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Swiss Confederation

Federal Department of the Environment,
Transport, Energy and Communications DETEC

Federal Office for the Environment FOEN
Waste Management, Chemicals, and Biotechnology Division

The Nagoya Protocol on ABS

and its implementation in Switzerland

Marco D'Alessandro, National Focal Point for the Nagoya Protocol, Federal Office for the Environment, Switzerland

Side Event COP-11, Hyderabad, India



Existing ABS user measures

- ❑ **Voluntary measures based on the Bonn Guidelines and on the Nagoya Protocol**
 - **ABS Good Practices and Model Clauses for academic research on genetic resources** (Swiss Academy of Sciences)
 - **The ABS Management Tool** (Stratos & others, financed by SECO)
 - **Ex-situ collections:** Botanic Gardens (International Plant Exchange Network), Culture Collection of Switzerland (ABS-standard)
 - **National ABS Clearing House** to share information (www.sib.admin.ch)
- ❑ **Disclosure of source** of genetic resources and traditional knowledge in patent applications (**Swiss Patent Act**)
- ❑ **International Treaty on Plant Genetic Resources for Food and Agriculture**





New draft legal ABS user compliance measures

New Chapter on genetic resources in the **Federal Act on the Protection of Nature and Cultural Heritage**:

I. **Due diligence requirement** (Implementation of Art. 5 and 15 of the NP)

- ❑ **Whoever utilizes a GR or whoever directly benefits from the utilization of a GR (users)** shall apply due diligence to ensure that:
 - access to the GR took place in accordance with the domestic ABS regulatory requirements of the Party to the NP that provided the GR;
 - benefits will be shared in a fair and equitable way.
- ❑ The **minimal information** that has to be recorded and passed on to subsequent users will be further regulated on the “Ordinance” level.

II. **Notification requirement** (Implementation of Art. 15.3 and 17 of the NP)

- ❑ Compliance with the due diligence requirement has to be notified **at the time of market authorization or commercialization of a utilized GR to a centralized checkpoint at the Federal Office for the Environment (FOEN)**.
- ❑ FOEN might transfer information related to compliance with the due diligence requirement to the Party that provided the GR or to the ABS-CH.
- ❑ Designation of **further “checkpoints” in existing procedures to check whether a notification was made at FOEN** (e.g. in the authorization procedure for pharmaceuticals).



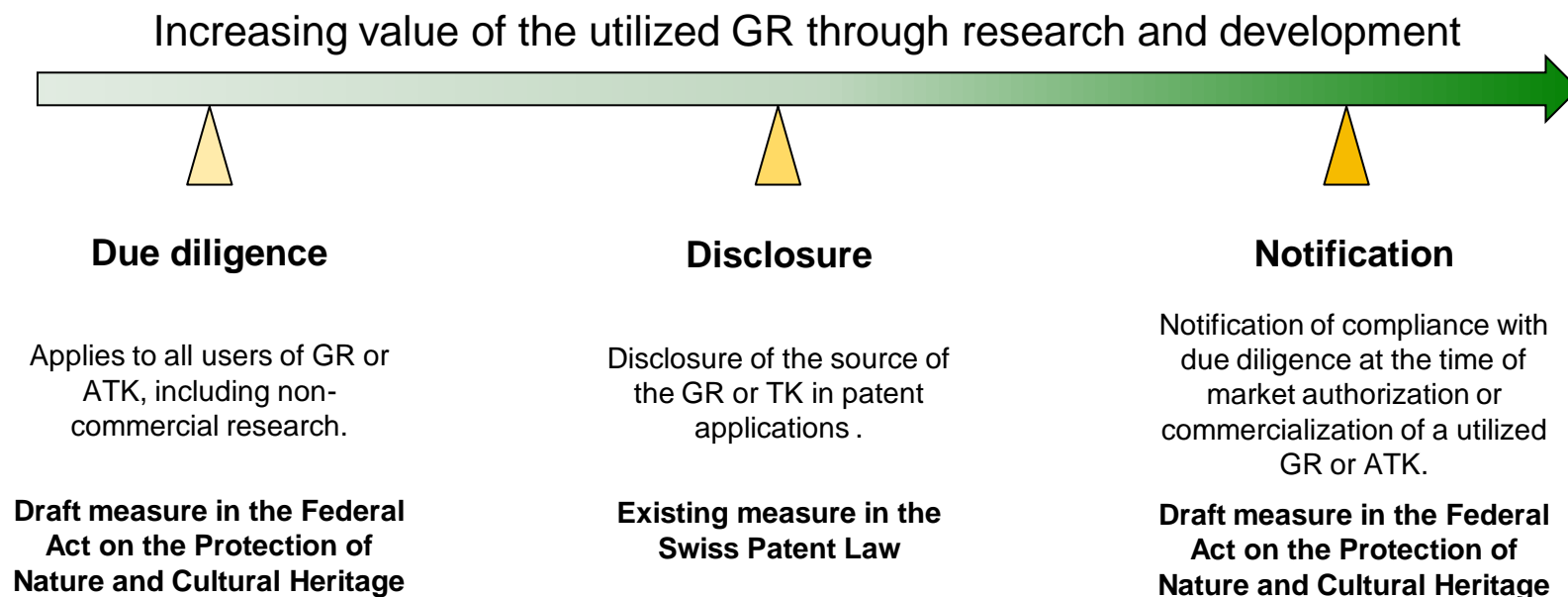
New draft legal ABS user compliance measures

- ❑ The due diligence and notification requirement will also apply to whoever utilizes **traditional knowledge associated with genetic resources**.
- ❑ **Sanctions and administrative measures:**
 - **A fine of up to 100'000 Swiss Francs (approx. 100'000 USD)** to whoever **intentionally** provides no or wrong information according to the notification requirement; for whoever acts through **negligence**, the fine will be up to **40'000 Swiss francs**.
 - **No authorization** for utilized GR or ATK **if the notification** to the centralized checkpoint **has not been made** by the time of market authorization.
 - Possibility to take **administrative measures** in cases of violation of the due diligence requirement (administrative order).
- ❑ The ABS-user measures will **only apply to GR and ATK provided by other Parties to the Nagoya Protocol** as well as to **access situations that occurred after the new provisions have come into force** → An incentive for other Parties to ratify the NP.



Rationale for the draft legal ABS user measures

- A system that facilitates research and innovation on GR while at the same time ensures compliance with ABS → **the higher the value of the utilized GR, the stronger the ABS user compliance measure.**

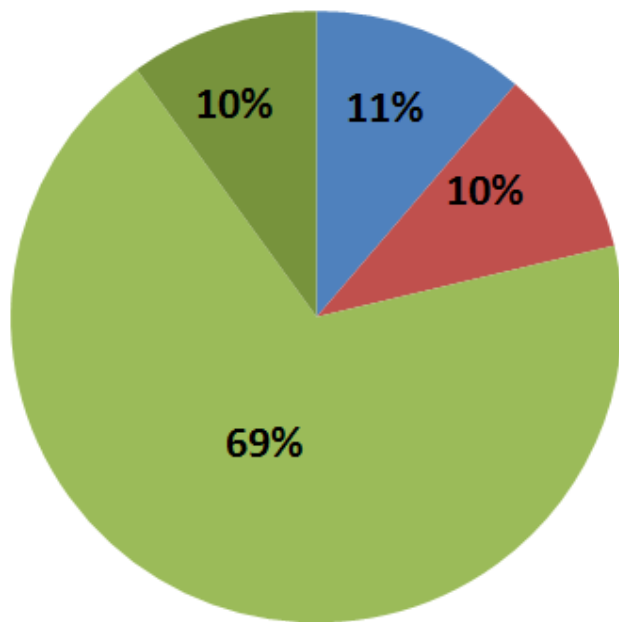




Overview of the results from the public hearing

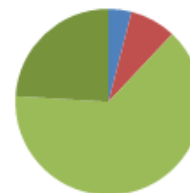
Draft proposal by the Federal Council

■ no position ■ rejection ■ acceptance but ■ acceptance



total of 80 replies

Cantons



umbrella associations for the economy



ecology and development NGOs



industry and professional organisations



research



political parties





Next steps

Till end of November:	Finalizing the analysis of the public hearing and reviewing the ratification document
End of 2012:	2. Consultation within the Federal Administration
Winter 2013:	Decision by the Federal Council to submit the proposal to the Parliament
Spring to autumn 2013:	Parliament

Ratification of the Protocol in Switzerland by the end of 2013 ?

Further Information:

Swiss Information System Biodiversity www.sib.admin.ch