

Second meeting of the Task Force on Access to Information under the Aarhus Convention – 16th December 2013, Geneva, Switzerland

Oral Statement by Georgina Downs, Director of UK Pesticides Campaign

I would like to start by apologising for not being able to attend the meeting in person due to ill-health, but I am very grateful to the secretariat as the meeting organisers for the opportunity to still be able to participate via telephone.

The Aarhus Convention, which makes provisions on access to information, public participation in decision-making, and access to justice in environmental matters, is highly relevant to many of the key issues concerning the risks to people in the countryside from exposure to pesticides used in crop spraying.

Brief outline of the facts

Agricultural pesticides are hazardous chemicals from which operators of crop-spraying machinery have to be protected by the use of protective clothing, respirators, and other personal protective equipment.

Pesticides can cause various acute and chronic adverse effects on human health including on the health of rural residents who are exposed to them.

Acute effects include chemical burns to eyes and skin, blisters, sore throats, burnt vocal chords, respiratory irritation, breathing problems, difficulty swallowing, headaches, dizziness, vomiting, stomach pains, flu-type illnesses.

Long term exposure to pesticides can, as the European Commission recognised in July 2006, “lead to serious disturbances to the immune system, sexual disorders, cancers, sterility, birth defects, damage to the nervous system and genetic damage.”¹ For many decades there have been reports of both acute adverse health effects, as well as chronic long-term illnesses and diseases (such as various cancers, leukaemia, non-Hodgkin’s lymphoma, neurological conditions, including Parkinson’s disease, asthma, amongst others) in rural communities where residents live near pesticide sprayed fields.

The recognition that the exposure for residents living in the locality of sprayed fields is high has clearly been recognised in EU legislation as residents are now specifically defined as a “vulnerable group” in Article 3, paragraph 14 of EU Regulation 1107/2009 which recognises that residents are “subject to high pesticide exposure over the long term.”²

¹ Source: http://europa.eu/rapid/press-release_MEMO-06-278_en.htm?locale=en

² Source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:309:0001:01:EN:HTML>

Despite these recognised hazards, under the UK Government's current policy and approvals regime, pesticides are permitted to be authorised for use near residents' homes, schools, children's playgrounds, hospitals etc. Indeed, they are authorised to be sprayed right up to the very boundary of a resident's property (whether that be a garden, or, say, a child's open bedroom window).

Further, under the existing UK pesticides policy there are currently no implemented legal provisions to enable residents – and their medical advisers – to access the necessary information as to the chemicals which will be, are being, or have been sprayed. Thus, even if a resident becomes dangerously ill as a result of pesticide exposure, the doctors or hospital treating that resident are not currently entitled to access any information as to the chemicals to which the resident has been exposed.

To date, rural residents across the UK have only been able to access information, as well as receive prior notification before spraying, if their local farmer provides it *voluntarily*, something which in the vast majority of cases is simply not forthcoming. Further, although many residents have tried to access the information on the pesticides sprayed in their locality via enforcing authorities for pesticides, such as the UK's Health and Safety Executive (HSE), including under national Freedom of Information and Environmental Information Regulations laws, the UK HSE has previously maintained that it can only disclose the information to individual residents with the "*consent of the person who provided it,*"³ and therefore if a farmer declined to disclose the information then residents had no law to fall back on to force disclosure.

Voluntary measures have existed for decades, do not work (however many times they are repackaged) and are completely unacceptable in this situation.

Obligations under EU law for providing residents access to information

As a direct result of the work of the campaign I run, EU legislation consisting of the Plant Protection Products (PPP) Regulations 1107/2009, and Directive 2009/128/EC (often referred to as the Sustainable Use Directive), contain a number of critical measures for providing residents with access to information.

These include: a new legal obligation for farmers and other pesticide users to provide information to residents on the pesticides they use, as a result of

³ For example, in a letter dated 3rd April 2003, the then Director General of the HSE, Timothy Walker stated, "*HSE inspectors are also authorised to exercise the powers of inspectors contained in the Health and Safety at Work etc. Act 1974 (1974 Act), which include for example, the power to make and carry out examinations and investigations and in the course of these, to obtain information. However, information obtained by inspectors using these powers is subject to limits on disclosure under the Act and generally, this means it can only be disclosed with the consent of the person who provided it.*" He went on to say that, "*As a matter of course, HSE inspectors routinely encourage pesticide users voluntarily to pass information on the products they use to members of the public who believe they have been exposed to and/or made ill as a result of exposure. Where they decline to do so, inspectors seek to obtain their consent to allow the information to be disclosed by HSE. Although in many cases users are happy to allow the information to be made available by either route, in some cases, for commercial or other reasons they feel unable or unwilling to consent to disclosure.*"

Article 67⁴ of the EU PPP Regulation, (which was directly applicable in all EU Member States from 14th June 2011); and the option for a new legal requirement in the statutory conditions of use for residents to be provided with prior notification before spraying (Article 31 para 4(b) of the PPP Regulation).

However, in relation to access to information the UK Government has so far misinterpreted the requirements of Article 67 by saying that the Competent Authority only has to provide the information if they already hold it and not if they have to actively ask farmers for it. Yet Article 67 is very clear in that the Competent Authority **would have to provide access to the information upon the request of a third party, such as residents.** Therefore if a resident contacts the UK authority to request access to the information then it has to undoubtedly trigger a request by the UK Authority for that information from the farmer concerned (in order to be able to then pass it on to the resident who has requested it, as required by Article 67 of the EU Regulation).

It is important to point out though that the new law under Article 67 of the EU Regulation is only via a *third party* which the campaign I run has continued to argue is wholly inadequate, especially in the event of an immediate poisoning when getting that information is critical and going through a third party would only add unnecessary and in some cases extremely dangerous time delays.

Residents must be legally permitted to have **full and direct access** to all relevant and necessary information about crop-spraying in their locality, including prior notification before any spraying. There are simply no justifiable reasons for the UK to continue to deny this basic information right to residents and other members of the public exposed to pesticides across the UK, as people have a fundamental right to know the information necessary to make informed and knowledgeable decisions in order to try and protect their health and the health of their family from any harm. **(Although obviously the fundamental point is that rural residents and communities should have the right not to be exposed to these chemicals at all in the first place).**

Access to information in accordance with the Aarhus Convention–Pillar I

The Aarhus Convention expressly recognises in its preamble that:

“every person has the right to live in an environment adequate to his or her health and well-being,” and “adequate protection of the environment is

⁴ The new legal obligation for farmers and other pesticide users to provide information to residents on the pesticides they use is Article 67 of the EU PPP Regulation, which can be seen on page 33 at:- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:309:0001:0050:EN:PDF> The relevant text states, “Professional users of plant protection products shall...keep records of the plant protection products they use, containing the name of the plant protection product, the time and the dose of application, the area and the crop where the plant protection product was used. They shall make the relevant information contained in these records available to the competent authority on request. **Third parties such as** the drinking water industry, retailers or **residents, may request access to this information by addressing the competent authority.**”

essential to human well-being and the enjoyment of basic human rights, including the right to life itself.”

The preamble then concludes that to assert these rights and meet these obligations, citizens must have access to information, be entitled to participate in decision-making, and have access to justice in environmental matters.

Article 4 of the Aarhus Convention sets out a framework through which members of the public can request and gain access to environmental information from public authorities and, in some cases, from private parties.

The Aarhus Convention places a high priority on releasing information on “emissions” (which has been defined in the Industrial Emissions Directive as, *inter alia*, a “*direct or indirect release of substances...from individual or diffuse sources...into air, water or land*”). Therefore the Aarhus Convention requires public authorities to take into account whether the information requested relates to emissions into the environment and, if so, **to be disclosed**.

It must also be stressed that the spraying and release of harmful pesticides in the localities of where residents live and breathe is permitted and approved under existing UK policy. The deliberate release of such hazardous substances thus **cannot** be deemed as “accidental” or non-intentional release.

The release of hazardous pesticides into the air and environment from crop spraying clearly equates to emissions into the environment. The Convention holds that information concerning pollutant emissions which is relevant for the protection of the environment may not be claimed as confidential commercial or industrial information (at Article 4 paragraph 4(d)). This would surely have to also apply exactly the same regarding the optional exception referred to in the Convention concerning intellectual property rights (at Article 4 para 4(e)).

In relation to Article 4 paragraph 4(g) of the Convention regarding the interests of a third party which has supplied the information requested, this optional exception cannot apply to a “third party” such as a farmer if there is a legal requirement for records containing that information to be kept, and to be provided to the Competent Authority on request, including for the specific purpose of providing to residents on request, **all** of which Article 67 of the EU Regulation provides for. Thus it is *not* information that is supplied *voluntarily*.

Article 5 of the Convention sets out the obligations of the Parties and public authorities to actively collect, hold, and disseminate environmental information

This includes mandatory systems for information about proposed and existing activities that may significantly affect the environment; pollutant release and transfer information; as well as critically, all information which could enable the public to take measures to prevent or mitigate harm arising from a threat to

human health or the environment. Further, the Convention sets a high priority on the rapid dissemination of information that could save human lives or prevent environmental damage (Article 5, para (1) (c)). The public authority is obliged to, as a minimum, disseminate all the information immediately to all the people who may be affected by the health and/or environmental threat.

It is important to stress the fact that actual harm does not have to have occurred for the immediate dissemination of information to be required, as it is based on the **risk of harm and not that harm has to have already occurred**

Article 3 of the Aarhus Convention points out that the Convention's provisions, including those in Articles 4 and 5, are minimum requirements, and that the Parties can establish regimes to provide broader public access to information.

Conclusion

Considering EU legislation contains a number of critical measures for providing residents with access to information on pesticides used in crop spraying, and that there are also provisions on access to information and public participation in decision-making contained in the Aarhus Convention, the UK therefore needs to establish an effective and accessible procedure enabling residents and communities to have **full and direct access** to all the necessary information about crop-spraying in the locality of residents' homes, schools, playgrounds, as well as a right to prior notice before any spraying.

I would end by saying that the overriding primary objective of EU legislation on pesticides is the high level of protection of human health. It is therefore clear that under EU law there should be no balancing of interests when it comes to public health protection, as the protection of human health must be paramount

In view of this the use of pesticides should be prohibited in substantial distances in the locality of residents' homes, schools, children's playgrounds, amongst other areas.

I therefore propose the Task Force to continue to consider this issue and to develop practical solutions to address these matters that would be beneficial for all Parties to the Convention and, most importantly, for the residents and communities affected from the spraying and use of agricultural pesticides.

Further information can be provided on request.

Georgina Downs, UK Pesticides Campaign

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