

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 21.3.2011
COM(2011) 130 final

2011/0055 (NLE)

Proposal for a

COUNCIL DECISION

**on signing the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress
to the Cartagena Protocol on Biosafety**

EXPLANATORY MEMORANDUM

1. The Cartagena Protocol on Biosafety to the Convention on Biological Diversity entered into force on 11 September 2003. The Protocol provides a framework, based on the precautionary principle, for the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, or pose risks to human health. The Protocol focuses specifically on transboundary movements.
2. The Council adopted a Decision on the conclusion, on behalf of the European Community, of the Protocol on 25 June 2002. The instrument for Community ratification was deposited on 27 August 2002.
3. Article 27 of the Cartagena Protocol bound the first meeting of the Parties (COP/MOP1) to initiate a process for the elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms and to endeavour to complete this process within four years.
4. Negotiations were conducted in the Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress. This group met five times between May 2005 and March 2008. COP/MOP4 in May 2008 in Bonn, Germany achieved a political break-through in the negotiations. Parties agreed to work towards a legally binding instrument based on an administrative approach to liability for adoption at COP/MOP5 in October 2010 in Nagoya, Japan. They also agreed to develop guidelines on civil liability.
5. Final negotiations on the legally binding instrument and on the civil liability guidelines took place in a "Friends of the Co-Chairs" (FoC) group involving 26 of 160 Parties to the Cartagena Protocol as well as advisors from other Parties. The EU had two seats at the negotiating table. Four FoC meetings took place between COP/MOP4 and COP/MOP5.
6. The Commission acted as the EU negotiator for the legally binding instrument on the basis of a formal authorisation adopted by the Council in June 2007 and extended in time after COP/MOP4. The negotiating directives were refined various times in response to developments in the negotiations, last by the Environment Council on 11 June 2010. They instructed the Commission to ensure that the results of the negotiation are consistent with relevant Union legislation and with the basic principles of Member States' law on liability and redress and that they could be implemented in the EU without introducing or amending substantive rules on civil liability. The Commission conducted the negotiations in close consultation with experts from Member States.
7. On 11 October 2010, EU coordination during COP/MOP5 in Nagoya, Japan unanimously supported the final compromise reached on the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety considering that it was within the limits of the agreed EU positions and the negotiating directives given to the Commission.

8. On 15 October 2010, the final plenary of COP/MOP5 successfully adopted the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety. The Protocol will be open for signature at the United Nations headquarters in New York from 7 March 2011 to 6 March 2012.
9. The COP/MOP5 decision adopting the Nagoya-Kuala Lumpur Supplementary Protocol calls upon the Parties to the CBD to sign the Protocol at the earliest opportunity and to deposit instruments of ratification, acceptance or approval or instruments of accession, as appropriate, as soon as possible
10. On 20 December 2010, the Council welcomed the adoption of the Nagoya-Kuala Lumpur Protocol.¹
11. In view of the above, it is appropriate for a representative of the Union to sign, subject to subsequent conclusion, the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety.

¹ See Council Conclusions "Convention on Biological Diversity: outcome of and follow-up to the Nagoya Conference (11-29 October 2010)" of 20 December 2010, paragraph 2.

Proposal for a

COUNCIL DECISION

on signing the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192 (1) in conjunction with Article 218 (5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 27 of the Cartagena Protocol on Biosafety bound the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Protocol to initiate a process with respect to the elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms.
- (2) In June 2007, the Council adopted a Decision authorising the Commission to participate in the liability and redress negotiations on behalf of the Union with respect to matters falling within Union competence, in accordance with certain negotiating directives. That authorisation was extended in October 2008 to cover the final stages of the negotiations.
- (3) The Union coordination meeting held on 11 October 2010 during the fifth Conference of the Parties serving as the Meeting of the Parties to the Protocol in Nagoya, Japan resulted in unanimous support for the final compromise reached on the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety, following consideration that it was within the limits of the agreed EU positions and the negotiating directives addressed to the Commission.
- (4) On 15 October 2010, the final plenary of the fifth Conference of the Parties serving as the Meeting of the Parties to the Protocol successfully adopted the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety.
- (5) The Protocol will be open for signature at the United Nations headquarters in New York from 7 March 2011 to 6 March 2012.

- (6) On 20 December 2010, the Council welcomed the adoption of the Nagoya-Kuala Lumpur Protocol².
- (7) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.

HAS ADOPTED THIS DECISION:

Article 1

The President of the Council is hereby authorised to designate the person or persons empowered to sign the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety on behalf of the Union.

The text of the Agreement to be signed is attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President

² See Council Conclusions "Convention on Biological Diversity: outcome of and follow-up to the Nagoya Conference (11-29 October 2010)" of 20 December 2010, paragraph 2.