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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Preparatory Committee of the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources (Geneva, 11-13 September 2023) - Final EU/Member States statements

Delegations will find attached the final EU/Member States statements delivered at the above-mentioned WIPO meeting.

Preparatory Committee of the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources

(Geneva, 11-13 September 2023)

Opening Statement

Chair,

1. The EU and its Member States congratulate you and your vicechairs on your election. We thank the Director General for his opening remarks. We also thank the Secretariat for preparing this session. We remain positive that this Preparatory Committee will have a successful outcome in the preparation for the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources.
2. Last week we had the opportunity to discuss on the substantive articles of the draft instrument and some advancement was made. There is still work to do in order to finalise this treaty. We remain engaged on the process ahead of us.
3. In general, we support the draft administrative provisions and final clauses presented in document GRATK/PM/2, although some of them raise concerns for us. We will make respective comments and remarks on them under Agenda Point 5.
4. We generally support the draft rules of procedure of the Diplomatic Conference proposed by WIPO Secretariat and presented in document GRATK/PM/3.
5. The EU and its Member States remain committed to engaging constructively during this Preparatory Committee.

Thank you.

5. Draft Final Clauses for the Instrument to be considered by the Diplomatic Conference

Article 10

We support the current drafting of Article 10 and, in particular, Article 10.2. We consider this provision to be essential for the correct implementation of the Instrument.

Article 11

The EU strongly supports consensus-based decision making. However, in line with the Group B statement, we consider that, in Article 11, a provision should be added that establishes that decisions have to be taken with a three-fourths majority in cases where consensus cannot be reached. The respective provision in Article 16.3 could then be deleted.

We also think that a provision regarding the quorum should be included, according to established practice in other WIPO administered treaties. We suggest therefore to add the following paragraph: “One-half of the Contracting States shall constitute a quorum.”

It is also our understanding that Article 11.2 (f) together with the corresponding provisions in Article 16.1, 16.2 and 16.4 should be deleted. The reason for this is that it should not be the Assembly being competent to make changes to the Articles 11 and 12 but rather the Diplomatic Conference (Article 15), because the latter had set up these provisions.

With regard to Article 11.3, we need to analyse and discuss further the implications of this provision at EU level. Therefore, we are not in a position to support the current drafting at the moment and will state our position at latest during the Diplomatic Conference.

Article 12

On Article 12, we consider that the text presented is in line with other WIPO treaties and includes adequate provisions for the International Bureau of WIPO to perform its tasks appropriately. Therefore, we support this provision.

Article 13

We would like to request the opinion from the Legal Counsel as regards Article 13(2) and the eligibility of the European Union and/or its Member States to become parties to the instrument.

Due to EU internal comity, there are situations where both the EU and its Member States become party to an international instrument. Also, for some WIPO instruments, such as the Berne Convention, only EU Member State – and not the EU as such – are contracting parties.

Other WIPO instruments, for example Article 15(3) of the Marrakech Treaty, contain provisions under which the EU has been able to become a member already at the Diplomatic Conference following certain formalities such as a special ad hoc declaration, etc.

In the absence at this stage of similar and explicit indications in this instrument, we would like to know the opinion from the Legal Counsel.

Without prejudice to aspects related to EU internal comity, would there be any legal impediment to apply the same treatment in this instrument, as in the Marrakesh Treaty? That is to say: That the EU could open up the possibility to eventually become a party already at the Diplomatic Conference and that this instrument could include a specific provision to that end, similar to Article 15(3) of the Marrakesh Treaty?

Article 15

With regard to Article 15, this provision needs further analysis on our side. Therefore, we are not in a position to support the current drafting at the moment and will state our position at latest during the Diplomatic Conference.

Article 16

In agreement with Group B statement, we are of the opinion that Article 16 should be deleted. The reason for this is that there should not be any exception to Article 15, as we have already stated in our comments on Article 11.

We propose that the provision in Article 16.3, requiring three-fourths of the votes cast, should then be reflected in Article 11.

Article 18

In relation to Article 18, we support, as mentioned by Group B, that the entry into force of the Instrument should require at least 30 eligible parties to ratify in order to allow sufficient time for preparation. In our opinion, many parties to this instrument will need to make legislative amendments to comply with it, and therefore, it would be advisable to allow them sufficient time for such purposes, including providing timely information to patent applicants and other stakeholders. This majority is the one required in other WIPO treaties, such as the Beijing Treaty adopted in 2012.

Article 19

Consistently with our proposal to modify Article 18 by increasing the required number of eligible parties whose ratification will be necessary for the entry force of the treaty, we propose to reflect that number as well in Article 19. The Article would then read: “(a) The 30 eligible parties referred to in Article 18”.

6. Draft Rules of Procedure of the Diplomatic Conference

Chair,

The EU and its Member States support the draft rules of procedure of the Diplomatic Conference proposed by WIPO Secretariat and presented in document GRATK/PM/3. We appreciate these rules are based on consolidated international practice and have been used in previous diplomatic conferences. We recognize the addition made in Rule 46, on the Status of Observers, and welcome it for the purposes of this Diplomatic Conference.

Thank you.
