

## Response by Switzerland to Notification Ref.: SCBD/ABS/VN/SG/76984

### Submission on cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance

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Switzerland is pleased to share with the Secretariat its views on cooperative procedures and institutional mechanisms to promote compliance with the Nagoya Protocol on ABS (NP-ABS) and to address cases of non-compliance (hereinafter "compliance mechanism"), to be included in the synthesis report of the Executive Secretary (cf. Report ICNP-1, UNEP/CBD/ICNP/1/8, p. 34, para. 2), and in preparation for an expert meeting on this matter as well as for the second meeting of the Intergovernmental Committee for the Nagoya Protocol (ICNP-2; I.c., para. 3).

Switzerland supports the correct and full implementation of the Nagoya Protocol and believes that a well-conceived compliance mechanism will be an important tool for ensuring the effectiveness of and improving compliance with the Protocol. The compliance mechanism shall be guided by the well-proven principles of transparency, fairness, consistency, expeditiousness and predictability, and shall address cases of non-compliance *inter alia* through the provision of advice and assistance, in a simple, facilitative, non-adversarial, non-judicial and cooperative manner. A compliance committee shall be established.

In order to structure our submission and to facilitate the synthesis of the various submissions by Parties and other stakeholders, our submission addresses the **elements and options for a compliance mechanism** in the kind and order of the note by the Executive Secretary in preparation for ICNP-1 (UNEP/CBD/ICNP/1/6/Rev.1).

#### *Objectives, nature and underlying principles*

As stated in Article 30 NP-ABS and in analogy to compliance mechanisms of many other multilateral environmental agreements (MEA), the NP-ABS compliance mechanism's objective shall be the two facets of "promoting compliance with the provisions of the Protocol" and "addressing cases of non-compliance". Its nature shall be supportive and facilitative, and "fairness" its overlying principle, as described in the second para. of this submission. The compliance mechanisms under the Cartagena Protocol on Biosafety (Cartagena Protocol) and under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) are good models with regard to objectives, nature and principles.

#### *Institutional mechanisms*

A compliance committee should be established as a standing body. The committee shall consist of 10 members nominated by Parties and elected by the Conference of the Parties serving as the meeting of the Parties to the NP-ABS (COP-MOP), two members from each of the five regional groups of the United Nations (UN). In case of an inter-sessional resignation, the Party who originally nominated the resigning member shall designate a substitute for the remaining election period. The members shall have legal, scientific and/or technical expertise, and shall be elected in their personal and individual capacity. The compliance committee shall have the flexibility to develop its own rules of procedure (to be adopted by the COP-MOP) and to hold meetings as necessary, preferably in conjunction with other related meetings and subject to the availability of financial resources (cf. para. III.5 of the compliance mechanism under the ITPGRFA).

### *Functions of the compliance body*

The functions of the compliance committee shall include meaningful activities with a view to reach the goals of Art. 30 NP-ABS, i.e. to promote compliance with the Protocol and to address cases of non-compliance. Again, the respective provisions of the compliance mechanisms under the Cartagena Protocol and the ITPGRFA shall serve as points of reference. The functions of the compliance committee shall essentially consist of collecting and considering information, offering advice and/or assistance, as well as making recommendations, be it to an individual Party or to the COP-MOP. Specific functions may also be assigned to the committee by the COP-MOP. Considering the lack of submissions as a major shortcoming of compliance mechanisms under various MEAs, the committee shall also deal with issues of non-compliance identified based on the national reports produced according to Art. 29 NP-ABS.

### *Procedures*

As a general principle, the compliance committee shall receive submissions relating to compliance from any Party (with respect to itself or to another Party). Moreover, the secretariat and the compliance committee itself should also be entitled to trigger a compliance procedure, both under certain specific requirements such as non-compliance with reporting obligations or information contained in national reports.

In order to be effective and in learning from lessons in other fora, particularly with regard to the notoriously limited use made of Party submissions, the possibility of other stakeholders, such as indigenous and local communities, research, industry, and civil society organisations, to initiate a compliance procedure shall be carefully examined and considered. To address concerns that such a trigger could undermine the non-adversarial nature of the procedure and could lead to an overload of the compliance committee's agenda, clear criteria for admissibility of submissions and for participation in procedures would have to be developed.

As already pointed out in the note by the Executive Secretary in preparation for ICNP-1 (UNEP/CBD/ICNP/1/6/Rev.1), information and the right to participate through the entire process for the Party that is the subject of a submission is essential to guarantee due process (para. 66).

### *Information and consultation*

The compliance committee shall consider relevant information from the Party concerned as well as the entity which has triggered the procedure. It may seek or receive information from the ABS Clearing-House, the CBD COP, the COP-MOP, subsidiary bodies of the CBD and its Protocols, the CBD Secretariat as well as other relevant sources. It may also seek advice from a roster of experts.

### *Measures to promote compliance and address cases of non-compliance*

The measures taken within the compliance mechanism shall take into account the type, degree and circumstances of the specific case and primarily focus on assistance and facilitation. If other measures seem to be necessary to promote compliance, they shall only be decided if the need for such measures is established.

### *Review of procedures and mechanisms*

There is no imperative need to explicitly schedule a review of the compliance mechanism. A general provision could state that a review is undertaken as soon as experience justifies it.

### *Conclusion*

Switzerland welcomes a process of elaborating a compliance mechanism under the NP-ABS. The valuable practical experience of compliance mechanisms under other MEAs, including the related Cartagena Protocol and ITPGRFA, shall be taken into consideration and be further elaborated and adopted to the special needs of NP-ABS, so that effective procedures contribute to the correct and full implementation of the NP-ABS.