

Biodiversity COP15 – A stepping stone towards effective access and benefit sharing

Here, Dominic Muyldermans and Markus Wyss explore the opportunities and challenges on the journey towards effective access and benefit sharing across the globe

The objectives of the Convention on Biological Diversity (CBD) of 1992 are the conservation and sustainable use of biodiversity, as well as the fair and equitable sharing of benefits arising out of the utilization of genetic resources. The CBD recognizes that countries have sovereign rights over their genetic resources and already included the principles of Access and Benefit Sharing (ABS). These ABS principles have been further operationalized in the Nagoya Protocol, which entered into force in 2014.

Pursuant to the recognition of sovereign rights over their genetic resources, countries started to enact national ABS laws requiring prospective users to conclude an ABS agreement with the provider country. Since these national ABS laws often differ in scope and provisions, business and academic users have to deal with a myriad of legal obligations when undertaking research, development and/or commercialization involving genetic resources.

Over the years, this has resulted in a complex legal ABS framework with high transaction costs and legal uncertainty. This, in turn, negatively impacts value creation and the development of technologies or products that are needed to address societal challenges like environmental sustainability, food security and human health.

Above and beyond this existing legal framework and due to the growing importance of data in research and development, the topic of “Digital Sequence Information on genetic resources” (DSI) came to the forefront in the international negotiations.⁽¹⁾ DSI was first included in a CBD decision in 2016 and since then was the subject of a multi-layered process including reports, expert groups and intersessional discussions that culminated in a seminal decision at the 15th Conference of the Parties (COP15) in Montreal in December 2022.

What has been decided

After lengthy negotiations, COP15 adopted a decision “to establish, as part of the Kunming-Montreal Global Biodiversity Framework, a multilateral mechanism for benefit-sharing from the use of digital sequence information on genetic resources, including a global fund”, recognizing that the current bilateral approach to ABS cannot be reasonably

applied to DSI. At the same time “a fair, transparent, inclusive, participatory and time-bound process [was set up] to further develop and operationalize the mechanism, to be finalized at the sixteenth meeting of the COP”.

The decision also provides a list of issues for further consideration, including (i) the potential to voluntarily extend the multilateral mechanism to genetic resources or biological diversity in general and (ii) the interface between existing national, bilateral ABS systems and the new multilateral benefit-sharing mechanism.

The new multilateral mechanism could pave the way for a future ABS framework which safeguards the value creation from the use of DSI and, eventually, also genetic resources. It is, however, largely unclear how this mechanism shall work in practice, i.e. who will implement and govern it, who will contribute and how much, and how contributions will be allocated. We have a skeleton, but the muscles and nerves are still missing.

How to make it work

The COP15 decision specifically acknowledges that the generation of, access to, and use of DSI support innovation and contribute to achieving the objectives of the CBD and the Global Biodiversity Framework. Furthermore, it is stated that tracking and tracing of all DSI is not practical. In that context, it is important to refer to the huge amounts of DSI that are being accessed, shared and used in the international academic and commercial research community via open-access databases, i.a. the databases of the International Nucleotide Sequence Database Collaboration. This means that the principle of open access to and secured use of DSI is specifically recognized and, thus, needs to be safeguarded in the new multilateral system to be developed.

Additional key criteria for the new multilateral system include, i.a., the need to:

- Be efficient, feasible and practical,
- Generate more benefits, including monetary and non-monetary, than costs,
- Be effective,
- Provide certainty and legal clarity for providers and users, and
- Not hinder research and innovation.

All these criteria are of paramount importance to ensure a balanced system.

Let's make it a success!

In operationalizing the system, we encourage policymakers to have due regard to the following guiding principles:

- A holistic approach

Any mechanism that is being developed needs to consider biodiversity as a whole. From a scientific perspective, a distinction between genetic resources and DSI is artificial and does not respect the realities of current scientific research. Thus, while the new multilateral mechanism is destined in the first place to cover all publicly available DSI, countries should also be given the possibility to include the genetic resources in its scope.
- Emphasis on value creation and value sharing

Rather than solely focusing on monetary benefit sharing, the mechanism should focus on reinforcing value creation and sharing. This means further reinforcing the inclusive and open access to DSI, and capacity building to bridge the gap between developed and developing countries.
- Sense of urgency

The timeline of two years for operationalizing the mechanism should be carefully guarded, to avoid a next wave of frustration and the further proliferation of national ABS laws covering DSI.
- Simplicity

To reach all the above, the new mechanism must be as simple as reasonably possible, to secure legal certainty and broad understanding and endorsement. Every single piece of additional complexity risks to make negotiations more cumbersome and time consuming, and to dilute the impact that this new mechanism can and should have.

We call upon policymakers to duly involve all relevant stakeholders in the design and implementation of a sustainable benefit-sharing system that supports the conservation and use of biodiversity in the best interest of society. Next to national authorities, academic users, indigenous people and local communities, and database providers, the business community will need to play an active and supportive role in its design and implementation.

Footnotes

1. “DSI” is used as a placeholder, and no final decision has yet been taken on its exact scope and definition. Instead, “Genetic Resource Sequence Data” or “Nucleotide Sequence Data” have been proposed as more precise terms.

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