



Convention on Biological Diversity

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Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Cartagena Protocol on Biosafety Eleventh meeting

Cali, Colombia, 21 October–1 November 2024

Item 14 of the provisional agenda*

Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress

Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress

Note by the Secretariat

I. Introduction

1. The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety was adopted by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol at its fifth meeting, by decision BS-V/11. The Supplementary Protocol entered into force on 5 March 2018.
2. At its tenth meeting, in its decision CP-10/13, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol and further serving as the meeting of the Parties to the Supplementary Protocol requested Parties to the Supplementary Protocol, and invited other Governments, to submit information to the Executive Secretary on the measures that they had in place to provide for financial security for damage from living modified organisms, and also requested the Executive Secretary to compile the information and submit it for consideration at its eleventh meeting.
3. In the same decision, Parties to the Supplementary Protocol were reminded to designate a competent authority to perform the functions set out in Article 5 of the Supplementary Protocol and to publish information on those competent authorities using the common format available for that purpose in the Biosafety Clearing-House.
4. The present note provides an overview of the status of the Supplementary Protocol in section II, an overview of information received regarding financial security measures in place for damage from living modified organisms in section III, an update on the publication of information on competent authorities in section IV and a draft decision in section V.

* CBD/CP/MOP/11/1.

II. Status of the Supplementary Protocol

5. The Supplementary Protocol is an international treaty to which only Parties to the Cartagena Protocol may become Party (Article 16, para. 3, of the Supplementary Protocol).

6. At the time of reporting, 54 Parties to the Cartagena Protocol were party to the Supplementary Protocol, including five new Parties to the Protocol (Belgium, Malawi, Nigeria, Peru and Ukraine) since the issuance of the report for the tenth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.¹ A list of Parties to the Supplementary Protocol by region is provided below:

(a) *African States.* Burkina Faso, Central African Republic, Congo, Democratic Republic of the Congo, Eswatini, Guinea-Bissau, Liberia, Malawi, Mali, Nigeria, Togo and Uganda;

(b) *Asia-Pacific States.* Cambodia, Democratic People's Republic of Korea, India, Japan, Mongolia, Syrian Arab Republic, United Arab Emirates and Viet Nam;

(c) *Eastern European States.* Albania, Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Republic of Moldova, Romania, Slovakia, Slovenia and Ukraine;

(d) *Latin American and Caribbean States.* Colombia, Cuba, Mexico, Peru and Venezuela (Bolivarian Republic of);

(e) *Western European and other States.* Austria, Belgium, Denmark, European Union, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands (Kingdom of the), Norway, Spain, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland.

III. Information received regarding financial security measures in place for damage from living modified organisms

7. Through notifications No. 2023-109 of 16 October 2023 and No. 2023-128 of 30 November 2023, the Acting Executive Secretary invited Parties to the Supplementary Protocol and other Governments to submit information on measures in place to provide for financial security for damage from living modified organisms, in particular where they had reported having such measures in place in their fourth national reports.

8. Submissions were received from three Parties to the Supplementary Protocol.² An overview of the information thus received is provided below.

9. One Party explained that, under its national legislation, rules had been introduced to provide financial compensation for damage caused by the unintended presence of genetically modified material or organisms in conventional or organic crops. The legislation set out the conditions that triggered financial compensation, outlined the compensation application process and provided the basis for calculating the compensation amount. The Party explained that the financial resources for the compensation scheme were levied from two sources. Producers paid the equivalent in local currency of approximately 14 United States dollars annually for each hectare under cultivation of a genetically modified crop. In addition, the State provided resources through a budget line in the Finance Act. The Party noted that the compensation scheme had not triggered any payments to date, as no genetically modified crops had been commercially cultivated in the country.

10. Two Parties reported having adopted at the national level legal measures that implemented a European Union directive on environmental liability.³

¹ CBD/CP/MOP/10/9.

² The submissions are available at bch.cbd.int/en/submissions-to-notifications?notification=2023-109.

³ 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.

11. One of those Parties reported that, under its Environmental Protection Act, liability was imposed on the “professionally acting polluter”, under administrative law. The liable party was held responsible for taking or bearing the cost of preventative, mitigating and remedial measures. While the Environmental Protection Act did not provide a basis for civil law claims for personal injury or property damage, civil liability could be established under other legal instruments, for example, the Environmental Liability Act, the Genetic Engineering Act and general civil law. Liability under the Genetic Engineering Act was assigned on the basis of the “strict liability” principle, up to a maximum compensation of 85 million euros (approximately 95 million dollars). In the case of an unlawful or culpable act, liability could be imposed on private individuals under tort law, which did not introduce a limit to the compensation amount. The Party noted that it had neither set aside public funds to compensate for damage caused by living modified organisms, nor introduced obligations to set aside financial reserves.

12. The other Party reported that it had implemented European Union Directive 2004/35/EC through its Environmental Protection Act, under which it had also implemented the provisions of the Supplementary Protocol. The same Act provided for the obligation of taking response measures in case of damage resulting from living modified organisms, or when there was sufficient likelihood that damage would occur if such measures were not taken. Also under the same Act, the competent authority was designated and assigned functions in accordance with the provisions of the Supplementary Protocol. The Party explained that there were no requirements to provide for financial security for damage resulting from living modified organisms and noted that no such damage had occurred on its territory to date.

IV. Publication of information on competent authorities

13. A central role is assigned to the “competent authority” under Article 5 of the Supplementary Protocol. A common format⁴ was developed to enable Parties and non-Parties to submit contact information on their Supplementary Protocol competent authorities through the Biosafety Clearing-House.

14. At the date of reporting, 10 Parties to the Supplementary Protocol and six non-Parties had designated their competent authorities in the Biosafety Clearing-House.

15. In the fourth national reports received to date, 40 Parties to the Supplementary Protocol reported having designated a competent authority under the Supplementary Protocol, while 11 non-Parties reported having designated a competent authority for carrying out the functions set out in the Supplementary Protocol.

V. Draft decision

16. On the basis of the information provided in the present note, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol and further serving as the meeting of the Parties to the Supplementary Protocol may wish to adopt a decision along the following lines:

The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety and further serving as the meeting of the Parties to the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety,⁵

Recalling decision CP-10/13 of 10 December 2022,

⁴ Available in the “Submit” section of the Biosafety Clearing-House, at <http://bch.cbd.int/en/register> (login required).

⁵ In accordance with paragraph 1 of Article 14 of the Supplementary Protocol, and subject to paragraph 2 of Article 32 of the Convention, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall serve as the meeting of the Parties to the Supplementary Protocol. Consequently, the present decision has been adopted by the Parties to the Supplementary Protocol.

Also recalling Goal A.10 of the implementation plan⁶ and the capacity-building action plan for the Cartagena Protocol,⁷

1. *Welcomes* the additional instruments of ratification, acceptance, approval or accession to the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety⁸ that have been deposited since the adoption of decision [CP-10/13](#);
2. *Invites* all Parties to the Cartagena Protocol that have not yet done so to deposit an instrument of ratification, acceptance, approval or accession to the Supplementary Protocol as soon as possible;
3. *Welcomes* the additional records published in the Biosafety Clearing-House containing the contact details of the competent authorities to perform the functions set out in Article 5 of the Supplementary Protocol;
4. *Reminds* Parties to the Supplementary Protocol to designate a competent authority to perform the functions set out in Article 5 of the Supplementary Protocol and to publish information on the competent authorities using the common format available for that purpose in the Biosafety Clearing-House;
5. *Welcomes* the information provided by Parties on the measures in place to provide for financial security for damage from living modified organisms, while noting that only a few Parties have provided such information;
6. *Invites* Parties to share information on financial security mechanisms, together with other information on national measures for the implementation of the Supplementary Protocol, in their fifth national reports, and requests the Executive Secretary to use that information when preparing the documentation for the first assessment and review of the effectiveness of the Supplementary Protocol;⁹
7. *Invites* Parties, other Governments and organizations to carry out capacity-building and awareness-raising activities in support of the effective implementation of the Supplementary Protocol, and encourages donors to provide the resources necessary in that regard, further to Goal A.10 of the implementation plan and the capacity-building action plan for the Cartagena Protocol.

⁶ Decision CP-10/3, annex.

⁷ Decision CP-10/4, annex.

⁸ See United Nations Environment Programme, document UNEP/CBD/BS/COP-MOP/5/17, annex, decision BS-V/11.

⁹ See decision CP-10/13, para. 12.