

Ownership and legal issues

Contracts and Access

Gene banking and cryopreservation

Training workshop

S.J. Hiemstra, 1-3 June 2010



Legal framework for national gene banks

- Gene bank **policy**
 - National policy and agreement between major stakeholders
 - Legal entity or entities responsible for cryopreservation
- Various types of **agreements**, for:
 - **Acquiring** germplasm for the gene bank
 - **Use** of gene bank material
- **Rights and responsibilities** of:
 - Gene bank
 - User of gene bank material
 - Donor of gene bank material

Local communities or farmer groups

NGOs

Breed associations

Who operates the
gene bank?

Regions/provinces/states within countries

Breeding industry

National government

Universities or research institute

1. Acquiring germplasm for the gene bank

■ **Ownership** of gene bank material?

Options:

- Transfer of ownership to gene bank
- Donation of material to gene bank
- Donor maintains ownership for a specific period of time (e.g. 'embargo period')
- Donor maintains ownership
- Donor maintains the right to use part of the material

Need for **agreements**/contracts between **owner of donor animal** and the **gene bank**, addressing the transfer of the germplasm

→ Within national, regulatory framework (e.g. CBD....)

Acquisition agreement, between owner of donor animal and gene bank could include...

- Ownership and rights of donor and gene bank
- Agreement on costs of collection, freezing, storage
- Conditions for accessing the germplasm by future users
- Exclusion of Intellectual Property Rights claims
- Clearly defined sanitary status
- Statement of gene bank to follow best practices
- Protection of germplasm related data

2. Access to gene bank material

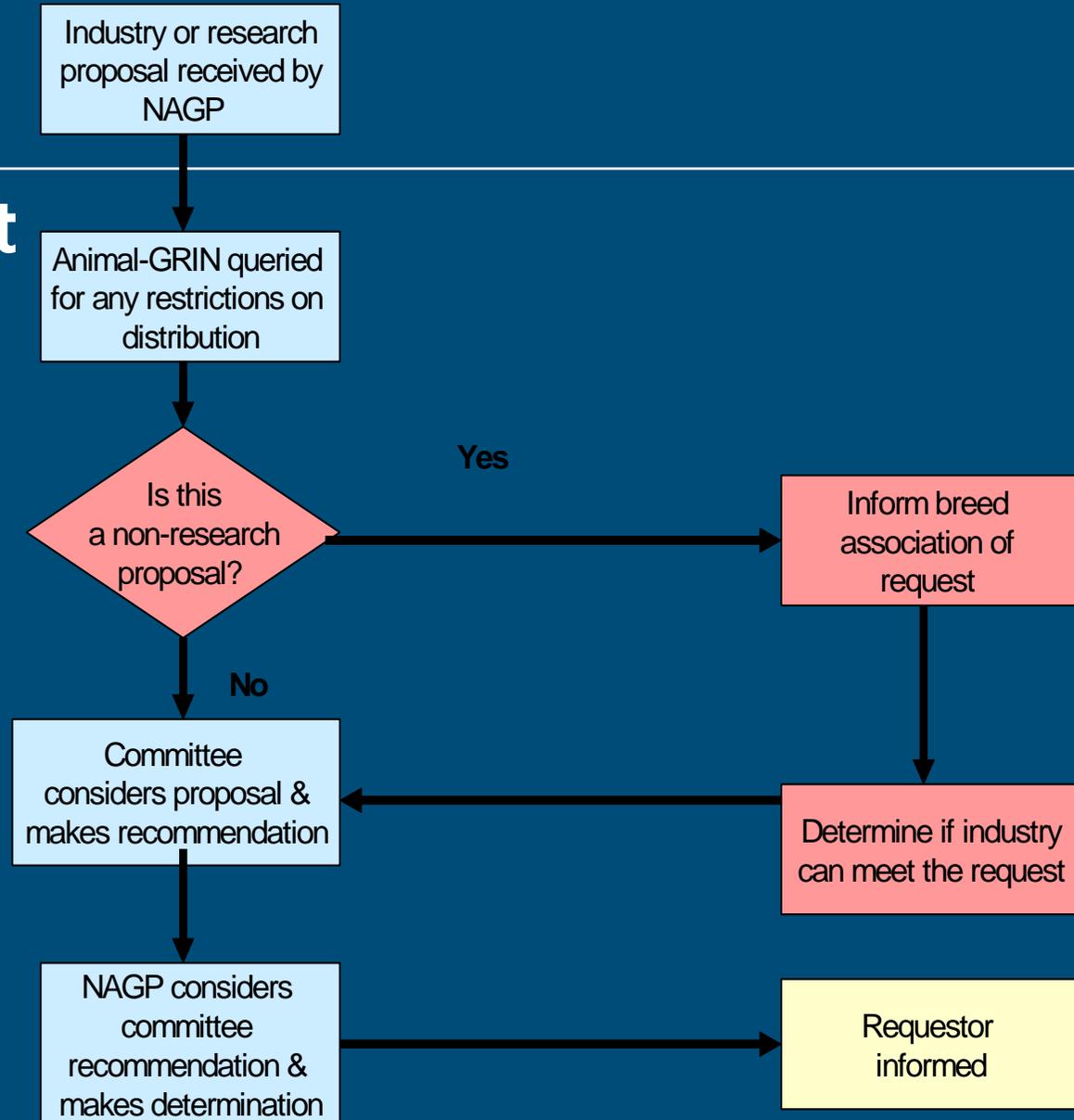
- **Breeding** = non-research request
 - Related to breed conservation or re-establishment
 - Other commercial breeding purpose
- **Research** request
- **Other** request

Written **requests** could include:

- Legal entity and affiliation of the applicant
- Accurate information on the intended use (breeding or research)
- Type and quantity of the genetic material requested
- Kinds and types of benefits that could be expected
- Competence of technicians involved

US example

handling request



Access criteria for breeding – example Netherlands

- Contribution to (rare) breed conservation?
- Sufficient quantity of material available?
- Restrictions/embargo period for use of gene bank material?
- No access if (similar) material is still available in the commercial (AI) sector
- Gene bank may want to claim access to offspring
- Decision after consultation of breed society

→ Depending on type of collection and gene bank objectives

Gene bank – User – Material Transfer Agreement

Material Transfer Agreement (MTA) could include:

- Type and quantity of genetic material provided
- Statement on intended use (objective)
- Price to pay by user and who will pay potentially high reproduction costs
- Liability related to
 - Potential sanitary risks of using gene bank materials
 - Quality of the gene bank material
- Rights of gene bank to offspring
- User will not further distribute/sell gene bank material
- No IPR claims
- Etc.

Conclusions

- Need for clear policies and (a variety of) agreements
- Decisions to be made at national level
- There will be a range of options how to regulate things