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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 SECOND MEETING OF THE TASK FORCE ON GENETICALLY MODIFIED ORGANISMS

1. On 4-5 December 2000, the task force on genetically modified organisms (GMOs) held its second meeting in Vienna. The meeting was organized by the Austrian Federal Environment Agency and the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management. Financial support was provided by Italy and Norway through the UN/ECE Trust Fund for Assistance to Countries in Transition.

2. The meeting was attended by 20 experts designated by the Governments of Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Denmark, Finland, France, Georgia, Germany, Italy, Kazakhstan, the Netherlands, Norway, the Republic of Moldova, Slovakia, Turkmenistan, Ukraine, the United Kingdom and Uzbekistan, as well as by the Commission of the European Communities. Representatives from the European ECO Forum and the Regional Environmental Center for Central and Eastern Europe (REC) also participated. Mr. Helmut Gaugitsch (Austria) chaired the meeting.

3. The meeting was opened by the Chairperson, who thanked delegations for providing written responses to the questionnaire sent with the letter of invitation. He reminded participants that the aim of the meeting was to develop clear recommendations which would serve as a basis for the open-ended intergovernmental working group which would prepare a draft decision for the Meeting of the Parties (CEP/WG.5/2000/2, para. 35).

4. Other issues, such as the relationship to the Cartagena Protocol on Biosafety and to capacity building, should also be discussed.

5. The UN/ECE secretariat gave an update on activities under the auspices of the Convention and explained the approximate time frames for the preparation of further meetings leading up to the first meeting of the Parties. REC informed the task force of meetings it had recently organized on the topic of GMOs in the context of the Aarhus Convention. A representative of the European ECO Forum presented an NGO web site in Denmark as a model for providing public access to information on GMOs.

6. It was agreed to divide into three discussion groups, dealing respectively with:

(a) The various procedural options for extending the application of the Convention in decision-making on GMOs (group 1, facilitated by Mr. Helmut Gaugitsch);

(b) The definition of ‘deliberate release’ and the question of how to deal with the contained use of GMOs under the Convention (group 2, facilitated by Mr. Hans Bergmans, Netherlands); and

(c) Labelling and "non-living" products derived from GMOs (group 3, facilitated by Mr. Alexander Kodjabashev, European ECO Forum, and Mr. Stephen Stec, REC).

7. The discussion groups met on the first day and reported back to the plenary on the second day of the meeting, where their preliminary findings were discussed in turn and revised as necessary. The conclusions and key discussion points of the task force are summarized in the following paragraphs.

Procedural options for extending the application of the Convention in decision-making on GMOs

8. The Meeting discussed the various procedural options for extending the application of the Convention in GMO decision-making. The bases for this discussion were paragraph 25 of the report of the first meeting of the task force (CEP/WG.5/2000/6), paragraph 33 of the report of the second meeting of the Signatories (CEP/WG.5/2000/2) and the list of options (a) to (f) in the letter of invitation to the second meeting of the task force, namely:

(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 the

practical arrangements;

(d) A protocol to the Convention covering GMO issues;

(e) A new annex to the Convention related to genetically modified organisms; and

(f) Other potential options, yet to be discussed.

9. The following points were agreed at the outset of the discussion:

(a) Those results of the first meeting of the task force where there was agreement were still valid and could form a valuable basis for the further development of any of the options;

(b) Some of the options were not necessarily mutually exclusive and could potentially be combined;

(c) When considering the implementation of the options, short-term and long-term goals could be taken into account.

10. The Meeting looked at each of the options in turn and attempted to analyse the practical, legal and timing implications of each of them.

11. Option (c) (guidelines on best practices, on improving the legal framework and on the practical arrangements) was discussed partly in combination with option (a) (a decision of the Meeting of the Parties setting out its view on how article 6, paragraph 11, should be construed).

12. Guidelines were regarded by some participants as a possibility for achieving in a rather short time and as a short-term goal a legally non-binding but morally binding instrument, which could be a useful basis for developing a legally binding instrument as a longer-term goal. They could be broad, not restricted to public participation in decision-making on the deliberate release of GMOs, and could cover issues such as public information, contained use and registers (for example, of the type envisaged in paragraphs 17 and 18 of CEP/WG.5/2000/6). As a non-binding instrument, guidelines would not be in conflict with existing legally binding instruments on GMOs (such as EU Directive 90/220/EEC and the Cartagena Protocol on Biosafety) and could support these instruments with respect to public information and participation aspects. Their usefulness would not necessarily be limited to the geographical area of UN/ECE. They could serve as a guide for those countries lacking a legal framework. In addition, they would not interfere with the goal of early ratification of the Aarhus Convention. Furthermore, guidelines as such would not exclude legally binding options at a later stage.

13. Other participants considered that it should not be a priority to develop guidelines because they would not add value. It was pointed out that many countries lacked specific legal provisions regulating GMO-related activities and experts from the newly independent States (NIS) and from NGOs in particular identified a strong need for a legally binding approach. Guidelines could take away valuable time and resources from the task of pursuing such an approach.

14. The remaining options discussed were of a legally binding nature. It was pointed out by some participants that only the legally binding options could serve to guarantee the rights of the public to information, participation and access to justice. Some regarded it as too early to pursue

a legally binding approach before a legal analysis of the implications of the various options was undertaken and also because it could have a negative effect on the process of ratification of the Convention. Others argued that legally binding measures would be adopted at the earliest at the first meeting of the Parties (probably not before 2002) and therefore would not interfere with an early ratification of the Convention. They could be achievable as a short-term goal, could provide legal certainty and some options for legally binding instruments could be implemented rather quickly. Any guidelines could be used as additional instruments in the context of capacity building.

15. It was generally agreed that legally binding measures would be less flexible than guidelines. Amending an annex could be simpler and take less time than adding a new annex or protocol. However, the development of an annex would require more time and resources than the development of guidelines. Also, some participants were concerned that inconsistencies with other instruments could be created.

16. As a first step and a way forward it was recommended that a thorough legal analysis of the Aarhus Convention, and especially the provisions of article 6, with respect to its implications for and relationship with other instruments on GMOs should be undertaken. The implications of the legally binding options should also be further explored. The secretariat was invited to undertake that exercise.

17. The option of 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 (option (b)) was considered only in relation to the public participation pillar of the Convention. Legally, this option would mean an amendment to the Convention on the basis of article 14. For the purposes of the discussion, it was agreed to make use of the results of the first meeting of the task force, where the applicability of article 6 to decision-making on the deliberate release of GMOs had been analysed (CEP/WG.5/2000/6, paras. 29-31). This option would be a step in further clarifying article 6, paragraph 11, which would not necessarily interfere with the ratification of the Convention. In the view of some participants, it could be relatively simple and would not necessarily take as much time to prepare as some other options.

18. The option of a protocol covering GMO issues (option (d)) was discussed. A protocol as a stand-alone instrument would be signed and ratified separately from the Convention and could theoretically be open to non-parties to the Convention. Like a new annex (see option (e)) it could be broad in scope, rather lengthy but also more inclusive. The question of whether it might be established under the joint auspices of, and thereby support, more than one instrument was raised. On the other hand, it could take considerable time and resources to develop a protocol. It could also be in conflict with or result in some duplication of existing instruments.

19. The option of a new annex to the Convention related to GMOs (option (e)) was discussed. Like option (b), this option would mean an amendment of the Convention in accordance with article 14. With respect to the contents, like options (c) and (d), a separate annex could be broad in scope. It could give legal certainty and address the specific characteristics of GMO activities, which were different from those of chemical installations and other types of activities listed in annex I. On the other hand, a separate annex could distort the balance of the

Convention and highlight the GMO issue too strongly. The relationship of or differences between options (b) and (e) would require further legal analysis. It could also be in conflict with or result in some duplication of existing instruments.

20. Initial proposals were prepared on: (i) a list of possible contents for guidelines (option (c)), presented as annex I to this report; (ii) some legal options with respect to implementing option (b), presented as annex II to this report. These proposals were presented to, but not discussed by, the task force. Not all of the participants supported the contents of the annexes at this stage.

Definition of 'deliberate release' and treatment of 'contained use'

21. The task force was generally in favour of using the definition of ‘deliberate release’ as stated in the Common Position for the Revision of EU Directive 90/220/EEC:

> 'Deliberate release 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 their contact with and to provide a high level of safety for the general population and the environment. '

However, it was noted by some participants that the word 'limit' in this definition did not mean 'prevent', and they therefore suggested that 'deliberate release' should be defined as all types of activities of contained use where releases of GMOs might occur.

22. In the interpretation of the definition of 'deliberate release', it was agreed that the following points should be taken into consideration:

(a) The definition of 'contained use' in EU Directive 98/81/EC (the revised 90/219/EEC) was noted:

> '"Contained use" shall mean any activity in which micro-organisms are genetically modified or in which such [genetically modified micro-organisms] are cultured, stored, transported, destroyed, disposed of or used in any other way, and for which specific containment measures are used to limit their contact with the general population and the environment.'

It was recommended that there should be no grey areas between 'contained use' and 'deliberate release' of GMOs, including for all potential 'placing on the market';

(b) The definition of 'placing on the market' contained in the Common Position for the Revision of EU Directive 90/220/EEC was noted:

> '"Placing on the market" means making available to third parties, whether in return for payments or free of charge.'

There were cases, e.g. placing on the market of GMOs intended for direct use as food, feed or for

processing, where the placing on the market entailed some degree of containment. This was not to be construed as contained use. Making available to third parties for the express purpose of contained use (e.g. sales of GMOs by culture collections where it was indicated that these GMOs must be handled under contained use) was not considered to be ‘placing on the market' according to the Common Position.

23. The use of the term 'limit' in the definition of 'contained use' implied that there were criteria for linking risk classes to adequate levels of containment. A case-by-case approach to risk evaluation for contained use should allow the application of the criteria to a particular case. The criteria should be such that the containment levels set by the criteria provided a high level of safety for the general population and the environment. The task force noted the following links between risk classes and containment classes:

(a) Risk I → Containment I;
(b) Risk II → Containment II;
(c) Risk III → Containment III;
(d) Risk IV → Containment IV.

Consequently, it was noted that the criteria that linked (classes of) GMOs to risk classes were important, not so much the individual GMOs or GMO projects.

24. The task force considered the issue of public involvement in the administration of 'contained use' as compared with the administration of 'deliberate release', and concluded that there were some fundamental differences:

(a) Deliberate release was about defined organisms, applied for a defined environmental purpose, for which a case-specific risk evaluation could be made;
(b) Contained use was in many cases about organisms that had not yet been created, for which the risk assessment was based on criteria, i.e. the risk classes of the host, vector and insert, and the way in which these influenced each other;
(c) Contained use for industrial purposes, however, was about defined organisms, often used on a large scale and over a long period of time. Here, similar concerns might apply as in deliberate release, e.g. when live GMOs were released into the environment, in waste streams or in any other way. (In EU countries, large-scale industrial plants in general and not only those where GMOs were used were covered by specific EU legislation requiring public participation.)

25. In the EU, according to specific legislation (Directive 98/81/EC), it was generally required that for laboratories, institutes, institutions and plants where GMO activities take place, applicants should indicate:

(a) What type of GMO activities they planned to do;
(b) What the maximum risk level was;
(c) What the maximum containment level needed was;
(d) How this was achieved in their specific situation.

In most legislation in EU countries, public participation in these issues was regulated. The

example was mentioned of the P4 facility in France, where the level of containment of the facility as well as the projects to be undertaken in the facility were under public scrutiny.

26. The Meeting concluded that:

(a) Contained use aimed to minimize the risk for the environment;
(b) Consequently, contained use should be dealt with differently under the Convention than deliberate release.

27. The task force considered that for the Convention not to cover the contained use of GMOs with respect to individual projects could be regarded as positive. It was noted that the amount of information was vast in such cases, and the information did not tell much more about the actual risks for the environment than the criteria did (i.e. the criteria used to determine the adequate containment level). However, it was considered that the Convention should have a role in relation to potential calamities and in situations where there were planned approved introductions of live GMOs into waste streams (i.e. where GMOs were not completely killed before they entered the waste stream). These might still not be covered by article 6, paragraph 11, but might be covered by article 6, paragraph 1 (b).

28. It was concluded that triggers would be needed to identify cases where contained use activities might have to be covered by the Convention. Such triggers might include:

(a) Scale of and potential exposure resulting from the activities;
(b) Thresholds, e.g. the risk class of the activities;
(c) Emergency plans: if emergency plans were deemed necessary for a particular activity, it would be apparent that there was a real possibility that the activity would have an impact on the environment.

29. Other views expressed during the discussion on contained use of GMOs included the following:

(a) If contained use of GMOs was strictly regulated under the Convention, care should be taken to avoid conflict with national legislation that might already regulate these issues;
(b) Regulations should be flexible enough to allow for new insights based on scientific progress;
(c) A guideline approach might be the best way;
(d) In cases where technological developments were expected, prospective technology assessment might provide good opportunities for public participation.

Labelling and 'non-living' products derived from GMOs

30. It was noted that there was a strong demand for GMO product information, including information on products containing GMOs, products derived from GMOs and products obtained by using GMOs.

31. While article 5, paragraph 8, of the Convention obliged each Party to develop mechanisms relating to product information, it was noted that the global nature of the GMO issue might require the establishment of international standards.

32. Information on the effects of GMOs on all aspects of the environment (as implicitly defined through article 2, paragraph 3, of the Convention) was considered relevant to the issue of GMO product information.

33. The question of GMO product information was recognized as being clearly linked to labelling. There were mixed views as to whether the issue of labelling of GMO products should be further addressed under the Convention, with experts from several governments being strongly sceptical as to whether there was such a need and experts from NGOs and other governments being equally sceptical about the extent to which the labelling issue would be fully addressed under the Cartagena Protocol on Biosafety and the Codex Committee.

34. For the further work of the task force, it was agreed that it would be necessary to establish what type of product information comprising labelling was required to be available under other international or regional agreements and it was recommended that for this purpose a legal analysis of the relevant agreements and existing practices should be undertaken.

35. It was furthermore recommended that the Signatories and the Aarhus Convention secretariat monitor the Cartagena Protocol, the Codex Committees on food labelling and GMOs and other relevant processes to evaluate the extent to which information on GMO products comprising labelling was handled thereunder. Explicit reference was made to the work currently ongoing in the EU on the labelling and traceability of GMOs.

36. With regard to article 5, paragraph 8, it was considered necessary to define a set of "sufficient product information" for products containing GMOs and/or derived from GMOs, and those produced by using GMOs, and to clarify which of this information was required to be provided to the public via the other international or regional agreements and which of this information might be required to be provided to the public under the Aarhus Convention in order to enable consumers to make informed environmental choices.

Relationship to the Cartagena Protocol on Biosafety

37. It was felt that links between the Cartagena Protocol and the Aarhus Convention should be established as early as possible. Article 23, paragraph 1 (a), and article 29, paragraph 4 (c), of the Cartagena Protocol specifically addressed the cooperation with other international bodies. The two instruments should be mutually supportive and not in conflict with each other. The Biosafety Clearing-house was regarded as being of core importance with respect to information on GMO-related activities, which could serve as the reference point. The secretariats of the two instruments should explore possibilities on how to work together more closely and on a more formal basis. Providing information about and improving the visibility of GMO-related activities in the context of the Aarhus Convention at meetings of the Intergovernmental Committee for the Cartagena Protocol was recommended.

Conclusions

38. The Meeting requested the Chairperson and the secretariat to finalize the report for submission to the intergovernmental working group due to be established in accordance with paragraph 35 of the report of the second meeting of the Signatories.

39. It was agreed that delegations to the first meeting of the working group would be invited to provide written comments on the contents of the annexes in advance of the meeting.

40. The Chairperson thanked all participants for their active participation in the meeting and the secretariat for its support, and closed the meeting.

Annex I

POSSIBLE ELEMENTS TO BE INCLUDED IN AARHUS CONVENTION GUIDELINES ON GMOs

1. Definitions:
   - Definitions to be used for the purpose of the Convention;
   - A list of definitions used in related instruments.

2. Overview of all international agreements which cover aspects of access to information, public participation in decision-making or access to justice regarding GMOs (e.g. Biosafety Protocol, EC directives, Aarhus Convention), specifying interlinkages, scope, possible overlaps and links to the Aarhus Convention.

3. Detailed implementation guidance for each of those international agreements in so far as they concern:

(a) Access to information, e.g. electronic information, confidentiality, labelling, dissemination of information;

(b) Public participation in decision-making, e.g. informing the public concerned, envisaged procedures, time frames, commenting, taking comments into account, Specifying in which cases there could be public participation regarding a proposed contained use;

(c) Access to justice, e.g. liability, review procedures, standing.

4. Practical examples: a compendium of existing practices illustrating the various areas in the aforementioned implementation guidance.

5. Non-legal possibilities for access to information and public participation: e.g. education, communication, consensus conferences.

6. Resources for further information: literature, Internet

7. Focal points.

Annex II

SOME POSSIBLE ALTERNATIVES FOR AMENDING THE CONVENTION'S PROVISIONS PROVIDING FOR PUBLIC PARTICIPATION IN DECISION-MAKING ON GMOs

OPTION 1: amendment to article 2 and article 6, paragraph 11:

Article 2

6. 'Deliberate release' 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] their contact with and to provide a high level of safety for the general population and the environment.

Article 6

11. (a) Subject to subparagraph (b), each Party shall apply the provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment;

(b) [Paragraph 6 (e) and paragraph 9 shall not apply to the decisions referred to in subparagraph (a) above. The requirement that the examination by the public of relevant information be free of charge referred to in paragraph 6 shall not apply to such decisions either.] The reference to 'expected residues and emissions' in paragraph 6 (a) shall be construed as referring to 'expected waste', and the reference in paragraph 6 (c) to 'measures envisaged to prevent and/or reduce the effects, including emissions' to 'proposed waste treatment'.

OPTION 2: amendment to article 2, article 6, paragraphs 1 and 11, and annex I:

Article 2

6. 'Deliberate release' 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] their contact with and to provide a high level of safety for the general population and the environment.

Article 6

1. Each Party:

(a) Shall, subject to paragraph 11, apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;

11. [Paragraph 6 (e) and paragraph 9 shall not apply to the decisions on the activities referred to in paragraph [21bis] of annex I. The requirement that the examination by the public of relevant information be free of charge referred to in paragraph 6 shall not apply to such decisions either.] The reference to 'expected residues and emissions' in paragraph 6 (a) shall be construed as referring to 'expected waste' and the reference in paragraph 6 (c) to 'measures envisaged to prevent and/or reduce the effects, including emissions' to 'proposed waste treatment' with respect to [such decisions][decisions on the activities referred to in paragraph [21bis] of annex I].

Annex I

[21bis] Genetically modified organisms

- deliberate release of genetically modified organisms into the environment
- [contained use of genetically modified organisms, where the potential risks are such as to require the drawing-up of emergency plans]1/

1/ It was noted that the inclusion of text on contained use would need to be considered in the light of the outcome of the further discussions on that topic.