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- Final EU/Member States' statements

Delegations will find in Annex, for information, the statements delivered on behalf of the EU and its Member States at the above mentioned WIPO meeting.

35th Session of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

(Geneva, 19-23 March 2018)

Opening Statement

Chair,

1. On behalf of the EU and its Member States, let me first congratulate you and your Vice-Chair Mr Lieder on your re-election and your new Vice-Chair Mr Chery Sidharta on his election. We trust that your highly experienced team will guide the work of this Committee in the framework of the mandate agreed at the 58th WIPO General Assembly. We wish you every success in this endeavour. We would like to thank the WIPO Secretariat for its excellent preparatory work for this session. In particular, we would like to thank the Secretariat for compiling documents WIPO/GRTKF/IC/35/5 and WIPO/GRTKFT/IC/35/6, which provide helpful overviews of the IGC's work.
2. The EU and its Member States welcome the decision by the WIPO GA on a new revised mandate which places the evidence based approach at the heart of its methodology. In that regard, we consider the new mandate to be an improvement on the previous one. We look forward to using the various possibilities provided for in the mandate, such as conducting/updating studies covering, inter alia, examples of national experiences, including domestic legislation, impact assessments, databases, and examples of protectable subject matter and subject matter that is not intended to be protected.

3. In this context, we note with appreciation an excellent overview provided by the recent WIPO study “Key Questions on Patent Disclosure Requirements for Genetic Resources and Traditional Knowledge”. We also look forward to discussions on the terms of reference for the study proposed in document WIPO/GRTKF/IC/35/9 on measures related to the avoidance of the erroneous grant of patents and compliance with existing access and benefit-sharing systems.
4. Looking back to IGC 30, it appears that despite some interesting informal discussions and the highly appreciated work of the facilitators, it remained difficult for the Committee to close existing gaps among diverging options in most articles contained in the Consolidated Document on Intellectual Property and Genetic Resources, as contained in document WIPO/GRTKF/IC/35/4. Nevertheless, we hope that in the next biennium under the new mandate we can pave the way towards mutually acceptable outcomes. In this context, the EU recalls that it remains open to discussing a mandatory disclosure mechanism with appropriate safeguards.

Chair,

5. Thirteen years have passed since the EU first tabled its proposal in the IGC. In the meantime, the international landscape has changed considerably, in particular the Nagoya Protocol has come into force. In order to further our understanding of this new landscape, the Committee might wish to consider potential benefits of examining interfaces between the implementation of the Nagoya Protocol and the introduction of patent disclosure mechanisms in IP legislation
6. Against this background we remain ready to continue our engagement as was evident at IGC 30. We believe that the EU occupies the centre ground in these often polarized discussions. We once again reiterate our view that delegations should try to focus discussions on realistic and achievable outcomes to reap tangible results of the IGC’s work. We would like to stress our willingness to contribute to such positive outcomes.

Thank you.

Statement on „Key Issues for Consideration by IGC 35”

Chair,

The EU and its Member States remain committed to constructively engage in discussions on a disclosure requirement in patent applications.

While the EU and its Member States are not demandeurs in the IGC, if a disclosure requirement were to be agreed as a result of our negotiations, we would like to reiterate our position on the key issues listed in the Chair’s note as follows:

- The disclosure requirement should not apply to derivatives and its coverage as regards Traditional Knowledge associated with Genetic Resources should depend on the results of ongoing discussions on the definition of TK.
- The trigger of the disclosure requirement should be that the invention is ‘directly based on’ subject matter.
- The applicant should declare the country of origin or, if unknown, the source of the specific resource to which the inventor has had physical access and which is still known to him.
- Exceptions and limitations should not be subject to national laws but should be provided for in a list of exceptions and limitations covering, for example, human genetic resources, derivatives or TK in the public domain.
- Revocation of patents cannot constitute a sanction. The consequences of non-compliance would be on the one hand that if the applicant fails or refuses to declare the required information, the application should not be further processed. On the other hand, if the information provided is incorrect or incomplete, sanctions outside the field of patent law should be envisaged.

As regards defensive approaches such as those focussed on databases or due diligence measures, we remain interested in discussing them to complement the policy debate on a disclosure requirement.

Thank you.

Statement on “The Consolidated Document Relating to Intellectual Property and Genetic Resources REV. 2 (track-changed)

(Dated March 23, 2018)”

Chair,

The EU and its Member States would like to thank the facilitators for their hard work and this second revision.

Article 3, Subject matter (p. 18)

At the outset, we would like to request an editorial change in the new document regarding Article 3, Subject matter. Our preferred text has been removed to the new ALT Article 3, in Part II “ALTERNATIVES TO ARTICLES 2-6 DEFENSIVE MEASURES” (p. 22). This suggests the understanding that our preferred wording for this Article does not form part of the Mandatory Disclosure Requirement option. We do not share that understanding and reiterate that the text preferred by the EU, which reads “[This instrument [shall][should] apply to patent applications for inventions directly based on genetic resources [and traditional knowledge associated with genetic resources].]”, should be replaced as an ALT to Article 3, among the provisions in Part I.

Alternative Preamble (p. 4)

We can support continuing discussions on the basis of the more streamlined and stylistically more coherent text in the Alternative Preamble.

Article 1, Definitions (p. 5-9)

As to the definition of “invention directly based on”, we prefer ALT 1, with the wording “invention” instead of “subject matter”.

We note that the terms are now grouped in two parts, namely “TERMS USED IN THE OPERATIVE ARTICLES” and “OTHER TERMS”. We think that two definitions which have been placed among “OTHER TERMS” should be reinserted among those terms which relate to the operative articles. These are the definition of “physical access”, which is closely connected to the definition of “invention directly based on”; and “in situ conditions”, which is closely connected to the definition of “country of origin”.

Article 4, Disclosure Requirement (p. 18-19)

We support the text of Article 4.1, with preferred bracketed language reading “claimed invention”, “patent applications” and “country of origin”.

As to Article 4.2, we would like to thank the facilitators for including our position in ALT, as requested during the Informal discussions.

We can also support the text in Article 4.3.

As regards Article 4.4, in our opinion we would need to further discuss how this provision would be implemented in practice, and whether it could be a more appropriate mechanism than the deleted 3.2, as originally supported by the EU.

Finally, we support the deletion of wording previously contained in 3.5 from the text of the Article on the Disclosure Requirement.

Article 5, Exceptions and Limitations (p. 19-20)

We prefer ALT 5.1.

Article 6, Sanctions and Remedies (p. 20-21)

For further discussions, we would like to indicate that our preference for the text of this article would be focussed on two main features: no revocation included, and no list.

Thank you.