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## Nagoya Protocol Legislation Training by ARCHE NOAH

Wolkersdorf, Austria: 24.-26.2.2017

**In February 2017, ARCHE NOAH hosted seed saver organisations from eight countries across Europe to a workshop focused on the Nagoya Protocol. The workshop concentrated on the obligations and opportunities arising from the Protocol for seed savers. This note provides a short summary of the discussions. ARCHE NOAH accepts no legal responsibility for the accuracy of the contents.**

### Legal background

The “Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization” is an international agreement that entered into force on 14<sup>th</sup> October 2014. It is supplementary to the **Convention on Biological Diversity** and provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD: the Protocol aims to ensure that the benefits that arise from the utilisation of genetic resources are shared in a fair and equitable way. The Nagoya Protocol covers genetic resources and traditional knowledge. In short, its main goals are to fight bio-piracy and protect the rights of indigenous and local communities.

### ITPGRFA and Nagoya Protocol

There are two pieces of international law governing benefit sharing in relation to plant genetic material. They should complement each other, but have different objectives and different approaches.

<b>FAO Treaty (ITPGRFA)</b>	<b>Nagoya Protocol to CBD</b>
Context is food security; objective is facilitating access to biodiversity	Context is protecting biodiversity; objective is preventing biopiracy
Narrow scope: benefit sharing (officially) applies only to publically managed ex situ varieties in Annex 1 of the treaty	Wide scope: applies to all genetic material (accessed after October 2014)
Access should be facilitated by state	States may refuse access
Multilateral benefit sharing: sMTA is standard, (financial) benefit sharing at 1.1%	Bilateral benefit sharing: conditions are mutually agreed between provider and user (Arche Noah will use mMTA)
You have to know regulations by the ITPGRFA contract only	You have to check the regulations in every country



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### The official source for information

An essential source for information for all users is the “**Access and Benefit-sharing Clearing-House**” (ABS-CH) (<https://absch.cbd.int/>). It is a platform for exchanging information on access and benefit-sharing and the implementation status of the Nagoya Protocol. You can find profiles for every country, as well as their NFPs (National Focal Points) and their CNAs (Competent National Authorities) on this platform. The idea behind the Clearing House is to connect users and providers of genetic resources and associated traditional knowledge to ensure flow of information and the equitable use of genetic diversity.

If the information is required about the access and/or use legislation in a country is required, the country’s NFP is a good first point of call.

### Nagoya Protocol implementation

The **EU Regulation 511/2014** clarifies how EU Member States must implement the Protocol. The regulation of access remains a national issue because states have sovereign rights on genetic resources and there are no minimum standards for PIC and MAT. States may impose rules on access, e.g. permit and/benefit sharing requirements, but they do not have to.

However, states **must** take action to ensure compliance with Nagoya obligations in their jurisdiction. States are also responsible for controlling and monitoring the new Nagoya regulations.

Some EU member states have implemented strong compliance controls (e.g. Denmark), whereas other member states have not yet started implementation (e.g. Austria).

### Obligations for users

The **key obligation for seed savers** is to “**seek, maintain and transfer**” information. This information should include: description of the genetic resource, date received, (direct) source, country of origin and any conditions attached. This is a long-term obligation because information has to be stored for 20 years after the last use of a resource.

Due to the EU Regulation 511/2014 “use of genetic resources” is defined as “research and development”, so planting, harvesting and maintenance an ex-situ collection are outside its scope. However, Arche Noah wants to protect genetic resources from any kind of bio-piracy or claims on intellectual property rights, so in its implementation Arche Noah had adopted a broader definition of use (for further detail see Arche Noah’s Nagoya forms at [www.arche-noah.at](http://www.arche-noah.at)).

To get legal access to a genetic resource the due diligence obligation exists. That means that any person or organisation has to take appropriate actions to find out all relevant information (origin, access regulations...) about a genetic resource. If information is insufficient or if you are unsure about its credibility, use must be stopped.



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### Arche Noah's implementation

Arche Noah supports the Nagoya Protocol because we believe in a fair and equitable sharing of benefits and the protection of indigenous people's rights.

Under Nagoya any seed or plant has to be transferred with a set of minimum information. How this responsibility is carried out depends on the system you want to use. In Arche Noah we have created **the mMTA** (model material transfer agreement) to accompany the transfer of a genetic resource, for example the transfer of seeds from our seed archive to a farmer. The mMTA is a document that should be passed with the plant genetic resource when it is swapped and circulated.

With the mMTA new material can enter the network, too. The mMTA determines that in case of commercial use of a genetic resource, 2% of turnover should be paid to a fund for conservation projects (**Difairsity fund**).

### Arche Noah's vision

Meeting the Nagoya Protocol obligations presents a challenge to seed savers organisations, but Arche Noah also sees an **opportunity to build a "seed commons"** and to implement more conservation projects through financial support by the Difairsity fund.

It is likely to take some time until access and benefit sharing systems under the Nagoya Protocol are established. Arche Noah is one of the first to create and implement such a system and therefore will take a leading role. Arche Noah members will be compliant and any benefits arising from the use of their resources will be shared in a fair way. The Arche Noah network generates a seed common in which plant material is easily shared, transferred and protected from patenting or genetic editing.

In summary, Arche Noah hopes that together with other seed savers we can use the Nagoya Protocol to: (a) protect genetic material from future intellectual property rights and genetic engineering; (b) raise awareness of and funds to support the conservation of biodiversity; (c) increase cooperation between seed savers.