

AARHUS CONVENTION AND CARTAGENA PROTOCOL ON BIOSAFETY

Promoting awareness, education, access to information, public participation and access to justice in LMOs/GMOs - related matters

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AARHUS CONVENTION

Brief Facts

UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention):

- adopted on 25 June 1998 in Aarhus, Denmark at the 4th 'Environment for Europe' Ministerial Conference
- entered into force on 30 October 2001
- 47 Parties including the EU
- Grants public rights and imposes on Parties and public authorities obligations regarding access to information, public participation and access to justice, reinforced by the compliance review system, incl. regarding GMOs

THE CARTAGENA PROTOCOL ON BIOSAFETY

Brief Facts

The Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol):

- Adopted on 29 January 2000 in Montreal, Canada, by the First Extraordinary Meeting of the Conference of the Parties (EXCOP) to the Convention on Biological Diversity
- Entered into force on 11 September 2003
- 173 Parties
- An international agreement to ensure the safe handling, transfer and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on biological diversity, taking also into account risks to human health

AARHUS CONVENTION AND CARTAGENA PROTOCOL

GENERAL PROVISIONS

Aarhus Convention:

- detailed modalities and procedural requirements
- Aarhus Clearinghouse – host of practical material on implementation
- Lucca Guidelines on GMOs (2002) and the Almaty Amendment on public participation in GMO decisions (2005) – direct references to CBD and the Cartagena Protocol/national biosafety framework

Cartagena Protocol:

- Article 23 - Public Awareness, Education and Participation regarding LMOs
- Article 20 - Information Sharing and the Biosafety Clearing-House
- Decisions BS-V/13 and BS-VIII/18 - Programme of Work on public awareness, education and participation regarding LMOs (2011-2020) and its Priority Areas
- Draft Implementation Plan for the Cartagena Protocol on Biosafety with reference to public awareness, education and participation, including access to information regarding LMOs (expected to be adopted at COP-MOP 10, in 2021)

GENERAL PROVISIONS OF THE AARHUS CONVENTION – HOW THEY APPLY TO GMOs

Aarhus Convention:

- **three pillars: access to information, public participation in decision-making and access to justice**
- **complementary and mutually supportive to the provisions of the national biosafety framework**
- **neither for nor against GMOs**
- **covers deliberate release into the environment¹, placing on the market² and contained use³ of GMOs**

¹ by current Article 6 (11) of the Convention

² both – by Almaty Amendment

³ all three – by access to information and access to justice provisions of the Convention and the Lucca Guidelines

AARHUS CONVENTION

ACCESS TO INFORMATION

Aarhus Convention:

- “Environmental information” means any information in written, visual, aural, electronic or any other material form on: (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including **genetically modified organisms**, and the interaction among these elements; [(b) ...] - (Article 2 (3))

Obligations of public authorities to:

- provide environmental information upon request (Article 4)
- collect and disseminate environmental information (Article 5)

AARHUS CONVENTION

ACCESS TO INFORMATION

Provision of environmental information upon request (Article 4):

- without an interest having to be stated
- in the form requested
- shall be made available ASAP and within 1 month at the latest
- a request may be refused on a limited list of grounds which shall be interpreted in a restrictive way
- refusal in writing if request was in writing or if applicant so requests; and as soon as possible and at the latest one month unless complexity of information justifies extension to two months, in which case notice, including reasons, must be given; reasons for refusal to be stated; information on the review procedure to be provided
- charges for supplying information may be levied but shall not exceed a reasonable amount and shall be communicated by the public authority beforehand

AARHUS CONVENTION

ACCESS TO INFORMATION

Disclosure of information

- ❖ Presumption of maximum disclosure, incl. EIA and other assessments documentation
- ❖ Information on emissions shall be disclosed
- ❖ **Optional grounds for refusal to be interpreted in a restrictive way, i.e. when the disclosure adversely affect (art 4 (4)):**
 - ❖ Proceedings of public authorities and personal data when confidential under national law
 - ❖ Commercial and industrial information when confidential under national law
 - ❖ Intellectual property rights; international relations, national defence, public security
 - ❖ The interests of a third party which has supplied the information voluntarily, and where that party does not consent to the release of the material; course of justice
- **AND public interest served by disclosure should be always taken into account**
- Information exempted should be kept under review and Information to be disclosed should be separated

THE CARTAGENA PROTOCOL ON BIOSAFETY

ACCESS TO INFORMATION

The Biosafety Clearing-House (Article 20):

- serves as a means through which information is made available
- provides access to information made available by the Parties relevant to the implementation of the Protocol
- also provides access, where possible, to other international biosafety information exchange mechanisms
- each Party shall make available to the BCH any information required to be made available to the BCH under the Protocol
- each Party shall endeavour to inform its public about the means of public access to the Biosafety Clearing-House (Article 23 (3))

THE CARTAGENA PROTOCOL ON BIOSAFETY

ACCESS TO INFORMATION

Information which **shall not** be considered confidential (Article 21):

- the name and address of the notifier;
- a general description of the living modified organism or organisms;
- a summary of the risk assessment of the effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health; and
- any methods and plans for emergency response.

THE CARTAGENA PROTOCOL ON BIOSAFETY

ACCESS TO INFORMATION

Public awareness and education (Article 23):

- Parties shall promote and facilitate public awareness and education concerning the safe transfer, handling and use of LMOs in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health
- Parties shall endeavour to ensure that public awareness and education encompass access to information on LMOs that may be imported
- Parties shall make the results of decisions regarding LMOs available to the public

AARHUS CONVENTION

PUBLIC PARTICIPATION

What is subject to public participation on GMOs?

- Decisions on specific activities that may have a significant effect on the environment (Art. 6)
- Plans, programmes and policies relating to the environment (Art. 7)
- Preparation of executive regulations and/or generally applicable legally binding normative instruments that may have a significant effect on the environment (Art. 8)

AARHUS CONVENTION

PUBLIC PARTICIPATION

This means:

- Specific activities on GMOs/LMOs (for example, permission to grow GMO crop)
- Plans, programmes and policies relating to GMOs/LMOs (for example, food safety-related policy)
- Legislation and other generally applicable legally binding rules relating to GMOs/LMOs (for example, legislation on GMO food labelling)

AARHUS CONVENTION

PUBLIC PARTICIPATION

Decisions related to specific activities on GMOs/LMOs:

- an individual decision issued by a public authority
- usually upon an individual application by an applicant for a permitting decision (most often a developer or operator of an existing installation)
- permitting a particular activity (development project) to be undertaken by the applicant
- in a specific place and under specific conditions
- usually following the general requirements set by the plans or programmes setting the framework for such activities

AARHUS CONVENTION

PUBLIC PARTICIPATION

Decisions related to plan, programme, policy on GMOs/LMOs:

- a general act (often adopted finally by a legislative branch)
- initiated by a public authority
- sets, often in a binding way, the framework for certain categories of specific activities (development projects)
- usually is not sufficient for any individual activity to be undertaken without an individual permitting decision

AARHUS CONVENTION PUBLIC PARTICIPATION

Preparation of executive regulations and other legal rules relating to LMOs/GMOs:

- Effective public participation shall be promoted in the preparation of executive regulations and other legally binding rules that may have a significant effect on the environment

Key elements of effective public participation

1. Identify the public and the public concerned
- ↓
2. Timely, adequate and effective notice
- ↓
3. Reasonable time-frames when all options are open
- ↓
4. Access to all necessary information
- ↓
5. Public entitled to comment/be heard
- ↓
6. Due account to be taken of public participation
- ↓
7. Prompt notice of decision
- ↓
8. If commitments revised, repeat as appropriate

BENEFITS OF PUBLIC PARTICIPATION

- Understanding of decision-making processes regarding LMOs/GMOs
- Enhanced trust, better quality of decisions, accountability and better governance
- Improved relationships between decision-makers and the public, and among different stakeholders
- Enhanced smooth implementation and improved legitimacy of decisions
- Economic gains and improved sustainability

KEY ACTIONS AT THE NATIONAL LEVEL

- Establish or enhance the implementation of effective procedures and mechanisms for effective access to information, public awareness and for enabling effective and inclusive public participation in decision-making and access to justice with regard to LMOs/GMOs
- Continue strengthening coordination and cooperation between national focal points of the Aarhus Convention and the Cartagena Protocol on Biosafety

In the light of SDGs, the transparency and effective public participation have acquired increased significance for the work on GMO/LMO matters

- ➤ **SDG 2** (zero hunger), especially, targets related to food security, improved nutrition and sustainable agriculture (targets 2.2 and 2.4) – access to information and public participation in the development and implementation of agriculture-related policies, plans, programmes and projects.
- ➤ **SDG 15** (life on land), access to information and public participation in decisions on LMOs/GMOs is crucial for raising public awareness and better decisions regarding the use of genetic resources, sustainable use of ecosystems and biodiversity.
- ➤ **SDG 16** (responsive, inclusive, participatory and representative decision-making) – the principles of accountability, transparency, inclusivity and the rule of law contained within SDG 16 are key for the implementation of all SDGs, whether directly referred to or otherwise.

The joint efforts by Parties, the treaties' bodies and the two secretariats thereby also support countries' efforts to achieve these SDGs

AARHUS CONVENTION AND CARTAGENA PROTOCOL ON BIOSAFETY

**Enhanced cooperation at national and
international level serves Parties to both
instruments**