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**Submission of information regarding measures to provide for financial security for damage from living modified organisms (Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress) – Response to CBD notification nft-2023-109 (Reference SCBD/CPU/DC/WM/KG/PD/PS/91317
Submission by GERMANY**

In Germany, since 2012, there has been no cultivation of living modified organisms (LMOs; referred to as 'GMOs – genetically modified organisms' in German legislation). Therefore, the practical relevance of financial protection against damage caused by LMOs is rather limited. However, Germany imports GMOs for use as or in food and feed, which require authorisation.

The Act on the Prevention and Remedying of Environmental Damage, the so-called Environmental Damage Act (USchG), is particularly relevant when it comes to establishing a public law liability of the professionally acting polluter towards the authorities. Since 2007, this Act implements the EU Environmental Liability Directive 2004/35/EC in Germany. It does not provide a basis for private law claims for personal injury or property damage. The party responsible for environmental damage is obliged e.g. to bear the costs of preventive, mitigating and remedial measures, if the liable party has not already taken these measures. These financial burdens are intended to create incentives to prevent damage in the first place. Culpability is not a factor.

The Environmental Protection Act itself does not adopt a comprehensive ecological approach, but focuses on the specific assets protected and defined in certain environmental laws. The Environmental Protection Act covers damage caused by genetic engineering activities, as well as the off-site transport of GMOs and any deliberate release of such organisms into the environment, their transport and placing on the market, or the transboundary movement of waste within, into or out of the EU.

In addition, private environmental law contains a number of liability provisions for private individuals. In particular, the Genetic Engineering Act, the Environmental Liability Act (1991) and in general civil law ('neighbour law' and 'tort law'), provide for liability for damage caused by the handling or by the release or placing on the market of GMOs. This includes compensation for damage to life, limb, health or property. Liability under the Genetic

Engineering Act is structured as strict liability, which applies irrespective of the fault of the perpetrator. The amount of liability is limited to EUR 85 million.

The aim of the Environmental Liability Act (1991) is to contribute to environmental precaution but also to improve the legal position of the injured party. The law is therefore predominantly designed to protect individual legal interests. However, the basic prerequisite for liability is that a specific damaging party can be named. Section 16 of the Environmental Liability Act provides for the possibility of compensating so-called ecological damage. Thus, the damaging party is obligated to compensate for such expenses incurred by the injured party in restoring the damaged nature or landscape.

Tort law can also impose liability on private individuals, but this requires an unlawful and culpable act on the part of those causing the damage. An example of such an act could be a breach of the duty to ensure safety in the handling of GMOs. There is no maximum liability.

In Germany, there are no public funds to compensate for damage caused by GMOs, nor are there any obligations to set aside financial reserves.