

## **Submission by Switzerland for WG-ABS 9 regarding the need for definitions in the ABS-IR**

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### **General considerations**

Switzerland is of the view that the draft operative text of the ABS-IR (Annex I of UNEP/CBD/WG-ABS/8/8) should first be further elaborated and negotiated and only then work should be undertaken to define certain terms to be included in the ABS-IR. This seems particularly important in order to make the most efficient use of the remaining negotiating time to finalize the operative provisions of the ABS-IR, and to avoid negotiating these provisions in the exercise of defining certain terms.

The decision on what definitions the ABS-IR should contain might be based on the following:

A: Terms that are already defined in the CBD could be included in the ABS-IR but should not be newly defined, as this could lead to inconsistency with the provisions of the CBD and the existing practice under the CBD;

B: Specific terms which are unique in the context of ABS might be additionally defined in the ABS-IR in order to facilitate its implementation and to enhance legal certainty in ABS transactions and compliance mechanisms;

C: Certain terms might become sufficiently clear through further elaborating on and negotiating of the operative text of the ABS-IR and therefore no specific definition might be needed;

D: Some terms are best to be defined in mutually agreed terms between providers and users of genetic resources and associated TK. Thus no need might arise to include them as definitions in the ABS-IR.

### **Considerations on specific terms based on the current status of the ABS-IR**

A: The following terms are defined in the CBD and **could be referenced in the ABS-IR**:

**“Biological diversity”, “Biological resources”, “Biotechnology”, “Country of origin of genetic resources”, “Country providing genetic resources”, “Genetic material”, “Genetic resources”, “Sustainable use”**

B: The following terms are not defined in the CBD but **could be defined in the ABS-IR**:

**„Utilization of genetic resources“** means the modification, biosynthesis, breeding and selection, propagation and cultivation, conservation, characterization and evaluation, or any biotechnological application involving genetic resources in activities of research not

aiming at commercialization, research and development aiming at commercialization, and commercialization.

*Rationale:* The concept of “utilization of genetic resources” is specifically contained in the third objective of the CBD and its Article 15.7 and is crucial in understanding the term “genetic resources” in the context of benefit-sharing. The first part of the proposed definition is based on the results of the technical and legal expert group (TLEG) on concepts, terms, working definitions, and sectoral approaches and lists important categories of typical forms of utilizations of genetic resources based on a technological approach (Para. 13, UNEP/CBD/WG-ABS/7/2). The last category identified by the TLEG has been replaced with “any biotechnological application”, which in our understanding is broader and accommodates any missing important category of utilization of genetic resources. The second part of the definition draws on existing operative text in the draft ABS-IR that recognizes three typical forms of utilizations of genetic resources that are found across most sectors and that might trigger different kinds of benefits to be shared on mutually agreed terms.

**“Misappropriation of genetic resources”** – means access to genetic resources without prior informed consent and/or mutually agreed terms pursuant to the national access legislation of the country providing the genetic resources and the access provisions set out in the ABS-IR in force at the time of access.

*Rationale:* This definition of misappropriation of genetic resources is based on the submission by Switzerland for WG-ABS 8 that is also included in the draft ABS-IR (Option 2, Alternative A, Annex I of UNEP/CBD/WG-ABS/8/8). The proposal is based on CBD-language and it could work as an important incentive to implement the ABS-IR by connecting the national access legislation of the country providing the genetic resources with the access provisions to be agreed on in the ABS-IR.

C: The following terms might become sufficiently clear through further elaborating on and negotiating the operative text of the ABS-IR and therefore **no specific definition might be needed:**

**“Access”** – This term could become sufficiently clear through the operative text of the access component of the ABS-IR.

**“Benefit-sharing”** – This term could become sufficiently clear through the operative text of the benefit-sharing component of the ABS-IR.

**“Traditional knowledge”** – According to Article 8(j) of the CBD, this term means knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. Should an internationally agreed definition of traditional knowledge be sought, care has to be taken to accommodate the diversity of different forms of traditional knowledge of ILCs relevant for the conservation and sustainable use of biological diversity and existing international understandings.

**“Associated traditional knowledge”** – This term could become sufficiently clear through further elaborating and negotiating the operative text under the component “traditional knowledge associated with genetic resources”.

D: The following terms seem to be particularly important in the context of benefit-sharing and could be defined between providers and users of genetic resources and associated traditional knowledge in mutually agreed terms. There **might be no need to include an internationally agreed definition in the ABS-IR:**

**“Derivatives”, “Products”, “Research not aiming at commercialization”, “Research and development aiming at commercialization”, “Commercialization”**