

The Aarhus Convention - Improving Public Participation on GMOs across Europe

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The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was signed by over 30 governments in June 1998. Although the Convention has now been ratified by over 17 countries¹ and is due to enter into force on 30 October 2001, specific shortcomings and ambiguities of the Convention are still up for negotiation. Some of these concern right to know and public participation in decision-making on GMOs. Options for how these weaknesses can be resolved are being discussed in a series of Task Forces, the one on GMOs being led by Austria.

The Convention was negotiated by the United Nations Economic Commission for Europe (UNECE), as part of its pan-European environmental legal framework. According to Jeremy Wates, Secretary to the Convention, the Convention is of particular importance to countries with economies in transition: "*The Convention is not only a powerful weapon in the struggle to protect the environment, but also a tool for democracy. Especially in countries which have recently introduced democratic systems, it is of crucial importance to establish principles of transparency, accountability and involvement of civil society to ensure stability and security.*"²

Improving the Provisions of the Convention relating to GMOs

At the moment, there is only brief reference to GMOs in the Aarhus Convention. This creates uncertainties and deficiencies in its provisions relating to GMOs. At the Second meeting of the Signatories to the Convention, signatories agreed to "*request the Parties, at their first meeting, to further develop the application of the of the Convention by means of inter alia more precise provisions...*"

On the basis of this decision, a Task Force on GMOs was established which has met twice - in Sofia, Bulgaria, April 2000; and in Vienna, December 2000 - to identify the Convention's shortcomings in this area and to discuss options for improving the Convention. Its purpose is to prepare options that Parties to the Convention could choose between, once the Convention has entered into force, assuming that they agree to improve the public participation provisions of the Convention at all. Members of the task force include representatives of the signatory countries and NGOs, the latter under the European EcoForum umbrella.

The task force meetings identified the following shortcomings of the Convention with respect to GMOs:

- No provisions for public participation in GMO-related issues;
- No definition of "*deliberate release*" of GMOs and whether this should also include genetically modified microorganisms (GMMOs) released during so-called "*contained use*" operations;
- Lack of clarity as to **what information on GMOs** should be publicly accessible: should the Convention require GE product labelling?

The task force also examined options for how the Convention should be changed in order to improve its provisions on GMOs, especially on public participation, and the nature of such an instrument (if any).

Public Participation in Decisions on GMOs

¹ Albania, Armenia, Azerbaijan, Belarus, Denmark, Estonia, Georgia, Hungary, Italy, Kazakhstan, Kyrgyzstan, the Republic of Moldova, Romania, the former Yugoslav Republic of Macedonia, Tajikistan, Turkmenistan, Ukraine and Poland

² Source: UNECE press release <http://www.unece.org/press/pr2001/01env06e.htm>

During the negotiations of the Aarhus Convention, in which NGOs participated, the issue of public participation in GMO-related matters was one of the most controversial. Both the German and French Governments initially opposed any participation.³ The resulting text requires Governments only to ensure public participation in decisions on the deliberate release of GMOs (and not on "contained use"?), and only "to the extent feasible and appropriate".

The options for amending the Convention to ensure public participation, which were considered by the Task Force were:

- ⇒ Non-legally binding guidelines
- ⇒ A Decision of the Meeting of the Parties
- ⇒ Amending the Convention to include a reference to GMO-related activities in an Annex
- ⇒ A protocol to the Convention covering GMO issues.

Most of the Task Force members favoured non-legally binding guidelines for different (but equally misguided) reasons: EU Member States to avoid conflicts with existing and proposed EU legislation and NIS delegates to avoid duplication and potential conflicts with international agreements, like the Biosafety Protocol. The meeting recommended that a legal analysis be undertaken to examine right to know and public participation provisions in EU and other international legislation. This is now available from the UNECE secretariat to the Convention.

The NGO coalition has argued that the provisions on GMOs in the Convention must be improved and in a way that is legally binding to guarantee citizens' rights to participation. Our preferred choice is to do this by amending the Convention, because this is the quickest option. However, we would also support the development of a separate annex or protocol, which could be more comprehensive (e.g. on labelling, risk assessments etc.) but which would take much longer to finalise.

A definition of "deliberate release"

Article 6.11 of the Aarhus Convention refers to "deliberate release" of GMOs, but this term is not defined. Unsurprisingly, the EU Member State representatives in the Task Force wanted the Aarhus definition consistent with that in the EU. The two key questions were:

- 1) whether the definition should include 'placing on the market'?
- 2) whether it should include some 'contained uses'?

The definition of deliberate release of GMOs in the EU Directive includes 'placing on the market', so the Task Force agreed that the Aarhus definition should do likewise. On 'contained use', there was no agreement. The NGO coalition argued that the EU definition does not go far enough. In excluding 'contained use', the EU definition ignores the many 'contained use' applications of GMOs (e.g. production of pharmaceuticals using GMMOs) which permit routine releases of GMMOs (e.g. in wastewater) and where accidental releases can also occur. In EU-speak, 'containment' is not necessarily 100%, but only has to be enough to 'limit' releases, and not 'prevent' them. This started some debate about risk classes of GMOs and containment levels, and whether for low levels of risk, it would be sufficient to give the public the right to participate in approval of the risk classes.

GM Food Labelling

The NGO coalition has been calling for the Aarhus Convention to include provisions on the labelling of GMOs and products thereof, based on the requirement of the Convention (Art. 5.8) to provide consumer information.

³ "European Governments deny public participation in decisions on genetic engineering activities", press release of European EcoForum, Geneva, 6 March 1998

There was no agreement in the Task Force on whether GM food labelling provisions should be included in the Convention. Many Task Force members mistakenly believe that the Biosafety (Cartagena) Protocol already covers issues of GM food labelling (but only for Living Modified Organisms, for trade purposes and requiring only the vague labels 'may contain GMOs'). Others claim that the issue of labelling is already addressed in EU Directives, or being tackled within the Codex Alimentarius Committee of the FAO⁴. Despite the misunderstandings, the meeting concluded that there was a strong demand for information on GMOs, derivatives of GMOs and products thereof.

Dynamics of the Aarhus Debate on GMOs

During the Task Force meetings, there was a clear split in the meeting between delegations from EU Member States and those from the NIS. Delegates from the EU argued that most of the additional provisions proposed by the NGO coalition are already covered in EU legislation. Delegates from NIS were rather silent; some because they understood no English and there was no Russian translation. There was very poor representation from CEE, especially from first-round accession countries.

There was considerable disagreement on how far the Cartagena Protocol, and in particular its Biosafety Clearinghouse, would go in satisfying demands for information on GMOs and for participation rights. This is far from clear.

The first meeting of the Intergovernmental Committee for the Cartagena Protocol (ICCP1), held in Montpellier in mid-December 2000 agreed to a pilot biosafety clearinghouse that will allow countries to access up-to-date lists of GMOs and details of national policies and regulations, to be launched imminently. However, decisions on other areas under discussion, including GMO traceability, packaging, handling and transport, national capacity building and formation of an expert advisory group, were postponed until next year's meeting, planned for October in Montreal, Canada.

Clearly, much of the detail of the Cartagena Protocol has still to be agreed and its implementation remains to be seen. In the meantime, the EcoForum coalition will continue to urge that the deficiencies of the Aarhus Convention on GMOs be tackled within this existing regional agreement. A legal analysis of public access to information and participation provisions in EU legislation and other international agreements may prove helpful in demonstrating the uncertainty, inadequacy and inappropriateness (e.g. different objectives) of other legislation. In the meantime, we need to keep abreast of developments in other forums.

Outcome of Meeting of Working Group on GMOs, 10-12 October 2001

This meeting took place in Geneva, 10-12 October 2001. Its purpose was to prepare a draft decision for the Meeting of the Parties. The draft decision is expected to cover the issue of public participation in decision-making on GMOs and to discuss how to address other issues such as, GMO labelling and product information and related issues, such as definitions of '*deliberate release*' and '*contained use*' of GMOs.

Instead of working on a draft decision, much of the meeting was taken up with debates, led by the European Commission and German delegations about their preference for non-binding guidelines and their content. Both the EC and Germany want no legally-binding provisions that would require them to change their laws. It was agreed that work on amending the Convention to mandate public participation on GMOs, both the text in main body and the annex, and on developing guidelines would continue in parallel. On GM labelling, it was agreed that this issue should be postponed until the work on public participation is complete. Again, work on GM labelling will take the parallel tracks of binding and non-binding instruments.

⁴ UN Food and Agriculture Organisation

In many countries of CEE and NIS, GE foods, derivatives and products thereof, are already on the market coming in as commercial imports or in Russia and Yugoslavia, also as food aid from the U.S. Although some countries in the region have GE food labelling laws, these are not enforced. NGOs from this region, and particularly from the NIS must argue that as non-EU members and in the complete absence of access to information on GMOs in their region, the Aarhus Convention is the only instrument that can guarantee citizens these urgent rights.

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