

## **Report: 1st Meeting of the German Nagoya Protocol HuB Network (1. GNP HuB Stammtisch)**

25 September 2020, 10:00-12:00 (video conference)

### **Launch of the Network**

Our virtual “GNP HuB Stammtisch” has begun, bringing people from all over Germany together every few months. It’s an online platform for participants to exchange for a couple of hours on issues relating to the implementation of the Nagoya Protocol.

At the meeting on 25 September 2020, a short overview was provided about the new network and its goals - ongoing exchange of information, networking and awareness-raising.

The new network is informal – participation and contributions are all completely voluntary and participants are encouraged to provide input on topics for discussion and make requests.

What’s coming up? Topics at future meetings include document and sample management, institutional issues like internal procedures, responsibilities etc., and digital sequence information on genetic resources (DSI). A number of participants are fairly new to the Nagoya Protocol and a number expressed interest in participating in an additional meeting “Nagoya Protocol for Newbies”.

### **Quiz on four common frequently asked questions (FAQs)**

Speed and accuracy were important for our quiz on common FAQs relating to the Regulation (EU) No 511/2014 (EU Regulation). Each question was followed by a discussion with input from the German Federal Agency for Nature Conservation (Bundesamt für Naturschutz, BfN).

The participants did well but not everyone got the right answer... it shows how important this type of exchange is for ensuring a better understanding of compliance in Germany.

***Congratulations to our winner Henriette and runners up Hanieh and Meike!***

**1. I do research on material received from a commercial source in Germany. Is it Nagoya Protocol (NP) relevant?**

What were the options?

- Yes, always.
- No, material acquired from commercial sources is always out of scope.
- Maybe. Check with the commercial provider where it came from and when.

Just over half of our participants got this right. You need to check with the commercial provider about where the material came from and when it was originally obtained. Material bought from a commercial source is not always NP relevant but it could be.

*What did BfN say about this?*

Using commercially sourced material originally intended for consumption or production for research purposes is a change of intent. This could fall within the scope of the EU Regulation.

The due diligence obligation under the EU Regulation requires the researcher to make an enquiry into where the material came from. The example of oysters bought from a producer in Denmark was used. Were the oysters imported to Denmark from another country? If so, the other country is the provider and their ABS laws (if they exist) have to be checked. The same applies if a researcher buys a fish from the local “Baumarkt”. This enquiry may mean tracing material back through different wholesalers and traders until the country of origin can be located, which could be extremely difficult in practice.

Every country approaches ABS differently, meaning that commercially produced material may or may not be subject to ABS laws. Some countries, for example, only regulate access to wild or endemic specimens. The fact that countries do things differently makes it difficult for researchers to understand their obligations.

Some material from commercial sources is out of scope of the EU Regulation, e.g. material originally from Germany as well as plant varieties that are legally on the market in the EU.

**2. My collaborator gave me material with a material transfer agreement (MTA), which says the material is NP compliant. Is that sufficient?**

What were the options?

- Yes, the MTA is sufficient to fulfil my due diligence obligation.
- Yes, if the material is not NP compliant, the other party is liable for it.
- Yes, the MTA will pass on any benefit-sharing obligations.
- No.

This was a hard question, time was short and only five people got this one right. It is a common question as material is often transferred between institutions on the basis of an MTA. Some of these MTAs include statements about Nagoya Protocol compliance and benefit-sharing. Is that sufficient? The answer is “no”.

*What did BfN have to say about this?*

If your collaborator in a foreign country organizes the ABS documentation on your behalf, that is great. The material can then be transferred on the basis of an MTA, which is a form of contract. If the information provided by your collaborator is incorrect, they could possibly be held liable for it.

HOWEVER, as a researcher in Germany you remain responsible for your due diligence obligations. It is necessary for you to ask the person providing the material to also give you a copy of any Nagoya documents, e.g. the benefit-sharing agreement and ABS permit. This allows you to check whether what you are proposing to do (e.g. export the material, research, transfer it to third parties etc.) is permissible. These are the documents that the BfN will want to see if they conduct a check.

Don't forget there is also an obligation under the EU Regulation to transfer Nagoya documents to subsequent users of the material – this is also not possible if you do not have them.

**3. *The national focal point (NFP) hasn't responded to multiple enquiries. How do I fulfil my due diligence obligations?***

*What were the options?*

- I should wait until I get an answer before doing anything.
- I need to get proof that I contacted the NFP 3 times in 3 months .
- I should look for information from other sources .
- I've done enough and can start my research.

There were two right answers time and most people got this question right. You need to contact the national focal point over an extended period of time and document your efforts PLUS you should look for information from other sources

*What did the BfN say about this?*

Contacting the NFP of the provider country is an important first step in the ABS process. The NFP should respond with information about how ABS works in their country and what you need to do. There are, however, NFPs that do not answer or emails sent to them bounce. What to do?

If there is any indication anywhere (that includes outside of the ABS Clearing House (ABSCH)) that ABS measures exist and/or access to “genetic resources” is not “free“, you need to keep trying to contact the authority in the provider country. The lack of response is not an excuse and you cannot start utilizing the material in the absence of the required documentation.

The ABSCH is not always up-to-date and some countries have ABS laws but do not publish them in the ABSCH. This means that laws may exist but are not listed there. To get more information, you can try doing a Google search, looking on the competent national authority's website, contacting the focal point of the Convention on Biological Diversity, getting in touch with the German Nagoya Protocol HuB Network or reaching out to the BfN.

If all your efforts don't lead anywhere and there is **no indication** anywhere that ABS applies, you can **initially** demonstrate part of your due diligence obligations by contacting the NFP a number of times over an extended period of time AND documenting these efforts. It is also important to check throughout this period that the responsible person has not changed. Contacting the competent authority at least three times over a period of several months would be perceived as diligent behaviour.

What is the risk? You start using your material for research and then find out that ABS applies. Then, according to the EU law, you would have to stop your research immediately until you obtain the required ABS documentation (if this is even possible).

It is also important to keep in mind that the concept of being diligent only applies for the EU Regulation. Starting research without knowing if ABS laws apply could result in a contravention of the provider country's laws and you could be sanctioned in that country.

#### ***4. I'm conducting research on material from a country that is not Party to the Nagoya Protocol. How do I proceed?***

*What were the options?*

- I don't have to submit a due diligence declaration.
- I should still check if there are applicable ABS laws.
- I have to provide evidence that ABS does not apply to me.
- I don't need to do anything.

There were two right answers. Most people knew that they should check whether there are applicable ABS laws in non-Nagoya countries. There is also no need to submit a due diligence declaration. Some people wrongly thought that they have to provide evidence that ABS does not apply to them.

*What did the BfN say?*

There are ABS laws in some non-Nagoya Protocol countries, e.g. Brazil, Costa Rica and Australia. The EU Regulation does not apply if material used for research comes from a non-Nagoya Protocol country. The German authority cannot sanction researchers for failing to have the required ABS documentation because the German authority does not enforce foreign law.

Researchers should still comply with local laws in the provider country even if there are no due diligence obligations in the EU. Apart from the risk of sanctions, non-compliance in provider countries could also have long term implications for researchers themselves and their institutions arising from, for example, the loss of trust and a tarnished reputation.

If ABS does not apply, there is no need for researchers to provide evidence of this, although the BfN might challenge a claim of being outside the scope of the EU Regulation. The BfN can ask questions and request to see documents, meaning that in practical terms, good record keeping/document management makes everyone's life easier.

Researchers should keep this in mind: If the EU Regulation does apply, researchers could possibly be sanctioned twice for non-compliance with ABS laws – once by the provider country and once by the German authority for failing to have the required documentation. If researchers have complied with the laws of a provider country, there are not so many additional obligations. Submitting the due diligence declaration is the easy part!

**If you have any questions about the German Nagoya Protocol HuB, our network or this report, please contact the GNP HuB coordinator, Elizabeth Karger ([info@nagoyaprotocol-hub.de](mailto:info@nagoyaprotocol-hub.de)).**