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EuropaBio principles for accessing genetic resources

1. EuropaBio members are supportive of the principles embodied in the United Nations Convention on Biological Diversity (CBD)

A basic principle of the CBD is that States (Countries) have sovereign rights over their biological resources consistent with the terms and limitations of the Convention. Access and transfer with regard to such resources can only be made if “Prior Informed Consent” (PIC) has been obtained from the providing entity, as identified by the appropriate governmental authority within the Contracting Party to the Convention. A contract with the providing entity, with a content of mutually agreed terms, should include sharing of the benefits, to reflect the contracting entities’ contribution to commercial value under commercially reasonable terms, allowing for the legal export and use of the material.

However the principles of PIC and access and benefit sharing should only apply to biological resources:

- that are not privately owned¹,
- that are already, or become, available to the public on an unrestricted basis, and/or
- that were obtained after the signature date of the CBD.

Moreover, plant genetic resources are already governed by the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) which was set up to be in harmony with the CBD but provides for a multilateral system for access and benefit sharing².

We are aware that some Contracting Parties to the CBD do not yet have authorities in place, and we encourage governments to establish these authorities.

2. EuropaBio members work according to the following guiding principles for access and benefit sharing

Members will make appropriate efforts to ensure that:

- no genetic material to be obtained directly from a Contracting Party will be included in screening for beneficial genetic resources without PIC;
- all materials screened and obtained after the CBD came into force in the providing country (Contracting Party) are covered by contracts and/or material transfer agreements before commercialisation;

¹ Proprietary biologic or genetic material, such as germplasm owned and used by companies under trade secret, PVP, or patent, is considered to be legally obtained outside the scope of the CBD. Otherwise the CBD would be in conflict with basic intellectual property rights, which was never its intent.

² The International Treaty takes into account the specificities and the historical development of plant genetic resources in agriculture and horticulture and provides the appropriate framework for these resources (although the International Treaty is certainly subject to improvements, for instance by extending the number of crops to which it applies).

- local capacity building is supported through collaborations, which may include but not be limited to sampling, collection and/or taxonomy as is appropriate and useful to both parties.

Members believe that:

- contracts should be based on mutually agreed terms that define commercial rights in advance and include, where appropriate, intellectual property rights, royalties, technology transfer or other means of benefit sharing;
- contracts should be signed by the appropriate governmental authority of the Contracting Party, where such exists, or the providing entity in the Contracting Party, subject to national law where the resources were collected:

3. EuropaBio members' cooperation with providing entities

In order to create situations of mutual benefit for EuropaBio members and the providing entities within Contracting Parties, members of EuropaBio will consider:

- monetary or other compensation (via technology transfer and capacity building) consistent with commercial value;
- compensation to the providing entity where the resources were collected if later commercialised;
- encouraging scientist to scientist collaboration.

4. EuropaBio members will consider the following in connection with the use of genetic materials:

- Samples of genetic material from *ex situ* collection depositories, acquired by the depository with the permission of the source country after the CBD came into force in that source country (Contracting Party), may be freely included in both scientific and industrial screening and evaluations, subject to existing contracts and intellectual property rights.
- Samples of genetic material, for which a third party is not willing to provide assurance that it has obtained such samples in conformance with the Convention on Biodiversity, if and when applicable, or prior to the Convention coming into force in the source country, should not be accepted.