Online version

ABS Focal point

[For the Dutch version, see the ABS Focal Point website.]
[Voor de Nederlandse versie, zie de website van het ABS Focal Point.]

Welcome to the twelfth ABS Focal Point newsletter. In this newsletter we give some tips on how to minimise your adminstrative burden for Access and Benefit-sharing, share updates and ask for your input on policy options for digital sequence information (DSI), discuss large-scale screening in the context of the EU ABS Regulation and report on recent updates of the ABS Focal Point website and this newsletter.

This newsletter contains:

- How to minimise your administrative burden for ABS.
- Opportunities to provide input on DSI before CBD meetings in December.
- Large-scale screening and the EU ABS Regulation.
- Visual updates for website and newsletter.

How to minimise your administrative burden for ABS

As a user of genetic resources, you may have Access and Benefit-sharing (ABS) obligations as set out in EU ABS Regulation. This may involve quite some work, but there are ways to minimise the administrative burden while complying with these obligations.

In scope of the EU ABS Regulation?

First, check whether your activities with the genetic resource(s) are really in scope of the EU ABS Regulation (EU Regulation 511/2014), as not all resources or activities are in scope. For example, the Regulation does not apply to genetic resources from a country that is not a Party to the Nagoya Protocol. Also, activities with genetic resources covered by a EU-recognised specialised ABS instrument (ITPGRFA or PIP Framework) fall outside the scope of the EU ABS Regulation. Knowing the scope helps you to avoid unnecessary work.

To find out if your activities are in scope of the EU ABS Regulation, the article 'EU ABS Regulation: in or out of scope?' is a good starting point, as it explains the scope of the EU ABS Regulation and highlights specific examples. Additionally, the ABS Focal Point's interactive help tool may assist you in determining if your activities are in scope of the EU ABS Regulation and, if this is the case, your obligations under the Regulation.

Of course, you should be aware that even if an activity with a certain genetic resource is outside the scope of the EU ABS Regulation, a provider country may have national access legislation that differs from the EU interpretation of the Nagoya Protocol. This means that activities or resources which are not in scope of the EU ABS Regulation may be in scope of national access legislation of the provider country.

ABS within your organisation

To decrease the burden for individual users within an organisation, some organisations have appointed a person or unit responsible for Nagoya Protocol matters and/or have established policies or procedures for accessing and utilising genetic resources. For example, relevant information on the genetic resource may already have been documented under an internal quality scheme or in an internal database. Contacting this person or unit can make it easier for to you find the ABS resources within your organisation and to comply with the EU ABS Regulation.

Your organisation may also be part of a user community whose best practice has been recognised by the European Commission under EU Regulation 511/2014. In such cases, follow that policy or best practice. You can also submit an existing but not yet recognised best practice for approval by the European Commission or establish a best practice in your user community and have it approved. A selection of best practices and codes of conduct can be found on the ABS Focal Point page Downloads and links.

Due diligence obligations: collecting information

As part of their due diligence obligations under the EU ABS Regulation, users are required to collect information about the genetic resources they are using, for example to determine the provider country. In certain situations, you are considered to have exercised due diligence regarding the collection of information.
This is the case if you:

- use a genetic resource obtained from a collection included in the register of collections of the European Union. For more information on registered collections, see the page FAQ – Important terms;
- use certain plant genetic resources for food and agriculture from countries that make available these plant genetic resources under the conditions of the SMTA (standard material transfer agreement) of the ITPGRFA (International Treaty on Plant Genetic Resources for Food and Agriculture). For more information, see Article 4(4) of the EU ABS Regulation and section 5.2 of the EU Guidance.

In these cases, other user obligations may still apply. For example, in some situations you should submit a due diligence declaration. For more information, read 'To DECLARE or not to DECLARE: when to submit a due diligence declaration'.

ABS help tool

Opportunities to provide input on DSI before CBD meetings in December

Policy options on possible ways to deal with access to and benefit-sharing from the utilisation of Digital Sequence Information (DSI) on genetic resources have been assessed on the basis of a performance matrix, with criteria focusing on effectiveness, efficiency, good governance and coherence. Various assessments indicate that the multilateral options score better than the bilateral ones. The options will be further discussed during Conference on Biological Diversity (CBD) meetings in December, and it is expected that important decisions on DSI will be taken there. You can still provide input by joining the on-line stakeholder meeting (23 Nov) or emailing the Dutch ABS Competent National Authority.

Background

During the past few years, an international discussion has been taking place on whether the utilisation of Digital Sequence Information (DSI) on genetic resources should be subject to Access and Benefit-Sharing (ABS) obligations, like the utilisation of genetic resources already is. The main discussion forum is the Convention on Biological Diversity (CBD), with other international ABS instruments mostly awaiting the outcomes there.

Various policy options have been developed on possible ways to deal with access to and benefit-sharing from the utilisation of DSI on genetic resources. To assess the different policy options, a multi-criteria framework has been developed, with the criteria focusing on effectiveness, efficiency, good governance and coherence.
A performance matrix was made to assess to what extent the policy options fulfil these criteria.

Assessment of the policy options

It was originally envisaged that a consultant would make an independent assessment of the proposed policy options, but the consultant was not able to fulfil this assignment. A first assessment has now been made by the Informal Advisory Group on DSI, which was established in 2021 to advance the DSI discussions. The results of this assessment can be found in this document and in the report of the chairs of the Informal Advisory Group on DSI.

The results of this initial assessment show that the multilateral policy options score better on the identified criteria than the bilateral ones, which is in agreement with the position that the Netherlands and the EU are taking. It must be borne in mind, however, that not all Parties of the CBD are involved in the Informal Advisory Group, and that the assessment has no formal status.

Also of interest to you may be the analysis of the options made by the international DSI Scientific Network, which was created in 2020 to help give the research community a voice in the DSI discussions. In this analysis as well, the multilateral options score better than the bilateral ones.

Important CBD meeting in December

From 7-19 December 2022, the second part of Fifteenth meeting of the Conference of the Parties to the CBD (COP-15) will be held in Montreal, Canada, and it is expected that important decisions on DSI will be taken in this meeting. To prepare for COP-15, a short fifth meeting of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework (OEWG-5), in which DSI will also be discussed, will be held in Montreal from 3-5 December.

How to provide input?

To prepare for COP-15, an online stakeholder meeting will be organised on 23 November. In this meeting, there will not only be the possibility to discuss DSI, but also various other important agenda items of COP-15, in particular the post-2020 Global Biodiversity Framework, an ambitious plan to bring about a global policy change with respect to biodiversity. The objective of this stakeholder meeting is to inform you on the process towards COP15 and to offer you the opportunity to provide input to the Dutch delegation for COP-15. You can register for the meeting through this registration form.

On the subject of DSI, you can also make your views known directly to the Dutch ABS Competent National Authority (Ms Kim van Seeters; k.vanseeters@minlnv.nl). It would, for instance, be very helpful if you could share your own assessment of the

policy options, especially by filling in the performance matrix and sending your filled-in matrix and any comments you may have to Ms Kim van Seeters.

Register for online stakeholder meeting (23 Nov)

Large-scale screening and the EU ABS Regulation

For some research projects, large numbers of genetic resources are screened to determine whether or not they fit the purposes of the project. In some cases, this large-scale screening activity is not in scope of the EU ABS Regulation.

What is large-scale screening?

In the initial phases of a research project, a company or researcher may carry out large-scale screening: the evaluation of usually large numbers of genetic resource samples against a specific criterion. Simply put, the objective of this activity is to screen out the vast majority of samples which are not of interest to the research project and to identify the few samples suitable for further research within the project.

Large-scale screening by itself, which is based on simple binary questions and resolved by identical tests performed on multiple samples in a standardised way in order to screen out the majority of them, would not fall in scope of the EU ABS Regulation (Regulation (EU) 511/2014). Since it is considered that no added scientific insight in relation to the screened-out samples is created, it does not amount to utilisation ('research and development on the genetic and/or biochemical composition of genetic resources') in the context of the EU ABS Regulation.

From screening to utilisation

When, however, a researcher starts to look in more depth into the genetic resources which have been identified for further study by the binary process, such activity

could fall within the scope of the EU ABS Regulation. Such further research moves beyond the application of standardised binary questions and follows a more individualised testing regime.

At that point, the research activity is no longer focused on screening out a large number of samples but is concentrated on identifying the qualities and properties of those genetic resources which have been selected. Given that such research creates additional knowledge and new insight into the genetic and/or biochemical composition of those genetic resources, it amounts to utilisation, and so falls within scope of the EU ABS Regulation.

When a researcher starts to look at genetic resources more in depth, this step can be regarded as the first step in a research and development chain. The distinction between screening activities and more in-depth analysis may not always be clear-cut. It is recommended to identify the end of screening activities and the beginning of any subsequent research activities, and keep records of this, as part of the user's due diligence obligations, for potential checks by the competent authorities.

Examples

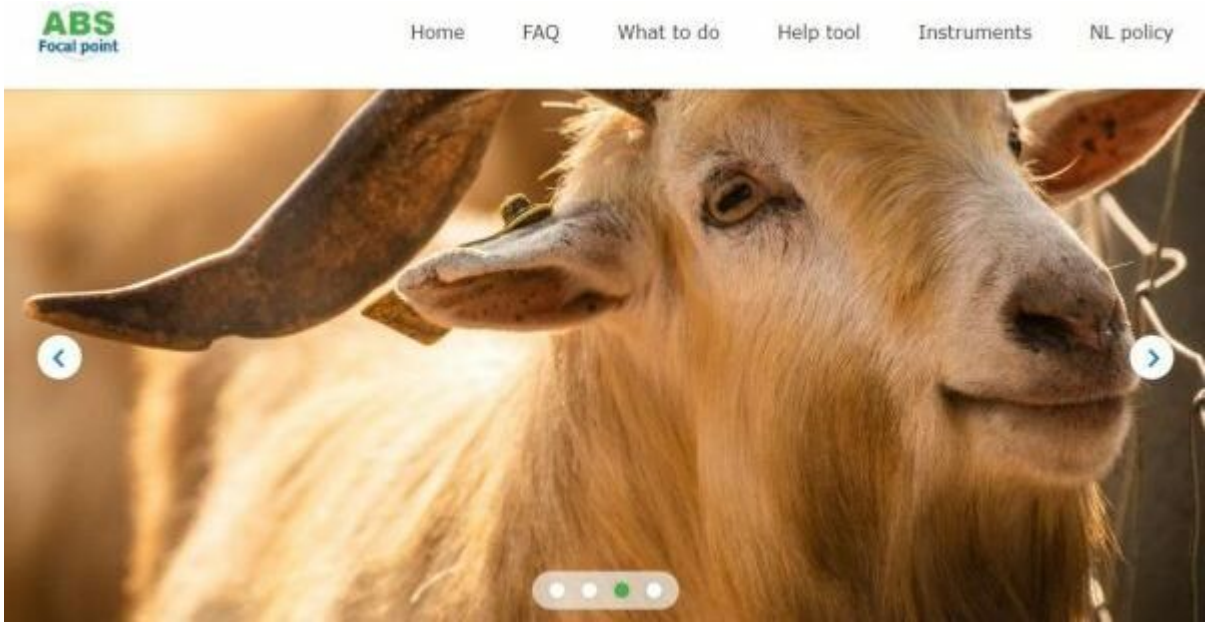
Microorganisms are screened to check which ones contain alpha-amylases. The process will only provide information that alpha-amylase is present in some microorganisms and enables the exclusion of microorganisms without alpha-amylase from further examination and analysis. It does not provide information on how such amylase performs in the baking process. This activity is considered screening and **out of scope** of the EU ABS Regulation.

Microorganisms in which alpha-amylase has been detected are studied for their value in baking, by testing the performance of the candidate alpha-amylases under real-life conditions in baking applications and their stability. Such activities examine the biochemical composition and activity of a derivative extracted from a genetic resource in detail, are considered to be utilisation and are therefore **within scope** of the EU ABS Regulation.

More detailed information on large-scale screening is available in section 6.5 of Annex II of the EU Guidance.

As always, it is important to realise that a provider country may have national access legislation that differs from the EU interpretation of the Nagoya Protocol. This means that activities or resources which are not in scope of the EU ABS Regulation may be in scope of national access legislation of the provider country.

EU Guidance (pdf)



Visual updates for ABS Focal Point website and newsletter

As you may have noticed, the design of the ABS Focal Point website was recently updated. Apart from giving the website a fresh, mobile-friendly look, this design makes it easier to navigate to find information on the FAQ, International instruments and NL policy pages.

The navigation bar at the top of each page now expands to show the subpages when you hover your mouse cursor on the bar when using a computer. On mobile, tap the menu icon (top left) to navigate to pages and subpages. The downloads and links, which were previously located in the right column of most pages, can now be found at the bottom of the page.

The ABS newsletter has also been updated. While the newsletter itself looks mostly the same, subscribing to the newsletter is now double opt-in. This means that after you sign up for our newsletter, you will receive an email to confirm the subscription. Be advised that this conformation email may accidentally end up in your spam folder. If you did not receive this email, please contact us.

If you have questions about ABS or the ABS Focal Point, or want to give feedback on how we could improve our website or newsletter, please let us know through NagoyaNL@wur.nl.

ABS Focal Point website

Questions? Get in contact.

Do you have questions or remarks?
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