

The ABS system of the Netherlands

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6 December 2021



Implementation of the Nagoya Protocol in the European Union (EU)



■ Compliance

➤ Legislation at EU level

- fine-tuning at national level (authorities, penalties)

■ Access

➤ Legislation individual countries; no EU legislation

- some EU Member States have established access legislation (Bulgaria, Croatia, France, Malta and Spain; Finland for traditional knowledge only)
- other EU Member States (including the Netherlands) do not regulate access to their genetic resources and associated traditional knowledge

Implementation of the Nagoya Protocol in the Netherlands (NL)

■ EU-level

- EU ABS Regulation (Regulation 511/2014)



■ National level

- Nagoya Protocol (Implementation) Act





- Official name: 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
- Regulation = Legally binding
- Implements compliance aspects of the Nagoya Protocol in the EU
 - *only deals with compliance, NOT with access*
- Entry into force: **12 October 2014**
 - same date as entry into force of Nagoya Protocol

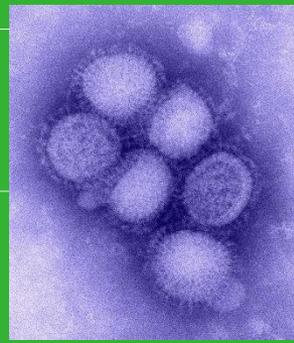
EU ABS Regulation



Scope (cumulative)

- Geographic scope
 - applicable to genetic resources from countries which are a Party to the Nagoya Protocol and have established access measures
 - applicable to utilisation within EU territory
- Temporal scope
 - applicable to genetic resources accessed from 12 Oct 2014 onwards
- Material scope
 - applicable to the utilisation of genetic resources and of associated traditional knowledge
 - utilisation includes basic research, applied research and product development
- Personal scope
 - applicable to all users of genetic resources

EU ABS Regulation



- Does not apply when ABS of genetic resources is covered by a '*Specialised International Instrument*'
 - International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)
 - *plant genetic resources for food and agriculture*
 - Pandemic Influenza Preparedness Framework (PIP-framework)
 - *influenza viruses with human pandemic potential*

EU ABS Regulation



Obligations of users in EU

- to exercise 'due diligence' to ascertain that the genetic resources they utilise have been legally acquired, and that benefits are shared
- to utilise and transfer genetic resources only in accordance with the Mutually Agreed Terms (MAT)
- therefore:
 - seek relevant ABS information (including permits and contracts)
 - keep ABS information for 20 years after end utilisation
 - transfer ABS information to subsequent users

EU ABS Regulation



Obligations of governments EU Member States

- carry out checks to monitor compliance of users
- follow up on concerns of provider countries
- lay down rules on penalties in case of non-compliance
 - “effective, proportionate and dissuasive”
- request users to submit ‘Due Diligence Declaration’
 - when external funding is received for research projects using genetic resources
 - at the stage of final development of a product developed via the utilisation of genetic resources
- transmit information of Due Diligence Declarations to ABS Clearing House as ‘Checkpoint Communiqués’



- Nagoya Protocol (Implementation) Act (with Explanatory Memorandum, Regulation and Decrees)
 - implements Nagoya Protocol in NL
 - into force: 23 April 2016
 - Competent National Authority (CNA): Ministry of Economic Affairs (now: Ministry of Agriculture, Nature and Food Quality)
 - monitoring agency: Netherlands Food and Consumer Product Safety Authority (NVWA)
 - National Focal Point (NFP): Centre for Genetic Resources, the Netherlands (CGN)
 - access to Dutch genetic resources not regulated: Prior Informed Consent (PIC) not needed

National legislation NL



- Sanctions and penalties:

“In the case of a serious offence, a prison sentence of a maximum of six years, a community service order, or a fine of the fifth category can be imposed. This is EUR 81,000 for persons and EUR 810,000 for legal entities.

In the case of a lesser offence, a prison sentence of a maximum of one year, a community service order, or a fine of the fourth category can be imposed. This is then EUR 20,250 for persons and EUR 81,000 for legal entities.”

ABS Competent National Authority (CNA)



Ministry of Agriculture, Nature and
Food Quality of the Netherlands

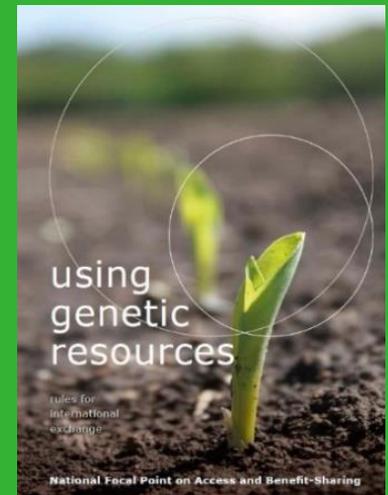
- Ministry of Agriculture, Nature and Food Quality (Ms Kim van Seeters)
 - is responsible for the implementation of the Nagoya Protocol in the Netherlands
 - represents the Netherlands in international ABS fora
 - CNA is, according to Nagoya Protocol, responsible for granting access when access is regulated, but access is not regulated in the Netherlands



- Netherlands Food and Consumer Product Safety Authority
 - performs inspections on compliance
 - 2017-2018: plant breeding sector (companies)
 - 2019-2020: public sector (universities, research institutes, academic medical centres)
 - 2021: food and feed industry (companies)
 - 2022: cosmetics industry; animal breeding sector
 - no offences found
 - receives and checks Due Diligence Declarations
 - transmits information of Due Diligence Declarations to ABS Clearing House as Checkpoint Communiqués

ABS National Focal Point

- Centre for Genetic Resources, the Netherlands (CGN)
 - is responsible for information supply
 - website
 - brochures
 - presentations
 - information on ABS Clearing House website
 - answers questions from users in NL and abroad
 - advises users in NL and abroad



The practice: what users in NL need to do



1. Check access rules of the provider country
 - ABS Clearing House (<https://absch.cbd.int/>)
 - National Focal Point (NFP) of the provider country
2. Where required, seek permission from the Competent National Authority (CNA) of the provider country (*'Prior Informed Consent'*, PIC)
3. Negotiate conditions with provider, and lay these down in a contract (*'Mutually Agreed Terms'*, MAT)
4. Use the genetic resources only in accordance with the conditions agreed with the provider

The practice: what users in NL need to do

5. Carefully document what they do with the genetic resources
6. Keep all documentation for 20 years after the end of utilisation
7. Submit a 'due diligence declaration' when they receive external research funding or bring a product on the market
8. Pass on all relevant information to further users of the genetic resources



More information



- ABS Clearing House website (<https://absch.cbd.int/>)
 - country information (contacts, legislation)
- ABS website EU:
(http://ec.europa.eu/environment/nature/biodiversity/international/abs/legislation_en.htm)
 - information on European rules
 - EU register of collections
 - recognized 'best practices'
- website ABS National Focal Point NL
(www.absfocalpoint.nl)
 - information on rules
 - guidance for users on what to do

Key messages

1. EU level: EU ABS Regulation

- EU users must exercise 'due diligence' to make sure genetic resources are accessed in accordance with national legislation of provider countries
- compliance monitored by EU governments
- access not regulated at EU level



2. National level NL: Nagoya Protocol (Implementation) Act

- division of tasks NL: LNV/NVWA/CGN
- possible sanctions/penalties
- access to Dutch genetic resources not regulated



Key messages

3. What users have to do in practice

- check access rules of the provider country
- secure and document legal status of genetic resources they acquire(d)
- document how they use genetic resources in R&D
- keep all documentation for 20 years
- pass on information to further users
- make 'due diligence declarations' when required



4. Where to find more information

- ABS Clearing House
- ABS website EU
- website ABS National Focal Point NL



Thank you!

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