Regulation (EU) No 511/2014 of the European Parliament and of the Council

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 Utilization in the Union

(Text with EEA relevance)

Introductory Text

CHAPTER I - SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1 Subject matter
Article 2 Scope
Article 3 Definitions

CHAPTER II - USER COMPLIANCE

Article 4 Obligations of users
Article 5 Register of collections
Article 6 Competent authorities and focal point
Article 7 Monitoring user compliance
Article 8 Best practices
Article 9 Checks on user compliance
Article 10 Records of checks
Article 11 *Deleted*

CHAPTER III - FINAL PROVISIONS

Article 12 Cooperation
Article 13 Complementary measures
Article 14 Committee procedure
Article 15 *Deleted*
Article 16 Reports and review
Article 17 Entry into force and application

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The main international instrument providing a general framework for the conservation and sustainable use of biological diversity and the fair and equitable sharing of the benefits arising from the utilisation of genetic resources is the Convention on Biological Diversity, approved on behalf of the Union in accordance with Council Decision 93/626/EEC (the 'Convention').

(2) The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity (the 'Nagoya Protocol') is an international treaty adopted on 29 October 2010 by the Parties to the Convention. The Nagoya Protocol further elaborates upon the general rules of the Convention on access to genetic resources and sharing of monetary and non-monetary benefits arising from the utilisation of genetic resources and traditional knowledge associated with genetic resources ('access and benefit-sharing'). In accordance with Council Decision 2014/283/EU, the Nagoya Protocol was approved on behalf of the Union.

(3) A broad range of users and suppliers in the Union, including academic, university and non-commercial researchers and companies from different sectors of industry, use genetic resources for research, development and commercialisation purposes. Some also use traditional knowledge associated with genetic resources.

(4) Genetic resources represent the gene pool in both natural and domesticated or cultivated species and play a significant and growing role in many economic sectors, including food production, forestry, and the development of medicines, cosmetics and bio-based sources of energy. Furthermore, genetic resources play a significant role in the implementation of strategies designed to restore damaged ecosystems and safeguard endangered species.

(5) Traditional knowledge that is held by indigenous and local communities could provide important lead information for the scientific discovery of interesting genetic or biochemical properties of genetic resources. Such traditional knowledge includes knowledge, innovations and practices, of indigenous and local communities embodying traditional lifestyles, relevant for the conservation and sustainable use of biological diversity.

(6) The Convention recognises that States have sovereign rights over natural resources found within their jurisdiction and the authority to determine access to their genetic resources. The Convention imposes an obligation on all Parties thereto to endeavour to create conditions to facilitate access to genetic resources, over which they exercise sovereign rights, for environmentally sound uses by other Parties to the Convention. The Convention also makes it mandatory for all Parties thereto to take measures with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from commercial and other utilisation of genetic resources with the Party to the Convention that provided those resources. Such sharing is to take place upon mutually agreed terms. The Convention

also addresses access and benefit-sharing in relation to the knowledge, innovations and practices of indigenous and local communities, which are relevant for the conservation and sustainable use of biological diversity.

(7) Genetic resources should be preserved in situ and utilised in sustainable ways, and the benefits arising from their utilisation should be shared fairly and equitably, in order to contribute to poverty eradication and, thereby, to achieving the United Nations Millennium Development Goals, as acknowledged in the preamble of the Nagoya Protocol. The implementation of the Nagoya Protocol should also aim to realise that potential.

(8) The Nagoya Protocol applies to genetic resources, over which States exercise sovereign rights, falling within the scope of Article 15 of the Convention as opposed to the wider scope of Article 4 of the Convention. That implies that the Nagoya Protocol does not extend to the full jurisdictional scope of Article 4 of the Convention, such as to activities taking place in marine areas beyond national jurisdiction. Research on genetic resources is gradually being extended into new areas, especially the oceans which are still the planet's least explored and least well-known environments. The deep ocean in particular represents the last great frontier on the planet and is attracting growing interest in terms of research, prospecting and resource exploration.

(9) It is important to set out a clear and sound framework for implementing the Nagoya Protocol that should contribute to the conservation of biological diversity and the sustainable use of its components, the fair and equitable sharing of the benefits arising from the utilisation of genetic resources and poverty eradication, while at the same time enhancing opportunities available for nature-based research and development activities in the Union. It is also essential to prevent the utilisation in the Union of genetic resources or traditional knowledge associated with genetic resources, which were not accessed in accordance with the national access and benefit-sharing legislation or regulatory requirements of a Party to the Nagoya Protocol, and to support the effective implementation of benefit-sharing commitments set out in mutually agreed terms between providers and users. It is also essential to improve the conditions for legal certainty in connection with the utilisation of genetic resources and traditional knowledge associated with genetic resources.

(10) The framework created by this Regulation will contribute to maintaining and increasing trust between Parties to the Nagoya Protocol as well as other stakeholders, including indigenous and local communities, involved in access and benefit-sharing of genetic resources.

(11) In order to ensure legal certainty, it is important that the rules implementing the Nagoya Protocol apply only to genetic resources over which States exercise sovereign rights within the scope of Article 15 of the Convention, and to traditional knowledge associated with genetic resources within the scope of the Convention, which are accessed after the entry into force of the Nagoya Protocol for the Union.

(12) The Nagoya Protocol requires each Party thereto, in the development and implementation of its access and benefit-sharing legislation or regulatory requirements, to consider the importance of genetic resources for food and agriculture (GRFA) and their special role for food security. In accordance with Council Decision 2004/869/EC, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) was approved on behalf of the Union. The ITPGRFA constitutes a specialised international access and benefit-sharing instrument within the meaning of Article 4(4) of the Nagoya Protocol that should not be affected by the rules implementing the Nagoya Protocol.

(13) Many Parties to the Nagoya Protocol, in the exercise of their sovereign rights, have decided that Plant Genetic Resources for Food and Agriculture (PGRFA) under their management and control and in the public domain, not listed in Annex I to the ITPGRFA, are also to be subject to the terms and conditions of the standard material transfer agreement (sMTA) for the purposes set out under the ITPGRFA.

(14) The Nagoya Protocol should be implemented in a manner that is mutually supportive with other international instruments that do not run counter to the Protocol's objectives or to those of the Convention.

(15) In Article 2 of the Convention, the terms 'domesticated species' are defined as any species in which the evolutionary process has been influenced by humans to meet their needs and 'biotechnology' as any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use. In Article 2 of the Nagoya Protocol, the term 'derivatives' is defined as a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

(16) The Nagoya Protocol requires each Party thereto to pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or

internationally. On 24 May 2011, the Sixty-fourth World Health Assembly adopted the Pandemic Influenza Preparedness Framework for the sharing of influenza viruses and access to vaccines and other benefits (the 'PIP Framework'). The PIP Framework applies only to influenza viruses with human pandemic potential and specifically does not apply to seasonal influenza viruses. The PIP Framework constitutes a specialised international access and benefit-sharing instrument that is consistent with the Nagoya Protocol and that should not be affected by the rules implementing the Nagoya Protocol.

(17) It is important to include in this Regulation the definitions from the Nagoya Protocol and the Convention that are necessary for the implementation of this Regulation by users. It is important that the new definitions contained in this Regulation, which are not included in the Convention or in the Nagoya Protocol, are consistent with the definitions of the Convention and the Nagoya Protocol. In particular, the term 'user' should be consistent with the definition of 'utilization of genetic resources' from the Nagoya Protocol.

(18) The Nagoya Protocol lays down an obligation to promote and encourage research related to biological diversity, in particular research with non-commercial intent.

(19) It is important to recall paragraph 2 of Decision II/11 of the Conference of the Parties to the Convention which reaffirms that human genetic resources are not included within the framework of the Convention.

(20) There is currently no internationally-agreed definition of 'traditional knowledge associated with genetic resources'. Without prejudice to the competence and responsibility of the Member States for matters relating to traditional knowledge associated with genetic resources and the implementation of measures to safeguard indigenous and local communities' interests, in order to ensure flexibility and legal certainty for providers and users, this Regulation should make reference to traditional knowledge associated with genetic resources as described in benefit-sharing agreements.

(21) With a view to ensuring the effective implementation of the Nagoya Protocol, all users of genetic resources and traditional knowledge associated with genetic resources should exercise due diligence to ascertain whether genetic resources and traditional knowledge associated with genetic resources have been accessed in accordance with applicable legal or regulatory requirements and to ensure that, where relevant, benefits are fairly and equitably shared. In that context, competent authorities should accept internationally-recognised certificates of compliance as evidence that the genetic resources covered were legally accessed and that mutually agreed terms were established for the user and the utilisation specified therein. The specific choices made by users as regards the tools and measures to apply in order to exercise due diligence should be supported through the recognition of best practices, as well as complementary measures in support of sectoral codes of conduct, model contractual clauses and guidelines with a view to increasing legal certainty and reducing costs. The obligation on users to keep information which is relevant for access and benefit-sharing should be limited in time and in accordance with the time-frame for potential innovation.

(22) The successful implementation of the Nagoya Protocol depends on users and providers of genetic resources or of traditional knowledge associated with genetic resources negotiating mutually agreed terms that lead to fair and equitable benefit-sharing and contribute to the Nagoya Protocol's wider objective of contributing to the conservation and sustainable use of biological diversity. Users and providers are also encouraged to raise awareness of the importance of genetic resources and of traditional knowledge associated with genetic resources.

(23) The due diligence obligation should apply to all users irrespective of their size, including micro, small and medium-sized enterprises. This Regulation should offer a range of measures and tools to enable micro, small and medium-sized enterprises to comply with their obligations at an affordable cost and with a high level of legal certainty.

(24) Best practices developed by users should play an important role in identifying due diligence measures that are particularly suitable for achieving compliance with the system of implementation of the Nagoya Protocol at an affordable cost and with a high level of legal certainty. Users should build on existing access and benefit-sharing codes of conduct developed for the academic, university and non-commercial research sectors and different industries. Associations of users should be able to request that the Commission determine whether it is possible for a specific combination of procedures, tools or mechanisms overseen by an association to be recognised as best practice. Competent authorities of the Member States should consider that the implementation of a recognised best practice by a user reduces that user's risk of non-compliance and justifies a reduction in compliance checks. The same should apply to best practices adopted by the Parties to the Nagoya Protocol.

(25) Under the Nagoya Protocol check-points must be effective and should be relevant to the utilisation of genetic resources. At identified points in the chain of activities that constitute utilisation, users should declare and provide evidence, when requested, that they have exercised due diligence. One suitable

point for such a declaration is when research funds are received. Another suitable point is at the final stage of utilisation, meaning at the stage of final development of a product before requesting market approval for a product developed via the utilisation of genetic resources or traditional knowledge associated with such resources, or, where market approval is not required, at the stage of final development of a product before first placing it on the Union market. In order to ensure the effectiveness of check-points, while at the same time increasing legal certainty for users, implementing powers should be conferred on the Commission in accordance with Article 291(2) of the Treaty of the Functioning of the European Union. The Commission should make use of those implementing powers to determine the stage of final development of a product, in accordance with the Nagoya Protocol, in order to identify the final stage of utilisation in different sectors.

(26) It is important to acknowledge that the Access and Benefit-Sharing Clearing House would play an important role in implementing the Nagoya Protocol. In accordance with Articles 14 and 17 of the Nagoya Protocol, information would be submitted to the Access and Benefit-Sharing Clearing House as part of the internationally-recognised certificate of compliance process. The competent authorities should cooperate with the Access and Benefit-Sharing Clearing House to ensure that the information is exchanged to facilitate the monitoring by the competent authorities of the compliance of users.

(27) The collection of genetic resources in the wild is mostly undertaken for non-commercial purposes by academic, university and non-commercial researchers or collectors. In the vast majority of cases and in almost all sectors, newly-collected genetic resources are accessed through intermediaries, collections, or agents that acquire genetic resources in third countries.

(28) Collections are major suppliers of genetic resources and traditional knowledge associated with genetic resources utilised in the Union. As suppliers they can play an important role in helping other users in the chain of custody to comply with their obligations. In order to do so, a system of registered collections within the Union should be put in place through the establishment of a voluntary register of collections to be maintained by the Commission. Such a system would ensure that collections included in the register effectively apply measures restricting the supply of samples of genetic resources to third persons with documentation providing evidence of legal access, and ensure the establishment of mutually agreed terms, where required. A system of registered collections within the Union should substantially lower the risk that genetic resources which were not accessed in accordance with the national access and benefit-sharing legislation or regulatory requirements of a Party to the Nagoya Protocol are utilised in the Union. The competent authorities of Member States should verify if a collection meets the requirements for recognition as a collection for inclusion in the register. Users that obtain a genetic resource from a collection included in the register should be considered to have exercised due diligence as regards the seeking of all necessary information. This should prove particularly beneficial for academic, university and non-commercial researchers as well as small and medium-sized enterprises and should contribute to a reduction in administrative and compliance requirements.

(29) Competent authorities of Member States should check whether users comply with their obligations, have obtained prior informed consent and have established mutually agreed terms. Competent authorities should also keep records of the checks made, and relevant information should be made available in accordance with Directive 2003/4/EC of the European Parliament and of the Council.

(30) Member States should ensure that infringements of the rules implementing the Nagoya Protocol are sanctioned by means of effective, proportionate and dissuasive penalties.

(31) Taking into account the international character of access and benefit-sharing transactions, competent authorities of the Member States should cooperate with each other, with the Commission, and with the competent national authorities of third countries in order to ensure that users comply with this Regulation and support an effective application of the rules implementing the Nagoya Protocol.

(32) The Union and the Member States should act in a proactive manner to ensure that the objectives of the Nagoya Protocol are achieved in order to increase resources to support the conservation of biological diversity and the sustainable use of its components globally.

(33) The Commission and the Member States should take appropriate complementary measures to enhance the effectiveness of the implementation of this Regulation and to lower costs, particularly where this would benefit academic, university and non-commercial researchers and small and medium-sized enterprises.

(34) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(35) Since the objective of this Regulation, namely to support the fair and equitable sharing of the benefits arising from the utilisation of genetic resources in accordance with the Nagoya Protocol, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and the need to ensure the functioning of the internal market, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

(36) The date of entry into force of this Regulation should be directly correlated to the entry into force of the Nagoya Protocol for the Union in order to ensure equal conditions at Union and global level in activities relating to access and benefit-sharing of genetic resources,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes rules governing compliance with access and benefit-sharing for genetic resources and traditional knowledge associated with genetic resources in accordance with the provisions of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the 'Nagoya Protocol'). The effective implementation of this Regulation will also contribute to the conservation of biological diversity and the sustainable use of its components, in accordance with the provisions of the Convention on Biological Diversity (the 'Convention').

Article 2

Scope

1. This Regulation applies to genetic resources over which States exercise sovereign rights and to traditional knowledge associated with genetic resources that are accessed after the entry into force of the Nagoya Protocol for Gibraltar. It also applies to the benefits arising from the utilisation of such genetic resources and traditional knowledge associated with genetic resources.

2. This Regulation does not apply to genetic resources for which access and benefit-sharing is governed by specialised international instruments that are consistent with, and do not run counter to the objectives of the Convention and the Nagoya Protocol.

3. *Deleted*

4. This Regulation applies to genetic resources and traditional knowledge associated with genetic resources to which access and benefit-sharing legislation or regulatory requirements of a Party to the Nagoya Protocol are applicable.

5. Nothing in this Regulation obliges disclosure of information which the Minister for the Environment considers contrary to the essential interests of national security.

Article 3

Definitions

For the purposes of this Regulation, the definitions of the Convention and the Nagoya Protocol as well as the following definitions apply:

(1) ‘genetic material’ means any material of plant, animal, microbial or other origin containing functional units of heredity;

(2) ‘genetic resources’ means genetic material of actual or potential value;

(3) ‘access’ means the acquisition of genetic resources or of traditional knowledge associated with genetic resources in a Party to the Nagoya Protocol;

(4) ‘user’ means a natural or legal person that utilises genetic resources or traditional knowledge associated with genetic resources;

(5) ‘utilisation of genetic resources’ means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention;

(6) ‘mutually agreed terms’ means the contractual arrangements concluded between a provider of genetic resources, or of traditional knowledge associated with genetic resources, and a user, that set out specific conditions for the fair and equitable sharing of benefits arising from the utilisation of genetic resources or of traditional knowledge associated with genetic resources, and that may also include further conditions and terms for such utilisation as well as subsequent applications and commercialisation;

(7) ‘traditional knowledge associated with genetic resources’ means traditional knowledge held by an indigenous or local community that is relevant for the utilisation of genetic resources and that is as such described in the mutually agreed terms applying to the utilisation of genetic resources;

(8) ‘illegally accessed genetic resources’ means genetic resources and traditional knowledge associated with genetic resources which were not accessed in accordance with the national access and benefit-sharing legislation or regulatory requirements of the provider country that is a Party to the Nagoya Protocol requiring prior informed consent;

(9) ‘collection’ means a set of collected samples of genetic resources and related information that is accumulated and stored, whether held by public or private entities;

(10) “associations of users” means an organisation that represents the interests of users in Gibraltar and that is involved in developing and overseeing the best practices referred to in Article 8 of this Regulation;

(11) ‘internationally recognised certificate of compliance’ means a permit or its equivalent issued at the time of access as evidence that the genetic resource it covers has been accessed in accordance with the decision to grant prior informed consent, and that mutually agreed terms have been established for the user and the utilisation specified therein by a competent authority in accordance with Article 6(3)(e) and Article 13(2) of the Nagoya Protocol, that is made available to the Access and Benefit-sharing Clearing House established under Article 14(1) of that Protocol.

(12) “serious cross-border threat to health” means a life-threatening or otherwise serious hazard to health of biological, chemical, environmental or unknown origin which spreads or entails a significant risk of spreading across national borders, and which may necessitate international coordination in order to ensure a high level of human health protection.

CHAPTER II

USER COMPLIANCE

Article 4

Obligations of users

1. Users shall exercise due diligence to ascertain that genetic resources and traditional knowledge associated with genetic resources which they utilise have been accessed in accordance with applicable access and benefit-sharing legislation or regulatory requirements, and that benefits are fairly and equitably shared upon

mutually agreed terms, in accordance with any applicable legislation or regulatory requirements.

2. Genetic resources and traditional knowledge associated with genetic resources shall only be transferred and utilised in accordance with mutually agreed terms if they are required by applicable legislation or regulatory requirements.

3. For the purposes of paragraph 1, users shall seek, keep and transfer to subsequent users:

(a) the internationally-recognised certificate of compliance, as well as information on the content of the mutually agreed terms relevant for subsequent users; or

(b) where no internationally-recognised certificate of compliance is available, information and relevant documents on:

  (i) the date and place of access of genetic resources or of traditional knowledge associated with genetic resources;

  (ii) the description of the genetic resources or of traditional knowledge associated with genetic resources utilised;

  (iii) the source from which the genetic resources or traditional knowledge associated with genetic resources were directly obtained, as well as subsequent users of genetic resources or traditional knowledge associated with genetic resources;

  (iv) the presence or absence of rights and obligations relating to access and benefit-sharing including rights and obligations regarding subsequent applications and commercialisation;

  (v) access permits, where applicable;

  (vi) mutually agreed terms, including benefit-sharing arrangements, where applicable.

4. Users acquiring Plant Genetic Resources for Food and Agriculture (PGRFA) in a country that is a Party to the Nagoya Protocol which has determined that PGRFA under its management and control and in the public domain, not contained in Annex I to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), will also be subject to the terms and conditions of the standard material transfer agreement for the purposes set out under the ITPGRFA, shall be considered to have exercised due diligence in accordance with paragraph 3 of this Article.

5. When the information in their possession is insufficient or uncertainties about the legality of access and utilisation persist, users shall obtain an access permit or its equivalent and establish mutually agreed terms, or discontinue utilisation.

6. Users shall keep the information relevant to access and benefit-sharing for 20 years after the end of the period of utilisation.

7. Users obtaining a genetic resource from a collection included in the register of collections within Gibraltar referred to in Article 5(1) shall be considered to have exercised due diligence as regards the seeking of information listed in paragraph 3 of this Article.

8. Users acquiring a genetic resource that is determined to be, or is determined as likely to be, the causing pathogen of a present or imminent public health emergency of international concern, within the meaning of the International Health Regulations (2005), or of a serious cross-border threat to health, for the purpose of public health emergency preparedness in not yet affected countries and response in affected countries, shall fulfil the obligations listed in paragraph 3 or 5 of this Article at the latest:

(a) one month after the imminent or present threat to public health is terminated; or

(b) three months after commencement of utilisation of the genetic resource;

whichever is the earlier.

Should the obligations listed in paragraph 3 or 5 of this Article not be fulfilled by the deadlines laid down in points (a) and (b) of the first subparagraph of this paragraph, utilisation shall be discontinued.

In the event of a request for market approval or the placing on the market of products deriving from utilisation of a genetic resource as referred to in the first subparagraph, the obligations listed in paragraph 3 or 5 shall apply entirely and without delay.

In the absence of prior informed consent having been obtained in a timely manner and mutually agreed terms having been established, and until an agreement is reached with the provider country concerned, no exclusive rights of any kind will be claimed by such a user to any developments made via the use of such pathogens.

Specialised international access and benefit-sharing instruments as mentioned in Article 2 remain unaffected.

Article 5

Register of collections

1. The Minister for the Environment shall establish and maintain a register of collections (‘the register’). The Minister for the Environment shall ensure that the register is internet-based and is easily accessible to users. The register shall include the references of the collections of genetic resources, or of parts of those collections, identified as meeting the criteria set out in paragraph 3.

2. The Minister for the Environment must, upon request by a collection holder, consider the inclusion of that collection, or a part of it, in the register. After verifying that the collection, or a part of it, meets the criteria set out in paragraph 3, the Minister for the Environment must without delay include the information received in the register.

3. In order for a collection or a part of a collection to be included in the register, a collection shall demonstrate its capacity to:

(a) apply standardised procedures for exchanging samples of genetic resources and related information with other collections, and for supplying samples of genetic resources and related information to third persons for their utilisation in line with the Convention and the Nagoya Protocol;

(b) supply genetic resources and related information to third persons for their utilisation only with documentation providing evidence that the genetic resources and the related information were accessed in accordance with applicable access and benefit-sharing legislation or regulatory requirements and, where relevant, with mutually agreed terms;

(c) keep records of all samples of genetic resources and related information supplied to third persons for their utilisation;

(d) establish or use unique identifiers, where possible, for samples of genetic resources supplied to third persons; and

(e) use appropriate tracking and monitoring tools for exchanging samples of genetic resources and related information with other collections.

4. The Minister for the Environment must regularly verify that each collection or part of a collection included in the register meets the criteria set out in paragraph 3.

Where there is evidence, on the basis of information provided pursuant to paragraph 3, that a collection or a part of collection included in the register does not meet the criteria set out in paragraph 3, the Minister for the Environment must, in dialogue with the collection holder concerned and without undue delay, identify remedial actions or measures.

Where the Minister for the Environment determines that a collection or a part of a collection no longer complies with paragraph 3, the Minister for the Environment must remove the collection or the part of the collection concerned from the register .

5. The Commission shall adopt implementing acts to establish the procedures for implementing paragraphs 1 to 4 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

Article 6

Competent authorities and focal point

1. The Minister for the Environment must designate one or more competent authorities to be responsible for the application of this Regulation. The Minister for the Environment must publish from time to time any changes to the names or addresses of the competent authorities responsible for the application of this Regulation.

2. *Deleted*

3. The Minister for the Environment shall designate a focal point on access and benefit-sharing responsible for liaising with the Secretariat of the Convention with regard to matters covered by this Regulation.

Article 7

Monitoring user compliance

1. The Minister for the Environment shall request all recipients of research funding involving the utilisation of genetic resources and traditional knowledge associated with genetic resources to declare that they exercise due diligence in accordance with Article 4.

2. At the stage of final development of a product developed via the utilisation of genetic resources or traditional knowledge associated with such resources, users shall declare to the competent authorities referred to in Article 6(1) that they have fulfilled the obligations under Article 4 and shall simultaneously submit:

(a) the relevant information from the internationally-recognised certificate of compliance; or

(b) the related information as referred to in Article 4(3)(b)(i)-(v) and Article 4(5), including information that mutually agreed terms were established, where applicable.

Users shall further provide evidence to the competent authority upon request.

3. The competent authorities shall transmit the information received on the basis of paragraphs 1 and 2 of this Article to the Access and Benefit-Sharing Clearing House, established under Article 14(1) of the Nagoya Protocol, and, where appropriate, to the competent national authorities referred to in Article 13(2) of the Nagoya Protocol.

4. The competent authorities shall cooperate with the Access and Benefit-Sharing Clearing House to ensure the exchange of the information listed in Article 17(2) of the Nagoya Protocol for monitoring the compliance of users.

5. The competent authorities shall take due account of the respect of confidentiality of commercial or industrial information where such confidentiality is provided for by national law to protect a legitimate economic interest, in particular concerning the designation of the genetic resources and the designation of utilisation.

6. The Commission shall adopt implementing acts to establish the procedures for implementing paragraphs 1, 2 and 3 of this Article. In those implementing acts, the Commission shall determine the stage of final development of a product in order to identify the final stage of utilisation in different sectors. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

Article 8

Best practices

1. Associations of users or other interested parties may submit an application to the Minister for the Environment to have a combination of procedures, tools or mechanisms, developed and overseen by them, recognised as a best practice in accordance with the requirements of this Regulation. The application shall be supported by evidence and information.

2. Where, on the basis of evidence and information provided pursuant to paragraph 1 of this Article, the Minister for the Environment determines that the specific combination of procedures, tools or mechanisms, when effectively implemented by a user, enables that user to comply with its obligations under Articles 4 and 7, it shall grant recognition as best practice.

3. An association of users or other interested parties shall inform the Minister for the Environment of any changes or updates made to a best practice for which recognition was granted in accordance with paragraph 2.

4. If there is evidence of repeated or significant cases where users implementing a best practice have failed to comply with their obligations under this Regulation, the Minister for the Environment shall examine, in dialogue with the relevant association of users or other interested parties, whether those cases indicate possible deficiencies in the best practice.

5. The Minister for the Environment shall withdraw the recognition of a best practice when it has determined that changes to the best practice compromise a user's ability to comply with its obligations under Articles 4 and 7, or when repeated or significant cases of non-compliance by users relate to deficiencies in the best practice.

6. The Minister for the Environment shall establish and keep up-to-date an internet-based register of recognised best practices. That register shall, in one section, list the best practices recognised by the Commission in accordance with paragraph 2 of this Article, and, in another section, list the best practices adopted on the basis of Article 20(2) of the Nagoya Protocol.

7. The Commission shall adopt implementing acts to establish the procedures for implementing paragraphs 1 to 5 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

Article 9

Checks on user compliance

1. The competent authorities referred to in Article 6(1) shall carry out checks to verify whether users comply with their obligations under Articles 4 and 7, taking into account that the implementation by a user of a best practice in relation to access and benefit-sharing, recognised under Article 8(2) of this Regulation or under Article 20(2) of the Nagoya Protocol, may reduce that user's risk of non-compliance.

2. The Minister for the Environment shall ensure that the checks carried out pursuant to paragraph 1 are effective, proportionate, dissuasive and detect cases of user non-compliance with this Regulation.

3. The checks referred to in paragraph 1 shall be conducted:

(a) in accordance with a periodically reviewed plan developed using a risk-based approach;

(b) when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, regarding a user's non-compliance with this Regulation. Special consideration shall be given to such concerns raised by provider countries.

4. The checks referred to in paragraph 1 of this Article may include an examination of:

(a) the measures taken by a user to exercise due diligence in accordance with Article 4;

(b) documentation and records that demonstrate the exercise of due diligence in accordance with Article 4 in relation to specific use activities;

(c) instances where a user was obliged to make declarations under Article 7.

On-the-spot checks may also be carried out, as appropriate.

5. Users shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1.

6. Where, following the checks referred to in paragraph 1 of this Article, shortcomings have been detected, the competent authority shall issue a notice of remedial action or measures to be taken by the user.

Depending on the nature of the shortcomings, The Minister for the Environment may also take immediate interim measures.

Article 10

Records of checks

1. The competent authorities shall keep, for at least five years, records of the checks referred to in Article 9(1), indicating, in particular, their nature and results, as well as records of any remedial actions and measures taken under Article 9(6).

2. The information referred to in paragraph 1 must be made available in accordance with the Freedom of Access to Information on the Environment Regulations 2005.

Article 11

Deleted

CHAPTER III

FINAL PROVISIONS

Article 12

Cooperation

The competent authorities referred to in Article 6(1) shall:

(a) cooperate with each other in order to ensure that users comply with this Regulation;

(b) consult, if appropriate, with stakeholders on the implementation of the Nagoya Protocol and this Regulation;

(c) cooperate with the competent national authorities referred to in Article 13(2) of the Nagoya Protocol in order to ensure that users comply with this Regulation;

(d) *Deleted*

(e) exchange information on the organisation of their system of checks for monitoring user compliance with this Regulation.

Article 13

Complementary measures

The Minister for the Environment shall, as appropriate:

(a) promote and encourage information, awareness-raising and training activities to help stakeholders and interested parties to understand their obligations arising from the implementation of this Regulation, and of the relevant provisions of the Convention and the Nagoya Protocol in Gibraltar;

(b) encourage the development of sectoral codes of conduct, model contractual clauses, guidelines and best practices, particularly where they would benefit academic, university and non-commercial researchers and small and medium-sized enterprises;

(c) promote the development and use of cost-effective communication tools and systems in support of monitoring and tracking the utilisation of genetic resources and traditional knowledge associated with genetic resources by collections and users;

(d) provide technical and other guidance to users, taking into account the situation of academic, university and non-commercial researchers and of small and medium-sized enterprises, in order to facilitate compliance with the requirements of this Regulation;

(e) encourage users and providers to direct benefits from the utilisation of genetic resources towards the conservation of biological diversity and the sustainable use of its components in accordance with the provisions of the Convention;

(f) promote measures in support of collections that contribute to the conservation of biological diversity and cultural diversity.

Article 14

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 15

Deleted

Article 16

Reports and review

1. Unless an alternative interval for reports is determined, as referred to in Article 29 of the Nagoya Protocol, the Minister for the Environment must prepare a report on the application of this Regulation every five years beginning with the day after exit day.

2. Every 10 years after the first report the Minister for the Environment must, on the basis of reporting on, and experience with the application of, this Regulation, review the functioning and effectiveness of this Regulation in achieving the objectives of the Nagoya Protocol. In carrying out the review the Minister for the Environment must, in particular, consider the administrative consequences for public research institutions, micro, small or medium-sized enterprises and specific sectors. The Minister for the Environment must also consider the need to review the implementation of the provisions of this Regulation in light of developments in other relevant international organisations.

3. The Minister for the Environment must report to the Conference of the Parties to the Convention serving as the meeting of the Parties to the Nagoya Protocol on the measures taken by Gibraltar to implement compliance measures in respect of the Nagoya Protocol.

Article 17

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. As soon as possible following the deposit of the Union's instrument of acceptance of the Nagoya Protocol, the Commission shall publish a notice in the *Official Journal of the European Union* specifying the date on which the Nagoya Protocol will enter into force for the Union. This Regulation shall apply from that date.

3. Articles 4, 7, and 9 of this Regulation shall apply one year after the date of entry into force of the Nagoya Protocol for the Union.