



ABS in practice

ABS regimes in Parties and non Parties to NP

The Access and Benefit-Sharing Clearing-House (ABSCH) is a platform for exchanging information on ABSCH and a key tool for facilitating the implementation of the Nagoya Protocol. ⓘ



National Records

- 172** ABS National Focal Point
- 102** Competent National Authority
- 224** Legislative, Administrative or Policy Measure
- 0** ABS Procedure
- 0** National Model Contractual Clause
- 301** Internationally Recognized Certificates of Compliance
- 44** National Websites or Databases
- 52** Checkpoint

110 Parties to the Nagoya Protocol

4 Ratified, not yet Party ⓘ

88 Non-Parties

General framework

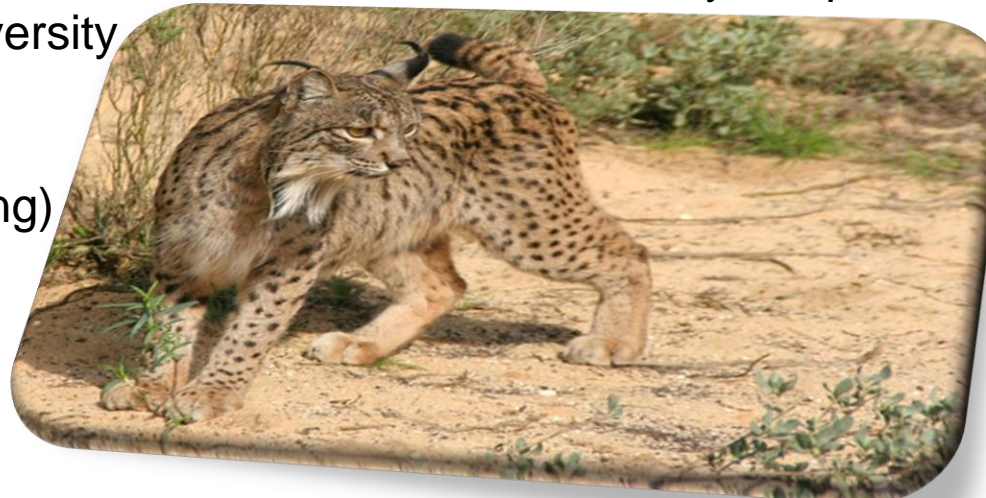
- ✓ more than **200 ABS measures** have been established by CBD Parties;
- ✓ a high number of Parties have not established a proper and comprehensive law/regulation on ABS (**implementation of NP basic obligations**);
- ✓ A number of Parties have included specific ABS measures **within wider laws and Strategies on Environment protection and Management or Biological Diversity**;
- ✓ A high number of Parties have established **more than one legislative measure on ABS** (sectorial measures, regulations, laws according to the themes of major interest nationally);
- ✓ The majority of the **EU Member States**, which are Parties to the Nagoya Protocol, **have not regulated access to their genetic resources** (Implementing Regulations)

ABS laws : practical examples



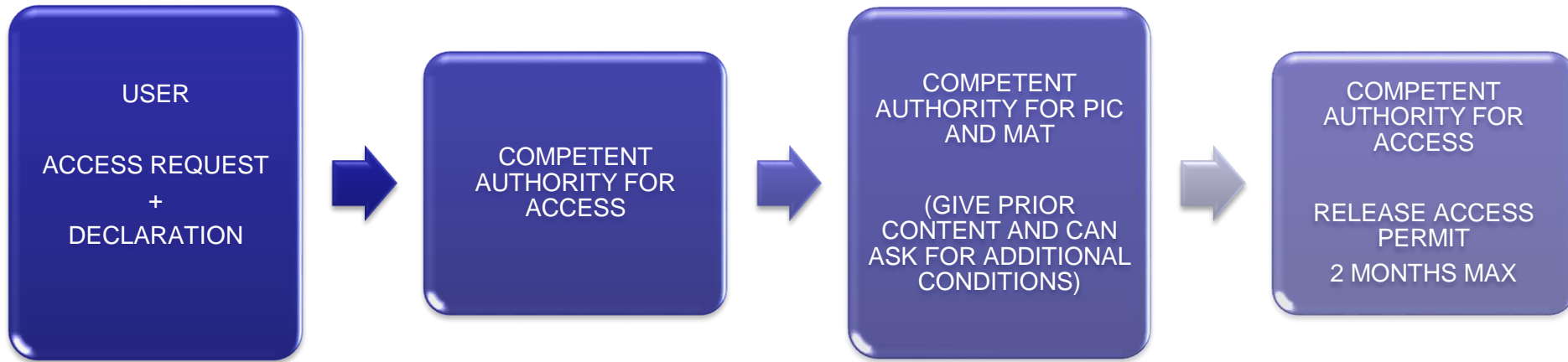
SPAIN

- ❑ **How ABS is regulated:** Ley 42/2007, *del Patrimonio Natural y de la Biodiversidad*, emended by Law 33/2015 and Real Decreto 124/2017 of 24 February 2017
- ❑ **What GRs?** = in situ and ex situ GRs deriving from wild taxa (no PGRFA, fishery resources, taxonomy purposes, collection and maintenance of samples in germplasm banks and ex situ collection for conservation, trade of seeds and forest material ...)
- ❑ **3 Access procedures:** 2 simplified procedures and 1 ordinary procedure
- ❑ **2 Competent Authorities:** 1 NCA for access permit (Ministry Env. and Agr.); 2 CA for PIC and MAT (different according to typology of GR and belonging area)
- ❑ **Benefits** directed to the conservation and sustainable use of biodiversity = Spanish Fund for the Natural Heritage and Biodiversity (under Law)
- ❑ **MAT:** not MAT model (guideline – ongoing)
- ❑ **Checkpoints:** more than one according to legal status of the user and type of utilization.

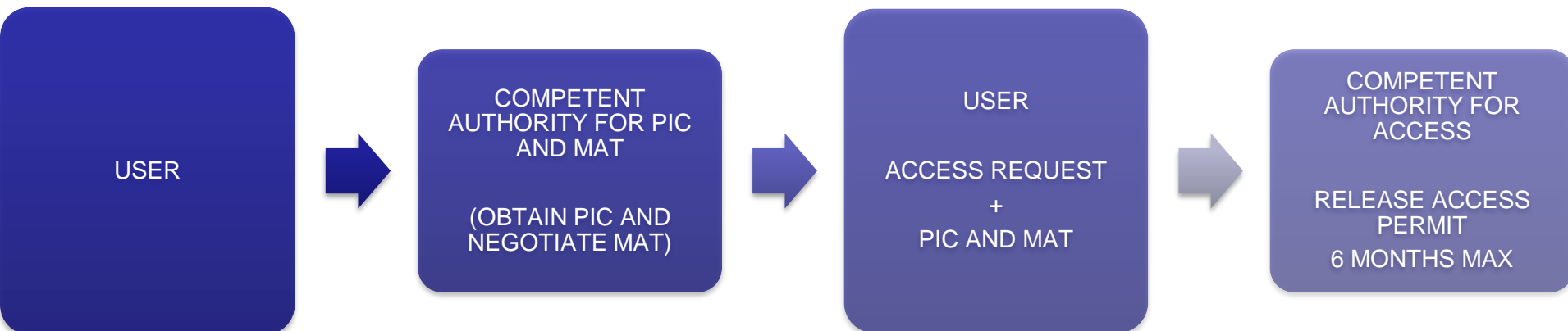


Access procedures

1. Utilization for non commercial purposes (basic research)



2. Utilization for Commercial purposes (applied research)



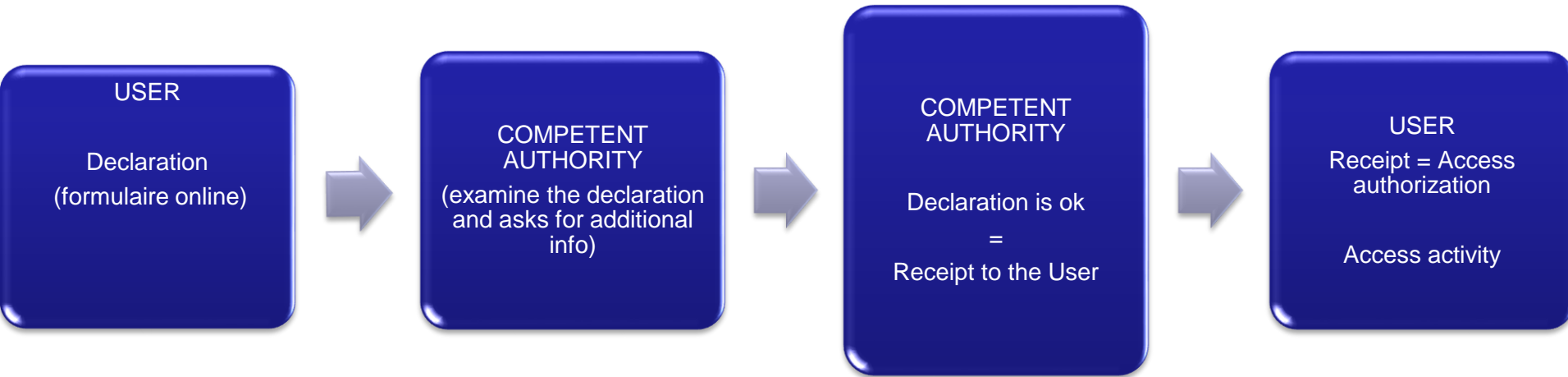
France

- ❑ **How ABS is regulated**: Loi n° 2016-1087 pour la reconquête de la biodiversité de la nature et des paysages - Decree n.2017-848 implementing the Law and EU Reg. – 2 administrative orders (MAT models and inscription of ex situ collections in EU Register)
- ❑ **What GRs?** = *in situ* and *ex situ* GRs from wild species (no PGRFA under ITPGRFA, cultivated and domesticated species, crop wild relatives...)
- ❑ **3 Access procedures**: 2 simplified procedures and 1 ordinary procedure
- ❑ **Benefits: French Agency for Biodiversity**, designated to receive monetary benefits and to use them for conservation and sustainable use of biodiversity (case of collections)
- ❑ **MAT**: negotiable in ord procedure (MAT model)
- ❑ **Checkpoints**: more than one according to the check stage.

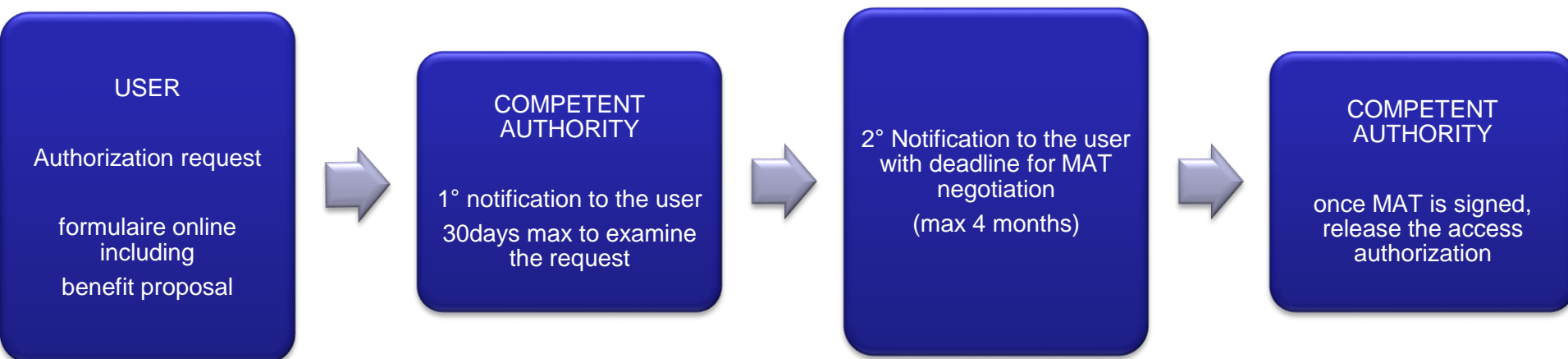


Access procedures

1. Declaration procedure: utilization for non commercial purposes (basic research)



2. Authorization procedure: utilization for Commercial purposes (applied research)



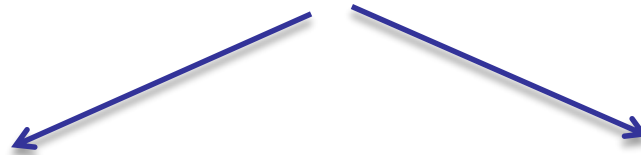
Brazil (no Party to NP)

- ❑ **How ABS is regulated:** Law no 13.123/2015 (amending the 2000 Law)
- ❑ **What GRs?** = all in situ and ex situ GRs naturally originated in Brazil (even if present outside Brazil) (also, seeds, PGRFA not in Annex 1 of ITPGRFA, crop wild relatives, cultivar etc.)
- ❑ **2 procedures:** Declaration and Notification
- ❑ **Competent Authority:** CGen (Genetic Resource Management Council) within the Ministry for Env.
- ❑ **Benefits: mandatory** channeled to the Benefit Sharing National Fund or to conservation projects.
- ❑ **MAT:** no MAT prior to utilization
- ❑ **Checkpoints:** more than one according to the check stage (SisGen, Anvisa, patent office, Cultivar National Authority)



Access procedures: result oriented legislation

USER
(HAS FREE ACCESS TO GRS)



**Research for non commercial purposes
= publication**



DECLARATION
To the online system (CGen)

**Research for commercial purposes
= finished Product**

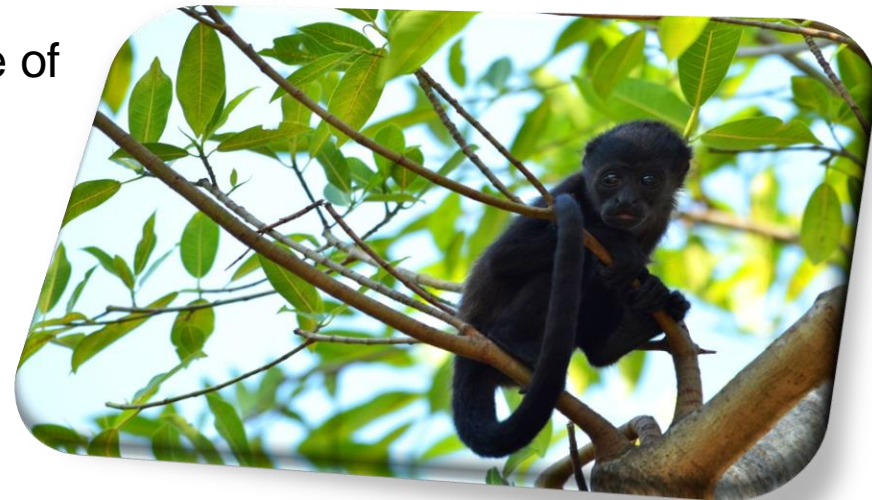


NOTIFICATION
To the online system (CGen)

* MAT is included in Declaration and Notification = not negotiable

Costa Rica (no Party to NP)

- ❑ **How ABS is regulated**: Biodiversity Law 7788 (1998), Executive Decree 31514 (2003), Executive Decree 33697 (2007) and Executive Decree 39341 (2016)
- ❑ **What GRs?** = the owner of the land (public or private) is the owner of GRs
- ❑ **procedures**: no difference between procedures (commercial and non commercial purpose). Three permits (basic research, bioprospection and commercial use)
- ❑ **Competent Authority**: Ministry of the Environment (CONAGEBIO)
- ❑ **Benefits**: no National Funds – directed to the provider
- ❑ **MAT**: is included in PIC and is negotiated between provider and user (MAT model in case of Commercial use)
- ❑ **Checkpoints**: not established yet



Key elements for an ABS law

1. Clearly define “Genetic Resources” in legislation = **ownership**
1. Avoid too much bureaucracy and allow for more **flexibility**
1. **Electronic** system (no paper system)
1. Distinguish between access procedures in case of basic research and applied research
1. **No holes** and gaps (everything to be regulated must fit into the law)
1. Clear idea of how to direct **benefits** (National Fund?)



DISCUSSION

(tips for an ABS law in Cyprus)

How do you exchange GRs (type of GRs, timing, procedures, documents, traceability) : what is necessary to preserve and keep into ABS law?

ABS rules need to be considered for access to GRs for basic research or only for access to GRs for commercial purposes?

What is needed in terms of benefits (monetary and non monetary)
Do you think a National Fund would be appropriate?

What GRs would you exclude from the scope of GRs and why?

What would be the main obstacles to your activity and what suggestions?

