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**A7-0429/2012**

19.12.2012

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## **RECOMMENDATION**

on the draft Council decision on the conclusion on behalf of the European Union of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety

(13582/2012 – C7-0323/2012 – 2012/0120(NLE))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Matthias Groote

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council decision on the conclusion on behalf of the European Union of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety**

**(13582/2012 – C7-0323/2012 – 2012/0120(NLE))**

**(Consent)**

*The European Parliament,*

- having regard to the draft Council decision (13582/2012),
  - having regard to the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety adopted on 15 October 2010 at the final plenary of the fifth Conference of the Parties serving as the Meeting of the Parties (COP/MOP 5) in Nagoya and signed by the Union on 11 May 2011 (13583/2012),
  - having regard to the request for consent submitted by the Council in accordance with Article 192 and Article 218(6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union (C7-0323/2012),
  - having regard to Rules 81 and 90(7) of its Rules of Procedure,
  - having regard to the recommendation of the Committee on the Environment, Public Health and Food Safety (A7-0429/2012),
1. Consents to conclusion of the Protocol;
  2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States.

## EXPLANATORY STATEMENT

### History of the proposal

On 29 December 1993 the Convention on Biological Diversity (CBD) entered into force. Pursuant to Article 19, paragraph 3 of the CBD, and following several working group meetings, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity was adopted on 29 January 2000 as a supplementary agreement to the CBD and entered into force on 11 September 2003. This international treaty provides a framework, based on the precautionary principle, for the safe transfer, handling and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, or pose risks to human health.

Article 27 of the Cartagena Protocol on Biosafety mandated the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Protocol (COP/MOP) 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. At the fifth Conference of the Parties serving as the Meeting of the Parties to the Protocol (COP/MOP 5) in Nagoya, Japan, the EU unanimously supported the final compromise reached on the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress, following consideration that it was within the limits of the agreed EU positions and negotiating directives addressed to the Commission. 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.

On 20 December 2010, the Council welcomed the adoption of the Nagoya-Kuala Lumpur Supplementary Protocol. In accordance with Council Decision of 6 May 2011, the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety was signed by the Union on 11 May 2011, subject to its conclusion at a later date.

### Objective

The *Cartagena Protocol on Biosafety to the Convention on Biological Diversity* is an international treaty governing the movements of living modified organisms (LMOs) resulting from modern biotechnology from one country to another. The Protocol establishes an advance informed agreement (AIA) procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. The Protocol contains reference to a precautionary approach and reaffirms the precaution language in Principle 15 of the Rio Declaration on Environment and Development. The Protocol also establishes a Biosafety Clearing-House to facilitate the exchange of information on living modified organisms and to assist countries in the implementation of the Protocol.

Principle 13 of the 1992 Rio Declaration on Environment and Development calls upon States to develop national law regarding liability and compensation and also to cooperate in developing further international law regarding liability and compensation for adverse effects of environmental damage.

Liability and redress in the context of the Cartagena Protocol concerns the question of what would happen if the transboundary movement of LMOs has caused damage. The *Supplementary Protocol on Liability and Redress*, adopted at COP/MOP5 in Nagoya in 2010, provides for international rules and procedure on liability and redress for damage to biodiversity resulting from LMOs.

The Supplementary Protocol focuses, mainly, on administrative procedures and requirements with respect to response measures that need to be taken in the event of damage by LMOs that adversely affect the conservation and sustainable use of biological diversity, taking also into account risks to human health.

Parties have an obligation, under the Supplementary Protocol, to provide, in new or existing domestic law, for rules and procedures that address damage. They need to provide for response measures with a view to prevent or mitigate damage or restore biological diversity. Parties must require the operator that is in direct or indirect control of the LMO in question to take appropriate measures in response to damage or sufficient likelihood of damage, a novelty particularly in many developing countries.

In the European Union, the provisions of the Cartagena Protocol on Biosafety are covered by the European legislation on Biosafety which is maintaining as a central cornerstone the precautionary principle. The liability provisions of the Nagoya-Kuala Lumpur Supplementary Protocol are covered by the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004, on environmental liability with regard to the prevention and remedying of environmental damage, which establishes a framework based on the "polluter pays" principle, according to which the polluter pays when environmental damage occurs.

The COP/MOP 5 also decided that additional and supplementary compensation measures may be taken in instances where the costs of response measures provided for in the Supplementary Protocol are not covered and that those measures may include arrangements to be addressed by the COP-MOP. Furthermore, the COP-MOP urged Parties to cooperate in the development and/or strengthening of human resources and institutional capacities relating to the implementation of the Supplementary Protocol and invited Parties to take this into account in formulating bilateral, regional and multilateral assistance to developing country Parties.

### **Declaration of the European Union**

According to Article 34 of the Convention on Biological Diversity, any protocol to that Convention is subject to ratification, acceptance or approval by States and by regional economic integration organisations. In accordance with paragraph 3 of this Article, regional economic integration organisations must declare the extent of their competence with respect to the matters governed by the relevant protocol. To fulfil this obligation, the Commission has prepared a Declaration annexed to the proposal.

In this declaration, 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.

The European Union further declares that it has already adopted legal instruments, binding on its Member States, covering all matters governed by the Supplementary Protocol.

### **Rapporteur's Conclusions**

The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress will greatly contribute to achieving the objectives of the Convention on Biological Biodiversity and of the Cartagena Protocol on Biosafety. Along the same lines of the European environmental liability directive of 2004, this Supplementary Protocol will specifically address liability and compensation for damage to biodiversity resulting from LMOs.

The Rapporteur endorses the Council decision, which approves the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress on behalf of the European Union, regarding those matters falling within the Union's competence.

The Rapporteur is pleased that most Member States have signed the Supplementary Protocol and calls upon them to swiftly ratify.



## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	18.12.2012
<b>Result of final vote</b>	+:                58 -:                0 0:                0
<b>Members present for the final vote</b>	Sophie Auconie, Pilar Ayuso, Paolo Bartolozzi, Sandrine Bélier, Milan Cabrnock, Martin Callanan, Nessa Childers, Tadeusz Cymański, Esther de Lange, Anne Delvaux, Bas Eickhout, Edite Estrela, Karl-Heinz Florenz, Gerben-Jan Gerbrandy, Matthias Groote, Satu Hassi, Jolanta Emilia Hibner, Dan Jørgensen, Karin Kadenbach, Christa Kläß, Eija-Riitta Korhola, Holger Kraemer, Jo Leinen, Peter Liese, Zofija Mazej Kukovič, Linda McAvan, Radvilė Morkūnaitė-Mikulėnienė, Miroslav Ouzký, Vladko Todorov Panayotov, Antonyia Parvanova, Andres Perello Rodriguez, Pavel Poc, Frédérique Ries, Anna Rosbach, Oreste Rossi, Dagmar Roth-Behrendt, Kārlis Šadurskis, Horst Schnellhardt, Richard Seeber, Theodoros Skylakakis, Claudiu Ciprian Tănăsescu, Salvatore Tatarella, Thomas Ulmer, Anja Weisgerber, Marina Yannakoudakis
<b>Substitute(s) present for the final vote</b>	Margrete Auken, Jutta Haug, Jiří Maštálka, Judith A. Merkies, Miroslav Mikolášik, Giancarlo Scottà, Alda Sousa, Andrea Zannoni
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Emine Bozkurt, Reinhard Bütikofer, Jean Lambert, Csaba Sógor, Josef Weidenholzer