

Rules for the implementation of the Nagoya Protocol (Nagoya Protocol (Implementation) Act)

BILL

We, Willem-Alexander, by the grace of God King of the Netherlands, Prince of Orange-Nassau, etc., etc., etc.

Greetings to all who see or hear these presents! Be it known:

Whereas we have considered it necessary to provide for statutory rules in order to implement 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, and the relevant European Union regulations;

We, therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Section 1

In this Act and the provisions based thereon:

‘EU regulations concerning genetic resources’ means regulations as referred to in article 288 of the Treaty on the Functioning of the European Union concerning access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation, including in any event Regulation (EU) no. 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union (OJEU 2014, 150) and regulations based thereon;

‘Nagoya Protocol’ means 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 concluded at Nagoya on 29 October 2010 (Dutch Treaty Series 2012 nos. 16 and 244);

‘Our Minister’ means Our Minister of Economic Affairs.

Section 2

1. It is prohibited to act in breach of such provisions of EU regulations concerning genetic resources as are designated by ministerial order.

2. Rules will be laid down by ministerial order to implement parts of EU regulations concerning genetic resources that do not allow for discretion or that concern the manner in which applications and documents are to be submitted.
3. Without prejudice to subsections 1 and 2, rules concerning access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation may be laid down by or pursuant to order in council to implement the Nagoya Protocol and EU regulations concerning genetic resources.

Section 3

Our Minister may grant dispensation or exemption from provisions laid down by or pursuant to section 2, in accordance with conditions and restrictions deriving from the Nagoya Protocol or from EU regulations concerning genetic resources, as the case may be.

Section 4

1. Our Minister designates a national focal point on access and benefit-sharing as referred to in article 13, paragraph 1 of the Nagoya Protocol.
2. Our Minister is the competent national authority on access and benefit-sharing as referred to in article 13, paragraph 2 of the Nagoya Protocol.
3. Our Minister is the competent authority responsible for the application of EU regulations concerning genetic resources where such regulations require a competent authority to be designated, unless Our Minister has designated a different competent authority.
4. Responsibility for monitoring compliance with provisions laid down by or pursuant to this Act is vested in:
 - officials designated by order of Our Minister;
 - officials charged by Our Minister of Security and Justice with the investigation of the offences defined by or pursuant to this Act, pursuant to section 17 of the Economic Offences Act.
5. Notification of an order as referred to in the first part of subsection 4 is made by means of publication in the Government Gazette.

Section 5

Our Minister is authorised to impose an order enforceable by remedial action to enforce the provisions laid down by or pursuant to this Act.

Section 6

1. Without prejudice to article 5 and article 117 of the Code of Criminal Procedure, Our Minister may, in accordance with the applicable EU regulations concerning genetic resources, take immediate interim measures in regard to users who breach provisions laid down by or pursuant to this Act. Such measures may include the confiscation of genetic resources or products developed from such resources, or a decision:
 - a. prohibiting the transport, processing or marketing of genetic resources or products developed from such resources;
 - b. prohibiting the further use of genetic resources or products developed from such resources;
 - c. requiring the temporary storage of genetic resources or products developed from such resources;
 - d. imposing an obligation to inform holders or suspected holders of genetic resources or products developed from such resources immediately and in an effective manner, that the resources were not acquired in accordance with provisions laid down by or pursuant to this Act;
 - e. requiring genetic resources to be returned to the country that provided them;
 - f. imposing an obligation to withdraw genetic resources or products developed from such resources that have been placed on the market or to store them in a central location;
 - g. imposing an obligation to identify and register genetic resources.
2. The costs of the measures referred to in subsection 1 are borne by the person responsible for access to or the use of the genetic resources, the owner thereof or the authorised representative of one or more of the said persons. If the costs are not paid in full within the time limit set by Our Minister, he may recover the sum owing by means of a final demand for payment.
3. The decisions referred to in subsection 1 may be subject to conditions or restrictions. Conditions may be attached to the obligations imposed by such decisions.
4. It is prohibited to act in breach of a decision as referred to in subsection 1.

Section 7

1. In this section, 'offence' means any act relating to the keeping of records or the supply of information that is in breach of provisions laid down by or pursuant to section 2, in cases designated by order in council.
2. Our Minister may impose an administrative fine on an offender in respect of an offence.
3. Rules will be laid down by order in council concerning the maximum level of the administrative fine that may be imposed for an offence or for categories of offences.
4. The administrative fine to be set pursuant to subsection 3 must not exceed the amount set for the first category referred to in article 23, paragraph 4 of the Criminal Code for each offence committed by a natural person and must not exceed the amount set for the second category referred to in article 23, paragraph 4 of the Criminal Code for each offence committed by a legal person or a company.
5. The Public Prosecution Service must be informed of an offence if this is warranted by the seriousness of the offence or the circumstances in which it was committed.
6. A penalty may not be imposed by a designated public authority pursuant to article 257ba of the Code of Criminal Procedure in respect of offences as referred to in subsection 1.

Section 8

The following is to be inserted in the alphabetical list in section 1a (1°) of the Economic Offences Act: Nagoya Protocol (Implementation) Act, section 2, subsection 1;.

Section 9

This Act enters into force on a date to be determined by Royal Decree.

Section 10

This Act may be cited as the Nagoya Protocol (Implementation) Act.

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern diligently implement it.

Done

State Secretary for Economic Affairs