**Notification SCBD/BS/MPM/DA/84222 (2015-002) Submission of information requested in decision on unintentional transboundary movements and emergency measures**

**Par. (b) Submission of views from the EU and its Member States on what constitutes unintentional transboundary movements in contrast with illegal transboundary movements and what type of information should be exchanged through the Biosafety Clearing-House**

1. **Relevant sections on unintentional transboundary movements (UTM) in the Cartagena Protocol**

* Article 16 - Risk management, par. 3: dealing with measures to be adopted by Parties to prevent UTMs of LMOs, including such measures as requiring a risk assessment to be carried out prior to the first release of a LMO.
* Article 17 - Unintentional transboundary movements and emergency measures: dealing with the obligation of Parties to take appropriate measures to notify, when they know of an occurrence under their jurisdiction resulting in a release that leads, or may lead, to an UTM of a LMO that is likely to have significant adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

1. **Relevant sections on illegal transboundary movements (ITM) in the Cartagena Protocol**

* Article 25 – Illegal transboundary movements: dealing with the obligation of Parties to adopt appropriate measures aimed at preventing, notifying and, if appropriate, penalizing transboundary movements of LMO carried out in contravention of their domestic measures to implement this Protocol.

1. **Views on what constitutes Unintentional Transboundary Movements**

No definition of UTMs is given in the Cartagena Protocol, whereas ITMs are defined as transboundary movements of living modified organisms carried out in contravention of domestic measures of Parties to implement the Protocol.

Article 16, par. 3 is setting the obligations for Parties to put in place preventive measures to limit the possibility that UTMs occur (e.g. by adopting and enforcing legal provisions on the authorisation, the traceability and the labelling of LMOs, as in the EU). The focus of this paragraph is on the measures adopted by Parties to avoid the accidental occurrence of transboundary movements rather than on the UTMs themselves.

Article 17 deals with issues related to cross-boundary co-operation in the event of a release that leads or may lead to an UTM. It contains a series of obligations primarily addressing the requirement to notify an occurrence resulting in a release when: 1) the release leads or may lead to an UTM of an LMO, and 2) the LMO is likely to have significant adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, in the affected or potentially affected States. In this case, the focus is on the release in the originating Party rather than on the UTM; the obligation is to notify a release not only when an UTM is ascertained ("lead"), but even when an UTM is possible ("may lead") as a result of that release.

We therefore consider that the term "unintentional" has a conceptual relevance, but not an operational relevance: Parties do not need, within the scope of Article 16, par. 3, and Article 17, to assess whether a transboundary movement is unintentional or not.

"Unintentional transboundary movements" should then simply be interpreted as "accidental transboundary movements",i.e. one that was not made on purpose as in contrast with "intentional transboundary movements" which are the object of other Articles of the Cartagena Protocol. The key element here is whether the transboundary movement is a deliberate one or not. The term "unintentional" may refer to either the transboundary movement (e.g. as a result of a release of an LMO which occurs in the proximity of an international border) or the LMO (e.g. in case of a contamination of a shipment with an LMO) or both.

The original release may have been intentional or unintentional.

1. **Conditions triggering obligation of notification of a release under Article 17 and of ITM under Article 25**

To support Parties in managing their obligations to notify under Article 17 and Article 25, conditions which trigger the obligation to notify a release according to Article 17 are summarised below in comparison with those triggering the obligation to notify an ITM as set out in Article 25, par. 3 (the obligation of notification is triggered when all the conditions below occur):

|  |  |
| --- | --- |
| **Conditions triggering the obligation to notify a release according to Article 17** | **Conditions triggering the obligation to notify a TM as illegal according to Article 25** |
| * A release of an LMO occurs. * The release leads or may lead to an unintentional (accidental) transboundary movement of an LMO from one Party to another Party/non-Party. * The LMO is likely to have significant adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health. | * A transboundary movement of an LMO occurs. * The transboundary movement contravenes domestic measures of Parties to implement the Protocol |

The condition for Art. 17 requires that the released LMO is likely to have significant adverse effects on biological diversity or risks to human health in the affected or potentially affected States. The condition for ITM is not necessarily linked to risk or adverse effects, but is more generally based on the contravention of domestic measures to implement the Protocol (e.g. traceability and labelling requirements are also included, if set by domestic legislation).

With regard to the Party which has the obligation to notify:

|  |  |
| --- | --- |
| **Party which should notify a release according to Article 17** | **Party which should notify an ITM according to Article 25** |
| The Party of origin (of the release) | The Party of import, the Party of origin or any affected Party |

1. **What type of information related to Article 17 should be exchanged through the Biosafety Clearing-House**

The notification under Article 17 to affected or potentially affected States, the Biosafety Clearing-House and, where appropriate, relevant international organisations, should include, in addition to the information specifically required under Article 17:

* Information on emergency measures adopted or being considered by the originating Party in response to the release of the LMO;
* any available information on methods of detection and identification and on reference material and control samples of the LMO.

All information should be kept under review and up-dated as necessary to help countries respond.

1. **Final considerations**

As a result of the considerations above and in line with the text of the Cartagena Protocol, we recommend that any reference to Article 17 of the Cartagena Protocol (e.g. Operational objective 1.8 and indicator 1.8.3 of the Strategic Plan, questions 99 to 101 of the Third National Report) be focused on the release of an LMO, rather than on the unintentional transboundary movement which results or may result from that release. This would avoid any misinterpretation or doubt in the interpretation of UTM versus ITM and would clarify on which cases Article 17 and Article 25 apply.