Assisting in ratifying and implementing the Aarhus Convention and the Cartagena Protocol by clarifying some of their key provisions
I. Why such clarification?

- 1. Article 6 bis

1. …

2. The requirements made by Parties in accordance with the provisions of paragraph 1 of this article should be complementary and mutually supportive to the provisions of their national biosafety framework, consistent with the objectives of the Cartagena Protocol on Biosafety.

- 2. COP-MOP Decision V/13 on public awareness, education and participation

The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety

…

3. Underlines the importance of ensuring coherence among the programme of work and relevant activities of the Aarhus Convention on…
II. Why such clarification?

1. A number of Parties to both the Aarhus Convention and the Biosafety Protocol have not ratified the amendment to the Convention

2. A couple of those Parties are Members of the EU

3. One Party to the Convention having ratified the amendment is not Party to the Protocol.
What kind of clarification?

1. Not a detailed legal analysis

2. Comments and views regarding the box “Synergies with the CBD and its Cartagena Protocol on Biosafety” on p. 170 of Implementation Guide (2nd edition available on the internet)
Objectives

1. Box, para. 4
   “The objective of the Cartagena Protocol, … is “to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity …” (Protocol, Article 1).

2. Box, para. 6
   “While the objective of the Aarhus Convention is “to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being” (Article 1), the CBD and the Cartagena Protocol focus more particularly on the protection of biological diversity for its own sake.”
Like the CBD, the Cartagena Protocol does not use the term “genetically modified organism”. Instead, it refers to “living modified organisms resulting from biotechnology”. The extent of any difference in the scope of these two terms has not been settled in practice.”

Comparing the definitions in Article 3 (g)-(i) of the Protocol and in Annex I, para. 2 (a)-(b) of the 2002 Lucca Guidelines
Information requirements in general

1. Box, para. 6, last section

“Conversely, regarding access to information, the Cartagena Protocol, in its article 20 establishing the Biosafety Clearing-House mechanism, defines more clearly than the Aarhus Convention what kind of scientific, technical, environmental and legal information has to be made publicly available.”

2. Protocol Article 20, para. 3

“Without prejudice to the protection of confidential, each Party shall make available to the Biosafety Clearing-House any information required to be made available to the Biosafety Clearing-House under this Protocol, and: (subparas. (a)-(e)

3. Doc. UNEP/CBD/BS/COP-MOP/6/16 (13/8 2012) on monitoring and reporting, para. 114
Information requirements in general

4. Article 2, para. 3 (a) of the Aarhus Convention

3. “Environmental information” means any information in written, visual, aural, electronic or any other material form on:

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
Public participation requirements

1. Box para. 6, second part

“However, despite their different foci, the provisions of the Cartagena Protocol and the GMO amendment to the Aarhus Convention overlap on the issue of public participation in decision-making. In this regard, the two instruments should not be seen as contradicting, but rather as complementing one another. In the light of the GMO amendment, the Aarhus Convention might be considered as the more elaborated instrument in respect of the modalities for public participation, for which it lays down detailed requirements; whereas article 23 of the Cartagena Protocol on public participation is of a more framework nature…”
Public participation requirements

2. COP-MOP Decision BS-V/13 on public awareness, education and participation, Annex-Programme element 4. Public Participation

3. COP-MOP Decision BS-VI/1 on compliance, para. 5

… facilitate the fulfilment of [Parties’] obligations to promote … participation, as specified in Article 23 …
1. Aarhus Convention Article 9, para. 3

... each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions ... which contravene provisions of its national law relating to the environment.

2. Protocol

No provisions on access to justice
Compliance mechanisms

1. Aarhus Convention
May be triggered by communications of members of the public

2. Protocol
Cannot be triggered by communications of members of the public
Some conclusions