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# Introduction to the International Law of Genetic Resources - Access & Benefit Sharing



***Workshop on Nagoya Compliance for Seed Savers  
Wolkersdorf, 25-26.02.17***



# Why Access & Benefit –Sharing Rules?



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## • HISTORICAL DEBT

BIOPIRACY

- **To the global South, origin of most GR used today.**  
**Plundered by developed, mostly colonial nations**

State sovereignty

- **To those who conserve the GR**

Benefit sharing

## • INTERDEPENDENCE & FLOW OF GR

- **Global interdependence for agri GR to react biotic & abiotic stresses**

Facilitated access

- **Using is conserving : promote exchange & movement of GR**

FOOD SECURITY



# How? International Law



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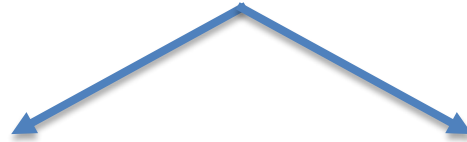


UNEP

29.12.93



Convention on  
Biological Diversity



29.06.04



The International Treaty  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

**Nagoya Protocol : 12.10.14**



BIOPIRACY

FOOD SECURITY

MUTUALLY SUPPORTIVE



# How? International Law



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29.12.93



Convention on  
Biological Diversity

## Nagoya Protocol : 12.10.14

- Conservation, sustainable & equitable use of **ALL biodiversity**
- **Sovereignty** over Genetic resources; ABS on **PIC & MAT**
- **Bilateral & Differential duties access & use**



29.06.04



The International Treaty  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

- Facilitated access & exchange of **AGRICULTURAL genetic diversity**
- **Sovereignty** over GR (Former Undertaking : Common Heritage)
- **Multilateral PIC & MAT system (2006)**



# International Law : ABS & agrobiodiversity



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Convention on  
Biological Diversity

**Nagoya Protocol : 12.10.14**

## Bilateral ACCESS & USE

- PIC (Art.6 NP)
  - « access for their utilisation » : R&D?
- MAT (Art. 5 NP)
  - Benefit sharing if « utilisation as well as subsequent applications and commercialisation »

**Challenging Future ?** Ratification and Implementation Slow, lack of Access legislation



The International Treaty  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

29.06.04



## Multilateral ACCESS & USE

- Access for « Food and Agriculture »
- Ex situ collections: sMTA as PIC & MAT
- In situ collection: national laws or GB rules (not yet adopted)

## Limited scope

- Annex I crops
- Put into the MLS: « under management and control / the public domain »

**A Treaty in crisis?** BS Fund, Enhancement MLS

# How? International Law at EU level



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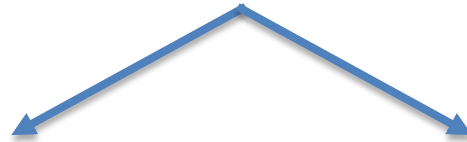


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29.06.04



The International Treaty  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

## Nagoya Protocol : 12.10.14

**EU signature:** 23.06.11

**EU approval (ratification) :**  
16.05.14

### How?

- EU Regulation 511/2014, 16.04.14
- Commission Implementing Regulation 2015/1866, 13.10.15
- Member States laws (esp. access regimes)

**EU signature:** 06.06.02

**EU approval (ratification) :**  
31.03.04

### How?

- 2004/869/EC Council decision of 24 February 2004 (conclusion ITPGRFA on behalf of the EC)
- Member States laws and practices (material in MLS - use of sMTA – In situ access rules)



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# *How? European & National Law*

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- **REGULATORY ACTION AT EU LEVEL?**
- **HOW ARE GR ACCESSED?**
- **HOW IS BENEFIT-SHARING ENSURED?**



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# *How? European & National Law*

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## **ITPGRFA**

- **REGULATORY ACTION AT EU LEVEL**

- *Coordination of political actions*
- *Public gene banks coordination on use of sMTA (AEGIS)*
- *Member States decision to put collection in sMTA & regulate access regimes for in situ collection*





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# *How? European & National Law*

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## **ITPGRFA**

- **HOW ARE GR UNDER ANNEX 1 ACCESSED?**
  - Access to Ex Situ collections of Annex 1 under management and control MS? sMTA
  - Access to Ex Situ collection of non Annex 1? NATIONAL LAWS (can choose sMTA, like NL)
  - Access to In situ GR? NATIONAL LAWS (until the GB adopts common rules)

## **PRINCIPLE OF FACILITATED ACCESS**

### *ARTICLE 5 sMTA — RIGHTS AND OBLIGATIONS OF THE PROVIDER*

- Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;
- All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the PGRFA provided;
- Access to PGRFA under Development, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;

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# *How? European & National Law*

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## **ITPGRFA**

- **HOW IS BENEFIT-SHARING ENSURED?**
  - **sMTA : Adopted in 2006**
    - *Viral contract: obligation to sign sMTA with subsequent recipients*
    - *No tracking*
    - *Builds a commons*
  - **Prohibition of IPR**

sMTA 6.2 The Recipient shall not claim any intellectual property or other rights that limit the facilitated access to the Material provided under this Agreement, or its genetic parts or components, *in the form received* from the Multilateral System.



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# *How? European & National Law*

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## **ITPGRFA**

- **HOW IS BENEFIT-SHARING ENSURED?**
  - **Non-monetary benefit-sharing**

sMTA 6.3 In the case that the Recipient conserves the Material supplied, the Recipient shall make the Material, and the related information referred to in Article 5b, available to the Multilateral System using the sMTA

- **Monetary benefit-sharing**

6.7 Commercialisation of Product incorporating PGRFA, not available without restriction to others for further research and breeding: fixed percentage of the Sales of the commercialized Product into the BS Fund . 1,1 % of sales (NOT if sold as commodity)

6.8 Commercialisation Product incorporating PGRFA, available without restriction to others for further research and breeding : encouraged to make voluntary payments

6.11 Option of crop based up-front payments: alternative to payments under Article 6.7 (all future obligations erased) 0,5 % of sales of PGRFA of same crop



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# *How? European & National Law*

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## **NAGOYA PROTOCOL**

### **REGULATORY ACTION AT EU LEVEL**

- **EU REGULATION 511/2014 & COM IMPLEMENTING REGULATION**
  - Regulation of Access remains complete national issue
    - No minimum standards for PIC or MAT
  - Prevent misuse GR : Due diligence obligation for users of GR
    - NO prohibition to use illegally obtained GR
    - How? Checkpoints, official checks & DD declaration
  - **Centralised Regulation with de-centralised enforcement**



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# *How? European & National Law*

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## **NAGOYA PROTOCOL**


- **HOW ARE GR ACCESSED?**
  - Access is determined in **NATIONAL LAWS** only (sovereignty)

### *ART.6.1. NAGOYA PROTOCOL*

« Access to genetic resources for their utilisation shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention ».

- Only governs « **ACCESS FOR UTILISATION** »

### *ART.2(c) NAGOYA PROTOCOL*



« Utilisation of genetic resources means to conduct research and development on the genetic and/or biochemical composition of genetic resources ».

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# How? European & National Law

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- **MINIMUM OBLIGATIONS (ART 13 -14 NAGOYA)**
  - **National focal point:**
    - Gives info on ABS legislation
  - **Competent national authority:**
    - Grants access through permits and IRCC
  - **ABS Clearing-House:**
    - Collects information on applicable legislation & IRCC
- **ADDITIONAL OBLIGATIONS**
  - Facilitated access for non-commercial research

*NAGOYA Art 8a “Countries, when developing their ABS laws, shall create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research.”*

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- Respect specialised benefit-sharing regimes : ITPGRFA

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# How? European & National Law

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## NAGOYA PROTOCOL

- **HOW IS BENEFIT-SHARING ENSURED?**
  - **Benefits shared with provider (or origin) country in BILATERAL CONTRACTS**

### ART.5.3. NAGOYA PROTOCOL

«To implement [the sharing of benefits in a fair and equitable way with the Party providing such resources that is the country of origin of such resources through mutually agreed terms], each Party shall take legislative, administrative or policy measures, as appropriate ».

- *Member States obligations?*
  - *ONLY to support implementation of benefit-sharing*
    - *Do (almost) nothing*
    - *Set minimum conditions or standart terms*



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# *How? European & National Law*

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## **NAGOYA PROTOCOL COMPLIANCE : EU REGULATION 511/2014**

### **LIGHT COMPLIANCE RULES**

- **Positive obligation to « seek, keep, transfer » information (Art.4§3)**
  - No prohibition to use illegal material : decide in all « diligence » discontinue use if insufficient information
- **Light administrative control**
  - Checkpoints *ex ante* for public research ; *ex post* for others (market approval / commercialisation) but no link with IP offices
  - No self- monitoring scheme, private or public : just « best practices »





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# *What should a seed saver know?*

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## **USER OBLIGATIONS**

- **Concept of Access for utilisation**
- **Principle of PIC & MAT**
- **System for seeking & transferring Nagoya related information**

## **OPPORTUNITIES**





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## **ARCHE NOAH – Brussels Office**

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***THANK YOU FOR YOUR ATTENTION !***

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