

Momentum is gathering for the international biodiversity negotiations COP15

Environment analysis: Zaneta Sedilekova, associate at Clyde & Co and Biodiversity Risk Advisor at Commonwealth Climate and Law Initiative, and Nigel Brook, partner at Clyde & Co, look ahead to COP15, the main themes that will be discussed, and likely outcomes, focusing in particular on possible requirement for mandatory reporting and disclosure of biodiversity impacts by business.

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In December 2022, world leaders will meet in Montreal, Canada for the second round of the 15th Conference of Parties (COP15) to the [Convention on Biological Diversity](#) (CBD) to agree on the final text of Global Biodiversity Framework (GBF), an agreement with an ambitious goal to reverse global biodiversity loss. As the world enters what scientists call ‘the sixth mass extinction’, a large-scale biodiversity extinction event which takes place over a short (thousands or millions of years) period of time, driven for the first time in the earth’s history by human activities, pressure has never been greater for countries to agree and adhere to ambitious biodiversity targets.

Background leading up to COP15

The first round of COP15 negotiations took place virtually in October 2021. States signed an aspirational [Kunming Declaration](#), in which they envisaged building an ‘ecological civilisation’ to secure ‘a shared future for all life on the earth’ and highlighted main actions to that end, including:

- mainstreaming of biodiversity across all decision-making
- phasing out and redirecting biodiversity-harmful subsidies
- enhancing the environmental law at both international and national level, and
- increasing financial, technological, and capacity-building support to developing countries

These aspirations are now expected to find legal recognition in the GBF to be agreed on at the second round of COP15 in December 2022, the [draft text](#) of which includes many ambitious goals for both governments and corporations.

Main themes of COP15

COP15 is set to take place across 13 days and [topics of discussion](#) will include food systems and health; sustainable consumption and production; conservation and sustainable use of species; green finance; fresh water, coastal and ocean ecosystems; and climate change mitigation and adaptation.

The importance of this last topic, which recognises the climate-biodiversity nexus, cannot be overstated. Indeed, a day of the COP27 climate negotiations in November 2022 was dedicated to biodiversity and saw the launch of a new initiative called Enhancing Nature-based Solutions for Climate Transformation (ENACT) with the aim of closing the finance gap for nature-based climate solutions. At the same time, COP27 also witnessed calls from the architects of the 2015 Paris Agreement on climate change for a ‘Paris-style agreement on biodiversity’ in the form of the GBF to turn the tide on biodiversity loss, in recognition of the

fact that climate change cannot be addressed without protecting and restoring biodiversity (see: [LNB News 16/11/2022 68](#)).

These developments further underline the importance of the COP15 biodiversity negotiations. In [its current form](#), the GBF has 21 targets and ten milestones covering all aspects of biodiversity protection and restoration, including the goal of protecting 30% of land and 30% of oceans by 2030 (the '30x30 target'). Its final text, once adopted, will require the 196 state parties to the CBD to implement all its goals nationally and submit National Biodiversity Strategy and Action Plans (NBSAP) to the Secretariat of the Convention on Biological Diversity to that end. Law plays a fundamental role in the implementation of NBSAPs by, among other things, setting a legal basis for biodiversity policies and planning across the various sectors and levels of national government. To date, the impact of NBSAPs has been materially limited by the lack of common frameworks and an accepted taxonomy for describing them. The final text of the GBF is expected to address these deficiencies. The level of ambition adopted in the GBF will therefore be determinative of the strength of the next round of NBSAP.

Reporting and disclosure of biodiversity impacts by business at COP15

Target 15 of the draft GBF specifically relates to assessing and reporting on corporate dependencies and impacts on biodiversity:

'All businesses (public and private, large, medium and small) assess and report on their dependencies and impacts on biodiversity, from local to global, and progressively reduce negative impacts, by at least half and increase positive impacts, reducing biodiversity-related risks to businesses and moving towards the full sustainability of extraction and production practices, sourcing and supply chains, and use and disposal.'

This explicit focus on the role of corporate actors in achieving biodiversity targets is unique to the GBF and has no precedent in the Paris Agreement. This points towards an increasing recognition at the international level that corporations, as beneficiaries of biodiversity-dependent ecosystem services, should also be responsible for their own negative biodiversity impacts, which may result in biodiversity risks. The strong language of 'dependencies and impacts' in the draft text of Target 15 points towards adoption of the double materiality standard, under which companies will have to disclose both the impacts that biodiversity has on their business and the impact their business has on biodiversity. If adopted in the final GBF, Target 15 is very likely to translate into concrete amendments to national corporate and securities laws mandating biodiversity disclosures, possibly in line with the recommendations to be published in September 2023 by the Taskforce on Nature-related Disclosures (TNFD). Explicit targets for corporations in the GBF may also create a regulatory transition risk in every state party to the CBD.

Business and liability risk related to biodiversity following COP15

Biodiversity liability risk is likely to increase after the adoption of the GBF, in much the same way climate change litigation saw a sharp rise after the Paris Agreement was signed in 2015. Both governments and corporations can expect to see cases filed either based on the climate-biodiversity nexus (such as climate cases focusing on deforestation or carbon sequestration function many natural ecosystems provide), or on standalone biodiversity cases. The latter category may come from a variety of sources, including value chains, which allow liability for biodiversity loss to be traced from the place where it occurs to the place where the benefits of such loss are reaped, often by multinational corporate groups. For a detailed analysis of biodiversity liability risk, see News Analysis: [Biodiversity litigation](#). Finally, as a widely accepted reporting framework and taxonomy begins to emerge, we may

see a rise in greenwashing litigation against corporations (as has happened in the climate change context).

Business preparedness is key

Prudent corporate risk management requires corporations to act ahead of any legal developments. Recommended steps include gaining familiarity with both existing and incoming regulations on value chain due diligence, mapping corporate value chains, staying abreast of progress of the TNFD, including identifying and measuring biodiversity dependencies and impacts, and raising the awareness of managers and boards. Legal advice will be an important component in any of these steps, which are further outlined in Clyde & Co's [Biodiversity liability and value chain risk report](#) from March 2022.

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