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**Subject: EU submission in reply to Notification 2006-041  
Measures, including consideration of their feasibility, practicality and costs, to  
support compliance with prior informed consent of the contracting party providing  
genetic resources and mutually agreed terms on which access was granted in  
Contracting Parties with users of such resources under their jurisdiction**

Dear Dr. Djoghlaif,

Germany and the European Commission, on behalf of the European Community and its Member States, would like to transmit the annexed response to the above mentioned notification.

Sincerely yours,

[SIGNED]

Nicola Breier

Head of Division– CBD Focal Point  
Ministry of the Environment,  
Nature Conservation and Nuclear Safety  
GERMANY

[SIGNED]

Hugo-Maria Schally

Head of Unit – CBD Focal Point  
Environment Directorate-General  
European Commission

**Annexes:** Information and views of the European Union on measures taken to support compliance with PIC and MAT

## **EU submission in reply to Notification 2006-041**

### **On Measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the contracting party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction.**

Before the third and fourth meetings of the Ad-Hoc Open-Ended Working Group on Access and Benefit-sharing, the EU already submitted ample information on measures taken by the European Community and its Member States to support compliance with prior informed consent of the contracting party providing genetic resources and of ABS requirements established through mutually agreed terms. In addition, the EU would like to provide the following observations.

### **Further activities to raise awareness about Access and Benefit-sharing**

The EU concurs with the preliminary assessment in document UNEP/CBD/WG-ABS/4/3 that highlights the lack of awareness among ABS stakeholders as one of the major impediments to the effective implementation of access and benefit-sharing frameworks.

In response, the European Community and EU Member States have continued their efforts to raise awareness of ABS issues, particularly amongst users of genetic resources in the EU. Some of the measures and steps that the EU has not previously reported on are briefly described in Annex 2 and 3 to this submission, as well as in the EU's submission to notification 2006-044 on experiences with the Bonn Guidelines.

### **Discussion on further international measures to enforce PIC and MAT in a trans-national context**

CBD parties are currently discussing in the Ad-Hoc Open-Ended Working Group on Access and Benefit-sharing whether there is a need for additional legal measures to ensure that users of genetic resources comply with access and benefit-sharing requirements across different jurisdictions.

In this context, the EU would first like to reiterate its proposal regarding the disclosure of origin or source of genetic resources and associated traditional knowledge in patent applications to the World Intellectual Property Organization as contained in document WIPO/GRTKF/IC/8/11. The EU considers this proposal as an element to support compliance with access and benefit-sharing requirements.

The EU is willing to engage in a substantive discussion on further measures to support compliance with PIC and MAT, not excluding legally binding ones. This could include work on an international definition of misappropriation and a related international obligation to prohibit the use of misappropriated genetic resources. However, a precondition for a discussion on such further measures is that, at the same time, efforts are undertaken to ensure that national access regimes fully conform to the CBD and the Bonn Guidelines and do not discriminate against foreign users of genetic resources. This will require the establishment of international minimum requirements on national access law and practice which serve as reference point for enforcement measures in user countries.

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**Select overview of recent measures taken by the European Community and its Member States to raise awareness amongst users of Genetic Resources on Access and Benefit-sharing and the Bonn Guidelines**

**Public research funders in Germany and France** are undertaking work to request acceptance of guidance on access and benefit-sharing formulated within the CBD.

Further Member States have established **national web-portals** dedicated to Access and Benefit-sharing issues, particularly with a view to enhancing the ability of users of genetic resources to obtain pertinent information on ABS quickly and at low cost.<sup>1</sup>

Further Member States such as **Belgium<sup>2</sup>** or **France** have undertaken extensive **consultations** with **users of genetic resources** to enhance awareness of Access and Benefit-sharing issues.

In November 2005, **Germany** held an **international user workshop** bringing together representatives from the research community, ex-situ collections and botanical gardens. At this meeting, different ABS compliance measures and activities adopted by botanical gardens and academic research institutions were presented. This meeting also demonstrated the need to consider existing instruments when designing new ABS policies.

In November 2006, a Nordic workshop was held for users from the **Nordic Countries**. The workshop concluded that further information as well as the development of tools to facilitate compliance with access rules is needed. A Nordic project to follow up on these conclusions will be considered in 2007.

Furthermore, **expert meetings** organised by the **Commission** and **Member States** involving users of genetic resources in the EU have become a regular feature of EU preparations prior to CBD meetings on Access and Benefit-sharing.

In part, as a consequence of the above-mentioned activities, users of genetic resources, like the pharmaceutical industry, the biotechnology sector, the botanical gardens and ex-situ collections have already developed or are in the process of developing and implementing **codes of conduct** that establish best practices on access and benefit-sharing for their respective areas of activity.

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<sup>1</sup> Netherlands; Germany: <http://www.abs.biodiv-chm.de>; United Kingdom: <http://www.defra.gov.uk/science/geneticresources>

<sup>2</sup> See Annex 3.

## **Belgian User Survey**

In 2006, the Belgian DG Environment of the Federal Public Service Health, Food Chain Security and Environment has funded a survey on the extent of knowledge and use of the CBD provision on access and benefit-sharing (and in particular the Bonn Guidelines) by Belgian users of genetic resources.

The study, realised by Research Unit on Biodiversity of the Centre for Philosophy of Law of the Catholic University of Louvain (specialised in ABS issues), started in January 2006 and ended in June of the same year. The full title of this notice of tender is « *Marché relatif à l'analyse du degré de connaissance et de prise en compte par les acteurs belges des dispositions de la Convention sur la Diversité Biologique en matière d'accès aux ressources génétiques et de partage juste et équitable des avantages résultant de leur utilisation.* »

The objective of the study was to consolidate the Belgian ABS national and international policy, and to know the exact situation regarding ABS provision and genetic resources users in Belgium. This aimed at identifying specific measures that need to be taken in order to improve stakeholders involvement. To this end, information's on the subject were gathered from all Belgian potential actors involved in the exchange of genetic resources.

Within the scope of this study only those biological resources, whose **origin is not the Belgian Kingdom**, were studied. They include resources which were taken from their natural habitat (in-situ) or from ex-situ collections and on-farm cultivation outside the natural habitat. It does not include human material.

In depth surveys were realised within a sample of 400 random selected organisations. 57 answers were received, with a relatively homogeneous rate of answers throughout the 7 different sectors (Biotechnology, Research, Health, Biological Control, Collections, Agriculture and Processing Industries), with a under representation of the biotechnology sector and an over representation of the research and collections sectors.

Following issues were treated:

- the degree of awareness of the CBD by Belgian users;
- the degree of implementation of the CBD and the Bonn guidelines ABS provisions ;
- the existing institutional models and practices used in exchanging material.

A meeting of an ad hoc expert group of academics and user representatives (social sciences experts' representatives, conservators/distributors' representatives, users' representatives, and directors of national ABS surveys in other countries) was organised in the framework of the study (in June 2006) to discuss the interpretation of the results, the possible policy recommendations and cross-country comparison of the draft report for the Belgian ABS survey.

The main results of the study indicate that the CBD is well known in the collections and research sectors and that the implementation seems more spread for acquisition of PIC than for benefit sharing.

The study also proposes recommendations on **documenting the flow of resources and open access policies in user countries** related to the exchange of resources.