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

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 FIRST MEETING

1. The first meeting of the Working Group on Genetically Modified Organisms (GMOs) took place in Geneva on 9-11 April 2003.
2. The meeting was attended by representatives from the Governments of Albania, Armenia, Austria, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Italy, Netherlands, Norway, Republic of Moldova, Serbia and Montenegro, Slovenia, Spain, Sweden, Switzerland, United Kingdom 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 Project on National Biosafety Frameworks attended the meeting.
4. The following organizations were also represented: European ECO Forum, GLOBE Europe, International Environmental Resources, and Regional Environmental Center for Central and Eastern Europe (REC).
5. The Director of the UNECE Environment and Human Settlements Division, Mr. Kaj Bärlund, opened the meeting by noting that the principal outcome of the activities of the first Working Group had been the Guidelines on Access to Information, Public Participation and Access to Justice with respect to GMOs, which had been adopted at the first meeting of the Parties in Lucca (Italy) and which would be circulated as an official document at the 5th Ministerial Conference in Kiev (21-23 May 2003). According to decision I/4 adopted by the Meeting of the Parties, the focus of the work would now shift to the legally binding track with the goal of reaching agreement on the extent to which the public should

have a right to participate in decision-making on GMOs. Finally, he welcomed the willingness of Austria, and specifically Mr. Helmut Gaugitsch, who had been designated by Austria to serve as Chairperson, to continue leading this important work and wished the Working Group success in securing a productive outcome.

I. ELECTION OF OFFICERS

6. Mr. Helmut Gaugitsch (Austria), Chairperson of the previous Working Group, assumed the chairmanship of the new Working Group. Ms. Nevenka Preradovic (Croatia) was elected as Vice-Chairperson.

II. ADOPTION OF THE AGENDA

7. The Working Group adopted the agenda for the meeting as set forth in document MP.PP/AC.2/2003/1.

III. REPORT ON THE ACTIVITIES OF THE WORKING GROUP ON GENETICALLY MODIFIED ORGANISMS ESTABLISHED UNDER THE COMMITTEE ON ENVIRONMENTAL POLICY

8. The Chairperson briefly reported on the activities of the previous Working Group, especially the Guidelines on Access to Information, Public Participation and Access to Justice with respect to GMOs and decision I/4. Decision I/4 established the new Working Group and required it to examine and build upon the preparatory work of the previous Working Group, and select the most appropriate legally binding options to put forward for possible decision and, if appropriate, adoption at the second meeting of the Parties.

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

9. The Working Group was invited to consider the most appropriate options for a legally binding approach to further developing the application of the Convention to GMOs, having regard to, among other things, the main conclusions of the analysis of the application of the Aarhus Convention to GMOs (CEP/WG.5/AC.3/2001/4). In order to structure the discussion, the Chairperson asked the Working Group to consider a background document in which he had outlined the basis for the work of the Working Group and invited it to address the following three questions:

(a) In exploring the legally binding approach to the further development of the application of the Convention to GMOs, which legally binding option(s) do you prefer and why?

(b) Which activities with GMOs should be covered?

(c) Which of the provisions of the Convention regarding public participation under article 6 and access to justice under article 9, paragraph 2, should be applied in a legally binding manner to (certain) GMO decision-making and which not? If the provisions mentioned should not be applied fully, in which way should they be adapted or modified?

10. With regard to the first question, the paper listed the legally binding options for developing the application of the Convention to GMOs which had been identified by the previous Working Group, namely:

(a) Amendment of the Convention by adding certain GMO activities to annex I and introducing the necessary changes in article 6;

(b) A new annex on GMOs;

(c) A protocol to the Convention; and

(d) A decision of the Meeting of the Parties;

as well as referring to the possibility of further legally binding options not previously identified.

11. There were mixed responses to the first question:

12. Several delegations were in favour of an amendment to the Convention by either adding certain GMO activities to annex I and making the necessary changes in article 6 or by adding a new annex to the Convention. Some delegations were also of the view that other amendments to the Convention were possible options at this stage, including amending article 2, amending article 6, paragraph 11, alone, developing of a new article 6bis and others. Other delegations felt that resorting to an amendment might impede or slow down the ratification procedure in some States, though it was pointed out that the relevant provisions of the Convention would have to be followed.

13. Some delegations supported the development of a protocol as the most comprehensive legal instrument, arguing that the adoption of a protocol would not influence the progress in ratification of the Convention. Other delegations considered that developing a protocol could be an expensive and time-consuming exercise that would not necessarily be justified by the goals to be achieved.

14. Most delegations agreed that a decision of the Meeting of the Parties on its own would not be sufficiently legally binding, although some felt that it could be made legally binding enough according to document CEP/WG.5/AC.3/2001/4.

15. Some delegations felt that it was premature to select options at this stage, or that there might be other options besides those identified by the previous Working Group, which included the possibility that once the specific needs and situations of various countries had been taken into account, those needs might be met without making any legally binding amendment to the Convention.

16. With regard to the second question, the Working Group agreed to examine how any legally binding option should encompass the deliberate release of GMOs into the environment, including the placing of GMOs on the market. There were more mixed views with respect to the

possible inclusion of “contained use” in the scope of a legally binding option. If contained use were to be included, it would be necessary to differentiate between types of contained use. It was agreed to return to the issue of contained use at a later stage.

17. With respect to the third question, there was broad support for the idea that the principles of articles 6 and 9 of the Convention should apply to the deliberate release of GMOs, including the placing of GMOs on the market, and several delegations expressed the view that there should not be a special public participation procedure just for decision-making on GMO issues. Some opposed this view and considered that, although the principles of articles 6 and 9 might be applicable, special procedures might be required for GMO activities. It was generally agreed that there was a need for further discussions on the application of the principles of articles 6 and 9 to contained use, in terms of possible differences in the definition of ‘public concerned’ and on the implications of different procedures applying to different risk categories of contained use involving genetically modified micro-organisms (GMMs).

18. The Working Group recognized that the three issues, of the form of the legally binding option, the scope of GMO decision-making to be covered and the public participation provisions to be applied, were all interrelated. It was therefore agreed to adopt an open and flexible approach by leaving all options on the table for the time being. Many delegations were of the view that the scope and procedures should be addressed before any legally binding option should be selected.

19. Having addressed the three questions, the Working Group discussed the scope and content of possible legally binding options in more detail. The Chairperson circulated an extract from a working document of the previous Working Group (CEP/WG.5/AC.3/2002/8), which contained a possible amendment to the Convention (option III in that document). It was agreed to base the discussion on that text, on the understanding that it would be used only as a tool for discussing the substantive issues and not as a concrete proposal for an amendment.

20. Most delegations felt that decision-making on the deliberate release of GMOs would fall within the scope, but there was a variety of views on possible exemptions. Some delegations were in favour of merging the deliberate release of GMOs with the placing of a GMO on the market. Others felt that it might be preferable to differentiate between placing on the market and (other) deliberate releases of GMOs, at least with respect to identifying exemptions, and that they should be addressed separately. It was pointed out that under European Union legislation, the placing of GMOs on the market fell within the definition of ‘deliberate release’, and suggested that this approach could be reflected in the Aarhus process. A complication that would need to be addressed was the fact that, under the EU approach, some uses of GMOs were not regarded as placing on the market and this would need to be taken into account if that approach were to be followed. In any case, it was agreed that it might be necessary to adopt a more precise definition of ‘placing on the market’ than proposed in note 3 of the text.

21. There were opposing views as to the circumstances in which decision-making on the repeated release of a GMO whose release had previously been approved using a public participation procedure could be exempt from public participation requirements. Some delegations felt it important that the repeat release should be of the same GMO in the same location to qualify for any such exemption, whereas other felt that, if the proposed release was of

the same GMO in a different location but under comparable conditions, this should be sufficient to justify a streamlined procedure. Several delegations proposed clarification of the term 'location' in this specific context, as experience showed that the word could be interpreted in different ways. It was suggested that it should be made explicit that it had to be the same GMO, and also that the word 'comparable' might be too broad.

22. It was noted that paragraph 21 of annex I to the Convention provided for the exemption of projects undertaken for certain research purposes. Although the discussion did not focus on the legally binding option of introducing an amendment to the Convention including certain GMO-related activities in annex I, it was noted that, if that option were to be pursued, the relationship with paragraph 21 of the annex would need to be considered.

23. Delegations were invited to present their experiences with respect to public participation and/or access to justice in the field of GMOs which could be regarded or further developed as "best practice" or at least "good practice" examples and also to refer to any needs that they might have in their efforts to address these issues.

24. The European Commission and several EU member States informed the Meeting of their experiences with the implementation of the provisions of Directive 2001/18/EC dealing with public participation. Preliminary analysis showed that the procedures for consulting and informing the public on proposed deliberate releases and the placing on the market of GMOs were reasonably effective. For the placing on the market, the Commission had made available to the public the information contained in the system of exchange of information and received a number of reactions from NGOs and the general public.

25. Some delegations from countries in transition reported on the lack of adequate legislation with regard to GMOs in general and expressed a need for institutional capacity building in this area and an exchange of experiences with developing and implementing appropriate legislation at subregional and regional level.

V. IMPLEMENTATION OF THE GUIDELINES

26. The Working Group noted the intention of the Meeting of the Parties to keep the Guidelines on Access to Information, Public Participation and Access to Justice with respect to Genetically Modified Organisms under review (ref. decision I/4, para. 2) and briefly considered how it might contribute to that process. It agreed that the written commenting procedure, whereby countries would report *inter alia* on any experience acquired with the implementation of the Guidelines, was the most effective way to deal with the matter for the time being.

VI. FUTURE PROCESS

27. It was agreed that the Working Group would meet again in Geneva on 1-3 October 2003. The delegations agreed to submit in writing accounts of their national experiences with the application of public participation procedures to activities with GMOs and the Guidelines on Access to Information,

Public Participation and Access to Justice with respect to GMOs. Delegations were also invited to identify their specific needs with respect to this process in their written submissions and to provide their input to the secretariat by 31 July 2003. The secretariat would then compile these comments in the language in which they were submitted and circulate them to the Working Group.

28. Delegations were invited to provide input in writing relating to a more detailed analysis of the implications, including advantages and disadvantages, of possible legally binding options. The Working Group requested the secretariat, in consultation with the Bureau and on the basis of input received from delegations through the written commenting process, to prepare the analysis. In doing this, it should build upon the existing legal analysis of the application of the Aarhus Convention to GMOs (CEP/WG.5/AC.3/2001/4) and should analyse all the options which had been discussed in the meeting as well as additional options proposed by delegations. The analysis should also address the question of the purpose and objectives of the exercise, the scope of GMO decision-making to be covered and the public participation provisions which would apply, and the interrelation between these elements. The secretariat paper would be prepared as an official document for the next meeting, available in the three official languages, and therefore the written contributions from delegations should be submitted by 31 May 2003. Comments received, including those received after this deadline, would in any case be circulated to delegations and taken into account at the meeting alongside the official documentation.

VII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

29. 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 Chairperson thanked the delegations for their contributions to the discussions and the secretariat for its efficient assistance in the meeting. Finally, he thanked the interpreters and closed the meeting.