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Public Participation in Decision-making and
Access to Justice in Environmental Matters

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(Item 5 (b) of the provisional agenda)

**REPORT ON THE IMPLEMENTATION OF THE GUIDELINES ON ACCESS TO
INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE WITH
RESPECT TO GENETICALLY MODIFIED ORGANISMS**

Introduction

1. The Guidelines on Access to Information, Public Participation and Access to Justice with respect to Genetically Modified Organisms (MP.PP/2002/7) were adopted by the Parties to the Convention at their first meeting (Lucca, Italy, 21-23 October 2002) as a non-legally binding and voluntary instrument with the aim of facilitating and giving guidance to the practical application of the provisions of the Convention and the development of national legal frameworks relevant to GMOs. The purpose of the Guidelines was also to encourage the development of a common approach to access to information, public participation and access to justice with respect to GMOs, assist other States seeking to develop or expand these procedural rights, stimulate open, transparent, efficient and accountable decision-making on activities with GMOs, and promote and facilitate public awareness, education and participation in decision-making on activities in this area.
2. At the same meeting, the Parties adopted decision I/4, by virtue of which they agreed to monitor and keep under review the implementation of the Guidelines, to amend them as necessary and to explore the need for complementing them by a more detailed handbook. In addition, in paragraph 34 of the Guidelines, the Parties resolved to report on their usefulness and

the progress made in implementing them to the Meeting of the Parties not later than two years after their adoption.

3. At the request of the Working Group on Genetically Modified Organisms, the secretariat developed a questionnaire to gather information on the measures taken to implement the Guidelines. The following countries submitted responses: Austria, Bulgaria, Denmark, Finland, France, Georgia, Italy, Netherlands, Norway, Republic of Moldova, Romania, Slovenia and Sweden. This report will provide a summary of the main findings based on these responses and draw some general conclusions in order to help Parties to review the implementation of the Guidelines at their second meeting. It may also be used as a basis for considering what further steps might be taken to strengthen the implementation of the Guidelines in the future.

I. PUBLIC PARTICIPATION IN DECISION-MAKING ON SPECIFIC ACTIVITIES WITH GMOs

4. The majority of countries that submitted responses to the questionnaire reported that the scope of GMO-related decision-making procedures in which public participation was provided included the deliberate release into the environment of GMOs and their contained use, in accordance with paragraphs 4 (a) and (d) of the Guidelines. In some cases, placing on the market was also subject to a public participation requirement in national legislation, but the majority of responding EU member States reported that this type of activity was regulated by EU Directive 2001/18 and that, consequently, it was not subject to public participation requirements within the scope of GMO-related decision-making procedures covered by their national legislation. No country reported on the application of public participation procedures in decision-making on simplified procedures as described in subparagraph 4 (c). Two countries, Bulgaria and Georgia, reported that they were developing national legislation on GMOs, the drafts of which included provisions on public participation covering activities referred to in paragraph 4 of the Guidelines.

5. As regard the means used to notify the public concerned about proposed activities with GMOs, all respondents said that notifications, generally comprising summaries of GMO applications, were made publicly available. As far as it could be ascertained, information that was considered confidential was omitted from documentation made available during public participation, the criteria for commercial confidentiality corresponding to those set out in the Cartagena Protocol on Biosafety. In most countries that responded to the question on this issue, notifications were published in the national and local press and on the Internet, although in some countries they were also published in the official gazette. Although some countries reported that only part of the information referred to in annexes II and III to the Guidelines was made available, the majority of respondents said that the content of notifications followed the recommendations from annex II and that the information from annex III was available within the public participation process.

6. On the basis of the responses received, it can be concluded that, in countries that have practical experience in this area, public participation processes on specific activities with GMOs broadly comply with the recommendations set out in paragraphs 13 to 21 of the Guidelines. Some countries, however, reported that certain guidelines were not followed (notably those

referred to in paras. 15, 17, 18 and 21 of the Guidelines). In virtually all countries, the time frame for the public to submit comments was four weeks. In principle, the public could submit comments in writing and some countries also accepted comments sent via e-mail. Most countries reported that a possibility of organizing public hearings was foreseen in their regulations, but a decision on whether to organize them or not was made case by case. The outcome of a public participation process was taken into consideration in decision-making and final decisions were made publicly available, usually on the Internet. Several countries reported that the public had the right to appeal against a decision taken by the authorities, usually within six weeks from the date the decision was made.

II. ACCESS TO ENVIRONMENTAL INFORMATION ON GMOs, COLLECTION AND DISSEMINATION OF INFORMATION ON ACTIVITIES WITH GMOs

7. With respect to information regarding activities with GMOs that was made publicly available via registers and databases, most respondents said that registers of GMOs and products derived from them either existed in their countries or that their development was foreseen in the near future. In most cases, respondents said that electronic public registers were established in their countries with a variety of information which, in some cases, included only locations of deliberate releases and contained-use facilities, while in others it also comprised assessment reports, decisions, statements, expert opinions and other relevant information. Several countries reported that national biosafety clearing houses were set up in accordance with the requirements of the Cartagena Protocol, as electronic portals providing comprehensive access to information on legislation, policies, procedures and activities with GMOs. In EU member States, the national clearing houses included, in addition to national sources, links to relevant EU legislative and policy documents. The majority of respondents reported that the information provided through any of these sources corresponded to the recommended information and methods for the public authorities to make information on GMOs available to the public as referred to in annexes V and IV to the Guidelines. The non-EU countries, with the exception of Norway, reported that the development of registers and databases was foreseen under their draft or, in some cases, recently adopted, national biosafety legislation. These registers and databases, once developed, were expected to follow recommendations from annexes V and IV.

8. From the responses received, it can be concluded that mandatory systems ensuring that public authorities receive adequate information about proposed and existing activities with GMOs, as described in paragraph 24 (b) of the Guidelines, exist in barely 50% of the countries. In some EU member States, notification systems for deliberate releases, placing on the market and contained use were put in place in order to comply with the requirements of relevant EU directives. In some countries, all activities with GMOs required authorization by national authorities, unless conducted in accordance with EC Regulation 1829/2003 on genetically modified food and feed, and conducting such activities without authorization was considered a criminal offence. Some countries did not refer to specific registers or databases, but reported that public authorities had access to databanks or that information on proposed or existing activities with GMOs was available through the national biosafety clearing house.

9. In over 50% of the responses, the Internet was listed as the main tool used to publish and disseminate reports on experience gained with activities with GMOs. Some countries published

only summaries of reports on the Web, while others included more detailed information, such as technical reviews, reports of inspections conducted by food safety authorities as well as documentation on GMO risk assessment. Norway reported that no regular reporting was conducted with respect to experience with deliberate releases and placing on the market due to a low level of these activities at the national level.

10. All EU member States that responded to the questionnaire reported the existence of mechanisms for traceability and labelling of products consisting of GMOs or containing GMOs. This information was provided to consumers either through national web registers with information on products approved for human consumption in the EU or through links to relevant web pages on EU regulations and their implementation. In all the EU member States that submitted responses to this question, labelling of products produced from GMOs or containing GMOs was required by law. In countries outside the EU, the situation varies. Some countries, notably those in the process of developing or improving their national biosafety legislation, either did not have any practical experience in this area or they had regulatory mechanisms in place which were, according to their reports, not implemented. Others reported that they had national legislation in place that required labelling and publication of risk assessment reports for products derived from GMOs, but they did not report on experience in its implementation.

III. ACCESS TO JUSTICE

11. Out of 13 respondents, only 4 reported that the provisions of article 9 of the Convention were applicable in their countries with respect to GMO activities. In other cases, access to justice was either provided in a more limited way and was applicable only in certain situations or activities, or the countries were developing national legislation on GMOs and were planning to take into account the provisions of article 9.

12. The following examples of the application of the access to justice provisions of the Convention to specific situations or activities were given: the right of appeal against permits issued for deliberate releases of GMOs, which in some cases was limited to the physical and legal persons that submitted comments during the public participation process; the right of appeal against refusals of requests for information on activities with GMOs; and the right to challenge both the substantive and the procedural legality of decisions on the deliberate release or contained use of GMOs. In all countries that submitted answers to this question decisions could be challenged through administrative courts, although in some alternative remedies could also be used (for example, the office of the ombudsman). Italy reported that a possibility of launching criminal proceedings existed in its legal framework and that provisions on the restoration of environmental damage could be applied in cases involving decision-making on activities with GMOs.

13. In terms of practical experience, few countries reported on specific court cases involving activities with GMOs. One case concerned the infringement of labelling regulations, another challenging a permit issued for the commercial sowing of genetically modified potato. Several countries reported that they had little or no practical experience in this area, mostly due to the fact that no permits for activities involving GMOs were given. The Netherlands reported that, on

average, around 20 permits were issued per year for deliberate releases of GMOs, that decisions to issue these permits were all challenged by concerned parties and that, as a consequence, some of the permits were revoked.

IV. MEASURES TAKEN TO PROMOTE THE GUIDELINES

14. The majority of EU member States reported that they had taken no specific steps to implement the Guidelines. The instrument was seen as an important tool only for those countries that did not have national biosafety regulation in place. One exception was Italy, which reported on its general intention to use the Guidelines in the future to improve access to information and public participation procedures in a new system of information-sharing and public participation that it was preparing.

15. Most respondents from countries outside the EU said that the Guidelines were used as a model for public participation provisions in drafting their national biosafety legislation. They also indicated that this instrument was a useful tool to develop a common approach to the application of the three pillars of the Convention to activities with GMOs. Norway reported that the Guidelines would be used to assess the appropriateness of its public participation procedures. Romania expressed the need for a detailed handbook containing, in particular, guidance on access to justice in this area and more detailed information on the possible content of publicly accessible lists, registers or files on activities with GMOs established and maintained by the public authorities, as referred to in annex V to the Guidelines.

16. No country identified paragraphs of the Guidelines which had proven problematic for implementation.

17. Out of 13 countries that responded to the questionnaire, 6 explicitly said that no measures had been taken to promote, disseminate or publicize the Guidelines. Five of these six countries were EU member States. In these six countries, the Guidelines were not translated into the national language, nor were they made available on the Web or in hard copy. Three other countries did not provide an answer to this question.

18. Four remaining countries, all in either Eastern Europe, the Caucasus and Central Asia or Southeast Europe, reported that the Guidelines were either already posted on the Ministry of Environment web site or that they would be posted once the web sites with information on GMOs were launched. These countries also reported on their plans to translate the Guidelines into their national languages and to publish them in hard copy. In Georgia, the Guidelines were distributed and used by the drafting group working on the new law on GMOs, while in Romania, they were distributed to participants in a United Nations Environment Programme's Global Environment Facility (UNEP/GEF) workshop on the development of national biosafety frameworks, held in 2004. The Republic of Moldova reported that the Regional Environmental Center (REC) Moldova had organized a seminar to familiarize non-governmental organizations with issues related to GMOs, at which the Guidelines were presented and discussed.

V. CONCLUSIONS

19. It is difficult to draw any firm conclusions on the status of implementation of the Guidelines for the whole UNECE region on the basis of the responses received, mostly because relatively few countries submitted responses to the questionnaire and some of them provided incomplete information.

20. However, some general conclusions can be drawn: limited efforts have been undertaken to promote the Guidelines and there is, in principle, very little practical experience with their application. The responses received leave a general impression that, in those countries that do not have national biosafety legislation in place, the Guidelines were useful as a source of inspiration for developing more detailed provisions on access to information, public participation and access to justice in activities with GMOs in their national biosafety legislation.

21. On the other hand, West European countries, in particular the EU member States, largely relied on either their national or EU legislation to provide an appropriate framework for decision-making in this area and did not undertake any specific measures to apply or promote the Guidelines.

22. Even in countries that were developing national biosafety legislation, the provisions on access to information, public participation in decision-making and access to justice with respect to GMOs were in principle modelled on other instruments and only partially inspired by the Guidelines. In these cases, their objective was in principle linked either with the requirement to comply with the provisions of legally binding instruments to which they are Party, such as the Cartagena Protocol, or, for those countries preparing for EU membership, efforts to harmonize their national legislation with the EU biosafety regulations.