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ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON ENVIRONMENTAL POLICY

**Working Group for the preparation  
of a draft convention on access  
to environmental information and  
public participation in  
environmental decision-making**

REPORT OF THE TENTH SESSION

1. The tenth session of the Working Group for the preparation of a draft convention on access to environmental information and public participation in environmental decision-making took place in Geneva from 3 to 6 March 1998.
2. It was attended by delegations of: Albania; Armenia; Austria; Azerbaijan; Belarus; Belgium; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Kazakhstan; Kyrgyzstan; Latvia; Lithuania; Malta; Netherlands; Norway; Poland; Portugal; Romania; Russian Federation; Slovakia; Slovenia; Spain; Sweden; Switzerland; the former Yugoslav Republic of Macedonia; Turkey; Ukraine; United Kingdom; and Uzbekistan.
3. The Commission of the European Communities was also represented.
4. Representatives of the Council of the European Union and the United Nations Environment Programme (UNEP) also attended.
5. The following non-governmental organizations (NGOs) were represented: Environmental NGOs Coalition; GLOBE; International Council of Environmental Law (ICEL); Regional Environmental Center for Central and Eastern Europe (REC); and World Conservation Union (IUCN).
6. The Working Group adopted the agenda as contained in document CEP/AC.3/19.

7. The Working Group used as a basis for discussion document CEP/AC.3/R.5/Rev.1 and the Chairman's proposals for resolving the outstanding issues set out in annex II to the report of the ninth session (CEP/AC.3/18).

8. The delegation of the Commission of the European Communities delivered the following statement regarding the applicability of the convention to the institutions of the European Communities:

"The European Community is committed to the successful completion of negotiations on this convention. The Community intends that the convention should in principle apply to the institutions of the European Community and, for that reason, has agreed to the removal of the square brackets around article 2 (b) (iv). Nevertheless, in view of:

- The specific nature of the Community's legal order and institutions; and
- The need to fully consult with the institutions of the Community on the application of the convention,

the Community wishes to inform other participants that it may be necessary for the Community to make a declaration on the way in which the convention will apply to its institutions. No decision has been made yet in this regard. The Community will do everything possible to keep other participants who have been involved in the negotiations informed of developments."

9. The Working Group agreed to revise the text of the convention (see annex below). Delegations made the following specific comments regarding this revision. The delegation of Turkey reiterated that the Turkish administrative and judicial authorities would apply paragraph 1 of article 4 in accordance with the provisions of Turkish legislation. The delegation of the Russian Federation withdrew its reservation regarding paragraph 8 of article 5. The delegations of France, Switzerland and the United Kingdom reserved their positions regarding the new text of article 10, paragraph 3, on financial arrangements. The Environmental NGOs Coalition did not support the new text of article 10, paragraph 5, and reserved its position in that regard. The Regional Environmental Center informed the Working Group that it was established pursuant to an intergovernmental agreement and therefore considered itself to be an independent international organization. The Environmental NGOs Coalition circulated a proposal to insert in annex I to the convention an activity on the movement of hazardous and radioactive waste. Some delegations recognized that the movement of hazardous and radioactive waste could fall within the scope of article 6, paragraph 1 (b).

10. The delegations of the Netherlands and Turkey preferred to have the wording ", if applicable" added to the new text of article 6, paragraph 6 (e). The delegation of Germany preferred the wording "of public authorities" in the opening sentence of article 8. The delegations of Denmark, Norway, Poland, Romania and Ukraine, as well as the Environmental NGOs Coalition, REC and GLOBE, expressed a preference for the deletion of the words "strive to" in the opening sentence of article 8.

11. The Environmental NGOs Coalition and REC reserved their position with regard to the new paragraph 11 of article 6. The delegation of Norway expressed its preference for including the issues of genetically modified organisms in annex I rather than in article 6. The delegation of France reserved its position regarding article 6, paragraph 11.

12. The delegations of Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom, as well as the Environmental NGOs Coalition, expressed a reservation on the new text in article 4, paragraph 4 (d). Without prejudice to the other reservations made in this context, the delegation of Denmark stated that its reservation was not of a purely formal nature but fundamental. In connection with the last sentence of article 4, paragraph 4, the delegation of Denmark stated that its agreement with this provision should in no way be interpreted as an indication of an agreement with the possibility of "disturbing" scientific research not yet completed and published.

13. On the proposal made by the delegation of the Netherlands to add a new paragraph 9 to article 3 and to delete article 4, paragraph 1 (b), and article 9, paragraph 6, the Turkish delegation stated that it could accept the said proposal with the addition of the phrase "within the framework of national legislation". However, on the basis of the argument put forward by the delegation of the Netherlands that a similar phrase already existed in articles 4 and 9 and that such an addition would be repetitive; the Turkish delegation accepted this argument in a spirit of compromise. The Turkish delegation informed the meeting that the contents of the new paragraph 9 of article 3 would be implemented in Turkey according to the provisions of its national legislation.

14. The delegation of Norway reserved its position concerning the introduction of the word "optional" in the first sentence of article 15. The delegation of Norway stated that in its view "contained use of genetically modified organisms" should also have been referred to in the resolution to be adopted by the Ministers.

15. The delegation of the Russian Federation expressed a reservation on the new wording of article 15, as it would have preferred the insertion of the words "shall consider" in the first line. The delegation of the United Kingdom reiterated its reservation about annex I, item 20, and stated that an explanatory statement might be necessary in this respect. The delegation of Germany reserved its position regarding annex I, item 20. The delegation of Poland stated that it understood "government" in article 2, subparagraph (b) (i), to mean public administration as it has been used in the French version.

16. The Regional Environmental Center for Central and Eastern Europe reiterated that it was established pursuant to an intergovernmental agreement, and sought to reflect this in article 10. The Working Group covered the concerns of REC in the draft resolution.

17. The delegation of Germany reserved its position with regard to article 6, paragraph 1 (c) (national defence), to article 6, paragraph 11, including the reference to genetically modified organisms in the preamble and in the draft resolution, and to annex I, item 22. Concerning article 4, paragraph 4 (d),

the delegation of Germany was in favour of deleting the second sentence. It was also in favour of deleting the words "and taking into account whether the information requested relates to emissions into the environment" in the closing paragraph of article 4, paragraph 4. The delegation of Germany was in favour of replacing the word "nationwide" in article 5, paragraph 9, by "comprehensive". For article 8, it preferred the following title: "Public participation during the preparation of executive regulations and other generally applicable legally binding rules". Moreover, it was in favour of keeping the formulation "of public authorities" in the opening paragraph of article 8, and deleting the words "for less than two years unless they would be likely to cause significant adverse effects on the environment or on health" in annex I, item 21.

18. The delegation of France stated that, to determine whether NGOs met the requirements referred to in article 9, paragraph 2, it would apply the legal and regulatory provisions, in particular those contained in the Rural Code, in the same manner to both foreign and French NGOs.

19. The Environmental NGO Coalition supported the Belgian proposal to adopt the title "convention on citizens' environmental rights" and regretted the lack of a reference to "rights" in the title. The Environmental NGO Coalition, supported by Poland, Belgium and Finland, reiterated its view that article 6 of the Convention applied equally to activities subject to land-use planning and pollution control processes where both existed within a country. The Environmental NGOs Coalition objected to the dilution of article 4, paragraph 4 (d), and expressed its reservation in relation to both that provision and the closing paragraph. It expressed its disappointment at the failure of the new article 6, paragraph 1 (c), to include any concept of a threshold of significant adverse effect and at the amount of discretion given to Parties by the reference to "deeming". It also supported the original Netherlands proposal for a new subparagraph (f) and criticized the text which was adopted because if introduced an unacceptable level of discretion and diluted what had been a useful provision. The Environmental NGOs Coalition expressed the pre-eminent nature of the issue of genetically modified organisms (GMOs) in its view and in that of the wide NGO community, as reflected in the Bled Declaration, and in the view of the European people, as indicated in opinion surveys. It regarded the issue as the most significant and awesome experiment undertaken by human beings since the splitting of the atom and described the text adopted by the Group as indefensible, as it resulted in better guarantees of rights for public participation in decisions on chicken farms than on GMOs. It expressed its disappointment at the Group's decision further to dilute the text in article 7, negotiated after many hours of discussion and which was not in square brackets. The Environmental NGOs Coalition expressed the view that the establishment of financial rules was an important issue and noted that the text in article 10, paragraph 3, provided only for the possibility of establishing such rules. Noting the Chairman's statement that the matter related to article 10, paragraph 5, could be dealt within the draft resolution, the Environmental NGOs Coalition said that it wanted the text to ensure the same level of participation for NGOs at meetings of the Parties as had occurred during the negotiations of the draft convention. This was supported by Austria, Denmark, the Netherlands and REC. The Environmental NGOs Coalition expressed the view that this convention

linked international human rights law and environmental law, and that it was therefore regrettable that the convention should have a provision on compliance which fell short of minimal international human rights standards established over more than 20 years. It gave all delegates a copy of a background paper prepared on its behalf and pointed out that the three rights guaranteed in the draft convention had equivalents in at least six international human rights instruments, which all, or at least virtually all, of the Governments present had ratified, in addition to the European Convention on Human Rights and its right of individual redress, which had been similarly ratified. It deplored the dilution of earlier proposals and the resulting text, which the United Kingdom described as the weakest compliance provision of any international environmental law instrument. The Environmental NGOs Coalition, supported by Ukraine, Albania, Poland, Norway and REC, presented a revised proposal on hazardous and radioactive waste movements. It described the proposal as giving Governments such an extremely wide discretion on implementation that, as an NGO delegation, it debased itself by putting it forward. However, it considered it necessary to at least establish the principle that such movements must be subject to public participation. It did not accept the view expressed by those delegations that considered that practical difficulties made public participation impossible, since the new text gave maximum flexibility. It pointed out that there was a clear difference between western and eastern European countries on this issue for obvious reasons.

20. The Working Group thanked its Chairman for his leadership and his endless efforts to prepare an effective convention.

21. The Working Group adopted its report on Friday 6, March 1998.

Annex

AMENDMENTS TO CEP/AC.3/R.5/REV.1

**Title**

For the title read **DRAFT CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS**

**Preamble**

Insert the following new eleventh preambular paragraph

Recognizing the desirability of transparency in all branches of Governments and inviting legislative bodies to implement the principles of this Convention in their proceedings,

Add the following new nineteenth preambular paragraph:

Recognizing the concern of the public about the deliberate release of genetically modified organisms into the environment and the need for increased transparency and enhanced public participation in decision-making in this field,

**Article 2**

Delete the square brackets in subparagraph (b), (iv)

Delete the square brackets in the closing sentence of subparagraph (b)

**Article 3**

Add the following paragraph

9. Within the scope of the relevant provisions of this Convention, the public shall have access to environmental information, have the possibility to participate in environmental decision-making and have access to justice without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or its effective centre of activity.

**Article 4**

Delete paragraph 1 (a)

For paragraph 4 (d) read

(d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;

In the closing sentence of paragraph 4 delete [whenever possible][where possible] and after disclosure add and taking into account whether the information requested relates to emissions into the environment

#### **Article 5**

In paragraph 9, for the first sentence read

9. Each Party shall take steps to progressively establish, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured computerized and publicly accessible database compiled through standardized reporting.

#### **Article 6**

In paragraph 1, add the following new subparagraph (c)

(c) Each Party may decide, on a case by case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defense purposes if that Party deems that such application would have an adverse effect on these purposes.

In paragraph 6 after upon request insert where so required under national law

Add at the end of paragraph 6

The relevant information shall include, at least and without prejudice to the provisions of article 4:

(a) A description of the site and physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;

(b) A description of the significant effects of the proposed activity on the environment;

(c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;

(d) A non-technical summary of the above;

(e) An outline of the main alternatives studied by the developer;

(f) In accordance with its national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2.

In paragraph 7 after at a public hearing or inquiry add with the applicant

Add the following new paragraph 11

11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, the provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

**Article 7**

In the first line after appropriate add practical and/or other

**Article 8**

For the title read

PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR  
GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS

After preparation insert by public authorities and after binding rules delete of public authorities

**Article 9**

Delete paragraph 6

**Article 10**

For paragraph 3 read

3. The Meeting of the Parties may, as necessary, consider establishing financial arrangements on a consensus basis.

In paragraph 4, delete [without the right to vote] and delete the square brackets

In paragraph 5, delete [without the right to vote] and delete the square brackets

Delete the square brackets around paragraphs 4 and 5

**Article 14**

In paragraph 4 delete [They] and delete the square brackets

In paragraph 5 (b) for provided that at least [...] Parties have not submitted read provided that not more than one third of the Parties have submitted

Delete the square brackets around paragraph 5



**Article 15**

For article 15 read

Article 15

## REVIEW OF COMPLIANCE

The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering of communications from members of the public on matters related to this Convention.

**Annex I**

In item 19 delete from ([- Waste and dangerous substances: until  
the end of the item

In item 21, after mainly for insert research, and for [unless they hold the potential for causing irreversible effect on environment and health] read unless they would be likely to cause a significant adverse effect on the environment or on health.

Delete the square brackets around item 21

For item 22 read

22. Any change to or extension of activities which in itself meets the criteria/thresholds set out in this annex, shall be subject to article 6, paragraph 1 (a). Any other change or extension of activities shall be subject to article 6, paragraph 1 (b).