



Living in harmony with nature

The Nagoya—Kuala Lumpur Supplementary Protocol on Liability and Redress

What is the Supplementary Protocol?

During the negotiations of the Cartagena Protocol on Biosafety, the issue of liability and redress for damage resulting from transboundary movements of living modified organisms was key for a number of countries. As a result, Article 27 of the Protocol mandated the negotiation of rules and procedures on liability and redress, which led to the adoption of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress on 15 October 2010.

The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress entered into force on 5 March 2018 as a legally-binding international instrument. Currently, there are 41 Parties to the Supplementary Protocol.

The Supplementary Protocol provides that Parties must require operators to take response measures in the event of damage resulting from living modified organisms which find their origin in a transboundary movement. Such measures must also be taken where there is a sufficient likelihood that damage will result if timely response measures are not taken. Parties may develop further civil liability rules in this regard.

Response measures are any reasonable actions to prevent, minimize, contain, mitigate or otherwise avoid damage or measures to restore biological diversity. The Supplementary Protocol defines damage as adverse effect on the conservation and sustainable use of biological diversity that is measurable or otherwise observable and significant, taking also into account risks to human health.

In addition to imposing a requirement for response measures, the Supplementary Protocol seeks that Parties continue to apply existing legislation on civil liability or develop specific legislation concerning liability and redress for material or personal damage associated with damage as defined in the Supplementary Protocol.



Why become a Party to the Supplementary Protocol?

The Supplementary Protocol allows Parties to respond in a practical way to damage resulting from living modified organisms. In the event of damage, or sufficient likelihood that damage will occur, Parties to the Supplementary Protocol can require the person in direct or indirect control of the living modified organism (the 'operator') to take response measures. Parties can also take such response measures through a competent authority and recover the expenses from the operator.

Becoming a Party to the Supplementary Protocol creates an enabling environment for addressing and preventing adverse effects of living modified organisms on biological diversity and human health while allowing Parties to derive maximum benefit from the potential that the technology has to offer.

Becoming a Party to the Supplementary Protocol also creates an incentive for operators to safely transfer, handle and use living modified organisms and thus contributes to the objective of the Cartagena Protocol.

The Supplementary Protocol can serve to give effect to the polluter pays principle, where States channel responsibility for response measures to those in control of the living modified organism that causes the damage.

Response measures foreseen under the Supplementary Protocol can be determined by an administrative authority and do not require the intervention of a judicial body. This 'administrative approach' provides for flexibility, which may contribute to a larger practical effect at the national level.

Fast Facts

The Nagoya—Kuala Lumpur Supplementary Protocol:

Entered into force on 5 March 2018.

Was adopted on 15 October 2010 by the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, at its fifth meeting, in Nagoya, Japan

The Nagoya—Kuala Lumpur Supplementary Protocol:

Takes its name from the city of Nagoya, where it was adopted, and from the city of Kuala Lumpur where several negotiation sessions were held

Is the first international treaty that provides for a definition of 'damage' to biodiversity

Learn More

Liability and Redress, <http://bch.cbd.int/protocol/supplementary/>

The text of the Supplementary Protocol http://bch.cbd.int/protocol/NKL_text.shtml

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