

## **Report of the Workshop on the preparation for the implementation of the Nagoya Protocol in Belgium**

**Brussels, 29/05/2012**

**Welcome address, Roland Moreau – Chair of the CCIM / CCPIE (see Annex 2)**

### **Introduction of the meeting, Inès Verleye – Chair of the workshop**

Ms. Inès Verleye welcomed the participants and introduced the issues to be addressed during the workshop. Participants were reminded that the workshop is not dealing with the broader topic of access and benefit sharing in general, but only with the relevant aspects for the implementation of the Nagoya Protocol. Moreover, it is important to remember that Belgium is already bound by the relevant ABS provisions of the Convention on Biological Diversity (CBD), which provides the general framework for the implementation of the Nagoya Protocol.

The framework for this workshop is squarely placed within the political commitment<sup>1</sup> that the timely ratification of the Nagoya Protocol is a high political priority for Belgium. To this effect, a study was commissioned by the four environment administrations<sup>2</sup> to identify and evaluate possible consequences of the implementation and ratification of the NP in Belgium. In order to do this, the study identified certain options as potentially relevant for further exploration by the study team in view of their application in Belgium. Two stakeholder workshops are foreseen to keep stakeholders closely involved in the further development of the options.

Before engaging in the actual exploration of the proposed options, this first workshop is aimed at collecting views of stakeholders on the possible options for the implementation of the core obligations of the Nagoya Protocol, i.e. obligations that require (a certain level of) implementation prior to ratification of the Nagoya Protocol. A second workshop later this year will focus on the further specification of these main options and on options for the implementation of additional obligations of the NP.

### **Organization of the workshop**

It was stressed that the workshop is as much an opportunity to contribute to awareness raising and capacity building with regard to the content of the Nagoya Protocol (NP) as to gather points of views and inputs from a broad range of stakeholders to feed into the ongoing study on the preparation of the implementation of the Nagoya Protocol. The workshop was therefore composed of two main parts.

#### **➤ Part I.**

The first part of the workshop consisted of three presentations, made jointly by the UCL Study team and the Steering Committee to

- 1.** explain the concepts and obligations contained in the Nagoya Protocol in order to clearly frame the workshop within the correct context, namely the national implementation and ratification of the Nagoya Protocol on ABS
  - General introduction on the Nagoya Protocol, Dries Van Eeckhoutte – LNE (Annex 3)

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<sup>1</sup> ICE decision 11 October 2011

<sup>2</sup> Federal Public Service for Health, Food Chain Safety and the Environment, Environment Directorate-General, Service for multilateral and strategic matters (SPSCAE), Bruxelles Environnement/Leefmilieu Brussel (IBGE-BIM), Vlaamse overheid, Departement Leefmilieu, Natuur en Energie (LNE), Service public de Wallonie, Direction générale opérationnelle Agriculture, Ressources naturelles et Environnement (DGARNE)

- Implementation of the Nagoya Protocol in Belgium: Introduction to the ongoing study, Tom Dedeurwaerdere – UCL (Annex 4)
2. to present possible options to do this, as currently identified for further exploration by the UCL Study team and the Steering Committee.
- Implementation of the Nagoya Protocol in Belgium: Presentation of proposed preliminary options based on the provisional results, Tom Dedeurwaerdere – UCL (Annex 5)

Comments on the presentations highlighted the need to increase the awareness of the stakeholders with regards to the impact of the Belgian implementation and ratification of the Nagoya protocol. The issues mentioned were discussed in more detail under Part II.

➤ **Part II.**

After the general presentations, an exchange of views and discussions took place on the proposed options on how to implement the core obligations of the Nagoya Protocol in Belgium. This was guided by the background document with preliminary findings of the Study (see annex 1) as well as the presentation in annex 6 which provided a framework for the discussions.

It was stressed that the options presented are only options selected to be explored further with regards to their relevance and possible impact within the framework of the Study. The purpose of the discussion was therefore not to already now support policy choices but only to get views and information of the stakeholders on each on the different options. Stakeholders were asked in particular to see whether the proposed options were the most relevant for further study or if any other relevant options were missing.

### **Summary of discussions**

Discussions focused on three questions to support the debate:

- 1) Are the proposed preliminary measures and options a good basis for further development of the Study regarding the implementation of the Nagoya Protocol in Belgium? Are there other relevant measures and options that the study should take on board?
- 2) What could be the advantages and the disadvantages of the different measures and options for implementing the Nagoya Protocol?
- 3) Is there any specific relevant information available that the stakeholders could share with the study team?

Within this context, the following views and ideas were collected during the workshop:

**1. On the general question whether or not to establish access (PIC and MAT) and benefit sharing measures:**

**PIC or not?**

- There was a general feeling that *requiring prior informed consent (PIC)* would be a good system as basic information is needed a) on the genetic resources (GR) accessed (what has been sampled? where? when? in order to have a better view on the GR involved), b) to get a better view on what we have (it was suggested that even the biggest collections have problems identifying what they have) and c) to keep track of the subsequent utilization.
- The question was raised how benefit sharing could be ensured if no PIC is required, as access and benefit sharing are clearly linked.
- PIC was considered necessary at least as a notification of what has been sampled. This would require having a look at the question of proper recording of data and digitalization.
- The type of PIC as well as the default option should be decided based on clear figures of administrative burden and the added value of the different options. The cost for access for collections is already very high and should be kept as low as possible and should take into consideration the high number of transactions by the collections. Considering the quantity and nature of current transactions it will also be necessary to identify the added value and the

administrative costs of a complex versus a simplified default system. The need for a real approval would probably be too burdensome while a simple notification could lead to an inventory that might not provide complete information but would be easy to use and could benefit everyone. The default option would thus be dependent upon the amount and nature of transactions.

- Some questions were raised on how a PIC would be used when States share the same GR. The NP contains provisions on cooperation to solve potential conflicts between states sharing the same GR. Furthermore, Art. 10 of the NP (which would however be a multilateral system) takes into account the transboundary situations of GR and traditional knowledge (TK) associated with GR but the article is still under discussion.
- The NP has turned the burden of proof around. Whereas before it was more interesting for users to access GR in states having the least regulation in place, now users might prefer states with clear and transparent access and benefit sharing (ABS) legislation in order to get more legal certainty and avoid later problems during the utilization. A PIC would offer such legal certainty to users.

#### **How to deal with mutually agreed terms (MAT)?**

- It was clarified that if PIC would be required in Belgium, it should be clarified at the same time whether MAT is required and what the conditions would be. Given that a phased approach would allow to fine-tune the measures as more experience is gathered, the initial MAT requirements could be rather limited and be further developed over time.
- It was mentioned that for culture collections, there are already standard rules and procedures applying to the exchanges. However, flexibility in the system is always needed for particular cases. This could be to a large extent provided for through a basic set of mandatory legal requirements, supplemented by a clear legal framework that would function as non-pre-emptory norms that would apply if the contracting parties do not provide other rules on the subject ("*aanvullend recht*" / "*droit supplétif*").
- An obligation to have a particular MAT (or rather further-reaching obligatory MAT provisions) might have to be limited to those utilizations that are expected to generate benefits and/or during the commercialization phase.
- Some concerns were raised regarding the implementation of other ABS related processes in Belgium. Apart from the Nagoya Protocol, these include in particular the International Treaty on Plant Genetic Resources (ITPGRFA) and the World Health Organization's (WHO) Pandemic Influenza Preparedness (PIP) Framework. The ITPGRFA and PIP Framework are multilateral systems which are different from the bilateral system put in place under the NP. However, even though the systems differ substantially, they cover similar obligations and were drafted to be mutually supportive (as confirmed *inter alia* by the preamble of the PIP and the preamble as well as Articles 4 and 8 of the Nagoya Protocol). It was therefore noted that it will be important to also implement them at national level in a mutually supportive way, in particular by maintaining close cooperation between the responsible for the different processes.

#### **2. On the different options for PIC (bottleneck, fishing net and the intermediary model)**

- The general concern expressed was to keep extra burdens low both for the users as for the administrations concerned. In that context, it was also suggested to avoid adding new requirements disconnected from the existing regulations and procedures.
- This was the starting point of each of the proposed options as it would facilitate implementation of the Nagoya Protocol and would limit the administrative burden by avoiding adding extra regulations and procedures on top of the ones already existing (and hence duplicate the burden for users and public authorities). It was noted that situations should be avoided where different permits from different ministries would have to be obtained for access to the same material/GR (cfr. the case in certain countries such as Peru). Not connecting the different requirements and procedures for the same material or the data management for these requirements and procedures would furthermore complicate the administrative follow-up as data would have to be resubmitted every time if different permit databases are not linked.
- As there is already an existing regulation on (physical) access to genetic material in Protected

Areas (PA) and on Protected Species (PS), it would be logical to further work on the basis of this. For example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its implementing legislation (at EU and national level) cover access to certain genetic material (although not in the sense of the NP), and could possibly serve as a basis for the further implementation of the NP for certain GR if it is refined.

- Access to GR is definitely not limited to Protected Areas (PA) and Protected Species (PS). Micro-organisms are generally accessed in extreme environments that do not necessarily coincide with the category PA/PS.
- Also other existing regulation could be potentially interesting and should as much as possible be evaluated and if relevant built upon. Examples could be found where access requests take place for economic or research purposes.
- In general, an “umbrella measure” integrating different measures on NP and PA + PS would be welcomed in order not to create too much administrative burden.

### **3. On the Competent National Authority (CNA)**

- The complexity of the system and the burden for both administrations and users will also depend upon the institutional organization.
- The proposed option whereby users would be able to contact a single entry point therefore seemed to be preferable to the option where users would have to contact individual authorities on different GRs.
- It was clear that in any case cooperation will be necessary between the 4 authorities.

### **4. On the National Focal Point (NFP)**

- It has to be noted that whereas one or more CNAs can be designated, the NP requires the designation of one sole NFP. Depending on the options that will be chosen for the implementation of the NP, it should be possible to identify the most appropriate arrangement for the fulfillment of the task of the NFP.
- The fulfillment of the tasks of NFP will in any event, have to be done in close cooperation with the different competent and involved authorities.

### **5. On compliance**

- Although option 2 was considered as a weaker option in supporting compliance with provider country's ABS legislation, it was considered that Belgian legislation should have an in-built safety valve.
- Option 1 was considered only possible if the law of the country of origin is well developed and sufficiently similar to the Belgian legal system (it might therefore be considered as an option for use amongst the EU Member States themselves), and might create high legal uncertainty for the users (e.g. in case the law of the provider country changes).
- Foreign law would always bring in legal uncertainty for users, which is testified by the difficulty to agree upon dispute settlement provisions in Material Transfer Agreements (MTAs).

### **6. On monitoring/checkpoints**

- It was clarified that in order to respect the political commitment to ratify timely the NP, only one checkpoint is needed. In the current situation, the two checkpoints that might be the easiest to implement, would be the PIC and the disclosure of origin in patent applications.
- It was noted that monitoring through the Belgian patent office would not be very efficient as it covers only a very small part of the transactions.
- Other options for a more efficient implementation could be considered in a later phase of implementation (e.g. the granting of public research funding as a checkpoint).

### **7. On the national ABS Clearing-House (ABS-CH) component**

- Since negotiations on the exact aspects of the ABS CH are still ongoing at international level, options for the development at national level are currently limited.

- Independent of those discussions, it is important to better recognize the role of the CBD Clearing-house (CBD CHM) in supporting awareness on ABS and on the NP.
- Furthermore, for the more specific technical requirements of a future functioning of the ABS-CH, several options will need to be looked at in more detail, taking into consideration among others the lessons learned from the establishment and functioning of the CBD CHM and the Biosafety Clearing-House (BCH) under the Cartagena Protocol.
- The knowledge and experience about the establishment and functioning of the CBD CHM and BCH should be taken into account both by the national experts as well as by the CBD Secretariat in order to avoid setting up an entirely new system by different people, to save time and money.
- The current experience with the functioning of the Biosafety Clearing House (BCH), furthermore questions whether the *national* BCH-node is still needed as it does not provide much added value vis-à-vis working through the central Biosafety database.
- Belgium invested heavily in the establishment of CBD CHMs in developing countries and this should be looked upon and possibly further developed in the context of supporting developing countries in their implementation of the NP.

#### **8. Some other, general comments**

- In the further preparation of the implementation of the Nagoya Protocol, costs of the different options and the administrative burden should be carefully considered. Moreover, also the question whether the implementation of the different options would require the adoption or modification of a cooperation agreement should be taken into consideration as this might require more time and effort.
- It was suggested that Belgium should exchange information about the implementation of the Nagoya Protocol with other decentralized states.

#### **Closure of the meeting**

Ms. Verleye, chair of the meeting thanked the participants for their active participation and their valuable input. She noted with satisfaction that the different options proposed by the Study team and the Steering Committee were considered by the workshop as a good basis for further work on how best to prepare the implementation of the Nagoya Protocol in Belgium. These options will now form the basis for the subsequent work of the Study team, including a thorough impact assessment, and the input received during the workshop will be taken on board in their analysis. She stressed that this is an ongoing process that ideally should be able to benefit from the experience of the stakeholders and that therefore further views and other relevant information remain more than welcome.

## Annexes

- Annex 1 Background document for the workshop “Presentation of preliminary findings of phase 1, phase 2 and phase 3a of the study”
- Annex 2 Welcome address, Roland Moreau
- Annex 3 Presentation “General introduction on the Nagoya Protocol”, Dries Van Eeckhoutte
- Annex 4 Presentation “Implementation of the Nagoya Protocol in Belgium: Introduction to the ongoing study”, Tom Dedeurwaerdere
- Annex 5 Presentation “Implementation of the Nagoya Protocol in Belgium: Presentation of proposed preliminary options based on the provisional results”, Tom Dedeurwaerdere
- Annex 6 Presentation “Exchange of views and discussion of a panel of the UCL-team and the Steering Committee with the floor on the options for implementation of the Nagoya Protocol in Belgium and the potential impact in Belgium”, UCL-team and the Steering Committee

## Abbreviations

ABS-CH	Access and Benefit-sharing Clearing-house
BCH	Biosafety Clearing House
CBD	Convention on Biological Diversity
CCIM	Coördinatie comité Internationaal Milieubeleid
CCPIE	Comité de coordination de la politique internationale de l’environnement
CH	Clearing House
CHM	Clearing-House Mechanism of the Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CNA	Competent National Authority
GR	Genetic Resource
ICE	Interministerial Conference on Environment
ITGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
LNE	Departement Leefmilieu, Natuur en Energie van de Vlaamse overheid
MAT	Mutually Agreed Terms
MTA	Material Transfer Agreement
NFP	National Focal Point
NP	Nagoya Protocol
PA	Protected Areas
PIC	Prior Informed Consent
PIP	Pandemic Influenza Preparedness
PS	Protected Species
UCL	Université Catholique de Louvain
WHO	World Health Organization

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