Access and Benefit-Sharing in Germany

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Germany has been actively involved in the development of the international regime for access and benefit-sharing (ABS) since its earliest stages. It signed the Convention of Biological Diversity (CBD) on 12 June 1992 and ratified it on 21 December 1993, just before the CBD entered into force.1 In October 2001, Germany hosted the meeting in Bonn at which the Ad Hoc Open-Ended Working Group on Access and Benefit-sharing adopted the draft of the Bonn Guidelines, which were subsequently approved by the Sixth Conference of the Parties (COP 6) in 2002. In 2008, Germany also hosted COP 9 in Bonn.

Along with other European countries, it signed the Nagoya Protocol in 2011,2 the legally binding framework adopted at the 10th COP to promote the implementation of ABS; while already being also a signatory of the CBD International Treaty on Plant Genetic Resources (ITPGRFA), which entered into force in 2004; that treaty is considered to be a specialised ABS instrument, under Article 4.2 of the Nagoya Protocol.

As a country with little natural resources, Germany clearly identifies itself not as a provider, but as a user of genetic resources originating from other countries. Germany’s public and private institutions invest largely in both basic and applied research3 and experimental development. Worldwide, Germany is ranked fifth in granting intellectual property rights over all inventions, especially patents.4 Consequently, Germany’s research-related industry is highly competitive. Some of these industries are related to the use of genetic resources in one way or the other. Industries related to such resources include

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1 The CBD went into force on 29 December 1993, 90 days after the 30th country ratified it. According to the CBD webpage (http://www.cbd.int/convention/parties/list/), Germany ratified the CBD after the 30th country; according to article 36 of the CBD, the CBD went into force in Germany on 22 March 1994.
2 Germany signed the Nagoya Protocol along with other 11 European countries on 23 June 2011.
3 Approximately 2.84% of its GDP, making it 4th after the United States, Japan and China. http://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS.
sectors such as pharmacy, horticulture, plant breeding (for food, agriculture and ornamentals), nutraceuticals, cosmetics and biotechnology industries, which either use natural compounds or synthesise their own material.

In what follows, we will first give an overview of the specific legal provisions on ABS in Germany and a brief overview (in Section II) at how access to biological material is regulated. In Section III, we focus on the different activities and the diversity of actors concerned with access and use of genetic resources from foreign countries, in compliance with the CBD, followed by our conclusions (in Section IV).

I Legal Provisions on Access and Benefit-Sharing in Germany

The Nagoya Protocol will be implemented EU-wide through the new EU Regulation No 511/2014 of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union (hereinafter referred to as the “EU Regulation on ABS”). This regulation entered into force on 9 June 2014 and applies as of 12 October 2014, when the Nagoya Protocol itself enters into force worldwide and for the European Union. However, the most relevant Articles 4, 7 and 9 of the EU Regulation on ABS will apply only one year after that, because additional measures need to be put in place before they can be applied. The EU Regulation on ABS implements all relevant international obligations uniformly on EU level that concern the use of genetic resources, especially Articles 15, 16 and 17 of the Nagoya Protocol. The regulation of access remains with the member states.

Germany is currently in the process of adopting a law to complement the implementation of the Nagoya Protocol on the national level and to implement the parts of the EU Regulation on ABS that need to be substantiated. Germany is a federal state, the competency to legislate is split between the

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6 EU Regulation on ABS Article 17 para. 3.

7 Bundestags-Drucksache 17/14245, 27.06.2013, p. 2.

8 Draft law of 7 February 2014, Law for the implementation of the obligations stemming from the Nagoya Protocol and the EU Regulation (Gesetz zur Umsetzung der Verpflichtung aus dem Nagoya-Protokoll und aus der Verordnung EU (xxx/xxx), Gesetz über die Nutzung genetischer Ressourcen – NgRG) (translation by the authors). This draft law has not yet been agreed on between the different ministries that are responsible for ABS. Therefore, it is