

**CARTAGENA PROTOCOL ON BIOSAFETY**  
**Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress (N-KL SP)**

**CropLife International supports ratification of the NKL-SP and congratulates those countries that have ratified it and are working toward its implementation. The NKL-SP is a positive tool providing the framework of a workable system that can contribute to the conservation and sustainable use of biodiversity. In support of this international instrument, CropLife International has developed one of the only capacity building tools available to Parties – the CropLife International N-KL SP Implementation Guide<sup>1</sup> - to provide implementation assistance. CropLife International thus supports the draft decision on liability and redress under the Convention on Biological Diversity (Convention) and the Cartagena Protocol on Biosafety (Protocol) and recommends that Parties focus ongoing work targeted toward timely and complete implementation of the N-KL SP. However, we also caution against undertaking any new work that would duplicate efforts completed and issues considered during its negotiation.**

**A. Background**

During the fifth meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-5) in October 2010, Parties adopted the NKL-SP that obligates Parties to have or enact domestic rules and procedures providing for liability and redress for damage to the conservation and sustainable use of biological diversity resulting from transboundary movements of living modified organisms (LMOs). The new treaty entered into force on 5 March 2018 following its ratification by 40 Parties. At the 2018 Biodiversity Convention on 17-29 November 2018 in Sharm El-Sheikh, Egypt, Parties to the Convention and Protocol will consider decisions on liability and redress generally, and specific to the N-KL SP. What follows are CropLife International views on these proposed decisions.

**B. CropLife International Views on Elements of a Draft Decision on Liability and Redress under the Convention (CBD/COP/14/10)<sup>2</sup> and Protocol (CBD/CP/MOP/9/11)<sup>3</sup>**

- CropLife International actively engaged with the Parties during the negotiations of the N-KL SP to ensure that the outcome of the negotiations considered the practical realities of trade in LMOs and their history of safe use. Due to its clear definition of “damage” and the focus on enabling national authorities to identify and evaluate damage to biological diversity and order response measures, CropLife International views the N-KL SP as a positive tool providing the framework of a workable system that can contribute to the conservation and sustainable use of biodiversity.
- CropLife International therefore supports ratification of the N-KL SP following a step-wise approach that will ensure that countries can comply with their legal obligations as of the date of ratification and encourages its Parties to focus their resources on its complete and timely implementation.
- CropLife International supports the elements of the draft decisions on liability and redress under the Convention and on the N-KL SP under the Protocol as they primarily focus on efforts to support implementation.
- However, the one element of the draft decision on the N-KL SP where CropLife International has some concerns is paragraph 8 of decision CBD/CP/MOP/9/11 which addresses the

<sup>1</sup> <https://croplife-r9qnrxt3qgjr4.netdna-ssl.com/wp-content/uploads/2014/04/Implementation-Guide-to-the-Nagoya-Kuala-Lumpur-Supplementary-Protocol-on-Liability-and-Redress-to-the-Cartagena-Protocol-on-Biosafety.pdf>

<sup>2</sup> <https://www.cbd.int/doc/c/8391/4ad9/c7303ddefa86c3ad759ee1a/cop-14-10-en.pdf>

<sup>3</sup> <https://www.cbd.int/doc/c/a9c8/d680/7c6ead41a120653a3c8ec2b6/cp-mop-09-11-en.pdf>

comprehensive study on financial security. The N-KL SP negotiations addressed this issue in great detail, over many years of contentious negotiation, with many different types of financial security arrangements considered.<sup>4</sup> The N-KL SP ultimately adopted language that retains the right for Parties to provide, in their domestic law, for financial security.<sup>5</sup>

- CropLife International therefore recommends that Parties do not revisit issues raised and vetted during those negotiations. To that end, CropLife International recommends the addition of the underlined text in paragraph 8 of decision CBD/CP/MOP/9/11 as follows:

*Paragraph 8: Requests the Executive Secretary to undertake a comprehensive study, for consideration by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety at its tenth meeting, without duplicating work completed during the Nagoya-Kuala Lumpur Supplementary Protocol negotiation process, addressing:*

- (a) The modalities of financial security mechanisms;*
- (b) An assessment of the environmental, economic and social impacts of such mechanisms, in particular on developing countries;*
- (c) An identification of the appropriate entities to provide financial security;*

For more information on this and other Protocol implementation issues, please visit <http://croplife.org/plant-biotechnology/cartagena-protocol-on-biosafety/>.

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<sup>4</sup> E.g., see section 6 of <https://s3.amazonaws.com/bch.webfiles/4cd5/6722/7b3399073f8fd7ab24f14bb1?AWSAccessKeyId=AKIAI7FAKF7TLBEQGAW3Q&Expires=1539120462&response-content-disposition=inline;%20filename=%22cpb-ts-03-en.pdf%22&response-content-type=application/pdf&Signature=11YEveqxYrLXwktZJA48Y6Fdn0g=>

<sup>5</sup> See Article 19 of the N-KL SP available at: [https://bch.cbd.int/protocol/NKL\\_text.shtml](https://bch.cbd.int/protocol/NKL_text.shtml).