



Brussels, 19 April 2024
(OR. en)

9052/24

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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	8722/24
No. Cion doc.:	5237/24 + ADD 1
Subject:	COUNCIL DECISION authorising the opening of negotiations, on behalf of the European Union, in the context of the World Intellectual Property Organization for an international legal instrument relating to intellectual property, genetic resources and traditional knowledge associated with genetic resources - Adoption

1. On 21 July 2022, following discussions within the WIPO Intergovernmental Committee on intellectual property and genetic resources, traditional knowledge and folklore (IGC) that have been ongoing since 2004, the WIPO General Assembly agreed to hold a Diplomatic Conference to conclude an international legal instrument relating to intellectual property, genetic resources and traditional knowledge associated with genetic resources (hereafter the “GR instrument”). The Diplomatic Conference will be held from 13 to 24 May 2024 in Geneva.
2. The aim of the draft international GR instrument is to improve the transparency and quality of the parts of the patent system that deal with genetic resources and the traditional knowledge associated with them, and to prevent patents from being erroneously granted for inventions that are not novel or inventive with regard to genetic resources and traditional knowledge associated with them.

3. On 9 January 2024, the European Commission submitted to the Council a Recommendation for a Council Decision authorising the opening of negotiations on an international legal instrument relating to intellectual property, genetic resources and traditional knowledge associated with genetic resources (5237/24 + ADD 1).
4. The draft negotiating mandate was discussed by the Working Party on Intellectual Property at eight meetings from January to April 2024. One key issue in those discussions was the nature and extent of the external competence for the matters covered by the draft GR instrument.
5. Against the background of the convergent opinion between the Member States and the Commission that the final assessment of this question can only be made once the text of the GR instrument is final, the Presidency suggested as a compromise an open mandate that authorises the Commission to participate, on behalf of the Union, in the negotiations as regards matters falling within its competence and in respect of which the Union has adopted common rules that may be affected or the scope of which may be altered by the GR instrument, without prejudging whether the GR instrument will also cover matters falling within Member State competence.
6. This compromise approach was approved by the Permanent Representatives Committee on 18 April 2024 on the basis of the compromise texts set out in 8710/24 and 8710/24 ADD 1
RESTREINT UE/EU RESTRICTED.
7. The adoption of the draft Council Decision is subject to qualified majority (Article 114 TFEU in conjunction with Article 218(3), (4) and (8) TFEU).

8. In light of the above, the Permanent Representatives Committee is invited to

- confirm its agreement on the text of the draft Council Decision set out in 8843/24, revised by the Council's legal/linguistic experts, and the negotiating directives set out in its addendum (8843/24 ADD 1 RESTREINT UE/EU RESTRICTED);
 - suggest that the Council decide, as an 'A' item at a forthcoming meeting, to adopt the Decision and its addendum set out in 8843/24 + ADD 1 RESTREINT UE/EU RESTRICTED;
 - note that the European Parliament will be informed of the adoption of the Decision in accordance with Article 218(10) TFEU, and that the Council Decision will be transmitted to the Parliament;
 - note that the Council Decision will be published in the Official Journal of the European Union in accordance with Article 17(2)(b) of the Council's Rules of Procedure.
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