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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
(Second meeting, Dubrovnik, Croatia, 3-5 July 2000)
(Item 4 (d) of the provisional agenda)

REPORT OF THE FIRST MEETING OF THE TASK FORCE ON GENETICALLY MODIFIED ORGANISMS

1. At their first meeting (19-21 April 1999, Chisinau, Republic of Moldova), the Signatories to the Aarhus Convention established a task force on genetically modified organisms (GMOs), led by Austria, to prepare a report summarizing the experience of implementing the provisions of article 6, paragraph 11, as well as relevant international processes and developments, and to make recommendations for further action.

2. On 6-7 April 2000, the GMO task force held its first meeting in Sofia, Bulgaria. The meeting was organized by the Austrian Federal Ministry for the Environment, the Austrian Federal Environment Agency and the Bulgarian Ministry of Environment and Water. Financial support was provided by Italy and Norway through the UN/ECE Trust Fund for Assistance to Countries in Transition.

3. The meeting was attended by 25 experts designated by the Governments of Armenia, Austria, Belgium, Bulgaria, Denmark, Finland, Georgia, Germany, the Netherlands, Norway, the former Yugoslav Republic of Macedonia and the United Kingdom. Representatives from the European ECO Forum, the Regional Environmental Center for Central and Eastern Europe (REC) and a resource person from the Netherlands also participated. Mr. Helmut Gaugitsch (Austria) chaired the meeting.

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4. The meeting was opened by Ms. Evdokia Maneva, Bulgarian Minister for Environment and Water, who underlined the importance of the Aarhus Convention in the context of genetically modified organisms.

5. The UN/ECE secretariat gave an update on the Aarhus Convention activities and explained the time frames in the preparation of the second meeting of the Signatories.

Overview of national experiences

6. In response to a questionnaire circulated by the secretariat and lead country, the following countries had submitted written statements describing their existing and planned regulatory frameworks applying to GMOs and outlining how the issues of information, participation and justice were dealt with in this context: Armenia, Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, Georgia, Germany, Iceland, Italy, Latvia, the Netherlands, Norway, Slovenia, Switzerland and the United Kingdom. The European Commission also provided a similar statement concerning the situation at European Community level.

7. The representatives of Austria and Bulgaria undertook to compile these statements, together with the list of participants and other relevant material, for submission as background material, in English only, at the second meeting of the Signatories.

8. The government-designated experts presented reports on existing or planned regulatory frameworks for biosafety and addressed the legal and practical aspects of access to information and public participation in their countries. From the presentations and from reports submitted by countries not present at the meeting, it appeared that there were strong differences between countries regarding whether and how biosafety as well as general access to information and public participation was regulated.

9. Most countries that had provided information to the meeting had general (‘horizontal’) legislation for access to information, which was also applicable to information on GMOs. Some countries had specific provisions in their GMO legislation on access to information, particularly identifying information that could not be kept confidential. The extent to which public participation was provided for in decision-making on the contained use and deliberate release of GMOs varied. Some countries did not have mandatory requirements in their legislation for public participation, but provided for it when deemed necessary. The moments in the decision-making process when the public was invited to participate could be either early or late in the decision-making process. In most countries, public participation was limited to decision-making in the field of releases of GMOs.

10. A representative from the European ECO Forum made a statement on its activities and views regarding public access to information and public participation in the sphere of GMOs.

11. Brief reports were given on the activities and findings of the REC and on the activities in the context of the project “Implementation of national biosafety frameworks in the pre-accession countries of Central and Eastern Europe”, which is funded by the Netherlands Government.

Future steps

12. Following these presentations, a general discussion took place on the recommendations to be submitted to the Signatories to the Convention at their second meeting.

13. The meeting noted the express wish of the Signatories to the Convention that the issue of GMOs should be on the agenda of the first meeting of the Parties and that the application of the Convention in this area should be further developed (ECE/CEP/43/Add.1/Rev.1). It was considered that the recent adoption of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, which contained provisions relevant to information and public participation, could pave the way for making further progress on this issue.

14. The items discussed were: (i) public access to information on GMO-related issues, and (ii) public participation in GMO-related issues. The meeting did not have time to discuss access to justice or other issues relevant to the Convention as they applied to GMOs. Some participants wished to emphasize that the views they expressed during the discussion were preliminary, given the shortage of time.

Public access to information on GMO-related issues

15. It was recommended that a good general level of public information and awareness on GMO-related issues should be promoted, as was intended by the information, education and awareness provisions in article 23 of the Protocol on Biosafety and the information-sharing requirements listed in its article 20 (Biosafety Clearing-House). This might facilitate both a fact-oriented discussion and more effective public participation in GMO-related decisions.

16. For the purpose of the Aarhus Convention, “environmental information” includes information on the state of elements of the environment, including GMOs, and the interaction among these elements as well as factors, activities or measures related to these elements (art. 2, para. 3, (a) and (b)). On this basis, public authorities, in response to a request for environmental information, are to make such information available to the public according to the provisions of article 4.

17. All provisions of article 5 on the active provision of information (including emergency and consumer information) are also relevant to information on GMOs, with “publicly accessible lists, registers or files” (para. 2(b)(i)) which should “progressively [become] available in electronic databases which are easily accessible to the public through public

telecommunications networks" (para. 3), especially on Internet servers, the use and accessibility of which is steadily increasing.

18. These registers could contain inter alia the following information regarding the use of GMOs:

(a) A general description of the legal framework related to GMOs and GMO-containing products within the country (including labelling requirements of products and contact points for further information);

(b) Non-technical explanations on the issues regulated;

(c) A list of products which have gained market approval in the country, and the requirements for labelling of GMO products marketed (including links to further information on potential risks and risk assessment);

(d) Information, including a summary of the risk assessment, on applications and decisions on contained use;

(e) Information, including a summary of the risk assessment, on applications for release or marketing of a GMO;

(f) New information relating to risk that may become available while the application is under consideration;

(g) The advice to the competent authority of any expert committee or advisory board on the application;

(h) Information on decisions to grant or refuse a consent and any limitations and conditions attached to any consent granted, including reasons;

(i) New information subsequently notified to the competent authority about consents granted;

(j) Information on the results of the release, including information on monitoring, and its implications for any further release;

(k) Decisions taken by the competent authority to revoke or vary any consent granted;

(l) Non-technical summaries of applications and decisions on deliberate releases;

(m) Contact points for further information if full information is not given.

19. There was no agreement as to whether it was feasible to include in these registers places and plots where GMOs were grown commercially.

20. The European ECO Forum and REC felt that the actual applications and decisions themselves should also be placed on the register. Other participants pointed out that further information could also be obtained under freedom-of-information legislation.

21. The European ECO Forum, supported by the representatives from Georgia and REC, cited article 5, paragraph 8, of the Convention and emphasized that information on GMOs was important to enable consumers to make informed environmental choices. This should include labelling information on products which were GMOs, contained GMOs or were derived from GMOs and on products which were GMO-free. Information should be clear and complete, not misleading, and understandable. Development of standards should begin immediately in preparation of the first meeting of the Parties.

22. Other participants had reservations concerning the NGO proposal and felt that, although it was an important issue, there was not sufficient time to discuss it. The Chairman proposed to revert to the issue at a later date.

23. The following Internet sites were identified as examples of good practice regarding one or more of the above aspects:

- Netherlands Environment Ministry: http://www.minvrom.nl
- United Kingdom Department of the Environment, Transport and the Regions: http://www.environment.detr.gov.uk
- Austrian Federal Environment Agency: http://www.ubavie.gv.at/umweltregister/genbio/intro.htm
- Austrian biosafety server: http://www.gentechnik.gv.at
- Belgian biosafety server: http://biosafety.ihe.be
- Norwegian Directorate for Nature Management:
- http://www.dirnat.no/temasider/
  See “Utsetting av genmodifiserte organismer”
- Norwegian Biotechnology Advisory Board: http://www.bion.no/

Public participation in GMO-related issues

24. There was general agreement that article 6, paragraph 11, of the Convention left it unclear to what extent and in what situations the provisions of article 6 should be applied to decision-making on GMOs. Terms considered to contribute to this lack of clarity were ‘feasible and appropriate’; ‘within the framework of its national law’; ‘provisions’ (without any qualifier to indicate whether all or just some provisions of article 6 were to be applied); and the term ‘deliberate release’ itself, which was not defined in the Convention.

25. Various procedural options for extending the application of the Convention in GMO decision-making were discussed. These included:

- A decision of the Meeting of the Parties setting out its view on how article 6, paragraph 11, should be construed;
- 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;
- Guidelines on best practices, on improving the legal framework and on the practical arrangements;
- A protocol to the Convention covering GMO issues.

This list was not considered to be exhaustive, and it was felt that it was too early at this stage to identify the best option.

26. With respect to public participation in decision-making on GMOs, most of the discussion focused on identifying any problems which would be created by considering decision-making on GMOs as falling under annex I. There were different views as to which types of decisions on GMOs would be most suitable for inclusion in annex I. Most participants felt that the priority should be to focus on the deliberate release of GMOs, as this was explicitly referred to in article 6, paragraph 11, and in the Resolution of the Signatories (ECE/CEP/43/Add.1/Rev.1).

27. Some participants held that decisions on the contained use of GMOs should also be subject to public participation in accordance with the full provisions of article 6, as contained use might in practice involve both routine and accidental releases to the environment. It was pointed out that different categories of contained use involved different degrees of risk. Decision-making on contained use might deal with a particular type of contained use, rather than on a case-by-case basis. It was decided to defer further consideration of public participation in the context of the contained use of GMOs.

28. It was generally felt that a definition of “deliberate release” would be necessary in order to understand the implications of public participation provisions in this area. Experts representing EU countries preferred to use the EU definition in Directive 90/220/EEC as a basis for developing a definition under the Convention. Some participants, notably from NGOs, expressed concern that the EU definition did not cover routine releases from contained uses. The Chairman noted that this question could be revisited in a future discussion on the contained use of GMOs. REC pointed out that there were several alternatives to the EU system available, including that of Norway which had been mentioned, and that these should be looked at in more detail. It was generally assumed that, for the purpose of applying provisions of article 6, “deliberate release” should be taken to also cover placing on the market of GMOs.

29. The meeting proceeded to examine each of the paragraphs of article 6 in turn to see whether they should be applicable in the context of decision-making on the deliberate release of GMOs. It was generally agreed that paragraphs 2-5, 7-8 and 10 could be applied to the deliberate release of GMOs without any adjustment.

30. In the case of paragraph 6, the following potential problems were identified:

(a) The expert designated by the Government of Germany indicated that Germany might have a problem with the requirement in the introductory paragraph that the public should be entitled to examine the information in question free of charge, in the context of GMO decision-making;

(b) It was considered that the references to “an estimate of the expected residues and emissions” in subparagraph (a) and to “emissions” in subparagraph (c) were not appropriate in the case of GMOs, and that it would be more appropriate to refer to “proposed waste treatment”;

(c) With regard to subparagraph (e), some participants wanted more time to seek legal advice on whether this created an obligation on the applicant to actually study alternatives, or only an obligation on public authorities to provide information on alternatives where these had been studied.

31. With respect to paragraph 9, the expert designated by the Government of Germany indicated that in Germany the requirement to actively inform the public of the decision might create legal difficulties when applied to GMOs.

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