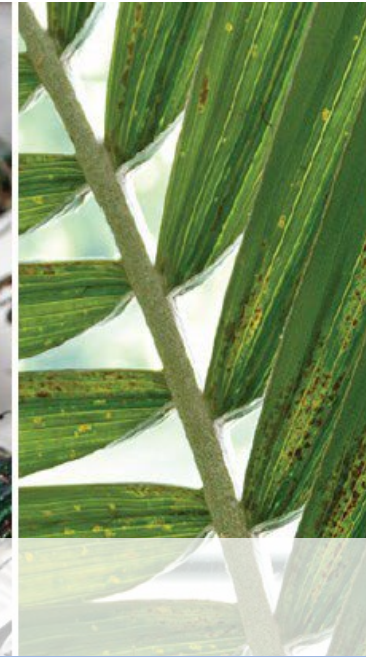
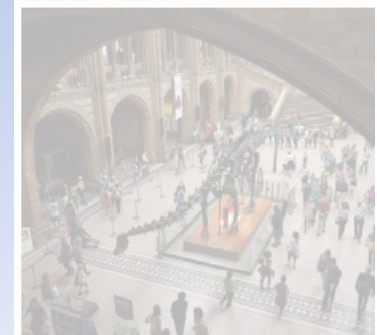


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CETAF Workshop on Access and Benefit Sharing – The Basics

The Convention of Biological Diversity (CBD)
Access and Benefit Sharing (ABS)
and
the Nagoya Protocol (NP)



The Convention of Biological Diversity



Convention on
Biological Diversity

- **Signed 1992, effective since 1993, 196 Parties to the CBD** (<https://www.cbd.int/>)
- **Article 3 of CBD: Principle:** *States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*
- **Paradigm change:** Genetic resources are no longer common heritage, but instead **States have sovereign rights over their genetic resources**

The country may determine:

- WHO can collect its biodiversity,
- WHAT they can do with it (from free access to restrict access), and
- HOW to do it (the procedures to follow).

The Convention of Biological Diversity



Convention on
Biological Diversity

CBD 3 main objectives:

1. conservation of biological diversity
2. sustainable use of its components
3. **fair and equitable sharing of the benefits arising out of the utilization of genetic resources (ABS)**

The Convention of Biological Diversity



Convention on
Biological Diversity

CBD 3 main objectives:

1. conservation of biological diversity
2. sustainable use of its components
3. **fair and equitable sharing of the benefits arising out of the utilization of genetic resources (ABS)**

New context since 1993 for all using genetic resources (GR):

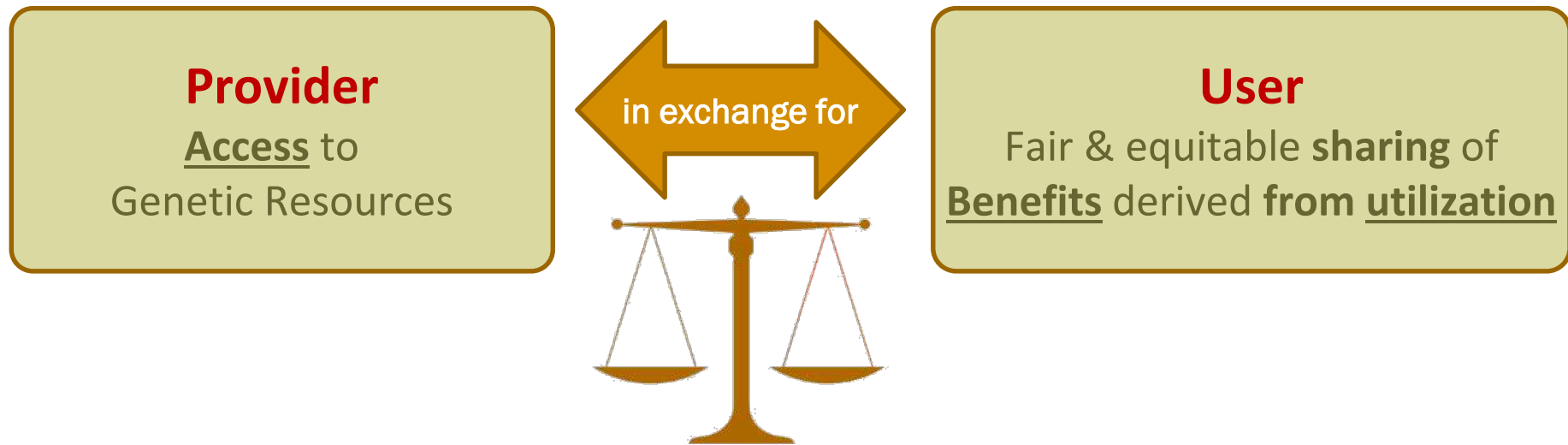
1. *benefit sharing*
2. *utilization*
3. *access*

The Convention of Biological Diversity



The basic idea:

Equity relationship between Access and Benefit-Sharing



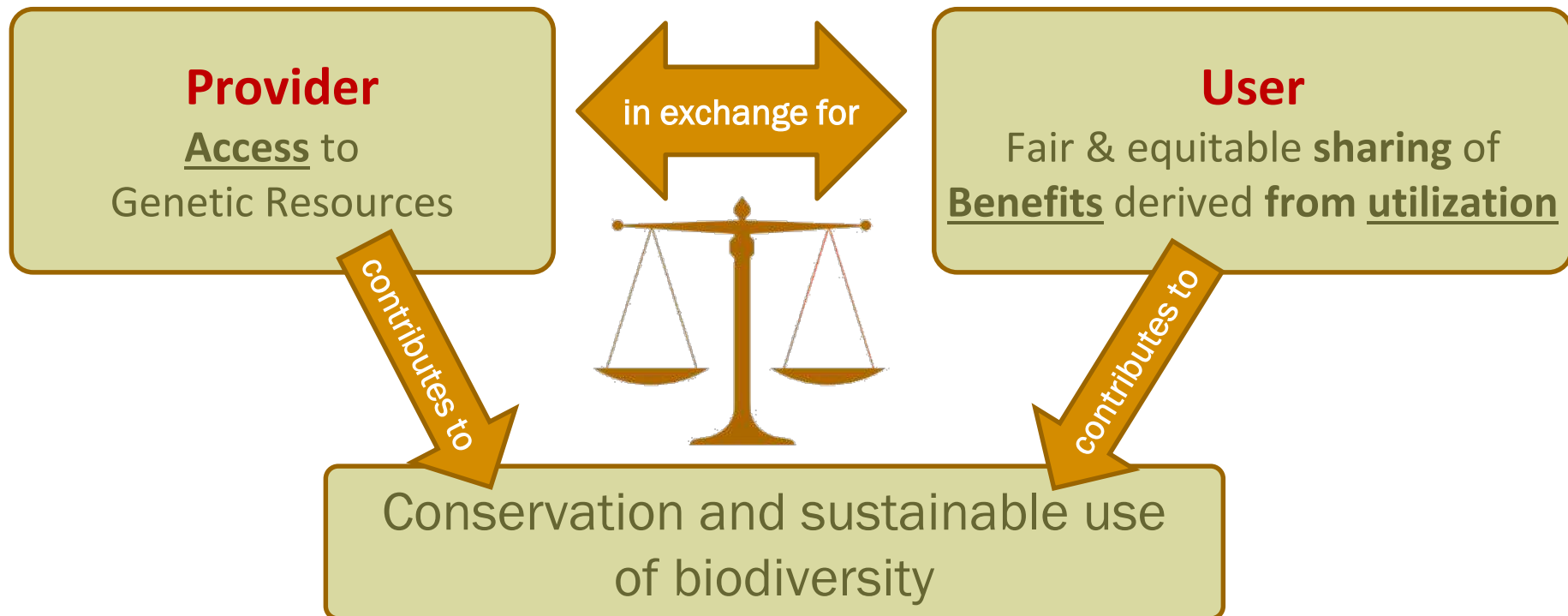
The Convention of Biological Diversity



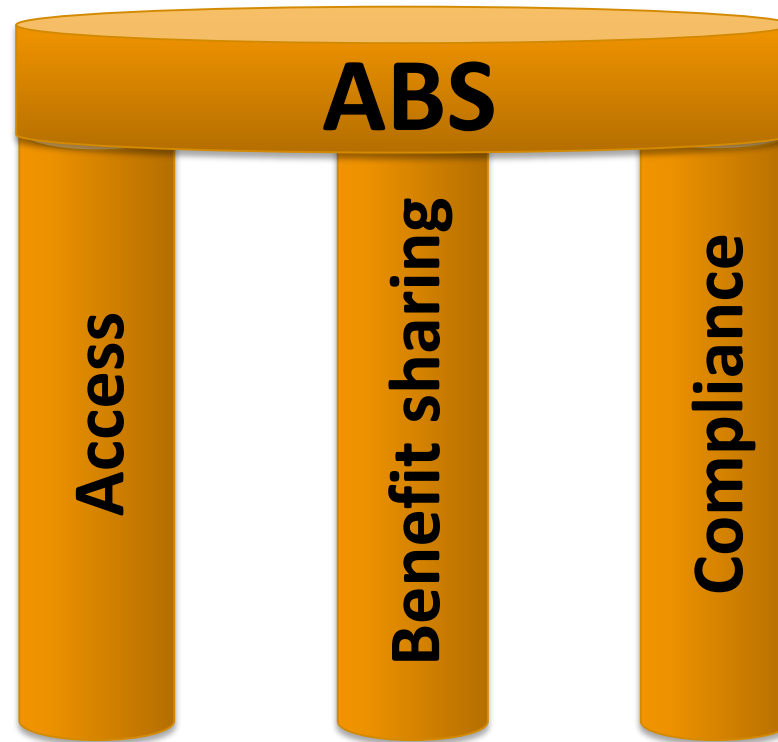
Convention on
Biological Diversity

The basic idea:

Equity relationship between Access and Benefit-Sharing



Access & Benefit Sharing: The LEGAL FRAMEWORK



Basic idea:

Compliance and Benefit Sharing is ensured through bilateral contracts

Utilisation without benefit sharing: *Hoodia goordonii* and its use as anti-obesity drug



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<https://www.maximumslim.com>, product screenshot

Utilisation without benefit sharing: *Asphalatus linearis* (Rooibos) and its use in novel foods, slimming preparations, cosmetics, extracts and flavorings



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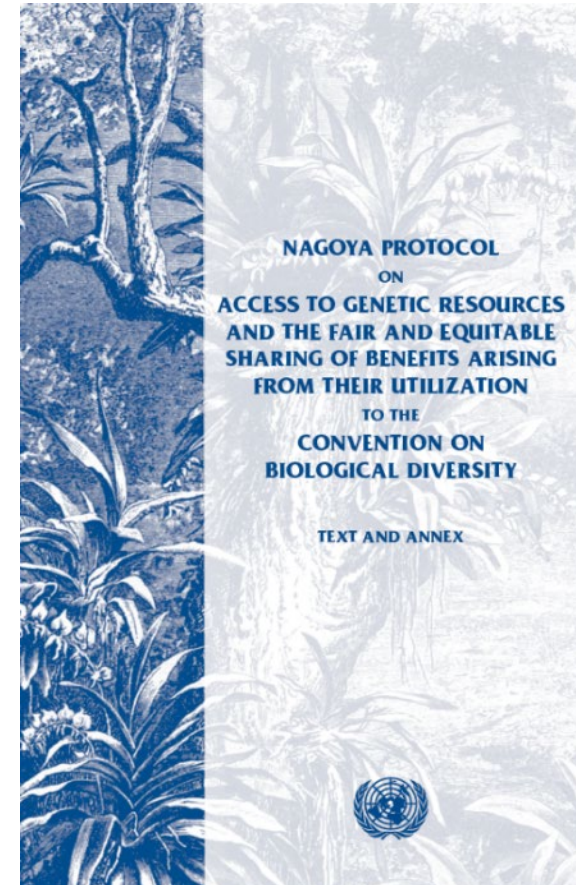


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The Nagoya Protocol: A FURTHER STEP FOR COMPLIANCE

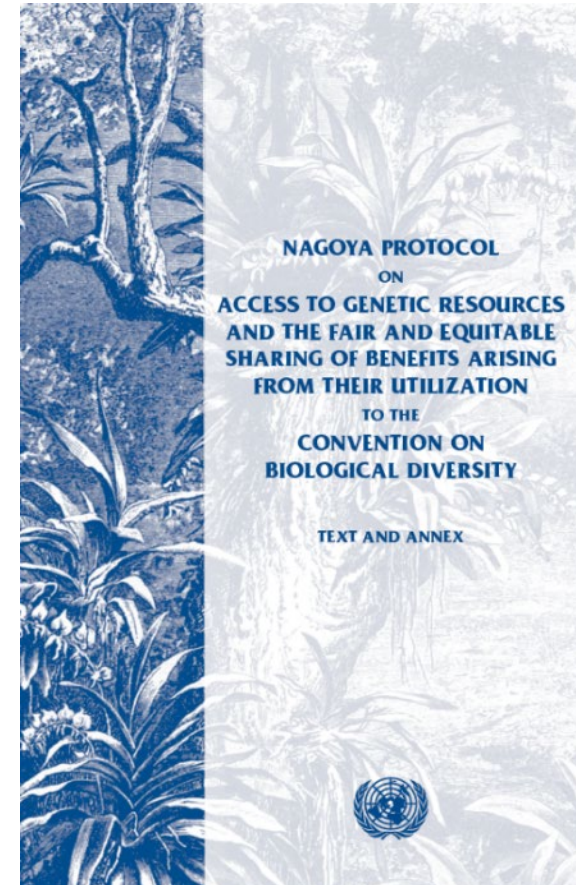
- **2010** (CBD COP10): Nagoya Protocol on Access and Benefit Sharing adopted (www.cbd.int/abs)

Supplementary agreement to CBD, providing a legally binding framework for the implementation of objective 3

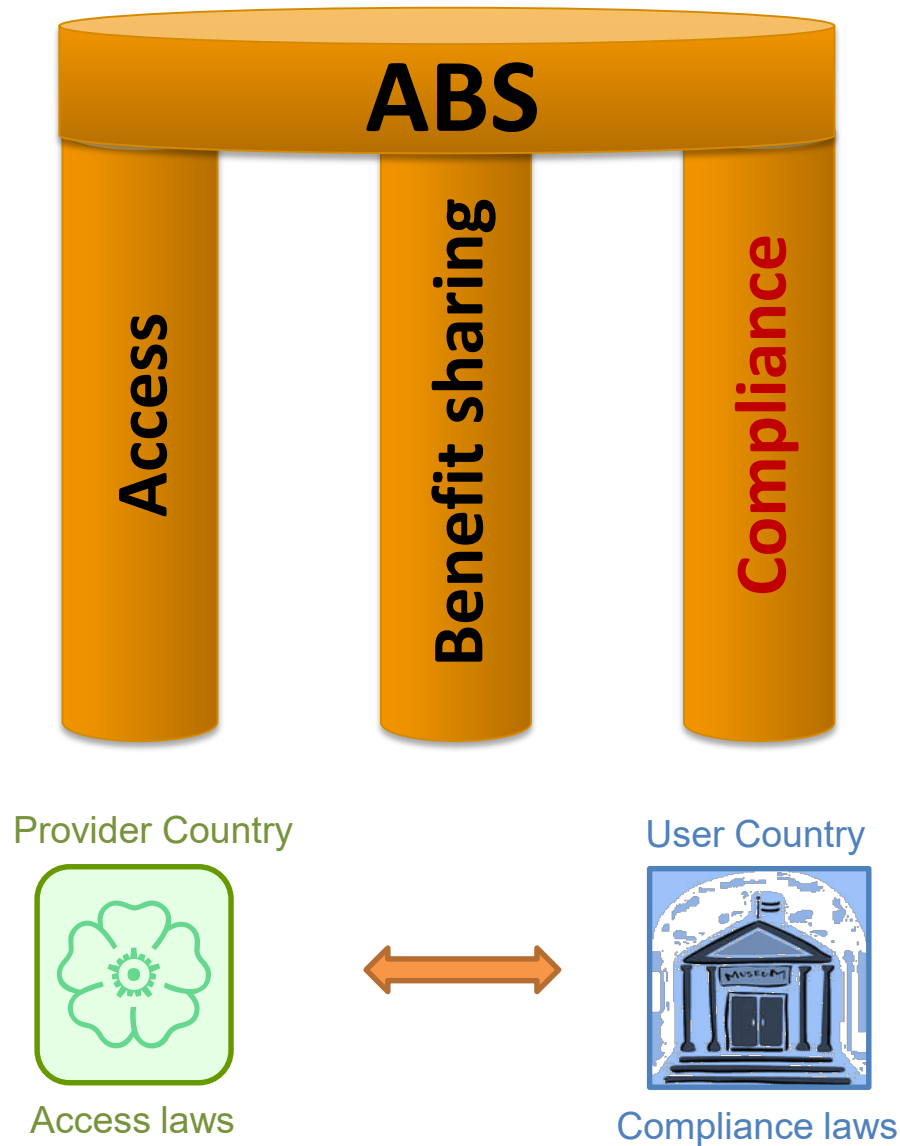


The Nagoya Protocol: A FURTHER STEP FOR COMPLIANCE

- **2010** (CBD COP10): Nagoya Protocol on Access and Benefit Sharing adopted (www.cbd.int/abs)
Supplementary agreement to CBD, providing a legally binding framework for the implementation of objective 3
- **12 October 2014:** Nagoya Protocol came into force
- 142 parties (as of March 2026)



The Nagoya Protocol: The LEGAL FRAMEWORK



The Nagoya Protocol: THE ABS CLEARING HOUSE

- launched by CBD Secretariat Nagoya 2018 <https://absch.cbd.int/en/countries>
- Interactive map that provides legal information and contacts

ABSCH ACCESS AND BENEFIT-SHARING CLEARING-HOUSE

HOME ABOUT SEARCH SUBMIT COUNTRY PROFILES HELP FORUMS NAGOYA PROTOCOL

CBD / ABSCH / Country profiles

National Records

178	ABS National Focal Point
168	Competent National Authority
307	Legislative, Administrative or Policy Instruments
40	ABS Procedure
13	National Model Contractual Clause
6272	Internationally Recognized Certificate
68	National Websites or Databases
108	Checkpoint
373	Checkpoint Communiqué
97	1st National Reports on the Implementation
101	Interim National Reports on the Implementation

Nagoya Protocol:

CONCEPT OF ACCESS & BENEFIT SHARING

The legal framework of the **Nagoya Protocol (NP)** applies for all **accessing and utilising GR**

The NP requires contracting parties to :

- establish **PREDICTABLE CONDITIONS** for access to GR within their national jurisdiction (**ACCESS LAWS** or to grant **FREE ACCESS**)
- ensure that **ONLY LEGALLY ACQUIRED GR ARE UTILISED** (**COMPLIANCE LAWS**)
- collect information relevant for **COMPLIANCE** (Check points)
- **USERS SHARE BENEFITS** arising from utilisation of GR

Nagoya Protocol:

... SOME ABBREVIATIONS AND IMPORTANT TERMS ...

- CBD = Convention on Biological Diversity
- NP = Nagoya Protocol
- ABS = Access & Benefit Sharing
- GR = Genetic Resources
- TK = Traditional Knowledge associated with genetic resources
- USER = natural or legal person that utilises GR or TK
- PROVIDER=supplier of GR or TK
- PROVIDING COUNTRY= The country supplying GR
- *in situ* SOURCES OF GR=includes populations of both wild and domesticated species. It determines the country of origin of the GR,
- *ex situ* SOURCES OF GR= GR kept outside their natural habitat which may or may not be allocated in the same country of origin of that GR

Nagoya Protocol:

DEFINITIONS TO UNDERSTAND ABS

- **Genetic resources** = any material of plant, animal, microbial or other origin
containing functional units of heredity
and of **actual or potential value**

Nagoya Protocol: DEFINITIONS TO UNDERSTAND ABS

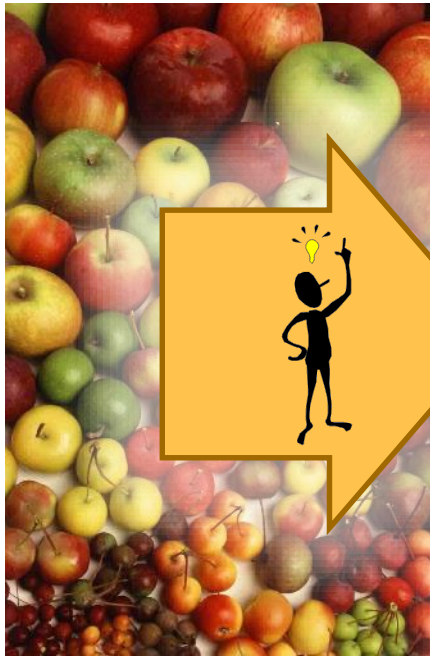
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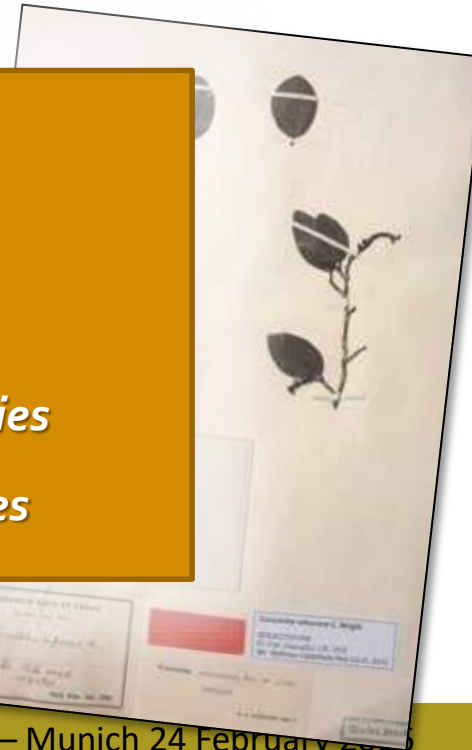
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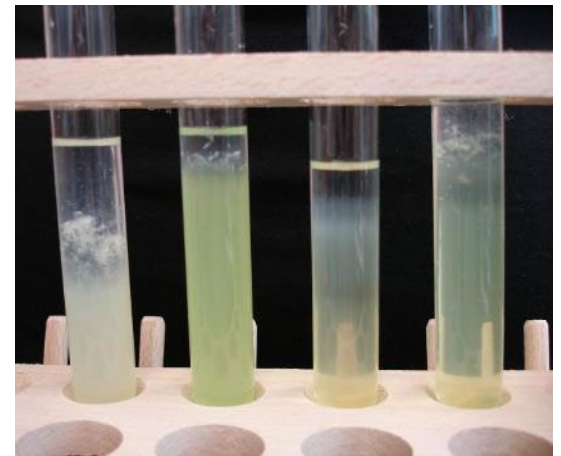
The term „Genetic Resources“ comprises:

- *Everything that contains DNA*
- *Living or dead plant material*
- *Wild species as well as breeding varieties*
- *material from in situ and ex situ sources*



Nagoya Protocol: MORE DEFINITIONS ...

- **Access** = Acquisition of a genetic resource
(no matter whether from *in situ* or *ex situ* sources)
- **Utilization** = Research and development on the genetic and/or biochemical composition of genetic resources



Nagoya Protocol: MORE DEFINITIONS ...

- **Access** = Acquisition of a genetic resource
(no matter whether from *in situ* or *ex situ* sources)
- **Utilization** = Research and development on the genetic and/or biochemical composition of genetic resources



- *No differentiation between commercial and non-commercial (ABS provisions applicable also to basic research)*
- *The definition of „utilisation“ might be interpreted differently from country to country*

Nagoya Protocol:

SCOPE

IT IS CLEAR what is not covered:

- It **does not apply** to **human genetic resources**
 - But it **does** cover human pathogens, parasites and other associated organisms carrying genetic material
- Areas beyond national jurisdiction are **not covered** (e.g. Open Sea or Antarctica)
- It **does not apply** to exchange of raw materials
- It **does not apply** for GR covered by other international agreements such as
 - ITPGRFA-International Treaty on Plant Genetic Resources for Food and Agriculture
 - WHO PIP-Pandemic influenza preparedness Framework (under the World Health Organization)

... STILL NEGOTIATING WHAT SHALL BE COVERED

Nagoya Protocol:

OBLIGATIONS FOR THE PARTIES

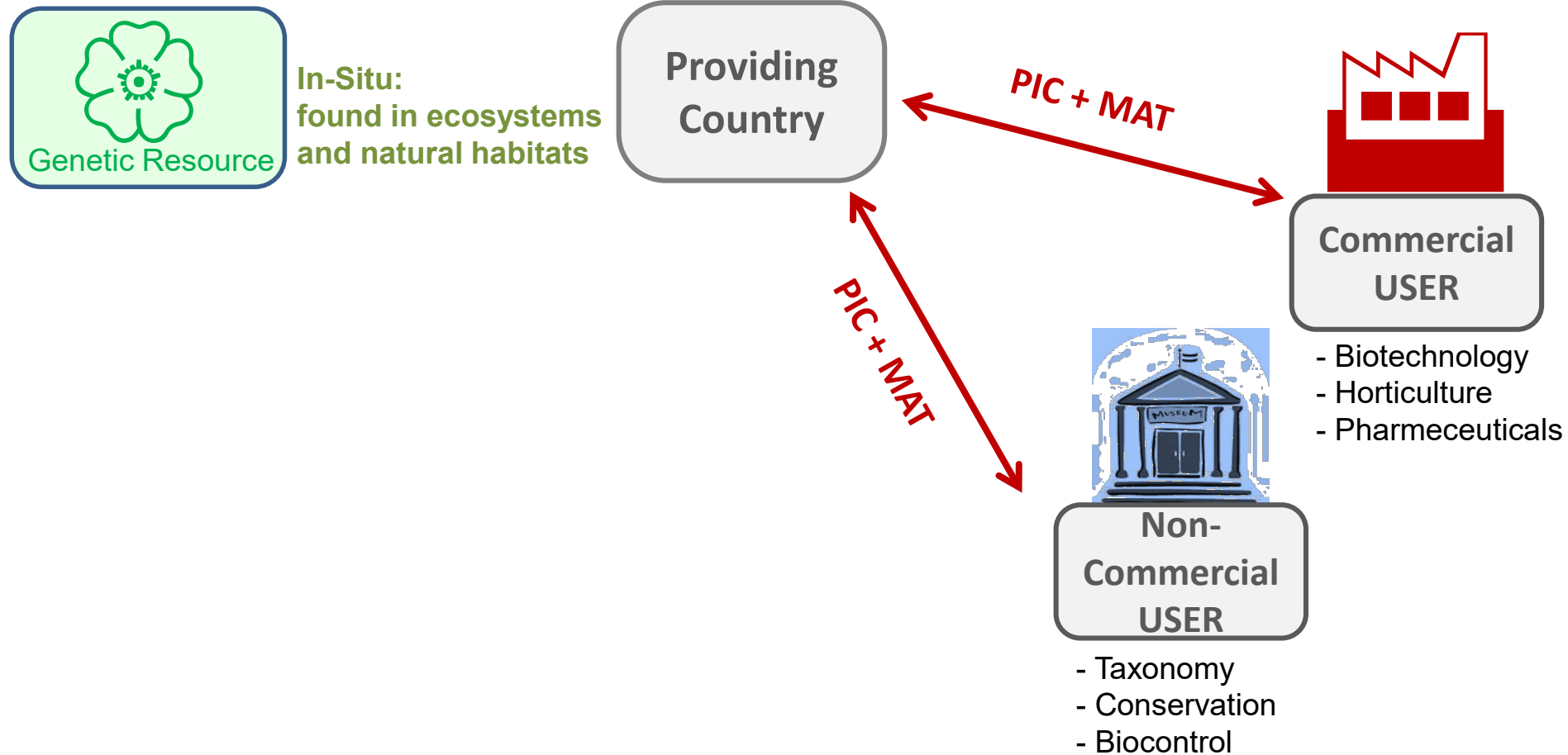
Parties of the Protocol should establish:

- a national Focal Point (NFP) that provides information and facilitates cooperation
- one or more competent **National Authorities** granting access to GR
- Special considerations to be given to:
 - Create conditions with simplified measures for non-commercial research
 - Pay due regard to emergencies affecting human, animal or plant health
 - Consider the importance of GR for food and agriculture

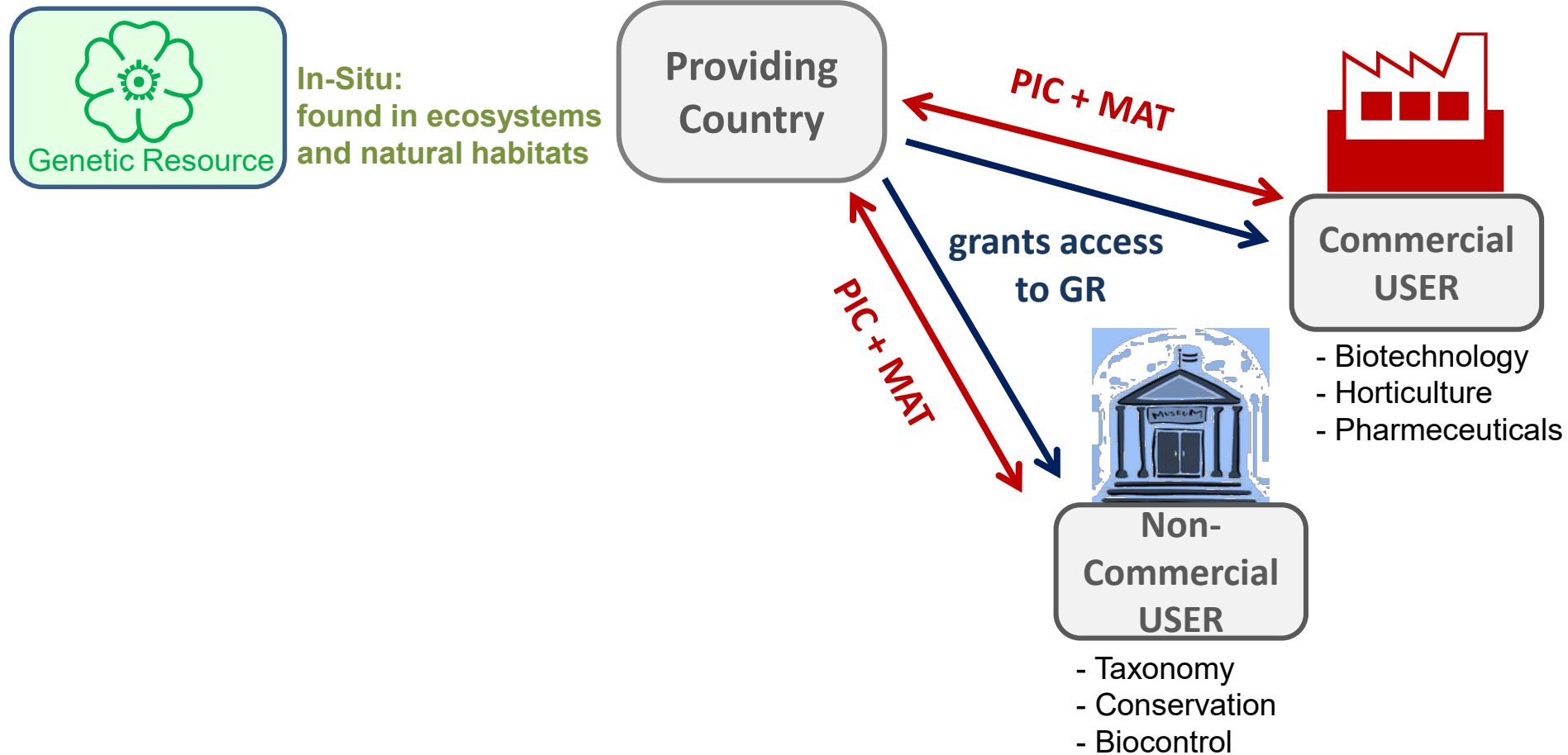
Nagoya Protocol: ADDITIONAL OBLIGATIONS

- Take measures to **raise awareness**
- Cooperate in **capacity building**
- **Cooperate in research and promote technology transfer**
 - Facilitate the non-commercial research
- Encourage development & use of model contractual clauses for Mutually Agreed Terms (MAT)
 - codes of conduct,
 - guidelines,
 - best practices and standards

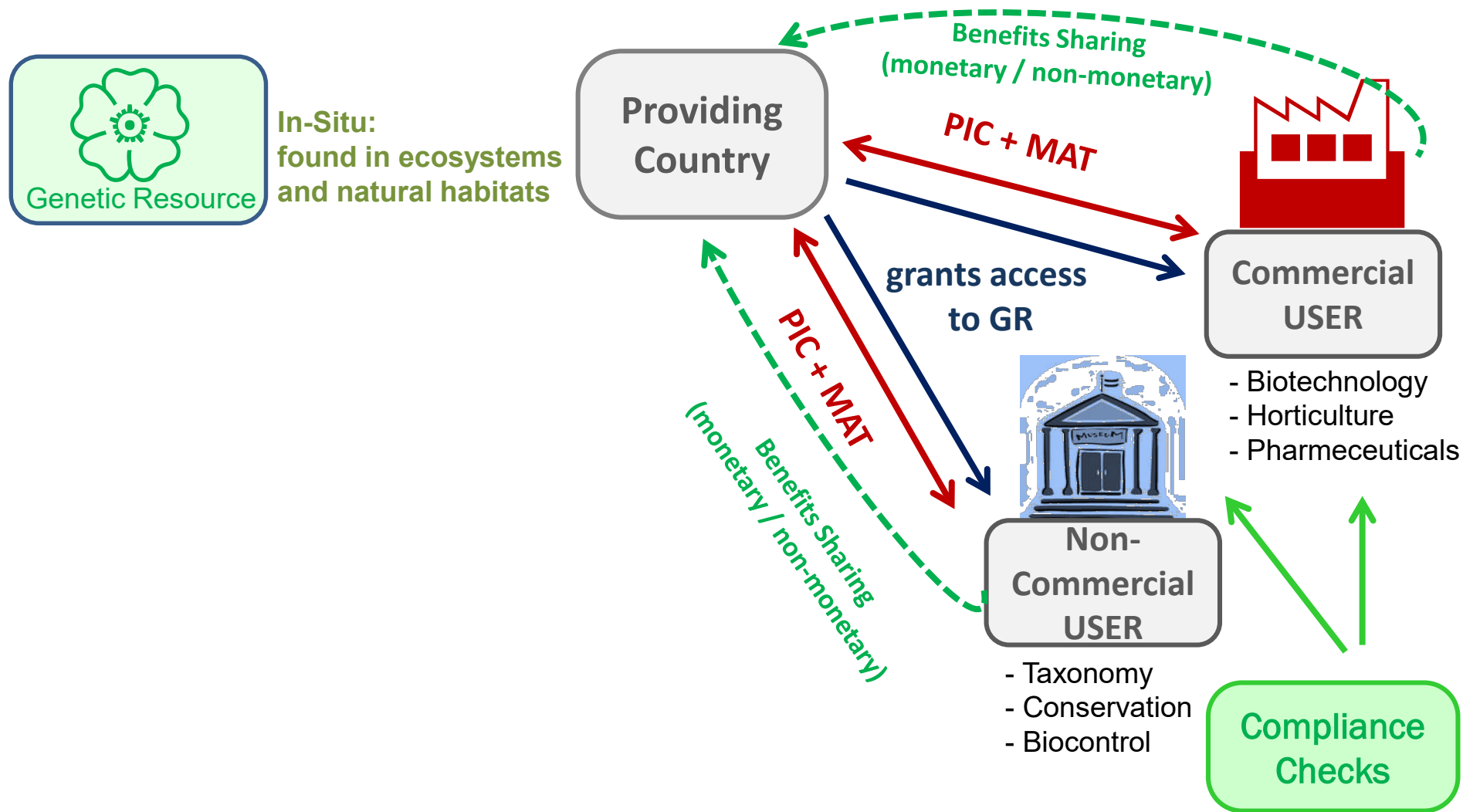
ABS – how it works in principle



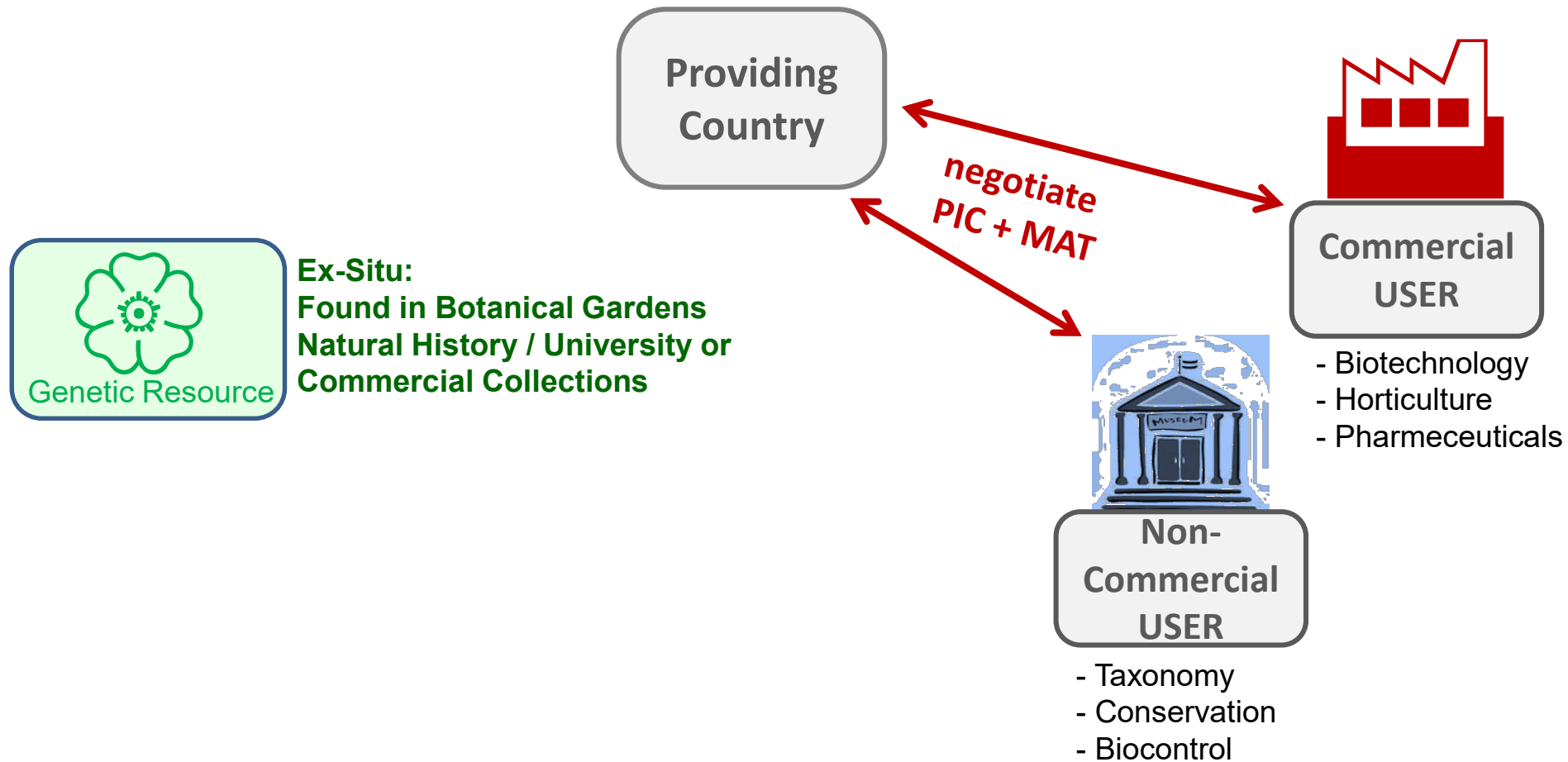
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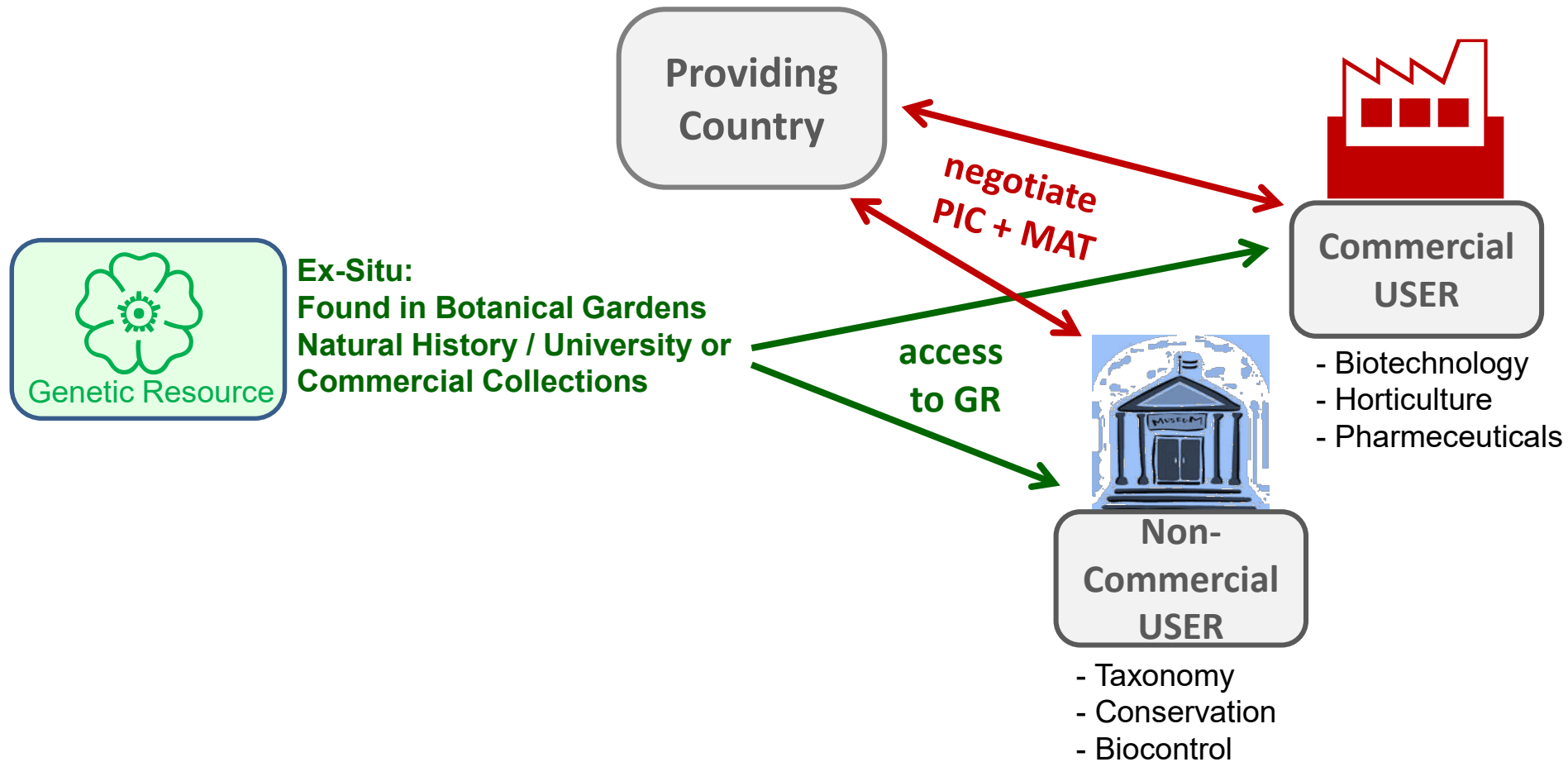
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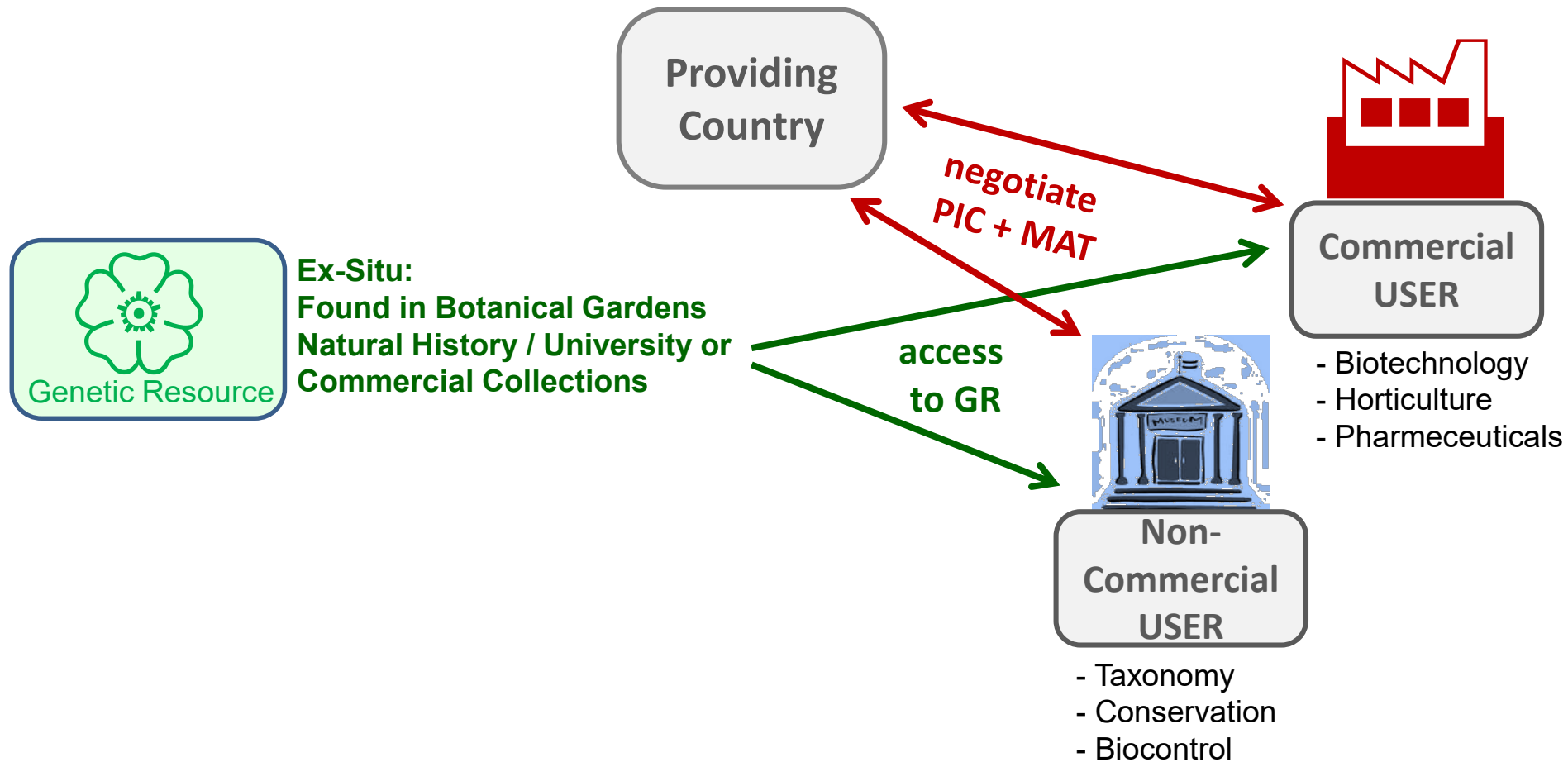
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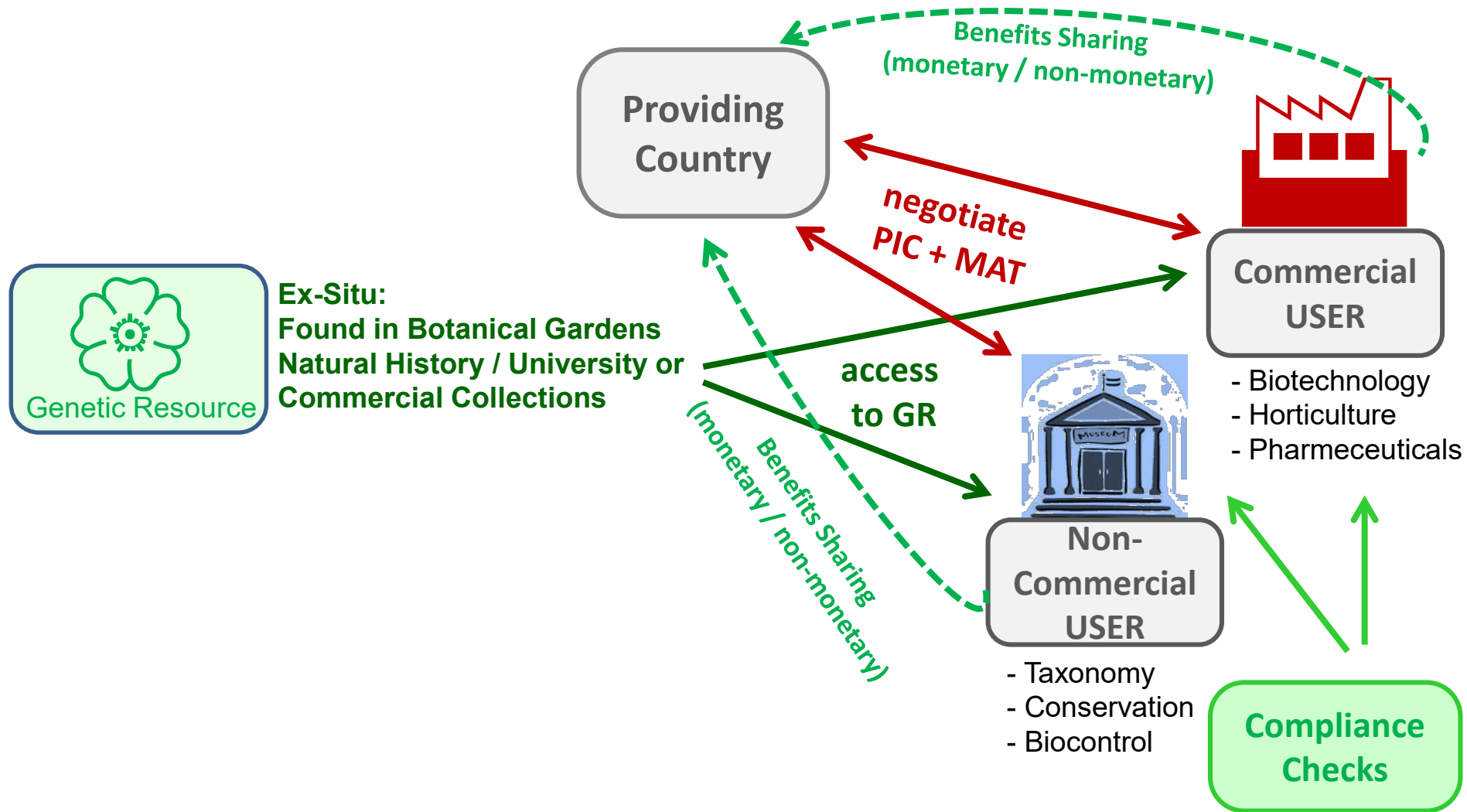
ABS – how it works in principle



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ABS – how it works in principle



Nagoya Protocol: ABC OF ABS – IN PLACE SINCE 2014!

Access



States (also within EU)
may regulate access to
their genetic resources

→ *National Legislation*

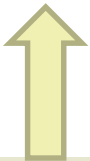
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Get permission (PIC,
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Benefit-Sharing



Users must agree
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→ *Mutually agreed
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Compliance



States must ensure that users comply with the Nagoya Protocol


→ *EU Regulation*

Nagoya Protocol: ABC OF ABS – IN PLACE SINCE 2014!

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Compliance

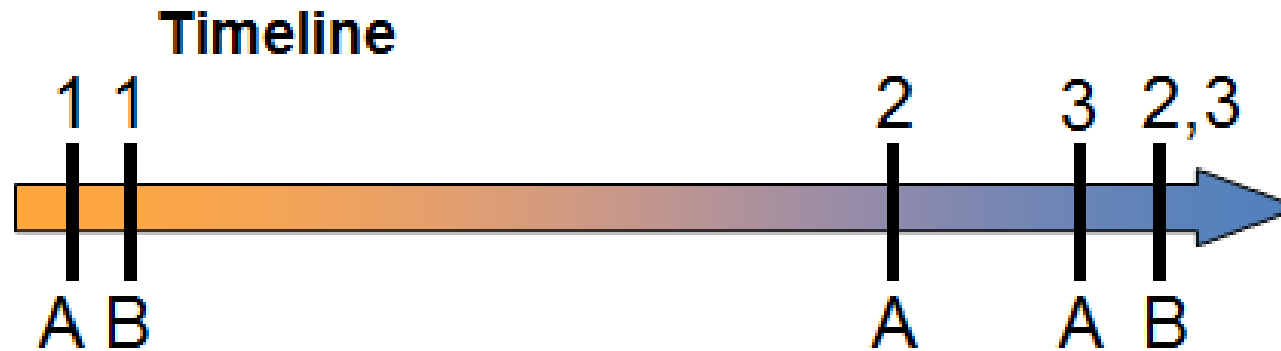
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that users comply with
the Nagoya Protocol

→ *EU Regulation*

 Fulfill obligations of
the EU Regulation
(e.g. reporting)

Nagoya Protocol:

ABC OF ABS – IN PLACE SINCE 2014!



1: Convention on Biological Diversity

A: adopted: 5 June 1992

B: entry into force: 29 December 1993

2: Nagoya Protocol

A: adopted: 29 October 2010

B: entry into force: 12 October 2014

3: EU regulation on ABS

A: adopted: 16 April 2014

B: entry into force: 12 October 2014 (2015)

Nagoya Protocol: FOLLOW THE TRACK

- Negotiate PIC:
 - Prior Informed Consent = permission of the Providing Country to a user to access GR
- Negotiate MAT:
 - agreement between *PROVIDER* and *USER* of GR on conditions of access, use and (monetary / non-monetary) benefit sharing between both parties
 - Do not confuse MAT with *MTA* (MATERIAL TRANSFER AGREEMENT)
MTA = agreement between two institutions on terms and conditions for transferring specimens or samples, including genetic material
- **Establish contracts** that evidence that PIC was obtained and MAT established
- **Observe your compliance obligations** (due diligence, reporting)

Risks:

Three areas of risk that may impact biodiversity collections and research:

- *LEGAL NON-COMPLIANCE*
Will be analysed with EU ABS Regulation in Presentation 2
- Failure to manage *CONTRACTUAL* agreements (benefit-sharing).
This lead to the importance of the CETAF Code of Conduct and BP
- Reputational risks. To increase mutual trust between providers and users of GR

...being on the safe side

- **Legal compliance.** You have to comply with all legal requirements (as per current legislation)
- **Contractual agreements.** You already negotiate access with providing countries. Now, you need to follow the documentation requirements
- **Reputational conditions.** The benefit sharing has been done for decades, it is already an implemented practice for researchers (on non-monetary basis)

...being on the safe side

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Editors differ about whether they are obliged to ensure specimens are legally acquired

10 FEB 2021 • BY YACHIRA LAW



doi: 10.1126/science.abh0269

<https://www.science.org/content/article/illicit-centipede-raises-thorny-question-should-journals-have-refused-publish-paper>