# Advancing implementation of the Nagoya Protocol

An international exchange on key challenges and practical ways forward

### 21 to 23 November 2017, Pentahotel City Centre, Brussels

**Workshop Report** 

Ву

Suhel al-Janabi Eva Fenster Peter Schauerte Mery Ciacci Alicja Kozlowska

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**Disclaimer:** This report is based on various notes taken during the workshop. It does not purport to reproduce at full length all debates and interventions. None of the messages conveyed in this report may in any way be interpreted as stating an official position of the European Commission or of the representatives of countries, institutions and entities present at the workshop. The European Commission takes no guarantee for correctness, details and completeness of statements and views in this reports as well as no guarantee for respecting private rights of third parties. Responsibility for the information set out in this report lies entirely with the authors.

### 1 Background

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (NP) is still in the early days of its implementation. Many current and future Parties to the Protocol are busy putting in place domestic measures implementing its provisions. It is important and timely that Parties exchange views and experiences on current and arising challenges in implementing both access and compliance regimes that eventually need to "speak" to each other in order to make the international ABS system work.

In this context, the European Commission, Directorate-General for Environment, has organized a workshop in Brussels with a view to provide an opportunity to work collaboratively - in an informal setting - towards a more coherent interpretation and implementation of the concepts and provisions of the Protocol.

On the one hand, the workshop has offered a platform for discussion of critical issues with respect to access regimes. Partners from provider countries were invited to present their **access measures** with particular focus on "special considerations" as foreseen under Article 8 of the Protocol. Also, users and Competent National Authorities (CNAs) responsible for implementation of compliance measures in the EU were invited to share their perspectives, which may assist provider countries in the identification of different design options for access legislation.

On the other hand, the meeting was a suitable occasion to discuss possible ways to implement effective **compliance measures**, and thus serve as an opportunity to take progress in the Protocol's implementation - with a special focus on (although not limited to) EU ABS measures. Participants also engaged in discussions on **contractual elements** of the **Mutually Agreed Terms** (MAT) and the way they could assist users and providers in achieving the objective of the Protocol.

Specifically, the main objectives of this workshop were that participants:

- gain deeper insights into access legislation, in particular in relation to provisions on "special considerations" (Art. 8 Nagoya Protocol);
- exchange views on options for compliance measures, and get acquainted with the EU ABS legal framework;
- understand better how contractual elements (MAT) can be helpful for both users and providers (and the respective countries).

The workshop was held from 21 to 23 November 2017 in Brussels, Belgium. It brought together around 74 participants from key countries developing or having established ABS regulations (third country authorities and EU competent national authorities), representatives from private sector and academia as well as representatives from the African Union Commission, the International Chamber of Commerce, the Secretariat of the of the Convention on Biological Diversity (SCBD) and the ABS Capacity Development Initiative.

In total, representatives of 32 countries attended the workshop: Colombia, Costa Rica, Ethiopia, India, Japan, Kenya, Malaysia, Mexico, Morocco, Norway, Peru, South Africa and Switzerland as well as representatives from 19 EU Member States (Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Malta, Nederland, Poland, Slovenia, Slovakia, Spain, Sweden and the United Kingdom).

This report presents a summary of the presentations given by participants to the workshop. All presentations can be downloaded under the following Dropbox-link: <u>https://www.dropbox.com/sh/ywxu1bwoc9aclxf/AAArZE4kM2hfx3d0sb0aRqo9a?dl=0</u>

### 2 Opening, Introduction and Setting the Scene

#### 2.1 Opening remarks by the European Commission and SCBD

Humberto Delgado Rosa, Director of Directorate D - Natural Capital of the European Commission DG Environment warmly welcomed all participants and pointed out the strong commitment of the European Union (EU) with respect to the Nagoya Protocol and ABS. Valérie Normand, Senior Programme Officer for ABS at the Secretariat of the Convention on Biological Diversity (SCBD) thanked the EU for organizing this workshop. Recognizing that ABS implementation is advancing at many levels, Ms. Normand stated that more and continued efforts are needed to make ABS work on a global scale.

#### 2.2 Status of Nagoya Protocol implementation (Valérie Normand, SCBD)

To set the scene, Valérie Normand (SBCD) provided participants with an overview of the current status of NP implementation. As of November 2017, 104 CBD parties have ratified the NP. Many countries are in the process of establishing institutional arrangements and measures at national level. Several capacity-building and development initiatives are ongoing to support the ratification and implementation of the Protocol. Ms Normand also gave an update on 2017-2018 developments, referring among others to the ABSCH, assessment and review of the Protocol, as well as SCBD capacity-building activities planned in the near future to support the implementation of the Protocol.

# 2.3 The Access-Compliance Interplay (Suhel al-Janabi, GeoMedia GmbH / ABS Capacity Development Initiative)

Suhel al-Janabi (GeoMedia GmbH/ ABS Capacity Development Initiative) gave a presentation on the access-compliance interplay under the NP. Research conducted by the German Federal Agency for Nature Conservation (BfN) in July 2017 revealed that several countries with ABS measures in place have not posted this information on the ABSCH. However, only a well-filled ABSCH, with up-to-date information on access measures, renders the ABS system stable and functional. Mr. al-Janabi also highlighted the key role of permit and IRCC for the implementation of the Protocol and informed participants that a "simply explained" video on monitoring and compliance is about to be finalized by the ABS Capacity Development Initiative and the SCBD (<u>http://www.abs-initiative.info/media-publications/multimedia/#jfmulticontent\_c1357-5</u>).

### **3** Access regulations

# **3.1** Countries' presentations of key access provisions and features, with a focus on addressing special considerations (Art. 8 NP)

A total of 12 countries (CR, IN, ZA, MY, ET, KE, PE, MA, CO, MX, ES, and FR), Parties and non-Parties to the NP, presented their ABS regulatory frameworks and respective access procedures. If applicable, the presentations also highlighted special considerations (Art. 8 NP) with regard to non-commercial research, health emergency situations and plant genetic resources for food and agriculture (PGRFA) in the context of the respective national access measures. Many presenters in addition included references to material under the FAO-Treaty (ITPGRFA).

A brief summary of the country presentation is provided below, followed by highlights of the key outcomes of the discussions that took place after the respective presentations (in bullet points). The summaries are based on notes taken during the meeting and do not reflect the official position of the respective countries. Presenters were given the opportunity to review and amend the text written by the note takers. The format and length of the respective texts may vary.

#### 3.1.1 Costa Rica – Melania Muñoz / José Alfredo Hernández

Melania Muñoz and José Alfredo Hernández (National Commission for the Management of Biodiversity, CONAGEBIO) stated that in Costa Rica both GR and derivatives are covered by the national ABS system. Costa Rica is not a party to the Nagoya Protocol: it signed the NP in 2011, but did not ratify it yet. In Costa Rica PIC includes MAT; there are three different types of permits: for basic research, bioprospecting, and commercial use. Access to TKaGR is regulated under the Biodiversity Law, but in order to grant access permits to TKaGR or GR inside indigenous territories, it is necessary to develop additional specific regulation through a participatory process and a consultation with indigenous people. This regulation is under development and access to GR and/or TKaGR hold by ILC or in the territory of ILC is not yet allowed. According to the place where the resources are collected, the provider could be the National System of Conservation Areas (SINAC), Costa Rican Institute of Fisheries and Aquaculture (INCOPESCA), private landowners, indigenous people or local communities (when the specific legislation is adopted).

- Costa Rica is a contracting party to the ITPGRFA; Annex 1 species under administration and control of the party and public domain used for conservation, research, plant breeding and/or capacity building for food and agriculture and species held by International Agricultural Research Centres (IARCs) are covered by the conditions of the Multilateral System and exchanged through the SMTA.
- For ITPGRFA Annex 1 species, which are accessed for other uses such as cosmetic, pharmaceutical and other industrial uses, the regular CONAGEBIO procedure applies. No specific measures for other PGRFA based on specific considerations are foreseen under the current ABS legislation.
- The commercial ABS permit follows the same procedure as the other two permits, but for commercialization, additional requirements need to be fulfilled.
- If access occurs in a collection, PIC is needed from the original provider (if the samples were collected before 2007) and from the collection.

- Bio-prospection, even before commercial use, already triggers BS obligations and providers can negotiate up to 10% of the research budget as BS.
- In emergency situations, an ABS permit is still needed. However, in case of a declared national emergency, the State can issue a mandatory license of a patent for the benefit of the country population, (a sort of waiver for "open access" in case there is a patent).

#### 3.1.2 India – Geetha Nayak

Geetha Nayak (GIZ Indo-German Biodiversity Programme) explained that in India, biological resources and associated knowledge are covered by the national ABS system. While foreign users apply for an access permit at the national level (National Biodiversity Authority), national users apply at the decentralized State Biodiversity Boards at regional states level. Exemptions from the ABS system are possible if a specific resource is normally traded as commodity, (currently 421 items are excluded). An online system is guiding users step by step towards the necessary application form and live help is available during office hours.

- Transnational companies have to apply as a category 1 user (non-Indian) at NBA.
- If a user does not accept the pre-negotiated draft MAT, he/she can present the issues to the expert committee and then continue the negotiations with this committee.
- Any change of intent within a given MAT triggers a new application.
- The list of biological resources normally traded as commodities (NTAC) as notified in official gazette of Government of India currently has a total of 421 items (<u>http://nbaindia.org/uploaded/pdf/Notification\_of\_Normally\_Traded\_Commodities\_dt\_7\_A\_pril\_2016.pdf</u> and <u>http://nbaindia.org/uploaded/pdf/NTC\_amendments\_S.O.1352.pdf</u>).
- In order to include new species in the list of commodities, a specific procedure needs to be followed, including the involvement of the expert committee and the ministry. The procedure and consultations thus takes a fairly long time.
- The BS and thus the predefined percentages are the same for both categories of users.
- 95% of the shared benefits have to be redistributed to the community providing the biological resources (BR) and is expected to be invested in sustainable development and the conservation of the resource.
- There is a single-window application system in India for applying for access to BR, i.e. to NBA.
   A foreign user cannot approach a community directly but always has to go through the NBA.
   Biodiversity Management Committees at the local level are consulted before access is granted to the user.
- If a biological resource, which is included in NTAC list, is purchased outside of India for research purposes, it still falls under the Indian ABS regulation and the user has to apply for access permit.
- As far as it concerns special considerations under art. 8 NP, a simplified access procedure is foreseen for non-commercial research and health emergency situations.

#### 3.1.3 South Africa – Lactitia Tshitwamulomoni

Lactitia Tshitwamulomoni (Department of Environmental Affairs) highlighted that in South Africa (ZA), indigenous biological resources (IBR) and traditional knowledge (TK) are covered by the national ABS system. Access applications can be filed by South African citizens and/or permanent residents, by a juridical person registered under South African law or by a foreigner in collaboration with a

juridical or natural person under South African law. Different authorities are competent to issue permits in case of application for commercial or non-commercial intent: for commercial, the application is done at national level (National Department of Environment Affairs, Minister), for non-commercial intent the application is done at provincial level (Provincial Departments of Environmental Affairs - MECs). Within the commercial procedure, two distinct procedures exist for the discovery phase (bioprospecting) and for the commercialization phase. South Africa has foreseen to introduce an electronic permitting system to further improve the efficiency of the permitting system.

- Human GR are excluded from ABS legislation in South Africa.
- South Africa does not require a BS agreement for non-commercial research, but is still interested in receiving non-monetary benefits in such cases through permit conditions. The amendment of the ABS legislation will ensure alignment with the relevant provisions of the Nagoya Protocol on ABS regarding non-commercial research.
- South Africa have operational checkpoints (i.e. Patent Office, Ports of Entry & Exit, Provincial Permit Issuing Authorities, and National Department of Environmental Affairs) which are not yet formalized and notified to the ABS Clearing House. South Africa is currently working on a mechanism to designate checkpoints in accordance with the provisions contained in the Nagoya Protocol.
- *Marula* is recognized as an indigenous biological resource (IBR) and an activity involving utilization of *Marula* species for bioprospecting or bio-trade falls under South African ABS legislation.
- South Africa has not yet decided on how to deal with concrete demands to generate and/or use DSI from species that originate from South Africa for non-commercial research. One of biggest questions under consideration regards the implications for South Africa if they decide to restrict the publication of DSI for non-commercial research.
- Under current South African legislation, IBR definition excludes IBR listed in Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture.
- South Africa is currently not yet a party to the FAO treaty (ITPGRFA) but the prospects of becoming a party is currently being reviewed by the government.

### 3.1.4 Malaysia – Wong Chee Ching

Wong Chee Ching (Ministry of Natural Resources and Environment) pointed out that the purpose of Malaysia's ABS Act is to implement the Convention on Biological Diversity and provisions on access and benefit sharing<sup>1</sup>. This Act is to safeguard the national interest by ensuring that benefits derived from utilization of biological resources from Malaysia (MY) are shared in a fair and equitable manner. In Malaysia, biodiversity is considered as land matter and land is under State jurisdiction. Power to implement the ABS Act has been delegated to State through the designation of Competent Authorities in each State. States have exclusive jurisdiction over all matters relating to access to a biological resource in their states. Competent Authorities in States have the power to issue permits for all the applications for access to a biological resource or traditional knowledge associated with a biological resource or traditional knowledge associated with biological resource. The Federal

<sup>&</sup>lt;sup>1</sup> Malaysia is not a Party to the NP

Government coordinates the implementation and enforcement of the ABS Act by the Competent Authorities. The NCA is the Ministry of Natural Resources and Environment (NRE) Malaysia.

The prior informed consent of the relevant ILCs shall be obtained for any access to biological resources (BR) in lands on which ILCs have a right established by the law; and for TK associated with BR that is held by such ILCs. The PIC shall be obtained in accordance with the customary laws, practices, protocols and procedures of ILCs.

An applicant for a permit for access to a BR or TK associated with BR, for commercial or potential commercial purposes shall enter into a benefit sharing agreement with the resource provider.

The Act foresees facilitated access for R&D for non-commercial purpose and no permit is required under the following circumstances:

- I. research for non-commercial purpose in or under the authority of public higher education institution, public research institution or Government Agency within Malaysia, subjected to conditions that PIC of the ILCs is obtained for access to TK associated with BR;
- II. exchange of BR between persons within a public higher education institution, public research institution or Government Agency within Malaysia or between such institutions or agencies within Malaysia for non-commercial purposes; and
- III. by any person or institution in or outside Malaysia who accesses a BR from a permit holder of non-commercial purpose or the person or institution under paragraph (i), at the request of the permit holder for the purpose of carrying out or continuing any research for noncommercial purpose.

This ABS Act provides the Minister (of NRE) with the power to exempt BR from all or any of the provision of the ABS Act, by order published in the Gazette.

Different procedures may be prescribed in respect of the specified BR to promote the conservation of biodiversity.

Malaysia is a party to the ITPGRFA, so PGRFA under Annex I of the ITPGRFA are not regulated by the ABS Act. The ABS Act does not apply to UPOV varieties either. Further, the ABS Act is not limiting the right of farmers to carry out conventional breeding, breeding or traditional practices used in agriculture, horticulture, poultry farming, dairy farming, animal husbandry or bee keeping.

#### 3.1.5 Ethiopia – Ashenafi Ayenew Hailu

As presented by Ashenafi Ayenew Hailu (Ethiopian Biodiversity Institute), genetic resources and community knowledge (CK) are covered by the national ABS system in Ethiopia. Access to GR is subject to PIC issued on the national level, while access to CK is subject to PIC from the concerned local community. As far as it concerns special considerations under art. 8 NP, a simplified procedure (MTA instead of PIC and MAT) exists for access with non-commercial intent. This simplified procedure can only apply to Ethiopian national public research and higher learning institutions and intergovernmental institutions based in the country, when the research activities are undertaken within the country. Ethiopia is a party to the ITPGRFA, so access to PGRFA in Annex 1 follows the procedure established in the ITPGRFA.

- So far, there has not been any access to community knowledge (CK). Ethiopia is currently working on developing a CK-database.

There is no private ownership of GR in Ethiopia. The ownership is with the State and since the State is representing the people, the ownership is vested in the State and the Ethiopian people.

- Ethiopia may consider the amendment of a clause in its ABS law, which, until now, requires foreign researchers to present a supportive letter from the CNA of his / her national state assuring that they will uphold and enforce the access obligations of the applicant. The existing law is under review for harmonization with the Nagoya Protocol.

#### 3.1.6 Kenya – Mukonyi Kavaka Watai

Mukonyi Kavaka Watai (Kenya Wildlife Service) pointed out that GR and Traditional Knowledge associated to GR are covered by the national ABS system in Kenya (PIC and MAT needed for access). Currently, there are no distinct procedures for commercial and non-commercial research under Kenya's legislations. Although current legislation does not establish special consideration for non-commercial purposes, access procedures for students are simplified. Development of further measures to facilitate access for research purposes is under considerations.

An emphasis is put on tracking of the accessed GR and TK in the utilization value chain, e.g. based on intellectual property claims. Currently with support of the ABS Capacity Development Initiative an IT based permitting system is put in place in order to fast track application procedures. This simplifies procedures, shortens the processing time and thus shall encourage researchers, including students who have time bound study periods.

Kenya is a party to the ITPGRFA, so Annex 1 species of the ITPGRFA are handled under the standard Material Transfer Agreements and are not covered under the main ABS law. Discussions are in place to develop a substantive ABS law that provides clarity on various access rights and types of genetic resources within the permitting process.

The country has not established a mechanism in the legislation that deals with emergencies but some cases are handled by inter-ministerial committees, such as approvals of specimen for diagnostics under diseases outbreaks surveillance etc. Also approvals of genetically modified organisms which are subject to various legal requirements including compliance with ABS PIC and MAT are handled under inter-ministerial committees.

- The Multilateral System (MLS) under the ITPGRFA is used in Kenya uniquely for ITPGRFA Annex 1 species. But Kenya is currently thinking about extending the MLS to species outside Annex 1 used for food and agriculture.
- Access to TK requires consent by the local community.
- The one-stop-shop permitting system that Kenya is currently working on is envisaged to be up and running in 2018.

#### 3.1.7 Peru – Miriam Cerdán Quiliano

Miriam Cerdán Quiliano (Ministry of Environment) highlighted that GR and aTK are subject to the Peruvian ABS system. According to the nature of GR, three different national entities process access applications. No differentiation is being made between commercial and non-commercial access. Species listed under Annex 1 of the ITPGRFA are, when used for food and agriculture, excluded from

the Peruvian ABS system.<sup>2</sup> Peru has national legislation to activate early alert mechanisms to avoid propagation and to control and eradicate transmissible diseases through the country (Law N° 26842). Peru has commitments with the WHO to face coordinately health emergency situations in the context of the international health regulation of 2005. Peru agrees with taking measures to facilitate the access to genetic resources of human pathogens in case of emergencies, always in compliance with PIC and MAT. As a provider country, Peru is interested in benefitting from access to vaccines and diagnosis kits, and capacity building in such matters, as well as to establish mechanisms of cooperation in the health sector with countries of greater technological development in order to create, develop and strengthen their human, institutional and infrastructure resources and to eventually be able to produce its own vaccines.

- Peru's ABS system is based on a decision (1996) of the Andean Community. The four member states are currently working on updating the decision.
- If genetic material / biochemical substances are accessed even if no R&D is carried out ABS requirements apply.
- Peru has invested a lot into combating bio-piracy.
- Different institutions are responsible for different GRs. This resulted in a fairly complicated situation with a variety of access procedures. A set of guidelines has been elaborated and will hopefully be adopted over the course of next year.
- Additional source of information for users: <u>http://genesperu.minam.gob.pe/</u>

### 3.1.8 Morocco – Fouad Zyadi

Fouad Zyadi (Ministry of Energy, Mines and Sustainable Development) first stated that the Moroccan ABS law is not yet adopted but that it exists in a draft form. The draft covers GR and aTK. The national Commission of GR will examine and process all access demands. The draft law foresees also cases for exclusion from its scope of application, such as human GR. A specific emergency procedure will be regulated via a decree.

- The ABS act is currently being finalized, and will then be adopted by the government. The respective regulations are currently being elaborated and will hopefully be approved in 2018 by the government. An exact forecast is difficult because it is a complex topic, also for decision-makers.
- The act does not aim at restricting the access to GRs, it is embedded in the national sustainable development strategy.
- An emergency procedure is foreseen to allow for an expeditious access to excluded GR and in case of emergency situations. Differences between the normal procedure and the emergency procedure are not yet clear and will be dealt with in the regulations.

#### 3.1.9 Colombia – Carlos Augusto Ospina Bravo

Carlos Augusto Ospina Bravo (Ministry of Environment) started by pointing out that just as Peru, the Colombian ABS system is based on the Andean Community decision 391 (1996) and that it applies for GR and their derived products. MAT have to be established between the state (owner of GR) and the person requesting the authorization to access the GR. Basic research activities do not trigger the ABS procedure. Introduced species and human GR are excluded from the ABS legislation under certain conditions. ITPGRFA species listed in Annex 1 are not excluded from the ABS system.

<sup>&</sup>lt;sup>2</sup> Peru is a party to the ITPGRFA.

currently reviewing options to set up a simplified procedure for access demands resulting from health emergency situations.

- Colombia has currently 160 pending access requests and the high number is also due to the relatively new law (translation of the respective handbook will hopefully be available in 2018). It takes approximately 4 months to grant a permit.
- Human GR and introduced species are excluded from the ABS legislation. To determine whether a species is considered as introduced or not, scientific studies are used. Currently, a contact group determines exact criteria for deciding whether a species is considered as introduced or not.
- In the beginning, the access procedure was very lengthy and the Ministry was under pressure to grant permits in time. The Ministry defined activities that would not be subject to the ABS procedure, such as research activities in the fields of molecular systematics, molecular ecology, evolution and molecular biogeography that are carried out with native species of Colombia.

#### 3.1.10 Mexico - Edda Fernández Luiselli

Edda Fernández Luiselli (Ministry of the Environment and Natural Resources) pointed out that in Mexico there is a Constitutional mandate to implement all ratified international agreements, including the NP, and commented that the respective regulation is currently in the last stage of the governmental review process. Two distinct CNAs (one for agriculture, livestock and fisheries, and one for wild species, including wild relatives of crops, and forests related GR) exist. A simplified regime is used for access requests with non-commercial purposes. Monetary and/or non-monetary benefits are negotiated between users and providers. When providers are indigenous peoples or local communities, 10% of the negotiated benefits are to be channeled to conservation actions or to the national fund. Simplified access procedures apply for certain conditions: health emergencies and non-commercial research. When GR for food and agriculture to be accessed are registered in the National Plant Varieties Registry (NPVR), requirements take into account information included already in the NPVR.

- If there is no commercial intent, but biochemical-genetic characterization activities are involved, this also triggers the simplified ABS procedure. This simplified regime was designed to avoid putting at risk the non-commercial scientific research.
- All microorganisms are included in the ABS regime.
- Sustainable use of a resource is excluded from the ABS procedure. Examples for sustainable use are: preparing traditional handicraft or textile based on biological resources.
- Currently there are 34 access requests, 11 of which are from national users. All requests are received and followed by the NFP.
- The procedure for non-commercial national users is lighter than for foreign users, who would need a national partner and contact the Ministry of Foreign Affairs.
- Mexico is currently working on capacity building activities (including for scientific researchers) with the support of a GEF project.
- In order to trigger the emergency procedure the user has to make a written agreement that will allow tracing a possible change of intent at a later stage.
- In commercial intent, the benefits must be negotiated between users and providers. The Federal Government accompanies the process of obtaining the PIC and the MAT negotiation,

as guarantee of indigenous peoples rights, including the right to be consulted through the PIC. This is a free-negotiation scheme, there are no guidelines for BS.

- If a seller of GR from Mexico sells to a company a given commodity from Mexico, ABS is still triggered if the company conducts R&D activities that involves genetic/biochemical characterization of the genetic resource obtained as commodity to create a new formulation or a similar commercial product.
- Monitoring of the utilization of GR will be done by different agencies according to the nature of the GR. Checkpoints will be established accordingly in the near future.
- A permit under the simplified regime will be issued in 30 working days; the commercial intent permit will be issued in 90 working days (after the PIC is granted).
- The period of validity for an ABS permit in Mexico is established taking into account two considerations: maximum three years to collect/acquire the GR and for the utilization, the validity period is granted on case by case basis, according to the project described in the application.

#### 3.1.10 Spain – Mari Carmen Fernández Pinos

Mari Carmen Fernández Pinos (Ministry of Agriculture and Fisheries, Food and Environment) highlighted that in Spain only GR from wild taxa are covered by the ABS access measures. The access regime applies to both Spanish and foreign users of GR from Spain. There are two kinds of access procedures: one for commercial intent, the other for non-commercial research. While PIC and MAT are required for all access with commercial intent, a declaration procedure significantly lowers the administrative burden for non-commercial research. In most cases, regional competent authorities negotiate and sign PIC and MAT while the national authority grants access permits based on PIC and MAT (in the case of an endemism present only in one region, the regional CA will issue also the permit). To access marine genetic resources, genetic resources in public domain or genetic resources in state ex situ collections, specific authorities responsible for the genetic resources negotiate and sign PIC and MAT, and the national authority grants access permits. PGRFA and other specific GRs<sup>3</sup> are outside of the scope of the Spanish ABS legislation. In case of declaration of emergency situations related to health, an exceptional access authorization on a provisional basis providing immediate access to the GR could be granted. So far, 7 permits for non-commercial utilization have been issued, but no permits for commercial utilization have been issued yet. The division of competences between national and regional competent authorities is enshrined in the Spanish Constitution. PIC and MAT can be in the same document: details on this will be addressed in the guidelines that are currently being elaborated.

#### 3.1.11 France – Guillaume Faure

Guillaume Faure (Ministry for Ecological and Solidary Transition) emphasized that GR and TKaGR accessed on French territory by any natural person or legal entity are covered by the national ABS system. The state is provider for GR while ILC are the provider of aTK. A simplified declaration procedure exists for non-commercial research, while an authorization request (incl. BS) needs to be submitted for any commercial research on wild GR and any research on aTK. GR from pathogens collected by laboratories as part of prevention and risk control for human health will be regulated by the Ministry for Health (the currently pending implementation should be adopted by the Ministry of

<sup>&</sup>lt;sup>3</sup> Namely: fishery resources (regulated by Law 3/200, zoogenetic resources for agriculture and food, genetic resources for exclusively taxonomic purposes, collection and preservation of samples at germplasm banks and *ex situ* collections with exclusively conservation purpose. Activities of production and commercialization of seeds and forest plants regulated by Bylaw 289/2003 are also out of scope of the Spanish ABS legislation.

Health by 2018). GR from cultivated and wild relative plants, GR from domesticated animals, GR from domesticated and cultivated microorganisms, GR from cultivated trees as well as pathogens collected by laboratories as part of prevention, monitoring and fight against health danger for animals, plants and health security for food, might be regulated by the ministry for food and agriculture.<sup>4</sup> In line with article 4.4 of the Nagoya Protocol, ITPGRFA Annex 1 species are outside the scope of French ABS legislation.

#### **3.2** Challenges related to access in user countries – Industry interventions

A total of seven presentations, including a presentation on overarching challenges related to implementation given by the International Chamber of Commerce (ICC), shed light on the functioning of different industry sectors (plant breeding, health (x 2), biocontrol, biotechnology, and cosmetics) and highlighted the perspectives of various commercial users on the current situation with regards to ABS. Details of the sector-specific presentations can be downloaded under the following Dropbox-link (presentations: no. 15-21):

#### https://www.dropbox.com/sh/ywxu1bwoc9aclxf/AAArZE4kM2hfx3d0sb0aRqo9a?dl=0

Below, a brief summary is provided of the key outcomes of the discussions that took place after each sector presentation. The summarized discussion-points are based on notes taken during the meeting and do not necessarily reflect the position of the respective sectors and/or presenters.

#### 3.2.1 International Chamber of Commerce (ICC) – Daphne Yong d'Hervé

Daphne Yong-d'Hervé said that in response to the interest expressed by representatives of provider countries in understanding user needs with respect to ABS, ICC had gathered information on such needs from its members. She emphasised that she was presenting the needs identified in a spirit of partnership to help advance a workable ABS system as such system could only work through collaboration between different actors involved. She stressed that users require legal certainty and predictability (especially clarity on scope). She emphasized the importance of user-friendly information (e.g. flowcharts explaining access procedures for user companies), the need for comprehensive, accurate and up-to-date information on the ABSCH and other measures facilitating compliance and sourcing. From the industry perspective, efficient negotiation processes as well as reasonable, clear BS terms taking into account commercial realities are also essential.

#### 3.2.2 Plant breeding perspective (Szonja Csörgő, European Seed Association)

In her presentation Szonja Csörgő addressed the specificities of plant breeding from the ABS perspective. She highlighted that plant breeding is a process from genetic resource to genetic resource where not only the basis but also the end product of the process is a genetic resource (a plant variety). She explained that quick innovation in plant breeding is a key since solutions have to be found quickly to the newly emerging environmental and social challenges and needs. Therefore, she emphasized that quick and easy access to all genetic resources for further breeding is essential.

<sup>&</sup>lt;sup>4</sup> In the meantime, it has become clear that France will not regulate access for cultivated and wild relative plants, domesticated animals, domesticated and cultivated microorganisms as well as pathogens collected by laboratories as part of prevention, monitoring and fight against health danger for animals, plants and health security for food.

She gave an overview of the specific ABS system under the International Treaty on Plant Genetic Resources for Food and Agriculture and pointed out that it does not impose any ABS obligations beyond the point of commercialization. She then explained that the breeding of each commercial variety may involve hundreds of different genetic resources (e.g.: breeding lines, genebank accessions, landraces, CWRs, commercial varieties etc.). Each commercial variety is then re-used for further breeding in many breeding programs resulting in new commercial varieties: 80-95% of the material used in breeding programs are commercial varieties and breeding lines coming from all over the world. Through a hypothetical example she illustrated how complex ABS may get in plant breeding given that the resulting product is also a genetic resource which is re-used as source of variation for further breeding and emphasized that if ABS obligations apply to commercial varieties, it may quickly become unworkable for plant breeders. Since ABS is such a complex issue, ESA, as an association of users, tries to assist its members by facilitating understanding of and compliance with ABS obligations.

#### 3.2.3 Health sector: emergency issues (Dr. Axel Braun, F.Hoffmann-La Roche)

Axel Braun shared experiences on recent emergency situations, such as the Ebola and Zika crisis. He pointed out that certain parties to the NP have no access regulation at all. If access is regulated, it is important to keep in mind the need for expeditious access to GR causing health emergency situations. Axel Braun emphasized the need for all stakeholders to collaborate on efficient access / proportionate compliance obligations for emergency situations in the interest of public health. He also referred to user challenges in the EU and pointed out possible solutions:

- Parties are free to regulate access to pathogens; they can also decide to exclude from the scope of their access regulations at least those pathogens, which are causing emergency situations;

- if access to pathogens is regulated, it is important to keep the need for expeditious access in mind;

- equally user countries could exclude pathogens or at least those creating emergency situations from compliance obligations;

- user countries need to provide legal clarity regarding compliance obligations, esp. regarding the term of "utilization".

- International organisations, like WHO, can provide recommendations on facilitated access for emergency situations and set up international emergency collection systems to simplify access and compliance.

# 3.2.4 Health sector: seasonal flu (Peter Thomsen, Novartis)

Peter Thomsen gave the insight into the possible consequences of NP implementation in relation to influenza vaccines. Influenza is a highly transmittable viral infection of humans and animals, resulting in 250.000 – 500.000 deaths of humans / year, particularly in high-risk groups. The presentation shed light on the procedure of production of vaccines. Pandemic influenza viruses under WHO PIP Framework are subject to Art. 4(4) of the NP (under the EU ABS Regulation). Seasonal influenza viruses are however not and hence are covered by the EU Regulation and ABS measures need to be observed.

- The PIP Framework does not cover seasonal influenza (only pandemic influenza).
- Options to avoid lengthy ABS procedures to delay vaccine supply include: developing a specialized instrument (long term solution); national exemption of pathogens of this type; a COP decision to exclude certain pathogens under certain conditions.
- Some form of benefit sharing should be included in the final solution.

#### 3.2.5 Biocontrol (Johanna Klapwijk, Koppert)

Johanna Klapwijk reported on key issues for the biocontrol sector. Macro- and micro-organisms are used as biocontrol agents for the control of pests and diseases primarily in their original form, and are only mass multiplied (no modification, no breeding, no utilization). Screening is mostly undertaken to increase the stock of knowledge and sequencing for identification without investigation of the genetic or biochemical composition. The country of origin of the GR may be difficult to determine because macro- and micro-organisms adapt to conditions of a host country (country of use) after introduction and therefore often acquire characteristics of the host country.

- Pheromones as bio-control agent are usually synthesized: this could be interpreted as a form of utilization.

### 3.2.6 Biotechnology perspective (Dr. Ricardo Gent, German Association of Biotechnology Industries)

Ricardo Gent provided participants with the biotech perspective. Chief raw material for biotechnology is biodiversity. Biotech is not an industry, it is a cross-sectoral technology used in many sectors (health care and animal health, agriculture, livestock and aquaculture, industrial applications). Biotech embraces the NP because it provides legal certainty. The presentation shed light on the biotechnology value creation process, emphasizing that the first step in biotechnology R&D is screening (in particular large-scale screening).

- Biotech is not to be seen as a specific sector, because it comprises many different sectors.
- In the pharmaceutical sector for example, up to 300.000 tests can be done per day, which might result in a single drug in the end. An individual ABS procedure for each of these tests might hinder the research on new drugs.
- There is an increasing trend towards "screening in the own backyard" to avoid lengthy procedures in providing countries.
- New tools (e.g. metagenomics) allow finding new drugs.

# 3.2.7 Cosmetic sector perspective (Manuela Coroama, Cosmetics Europe)

Manuela Coroama gave a brief overview of the cosmetics sector's value chain and of the importance of natural ingredients, as well as of its R&D activities. Regarding derivatives, she referred to the Commission's *Guidance document on the scope of application and core obligations of Regulation (EU) No 511/2014* which clarifies that research and development on derivatives (whether or not containing functional units of heredity) is within scope of the EU ABS Regulation when access to these derivatives is combined with access to a genetic resource from which that derivative was or is obtained. In the absence of provisions in the operative parts of the CBD, the Nagoya Protocol and the EU ABS Regulation, the cosmetics sector proposed to clarify that this statement would be understood to refer to an ascertainable (or identifiable) level of continuity (link or relationship) between the generation of the derivative from the genetic resource and the R&D activities conducted on the derivative thus obtained. This 'continuity' concept provides for an operative and proportionate

criterion which helps to distinguish between situations that fall in or out of the scope of the EU ABS Regulation and enhances legal certainty.

- This triggered a question if a use of aTK in relation to a commodity bought on the market (being endemic plant) would result in ABS obligations under the notion of "continuum". Manuela Coroama responded that such decisions should be made on a case-by-case basis.
- With regards to Article 5.1 NP BS obligations for subsequent use), cases that would fall outside the due diligence obligations under the EU ABS Regulations were discussed where concerns were raised that interpretations pushing for being outside of the scope of the Regulation are not in the spirit of the Protocol.
- Industry representatives explained that they do not see BS obligations as problematic, but are concerned by complicated procedures for access. Legal certainty is a crucial element for the industry. The issue whether EU compliance regulation can ensure BS was discussed. BS arrangements are regulated in MAT. The EU ABS Regulation foresees a system to monitor and control users that ensures that CNA in the EU brings back the information about a resource from a provider country and its use in the EU to CNA of the provider country.

Finally, in the consecutive discussion it was observed that within the livestock sector that the flow of GR is predominantly from north to south - and is then shared within the south. Regulators might want to think about the exclusion of livestock GR from their ABS procedures for the benefit of all.

#### **3.3 Access challenges in user countries - Public research interventions**

A total of four presentations shed light on the overall functioning of different public research sectors. For details of the sector-specific presentations, please refer to the presentations that can be downloaded under the following Dropbox-link (presentations no. 22-25): https://www.dropbox.com/sh/ywxu1bwoc9aclxf/AAArZE4kM2hfx3d0sb0aRqo9a?dl=0

In the following paragraphs, a brief summary of the key outcomes of the discussions that took place after each sector presentation is provided.

# 3.3.1 Research objective (Dr. Chris Lyal, Natural History Museum London)

Chris Lyal noted that the Natural History Museum London undertakes collection-based research on approx. 80 million items. Only a small proportion of the collection is "utilized" and an even smaller proportion falls under the NP. Often samples contain unknown entities. Utilization may be initiated decades after acquisition and activities such as DNA sequencing are expected to increase. Like other institutions in the sector, the Natural History Museum does not have a commercial focus, nor has it applied for patents. A list of mismatches between the likely understanding of how research operates and the practicalities of taxonomic research was presented. These include that the individual collecting the specimens is not necessarily the one conducting the taxonomic or other research afterwards and that everything collected will have a scientific name and can be identified rapidly. Workflows need to be understood in access and reporting procedures and managed in internal ABS procedures of the institution. Possible changes in research were discussed, including whether the employment of an analytical technique not in existence at the time when access was granted might constitute such a change, and the need for capacity of CNAs to manage all possible requests for change stressed. Partnerships between personnel in user and provider countries facilitate taxonomic, morphological and genomic research, clarity on processes, reporting on its conclusions and sharing benefits.

#### 3.3.2 Public research perspective (Bert Visser, Wageningen University and Research)

Bert Visser shed light on ABS-relevant features of public research. Public research uses all types of GR in all scientific domains. Consortium research and Public Private Partnerships (PPP) are increasingly common. It is important for the management of public research organizations to clearly define responsibilities regarding due diligence obligations within the organization and to regularly monitor compliance. In sum, the public sector is not in an exceptional position. Upstream research becomes more relevant and implies more often access to GR. Further, the role of public research management is not yet fully recognized. In sum:

- public research does not equal non-profit research, it can also have commercial purposes;
- research and private sector are strongly interlinked today (e.g. through PPPs);
- it is often not clear who is carrying the legal responsibility within an institution. This needs to be clarified;
- there is a presumption that since a researcher works in public research, he/she is not bound by ABS obligations since he/she is already sharing the benefits through the publications. This is however a misunderstanding and awareness raising needs to be done in this regard.

### 3.3.3 Culture Collections' perspective (Dr. Philippe Desmeth, World Federation for Culture Collections)

Philippe Desmeth informed about opportunities and challenges of the NP for microbial culture collections and initiatives related to CBD and NP implementation. Culture collections provide microbiological resources, data and services. It was highlighted that the CBD and NP may provide opportunities to improve global working of microbial culture collection, but over-regulation may stall operations of culture collections and disrupt collaboration among scientists. In sum:

- culture collections provide for microbiological organisms and data but still the majority of microorganisms cannot be cultivated;

- the data from culture collections are publicly accessible via online catalogues; it is mostly stored in the internet and clouds, which adds another layer of complexity to the questions with regard to ABS;-Trust is most important and must be underpinned by fair and equitable contracts;

- culture collections prefer to follow a standard procedure and use model or standard contracts (such as SMTAs). If a provider wants additional clauses, the sector tries to accommodate that but this slows down the process significantly;

- material going into the public catalogue is for sharing and for the scientific community. The laws of the providing country are also taken into account.

### 3.3.4 Botanic Gardens' perspective (Suzanne Sharrock, Botanic Gardens Conservation International)

Suzanne Sharrock reported on the botanic gardens perspective on ABS. Over 3000 botanic gardens and related institutions worldwide focus on conservation, education and research. The botanic garden community took a proactive approach to implementing the CBD and the NP. Principles on ABS were developed in 2000 by a diverse group of institutions and countries. Further, the

International Plant Exchange Network (IPEN) facilitates exchange for non-commercial use of living collections, while upholding ABS requirements. The presentation also addressed access challenges and managing requests. In sum:

- one third of all known plants are in collections, together with millions of herbarium specimens and additional information, including data on origin and identity of samples;
- collections are scientifically curated and use a range of different documentation systems;
- there is a tradition of exchange between gardens and this results in lot of movement of materials (e.g. Bonn Botanic Garden has approximately 4.000 demands for plant exchanges per year);
- it will be crucial to have system in place that allows for the tracking of the plant material;
- the International Plant Exchange Network (IPEN) could become a recognized system under the Protocol, but this will be a long process.

#### 3.4 Challenges in practical application – Interventions by User CNA's

# 3.4.1 What triggers obligations in provider countries? Pernilla Åhrlin

Pernilla Åhrlin (Swedish Environmental Protection Agency) provided participants with a short introduction into the EU compliance system, the role of the CNA in the EU and challenges in practical implications. She highlighted the usefulness of flowcharts on access procedures and encouraged countries to publish relevant information on the ABSCH, including IRCCs which helps to identify users and makes it easier to conduct checks. Ms Åhrlin also emphasized the usefulness of closer cooperation and dialogue on compliance and experience with the CNAs of provider countries.

In the following paragraph, a brief summary of complementary information by other CNA representatives is provided:

- The ABSCH is the first entry point for users to ensure compliance, but is not yet sufficiently populated;
- NFPs should play a key role in guiding users, but many requests to NFPs remain unanswered;
- the importance of IRCCs cannot be overestimated (the reference number allows easy tracking);
- in some cases, in-country partners do not provide accurate information on ABS obligations.
   More awareness-raising addressed to in-country partners is necessary;
- transparency and legal certainty are essential for making ABS work.

# **3.5** Balancing expectations and needs - Observations deriving from preceding sessions (Bert Visser, Pierre du Plessis, African Union)

#### 3.5.1 Overall observations

- The number of Contracting Parties and checkpoints (CPs) is increasing.
- Increasing number of legal frameworks and already issued PICs and MATs is a proof that the NP becomes fully operational.
- There is an increase in published IRCCs.
- The ABSCH is the central tool in ABS implementation we all have to continue working to populate it.

- In many legal frameworks there is recognition of the FAO Treaty in a mutual supportive manner; most countries mention Annex 1 species; some go beyond.
- Exemptions have not been introduced for health emergency situations by most countries.
- Often there are different registration and evaluation procedures and / or requirements for non-commercial and commercial research / basic research, bioprospecting and commercial research; at change of intent a renewed application is needed in most cases.
- Access to aTK is bound to approval by IPLC in all countries and requires BS with communities in many cases; it is good to see that the distinction between access to GR and access to aTK is now being made.
- It seems to become increasingly more common that any access to GR and/or aTK requires collaboration with a local partner (with the goal to increase non-monetary BS).
- Countries are working on facilitating access (through manuals, websites, flow charts, e-applications, FAQ etc.).
- Some countries install an ABS one-stop-shop while others prefer decentralized approaches.
- The number of granted requests is still very limited (approx. between 0 –100 per country) compared to more than 100.000 accessions under the FAO treaty. The average time frame for obtaining a permit is still long and/or unpredictable.
- Collection holders face challenges with ABS (e.g. huge number of transfers) and try to improve the mediation between providers and recipients/users. Documentation systems become increasingly important and professionalized.

#### 3.5.2 Observations and possible ways forward:

- Many implementation problems are linked with the bilateral nature of the Protocol.
- Provider countries stressed that compliance measures need to result in BS.
- BS needs to be made more visible; in many sectors non-monetary benefits are being shared but they are not enough visible and not sufficiently connected with the objectives of countries' development plans.
- Time frames (especially important in emergency situations but also for others, e.g. PhD students) for issuing ABS permits need to be improved; countries need to become more efficient.
- Transaction costs need to be reduced (for both PIC and MAT).
- Best practices are needed; this will support the decision-making in provider countries.
- Trust needs to be built up to make ABS work.
- Some experts stated that the more specialized instruments there are, the more complicated the ABS system becomes. Lack of capacity in developing countries results in reluctance to elaborate and accept more specialized ABS instruments.
- There is a need for more flexibility. It should be ideal to foresee that a high-ranking decision maker (e.g. the minister) could be able to exempt certain resources in case of emergencies or similar. Too specific laws might cause difficulties during the next outbreak of a virus. Some advocated thus for not being too descriptive in ABS legislation.
- -
- The importance of partnerships and collaboration should be recognised.

# 3.5.3 Topics identified for further consideration and action:

Four major topics were identified and participants were asked to write down their respective ideas and thoughts on cards that were pinned under the corresponding topics:

(1) How can we improve the functioning of the ABSCH? What could checkpoints and users do?

- (2) How should special arrangements for special categories under Article 8 NP be further developed?
- (3) What are incentives and deterrents to access and utilization of GR?
- (4) What are the perspectives for strengthening the concept of partnerships?

The following is a summary of the various points raised by the participants per major topic.

#### ABSCH

- Create best practices to improve the ABSCH (e.g. a test run to obtain the status quo).
- Put all information on the national ABS system there is (incl. flowcharts) on the ABSCH; this would facilitate compliance in the EU.
- Provide at least a summary of your ABS system in English to lower the language barrier.
- Include a new search function in the ABSCH to allow for a search according to specific articles of the NP.
- Set up an email alert / notification for updates and new uploads on the ABSCH (in planning by the SCBD).
- National Reports can be searched for specific Protocol provisions via the new national report analyser: very user-friendly.
- Operationalize checkpoint communiqués.
- Keep on building trust through exchanges (e.g. Copenhagen Business Dialogue) and also informal contacts at bilateral level between user and provider countries.
- ABSCH as instrument for building trust in system.

#### Special considerations (Art. 8)

- Flexibility is needed for conducting research in the provider country (efficiency and cost-effectiveness).
- Consider specific features of GFRA and its subsectors, work of FAO CGRFA.
- Apply SMTA (-like) conditions also to non-annex I crops as a way to implement specific considerations 8 (c).
- Engage and explain sectoral practices to CNAs.
- Attain knowledge from representatives in Ministries of Agriculture concerning sectoral practices behind research and agriculture.

#### Incentives and deterrents

- Clear and quick procedures facilitate access and utilization of GR.
- Provider countries should play an active role in reaching out to industry; for example, a list of certified local companies from provider countries on the ABSCH would be highly appreciated by users.
- Synchronize time frames with needs of research / private sector.
- Facilitating measures for SMEs are important.
- More flexibility is needed in national ABS systems regarding user needs.
- Better recognition of non-monetary BS is required.
- Lowering transaction costs is important for users, but this should not be at the expense of legal certainty.

- Benefits to be shared should be made more visible to provider countries, user countries and the world at large.

#### Partnerships

- The concept of partnership is important but it requires a certain level of responsiveness and clarity.
- The need to engage with a local partner for access GR and / or TK may deter potential users from sourcing in the country.
- Investment is needed to foster partnerships. Providers should be seen as partners in the investment scheme rather than only as the resource provider.
- Providers could collaborate with non-commercial researchers to lower the risks for commercial users.
- The partnership with different companies in R&D is relevant to develop the relation between users and providers.
- Communication between user and provider CNAs is essential.
- Partnerships can only develop when responsible authorities are ready to react to the approaching partners and ready to take decisions (responsiveness; swift decisions at appropriate (not the highest) level are needed).

### 4 ABS contracts - Mutually Agreed Terms (MAT)

# 4.1 Mutually Agreed Terms (MAT) – Linking users and providers (Eva Fenster, GeoMedia / ABS Capacity Development Initiative)

To set the scene, Eva Fenster (GeoMedia / ABS Capacity Development Initiative) highlighted the key role of MAT in the context of the Nagoya Protocol and provided participants with a brief overview of key elements that should be addressed in ABS contracts. Ms. Fenster further drew attention to several publications on how to draft successful ABS contracts as well as a series of contract trainings conducted by the ABS Initiative and the Norwegian Fridtjof Nansen Institute.

# 4.2 Establishing ABS contracts; experiences and lessons learnt from practice (Maria Julia Oliva, UEBT)

Maria Julia Oliva (Union for Ethical BioTrade) gave a presentation on approaches to monitoring utilization of GR and monitoring elements to be included in MAT. She informed participants that monitoring is a management tool: its objective is to follow up, adjust and improve. Contrary to widespread opinion, monitoring is more than just reporting. A variety of monitoring tools exist, such as questionnaires, interviews, visits and audits. It is important to find the right combination of different tools. Audits for example, are useful, but expensive tool for monitoring. In her presentation, Ms Oliva highlighted that monitoring is not counter but essential to an ideal partnership.

# 4.3 MAT content – what useful elements for users and providers? (Alicja Kozlowska, European Commission)

Alicja Kozlowska (European Commission) gave a presentation on the useful elements which can be considered in the content of mutually agreed terms (MAT) in order to help linking users and providers' needs. She pointed out that both users accessing GR and provider countries may not be aware of the future possible utilisations. Yet, while this aspect may be of less interest to the users accessing material, the provider countries do have an interest in what will happen with the genetic

resources in the future. It would be thus useful if the content of MAT contained provisions to clarify on what the parties to the contract agreed upon with regard to future users. This would assist also CNAs checking compliance in users' jurisdiction. She recalled users' obligations under the EU ABS Regulation and highlighted the challenges faced by the CNAs under the EU ABS Regulation to monitor and check users' compliance with regard to MAT conditions: CNAs are not a party to the agreement; they do not necessarily have access to the content of MAT. She stressed that MAT may provide answers to many questions on possible ways of utilising GR as well as on benefits to be shared. She stressed that users do not see benefit sharing as problematic; the administrative burden and unclear time frames for decision-making however are perceived as such.

# 4.4 Experiences from people who already signed contracts - Views from providers and users

Regulators in user countries, practitioners from industry and academia and provider country representatives were invited to share their experiences made in relation to ABS contracts. The following is a summary of the various points raised:

#### 4.4.1 Perspective of regulators in user countries

- Clear guidelines on what should be included in MAT and whether there is a specific process to follow in the establishment of MAT are needed.
- Guiding documents and tools for MAT negotiation should be made available on the ABSCH
- European CNAs are not in a position to enforce the terms of MAT which is reliant on contract law between the two contracting parties. However, in the UK, if there is a dispute regarding the MAT between the provider and the user, the UK CNA can ensure that the UK court system would work to provide remedies for a breach of contract.
- IRCCs are a key tool in supporting monitoring of users by transferring information to the CNA in the user country.
- Good working relationships between provider CNAs and user CNAs and the sharing of information are important.

# 4.4.2 Perspective of practitioners from industry and academia

- Clear reporting frameworks are needed.
- MAT needs to be unambiguous, clear and compatible with MoUs (where applicable).
- MAT clauses must be realistic and include conditions that can be met.
- A library or a list of model contract clauses, taking into account sectoral specificities, would be very useful.
- Model contracts and standards are necessary (and already being used) in institutions that ship strains every day.
- Deliverables of the provider must be clearly defined.
- Specify in MAT whether aTK is involved.
- Model clauses are important but need to be adapted to specific situations.
- Provide a platform (e.g. workshop) for ABS actors to jointly draft sector-specific contractual model clauses on ABS.

# 4.4.3 Perspective of provider country representatives

- Clauses on BS are a key component of MAT. It is difficult to establish a fixed BS percentage, it may be better to negotiate on a case-by-case basis.
- MAT model clauses, in particular for commercial research, need to be developed.
- It is important to open up a discussion on which parts of a contract can be standardized taking into account sectoral specificities.
- There is a problem of price discovery in GR: you need to have a basis for calculating the price for the GR but information on BS is usually kept confidential.
- The reporting obligations (including language of such reporting) should be specified in MAT.

### **5** Compliance: Introduction and EU legislation

### 5.1 Key provisions of the Nagoya Protocol (Valerie Normand, SCBD)

Valerie Normand (SCBD) provided participants with an overview of key provisions of the Nagoya Protocol and informed about the role of the ABSCH. She presented a flowchart with various steps in monitoring the utilization of GR. The ABSCH makes available national records (information on NFPs, CNAs, ABS measures, IRCCs, etc.) as well as reference records (information on model clauses, codes of conduct and other tools). Finally, Ms Normand highlighted that the SCBD provides timely support and technical assistance via email, Skype and a live helpdesk and gives capacity-building trainings and webinars.

In the following paragraph, a brief summary of the key outcomes of the discussions that took place after each presentation is provided. The summarized discussion-points are based on notes taken during the meeting and do not necessarily reflect the official position of the respective countries or entities:

- ABSCH contains only non-confidential information. Except for some minimum requirements, the Parties may decide what to put on the ABSCH.
- It is possible to indicate that certain types of information are confidential in an IRCC and CPC.
   The minimum information available is the "unique identifier" and the country of origin of the GR.
- It must be clear that confidentiality is respected.
- A template (common format) for the CPC is available on the ABSCH. IRCC and CPC look similar. Specific to the CPC is that it contains a description of information received by the checkpoint relevant to the utilization of GR as well as an option to include a link to the IRCC.
- It is possible to update an IRCC with further information.
- Users need to trust that authorities have experience with confidential information.

# 5.2 Implementation of the Nagoya Protocol in the EU regulatory framework (Alicja Kozlowska, EC /Matthias Leonhard Maier, EC)

Alicja Kozlowska and Matthias Leonhard Maier (European Commission) provided an overview of the EU Regulation n. 511/2014 (the EU ABS Regulation), which implements the compliance pillar of the Nagoya Protocol in the Union. Ms. Kozlowska explained the preparatory process leading to the adoption of the EU ABS Regulation. She explained that the impact assessment carried out in this

context considered various options for implementation of the Nagoya Protocol. The assessment revealed the complexity of value chain in the EU and exchanges between the upstream and downstream actors. Ms. Kozlowska explained that due diligence (DD) which forms the core element of the EU ABS Regulation, addresses this aspect. She continued by explaining that access legislation is left to Member States' choice; and benefit-sharing is regulated by conditions set in MAT; the EU ABS Regulation in turn implements the compliance measures of the Protocol. The EU ABS Regulation establishes measures to monitor utilisation (checkpoints), measures to enforce compliance (checks & penalties) and measures to encourage compliance (register of collections; best practices). Ms. Kozlowska explained that enforcement measures are implemented at the Member States level. Member States also need to designate competent authorities responsible for implementation of the Regulation.

Mr. Maier presented the Implementing Regulation adopted by the Commission to lay down detailed rules for the implementation of the two checkpoints established under the EU ABS Regulation (first one at the research stage, second one at the pre-commercialization stage), the register of collection and the recognition of best practices. Mr. Maier explained that two checkpoints are established in the EU, i.e. (1) at the research stage (covering both privately and publicly funded research), (2) at the pre-commercialization stage. He also briefly introduced the IT tool, DECLARE developed by the Commission for users to submit due diligence declarations electronically. The system also assists the Member States with handling of the declarations and transferring them to the ABSCH. DECLARE is used by majority of Member States (except for Spain which developed its own system and France, which also developed a separate system to handle 1<sup>st</sup> checkpoint declarations, while the 2<sup>nd</sup> checkpoint declarations are processed via DECLARE).

Finally Ms. Kozlowska discussed major challenges for the implementation, such as the need for awareness raising on ABS and lack of clarity and legal certainty regarding the concepts used by the Protocol and the EU ABS Regulation (e.g.: "utilisation"). In order to address these uncertainties, the Commission prepared together with the Member States experts a Guidance document on the scope of application and core obligations of the EU ABS Regulation. Further guidance for different sectors affected by EU ABS Regulation as well as for upstream users is also being developed. During the discussions on further guidance the issue of large scale screening was reported as one that raises concerns of all groups of stakeholders (researchers and academia, industry etc.).

During the discussion, which followed the presentation the following points were considered:

- the EU ABS Regulation does not apply to bio-trade; however, if a genetic resource acquired as a commodity in the EU is being used for R&D within the EU, it falls within the scope of the EU ABS Regulation;
- a concern was raised that EU collections hold a lot of African genetic resources and that material held in collections should be accompanied by PIC and MAT from provider countries, when required;
- the need for awareness-raising also in European Union was pointed out;
- the need to develop and apply best practices in the EU was also stressed.

#### 5.3 Compliance: regulations at country level - Implementation in EU Member States

#### 5.3.1 UK

Katie Beckett (Regulatory Delivery, Department for Business, Energy and Industrial Strategy) gave a presentation on compliance measures in the UK. Regulatory Delivery (RD), the competent authority for ABS in the UK, uses several measures to ensure that GR and aTK utilized in the UK have been accessed in accordance with legislation of the provider country (e.g. risk-based market surveillance, company registration, etc.). RD supports users to understand the legislation, its relevance and compliance obligations and has, to date, focused activities on awareness raising. Where necessary and proportionate, both civil and criminal sanctions are available to Regulatory Delivery as enforcement tools. The UK has not established access and benefit sharing legislation for accessing UK genetic resources under the Nagoya Protocol.

#### 5.3.2 Germany

Thomas Greiber (German Federal Agency for Nature Conservation, BfN) informed participants that access to GR in Germany is free and solely subject to general restrictions of public and private law where applicable. BfN is the CNA responsible for checking user compliance, enforcing compliance and sanctioning infringements in Germany. BfN collaborates with the Federal Office for Agriculture and Food (when it comes to GR for food and agriculture) and with the Robert Koch Institut (in case of human pathogens). The German CNA uses a step-wise approach to user checks: user identification, user survey and user checks. The basis for user checks are periodically reviewed plans using a risk-based approach as well as substantiated concerns. Risk assessments can be based on sector specific information but also user specific analyses. There are no criminal sanctions for non-compliance, but regulatory fines up to 50.000 EURO may be imposed. The German CNA also plays a key role in informing and advising German users and collections.

#### 5.3.3 Netherlands

Linda Wassink-de Ligt (Netherlands Food and Consumer Product Safety Authority, Ministry of Agriculture, Nature and Food Quality) provided participants with a brief presentation on monitoring compliance of the ABS Regulation in the NLD. The Ministry of Agriculture, Nature and Food Quality is the designated CNA in the Netherlands. Access to GR in the Netherlands is not regulated. First compliance checks (ca 40) have been conducted in the plant-breeding sector with a view to assist compliance, measure the compliance level and identify risks and difficulties. Compliance in this sector is high. The sector is avoiding risks and mainly using pre-Nagoya material. In cases of light infringements, remedial actions are applied. Missing documents, needed by Article 4 of the Regulation, have to be collected within reasonable time. Above that, the Minister can apply immediate interim measures, like taking products out of the market etc. In case of serious violations, criminal sanctions may be imposed (up to 6 years imprisonment). In 2018, monitoring shall be extended to more user groups and it is foreseen to apply a risk-based approach for each user group in the near future.

In the following paragraph, a brief summary of the key outcomes of the discussions that took place after the three presentations is provided. The summarized discussion-points are based on notes taken during the meeting and do not necessarily reflect the official position of the respective countries:

- An incentive for users to comply with the NP is not only to be in compliance with the law. Many companies see compliance as an opportunity (e.g. to be a leader in the field, to engage with local communities, engaging in BS as unique selling point).
- Many user country authorities focus on helping and not punishing users of GR and /or aTK. While being considered as "soft implementation" by some, it promotes good dialogue.
- ABS awareness raising (e.g. at trade shows) is important.
- Some countries (e.g. Germany) issue official letters to users upon request which declare that access is free in the country.
- CNAs of EU Member States work in close collaboration, share information and operate to some extent as one body, which is very helpful when dealing with cases of non-compliance with ABS legislation.

#### 5.4 Compliance implementation in countries other than EU

#### 5.4.1 Switzerland

Franziska Bosshard (Federal Office for the Environment, FOEN) shed light on the implementation process and compliance measures in CH. CH implemented a Federal Act and set up the "Nagoya Ordinance" which is similar to the EU ABS Regulation and it is based on due diligence obligations. The Nagoya Ordinance describes in detail due diligence and notification requirements and introduces a system for recognized collections and best practices as well as rules for access to GR in Switzerland. The country has set up two checkpoints: a disclosure (IPI) and a notification checkpoint (FOEN). Further, if the sign of a violation of due diligence obligations or access to genetic resources in Switzerland is notified to FOEN, FOEN will carry out checks on that. Notification forms, FAQs and useful documents for implementation are available on the homepages of FOEN and the Swiss Information System Biodiversity (SIB).

#### 5.4.2 Japan

Rie Funabiki (National Institute of Technology and Evaluation) held a presentation on JP's domestic measures for ABS. The ABS Guidelines of JP (a soft-law document) came into force in August 2017. They are expected to serve as effective compliance measures in accordance with the NP. The Guidelines are also intended to facilitate R&D activities by supporting compliance with ABS legislation of provider countries. PIC is not required for access to GR in Japan. In order to encourage smooth access to GR in Japan, the Japanese governmental agency can issue a document showing the provenance of GR acquired in Japan upon request ("notification of acquisition"). Ms Funabiki further informed participants on user obligations in Japan.

#### 5.4.3 Norway

The presentation held by Sunniva Aagaard (Norwegian Environment Agency) focused on the compliance measures in Norway. User country measures in Norway came into force in 2009. The Nature Diversity Act contains chapters on access to genetic material, the competent authority and enforcement. A regulation on access to and utilization on genetic material is under development. The Directorate of Fisheries and the Norwegian Environment Agency are suggested competent authorities, including supervisory authority. Regulations relating to the protection of TK associated with genetic material entered into force in January 2017. A regulation on compliance measures relevant for genetic material from other countries and checkpoints is in process.

In the following paragraph, a brief summary of the key outcomes of the discussions that took place after the three presentations is provided. The summarized discussion-points are based on notes

taken during the meeting and do not necessarily reflect the official position of the respective countries:

- Switzerland conducts checks on due diligence when an alleged violation is notified to FOEN by a third, for example an NGO. FOEN may also carry out on spot checks, but at the moment FOEN is not doing spot checks yet.
- In the case of health emergency the obligation for compliance in Switzerland is delayed until a product is launched on the market.
- The Japanese ABS Guidelines is a non-legally binding document that does not prescribe punitive measures, but requires all users to comply (which they tend to do).
- In Japan, if a GR is transmitted to a second person or company, the second user is not obligated to announce the use but most users do.
- If cases of non-compliance are detected in Japan, the Ministry of Environment gives strong advice but no penalties. Since the reputation of the user is at stake, this advice is usually followed.
- Norway is in the process of putting in place CPs and compliance obligations.

# 5.5 Compliance and the way forward - Compliance systems in planning / under development

Representatives from providing countries were invited to share reflections on their respective compliance systems (in planning / under development):

- The designation of checkpoints in Mexico is under consideration. The patent office may become the official checkpoint.
- South Africa is currently amending its legislation to cater for compliance monitoring for South African users sourcing GR from abroad. In the interim situation, it is the South Africa's patent office, which ensures that ABS rules are adhered to.
- India recently submitted the interim report on the Nagoya Protocol to the SCBD where it specifically mentions user country measures as required under Art. 15 NP. India has held rounds with the responsible department and has taken appropriate steps to look into whether the patent office could be a suitable checkpoint.
- Kenya is in the process of developing a substantive ABS law and has developed an IT-based permitting system with support of the ABS Capacity Development Initiative. It is in discussion with the relevant agencies with regard to the set-up of its national compliance system.
- The African Union ABS Guidelines follow the structure of the Nagoya Protocol but they are not prescriptive due to the diversity of common law / civil law systems in Africa.
- Costa Rica recognizes the need to amend its decree once the country ratifies the NP. In its decree, Costa Rica included an innovative procedure, which is the conciliation process, which allows the provider to still receive benefits from the user following conciliation between the two parties.
- Ethiopia identified the gaps between the existing ABS law and the NP. One of these gaps is the designation of an official checkpoint, which is work in progress. Monitoring tools assisting compliance (Paul Oldham, One World Analytics)

Paul Oldham (One World Analytics) presented a model for an online permit and monitoring system in support of implementation of the NP. A single electronic permit system makes it easy to apply for permits and for government authorities to review and approve applications, monitor compliance and

report on access, BS, compliance and reporting provisions of the NP. Mr. Oldham presented the core components of an electronic permit system and key lessons learnt from the implementation of an electronic permit system in Kenya. A handbook on ABS monitoring is under preparation.

Summary of the key outcomes of the discussion:

- All known variations of the spelling of a given species are integrated in the permitting system.
- Streamlining permits via an online system as well as the ability to track non-monetary benefits is very useful.
- Using advanced technologies (such as an online permitting system) is not essential. The robustness of a permit in the ABS system is what really matters.
- Trust plays a key role in ABS but it needs to be both on the provider and the user side. For example, users often ask for confidentiality not to disclose information to their competitors.
- According to the African Union ABS Guidelines, users sourcing illegally in Africa will become blacklisted as bio-pirates on the African continent. This approach is an incentive to be a good corporate citizen and could be adopted by other providing countries.

### 6 Wrapping up the workshop

#### 6.1 What brought participants forward (green cards)

- Fantastic range of participants, good composition of the workshop
- Extremely enriching discussions
- Workshop contributed to trust-building among ABS actors
- Workshop was an efficient way to strengthen dialogue between private sector (needs) and provider countries
- The value of the ABSCH for increasing transparency cannot be overestimated
- Clarity in monitoring approaches gives way to new ideas
- Opportunity to realize how much everybody is a user as well as a provider
- Mutual understanding between provider countries and user countries is increasing
- Capacity building regarding provider country and user positions
- Better understanding of challenges in provider countries
- Great opportunity to share knowledge, experiences, information and concerns
- Better understanding of different approaches and perspectives of compliance monitoring system in user countries
- Better understanding of access legislation in various jurisdictions, including ABS laws under development
- Importance of the dialogue between provider countries and user countries were recognized

#### 6.2 Key challenges identified by participants (red cards)

- Trust-building between users and providers takes time
- There is a need to bridge gaps for more partnership
- The limited alignment in underlying values and expectations needs to be addressed ("expectation management")
- Case studies on BS need to be documented

- Clear definitions in ABS (terms have different meanings depending on the national context, e.g. "utilization", "guidelines" etc.) would be useful
- Monitoring systems
- Capacity-building
- It is key to support the elaboration of sectoral standard clauses for MAT with a view to increase cooperation and lower transaction costs. These standards should ideally be endorsed at COP-MOP
- There is a need for continued dialogue among ABS actors
- The ABSCH does not fulfil its role of source of information on access requirements as it is not populated sufficiently and updated regularly
- There is a need for more progress on best practices and model clauses
- Compiling best practices on contractual clauses to build a library requires user-provider cooperation
- Work on better separating trade in genetic resources for existing applications and use from utilization
- Make the lengthy legal efforts to transform into more BS and biodiversity conservation
- A focus needs to be put on BS because BS is the key to trust
- Facilitated access is required for special situations, e.g. emergencies
- The interphase of R&D and bio-trade needs to be addressed
- Understanding user needs
- Simplification
- Cost-benefit analysis of public-private resources spent on ABS versus benefits for biodiversity conservation
- Users should take into account the NP "age" (infancy). Users do not yet clearly understand the business advantages of complying.
- Appreciate non-monetary benefits as well
- Automated monitoring systems (capacity building)

#### 6.3 What actors (can) do (panel discussion)

- ABS should be used as a tool for conservation in terms of the CBD
- ABS actors should contribute to building up a collection of model clauses as foreseen by WIPO / create a library or tool box of model clauses
- Parties could request the SCBD to gather and analyse information on model contractual clauses found on the ABSCH (compiling sector-specific information, identifying commonalities and differences of sectors would be a good way forward)
- ABS actors could complement information on model contractual clauses which are available on the ABSCH
- Work in partnership with other countries (providers and users) should be undertaken

### 7. Closing words

Jorge Rodriguez Romero (Deputy Head of the Unit of Multilateral Environment Cooperation, DG Environment, European Commission) closed the conference, thanking participants for sharing their experiences and rich, fruitful discussions. He highlighted the need for partnership based on trust between provider and user countries and called on countries to increase collaboration with a view to

reach agreements and ways forward regarding the implementation of the Protocol. Mr Rodriguez further emphasized the key role of the ABSCH and the need for more awareness-raising on ABS.

### Annex

Agenda



### Advancing implementation of the Nagoya Protocol An international exchange on key challenges and practical ways forward 21 to 23 November 2017, Pentahotel City Centre, Brussels

#### AGENDA

Tuesday, 21 November 2017				
08.30	Registration			
09.00	<ul> <li>Opening / Welcome         <ul> <li>European Commission DG Environment (Humberto Delgado Rosa, Director, Directorate D, Natural Capital)</li> <li>CBD Secretariat (Valerie Normand, SCBD)</li> </ul> </li> <li>Introduction         <ul> <li>Objectives, &amp; getting to know each other</li> </ul> </li> </ul>			
09.45	<ul> <li>Setting the scene</li> <li>Status of Nagoya Protocol implementation (Valerie Normand)</li> <li>The Access-Compliance Interplay under the Nagoya Protocol (Suhel al-Janabi, GeoMedia GmbH/ ABS Capacity Development Initiative)</li> </ul>			
10.30	Coffee/ tea			
11.00	<ul> <li>Access regulations</li> <li>Key access provisions and features, addressing special considerations (Art. 8 NP): Costa Rica, India, South Africa</li> </ul>			
12.30	Lunch			
14.00	<ul> <li>Access regulations</li> <li>Key access provisions and features, addressing special considerations (Art. 8 NP): Malaysia, Ethiopia, Kenya</li> </ul>			
15.30	Coffee / tea			
16.00	<ul> <li>Access regulations         <ul> <li>Key access provisions and features, addressing special considerations (Art. 8 NP): Morocco, Mexico</li> </ul> </li> <li>Access regulations in EU Member States         <ul> <li>Key access provisions and features, addressing special considerations (Art. 8 NP): Spain, France (tbc)</li> </ul> </li> <li>Overview on ABS legislation         <ul> <li>China</li> </ul> </li> </ul>			
17.30	End of Day 1			
18.30	Cocktail (Pentahotel) and dinner for sponsored participants			

Wednesday, 22 November 2017				
9.00	<ul> <li>Access issues – challenges in user countries</li> <li>Recap day 1 and Introduction to day 2</li> <li>Access legislation in the eyes of users – business users' needs (Daphne Yong d'Hervé, International Chamber of Commerce)</li> </ul>			
9.15	<ul> <li>Challenges in practical application – Industry sector interventions</li> <li>Plant breeding perspective (Szonja Csörgő, European Seed Association)</li> <li>Health sector: emergency issues (Dr. Axel Braun, F. Hoffmann – La Roche)</li> <li>Health sector: seasonal flu (Peter Thomsen, Novartis)</li> <li>Biocontrol (Johanna Klapwijk, Koppert)</li> <li>Biotechnology perspective (Dr. Ricardo Gent, German Association of Biotechnology Industries)</li> <li>Cosmetic sector perspective (Manuela Coroama, Cosmetics Europe)</li> </ul>			
11.00	Coffee / tea			
11.30	<ul> <li>Challenges in practical application – Interventions by public research institutions</li> <li>Research objective (Dr. Chris Lyal, Natural History Museum London)</li> <li>Public research perspective (Bert Visser, Wageningen University and Research)</li> <li>Culture Collections' perspective (Dr. Philippe Desmeth, World Federation for Culture Collections)</li> <li>Botanic Gardens' perspective (Suzanne Sharrock, Botanic Gardens Conservation International)</li> </ul>			
12.00	<ul> <li>Challenges in practical application – Interventions by User CNA's</li> <li>What triggers obligations in provider countries?</li> </ul>			
12.30	Lunch			
13.45	<ul> <li>Access- Balancing expectations and needs</li> <li>Observations deriving from preceding sessions (Bert Visser, Pierre du Plessis, African Union)</li> <li>Situation analysis</li> <li>Way forward</li> </ul>			
15.40	Coffee break			
16.10	<ul> <li>Mutually Agreed Terms (MAT) – Linking users and providers</li> <li>Establishing ABS contracts; experiences and lessons learnt from practice (Maria Julia Oliva, UEBT)</li> <li>MAT content – what useful elements for users and providers? (Alicja Kozlowska, European Commission)</li> <li>Views from providers and users</li> <li>Discussion: How would model contract clauses help?</li> </ul>			
17.30	End of Day 2			

	Thursday, 23 November 2017			
9.00	<ul> <li>Compliance: Introduction and EU legislation</li> <li>Recap Day 2</li> <li>Key provisions of the Nagoya Protocol (Valerie Normand)</li> <li>Implementation of the Nagoya in the EU regulatory framework (Alicja Kozlowska, EC /Matthias Leonhard Maier, EC )</li> </ul>			
10.30	Coffee / tea			
11.00	<ul> <li>Compliance: regulations at country level</li> <li>Implementation in EU Member States (UK, Germany, Netherlands)</li> <li>Implementation in other countries (Switzerland, Japan, Norway)</li> </ul>			
12.30	Lunch			
14.00	<ul> <li>Compliance: way forward</li> <li>Compliance systems in planning / under development</li> <li>Monitoring tools assisting compliance (Paul Oldham, Lancaster University)</li> <li>Key factors of effective and efficient monitoring and compliance systems</li> </ul>			
15.30	Coffee / tea			
15.45	Key learnings from the workshop			
16.00	Tackling the challenges – what actors (can) do (panel discussion)			
16.20	<ul> <li>Closing</li> <li>European Commission, DG Environment, Jorge Rodriguez Romero, deputy head of unit, Multilateral Environmental Cooperation</li> </ul>			
16.30	End of the workshop			

Attendance list EU ABS Workshop - Advancing Implementation of the Nagoya Protocol 21-23 November 2017, Brussels, Belgium			
Cosmetics Europe	Association		
European Seed Association (ESA)	Association		
World Federation for Culture Collection	Association		
International Biocontrol Manufacturers Association (IBMA)	Association		
IFRA – International Fragrance Association	Association		
Federal Ministry of Agriculture, Forestry, Environment and Water Management	Austria		
Service Public Fédéral Santé Publique, Sécurité de la Chaîne Alimentaire et Environnement	Belgium		
Agentschap voor Natuur en Bos	Belgium		
One World Analytics & United Nations University Institute for Advanced Study of Sustainability (UNU-IAS)	Consultancy		
ABS Capacity Development Initiative / GIZ	Cooperation agency		
National Commission for the Biodiversity Management (CONAGEBIO)	Costa Rica		
National Comission for Biodiversity Management, Ministry of Environment and Energy	Costa Rica		

Ministry of Environment	Croatia
Ministry of Agriculture, Rural Development and Environment	Cyprus
Ministry of Agriculture	Czech Republic
Ministry of Environment	Czech Republic
Environmental Protection Agency	Denmark
Ministry of Environment	Estonia
Ethiopian Biodiversity Institute (EBI)	Ethiopia
European Commission	EU
Finnish Environment Institute	Finland
Natural Resources Institute	Finland
Ministère de la Transition écologique et solidaire	France
Ministry of Higher Education, Research and Innovation	France
French Ministry of Agriculture	France
Federal Agency for Nature Conservation	Germany

Bundesamt für Naturschutz	Germany
Federal Ministry for the Environment, Nature Conservation and Nuclear Safety	Germany
Ministry of Agriculture	Hungary
Indo-German Biodiversity Programme, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH	India
Pierre Fabre Research Institute	Industry
Hoffmann-La Roche A.G.	Industry
DSM Nutritional Products Ltd.	Industry
Secretariat of the Convention on Biological Diversity	International organisation
African Union	International organisation
Italian Ministry of Environment, Land and Sea	Italy
National Institute of Technology and Evaluation (NITE)	Japan
Kenya Wildlife Service	Kenya
Ministry of Natural Resources and Environment	Malaysia
Ministry for the Environment, Sustainable Development and Climate Change	Malta

Ministry of the Environment and Natural Resources	Mexico
Ministry of Energy , Mine and Sustainable Development	Morocco
Ministry of Economic Affairs	Netherlands
Union for Ethical BioTrade (UEBT)	NGO
Norwegian Environment Agency	Norway
GeoMedia GmbH / ABS Capacity Development Initiative	Organising agency
Chief Inspectorate of Environmental Protection	Poland
Ministry of Environment	Poland
Instituto de Conservação de Natureza e das Florestas	Portugal
Ministry of Environment	Slovakia
Department of Environmental Affairs	South Africa
Ministry of Agriculture and Fisheries, Food and Environment	Spain
Natural History Museum London	Stakeholder
Botanic Gardens Conservation International	Stakeholder

Swedish Environmental Protection Agency	Sweden
Federal Office for the Environment (FOEN)	Switzerland
Federal Office for the Environment (FOEN)	Switzerland
Department for Business, Energy & Industrial Strategy (BEIS)	United Kingdom
Department for Environment, Food and Rural Affairs (DEFRA)	United Kingdom
Centre for Genetic Resources	University