



## CONCEPT NOTE

### SECOND NEGOTIATIONS MEETING

#### AMENDMENT OF THE NAIROBI CONVENTION PROTOCOL CONCERNING PROTECTED AREAS WILD FAUNA AND FLORA IN THE EASTERN AFRICAN REGION

13-15 September 2023  
Antananarivo, Madagascar

#### INTRODUCTION

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The [Nairobi Convention](#) for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean Region (as amended in 2010), together with its [Protocol](#) concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region and the Protocol concerning Co-operation in combating Marine Pollution in Cases of Emergency ([Emergency Protocol](#)) in the Eastern African Region were enacted in Nairobi on 21 June 1985. In 2010 a Protocol for the Protection of the Marine and Coastal Environment of the Western Indian Ocean ([LBSA Protocol](#)) was adopted alongside the Amended Nairobi Convention. These instruments collectively constitute the regional legal framework for the protection and conservation of the marine and coastal environment of the Western Indian Ocean (WIO) region. Moreover, the Contracting Parties have since negotiated a Protocol on Integrated Coastal Zone Management in the Western Indian Ocean ([ICZM Protocol](#)), to be adopted by the Convention's Conference of Plenipotentiaries.

The 1985 Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region ([the Protocol](#)) obliges the Contracting parties to take all appropriate measures to maintain essential ecological processes and life support systems, to preserve genetic diversity, and to ensure the sustainable utilisation of harvestable natural resources under their jurisdiction. In particular, the Protocol seeks to protect and preserve rare and fragile ecosystems as well as rare, depleted, threatened or endangered species of wild fauna and flora and their habitats in the Eastern Africa region. The Protocol entered into force on 30 May 1996. The need to amend the Protocol has been stated by the Contracting Parties to the Nairobi Convention on several of the Conference of Parties (COP) to the Convention. These include [COP3](#) (Maputo, 2001), [COP4](#) (Antananarivo, 2004), [COP7](#) (Maputo, 2007), [COP8](#) (Mahe, 2015), [COP9](#) (Mombasa, 2018) and [COP10](#) (Mombasa, 2021). The Kunming-Montreal [Global Biodiversity Framework](#) of the [Convention on Biological Diversity](#) adds more impetus to the amendment of the Protocol.

The programme on capacity building related to Multilateral Environmental Agreements (MEAs) in the African, Caribbean and Pacific (ACP) Group of States ([ACP MEAs 3 Programme](#)) results from a partnership between the European Commission ([EC](#)), the Secretariat of the African, Caribbean and



Pacific Group of States ([ACP Secretariat](#)), the United Nations Environment Programme ([UNEP](#)) and the Food and Agriculture Organization of the United Nations ([FAO](#)). The aim of the programme is to empower key stakeholders to address environmental challenges and to reap the benefits of improved environmental management at the national and regional level. In the context of the Nairobi Convention in the Western Indian Ocean region, Phase III of the ACP MEAs Programme aims at better management of coasts and oceans, enhancing ocean governance and supporting effective implementation of the Convention.

## **MARINE BIODIVERSITY OF THE WESTERN INDIAN OCEAN**

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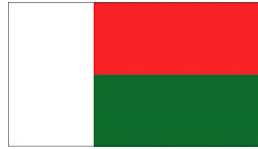
The Kunming-Montreal Global Biodiversity Framework (GBF) [adopted in December 2022](#) observes that biodiversity is fundamental to human well-being and a healthy planet. It underpins virtually every part of our lives; we depend on it for food, medicine, energy, clean air and water, security from natural disasters as well as recreation and cultural inspiration, among others. More than half of the global gross domestic product (GDP) relies on biodiversity and healthy ecosystems. The ambition of GBF is to deliver on the 2050 vision of the Convention “living in harmony with nature” through four goals for 2050 and 23 interim targets for achievement by 2030. Critical in the GBF are Goal A (biodiversity) Goal B&C (sustainable use and benefit sharing) and Goal D (means of implementation). Almost all the 23 targets are important for amendment of the Protocol Concerning Protected Areas wild flora and fauna in the Western Indian Ocean. They include effectively protecting 30% of all ecosystems (including marine), placing 100% of marine areas under biodiversity-inclusive spatial planning, supporting restoration (the actual target needs to be determined nationally) and promoting sustainable use across 100% of areas outside of protected areas, through fisheries, tourism, and other economic sectors. The monitoring framework of the GBF cites coral, algae and fish variables as complementary indicators supporting the calculation of headline indicators, in particular ‘ecosystem extent’ and the ‘Red List of Ecosystems’ for coral reefs.

The Global Assessment Report on Biodiversity and Ecosystem Services issued by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) in 2019,<sup>1</sup> fifth edition of the [Global Biodiversity Outlook](#), and many other scientific documents provide ample evidence that, despite ongoing efforts, biodiversity is deteriorating worldwide at rates unprecedented in human history. An average of around 25 per cent of species in assessed animal and plant groups are threatened, suggesting that around 1 million species already face extinction, many within decades, unless action is taken to reduce the intensity of drivers of biodiversity loss. Without such action, there will be further acceleration in the global rate of species extinction, which is already at least tens to hundreds of times higher than it has averaged over the past 10 million years.<sup>1</sup>

The Western Indian Ocean (WIO) is renowned for the richness of its marine biodiversity, especially that associated with the region’s widespread coral reef systems. The mangroves, seagrasses, rocky and sandy shorelines with associated dune systems and coastal forests, and the deep-sea features such as

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<sup>1</sup> IPBES (2019): *Global Assessment Report on Biodiversity and Ecosystem Services*. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn. 1,148 pages. <https://doi.org/10.5281/zenodo.3831673>.



seamounts, ridges and abyssal plains also contribute substantially to the biodiversity of the region. The innumerable islets and atolls scattered across the WIO also support extraordinary biodiversity, including vast numbers of often rare, endemic and endangered marine species. The unique biodiversity plays an essential role in water quality regulation, coastal protection, carbon fixation and storage, and increased resilience from climate change as well as providing feeding, breeding or nursery grounds of species of commercial interest for fisheries and endangered or threatened species.

The rich marine biodiversity supports burgeoning coastal populations both directly, through the provision of a variety of marine resources and vital ecosystem services such as coastal protection, and indirectly, through the opportunities it provides for economic growth through sectors such as fisheries, tourism, infrastructure development and others. The combined population for the WIO region is 244 million, and the ten countries in the region are Contracting Parties to the Nairobi Convention for the protection, management and development of the coastal and marine environment of the WIO region.

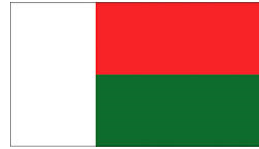
The economic value of the WIO ecosystems' goods and services is estimated at over USD 20 billion Gross Marine Product per annum and a total asset base of over USD 333.8 billion. With over 25 percent of the WIO population (about 65 million people) living within 100km of the coastline, the coastal and marine ecosystems provide essential sources of livelihoods and income to coastal communities and significantly contribute to national economies. However, the WIO is threatened by ecosystem degradation from rapid urbanization, increased population growth, coastal development, including land reclamation and conversion. Impacts of climate change and variability have led to coral bleaching, sea-level rise, flooding and other effects. In response to the emerging natural and anthropogenic challenges, Contracting Parties to the Nairobi Convention are adopting an integrated approach in the management of ocean resources to maintain a balance between conservation and development. The approach aligns with the 2030 Global Agenda for Sustainable Development with Sustainable Development Goal (SDG) 14 focusing on the need to mobilize global effort to conserve and sustainably use the oceans, seas and marine resources for sustainable development.

## WHY THE AMENDMENT

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There are advantages in a regional approach to addressing some environmental issues such as marine biodiversity. Such regional arrangements facilitate policies and rules appropriate to the needs of the Western Indian Ocean. Secondly, political consensus may be obtainable at a regional level which could sometimes be a challenge at global level, and thirdly, cooperation in enforcement, monitoring and information exchange may be easier to arrange. In relation to national approaches, a regional approach is beneficial as it creates standards to which national frameworks can aspire or adapt. A regional protocol also recognizes the interconnectedness of ecosystems and processes.

The Protocol Concerning Protected Areas and Wild Fauna and Flora of the Eastern African Region as adopted in 1985 *“provided for the protection and rational development of the living resources of the region, which are a natural heritage with important economic and social values and potential, through the preservation of habitats, the protection of species, and the careful planning and management of*



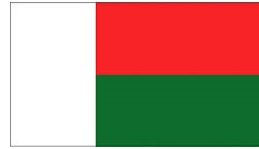
*human activities that affect them.*” The Protocol recognises the “*danger from increasing human activities*” and stresses the importance of protecting and improving the state of the wild fauna and flora and natural habitats of the WIO region “*among other means by the establishment of specially protected areas in the marine and coastal environment.*” However, the Protocol fails to elaborate in detail on the dangers and threats to marine and coastal areas and biological diversity in the region, and the interconnectedness of the habitats, ecosystems and species. The Protocol also fails to acknowledge existing international and regional legal and policy instruments, some of which were developed after the protocol was adopted. The three planetary crises of pollution and waste, climate change, and biodiversity loss, have further compounded the integrity of coastal and marine resources across the WIO region.

The amendment of the Protocol and its annexes was pursuant to pertinent decisions of the Conferences of Parties to the Nairobi Convention that have recommended that this Protocol be reviewed and amended to strengthen its legal framework for an effective regime for biodiversity conservation, and management of marine and coastal ecosystems across sectors and national boundaries.

The amendment also aims to provide a stronger framework for addressing current and emerging threats to the coastal and marine biodiversity from threats such as anthropogenic pressures (growing intensity of human settlements and unsustainable socioeconomic activities, coastal development, habitat degradation), natural disasters and climate change. The review amendment and negotiations of the Protocol and its annexes shall be informed by science, taking into account the latest scientific information available in the region such as from the Marine Protected Areas Outlook, Critical Habitats Outlook, and the Sharks and Rays Review Report. The amendments are cognizance of the goals of the 2022 Global Biodiversity Framework and its 23 targets. The amendment requires involvement of relevant stakeholders.

## **NATIONAL COASTAL AND MARINE BIODIVERSITY CONSIDERATIONS**

It will be important to reflect further on some key questions related to the Protocol at the national level. What are the conservation gains since the Protocol was enacted in 1985 and what contemporary processes are in place to guide future conservation policy and actions at national and regional level? What has been the progress to (i) reduce loss of critical habitats, (ii) to increasing protected area coverage and their representation for ecological connectivity. (iii) What efforts have been made to minimize threats to ecosystems, ensure genetic diversity, and maximise conservation and socioeconomic outcomes. What is the national biodiversity status of Marine Protected Areas in supporting conservation strategies that promote persistence of species population, offshore habitats such as seamounts, Key Biodiversity Areas (KBAs), and Important Bird Areas? What percentage of larval fish dispersal corridors and spawning sites of transient reef fish species are protected by each Contracting Party? What is the status of locally managed marine areas that support successful socioeconomic outcomes and sustainable fisheries? What is the extent and status of the marine



ecosystems including fisheries in the areas beyond the national jurisdiction (ABNJ)? What is the significance of the ABNJ on the governance of the marine and coastal resources of a given Contracting Party?

Other areas of consideration during the second negotiations would include a look at pressures and drivers prevalent in the Western Indian Ocean. For example, what are the impacts of climate change, sea level rise, damming and water abstraction, on the coastal and marine ecosystems and livelihood of coastal communities in the WIO? How is overharvesting of most of the coastal natural resources impacting on the critical coastal and marine ecosystems? How does the major shift of emphasis on the Blue Economy and infrastructure development projects by a number of Contracting Parties relate with the coastal and marine ecosystems and livelihoods?

Negotiators will be interested to identify key strategies that are in place for achieving national and regional biodiversity conservation and sustainable development. Also, it will be important to reflect on the roadmap for developing and achieving marine biodiversity targets and indicators, socioeconomic objectives and complementary policies for climate change adaptation and sustainable development goals. What national goals are aligned to the emerging marine biodiversity indicators and targets in the Global Biodiversity Framework, such as the WIO ecosystems indicator monitoring framework - to support mainstreaming of biodiversity conservation at national level?

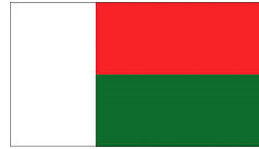
Some final thoughtful questions: Does amending the Protocol require a regional governance framework to integrate national initiatives, goals, and objectives into broader regional and global goals? Which transboundary conservation initiatives between countries are required to facilitating equitable protection efforts? What areas of cooperation within the WIO region are needed to ensure a better representation of biodiversity and ecosystem processes? Which quality and sustainable development targets are needed to better harmonise regional goals and national initiatives such as the blue economy and marine spatial planning? Which common indicators are needed for conservation, sustainable development, and climate change adaptation at national and regional level? What capacity needs and precautionary measures are needed for achieving biodiversity conservation and sustainable development in the region? What will be the reporting mechanisms by the Parties on progress in the implementation of the Protocol?

It is envisaged that the second negotiations and the resultant amendments will effectively lead in the conservation and sustainable utilisation of the region's coastal and marine resources, strengthen the resilience of ecosystems supporting a healthy and productive ocean, and halt biodiversity loss. It is planned that the texts for the amendment to the Protocol and its Annexes will be negotiated for a short period, and later presented for consideration and possible adoption at a Conference of Plenipotentiaries.

## **FIRST NEGOTIATIONS MEETING**

In response to the intensification of pressures resulting from both anthropogenic and natural factors in the WIO region the [ACP MEAs Programme in the Nairobi Convention area](#) supported, during 2021 the [justification](#) for review and amendment of the Protocol Concerning Protected Areas and Wild Fauna





and Flora of the Eastern African Region. A review of the Protocol sought to incorporate recent and ongoing global commitments and processes on biodiversity including adoption of an ecosystem-based approach (EbA) to the management of the coastal and marine environment.

Prior to the first negotiations of the Protocol, the Nairobi Convention had shared a report highlighting justification for review and amendment of the Protocol in 2021 and shared for further technical review by the Focal Points to the Nairobi Convention in February 2022. The report took note of new and emerging environmental issues as well as ongoing global and regional discussions that needed to be considered in the review of the Protocol. The report elaborated on the justification for amending the Protocol including the why and the how of amending specific articles.

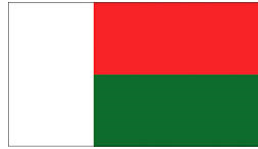
The justification was drawn from emerging reports on the state of critical habitats, species, and ecosystems of the Western Indian Ocean, and recent global instruments including by CITES, CBD, CMS and ongoing discussions on protected areas, wild fauna and wild flora, Sustainable Development Goals, Aichi Biodiversity Targets, Global Biodiversity Framework, the Paris Agreement, African Union Agenda 2063, and the 19 June 2023 the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction ([A/CONF.232/2023/4](#)). Potential areas for review and proposed amendments were made directly on the 1985 Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region. The proposed amendments to the Protocol and its annexes were presented to the first negotiation by the Ad hoc Legal and Technical Working Group as nominated by the Contracting Parties.

The first negotiations for amending the Protocol held in Antananarivo, Madagascar, on 15–18 November 2022 focused on a draft Protocol. The draft Protocol prepared by the Secretariat had rearranged the articles from the 1985 original Protocol and offered to the negotiators as a draft proposal with an overview of proposed articles for revision around (i) General Provisions, (ii) Protection of species, (iii) Protected areas, (iv) Provision common to protected areas and species, and (v) Institutional and final provisions. At the end of the 4 days of negotiation, changes, comments, edits, additions and reformulation of the draft protocol proposal were captured by the secretariat. The revised the draft text of the Protocol and which will inform the second negotiations is available at <https://nairobiconvention.org/clearinghouse/node/930>

## **NEGOTIATION SKILLS**

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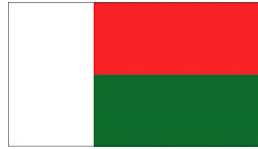
Experience and knowledge in negotiation skills are a prerequisite for effective participation at negotiations for amending the Protocol. For a sustained impact, capacity building is an important trigger for developing and increasing negotiation skills and technical knowhow that is needed for amending the Protocol and for fostering national, regional and global objectives on marine biodiversity. In addition to building national and regional negotiating skills, effective negotiations require relevant available information prior to meetings on issues of the Protocol. Negotiators require up to date information on the state of marine biodiversity to respond effectively in the negotiations. A short training on negotiation skills and etiquette may be offered at the second negotiations meeting. Technical documents for the negotiators are available at this [link](#).



## **OBJECTIVES OF THE SECOND NEGOTIATIONS MEETING**

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- a. To introduce negotiations skills and etiquette at the second negotiations for amending the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, including Strategic negotiations issues
- b. To give technical observations, analysis and review on the comments made during the first negotiations for amending the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region addressing coherence, redundancies, consistency, and ease of communication including identifying potential areas of technical solutions
- c. To successfully hold and engage in the second negotiations for the amendment of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region



## **PROVISIONAL PROGRAMME**

The First Negotiation Meeting for amending of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region

**Date: 13-15 September 2023**  
**Antananarivo, Madagascar**

1. Opening Addresses
  - a. Nairobi Convention Secretariat
  - b. Representative of the Government of Madagascar
  - c. Chair of Bureau - Government of Madagascar
2. Introductions
3. Organizational matters
  - a. Election of officers
  - b. Adoption of the agenda
  - c. Organization of work
4. Negotiation skills and etiquette
5. Overview of the comments made at the first negotiations meeting for amending of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region
6. Second negotiations on articles of the proposed draft Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region
7. Closure of the Meeting.

## **DELIVERABLES**

1. Capacity building on negotiation skills
2. Consensus on the observations and comments on the draft Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region
3. Second negotiated draft of the amended articles of the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region



## PROVISIONAL AGENDA

Day/Time	Session	Responsible
<b>Day 1</b>		
8:30-9:00	Registration	
9:00-9:30	<b>SESSION I: Opening of the Meeting</b>	NCS
	<ul style="list-style-type: none"> <li>Welcoming remarks by NC Secretariat</li> </ul>	NCS
	<ul style="list-style-type: none"> <li>Introductions by Contracting Parties and Partners</li> </ul>	
	<ul style="list-style-type: none"> <li>Welcome by the Government Madagascar</li> </ul>	Madagascar
	<ul style="list-style-type: none"> <li>Opening statement by the Chair of the Bureau of the Nairobi Convention</li> </ul>	Madagascar
9:30-10:30	<b>SESSION II: Organization of matters</b>	Chair of Bureau
	<ul style="list-style-type: none"> <li>Presentation of letters of accreditation</li> </ul>	
	<ul style="list-style-type: none"> <li>Election of Officers</li> </ul>	
	<ul style="list-style-type: none"> <li>Adoption of the Agenda</li> </ul>	
<b>10:30</b>	<i>Break and group photo</i>	
	<b>SESSION III: Technical presentations</b>	Chair of Bureau
11:00-12:00	<ul style="list-style-type: none"> <li>Negotiation skills and etiquette</li> </ul>	NCS
12:00-13:00	<ul style="list-style-type: none"> <li>Overview of the comments made at the first negotiations meeting for amending of the Protocol</li> </ul>	NCS
<b>13:00-14:00</b>	<i>Lunch break</i>	
	<b>SESSION IV: Negotiations - Part I &amp; II</b>	Elected Chair
14:00-14:45	<ul style="list-style-type: none"> <li>The Preamble</li> </ul>	
14:45-15:15	<ul style="list-style-type: none"> <li>Article 1</li> </ul>	
15:15-15:45	<ul style="list-style-type: none"> <li>Article 2</li> </ul>	
15:45-16:15	<ul style="list-style-type: none"> <li>Article 2A</li> </ul>	
<b>16:15-16:30</b>	<i>Health break</i>	
16:30-17:00	<ul style="list-style-type: none"> <li>Article 3</li> </ul>	
	End of Day 1	
<b>Day 2</b>		
9:00-9:05	Recap of Day 1	Elected Chair
	<b>SESSION V: Negotiations - Part II &amp; III</b>	
9:05-9:35	<ul style="list-style-type: none"> <li>Article 3B</li> </ul>	
9:35-10:05	<ul style="list-style-type: none"> <li>Article 5</li> </ul>	
10:05-10:30	<ul style="list-style-type: none"> <li>Article 6</li> </ul>	
<b>10:30-11:00</b>	<i>Health Break</i>	
11:00-11:30	<ul style="list-style-type: none"> <li>Article 6A</li> </ul>	
11:30-12:00	<ul style="list-style-type: none"> <li>Article 7</li> </ul>	
12:00-12:30	<ul style="list-style-type: none"> <li>Article 8</li> </ul>	
12:30-13:00	<ul style="list-style-type: none"> <li>Article 10</li> </ul>	
<b>13:00-14:00</b>	<i>Lunch break</i>	
14:00-14:30	<ul style="list-style-type: none"> <li>Article 10A</li> </ul>	
14:30-15:00	<ul style="list-style-type: none"> <li>Article 10B</li> </ul>	
15:00-15:30	<ul style="list-style-type: none"> <li>Article 10C</li> </ul>	
15:30-16:00	<ul style="list-style-type: none"> <li>Article 10D</li> </ul>	
16:00-16:30	<ul style="list-style-type: none"> <li>Article 11</li> </ul>	
<b>16:30-16:45</b>	<i>Health Break</i>	
16:45-17:15	<ul style="list-style-type: none"> <li>Article 9</li> </ul>	
	End of Day 2	
<b>Day 3</b>		
9:00-9:05	Recap of Day 2	Elected Chair

Day/Time	Session	Responsible
	<b>SESSION VI: Negotiations - Part IV</b>	
9:05-9:35	• Article 12	
9:35-10:05	• Article 14	
10:05-10:30	• Article 15	
<b>10:30-11:00</b>	<i>Health Break</i>	
11:00-11:30	• Article 16	
11:30-12:00	• Article 17	
12:00-12:30	• Article 18	
12:30-13:00	• Article 20	
<b>13:00-14:00</b>	<i>Lunch Break</i>	
14:00-14:30	• Article 21	
14:30-15:00	<b>SESSION VII: Negotiations - Part V</b>	Elected Chair
15:00-15:30	• Article 21A	
15:30-16:00	• Article 22	
16:00-16:30	• Article 22A	
<b>16:30-16:45</b>	<i>Health Break</i>	
16:45-17:15	• Article 22B	
17:15-17:45	•	
	End of Day 3	
<b>Day 4</b>		
9:00-9:05	Recap of Day 3	
	<b>SESSION VIII: Technical - ANNEXES</b>	Elected Chair
9:05-9:35	• Annex I and discussions	
9:35-10:05	• Annex II and discussions	
10:05-10:30	• Annex III and discussions	
<b>10:30-11:00</b>	<i>Health Break</i>	
11:00-12:30	• Annex IV and discussions	
	<b>Closing of the negotiation meeting</b>	
12:30-12:40	Closing remarks by the Head of the Nairobi Convention secretariat	NCS
12:40-12:50	Closing remarks by Madagascar	Government of Madagascar
12:50-13:00	Closing remarks by the Chair of the Bureau	Madagascar
<b>13:00-14:00</b>	<i>Lunch break</i>	
14:00-16:00	Meeting of the focal points	NCS