



**COUNCIL OF
THE EUROPEAN UNION**

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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 September 2006

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Recommendation from the Commission to the Council on the
participation of the European Community in negotiations on international
rules and procedures in the field of liability and redress for damage
resulting from transboundary movements of Living Modified Organisms
(LMOs) under the Cartagena Protocol on Biosafety

Delegations will find attached Commission document SEC(2006) 1135 final.

Encl.: SEC(2006) 1135 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.09.2006
SEC(2006) 1135 final

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

on the participation of the European Community in negotiations on international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of Living Modified Organisms (LMOs) under the Cartagena Protocol on Biosafety

A. EXPLANATORY MEMORANDUM

1. The Cartagena Protocol on Biosafety to the Convention on Biological Diversity entered into force on 11 September 2003. The Protocol provides a framework, based on the precautionary principle, for the safe transfer, handling and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, or pose risks to human health. The Protocol focuses specifically on transboundary movements.
2. The Council adopted a Decision on the conclusion, on behalf of the European Community, of the Protocol on 25 June 2002. The instrument for Community ratification was deposited on 27 August 2002.
3. According to Article 27 of the Protocol, the Conference of the Parties serving as the Meeting of the Parties to the Protocol (COP/MOP) shall, at its first meeting, adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years. The COP/MOP established at its first meeting in 2004 an Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress to fulfil Article 27.
4. The mandate of this group is to examine information and analyse general issues relating to liability and redress for damage resulting from transboundary movements of LMOs and to elaborate options for elements of rules and procedures on liability and redress. The Ad Hoc Group on Liability and Redress met twice, from 25 to 27 May 2005 and from 20 to 24 February 2006 in Montreal, Canada. After the review of information and analysis of general issues, the Group has moved to the elaboration of operational text for the various elements of the rules and procedures on liability and redress. The third, fourth and fifth meeting of the Group will take place in 2007 and to 2008 in order for it be able to present its final report together with the proposed international rules and procedures in the field of liability and redress to COP/MOP4 scheduled for 2008 in Germany.
5. According to Article 174.1 of the EC Treaty, one of the objectives of Community environment policy is the promotion of measures at international level to deal with regional or worldwide environmental problems. To achieve this objective, the Community may conclude agreements with third parties in accordance with Articles 175 and 300.
6. According to the Article 300.1 of the EC Treaty, for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it. In exercising the powers conferred upon it by this paragraph, the Council

shall act by a qualified majority, except in the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.

7. The text of the international rules and procedures on liability and redress that will be presented to COP/MOP4 for adoption in 2008 will be negotiated in the next three meetings of Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress. These rules and procedures concern environmental protection and will constitute an agreement in the sense of Article 300.1 of the EC Treaty. A number of EC legislative instruments¹ cover liability and redress for damage resulting from transboundary movements of LMOs. Member States cannot take on obligations outside the framework of Community legislation which might affect Community rules or alter their scope.
8. Therefore, it is necessary for the Commission to make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations on this issue at the next meetings of the Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in 2007 and 2008 and at COP/MOP4 in 2008.

¹ *Inter alia*, Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 21.4.2004, p.56; Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 7.8.1985, p.29, as later amended; Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 22.12.2000, p.1.

B. RECOMMENDATION

In the light of the above, the Commission recommends that:

- (1) the Council authorises the Commission to participate, on behalf of the European Community, as regards matters falling under Community competence, in the negotiations on international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of LMOs under the Cartagena Protocol on Biosafety at the third, fourth and fifth meeting of the Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress and at the fourth meeting of the Conference of the Parties serving as the Meeting of the Parties to the Protocol.
- (2) the Commission conducts these negotiations on behalf of the European Community, as regards matters falling within Community competence, in consultation with a special committee of representatives of Member States in accordance with the appended negotiating directives;
- (3) when the rules and procedures deal with matters falling within the shared competence of the Community and of the Member States, the Commission and the Member States should cooperate closely during the negotiation process, with a view to aiming for unity in the international representation of the European Community;
- (4) the Council issues the appended negotiating directives.

ANNEX

NEGOTIATING DIRECTIVES

1. The Commission shall ensure that the international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of LMOs to be adopted under the Cartagena Protocol on Biosafety are consistent with relevant Community legislation and that the capacities of developing countries are taken into account during the negotiations of these rules and procedures.
2. The Commission shall ensure that, should the rules and procedure or parts thereof take the form of a legally binding agreement, the latter contains appropriate provisions allowing the Community to become a Party thereto.
3. The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.