

Public Participation in Biofuels Voluntary Certification Schemes Decision-Making

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479 words

Related thematic cluster: 4. Public Participation

The European Union (EU), in response to its international commitments under the United Nations Framework Convention on Climate Change, has adopted a diverse climate change policy to reduce greenhouse gases (GHGs) emissions produced by its member states. At the same time, the EU and all its Member States are parties to the Aarhus Convention (AC) which guarantees procedural rights in all kinds of environmental matters. As a consequence, measures adopted under the EU climate change policy are also covered by the scope of the AC, but its implications in this field are not yet well examined. One important EU measure to mitigate climate change is the exploitation of renewable energy sources. According to the Renewable Energy Directive (RED), only those biofuels that have fulfilled the sustainability criteria can be used to achieve the 10% national renewable energy targets in transport. One of the options of proof of compliance with these criteria is the voluntary schemes recognised by the European Commission. This paper will discuss whether the right to public participation as prescribed by the AC has been complied with in this recognition process of biofuels voluntary certification schemes.

To date, there has not been any public participation in the approval of the 19 biofuels different voluntary certification schemes recognised so far by the European Commission. This raises the question of whether there is an obligation under EU Law and under the AC to provide for public participation within this process. The RED does not provide a specific provision on public participation which would apply to all provisions of the Directive, including the recognition of voluntary schemes. Also the Communication from the European Commission on the recognition of voluntary schemes does not foresee any possibility for public participation. Since the decision on the recognition of biofuels voluntary certification schemes

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is a measure adopted by an EU institution, Regulation 1367/2006 (Aarhus Regulation) which implemented to the European institutions and bodies the provisions of the AC will apply. Although the Aarhus Regulation intends to implement all obligations which derive from the Aarhus Convention to EU institutions and bodies, regarding public participation this regulation only partially implements Article 7 of the AC since it provides for participation in plans and programmes but not in policies. This research will show that the decisions on the recognition of voluntary schemes are not plans or programmes. This paper will further examine if there is any obligation pursuant to the provisions of participatory rights of the AC: Articles 6 (specific activities), Article 7 (plans, programmes and policies) and 8 (executive regulation and/or generally applicable binding regulation). After analysing the scope of the AC provisions on public participation in view of the approval of biofuels voluntary certification schemes, this paper will conclude whether the EU, by not providing a clear framework for public participation in this process, is currently in violation of the obligations stemming from the AC.

Short Biography (max. 150 words)

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Sandra Nóbrega is currently a PhD candidate at the Public Law Department of Maastricht University in the Netherlands. Her research focuses on access to environmental information and public participation to governmental decision-making in the field of EU Climate Law. She is particularly interested in how these procedural rights are applied and may give rise to legal problems within the context of the measures adopted by the EU to meet climate and energy targets for 2020. Her most recent publication is titled “Climate change-related Aarhus conflicts: how successful are procedural rights in EU climate law?” (RECIEL, 23 (3), 354-366, 2014, co-authored with Prof. Marjan Peeters).

She has tutored the courses of European Environmental Law (master) and International Environmental Law (bachelor) at Maastricht University. Sandra is a Brazilian lawyer with undergraduate degrees in environmental science and in law and a master degree in Comparative, European and International Law from Maastricht University (MIC program).