

**DECREE N° 2017-848 DATED 9th MAY 2017 REGARDING ACCESS
TO GENETIC RESOURCES AND THEIR ASSOCIATED
TRADITIONAL KNOWLEDGE, AS WELL AS THE SHARING OF
BENEFITS ARISEN FROM THEIR UTILISATION**

Courtesy translation

**Warning : in the event of any legal inconsistency between the English
courtesy translation and the French version, the French version of the
Decree n° 2017-848 shall prevail.**

(<https://www.legifrance.gouv.fr/eli/decret/2017/5/9/DEV1702693D/jo/texte>)

Decree n° 2017-848 dated 9th May, 2017, regarding access to genetic resources and their associated traditional knowledge, as well as the sharing of benefits arisen from their utilisation

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Alias: <https://www.legifrance.gouv.fr/eli/decret/2017/5/9/2017-848/jo/texte>

Concerned public: Anyone wishing to access genetic resources or their associated traditional knowledge on French territory. Anyone using genetic resources or associated traditional knowledge on French territory, irrespective of the country where the access to these resources and knowledge occurs.

Subject: Access to genetic resources and their associated traditional knowledge on French territory, for the purpose of sharing the benefits arisen from their utilisation and to ensure that users in the European Union (EU) comply with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation.

Entry into force: The text shall come into force on 1st July 2017, with the exception of Articles D. 412-39 and D. 412-41 of the French Environmental Code.

Note: This decree establishes rules on administration policy, relating to declarative procedures and authorization for the utilisation of genetic resources or associated traditional knowledge. The sharing of benefits shall be defined on a contractual basis.

This decree takes into account the specificities of the subject, associating overseas collectivities and traditional communities.

It also enforces the requirements for collection and 'due diligence' in European (EU) Regulation no. 511/2014 of the European Parliament and Council dated 16 April 2014 regarding measures to ensure that users in the EU comply with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation.

References: The French Environmental Code may be consulted on the website Légifrance (<http://www.legifrance.gouv.fr>).

The Prime Minister,

Following the report by the Minister of the Environment, Energy and the Sea, in charge of International Climate Relations,

Given the Convention on Biological Diversity (two Appendices in total), adopted in Rio de Janeiro on 22 May 1992 and signed by France on 13 June 1992;

the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation, relating to the Convention on Biological Diversity (one Appendix in total), adopted in Nagoya on 29 October 2010 and signed by France on 20 September 2011;

the (EU) Regulation no. 511/2014 of the European Parliament and Council dated 16 April 2014, relating to measures to ensure that users in the EU comply with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation;

the French Environmental Code, especially Articles L. 412-3 to L. 412-20, L. 635-2-1 and L. 640-5;

the French General Local Authorities Code, especially Article L. 7124-19;

the French Code of Administrative Justice, especially Articles L. 213-1 to L. 213-6 and R. 213-1 to R. 213-4;

the French Code on Relations between the Public and the Administration;

law no. 61-814 dated 29 July 1961, conferring the status of overseas territory to the islands of Wallis and Futuna;

decree no. 97-34 dated 15 January 1997, relating to the decentralization of decisions from individual administrations;

decree no. 97-1204 dated 19 December 1997, issued for the application of paragraph 1, Article 2 of decree no. 97-34 dated 15 January 1997 to the Minister for the Environment, relating to the decentralization of individual administrative decisions;

the referral of the General Council of La Réunion dated 10 February 2017;

the referral of the Regional Council of La Réunion dated 10 February 2017;

the referral of the French Guiana Assembly dated 10 February 2017;

the referral of the Martinique Assembly dated 10 February 2017 ;

the referral of the General Council of Mayotte dated 13 February 2017;

the referral of the General Council of Guadeloupe dated 14 February 2017;

the referral of the Regional Council of Guadeloupe dated 14 February 2017,

and the referral of the Territorial Assembly of Wallis and Futuna dated 1 March 2017,

the Council of State (Public Works Division) has hereby decreed:

I.-The title of Chapter II under the first heading of Book IV of the French Environmental Code (regulatory section) is replaced by the following title: "Supervision of the utilisations of natural heritage";

II.-Section 4 is added to the same Chapter, worded as follows:

"Section 4

"Access to genetic resources and their associated traditional knowledge, as well as the sharing of benefits arisen from their utilisation.

"Sub-section 1

"Declarative procedures for access to genetic resources on the national territory and the sharing of benefits arisen from their utilisation."

"Art. R. 412-12.-The general terms and conditions for sharing the benefits listed in IV, Article L. 412-7 consist of the following:

"1) When the genetic resources are utilised for the purpose of gaining knowledge about biodiversity: either in conservation activities in situ or ex situ of the species mentioned in the declaration or closely related species, in collaborative, cooperative or contributory activities

pertaining to research, education, training or the raising of awareness amongst the local population and its professional community, as well as for the transfer of skills and technologies relating to the species indicated in the declaration or closely related species’;

“2) When the genetic resources are gathered in a collection for conservation purposes: through in situ or ex situ conservation activities for the species mentioned in the declaration or closely related species, such as by storing a duplicate of the sample in a collection’;

“3) When the genetic resources are utilised for development purposes with no direct commercial objective: either in conservation activities conducted in situ or ex situ for the species mentioned in the declaration or closely related species, or in actions that contribute at the local level, to the development of a sector associated with the sustainable utilisation of the genetic resources mentioned in the declaration or which promote biodiversity, in relation with the territories that have contributed to the conservation of these resources.”

“Art. R. 412-13.-I.-Any person wishing to access genetic resources in the cases provided for in I and III of Article L. 412-7 shall submit a declaration to the French Minister for the Environment.

“II.-This declaration shall be made according to a template determined by the Minister for the Environment, which will include the following:

“1) If a natural person: their surname, first name and place of residence; if a legal entity: its title or company name, legal form, head office address and the status of the signatory to the declaration;

“2) A description of the activities for which the declaration is being made, as well as their objective;

“3) The designation of the taxa concerned, as precisely as possible, and reference of the place where the samples were collected, or, if the material is in a collection, of the entity holding the samples;

“4) A description of the technical means of access to the genetic resources and the modalities of collection ;

“5) The projected timetable for carrying out the activities;

“6) The applicant’s preferred method of sharing the benefits of their activities, as well as the beneficiary or beneficiaries;

“7) Any confidential information that the declarant considers might breach industrial or business secrets, if disclosed.

“III.-Pursuant to Article L. 112-9 of the French Code on Relations between the Public and the Administration, the declaration may be transmitted using a teleservice system installed at the behest of the Minister for the Environment.

“Art. R. 412-14.-I.-If the declaration is incomplete, the Minister for the Environment shall request the declarant to complete it. As soon as the declaration is complete, said Minister shall issue an acknowledgement of receipt to the declarant¹. Access to the genetic resources

¹Additional comment (not part of the original text) : this document is proof that PIC (prior informed consent) was granted and that MAT (mutually agreed terms) were established.

indicated in the declaration shall be deemed to be authorized, once the declarant has received the above-mentioned acknowledgement of receipt.

“II.-In the event of any modification to the declaration, the declarant shall send the Minister for the Environment a rectifying declaration, subject to the same formalities as the initial declaration.

“Art. R. 412-15.-I.-The acknowledgement of receipt of the declaration shall be sent by the Minister for the Environment, after concealing or redacting any confidential information when applicable :

“1) to the Access and Benefit Sharing Clearing-House, as defined in Article 14 of the Protocol for Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arisen from their utilisation, pertaining to the Convention on Biological Diversity adopted in Nagoya on 29 October 2010,

“2) when access to genetic resources is granted for the territory of a local authority where traditional communities in the meaning of Article L. 412-4 are present, to the public legal entity mentioned in Article L. 412-10.

“II.-A summary of the declarations received shall be published every six months in the Ministry of the Environment’s Official Gazette.

“Art. R. 412-16.-I.-For the application of this sub-section to their activities, the custodians of scientific collections may declare that they wish to avail themselves of the provisions of Article L. 412-16.

“In this case, as from the 1st of January of the year following the one in which the application is made, they will only need to submit to the Minister for the Environment an update to the information provided in their previous declarations, every year before the 31st of March if these have been modified during the previous calendar year, as well as any new declarations required with regard to access for the current calendar year.

“Pursuant to Article L. 112-9 of the French Code on Relations between the Public and the Administration, this information may be transmitted via a teleservice system installed at the behest of the Minister for the Environment.

“II.-If the declaration is incomplete, the Minister for the Environment shall ask the declarant to complete it. As soon as the declaration is complete, said Minister shall issue an acknowledgement of receipt to the declarant.

“III.-The Minister for the Environment shall send the declarations received pursuant to point I and their corresponding acknowledgements to the Minister for Research, for information purposes. Acknowledgements of receipt shall also be transmitted, if applicable, after concealing or separating confidential information, to the Access and Benefit Sharing Clearing-House as defined in Article 14 of the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation, pertaining to the Convention on Biodiversity adopted on 29 October 2010.

“.IV-A summary of the declarations received shall be published every year in the Ministry of the Environment’s Official Gazette.

“Art. R. 412-17.-If they have adopted the deliberation provided for in Article L. 412-15, the Regional Councils of Guadeloupe and La Réunion, the Assemblies of French Guiana and Martinique and the General Council of Mayotte shall exercise the role of the Minister for the Environment in applying this sub-section.

“Sub-section 2

“Procedure for authorizing access to genetic resources on the national territory and the sharing of benefits arisen from their utilisation.

Art. R. 412-18.-I.-Any person wishing to access genetic resources with the intention to utilise them for purposes other than those mentioned in I and III of Article L. 412-7 and, in application of IV of the same article, any person who considers that the general terms and conditions for benefit sharing are applicable to their activities, pursuant to Article R. 412-12, are not appropriate to the specific case in their file, shall submit an application for authorization to the Minister for the Environment.

“II.-This declaration shall be made according to a template determined by the Minister for the Environment, which shall include the following:

“1) If a natural person: their surname, first name, place of residence, and if a legal entity: its title or company name, legal form, head office address and the status of the signatory to the application;

“2) A description of the activities for which the application is being made, their purpose and their proposed utilisations;

“3) The designation of the taxa concerned, with as much precision as possible, and reference of the sampling site, specifying whether it is situated within the geographical boundaries of a national park, as defined in Article L. 331-1 or, if the material is in a collection, the name of the entity holding the samples;

“4) A description of the technical means used to access the genetic resources and the modalities of collection;

“5) The elements enabling the evaluation of the impact on biodiversity of the activities or their proposed implementation, especially in terms of limited sustainable use or the risk of depleting the genetic resource for which access is being requested;

“6) The proposed timetable for undertaking the activities;

“7) The applicant’s proposals for benefit sharing, a statement of their technical and financial capacity and, if they desire, the deadline, when this exceeds the maximum timeframe provided for in Article R. 412-19, proposed for reaching an agreement over benefit sharing;

“8) Any confidential information which the applicant considers may breach industrial or business secrecy, if disclosed .

“III.-Pursuant to Article L. 112-9 of the French Code on Relations between the Public and the Administration, the application for authorization may be transmitted using a teleservice system installed at the behest of the Minister for the Environment.

“Art. R. 412-19.-On receiving the request, the Minister for the Environment shall send the applicant a formal message, indicating the date of registration. With notice of a maximum of fifteen working days, the Minister for the Environment shall examine the file in its entirety. If he considers the application to be incomplete, he shall request that the applicant makes the necessary corrections, pursuant to the conditions provided in Articles L. 114-5 and L. 114-6 of the Code on Relations between the Public and the Administration.

“Within a period of one month of receiving a completed file, the Minister for the Environment shall notify the applicant of the deadline set for reaching an agreement on benefit sharing. This period cannot exceed four months, unless the applicant has requested a longer period in their application. Before the expiry of this period, the Minister may reject the application, for the reasons provided in 2) and 3) of point IV in Article L. 412-8.

“Art. R. 412-20.-I.-The benefit sharing contract may refer to a model contract determined by a decision of the Minister for the Environment.

“II.-The threshold provided in the last line of V, Article L. 412-8 is fixed at 1,000 euros.

“Art. R. 412-21.-When a conciliation procedure is implemented, as provided for in point VII of Article L. 412-8, this conciliation shall be arranged according to the principles that apply to mediation, pursuant to the description in Articles L. 213-1 to L. 213-6 and R. 213-1 to R. 213-4 of the French Code of Administrative Justice. The competent court shall be the administrative tribunal within whose jurisdiction the genetic resources forming the subject of the application are located, or the Paris Administrative Tribunal, when these genetic resources are not located in the jurisdiction of any individual administrative tribunal.

“Art. R. 412-22.-I.-The event of a failure to reach an agreement over benefit sharing by the deadline set, in application of line two of Article R. 412-19 on reaching an agreement, or when recourse to conciliation - on which date the mediation shall be considered terminated, pursuant to paragraph two of Article L. 213-6 in the French Code of Administrative Justice - leads to the application being rejected.

“II.-In the case of a benefit sharing agreement, the Minister for the Environment shall adjudicate on the application within two months from the date of this agreement being signed. Authorization shall be deemed to be granted in the absence of a decision by the Minister by the end of this period.

“on granting authorization, the Minister shall establish the duration of its validity, according to the activities for which the application is being made, and may impose conditions on this, especially in relation to the utilisation of genetic resources.

“Art. R. 412-23.-When the activity for which the application has been submitted or the implementation of the same is intended to manage specific components of biodiversity covered by other legislation, the refusal to grant authorization must not be motivated by the risk of depleting the resource.

“Art. R. 412-24.-I.-The decision to issue an authorization and the benefit sharing contract shall be sent by the Minister for the Environment, if applicable, after concealing and redacting any confidential information:

“1) to the Access and Benefit Sharing Clearing-House, as defined in Article 14 of the Protocol for Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation, pertaining to the Convention on Biological Diversity adopted in Nagoya on 29 October 2010,

“2) and when access to genetic resources is granted for the territory of a local authority where traditional communities are present in the meaning of Article L. 412-4, to the public legal entity mentioned in Article L. 412-10.

“II.-A summary of the declarations issued shall be published every six months in the Ministry for the Environment’s Official Gazette.

“Art. R. 412-25.-In response to the beneficiary’s application for authorization, or on their own initiative, the Minister for the Environment may, after issuing the authorization, add the necessary supplementary provisions to guarantee the fair and equitable sharing of benefits arisen from the utilisation of genetic resources or for contributing to the protection of biodiversity and the sustainable use of its elements, or for mitigating elements of initial provisions, where there no longer appears to be any justification for holding them.

“When the beneficiary’s request for authorization does not imply any modification of the benefit sharing contract, a lack of response to this request for a period exceeding two months shall be deemed as acceptance.

“When the benefit sharing contract needs to be modified, the provisions relating to the conclusion of the initial contract shall apply.

“Art. R. 412-26.-Any draft amendment of the activities, which is likely to lead to a significant change in the elements for which authorization has been granted, must be brought by the beneficiary to the attention of the Minister for the Environment, together with the information required to assess the extent of its impact.

“When the beneficiary’s request for authorization does not imply any modification of the benefit sharing contract, a lack of response to this request for a period exceeding two months shall be deemed as acceptance. During this period, the Minister may, where necessary, add supplementary provisions to the authorization.

“Where the application implies an amendment of the benefit sharing contract, the provisions relating to the conclusion of the initial contract shall apply.

“Art. R. 412-27.-If they have adopted the deliberation provided for in Article L. 412-15, the Regional Councils of Guadeloupe and La Réunion, the Assemblies of French Guiana and Martinique and the General Council of Mayotte shall perform the role of the Minister for the Environment in applying this sub-section.

“Sub-section 3

“Procedure for authorizing the utilisation of traditional knowledge associated with genetic resources.

“Art. R. 412-28.-I.-When one or more traditional communities, pursuant to 4) in Article L. 412-4, in French Guiana or the islands of Wallis and Futuna, hold traditional knowledge associated with genetic resources, any person wishing to use this traditional knowledge shall submit a request to the Minister for the Environment.

“II.-This declaration shall be made according to a template determined by the Minister for the Environment, which shall include the following:

“1) If a natural person: their surname, first name and place of residence and, if a legal entity: its title or company name, legal form, head office address, and the status of the signatory to the application;

“2) A description of the activities for which this application is being made, their objectives and their proposed implementation;

“3) A description of the traditional knowledge concerned, citing the traditional community(ies) who possess it, or, if the traditional knowledge is in a collection, the name of the entity holding the collection and, if the utilisation of this traditional knowledge requires access to genetic resources, the origin of the samples that the applicant plans to avail themselves of to access these resources;

“4) A description of the protocol for accessing the associated traditional knowledge;

“5) A description of the credentials of persons engaged to intervene on the applicant’s behalf;

“6) The proposed timetable for undertaking the activities;

“7) The elements that enable the evaluation of the impact on biodiversity of the activity and its planned implementation especially in terms of limited sustainable use or the depletion of the genetic resource with which the traditional knowledge forming the subject of this application is associated;

“8) The applicant’s proposals with regard to benefit sharing and a presentation of their technical and financial capacity;

“9) Any confidential information that the applicant considers may breach industrial or business secrets, if disclosed.

“III.-Pursuant to Article L. 112-9 of the French Code on Relations between the Public and the Administration, the application for authorization may be transmitted using a teleservice system installed at the behest of the Minister for the Environment.

“Art. R. 412-29.-On receiving the request, the Minister for the Environment shall send the applicant an acknowledgement of receipt, indicating the date of registration. With notice of a maximum of 15 working days, the Minister for the Environment shall examine the file in its entirety. If he considers the application to be incomplete, he shall request that the applicant makes the necessary corrections, pursuant to the conditions provided in Articles L. 114-5 and L. 114-6 of the Code on Relations between the Public and the Administration.

“Within a period of one month of receiving the completed file, the Minister for the Environment shall send it to the public legal entity mentioned in Article L. 412-10.

“Art. D. 412-30.-The public legal entity mentioned in Article L. 412-10 is:

“1° For French Guiana, the public institution indicated in Article L. 7124-19 of the French General Local Authorities Code;

“2) For the islands of Wallis and Futuna, pursuant to Article L. 635-2-1, the territorial constituency(ies) within which the traditional communities concerned are established. However, if the territorial constituency concerned does not explicitly state its agreement over arranging a consultation with the traditional community within a period of 15 days of referral, this consultation shall be arranged by the Chief Administrator of the Wallis and Futuna Islands.

“Art. R. 412-31.-Within a period of one month of referral, the legal entity designated in Article D. 412-30 shall set the timetable for the consultation with the traditional community(ies) concerned and duly notify the applicant

“The duration of the consultation must be established in a way that permits this legal entity to send to the Minister for the Environment the report mentioned under 6) of Article L. 412-11 within a maximum period of nine months, as from the date of the referral.

“To guarantee that the traditional community(ies)concerned are adequately informed and included, the duration of the consultation must be at least two months if the application refers to the utilisation of traditional knowledge for the purpose of learning about or gaining benefits from biodiversity, with no direct commercial development, and at least four months in any other case.

“Art. R. 412-32.-The application file is to be made available to the traditional community(ies) concerned, for the entire duration of the consultation.

“It shall also be presented under conditions that are suitable for their lifestyle and culture, especially in a language or dialect that they understand.

“The applicant may take part in the consultation with the traditional community(ies) with the approval of the legal entity designated in Article D. 412-30 and under the conditions established by the latter.

“Art. R. 412-33.-In the case of prior consent from the traditional community(ies), the legal entity designated in Article D. 412-30 shall negotiate and sign the benefit sharing contract with the applicant, in light of the report mentioned under 6) of Article L. 412-11. This contract shall comply with the template contract depicted in the Appendix to this Article.

”The applicant shall transmit the signed contract(s) as well as the corresponding report(s) to the Minister for the Environment,

“The Minister for the Environment shall adjudicate on the request within a period of two months of receiving the above-mentioned documents. Authorization shall be deemed to be granted in the absence of a decision by the Minister by the end of this period.

“The decision to grant authorization - if applicable, with conditions attached - shall establish the duration of its validity, according to the activities for which the application was submitted.

“Art. R. 412-34.-In response to the beneficiary’s application for authorization or on his own initiative, the Minister for the Environment may, after granting authorization, add supplementary provisions necessary for guaranteeing the fair and equitable sharing of benefits arisen from the utilisation of traditional knowledge associated with genetic resources, or for contributing to the protection of biodiversity and to the sustainable utilisation of its elements, or to mitigate initial provisions, where it no longer seems justified to hold them.

“The Minister for the Environment shall transmit the beneficiary’s application for authorization to the legal entity designated in Article D. 412-30 or inform it of their decision to modify their decision on authorization.

“When the beneficiary’s request for authorization does not imply any modification of the benefit sharing contract, a lack of response to this request for a period exceeding two months shall be deemed as acceptance.

“Where the benefit sharing contract needs to be modified, the provisions of Article R. 412-31 to R. 412-33 shall apply.

“Art. R. 412-35.-Any draft amendment of activities that are likely to lead to a significant change in the elements for which authorization has been granted must be brought by the beneficiary to the attention of the Minister for the Environment and the legal entity designated in Article D. 412-30, accompanied with any information that will enable the extent of its impact to be assessed.

“When the beneficiary’s request for authorization does not imply any modification of the benefit sharing contract, a lack of response to this request for a period exceeding two months from its reception shall be deemed as acceptance. During this period, the Minister may, where necessary, add supplementary provisions to the authorization.

“Where the application implies an amendment of the benefit sharing contract, the provisions of Articles R. 412-31 to R. 412-33 shall apply.

“Art. R. 412-36.-In the event of any changes to the stipulations of the benefit sharing contract, termination of this contract or any other event affecting its performance, the legal entity designated in Article D 412-30 shall duly and promptly inform the Minister for the Environment, who will then assess any consequences of the above affecting the authorization.

“Art. R. “412-37.- The authorisation decree and the benefit sharing contract(s) shall be sent by the Minister for the Environment, if applicable, following the concealment or separation of confidential information, to the Access and Benefit Sharing Clearing-House, as defined in Article 14 of the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation, pertaining to the Convention on Biological Diversity adopted in Nagoya on 29 October 2010.

“A summary of the authorizations granted shall be published every six months in the Ministry of the Environment’s Official Gazette.

“Art. R. 412-38.-If it has adopted the deliberation provided for in Article L. 412-15, The French Guiana Assembly shall fulfil the role of Minister for the Environment in the application of this sub-section.

“Sub-section 4

“ Rules of compliance relating to the utilisation of genetic resources and associated traditional knowledge

“Art. D. 412-39.-I.-The Minister for Research shall be the competent authority:

“1) To receive, in application of paragraph 1 of Article 7 of (EU) Regulation no. 511/2014 of the European Parliament and Council dated 16 April 2014, relating to measures concerning the compliance of users in the EU with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation, the beneficiaries’ declarations of funding for the research work, involving the utilisation of genetic resources and associated traditional knowledge, and confirming that the user has demonstrated due diligence pursuant to Article 4 of the Regulation;

“2) To ensure the application, with regard to the utilisation referred to in 1), of paragraphs 3 to 5 of Article 7 and Articles 9,10,12 and 13 of the same Regulation.

“II.-The Minister for the Environment shall be the competent authority.

“1) To receive, in application of paragraph 2 of Article 7 of the Regulation indicated in 1) of point I, declarations at the final stage of development of a product created using genetic resources or traditional knowledge associated with genetic resources, confirming that the user has demonstrated due diligence pursuant to Article 4 of the Regulation;

“2) To ensure the application, with regard to the utilisation referred to in 1), of paragraphs 3 to 5 of Article 7 and Articles 9,10,12 and 13 of the same Regulation.

“Sub-section 5

“Register of collections within the European Union

“Art. R. 412-40.-The custodian of a collection of genetic resources may request the entry of all or part of its collection in the European Registry of Collections provided for in Article 5 of (EU) Regulation no. 511/2014 of the European Parliament and Council dated 16 April 2014, pertaining to measures concerning the compliance of users in the EU with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation.

“The procedures for formulating and examining an application file as well as for monitoring collections entered in the Register shall be specified in the joint decision of the Minister for Research and the Minister for the Environment.

“Art. D. 412-41.-The Minister for Research is the competent authority for applying Article 5 of (EU) Regulation no. 511/2014 of the European Parliament and Council dated 16 April 2014 relating to measures concerning the compliance of users in the EU with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arisen from their utilisation.”

Article 2

I.-Added to Article R. 635-1-1 of the French Environmental Code is a clause worded as follows:

“Sub-sections 3 to 5 of section 4 of Chapter II of the first heading of Book IV apply to Wallis and Futuna.”

II.-To point I of Article R. 644-1 of the same Code, the following wording: “R. 412-1 to R 413-51 is replaced by the wording: “R. 412-1 to D. 412-41 and R. 413-1 to R. 413-51”.

Article 3

In the table depicted in point II of the 1st heading of the Appendix to the above-mentioned decree dated 19 December 1997, in the column, ‘Book IV’, before the line:

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Issuing and withdrawal of the agreement on national botanical conservatories.	Article R. 416-5
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“

Are inserted the following sentences :

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Issuing of an acknowledgement of receipt of a declaration to access genetic resources for their utilisation	Articles R. 412-14 and R. 412-16
Decisions on authorization to access genetic resources for their utilisation	Article R. 412-22
Decisions on authorization for the utilisation of traditional knowledge associated with genetic resources	Article R. 412-33

”.

Article 4

I.-This decree shall come into force on the 1st of July 2017, with the exception of Articles D. 412-39 and D. 412-41 of the French Environmental Code.

The above clause is applicable to Wallis and Futuna and in the French Southern and Antarctic Territories.

II.-With the exemption of the provisions of Article D. 412-30 of the French Environmental Code, until the creation of the public institution mentioned in Article L. 7124-19 of the French General Local Authorities Code, the State shall be, for French Guiana, the public entity mentioned in Article L. 412-10 of the French Environmental Code.

Article 5

The Minister for the Environment, Energy and the Sea, in charge of International Climate Relations, the Minister for State Education, Higher Education and Research, the Minister for the Overseas Territories, and the Secretary of State in Charge of Biodiversity are respectively tasked, as appropriate, with the implementation of this decree, which shall be published in the Official Gazette of the French Republic.

Annex

ANNEX TO ARTICLE R. 412-33

Template contract for the sharing of benefits of the utilisation of traditional knowledge associated with genetic resources.

This contract has been concluded between:

- the public institution indicated in Article L. 7124-19 of the French General Local Authorities Code, represented by its president (when the traditional knowledge belongs to one or more traditional communities of the territory of French Guiana);
- the territorial constituency of... (Uvea/Alo/Sigave), represented by (when the traditional knowledge belongs to one or more traditional communities on the territory of the islands of Wallis and Futuna),

hereinafter known as “the public legal entity designated in Article D. 412-30 of the French Environmental Code”

, on one hand

XXX, with its registered office located in ..., duly represented by... in the capacity of..., hereinafter referred to as the ‘user’

, on the other hand

Hereinafter known collectively or individually as the ‘parties’,

In light of the Convention on Biological Diversity (two Appendices in total) adopted in Rio de Janeiro on 22nd May 1992 and signed by France on 13 June 1992;

the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (consisting of one Appendix), adopted in Nagoya on 29 October 2010 and signed by France on 20 September 2011;

the French Environmental Code, especially its Articles L. 412-9 to L. 412-14 and R. 412-28 to R. 412-38;

the application for the utilisation of traditional knowledge associated with a genetic resource, presented on... by....,

and the administrative form dated..., drafted in application of 6) of Article L. 412-11 of the French Environmental Code, describing the outcomes of the consultation with the traditional community(ies) affected by the application.

Article 1

Subject of the Contract

This contract is intended to formalize the prior informed consent given by the following

traditional community(ies) :

for the utilisation of the following traditional knowledge:

for the following purposes:

It specifies the conditions for utilising this traditional knowledge, under which consent has been given, as well as the conditions for sharing the benefits arisen from this utilisation.

This contract is registered under No.: ...

Article 2

Conditions for the utilisation of traditional knowledge

Article 3

Conditions for sharing the benefits arisen from utilisation

3.1 The benefits arisen from the utilisation of traditional knowledge associated with genetic resources shall be allocated to the projects described below, for the direct benefit of the traditional communities mentioned under Article 1:

The projects must fall under the activities indicated in a-f of 3) in Article L. 412-4 of the French Environmental Code:

- a) Enriching or preserving biodiversity in situ or ex situ, while ensuring its sustainable use;
- b) Preserving traditional knowledge associated with genetic resources by creating, if applicable, databases of the traditional knowledge pertaining to the communities concerned, with their informed prior consent, and to the protection of other traditional practices and knowledge that respect biodiversity;
- c) Contributing at local level to the creation of employment for the population and to the development of a sector associated with the sustainable use of genetic resources or the traditional knowledge associated with it or that permits the enhancement of biodiversity, in tandem with the territories that have helped conserve these resources;
- d) Collaborating, cooperating or contributing to activities pertaining to research, education, training or raising awareness amongst the local population and its professionals, or the transfer of skills and technology;
- e) Maintaining, conserving, managing, supplying or restoring ecosystem services on any given territory,
- f) Making financial contributions.

3.2. The conditions under which these projects must be undertaken in cooperation with and including the participation of these traditional communities are as follows:

3.3. The benefits arisen from the utilisation of traditional knowledge shall be allocated to:

- the following traditional community(ies) :
- the public legal entity designated in Article D. 412-30 of the French Environmental Code,

which ensures its management and possible devolution to the traditional community(ies) concerned. These benefits shall be processed in separate accounts. They can only be allocated to projects that directly benefit to the traditional community(ies) concerned and which are executed with the cooperation of the latter.

In the event of the disappearance of the recipient of the benefits initially designated in the contract, the public legal entity mentioned in Article D. 412-30 of the French Environmental Code shall act as proxy (optional provision, pursuant to III of Article L. 412-14 of the French Environmental Code).

Article 4

Publication of the results

Scientific publications and literature aimed at the general public shall mention the origin of the traditional knowledge and the registration number indicated in Article 1.

Article 5

Duration and termination

This contract shall enter into force once authorization has been granted, as provided for in Article R. 412-33 of the French Environmental Code.

It may be terminated by the public legal entity designated in Article D. 412-30 of the French Environmental Code in the event of the user's failure to satisfy any of its stipulations. This termination shall automatically occur three months after notice to remedy the defect, issued in the form of a recorded delivery letter, which elicits no response.

Article 6

Procedure for amicable settlement

The parties shall endeavor to amicably resolve any dispute relating to the interpretation of the stipulations of this contract or its execution.

Any dispute between the user and the public legal entity designated in Article D. 412-30 of the French Environmental Code shall be the subject of a letter of dispute from the user, revealing the reason for their disagreement and indicating, if applicable, the desired corrective measures. The public legal entity, designated in Article D. 412-30 of the French Environmental Code disposes of a period of two months for notifying of its decision, as from receipt of the letter of dispute. The absence of a decision within this period shall be deemed as a rejection of the claim.

Article 7

The applicable law and competent jurisdiction.

This contract is subject to French law.

In the case of a dispute linked to the interpretation, execution or validity of this contract, and in the absence of an amicable settlement, the dispute may be brought before the competent administrative jurisdiction on the territory.

Signed in, on

Written on the 9th of May 2017.

Bernard Cazeneuve

By the Prime Minister:

The Minister for the Environment, Energy and the Sea, in charge of International Climate Relations,

Ségolène Royal

The Minister for State Education, Higher Education and Research,

Najat Vallaud-Belkacem

The Minister for the Overseas Territories,

Ericka Bareigts

The Secretary of State for Biodiversity,

Barbara Pompili