EUROPEAN ECO-FORUM

Amendment to the Aarhus Convention (Almaty, 2005) as an international mechanism for public access to decision-making in the field of biosafety

Eco-TIRAS
2006

CZU502/504(094.2)(082)
A 45

Amendment to the Aarhus Convention (Almaty, 2005) as an international mechanism for public access to decision-making in the field of biosafety / European ECO-Forum. – Chişinău: Eco-TIRAS, 2006. „ELAN POLIGRAF" SRL - 36 p.

Authors:
Serhiy Vykhryst (Kyiv, Ukraine), Olexiy Angurets (Friends of the Earth Ukraine, Dnipropetrovsk, Ukraine), Andriy Ostapenko (Kyiv, Ukraine), Ivan Ignatiev ("Ecospectrum-Bendery", Transdniester, Moldova) and Ilya Trombitsky (Eco-TIRAS, Chisinau, Moldova)

Current brochure has a scope to familiarize MPs, governmental decision makers, local authorities, NGOs and a public with Amendment to the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, adopted in Almaty in 2005, which permits public to participate in adoption of decisions related to genetically modified organisms. The brochure is written and published by European ECO-Forum via Eco-TIRAS NGO from Moldova owing to support of the European Environmental Bureau thanks to financial support from the European Commission and the Belgium Federal Ministry for Public Health, Food Safety and Environment and UNEP/GEF Project „Support for the Implementation of the National Biosafety Framework for Republic of Moldova".

Descrierea CIP a Camerei Naţionale a Cărţii

Amendment to the Aarhus Convention (Almaty, 2005) as an international mechanism for public access to decision-making in the field of biosafety / European ECO-Forum. – Chişinău: Eco-TIRAS, 2006. „ELAN POLIGRAF" SRL - 36 p.

ISBN 978-9975-66-003-7

1300 ex.

ISBN 978-9975-66-003-7

Eco-TIRAS International Environmental Association of River Keepers
Str. Teatrala 11A, Chisinau 2012, Moldova
Tel./Fax: +373 22 225615
E-mail: ecotiras@mtc.md;
www.eco-tiras.org

European Environmental Bureau
Boulevard de Waterloo 34
B-1000 BRUSSELS
Telephone: + 32 (0) 2 289 10 90
Fax: + 32 (0) 2 289 10 99
email: eeb@eeb.org ; www.eeb.org

CONTENT

INTRODUCTION 4

ALMATY AMENDMENT'S HISTORY 7

PROCEDURE FOR THE AMENDMENT'S ENTRY INTO FORCE 12

AMENDMENT'S CONTENT AND IMPACT 17

AMENDMENT'S IMPLEMENTATION AS AN ESSENTIAL ELEMENT OF THE NATIONAL BIOSAFETY FRAMEWORKS 22

USEFUL LINKS 31

TEXT OF ALMATY AMENDMENT TO THE AARHUS CONVENTION 32

INTRODUCTION

Involving the general public into the discussion about problems important for society and providing conditions for sharing responsibility of adopted decisions makes government more confident that their policy is supported by the public. This is in particular true for those fields that affect major interests of the society (e.g., people's health, state of the environment, consumers' rights, social security).

Many problems brought about by the nature of human civilisation were solved due to successes of modern biotechnology. Diabetes is a good example of that. Now it is treated by insulin gained from bacteria which has a built-in special DNA containing different nucleotides and regulatory elements needed to stir up a necessary gene. Two resulting chains of molecules are eventually connected by a chemical reaction to receive a complete molecule of insulin. Successes of gene engineering are very tangible and important for the medical field of human hormones synthesis.

Nevertheless, the process of introducing alien elements into hereditary mechanisms of living organisms, i.e. what was created by nature, by itself is raising growing concern and resistance in the world. The motives for that are different. Some emphasise the potential infringement on wildlife genetics and its protection as one of the main tasks of the Convention on biological diversity. Others point out potential threats for human health coming from food, produced using GMO crops, for example, allergic reactions of human organisms to new types of protein generated by genetically modified organisms. Another issue is the preservation of species, sorts and breeds which have become traditional elements of local culture over the ages. Building on the mentioned above, the European Union treats GMOs following the fundamental approach, based on the precautionary principle, that every new GMO should be assessed for risks and the assessment's results should not be extrapolated to other GMOs. Finally, the majority of religious confessions are suspicious about changing the basics of habitat, created by God. Ethical problems regarding manipulations with human hereditary mechanisms are even more complex and diverse.

In a democratic society every citizen and consumer should posses the right of choice as well as the right of access to information, touching upon his interests or interests of the society (including but not limited to information on factors infringing on health and environment), and participate in the relevant decision-making by, inter alia, presenting arguments, which should be taken into account by the state authorities responsible for the corresponding decision-making. Principle 10 of the Rio Declaration on Environment and Development, adopted by the United Nations Conference in 1992 says, that "each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available". Additionally, Principle 15 of the Rio Declaration, stresses the need to apply precautionary measures when new forms of impact threaten to possibly damage the environment: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".

Obviously, since the introduction of new GMOs is potentially dangerous to the environment, and primarily for biodiversity, they bear health and socio-economic risks connected with possible exports of products, costs of rights to use GMOs and others; they fall within the scope of Principles 10 and 15 of the Rio Declaration.

Therefore when the Aarhus Convention was drafted the public had enough grounds to demand that it covers issues also connected with the use of GMOs. Unfortunately, in the late 90s because of the lack of knowledge on GMOs and business lobby resistance, the issue of public participation in decision-making on GMOs in the Convention's paragraph 11 of Article 6 was put into the

national authorities' domain. Since then on the global level the public, concerned by risks connected with GMOs, pushed for the adoption of the Cartagena Protocol on biological safety (2000) to the Convention on biological diversity (Rio, 1992). Article 23 of the Protocol sets minimal requirements for public awareness, consultation and participation in decisions related to living modified organisms. It is true that the Cartagena Protocol owes its existence to the expressly concerned public.

The Aarhus Convention, being a regional environmental democracy mechanism, is open for accession to any UN Member State in the world. The Almaty Amendment, at that, after the Parties to the Convention ratify it will provide opportunities for the public to control the quality of decisions made by the state authorities responsible for transboundary movement, import, deliberate release into the environment, and placing GMOs on the market. Bearing in mind that the biotech industry is actively expanding, the Amendment's earliest entry into force will facilitate stronger biosafety for each Member State individually and the entire UNECE region as a whole. This will also reduce risks for the environment, health and economic safety of these countries.

This brochure aims at informing decision-makers, environmental NGO representatives, associations of consumers' rights protection, farmers, local self-government authorities and all those interested with the possibilities of public participation in decision-making related to GMOs given by the 2005 Almaty Amendment to the Aarhus Convention. Its approval by Parliaments and national implementation is important and pressing. It is crucial for UNECE Member States to accept and implement the Almaty Amendment without delay.

ALMATY AMENDMENT'S HISTORY

The right to live in the environment favourable for human health and well-being, as well as the possibility to protect and improve its con ditions, is one of the main human rights stated in a number of international treaties. Its implementation depends on the effective mechanism of public access to environmental information, ability of the public to influence the decision-making in environmental matters and to protect their rights in courts of law. The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters is such a mechanism.

Paragraph 15 of the Ministerial Resolution devoted to the adoption of the Aarhus Convention refers to the issue of GMOs and the Parties are asked to continue developing the Convention's mechanism in this field at the First Meeting of the Parties (MoP). This statement and the following decision of the Committee on Environmental Policy became the main engines for the initial establishment of a Task Force and afterwards, the Working Groups (WG) on GMOs. The Task Force was established by the First Meeting of Signatories, held on 19-21 April 1999 in Chisinau, Moldova. The Task Force activities were focused on preparing a report summarising existing experience of the Convention's application in the field of GMOs and developing recommendations for expanding the scope of the Convention therein. The Task Force identified the following major directions of its research:

1. Public access to information on issues related to GMOs;
2. Public participation in decisions related to GMOs;
3. Labelling and "non-living" GMO products.

The legislation research showed major differences between countries in their approaches to biosafety, along with the general access to information and public participation in decisions related to GMOs. Many states have the so-called "horizontal" legislation on access to information equally applied to access to information on GMOs. In a number of cases GMO governing legislation contained special provisions on access to information, in particular, identifying types of non-confidential data.

The level of public participation in decision-making on contained use and deliberate release of GMOs was extremely different. In a number of states the

national legislation did not provide for mandatory public participation. It was mentioned only as a possibility. The public could get involved in the decision-making process at early or later stage of the procedure. The majority of Signatories as of 1999, however, had limited public participation in decisions related to GMOs.

The analysis of Articles 4 and 5 of the Aarhus Convention ("Access to environmental information" and "Collection and dissemination of environmental information"), which regulate public access to environmental information, did not find any considerable barriers restricting the application of the referred articles to GMOs, as one of the elements of the environment. The issue of applying Article 6 to certain types of activities related to GMOs turned out to become a major challenge for the Task Force. Paragraph 11 of Article 6 provides for potential public participation in decision-making on deliberate release of GMOs into the environment. However, its legal uncertainty and rather vague wording, as well as the Convention's failure to define "deliberate release", made it almost impossible to apply Article 6 to decision-making regarding GMOs. Members of the Task Force also took opposite positions on the possibility for the Article's application in the field of placing GMOs on the market and their contained use. This was primarily due to the fact that neither the Convention nor its Annex I contained any references to these types of activities with GMOs.

Both the Task Force and eventually two WGs discussed various procedural approaches for overcoming the mentioned controversies and expanding the Convention's scope of application to incorporate decisions related to GMOs. They arrived at five main, primarily legally-binding, alternatives:

1. decision of the MoP, interpreting the provisions of paragraph 11 of Article 6;

2. decision of the MoP amending the Convention by adding a reference to activities related to GMOs to Annex I and corresponding textual changes in paragraph 11 of Article 6;

3. guiding principles (guidelines) on best practices, legislation development and practical implementation mechanisms;

4. Protocol to the Convention covering the issues related to GMOs;

5. new Annex to the Convention, dealing with GMOs.

Representatives of the majority of EECCA (Eastern Europe, Caucasus and Central Asia) countries, as well as NGOs ("The European ECO-Forum", "GLOBE Europe"), the Regional Environmental Centre for Central and Eastern Europe (REC CEE) and some other organisations actively supported the legally binding options. Their position was basically grounded on the fact of almost complete absence of the national legislation regulating activities related to GMOs in these countries and therefore complete absence of legally binding guarantees for public access to information, public participation and access to justice in matters related to GMOs. The adoption of "Guidelines" as a non-binding, completely voluntary and advisory in their nature, could not provide for even minimum safety for citizens in a growing GMO market.

EU Member States did not support the legally binding options pointing out possible controversies and duplications with other international and regional instruments (including EU legislation, Cartagena Protocol, Codex Alimentarius), and potential complications with accession to the Aarhus Convention by new states. The polarization of views grew to become geographically distinct where EECCA countries spoke for the legally binding options and the EU delegations insisted on the adoption of guiding principles. The compromise solution was found in the development of the "Guidelines on access to information, public participation and access to justice with respect to genetically modified organisms" along with the MoP-1 decision outlining further work on the issue, possibly in a legally binding direction. This compromise was carved at MoP-1 in Lucca, Italy (21-23 October 2002) by the Decision I/4 on GMOs. The Parties adopted Guidelines and established a new WG to further explore the options for a legally binding approach. The Guidelines were also supported at the 5th Ministerial "Environment for Europe" Conference held on 21-23 May 2003 in Kiev.

Unfortunately, three more years passed and the WG on GMOs was not able to elaborate the most optimal legally binding mechanism for applying the provisions of the Aarhus Convention to decisions on GMOs. The rigid uncompromising EU position on the issue – often driven by bioindustry and major GMO exporters – deliberately blocked any progress in the Convention's development in this field.

Under such circumstances, NGOs in different countries launched a principal "moratorium on GMOs" strategy, also expressed at the 5th Ministerial Conference in Kiev. NGOs urged the ministers to agree on the moratorium on GMOs in agriculture and GMO-products release until it is undoubtedly proven that

GMOs are not potentially harmful for the environment or such a harm could be effectively prevented with accessible measures.

The European ECO-Forum, a Pan-European coalition of environmental citizen organisations focusing on the "Environment for Europe" process, on the eve of Almaty MoP-2 called upon the Parties to pay separate attention to the issues of public participation in making decision related to GMOs. The European ECO-Forum emphasised the fact that there should not be any exceptions to the public participation procedure in decisions on GMOs. In addition they also emphasized that citizens should have equal access to decision-making related to GMOs in accordance with decision-making in other environmental matters. The issues of GMOs use and control are directly connected with the human rights to safe environment, access to timely, complete and reliable information on goods and products quality as well as health risks. NGOs voiced for the most principal approach in applying the Aarhus Convention to decisions on GMOs.

Four meetings of the WG on GMOs resulted in five options, four legally binding and one non-binding. The first and the second options, establishing solid legal grounds for public participation in decision-making on GMOs, were promoted by EECCA countries and NGOs. The third and the fourth options reflected a much weaker and less binding approach supported by the EU.

Many experts agreed that Option 1 was the most effective and simple among the four legally binding options. Its simplicity consisted in amending the Convention by deleting paragraph 11 of Article 6 and expanding the scope of paragraph 1(a) of Article 6 and Annex I to cover GMO-related activities.

Option 2 was in many aspects the most elaborated and compromise-reflecting alternative out of those developed by the WG. It was very close to the essence of Option 1, incorporating, at the same time, major concerns expressed by the EU, as its provisions would not have required any substantial changes in the corresponding EU legislation. The Option included: deletion of paragraph 11 of Article 6 and introduction of a new annex on GMOs, containing both the Party's obligation to establish an effective mechanism for public participation in decisions on GMOs and the list of essential elements of such a mechanism.

Option 3 (or the 1st EU Option) – the most laconic one – had general formulations and basically no concrete obligations for the Parties as for the public participation in decisions on GMOs. It referred to Article 23 of the Cartagena Protocol, in fact preventing the application of the Aarhus Convention to GMO-

related decision-making until at least a minimal procedure for public participation in this field is established under the Protocol. Bearing in mind the complexity of negotiations under the Cartagena Protocol this Option would have basically shelved the application of the Aarhus Convention to GMOs.

Option 4 (or the 2nd EU Option) has gained some support from the EU Member States as well as some EECCA countries. Many experts thought it was too weak and underdeveloped, proposing to adopt new Article 6-bis and Annex on GMOs. Thus it would have somewhat contravened with the Convention itself, presenting a self-standing procedure for public participation in decision-making on GMOs and considerably narrowing the list of activities it would have covered.

Both options presented by the EU proved that at least at that time the EU was not prepared to establish an effective mechanism for public participation in decisions related to GMOs.

Lucca Guidelines were a non-binding option at that. They were more of an advisory nature and did not provide for a strict review system. In the absence of binding legal obligations their effective implementation in EECCA countries would have been uncertain, especially if not supported by the established national legal biosafety framework. A legally binding instrument, on the contrary, would have secured at least a minimal safety for citizens in a growing GMO market. The report on the implementation of the Guidelines presented in March 2005 was an additional supporting argument for that. The report was based on the review of compliance with the Guidelines in the EU and EECCA countries in the past two years. It showed a very limited scope of measures, undertaken to encourage the Guidelines application, and contained almost no practical experience of implementation. While those EECCA countries which did not have proper national biosafety legislation used the Guidelines as the basis for developing their own rules for access to information, public participation and access to justice in matters related to GMOs; the EU Member States basically relied on their national and Community laws. CEE states, working towards accession to the EU, tended to approximate their laws to the EU legislation.

In February 2005 the Republic of Moldova submitted a proposal to amend the Convention following the approach of Option 2. Along with the provisions on deliberate release and placing on the market the proposal outlined rules for public participation in decisions on GMO contained use. Another added value of the proposal was that it was submitted by the Party and, therefore, could

not have been overlooked by the WG and should have been put for discussion at the MoP.

Since none of the elaborated options gained general support, the only way out was to find a compromise option reflecting both national and regional experience of public participation in decisions on GMOs.

On the eve of Almaty MoP-2 many EECCA countries were pessimistic about the perspectives of reaching a common position with the EU which did not show good political willingness and readiness to find a solution. Many experts doubted any considerable progress in expanding the scope of the Convention to include decisions on GMOs. NGOs also expressed their grave concern of the situation in the "Almaty Call for Action". The statement condemned the blocking EU position on a legally binding instrument and called upon the Parties to adopt a progressive amendment to the Aarhus Convention.

It turned out that Option 4 (the 2nd EU Option) formed the basis for further discussions at the WG on GMOs meeting in Almaty. Complex negotiations between the EU and EECCA countries supported by the European ECO-Forum, GLOBE Europe and REC CEE resulted in a compromise providing for a legally binding instrument for public participation in decision-making related to GMOs. Notwithstanding its shortcomings the Almaty Amendment formed the basis for the continuous development of the Aarhus Convention in the field of GMOs.

PROCEDURE FOR THE AMENDMENT'S ENTRY INTO FORCE

Any amendment to an international treaty is primary related to changes in its content. Pursuant to Article 39 of the Vienna Convention on the Law of Treaties of 1969, any treaty may be amended by agreement between the parties. Article 14 of the Aarhus Convention gives the right to any Party to propose amendments to the Convention. The text of any proposed amendment should be submitted in writing to the Executive Secretary of the Economic Commission for Europe (UNECE), who should communicate it to all Parties at least ninety days before the MoP at which it is proposed for adoption. Thus, the MoP is the only authority to adopt amendments to the Aarhus Convention.

Pursuant to paragraph 3 of Article 14, amendments to the Convention should be adopted either by consensus or, as a last resort, by a three-fourths majority vote of the Parties present and voting at the meeting. For many years common UNECE practice has been to adopt decisions by consensus. The provision on a three-fourth majority vote exists as an extraordinary tool to resolve serious controversies between the stakeholders. The term "Parties present and voting" means Parties present and casting an affirmative or negative vote. If one or more Parties were not present at the meeting, it is understood that the decision was adopted on their behalf as well.

The text of the amendment and a corroborative decision is communicated to all Parties. This is the function of the Depositary – the keeper of an original text of the treaty. The Secretary-General of the United Nations is the Depositary of the Aarhus Convention. The UN Office of Legal Affairs (UNOLA) acts on behalf of the Secretary-General therein.

Paragraph 4 of Article 14 provides that amendments to the Convention other than those to an annex shall enter into force for Parties having ratified, approved or accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties.

Amendments to an annex enter into force if none of the Parties object to them or if the number of objecting Parties do not exceed one third of the total number of Parties to the Aarhus Convention. Such amendments enter into force for the "non-objecting" Parties on the expiry of twelve months from the date of their communication by the Depositary.

It is generally accepted that amendments to an annex follow a much more simple procedure for entering into force than amendments to a Convention. Primarily, Article 14 foresees just a notification to the Depositary if the Party is unable to approve an amendment to an annex. Meanwhile, amendments to the Convention should be ratified, approved or accepted which requires the authority of supreme state bodies, in many cases – the Parliaments. Secondly, the odds that the MoP decision becomes unacceptable for a third of Parties afterwards are very small. And finally, there are no deadlines for ratifying an amendment to the Convention, whereas an amendment to an annex enters into force on the expiry of twelve months from the date of its communication by the Depositary if at least two-thirds of the Parties support it.

As for the so-called "new" Parties the Vienna Convention on the Law of Treaties provides that every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended. Moreover, any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State, be considered as a party to the treaty as amended.

The international law on treaties distinguishes two types of a treaty's entry into force: entry into force by a treaty itself and its entry into force for a separate party. After a treaty enters into force itself it should be transmitted to the UN Secretariat for registration or filing and recording and for publication. As a rule, bilateral treaties enter into force for both parties simultaneously. At the same moment they enter into force themselves, i.e. from that moment on members of international community understand that certain states have gained new obligations under international law which they should comply with. Multilateral treaties, however, enter into force in stages. They, first of all, enter into force themselves and for those states which have by that time ratified, accepted, approved or acceded to them, and afterwards individually for those states which acceded to these treaties after their entry into force. For example, the Aarhus Convention entered into force on 30 October 2001 – on the ninetieth day after the date of deposit by the Depositary of the sixteenth instrument of ratification, acceptance, approval or accession, i.e. after the Convention gained first sixteen Parties. For all other states the Convention entered into force on the ninetieth day after the date of deposit of their respective instrument of ratification, acceptance, approval or accession.

Was the Aarhus Convention legally binding for those states which became Parties to it before the Convention entered into force (i.e. before the number of Parties reached 16 and more)? Pursuant to Article 18 of the Vienna Convention on the Law of Treaties, a state is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed. In other words, a state which has signed a treaty or moreover ratified it (before the treaty entered into force itself) shall not gravely violate such a treaty. Obviously, after a treaty has entered into force itself (in case of the Aarhus Convention – since 30 October 2001) – any departure from its provisions could be considered as a breach of this treaty.

The Almaty Amendment introduces changes to the Convention (paragraph 11 of Article 6) and adds a new article (Article 6-bis) and an annex (Annex I-bis) to its text. The Amendment leaves existing annexes unchanged. Taking the mentioned into account the Amendment should respect the following conditions for entry into force: the Amendment will enter into force on the ninetieth

day after it is ratified, approved or accepted by at least three fourth of the Parties to the Aarhus Convention. Thereafter it will enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the Amendment.

After the adoption of the Almaty Amendment the question of ambiguity of the provisions of paragraph 4 of Article 14 of the Aarhus Convention arose. As mentioned before, this paragraph stipulates the procedure for an amendments entry into force. The most controversial issue is the exact number of ratifications required for an amendment's entry into force. The Convention's text uses the definition of "three fourth of these Parties", leaving unclear which number of Parties should be taken as a basis for calculation. There are a number of approaches, two of which are the basic ones. They are the so-called: a "fixed target" approach and a "moving target" approach.

The core meaning of the fixed target approach could be interpreted as the initial number of Parties, for the purposes of paragraph 4 of Article 14, should be equal to the number of Parties to the Aarhus Convention at the time of MoP-2, where the Amendment was adopted.

The moving target approach has its title due to the fact that it moves (postpones) the date of an amendment's entry into force to an unpredictable time in the future. This means that with every accession to the Aarhus Convention by a "new" Party, the number of ratifications required for an amendment's entry into force increases. The amendment, therefore, enters into force only under the situation when the number of Parties having ratified the amendment reaches the three fourth threshold of the total number of Parties to the Aarhus Convention at this point of time. The example of the Aarhus Convention could be more illustrative: the Convention had 35 Parties when the Almaty Amendment was adopted and if that number did not change the Amendment would have required ratification by 27 Parties to enter into force. As of today, the Convention has 40 Parties, and the moving target approach would require 30 Parties to ratify the Amendment for it to enter into force. At some point in time the number of Parties to the Aarhus Convention will reach 50 and if the Almaty Amendment is not in force by that time it would require at least 38 supporting Parties (those who ratified, approved or acceded to the Amendment) to enter into force and so on.

Obviously, the moving target approach complicates and slows down the process of entering amendments into force.

Having consulted with the Depositary – UNOLA – the Secretariat of the

Aarhus Convention has identified two possible solutions to the described situation: (1) to amend Article 14 of the Convention using more clear and firm rules for amendment's entry into force; and (2) to make a special agreement between the Parties to the Aarhus Convention reflecting their joint position on the interpretation of corresponding provisions of Article 14.

In the first case, the mentioned changes would form a new amendment themselves required to follow the pathway of existing Article 14 to enter into force. On the one hand, the Convention's text would have been finally clarified; on the other – that would have probably further postponed the Almaty Amendment's entry into force.

In the second case, some doubts were expressed on the nature of such an agreement between the Parties, the procedure for its conclusion and entry into force. Article 31 of the Vienna Convention of the Law of Treaties in its paragraph 3 (a) clearly provides for a possibility of making a subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions. It was agreed that in case of the Aarhus Convention a decision of the MoP could form such a subsequent agreement. The WG of the Parties to the Aarhus Convention mandated the Convention's Secretariat to elaborate relevant draft decision and established a small expert group to assist the Secretariat and support the process. It was also decided that in substance the issue of Article 14 interpretation would be considered by MoP-3 in summer 2008 in Riga, and the draft decision developed by the Secretariat should be formulated in such a manner as to provide for the amendments earliest entry into force.

Thus, it could be stated with a great level of certainty that the Parties to the Aarhus Convention would follow the fixed target approach and, therefore, the Almaty Amendment would enter into force after it is ratified by at least 27 Parties to the Aarhus Convention.

But before the Almaty Amendment enters into force the stakeholders should remember paragraph 2 of the MoP-2 Decision II/1, encouraging Parties to ratify, accept or approve the Amendment at the earliest opportunity and to apply it to the maximum extent possible pending its entry into force, and paragraph 3 of the Decision also encouraging Parties to renew their efforts to implement the Guidelines on Access to Information, Public Participation and Access to Justice with respect to Genetically Modified Organisms (MP.PP/2003/3).

AMENDMENT'S CONTENT AND IMPACT

Textually the Almaty Amendment represents a new wording of paragraph 11 of Article 6 and amends the Aarhus Convention with Article 6-bis and Annex I-bis. It is known that Article 6 of the Aarhus Convention regulates public participation in decision-making on various types of activities. In its existing formulation paragraph 11 of the Article gives the right to the Parties, within the framework of their national law, to apply "to the extent feasible and appropriate" provisions of Article 6 regarding decisions on whether to permit the deliberate release of genetically modified organisms into the environment. In practice the application of public participation procedures to decisions on GMOs is unlikely. Firstly, such public participation should fit in the national legislation of a Party. Secondly, the procedure may be applied "to the extent feasible" – i.e. each state decides for its own which elements of the public participation procedure are applicable to decisions related to GMOs and which are not. This also brings into questions whether states will consider public participation procedures applicable to decisions on GMO at all. Thirdly, the procedure may be applied "to the extent appropriate" – i.e. even those procedural elements which are considered applicable, could be implemented partially upon the state's discretion. Finally, , the public participation procedure, laid out in Article 6 of the Aarhus Convention, could be applied only to decisions on whether to permit the deliberate release of GMOs into the environment. Thus, decisions on placing GMOs on the market and their contained use fall outside the scope of Article 6 of the Convention. It should be mentioned though that paragraph 5 of Article 3 of the Aarhus Convention given the right to the Parties to "maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention". Therefore, a state, if it wishes, could apply public participation procedure to decision-making related to all types of activities involving GMOs, and this would not contravene the Convention. Only an optimist would hope for such an application of the Aarhus Convention, even on an ad hoc basis. Unfortunately, practice proves otherwise: none of the Parties have applied paragraph 11 of Article 6.

As it was described earlier, the history of negotiations on the Almaty Amendment was long and complex, where some of the Amendment opponents used part of the rhetoric above. Really, if paragraph 5 of Article 3 makes it possible for a Party to go beyond the scope of the Aarhus Convention in the

field of access to information, public participation in decision-making and access to justice in environmental matters, – what is the added value of separately regulating public participation in decisions related to GMOs? Moreover, a number of delegations suggested shifting the negotiations to a more appropriate, in their view, Cartagena Protocol on Biosafety with its Article 23 on public awareness and participation. Finally, there were a number of those who looked at the Amendment from a scientific and practical perspective, whether GMOs were safe or dangerous.

Primarily, pursuant to the objective of the Aarhus Convention, expressed in its Article 1, the aim of proclaiming, guaranteeing and establishing mechanisms for implementation of the rights foreseen by the 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". This primarily means a possibility for a conscious and informed choice, an ability to participate in a decision-making process, a chance to obtain and share information on the state of the environment, food, goods and services, which has a potential impact on it. Therefore, the establishment, through the Almaty Amendment, of a mechanism for public participation in decisions related to GMOs has never had and still does not have a goal of proving the danger or safety of GMOs. Its objective is to set up a mechanism for public participation in decisions on deliberate release of GMOs into the environment and placing them on the market.

Secondly, the objective of the Cartagena Protocol on Biosafety 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, taking also into account risks to human health, and specifically focusing on transboundary movements". Therefore, the Protocol lays conditions for the development and proper functioning of the national biosafety frameworks, where the mechanism of public participation in decisions on GMOs should be an essential element. Hence, the principles of the Aarhus Convention – as special tools – should be looked at as a part of a more general mechanism of the Cartagena Protocol. It is not surprising then that the participants of Almaty MoP-2 emphasised the need to develop collaboration between both processes "with a view to maximizing synergy and avoiding duplication of effort", underlining that "the Aarhus Convention provides an appropriate international framework for further developing access to information, public participation and access to justice with respect to GMOs".

Finally, compared to a global instrument like the Cartagena Protocol, the Aarhus Convention thus a regional mechanism, can best facilitate the development of balanced and transparent national biosafety frameworks, foreseen by the Cartagena Protocol, in the majority of UNECE countries in transition. Elaboration within the scope of the Convention of more precise regulations on public participation in decisions on GMOs, as compared to more general ones in Article 6 of the Aarhus Convention and Article 23 of the Cartagena Protocol, - takes firm account of the specifics of GMO-related activities and guarantees the fulfilment of the objective.

The main obligation which the Almaty Amendment vests with the Parties is to provide for early and effective information and public participation prior to making decisions on whether to permit the deliberate release of GMOs into the environment and placing them on the market. In this case, separate attention should be paid to the principles of early and effective information as well as public participation. The principle of early information primarily means that a public authority, responsible for making decisions on permitting the deliberate release of GMOs into the environment or placing GMOs on the market, should at the earliest stage of a decision-making procedure inform the public. This can take place either by public notice or individually informing society that a request/notification/application for a relevant permit regarding the deliberate release of a GMO into the environment or the placement of GMOs on the market has taken place. The principle of effective information, inter alia, means that the relevant information should be provided in a popular, easily understood, comprehensible form and sufficient volume, as well as presented timely upon a request, ensuring conscious and informed public participation in a decision-making process. The principle of early and effective public participation states that a decision-making procedure should include a reasonable time frame, giving the public adequate time limits and opportunity to express an opinion on a proposed decision. It is also important that the mechanism of public participation in decision-making related to GMOs should either be coordinated by or from an essential part of the national biosafety framework.

In order to properly implement the Almaty Amendment, the national legislation regulating public participation in decisions on GMOs should go beyond a mere declaration of the principle of public participation. It should provide for concrete measures ensuring the principle's implementation. This seconds the importance of developing an integral national biosafety framework.

Point 5 of Annex I-bis requires the Parties to ensure transparency of decision-making procedures and provide access to the relevant procedural information to the public. The principle of transparency is to a certain extent similar to general legal principles of publicity and openness. While in point 8 of Annex I-bis the principle of transparency is partially reflected in the obligation of a public authority, responsible for decision-making on GMOs, to make publicly available both the decision along with the reasons and considerations upon which it is based, - point 5 requires public authorities to inform the public of all phases and stages of the decision-making procedure related to GMOs early. As a part of the national biosafety framework such a procedure should be universal (uniform); each state should identify a single public authority responsible for issuing permits for the deliberate release of GMOs into the environment or placing GMOs on the market; the decision-making procedure should be accessible, i.e. anybody interested should be able, without any complications or barriers, to get acquainted with the description of the procedure formulated clearly and comprehensible. Point 5 contains a sample list of data, which the description of a decision-making procedure on GMOs could include: the nature of possible decisions (type of an act of a public authority legalizing/formalising a permit, time schedule for its adoption and the procedure for appealing against it, legal power of such an act and its period of validity; possible interim/preliminary decisions, procedure and time schedule for their adoption, their validity, etc.); the public authority responsible for making the decision (name and address of the mentioned public authority, contact information of officials responsible for making the decision, contact information of head officials of the public authority); public participation arrangements (description of forms of public participation, procedure and methods for their application; information on previous experience of applying public participation mechanisms, etc.); an indication of the public authority from which relevant information can be obtained (methods of obtaining information, contact persons); an indication of the public authority to which comments can be submitted and of the time schedule for the transmittal of comments. This list is not exhaustive. Pursuant to the national legislation and/or a decision of a competent public authority the description of a decision-making procedure on GMOs could include other information.

The public authority responsible for making the decision on GMOs makes available to the public in an adequate, timely and effective manner a summary of the notification introduced to obtain an authorization for the deliberate release into the environment or the placing on the market of a GMO on its territory, as well as the assessment report where available and in accordance with its national biosafety framework. An opportunity for the public to submit any comments, information, analyses or opinions that it considers relevant to the proposed decision is considered to be an essential element of the public participation procedure. Hence, only by informing or providing information on the proposed decisions upon the request, not ensuring proper feedback within the meaning of the Aarhus Convention, a public authority will not comply with the public participation requirement foreseen by the Almaty Amendment. Aside from that, it is important to remember that the procedure for public participation in decisions related to GMOs should include reasonable time frames in order to give the public an adequate opportunity to express an opinion on a proposed decision.

Point 7 of Annex I-bis remains to be the most disputable one: "Each Party shall endeavour to ensure that, when decisions are taken on whether to permit the deliberate release of GMOs into the environment, including placing on the market, due account is taken of the outcome of the public participation procedure organized pursuant to paragraph 1". Both the interpretation and implementation of the principle regarding 'taking due account of public opinion' when taking the final decision raises controversies not only within the meaning of the Almaty Amendment but also within the meaning of paragraph 8 of Article 6 of the Convention. Mutually expelling in this case are the positions where, on the one hand, it is considered that the outcomes of the public participation procedure hold minimum legal impact and could be taken into account by a public authority responsible for taking the final decision only as a general background information; on the other hand, the outcomes of the public participation procedure are believed to be legally binding and the final decision of a public authority could not contravene to them. The practice uses a variety of approaches within the listed extremes.

As it was mentioned earlier at the final stage of public participation the procedure requires the text of the final decision to be made publicly available along with the reasons and considerations upon which it is based.

In a number of instances the Almaty Amendment provides that the public participation procedure may be inapplicable to the decisions related to GMOs. It is worth noting though that the mentioned exceptions are not mandatory and could be applied on the discretion of a Party. In the case of the deliberate release of a GMO into the environment the exceptions include the situation

when: (a) such a release under comparable bio-geographical conditions has already been approved within the regulatory framework of the Party concerned; and (b) sufficient experience has previously been gained with the release of the GMO in question in comparable ecosystems. In the case of the placing of a GMO on the market the public participation procedure may be inapplicable if: (a) a GMO was already approved within the regulatory framework of the Party concerned; or (b) it is intended for research or for culture collections.

Last but not least is the issue of confidential information. Notwithstanding rather clear regulations on confidentiality to be found in paragraph 4 of Article 4 of the Aarhus Convention, in the Almaty Amendment the Parties decided to separately identify certain types of information which for the purposes of Annex I-bis should not be considered confidential:

- a general description of the GMO or GMOs 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;
- the methods and plans for monitoring the GMO or GMOs concerned and for emergency response;
- the environmental risk assessment.

AMENDMENT'S IMPLEMENTATION AS AN ESSENTIAL ELEMENT OF THE NATIONAL BIOSAFETY FRAMEWORKS

When addressing the issue of implementation of the amendments to the Aarhus Convention related to GMOs, special emphasis should be made on the important role the Convention plays as a unique international treaty. The Convention ties together environmental and human rights and builds upon one of the cornerstone principles of sustainable development – responsibility in the face of future generations. Pursuant to the Aarhus Convention sustainable development could be achieved only through the involvement of all stakeholders in its planning and implementation, and when the responsibility of a state and business is linked with the prioritisation of healthcare and environmental protection. The Convention focuses its attention on mutual collaboration between public authorities and the general public, establishing conditions for participation of the public concerned in the process of drafting, adoption and implementation of decisions at the local, state and international level.

It is also important and significant that the public, through NGOs, is involved and plays the central unprecedented role in the negotiations, development and further improvement of the Aarhus Convention itself. This was one of the first instances of direct public participation during the development of a high-level treaty. Another unique feature of the Aarhus Convention is that it concentrates more on building partnerships between a state and its civil society rather than strengthening collaboration between its Parties. Therefore, the process of drafting the Aarhus Convention itself, initiated by the public concerned, formed it as a useful tool for citizens' environmental rights protection.

The problem of application of modern biotech products, namely GMOs, has been of a great concern both for environmental organisations and the general public for about 15 years. The risks evaluation, related to GMOs, as well as the issue of their potential danger fall outside the scope of this publication. Meanwhile, the necessity to establish a comprehensive, structured and operative biosafety framework is acknowledged both by society and public authorities.

Biosafety means a system of biological, chemical and physical conditions and measures which prevent an accidental release of GMOs and their products into the environment and/or transfer of genetic information by them.

Obviously, the growth of modern biotechnology and wide application of GMOs should take into account the principles of sustainable development. "Agenda 21" has a separate chapter devoted to the issues of safe use of biotechnology.

The preamble says that "By itself, biotechnology cannot resolve all the fundamental problems of environment and development, so expectations need to be tempered by realism". Furthermore in the chapter it is stressed upon that: "Only when adequate and transparent safety and border-control procedures are in place will the community at large be able to derive maximum benefit from, and be in a much better position to accept the potential benefits and risks of, biotechnology".

Human development of the last decades and real steps towards strengthening civil society made it possible to take important scientific and technical matters outside the restricted cycle of mere scientific discussions and reveal them to the broader public. Nuclear physics is a good example of the outcome of taking decisions regarding the newest achievements of science and technology and not involving the public. The unwise use of one of the most important discoveries of the 20th century – nucleus' structure and nuclear chain reaction almost led to a global nuclear war with catastrophic consequences for humankind and the biosphere.

The precautionary principle (Principle 15th of the Rio Declaration), stated in the Declaration on Environment and Development, points out that before applying any new technology, a working regulation and control system should be created, which would safeguard humans and the environment when this technology is applied. Lack of full scientific certainty of the danger of a technology should not be used as a reason for postponing measures to prevent environmental degradation.

This means that a decision on a wide application of GMOs should be taken only following a comprehensive analysis of its scientific, legal, economic and social consequences. Different experts (biologists, economists, lawyers, sociologists) and the public concerned should participate in the decision-making on application of all GMOs.

Naturally, such an important matter as public participation in ensuring an effective biosafety framework could not have been overlooked by the scope of the Aarhus Convention. It is only eventually, but the concerned public has gained its right to be involved in the decision-making on GMOs through the Aarhus Convention. MoP-2 in Almaty in May 2005 officially proclaimed the right of the public to participate in decisions on the deliberate release into the environment and placing on the market of GMOs.

Hence, for the time being the two most important international instruments regulating matters related to GMOs, and in particular, defining rights of the public in this field, are the Aarhus Convention and Article 23 of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

The main objective of the Protocol is to secure the level of protection when transferring and using living GMOs. The amendments to the Aarhus Convention have something in common with Article 23 of the Cartagena Protocol – public awareness and participation. Article 23 is of a framework nature, obliging the Parties to the Cartagena Protocol to promote awareness, education and public participation in processes related to ensuring safe transfer, handling and use of GMOs. In accordance with the general idea of the Cartagena Protocol to regulate, primarily, transboundary aspects of GMOs and export-importing relations of the Parties, major attention is paid to the deliberate release of GMOs generated on territories other than the state of their release. The Aarhus Convention, as amended, primarily lists in detail possible measures and procedures for public participation in decision on GMOs. Secondly, it covers almost all cases of GMOs generation both inside and outside a state. Thirdly, the Convention ties the requirements of its Article 6-bis with objectives of the Cartagena Protocol which gives grounds to consider both instruments together as a uniform platform for an international biosafety framework.

The situation with an effective bisafety framework and public participation is diverse in the UNECE region, where the Aarhus Convention is applied. The EU Member States follow a careful approach in wide application of GMOs and at the same time share the most developed legislation. The EU basic regulations in this field are the EU Directives 2001/18/EC (basic document on the deliberate release of GMOs into the environment), 1829/2003 (on modified food and feed), 1830/2003 (on labelling and GMOs content), 1946/2003 (on transboundary movement of GMOs) on some others.

EECCA countries in general follow a discreet approach to GMO application, but very often possess underdeveloped legislation in this field. Thus, the early entry into force of the Almaty Amendment is more important for them. This would build capacities of the concerned public and expand possibilities for environmental NGOs with regards to ensuring biosafety. Among EECCA countries Moldova's legislation on GMOs is the most developed possessing a comprehensive public participation mechanism. This experience could be a model example to follow for other countries in the region.

Basic requirements for a national law on biosafety could look along the following:

1. The most general rule – coordination with existing international instruments, primarily the Cartagena Protocol and the Aarhus Convention. Recommended example – the EU legislation.
2. Clear and comprehensive definition of terms.
3. Single public authority responsible for the import, release and use of GMOs.
4. Clear and adequate risk levels (classes), reflecting potential danger of GMOs for people's health and the environment.
5. Regulation of GMOs registration and release procedure.
6. Regulation of export, import and transit of GMOs and GMO products.
7. Regulation of transporting, storing, use and withdrawal of GMOs and GMO products.
8. Regulation of labelling of GMOs and GMO products in the absence of other legislation on GMO labelling.
9. Regulation of access to information, public participation in decision-making and access to justice in matters related to GMOs in the absence of other special laws on that.

Coverage of the mentioned points in the national law would guarantee the minimal level of biosafety easing the state's integration in the international biosafety framework.

Public participation has already played considerable role in securing the most careful, socially oriented approach towards mass introduction of GMOs in our daily life. In general the structure of public participation in decisions of its concern could have a number of forms. The most effective form of expressing public opinion in a global matter – is a public campaign. Its objective would be to summarise opinions of all stakeholders and reflect them in decision-making.

It is worth mentioning that an effective campaign requires high professional attitude, good resource and expert capacities, as well as experience in working with different target groups. Such campaigns aimed at ensuring maximum safety when introducing GMOs and GMO products have been held for many years by both international and national environmental NGOs.

Let's have a look at different level campaigns.

Local level:

- direct informing of the public about the problem in a comprehensible and easy understood form (actions, lectures, meetings with interested citizens organisations);
- work with the mass media (interviews, publications, press-releases on key events related to GMOs);
- children and youth education on biosafety (actions, lectures, thematic contests);
- work with target groups (exchanging views, discussions, finding common positions);
- work with public authorities (informing on a problem, consulting on existing biosafety framework and its implementation);
- work with producers, directly or indirectly related to GMO problem (informing on their right, obligations and liability in case of the deliberate release or placing on the market of GMOs, consulting on existing biosafety framework and its implementation);
- coordination of collaboration between the public and public authorities as well as other stakeholders (public hearings, public assessments, comments on notifications on the deliberate release into the environment or placing on the market of GMOs).

Regional level:

– setting up an information centre (gathering information from the local level on events related to GMOs, information dissemination on GMOs and a biosafety framework to stakeholders, including through Internet);

– work with public authorities (participation in the work of competent public authorities, responsible for the deliberate release of GMOs into the environment or placing GMOs on the market (if applicable), participation in the development and implementation of a biosafety framework);

– work with associations of producers, directly or indirectly related to GMO problem (exchanging information on events related to GMOs, joint implementation of principles of maintaining biodiversity and national producers' rights protection);

– monitoring situation regarding the deliberate release of GMOs into the environment or placing GMOs on the market (collaboration with GMO testing and control centres, other competent authorities, responsible for safety, people's health and environmental protection);

– coordination of collaboration between the public and public authorities as well as other stakeholders (public hearings, public assessments, summarising positions of the public concerned regarding the decision-making and facilitating public rights implementation on access to justice in matters related to GMOs and biosafety).

National level:

– participation in drafting, further improvement and implementation of the legislation related to GMOs and biosafety (collaboration with legislative and executive authorities on drafting, amending, implementing laws, bylaws and regulations on GMOs and biosafety);

– participation in drafting national implementation reports for the Aarhus Convention, Cartagena Protocol and other related processes (collaboration with relative public authorities, responsible for activities coordination on international treaties, related to GMOs and biosafety, regarding complete, open and independent reporting on the Party's activities within the scope of a corresponding treaty);

– work with public authorities (participation in the work of a competent authority(ies), responsible for permitting import, release and use of GMOs, participation in the development and implementation of the national programme on a biosafety framework);

– monitoring situation on the deliberate release of GMOs into the environment or placing GMOs on the market (gathering and summarising information presented by information centres, collaboration with the central public authority, responsible for GMO testing and control, other central competent authorities, responsible for safety, people's health and environmental protection);

– coordination of collaboration between the public, public authorities and other stakeholders (general coordination of all lower levels, activities coordination with all national level stakeholders);

– developing strategy and tactics for running campaigns at the national and lower levels (planning a campaign by its coordinating bodies);

– coordinating campaigns with national organisations of other countries and international structures (informing relevant public structures on the situation with the deliberate release of GMOs and biosafety framework functioning).

International level:

– participation in international processes and agreements/treaties related to different aspects of GMO application and establishment of an effective biosafety framework (representing positions of the public, drafting thematic documents, reports and proposals on the improvement of international regulation of GMOs within the scope of the Aarhus Convention, Cartagena Protocol, Convention on Biodiversity, Commission on Sustainable Development, World Health Organisation structures, etc.);

– providing feedback between international processes and the local public concerned (analysing incoming scientific, legal and other official data and informing the public in a comprehensible form);

– coordinating an international campaign (planning a campaign by its coordinating bodies taking into account national and regional peculiarities).

Below is a short information on leading international organisations which for many years have been running public campaigns devoted to GMOs and biosafety.

International Federation of Public Environmental Organisations Friends of the Earth ***http://www.foeeurope.org/GMOs/Index.htm***

Campaign on controlling GMOs is focused on promoting GMO-free agriculture and protecting citizens' right to choose GMO-free food products. National level organisations are coordinating their efforts in the following fields:

– active lobbying at the national and international levels of stronger legislation on GMOs;

– supporting GMO-free zones;

– raising public awareness and participation in decisions on GMOs;

– promoting implementation of the GMO consumers' right to choose;

– informing the public on scientific and research data on GMOs;

– making proposals on resolving conflict situations and developing a strategy in the field of GMOS and biosafety.

Northern Alliance for Sustainable Development (ANPED) ***www.anped.org***

ANPED's working group on agriculture, biosafety and biodiversity runs activities promoting people's health and environmental protection from threats related to GMOs.

WG's strategic objective is to achieve sustainable use of natural resources based on the principles of sustainable production and consumption, as well as preventing harmful effects from human activies on human health and biosphere components.

NIS Alliance "For biosafety" ***www.biosafety.ru***

NIS Alliance "For biosafety" is the only informal environmental NGO association, acting against GMO dissemination and promoting alternatives. The Alliance was founded in April 2004 uniting 20 NGOs from 9 NIS countries: Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Ukraine.

Main tasks of the Alliance for the period of 2004-2007 are:

– promoting food producers' refusal to use GMOs through a wide consumers campaign and informing producers;

– preventing the release of GM-cultures into the soil and promoting temporary legislative ban on that;

– initiating a wide discussion on the problem of patents on living organisms and safety of genetic resources.

Numerous scandals connected with finding illegal GMOs all over the world illustrate imperfection of the existing biosafety framework even in the most developed countries. So far EECCA countries, with minor exceptions, are able to monitor the general situation with GMOs dissemination on their territories at a very small scale. For these countries the issue of GMO identification and distinguishing GM from non-modified cultures is a primary one. This is one of the most important functions of an effective biosafety framework.

"Friends of the Earth" experts have developed recommendations on initial steps, facilitating conditions for safe application of modern biotechnologies:

- Countries should support implementation of systems for separation and identification. Countries where GM products are produced or packed, should ensure prevention of gene pollution and store GM cultures separately from non-GM products.
- Governments should support the introduction of a relevant documentation on identification of all GMOs during transboundary movement/transfer. Scandals similar to those with StarLink and Bt10 clearly prove, that all cases of GMOs transfer should be monitored both at packaging and food chain transfer.
- Governments should oblige exporters to guarantee that their products are free of GMOs which are prohibited universally or in the importing country. Requirements should be set regarding preliminary identification of GMOs before planning them on test fields (even before commercialisation). Introduction of such measures would mean that competent authorities possess all technical capacities to run checks as well as introduce separation, labelling and detecting gene pollution.
- Governments should apply legal mechanisms shifting liability on polluters. Damages, caused by pollution with GM-cultures, should be covered by the polluters, but not farmers, growing traditional cultures, or importing countries. Countries should adopt legislation protecting farmers from potential losses caused by pollution of their own crops from cross-pollination. The legislation should also guarantee farmers' right to standing against the polluter in a court of law.

The structure described above is somewhat a generalisation of public right to information and participation in decisions related to GMOs. Public campaigns in the closest to the described forms could be found in a number of the

EU Member States. Other UNECE countries implement the above mentioned elements only partially. It is the early ratification of the Almaty Amendment to the Aarhus Convention that would give an opportunity to the public to fully implement their rights and speed up the development of effective public participation mechanism in the national biosafety frameworks.

USEFUL LINKS

http://www.unece.org/env/pp –	Aarhus Convention
http://www.unece.org/env/pp/gmo.htm –	GMO Working Group of Aarhus Convention
http://aarhusclearinghouse.unece.org/ –	Aarhus Convention Clearing House
http://www.cbd.int/biosafety/default.shtml –	Cartagena Biosafety Protocol (CP)
http://www.cbd.int/biosafety/bch-background.shtml –	Biosafety Clearing House of CP
http://www.eeb.org –	European Environmental Bureau
http://www.anped.org –	ANPED – The Northern Alliance for Sustainability
http://www.gmwatch.org –	GM Watch
http://www.genewatch.org –	GENEWATCH – UK NGO
http://www.foe.org –	Friends of the Earth
www.foeeurope.org/GMOs –	Friends of the Earth Europe
http://www.biosafety.ru –	Alliance of CIS Countries for Bio safety
http://www.saveourseeds.org/en/index.php –	SOS – Save Our Seeds NGO
http://www.genet-info.org –	GENET – European NGO Net work on Genetic Engineering
http://www.grassroots.de –	Grassroots Foundation fuer Um weltschuetz und Menschen rechte

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

ECE/MP.PP/2005/2/Add.2
20 June 2005

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

REPORT OF THE SECOND MEETING OF THE PARTIES

Addendum

DECISION II/1

GENETICALLY MODIFIED ORGANISMS

adopted at the second meeting of the Parties
held in Almaty, Kazakhstan, on 25-27 May 2005

The Meeting of the Parties,

Recognizing the importance of further developing the application of the Convention to decisions on whether to permit the deliberate release of genetically modified organisms (GMOs) through applying inter alia more precise provisions than those set out in article 6, paragraph 11, of the Convention,

Recalling its decision I/4,

Acknowledging the varying practical needs of the Convention's Parties and Signatories, in particular those with economies in transition, in relation to the development and implementation of national biosafety frameworks, including their needs for stronger provisions on public participation,

GE.05-31950

Recognizing the need to cooperate with other international organizations and forums, in particular the Cartagena Protocol on Biosafety, with a view to maximizing synergy and avoiding duplication of effort, inter alia through encouraging the exchange of information and further collaboration between the secretariat of the Convention and that of the Cartagena Protocol,

Calling upon all Parties and Signatories to the Convention to ratify or to accede as appropriate to the Cartagena Protocol, as this provides an opportunity to develop a national biosafety framework, including risk assessment and decision-making procedures involving public participation, and to facilitate participation in capacity-building programmes, particularly in the context of the relevant United Nations Environment Programme/Global Environment Facility project,

Believing that, notwithstanding developments in other forums, the Aarhus Convention provides an appropriate international framework for further developing access to information, public participation and access to justice with respect to GMOs,

Supporting the continued use of the Guidelines on Access to Information, Public Participation and Access to Justice with respect to Genetically Modified Organisms (MP.PP/2003/3), which it adopted as a non-binding, voluntary instrument,

Noting the activities and reports of the Working Group on Genetically Modified Organisms,

1. Adopts the amendment to the Convention set out in the annex to this decision;

2. Encourages Parties to ratify, accept or approve the amendment at the earliest opportunity and to apply it to the maximum extent possible pending its entry into force;

3. Also encourages Parties to renew their efforts to implement the Guidelines; and

4. Resolves to review progress in the ratification, acceptance and approval of the amendment and the implementation of the Guidelines at its third meeting.

Annex

AMENDMENT TO THE CONVENTION

Article 6, paragraph 11

For the existing text, substitute

11. Without prejudice to article 3, paragraph 5, the provisions of this article shall not apply to decisions on whether to permit the deliberate release into the environment and placing on the market of genetically modified organisms.

Article 6 bis

After article 6, insert a new article reading

Article 6 bis

PUBLIC PARTICIPATION IN DECISIONS ON THE DELIBERATE RELEASE INTO THE ENVIRONMENT AND PLACING ON THE MARKET OF GENETICALLY MODIFIED ORGANISMS

1. In accordance with the modalities laid down in annex I bis, each Party shall provide for early and effective information and public participation prior to making decisions on whether to permit the deliberate release into the environment and placing on the market of genetically modified organisms.

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.

Annex I bis

After annex I, insert a new annex reading

Annex I bis

MODALITIES REFERRED TO IN ARTICLE 6 BIS

1. Each Party shall lay down, in its regulatory framework, arrangements for effective information and public participation for decisions subject to the provisions of article 6 bis, which shall include a reasonable time frame, in order to give the public an adequate opportunity to express an opinion on such proposed decisions.

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

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

(i) Such a release under comparable bio-geographical 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 GMO in question in comparable ecosystems;

(b) In the case of the placing of a GMO on the market, if:

(i) It was already approved within the regulatory framework of the Party concerned; or

(ii) It is intended for research or for culture collections.

3. Without prejudice to the applicable legislation on confidentiality in accordance with the provisions of article 4, each Party shall make available to the public in an adequate, timely and effective manner a summary of the notification introduced to obtain an authorization for the deliberate release into the environment or the placing on the market of a GMO on its territory, as well as the assessment report where available and in accordance with its national biosafety framework.

4. Parties shall in no case consider the following information 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) The methods and plans for monitoring the genetically modified organism or organisms concerned and for emergency response;

(c) The environmental risk assessment.

5. Each Party shall ensure transparency of decision-making procedures and provide access to the relevant procedural information to the public. This information could include for example:

(i) The nature of possible decisions;

(ii) The public authority responsible for making the decision;

(iii) Public participation arrangements laid down pursuant to paragraph 1;

(iv) An indication of the public authority from which relevant information can be obtained;

(v) An indication of the public authority to which comments can be submitted and of the time schedule for the transmittal of comments.

6. The provisions made pursuant to paragraph 1 shall allow the public to submit any comments, information, analyses or opinions that it considers relevant to the proposed deliberate release, including placing on the market, in any appropriate manner.

7. Each Party shall endeavour to ensure that, when decisions are taken on whether to permit the deliberate release of GMOs into the environment, including placing on the market, due account is taken of the outcome of the public participation procedure organized pursuant to paragraph 1.

8. Parties shall provide that when a decision subject to the provisions of this annex has been taken by a public authority, the text of the decision is made publicly available along with the reasons and considerations upon which it is based.

EUROPEAN ECO-FORUM