

THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

The following comments were received through a communication from the European Community and its Member States

At the Seventh Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, the Committee called for further comments on the draft objectives and core principles set out in document WIPO/GRTKF/IC/7/5, before 25 February 2005.

Document WIPO/GRTKF/IC/7/5 summarizes the existing legal mechanisms and experiences with the protection of Traditional Knowledge (TK), and makes an attempt to formulate specific objectives and core principles on TK protection based on existing practices, without considering the international dimension as a distinct issue.

The European Community and its Member States wish to reiterate their support for further work towards the development of international sui generis models for the legal protection of TK and for the flexible and consistent approach in the draft document. Measures to protect TK need to strike a fair balance between the rights and interests of TK holders and the interests of those who use and benefit from TK, and TK protection should also be consistent with existing intellectual property systems and international treaties, without prejudice to specific rights and obligations already established under binding legal instruments. The European Community and its Member States also wish to stress that the final decision on the protection of TK should be left to the individual Contracting party.

The draft document is a constructive and elaborate document which contains the right elements that should play a role in the discussion on the protection of TK.

However, at this stage we find the draft document still susceptible of further elaboration, particularly as regards determining the scope and consequences of the core term "traditional knowledge". Determining a clear and acceptable definition of TK is of paramount importance for any future work. In particular, further efforts should be made aiming at developing, defining and qualifying further the different prerequisites of B3 paragraph 2 such as "result of intellectual activity or insight", "traditional context", "form part of traditional knowledge systems", "embodied in the traditional lifestyle".

The draft text also needs to be improved in order to provide more legal certainty, as long as some terms need further and better definition and the consequences of the implementation of some principles has to be studied and measured. In particular, further discussion is needed on issues such as:

- the identification of the TK holders;
- the protection against misappropriation;
- the provisions regarding compensation for the TK holder;
- the principle of prior informed consent;
- the exceptions and limitations;
- the concept of "public domain"
- the duration of the protection and entitlement;
- the possible need of registration.

In this context, individual EU Member States may wish to make specific (and non-exhaustive) comments on the current text of the draft document.