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COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY
THE SECRETARIAT

Brussels, 15 June 2005

***MEETING OF THE PARTIES TO THE CONVENTION ON ACCESS TO
INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS - ÅRHUS
CONVENTION, ECONOMIC COMMISSION FOR EUROPE (ECE)***

ALMATY, KAZAKHSTAN, 25-27 MAY 2005

SUMMARY NOTE

I. BACKGROUND

The Second Meeting of Parties (MOP2) of the Århus Convention took place in Almaty, Kazakhstan, on the 25-27 May 2005. The European Parliament was authorised to send three of its members as participants within the European Community Delegation to the meeting.

The members were:

PPE-DE: Eija-Riitta Korhola, Finland
Marcello Vernola, Italy
Verts/ALE: Rebecca Harms, Germany

The members were accompanied by Virpi Köykkä from the Environment Committee secretariat and by Miikka Nieminen, assistant to Mrs Korhola.

Approximately 350 people took part in the meeting, of which two thirds represented 28 parties to the Convention, including the European Communities, eight ECE member states and international organisations, such as the United Nations Environment Programme (UNEP), and the Organisation for Security and Co-operation in Europe.

Few environment ministers were present during the high-level segment. Most Parties were represented by civil servants and legal experts. In addition to the three MEPs,

only a handful of parliamentarians from the host country and Luxembourg took part in the meeting. All the EP members were present during the first two days of the meeting. Mrs Harms was also present on Friday during the high-level segment.

The presence of NGOs was very visible at the meeting (75 different organisations present), due to their immediate interest in the Århus Convention. They were gathered under the umbrella of the European ECO Forum. Moreover, several business organisations took part in the meeting as well.

The two first days were reserved for negotiations and for reporting on substantial issues (chair: Marc Pallemarts, Belgium) and the last day was the High Level Segment (chair: Mrs Aitkul Samakova, Environment Minister of Kazakhstan), consisting of ceremonial statements, a ministerial panel discussion and formal adoptions.

Status of ratification of the Århus Convention

The Århus Convention was signed in 1998. For the time being, 35 countries have ratified the Århus Convention. The European Communities ratified it on 17 February 2005, just in time for the MOP-2. However, all Member States have to ratify the Convention separately. Five EU Member States have not yet done so, including Germany, Greece, Luxembourg, Sweden and Ireland.

II. ACTIVITIES OF THE MEMBERS OF THE EUROPEAN PARLIAMENT

Preparatory meeting with the Commission

Before departure MEPs were briefed by Mr Charles Pirotte of the European Commission.. Parliament expressed its priorities in a resolution adopted at the April II part-session.

De-briefings by the Commission during the meeting

Once again, MEPs were not authorised to attend the EU co-ordination meetings, which took place twice a day. However, they were briefed by the Commission (Mr Grant Lawrence and his staff) in an informal manner several times during the conference.

Meetings with NGOs

On Wednesday, MEPs were briefed by John Hontelez, Secretary-General of the European Environment Bureau on the state of play of the negotiations, particularly on GMOs, access to justice and public participation in international fora. This briefing was a good complement to the briefings by the Commission.

On Thursday lunchtime MEPs met representatives of local NGOs. Sergei Kuratov from Green Salvation and Galina Chernova from Globus, Center for Environmental Legal Initiatives were accompanied by Ida Reuterswård, who worked for the Regional Environmental Centre for Central Asia (CAREC). Meeting local environmental NGOs was particularly interesting because two of the four non-compliance cases discussed in the meeting concerned Kazakhstan.

The representatives of the NGOs voiced their concerns over the clash between environmental and economic interests in Kazakhstan. Like in other economies in transition, which attract foreign investments, especially in the beginning, it is difficult to strike a balance between economic, environmental and social interests. In Kazakhstan's case, the existence of huge oil resources has made the country particularly interesting for multinational companies. Oil companies have made long-term contracts with the government without special requirements to preserve nature or even respect individual property rights. Although Kazakhstan has ratified the Århus Convention, problems remain as regards public participation in environmental decision-making and access to justice, in particular. Furthermore, environmental activists lack resources to take infringement cases to the court.

Participation in the panel discussion

Both EP rapporteurs on the Århus Convention, Mrs Eija-Riitta Korhola and Mrs Rebecca Harms, had been invited to participate in the ministerial panel discussion on implementation. Due to her other commitments, Mrs Korhola was not able to be present on the last day. Mrs Harms was present and underlined in her contribution the importance to proceed in the EU with the directive on access to justice.

Other activities

MEPs had bilateral, informal contacts with representatives of several national delegations and various NGOs.

III. ISSUES AT STAKE AT MOP-2

The overall purpose of MOP-2 was to push forward the implementation of the Århus convention. The agenda was not considered very substantial, but a few topics emerged as of particular importance. (complete agenda attached). For the European Community, the most significant ones were the items concerning GMOs, Public Participation in International Forums and Access to Justice. In some cases, concerns were more of a procedural rather than substantial nature.

GMOs

The Århus Convention states that *'each party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article [public participation in decisions on specific activities] to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.'*

At the first MOP in Lucca 2002, the parties had adopted guidelines concerning GMOs. They had also established a working group to examine options for a legally binding approach to further develop the application of the Convention with respect to GMOs.

Parties from the EECCA-countries (Eastern Europe, Caucasus and Central Asia) had been particularly active in this issue, due to the lack of national legislation. They were in favour of amending the Convention. It goes without saying that environmental NGOs played an active role in this issue.

For the European Community, the bottom line was clear: the possible amendments to the Convention should not lead to a need to amend the existing EU legislation on GMOs, which already provides guarantees for public participation.

A compromise text negotiated by the Working Group of the Parties was presented to the Meeting, involving the deletion of the above-mentioned paragraph and inserting a new article and a new annex on GMOs. It addressed the concerns of the Central Asian and Eastern European countries while being compatible with the current EU legislation.

MOP-2 did not have any difficulties, therefore, in adopting the final proposal, which states that *'each Party shall provide for early and effective information and public participation prior to making decision on whether to permit the deliberate release into the environment and placing on the market of genetically modified organisms.'*

Public Participation in international forums (PPIF)

The parties of the Århus Convention have committed themselves to the promotion of the Convention principles in various international environmental decision-making processes (like the Kyoto agreement, the Espoo Convention) and within the framework of international organisations (like WTO) in matters relating to the environment.

Following the recommendation by MOP-1 in 2002, an expert group had been working on a set of guidelines on PPIF. The first draft of the guidelines became available only a short time before MOP-2 and was put on the agenda a bit hastily. The problem was that there had not been enough time to consult the other international forums that could be affected by the guidelines. Before the meeting it was not clear, whether it was possible to adopt the guidelines as such, or whether they could be adopted with a view on limited implementation in a few test cases or whether they could only be adopted for consultation purposes.

The negotiations led to a compromise, whereby the Almaty guidelines were adopted and a Task Force was established to carry out work on further consultation on the applications of the guidelines. It was emphasised that the Parties should be proactive in promoting the issues addressed in the guidelines, in particular, in other environmental conventions of the UNECE. The next MOP in 2008 (possibly in Moldova) will then review the guidelines on the basis of the experience gained.

Access to justice

The discussion on Access to Justice was largely reduced to a procedural battle. In the first MOP, a Task Force on Access to Justice was established to support the implementation of the third pillar of the Convention. It had carried out a survey on the obstacles to access to justice, which showed that barriers continued to exist in a number of countries. The key question posed to MOP-2 concerned the way forward - how effective access to justice should be promoted in the future. The conclusion of the Task Force was that focus of the future work should be at the expert level.

MOP-2 needed to decide whether the work should be continued by establishing a Working Group or by means of a new Task Force. The choice between the two had a number of practical consequences: whereas establishment of a working group would imply a long-term, possibly indefinite commitment and a 'high-level' status for its work, the setting up of a task force would mean working on a more ad hoc -basis at the expert level. According to the UN rules, a working group would be entitled to have complete interpretation and translation services, whereas a task force would not have an automatic access to such services. This would make a big difference to the practical work of the body.

The EECCA countries were in favour of setting up a working group, but the European Community spoke up in favour of a task force. The former argued that with a task force 'the broken stick would remain broken'. After a lengthy discussion, the Meeting decided to establish a Task Force with a mandate to continue the work of the previous Task Force (i.e. study the situation and collect information), develop information and training material and consider the effective contribution of remedies available under different legal systems to the achievements of the Convention's objectives. The Task Force would report back on its work to the next MOP. In addition, it was decided to request the United Nations to make interpretation and translation available for the Task Force on an exceptional basis.

Implementation and the report on compliance

Implementation reports from 26 member countries had been submitted to MOP-2. A synthesis report summarising the findings and identifying the main trends was presented to the meeting. The NGOs present in the meeting argued that many reports did not give an accurate picture of the state of implementation. They requested changes in the format of reporting as well as the use of uniform indicators.

One of the most delicate issues in the MOP-2 related to the decisions on compliance. There were four non-compliance cases on the table, two concerning the host country, one concerning Ukraine and one on Turkmenistan. After further negotiations, it was decided to slightly amend the draft decision concerning Kazakhstan so that it put more emphasis on Kazakhstan's willingness to cooperate with the Compliance Committee.

Almaty Declaration

In the end of MOP-2, the 'Almaty Declaration' was adopted, urging all signatories to the Convention, which have not ratified it yet to do so as soon as possible and inviting all interested states which have not signed the Convention (even outside the UNECE region) to accede to it. It also pointed out the problems relating to the funding of activities under the Convention.