Discussion document on the Implementing Act – Comments from RBG, Kew, UK

The Royal Botanic Gardens, Kew, UK is a botanical garden with global and historic plant collections dating back 255 years. Kew's collections include approximately 7 million dried plant specimens, a living collection of over 19,000 plant species, 1.25 million dried fungi specimens, 150,000 slides detailing plant micro-traits, the world's largest wild plant DNA bank and genome size database and two billion seeds in the MSB, in addition to many other smaller collections and databases.

Kew is active in over 70 different countries and the fieldwork and sharing of information Kew undertakes in order to achieve its scientific objectives is dependent on working in partnerships. The agreements Kew has with partners ensure Kew works according to national and international laws and priorities. Kew has hundreds of scientific visitors to its collections each year, and tens of thousands use its online database resources.

We note that Article 8a of the Nagoya Protocol states that "In the development and implementation of its … regulatory requirements, each Party shall: (a) Create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research".

In order to encourage regulation that supports and encourages the crucial conservation research we do, we have the following comments:

Voluntary Tools

- use of terminology 'registering collections as *suppliers* of genetic resources' be amended to 'holders of genetic resources'.

Monitoring user compliance

- Need clarification on what constitutes 'utilisation of genetic resources' within the Regulation to adequately fulfil due diligence requirements e.g. – what is research funding involving utilisation?
- Very unclear where the trigger for due diligence declaration should be in the chain of utilisation. Need more clarity here.
- How would EU enforce due diligence declaration being made when product development takes place outside the Union? Surely this is out of scope of the Regulation.

Register of Collections

- Can Collections apply to be Registered collections if the MS in which they are located is not a Party to NP?
- Where only part of a collection is included in a register this is likely to be due to date of access of genetic resources in the collection (post NP), appropriate documentation, and potential for utilisation
- Kew's current position is that we will only consider applying for collections/part of collections to be Registered if the genetic material in that collection is: collected post NP, sufficiently well documented to fulfil A5 requirements, and for which there is a business case for establishing a RC (i.e. any collections for which we expect or want to encourage commercial users).

A7 – monitoring user compliance

DDD at research funding stage

Two key issues remain unclear: what is utilisation and what activities should trigger the declaration? and, when should the declaration be made - when the funding is received? When the genetic resource is accessed? Or utilised? These stages may happen at different locations/institutions and involving different parties (and Parties).

- First due diligence declaration to be made '**upon first receipt** of **research funding** by the recipients of research funding **involving the utilisation of GR and/or TK**'. If the GR have not yet been obtained then the declaration should be made 'at the latest when the recipient of research funding .... has obtained the GR and or TK'.
- The trigger is very unclear. Is it on receipt of the funding? What if there are a variety of funding sources for one project? Is it when GR is obtained (and what does this mean – collection? Arrival at institution?). What does research funding mean? Again, clarity is needed on the definition of utilisation of GR and/or TK to make this workable.
- What is the due diligence duty when no utilisation (r and d) is expected in the period of research funding, but there is a likelihood/possibility/potential of future utilisation by a third party user?
- Applicability of Regulations to Union funded research that takes place outside the Union is beyond scope and unenforceable

DDD at stage of final development of product

- What does 'product developed via utilisation' cover? Could this be a publication?
- In (d) what might 'the result of utilisation is sold or *in any other form* transferred' cover? Could this cover DNA barcodes? If so then this DDD will be very arduous to fulfil.
- Where utilisation takes place outside the Union this is not in scope of Regulations.

Application of recognition of best practices

- Do all members need to send CVs? This would be unworkable and unenforceable. Surely just head/executive?

Deficiency of best practice

- Associations of users may not have authority to deal with non compliance with best practice (which, by their nature, are usually voluntary). This duty should be carried out by CA.

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