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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
(Second meeting, Geneva, 18 – 20 February 2002)

REPORT OF THE SECOND MEETING

1. The second meeting of the Working Group on Genetically Modified Organisms (GMOs) took place in Geneva on 18-20 February 2002.
2. The meeting was attended by representatives from the Governments of Armenia, Austria, Belgium, Canada, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Italy, Kyrgyzstan, Netherlands, Norway, Portugal, Republic of Moldova, Spain, Tajikistan, United Kingdom, United States of America and Uzbekistan.
3. The Commission of the European Communities was represented.
4. The United Nations Environment Programme (UNEP) was represented.
5. The following organizations were represented: European ECO Forum, Hungarian Environmental Partnership Foundation, International Council of Chemical Associations (ICCA), NGO Forum 'Environment and Development', Regional Environmental Center for Central and Eastern Europe (REC) and Slovenian foundation for Sustainable Development (UMANOTERA).

6. The Chairperson of the Working Group, Mr. Helmut Gaugitsch (Austria), opened the meeting. He recalled that the main objective of the Working Group was to prepare a draft decision for the first meeting of the Parties, and reminded the delegations of the understanding reached at the first meeting of the Working Group that it would follow a two-track approach, a legally binding one and a non-legally binding one. He also informed the Working Group of the outcome of the first meeting of the Working Group for the preparation of the first meeting of the Parties, which had taken place late November 2001. That Working Group had recommended to the Working Group on GMOs to concentrate on the work on guidelines rather than carrying out further work on an amendment to the Convention before the first meeting of the Parties. However, a draft decision for the Meeting of the Parties could consider further work on the legally binding approach (CEP/WG.5/2001/2, para. 33). The Chairperson suggested that this recommendation should be taken into account.

I. ADOPTION OF THE AGENDA

7. The Working Group adopted the agenda for the meeting as set forth in document CEP/WG.5/AC.3/2002/1.

II. DRAFT DECISION

8. The secretariat briefly presented the draft decision on genetically modified organisms for adoption at the first meeting of the Parties contained in document CEP/WG.5/AC.3/2002/4. The draft decision was based on the two-track approach agreed by the Working Group at its first meeting and provided for two options with respect to the legally binding track. According to option I, which was intended to be consistent with the recommendation of the Working Group for the preparation of the first meeting of the Parties, the Parties, at their first meeting, would establish a working group to prepare a draft amendment to the Convention for their second meeting. According to option II, the Parties, at their first meeting, would amend the Convention along the lines indicated in the annex referred to in that option.

Preamble

9. A number of specific comments were made on each preambular paragraph of the draft decision, ranging from mere drafting or technical points to more substantive comments; the latter ones being reflected in this report.

10. When addressing the fourth preambular paragraph, some delegations felt that the text gave the impression of a lack of legal clarity in the Convention and expressed a preference that the wording be reformulated to avoid this impression. Others felt that such a paragraph was crucial and that the lack of clarity as to what a Party would be required to do to comply with article 6, paragraph 11, lay at the root of the request in the ministerial resolution for further work to be done on this issue.

11. The fifth preambular paragraph was considered by some delegations to go beyond the mandate given by the Ministers as the issues of contained use and labelling were not addressed in the Aarhus resolution accompanying the adoption of the Convention, and they suggested therefore that the paragraph should be deleted altogether. Others thought that it was too broadly formulated and suggested inserting after “*more precise provisions on*” the words “*access to information, public participation and access to justice with respect to*” in order to clearly identify the issues related to the Aarhus Convention. It was agreed to keep the paragraph on the table in square brackets for the time being with the suggested clarification.

12. No specific comments were made on the sixth preambular paragraph but it was considered that this might benefit from being combined with the first two elements of the seventh preambular paragraph, following the approach in the Protocol on Biosafety, with the precautionary approach being dealt with in a separate paragraph. Others favoured the precautionary approach being linked with the issue of public concern.

13. With respect to the seventh preambular paragraph, many delegations found that the wording “*the degree of uncertainty in the risk assessment of GMOs*” should be deleted or at least needed more consideration, and questioned whether reference to the public should be made in this context. Others defended the text and the role of the public.

14. Regarding the eighth preambular paragraph, it was noted that this attempted on the one hand to acknowledge relevant work being carried out in other international forums and on the other hand to argue that further work was needed under the Aarhus Convention. It was proposed that the text be redrafted so as to distinguish these two elements and highlight the unique role of the Aarhus Convention within the context of relevant international instruments.

15. In the final preambular paragraph, some delegations proposed that the word “*strengthening*” should be replaced by “*further developing*” to reflect better the ministerial resolution. Other delegations found that it would be premature to discuss this preambular paragraph before a decision on how to proceed on the legally binding track had been made.

Guidelines

16. With respect to the operational paragraphs 1 and 2, it was decided that these needed to be further considered. It was mentioned that a specific reference to the guidelines being voluntary and non-legally binding could be added as well as a recommendation to the Parties that they should use the guidelines. It was also pointed out that, concerning the second paragraph, it might not be the Ministers themselves but a working group which would be mandated to explore the need for reviewing the guidelines and complementing them by a more detailed handbook.

17. Some delegations reserved their position with respect to these two paragraphs and preferred to see the paragraphs kept in square brackets until the text of the third paragraph had been decided upon, as a decision to address the issues in a legally binding way was seen as a condition for adopting the guidelines. Some delegations reserved their positions regarding

whether there should be a commitment in the draft decision obliging Parties to keep the guidelines under review. The value of such a commitment would depend on the value of the guidelines themselves.

18. The question was raised as to whether the guidelines prepared by the Working Group for adoption at the first meeting of the Parties should be made available for possible endorsement at the Fifth Ministerial 'Environment for Europe' Conference in Kiev 2003. If this were to be the case, it could have implications for the content of the draft guidelines as well as the draft decision.

Amendment of the Convention

19. As mentioned above, two options had been presented for paragraph 3 of the draft decision. When addressing their preference for one or the other option, there was a geographical split: delegations from the newly independent States and Central and Eastern Europe were generally of the opinion that legally binding provisions were needed in order to have any effect in their countries and in favour of working on the basis of option II, whereas the delegations from Western countries generally preferred to work on the basis of option I.

20. As many of the delegations favouring option II indicated their willingness to work on basis of option I on the understanding that this option would mandate the start of work on a legally binding amendment to the Convention after the first meeting of the Parties, it was agreed to work on option I. The Chairperson then prepared a revised version of option I taking into account the discussion on the first day of the meeting, which was presented to the Meeting and discussed (annex I).

21. The new text was accepted as a useful basis for further discussion. Some delegations proposed that the included mandate should be formulated in a more flexible way, with respect to the type of legally binding instrument, the time frame and the appropriateness of already making a commitment at the first meeting of the Parties to a future amendment of the Convention.

22. It was pointed out to the Working Group that first the Task Force and subsequently the Working Group had addressed in some detail the various options for pursuing the legally binding approach, most recently at the first meeting of the Working Group (CEP/WG.5/AC.3/2001/2, paras. 11-17). Out of this work a clear preference had emerged. That was the basis for the request made to the secretariat at the previous meeting to prepare draft text for a possible amendment to the Convention. To request a new working group established by the Meeting of the Parties to explore options would involve a repetition of this work.

23. In the discussion of the revised text, three alternative ways for the Meeting of the Parties to address the legally binding approach emerged:

- (a) The Parties, at their first meeting, would amend the Convention immediately;
- (b) The Parties, at their first meeting, would initiate negotiations on a text for a draft amendment or another type of a legally binding instrument with a view to the amendment or instrument being adopted at their second meeting;

(c) The Parties, at their first meeting, would establish a process whereby the implementation of the guidelines would be evaluated, and, on the basis of this evaluation, the necessity of a legally binding instrument and the form and shape which such an instrument might take would be explored.

24. It was decided to come back to this issue at the next meeting of the Working Group. The Chairperson appealed to delegations to consult in their capitals with a view to moving the process forward at the next meeting.

III. GUIDELINES

General comments

25. The Chairperson briefly presented the draft guidelines prepared by the Bureau in consultation with the secretariat (CEP/WG.5/AC.3/2002/3), and outlined their structure and content as well as their voluntary and non-legally binding nature. The Working Group held a preliminary round of discussion on the document, during which a number of general comments were made. Some delegations expressed the view that the language was too prescriptive and legalistic and that national differences should be respected. The guidelines should be practical to implement and should therefore allow for flexibility.

26. Some delegations questioned the structure of the document, prompting the Chairperson to remark that the structure broadly followed that which had been agreed at the previous meeting (CEP/WG.5/AC.3/2001/2, annex). It was pointed out that some of the elements agreed at the previous meeting, including capacity building, liability, measures to improve and facilitate public knowledge and the designation of competent authorities were not covered by the draft guidelines. It was agreed that it would be useful to set out more clearly the objectives and scope of the guidelines. An informal new draft of the earlier sections of the document was prepared with a new title, a restructured preamble, a section setting out the objectives of the guidelines, a section on the scope of the public participation chapter and combining the notification and access to information elements into a common section. There was general agreement that this restructuring represented an improvement. However, the Working Group did not discuss the language of the revised preamble in detail. It was agreed to address further structural questions at a later stage if it proved necessary.

27. It was noted that the target audience for the guidelines might affect their content. Guidelines prepared just for the Parties could 'take as read' the obligations in the Convention, whereas guidelines aimed at non-Parties might need to address (in non-binding language) some of the issues dealt with in the Convention. It was generally understood that the guidelines would be adopted by the Parties to the Convention but, if appropriately drafted, could be endorsed and used by other States not Party to the Convention.

28. There were differing views as to what the scope of the guidelines as well as the different chapters (e.g. on information and participation) should be. No detailed discussion of these issues took place. Some delegations felt that the non-binding nature of guidelines should allow for the

scope to be broader than would be the case with a binding approach, and it was pointed out that this argument had been made at the previous meeting by advocates of the non-binding track. Others felt that covering all GMO-related issues from the start would be too ambitious, and that the guidelines should initially have a narrow focus, with the possibility of broadening this at a later stage. Some concerns were expressed about the inclusion of the contained use of GMOs, especially types of contained use in certain risk categories. It was suggested that deliberate release, including placing on the market, should be the core of the guidelines, but that they could also cover other issues.

29. During the discussion of the text of the draft guidelines, a number of specific comments were made on the provisions, some of which are included below. These were not necessarily agreed by the Working Group.

Definitions

30. The Working Group discussed the section on definitions and a number of suggestions were made for amendments. On the basis of this, a small group led by the Netherlands prepared a revised draft, which was presented to the Working Group but not discussed (annex II). The new text could be placed at the end of the guidelines. It was agreed that this should serve as the basis for further work on this section.

Notification and access to information

31. Comments on the elements relating to notification and access to information (the former included in the section entitled 'General considerations' in document CEP/WG.5/AC.3/2002/3) included the following:

- In paragraphs 3 and 7, the words “*and/or*” should be replaced by “*and*”;
- In paragraph 6, the reference to article 4, paragraph 4, of the Aarhus Convention, should be a reference to article 4, paragraphs 3 and 4;
- The reference to human health in the guidelines was questioned by some delegations, whereas others found the reference appropriate, as it was covered by the Aarhus Convention, inter alia in article 2, paragraph 3 (c);
- Some delegations indicated that there could be problems referring to locational information, inter alia because of difficulties with the enforcement of such a provision, whereas others considered this to be important;
- Some items of information in paragraph 6 (e) should be made available to the public only if the information already existed;
- The question of which risk categories should be included in paragraph 6 (f) would need further discussion;
- Paragraph 8 might need to be moved to a more general information chapter.

Public participation and decision-making

32. Comments on this section included the following:

- It was suggested to change the title of this section to: procedures for public participation in decision-making;
- In paragraph 11, several delegations suggested deleting the reference to public authorities;
- In paragraph 13, best practice examples could be added on how public authorities take due account of the outcome of the public participation. It was suggested that “due” should be replaced by “maximum”;
- In paragraph 14, the words “and/or” should be replaced by “and”;
- Some delegations found paragraphs 14 and 15 overly prescriptive, whereas others found that they were providing guidance on how these issues could best be dealt with. Deletion of the word “shall” in the first line of paragraph 15 was suggested in order to emphasize the voluntary nature of the guidelines;
- As to paragraph 16, some doubts were raised as to whether public participation procedures should be applied in the context of the reconsideration or renewal of operating conditions;
- With respect to paragraph 17, some delegations suggested that it should be clarified that the measures in this paragraph would be additional to those recommended above. Others suggested that they could be alternatives.

Collection and dissemination of information on activities with GMOs

33. Comments made on this section included the following:

- Protection of intellectual property rights should be taken into consideration;
- The term “*mandatory*” in paragraph 18 might not be compatible with the status of guidelines;
- Clarification of which GMO-related activities were referred to in the various provisions;
- Good practices with registers should be taken into account;
- References to “*supranational*” in various places might need to be replaced with the term “*regional*” and/or “*international*”;
- Duplication with other instruments, especially the Cartagena Protocol on Biosafety, should be avoided, and links should be made to the Biosafety Clearinghouse;
- The question of the language in which information is available should be addressed – for some, a official language of the United Nations might be sufficient, for other information it should be in the national language;
- In paragraph 20, information on the means of protection from a GMO-related threat should be included;
- Inclusion of information on places and plots where GMOs are grown commercially might be problematic for some delegations, inter alia because of concerns with respect to the enforcement of such a provision, though others considered it important;

- A cross-reference to paragraph 6 might be useful;
- In paragraph 22, some international web sites (United Nations Industrial Development Organisation (UNIDO), Organisation for Economic Co-operation and development (OECD)) could be added;
- In paragraph 23, there were different views on how prescriptive the interval between dissemination of reports should be, and it was suggested this could be done within the framework of general state-of-the-environment reports. The system whereby EU countries report this information to the European Commission, which then publishes it, should be taken into account;
- In paragraph 24, draft legislation and draft policy documents could be added to the list of information which should be actively disseminated;
- In paragraph 24 (d), significant documents on regulatory approaches need not be limited to international ones;
- In paragraph 25, there were different views on the extent to which public authorities should have a role in encouraging the private sector to inform the public on the impact of their activities;
- There were mixed views on the extent to which labelling and traceability issues should be covered. Some delegations felt that there were other more appropriate forums dealing with the issue and that the guidelines should limit themselves to giving encouragement to those other processes. Others considered that the issues were not being resolved effectively in the other forums and that article 5, paragraph 8, of the Convention gave a mandate to cover them under the Convention;
- Labelling of products derived from GMOs would be more controversial than labelling of GMOs;
- Paragraph 31 concerning capacity-building and assistance was of general relevance in the guidelines.

Access to justice

34. Comments made on the section on access to justice included the following:

- Some delegations felt that this section repeated parts of the Convention in non-binding language but with some variations, giving rise to concerns of redundancy on the one hand and inconsistency on the other;
- Concerns were again expressed about the various references to the term 'supranational' with some feeling that it should be deleted and others that it should be replaced with 'international';
- The notion that breaches of the guidelines, which are inherently non-binding, might be subject to access-to-justice procedures would need careful examination;
- Paragraphs 32 and 33 echoed article 9, paragraph 1, of the Convention, but there was no provision in the guidelines equivalent to article 4 (upon which article 9, para.1, was based). Since article 2, paragraph 3 (a), and article 4 cover GMOs, the provision might be redundant (at least for Parties);

- Due to its greater detail than article 9, paragraph 2, of the Convention, paragraph 35 was seen as adding value by some delegations while causing problems for others, partly due to the notion of 'due account' and the range of public having access to the procedures.

IV. FUTURE PROCESS

35. The Chairperson invited delegations to submit comments on the guidelines to the secretariat in writing by 6 March 2002 to facilitate the further drafting process. The comments would be made available on the Convention's web site in the language in which they were submitted.

36. It was agreed to invite the Chairperson to prepare a new draft of the guidelines to be presented to the Working Group for consideration at its next meeting. In this task the Chairperson would be assisted by the secretariat and a small but representative ad hoc drafting group whose members would offer their assistance in a personal capacity. The membership of the drafting group was agreed as follows: Ms. Aida Iskoyan (Armenia), Ms. Nevenka Preradovic (Croatia), Ms. Liina Eek (Estonia), Mr. Gernot Schubert (Germany), Ms. Birthe Ivars (Norway), Ms. Jane Bulmer (United Kingdom), Mr. Daniele Franzone (European Commission), Ms. Magdolna Toth Nagy (REC) and Mr. Juan Lopez Villar (European ECO Forum). The dates of 18-19 March 2002 were provisionally set for the drafting group's meeting. The venue would still have to be decided.

37. The Working Group requested the secretariat, in consultation with the Bureau, to prepare a revised text of the draft decision for the Meeting of the Parties, taking account of the Working Group's discussion, to be discussed at its next meeting.

V. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

38. 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 Working Group for the constructive atmosphere and the secretariat for its efficient assistance in the meeting. Finally, he thanked the interpreters and closed the meeting.

Annex I

**PROPOSAL FOR NEW TEXT FOR PARAGRAPH 3, OPTION I,
IN DOCUMENT CEP/WG.5/AC.3/2002/4**

3. Establishes the Working Group on Genetically Modified Organisms to prepare an appropriate draft amendment to the Convention for possible adoption at the second meeting of the Parties. The Working Group shall take into account the work undertaken by the Working Group on Genetically Modified Organisms established by the Committee on Environmental Policy, including the text of option II in document CEP/WG.5/AC.3/2002/4. It shall also take account of relevant work being undertaken in other international forums, having in mind the need to avoid duplication and promote synergies. The draft amendment to the Convention shall be designed to strengthen the requirements for public participation in decision-making on the deliberate release of GMOs, including placing on the market, and [may aim to strengthen the requirements for public participation in decision-making] on certain types of contained use of GMOs.

Annex II

PROPOSAL TO REPLACE THE SECTION ON DEFINITIONS IN DOCUMENT CEP/WG.5/AC.3/2002/3 BY THE FOLLOWING SECTION

[Glossary]

Use of terms

1. For the purpose of these guidelines, the following use of terms for [activities][operations] with GMOs, which is based on existing international and regional documents, such as the Cartagena Protocol on Biosafety and the EC Directives on the deliberate release (2001/18/EC) and contained use (98/81/EC) of GMOs, applies:

(a) ‘Genetically modified organism’ (GMO) means any organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology;

(b) ‘Modern biotechnology’ means the application of:

- (i). In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles, or
- (ii). Fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection;

[(c) ‘Micro-organism’ means any microbiological entity, cellular or non-cellular, capable of replication or of transferring genetic material, including viruses, viroids, animal and plant cells in culture;]

(d) [‘Deliberate release of GMOs into the environment’ or] ‘deliberate release’ is defined as 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;

[(e) Two types of deliberate releases of GMOs into the environment can be distinguished: type-I deliberate releases of GMOs for which insufficient experience in [certain ecosystems][the likely potential receiving environment] has been obtained, and type-II deliberate releases of GMOs for which sufficient experience in [the likely potential receiving environment] has been obtained;]

(f) ‘Placing of GMOs on the market’ is defined as making GMOs available to third parties, whether in return for payment or free of charge;

(g) ‘Contained use of GMOs’ or ‘contained use’ means any [activity][operation], undertaken within a facility, installation or other physical structure, which involves genetically modified organisms that are controlled by specific measures that effectively limit their contact

with, and their impact on, the external environment;

[(h) The four different risk categories of [activities][operations] of contained use involving genetically modified micro-organisms (GMMs) are:

- Class 1: [activities][operations] of no or negligible risk [, that is to say activities for which level-1 containment is appropriate to protect human health and the environment];
- Class 2: [activities][operations] of low risk [, that is to say activities for which level-2 containment is appropriate to protect human health and the environment];
- Class 3: [activities][operations] of moderate risk [, that is to say activities for which level-3 containment is appropriate to protect human health and the environment];
- Class 4: [activities][operations] of high risk [, that is to say activities for which level-4 containment is appropriate to protect human health and the environment];

[(i) 'First-time contained use of [GMOs][GMMs]' is defined as the first-time use, in a specific contained facility, of a GMO belonging to a [group] which has not previously been notified to the public authorities;]

[(j) 'Subsequent contained use of GMOs' is defined as contained use, in a specific facility, of GMOs belonging to a group which has previously been notified to the public authorities;]

[(k) [option 1: definition on the risk level]

[option 2: definition on small and large-scale activities/operations]

[option 3: scientific or industrial activities/operations]]