

Federal Act on the Protection of Nature and Cultural Heritage (NCHA)

Section 3c: Genetic Resources (*new*)

Art. 23n Due diligence requirement

¹ Any person who - according to the Nagoya Protocol¹ - utilises genetic resources or directly benefits from their utilisation (users) shall apply due diligence appropriate to the circumstances to ensure that:

- a. the resources have been accessed lawfully; and
- b. these benefits are shared in a fair and equitable way.

² Utilisation of genetic resources in terms of paragraph 1 means to conduct research and development on the genetic or biochemical composition of genetic resources, including through the application of biotechnology.

³ Access in terms of paragraph 1 letter a is lawful, if by virtue of the Nagoya Protocol it is in accordance with the domestic access and benefit-sharing regulatory requirements of the Party to the Nagoya Protocol that provides the resource.

⁴ If the requirements of paragraph 1, letters a and b are not complied with, the user shall ensure that they are fulfilled subsequently, or shall renounce using the genetic resources concerned or benefiting directly from their utilisation.

⁵ The Federal Council shall regulate what information must be recorded on the utilised genetic resources and passed on to subsequent users.

Art. 23o Notification requirement

¹ Compliance with the due diligence requirement must be notified to the Federal Office for the environment FOEN before market authorisation has been obtained or, if such authorisation is not required, before the commercialisation of products developed on the basis of utilised genetic resources.

² Information related to compliance with the due diligence requirement may be passed on to the international clearing-house described in Article 14 of the Nagoya Protocol and to the competent national authorities of Parties to the Nagoya Protocol. The name of the person proceeding with the notification, the product to be commercialised, the utilised genetic resource, the date at which it has been accessed as well as its source are made publicly available.

³ The Federal Council shall designate competent authorities responsible for verifying compliance with the notification requirement. It may provide for exemptions to the

¹ SR ... (as of 29 October 2010)

notification requirement if the verification of compliance with the due diligence requirement is ensured by other means.

Art. 23p Traditional knowledge

Articles 23n and 23o also apply to traditional knowledge of indigenous or local communities associated with genetic resources.

Art. 23q Genetic resources in Switzerland

¹ The Federal Council may make access to genetic resources in Switzerland subject to a notification or an authorisation and to an agreement that regulates the utilisation of genetic resources and the sharing of benefits arising out of their utilisation.

² The Confederation may support the conservation and sustainable use of genetic resources.

Art. 24a

² Any person who intentionally fails to provide information or provides false information under Article 23o shall be liable to a fine of up to 100,000 francs; if the offender acts through negligence, the fine shall be up to 40,000 francs. The judge may order publication of the judgement.

Art. 24h Federal enforcement powers (new)

¹ ...

² ...

³ The Confederation shall enforce the regulations on genetic resources (Art. 23n–23q); it may delegate certain tasks to the Cantons.

⁴ ...

Art. 25d Transitional provision to the amendment of ... (new)

Articles 23n and 23o apply to circumstances relating to access to genetic resources or associated traditional knowledge that has occurred after the said provisions came into force.