

Draft Text on Genetic Resources and Associated Traditional Knowledge: Executive Summary

OBJECTIVES

The instrument envisaged in the Text of a Draft International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources (Draft Text) would aim to enhance the efficacy, transparency and quality of the patent system with regard to genetic resources (GRs) and associated traditional knowledge (ATK), and prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to GRs and ATK.

MANDATORY PATENT DISCLOSURE REQUIREMENT

The Draft Text would establish a mandatory patent disclosure requirement – this would require patent applicants to disclose the country of origin of the GRs and/or the indigenous peoples or local community providing the ATK, if the claimed inventions are “materially/directly based on” GRs and/or ATK. If such information is unknown, the source of the GR or ATK should be disclosed. If none of the above information is known, the patent applicant should be required to declare so. Patent offices should provide certain guidance, though they would have no obligation to verify the authenticity of the disclosure.

SANCTIONS AND REMEDIES

Non-compliance with such mandatory disclosure requirements would be subject to appropriate, effective and proportionate measures, in accordance with national law, though the patent applicants would have the opportunity to rectify a failure to disclose the required information. Only if there has been fraudulent intent in regard to the disclosure requirement, may a patent be revoked or rendered

unenforceable. Fraud aside, no Contracting Party should revoke or render unenforceable a patent solely on the basis of an applicant’s failure to disclose the required information.

NON-RETROACTIVITY

Despite there already being several mandatory disclosure regimes at the national and regional levels, the Draft Text includes a non-retroactivity clause, i.e. no obligations of this instrument should be imposed in relation to patent applications filed prior to the ratification of or accession to this instrument.

INFORMATION SYSTEMS

The Draft Text suggests the establishment of information systems (such as databases) of GRs and ATK, in consultation with relevant stakeholders. The information systems would be accessible to patent offices for the search and examination of patent applications.

REVIEW MECHANISM

The Draft Text provides an in-built review of the instrument to allow for certain issues to be reviewed no later than four years after its entry into force. These issues include the possible extension of the disclosure requirement to other areas of IP and to derivatives, and other issues arising from new and emerging technologies that would be relevant to the application of the instrument.

OTHER INFORMATION

The definitions of GRs and genetic material in this instrument mirror the definitions in the Convention on Biological Diversity (CBD). The text provides that this instrument should be implemented in a mutually supportive manner with other relevant international agreements.