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**ECONOMIC COMMISSION FOR EUROPE
COMMITTEE ON ENVIRONMENTAL POLICY**

Meeting of the Signatories 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
(First meeting, Geneva, 10 – 12 October 2001)

REPORT OF THE FIRST MEETING

1. The first meeting of the Working Group on Genetically Modified Organisms (GMOs) took place in Geneva on 10-12 October 2001.
2. The meeting was attended by representatives from the Governments of Albania, Armenia, Austria, Belgium, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Italy, Kazakhstan, Poland, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, United States of America, Uzbekistan and Yugoslavia.
3. The Commission of the European Communities was represented.
4. The following organizations were represented: World Health Organization (WHO), European ECO Forum and Regional Environmental Center for Central and Eastern Europe (REC).

5. Mr. Kaj Bärlund, Director of the UNECE Environment and Human Settlements Division, opened the meeting. He reminded the Working Group of the special attention given to GMOs in paragraph 15 of the Ministerial Resolution that had accompanied the adoption of the Convention, which called upon the Parties, at their first meeting, to further develop the application of the Convention in this area. This request from the Environment Ministers had been one of the main motivations behind the setting-up of the task force on GMOs and now this Working Group.

6. The working group elected Mr. Helmut Gaugitsch (Austria) as Chairperson and Ms. Liina Eek (Estonia) as Vice-Chairperson.

7. The Working Group adopted the agenda for the meeting as set forth in document CEP/WG.5/AC.3/2001/1.

8. The Chairperson presented the report of the second meeting of the task force on GMOs, which had taken place in Vienna in December 2000 (CEP/WG.5/AC.3/2001/3). He traced the evolution of the process leading up to the meeting and summarized its main results. It was generally agreed that the work of the task force in its two meetings provided a useful basis upon which the Working Group could build.

9. The Chairperson reminded the Working Group that its main task was to prepare a draft decision for the first meeting of the Parties. Referring to the reports of the second meeting of the Signatories and of the second meeting of the task force, he expressed the view that the decision should cover the issues of public participation in decision-making on GMOs as well as that of GMO labelling and product information, and could cover related issues considered by the task force, such as the definitions of 'deliberate release' and 'contained use' of GMOs.

10. Following the suggestion of the task force (CEP/WG.5/AC.3/2001/3, paras. 16, 34 and 35), the secretariat had commissioned two legal studies. The Working Group welcomed the two papers prepared by consultants as useful background material.

Public participation in decision-making on GMOs

11. At the second meeting of the task force, five procedural options for extending the application of the Convention to decision-making on GMOs had been discussed in some detail. These were:

- (a) A decision of the Meeting of the Parties setting out its view on how article 6, paragraph 11, should be construed;
- (b) A decision of the Meeting of the Parties to amend the Convention by including a reference to GMO-related activities in annex I and amending article 6, paragraph 11, accordingly;
- (c) Guidelines on best practices, on improving the legal framework and on practical arrangements;

- (d) A protocol to the Convention covering GMO issues; and
- (e) A new annex to the Convention related to GMOs.

Draft elements relating to options (b) and (c) had been developed further in annexes II and I respectively to the report of the second meeting of the task force.

12. The implications of these options had been further explored in document CEP/WG.5/AC.3/2001/4, which the secretariat presented to the Working Group. Delegations were invited to comment both on that document and on annexes I and II to document CEP/WG.5/AC.3/2001/3.

13. Some delegations were in favour of starting to work on non-binding guidelines, leaving aside legally binding options for consideration at a later stage if at all. Other delegations felt that a legally binding approach was essential.

14. There was no support for giving further consideration at this stage to options (d) and (e). Option (a) was considered to be a non-binding option which would not add much value. The discussion therefore focused on option (b), involving an amendment to the Convention, and option (c), involving the preparation of guidelines.

15. It was noted that the option of guidelines and the option of an amendment to the Convention were not mutually exclusive. On the other hand, some delegations recognized that any potential amendment to the Convention could not be achieved by simply adapting guidelines. It was, therefore, agreed to explore the two options in parallel, without prejudice to the future decision.

16. A discussion on possible elements for inclusion in guidelines took place, taking annex I to document CEP/WG.5/AC.3/2001/3 as a starting point. The outcome of that discussion is summarized in the annex below. It was noted that guidelines could include any GMO-related issues relevant to the Aarhus Convention, i.e. they need not be limited to the public participation issue. They could include a preamble setting out the rationale for guidelines.

17. Several delegations from the newly independent States (NIS) pointed out that clear legal frameworks regulating activities involving GMOs were virtually non-existent in their countries, and that until such regulatory frameworks existed, it would be difficult to address the question of public participation in a permitting process. They nonetheless hoped that the Convention could somehow promote the establishment of such frameworks. Some other delegations were sceptical about the possibilities for tackling this problem within the framework of the Aarhus Convention.

18. The Working Group proceeded to examine article 6 of the Convention, paragraph by paragraph, to see if it was feasible to apply these provisions to deliberate releases of GMOs in a legally binding manner. The results of a similar exercise by the task force were taken into account (CEP/WG.5/2000/6, paras. 29-31).

19. Some delegations noted that the feasibility of applying the provisions of article 6 to

deliberate releases of GMOs would depend on the scope of the deliberate releases to be covered. It would, therefore, be necessary to differentiate between the various categories of deliberate releases. Whereas some types of decision-making on deliberate releases of GMOs might be appropriate for the full application of article 6, others (for example, those which were at present subject to simplified procedures under EU legislation) might be subject to differentiated procedures, which could include no public participation at all.

20. There was general agreement that the provisions of article 6, paragraphs 2 to 10, could be applied to decision-making on first-time deliberate releases of GMOs, without any need to amend these provisions or to introduce legally binding language altering the way they would apply to such decision-making. However, it was felt that it might be useful to recommend in the proposed guidelines how certain of those provisions might be applied. Specifically, it was proposed that, in the context of applying the provisions of article 6 to decision-making on GMOs:

(a) In paragraph 6, subparagraph (a), the reference to ‘expected residues and emissions’ should be construed as meaning ‘expected waste and its proposed treatment’;

(b) In paragraph 6, subparagraph (c), the reference to ‘including emissions’ should also be construed as meaning ‘expected waste and its proposed treatment’;

(c) In this regard, genetically modified pollen would not be considered to be waste, though it might fall within the concept of ‘effects’;

(d) The interpretation of the word ‘significant’ in paragraph 6, subparagraph (b), in the particular case of GMOs would need to be considered, taking into account the merit of undertaking an environmental risk assessment;

(e) With respect to paragraph 6, subparagraph (e), the extent to which alternatives should be studied by the applicant, and what this might mean in the GMO context, should be addressed; and

(f) With respect to paragraph 10, guidance should be developed on when it would be ‘appropriate’ to apply the provisions in paragraphs 2 to 9, *mutatis mutandis*, to the reconsideration or updating of the terms of authorization for GMO releases, and how they should be applied.

21. Some delegations felt that where the *deliberate release* of a type of GMO had already been approved using an article 6-type public participation procedure, decision-making on subsequent releases of the same type of GMO should not necessarily require the full provisions of article 6 to apply. Similarly, there could be simplified procedures (i.e. with less or no public participation) where it was considered that sufficient experience had been gained. Other delegations felt that the provisions of article 6, paragraphs 2 to 10, should be applied to decision-making on all types of deliberate releases of GMOs. The latter delegations argued that since the

location of the subsequent release might be different, different members of the public could be affected and that these should have the same opportunities to exercise their rights of public

participation.

22. There was general agreement that authorizations for the *placing on the market* of GMOs for the first time should be fully subject to the provisions of article 6. Some delegations felt that the application of article 6 to renewals of such authorizations and the making available of GMOs to third parties for research purposes and culture collections should be optional. Other delegations felt that all authorization processes for placing GMOs on the market should be fully subject to the provisions of article 6.

23. Regarding the *contained use* of GMOs, most delegations felt that first use in large-scale installations of genetically modified micro-organisms in the higher-risk classes could or should be fully subject to the provisions of article 6. The contained use of genetically modified plants and animals would need to be considered separately. It was noted that further work would be needed to differentiate between contained uses where public participation should or could be required and those where it should not or need not be. It was agreed that the triggering criteria listed in paragraph 28 of the report of the second meeting of the task force were a good basis for further discussion. It was also recommended that the first use of a GMO should be added and subsequent contained uses of the same GMO as a criterion.

Information, labelling and product information

24. The Chairperson reminded the Working Group that the Signatories at their second meeting had deemed the conclusions of the first meeting of the task force on public information to be a useful contribution to work in this area. It was agreed that the relevant paragraphs of its report (CEP/WG.5/2000/6, paras. 15 to 18) should be included in the appropriate place in the list of possible elements for guidelines. Some delegations pointed out that certain parts of paragraph 18 would need further discussion if they were to be made recommendatory, notably subparagraphs (d), (e), (f), (i) and (j). It was noted that the exemptions in article 4, paragraphs 3 and 4, could in any case be invoked by Parties, which might help to solve some potential problems, and that this could be made explicit in the guidelines.

25. With reference to labelling and product information, the Chairperson drew the attention of the Working Group to some of the main conclusions of document CEP/WG.5/AC.3/2001/5, pointing out that one of its main objectives had been to identify gaps in existing international or regional instruments which the Convention could usefully fill. In this regard, one delegation pointed out that the fact that EU legislation covered certain issues could not be taken to imply that covering the same issues under the Convention would be redundant, since many NIS were not expected to become part of the EU for the foreseeable future.

26. There was general agreement that for reasons of legal certainty, the question of labelling needed to be addressed through a legally binding framework, without prejudice to the type of

framework. Some elements should be further elaborated in guidelines. However, in the context of an international instrument, some delegations preferred to address the issue within the context of the Aarhus Convention, whereas others felt that it should be addressed under other

instruments, such as the Cartagena Protocol or those being developed by the Codex Alimentarius Commission. In addition, some delegations felt that national or regional instruments could be sufficient to address the issue of labelling.

27. It was generally agreed that labelling should be simple and understandable. In view of the amount of trade across borders, there should be international harmonization of labelling schemes as far as possible. Labelling should give the source of further more detailed information. Bar codes could be useful in some contexts but would be meaningless to the end-consumer. Such issues could be addressed in guidelines.

28. The European Commission informed the Working Group that the EU labelling requirements currently applied to products consisting of GMOs as such (i.e. living modified organisms with the potential to reproduce) but that the Commission had recently proposed that these be extended to cover products derived from GMOs and had also proposed requirements for traceability. The Commission's proposals were currently under discussion among EU member States. The secretariat was requested to distribute the European Commission's proposals to delegates electronically after the meeting.

29. Some delegations felt that there was a risk of not completing the work on any front if too many parallel approaches were pursued, and that labelling was a topic that should be postponed. Other delegations considered that there was some urgency to take steps to establish labelling requirements with respect to GMOs, in view of the current illegal transfer of living modified organisms in products. It was agreed that the public participation topic should be given higher priority than labelling, but that labelling needed to remain on the agenda of current work.

30. It was suggested that the possibility of developing the labelling question on the legally binding track could be revisited at the next meeting. One delegation proposed that the draft decision of the Meeting of the Parties should call on Parties to develop national legislation on the labelling of GMOs and GMO products.

Possible elements of a draft decision on GMOs for the first meeting of the Parties

31. The Working Group had a first exchange of views on a proposal from the Chairperson for a structure and possible elements for a draft decision on GMOs for the first meeting of the Parties. The Working Group asked the secretariat and the Bureau to take into account the comments put forward when further developing elements for a draft decision as a basis for discussions at the next meeting of the Working Group (see para. 32).

Future process

32. The Working Group agreed to hold a second meeting in Geneva on 18-21 February 2002

and requested the secretariat in consultation with the Bureau to further elaborate elements for a draft decision based on the discussions in the Working Group.

33. Concerning the guidelines, the Working Group requested the Bureau to prepare draft guidelines, in consultation with the secretariat and interested delegations, which could serve as a basis for discussion at its next meeting. Delegations were invited to provide to the secretariat, by 15 November 2001, comments on possible elements to be included in the guidelines and practical examples and alternatives for public participation in decision-making processes on specific uses of GMOs.

34. The Working Group finally requested the secretariat in consultation with the Bureau to prepare for its next meeting draft text for a possible amendment to the Convention (the legally binding track) containing alternative options, taking account of the various views put forward in the discussion.

35. The Chairperson thanked the participants, the secretariat and the interpreters and closed the meeting.

Annex

**POSSIBLE ELEMENTS TO BE INCLUDED IN
AARHUS CONVENTION GUIDELINES ON GMOS**

A preamble should identify the reason for and usefulness of the guidelines:

- Facilitating the implementation of and improving the application of the Convention in the field of GMOs
- Parties recognize the importance of public participation in the decision-making process on GMOs
- Contribution to a common approach to public participation procedures by countries
- Stimulation of good practices going beyond the minimum legal requirements of the Convention
- Contribution to confidence building among the various stakeholders involved
- Emphasizing the need for a proper legal framework and providing input for developing national legislation
- As practical as possible
- Objective: open, transparent and efficient decision-making process on GMOs

Content of the guidelines:

Public participation

- Identification and specification of various uses of GMOs and their relationship with public participation: deliberate release (standard and simplified procedure), placing on the market, contained use (different risk classes), first-time and subsequent uses, ...
- Designation of competent authorities/focal points
- Elements of a public participation procedure: notification, public information, comments from the public (written comments, public hearing), how are they taken into account, feedback to the public, time frames, possibility for further information, ...
- Resources for further information (literature, Internet, . . .)
- Practical examples and alternatives for public participation in the decision-making

process of specific uses (methods for involving the public in decision-making)

- Relationship with general (legal) framework on GMOs and biosafety
- Capacity building

Public information

- Paragraphs 15 –18 of the report of the first meeting of the task force
- Measures to improve and facilitate public knowledge and raise public awareness
- Labelling

Access to justice

- Liability, review procedures, standing

Further points for consideration:

- Relationship with background information/documentation: overview of other relevant international and national instruments, providing reference and links to them
- Size, form and target group of the guidelines
- Complementation by a more detailed handbook
- Cf. IUCN explanatory guide to the Cartagena Protocol