



EUROPEAN COMMISSION

Dr. Ahmed Djoghlafl
Executive Secretary
Convention on Biological Diversity
413, Saint Jacques Street, Suite 800
Montreal, Quebec, Canada
H2Y 1N9

Bonn / Brussels, 15 February 2007

**Subject: EU submission in reply to Notification 2006-045 - Access and Benefit-Sharing,
Further information on the gap analysis**

Dear Dr. Djoghlafl,

In reply to notification 2006-045, Germany and the European Commission, on behalf of the European Community and its Member States, would like to transmit the enclosed EU submission providing observations on the gap analysis itself and identifying some areas, where the EU, based on its own analysis, considers that the international ABS negotiations could add value to the current system of ABS governance.

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

Annex: Observations by the European Community and its Member States on the gap analysis

EU submission in reply to Notification 2006-045

Observations by the European Community and its Member States on the gap analysis

In response to the above-mentioned notification, the EU would like to provide two observations regarding the gap analysis.

First, there is a continuing need for a real analysis of the current system of ABS governance to support parties to take an informed choice on the appropriate focus of the negotiations.

In the terms of reference of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, parties to the CBD agreed to elaborate and negotiate an international ABS regime "drawing on *inter alia* an analysis of existing legal and other instruments at national, regional and international levels relating to access and benefit-sharing, including: access contracts; experiences with their implementation; compliance and enforcement mechanisms; and any other options." (Decision VII/19 D, Annex (a) (i)).

According to Decision VII/19 D, Annex (a) (ii), this analysis will support the Ad Hoc Working Group on ABS to examine whether and to what extent possible elements of an international ABS regime are part of existing instruments and how to address the gaps.

Based on recommendation 3/1 of the Third Meeting of the ABS Working Group, the European Community and its Member States provided information on existing instruments to the Executive Secretary. Other parties, governments and relevant stakeholders did so as well. The Executive Secretary compiled the information received in Document UNEP/CBD/WG-ABS/4/3 prior to the Fourth Meeting of the ABS Working Group.

However, a proper analysis of the information contained in this document and drawn from other sources still needs to be undertaken. Against this background, the Eighth Conference of the Parties requested the Executive Secretary to present the final version of the gap analysis to the Fifth Meeting of the ABS Working Group (see Decision VIII/4, A para. 9).

In line with the terms of reference for the ABS negotiations, the final version of the gap analysis needs to clearly spell out which of those elements that have been identified as possible elements of an international ABS regime are already parts of existing instruments and where gaps exist.

The gap analysis should also include a review of national compliance and enforcement mechanisms/ regulations in place.

This analysis will support parties in their effort to focus the negotiations on those areas where additional international rules would add value to the current system of ABS governance. A clear focus of the negotiations will also help to complete the work in the ABS Working Group at the earliest possible time before the tenth Meeting of the Conference of the Parties to the CBD.

Second, there are some areas where the EU, based on its own analysis, would see that the international ABS negotiations could add value to the current system of ABS governance.

These are:

- International minimum requirements on national access legislation and practice that could serve as reference point for user measures across different jurisdictions.
- Exploring ways to prevent the use of genetic resources that were not obtained in accordance with access legislation of provider countries, respectively with international minimum requirements on access.
- Sectoral work on standardising Material Transfer Agreements.

