

Mr Janez Potočnik
Commissioner for Environment
European Commission
Rue de la Loi 200
B – 1049 Brussels

4 May 2011

Dear Commissioner,

Janez Potočnik

BUSINESSEUROPE has recently been made aware of on-going work in the context of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

I would like to draw your attention to two issues of great concern which, if adopted, would have far-reaching negative impacts on European industry.

As the European Union will be tasked with ratifying decisions taken by the Parties to the Aarhus Convention, it is important that EU policy-leaders examine very carefully what is currently being discussed in the context of this Convention.

Access to environmental information held by the private sector

At its meeting in February 2011, the Working Group of the Parties of the Aarhus Convention adopted a proposal to work on ensuring access by the public to “environmental information held by the private sector”. It will now be discussed at the Meeting of the Parties to the Convention (MOP-4) on 29 June – 1 July 2011 in Moldova and, if approved, will result in an amendment to the Convention.

While BUSINESSEUROPE generally supports transparency, openness and involvement of the public in decision-making processes, such a proposal would be an incursion into the realm of privacy and would go against European Community law concerning confidentiality and data protection. The proposal is also inherently contrary to the Aarhus Convention, which is to promote access to information held by public authorities.

In the EU, a number of environmental laws, such as the Industrial Emissions Directive and the REACH Regulation, rightly set common requirements in terms of information flow from businesses to public authorities. It gives public authorities, which must remain as the “guardian” of environmental information given to the public, the necessary information to ensure proper implementation. However, allowing direct public demand to information held by companies would be unjustified and would encourage unfair commercial practices as well as risk discouraging companies from developing own-initiative environmental studies and therefore be counterproductive.

Access to justice for environmental NGOs

At the meeting in June 2011, the Parties to the Convention will also discuss the following set of proposals:

- Establishing financial assistance mechanisms to support the access of environmental NGOs to administrative and judicial procedures
- Protecting environmental NGOs against the assessment of court costs where allegations and/or legal claims are found to be baseless

The Treaty of Lisbon treats all EU citizens and organisation alike and guarantees a balanced system of access to the European Court of Justice. Providing financial support for environmental NGOs' access to justice would provide particular facilities to a specific interested group and therefore would exceed the scope of the Treaty.

In addition, such proposals could flood the legal system with unsubstantiated claims and impose significant administrative costs on governments and industry, as well as resulting in delays detrimental to business and consumer interests.

I trust that you will give your best attention to these views and remain at your disposal should you require any additional information.

Yours sincerely,

Best regards,

Philippe

Philippe de Buck