

Biosafety Protocol ratification provides new measures to guard against genetically modified organisms

1. What is the Biosafety Protocol?

The UN Cartagena Biosafety Protocol (CBP) that seeks to protect the environment from the potential risks of Genetically Modified (GM) organisms will officially become law on the 11th of September of 2003.

The Biosafety Protocol is a UN Agreement adopted in 2000 in Montreal, Canada. With the ratification by over 50 countries, most of which are developing countries, the Protocol takes effect. One of the main objectives of the Biosafety Protocol is to regulate transboundary movement of Genetically Modified Organisms (GMOs). For the first time global rules on biosafety will be effective at the international level, and trade of Genetically Modified Organisms between Parties to the Protocol will be subject to the rules of the Protocol.

The Protocol is the first international agreement, which clearly shows that Genetically Modified Organisms (GMOs) are different from conventional organisms, and therefore require different treatment. Therefore the Protocol stands in contradiction to policies held by some countries, such as the U.S., which maintain that GMOs are not different from the conventional plants and animals from which they are derived.

2. Key elements of the Biosafety Protocol

Transboundary movement of Living Modified Organisms

The CPB covers only „living modified organisms“ (LMOs) not „genetically modified organisms“. This was due to the opposition by the U.S. and other big agriculture exporters, which opposed the wording GMO in order to exclude non-living modified organisms and limit the effect of the law to those Living Modified Organisms destined to grow in the fields eg seeds. At the same time the use of the definition LMO excludes products derived from GMOs like processed food derived from a GM plant such as maize flour that might be used in a tortilla.

The CPB focuses primarily on regulating the transboundary movement of LMOs between Parties of the Protocol, but there are also some provisions on transit, handling and use of LMOs as well. The general scope applies in principle to all LMOs, but is very limited on LMO pharmaceuticals, LMOs in transit and LMOs for contained use.

The Advance Informed Agreement

The Advance Informed Agreement (AIA) constitutes the key mechanism of the Protocol. Thanks to this mechanism the importing Party must give a prior informed consent before an LMO enters into its territory. It applies only to the first transboundary movement for intentional introduction into the environment like field trials, or planting. The decision of whether to give the prior informed consent will be taken by the importing party based on a risk assessment and the precautionary principle.

Unfortunately the AIA mechanism will not apply to LMOs intended for direct use as food, feed or processing, which constitutes the bulk of the LMOs traded today. This category will be only subject to an internet system of information called the Biosafety Clearing House. This system requests that minimal information related to any LMO approved at national level by any Party of the Protocol should be posted on the Biosafety Clearing House.

Capacity building essential

Many developing countries do not have a regulatory framework governing GMOs nor the resources to enforce such legislation. Capacity will be therefore key in the areas of administration, legislation, science, and enforcement and monitoring.

Liability

The development of a system for liability and redress is foreseen in the Protocol and has to be established within four years after the entry into force of the Protocol. There is an urgent need for an immediate establishment of an effective liability mechanism under the Protocol to ensure that corporations that harm the environment, for instance through contamination by GM crops, pay for the pollution they create.

Other provisions of the Protocol

The Protocol also will require all exporters of LMOs to be released into the environment to take measures to prevent contamination of GM seed products by implementing an identity preservation system. Living modified organisms that are intended for intentional introduction into the environment have to be clearly identified as living modified organisms. On the other hand, LMOs destined for food, feed or processing will have to be identified only as "may contain" living modified organisms.

The inclusion of the precautionary principle is another important accomplishment of the CBP. This principle requires that where there are threats of serious or irreversible damage then, despite lack of scientific certainty, it is better to act now to be safe than wait to be sorry.

3. The challenges ahead

Solving the deficiencies

The Biosafety Protocol is a landmark agreement which for the first time sets out regulations on GMOs, particularly on transboundary movements. Despite its significance, the Biosafety Protocol is still a young agreement and is not robust enough. The Protocol contains several deficiencies like the rather limited nature of its scope and of the advance informed agreement.

This was due to the fact that it was a heavily negotiated agreement, which was always opposed by the U.S. and the so-called Miami group (main agriculture exporting countries).

In spite of not being a robust agreement, the Biosafety Protocol was an important step since it set the pillars for international regulation on the issue, something that industry and some governments had rejected. International instruments often start weak, but continue growing progressively. In the long-term the aim should be to improve the Protocol by correcting the deficiencies it has at present.

A minimum standard: the urgent need for building comprehensive national biosafety regimes

The Protocol establishes only a set of minimum standards, and in the short-term it is urgent that countries build their own biosafety laws to improve the provisions of the current text of the Protocol. The international notification system under the Protocol does not replace national biosafety legislation, so enacting stricter national legislation on biosafety is still needed at the domestic level. This is allowed by the Protocol which recognizes the right of a Party to take action which is more protective of the conservation and sustainable use of biological diversity than that called for in the Protocol if consistent with the objective and the provisions of the Protocol.

One of the main challenges with regulating GMOs via the CPB is the U.S. government. The U.S. is the main grower of GM crops. On the other side it is not a party to the CPB and therefore not bound by its rules. This shifts the burden to recipient countries, and that is why it will be so important that strict national legislation on biosafety is implemented at the national level by recipient countries, and adequate capacity is built. Countries that would like to establish protection against unregulated imports of GMOs should impose national legislation immediately. In their relationship with the United States, developing countries cannot rely on the Biosafety Protocol.

4. The way forward

Governments that wish to establish a high level of protection of the environment, human health, and socioeconomic concerns from the potential risks derived from GMOs are urged to:

- Sign and ratify the Biosafety Protocol as soon as possible. The Biosafety Protocol membership must be strengthened and the more countries that join it the stronger the Protocol will be.
- Implement comprehensive biosafety regimes at the national level which go further than the Biosafety Protocol, in order to properly regulate GMOs and products thereof. National biosafety legislation is urgently needed to compensate for the deficiencies of the Protocol, and to protect the recipient countries against exports of GMOs from countries not parties to the Protocol.