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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 FOURTH MEETING

1. The fourth meeting of the Working Group on Genetically Modified Organisms (GMOs) took place in Geneva on 18-20 October 2004.

2. The meeting was attended by representatives from the Governments of Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Kyrgyzstan, Latvia, Netherlands, Norway, Republic of Moldova, Slovakia, Spain, Sweden, Switzerland, Tajikistan, Ukraine, United Kingdom and United States of America. The Commission of the European Communities was also represented.

3. Representatives from United Nations Environment Programme's Regional Office for Europe (UNEP/ROE) and 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 regional environmental organizations were represented: Regional Environmental Center for Central and Eastern Europe (REC) and Regional Environmental Centre Russia.

5. The following non-governmental organizations were represented: Black Sea Biotechnology Association (Russian Federation), Centre for International Environmental Law, CropLife International, Earthjustice, European ECO Forum and GLOBE Europe.

6. Mr. Helmut Gaugitsch (Austria), Chairman, opened the meeting. He stressed that it was the Working Group's final meeting and that it should therefore aim to complete its mandate at the meeting, having in mind the request from the Working Group of the Parties to focus on the most appropriate options for a legally binding approach.

I. ADOPTION OF THE AGENDA

7. The Working Group adopted the agenda for the meeting as set out in document MP.PP/AC.2/2004/3 with the addition of one new item under 'Any other business', namely the review of the implementation of the Guidelines on Access to Information, Public Participation in Decision-making and Access to Justice with respect to GMOs.

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

8. The Chairman invited delegations to state which options (MP.PP/AC.2/2004/2, annexes) would be acceptable as a starting point for negotiations on the elements of a decision to be presented for consideration and adoption at the second ordinary meeting of the Parties.

9. The delegation of the Netherlands, on behalf of the European Union, expressed general support for the development of public participation provisions on the deliberate release of GMOs in order to meet the practical needs of Parties and Signatories as well as for promoting the application of the Convention in international environmental decision-making processes and developing synergies with existing international agreements. It also, however, emphasized the common view of European Union member States to stay within the legislative framework of the European Union and to continue to use the Guidelines on Access to Information, Public Participation in Decision-making and Access to Justice with respect to Genetically Modified Organisms. Finally, it emphasized that contained use should not be included in any selected legally binding option, but expressed some support for the option set out in annex III to the report of the third meeting. The European Union had prepared another two options for discussion, although at this stage there was no agreement within the EU upon a single option.

10. Many other delegations expressed a clear preference for the option set out in annex I to the report of the third meeting, but were also willing to discuss the options set out in annexes II and IV, including a possibility of merging these two options. They also expressed willingness to discuss the two options proposed by the European Union.

11. It was agreed to work on the basis of annexes I to IV to the report of the previous meeting, as well as the two new options put forward by the EU. The Chairman invited delegations to leave the

option set out in annex I aside for the time being, as it had been extensively discussed at earlier stages.

12. With respect to the options set out in annexes II and IV to the report of the previous meeting, the Chairman proposed to see if these could be combined, since they both dealt with the insertion of a new paragraph in article 6 and the introduction of a new annex I bis specifically dealing with GMOs. This being agreed, the Working Group revised annex IV, incorporating elements from annex II (hereafter option 2). Some delegations felt that the approach would not allow for a sufficient differentiation between activities listed in annex I and activities with GMOs, whereas others felt that provisions on public participation procedures contained in article 6, paragraphs 2 to 10, were flexible enough to be adjusted to any specific type of activity involving GMOs. Views also differed on whether certain aspects of the contained use of GMOs should be covered by either of these two options or a combination thereof. Finally, there were different views on the placement of this option, with several delegations supporting retaining it within article 6, either as an addition to paragraph 1 or to replace paragraph 11, and others wanting to retain the option of it being a new article 6 bis. It was agreed to accommodate each of these alternatives for the time being.

13. Regarding the option set out in annex III to the report of the previous meeting, all delegations agreed that some elements needed to be clarified if it were to be retained. More specifically, further discussions were needed on the possible scope of application of article 6, paragraphs 2 to 10. Many delegations expressed concerns about the phrase 'equivalent guarantees of rights', considering it to lack clarity. The Working Group agreed to delete the last sentence of this option, since there was a common view that the decision on modalities and practical arrangements for the implementation of any selected option(s) should be decided at the second ordinary meeting of the Parties and not deferred to a subsequent meeting. It was also agreed to delete the reference to the Guidelines.

14. The delegation of the Netherlands, on behalf of the European Union, presented two additional options, which reflected the views of these delegations expressed during their internal consultations. A revised version of the second option was presented during the meeting, updated on the basis of further internal consultations among the EU delegations.

15. The first EU option (hereafter option 3), which would either replace the existing article 6, paragraph 11, or become a new article 6 bis, was intended to provide considerable flexibility to Parties in applying public participation provisions to the deliberate release of GMOs, including placing on the market, but not contained use, and contained a cross reference to the Cartagena Protocol. Many delegations strongly supported this option because they felt that it was general and flexible enough to accommodate different approaches to decision-making on activities with GMOs in national legislation. Many other delegations opposed this view by stating that, although allowing for a high degree of flexibility, this option did not provide clear guidance on public participation requirements related to decision-making on activities with GMOs, especially in some countries where such requirements, when negotiated at the international level, could be directly translated into national legislation. Several delegations expressed particular concern at the provision on the Cartagena Protocol.

16. The second EU option (hereafter option 4), which introduced a new article 6 bis, was an attempt to apply the principles of the Convention and certain public participation procedures to the deliberate release of GMOs, including placing on the market. This option gained broad support and all delegations agreed that it could be one possible basis for future work. Some questions remained, though, in particular on the placing of this option within the Convention and its relation to article 6, paragraph 11, as well as on the inclusion of contained use in the scope of activities covered by this option.

17. In order to further address these questions, the Chairman convened informal evening meetings of a small group to carry out preparatory work on behalf of the plenary.

18. On the basis of this work, the Chairman presented revised versions of the various options that had been discussed in plenary. Some revisions proposed by the small group were accepted by the Working Group, others were further changed.

19. The Chairman invited the Working Group to indicate which options it wished to see transmitted to the Working Group of the Parties and whether any of them could be eliminated. There was no support for the option set out in annex III to the report of the third meeting and therefore it was agreed to eliminate it.

20. The delegations from Eastern Europe, the Caucasus and Central Asia presented a joint statement reiterating their preference for option 1 but stating their willingness, in the spirit of compromise, to work on the basis of option 2. They were particularly opposed to option 3, as, in their view, this neither reflected the work undertaken in the Working Group over a number of years nor addressed their needs. Some elements in option 4 were considered to have merit.

21. Other delegations expressed strong opposition to option 3, inter alia on the grounds that it would bring little or no added value and that the reference to the Cartagena Protocol was inappropriate. These delegations emphasized, and the Working Group acknowledged, that the absence of square brackets in the option should not be seen as an indication that there was not significant opposition to the option as a whole as well as to specific elements of it.

22. With regard to option 4, even though it was not fully discussed and it was agreed not to amend it, the following points were raised during the discussion:

(a) Concern was expressed by some delegations at the lack of any public notification requirement along the lines of article 6, paragraph 2;

(b) Some delegations proposed that Parties should ensure that due account was taken of the outcome of public participation, not just ‘strive’ to do so;

(c) Most delegations agreed that placing on the market should be included;

(d) Some delegations considered that if deliberate releases of GMOs which had previously been authorized were to be exempt from the public participation requirements, the earlier regulatory framework should meet certain standards;

(e) Some delegations expressed concern that, under the proposal, the information to be provided on the environmental risk assessment and on the methods and plans for monitoring the GMOs concerned and for emergency response would be limited to a summary in each case;

(f) Concerns were also expressed about requiring information on the location of the release only 'if appropriate'.

23. The EU requested that both its options (options 3 and 4) should be forwarded to the Working Group of the Parties without amendment notwithstanding the discussions that had taken place both in the plenary and in the small group. It indicated that option 2 also had some merit. Finally, it asked that the non-legally binding option should be retained. The non-legally binding option was based on a position that better progress may be achieved in the framework of other international processes dealing with GMOs, while ensuring synergies, confirming cooperation with the secretariat to the Aarhus Convention, promoting the principles of the Aarhus Convention and supporting capacity-building and capacity-building projects in this field. CropLife International asked for its support for the first EU option and for the non-legally binding option to be noted.

24. Many other delegations considered that the non-legally binding option fell outside the mandate of the Working Group, which was to explore, select and develop options which further developed the application of the Convention in a legally binding way. The Chairman pointed out that the option was always on the table in the sense that a decision by the Meeting of the Parties not to adopt any legally binding option was always possible.

25. The Working Group agreed to forward the following legally binding options for consideration by the Working Group of the Parties:

(a) **Option 1**: the text contained in annex I to the report of the third meeting, reproduced unaltered;

(b) **Option 2**: the revised version of annex IV to the report of the third meeting, incorporating elements of annex II to that report and other comments made during the present meeting, with the text placed either in article 6, paragraph 1, or replacing article 6, paragraph 11, or as a new article 6 bis;

(c) **Option 3**: the proposal for a general obligation to promote public participation in decisions on deliberate releases with a cross reference to the Cartagena Protocol, either to replace article 6, paragraph 11, or as a new article 6 bis, with the text as it had been presented (i.e. without modification by the Working Group);

(d) **Option 4**: the proposal for a new article 6 bis setting out a modified public participation procedure for decision-making on deliberate releases, including placing on the market, of GMOs, with the text as it had been presented (i.e. without modification by the Working Group).

III. DRAFT DECISION ON GENETICALLY MODIFIED ORGANISMS

26. The Working Group discussed the draft decision of the Meeting of the Parties on genetically modified organisms, taking as a basis a draft prepared by the Bureau and the secretariat (MP.PP/AC.2/2004/5). In the course of the discussion, various amendments were made to the text and it was agreed to transmit it, as revised, to the Working Group of the Parties for further consideration and transmission to the Meeting of the Parties, with the operative paragraphs placed in square brackets.

IV. REVIEW OF THE IMPLEMENTATION OF THE GUIDELINES ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE WITH RESPECT TO GENETICALLY MODIFIED ORGANISMS

27. At their first meeting, the Parties had agreed to monitor the implementation of the Guidelines, and to report for the first time on their usefulness and the progress made in implementing them not later than two years after their adoption. The Parties had also resolved to keep the Guidelines under review, to amend them as necessary and to explore the need for complementing the Guidelines by a more detailed handbook (decision I/4).

28. The Working Group agreed to establish a commenting procedure so that the secretariat could prepare a review of the status of implementation of the Guidelines for the second ordinary meeting of the Parties. It mandated the secretariat to develop and circulate a questionnaire asking delegations to provide comments by 15 January 2005 on their experience with the Guidelines.

V. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

29. The Working Group adopted its 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 Chairman thanked the delegations for their contributions and the progress made at this and earlier meetings. He reminded delegations of the need to continue to work on the issues and expressed the hope that the Working Group of the Parties would be able to achieve progress and present the results of this work to the Meeting of the Parties. Finally, he thanked the secretariat and interpreters for their support and closed the meeting.

Annex I

OPTION 1

Article 6

Delete paragraph 11.

Annex I

Paragraph 20

After paragraphs 1-19 insert and 21 bis
Insert a new paragraph reading

21 bis [Except with respect to any Party that has in place a national regulatory framework which affords an equivalent guarantee of public rights of participation in decision-making on whether to permit such activities, the][The] following activities involving genetically modified organisms (GMOs):

(a) The deliberate release of a GMO 4/ for any purpose other than its placing on the market 5/ [, except if:

(i) Such a release [in the same location and] under comparable conditions has already been approved using a public participation procedure conforming to the requirements of article 6, paragraphs [2 to 10]; or
(ii) Sufficient experience 6/ has been gained with the release of this GMO];

(b) The placing of a GMO on the market 7/ [, except if:

(i) It was originally authorized using a public participation procedure conforming to the requirements of article 6, paragraphs [2 to 10], and the authorization needs to be renewed; or
(ii) It is intended for research or for culture collections];

[(c) The contained use of a genetically modified micro-organism (GMM), 8/ if:

(i) It is foreseen in large-scale industrial installations;
(ii) It involves a GMM belonging to risk category 3 or 4;
(iii) Contingency plans are deemed necessary for the use of the GMM in a facility; [and] [or]
(iv) The GMM has not already been used [in the same facility and] under comparable conditions and been approved using a public participation procedure conforming to the requirements of article 6, paragraphs [2 to 10];]

[(d) The contained use of a GMO other than a GMM, 9/ if:

(i) Contingency plans are deemed necessary for the use of the GMO in a facility; [and] [or]

(ii) The GMO has not already been used [in the same location and] under comparable conditions and been approved using a public participation procedure conforming to the requirements of article 6, paragraphs [2 to 10]].

Add the following footnotes

4/ For the purpose of this Convention, 'genetically modified organism' or 'GMO' means an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination.

5/ For the purposes of this Convention, 'deliberate release of a GMO' means any intentional introduction into the environment of a GMO, or a combination of GMOs, for which no specific containment measures are used to limit its contact with and to provide a high level of safety for the general population and the environment.

6/ [Text to define 'sufficient experience' to be based on annex V to EU directive 2001/18/EC on the deliberate release into the environment of GMOs.]

7/ For the purposes of this Convention, 'placing on the market' means making available to third parties, whether in return for payment or free of charge.

8/ For the purposes of this Convention, 'contained use of a GMM' means any activity in which a micro-organism is genetically modified or in which such a genetically modified micro-organism is cultured, stored, transported, destroyed, disposed of or used in any other way, and for which specific containment measures are used to limit its contact with the general population and the environment.

9/ For the purposes of this Convention, 'contained use of a GMO other than a GMM' means any activity in which an organism that is not a micro-organism is genetically modified or in which such a genetically modified organism is cultured, stored, transported, destroyed, disposed of or used in any other way, and for which specific containment measures are used to limit its contact with the general population and the environment.

Annex II

OPTION 2

ALTERNATIVE A

Article 6, paragraph 1

Insert a new subparagraph (a) bis reading

> (a) Shall apply the provisions on public participation to decisions on whether to permit proposed activities relating to genetically modified organisms in accordance with the modalities established in annex I bis[. Any Party may, however, determine that its domestic regulatory framework shall instead apply if this affords public rights of participation in such decisions [broadly] equivalent to those laid down in annex I bis];

Article 6, paragraph 11

> [Delete this paragraph.]

ALTERNATIVE B

Article 6, paragraph 11

Replace this paragraph with the following text:

> Each Party shall apply the provisions on public participation to decisions on whether to permit proposed activities relating to genetically modified organisms in accordance with the modalities established in annex I bis. [Any Party may, however, determine that its domestic regulatory framework shall instead apply if this affords public rights of participation in such decisions [broadly] equivalent to those laid down in annex I bis.]

ALTERNATIVE C

Article 6, paragraph 11

> [Delete this paragraph.]

Insert a new article 6 bis as follows:

> Each Party shall apply the provisions on public participation to decisions on whether to permit proposed activities relating to genetically modified organisms in accordance with the modalities established in annex I bis. [Any Party may, however, determine that

its domestic regulatory framework shall instead apply if this affords public rights of participation in such decisions [broadly] equivalent to those laid down in annex I bis.]

FOR ALTERNATIVES A, B AND C:

Annex
Insert a new annex I bis reading

Genetically modified organisms

1. For the purposes of this annex, the deliberate release of genetically modified organisms (GMOs) in the environment shall include:

(a) The deliberate release of a GMO for any purpose other than its placing on the market, except if:

(i) Such a release [in the same location and] under comparable conditions has already been approved using a public participation procedure conforming to the requirements of paragraph 3 below; or
(ii) Sufficient experience has been gained with the release of this GMO;

(b) The placing of a GMO on the market, except if:

(i) It was originally authorized using a public participation procedure conforming to the requirements of paragraph 4 below, and the authorization needs to be renewed in accordance with a Party's regulatory framework; or
(ii) It is intended for research or for culture collections.

[2. For the purposes of this annex, the contained use of GMOs shall include:

(a) The contained use of a genetically modified micro-organism (GMM), if:

(i) It is foreseen in large-scale industrial installations;
(ii) It involves a GMM belonging to the two highest risk categories;
(iii) Emergency plans are deemed necessary for the use of the GMM in a facility; and
(iv) The GMM has not already been used [in the same facility and] under comparable conditions and been approved using a public participation procedure conforming to the requirements of paragraph 5 below;]

[(b) The contained use of a GMO other than a GMM, if:

(i) Emergency plans are deemed necessary for the use of the GMO in a facility; and

(ii) The GMO has not already been used [in the same location and] under comparable conditions and been approved using a public participation procedure conforming to the requirements of paragraph 5 below].

3. Decisions to permit deliberate releases of GMOs for purposes other than placing on the market will be subject to article 6, paragraphs 2 to 10, except for:

(a) Paragraphs 2 (e), 6 (e) and 10, which shall be applied only to the extent feasible and appropriate; and

(b) Paragraph 6 (a) and (c), which shall be construed in a manner applicable to GMOs. The obligation to take due account of the outcome of public participation shall not be construed as implying an obligation to provide individual responses to submissions from the public.

4. Decisions to permit GMOs for placing on the market will be subject to article 6, paragraphs 2 to 10, except for:

(a) Paragraphs 2 (d) (iii) and (e), 6 (e) and 10, which shall be applied only to the extent feasible and appropriate; and

(b) Paragraph 6 (a) and (c), which shall be construed in a manner applicable to GMOs. The relevant information in article 6, paragraph 6, shall contain a description of the geographical area(s) of the proposed activity, including the specific conditions of use and handling. The obligation to take due account of the outcome of public participation shall not be construed as implying an obligation to provide individual responses to submissions from the public.

[5. Decisions to permit GMMs and GMOs for contained use will be subject to article 6, paragraphs 2 to 10, except paragraphs 2 (e) and 6 (e).]

6. For the purposes of this annex and article 4, paragraphs 3 and 4, the following information shall not be considered as confidential by Parties:

(a) General description of the GMO or GMOs, the name and address of the notifier, the purpose of the release, the location of the release and the intended uses;

(b) Methods and plans for monitoring the GMO or GMOs and for emergency response;

(c) The environmental risk assessment.

7. For the purposes of this Convention, ‘genetically modified organism’ or ‘GMO’ means an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination. Within the terms of this definition, genetic modification is considered to result, inter alia, from the use of the following techniques:

(a) Recombinant nucleic acid techniques involving the formation of new combinations of genetic material by the insertion of nucleic acid molecules produced by whatever means outside an organism, into any virus, bacterial plasmid or other vector system

and their incorporation into a host organism in which they do not naturally occur but in which they are capable of continued propagation;

(b) Techniques involving the direct introduction into an organism of heritable material prepared outside the organism including micro-injection, macro-injection and micro-encapsulation; or

(c) Cell fusion (including protoplast fusion) or hybridization techniques where live cells with new combinations of heritable genetic material are formed through the fusion of two or more cells by means of methods that do not occur naturally.

It is not considered to result from in vitro fertilization, natural processes such as conjugation, transduction and transformation, or polyploidy induction, on condition that these techniques do not involve the use of recombinant nucleic acid molecules or genetically modified organisms made by techniques/methods other than mutagenesis or cell fusion (including protoplast fusion) of plant cells of organisms which can exchange genetic material through traditional breeding methods.

8. For the purposes of this Convention, 'deliberate release of a GMO' means any intentional introduction into the environment of a GMO, or a combination of GMOs, for which no specific containment measures are used to limit its contact with and to provide a high level of safety for the general population and the environment.

9. For the purposes of this Convention, 'placing on the market' means making available to third parties, whether in return for payment or free of charge. The following operations shall not be regarded as placing on the market:

(a) Making available GMMs for contained use;

(b) Making available GMOs with the exception of such micro-organisms referred to in subparagraph (a) above to be used exclusively for activities where appropriate stringent physical containment measures are used to limit their contact with and to provide a high level of safety for the general population and the environment.

[10. For the purposes of this Convention, 'contained use of a GMM' means any activity in which a micro-organism is genetically modified or in which such a genetically modified micro-organism is cultured, stored, transported, destroyed, disposed of or used in any other way, and for which specific containment measures are used to limit its contact with the general population and the environment.

11. For the purposes of this Convention, 'contained use of a GMO other than a GMM' means any activity in which an organism that is not a micro-organism is genetically modified or in which such a genetically modified organism is cultured, stored, transported, destroyed, disposed of or used in any other way, and for which specific containment measures are used to limit its contact with the general population and the environment.]

Annex III

OPTION 3

Either new article 6 bis or new article 6, paragraph 11.

The Parties shall, in accordance with their laws and regulations, inform and consult the public in the decision-making process regarding the deliberate release and placing on the market of genetically modified organisms and shall make the results of such decisions available to the public, while respecting confidential information. The national requirements adopted in application of this provision are without prejudice to other specific requirements to be developed in accordance with article 23 of the Cartagena Protocol on Biosafety.

Annex IV

OPTION 4

Article 6 bis

1. Subject to paragraph 2, each Party shall provide for early and effective information and public participation prior to making decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

2. In its regulatory framework a Party may provide for exceptions to the public participation procedure laid down in this article:

(a) In the case of the deliberate release of a genetically modified organism into the environment for any purpose other than its placing on the market, if:

(i) Such a release in the same location and under comparable conditions has already been approved within the regulatory framework of the Party concerned; and
(ii) Sufficient experience has previously been gained with the release of the genetically modified organism in question in comparable ecosystems;

(b) In the case of the placing of a genetically modified organism on the market, if:

(i) It was originally authorized within the [regulatory framework] of the Party concerned; or
(ii) It is intended for research or for culture collections.

3. Each Party shall lay down, in its regulatory framework, and subject to the following paragraphs of this article, arrangements for effective information and public participation procedures for decisions subject to the provisions of this article, which shall include a reasonable time frame, in order to give the public an adequate opportunity to express an opinion on such proposed decisions.

4. Relevant information shall be made available to the public in an adequate, timely and effective manner, subject to paragraphs 3, 4 and 6 of article 4. Parties shall in no case consider the information referred to in subparagraphs (a), (b) and (c) as confidential:

(a) A general description of the genetically modified organism or organisms concerned, the name and address of the applicant for the authorization of the deliberate release, the intended uses and, if appropriate, the location of the release;
(b) A summary of the methods and plans for monitoring the genetically modified organism or organisms concerned and for emergency response;
(c) A summary of the environmental risk assessment.

In addition, each Party shall ensure transparency on decision-making and may, where appropriate, provide the following procedural information to the public:

(i) The nature of possible decisions;
(ii) The public authority responsible for making the decision;
(iii) Public participation arrangements laid down pursuant to paragraph 3;
(iv) An indication of the public authority to which comments can be submitted and of the time schedule for the transmittal of comments.

5. The procedures laid down pursuant to paragraph 3 shall allow the public to submit any comments, information, analyses or opinions that it considers relevant to the proposed deliberate release, in any appropriate manner.

6. Each Party shall strive to ensure that, when decisions are taken on whether to permit the deliberate release of genetically modified organisms into the environment, due account is taken of the outcome of the public participation procedure organized pursuant to paragraph 3. The obligation to take due account of this outcome shall not be construed as implying an obligation to provide individual responses to submissions from the public.

7. When a decision subject to the provisions of this article has been taken by a public authority, each Party shall take all necessary measures to ensure that the decision is made publicly available.