment (IA)

In the first instance, it is deemed important to actively influence the policy process within the European institutions. As mentioned earlier, cultural heritage has recently been introduced as a criterion into the handbook for conducting Impact Assessments. In an early stage of policy development, new proposals by the Commission are being screened for their conformity with several policy fields, for instance, for what concerns their social, economic, ecological aspects, and, in theory, with cultural heritage. The European Commission is open to input in order to turn the cultural heritage criterion into practice. It will thus become possible to advance qualitative data and expertise in the course of the consultation periods within the context of an existing or planned IA or Roadmap. It may equally prove useful to offer assistance in making the cultural heritage components in the handbook even more objective (and other instruments such as Impact Inventory and list of impacts), thus rendering them more quantifiable. The fact is that the indicators for measuring the impact on cultural heritage lack a solid and well-substantiated base. Besides, there still remains the question whether or not the employment of this instrument will yield the desired results. An IA only exerts an impact during the start-up phase of the decision-making process. An IA is beset with so many criteria to decide from that the cultural heritage or culture component somehow tends to get lost in the shuffle. H. Vos notes that the European Commission, and consequently also the reports from its officials, has very little bearing on the ultimate decisions.

2. Platform Cultural Heritage

Coupled to the above considerations, it is important that the relevant actors within the cultural heritage field be recognized as official interlocutors and that they be in a position to lobby in order to influence the decision-making process with consequences for cultural heritage. Within such a strategy, one could erect a platform 'cultural heritage', a network of interested European House Representatives, administrations, and members from the academic community. Europe is in search of such interlocutors and consultation partners and has for that purpose provided in financing avenues. It should be interesting and useful to explore how this has come about within, for example, the domain of mental health care (formation, structure, financing). Such a platform further offers the benefit of possibly having input during the subsequent phases of decision-making and concretisation.

3. Parliamentary intergroup

Another possible trajectory to consider is the organisation of an intergroup in the European Parliament around cultural heritage. This group of interested House Representatives could form a political platform for the problem in question. The effectiveness of this route was, however, deemed minimal by a number of Representatives.

4. Clause of special considerations

T. Nypan of the European Heritage Legal Forum has proposed a concrete example for upgrading guidelines from other policy areas in function of their benefits to cultural heritage. The administrations competent in the cultural heritage domain remain often inadequately informed about written guidelines and their wanted or unwanted consequences on the management and conservation of cultural heritage. As such, T. Nypan tried to set up within the European institutions

a judicial observatory that, from the very outset, could issue cautions with respect to consequences for cultural heritage. This observatory could thus propose a clause of 'special considerations' that would admit of exceptions, for example, in the case of certain techniques or materials needed to conserve or manage cultural heritage goods. This institution would therefore function as a kind of watchdog, an ombudsman's office. To this effect, the European Heritage Legal Forum was formed in 2008 as an initial step towards the subsequent formation of such an observatory. The EHLF is composed of a network of experts from various member states to work on this problem.

5. Importance of awareness raising in the heritage sector for the European decision-making

Not only the European policy makers need to be made attentive to the impact and (undesirable) effects of the European decision-making upon cultural heritage. Likewise, policy makers at the regional and local levels, the civil society, and academics ought to become more sensitive to the intervention of the European Union. Knowledge is Strength. Only when the diverse parties involved do understand how Europe functions, how the "threatening European legislation" comes into being, in what ways the decision-making mechanisms can be influenced, will it become possible to strategically react qua "cultural heritage domain". Broadly disseminated knowledge can ensure that these unwelcome consequences be avoided in a proactive manner.

6. Cultural Cardiff process

Numerous studies compare the environment and culture policy areas with one another as weak elements within the European policy and political arena. But, in contrast with culture, a process has been set in motion for the environmental domain that has led to horizontal policy integration. The EU Summit in Cardiff (1998) put the environmental problem prominently on its agenda and introduced a process whereby all other policy areas need to 'horizontally' integrate the effects on the environment. According to these studies, environment and culture are very comparable (despite some fundamental differences) since both may be influenced by decisions in other domains such as agriculture, transportation, energy, trade, ...etc. For instance, H. Vos has proposed to adapt this Cardiff process to culture. It is important that the European Council of Heads of State and Government Leaders in Cardiff decided to bring this horizontal integration to attention as a prime point of attention. It does, indeed, appear that the European Commission, or even Councils of Ministers for the Environment, does not possess enough authority to push this process forward. For culture – as for the environment – this seems to be only possible if and when a few countries decide to take the initiative, for instance, in the course of their presidency term. Notable also is the fact that the Council keeps monitoring this problem. In this respect, following the EU Cardiff Summit, important measures were undertaken, such as a list of indicators (to be able to measure the impact of decisions on the environment), priorities were clearly identified, and, during the 6th programme of action for the environment, some documents were given a binding force. In the literature, the Cardiff process is being positively judged but, as is not surprising, with certain reservations and comments. One criticism holds that a number of stakeholders was insufficiently involved (including Parliament).

H. Vos and others have come to the conclusion that there exist enough contact points – even obligations – for and with culture and that it makes little sense to demand additional provisions. In their opinion, important now is to organize the implementation of the already existing treaty clauses. The best strategy to do this is to form a broad cultural coalition of member states, interest groups, and collaborators from the European institutions in order that culture (and consequently also cultural heritage) be placed on the agenda.

4. Target audience

The aim of the planned conference is to disseminate and extend the cultural heritage platform and our historical environment amongst the European institutions. To that end, it is therefore essential that we reach as many likely decision-makers and important actors as possible. We are targeting some 200 participants for the conference. The prime target group is the European Parliamentary members, officials of the European Commission and the European Parliament, and representatives

of the member states with the Council of the European Union. Our purpose is to raise awareness among individuals that have no affinity or familiarity with the issues of cultural heritage and/or culture as they are currently present within the cultural heritage domain.

A possible second target group for the conference is the “specialists” from within the cultural heritage domain itself: the civil society on heritage from the various European nations. They are familiar with the problem through practical experiences and will be influential in expanding the scope of the platform. In addition, it seems important to us not to lose sight of the local, regional and national administrations in the process.

5. Organisation of the conference

A few departure points for the programme:

- To the point - Tackle the problem head-on
- The proposed problem is being introduced in a nuanced fashion
- Concrete examples are adduced
- It is not unimportant to give prominent roles to some of the protagonist players in order thus to engage them to assume a certain commitment

The conference will be organized in three thematic parts. The opening address will be delivered by minister G. Bourgeois. This will be followed by a forceful speech intended to enthuse the participants and convince them of the potential of cultural heritage for the society as a whole (economic, cultural diversity, and ecological benefits). For this we are considering a keynote speaker who is connected with a reputed institution at work within the cultural heritage domain.

The next keynote speaker will offer a nuanced and clear exposition of the problem as we have sketched it out above. The topic will be further concretised in the course of the morning sessions by the accounts of three regions with experience in the field: Flanders or Wallonia, a Hungarian, and a Polish region. In this manner, we will establish an immediate and direct link with the future presidencies. In order to avoid overlap, each of the speakers will concentrate on a specific theme: energy, food safety, et alia, ... These themes are still to be determined.

During the afternoon sessions, the long-term strategies will be discussed. The possibilities presented by Impact Assessments will be explained. The possibility of a platform will be debated using a concrete example. Strategies that were adduced from the environmental sector for putting this topic on the agenda will be examined. Likewise, attention will be paid to the role played by the civil society as a platform for cultural heritage management and conservation.

And during the third part, we shall look at future prospects and the Declaration of Intent will be officially proposed. A debate on long-term strategies is planned amongst some key figures. This will be followed by the day's highlight: the official presentation of the Declaration of Intent. The conference will conclude with a reception.

5. Provisional programme

Wednesday 8 December 2010: guided tour and dinner

Guided tour around the inner city of Bruges: possibly with focus on the theme of the construction of medieval Bruges during the 19th century

Dinner in, for instance, the family brewery 'Halve Maan' (family artisanal concern operating in the Bruges city centre)

Thursday 9 December 2010: Conference: 'Cultural heritage and the European Union'

9:00-9:30 AM: Reception

9:30-9:40 AM: Welcoming address by Flemish Ministers Geert Bourgeois and Joke Schauvliege

9:40-10:10 AM: Importance of cultural heritage

possible speaker, Simon Thurley (Chief Executive, English Heritage)

Part 1: Placing the problem in its context

10:10 – 11:00 AM: General context of the problem

possible speaker, Terje Nypan (chairman of EHLF)

11:00 AM – 12:30 PM: Three European regions in turn present concrete examples on a part-aspect (per sector/contrast between urban and rural areas)

- Wallonia or Brussels
- Hungarian region
- Polish region

12:30-1:45 PM: lunch (cold and hot buffet)

Part 2: Strategies

3:45 – 2:05 PM: Impact Assessment as possible strategy

possible speaker, a member from the Impact Assessment Board

2:05-2:25 PM: example of an existing platform (mental health care?)

possibly a European Parliament member involved in the formation of the platform for mental health care.

2:25 – 2:45 PM: Inspiration from the environmental sector

possible speaker, Jos Delbeke (European Commission, DG Climate, Director General)

2:45-3:05 PM: Importance of a solid platform: role of the Cultural heritage civil society

Possibly Mrs. Sneška Quaedvlieg-Mihailovic (Secretary-General Europe Nostra)

3:05 – 3:30 PM: coffee break

Part 3: Vision on the future

3:30 – 4:15 PM: Round-table discussion with some protagonist players: vision on the future

Possibly Mrs. Cristina Gutierrez-Cortines (Spanish European Parliament member)

Possibly a member of the Council of Europe (?)

Possibly a member of the academic community?

Possibly the Director General of the DG EAC of the European Commission

Moderator: possibly a member of the European Heritage Heads Forum (steers the discussion and presents the final conclusions)

4:15 – 4:35 PM: Vision of the European Commission on the place / future of cultural heritage in Europe

Possibly Mrs. Androulla Vassiliou (European Commissioner for Education and Culture)

4:35 – 5:00 PM. Official presentation of the Declaration of Intent

5:00 PM: reception with servings of regional products

Friday 10 December

Optional and no-obligation cultural package

7. Input

Meirsschaut, P., *De relatie tussen cultuur en het Europees Gemeenschapsrecht. Een onderzoek naar de impact van het Europees Gemeenschapsrecht op de culturele sector*, Unpublished paper, U of Ghent, 2007, 95 pp.

Nypan, T., [*Effects of European Union legislation on the built cultural heritage*](#)

Nypan, T., Ronchi, A.,(ed.), *European Legislation and Cultural Heritage*, Milan, 2006.

European Commission, DG Research, *Preserving our heritage, improving our environment – 20 years of EU research into cultural heritage. Volume I*, 2009, 33 pp.

Vos, H. (ed.), *De impact van de European Union. Beleidsterreinen, strijdpunten en uitdagingen*, Louvain, 2008, 114 pp.

Vos, H., Inspiratie voor cultuur uit integratie van milieu. From: Beugels, P., De Groof J., Vos, H., (ed.) *Het cultureel tekort van de European Union. Opstellen over cultuurpolitiek en culturele rechten*, Amersfoort, 2003, 192 pp.

Discussions and consultations with :

- Prof. A.M. Draye
- Europe Nostra
- Prof. Koenraad Van Balen
- EHLF (Terje Nypan and Jacques Akerboom)
- European Parliament members Frieda Brepoels, Cristina Gutierrez-Cortines, Saïd El Khadraoui
- Council of Europe (by mail)
- European Commission, DG Culture and Education, J.J. Cassidy
- Prof. H. Vos

<http://www.riksantikvaren.no/ehlf/>

<http://www.english-heritage.org.uk/ehhf/>

http://www.europanostra.org/UPLOADS/FILS/position_paper_to_eu_institutions.pdf