

Towards a bioeconomy

23.10.2020 3 min read

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Brazil and other countries have carried out various research and development projects focusing on the genetic and biochemical composition of their biodiversity heritage, some using biotechnology, with a view to marketing products in certain economic sectors, such as agribusiness and the pharmaceutical and cosmetics industries.

The Nagoya Protocol, which was recently approved by Brazil's Federal Senate, will give public and private organizations a regulatory structure for international transactions involving access to genetic resources and associated traditional knowledge.

The Nagoya Protocol, which is a multilateral agreement that supplements the Convention on Biological Diversity (CBD), has been in force internationally since October 2014 and has been ratified by 124 countries. The Protocol starts from the premises established in the CBD that countries have sovereignty over the genetic resources existing in their territory, that those resources have unquestionable economic value, and that countries have the right to share the benefits when their genetic resources are used by others, whether individuals, businesses, or governmental agents.

With the Protocol in effect, national organizations can benefit from an international system for monitoring Brazilian genetic resources, making it possible to trace the material's source during its transfer from one country to another or from one organization to another. In addition, the adoption of rules on the requirement for prior consent and mutually agreed terms will foster a new way of accessing genetic resources, in which research and technological development must be accompanied by responsibility for conservation of genetic resources.

Users will be able to check whether the source of the genetic resources they wish to use is legal (by means of monitoring and checkpoint methods); likewise, products and results attained using the genetic resources can be shared with the supplying country through legal mechanisms such as payment of royalties, creation of joint ventures, transfers of technology, and other monetary and non-monetary benefits provided for in the Protocol.

Each signatory to the Protocol is responsible for adopting the legislative, administrative, and political measures that may be needed to provide legal certainty, clarity and transparency in its legislation and to establish fair, non-arbitrary rules and procedures for access to genetic resources and benefit sharing. In Brazil, Law 13.123/2015 (the Biodiversity Law) already sets out rules on access and benefit sharing with a view to conservation and sustainable use of the country's biodiversity.

The Nagoya Protocol also leaves room for countries to enter into bilateral and multilateral agreements on benefit sharing. In addition to the challenge of making the provisions of the Biodiversity Law effective and giving its national legislation international credibility, Brazil will have to take into account the

benefit sharing rules adopted by the Protocol's other member countries when accessing their biodiversity, by virtue of the rule of mutual respect under article 15 of the Protocol.

In practice, the Protocol's member countries assume the duty to create instruments to ensure compliance with the law of the country that supplies a genetic resource. This new reality requires that organizations that conduct research involving foreign biodiversity must adopt compliance mechanisms that make it possible to be aware of and comply with foreign law when necessary.

Brazil's accession to the Nagoya Protocol is a positive signal to national and international organizations, both public and private, that are interested in obtaining access to this country's genetic resources. By providing a foundation that enables member countries to promote compliance with the law in international transactions involving genetic resources, the Protocol will certainly have the effect of accelerating the development of what has come to be called the bioeconomy.

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