

Valorising the Nagoya Protocol: The Potential of Private Standards for Access and Benefit Sharing of Genetic Resources and Traditional Knowledge

Exploratory Research Agenda Workshop – Executive Summary

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Executive Summary of the Exploratory Research Agenda Workshop “Valorising the Nagoya Protocol: The Potential of Private Standards for Access and Benefit Sharing” 18 December 2019, Wageningen University & Research (WUR) Campus, the Netherlands

<https://www.wur.nl/en/show/Valorising-the-Nagoya-Protocol-The-Potential-of-Private-Standards-for-Access-and-Benefit-Sharing.htm>

The workshop was organised by Dr Hanna Schebesta from the Law Group, and financed by means of a personal ‘Excellence Grant’ from the Social Sciences Department.

The workshop aimed to explore positive drivers for Nagoya Protocol compliance and to discuss the idea of placing consumer-facing labels on final products in Nagoya affected supply chains with a wide range of stakeholders. More specifically, the objectives were to validate the research idea with stakeholders, to formulate a joint research agenda, establish avenues for further collaboration and publish a working paper. To establish an open and critical debate, short pitch presentations were clustered around three topics and linked to interactive group activities. The workshop was facilitated by the NextView company. It was attended by 17 participants coming from academia (consumer behavior, supply chain, legal), institutional actors (European Commission, national focal point), standards, and industry (cosmetics, plants, pharma, food).

Building a Research Agenda: Valorising the Nagoya Protocol

The keynote on *Consumer-based mechanisms as positive drivers for benefit sharing* was delivered by Dr Schebesta (Law Group, WUR), presenting the research idea of using private standards to incentivise Nagoya compliance. This approach goes further than using private standards as implementation tools, and suggests that they can leverage advantages for industry from the consumer perspective. This was followed by *Systematic overview of ABS obligations in private standards*, a presentation of research findings on the extent to which main private standards on sustainability actually refer to the Nagoya Protocol or include ABS provisions in their criteria by Mr Monaco (Law Group, WUR). To date, there are four standard schemes that are explicitly dedicated to the Nagoya Protocol.

Value Chain Simulation

In a mind mapping group activity, the participants were asked to exercise a simulation of the research idea in a value chain of their choice. The examples of the agrochemical field and cosmetics highlighted the fact that R&D makes it difficult to establish who is the actual user, and that in many cases, responsibility for Nagoya Protocol compliance within value chains ends before the final product.

Standardisation Perspective: How can private standards ensure benefit sharing?

Mr Gonnet (Nitidae) spoke on *Existing private standards and benefit sharing* and compared the criteria behind the Nagoya Protocol and existing biotrade labels. The presentation called attention to the diverse underlying criteria in different schemes, relating to aspects such as economically fair trade, environment, or biodiversity. This raised the question whether a benefit sharing standard would be complementary or stand-alone, or whether such criteria could be included in existing multidimensional standards.

Examples of benefit sharing contracts on Pacific yew tree, Mexican maize and Brazil were presented by Mr Manheim (WilmerHale on behalf of Mars). The speaker noted the complexity in determining whether there are obligations on the part of the commercial company to pay benefits back to the community when the initial obligation is imposed on the company that access the resources in the first place. He also noted challenges, particularly digital sequencing and the fact that the United States is not a CBD Party.

During the discussion, the participants highlighted the particularities of sectors. There is an often urgent nature of innovations in the pharmaceutical sector, and the idea does not translate well in the plant breeding sector where many materials end up in one variety. As an overall sentiment, the sectors expressed the tension between innovation and fair benefit sharing.

System Perspective: Private standards as a way to overcome challenges in ensuring benefit sharing in the supply chain?

Dr Brink (Dutch National Focal Point) presented *Compliance obligations in the EU*, underlining the paramount role of national legislation in discussing 'due diligence' obligations. In the EU, due diligence declarations have to be submitted in two checkpoints, in external funding for research and at the final stage of product development. In addition, there are monitoring obligations by the Member States. A new EU Guidance document on these obligations is expected in 2020.

The Nagoya Protocol on access and benefit-sharing: Specific Issues of Implementation were discussed by Dr Tsioumani (University of Trento) with a focus on genetic resources, traditional knowledge and utilisation. Much in the Nagoya Protocol is a matter of interpretation, specifically: what is considered utilisation, what are genetic resources and the status of derivatives and genetic sequence data, and what constitutes traditional knowledge associated with genetic resources.

'Consumer Perspective': Can consumer-driven mechanisms act as a positive driver for benefit sharing?

Data on consumer behaviour and product labels were presented by Dr Schebesta (Law Group WUR). A number of studies indicate a willingness to pay a premium for certification and ecolabelling policy practices. Labels have a positive influence on consumer perception, due to the perception of the level of institutionalisation and credibility of labels. The discussion noted the risk inherent in the inflation of labels, and that the precise criteria of standards are not easily understood. The participants debated which business and market considerations would be at play, and the merits of a b2c or b2b standard.

Rank & Rate of the Research Agenda

The participants were asked to reflect on the potential of private labels for benefit sharing in three clusters that focused on the consumer, standard and value chain perspective respectively.

The Consumer Group identified two potential benefits: a debatable possibility for price premiums and enhanced trustworthiness of the brand. Important questions identified were: to which group or type of products do these labels or do these certifications apply to and which not? The group also highlighted the need for story telling in certification, ie who benefits, and noted the challenge to tell the Nagoya Protocol story comprehensively to consumers.

Standard Group thought that private standards might facilitate Nagoya Protocol compliance. A new label would not be useful, but rather the integration in existing ones. The standard should not simply be certification but help in the compliance process. The main points of interest for companies could be the support in the compliance process, protection of reputation issues, and possibly shifting liability to the standard. These considerations would need to be specific for products and for sectors. A private standard could work as a predecessor of an recognised certificate of compliance to speed up the process.

The Value Chain Group raised the issue whether labels are misleading - would the absence of a label suggest negative characteristics and whether a pure 'law compliant' claim would violate labelling law. There was disagreement as to whether certification could help reduce the transaction costs, or by contrast increase them. Having a label would risk raising inflated expectation in the benefit sharing community. The costs of implementing has to be considered. There was some concern on the implications for your market structure, whether it would be workable for both big and small companies.

Conclusions

There were mixed views about the potential utility of private standards in valorizing compliance with ABS obligations among the stakeholders, coupled with a shared assessment that this would vary largely by sector, supply chain and product groups.