

EU Regulation on ABS: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL *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 Utilisation in the Union*

Morten Walløe Tvedt, the Fridtjof Nansen Institute,
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FNI's ABS Project Team

FNI political science and law

- Studied biodiversity policy and law for almost 20 years
- Private independent Norwegian research institute
- Competence center on biodiversity policy and law
- Capacity building and implementation consultations for countries: Bhutan, African, Pacific and Caribbean
- Looking at international law in a high number of areas: Patent law, IPR, WIPO, FAO, ITPGRFA, CGRFA etc
- Team of researchers: *Kristin Rosendal, Morten Walløe Tvedt, Christian Prip, Leif Christian Jensen, Tone Winge, Ole Kristian Fauchald, Peter Johan Schei*



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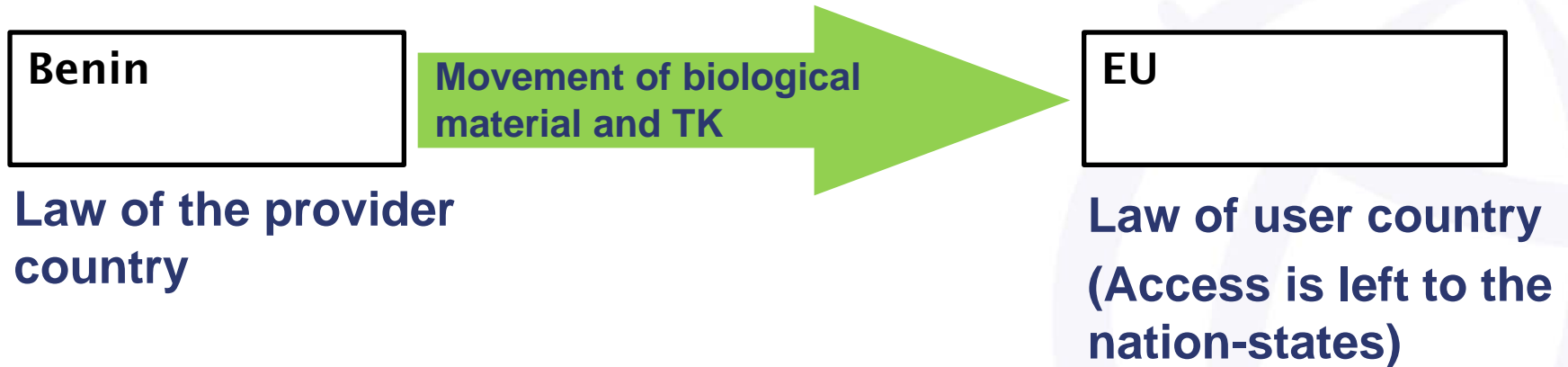
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The situation in GR Policy and Law

International law

- The principle of sovereignty
- Sovereign rights over GR
(permanent sovereignty to nat. resources)

Regional level



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EU Regulation:

Draft preamble 8. It is important to set out a clear and sound framework for implementing the Nagoya Protocol that should *contribute to the conservation of biological diversity and sustainable use of its components, the fair and equitable sharing of the benefits arising from the utilisation of genetic resources and poverty eradication while at the same time enhancing* opportunities available for nature-based research and development activities in the Union.



EU Regulation:

8. cont

It is also essential to prevent the *utilisation in the Union of* genetic resources or traditional knowledge associated with genetic resources *which were not accessed in accordance with the national access and benefit-sharing legislation or regulatory requirements of a Party to the Nagoya Protocol* and to support the effective implementation of benefit-sharing commitments set out in mutually agreed terms between providers and users.

It is also essential to improve the conditions for legal certainty in connection with the utilisation of genetic resources and traditional knowledge associated with genetic resources.



EU draft Art. 2:

- This Regulation applies to genetic resources over which ***States*** exercise sovereign rights and to traditional knowledge associated with genetic resources that are accessed after the entry into force of the Nagoya Protocol for the Union.
- EU draft Art. 3. 4: "access" means the acquisition of genetic resources or of traditional knowledge associated with genetic resources in a Party to the Nagoya Protocol Temporal scope to the NP.



EU:

Draft Art 3. 8a:

- "illegally accessed genetic resources" means genetic resources and traditional knowledge associated with genetic resources which were **not accessed in accordance with the national** access and benefit-sharing legislation or regulatory requirement of the provider country that is a Party to the Nagoya Protocol requiring prior informed consent;



EU draft Art. 4:

- Obligations of users
- 1. Users shall exercise **due diligence** to ascertain that genetic resources and traditional knowledge associated with genetic resources **which they utilise have been** accessed in accordance with applicable access and benefit-sharing legislation or regulatory requirements and that benefits are fairly and equitably shared upon mutually agreed terms, **in accordance with any applicable legislation or regulatory requirements.**



EU draft Art. 4 1a:

- Genetic resources and traditional knowledge associated with genetic resources shall only be transferred and utilised in accordance with mutually agreed terms if they are required by applicable legislation or regulatory requirements.



EU Regulation:

For the purposes of paragraph 1, users shall seek, keep and transfer to subsequent users:

- (a) the internationally recognised certificate of compliance, as well as information on the content of the mutually agreed terms relevant for subsequent users; or
- (b) where no internationally recognised certificate of compliance is available, information and relevant documents on:

EU draft Art. 5:

- The Commission shall establish and maintain a register of collections within the Union. The Commission shall ensure that the register is internet-based and easily accessible to users. It shall include the references of the collections of genetic resources, or of parts of those collections, identified as meeting the criteria set out in paragraph 3.



EU draft Art. 7 Monitoring user compliance:

1. Member States and the Commission shall request all recipients of research funding involving *the utilisation* of genetic resources and traditional knowledge associated with genetic resources to declare that they exercise due diligence in accordance with Article 4.

2. *At the stage of final development of a product developed via the utilisation of genetic resources or traditional knowledge associated with such resources, users shall declare to the competent authorities referred to in Article 6(1) that they have fulfilled the obligations under Article 4 and shall simultaneously submit:*



EU draft preamble:

(21) Member States should ensure that infringements of the rules *implementing* the Nagoya Protocol are sanctioned by means of effective, proportionate and dissuasive penalties.



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Thank you for your attention

Morten Walløe Tvedt, mwt@fni.no,
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