



**Economic and Social
Council**

Distr.
GENERAL

MP.PP/AC.2/2003/4
24 October 2003

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

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 SECOND MEETING

1. The second meeting of the Working Group on Genetically Modified Organisms (GMOs) took place in Geneva on 1-3 October 2003.
2. The meeting was attended by representatives from the Governments of Armenia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Greece, Georgia, Germany, Ireland, Italy, Netherlands, Republic of Moldova, Romania, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, United Kingdom, United States of America 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 and Implementation Project on National Biosafety Frameworks attended the meeting.
4. The following organizations were also represented: CropLife International, European ECO Forum, GLOBE Europe, International Environmental Resources, Policy Center in GMOs Risk Management (Russian Federation), Regional Environmental Center for Central and Eastern Europe (REC) and Russian Regional Environmental Centre.
5. Mr. Helmut Gaugitsch (Austria), Chairperson of the Working Group, opened the meeting by reminding the Working Group of its mandate set out in decision I/4 of the Meeting of the Parties, which required it to examine and build upon the preparatory work of the previous Working Group, and specifically to further explore what the options were for a legally binding approach, to select

and develop the most appropriate options and to put them forward for possible decision and, if appropriate, adoption at the second meeting of the Parties.

6. The Chairperson briefly reported on the outcome of the first meeting of the Working Group and set out his views on how to build upon that work. At the previous meeting, delegations had agreed to submit in writing accounts of their national experiences with the application of public participation procedures to activities with GMOs and with the Guidelines on Access to Information, Public Participation and Access to Justice with respect to GMOs (MP.PP/2002/6) and were to identify their specific needs with respect to this process. In addition, delegations were expected to make written submissions concerning the implications, including advantages and disadvantages, of possible legally binding options. The latter contributions were used as a basis for an analysis of implications of various legally binding options for further developing the application of the Convention to genetically modified organisms (MP.PP/AC.2/2003/5), which had been prepared by the secretariat in consultation with the Bureau and circulated to the Working Group in advance of the meeting. The Chairperson expressed the hope that the written submissions and the analysis would be used to further structure discussions on the scope, content and format of possible legally binding options.

I. ADOPTION OF THE AGENDA

7. The Working Group adopted the agenda for the meeting as set out in document MP.PP/AC.2/2003/3.

II. EXCHANGE OF INFORMATION ON NATIONAL EXPERIENCES AND NEEDS

8. Delegations were invited to report on their experiences and needs with respect to the application of public participation procedures to activities with genetically modified organisms and the Guidelines on Access to Information, Public Participation and Access to Justice with respect to GMOs. The conclusions of the discussion are summarized in the following paragraphs.

9. Some delegations, in particular those from EU countries, had a number of years of experience with public information and participation in GMO decision-making.

10. As the EU regulatory framework had been revised recently, EU member States and the Commission had for the most part acquired only limited experience with applying the public information and participation procedures under the new system.

11. Delegations from some of these countries expressed reluctance to establish new and additional requirements for public participation in GMO decision-making before having gained more experience with their existing systems.

12. Some delegations felt that public input received to date had contributed little to the risk assessment process, as many comments had been of a more general nature, e.g. addressing ethical,

socio-economic or political issues. Others mentioned that input from the public or NGOs had sometimes contributed to the quality of the risk assessment process as well as raised more general issues.

13. Some delegations, in particular from countries with economies in transition, identified a clear need for a regulatory framework on GMO decision-making, including requirements and procedures for public participation.

14. While the Cartagena Protocol was seen as the relevant international instrument for establishing national biosafety frameworks, including certain public information and participation requirements, some of these delegations indicated that its relevant provisions (art. 23) would not be sufficient and looked towards the Aarhus Convention to ensure that public-participation requirements were made an integral part of the national framework from the start.

15. Others felt that it still had to be proven that the further development of legally binding provisions under the Aarhus Convention would provide timely added value to the development of national biosafety frameworks, taking into account the initiatives under the UNEP-GEF projects on the development and implementation of national biosafety frameworks.

16. At the national level, there should be coordination between the implementation of the Cartagena Protocol and the Aarhus Convention, in order to avoid duplication and promote synergies.

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

17. A general discussion on the legally binding options took place. Divergences similar to those that had occurred during the discussion under the previous item emerged. Some delegations, notably from the EU countries, expressed the view that the question of specific needs should be fully explored before entering into the process of further exploring legally binding options. At least one delegation expressed the view that more experience should be gained with the implementation and application of the Guidelines adopted at the first meeting of the Parties. Others felt that the indication from several non-EU countries that they needed an international legal obligation in order to catalyse the introduction of public-participation requirements at national level was sufficient to allow the Working Group to address its central task of exploring legally binding options. It was eventually agreed to proceed with the discussion on the scope and content of any legally binding options, on the understanding that the more specific needs of the countries, including NGOs, would emerge during the process and could be further discussed at that point.

18. The secretariat presented the analysis of legally binding options (MP.PP/AC.2/2003/5) that it had prepared in consultation with the Bureau at the Working Group's request. The Working Group then discussed the issue of which public-participation procedures might be applied to the various categories of GMO decision-making before discussing the various forms that the legally binding option might take.

19. In order to structure the discussion, the Chairperson invited the Working Group to address the following three questions with respect first to the deliberate release of GMOs for experimental purposes, then with respect to the placing on the market of GMOs, and finally with respect to the contained use of GMOs:

- Could the procedures set out in paragraphs 2 to 10 of article 6 of the Convention be applied without alteration?
- Could the procedures set out in paragraphs 2 to 10 of article 6 of the Convention be used as a basis, but with some alteration?
- Is a different approach needed, i.e. a different set of public-participation procedures from those set out in paragraphs 2 to 10 of article 6 of the Convention?

20. As regards decision-making on the deliberate release of GMOs for experimental purposes, most of the delegations that commented indicated a preference for applying the procedures set out in paragraphs 2 to 10 of article 6 of the Convention without any alteration. Some delegations preferred to see a different participation procedure, and some of these suggested that EU legislation could provide the model. One delegation, citing the principle of subsidiarity, indicated that its preferred option was to rely upon the type of procedure set out in article 6, paragraph 11, for these activities, possibly complemented with interpretative elements where need be. Other delegations held the view that there would not have been any reason for the Meeting of the Parties to establish the Working Group with the mandate to explore legally binding options if it had considered that provision to be clear enough.

21. With respect to decision-making on placing of GMOs on the market, opinion was divided as to whether the procedures set out in article 6, paragraphs 2 to 10, could be used as the basis or whether different participation procedures were needed. Those opposed to using the article 6 procedures as the basis cited the fact that other activities listed in annex I tended to be location-specific whereas placing on the market was not, and thus the public concerned would not be centred around a particular location. It was pointed out that, in the EU, the authorization procedure for placing of GMOs on the market functioned at the level of the Community rather than at the national level, and that this should be taken into account. One delegation again indicated that its preferred option was to rely upon the type of procedure set out in article 6, paragraph 11, possibly complemented with interpretative elements where need be.

22. As regards decision-making on the contained use of GMOs, most of the delegations that commented expressed a preference for not including public participation requirements at all, using the argument that since the GMOs were contained and not entering the environment, there was no need for a public-participation requirement. Other delegations favoured applying the procedures set out in article 6, paragraphs 2 to 10, at least to decision-making on genetically modified micro-organisms (GMMs) in the higher risk categories, arguing that the potential risk of significant damage was sufficient justification. One delegation stated that some release to the environment sometimes took place even in regular contained use.

23. It was indicated by at least one delegation that the implications of article 9, paragraph 2, could be problematic if the provisions of article 6 were to be changed and it was agreed that this issue should be fully taken into account when discussed at a later stage.

24. The possibility of pursuing a differentiated approach whereby some countries would rely on existing legislation and a legally binding option would be developed for the other countries lacking an appropriate framework was also discussed. It was generally felt that, while such an approach might resolve the immediate impasse faced by the Working Group, it could have some far-reaching political implications and could set a precedent which might not be desirable. It was felt that further reflection and consultation on this possibility should take place. Article 9, paragraph 2 (c), and article 11, paragraph 6, of the Cartagena Protocol were cited as examples of differentiated approaches.

25. There was a brief discussion on the issue of timing. In reference to the above-mentioned need for legal biosafety frameworks, it was noted that the legally binding options would generally not have legal force for a number of years following their adoption, as they would need to receive the requisite number of ratifications to bring them into force. However, one delegation representing an organization provided information corroborating an observation made by the secretariat to the effect that, even during the development of the options, the draft texts could already serve as a helpful model for countries intending to be eventually bound by them, as had been the case with the Aarhus Convention itself.

26. Having partly addressed the issues of scope and content, the Working Group discussed the form of the legally binding options that would most adequately address the different needs expressed by the countries. Delegations were invited to indicate which of the options presented in the analysis of legally binding options (MP.PP/AC.2/2003/5) would satisfy their needs taking into account the issue of timing.

27. Some delegations felt that it was necessary to further identify needs, and from this, define the scope and procedures, before attempting to identify which would be the most appropriate form of legally binding approach, and consequently refrained from indicating preference for any legally binding option.

28. Option A (amendment of the Convention) was the option on which views were most divided. Several delegations expressed a firm preference for option A1 (deletion of article 6, paragraph 11, and addition of certain GMO activities to annex I), believing this to be the most practical solution. Several others were firmly opposed to it, stating that it would be very difficult to apply the public-participation procedures set out in article 6, paragraphs 2 to 10, to activities with GMOs because of the different nature of GMO activities as compared with annex I activities. Option A2 (amendment of article 6, paragraph 11, and addition of a new annex) also attracted some support. Other options for amendments identified in the analysis were either opposed by one or more delegations or were not supported. Two new options for amendments were put forward, namely deletion of article 6, paragraph 11, only, supplemented by possible interpretative elements as to how to apply the Convention to GMO-related decisions, which one delegation wanted to present for consideration, and addition of a new subparagraph after article 6, paragraph 1 (b), referring to a new annex on

GMOs. This last option drew broad support from delegations from countries in transition and some NGOs as a possible alternative to option A1.

29. There was little support for option B (protocol). Some delegations expressed the concern that it was not clear how it would satisfy the needs expressed during the meeting and that developing a protocol would inevitably entail a long-term commitment of time and resources. Some delegations which had previously expressed support for this option indicated that they could live with option A.

30. Most delegations considered option C (decision of the Parties) not to be a legally binding option under normal circumstances.

31. There was broad agreement that option D (rendering the Guidelines legally binding) was not a viable or desirable option.

32. Some delegations felt that option E (the “zero option”) should remain on the table, but it was generally agreed that the issue should not be discussed for the remainder of this meeting.

33. Some delegations suggested that the best approach would be to restrict the number of possible legally binding options by clearly indicating which of the options identified in the analysis could be eliminated from further discussions. Others suggested that all options, including options C, D and E, should remain on the table, in addition to further options that had not been identified in the analysis. One delegation suggested that further legal analysis should be carried out.

IV. FUTURE PROCESS

34. The dates for the third and fourth meetings of the Working Group were set at 24 to 26 March 2004 and 11 to 13 October 2004 respectively.

35. To pave the way for further discussion, delegations were invited to submit comments on the following:

- Reasons for and possible procedures for a differentiated approach (i.e. between different groups of Parties), in particular taking into account the time frames and added value;
- Possible elements of legally binding public-participation procedures (taking different GMO decision-making categories into account); and
- Proposals for elements of preferred legally binding option(s).

Comments should be submitted to secretariat by 31 January 2004. These comments, including those received after this deadline, would be made available by the secretariat in their original language(s).

36. The secretariat was requested to inform the Working Group of the Parties about the discussions on a possible differentiated approach.

37. The Working Group recognized that its results might help Parties to the Cartagena Protocol to implement its article 23. The two instruments could complement each other and be mutually supportive. The Working Group mandated the secretariat to contact the secretariat of the Convention on Biological Diversity to convey this message.

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. In his concluding remarks, the Chairperson expressed his concern at the amount of work remaining to be done in order for the Working Group to fulfil its mandate and urged delegations to do their best to ensure faster progress at the next meeting. He then thanked the secretariat and the interpreters and closed the meeting.