Article 14. Bilateral, regional and multilateral agreements and arrangements

1. Parties may enter into bilateral, regional and multilateral agreements and arrangements regarding intentional transboundary movements of living modified organisms, consistent with the objective of this Protocol and provided that such agreements and arrangements do not result in a lower level of protection than that provided for by the Protocol.

2. The Parties shall inform each other, through the Biosafety Clearing-House, of any such bilateral, regional and multilateral agreements and arrangements that they have entered into before or after the date of entry into force of this Protocol.

3. The provisions of this Protocol shall not affect intentional transboundary movements that take place pursuant to such agreements and arrangements as between the parties to those agreements or arrangements.

4. Any Party may determine that its domestic regulations shall apply with respect to specific imports to it and shall notify the Biosafety Clearing-House of its decision.

395. Article 14(1)-(3) addresses the situation where Parties to the Protocol have concluded, or intend to conclude, a separate agreement or arrangement on intentional transboundary movement of LMOs. For example, it is possible that two neighbouring countries, with an active trade in LMOs, may decide to conclude an agreement that is more specific than the Protocol, addresses the issues in more detail, and is adjusted to those countries’ particular situation and needs.

396. Article 14 states that the provisions of the Protocol “shall not affect” intentional transboundary movements of LMOs that take place in accordance with such an agreement or arrangement entered into by a Party to the Protocol. However, such agreements or arrangements must be consistent with the objective of the Protocol and must not result in a lower level of protection (for biodiversity and for human health) than that provided for by the Protocol.

397. One issue which arises in relation to Article 14 is whether it applies to agreements and arrangements between Parties only, or also to agreements and arrangements between Parties and non-Parties. This is important considering the standard that is set in Article 14(1) for such agreements and arrangements. This issue is addressed further in the commentary on Article 24.

398. One specific application of Article 14 relates to the special situation of the European Union and its member States. As future Parties to the Protocol, the European Community and its members will want to continue to apply the relevant EU legislation both within the internal market of the EU and to imports of LMOs from third States into the EU, in precedence over the provisions of the Protocol. Article 14 was intended to provide the basis for this. In an earlier draft of the Protocol, there was a provision dealing specifically with the issue of regional economic integration organizations applying their own legal provisions to transboundary movements of LMOs involving their region. The definition of “regional economic integration organization” in Article 3 was included in the context of that provision. In the final negotiations, the provision in question was deleted with the understanding that Article 14 would serve the relevant purpose. According to the interpretation of the European Commission, Article 14(3) provides the basis for giving precedence to EU legislation in relation to movements of LMOs within the EU, and Article 14(4) in relation to the import of LMOs into the EU from third States (see below).

1. Parties may enter into bilateral, regional and multilateral agreements and arrangements regarding intentional transboundary movements of living modified organisms, consistent with the objective of this Protocol and provided that such agreements and arrangements do not result in a lower level of protection than that provided for by the Protocol.

399. This provision establishes a double requirement for separate agreements or arrangements regarding intentional transboundary movements of LMOs among Parties:

(i) such agreements and arrangements must be consistent with the objective of the Protocol; and

(ii) they may not result in a lower level of protection than that provided by the Protocol.

The rationale is to give Parties the opportunity to establish and apply bilateral or multilateral systems for the management of the transboundary movement of LMOs other than the system provided by the Protocol. However, at the same time, Article 14 seeks to ensure that the objective of the Protocol is not undermined by such alternative arrangements. Parties may not use a separate agreement or arrangement to avoid their obligations under the Protocol.

400. Article 14 refers to “bilateral, regional and multilateral agreements and arrangements”. This wording indicates that a Party may conclude a treaty with one other Party (bilateral) or with more than one other Party (multilateral). A multilateral treaty can be limited to a particular region (regional), or it can be wider in scope.

401. The reference to “arrangements” in addition to “agreements” can be understood to mean that international legal instruments that do not assume the form of treaties but imply an engagement on the part of the States concerned are also covered. These may include for example arrangements on LMOs within the OECD or the European Union, or within other regional bodies that do not take the form of treaties.

402. The difficulty in relation to Article 14(1) lies in the interpretation of the terms “consistent with the objective of the Protocol” and “do not result in a lower level of protection”, which set a standard for agreements and arrangements under Article 14. These terms are not defined and no specific mechanism is established to monitor and assess whether Article 14 agreements and arrangements have met these requirements. If difficulties should arise in relation to such agreements and arrangements, the COP/MOP or the compliance mechanisms to be adopted under Article 34 of the Protocol may be called upon to play a role in their resolution.

403. In order to be consistent with the Protocol’s objective, an Article 14 arrangement or agreement would need to be in accordance with the precautionary approach contained in Principle 15 of the Rio Declaration, contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of LMOs that may have adverse effects on biological diversity, taking also into account risks to human health. While the agreement or arrangement would not need to replicate the same procedures and techniques, such as the AIA provisions, contained in the Protocol it should provide for equivalent measures necessary to achieve an adequate level of protection. Thus, as a minimum, it should provide for a mechanism to ensure safe transfer, handling and use of LMOs, and for a method to provide the importing country with an opportunity and a basis for deciding whether or not to consent to the import of LMOs. (See also commentary on Article 9, paragraphs 302–303).

404. The requirement that such agreements and arrangements “do not result in a lower level of protection than that provided for by the Protocol” indicates that at least an equivalent level of protection must be achieved. This requirement is in conformity with the general obligations of Parties to adhere to the Protocol’s objective and to ensure that activities involving LMOs are undertaken in a manner that prevents or reduces the risks to biological diversity, taking also into account risks to human health (see commentary on Article 2(2)). It is also consistent with the right of Parties to take action that is more protective than that called for in the Protocol, provided such action is consistent with the provisions of the Protocol and its other obligations under international law (see commentary on Article 2(4)). Parties are not entitled to take action that is less protective of the conservation and sustainable use of biological diversity than that called for in the Protocol. It should be noted that the level of
protection provided by the Protocol, as it enters into force and is applied by its Parties, may evolve over time, and may differ from LMO to LMO. An Article 14 agreement or arrangement must be similarly flexible to keep pace with developments under the Protocol.

2. The Parties shall inform each other, through the Biosafety Clearing-House, of any such bilateral, regional and multilateral agreements and arrangements that they have entered into before or after the date of entry into force of this Protocol.

405. The purpose of Article 14(2) is to provide transparency as regards the international legal rules that govern transboundary movements of LMOs for States that are Parties to the Protocol.

406. Article 14(2) refers to agreements and arrangements entered into by a Party before or after the date of entry into force of the Protocol. The “date of entry into force” of the Protocol is addressed in Article 37(1). The difference between agreements and arrangements entered into before or after the date of entry into force of the Protocol is primarily relevant in the case where a separate agreement does not conform to the requirements of Article 14(1). Agreements or arrangements that are compatible with the Protocol take precedence in accordance with Article 14(3) (see below). Parties that have already entered relevant agreements or arrangements before the Protocol comes into force are entitled to maintain these provided they meet the conditions set out in Article 14(1). If an incompatible agreement was entered into before the entry into force of the Protocol, the rules of international treaty law stipulate that the Protocol takes precedence over the older treaty as between Parties to both treaties. If an incompatible agreement is entered into after the entry into force of the Protocol, it would be in contravention of Article 14, and of the Party’s duty to fulfil its obligations under the Protocol in good faith. 87

3. The provisions of this Protocol shall not affect intentional transboundary movements that take place pursuant to such agreements and arrangements as between the parties to those agreements or arrangements.

407. This is the key provision of Article 14. It explains why the consistency requirement in Article 14(1) is important. Article 14(3) stipulates that a separate agreement or arrangement, if it fulfils the conditions of Article 14(1), takes precedence over the Protocol, but only with regard to transactions between the States that are parties to it.

■ In a transboundary movement between State A and State B, both of which are Parties to the Protocol and to the separate agreement under Article 14, the separate agreement applies.

■ By contrast, in a transboundary movement between State C, which is a Party to the Protocol as well as to the separate agreement under Article 14, and State D, which is a Party to the Protocol but not to the separate agreement, the Protocol applies.

408. In each case, the separate agreement must fulfil the Article 14(1) conditions. This is in fact a restatement of a rule of international treaty law that governs the relationship between successive treaties on the same subject. Under Article 30(2) of the Vienna Convention on the Law of Treaties, a treaty may accord precedence to another treaty entered into by its parties, as the Protocol does in this instance. Article 30(4)(b) of the Vienna Convention stipulates that in a relationship between a State that is a Party to two agreements and a State that is a Party to one of the agreements only, the agreement to which both States are Parties shall apply.

409. Article 14(1)-(3) refers to agreements and arrangements regarding intentional transboundary movement of LMOs, and Article 14(3) provides that the Protocol provisions shall not affect intentional transboundary movements that take place pursuant to such agreements and arrangements. Thus other provisions of the Protocol which are not applicable only to transboundary movements of LMOs will continue to apply even as between parties to the separate agreement (see Box 10 for an analysis of the distinction between the two types of provisions).

With regard to the EU, relevant EU legislation is considered a “regional agreement or arrangement” in accordance with Article 14. This means that EU legislation shall apply to transboundary movements of LMOs within the EU in precedence over the provisions of the Protocol, in accordance with Article 14(3).\(^8\)

4. Any Party may determine that its domestic regulations shall apply with respect to specific imports to it and shall notify the Biosafety Clearing-House of its decision.

This provision does not relate specifically to the title of Article 14, as it does not concern separate agreements or arrangements on the transboundary movement of LMOs. Its relevance and aim here are not immediately obvious. In order to understand the meaning and significance of Article 14(4) and the reason for its placement in this Article, one needs to look at the negotiating history of the Protocol. In fact, the placement of this provision was subject to discussion, and it was moved several times during the negotiation process.

The Protocol contains three provisions dealing with the possibility for Parties to subject certain imports of LMOs to domestic legislation rather than the precise requirements of the AIA procedure:
- Article 9(2)(c) provides for a decision to be taken by the Party of import, after receipt of notification of an intended transboundary movement under the AIA procedure, to apply its domestic regulatory framework to that particular movement in preference to the AIA procedure, provided that the national framework is consistent with the Protocol (see commentary on Article 9);
- Article 13(1)(b) sets out a simplified procedure by which specified LMOs may be exempted from the AIA procedure by a Party through advance notification to the Biosafety Clearing-House, provided certain requirements are met (see commentary on Article 13); and
- Article 14(4) allows for a general application of domestic regulations to specific imports in preference to the AIA procedure, also by advance notification to the Biosafety Clearing-House.

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Box 28. Example of a regional arrangement


**Objective**

In accordance with the precautionary principle, the objective is to approximate the legislation of the Member States and to protect human health and the environment in two cases:
- Deliberate release into the environment of genetically modified organisms; and
- Placing on the market of genetically modified organisms in the European Union.

**General obligations**

- Ensuring that appropriate measures are taken to avoid adverse effects on human health and the environment, in accordance with the precautionary principle;
- Genetically modified organisms may only be deliberately released or placed on the market in conformity with the procedures set out in the Directive.

**Authorization procedures**

Procedures are established for the authorization of release into the environment and placing on the market of genetically modified organisms in the European Union. Subject to a safeguard clause in the Directive, once consent has been given for the placing on the market of a GMO as or in a product, that product may be used

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413. The negotiating history of the Protocol shows that Article 14(4) was intended to take account of the need of the EU for a mechanism to apply its own legislation to movements of LMOs taking place from third parties into the EU. By allowing the application of “its domestic regulations” (i.e. the relevant EU legislation, see Box 28), Article 14(4) takes account of this need. However, the application of Article 14(4) is not limited to regional economic integration organizations. It can be invoked by any Party to the Protocol.