



ABS IN FRANCE

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ABS in legal framework

In France, ABS requirements and procedures are established through the following laws and regulations:

- [Law No. 2016-1087](#) on Biodiversity, Nature and Landscapes
- [Decree No. 2017-848](#) on Access to Genetic Resources and associated Traditional Knowledge and Benefit-sharing from their Utilisation

As a EU Member State, EU regulations on ABS also apply, including:

- [EU Regulation No. 511/2014](#) of 16 April 2014 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 Utilization in the Union
- [EU Commission Implementing Regulation 2015/1866](#) of 13 October 2015

Overview

France is known for its rich natural and cultural heritage. In Europe, France lies at the crossroads of biogeographic regions. Around the world, its territories range from subarctic to tropical latitudes, and include biodiversity hotspots. The French exclusive economic zone — where the country has rights to explore and use marine resources — is one of the largest in the world.

At the same time, France has a significant bio-economy. It is a global leader in sectors using natural ingredients, such as food and cosmetics. Indeed, France exemplifies that, in the context of access and benefit sharing (ABS), there are often no clear distinctions between “provider” and “user” countries.

As part of the European Union, France has measures to monitor compliance with ABS, in line with the Nagoya Protocol. In 2016, France also adopted, as part of its Biodiversity Law, rules on access to genetic resources and associated traditional knowledge within its territories, with the aim of “innovation without plundering”. This note outlines ABS requirements on research and development on French biodiversity, with a focus on natural ingredients.

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What is the scope of ABS rules?

In line with the Nagoya Protocol, ABS requirements in France are triggered by the “utilisation of genetic resources”. However, the term is defined more broadly in the French Biodiversity Law. It includes research and development activities on the genetic or biochemical composition of plants, animals, and other components of biodiversity. And it also refers to the “valorisation” of research and development results - namely, their subsequent applications and commercialisation.

ABS requirements cover only wild, native species. The French Biodiversity Law foresees the possibility of a specific regime for the research, development and valorisation of cultivated and domesticated species - for instance, rose, lavandin or thyme. However, such a regime has not been developed.

Both in situ and ex situ access is covered. Samples of biological material stored in public and private collections in France are also subject to ABS requirements. This means that any new access to such material, as well as any “new use” of material previously obtained - defined as research and development towards a commercial application in a new and different economic sector - would require a permit.

Traditional knowledge associated with genetic resources is also covered by ABS rules in France. Utilisation of such traditional knowledge is defined as its study and valorisation. However, traditional knowledge not longer linked to specific indigenous peoples or local communities, or widely known and used outside of such communities is excluded.

What are access procedures?

ABS procedures differ based on the commercial or non-commercial purpose of the utilisation of genetic resources. Non-commercial utilisation is defined as any research aiming to conserve, collect, valorise or otherwise increase knowledge on biodiversity - without a direct commercial purpose. Such activities only require declaration to the Ministry of the Environment, the competent authority for ABS implementation.

International commitments

France is a party to the following international agreements related to access to genetic resources and benefit sharing (ABS):

- Convention on Biological Diversity (CBD) — since 1994.
- International Treaty on Plant Genetic Resources for Food and Agriculture — since 2005.
- Nagoya Protocol on ABS — since 2016.



Competent authorities

Under the Nagoya Protocol, competent national authorities are responsible for granting access and advising on applicable procedures and requirements.

In France, the competent authority on ABS is the Ministry of Ecology.

Ministère de la Transition écologique
et solidaire

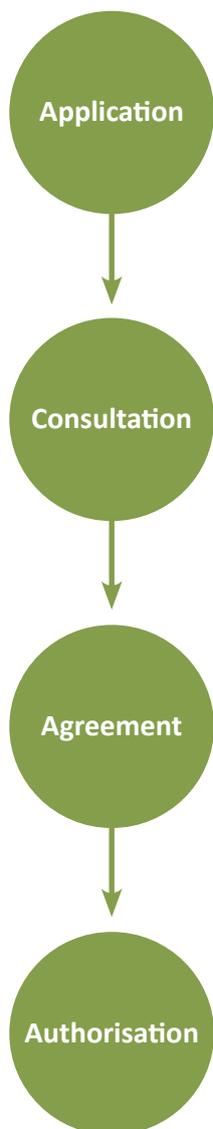
Direction de l'eau et de la
biodiversité Mission APA

1, place Carpeaux

92055 La Défense Cedex- France

apa@developpement-durable.gouv.fr

Companies wishing to access genetic resources for commercial purpose, as well as associated traditional knowledge, need to secure an authorisation, prior to the collection taking place.



The application can be submitted online or in hard copy. It requires information on the applicant and proposed activities, but it is possible to treat sensitive commercial information as confidential.

In some cases, the Ministry of the Environment must consult or otherwise involve other entities. For example, relevant management authorities must consent to the collection of samples within national parks (though consent is implied if there is no decision within two months).

Utilisation of traditional knowledge associated with genetic resources requires prior informed consent from the communities involved. The process for consultation and prior informed consent is led by a public entity, charged with such tasks. This entity is responsible for identifying and engaging members of the local community and documenting and communicating the outcomes of discussions. This consultation process should last no longer than nine months.

The benefit sharing agreement is negotiated with the Ministry of the Environment, which may involve or seek advice from other stakeholders. The process should take no longer than four months. In cases involving traditional knowledge, the benefit sharing agreement is negotiated with the public entity representing the local community.

The ABS authorisation should be issued within two months of concluding the benefit sharing agreement - otherwise, it is considered to be automatically granted. However, the authorisation may be refused in circumstances such as lack of agreement on benefit sharing or possible negative impacts on biodiversity.

ABS rules in Overseas France

Different ABS rules may apply in Overseas France. This is particularly the case with collectivities, which have the right to develop their own laws. For instance, New Caledonia and French Polynesia have already enacted their own legislation on ABS. Specific local rules on ABS may also apply to certain regions, even under the national legislation. The following are examples of distinctive ABS rules:

- French Polynesia (Country Law No. 2012-5 on Access to Biological Resources and the Sharing of Benefits from their Valorisation);
- New Caledonia, southern province (Deliberation 06-2009 of 18 February 2009 on the Harvesting and Exploitation of Biochemical and Genetic Resources).



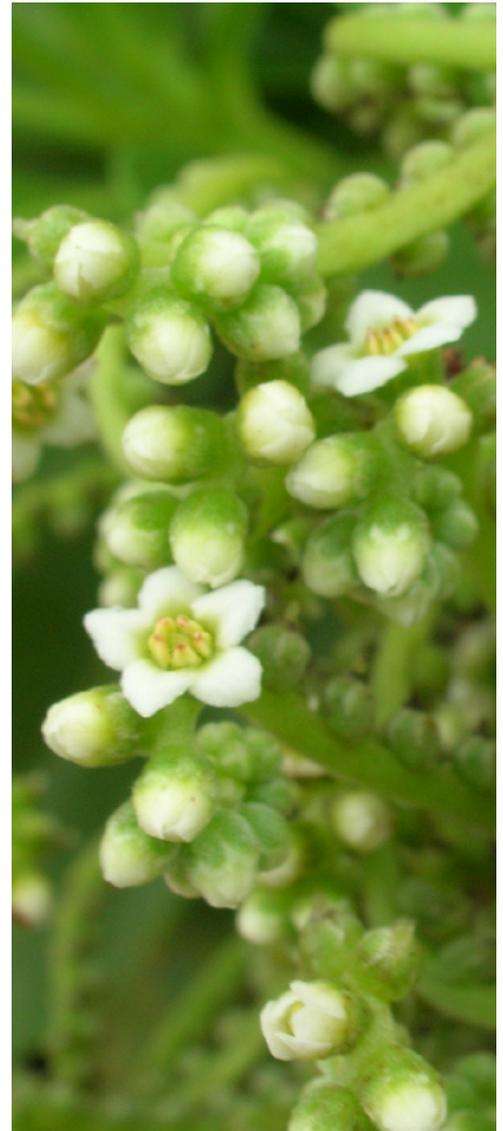
Approaches to benefit sharing

In France, benefit sharing terms are negotiated — within certain parameters — between the users and relevant competent authorities. Standard benefit sharing contracts (for genetic resources and associated traditional knowledge respectively) are available, but terms can be tailored for different projects.

A wide range of possible benefits is foreseen, from restoring biodiversity, preserving traditional knowledge through tools such as databases, and payments and other monetary benefit sharing. Monetary benefit sharing may refer to the revenue of the product derived from the utilisation of genetic resources. However, such percentage may not be higher than five percent of its global annual turnover, excluding taxes. Monetary benefits from utilisation of genetic resources go to the French Agency for Biodiversity. Benefits from the utilisation of associated traditional knowledge go to projects for and developed jointly with the local communities.

What are sanctions for non-compliance?

Persons or organisations deemed to be in non-compliance will be given notice and a period of time to bring their activities in line with ABS rules. However, significant sanctions are applicable in cases of subsequent non-compliance, especially for commercial utilisations. For instance, fines may reach up to € 1 million in situations of commercial utilisation, as well as involve one year imprisonment and an up-to-5-years ban to access French genetic resources and associated traditional knowledge.



Prepared by:



Union for Ethical BioTrade Secretariat
De Ruyterkade 6
1013 AA, Amsterdam, Netherlands
info@uebt.org
www.uebt.org

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