



Nagoya Treaty implementation in the EU marine area

Maria Ana Martins

**Portuguese Task Group for the
Extension of the Continental Shelf**

Picture taken by
© Bruno Ribeiro

Nagoya Treaty implementation in the EU marine area



- I. Issues on the competence on the MGR Access and the Benefits Sharing
- II. Public consultation on the Nagoya Protocol
- III. A possible way to achieve the implementation of the Nagoya Protocol

I – Marine Genetic Resources ABS Competence

Legal framework:

United Nations Convention on the Law of the Sea



I – Marine Genetic Resources ABS Competence

Article 77

Rights of the coastal State over the continental shelf

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

I – Marine Genetic Resources ABS Competence



I – Marine Genetic Resources ABS Competence

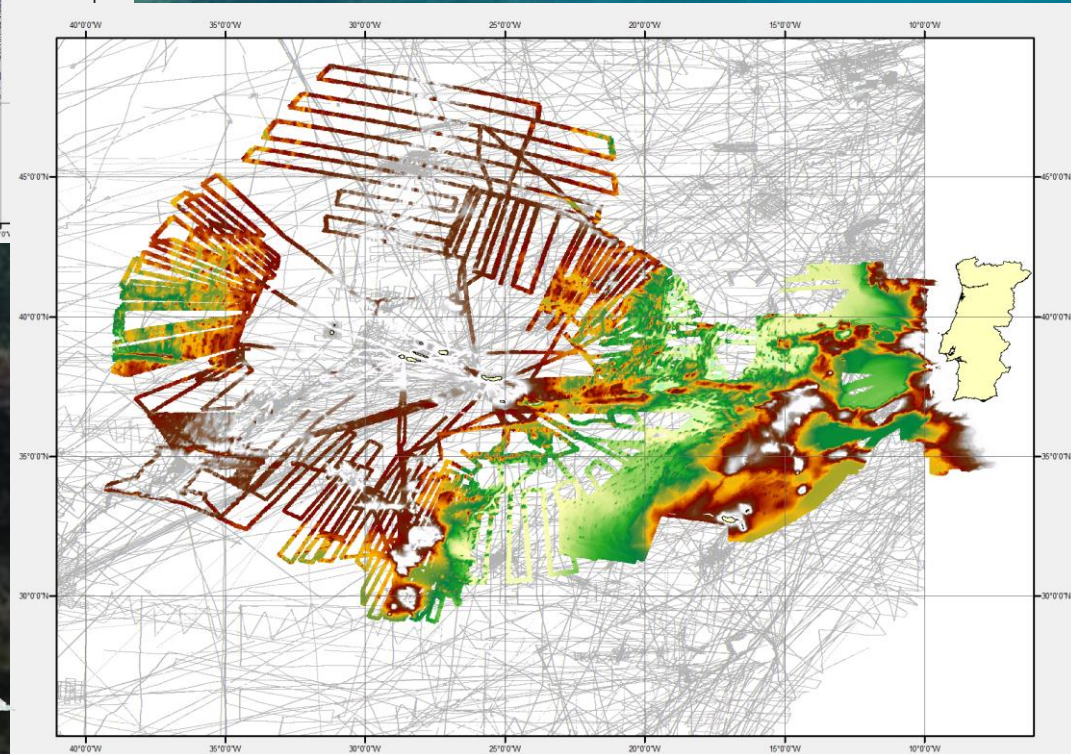


Before

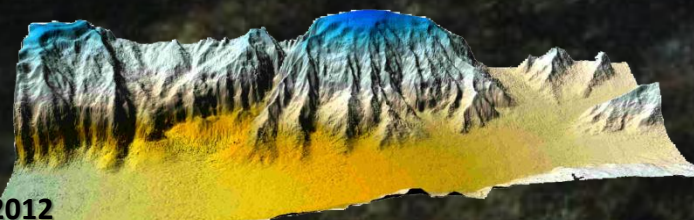


After

Resolution better than 250m



Resolution better than 250m



I – Marine Genetic Resources ABS Competence



I – Marine Genetic Resources ABS Competence

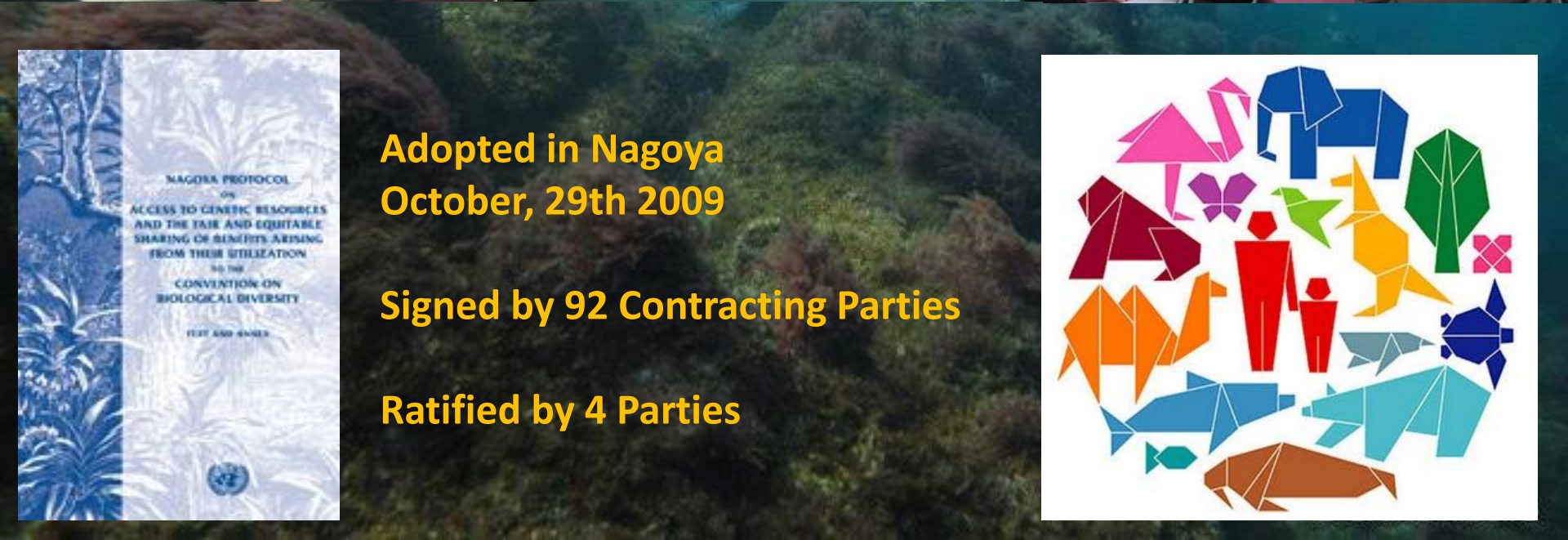
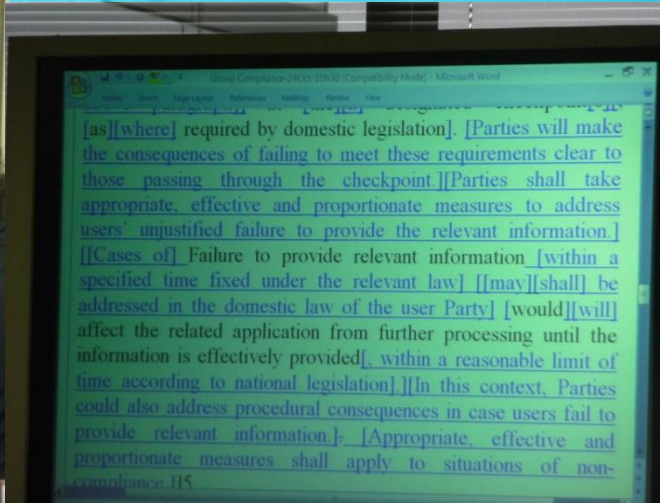
Legal framework: Convention on Biological Diversity

Article 1. Objectives



The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

I – Marine Genetic Resources ABS Competence



**Adopted in Nagoya
October, 29th 2009**

Signed by 92 Contracting Parties

Ratified by 4 Parties



I – Marine Genetic Resources ABS Competence

Lisbon Treaty

Article 3 (exclusive competences)

...

(d) the conservation of marine biological resources under the common fisheries policy;

Access to MGR is not included

II - Public consultation on the Nagoya Protocol

PUBLIC CONSULTATION ON THE IMPLEMENTATION AND RATIFICATION 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

From 24/10/2011 to 30/12/2011

Questionnaire on the best way to benefit from ABS legislation

43 responses

II - Public consultation on the Nagoya Protocol

EFPIA (pharmaceutical)

EUROPABIO (bio industry)

EFCI (cosmetic)

FEBEA (beauty and wellness)

Hungarian Intellectual Property Office

Justice and Environment (Law)

Leibniz Institute DSMZ (public service collection)

Netherlands Biotech Industry Association

NOVARTIS (health and wellbeing)

Pierre Fabre Laboratoires

Ministry of Environment of Norway

Union for Ethical Bio trade

University of Azores

II - Public consultation on the Nagoya Protocol

Problems Identification:

1. Different legislation would impose a huge workload on applicants and set up limitations for intra-EU-commerce. Non enough co-ordinated legislation is building potential “Babel Tower” . Overburdening administrative work.
2. Only important companies have enough time and resources to devote to bilateral negotiation or to comply with national rules
3. It is not national borders that dictate the presence or absence of organisms nor their properties but the ecosystems and environment.
4. ABS regulatory framework mainly focuses on monetary incentive schemes that imperfectly integrate other broader social values associated with the use and exchange of genetic resources, such as biological diversity conservation or sustainable use of genetic resources.

II - Public consultation on the Nagoya Protocol

Examples of implementation mechanisms:

1. **Bonn Guidelines and sector specific approaches can be utilised as tools in the implementation of the Nagoya Protocol.**
2. **Norwegian Marine Resources Act (2008) and The Nature Diversity Act (2009)**
3. **Access in the UK is generally covered by laws addressing property, trespass and intellectual property and regulations applied to protected areas**
4. **Specific ABS regulations in one outermost region (French Guyana for the area of the National Park) and in one OCT (South Province in New Caledonia)**
5. **Australian example**
6. **Belgium Contractual arrangements for access to GRs (generally confidential)**

III - A possible way to achieve the implementation of the Nagoya Protocol



Valid simplified procedures with legal certainty are likely to reduce the administrative burden

The EU responsibility in this area is negotiating common approaches, check points and procedures where possible, that facilitate exchange within the EU. Harmonisation should be at the procedural and reporting levels. It should be left to nations to what extent they put in place legislative requirements.

New procedures or an adjustment of the existing ones will probably be necessary, but not new structures or institutions

Mutual checkpoints at European level could be seen as opportunities to facilitate relationships and mutual understanding between providers and users.

The measures main induce EU cooperation but never impose EU rules equal to all states

III - A possible way to achieve the implementation of the Nagoya Protocol



National legislation

National access laws and participatory mechanisms are best suited to adapt to local realities and stakeholders needs (Commission, Communication, 23/10/2003)

Ratification by member States will:

1. require new EU legislation
 2. Affect EU legislation
 3. Be in conflict with the EU Treaty
- (Note of the Commission, 06/10/2010)

EU common approaches

Uniform or harmonious might enhance compliance with ABS legislation and there might be possibilities of designating some EU institutions as checkpoints
Koester, Veit (2012)

III - A possible way to achieve the
implementation of the Nagoya Protocol



National legislation and EU common approaches

Simplicity Homogeneity Rapidity

ATLANTIC FORUM

Coastal and Deep Sea Natural Resources



Azores, 21st September, 2012



emepc

Estrutura de Missão para a
Extensão da Plataforma Continental

Thank you

Maria Ana Martins

mamartins@emepc-portugal.org

Portuguese Task Group for the
Extension of the Continental Shelf

Picture taken by
© Bruno Ribeiro