



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: General Secretariat
to: Delegations

Subject: 21th Session of WIPO Intergovernmental Committee on Intellectual Property
and Genetic Resources, Traditional Knowledge and Folklore
(Geneva, 16 to 20 April 2012)
- Final statements by the European Union and its Member States

Delegations will find in the Annex, for information, the statements made at the above-mentioned
WIPO meeting on behalf of the European Union and its Member States.

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IGC21 (16-20 April 2012)

Item 6 (Traditional Knowledge)

Mr Chairman,

The EU and its Member States fully acknowledge the mandate by the GA on the work programme for this session on TK with a focus on the 4 articles dealing with Subject Matter of protection, Beneficiaries, Scope of Protection and Limitations and Exceptions. In particular, we attach great importance to reaching an agreement on the definition on TK in article 1 and on Beneficiaries in article 2. Without prior agreement on definition and beneficiaries, it would be extremely difficult to finalize the other draft articles.

The EU and its Member States would also like to reiterate our position with regard to bringing forward the discussion on the Policy Objectives and General Guiding Principles, which stand at the forefront of working document WIPO/GRTKF/IC/21/4. . They constitute the foundation of any instrument on Traditional Knowledge so that such a discussion is necessary in order to set out the content of the substantial articles. Without knowing the goals of our work it is very difficult to find the right solutions. Although we would have preferred to discuss Objectives and Principles first, before we discuss the articles, we are pleased to have assurance from you M. Chair, that we have time set aside to do so.

The EU and its MS can also support the suggestion to appoint a few facilitators with the understanding that those who are appointed have the necessary expertise in this field and that the text they produce gets to be discussed back in Plenary.

I thank you M. Chair.

Statement on Article 1: Subject Matter of Protection, Definition of Traditional Knowledge

Mr. Chairman,

The EU and its Member States believe that the definition of TK is a fundamental element of our work with regard to find solutions on safeguard of TK. With an agreement on a clear definition on TK we can ensure that we work from the same point of reference and we will be in a much better position to finalize the other draft articles.

The EU and its Member States prefer a fairly simple and clear definition and therefore support Option 1 as stated in paragraph 1.1 in Article 1. In order to obtain a more clear definition, we propose to add the sentence “as set out in accordance with the criteria for eligibility” after “a traditional context” at the end of paragraph 1.1.

The EU and its Member States are of the view that Option 2 of Article 1 is too open ended and we therefore do not support this option.

As regard to the Criteria for Eligibility the EU and its Member States find that a list of criteria is an appropriate way to support the definition of TK. We can therefore support Option 1 in paragraph 1.2 in Article 1. However concerning d) the EU and its Member States cannot support a reference to ‘a reasonable period of time’ nor to ‘prior informed consent’ and suggest those references to be deleted. We also believe that the criteria set out in Option 1 should be cumulative and we therefore suggest that an ‘and’ is added between each criteria.

The EU and its Member States consider that the criteria in Option 2 in paragraph 1.2 do not sufficiently support the definition of TK.

Thank you Mr. Chairman

IGC21 (16-20 April 2012)

Statement on Article 2: Beneficiaries of Protection

Mr Chairman,

The EU and its Member States believe that identification of Beneficiaries of Protection of TK is important. Together with the definition of TK this is a key article which forms the basis for our work. We need a clear indication of those who should be the beneficiaries of the protection of TK. This is closely linked to the issue of access and benefit sharing.

The EU and its Member States support Option 1. We find that indigenous peoples and local communities should be the beneficiaries of protection of TK.

We therefore do not support Option 2. We find that references to families and individuals may be ambiguous and therefore in our opinion not sufficiently clear as an identification of beneficiaries. Further we do not find that nations should be considered as beneficiaries, although we fully acknowledge the concerns of certain Member States. We believe that it is still the indigenous peoples and local communities of that territory that should be regarded as the beneficiaries - not the state or nation.

Thank you Mr Chairman

IGC21 (16-20 April 2012)

Statement on Article 3: Scope of Protection

Mr Chairman,

The EU and its Member States are of the opinion, that there should be a certain degree of flexibility when providing for appropriate measures concerning the scope of protection of TK.

The EU and its Member States can therefore support Option 1 in paragraph 3.1 of Article 3. We believe that this option provides the necessary possibility for Member States to set out adequate provisions in their national law. We find, however, that there should be no reference in sub-paragraph (a) to secret TK. We do have some concern on the definition of “commercial use” in sub-paragraph (c).

The EU and its Member States cannot support Option 2 in paragraph 3.1. This option contains binding treaty language, which is not acceptable to us. In particular the EU and its Member States cannot accept the reference in Option 2, paragraph 3.1, sub-paragraph (e) to a mandatory disclosure requirement.

With regard to Option 2, paragraph 3.3 we find that this paragraph is basically covered by Option 1.

Thank you Mr Chairman

IGC21 (April 16-20, 2012)

Statement on Article 4

As a general note, the EU and its Member States would like to recall that we do not consider an internationally binding instrument to be an acceptable outcome, and therefore throughout the text we think that the work “shall” should be replaced with the word should”.

In Article, 4, the EU and its Member States support paragraph 4.2 option 1, and we also think that paragraph 4.3 of option 3 may be acceptable.

IGC21 (16-20 April 2012)

Statement on Article 5: Administration of Rights

Mr Chairman,

The EU and its Member States approve the possibility in Article 5 for Member States to establish a national or regional authority or authorities. We find that such bodies could be to the benefit of indigenous people and local communities.

With regard to the first sentence of paragraph 5.1 the EU and its Member can support the current wording in the form: “A Member State may, in consultation with the holders of traditional knowledge in accordance with its national law, establish or appoint an appropriate national or regional competent authority or authorities.”

The functions of the authorities should be determined in close consultation with holders of TK. However, we do not believe that the functions as such should be authorised by the holders.

We do not find that the authority should be enabled to act as a judiciary or an enforcement agency. Moreover the authority should not be competent to administer TK in situations where there is no holder of that TK. This would not be consistent with the definition of beneficiaries.

The functions may include according to national law activities related to dissemination of information concerning protection of TK and assist TK holders on aspects concerning the use and practices with regard to TK.

We support that the identity of the authority should be communicated to WIPO.

Thank you Mr Chairman

IGC21 (16-20 April 2012)

Statement on Article 7: Term of Protection

Mr Chairman,

The EU and its Member States believe that protection of TK should last as long as the TK fulfils the criteria for eligibility for protection according to Article 1. We therefore join other Member States in supporting Option 1 of article 7.

Thank you Mr Chairman

IGC21 (April 16-20, 2012)

Statement on Article 8

The EU and its Member States join other delegates in supporting option 1 of article 8.1.

IGC21 (16-20 April 2012)

Statement on Article 9: Transitional Measures

Mr Chairman,

The EU and its Member States agree that this instrument will only cover TK which meets the requirements of Article 1, when the instrument enters into force.

We also support option 1 of Article 9.1.

Thank you Mr Chairman

IGC21 (April 16-20, 2012)

Statement on Article 10

The EU and its Member States support option 1 of Article 10.2, but do not consider it necessary to list examples of international agreements in the Article. We do not support Article 10.2

IGC21 (16-20 April 2012)

Statement on Article 11: National Treatment and Other Means of Recognizing Foreign Rights and Interests

Mr Chairman,

The EU and its Member States fully acknowledge the need for appropriate means of recognition of foreign rights holders.

However as stated several times we do not support an international legally binding instrument as a final outcome of our negotiations. Therefore we do not accept Article 11 in its present form and suggest that further deliberation is carried out in order to meet the concerns with regard to foreign rights holders.

Thank you Mr Chairman

IGC21 (April 16-20, 2012)

Statement on Article 12

The EU and its Member States feel that the concepts contained in the second paragraph are of a more general nature and would better be considered in objectives and principles. With regard to the first paragraph, the use of the term “prior informed consent” does not seem to be correct in this context, and we would ask the facilitators to consider whether it is being used correctly here, or if it has been inserted simply as a replacement for the term “consent”, perhaps incorrectly.

IGC21 (April 16-20, 2012)

Statement on objectives and principles

M. Chair,

Speaking on behalf of the EU and its MS, we echo the comment made by the chair concerning the need to recall that the instrument on which we are working is a n instrument for the protection of TK, and that the objectives should therefore concentrate on this and not focus on issues which are outside the mandate of our work.

It's important to remember that the role of the objectives and principles is to inform and direct the work of producing the instrument, and to help in understanding the context of the instrument. They are not intended to pre-empt the instrument or to act as an anchor for ensuring that certain elements are included in the instrument. They should set out what we are trying to achieve, but not go in to the detail of how we are trying to achieve it.

Turning to the substance of the objectives, the EU and its MS have interpreted the objectives as presently written as being two sets – a longer set, and then a more concise set beginning on the second half of page 3 of the document. We support this smaller set of objectives, with the following changes:

In para (i), “holistic” should be replaced with “distinctive”;

At the end of point (iii), text should be added to say “taking into account the fair and legitimate balance which must be struck between the relevant and different interests that have to be taken into consideration”;

In point (iv), “repress” should be replaced with “prevent”;

In point (ix), the text at the end “and the principles of free and prior informed consent” should be removed.

Concerning the principles, we echo the point made by New Zealand, that we should be careful to avoid duplication between the objectives and principles and that we should consider whether the principles are necessary if a satisfactory list of objectives is achieved.

We feel that in points (a) and (b) there is a lack of clarity concerning what is being referred to as “rights” and “needs”, and that it needs to be made clear that this refers to rights in respect of traditional knowledge. Principle (j) might be merged with principle (a), since they appear to be very similar.

Thank you M. Chair

IGC 21 (16-20 April 2012)

Statement on item 7 (Participation of Observers)

The EU and its MS thank the Secretariat for the new document WIPO/GRTKF/IC/21/6 presenting the practical implications of proposals 1, 3 and 6 on the participation of observers.

As previously indicated, the EU and its MS are particularly supportive of those proposals which seek to fortify and rationalize the selection of observers and their financing mechanisms. We understand the rationale put forward by the Secretariat to maintain the functioning of the Voluntary Fund Board as is. We also support establishing an Accreditation Advisory Board appointed by the IGC for two years with a proper composition.

As to the proposal on the format of the Indigenous Panel, the EU and its MS would rather maintain the current format, as indicated by group B.

I thank you M. Chair.

IGC21 (16-20 avril 2012)

Statement on Future Work

The EU and its MS are of the view that after discussing separately GRs, TK and TCE in 3 subsequent sessions of IGC, there will be some need to wrap up our discussions and agree on the recommendations to be transmitted to the next General Assembly.

We note with great satisfaction that last year in IGC19 we had efficiently prepared a recommendation for the GA on the renewal of the mandate of IGC. We wish to see some similar fruitful discussions held in July of this year on the future work of IGC.

Therefore the EU and its MS strongly support [the wise suggestion by the Chair] to have a specific item on "Future Work" on the agenda of IGC22.

I thank you M. Chair.
