

How to implement Article 18.2(a) of the Cartagena Protocol on Biosafety

Article 1 objective

In accordance with the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

Article 18 Handling, Transport, Packaging and Identification

1. In order to avoid adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, each Party shall take necessary measures to require that living modified organisms that are subject to intentional transboundary movement within the scope of this Protocol are handled, packaged and transported under conditions of safety, taking into consideration relevant international rules and standards.

2. Each Party shall take measures to require that documentation accompanying:

(a) Living modified organisms that are intended for direct use as food or feed, or for processing, clearly identifies that they "may contain" living modified organisms and are not intended for intentional introduction into the environment, as well as a contact point for further information.

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall take a decision on the detailed requirements for this purpose, including specification of their identity and any unique identification, no later than two years after the date of entry into force of this Protocol;

(b) Living modified organisms that are destined for contained use clearly identifies them as living modified organisms; and specifies any requirements for the safe handling, storage, transport and use, the contact point for further information, including the name and address of the individual and institution to whom the living modified organisms are consigned; and

(c) Living modified organisms that are intended for intentional introduction into the environment of the Party of import and any other living modified organisms within the scope of the Protocol, clearly identifies them as living modified organisms; specifies the identity and relevant traits and/or characteristics, any requirements for the safe handling, storage, transport and use, the contact point for further information and, as appropriate, the name and address of the importer and exporter; and contains a declaration that the movement is in conformity with the requirements of this Protocol applicable to the exporter.

3. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall consider the need for and modalities of developing standards with regard to identification, handling, packaging and transport practices, in consultation with other relevant international bodies.

The Cartagena Protocol on Biosafety (BSP), now ratified by 131 states of the world, sets common minimum standards for transboundary movements of living modified organisms (LMOs, outside the protocol usually called genetically modified organisms or GMOs).

In order to achieve the goals of the BSP full information about all transboundary movements of LMOs is indispensable.

However, the first two meetings of the Parties (MOP) to the BSP could not agree on a decision regarding the most contentious point: how to identify, label, and handle LMOs intended for food, feed, or for processing (FFP), especially bulk commodities. After intensive negotiations at the last MOP in Montreal in June 2005 two Parties, New Zealand and Brazil, blocked an imminent agreement on this outstanding issue. It will be up to MOP 3 in Curitiba, Brazil, 13 – 17 March, to find a solution for this problem, which should have been resolved by September 11th 2005.

Crucial information

In order to protect their environment and their citizen's health and to fulfil their obligations under the BSP all countries must have full information about incoming LMOs, especially as LMOs can reproduce and spread in the environment irrespective of their intended use.

The right to this information must not be restricted to the citizens of the majority of countries, which already have in place proper national legislation that establishes procedures for risk assessment, approval, risk management, traceability, and labelling of LMOs and adequate means for their implementation. The BSP is intended to set minimum global safety and information standards to protect all of the planet's environment and all its citizens. The establishment of an indivisible global right to know also protects the economic interests of all farmers and entrepreneurs who intend to export food and feed to countries that require proper labelling of LMOs.

A clear, simple, and robust solution is required, which obliges exporting Parties to provide the necessary information and enables importing countries to take sovereign decisions about the admission and required handling of LMOs.

Requirements for documentation

A comprehensive and adequate documentation of transboundary movements of LMOs under Art. 18.2(a) must enable the party of import:

1. to determine whether the LMOs imported are approved or prohibited under national legislation;
2. to directly refer the LMOs that a shipment contains or may contain to the decisions and notifications provided by the party of export according to Art. 11 of the Protocol and the necessary documentation as set out in Annex II;
3. to establish adequate monitoring measures regarding unintended releases into the environment and regarding their use and consumption in processed food and feed;
4. to determine whether goods consisting of or containing LMOs, which have been imported, can be legally exported to third countries and which information may have to accompany such exports.

These tasks require:

1. Identification of all LMOs imported goods contain or “may contain”;
2. Information about any thresholds applied for any unidentified or adventitious presence of LMOs in the shipments;
3. Access to documentation of the status of risk-assessment and approval or non-approval of these LMOs in third countries;
4. Practical means to identify these LMOs both in processed goods and in the environment, including unique identifiers and reliable testing methods;
5. Easy access to and fair sharing of all information regarding the LMOs that a shipment contains or may contain and ready access to the information available on these LMOs.

Thresholds

The Protocol does not foresee nor provide a mechanism for the setting of thresholds, below which Parties would be exempted from the obligations of the Treaty. As the primary focus of the Protocol is the protection of the environment and human health where thresholds are not scientifically defensible, such thresholds could only be derived from technical restrictions and standardisation requirements for the detection and identification of LMOs. There is general agreement within the scientific and technical community that reliable detection is practically feasible at a level of 0,1 percent.

Additional arbitrary thresholds, as usually set for the purpose of labelling LMOs in consumer products and feed, are subject to national legislation and have been excluded from the scope of the Protocol. They do not apply to the obligations of the initial transboundary movement of LMOs for food or feed, or for processing (18.2(a)) nor to LMOs for contained use (18.2(b)) or cultivation (18.2(c)).

Contact point and responsibilities

A contact point for further information is required in the cases of LMOs for contained use and for introduction into the environment. For reasons of consistency these contact points should be the initial producer of the GMO event in conjunction with the Biosafety Clearinghouse (BCH). No contact point is required for labelling LMOs for FFP. However, such information will be crucial in the event of unintended introduction of such LMOs into the environment. Hence the label of LMO-FFPs should convey direct contact both to the producer of the event and to the BCH (via its national contact point) in the language(s) of the importing country. This information should be attached to the unique identifier in a standardised way, which enables the user of the label to understand the unique identifier and obtain further information about it. In order to achieve the goals of the BSP, full information about all transboundary movements of LMOs is indispensable.

Feasibility

Submissions by interested parties, notably the International Grain Trade Coalition as well as LMO exporting countries, suggest that proper labelling of LMO-FFPs would be costly and in some cases unfeasible. These claims are made with the purpose of suggesting a labelling scheme that would require no more than a notice, that shipments "may contain" unspecified types and quantities of LMOs, which would be neither identified nor quantified. Such information would be useless and inadequate from the perspective of biosafety and would not meet the minimum requirements as set out above.

It should be noted that the entire concept of Biosafety as set out in the Cartagena Protocol depends upon proper information and equal access to such information for all Parties and their citizens. Constructive participation of all Parties and companies in this information process is the prerequisite for its implementation. Non-Party states must be obliged to participate in this information system as a prerequisite for exporting to Parties to the Protocol LMOs and products that contain LMOs. Non-compliance with this general obligation or obstruction by states or companies should be jointly sanctioned by all Parties of the Protocol.

At present there is only:

- a limited number of different types of LMOs (distinct LMO-“events”, which are bred into different varieties, originate from only 5 companies world wide; one company – Monsanto – holds patents for over 90 % of the events commercially grown);
- a limited number of commercially grown crops (maize, soya, oilseed rape, cotton, papaya), of which there are LMOs;
- a limited number of countries that are exporting LMOs (98% of all LMOs were cultivated in only five countries in 2005).

While this may change in the future, the present situation provides a good starting point for global identification and labelling of LMO shipments, which can be adapted to further developments over the coming years. If the USA, Argentina, Canada, China, and Brazil properly identify and label their exports of soya, maize, oilseed, and cotton, the bulk of transboundary LMO movements would be under control. It should also be noted that the majority of transboundary movements of LMOs for FFP are handled by a small number of international commodity trade companies in standardised way.

As the absence of LMO material (in general as well as for specific events only) both in FFP and in seed has become an important commercial issue in countries where labelling of consumer products is now mandatory, various systems of identity preservation or segregation of LMO and non-LMO crops are available on the market. Tests for all commercially cultivated LMOs are available at declining prices and with increasing accuracy. In order to determine which LMOs a shipment of FFP products may inadvertently contain, a comprehensive list of LMOs cultivated within the area of origin would suffice.

Costs of generating and forwarding this information are negligible and should not be confused with the potential costs of identity preservation systems to guarantee specific non-LMO quality of products.

Economic aspects

The world's largest markets for commodities and agricultural products (EU, China, Japan, Australia) and at least forty-eight other countries already require labelling of LMOs under their national legislation. In many other countries respective laws are in preparation. While the details for necessary information and labelling differ in their extent, all these legal provisions require reliable product information and traceability of LMOs for importers and exporters of food and in some cases also feed products. In addition, the European Union's labelling and traceability regulations for food and feed also require traceability of LMO-products even where their identification is no longer possible in the final product (e.g., oil, starch, fructose).

As imports of FFP products to these markets already require even more detailed information about LMO-FFP imports, failure to agree on minimum international standards would unfairly hit only those countries that do not yet have in place the full set of national LMO legislation and who may lack appropriate means of implementation. These countries could become the dumping ground for suspicious and not sufficiently documented LMO shipments. As a consequence, exports of FFP products from these countries also could be affected as potentially containing unidentified LMOs.

As a matter of efficiency and global fairness, the costs for providing this information should be borne by those producing, using, and selling LMOs and not by those receiving shipments that contain or may contain LMOs. Withholding of such information will cause unnecessary and additional costs further down the chain of production, trade, and consumption. It may also create additional costs and risks regarding the control and monitoring of the intentional and unintentional, potentially illegal introduction of LMOs into the environment. While it might be in the interest of certain players in the global food chain to avoid costs and consequences of information sharing, this will inevitably create additional costs and necessary measures for other players in the market and for national authorities.

Implementation of Article 18 should therefore follow three simple rules and terms of trade:

1. Information about the identity of LMOs in FFP products is a pre-requisite for their transboundary movement.
2. No information about the identity and quantity of LMOs in a shipment must be lost or withheld.
3. The costs of this information must be borne by the exporting and not the importing Party at any stage of the process.

These rules will create a common interest of the market to minimise costs while complying with the provisions of the Protocol. They will also prevent double standards and unfair barriers to market access, especially where there are no means to test and retrieve information about the LMO content of certain agricultural goods and products.

How exporters cover potential additional costs from generating and communicating this information will largely depend upon external market factors (demand, offer, and market control). Price development and differentiation of LMO-FFP commodities over the past years do not support claims of increasing costs to the importer. However considerable costs do occur in exporting countries, when the absence of certain LMOs has to be guaranteed in shipments to countries where imports of these LMOs are not approved.

Special problems arise where the transboundary movement of LMOs is not market driven, but part of food aid and emergency relief operations to countries that have not yet established national regulations on LMO imports.