

First Meeting of the Parties
to the Cartagena Protocol on Biosafety
23 - 27 February 2004, Kuala Lumpur, Malaysia

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POSITION STATEMENT

French civil society is pleased by the 11 September 2003 entry into force of the Cartagena Protocol on Biosafety, the only legally binding international agreement governing living modified organisms (LMOs) giving the precautionary principle operational footing. It provides Governments with a vital lever for action in terms of biotechnological risk prevention, notably in countries where legislation on this issue is weak.

Now that the Protocol has entered into force, the hardest remains to be done—ensure its implementation. For this, the Meeting of the Parties to the Protocol must, as rapidly as possible, define and enforce binding regulation mechanisms. There are numerous technical, scientific, legal and economic challenges involved, notably when it comes to identification, information exchange, and liability.

Recommendations

We expect the Governments present at the first Meeting of the Parties to the Protocol in Kuala Lumpur to formally acknowledge these challenges and accordingly propose strict rules. Hence, we call the Governments to be vigilant regarding the following:

A Harmonised and Reliable Identification System

LMO movements must take place in the greatest transparency so as to ensure that LMO handling and transport do not endanger the environment:

- The LMO identifying information contained in the documentation must be exhaustive (LMO name, promoter gene, gene of interest, selector gene).
- The unique identifier proposed by OECD is a first step towards regulatory biotechnology surveillance. However, it must not exclude the establishment of a unique identification system specific to the Protocol that covers not only genetically modified plants but also genetically modified animals and microorganisms. This system must be linked to the Protocol's Biosafety Clearing-House so that the information contained in the documentation is also contained in the database.
- The phrase "may contain" is unacceptable because it does not allow for clear identification of the content of the agricultural raw materials exchanged. A technical zero baseline must be set to determine at which percentage of LMOs a cargo must be considered to be a "LMO cargo". Exporters must be liable for their cargo.

- Reliable, homogenous, and precise quantitative methods of detection (Polymerase Chain Reaction and Ligase Chain Reaction) are necessary to verify the presence of LMOs with the strictest possible thresholds (technical zero).

In this optic, we ask that the expert group on identification that should be created by the Meeting of the Parties to the Protocol propose adequate solutions as soon as possible.

An Efficient Information Exchange System

An information management tool, the Biosafety Clearing House is also a crucial mechanism for technical and scientific cooperation. The availability, exactitude, and accessibility of the information exchanged by this Clearing House are vital:

- A fully decentralised management system that is left to the initiative of Governments is not sufficiently binding to meet these demands. However, the development of a centralised system managed by the Protocol's Executive Secretariat including Regional Clearing-Houses adapted to the specific needs of each sub-region is the option most likely to guarantee the transparent management of information and facilitate the participation of developing countries.

A Binding Regime of Liability and Compensation in Case of Damages

Liability and compensation for damages is the least complete link in national legislation. The multiplication

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of cases of genetic contamination, notably in centres of origin and genetic diversity (Mexico, 2001), is proven. The Protocol is the international instrument that can lift this blockage and spur national regulations:

- A binding regime based on the polluter pays principle must be elaborated as soon as possible. It is not up to the community to assume and repair such damages but rather the entities behind the design, production, commercialisation, and introduction of LMOs in the environment. Among other things, this regime must be able to apply to damages that appear long after the dissemination of LMOs in the environment.

In this optic, the group of experts must be mandated to propose as soon as possible an international system of legal protection based on objective liability for both voluntary and involuntary damages given the high degree of irreversibility of damages to agrarian systems and rural populations.

Sustainable Funding

With the entry into force of the Protocol, adopting and implementing biosafety frameworks raises new technical, scientific, and legal challenges for developing countries and countries in transition, who make up the majority of Parties to the Protocol.

- The provision of new and additional resources is crucial for the implementation of the Protocol. We support the recommendations of the Intergovernmental Committee for the Cartagena Protocol calling on the Global Environment Facility Council and bilateral and multilateral donors to grant new financing. The effectiveness of the Protocol relies on the ability of these countries to establish the regulatory, administrative, technical and legal mechanisms necessary for the prevention of biotechnological risks.

Strengthen the Protocol by Clarifying the Position of the Non-Party Countries

The Protocol runs the risk of being weakened from within and from without by the ambiguous position of the non-Party countries:

- The role of the non-Party countries in decision-making within the Protocol must be clarified. In conformity with the status of observer, the non-Party delegations do not have the right to vote. In this logic, they must not be allowed to participate in the various committees or bodies that will be

formed by the Meeting of the Parties to the Protocol such as the Compliance Committee.

- The non-Party countries must not weaken the rapid and complete implementation of the Protocol. The bilateral and/or regional arrangements between the Parties and non-Parties authorised in Articles 24 and 14 of the Protocol create a loophole: agreements can be compatible with the objectives of the Protocol without being binding. Thus, we condemn the tripartite initiative between the United States and Canada (non-Party countries) and Mexico (a Party country) in the framework of NAFTA concerning documentation for genetically modified organisms destined for human or animal consumption or processing. The threshold of tolerance of 5% suggested by industry and mentioned in this agreement is unacceptable and makes a moratorium on bilateral agreements between Parties and non-Parties necessary.

The Protocol has only just entered into force and the threat of the creation of a WTO panel against the European moratorium on the commercialisation of new GMOs already reveals a conflict of standards that could upset the international legitimacy of the Protocol. The Protocol urgently needs to establish procedures and its rules urgently needs to be legitimised in order to ensure WTO acknowledgement of biosafety standards.

Friends of the Earth and the Research and Technological Exchange Group (GRET)¹, in partnership with the Confédération Paysanne, the Centre de Recherche et d'Information sur le Développement (CRID, the centre for research and information on development), Greenpeace, and the Fédération nationale de l'agriculture biologique (the national federation on organic agriculture).

For the First Meeting of the Parties to the Cartagena Protocol

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