

Consequences of the EU Regulation on the Nagoya Protocol for FGR exchange

19 November 2013

Bert Visser



WAGENINGEN **UR**
For quality of life

Centre for Genetic Resources, The Netherlands (CGN)

This presentation



- Major concepts in the EU Regulation
- Scope and features of FGR
- Traditional knowledge
- Geographical scope
- Temporal scope
- Genetic resources vis-à-vis trade products
- Administrative burden
- Impact on the management of collections
- Options for a sector response, back to FGR features
- Conclusions



Terms novel for the CBD



- FGR: forest genetic resources
- CBD: Convention on Biological Diversity
- ABS: Access and Benefit-Sharing
- CNA: Competent National Authority
- NFP: National Focal Point
- PIC: Prior Informed Consent
- MAT: Mutually Agreed Terms
- MTA: Material Transfer Agreement
- ITPGRFA: International Treaty on Plant Genetic resources for Food and Agriculture



Major concepts in the EU Regulation (1)



- Art. 1: Regulation deals with genetic resources and associated traditional knowledge
- Art. 2: Regulates compliance with benefit-sharing obligations
 - access remains a Member State responsibility
- Art. 4: Due diligence on the user
 - internationally recognised certificate of compliance important
- Art. 5: Register of collections
 - having legally acquired their resources
 - verification by Member States

Major concepts in the EU Regulation (2018/2569)



- Art. 6: List of competent authorities EU Member States
- Art. 7: Monitoring user compliance takes place
 - when receiving research funding
 - when requesting market approval
 - when placing in the market
- Art. 8: Associations of users may implement best practices
 - recognition by EU Commission, register of best practices
- Art. 9: Checks on user compliance
 - best practice reduces risk of user's non-compliance
- Art. 10 – 11: Register of checks and penalties

Scope of FGR



■ Biological scope

- includes trees and shrubs
- excludes non-tree food and medicinal plants occurring in forests

■ Forest species can be used:

- for direct production purposes
- as a genetic resource, i.e. by researchers, breeders
- grey area: when a *subset of seeds* from a certain provenance is *selected* for production purposes and in advance of direct production, the seeds of that provenance are used as a genetic resource



Features of FGR



- ITWG of FAO Commission of GRFA has rated GR features
 - customary exchange practices
 - use may generate non-monetary benefits beyond provider and recipient
 - human intervention limited
 - improvements limited
 - exchange patterns limited
 - numbers of stakeholders limited

- Consequences for best practices and monitoring?

FGR and traditional knowledge



- Extensive traditional knowledge on non-timber forest products
- Limited traditional knowledge on the use properties of FGR
 - e.g. salicylic acid from the bark of the willow
 - more examples?
- Scientific knowledge may also be part of mutually agreed terms (MAT) and covered by PIC (prior informed consent)



Geographical scope



- EU Regulation applies to all international exchange of FGR
 - flows largely/only between temperate zone countries
- ABS conditions so far differ in practice
 - not applied between a number of EU countries
 - may be relatively easy to comply with all other OECD countries
 - e.g. Finland – Russia; Poland – Ukraine?
- Exchange relevant in context of EU projects



Temporal scope



- The EU Regulation applies to genetic resources... that are accessed after the entry into force of the Nagoya Protocol for the (European) Union
 - not retro-active
 - still, provisions of the Convention on Biological Diversity (CBD) apply since 1994

- Gradual impact on research and breeding to be expected since only applicable to new entries



Genetic resources vis-à-vis trade products



■ Some comparisons

- is it (used as) seed or grain (= food)?
 - will the sperm be used to breed a new herd or only to produce a milk cow for a small-holder?
 - are the bio-control agents only reproduced to control pests and diseases or genetically changed for that purpose?
- ## ■ Forest resources for plantation and production only? Or for selection and breeding?
- ## ■ If forest resources can be used for both, a contract may specify conditions for different types of use
- if used for research and breeding, go back to provider



Administrative burden



- Implementation of EU Regulation means new administrative obligations (see Art. 4)
 - users shall exercise due diligence
 - to ascertain that GR that they utilise have been accessed in accordance with applicable ABS legislation....
 - users shall seek , keep and transfer any internationally recognized certificate of compliance as well as MAT
 - if not, go back to the provider

- However.....
 - users obtaining a GR from a collection included in the register shall be considered to have exercised due diligence



Impact on the management of collections



- Under Art. 5, the collection holder takes over the due diligence obligation of the user
- Many FGR users are also collection holders
 - managers of seed provenances might (mutually) exchange
 - climate change might result in increase of international exchange
 - compare with botanical gardens: most exchanges within network
- So, what is an effective sector response?

Options for a sector response



- Standard MTA for regulating exchanges between provenances, and research and breeding materials
- Best practices established for entire sector
 - including FGR managers, researchers, breeders, commercial producers, traders, end users
 - regulating the use of material as GR only
 - ensuring that commercial contracts require ABS negotiations in case of later use of production material as GR
 - at the level of individual states, some exchanges for the purpose of FGR may be exempted, i.e. not require MAT



Back to FGR features



- Customary exchange practices
 - no longer possible; awareness raising
- Use may generate non-monetary benefits beyond provider and recipient
 - important when negotiating MAT conditions
- human intervention and improvements limited
 - research and breeding, hence ABS, limited to some species
- exchange patterns and numbers of stakeholders limited
 - may facilitate development of model MTAs



Conclusions



- New EU Regulation will apply to future international exchanges of FGR
- Time for the sector to respond
 - analyse specific situation (see FAO CGRFA)
 - develop best practices
 - create awareness
- Ensure sector compliance
- Minimize administrative burden for sector
 - develop and use standard/model MTAs