

Access and sharing the benefits arising from the utilisation of genetic resources and their associated traditional knowledge (ABS)

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The regulation for access and sharing the benefits arising from the utilisation of genetic resources and their associated traditional knowledge (ABS) controls the relationships between the supplier and the user of genetic resources and associated traditional knowledge. Who is affected by the regulation in France? What is its scope? What are the procedures to be followed?

The Nagoya Protocol and its transposition into French Law

Adopted in October 2010, the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation (ABS) entered into force on 12 October 2014. This protocol establishes an international legal framework based on three sections:

- **Access to genetic resources and their associated traditional knowledge with a view to their utilisation** : States can decide to make this access subject to their prior informed consent or to the consent of the traditional communities involved;
- **Benefit sharing** : the benefits must be shared fairly and equitably, subject to conditions established by mutually agreed terms between the user and the provider country or the traditional community involved;

- **Compliance** : the States Parties must adopt measures to ensure that access to genetic resources and to the associated traditional knowledge used under their jurisdiction complies with the internal regulations of the provider countries for access and benefit sharing.

The law of 8 August 2016 on reclaiming biodiversity, nature, and landscapes led to ratification of the Nagoya Protocol in France, and established measures to implement these three sections. Accordingly, a national access and sharing system for the benefits arising from the utilisation of genetic resources and their associated traditional knowledge (ABS system) was introduced. This system is not applicable in French Polynesia and New Caledonia, which have developed their own regulations in accordance with their statutes and competences. In addition, only the provisions concerning the utilisation of the associated traditional knowledge apply to the Wallis and Futuna Islands.

Why is France regulating access to its genetic resources and to their associated traditional knowledge?

France has a rich biodiversity, but it is under threat. The purpose of the ABS system is to combat biopiracy (the collection and utilisation of biological material or associated traditional knowledge for commercial, industrial, scientific or personal purposes without obtaining the required authorisation), to ensure the protection of biodiversity and traditional knowledge, and to ensure their sustainable use by equitably sharing the benefits drawn from them. Finally, it also offers improved legal security to each stakeholder and makes it easier to trace the resources used.

Who is affected by the national ABS system in France?

The ABS system applies to mainland France and its overseas territories, covering terrestrial, aquatic and marine areas, and also the airspace.

Users

A user is a French or foreign natural person or a legal entity working for the public or private sector, who or which utilises genetic resources or traditional knowledge associated to these genetic resources.

Utilisation of genetic resources is defined as research and development activities on the genetic or biochemical composition of genetic resources, in particular through the application of biotechnologies, and the valorization of these genetic resources as well as the applications and marketing arising from them;

Utilisation of associated traditional knowledge means studying and making use of it (e.g. making use of knowledge related to the medicinal properties of a plant held by a traditional community).

Providers

Two categories of providers are established:

- The French State, for genetic resources under national sovereignty;
- The traditional communities of French Guiana and Wallis and Futuna, for the associated traditional knowledge that they hold.

Organisation of the ABS system in France

The ABS system in France comprises:

- **A general scheme** for genetic resources and their associated traditional knowledge, excluding those governed by special schemes;
- **Special schemes:** For the genetic resources of related wild species, genetic resources originating from domestic or cultivated species, genetic resources that are subject to forestry and genetic resources collected by laboratories for the purposes of preventing, monitoring and combating health hazards relating to animals, plants and food safety and the prevention and control of serious human health hazards.

Scope of the national ABS scheme

- Wild genetic resources.
- Genetic resources of related wild species .
- Genetic resources from domesticated or cultivated species.
- Genetic resources that are subject to forestry.
- Genetic resources collected by laboratories (preventing, monitoring and combating health risks to animals, plants and food safety and preventing and controlling serious human health hazards).

Fields not covered by the national ABS scheme

- Human genetic resources.
- Genetic resources collected outside the national territory and outside areas under French sovereignty or jurisdiction.
- Genetic resources covered by international instruments specialised in access and sharing of the benefits, such as the International Treaty on Plant Genetic Resources for Food and Agriculture.
- Genetic resources of species utilised as models in research and development (e.g. white laboratory rats).
- Genetic resources and their associated traditional knowledge that contribute to safeguarding defense and national security interests.
- Related traditional knowledge that cannot be attributed to one or more traditional communities or which have well-known properties that have been used for a long time and repeatedly outside of the traditional communities that share them.
- Traditional knowledge and techniques related to usage methods that could benefit agricultural, forestry or food products or marine products.

- Exchange and use of genetic resources and associated traditional knowledge within and between communities of inhabitants, for personal or non-commercial purposes;

Procedures to be followed

There are two quick and easy options to apply to the MTES (French Ministry for an Ecological and Solidary Transition): an e-procedure or an official form (CERFA forms).

E-procedure

Accessible for declarations and authorisations, an e-procedure can be used by a legal entity to make its request (activities carried out within a legal entity) or by a natural person (activities carried out individually).

- [Declaration of access to genetic resources for legal entities, research bodies, universities, companies, etc.](#)
- [Declaration of access to genetic resources for natural persons](#)
- [Authorisation for access to genetic resources for legal entities, research bodies, universities, companies, etc.](#)
- [Authorisation for access to genetic resources for natural persons](#)

Official CERFA forms

These declaration and authorisation forms should be filled in and returned to apa@developpement-durable.gouv.fr

Declaration

- [CERFA form No. 15786: Declaration for access to genetic resources from non-domestic animal species or non-cultivated plant species and for sharing the benefits arising from their utilisation](#)

Authorisation

- [CERFA form No. 15784: Request for authorisation to access traditional associated knowledge related to genetic resources from non-domestic animal species or non-cultivated plant species and for sharing the benefits arising from their utilisation](#)
- [CERFA form No. 15785: Request for authorisation to access genetic resources from non-domestic animal species or non-cultivated plant species and for sharing the benefits arising from their utilisation](#)

Enforcement of European ABS regulations: due diligence obligation by users

In accordance with the “compliance” section of the Nagoya Protocol, EU regulation 511/2014 and its implementing regulation 2015/1866 seek to ensure that genetic resources and their related associated traditional knowledge utilised within the European Union are accessed in accordance with the internal ABS regulations of the countries providing these resources. These regulations establish a due diligence obligation on the part of users, as well as a mechanism of checkpoints at

the stage of research funding on the one hand and at the final product development stage on the other hand. These require a declaration to be submitted by the users to the competent national authorities, certifying that they have fulfilled the due diligence obligation .

How does this apply for french users ?

- At the stage of final development of a product:

The appropriate authority is the MTES. The required due diligence declaration must be made on the [DECLARE platform](#) set up by the European Commission:

- At the stage of research funding:

The competent authority is the MESRI (French Ministry of Higher Education, Research and Innovation). The required due diligence declaration should be made on the [platform](#) set up by the French Ministry of Higher Education, Research and Innovation

The minister in charge of research is also competent to deal with requests to enter a collection in the European register of collections.

- [Send an email to the French Ministry of Higher Education, Research and Innovation](#)

Contact information

Contact points for the Nagoya Protocol in France

Ministère de la transition écologique et solidaire

Direction générale de l'aménagement, du logement et de la nature

Direction de l'eau et de la biodiversité

Sous-direction de la protection et de la restauration des écosystèmes terrestres

Bureau de l'encadrement des impacts sur la biodiversité - Mission APA

1, place Carpeaux - 92055 La Defense Cedex - France

- [Send an email to the Nagoya Protocol contact points at the MTES](#)

ABS Regulations

International level

- [Convention on Biological Diversity \(CBD\)](#)
- [Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization \(ABS\)](#)

European level

- [EU Regulation No. 511/2014 of 16 April 2014 on compliance measures for users from the the Nagoya Protocol on Access To Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union](#)

- [EU Implementing Regulation 2015/1866 of the Commission of 13 October 2015 laying down detailed rules for the implementation of Regulation \(EU\) No. 511/2014 of the European Parliament and of the Council as regards the register of collections, monitoring user compliance and best practices](#)
- [Guidance document on the scope of application and core obligations of EU Regulation No. 511/2014 of the European Parliament and of the Council on the compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union](#)
- [Presentation of European regulations on the website of the Commission](#)

National level

- [Title V of Law No. 2016-1087 of 8 August 2016 on Reclaiming Biodiversity, Nature and Landscapes](#)
- [Decree No. 2017-848 of 9 May 2017, regarding access to genetic resources and their associated traditional knowledge and sharing the benefits arising from their utilisation](#)
- [Book IV, chapter II, section 3 of the French Environmental Code](#)
- [Book III, title IV of the Environmental Code of French Polynesia](#)
- [Environmental Code of New Caledonia - North Province](#)
- [Environmental Code of New Caledonia - South Province](#)

ABS documentation

- [Presentation of the ABS on the website of the Biodiversity Research Foundation](#)