

15 April 2013

Ms. Ella Behlyarova
Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment, Housing and Land Management Division
Palais des Nations, Av. de la Paix 10
1211 Geneva 10
Switzerland
Via e-mail: ella.behlyarova@unece.org

Re: Third version of the Revised Draft Recommendations on Public Participation in Decision-Making

Dear Ms. Behlyarova:

On behalf of CropLife International, I thank you for the opportunity to provide comments on the above-referenced third version of the draft Recommendations on Public Participation.

As a representative of the private sector, CropLife International is committed to actively contribute to the process of developing effective Recommendations on Public Participation. We therefore would like to express our disappointment that the substantive comments provided to the second version of the draft Recommendations do not seem to have been taken in consideration. In this regard, we also refer to the red-lined version of our suggested revisions, including justifications and further explanations, to the second version of the revised draft Recommendations on Public Participation, which we submitted on 30 November 2012. In our opinion, these suggested revisions aim to make the Recommendations more effective.

It is our view that the draft Recommendations on Public Participation should provide less detail and focus on the substantive guidelines to enable public participation in an effective manner, without undermining the decision making process.

We hereunder would like to repeat the key principles which in our opinion should be taken into due consideration:

Role of the Private Sector: In accordance with the Preamble of the Aarhus Convention, we believe that it is fundamental to recognize and emphasize the importance of the role that the private sector can play in environmental protection. We also would like to add that the equal treatment of individual citizens, NGO's and the private sector should be guaranteed and reflected in the recommendations. We acknowledge that the private sector has been added in certain sections of the third version of the draft Recommendations on Public Participation, but would advise to consistently include a reference to the private sector in the text.

Scope of the Convention: As a general principle, it is important that the recommendations remain within the scope of the Aarhus Convention and do not extend the definitions, rights and obligations of “public authorities” and “the public” as stipulated in the text of the Aarhus Convention.

As a key example, it should not be the objective, or the effect, of the recommendations on public participation in decision-making to develop guidance or provide interpretation on access to information. Art 4 establishes criteria and procedures for providing or refusing to provide access to environmental information, taking into account the need to safeguard legitimate public and private interests, including confidential business information (CBI), intellectual property rights and personal data protection. We would like to stress that failure to adequately protect CBI discourages the research and development of innovative products by highly regulated industries, which require data submissions to regulatory authorities often containing CBI.

Another key element we observed in the recommendations is the ambition to delegate decision-making powers from public authorities to certain members of the public concerned, which would intervene with national laws providing the legal basis for the decision making power of an authority, and contradict general principles of representative democracies. Certainly organizations can and should be involved in organizing public debates, but governmental obligations to engage the public in decision-making should not be delegated to groups with an interest in the outcome.

NGOs may view themselves as responsible for certain aspects of public participation; the private sector on its own initiative or pursuant to regulations may provide information to the public to facilitate awareness and participation in decision-making. In both cases, however, the actors are not carrying out governmental responsibilities and cannot be considered public authorities. In addition, the national legislation defining the mandate of the public authorities also establishes the stage at which the process for public participation commences and its modalities.

Public Participation in decision-making on GMOs: As remarked above, the scope of recommendations regarding an instrument should not exceed the scope of that instrument. The GMO amendment explicitly applies to public participation on decisions on “whether to permit the deliberate release into the environment and placing on the market of GMOs”. Contained use is intentionally not covered by the GMO amendment and, accordingly, reference to “contained use” should be removed from the recommendations. We also note that the reference to the Lucca guidelines (MP.PP/2003/3, para 3.) is not appropriate and cannot be used to justify an extension in scope of the GMO amendment. The GMO amendment was agreed and adopted by the Parties to the Aarhus Convention in 2005. The GMO amendment thus supersedes and replaces the Lucca guidelines.

Moreover, we do not believe the recommendations have to establish new creative provisions for public participation such as public enquiries or citizens’ juries “to obtain the public’s views on whether GMOs should be placed on the market in the country, or on more specific issues, for example, risk assessment and risk management of GMOs” as public participation provisions for GMOs are already appropriately covered by the GMO Amendment and by the UN Biosafety Protocol.

Practical considerations: As already pointed out above, we would like to stress that the current draft recommendations would result in a very burdensome process which will undermine the effectiveness and speed of decision-making, would lead to legal uncertainty, with the effect of slowing down or preventing the approval and the placing on the market of innovative products.

We thank you for your consideration of our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dewar", is positioned above the typed name.

Denise Dewar
Executive Director, Plant Biotechnology
CropLife International