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Meeting of the Parties to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters

Working Group on Genetically Modified Organisms

REPORT OF THE THIRD MEETING

1. The third meeting of the Working Group on Genetically Modified Organisms (GMOs) took place in Geneva on 24-26 March 2004.

2. The meeting was attended by representatives from the Governments of Armenia, Austria, Azerbaijan, Belgium, Denmark, Finland, France, Georgia, Germany, Ireland, Italy, Kyrgyzstan, Netherlands, Norway, Spain, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, United Kingdom, United States of America and Uzbekistan. The Commission of the European Communities was also represented.

3. Representatives from the United Nations Environment Programme's Global Environment Facility (UNEP/GEF) Development and Implementation Project on National Biosafety Frameworks attended the meeting.

4. The following regional environmental organizations were represented: Regional Environmental Center for Central and Eastern Europe (REC) and Regional Environmental Centre Russia.

5. The following non-governmental organizations were also represented: Biosafety Interdisciplinary Network (Switzerland), CropLife International, European ECO Forum, Friends of the Earth (Ukraine), GLOBE Europe, International Environmental Resources, and Union for the Protection of Consumer Rights (Armenia).

6. Mr. Helmut Gaugitsch (Austria), Chairman, opened the meeting by reminding the Working Group of its mandate, set out in decision I/4 of the Meeting of the Parties, and invited delegations to examine and build upon the work done in the previous two meetings in order to select and develop the most appropriate legally binding options for public participation in decision-making on genetically modified organisms for possible decision and, if appropriate, adoption at the second meeting of the Parties. The Chairman informed the Working Group of the outcome of the first meeting of the Working Group of the Parties (23-24 October 2003), at which it had urged the Working Group on Genetically Modified Organisms to continue to work towards the timely fulfilment of its mandate.

7. The Chairman also briefly reported on the outcome of the first meeting of the Parties to the Cartagena Protocol, in particular on decisions that were closely related to the themes of the Aarhus Convention, i.e. on the adoption of a mid-term programme of work and capacity-building with respect to the implementation of article 23 of the Protocol.

8. Following a request made by the Working Group at its second meeting (1-3 October 2003), the secretariat had written a letter to the secretariat of the Convention on Biological Diversity to discuss possibilities for cooperation on these matters. In his response to this letter, Mr. Hamdallah Zedan, Executive Secretary of the Convention on Biological Diversity, had highlighted the important role that the Aarhus Convention was playing in promoting public participation in decision-making on GMOs and agreed that the Cartagena Protocol and the Aarhus Convention could complement each other and be mutually supportive. Furthermore, Mr. Zedan had expressed the belief that the outcome of the processes under the Aarhus Convention, in particular discussions in the Working Group on GMOs, would contribute significantly to the consideration of the subject matter under the Cartagena Protocol.

I. ADOPTION OF THE AGENDA

9. The Working Group adopted the agenda for the meeting as set out in document MP.PP/AC.2/2004/1.

II. LEGALLY BINDING OPTIONS FOR FURTHER DEVELOPING THE APPLICATION OF THE CONVENTION TO GENETICALLY MODIFIED ORGANISMS

10. At the second meeting of the Working Group and in the comments provided in advance of the third meeting, some delegations had proposed to examine the possibility of pursuing a differentiated approach with respect to the development of legally binding options within the framework of the Environment Strategy for Eastern Europe, the Caucasus and Central Asia (EECCA) adopted at the fifth Ministerial 'Environment for Europe' Conference (Kiev, 21-23 May 2003). The Chairman invited Ms. Mary Pat Silveira (UNECE), secretary of the 'Environment for Europe' process, to inform the Working Group about this process. Ms. Silveira informed the Working Group of the history and structure of the process as well as its functions in relation to the regional environmental legal instruments. Whereas the 'Environment for Europe' process had welcomed and encouraged the

negotiation, adoption and ratification of legal instruments, neither the Ministerial Conference nor its preparatory group had engaged yet in the negotiation of new instruments. The EECCA Strategy, which had been designed as a partnership of all UNECE member States, encouraged cautious approaches to decision-making on the use of GMOs, based on the precautionary principle.

11. In order to promote the exchange of information on the implementation of the Cartagena Protocol, the Chairman invited the representatives of the UNEP/GEF Development and Implementation Project on National Biosafety Frameworks to present the progress in their work. It was explicitly pointed out that EECCA countries were involved in developing or implementing national biosafety frameworks. Mr. Christopher Briggs and Mr. Piet van der Meer (UNEP/GEF) reported on the projects to develop and implement national biosafety frameworks, in particular with respect to their public participation component and taking into account the Aarhus Guidelines. This component included both a requirement to include a wide range of stakeholders in national coordinating committees, including all relevant ministries in participating countries, and the application of national public participation legislation and mechanisms in decision-making on GMOs. Electronic versions of these presentations can be found at www.unece.org/env/pp/gmo.htm. The development projects were all due to be completed during 2004-2005. All participating countries that had not yet signed or ratified the Protocol had committed themselves to ratifying before the end of the projects. In the opinion of UNEP/GEF, preliminary analysis did not seem to indicate that EECCA countries at this stage considered public participation to be a gap. Some delegations disagreed.

12. The Chairman invited delegations to take account of these important processes and developments and to move forward in the exploration of possible legally binding options for developing the application of the Convention to decision-making on GMOs. A general discussion took place on the comments submitted after the second meeting of the Working Group on possibilities for pursuing a differentiated approach and elements of preferred legally binding options. Divergences similar to those that had occurred during the discussion in the previous meeting emerged. EU delegations expressed the view that it would be very difficult for them to take position on one particular form of a legally binding option pending further progress on other items of decision I/4. Some EU delegations stated that more experience should be gained with the application of the relevant EU legislation and the Guidelines adopted at the first meeting of the Parties as well as addressing paragraph 3 (a), (b) and (c) of decision I/4. Other delegations felt that the Working Group should continue with the exploration of a possible legally binding approach. Such an approach was deemed necessary to make sure that an adequate legal framework for public participation was in place in all countries of the UNECE region.

13. To structure the discussion, the Chairman invited the Working Group to examine and discuss three options which, in his view, had gained the widest support in the previous discussions and in submissions provided in advance of the meeting by delegations that were in a position to express an opinion.

Option 1: deletion of article 6, paragraph 11, and the inclusion of GMOs in annex I;
Option 2: insertion of a new provision under article 6, paragraph 1 (a) bis, amendment of article 6, paragraph 11, and addition of a new annex;

Option 3: either replacement of article 6, paragraph 11, or its deletion and introduction of a new article 6 bis making a cross reference to the Guidelines and introducing the idea of further modalities to be addressed at the second meeting of the Parties.

Under the three options, a Party would be able to apply a national regulatory framework which provided equivalent guarantees. The Chairman introduced each of the three options and invited delegations to indicate which options would be acceptable as a starting point for negotiations on the elements of a decision to be presented for consideration and adoption at the second ordinary meeting of the Parties. He emphasized that all other options were still on the table.

14. The delegation of Ireland, on behalf of the European Union and the accession States, stated a general reservation with respect to taking a formal position on any of the three options, but also expressed a willingness to adopt a constructive approach and to discuss all options that would be brought forward in the discussion.

15. Some delegations expressed a clear preference for option 1, but were also willing to discuss option 2. Other delegations questioned the suitability of option 1 by highlighting a need to further discuss the application of public participation procedures to research and development, including possible exemptions. One delegation questioned the applicability of option 1 by suggesting that might create conflicting obligations with other international legal agreements.

16. Some delegations expressed a preference for option 2, while others felt that a clearer view on the application of public participation procedures contained in article 6, paragraphs 2 to 10, was needed before this option could be further considered.

17. At this stage, option 3 received no clear support, as all delegations agreed that a further consideration of the scope of decision-making to be covered by public participation procedures from article 6, paragraphs 2 to 10, was needed to proceed with discussions. Several delegations expressed a need for an agreement on the definition of deliberate release, while others questioned whether the reference made in this option to the non-legally binding Guidelines would be possible in a legally binding amendment to the Convention.

Scope of decision-making

18. Since some delegations felt that there was a need to clarify the possible scope of application of public participation procedures to decision-making on different types of activities involving GMOs, the Chairman presented a text that could be included either in annex I or in annex Ibis, depending on which of the three options would be pursued. He proposed that delegations should examine the following four types of activities involving GMOs:

(a) Deliberate release;
(b) Placing on the market;
(c) Contained use of a genetically modified micro-organism (GMM);
(d) Contained use of a GMO other than a GMM.

The Chairman proposed that delegations should initially focus on the type of activities with GMOs, without reference to the applicability of the provisions set out in article 6, paragraphs 2 to 10.

19. With respect to decision-making on the deliberate release of GMOs, there was general agreement, the EU and accession countries apart, that 'deliberate release' should be covered regardless of the legally binding option pursued, and that the definitions of the key terms in the EU legislation should be used, except that there should be a clear differentiation between 'deliberate release' and 'placing on the market'. Some delegations suggested that no exceptions should be made with respect to public participation in decision-making on the deliberate release of GMOs, while others were of the view that certain exemptions should be allowed, in particular for research and pharmaceuticals.

20. With respect to decision-making on the placing of GMOs on the market, some delegations pointed out that this activity differed significantly from the others listed in annex I to the Convention and that it should not be included in an amendment to the Convention. Others disagreed, stating that such decision-making should be subject to public participation.

21. There was no consensus on decision-making on the contained use of GMOs. The EU and some other delegations wanted this type of activity to be exempted from public participation requirements, while others felt that public participation procedures should apply to decision-making on certain contained uses of both GMMs and other GMOs meeting certain criteria.

Applicability of public participation provisions to different categories of decision-making

22. To further structure this discussion and to address the introduction of modifications with respect to the type of activity that should be subject to public participation, the Chairman presented a revised version of option 2. It allowed for different public participation procedures to be applied to certain activities belonging to each of the three types of activities: deliberate release, placing on the market and contained use.

23. The Chairman convened an informal evening meeting of a small group to carry out preparatory work on behalf of the plenary. It was made clear that any conclusions of the small group would be referred to the plenary, and that any comments made in it would be without prejudice to positions that delegations might take subsequently in the plenary.

24. On the basis of this preparatory work, the Working Group discussed the applicability of article 6, paragraphs 2 to 10, to the deliberate release of GMOs other than placing on the market; and to the placing on the market of GMOs. The delegation of Ireland, on behalf of the EU and accession States, stated a general reservation with regard to taking a formal position on the conclusions reached (paras. 26-42 below).

25. There was general agreement that whatever changes, if any, might be made to the Convention to accommodate GMOs, it was not the intention to amend the public participation procedures for other activities covered by the Convention. In other words, if some provisions in paragraphs 2 to 10 were not applicable to GMOs, and if it were decided to amend the Convention to deal with GMOs

more fully, this would most likely be done through new text relating to GMOs rather than through amending paragraphs 2 to 10 themselves.

Deliberate release of GMOs other than placing on the market

26. Article 6, paragraph 2 (e), in its current form was considered not to be applicable to the deliberate release of GMOs. Some delegations felt that it might need to be explicitly mentioned that the provision did not apply to deliberate releases. Others took the view that, if the deliberate release of GMOs was not generally subject to a national or transboundary environmental impact assessment procedure, this would simply mean that there would be no need to notify the public in such cases that they were subject to such a procedure, i.e. the clause would not present any problem for deliberate releases. The Chairman proposed that the provision could be applied with the qualification 'if feasible and appropriate', since to not apply the provision at all would be to take a step backwards from the existing provision in article 6, paragraph 11, which was presumably not the intention.

27. The Working Group agreed that article 6, paragraph 5, was not particularly appropriate in the case of the deliberate release of GMOs but, since the provision was framed in recommendatory language and only to be applied 'where appropriate', it was not considered to be problematic.

28. With respect to article 6, paragraph 6, the Working Group considered that if the provision were to be tailored to fit deliberate releases of GMOs, it should be made clearer which information must under no circumstances be kept confidential, namely the information referred to in EU Directive 2001/18, article 25. The conclusions of the former Working Group to the effect that the references to 'expected residues and emissions' and 'emissions' in subparagraphs (a) and (c) should be construed as 'expected waste and its proposed treatment' in the case of GMOs were noted and endorsed. Subparagraph (e) was regarded as problematic by some delegations, as it was not required under EU legislation. Other delegations emphasized that, if the applicant had not studied any alternatives, the provision did not require any such studies to be carried out. The Chairman suggested that adding 'if available' might make this point clearer.

29. In article 6, paragraph 8, the reference to a requirement to take due account of the outcome of the public participation in the decision was considered by some delegations to go too far in the case of the deliberate release of GMOs, and to go beyond existing EU legislation. Other delegations considered this provision to be fundamental. Some delegations thought that clarification of what 'taking due account' meant could be useful, whereas others pointed out that no such clarification was provided for annex I activities and that to attempt clarification might result in being unduly prescriptive. The Chairman proposed to address this concern by clarifying that 'taking due account' would not mean that each submission by the public would have to be responded to individually.

30. With regard to article 6, paragraph 10, it was noted that an application for renewal of a permit for deliberate releases under EU legislation would not trigger a public participation procedure. Under article 8, paragraph 2, of Directive 2001/18, only if new information on significant risks for human health or the environment came to light, would this need to be provided to the public, but even this was not a public participation procedure. For these reasons, some delegations considered

that it would not be appropriate to apply article 6, paragraph 10, to the deliberate release of GMOs. The term 'operating conditions' was also considered to be inappropriate. Some delegations considered that since the provision was required to be applied only 'where appropriate', the situation of GMOs was already accommodated. The Chairman invited the European Commission to make a proposal on this point at its earliest convenience.

31. No other provisions of article 6 were considered to be problematic for deliberate releases other than placing on the market.

Placing on the market

32. With regard to article 6, paragraph 2, the Working Group discussed the implications of the reference to the 'public concerned'. It was noted that, in the case of the European Union, the market in question encompassed some 300 million people and that individual notification would not be practical. However, it was also noted that the provision only required the public concerned to be informed 'either by public notice or individually as appropriate' and it would clearly not be 'appropriate' to provide individual notification to each EU citizen every time a GMO was placed on the market.

33. With respect to article 6, paragraph 2 (a), it was mentioned that placing on the market was not really an activity; on the other hand, it was also pointed out that several other 'activities' in annex I were not really activities, such as dams and pipelines.

34. With respect to article 6, paragraph 2 (d)(iii), some delegations expressed concern about the reference to public hearings in the context of placing on the market, since these were not required under EU legislation. Others considered that the term 'any envisaged' made it sufficiently clear that there was no requirement for a public hearing in every decision-making process covered by the provision, just that where there was to be such a hearing, information on it should be provided.

35. With respect to article 6, paragraph 2 (e), similar differences of opinion emerged as on deliberate releases other than placing on the market.

36. Article 6, paragraph 5, was considered to be even less applicable to placing on the market than to other deliberate releases, but as in the other case, not problematic, due to the qualifier 'where appropriate'.

37. Article 6, paragraph 6 (a), was considered not to be appropriate to the placing on the market of GMOs. It was suggested that the wording of annex IV, paragraph. A5, of EU Directive 2001/18 could be used: 'description of the geographical area(s) and types of environment where the product is intended to be used, including, where possible, estimated scale of use in each area.' It was considered that the phrase 'including an estimate of the expected residues and emissions' could in the context of placing on the market be rephrased 'including specific conditions of use and handling', in line with EU Directive 2001/18, article 13, paragraph 2 (c).

38. Some delegations suggested that a specific reference to risk assessment in article 6, paragraph 6 (b), could be useful, whereas others felt that the existing wording covered this.

39. In article 6, paragraph 6 (c), as in article 6, paragraph 6 (a), it was considered that the phrase 'including emissions' could in the context of placing on the market again be rephrased 'including specific conditions of use and handling'.

40. There was a similar discussion on article 6, paragraph 6 (e), as had taken place on other deliberate releases, with views if anything more divided. Again, it was suggested that adding 'if available' might make this point clearer.

41. With respect to article 6, paragraph 8, the meaning of the requirement to take due account of the outcome of public participation was again raised and considered by some delegations as being problematic, due to the fact that it was not required under EU legislation on GMOs and the potential scale of the public concerned. The Chairman proposed to deal with this issue in the same way as with deliberate releases, namely to clarify that 'taking due account' would not mean that each submission by the public would have to be responded to individually.

42. With respect to article 6, paragraph 10, a similar discussion took place as in connection with the deliberate release of GMOs, though in this case article 24 of the EU Directive 2001/18 was considered by some delegations to be an important reference point. The Chairman invited the European Commission to make a proposal at its earliest convenience.

Options for further consideration

43. The Chairman presented a revised version of option 2, which attempted to reflect the discussions on the application of article 6, paragraphs 2 to 10, to certain activities related to the deliberate release of GMOs and the placing of GMOs on the market.

44. The delegation of Ukraine, on behalf of the EECCA countries, presented another option, which included text on possible differentiation in the application of public participation provisions set out in article 6, paragraphs 2 to 10, to certain activities involving GMOs, including deliberate releases, placing on the market and contained uses.

45. The delegation of Ireland, on behalf of the European Union, presented a 'non-paper' in support of the Chairman's efforts, outlining several additional options that, in the view of those delegations, contributed to the full picture of the debate at this and earlier meetings. It requested this to be annexed to the report.

46. The Chairman proposed that all the presented options should be annexed to the report of the meeting, namely the Chairman's option 1 (annex I), option 2 as revised during the meeting (annex II), option 3 (annex III), the option presented by the EECCA delegations (annex IV) and the various options contained in the European Union's non-paper (annex V). These options would then be used as a basis for discussion at the fourth meeting of the Working Group.

47. Some delegations considered that it was important to focus on a smaller number of options at the next meeting, and expressed the view that some of the options outlined in the 'non-paper' presented on behalf of the European Union and accession countries fell outside the scope of the mandate.

III. FUTURE PROCESS

48. To prepare for the next meeting of the Working Group, scheduled for 18-20 October 2004, delegations were invited to submit comments on any of the options annexed to the report of the meeting, including views on how to combine several options. It was agreed that any comments received by the secretariat would be made available on the Convention's web site in the language in which they were submitted. No specific deadline was set for these submissions, but delegations were invited to send their comments as soon as possible and at least two weeks before the meeting.

49. The Working Group mandated the Bureau and the secretariat to prepare a draft decision for the second meeting of the Parties (Almaty, Kazakhstan, May 2005). Delegations were invited to submit proposals for the decision by 15 June 2004.

50. The Working Group agreed that, if necessary, the Chairman would again consult the small group (see para. 23) to assist with the preparation of the next meeting.

IV. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

49. The Working Group adopted the report on the understanding that the French- and Russian-speaking delegates would reserve their positions until the report was available in French and Russian as well. The Chairman thanked the delegations for their contributions and welcomed the fact that they had really entered into concrete discussions on matters of substance. He urged delegations to continue to work on the issues during the intersessional period, keeping in mind the mandate of the Working Group, and expressed the hope that further progress at the next meeting would enable the Working Group to complete its task. Finally, he thanked the secretariat and interpreters for their support and closed the meeting.

Annex I

OPTION 1: Proposed by the Chairman

Article 6

Delete paragraph 11.

Annex I

Paragraph 20

After paragraphs 1-19 insert and 21 bis
Insert a new paragraph reading

21 bis [Except with respect to any Party that has in place a national regulatory framework which affords an equivalent guarantee of public rights of participation in decision-making on whether to permit such activities, the][The] following activities involving genetically modified organisms (GMOs):

(a) The deliberate release of a GMO 4/ for any purpose other than its placing on the market 5/ [, except if:

(i) Such a release [in the same location and] under comparable conditions has already been approved using a public participation procedure conforming to the requirements of article 6, paragraphs [2 to 10]; or
(ii) Sufficient experience 6/ has been gained with the release of this GMO];

(b) The placing of a GMO on the market 7/ [, except if:

(i) It was originally authorized using a public participation procedure conforming to the requirements of article 6, paragraphs [2 to 10], and the authorization needs to be renewed; or
(ii) It is intended for research or for culture collections];

[(c) The contained use of a genetically modified micro-organism (GMM), 8/ if:

(i) It is foreseen in large-scale industrial installations;
(ii) It involves a GMM belonging to risk category 3 or 4;
(iii) Contingency plans are deemed necessary for the use of the GMM in a facility; [and] [or]
(iv) The GMM has not already been used [in the same facility and] under comparable conditions and been approved using a public participation procedure conforming to the requirements of article 6, paragraphs [2 to 10];]

[(d) The contained use of a GMO other than a GMM, 9/ if:

(i) Contingency plans are deemed necessary for the use of the GMO in a facility; [and] [or]

(ii) The GMO has not already been used [in the same location and] under comparable conditions and been approved using a public participation procedure conforming to the requirements of article 6, paragraphs [2 to 10]].

Add the following footnotes

4/ For the purpose of this Convention, 'genetically modified organism' or 'GMO' means an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination.

5/ For the purposes of this Convention, 'deliberate release of a GMO' means any intentional introduction into the environment of a GMO, or a combination of GMOs, for which no specific containment measures are used to limit its contact with and to provide a high level of safety for the general population and the environment.

6/ [Text to define 'sufficient experience' to be based on annex V to EU directive 2001/18/EC on the deliberate release into the environment of GMOs.]

7/ For the purposes of this Convention, 'placing on the market' means making available to third parties, whether in return for payment or free of charge.

8/ For the purposes of this Convention, 'contained use of a GMM' means any activity in which a micro-organism is genetically modified or in which such a genetically modified micro-organism is cultured, stored, transported, destroyed, disposed of or used in any other way, and for which specific containment measures are used to limit its contact with the general population and the environment.

9/ For the purposes of this Convention, 'contained use of a GMO other than a GMM' means any activity in which an organism that is not a micro-organism is genetically modified or in which such a genetically modified organism is cultured, stored, transported, destroyed, disposed of or used in any other way, and for which specific containment measures are used to limit its contact with the general population and the environment.

Annex II

OPTION 2: Proposed by the Chairman (as revised during the meeting)

Article 6

Insert new paragraph 1 bis reading

(a) Each Party shall, subject to the following conditions [and to paragraph 11 below], apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I bis, paragraph (a):

[(i) Paragraphs 2 (e), 6 (e) and 10 shall be applied only to the extent feasible and appropriate;]

(ii) Notwithstanding the reference in paragraph 6 to the right of public authorities to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4, the following information shall in any case be disclosed:

– A general description of the GMO or GMOs, the name and address of the notifier, the purpose of the release, the location of the release and the intended uses;

– Methods and plans for monitoring the GMO or GMOs and for emergency response;

– The environmental risk assessment;

(iii) In subparagraphs 6 (a) and (c), the references to 'expected residues and emissions' and to 'emissions' shall in both cases be construed as referring to 'expected waste and its proposed treatment'[;

(iv) The obligation to take due account of the outcome of public participation shall not be construed as implying an obligation to provide individual responses to submissions from the public];

(b) Each Party shall, subject to the following conditions [and to paragraph 11 below], apply the provisions of this article to decisions on whether to permit proposed activities listed in annex I bis, paragraph (b):

[(i) [Paragraphs 2 (d)(iii) and (e), 6 (e) and 10 shall be applied only to the extent feasible and appropriate;]

(ii) Notwithstanding the reference in paragraph 6 to the right of public authorities to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4, the following information shall in any case be disclosed:

– A general description of the GMO or GMOs, the name and address of the notifier, the purpose of the release, the location of the release and the intended uses;

– Methods and plans for monitoring of the GMO or GMOs and for emergency response;

– The environmental risk assessment;

(iii) The expression 'A description of the site' in paragraph 6 (a) shall be construed as referring to 'description of the geographical area(s) and types of environment where the product is intended to be used, including, where possible, the estimated scale of use in each area', and the expression 'an estimate of the expected residues and emissions' shall be construed as referring to 'specific conditions of use and handling';

(iv) In paragraph 6 (c), the reference to 'emissions' shall in the context of placing on the market be construed as referring to 'specific conditions of use and handling'[;

(v) The obligation to take due account of the outcome of public participation shall not be construed as implying an obligation to provide individual responses to submissions from the public];

(c) Each Party shall [, subject to paragraph 11 below,] apply the provisions [set out in paragraphs …] of this article to decisions on whether to permit proposed activities listed in annex I bis, paragraphs (c) and (d).

For paragraph 11, substitute

[The provisions of paragraph 1 bis above shall not apply to any Party that has in place a national regulatory framework which affords an equivalent guarantee of public rights of participation in decisions on whether to permit activities involving genetically modified organisms.]

Annex

Add a new annex I bis reading

List of activities referred to in article 6, paragraph 1 bis

The following activities involving genetically modified organisms (GMOs):

[The text would continue as in the previous option (annex I (a), (b), (c) and (d) of this report).]

Annex III

OPTION 3: Proposed by the Chairman

Article 6

Either: For paragraph 11, substitute
Or: Delete and insert a new article 6 bis reading

Each Party shall provide for early and effective public participation in decisions on whether to permit the deliberate release of genetically modified organisms into the environment. In implementing this [paragraph][article], each Party shall apply the provisions of paragraphs [2 to 10] of article 6 a national regulatory framework which affords equivalent guarantees of public rights of participation in such decisions, [and shall take account of the Guidelines on Access to Information, Public Participation and Access to Justice with respect to GMOs]. [The Meeting of the Parties, at its first session following the entry into force of this amendment, shall decide on the modalities and practical arrangements for the implementation of this [paragraph][article].]

Annex IV

OPTIONS PROPOSED BY EECCA COUNTRIES

Article 6, paragraph 1

Insert a new subparagraph (a) bis reading

> Shall apply the provisions on public participation to decisions on activities related to genetically modified organisms in accordance with the modalities established in annex I bis.

Article 6, paragraph 11

Delete this paragraph.

Annex Insert a new annex I bis reading

Genetically modified organisms and micro-organisms

1. Public participation will be provided for in decision-making procedures in the following areas of GMO and GMM applications, and adapted to the specific requirements of these decision-making procedures and uses:
   (a) Deliberate releases for purposes other than placing on the market;
   (b) Placing on the market;
   (c) Contained uses of GMMs and GMOs.

2. Decisions to permit deliberate releases of genetically modified organisms for purposes other than placing on the market will be subject to article 6, paragraphs 2 to 9, except paragraphs 2 (e) and 6 (e).

3. Decisions to permit genetically modified organisms for placing of the market will be subject to provisions from article 6, paragraphs 2 to 9, except paragraphs 2 (e) and 6 (a) and (e). The relevant information in article 6, paragraph 6 shall contain a description of the geographical area(s) of the proposed activity, including the specific conditions of use and handling.

4. Decisions to permit genetically modified microorganisms (GMMs) and genetically modified organisms (GMOs) for contained use will be subject to article 6, paragraphs 2 to 9, except paragraphs 2 (e) and 6 (e). The contained uses of GMM and GMOs other than GMMs that will be subject to the public participation provisions of article 6 are:
The contained use in large-scale industrial installations;
   (a) The contained use of GMMs belonging to risk category 3 or 4;
   (b) The contained use of GMMs and GMOs other than GMMs where contingency plans are deemed necessary for the use of the GMM or the GMO in a facility.

5. For the purpose of this annex, the following information shall not be considered as confidential by Parties:

(a) General description of the GMO or GMOs, the name and address of the notifier, the purpose of the release, the location of the release and the intended uses;
(b) Methods and plans for monitoring the GMO or GMOs and for emergency response;
(c) The environmental risk assessment.

Annex V

EU 'NON-PAPER' REFLECTING FURTHER OPTIONS

1. The Chairman's proposal states that, in addition to its three options, other options exist and remain on the table. To fully reflect the debate of earlier meetings and the past two days, this non-paper seeks to set out other options that have been on the table at one moment of the negotiations or another. It does not, of course, preclude the possibility of submitting further options after this meeting.

2. This non-paper does not reflect preferences or agreement on any of these options from the EU Member States, Accession States or the Commission. Its purpose is to clarify the discussion on various options. There has not been a legal analysis yet of these options, and it is premature to discuss it at this meeting of the Working Group.

3. According to decision I/4, the list of options is not limited to amendments to the Convention, and there is no limit to the number of options that can be considered by this Working Group and put forward for possible decision at the second ordinary meeting of the Parties to the Aarhus Convention.

4. The European Union will discuss the options in the Chairman's proposals as well as the options set out in this non-paper over the summer to prepare its position in good time for the next meeting of the Working Group.

A. Variation of Chairman's options:

- Variation of the first section to apply only relevant parts of article 6, paragraphs 2 – 10;
- Second section: national frameworks to have regard to the need for increased transparency and greater public participation in decision-making;
- In adopting such an approach, Parties shall take account of other relevant international obligations and related activities taking place in other international forums.

B. New article:

- A new article setting out specific public consultation procedures for GMOs, totally independent of the provisions of article 6, as well as annex I, with or without deletion of paragraph 11 of article 6.

C. Amendment of article 6, paragraph 11, only:

- Amendment of article 6, paragraph 11, to (i) delete the reference to "to the extent feasible and appropriate", and (ii) replace the reference to the application of article 6 by a reference to the principle of early and effective public consultation (language of the EU legislation and

the Cartagena Protocol). This amendment would reinforce the obligation of paragraph 11 of article 6 (which would still need to be implemented according to national legislation) and would align the obligation for the Parties to the Aarhus Convention not yet Parties to the Cartagena Protocol on Biosafety to the obligation set out in paragraph 2 of article 23 of the Protocol.

D. Cartagena Protocol/UNEP-GEF process:

- Common elements. Decision at the second ordinary meeting of the Parties to the Aarhus Convention to:
  - Prepare a contribution having regard to the existing guidelines and any other implementing elements to the implementation of article 23 of the Cartagena Protocol, (i) with respect to capacity-building, and (ii) in the context of the medium-term programme of work starting at the second ordinary meeting of the Parties to the Cartagena Protocol;
  - Encourage/request Parties to the Aarhus Convention to ratify the Cartagena Protocol (this would have legally binding implications, as it would bring for these countries more prescriptive international obligations on participation in GMO decision-making, as well as responding to the needs expressed for a national biosafety framework, including risk assessment and decision procedures);
  - Recommend to further develop the participation mechanisms in the UNEP/GEF process.
- Possible sub-options :
  - Decision containing recommendatory principles or procedures (comparable to further specific provisions under the Aarhus Convention's annex 1 bis);
  - Delete article 6, paragraph 11, and disapply article 6, paragraph 1 (b), in respect of GMOs;
  - Use of complementary decisions of the Meetings of the Parties to the Aarhus Convention and the Cartagena Protocol.

E. 'Environment for Europe' and the EECCA Strategy:

- A decision to prepare a ministerial decision within the framework of the 'Environment for Europe' process (i) committing (in a legally binding manner) all (or part) of the UNECE countries to ratifying and implementing the Cartagena Protocol if they have not done so yet, and (ii) providing further and specific guidance as to how to implement public participation for GMOs according to the Aarhus Convention and the Cartagena Protocol, at the national level.

- Adoption of a further legal instrument by EECCA continues and other States with relevant needs under UNECE auspices through the application of the EECCA Strategy under the 'Environment for Europe' process.

F. Standard-setting:

- An amendment of articles 2, 4 or 6 (in the "spirit" of the provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures recognizing the special value of specific guidelines and standards to meet the objective of the Agreement), recognizing that national procedures for public participation implemented on the basis of the existing Guidelines (as a non-binding example), or of standards to be developed later such as possibly a more detailed handbook, would meet the objectives of the Aarhus Convention.