



Brussels, 5.10.2012
COM(2012) 577 final

2012/0279 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity

EXPLANATORY MEMORANDUM

The Convention on Biological Diversity (the Convention) is the main international framework for measures to conserve biological diversity, to sustainably use its components and for the fair and equitable sharing of benefits arising from the utilisation of genetic resources. With currently 193 Parties, the Convention has almost universal membership. The European Union and all of its 27 Member States are Parties to the Convention.

Article 15 of the Convention establishes a general framework for access to genetic resources and benefit-sharing: it recognises the authority of states to determine access to genetic resources as part of their sovereign rights over natural resources. Parties are obliged to take steps to facilitate access to their genetic resources. At the same time all Parties are obliged to take legislative, administrative or policy measures to share in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilisation of genetic resources with the Party providing these resources.

Heads of state and government attending the World Summit on Sustainable Development in August 2002 agreed to launch negotiations on an "international regime" on access and benefit-sharing in the framework of the Convention. On 29 October 2010, the tenth conference of the parties to the Convention adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Protocol).

The decision of the conference of the parties also calls upon the Parties to the Convention to sign the Protocol at the earliest opportunity and to deposit instruments of ratification, acceptance or approval or instruments of accession, as appropriate, with a view to ensuring the entry into force of the Protocol as soon as possible. The Protocol requires fifty ratifications to enter into force.

The Protocol was open for signature at the United Nations headquarters in New York from 2 February 2011 to 1 February 2012. The EU and most of its Member States have signed the Nagoya Protocol.¹

The European Parliament, the Council of the European Union and the Commission have expressed their commitment to a swift implementation and ratification of the Nagoya Protocol in the Union.²

The Commission has proposed a Regulation of the European Parliament and of the Council³ establishing a system of measures for implementing the Nagoya Protocol in the Union.

In view of the above, it is appropriate for the European Union to conclude the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

¹ Except Latvia, Malta and Slovakia.

² Council Conclusions of 20 December 2010 (paragraphs 1 and 21), 23 June 2011 (paragraph 14), European Parliament Resolution of 20 April 2012 (paragraph 101), Commission Communication on an EU Biodiversity Strategy to 2020 (COM (2011) 244) (Action 20).

³ COM(2012) 576

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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(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament⁴,

Whereas:

- (1) The Union and its Member States joined the consensus of the 193 Parties to the Convention on Biological Diversity that adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Nagoya Protocol) on 29 October 2010.
- (2) The Union and most of its Member States have signed the Nagoya Protocol.
- (3) The European Parliament, the Council and the Commission have expressed their commitment to a swift implementation and ratification of the Nagoya Protocol in the Union⁵.
- (4) The Nagoya Protocol should be approved on behalf of the European Union.

HAS ADOPTED THIS DECISION:

Article 1

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity is hereby approved on behalf of the Union.

⁴ OJ C , , p. .

⁵ See Council Conclusions of 20 December 2010 (paragraphs 1 and 21), 23 June 2011 (paragraph 14), European Parliament Resolution of 20 April 2012 (paragraph 101), Commission Communication on an EU Biodiversity Strategy to 2020 (COM (2011) 244) (Action 20).

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the deposit of the instrument of approval provided for in Article 33 of the Protocol, in order to express the consent of the European Union to be bound by the Protocol.

The deposit of the instrument of approval shall take place simultaneously with the deposit of those of the Member States.

At the same time, the designated person shall deposit the declaration set out in the Annex to this Decision, in accordance with Article 34(3) of the Convention on Biological Diversity.

Article 3

This Decision shall be published in the Official Journal of the European Union.

Done at Brussels,

*For the Council
The President*

ANNEX

DECLARATION BY THE EUROPEAN UNION IN ACCORDANCE WITH ARTICLE 34 (PARAGRAPH 3) OF THE CONVENTION ON BIOLOGICAL DIVERSITY

"The European Union declares that, in accordance with the Treaty on the Functioning of the European Union, and in particular Article 191 thereof, it is competent for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;*
- protecting human health;*
- prudent and rational utilisation of natural resources;*
- promoting measures at international level to deal with regional or worldwide environmental problems, including climate change.*

Moreover, the European Union adopts measures at European Union level for establishing a European Research Area and for the proper functioning of its internal market.

The European Union declares that it has already adopted legal instruments, binding on its Member States, covering matters governed by this Protocol."