

# European legislation on access to genetic resources and products derived from biodiversity

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# Context (1)

- **Biodiversity seen in Europe as :**
  - ✓ threatened exotic species → international protection through environmental agreements
  - ✓ local breeds and landraces → Europe is as much a provider as a user of genetic resources
  - ✓ supported by international exchanges of knowledge and species → preference for collective, non-exclusive regulation systems for genetic resources
- ➔ *Europe unprepared to the CBD principle of regulating access to national genetic resources*

## Context (2)

- **Food in Europe is a cultural matter :**
  - ✓ rooted in the combination of local agro-biodiversity – “terroir” products – cultural traditions → recognition as local heritage
  - ✓ valuing tradition over technological developments → importance of consumer protection
- ➔ *In the field of food, Europe is more familiar with the logic of traditional knowledge protection (8j) than with the logic of commercial benefit-sharing (15)*

# Background : definitions (1)

## Genetic resources =

Any genetic material (= material of plant, animal, microbial or other origin containing functional units of heredity) of actual or potential value

→ *material + immaterial*

Applicable law :

- ✓ CBD art 15 = access and benefit sharing
- ✓ access laws / environment protection
- ✓ intellectual property rights for new genetic resources created by man

## Background : definitions (2)

### Biological resources =

- ✓ (genetic resources)
  - ✓ organisms or parts thereof,
  - ✓ populations
  - ✓ any other biotic components
- of actual or potential use or value for humanity

→ *material*

Applicable law :

- ✓ *out of the scope of ABS*
- ✓ trade laws (commodity)
- ✓ environment protection (threatened species)

# Background : definitions (3)

## Traditional knowledge =

- ✓ nature, possible description or definitions yet to be agreed upon
- ✓ multiple characteristics of TK systems (integral to a community's belief system, collective, continuously evolving...)
- ✓ related to indigenous knowledge, traditional medicine, local technology, know-how and practices

→ *immaterial*

Applicable law :

- ✓ CBD 8j
- ✓ intellectual property rights



# Access legislation in Europe : France

## ➤ Legal framework

- ✓ "GR" unknown by law : reference to "diversity" only, as part of national heritage, whose management is of common interest (art. L 110-1 Environment Code)
- ➔ no rights and obligations on individual GR, except those protected by IPR
- ✓ access for scientific purposes within protected areas
- ✓ efforts to clarify access rules to GR : Amazonian park in French Guyana (art L 331-15-6)

## ➤ Policy framework

- ✓ collective management of French diversity (*Charte Nationale*) = networks maintaining National Collections, accessed through the ITPGRFA multilateral system

# Access legislation in Europe : Nordic countries

Iceland, Denmark, Finland, Norway, Sweden

## ➤ Legal framework

- ✓ specific provisions for Sami people while entering the EU (exclusive rights to reindeer husbandry)
- ✓ no global access regime

## ➤ Policy framework

- ✓ Strategy for Genetic Resources in the Fisheries, Agriculture, Forestry and Food Sectors in the Nordic Region (2005 – 2008)
- ✓ main goals = conservation and sustainable use through joint management of Nordic genetic material ; follow-up the Ministerial Declaration on Access and Rights to GR, co-operation within the region

# IP on results of the utilisation of GR in Europe

- **European patent convention (1973)**
  - ✓ patent on micro-organisms (+ function)
  - ✓ no patent on animal breeds nor plant varieties
  - ➔ UPOV = free access to genetic variability
  - ➔ IT = impossibility to track individual GR in plant breeding
- **EU Directive 98/44/EC on biotech inventions**
  - ✓ strict interpretation of the industrial application criteria
  - ✓ links with ABS : mention of the origin of the material used (recital 27), of article 8j of the CBD (recital 55), further work on TRIPs – CBD relation

# Traditional knowledge protection in Europe

## ➤ EU legislation

- ✓ collective trademarks (art 15(2) of Directive 89/104/EEC – art L75- of French IP Code ; art 64(2) of EC Regulation n° 40/94)
- ✓ geographical indications : protection of geographical indications and designation of origin for agricultural products and foodstuffs (EEC Regulation n° 2081/92 of 14 July 1992) ; appellations of origin (AOC) in France (art L115-1 of Consumer Code) = "quality and characteristics due to the geographical environment, including both natural and human factors"

## ➤ Portugal Decree-Law n° 118/2002 on TK associated to plant GR in Portugal

# EU position in current IP negotiations

## ➤ Disclosure of origin

- ✓ in favour of a binding international requirement to disclose the origin or source of GR and associated TK in patent applications if
- ✓ discussed in WIPO IGC
- ✓ not a condition for patentability

## ➤ TK protection

- ✓ should contribute to CBD 8j objectives
- ✓ WIPO IGC primary forum for IP discussions on TK
- ✓ supports the UN Declaration on the Rights of Indigenous Peoples (13 September 2007)
- ✓ promotes participation of local and indigenous communities to the process

# Ways forwards (1)

## 1. Clarify starting point of ABS

- **Which part of biodiversity is used :**
  - ✓ material (no use of the functional units of heredity)  
= commodity or product → trade
  - ✓ immaterial = knowledge → IP ; European interest in developing protection for collective an evolving knowledge
  - ✓ combination of material + immaterial = GR → ABS
- **What is the national regime for access to GR**
  - ✓ needed to issue any international certificate or apply any compliance measure
  - ✓ minimum international common standards, including consistency with CBD / IT PGRFA

## Ways forwards (2)

### 2. A two-levels process

#### ➤ **Governmental level : consistency**

- ✓ recognize and use the specialized international fora to develop the international ABS regime

#### ➤ **Stakeholders level : sectorial / bottom-up approaches**

- ✓ simplified access for non-commercial research
- ✓ GR for food and agriculture not covered by the IT PGRFA
- ✓ stakeholders' codes of conduct
- ✓ standard provisions for ABS contracts

*Thank you for your attention*

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