



# Public participation in environmental decision-making in EECCA region, the Aarhus Convention and its GMO Amendment

Yelyzaveta Aleksyeyeva  
Environment-People-Law, Ukraine  
Viet Nam, 2013

# PP in decisions on specific activities, Art. 6

- The **public concerned** is informed, **early** in an environmental decision-making procedure (when all options are open)
- in an **adequate, timely and effective** manner
- participation procedures shall include reasonable **time-frames** for informing the public and for the public **to prepare and participate effectively**
- Provide **access to all information** relevant to the decision-making for examination **free of charge**
- Procedures allow the public to submit **any comments**, information, analyses or opinions that it considers relevant to the proposed activity
- **due account** is taken of the outcome of the PP
- the text of the **decision** along with the reasons and considerations on which the decision is based are made **publicly accessible**

# PP in GMO decisions – Art. 6 (11)



- Currently, Parties must apply the Convention's public participation requirements on decisions on whether to permit the deliberate release of GMOs into the environment *to the extent feasible and appropriate within the framework of its national law (1998, 2001)*
- *+ placing on the market + contained use of GMOs (Lucca Guidelines, 2002)*

# Amendment on GMOs, 2005



- In 2005, Parties to the Aarhus Convention adopted an amendment to the Convention on public participation in GMO decisions
- Requires Parties to provide for early and effective information and public participation in **decisions on the deliberate release into the environment** and **placing on the market** of GMOs (*big step forward both for the EU and EECCA regions*)
- Will enter into force when ratified by  $\frac{3}{4}$  of Parties at time amendment was adopted.
- Has 27 ratifications, 22 of which count to entry into force, needs 5 more.

# Amendment



- Amends Article 6 para 11 to exclude decisions on GMOs from the scope of Article 6
- Introduces a new Article 6 bis and Annex 1 bis laying down specific provisions for PP in decisions on GMOs
- Requires **1) early and effective information** and **2) PP** prior to making decision
- Gives rights to “public”, generally, not just “public concerned”

# What decisions on GMO



- Covers 1) deliberate release into the environment and
- 2) placing on the market (*Does not cover contained use as the Lucca guidelines advise*)
- Some possible exceptions
  - For deliberate release, if another such release in comparable bio-geographical conditions approved by Party and sufficient experience gained
  - For placing on market, if already approved by Party or if intended for research or future culture collection

# Access to information in course of PP



**Summary of notification** to obtain authorization for GMOs activity and **risk assessment report** to be **made public** in timely and effective manner

Although legislation on **confidentiality** may apply, some information cannot be kept confidential:

- General description of GMO, name and address of applicant, intended use,
- Location of release,
- Methods and plans for monitoring and emergency response
- Environmental risk assessment

# Confidentiality exceptions in Moldova

- Description of GMO, name and address of the applicants,
- Purpose of suggested activities in relation to GMOs,
- Results of deliberate release of specific GMOs,
- Ban in EU Member States on the use of a GMO under consideration,
- Site where deliberate release of GMO would take place, with the description of territory, distance to the nearest protected areas,
- ERA, including description of possible impact on 1) the environmental and 2) human health
- Measures to restrict the possible negative impact on the environment and human health
- Plan for monitoring the impact
- Measures to treat wastes coming out of activities with GMOs
- Action plan in case of emergency
- Corresponding documentation

# Access to information in course of PP



**Summary of notification** to obtain authorization for GMOs activity and **risk assessment report** to be **made public** in timely and effective manner

Although legislation on **confidentiality** may apply, some information cannot be kept confidential:

- General description of GMO, name and address of applicant, intended use,
- Location of release,
- Methods and plans for monitoring and emergency response
- Environmental risk assessment

# Transparency of decision-making procedures



Procedural information to be made public

- The nature of possible decision
- The authority responsible for making the decision
- Details of PP arrangements
- Authority from which relevant information can be obtained and to which comments can be submitted (time schedule for such submission)
- Public entitled to submit any comments, information, analyses or opinion it considers relevant
- Must **endeavor to take due account** of outcome of public participation v. ensure that due account is taken (Art. 6)
- Text of decision, along with reasons, to be made public

# Trends of PP in EECCE



- All countries from the EECCA region ratified the AC and to some extent transposed it into domestic legislation
- PP procedures are incomplete, undeveloped or poorly elaborated
- PP procedures do not fit into domestic EIA and environmental decision-making procedures
- When laws are more or less in place, the enforcement of the PP provisions is low
- Low awareness even among public servants and judges
- Environmental issues are not on political agendas

# Common challenges, 1



- Early participation remains a significant problem
- Authorities not always properly identify the public concerned
- Timeframes are generally insufficient
- Information is often not easily accessible or available at times convenient for the public
- It is often the case that information obtained is incomplete  
(EIA)
- Exceptions as regards access to information can be extensively or arbitrarily interpreted
- The intellectual property exception has been abused, denying access to reports prepared by third party consultants for public authorities (EIA materials)

# Common challenges, 2



- NGOs\the public have little confidence that due account is taken of PP
- PP is not valued and certainly not encouraged
- There is no feedback on how public comments have been considered, and any reasons for not incorporating them
- Even when MoE make significant efforts to involve the public in decision-making and drafting of legislation, the interdepartmental efforts are poor and when decision-making\drafting falls outside the remit of the MoE, PP is generally non-existent

# Case study: Public Participation in decisions relating to GMOs in Moldova



# Domestic Biosafety Framework

- The Law of Moldova on biosafety, 2001
- Regulates activities on production, testing, use and export of GMOs
- National Committee on Biosafety is established
  - 2 from the Ministry of Environment
  - 7 GMOs' scientist from leading institutions
  - 1 from Ministry of Economic, Ministry of Health, Ministry of Agriculture
  - NGO expert
- National Committee issues permits for GMO activities

# Article 39 – PP in GMO decisions

- **Decision-making procedures** for deliberate release of GMOs into the environment, placing on market and production of food from GMOs **shall be transparent**
- Within 10 days since notification is received the public authority shall inform the public on such notification and on the ways to receive further info on the proposed activity and possibilities to participate
- Public consultation period is **30 days**
- Public authorities **shall take due account** of the comments received
- Public hearing can be held, if necessary

## Regulations on Information and Public Consultation on GMOs *by Ministry of Environment of Moldova, 2004*

- National Biosafety Commissions (NBC) should identify the categories of the public concerned on the basis of requests for information submitted to NBC. It also shall establish and maintain the Register of the PC according to Annex 1
- Provision of information in course of PP is implemented by means of the web-page of NBC, electronic mailing lists, and paper copies
- The application for decision on GMO with all annexes and supporting materials placed on the web-page (*confidential info identified by the applicant*)
- Notification on acceptance of the application for decision on GMOs is published in national media with indication of the web-page where all the information can be found + to electronic mailing lists of Register of the Public Concerned

# Regulations on GMOs - 2

- **Local communities** are recognized to be the public concerned, so they are informed by means of local mass media, posters in the premises of local authorities
- The public has the right to received **substantiated reply** from the NBC concerning the acceptance or rejection of public comments
  - The draft decision of NBC together with the indication of comments received and their assessment by the NBC, should be places on the web-page of NBC
- NBC compiles and publishes on the web-page the Register of GMOs and products thereof, permitted for use, as well as Register of Decisions with reasoning concerning permitting their use and annexes of non-confidential materials, as well as opinions of export institutions