4th Business Dialogue
Copenhagen, 28-29
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EU Regulation implementing the Nagoya Protocol in the Union
NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY

TEXT AND ANNEX

Oct. 2010
Pillars of the Nagoya Protocol - the ABC of ABS -

"Access"
Not implemented at EU level
Each State/Party to decide if they establish access rules, incl. EU Member States

"Benefit sharing"
Subject to contractual agreement

"Compliance"
See EU ABS Regulation
Key: Due diligence obligation for all users
REGULATION (EU) No 511/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014

on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and
the fair and equitable sharing of benefits arising from their utilization in the Union
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,
State of play

• The Nagoya Protocol entered into force on 12 October 2014;
• The EU ABS Regulation (No. 511/2014) is applicable as of then;
• Articles 4, 7 and 9 will only apply one year later;
Scope of EU ABS Regulation

Does the activity fall under the scope of the ABS regulation?

- On substance, incl. specialised instruments?
- Temporally?
- Geographically?

IF YES
Scope - substance

• The EU ABS Regulation concerns 'utilisation' of genetic resources (not commodity trade)
• It applies to genetic resources (and associated traditional knowledge) obtained from parties to the Nagoya Protocol with ABS legislation in force
• It does not cover genetic resources that are governed by specialised international instruments (e.g. MLS of the ITPGRFA)
Scope – temporal and geographical

- EU ABS Regulation applies to genetic resources accessed after entry into force of the Nagoya Protocol for the Union
- EU ABS Regulation is not applicable to genetic resources obtained from areas beyond national jurisdiction (ABNJ), e.g. high seas (see UNCLOS) or areas covered by the Antarctic Treaty
The core of the EU ABS regulation due diligence

Users are obliged to provide information on:

- **When? Where? What?**
- **From whom and to whom?**
- **Access permit (PIC)?**
- **Mutually agreed terms?**
  - incl. benefit-sharing
- **Presence or absence of rights and obligations?**

**Insufficient information / uncertainties?**

**Discontinue utilisation**
Key provisions of the EU ABS regulation

- user's *due diligence* obligation
- monitoring = checkpoints
- Register of collections
- best practice
- compliance checks
- penalties
- Receiving funding at the final stage of development

See future implementing acts
Main task for EU Member States

- EU Member States to designate competent authorities (Article 6)
  See in particular for the purposes of Articles 5 (register of collections), 7 (monitoring user compliance) and 9 (checks on user compliance)

- EU Member States to lay down rules on penalties (Article 11)

- EU Member States to prepare for checks on user compliance → risk-based approach (Article 9)
Next steps

- **EU level:**
  - Work on implementing act
  - Preparation of (sectoral) guidance documents

- **MS level:**
  - Designation of competent authorities
  - Lay down rules on penalties
  - Organize monitoring of compliance checks
Thank you for your attention!

- For more information see: [http://ec.europa.eu/environment/nature/biodiversity/international/abs/index_en.htm](http://ec.europa.eu/environment/nature/biodiversity/international/abs/index_en.htm) (incl. link to the EU ABS Regulation)
  as well as [www.cbd.int/abs](http://www.cbd.int/abs)
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