



CONTACTS AND NEGOTIATION

ESTABLISHING TRUST WITH PROVIDER COUNTRIES

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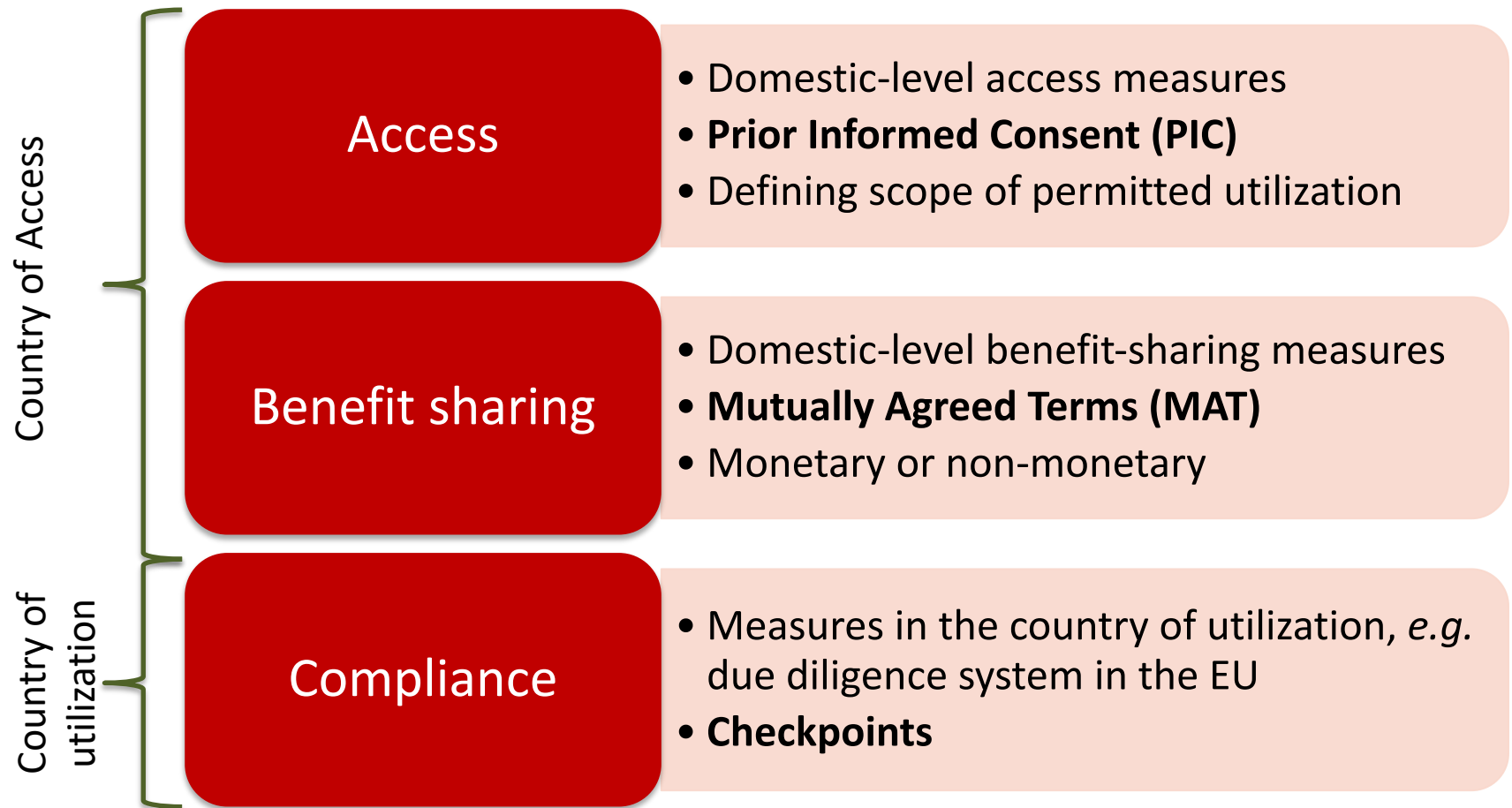
1. Overview of the international legal framework on ABS
2. How to find the right contacts and the up-to-date information
3. Insights on provider country legislation
4. Conclusion

Once upon a time
(any resemblance to real persons is a result of Google
Images)



1. Nagoya Protocol

Obligations



2. How to find the right contacts

ABS Clearing House



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The Access and Benefit-Sharing Clearing-House (ABSCH) is a platform for exchanging information on ABSCH and a key tool for facilitating the implementation of the Nagoya Protocol. ⓘ

JS map by amCharts Disclaimer

128 Parties to the Nagoya Protocol

1 Ratified, not yet Party ⓘ

70 Non-Parties

National Records

175	ABS National Focal Point
118	Competent National Authority
263	Legislative, Administrative or Policy Measure
21	ABS Procedure
3	National Model Contractual Clause
1996	Internationally Recognized Certificates of Compliance
52	National Websites or Databases
69	Checkpoint

Announcements

HANDOUT
Contribution of ABS to the Sustainable Development Goals

3 WEBINARS HELD ON DEC 1, 9 AND FIRST QUARTER 2021
Webinars on ABS as genetic resources

FIVE ONLINE SESSIONS HELD FROM 29TH OCTOBER TO 13 NOVEMBER.
Let's celebrate the 10th anniversary of the

2. How to find the right contacts

ABS Clearing House

<div> <div>1/2</div> <div>Countries</div> <div>Party Status</div> <div>Regions</div> <div>EXPORT</div> </div>		NFP ⁱ	CNA ⁱ	MSR ⁱ	PRO ⁱ	NMCC ⁱ	IRCC ⁱ	NDB ⁱ	CP ⁱ	CPC ⁱ	NR ⁱ
		175	118	263	21	3	1996	52	69	37	98
1	Afghanistan PARTY TO THE NAGOYA PROTOCOL ENTRY INTO FORCE: 04 SEP 2018	NFP 1	CNA 0	MSR 0	PRO 0	NMCC 0	IRCC 0	NDB 0	CP 0	CPC 0	NR 0
2	Albania PARTY TO THE NAGOYA PROTOCOL ENTRY INTO FORCE: 12 OCT 2014	NFP 1	CNA 1	MSR 2	PRO 0	NMCC 0	IRCC 0	NDB 0	CP 0	CPC 0	NR 1
3	Algeria NON-PARTY SIGNATORY	NFP 1	CNA 0	MSR 1	PRO 0	NMCC 0	IRCC 0	NDB 0	CP 0	CPC 0	NR 0
4	Andorra NON-PARTY	NFP 0	CNA 0	MSR 0	PRO 0	NMCC 0	IRCC 0	NDB 0	CP 0	CPC 0	NR 0
5	Angola PARTY TO THE NAGOYA PROTOCOL ENTRY INTO FORCE: 07 MAY 2017	NFP 1	CNA 0	MSR 0	PRO 0	NMCC 0	IRCC 0	NDB 0	CP 0	CPC 0	NR 1
6	Antigua and Barbuda PARTY TO THE NAGOYA PROTOCOL SIGNATORY ENTRY INTO FORCE: 12 MAR 2017	NFP 1	CNA 1	MSR 2	PRO 0	NMCC 0	IRCC 0	NDB 0	CP 0	CPC 0	NR 1
7	Argentina PARTY TO THE NAGOYA PROTOCOL SIGNATORY ENTRY INTO FORCE: 09 MAR 2017	NFP 1	CNA 1	MSR 0	PRO 0	NMCC 0	IRCC 1	NDB 0	CP 0	CPC 0	NR 1
8	Armenia NON-PARTY	NFP 1	CNA 0	MSR 0	PRO 0	NMCC 0	IRCC 0	NDB 0	CP 0	CPC 0	NR 0
9	Australia NON-PARTY SIGNATORY	NFP 1	CNA 0	MSR 0	PRO 0	NMCC 0	IRCC 0	NDB 0	CP 0	CPC 0	NR 0
10	Austria PARTY TO THE NAGOYA PROTOCOL SIGNATORY ENTRY INTO FORCE: 18 OCT 2018	NFP 1	CNA 1	MSR 3	PRO 0	NMCC 0	IRCC 0	NDB 2	CP 1	CPC 0	NR 0
11	Azerbaijan	NFP	CNA	MSR	PRO	NMCC	IRCC	NDB	CP	CPC	NR

2. How to find the right contacts

Local Partners

- Ask the scientists at the institute you are collaborating with whether they have experience with the local ABS procedures and whether they can help you establish contact with the authorities.
- Some provider country laws require the local partners to obtain the contracts! Make sure you have good contacts, and make sure your local partner is aware of this.
- LifePlan survey on the ABS knowledge of local partners: Lifesaver :)
- It is your responsibility to have the correct permits, and negotiate contracts with the right authority. Do not fully rely on local partners to do the work for you.



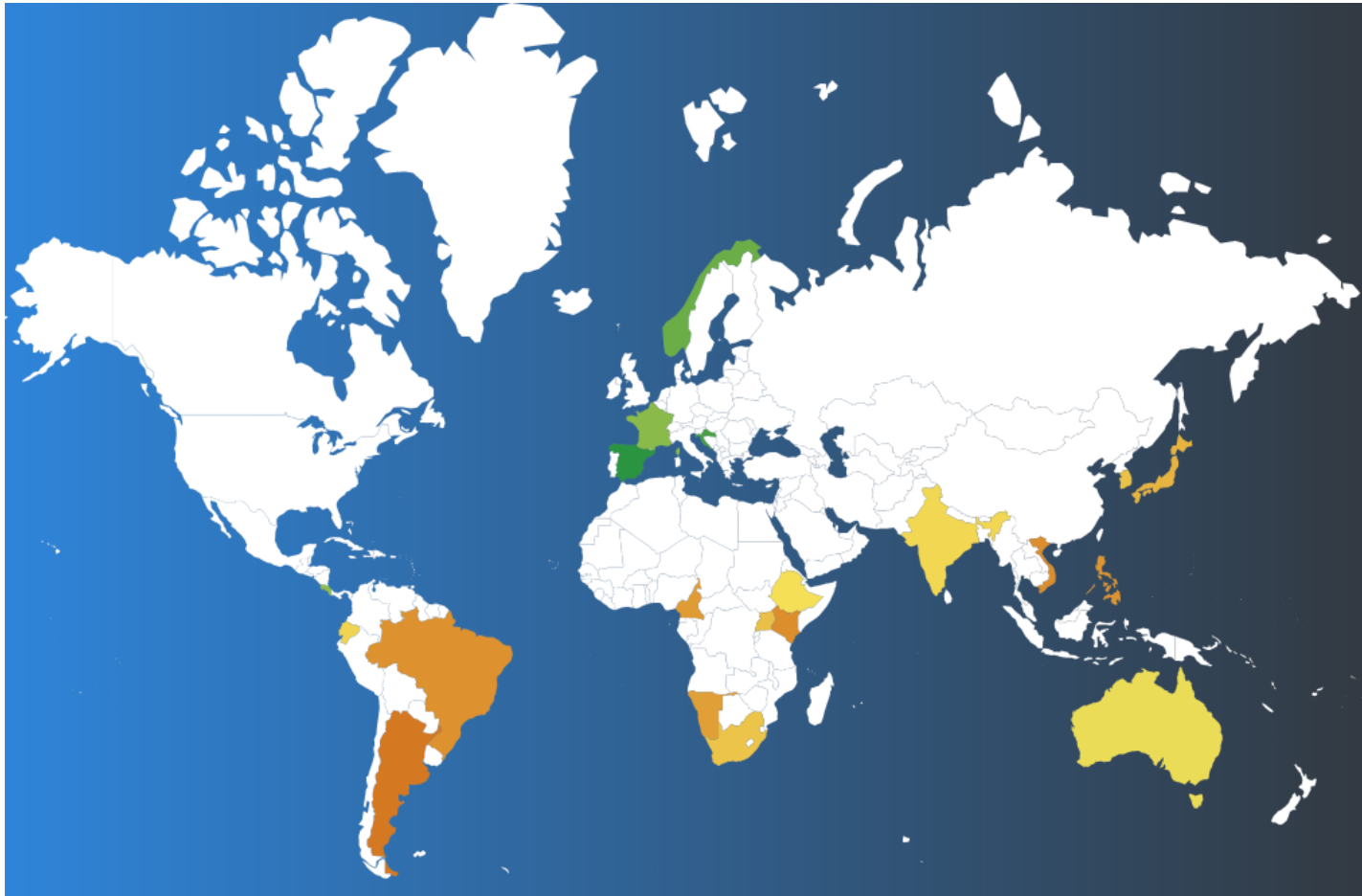
2. How to find the right contacts

Legal advice

- **Never fully rely on the information on the ABS Clearing House.** They might be outdated, new laws may have been implemented, the Competent Authority might have changed!
- **Never fully rely on the information from the local partners.** They are not legal experts, they are not ABS experts, they are scientists just like you.
- **DO consult a legal expert** on finding the right contacts and the most up-to-date legislation.
- **Ask support during the negotiations** to check the communication, clauses in the contracts
- **If you do not receive a response from the authorities,** try a few times to establish contact and ask help from local partners. If you still cannot hear from them, ask a legal expert to conduct a risk analysis for you.



3. Insights on provider country legislation



Commonly used regulatory options on ABS	Access	Scope	Material scope	In situ only
				In situ + ex situ
				Access to DSI
			Temporal scope	Sampling
				Utilization
				Access to a previously utilised genetic resource for new utilisation
			Utilization scope	Research
				Development
				R&D
		Pre-condition for access		Mandatory BSA
			Voluntary BSA	
	Options for regulatory mechanisms		Permit	
			Notification	
	Standardisation		Standardised	
			Case-by-case	
		Benefit-sharing	Types	Monetary
	Access fee			
	Up-front payment			
	License fee			
	Royalties			
	Salaries and funding			
	Trust fund payment			
	Non-monetary			Raw data
				Research results
				Capacity building
				Technology transfer
				Research directed towards priority needs of the provider country
				Food and livelihood security benefits
	Trigger			Access
				Utilisation
	Standardisation			Standardised
				Case-by-case
	Renegotiability			Renegotiable when the user and/or the intent changes
				Non-renegotiable
			Compliance	Sanctions
		Criminal sanctions in any case of breach		
		Administrative fines for light breach, criminal sanctions for severe breach		

Excerpt from Sirakaya, A. (2019) Balanced Options for Access and Benefit-Sharing: Stakeholder Insights on Provider Country Legislation:

<https://www.frontiersin.org/articles/10.3389/fpls.2019.01175/full>

3. Insights on provider country legislation

Regulatory Mechanisms

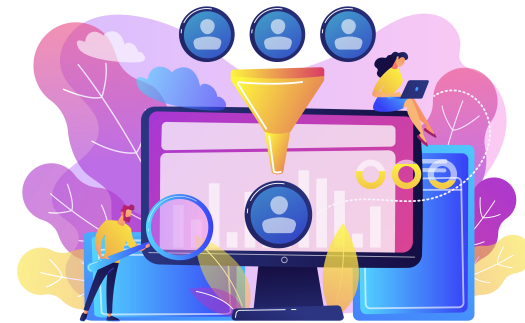
- There is no one-size-fits-all solution!
- Each provider country has a **different ABS procedure**.
- Some provider countries have **multiple competent authorities**:
 - Depending on the **region**
 - Depending on the **type of genetic resource**
 - Depending on the **competence** of different ministries
- Some provider countries have **different permit procedures for sampling, access, material transfer and export**. Some provider countries have integrated procedures.
- Some provider countries have **different legislation per region**. E.g. Argentina, Portugal, Spain



3. Insights on provider country legislation

Negotiation

- **Before negotiating** benefit-sharing terms, check with your project, and team to determine **what type of benefits you can offer**
 - Research funds
 - Workshops, webinars, courses
 - Equipment
 - Training programme for researchers from provider countries
 - Access to data
 - Tools to analyse the data
 -
- When you are contacting a the authorities, make sure you are **as detailed as possible about what you aim to do with the material, which methods** you will use for your research, **which institutes** will have access to it, whether you will **transfer the material to third parties** and what you aim to do with the **material after the project**.



4. Conclusions

- Start identifying the provider countries and their ABS procedure **as early as possible** within a project.
- **Do not collect material before obtaining the necessary documents!**
 - For some countries, this is a crime punishable by imprisonment.
- When negotiating, **never promise a benefit that you cannot provide.**
- If you are a project leader, **establish an internal strategy for ABS compliance at the start of a project** and inform all scientists and local partners of this strategy.