



**COUNCIL OF
THE EUROPEAN UNION**

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PI 53

WORKING DOCUMENT

from : Presidency

to : delegations

No prev. doc.: 12621/08 PI 44

Subject : Revised draft contribution by the European Community and its Member States to the draft gap analysis carried out by the WIPO Secretariat on the protection of traditional knowledge

Delegations will find attached a revised draft contribution by the European Community and its Member States to the draft gap analysis carried out by the WIPO Secretariat on the protection of traditional cultural expressions and expressions of folklore.

The draft takes into account comments made by delegations at the meeting of the Working Party on Intellectual Property (Patents) on 11 September 2008.

Changes vis-à-vis the previous version (12621/08) are indicated.

**[..] Contribution by the European Community and its Member States to the draft
gap analysis carried out by the WIPO Secretariat
on the protection of traditional knowledge**

On behalf of the European Community and its Member States, France thanks the WIPO Secretariat for preparing the draft gap analysis on the protection of traditional knowledge, and for the invitation to delegations and observers to provide their comments.

Generally speaking, the European Community and its Member States support the work process begun by the Committee. The analysis drawn up by the Secretariat shows a progressive approach towards dealing with the issue of traditional knowledge.

From their reading of the document, the European Community and its Member States note that a number of instruments that exist in the intellectual property field or under public international law already afford possible forms of protection for traditional knowledge.

The European Community and its Member States would also point out that one of the gaps identified in the document concerns the difficulty of defining and identifying the traditional knowledge to be protected. In this respect, the European Community and its Member States have constantly recalled that it was essential, in order to guarantee legal security, that a definition of traditional knowledge be arrived at so that it can be clearly identified and described. It is also clear from the document that a number of objectives have been expressed for which protection is sought. The European Community and its Member States consider that further thought should be given to the matter of which specific objective(s) we want to highlight in seeking to protect traditional knowledge. The answer to this question will make it easier to know whether the forms of protection that exist are adequate.

Lastly, the European Community and its Member States note that the document lists a broad range of options that exist or might be developed to address any identified gaps. Here the European Community and its Member States would reiterate their support for continued work on developing international *sui generis* models or other non-binding options for the legal protection of traditional knowledge.

Having said this, the European Community and its Member States would like to comment on the following points of the document:

- with regard to the forms of protection (points 12 et seq.), point 17 of the document should be highlighted, which rightly stresses that the proposals for strengthening international patent law standards requiring specific forms of disclosure relating to traditional knowledge and genetic or biological resources represent significant forms of defensive protection of traditional knowledge. In this respect, it should be recalled that the European Community and its Member States made a proposal to this Committee on disclosure of the origin or source of genetic resources and the related traditional knowledge in patent applications. Likewise, the document mentions the existence within this Committee of guidelines for examination of traditional-knowledge-related patents (point 16) which should assist patent examiners to define inter alia the state of the art appropriate for avoiding the grant of illegitimate patents. As the document shows, these points might provide responses for certain objectives and gaps identified by the Secretariat;
- as regards the definition of traditional knowledge (points 38 et seq.), the European Community and its Member States have stated previously that the definition contained in Article 3 of document WIPO/GRTKF/IC/12/5 (c) was a sound basis for work and should be examined in greater depth within the Committee. In particular, further consideration should be given in the document to the concept of "public domain", by trying to determine what traditional knowledge is not, so as to have a better understanding of what traditional knowledge might be.

