

# The French legislation on Access and Benefit-Sharing

Annelaure Wittmann  
Policy officer on economic instruments and biodiversity

Ministry of Ecology, Sustainable Development and  
Energy - France

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Nagoya Protocol

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Ministère de l'Écologie, du Développement durable et de l'Énergie

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# Outline of the presentation

- **Why is the Nagoya Protocol important to France ?**
- **Towards a national legislation on ABS**
- **Towards ratification of the Nagoya Protocol**

# 1 - Why is the Nagoya Protocol important to France ?

- Towards a national legislation on ABS
- Towards ratification of the Nagoya Protocol



# A mega-diverse country



The Dune du Pilat

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The Marais Poitevin

© Thierry Degen MEDDE/METL



The Calanques

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# A mega-diverse country (2)



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Polynésie

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St Pierre et Miquelon

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La Réunion

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# France is both a provider and a user country

## GR user

- **Industries**

Cosmetic (2<sup>nd</sup> in the world)

Agro-food (1st industry in France)

Pharmaceutical...

- **Research**

Academic & commercial

## GR provider

- ***In situ***

**Mainland** : > 50 % of the « habitats of community interest » in the EU

**Overseas** : 4/5 of the French biodiversity (Amazonian forest, islands in 3 different oceans, endemic species, 10 % of the world's coral reefs)

- ***Ex situ***

Collections of GR of wild species and domesticated species (60 millions specimens in the MNHN)

Collections of pathogens (15000 strains of microorganisms in the Institut Pasteur)



# Existing regional ABS legislations / regulations

1. French Guiana Amazonian National Park (*loi n° 2011/884*)

2. Polynesian Code of Environment (*loi du pays n° 2012-5*)

3. New Caledonian Code of Environment (*délibération 06-2009 in the Southern province*)

# Key expectations of French stakeholders

## Users

- Legal certainty
- To facilitate partnerships
- ABS rules should be simple, practical, cost-effective
- ABS rules should be adapted to each sector
- To maintain an enabling environment for innovation

## Providers

- To support *in situ* and *ex situ* conservation
- To share benefits with local actors (jobs, know-how, products)
- To protect TK and local cultures
- A participatory approach where local governments have a key role (overseas)
- To improve the relations between users and providers (all)





# Key objectives of the draft national legislation

To strengthen **biodiversity protection** and to better share the benefits derived from its utilization by channeling them towards conservation and sustainable use of biodiversity ;

To strengthen **legal certainty** of users.

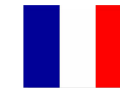
- Why is the Nagoya Protocol important to France ?

## 2 - Towards a national legislation on ABS

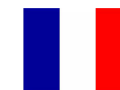
- Towards ratification of the Nagoya Protocol

# Articulation EC regulation / French draft legislation

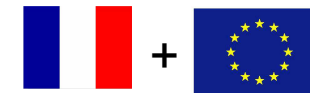
**Access** to French GRs and TKs (national legislation)



**Benefit-sharing** (national legislation)



**Compliance** (national legislation and EC regulation)





# Towards a national legislation on ABS

## Preparatory work

### **Studies**

- 2006, 2010, 2013 : Economic studies carried out by the ministry of ecology on the use of GR by the French research and private sector
- 2010 : Feasibility study on ABS and TK in the overseas territories

### **Stakeholders dialogue**

- Many consultations and bilateral meetings with the research, private sector and overseas institutions



# Towards a national legislation on ABS (2)

## Legislative procedure

- 2012 : parliamentary report on biopiracy
- 2012-2013 : drafting of the legislation and its impact assessment
- March 26, 2014 : draft legislation on biodiversity officially presented by the French government to the Parliament
- June 26, 2014 : 1st adoption of the draft legislation by the Sustainable Development Commission of the *Assemblée Nationale* (with amendments)
- **Next steps** : adoption of the draft legislation after 2 readings by the *Assemblée nationale* in plenary and by the *Sénat*

# Overview of the contents of the draft legislation on biodiversity



## PROJET DE Loi Biodiversité

A row of six colored circles: green, orange, purple, blue, dark purple, and brown.

6 chapters :

- 1 – general principles
- 2 – governance
- 3 – creation of a French Agency for Biodiversity
- 4 – ABS**
- 5 – natural areas and protection of species
- 6 – protection of landscapes





# Scope of the draft ABS legislation

- **Principles**

- a material, geographical and temporal scope coherent with the Protocol's scope
- a large scope to avoid grey areas for users
- simple procedures

- **Out of scope**

- Human GR
- GR accessed outside national boundaries (abroad or high seas)
- GR already covered by international ABS instruments (Plant Treaty)
- GR from cultivated and domesticated species used as model species in research

# Scope of the draft ABS legislation (2)

- **Covered by the draft legislation**
  - *In situ* and *ex situ* access to GR
  - New utilizations of French GR already in collection in France (past and on-going R&D projects are not concerned)
- **Covered by specific rules**
  - GR from domesticated and cultivated species (ministry of agriculture)
  - GR in forestry (ministry of agriculture)
  - GR from crop wild relatives used in crossbreeding with cultivated species in plant variety selection (ministry of agriculture)
  - Pathogens – for human, animal and plant health, as well as for food products safety (ministry of health & ministry of agriculture)

# Scope of the draft ABS legislation regarding TK

- **Out of scope**
  - TK that cannot be considered as belonging to 1 community in particular
  - well known and widely used TK (outside the communities)
  - TK covered by other official recognition schemes (ex: labels...)
  - TK shared within communities



# Procedures

Case	Procedure
Cultivated, domesticated, & crop wild relatives used in crossbreeding with cultivated species in plant variety selection	Specific
Pathogens	
Non-commercial use	General (declaration)
Sanitary emergencies	
Commercial use of GR	General (authorization)
Any use of TK	

## Simple & flexible rules adapted to each sector

- **Declaration:** website (CHM formats), subscription to a model benefit-sharing agreement & automatic issuance of permit
- **Authorization:** request to the relevant authority, negotiation of a specific benefit-sharing agreement & issuance of permit
- Request permits **at the appropriate level** (on a project basis, yearly...)
- Lower and upper **limits** by sectors to negotiate benefit-sharing agreements

# Compliance : a graduated approach

## Prevention and early detection of non-compliance :

- **Information** of stakeholders, Q&A sessions, dedicated e-mail address, voluntary procedure (since 2010) ;
- **Checkpoints** (EC regulation 511/2014)
- **Official checks**

## Sanctions if non-compliance is detected

- **Formal notice** to give the user a deadline to comply
- **Administrative** sanctions (withdrawal of the permit)
- **Penal** sanctions proportionate to the infraction (up to 1 year imprisonment and a fine of 150 000 €)
- If necessary : **additional** dissuasive sanctions can be imposed by the judge (a fine up to 1 million € in case of a commercial use only, and an access ban to French GR and TK during up to 5 years for commercial use only).

- Why is the Nagoya Protocol important to France ?
- Towards a national legislation on ABS

## 3 - Towards ratification of the Nagoya Protocol

## Background

September 29, 2010 : adoption of the NP

October 20, 2011 : France signed the NP

## Ratification procedure in France

The Parliament (*Assemblée nationale* + *Sénat*) has to authorize the President to ratify.

## Next steps

Draft legislation on the ratification of the NP - under preparation.  
Will be presented to the Parliament once the draft legislation on access is adopted.

# Thank you for your attention !

For more information, please contact :

**[apa@developpement-durable.gouv.fr](mailto:apa@developpement-durable.gouv.fr)**

