

## REPORT

### 6th Meeting of the German Nagoya Protocol HuB Network (6th GNP HuB Stammtisch)

Wednesday, March 2 from 14:00-15:30, online meeting.

#### German Nagoya Protocol HuB - Project Update

At the beginning of the meeting, Dr. Scarlett Sett gave a brief project update.

A new video on the importance of ABS rules and their implications was presented to the participants. The video is intended to raise awareness among researchers about why compliance with the Nagoya Protocol is important and what the consequences of non-compliance might be. The video can be found on the new HuB [YouTube channel](#) and on the [project website](#).

A new infographic was also presented that provides guidance on which departments of an institution might be relevant for ABS compliance and how responsibilities might be shared at the individual and institutional levels. The infographic can be found on the [HuB website](#).

The HuB podcast "Nagoya Bites" is now available on [Spotify](#) and YouTube in addition to the project website.

The participants were also informed that the project manager, Elizabeth Karger, would be returning from parental leave in March.

Lastly, participants were reminded of the existence of a group for ABS compliance officers from German research institutions and universities. Network members who are also ABS compliance officers were invited to contact Dr. Sett if they are interested in joining this group.

#### Impulse presentations

##### ***DFG Engagement with ABS - Dr. Meike Teschke, German Research Foundation (DFG).***

Dr. Teschke explained how ABS and the Nagoya Protocol are addressed by the German Research Foundation (Deutsche Forschungsgemeinschaft, DFG), which has been dealing with the issue for a long time.

Expert panels have been established at the DFG to provide advice on socially and politically relevant topics, with one of these dealing with ABS and the Nagoya Protocol. This is called the "Permanent Senate Commission on Fundamental Questions of Biodiversity" (Ständige Senatskommission für Grundsatzfragen der biologischen Vielfalt, SKBV). In order to address the requirements for research, the SKBV established an additional expert body, namely the Working Group on Access and Benefit Sharing (Arbeitsgruppe ABS, AG ABS), whose members are researchers from the life and legal sciences. The AG ABS is in constant exchange with staff from the relevant ministries and the German Federal Agency for Nature Conservation (Bundesamt für Naturschutz, BfN).

The AG ABS:

- has been following the relevant political and legal developments for many years;
- represents the interests and needs of the research community in national and international discussions;
- identifies need for action by the DFG and advises the SKBV, the DFG Head Office and DFG committees;
- together with SKBV, it develops publications to support the research community with their obligations arising from the implementation of the Nagoya Protocol.

The DFG is committed to awareness-raising so that researchers know about relevant ABS rules. It now requests information from applicants regarding ABS as part of the funding application process. This is done as experience had shown that many researchers were not aware of their ABS obligations.

The SKBV, through the ABS AG, has produced two important publications to assist the scientific community with ABS and the Nagoya Protocol. These are:

- [Guidelines for Researchers](#) and [Model Clauses](#) – these guidelines provide information for conducting Nagoya Protocol related research projects. The Model Clauses are intended to assist researchers with the negotiation of the relevant contracts with the provider countries.
- [Guidelines for Scientific Institutions](#) - an aid for the management and administration of research institutions to ensure a legally compliant handling of the Nagoya Protocol (available in German only). At the moment, an English version does not exist but DFG is considering whether one is required.

The first publication has been around for a while and the second one was published in December 2021.

### ***Presentation of the new DFG Guidelines for Scientific Institutions - Lucas Hennicke, University of Greifswald.***

Mr. Hennicke started by pointing out that provider countries have their own ABS rules, which have different scopes. Research institutions are only directly addressed sometimes. In addition, there are the European and German implementing Acts to the Nagoya Protocol, which cover all natural and legal persons as well as any research or development activity involving genetic resources that fall within their scope of application.

In practice, this means that a two-pronged examination of ABS law is required:

- First, it should be checked whether the ABS laws of the provider country are relevant, and if not, this should be documented.
- Second, if the ABS laws are relevant, additional attention must be paid to whether the European Regulation applies and the corresponding obligations should be fulfilled.

With respect to the ABS regulations of the provider countries, Prior Informed Consent (PIC) is usually obtained and then access agreement is entered into with the provider (Mutually Agreed Terms, MAT). There may be variations due to the sovereignty of States.

Next, the three obligations of the EU and German transposition Acts must be considered:

- General due diligence obligation;
- Duty to document;

- Duty to submit a so-called due diligence declaration.

Different entities at the organizational level can be responsible for these duties:

- Scientific institutions as legal entities represented by the management level. If there is no explicit attribution of responsibility, it can be determined internally who is responsible;
- Project management;
- Researchers.

Legal and non-legal consequences are attached to these responsibilities. Checking occurs at different levels:

- Compliance with ABS rules is monitored by the authorities of the respective provider country. There may be sanctions for non-compliance, for example, research bans, entry bans, etc.
- The EU and German implementation Acts to the Nagoya Protocol: In Germany, monitoring is done by the BfN. Sanctions take different forms, including orders to stop research and take remedial action. In addition, non-compliance can be dealt with as an administrative offence, which can attract a fine of up to 50,000 euros.

#### *Q&A session*

A participant asked what to do in cases where there is doubt whether research is “utilization” or not. Mr. Hennicke noted that the DFG and the EU Guideline are useful and one can always contact the BfN in this regard. In addition, one can also contact the country of origin and ask whether the proposed research falls under their ABS laws.

#### ***First experiences from a university - Prof. Erwin Beck, University of Bayreuth.***

The DFG Guidelines for institutions were only published in December last year. Prof. Beck emphasized that a full implementation of these guidelines is not easy in such a short time period. He then presented the status of implementation at a university.

The university management and the advisory office are aware of the issue. The number of potential projects that could be Nagoya-related is unknown as there is no reporting requirement at the university. However, looking at the collaborative projects being undertaken at the university, it can be assumed that some would be affected.

The Research Funding Staff unit at the university has been tasked with dealing the issue and it will determine any need for action. The new DFG publication was sent to all faculties and the Unit’s newsletter also referred to the Nagoya Protocol. There has been little need to provide advice to researchers and a point of contact for controls is yet to be established.

It is up to the researchers to check whether there are any ABS commitments. There is no central archive for ABS documents, which must be kept for 20 years. The documents remain with the researchers (Principal Investigators, PIs). Individual researchers are also responsible for submitting their due diligence declarations through DECLARE.

Prof. Beck suggested that to create more awareness at universities in general, ABS and the Nagoya Protocol could be raised with the Conference of Biology Departments and the Conference of University Rectors.

## Discussion

The speakers were asked whether they have noticed any changes since the new DFG guidelines were published in December. Dr. Teschke said that, contrary to her expectations, not many enquiries had been received. Prof. Beck said that there had been some enquiries from PIs at the university because they are responsible for ABS and the relevant documentation is still with them. His expectation is that it will take more time for management to be aware of the structural changes needed to meet the requirements arising from the implementation of the Nagoya Protocol.

The new DFG guidelines were sent directly to the management at German academic institutions. However, it is to be expected that it will take a while for necessary changes to occur at universities and research institutes. It is not always clear as to what questions need to be addressed and who needs to be involved but the [new infographic](#) from the GNP HuB project could help institutions to navigate this process. There are other good information materials and resources available but it takes time for processes to be fully developed and implemented at the institutional level. It was also noted that the user checks by the BfN were a significant factor for some institutions to start addressing the issue.

One participant asked how IT can implement a system for ABS information in existing databases for research material. It was noted that each institution has different internal rules and implementation options. The example of DSMZ was discussed, where the new requirements were added to an existing workflow. There was close collaboration with IT to make Nagoya-related information in DSMZ's catalogue available for download. The catalogue links to the ABS Clearing House (ABSCH) and there is an application programming interface (API) to query whether a country is a Nagoya Protocol or CBD Party and if so, since when. It was noted that the information in the ABSCH about ABS laws is not considered legally binding. In other words, the lack of laws in the ABSCH does not mean that none exist. Some participants shared their experience that implementation at the institutional level took place more quickly due to pressure from scientists and professors, and the participation of IT experts is/was essential for establishing databases and systems for storing ABS documentation.

Following that, the obligation to store documentation for 20 years was discussed. It was emphasized how important this obligation is. However, for some participants it was unclear when the 20 years start or when research actually ends in cases where material is then passed on to other researchers. There are also questions about how material is stored, e.g. whether it stays with the individual researchers.

It was also noted that information on Nagoya Protocol compliance must be provided when applying for research funding from the DFG, which means that sometimes there are enquiries from individual researchers.

Next, the issue of liability was raised. It was noted that individual researchers can only be liable up to a certain point and some responsibility remains with their institution. It is therefore important to delineate between the different obligations of individuals and legal entities. Researchers must have the necessary documents to conduct research on the material in question, but institutions must have created the conditions for researchers to be able to comply with their obligations. The CETAF Code of Conduct is a good starting point for individuals and institutions. To date, most violations of the EU Regulation have been found to be due to the failure of management to create the necessary conditions, and fines have been imposed on the respective legal entities.

At the end of the meeting it was emphasized how important it is that the participants share their knowledge with their own institutions. The GNP HuB project also offers information sessions for institutions about the topic of compliance, but the more people there are who can share their knowledge and understanding of the topic, the better.

Lastly, the guest speakers were asked about their expectations for the future. The ABS AG will keep an eye on developments around the topic of digital sequence information (DSI) and advocate for multilateral solutions. The topics of open science and open data are also of high importance. The DFG Head Office wants to continue to provide advice and support for the research community and to conduct awareness-raising in areas that are not necessarily aware that they are affected by the Nagoya Protocol, e.g. medical microbiology.

### **Summary and outlook**

This meeting, which was organized in cooperation with the DFG, gave participants an insight into the new DFG guidelines for scientific institutions and their implementation.

The questions and discussion points will be considered in the planning of future meetings. The next "Stammtisch" will take place in June.