

October 2016



Food and Agriculture
Organization of the
United Nations



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

Item 6 of the Provisional Agenda
INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE
FIRST MEETING OF THE SCIENTIFIC ADVISORY COMMITTEE ON THE GLOBAL INFORMATION SYSTEM OF ARTICLE 17 OF THE TREATY
Rome, Italy, 24 – 25 November 2016
TRANSPARENCY OF RIGHTS AND OBLIGATIONS OF USERS OF THE GLOBAL INFORMATION SYSTEM

I. INTRODUCTION

1. At its Sixth Session, the Governing Body of the Treaty endorsed a vision of the Global Information System under Article 17 of the Treaty. One component of the vision is the promotion of transparency of rights and obligations related to accessing, sharing and using information associated with germplasm, and the establishment of ways to exercise those rights and obligations within the Global Information System.
2. A 6-year programme of work complements the vision. The programme of work foresees the analysis of the institutional, organizational, policy and legal factors for PGRFA information access, sharing and use in the context of the Treaty's provisions, in particular Articles 12 and 13 on the Multilateral System. It also focuses on understanding the applicability and impacts of models developed in other parts of the Treaty, such as the Multilateral System, and initiatives such as DivSeek.¹
3. With a view to setting in motion the policy and legal component of the vision and in order to begin implementing the programme of work, the Secretariat commissioned a background study paper on the legal status of genomics information in the Treaty and in the wider international framework of access and benefit-sharing (ABS). The Secretariat prioritized this sub-category of information in the light of the growing attention by the Treaty community to the importance of genomics information for advancing the objectives of the Treaty, and of developments occurring in the global ABS landscape that Treaty stakeholders should be informed of when operating under the GLIS. The background paper is in the documentation for this meeting of the GLIS-SAC.² A summary of its findings and recommendations is in the *Annex* of this document.
4. Based on the findings of the background study paper, which are for the most part relevant to other categories of information beyond genomics, this working document suggests follow-up activities to advance the policy and legal area of work of the GLIS, for consideration by the GLIS-SAC.

¹ www.divseek.org

² IT/GB-7/SAC-1/BSP10.

II. RIGHTS AND OBLIGATIONS WITHIN THE GLOBAL INFORMATION SYSTEM

5. For GLIS users to exercise their rights and obligations within the GLIS, it is necessary to understand first what those rights and obligations are. The background study paper examines the legal status of genomic information within the Treaty and the Nagoya Protocol and recommends a series of ABS-cognizant measures to develop the GLIS infrastructure. It also recommends a continuous observatory to monitor ABS developments regarding information related to PGRFA.

6. The paper points out to some other possible legal limitations or constraints to the availability of information through the GLIS, e.g. confidentiality. The GLIS will necessarily have to cater for or adapt to those limitations or constraints. While ABS limitations are the focus of the first background study paper for the GLIS-SAC, it appears necessary to the designing of an effective GLIS to examine the limitations comprehensively, beyond the ABS context. Given that the GLIS is based on existing information systems, the system will have to link to multiple information sources distributed over multiple systems and interfaces. To achieve this, the GLIS will have to be responsive to legal considerations about interoperability, i.e. the status of information that is collected, stored and distributed via or from those systems.

7. If the GLIS is to enable information providers (i.e. the collectors or generators of information, or the right holders) to contribute their data sets by registering to the GLIS and enabling access and use, the inherent tension between the general goal of information sharing and the legal limitations to the availability of information through the GLIS, will have to be recognized, analysed and constructively addressed.

8. The legal analysis of interoperability should be as comprehensive as possible, and, beyond ABS, embrace not only confidentiality but also:

- i) intellectual property (IP) laws that protect the right holder and restrict the user of information (e.g. copyright or database protection laws), as well as the limits to statutory IP law (e.g. statutory limitations and exceptions, public domain status); and
- ii) private law instruments, e.g. in the form of waivers, licenses and contracts, for databases and other data compilations.

9. By addressing all the above limitations, the GLIS may allow its users to distinguish between information that is freely available (i.e., information that the GLIS and/or the linked information systems can collect, store and redistribute without limitations) and information that is subject to restrictions.

III. COLLABORATIONS WITHIN THE GLIS

10. The comprehensive consideration of legal protection of information and the legal limitations that such protection may entail to the gathering, keeping and making available information through the GLIS, should not exhaust the next steps for policy and legal work. In this regard, the GLIS should not limit itself to only informing its users of the various sources of legal protection of information for them to exercise their rights and obligations.

11. If the GLIS is to become more than the sum of its parts, it should also create incentives to research collaboration based on the effective access to and use of information within the GLIS. Such incentives may not be just normative. Instead of introducing, at the outset, general information sharing standards, a more exploratory and bottom-up approach could be followed by the GLIS. This approach could be centred on small pilot projects that would link the exercise of rights and obligations on PGRFA information to other components of the GLIS vision and programme of work, including capacity building and technology transfer, which may constitute relevant incentives for information providers and users to create a pattern of sustainable collaboration and sharing around GLIS.

12. These pilot projects could be developed around a series of user cases. Such user cases would encompass enough variation in terms of goals and objectives, categories of information,

categories of providers and users involved, types of technical infrastructure and sharing approaches so as to allow for a thorough consideration of options for the GLIS to facilitate research collaborations based on PGRFA information.

IV. ADVICE SOUGHT

13. The Committee is invited to consider the findings and recommendations made in the background study paper, as summarized in the Annex of this document, and provide its advice, which may include recommending:

- i) the consideration of legal protection of information and the legal limitations that such protection may bring forward to the gathering, keeping and making available of information through the GLIS;
- ii) the analysis of selected existing projects and initiatives that entail information flows (e.g. from existing PGRFA information systems) and sharing (e.g. interoperability between provider and user data) for international research and breeding collaborations in the plant sector;
- iii) based on such analysis, the development of GLIS use cases that could inform, subject to the availability of financial resources, the launching of exploratory pilot projects combining GLIS functions and infrastructure with incentives to collaborate for the effective access to and use of PGRFA information;
- iv) any other steps or actions that could enhance transparency of rights and obligations of the users of the GLIS.

Annex**FINDINGS AND RECOMMENDATIONS OF THE BACKGROUND STUDY PAPER 10****“The GLIS and Genomic Information: Transparency of Rights and Obligations”*****BACKGROUND***

ABS stakeholders are considering the applicability of ABS to digital sequence data.

The issue may be relevant to several components of the GLIS vision and programme of work, and to some of the future operations of international genebanks in the framework of the Treaty.

FINDINGS

Genomic information, as one possible category of information resulting from research on germplasm in the Multilateral System, may be made available to the Multilateral System through the GLIS, by Recipients of germplasm, subject to the protection of confidentiality.

The text of the Treaty does not provide for standards of access to and utilization of information in the GLIS.

The subject matter that the Nagoya Protocol regulates, i.e. “genetic resources”, does not expressly refer to intangibles.

Interpretations relying on the need not to undermine the general objective of benefit sharing and on the concept of “utilization” in the Protocol are, nevertheless, being advanced, which would result in interpreting the application of the Protocol to include intangibles, genomic information included.

National legislation and mutually agreed terms may regulate the utilization of genomic information derived from genetic resources.

Users of such information should be informed of its regulatory status. In particular, genomic researchers may have to inquire into the origin of tangible genetic material and ensure that such material was accessed in compliance with the domestic laws of a provider country, as applicable.

Research on genetic resources is adapting to the new ABS legal environment.

Regulatory pathways asserting national control over genomic information are eliciting a response by the research community that encourages research commons.

Repositories of genomic information inform users about any rights and obligations attached to the genetic resources from which the information is extracted, or attached to the information itself, and their further use.

RECOMMENDATIONS

The GLIS infrastructure should reflect the scope of Article 17 of the Treaty but initially prioritize information extracted from germplasm that is in the Multilateral System.

Digital Object Identifiers (DOIs) are a useful tool to link information extracted from germplasm in the Multilateral System to the SMTA status of the original material.

Recipients of germplasm with the SMTA who make available through the GLIS non-confidential information, including genomic information, resulting from research, should retain the legal control of such information.

Any future comprehensive analysis of legal interoperability for the GLIS infrastructure should include ABS.

The GLIS should set up an observatory to monitor possible ABS legislative developments on digitalized information to inform its users.

For the GLIS to establish a policy profile that positively influences accessibility and usability of information, it is advisable to activate the capacity development and technology transfer elements of its vision and Programme of Work through use cases and pilot projects.