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EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

on the signing 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

1. The Convention on Biological Diversity (CBD) 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.

2. Article 15 CBD 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 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.

3. 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 CBD. The Seventh Conference of the Parties to the CBD (CBD COP7) in February 2004 adopted a detailed negotiating mandate. Negotiations were undertaken in the Ad Hoc Open-Ended Working Group on Access and Benefit-sharing (ABS WG). At CBD COP8 in March 2006, Parties committed themselves to complete negotiations at the earliest possible time before CBD COP10 in October 2010. At CBD COP9 in May 2008, Parties agreed on the textual basis and on a detailed roadmap for the final negotiations.

4. Final negotiations on the Nagoya Protocol were held in April 2009, in November 2009, in January 2010, in March 2010, in July 2010, in September 2010 as well as prior to and during CBD COP10 in October 2010.

5. On 26 October 2009, the Council adopted a decision formally authorising the Commission to participate, on behalf of the European Community for matters falling within Community competence, in the negotiations on the international regime on access and benefit-sharing at the eighth and ninth meeting of the Ad Hoc Open-Ended Working Group on Access and Benefit-sharing. The authorisation included all issues under negotiation, except traditional knowledge associated with genetic resources, which was negotiated by the Member States holding the Presidency of the Council on behalf of the Member States. The Commission's authority to negotiate was extended until CBD COP10 by a decision of the Council on 21 September 2010.

6. Throughout the negotiations, the Council repeatedly expressed its political support to the negotiation and its commitment to a successful outcome.¹ On 29 October 2010, EU ministerial coordination during CBD COP10 in Nagoya unanimously supported a compromise proposal on the ABS Protocol tabled on the last day of COP10 by the Japanese COP10 Presidency, considering that it was within the limits of the agreed EU positions and the negotiating directives addressed to the Commission.

¹ See Council Conclusions of 6 March 2006, 28 June 2007, 4 March 2008, 16 March 2010, and 14 October 2010.

7. On 30 October 2010, final plenary of CBD COP10 successfully 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 will be open for signature at the United Nations headquarters in New York from 2 February 2011 to 1 February 2012.

8. The CBD COP10 decision adopting the Nagoya Protocol calls upon the Parties to the CBD 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. An Intergovernmental Committee for the Nagoya Protocol will meet in June 2011 and April 2012 to prepare the first meeting of the Parties to the Protocol.

9. On 20 December 2010, the Council adopted conclusions that, *inter alia*, welcome adoption of the Nagoya Protocol on ABS, and invite the Commission to sign the Nagoya Protocol at the earliest opportunity and start preparations for its timely ratification and implementation.²

10. In view of the above, it is appropriate for a representative of the Union to sign, subject to subsequent conclusion, 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.

² See Council Conclusions of 20 December 2010, in particular paragraphs 1 and 21.

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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 (5), thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) In August 2002, heads of state and government attending the World Summit on Sustainable Development agreed to launch negotiations for an international regime on access and benefit-sharing in the framework of the Convention on Biological Diversity.
- (2) On 26 October 2009, and again on 21 September 2010, the Council authorised the Commission to participate in those negotiations on behalf of the Union with respect to matters falling within Union competence.
- (3) The Council repeatedly expressed its political commitment to the successful conclusion of the negotiations by the agreed deadline.³
- (4) The Union ministerial coordination meeting held on 29 October 2010 during the tenth Conference of the Parties to the Convention Biological Diversity in Nagoya unanimously supported the compromise proposal for a Nagoya Protocol tabled by the Japanese Presidency.
- (5) Following its adoption by the tenth Conference of the Parties to the Convention on Biological Diversity, 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 will be open for signature at the United Nations headquarters in New York from 2 February 2011 to 1 February 2012.

³ See Council Conclusions of 6 March 2006, 28 June 2007, 4 March 2008, 16 March 2010, and 14 October 2010.

- (6) On 20 December 2010, the Council welcomed the adoption of the Nagoya Protocol and invited the Commission to sign the Nagoya Protocol at the earliest opportunity and to start preparations for its timely ratification and implementation.⁴
- (7) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.

HAS ADOPTED THIS DECISION:

Article 1

The President of the Council is hereby authorised to designate the person or persons empowered to sign 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 on behalf of the Union.

The text of the Agreement to be signed is attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at

For the Council
The President

⁴ See Council Conclusions of 20 December 2010, in particular paragraphs 1 and 21.