

Annex 2

Reasoned opinion of the Riksdag

In the light of the examination of the application of the principle of subsidiarity in the Commission's proposal for a Regulation of the European Parliament and the Council on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation in the Union (COM(2012) 576 final) as reported in the statement from the Committee on Environment and Agriculture 2012/13:MJU6 Access to Genetic Resources, etc., the Riksdag considers that the current proposal conflicts with the principle of subsidiarity.

The Riksdag would like to begin by pointing out that it is essential that both the EU and individual member states in the Union take the necessary measures to ensure the ratification of the Nagoya Protocol.

In the Convention on Biological Diversity, it is recognised that states have sovereign rights concerning genetic resources within their jurisdiction and the right to decide as regards access to these resources. The parties are at the same time obliged to take measures to facilitate access to their genetic resources. The Nagoya Protocol includes rules regarding access to genetic resources as well as fair and equitable sharing of the benefits arising from their utilisation.

The Riksdag welcomes the fact that the Commission has presented a regulation that contains measures for the implementation of the Nagoya Protocol in the Union. The Riksdag notes that the Nagoya Protocol will need to be ratified by the Union and all its member states. Both the Union and each member state has to be able to show that they meet all their obligations in accordance with the Protocol.

How this is to be achieved is an internal matter for the EU and its member states. All measures at EU level require the Union to have the relevant authority and they also require that it is possible to demonstrate that there is added value which cannot be achieved with measures implemented at national level. Under the principle of subsidiarity, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states, either at central level or at regional and local level, and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Union level. As mentioned above, the Commission's proposal for a regulation is to be applied to genetic resources to which states have sovereign rights and to traditional knowledge concerning genetic resources following the entry into force in the Union of the Nagoya Protocol.

In the part in which the proposal intends to regulate that users of genetic resources and traditional knowledge concerning genetic knowledge follow the regulations in the Nagoya Protocol, the Riksdag considers that a harmonisation of the legislation is justified. The aim of legislation of this kind is to simplify matters for users, and it is difficult to see that individual member states without EU measures would be able to coordinate their national legislation in a way corresponding to the focus of the proposal. According to the Riksdag's assessment, this part of the proposal is compatible with the principle of subsidiarity.

As stated in Article 1 of the Commission's proposal, the aim of the regulation is to establish provisions on access to and sharing of benefits from genetic resources and traditional knowledge concerning genetic resources in accordance with the provisions in the Nagoya Protocol. As regards measures for such matters as access, the parties to the Protocol may

themselves decide whether they wish to regulate access. In the opinion of the Riksdag, the legislative competence in this area should remain with the member states. The Commission's proposal does not exclude a transfer of national competence to the EU in this part since it is not clearly stated that the regulation refers to the use of genetic resources and traditional knowledge concerning genetic resources. Only two EU member states have developed legislation on access to genetic resources to which they have sovereign rights. Other member states have free access to their genetic resources. In addition to this, the Commission emphasises that harmonised measures at EU level for access are not necessary. The Riksdag considers that under these circumstances it is therefore an unnecessary and disproportional measure to establish a "Union platform" with the purpose of tightening up and discussing member states' regulation regarding access. The establishment of such a platform through the regulation would have no advantages. The proposal to establish a platform for access to genetic resources in the EU can be seen as an initial step towards EU-harmonised legislation on access. The legislative competence should also for this area therefore remain with the member states.

In summary, the Riksdag considers that parts of the Commission's proposal for a regulation in its present form should not be implemented at EU level since they cannot be regarded to be in agreement with the principle of subsidiarity.