

Abstract Submission for the Annual EELF Conference 2016

Procedural Environmental Rights: Principle X in Theory and Practice

Topic of the proposed paper: Procedural environmental rights and decision-making procedures related to GMOs

Related cluster: Procedural environmental rights: cross-cutting issues

Working title: The “participatory” authorisation process for GMOs – between aspiration and reality

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Abstract

Across the EU, public opinion on genetically modified organisms (GMOs) is more than divided, as are the views on how to best regulate GMOs.

In view of the potential risks and uncertainties associated with GMOs, the EU chose a prior authorisation procedure as the appropriate regulation strategy. This procedure aims at giving effect to the precautionary principle and at enabling a common EU approach to GMO market integration. In 2008, the EU approved the so-called GMO amendment to the Aarhus Convention; the latter being known as “the most impressive elaboration of principle 10 of the Rio Declaration”. Although not yet in force, parties are encouraged to already apply the GMO amendment to the maximum extent possible.

My paper analyses the GMO amendment and compares it with the current EU authorisation process for GMOs. Focusing on the aspect of public participation, the paper highlights the weaknesses of the current EU regulatory framework in the decision-making process and – against this backdrop – points towards possible solutions to bringing it in line with international law commitments.

Thesis 1: A stringent application of the GMO amendment upgrades the EU authorisation process for GMOs

The GMO amendment provides for information, public participation and access to justice, areas that the EU regulator has not yet directed too much attention to; much rather, the focus so far lay on the economic dimension of GMO regulation. Thus, to this day, the EU authorisation process for GMOs is not functioning well, lacking legitimacy and missing a democratic dimension. Better information, public participation and access to justice as foreseen in the GMO amendment could help outweighing these weaknesses.

Thesis 2: The current “selective openness” of the decision-making process is “no openness at all”

In the current regulatory framework, the scientific risk assessment serves as a preparatory measure for the political decision whether to authorise a GMO in the EU; this political decision is free to deviate from the prior risk assessment. The public may comment on the outcome of this risk assessment. However, further on in the decision-making process, i.e. when the actual decision is taken, there is no possibility for the public to express its views. Limiting the possibilities of the public to engage in the decision-making process to the preparatory stage only is in clear conflict with the GMO amendment.

Thesis 3: The mere right to make comments does not constitute effective public participation

In the current regulatory framework, the public indeed has a right to comment on the risk assessment conducted by a Member State’s authority or the EU’s European Food Safety Authority (EFSA). However, there is no complementary requirement for the EU decision-making bodies to take these comments into account. The result is a non-transparent decision-making process, which prevents proper scrutiny by the public and is thus contrary to the GMO amendment. Considering the public’s comments in the EU decision-making process must be a precondition for the legality of the final decision and its failure consequently – in accordance with EU case law – be enforceable by the public.

Author’s biography: Birgit Hollaus is a legal researcher and doctoral candidate at the Research Institute for Urban Management and Governance, Vienna University for Economics and Business (WU Vienna). Alongside her academic work, she is a legal consultant with Shifting Values, currently involved in a project on EU transparency in Multilateral Environmental Agreements commissioned by Humane Society International and the International Fund for Animal Welfare; recently, she has also completed a legal internship with the Biodiversity team at ClientEarth London. In her academic career, she has conducted research in various areas of international, EU and national environmental law, including work on EU nature and species protection law as well as on the influence of the Aarhus Convention on EU and national law. In her master’s thesis, she analysed the EU authorisation process for GMOs as an example for risk regulation in law.