



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

ENV	754
AGRI	667
WTO	345
PI	126
DEVGEN	269
MI	479
SAN	199

NOTE

from:	General Secretariat of the Council
to:	Delegations
Subject:	Roadmap for the ratification of the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation - Information from the Commission

Delegations will find attached a note from the Commission on the above item, which will be dealt with under "Other business" at the meeting of the Council (Environment) on 10 October 2011.

Roadmap for the ratification of the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation**- Information from the Commission -****Introduction**

The adoption of the Nagoya Protocol (NP) was a major step in the implementation of the Convention on Biological Diversity (CBD) and a precondition for the successful conclusion of CBD COP 10. The NP is a new international treaty with binding obligations of potentially considerable economic impact, which come into effect immediately upon ratification and entry into force for any party. Ratification by the EU and its Member States will therefore require a careful analysis of what legislative and administrative measures are required both at EU and at MS.

The NP will have an impact on a series of activities and related stakeholders in the EU such as biodiversity research in third countries or in the EU based on material acquired in a third country and aiming at commercial or non-commercial uses of the research outcomes. According to a preliminary analysis made by the Commission, the NP touches upon a range of areas under Union competence and affects existing Union legislation. With few exceptions, the Union has not adopted specific legislation on ABS; so, additional legislation is needed for the EU to fulfil its obligations as a Party to the ABS Protocol.

It is the ambition of the Secretariat of the CBD and a number of developing countries (particularly India as the incoming presidency of CBD COP 11) that the first Meeting of the Parties (COP/MOP 1) of the NP should be held in conjunction with the CBD COP 11 in India in October 2012. The NP has so far been signed by 60 Parties of the CBD; no ratification has been registered yet. It remains to be seen whether an entry into force by mid October 2012 is realistic, but the EU will have to consider the timing of the ratification by the EU and its MS.

The EU will be seen by many as a determining factor in the lead up to ratification, as the EU and EU MS constitute a significant proportion of the signatories so far (i.e. 21). Ratification or lack of ratification by the EU and MS may actually tip the balance for or against entry into force of the Nagoya Protocol in time for CBD COP 11.

An international treaty that has immediate binding effect on the EU and its MS can normally only be ratified once the necessary implementing legislation, via normal legislative procedure, is in place. The Commission will do its utmost to adopt the necessary legislative proposals during 2012. However, due to the timing of the legislative procedure, the EU would not be in a position to ratify the NP before late 2014. That is certainly too late for any COP/MOP 1 of the NP in 2012, but would be in conformity with the Aichi targets ¹ adopted in Nagoya. Given the extent of EU legislation that would be affected it is also excluded that individual EU MS would ratify unilaterally, prior to a ratification by the EU.

If entry into force were to happen without the EU having ratified, it would mean that the EU would not be a Party at the negotiating table, when decisions that would affect the interpretation and implementation of the NP could be taken. That could lead to certain decisions that might make it virtually impossible for the EU to ratify.

Impact of the NP in the EU

EU Member States cannot assume alone the obligations established by the NP. In some additional areas EU action would be better placed to achieve the objectives of the NP and safeguard consistency with the objectives of the EU Treaty. Not only would unilateral ratifications of the Protocol by individual MS be in conflict with the EU Treaty, but they would also place the ratifying MS in situations of non-compliance vis à vis the NP.

¹ See also CBD-UNEP "Strategic Plan for Biodiversity 2011-2020 and the Aichi Targets" target n°16.

Time-frame for running through the ordinary legislative procedure

The Commission is analysing the legal and economic aspects of implementing the NP in the EU as part of the required the Impact Assessment, and has already taken several preparatory steps: an impact study has already been launched, a meeting with experts from MS organised, and an outreach with our main CBD partners is ongoing. An online public consultation will be launched in few days and a stakeholders meeting is planned for January 2012. The Commission is aiming at adopting a legislative proposal as quickly as possible in 2012. However this would only constitute the start of the ordinary legislative procedure, which usually takes between 18-30 months. Formal EU ratification of the Nagoya Protocol would, as indicated above, be at the earliest in late 2014.

Ratification before conclusion of the ordinary legislative procedure

The Commission is conscious of the political pressure that might be brought to bear on the EU by outside partners to advance its ratification, but points out that such a step would mean to ratify before implementing legislation is adopted and would place the EU quite clearly in a situation of non-compliance with its obligations under the NP. Before taking such a step the EU should assess the likelihood of an early entry into force of the NP and discuss the potential consequences of an EU ratification.
