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Delegations will find at annex, for information, the EU/Member States statements as delivered at the above-mentioned WIPO meeting.

40th Session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

(Geneva, 17-21 June 2019)

Opening Statement

Agenda item 1

Chair,

1. On behalf of the EU and its Member States, let me first thank you and your Vice-Chairs as well as the Secretariat for the excellent preparation of this important meeting, the last one under our current IGC mandate.
2. The previous session was the third thematic session to discuss Traditional Knowledge/Traditional Cultural Expressions (TK/TCEs). Building on helpful discussions in the *ad hoc* Expert Group preceding IGC 39 and in the small contact groups, some progress was made on issues concerning the subject matter of protection and eligibility criteria (draft Articles 1 and 3) and objectives (draft Article 2).
3. We look forward to continuing discussions on the basis of the REV 2 documents emerging from the last session, currently contained in documents WIPO/GRTKF/IC/40/4 and WIPO/GRTKF/IC/40/5. We would like to make further technical comments on some elements of the text later on under Agenda item 6. We thank the IGC Chair for his helpful information notes for this session. As regards methodology, we reiterate that transparency and inclusiveness remain a necessity.

4. Chair, the EU and its Member States would like to thank you for preparing and circulating a Chair's text on an Instrument Relating to Intellectual Property and Genetic Resources and Traditional Knowledge Associated with Genetic Resources. We are appreciative of your efforts to facilitate progress on GRs by means of providing a text intended to serve as a possible alternative for further discussions. In our view, your personal initiative provides an opportunity to be considered for future work on Genetic Resources.
5. Chair, as one of the major tasks of this session is to discuss a Recommendation for the General Assembly on future work, the EU and its Member States reiterate our recognition of the importance of the work carried out by the IGC and our support for the continuation of its work in the next biennium. We look forward to participating actively in the discussions on a new mandate and work programme. We thank you for issuing an Information note on Item 7.
6. One of our general considerations about the new mandate is that we are in support of embarking from the text of the current mandate as a starting point for negotiations on future work. As to working methods, we remain convinced of the usefulness of evidence-based discussions and reliance on national experiences in the IGC. Finally, we are of the opinion that the 2019 General Assembly is not in the position to convene a diplomatic conference on any of the three topics. In addition, any decisions on further actions should be taken at the end of the mandate period, as this is the established practice of the IGC.
7. We remain committed to achieving an efficient work programme for the IGC that is acceptable to all. We have further comments to make later on under Agenda Item 7 or, as the case may be, in Informal discussions.
8. Chair, the EU and its Member States look forward to participating constructively in all discussions at this crucial session of the IGC and hope to achieve a successful outcome.

Thank you.

Traditional Knowledge/Traditional Cultural Expressions

(Docs WIPO/GRTKF/IC/40/4, WIPO/GRTKF/IC/40/5, WIPO/GRTKF/IC/40/7, WIPO/GRTKF/IC/40/8, WIPO/GRTKF/IC/40/9, WIPO/GRTKF/IC/40/10 and WIPO/GRTKF/IC/40/INF/7)

Agenda Item 6

Chair,

1. On behalf of the EU and its Member States, let me first thank you for preparing a substantive note to facilitate discussions on cross-cutting issues of TK/TCEs.
2. Our previous session was the third thematic session to discuss Traditional Knowledge/Traditional Cultural Expressions (TK/TCEs). Building on helpful discussions in the *ad hoc* Expert Group preceding IGC 39 and in the small contact groups, some progress was made on issues concerning the subject matter of protection and eligibility criteria (draft Articles 1 and 3) and objectives (draft Article 2).
3. We look forward to continuing discussions on the basis of the REV 2 documents emerging from the last session, currently contained in documents WIPO/GRTKF/IC/40/4 and WIPO/GRTKF/IC/40/5. The EU remains of the view that such instrument(s) should be non-binding.
4. As regards the closely connected issues of definition and eligibility criteria, we welcome the tendency of eliminating overlaps and maintaining a set of eligibility criteria. As to Article 1, it remains subject to debate what elements should be included in the definitions. In particular, as to the definition of Traditional Cultural Expressions, we look forward to continued discussions on the wording "in which traditional culture *and knowledge* are expressed". Article 3 in both texts takes into consideration our concerns relating to the so-called temporal aspect; we support Alternative 2.
5. Regarding the issues of objectives, we appreciate that Article 2 Alt 2, which is our strong preference, has been retained. Amendments in Alt 2 correctly reflect our proposal made during Informal discussions at IGC 39 as well as our final editorial comment about the relevant part of the REV 2 documents.

6. Chair, while the EU and its Member States welcome some progress made in text-based discussions, we continue to advocate solid and evidence based working methods as reflected in the current IGC mandate. In this context we recall our two proposals for studies contained in documents WIPO/GRTKF/IC/39/16 and WIPO/GRTKF/IC/39/17. In substance, the EU propose that the Secretariat should undertake studies of national experiences and domestic legislation in relation to the protection of Traditional Knowledge and Traditional Cultural Expressions respectively. To inform discussions at the IGC, the studies should analyse domestic legislation and concrete examples of protectable subject matter and subject matter that is not intended to be protected; and take into account the variety of measures that can be taken, some of which could be measures based, whilst others could be rights-based.
7. In this context, we are also supportive of a similar proposal by the United States of America and Japan which aims at conducting a study by the WIPO Secretariat on existing *sui generis* systems for the protection of TK/TCEs. We are interested in working with other delegations to explore possibilities to consolidate our proposals. We stand ready to engage in such cooperation at this session in the context of discussions related to the new mandate.

Thank you.

EU intervention on TK/TCEs in IGC 40 Plenary

(Proposal WIPO/GRTKF/IC/40/14 for a study by the WIPO Secretariat)

Agenda Item 6

Chair,

1. As we signalled in our statement on TK/TCEs delivered in plenary yesterday, the EU and its Member States are supportive of the proposal for a study by the WIPO Secretariat on existing sui generis systems for the protection of TK in WIPO member states.
2. In the context of our own similar proposals we resubmitted for the last session, we recognise a potential overlap of ideas to incorporate evidence based working methods as reflected in the current IGC mandate.
3. We are, at the same time, sensitive to feedback received from other IGC participants in response to proposals calling for studies. We also note the guidance from you, Chair, that a balanced approach about studies is key.
4. The EU and its Member States have already signalled at this session our readiness to engage in cooperation with other delegations to explore possibilities to consolidate our proposals, which appear to aim at the same purpose: to gather and process further information on national experiences and gain a better understanding of existing sui generis systems for the protection of TK/TCEs.
5. We would like to inform the IGC on our ongoing consultations with some other delegations, in particular the US, to find a possible way forward.
6. The EU and its Member states are hopeful that such cooperation can result in outcomes that can be acceptable to all.

Thank you.

EU intervention on TK/TCEs in IGC 40 Plenary

(Comments on Facilitator's work in progress text)

Agenda Item 6

1. Thank you for giving me the floor, Mr Chair. And many thanks to the facilitators for the impressive efforts in narrowing down the options.
2. Without a detailed analysis, and without being able to coordinate with the EU MS, at first glance, we think that the text could be used as a basis for further discussion, subject to further details and comments from our side.

Thank you.

EU intervention on TK/TCEs in IGC 40 Plenary

(Comments Rev1 TK/TCE)

Agenda Item 6

1. Thank you, Mr. Chair, for giving me the floor once again. On behalf of the EU and Its MS, we appreciate efforts from all the participants: the chair and the vice chair, in particular the co-facilitators, the secretariat, and also the delegations, to further streamline the text.
2. We consider the texts as presented in the revision document acceptable as a basis for further negotiations.
3. We will of course have comments and questions on some of the changes.

Thank you.

Closing Statement

Agenda item 10

Chair,

1. The EU and its Member States would like to thank you, your Vice-Chairs, the facilitators and the Secretariat for guiding us through our agenda successfully this week. We note with appreciation the important results we achieved at this session.
2. We welcome the adoption of two revised texts on TK and TCEs.
3. We also welcome that IGC 40 managed to reach consensus on a recommendation to the General Assembly on the terms of the IGC mandate and work program for 2020-2021.
4. We align ourselves with the statement made by Group B.
5. Finally, the EU and its Member States would like to thank all delegations for maintaining a positive spirit of cooperation throughout our discussions this week. We look forward to participating constructively in the work of the IGC under the new mandate.

Thank you.
