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Ms Ella Behlyarova
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(UNECE)
Environment, Housing and Land Management Division
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Second version of the Revised Draft Recommendations on Public Participation in Decision-making in Environmental Matters: ECPA comments

Dear Ms. Behlyarova,

On behalf of the European Crop Protection Association (ECPA) I would like to thank you for the opportunity to submit comments on the above-referenced draft document.

Our key remarks on the draft document are summarised in this letter, and we enclose a clean version of the draft recommendations incorporating all amendments, which we propose on the draft document based on these comments.

Role of the Private Sector: In accordance with the Preamble of the Aarhus Convention, we believe that it is fundamental to recognize and emphasise 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.

Scope of the Convention: As a general principle, it is important that the recommendations remain within the scope of the Aarhus Convention and should in no way 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, nor the effect, of the recommendations on public participation in decision-making to develop guidance or provide interpretation on access to information. Article 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 intellectual property rights such as confidential business information (CBI) and the protection of personal data. We would like to stress that failure to adequately protect CBI discourages the research and development of innovative products by highly regulated industries, which have to submit data to regulatory authorities often containing CBI to receive marketing authorisations for their products.

Another key element we observe in the draft 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 as public authorities. In addition, the national legislations defining the mandate of public authorities also establish the stage at which the process for public participation commences, and its modalities.

Practical considerations: We note that the current draft recommendations would result in a very burdensome process, which would undermine the effectiveness and speed of decision-making, and would lead to legal uncertainty with the effect of slowing down or preventing the approval and the placing on the market of innovative products.

Finally, ECPA was involved in drafting the CropLife International amendment proposals to the draft recommendations, and we thus support their track changes version of amendments and detailed comments.

We thank the Task Force on Public Participation for taking account of our comments.

Kind regards

A handwritten signature in black ink, appearing to read 'Friedhelm Schmider', written in a cursive style.

Friedhelm Schmider
Director General

