

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.6.2006
COM(2006) 338 final

2006/0113 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of an amendment to the Convention on access to information, public participation in decision making and access to justice in environmental matters

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The UN/ECE Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters (hereinafter referred to as the Convention) was signed by the Community and its Member States on 25 June 1998. The Convention entered into force on 30 October 2001 and was approved by the Community on 17 February 2005, following Council Decision 2005/370/EC[1].

2. Article 6 paragraph 11 of the Convention specifically addresses public participation in relation to decision-making on the deliberate release of genetically modified organisms (hereinafter GMOs) into the environment and demands Parties to apply the requirements of Article 6, to the extent feasible and appropriate, within the framework of their national legislation.

3. These requirements are given effect in the Community via relevant provisions under Directive 2001/18/EC of 12 March 2001 on the deliberate release into the environment of GMOs[2] and Regulation (EC) No 1829/2003 of 22 September 2003 on genetically modified food and feed[3].

4. Signatories to the Convention requested the 1st Meeting of the Parties to develop further the application of the Convention to the deliberate release of GMOs. The 1st Meeting of the Parties (Lucca, Italy, 21-23 October 2002) subsequently established a Working Group on GMOs, with a mandate to identify and develop potential options to strengthen the existing Århus provisions on this subject. The options resulting from the work of this group were examined at the 2nd Meeting of the Parties (Almaty, Kazakhstan, 27 May 2005).

5. The Council of the European Union authorised the Commission, on behalf of the European Community, to conduct negotiations on a possible amendment to the existing Århus provisions on GMOs in accordance with negotiating directives adopted on 10 March 2005. Within the framework of these directives, the Commission needed to ensure that decisions to be adopted by the 2nd Meeting of the Parties would be consistent with relevant Community legislation, particularly on deliberate release into the environment and placing on the market of GMOs.

6. The 2nd Meeting of the Parties agreed on an amendment to the Convention to make more specific the obligations placed on Parties with regard to public participation in decision-making on GMOs. Relevant Community rules governing GMOs incorporate provisions for access to information and public participation, in particular through the requirements of Articles 9 and 24 of Directive 2001/18/EC[4] and of Articles 6, 18 and 29 of Regulation (EC) No 1829/2003[5]. These provisions are consistent with the amendment to the Århus Convention, , which will hence not lead to any revision of

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1 Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters.

2 OJ L 106, 17/04/2001 p. 01-39.

3 OJ L 268, 18/10/2003 p. 01-23.

4 Articles 7, 8, 16, 19, 20, 23 and 31 of Directive 2001/18/EC contain specific provisions on information to be made accessible to the public. In addition, Article 25 of Directive 2001/18/EC indicates which information shall not be considered confidential.

5 Article 30 of Regulation (EC) No 1829/2003 specifically addresses which information shall not be

this legislation.

7. The successful Community coordination during the negotiation process should be similarly ensured with regard to the conclusion of the amendment to the Århus Convention, with a view to permit the deposit, as far as possible simultaneously, of the instruments of ratification, acceptance or approval by the Community and the Member States. The few Member States that have not yet ratified the Convention should also step up their efforts to that end.

8. The Community should now approve this amendment to the Århus Convention.

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considered confidential.

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on the conclusion, on behalf of the European Community, of an amendment to the Convention on access to information, public participation in decision making and access to justice in environmental matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175 (1) in conjunction with the first sentence of the first subparagraph of Article 300 (2), and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The UN/ECE Convention on access to information, public participation in decision making and access to justice in environmental matters (hereinafter the Århus Convention) aims at granting the public rights and imposes on Parties and public authorities obligations regarding access to information and public participation and access to justice regarding environmental matters.

(2) The European Community, in accordance with the Treaty establishing the European Community, and in particular Article 175 (1) thereof, is competent for entering into international agreements, and for implementing the resulting obligations, which contribute to the pursuit of the objectives listed in Article 174 (1) of the EC Treaty.

(3) The Århus Convention was signed by the Community on 25 June 1998 and entered into force on 30 October 2001. The Convention was approved by the Community on 17 February 2005 in accordance with Council Decision 2005/370/EC[6].

(4) The Second Meeting on the Parties, meeting in May 2005, agreed on an amendment to the Århus Convention making more specific the obligations placed on parties with regard to public participation in GMO decision-making processes. Relevant Community law governing GMOs, and in particular Directive 2001/18/EC and Regulation (EC) No 1829/2003, incorporates provisions for public participation in decision-making on GMOs, consistent with the amendment to the Århus Convention.

(5) The amendment to the Århus Convention is open to ratification, acceptance or approval by Parties since 27 September 2005. The European Community and the Member States

[6] OJ L 124, 17/05/2005, p. 01-03.

should take the necessary steps to permit the deposit, as far as possible simultaneously, of the instruments of ratification, acceptance or approval.

(6) The Community should approve this amendment to the Århus Convention.

HAS DECIDED AS FOLLOWS:

Article 1

The amendment to the Århus Convention concerning public participation in decision-making on genetically modified organisms, as laid down in the Annex to this Decision, is hereby approved on behalf of the Community.

Article 2

1. The President of the Council is hereby authorised to designate the person or persons empowered to deposit the instrument of approval of the amendment with the Secretary-General of the United Nations, acting in his capacity as depositary, in accordance with Article 14 of the Århus Convention.

2. The European Community and Member States parties to the Århus Convention shall endeavour to deposit simultaneously, as far as possible not later than 31 December 2006, their instruments of ratification, acceptance or approval of the amendment.

Article 3

This Decision shall be published in the *Official Journal of the European Union.*

Done at Brussels,

For the Council
The President

ANNEX

AMENDMENT TO THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Article 6, paragraph 1

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.