

Summary EU- Session Exchange of views on the state of implementation of the of the Nagoya Protocol: Hugo-Maria Schally

Soon after the adoption of the Nagoya Protocol that EU has started the consideration of the measures necessary to enable a ratification of the NP by the EU as well as its MS. The starting point of the analysis was an extensive Impact Assessment, including a wide stakeholder consultation. The analysis looked at the main elements of the NP namely the issues related to Access requirements, benefit sharing and compliance measures and looked at what would necessary to be addressed at the level of the EU and what would be remain to be considered at the level of the individual EU MS.

That analysis quickly delivered the conclusion that access requirements would be left for the consideration of the individual MS, especially since there was no obligation for Parties to the NP to establish such requirements. Only if such requirements established by individual EU MS would be seen to damage the functioning of EU internal market, would the EU consider whether a certain degree of harmonisation was necessary to guarantee the respect of that principle.

Benefit sharing would in the implementation of the NP be dealt with through provisions addressing the respect of terms contained in MAT. As far as compliance measures are concerned the conclusion was that nature of those measure required a harmonised implementation across the EU. The result of the consultation process showed that that was also what stakeholder preferred.

In the further study the EU aimed at identifying solutions that would allow the full respect of the obligations agreed under the NP, while putting the least possible burden on users. This resulted in a proposal for an EU regulation based on the principle of "due diligence". This proposal - together with the proposal for the ratification of the NP - was presented to the EP and the Council of Ministers in October 2012.

This marked the beginning of an intensive period of discussions and negotiations between the three different institutions of the EU involved in this process. This process is now very close to its completion as both co-legislators have reached a political agreement on the text of a draft EU regulation, that will enable the ratification of both the EU and its individual MS. The last steps will now be a vote in the Plenary of the EP in March and a decision in the Council of Ministers in the course of April. At the same time the EP will give its consent to the ratification of the NP by the EU. The Council of Ministers will finally adopt the regulation and authorise the deposit of the instrument of ratification. This should enable the EU deposit the instrument in time for a possible COP/MOP I in October 2014. The time schedule of the ratification by individual EU MS may vary depending on their internal procedures, but with the entry into force of the regulation and the NP for the EU, the mandatory measures under the NP will have been taken in the EU also binding the individual MS and their citizens.

The regulation covers the measures necessary to comply with the obligations concerning compliance measures such as f.ex. monitoring compliance, checkpoints, compliance with legislation, national focal points, reporting and submission of information to the ABS CH etc. It requires the establishment of sanctions and penalties in the respective EU MS, the designation of the national entities that will serve as checkpoints as well as the conducting of checks and controls of operators active in the EU MS. It also establishes important compliance facilitation tools such as the "EU registered collections" and "recognised best practices".

With this legislation the EU and its MS will be well equipped to begin the implementation of the NP once it enters into force.