

# Access & Benefit Sharing system for Botanic Gardens

endorsed by the EU Consortium of National Networks of Botanic Gardens

EU Consortium of National Networks  
of Botanic Gardens  
advisory body to  
Botanic Gardens Conservation International (BGCI)  
and the International Association of Botanic Gardens (IABG)

on behalf of the Consortium

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# The Access & Benefit Sharing system for Botanic Gardens

## **Introduction**

It is estimated that the 1800 botanic gardens worldwide maintain plants of perhaps as many as 80.000 plant species, almost one-third of the total number of higher plant species. Often they maintain herbaria, seedbanks, etc., or have a close cooperation with these. Botanic gardens also play an important role in education and information regarding plant conservation issues. This makes botanic gardens stakeholders in the implementation of the Convention on Biological Diversity (CBD).

For botanic gardens throughout the world, the international seeds exchange is an important mechanism for acquiring plant material. This exchange system runs within a more or less closed circuit of botanic gardens and other botanic research organizations. The International Seeds Exchange has a long-standing tradition, going back to the 18<sup>th</sup> century. It has always been mainly for non-commercial purposes. In addition, the international seeds exchange is the single most important source of plants for the great majority of botanic gardens in the world. The exchange up till now takes place free of charge. This access not only serves science, but also enjoyment, and education of the general public.

After the entry into force of the Convention on Biological Diversity on December 29, 1993, botanic gardens too have considered how to comply with the Convention. Much work has already been done towards the developments of a model for voluntary implementation of the CBD's Access and Benefit Sharing by botanic gardens (see 'brief history' at the end of this document). The Access & Benefit Sharing system for Botanic Gardens currently presented was developed by the German-speaking network (botanic gardens from Austria, Germany and German-speaking Switzerland), after an attempt was made to implement the Common Policy Guidelines (CPG).

It builds on the Common Policy Guidelines as developed by the ad-hoc working group headed by the Royal Botanic Gardens, Kew (Latorre Garcia *et al.*, 2001), the "fast-track closed exchange circuit as practised for CITES", as well as the "Fast-track exchange circuit" as proposed by the Royal Botanic Gardens, Kew and Botanic Gardens Conservation International in 1996.

The Access & Benefit Sharing system for Botanic Gardens responds to the call within the Gran Canaria Declaration for "development and implementation of best practices in plant conservation which will ensure the fullest community and institutional participation at all levels".

The Access & Benefit Sharing system for Botanic Gardens in addition also takes into account the relevant paragraphs of both the International Agenda for Botanic Gardens in Conservation, and the Action Plan for Botanic Gardens in the European Union, that refer to implementation of the Convention.

The Access & Benefit Sharing system for Botanic Gardens is supported by the European Consortium of Botanic Gardens, the platform of official representatives of the national networks of botanic gardens of each EU country by means of adoption of a resolution (appendix 4). The Access & Benefit Sharing system for Botanic Gardens has the advantage of being both easy to understand, simple to operate and transparent, as well as keeps the paperwork to a minimum. The first advantage of the proposed system is that it is not based on bilateral agreements between organisations exchanging plant material but on an world-wide

exchange system for non-commercial use for botanic gardens that have pledged to implement the CBD. The second huge advantage is that it shares the non-monetary benefits, resulting from the non-commercial use, with all gardens. Such benefits are shared irrespective of whether a particular botanic garden has or has not joined the system, thus aiming for global access and benefit sharing for the non-monetary benefits.

This system is now in the process of being considered for adoption by the national networks of botanic gardens in several EU countries or has already been adopted (see under the heading "Participation").

As a precursor to a global system, the EU Consortium of National Networks of Botanic Gardens advises the botanic gardens within the EU to adopt this model as a first step.

### **Points of departure**

- 1) The responsibility for implementation of the Convention on Biological Diversity (CBD) officially lies with the national governments that have ratified the Convention
- 2) Botanic gardens must do their utmost to comply with and honour the CBD
- 3) The majority of plant exchanges between botanic gardens are for non-commercial purposes, through the international seeds and plants exchange. It is very important that this exchange both complies with the CBD while retaining its practicality
- 4) In case of intended commercial use, the organization responsible for developing the commercial use (the beneficiary) is also responsible for demonstrating that it has taken the necessary steps in accordance with the CBD. This also applies to the garden supplying the plant material
- 5) The CBD secretariat can act as clearing-house mechanism to publish the national lists of gardens that have adopted this system.

### **Aim**

The aim of this document is to develop a global system for the implementation of the ABS which honours the spirit of the CBD, and is also reasonably easy to implement. The main focus of this system is on the exchange of plant material (Plant genetic resources) for non-commercial purposes, since this covers the bulk of material transfers of most botanic gardens. The proposed mechanism for commercial purposes for those instances where botanic gardens play a role (e.g. supply of the Plant genetic resources for that purpose) will also be described. As the proposed system is a voluntary one, the text is concise, explaining the main functioning rather than trying to describe all minor details or exceptions. This can be done at a later stage when the implementation has received wide support and relevant experience in the implementation has been acquired. This means that the current document is not the final version, but the basis on which experience will be built in the years to come, taking into account relevant developments regarding the International Undertaking on Plant Genetic Resources for Food and Agriculture, and CITES.

### **Description of the Access & Benefit Sharing system for Botanic Gardens**

The Access & Benefit Sharing system for Botanic Gardens entails that the individual botanic gardens within each national network sign the Code of Conduct. These national ABS networks of botanic gardens that comply with the ABS are linked internationally, thus creating a global network of botanic gardens complying with the ABS.

Ideally, each individual botanic garden signs this Code of Conduct agreement (certification) with its National Authority, in line with the responsibility of each Party in implementing the CBD. Each Party may however choose to designate a specific organization to carry out this form of certification for the national government.

Access & Benefit Sharing system for Botanic Gardens is not open to commercial organizations or individuals.

For any Plant genetic resources entering or leaving the Access & Benefit Sharing system for Botanic Gardens, the use of (bilateral) Plant Material Transfer/Supply Agreements for supply of plant genetic resources both to botanic gardens that have not (yet) signed the Code of Conduct, as well as for commercial organizations, is mandatory.

The Code of Conduct contains statements:

- 1) in which the garden commits itself to follow the spirit of the CBD
- 2) that the botanic garden will only accept plant material that has been legally obtained by the supplier and which is accompanied by the necessary information, including any additional restrictions under which the plant material was supplied;
- 3) that the plant material received from ex-situ sources under this Code will be used for non-commercial purposes only
- 4) that regarding any in-situ collecting activities, the garden will only do this in strict accordance with the ABS (the botanic garden will obtain prior informed consent) and will also abide to national and international agreements, laws and best practice where applicable
- 5) that for any intended commercial use of plant material obtained from 1993 onwards pursued in the future, prior informed consent must be obtained from the country of origin prior to any steps to develop such commercial use, and that in any such case the user is responsible for the fair and equitable sharing of revenues
- 6) that the garden will only pass on legally obtained plant material, obtained from 1993 onwards, if no other relevant restrictions apply which prohibit this, and for non-commercial use only
- 7) that for passing on plant material to third parties that have not signed up to the system as described, a Plant Material Supply Agreement stating the terms of supply must be signed by the recipient prior to the actual exchange
- 8) that for passing on plant material to parties that have signed up to the system, the signing of the Plant Material Supply Agreements considered implicit and can therefore be omitted.
- 9) whether the garden will or will not treat Plant genetic resources acquired prior to the CBD coming into effect as Plant genetic resources acquired after the CBD came into effect.  
[Note: although such a statement is strongly advised both on grounds of practicality and in line with the spirit of the CBD, this is still a voluntary measure to be decided by each individual garden, unless the National ABS Authority with which the Code of Conduct is signed decides to impose this as an extra requirement.]

For an example of such a Code of Conduct, see appendix 1.

### **How will the Access & Benefit Sharing system for Botanic Gardens operate?**

Amongst the botanic gardens in the world that have signed the Code of Conduct, Plant genetic resources can be exchanged efficiently. Since the participants of the Access & Benefit Sharing system for Botanic Gardens have pledged to uphold the CBD and will only exchange Plant genetic resources for non-commercial purposes, the use of Material Transfer / Supply Agreements can be omitted.

For Plant genetic resources entering or leaving the Access & Benefit Sharing system for Botanic Gardens, the use of Material Transfer/Supply Agreements are considered necessary, and appropriate action should be taken, including where necessary resolve the requirements for prior informed consent and arrangements for equitable benefit sharing.

Since the national governments are responsible for the implementation of the CBD, the national networks of botanic gardens are suggested to contact their National ABS Authority to discuss the establishment of a national ABS network of botanic gardens. Alternatively, the national organization (network) of botanic gardens may assume the role of certification institute with which individual botanic gardens can sign the Code of Conduct prior to, or in the absence of, current involvement of the National ABS Authority.

The establishment of each national ABS network of botanic gardens will involve:

- endorsement (“certification”) of individual botanic gardens joining the national ABS network after receiving the signed Code of Conduct, either by the national government or by a designated national organization of botanic gardens
- communication of any specific restrictions if and when deemed necessary by the National ABS Authority
- regular update of the national list of botanic gardens that have joined the national ABS network of botanic gardens and submission of that list to the CBD secretariat for publication on the web site
- a mechanism for periodic review.

The system can thus function fairly simple without causing a substantial administrative overload to the national governments. Each government may decide to delegate this role to e.g. the Focal Point for Access & Benefit Sharing or e.g. the national network organization of botanic gardens.

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## **Appendix 1: Code of Conduct**

N.b.1: the Code of Conduct is a self-imposed (non-legally binding) policy that must be signed by the director, manager or any other such person authorised to sign official documents on behalf of the organisation.

N.b.2: the exact text of the Code may vary from country to country as decided by the national government but should contain paragraphs on all statements as listed in the description.

Below, an example of such a Code of Conduct is given.

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### **Code of Conduct**

on the acquisition, maintenance, and supply of plant material for  
botanic gardens and similar collections (hereafter indicated as 'garden')

#### **A. Background**

The entire biological diversity on Earth is basically the responsibility of mankind. Botanic gardens traditionally contribute substantially to the conservation of biological diversity of plants. Since the Convention on Biological Diversity (Rio de Janeiro, 1992) came into force, the signatory states ("Parties") agree that individual countries have the sovereign right over the elements of biological diversity within their territory. At the same time, the Parties have agreed to provide access to the potentially useful parts of the biological diversity, the genetic resources.

Botanic Gardens and their staff contribute to the implementation of the CBD within their specific possibilities and conditions.

#### **B. Objectives**

- 1) With this Code of Conduct, the garden commits itself, as regards the acquisition, the maintenance and supply to others, to act in accordance with the spirit on the Convention on Biological Diversity and the Convention on Trade in Endangered Species (CITES), as well as in accordance with all relevant laws and regulations.
- 2) This Code underlines the objective of the garden, to safeguard the proper acquisition and sustainable use of the biological diversity as well as promote relevant research. To that end, transparent documentation of the plant collection is necessary to ensure the availability of the required information ('tracking'), as required by the CBD.
- 3) The Code also aims to promote international cooperation, by providing a basis for the countries of origin to give support to the garden in research and collection activities within its territory, in line with the spirit of the Convention on Biological Diversity.

#### **C. Acquisition, Maintenance and Supply**

##### **C.I Acquisition**

- 1) The garden will only accept plant material that has been legally obtained by the supplier and which is accompanied by the necessary information
- 2) The acquired plant material is documented adequately and includes any restrictions that apply to its use

- 3) The garden will not accept plant material that, according to the relevant restrictions applying to it, should not be disseminated further
- 4) The plant material received under this Code of Conduct from ex-situ sources from 29 december 1993 onwards will be used for non-commercial purposes only.
- 5) In case of plant collecting in-situ, the garden is committed to act in accordance to the CBD. It will abide by national and international legislation on nature and species conservation and it will obtain prior informed consent from the provider country
- 6) The garden will also contribute where possible in the conservation of the biological diversity in the country of origin, as well as transfer of scientific and technological knowledge
- 7) Plant material can also be accepted 'in custody' (without presuming ownership) if this furthers the implementation of the CBD. The garden management is responsible for the plant acquisition policy
- 8) In case the garden considers pursuing commercial interests, prior informed consent will be obtained from the country of origin and arrangements made for fair and equitable benefit-sharing through the use of a (bilateral) Material Transfer / Supply Agreement for all plant material concerned

#### C II Maintenance within the collection

The garden contributes to the conservation of Biodiversity through maintenance and cultivation of the plant material in its plant collections. It guarantees the continuous adequate documentation of its plant collections, which are maintained mainly for scientific and educational purposes.

C III Supply of plant material

- 1) The garden will supply plant material on condition that the recipient acts in accordance with the CBD, especially the Access and Benefit Sharing article.
- 2) The garden management is responsible for the supply of plant material to other organisations, and guarantees appropriate documentation
- 3) The garden declares explicitly, that the Plant genetic resources supplied are for non-commercial purposes only.
- 4) For any intended future commercial use of plant material obtained by the recipient from 29 December 1993 onwards, prior informed consent must be obtained from the country of origin prior to any steps to develop such commercial use. In any such case the user is responsible for the fair and equitable sharing of revenues
- 5) The garden will only pass on legally obtained plant material for non-commercial use, and only if no other relevant restrictions apply which prohibit this
- 6) For passing on plant material to third parties that have not signed up to the system as described, a Plant Material Supply Agreement stating the terms of supply must be signed by the recipient prior to the actual exchange
- 7) For passing on plant material to parties that have signed up to the system, the signing of the Plant Material Supply Agreements considered implicit and can therefore be omitted
- 8) The garden will / will not [delete as appropriate] treat Plant genetic resources acquired prior to the CBD coming into effect as Plant genetic resources acquired after the CBD came into effect.

[Note: although such a statement is strongly advised both on grounds of practicality and in line with the spirit of the CBD, this is nevertheless a voluntary measure to be decided by each individual garden, unless the National ABS Authority with which the Code of Conduct is signed decides to impose such an additional requirement.]

## Appendix 2: Agreement on the supply of plant material by the Botanic Garden XY<sup>1</sup>

Since the Convention on Biological Diversity (Rio de Janeiro, 1992) entered into force on December 29, 1993, it has become necessary for botanic gardens to comply in particular with Article 15 (Access to genetic resources), especially in connection with the exchange of plant material. Accordingly, the garden only passes on plant material under the condition that the user acts in the spirit of the Convention on Biological Diversity.

The garden is dedicated to the conservation, sustainable use and research of biological diversity. With regard to the acquisition, maintenance and supply of plant material, the garden therefore expects its partners to act in a manner that is consistent to the letter and the spirit of the Biodiversity Convention, the Convention on International Trade in Endangered Species (CITES) and in compliance with all relevant conventions and laws relating to the protection of biological diversity.

Consequently, only those institutions that accept the following conditions will receive plant material from the garden's collection:

- 1) On the basis of this agreement, the material is intended to serve the common good, particularly scientific study, education and the interests of environmental protection
- 2) Upon accepting plant material from the garden, the recipient is obliged to document and preserve all relevant information pertaining to the material appropriately
- 3) In the event that scientific publications on the plant material provided are produced, the origin of the material is to be cited. In addition, these publications are expected to be sent to the garden automatically, without request
- 4) Intended commercial use by the recipient is not covered by this agreement. The commercialization is the object of a separate agreement with the country of origin. This agreement underlies the provisions of the ABS, i.e. the user is obliged to share benefits with the country of origin and to forward relevant information to the authority instructed with the implementation of the ABS
- 5) The garden will forward information on the material supply on request to the authority instructed with the implementation of the ABS<sup>2</sup>
- 6) Plant material may only be supplied on the basis and under the conditions of this or corresponding agreements

I accept the above conditions.

Date

Signature

Name and address, stamp

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<sup>1</sup> Marker for the name of a botanic garden, institute or the like.

<sup>2</sup>The ABS National Focal Point / National Authority

## Appendix 3: further considerations

### Pre- and post-CBD plant material

For practical and transparency reasons, botanic gardens are strongly advised to treat all plant material in the same manner, i.e. treat all plant material 'as if' acquired after the CBD came into effect and therefore subject to the CBD. By doing so, it should be clear however that no responsibility is accepted for retroactive benefit-sharing claims regarding commercial use of plants acquired before the CBD came into effect.

### Commercial use

In case of intended commercial use, the botanic garden supplying plant material to commercial parties (pharmaceutical, horticultural or similar companies) must either itself or its commercial partner obtain prior informed consent from the country of origin of that particular plant material before actually supplying the plant material to the commercial party involved. This prior informed consent must also address the issue of benefit-sharing (especially between the company intending to develop commercial use and the country of origin). Since this requires a bilateral agreement, based on applicable law in both countries, no examples are provided here.

### Relevant documentation

The garden receiving plant material is responsible to adequately document the origin of the plant material, in particular country of origin, as well as any restrictions to the use of the plant material. The garden passing on plant material to another garden or third party is responsible to also pass on all relevant information on the origin of the plant material, in particular country of origin, as well as any restrictions to the use of the plant material.

### Scope and timeframe

Although the system can be developed within the national network of botanic gardens in each country, the ultimate aim is to establish a global system. In order to reach this point, this can be achieved easiest by regional adoption first. As for Europe, the EU Consortium of National Networks of Botanic Gardens (the European network of botanic gardens) has adopted a resolution to this effect (appendix) and is currently promoting the Access & Benefit Sharing system for Botanic Gardens within the EU. It is envisaged that the European network will adopt this system in the near future. The next phase will be to contact other regional networks to consider and adopt the Access & Benefit Sharing system for Botanic Gardens.

## Participation

Overview of the support from the national networks of botanic gardens within the European Union that have discussed the implementation of the Access and Benefit Sharing system for Botanic Gardens so far:

- Austria: the Austrian network has participated in the development of the Access & Benefit Sharing system for Botanic Gardens and is expected to adopt it at its next meeting in November, 2001
- Belgium: the national network of botanic gardens discussed the Access and Benefit Sharing system for Botanic Gardens and adoption is foreseen before the end of October 2001.
- Denmark: the (informal) national network of botanic gardens will adopt the Access & Benefit Sharing system for Botanic Gardens
- France: the French network will endorse the Access & Benefit Sharing system for Botanic Gardens
- Germany: the national network of botanic gardens has officially adopted the system, also on behalf of the Austrian and German-speaking Swiss botanic gardens
- Luxemburg: the (informal) national network of botanic gardens will adopt the Access & Benefit Sharing system for Botanic Gardens
- Sweden: The Swedish network of botanic gardens will endorse the Access and Benefit Sharing system for Botanic Gardens
- Switzerland  
(observer, non-EU): the Swiss network of botanic gardens is currently reviewing the Access & Benefit Sharing system for Botanic Gardens. The Swiss botanic gardens haven't yet decided, but will probably adopt it.
- The Netherlands: the Dutch national network has adopted the Access & Benefit Sharing system for Botanic Gardens in November 2001. The model has also been incorporated in the policy plan on genetic resources of the Dutch government.

The members of the EU Consortium of Botanic Gardens representing Finland, Ireland, Italy, Portugal, and Spain have expressed their support for the Access and Benefit Sharing system for Botanic Gardens, but no formal decision has been made by their national network regarding support for the ABS-BG.

## Brief history

Since 1994, the ABS has continuously been an issue at international meetings of botanic gardens, the objective being to establish a model for the voluntary implementation of the ABS by botanic gardens, with special emphasis to access and benefit sharing.

In 1997, under the auspices of the Convention & Policy Section of the Royal Botanic Gardens, Kew, a pilot project was launched. This has culminated in the report "Results of the Pilot Project for Botanic Gardens: Principles on access to genetic resources and benefit-sharing, common policy guidelines to assist with their implementation and explanatory text"

Also, at the end of 1996, the German government funded the establishment of the "Forschungs- und Entwicklungs Vorhaben" (Research and Development Undertaking), based at the Bonn Botanic Garden. This resulted in two publications, the first being "Botanischen Gärten und Biodiversität " (also available in English: "Botanic Gardens and Biodiversity"), which presents the CBD issue and its relevance to botanic gardens. The second publication is titled "Beitrag der deutschen Botanischen Gärten zur Erhaltung der Biologischen Vielfalt und Genetischer Ressourcen" (Contribution of German Botanic Gardens to the Conservation of Genetic Resources).

As a result of a European-wide discussion, this culminated in the Access & Benefit Sharing system for Botanic Gardens. A first draft of this system received wide support from the European Botanic Garden Network (the EU Consortium of National Networks of Botanic Gardens) in May 2001.

## Appendix 4: Resolution from the BGCI/IABG European Botanic Gardens Consortium on harmonised policies for botanic gardens in the European Union on access to their collections and benefit-sharing.

6 May, 2001, Funchal, Madeira, Portugal

A meeting of the BGCI/IABG European Botanic Gardens Consortium held in Funchal, Madeira, Portugal from 5-6 May, 2001 considered issues relating to the implementation of Article 15 of the Convention on Biological Diversity on Access and Benefit Sharing by botanic gardens within the European Union. The meeting noted the importance of botanic gardens in the European Union addressing the need for harmonised policies with regard to access to their plant collections and sharing benefits derived from the use of such collections.

The meeting noted the work undertaken by several botanic gardens in Europe, most notably by the Bonn Botanic Garden, Germany and the Royal Botanic Gardens Kew, U.K., in co-operation with other botanic gardens and botanic gardens associations, in the development of common guidelines and codes of conduct for Materials Supply/Acquisition Agreements for botanic gardens to help meet their obligations under the CBD (Article 15).

The Consortium recommended:

### **1 Access**

- a) that a common, unified policy response should be prepared by the European Botanic Gardens Consortium for the inter-sessional meeting in Bonn (October 2001) presenting the EU botanic Gardens position and welcoming the common guidelines and standard code of conduct prepared by the Bonn Botanic Garden, as a basis for the development of national policies and codes of conduct for botanic gardens;
- b) the preparation and provision of standard guidelines for botanic gardens throughout Europe with regard to access to and use of their collections;
- c) the development of efficient and effective procedures in accordance with the provisions of the Convention on Biological Diversity, to facilitate the exchange of material between institutions in the European Union for scientific purposes and to further the aims of the Convention, by establishing a European system for material exchange between botanic gardens. Such a system could include European botanic gardens that have signed an agreed code of conduct stating that all plant material received through this system would not be used for commercial purposes.

### **2 Benefit sharing**

- a) that a similar standardised procedure be developed for policies relating to benefit-sharing;
- b) that the primary responsibility for determining the use of any benefits arising from the commercialisation of genetic resources derived from botanic gardens collections should reside with the source countries of the original germplasm, in co-operation with other bona fide stakeholders.

### **3 Implementation**

- a) that national botanic garden networks of the EU initiate urgent steps to prepare, adopt and implement such policies, harmonising them with those adopted by botanic gardens in other EU countries and with relevant national and European policies and legislation;
- b) that botanic garden associations develop linkages with their national ABS focal points to facilitate the recognition and, where appropriate, endorsement of such policies by the relevant authorities.

## Appendix 6: definitions and circumscriptions

ABS:	Access and Benefit Sharing (article 15 of the CBD)
CBD:	Convention on Biological Diversity
CPG:	Common Policy Guidelines
Country of origin:	see 'Origin'
Origin:	with 'origin' the specific location is meant from where a plant plant was found in the wild. Country of Origin means the country where that specific location belongs to. Although many plants have a range that covers more than one country, the plant material exchanged comes directly or indirectly from a specific country of origin. If the plant material directly came from another garden ( <i>ex situ</i> collection), the data on that accession of plant material should also reveal the country of origin.
<b>PGR:</b>	<b>plant genetic resources</b>
Plant genetic resources :	the genes, as they naturally occur in living organisms. They contain all information for the production (directly or indirectly) of all chemical compounds that an organism needs to produce for all aspects its functioning. Botanic gardens in general exchange (parts of) plants. In the current document, where the term Plant genetic resources is used, this means all plant material in which viable DNA is present.
Pre- & Post CBD plants:	plants in <i>ex situ</i> collections obtained either before or after the CBD came into effect on December 29, 1993.
Plant material:	see 'Plant genetic resources'
Source:	the direct supplier of the Plant genetic resources, e.g. an <i>ex situ</i> collection of another botanic garden, a nursery, or a botanic expedition.