

The challenges for implementing the Nagoya Protocol in a multi-level governance context: lessons from the Belgian case

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The 2010 Nagoya Protocol on Access and Benefit-sharing (ABS) is the latest protocol to the Convention on Biological Diversity (CBD). Its core objective is to further the implementation of the third objective of the CBD, *i.e.* the fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge.

The implementation of the Protocol can lead to two fundamentally different policy processes. The first type of process is based on a market-oriented self-regulatory approach, which emphasizes the self-regulating capacity of the concerned economic actors and assumes this is the most effective and efficient mechanism to achieve the objectives of the Protocol and the CBD. The second type of process is based on a normative institutionalist approach, which focuses on the norms and formal rules of institutions that support, frame, shape and constrain the actions of the players acting within them. This second approach relies on the positive institutionalization of the core principles of the ABS regime within national legislation and public policies, beyond the minimal measures for the coordination of the bilateral contracting between economic actors. While the former approach only relies on best efforts of private actors to achieve the social and environmental objectives of the CBD, the latter, by institutionalizing ABS, guarantees that the objectives of the CBD are preserved during the implementation. In other words, for the objectives of the CBD to be ensured through the implementation of the Protocol, an institutionalist approach to implementation is to be preferred.

But the implementation of the Nagoya Protocol is a multi-level governance process: a continuous interaction between different policy-levels, between different departments within these levels and between different governmental and non-governmental actors will be necessary for the implementation to be effective. This multi-level context is likely to impact the choice between a self-regulatory approach and a normative institutionalist approach. This paper thus uses the case of the Nagoya Protocol in Belgium to depict how multi-level implementation favors some governance patterns at the expense of others. It shows that the multi-level governance context characterizing the Nagoya Protocol has a natural tendency towards a market-oriented self-regulatory approach, risking falling short of achieving the objectives of the Protocol.

Keywords: self-regulation; institutionalism; European environmental policy; biodiversity governance; access and benefit-sharing (ABS); Nagoya Protocol; implementation challenges.