

**REPORT OF THE REGIONAL CONSULTATION FOR CENTRAL AND EASTERN
EUROPEAN COUNTRIES IN SUPPORT OF THE FINALIZATION OF THE
INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING**

9-10 February 2010, Isle of Vilm, Germany

I. INTRODUCTION

1. The Access and Benefit-Sharing Regional Consultation for Central and Eastern Europe was organized from 9 to 10 February 2010 at the International Academy for Nature Conservation Isle of Vilm, Germany, with the active support of UNEP and the Federal Agency for Nature Conservation Germany in close collaboration with the CBD Secretariat, and in consultation with the Co-Chairs of WG-ABS.
2. The Regional Consultation was organized in response to decision IX/12 on Access and Benefit-sharing, paragraph 17, where the Conference of the Parties (COP) emphasized the importance of consultations to advance the negotiations of the International Regime on Access and Benefit-sharing and requested the Co-Chairs of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (WG-ABS) to be instrumental in organizing and facilitating such consultations during the intersessional period. The decision also encouraged Parties and stakeholders to carry out bilateral, regional and interregional meetings and consultations and called upon donors and relevant organizations to provide financial resources necessary for such meetings and consultations. In addition, in paragraph 22 of the same decision, the COP invited the United Nations Environment Programme (UNEP), governments and other international organizations to support regional and interregional Consultations in close collaboration with the Secretariat.
3. In accordance with the above, and further to notification 2009-010 of 24 August 2009 announcing the tentative calendar of the Regional Consultations, the Regional Consultation for Central and Eastern Europe provided an opportunity for the negotiators from the region to consult and exchange views on the components of the International Regime during the intersessional period with a view to finalizing the negotiations of the International Regime at the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.
4. The following countries sent government-nominated officers or experts to the workshop: Azerbaijan, Croatia, Estonia, Georgia, Hungary, Montenegro, Poland, Serbia, Tajikistan, and Ukraine. The list of participants is attached as Annex II.

II. PROCEEDINGS OF THE REGIONAL CONSULTATION

**ITEM 1. OPENING OF THE MEETING, ORGANIZATIONAL MATTERS AND
ADOPTION OF THE AGENDA**

5. Ms Snezana Prokic, CEE member of the CBD Bureau, opened the meeting at 9am on Tuesday, 9 February 2010.
6. Opening statements were made by Mr Alphonse Kambu of UNEP's Division on Environmental Law and Conventions on behalf of UNEP; Mr Horst Korn, Head of the Division on Biodiversity of the Federal Agency for Nature Conservation on behalf of the host country Germany, Mr Lyle Glowka, Senior Legal Advisor of the Secretariat of the Convention on Biological Diversity on behalf of the Executive Secretary of the Convention on Biological Diversity; Mr. Fernando Casas and Mr. Timothy Hodges, Co Chairs of WG-ABS.
7. Mr. Kambu welcomed the participants. He expressed his gratitude to the co-organisers of the meeting and for the host to co-fund the meeting. He mentioned that UNEP is honoured to provide support for this meeting, underscoring the importance of the access and benefit sharing matter for UNEP,

especially in the International Year of Biodiversity with the COP 10. He also stated that UNEP is aware of the necessity of capacity building in this field.

8. Mr Korn welcomed the participants. He mentioned that the German Government attaches a high priority to the ABS matter, saying that the ultimate success of the CBD depends on the successful negotiation of an International Regime on ABS. He highlighted Germany's responsibility for implementing the CBD-COP9 decisions.

9. Mr Glowka also welcomed the participants. He underscored the progress reached by the 8th meeting of the ABS Working Group held in Montreal, last November. He said this Regional Consultation meeting constitutes an important step and an opportunity for CEE to discuss and exchange views on the main aspects concerning the international regime before the last negotiation of the Working Group towards the COP 10 to be held in Nagoya, next October. He stated that it is now time for finding compromises.

10. Mr Casas reminded the participants of the long road of tackling the third objective of the CBD. He pointed out the high complexity and the many ramifications of the ABS matter in terms of technology, science, legislation, politics, economics and social regards related to the rights of indigenous people. He stressed that the ultimate purpose of the International Regime is really to help state parties to regulate at the national level, and that the entire ABS matter is about options and opportunities and not about threats.

11. Mr Hodges mentioned that the key to success towards the adoption of the international regime is to build a better understanding within regions and across the regions in order to ensure implementation of the third objective of the CBD. With this bearing in mind there is an increasing recognition of the need of reaching an International Regime on ABS for the overall success of the CBD. He also stated that the ABS provisions in the CBD have been a response to a range of needs and reemphasized the opportunities arising from the ABS matter for each state party. He acknowledged the virile leadership of Germany during its COP presidency.

12. Ms Prokic, chair of the meeting, described the ways the CEE region has been involved in the ABS negotiations so far.

13. The following agenda was adopted, on the basis of the provisional agenda:

- Opening of the meeting, organisational matters and adoption of the agenda
- Contribution of the regional consultations to the intersessional process and for the preparation of WG-ABS 9
- The International Regime on ABS (Key elements such as access, benefit sharing, compliance, traditional knowledge and capacity building, nature, objective and scope)
- Post COP 10: Implementation related issues
- Towards WG-ABS9: A CEE perspective
- Other matters
- Closure of the meeting

ITEM 2. CONTRIBUTION OF THE REGIONAL CONSULTATIONS TO THE INTERSESSIONAL PROCESS AND FOR THE PREPARATION OF ABS WG 9

14. Mr Glowka presented a brief overview of ABS provisions of the CBD with their underlying principles and main components, of the insufficient status of implementation, and of the status of the negotiation process of the International Regime on ABS.

15. Mr Hodges provided an update of the intersessional process, including major negotiator blocs and groups, providing a background for participants about the regional consultations being held during this period. He remarked that the context of this meeting is highly relevant for the negotiation process as the

time remaining for the presentation of any proposed draft instrument (protocol) to be considered in Nagoya is short. He also mentioned that in order to achieve that goal it is necessary to have a successful conclusion of the work to be done in the 9th meeting of the ABS Working Group held in Cali this March. He stated that this working session is crucial towards that process, presented an overview of the ABS international regime negotiation process underscoring the importance of ensuring that an efficient, and most importantly, a high quality access and benefit sharing international regime is established.

16. Ms Prokic explained, that a draft paper from the CEE region had been prepared by CEE bureau members for this meeting and will be discussed in the course of this consultation as the CEE input in the intersessional process before the ABS-WG9 meeting.

17. Several participants reported on national provisions related to the use and conservation of genetic resources. None of the countries present have ABS legislation in place yet. However, participants stressed the importance of dealing with ABS since their region is both an important provider of genetic resources as well as a user. Since some of the CEE countries are also members of the EU or are EU candidates, the EU position on this matter should be taken into account when formulating a regional position. Participants reiterated that an International Regime will help their countries to draft and implement relevant legislation and provisions. The participants were grateful for this first regional meeting on ABS matters as an excellent opportunity to build networks and exchange views and experience. The need for capacity building was expressed by several representatives.

ITEM 3. THE INTERNATIONAL REGIME ON ABS

18. Drawing upon the Montreal Annex, Mr Glowka presented the key elements of the proposed International Regime. He reminded participants that access, benefit-sharing and compliance are interrelated issues.

19. Ms Prokic invited participants to exchange views and identify areas of coordinated actions/proposals with respect, among others, to the following issues:

- Access
- Benefit-sharing
- Compliance
- Nature, objective, scope
- Traditional Knowledge and Capacity-building

20. The representatives presented their views on each of the elements which were analyzed from different perspectives during an active discussion. Issues discussed were

- Disclosure requirements and their relationship to the Patent Examination Process and Intellectual Property Rights
- Certificate of compliance with its practical and cost implications
- Non-discrimination of access rules versus preferential bilateral agreements
- Sustainability criteria as part of the national access provisions
- The continuum of non-commercial and commercial use of genetic resources and options for dealing with this
- Options to encourage use of genetic resources for research purposes while at the same time ensuring monetary and non-monetary benefit sharing
- The nature of genetic resources and derivatives
- The nature of the International Regime and the EU position on this
- The objective of the International Regime

- The inclusion of traditional knowledge associated with genetic resources into the International Regime.

It was then possible to identify common understandings on some of the elements which could constitute the main principles for the negotiation of an International Regime from the region's perspective. The elements identified are further detailed in Annex I to this report. The report with its Annexes will be sent to all CBD and ABS NFPs of the region for consideration and use in the regional process to prepare for ABS WG9, and will provide a basis for all countries in the region to engage more actively in the negotiations. The report will be posted on the CBD (and BfN) website.

ITEM 4. POST COP 10: IMPLEMENTATION RELATED ISSUES

21. Mr Glowka introduced some considerations for a COP10 decision on the adoption of a protocol and an intergovernmental committee for the interim implementation and highlighted several procedural and budgetary implications.

ITEM 5. TOWARDS WG ABS9: A CEE PERSPECTIVE

22. The WG-ABS Co-chairs informed the group about the upcoming Co-chairs' Informal Inter-regional Consultations (CIIC) to be held before the ninth meeting of the Working Group on Access and Benefit-sharing, in Cali, Colombia (16-18 March 2010). To be held shortly before WG-ABS 9, the meeting has the goal to facilitate negotiations at WG-ABS 9 and identify solutions to outstanding issues and to consult on preambular text, definitions and provisions. The Co-chairs emphasised that the CICC is not a negotiation meeting and the CICC will not be a decision making body. The Co-chairs also emphasised that according to the notification 2010-013 (22 January 2010) the Bureau Members from each region were requested to liaise with their respective region and provide the Secretariat the names of the eight representatives of their region to participate in the CICC. These eight representatives will be designated to participate on behalf of their region (and not on behalf of their country).

23. Participants agreed on the composition of the CEE delegation to participate in the CICC. The following countries were designated to participate in the CICC: Belarus (Natalya Minchenko), Croatia (Dubrovka Stepic), Czech Republic (Vlastimil Zedek), Georgia (Joseb Kartsivadze), Hungary (Ditta Greguss), Serbia (Snezana Prokic), Tajikistan (Tatyana Novikova) and Ukraine (Sergey Gubar). In case that one or more of these countries cannot participate, replacements will be nominated from the countries of Armenia, Moldova, Russian Federation or Slovenia. The nominations will be communicated to the CBD Secretariat through the CEE Bureau members by the deadline of 20 February 2010. The question of financial support towards the participation of these nominees needs to be clarified soon, in particular it was noted that the nominated representative from the EU/CEE country will require financial support.

ITEM 6. OTHER MATTERS

24. As of 10 February 2010, out of the 28 countries of the CEE region only 6 countries (Belarus, Czech Republic, Georgia, Serbia, Tajikistan, and Ukraine) have registered so far for the ABS WG9. The representatives present at this regional consultation strongly urged all CEE countries to prioritise their participation in ABS-WG 9 considering that this is the final negotiation session for the International Regime, and to pre-register with the CBD Secretariat as soon as possible.

ITEM 7. CLOSURE OF THE MEETING

25. The meeting expressed its appreciation and gratitude to the government of Germany for its hospitality.

26. The chair expressed its appreciation to UNEP and CBD Secretariat and to the Federal Agency for Nature Conservation for the preparation and organization of this consultation meeting.

27. The Regional Consultation closed at 5 p.m. on Wednesday, 10 February 2010.

Vilm, 10 February 2010

REGIONAL CONSULTATION FOR CENTRAL AND EASTERN EUROPEAN COUNTRIES IN SUPPORT OF THE FINALIZATION OF THE INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING

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Bearing in mind that access and benefit-sharing is one of the three pillars and objectives of the Convention on Biological Diversity, 10 countries of the CEE Region participating in the regional consultation would like to offer the following common understandings concerning the main components of the International Regime on Access and Benefit sharing as a basis for facilitating the finalization of the International Regime.¹

NATURE

1. International Regime on Access and Benefit-sharing should be a protocol as a legally binding instrument.

OBJECTIVE

1. The objective of the International Regime on Access and Benefit-sharing is to effectively implement the provisions in Articles 1, 8(j), 15, 16 and 19.2 of the Convention and its three objectives, by:

- Regulating and facilitating access to genetic resources, their derivatives and products containing genetic material and associated traditional knowledge through transparent legal and institutional frameworks;
- Ensuring the establishment of conditions and measures for the fair and equitable sharing of benefits arising out of utilization of genetic resources, their derivatives and products containing genetic material and associated traditional knowledge and to prevent their misappropriation and misuse;
- Securing compliance with national ABS legislation, including access (PIC) and benefit-sharing (MAT), of the country of origin providing those resources or of the Party that had acquired those resources in accordance with the Convention on Biological Diversity;
- Establishing provisions that will facilitate the rights and obligations of Parties building on and going beyond the Bonn Guidelines;

taking into account all rights over those resources and associated traditional knowledge of indigenous and local communities.

SCOPE

1. The development of definitions would help to determine more accurately the scope of the provisions of the International Regime, and can contribute to generate legal certainty for users and providers of genetic resources.

2. The International Regime on Access and Benefit-sharing applies to genetic resources, their derivatives and products containing genetic material, as well as associated traditional knowledge, innovations and practices in accordance with relevant provisions of the CBD.

¹ The content of the paper below is also based on regional CEE consultations during previous WGABS and intervention made on behalf of CEE in WGABS sessions with some proposals.

3. The International Regime on Access and Benefit-sharing applies to benefits arising from commercial and other utilization from the date of entry into force of the International Regime.

4. The International Regime on Access and Benefit-sharing does not apply to:

- (a) Human genetic resources;
- (b) Marine genetic resources located in areas beyond the limits of national jurisdiction;

5. The International Regime should be implemented in harmony with other existing international instruments and processes addressing genetic resources.

ASSOCIATED TRADITIONAL KNOWLEDGE

1. The International Regime should recognise that there are rights and obligations to be met regarding access and benefit sharing arising from the use of the traditional knowledge associated with genetic resources and that the interested parties should understand these.

2. There is a need to identify mechanisms for the cases of transboundary traditional knowledge associated with genetic resources.

CAPACITY BUILDING

1. The International Regime on Access and Benefit-sharing should establish and strengthen capacity for its implementation according to national needs and priorities.

ACCESS

1. The International Regime should re-affirm Parties have sovereign rights over their genetic resources including the authority to determine access to genetic resources subject to national legislation.

2. The International Regime should require Parties to ensure legal certainty, clarity and transparency for both users and providers through their national ABS frameworks noting that this will contribute to compliance.

3. Prior informed consent is a precondition to obtain access to genetic resources and should be non-discriminatory.

4. When access is granted it shall be subject to mutually agreed terms.

5. A national competent authority that is responsible for access requests should be appointed and supported.

6. It is important to exchange information on access through a clearing house mechanism.

7. Explore options for facilitating simplified access for non-commercial use.

BENEFIT SHARING

1. Benefit sharing should be upon mutually agreed terms.

2. The International Regime should promote equality in the negotiation of mutually agreed terms.

3. The International Regime should include provisions to guarantee the fair and equitable sharing of monetary and non-monetary benefits.
4. A follow-up and monitoring mechanism included in the compliance section of the International Regime should ensure compliance with national legislation, as well as the benefit sharing set out in mutually agreed terms.

COMPLIANCE

1. The International Regime on ABS should include obligations in relation to compliance measures.
2. Compliance measures include promotion, monitoring and enforcement of compliance with national ABS legislation and mutually agreed terms.
3. Internationally recognized certificate issued by the national competent authority:
 - a) The decision to grant the prior informed consent registered by a Party in the clearing house mechanism, shall be the internationally recognized certificate;
 - b) Where a genetic resource is covered by an internationally recognised certificate of compliance, Parties shall deem that this genetic resource has been obtained in compliance with the domestic ABS framework of the provider country and has not been misappropriated.
4. Users of genetic resources should take steps to assure themselves that they are not using misappropriated genetic resources.
5. Mechanisms are required to facilitate genetic resources monitoring and information exchange for the purposes of the International Regime.
6. Developed countries could support capacity building of the users of genetic resources in order to ensure that they will comply effectively with the provisions of the International Regime.

Annex II

**Regional Consultations for Central and Eastern European Countries in support of the finalization of the International Regime on
Access and Benefit-sharing
8 to 11 February 2010, INA Vilm, Germany**

List of Participants

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