Chapter 9. Challenges in the Implementation of the Nagoya Protocol from the Perspective of a Member State of the European Union: The Case of Spain

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Following an illustration of the uniqueness of Spanish biodiversity and Spain’s key commitment to the ABS negotiations, this chapter analyses the challenges Spain will face when implementing the Nagoya Protocol. These obstacles mainly relate to: access to genetic resources\(^1\) and associated traditional knowledge;\(^2\) fair and equitable benefit-sharing;\(^3\) and compliance.\(^4\) Additional complexities arise from Spain’s membership to the European Union (EU) and Spanish internal division of competences. As a consequence, the external challenges that Spain could face if it were to decide to ratify and implement the Protocol earlier than the EU will be discussed. In addition, certain internal challenges that could arise from the distribution of competences between the central government and the regional level will be addressed. Substantive challenges related to ownership of genetic resources, the traditional knowledge of local communities, channelling benefits towards biodiversity conservation, and compliance measures are also analysed.

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1 Nagoya Protocol Article 6.
2 Nagoya Protocol Article 7.
3 Nagoya Protocol Article 5.
4 Nagoya Protocol Articles 15, 16 and 17.
I. Spain As a Case Study

1. Spain’s Dual Role As a Provider and User Country

In order to understand the particular position Spain has in comparison to most EU Member States, it is necessary to consider some facts about its biodiversity. Spain is one of the most biodiverse countries in Europe. It has been singled out as one of the twenty-five biodiversity hotspots in the world. Its biodiversity richness responds to a unique geographical situation, a rich geological diversity, a great climatic variability and the existence of islands – all of which contribute to high rates of biodiversity and endemism.

In Spain there are 8,000–9,000 taxa of vascular plants (around 85% of the total listed in the EU). Of those, 1,500 are native, thus half of the taxa endemic to Europe is Spanish. The results for fauna are comparable given the fact that 70,000 of the 142,000 species of animals in Europe are found in Spain, with mammals and birds, the two best-known groups, accounting for 79% and 74% of the European total, respectively. This data places Spain at the top of the European biodiversity or natural assessments indices, thereby making it one of the EU Member States with the largest and most numerous tracts of land in a natural or semi-natural state.

Previous figures show that Spain is significantly different from the rest of Europe as it hosts most biodiversity in the continent. This uniqueness characterises Spain as a great provider of genetic resources. As such, Spain, in practice, shares common interests with traditional provider countries and, in particular, with Latin American countries. On the other hand, Spain also hosts some users of genetic resources, working in the promising and emerging field of marine biotechnology. Nevertheless, Spain still lags behind the leading EU countries in the biotech sector, like Denmark, France, Germany, Netherlands, Sweden or the UK.

2. Spain’s Key Role in the Negotiation of the Nagoya Protocol

Spain has actively committed to the support and development of the Convention on Biological Diversity (CBD). This should be seen against the

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6 Spain, Royal Decree, No. 1274, 2011 (Decree 1274/2011) (approves Biodiversity and Natural Heritage Strategic Plan).