



Case C-24/21 - PH v Regione Autonoma Friuli Venezia Giulia

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Access to justice in environmental matters



“The fish cannot go to Court” (AG Sharpston, C-115/09, *Trianel*)

The public’s right to review by a court or another independent body to ensure that public authorities respect:

- the right to **access to environmental information**,
- the right to **public participation**, and
- **environmental law** in general.



Aarhus Convention
(Article 9)

EU Regulation No 1367/2006
on access to information,
public participation and access
to justice, amended in 2021
(Aarhus Regulation)
(Article 10)

Transposition
measures in the EU
Member States

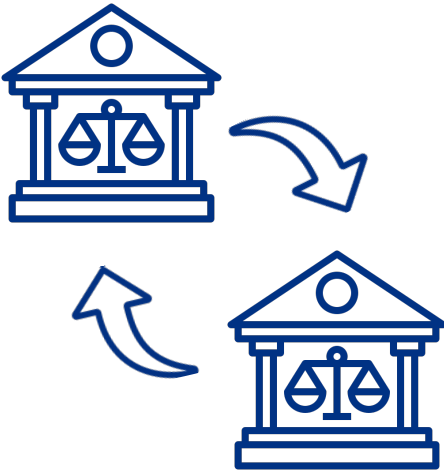
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Facts

- On 8 April 2011 the FVG region (Italy) adopted Regional Law No 5/2011, whose Article 2.1 prohibits the cultivation of genetically modified maize
- On 9 May 2015 PH, the owner of a farm in that region, cultivated a variety of genetically modified maize known as MON 810
- On 11 August 2015 the competent regional services imposed a fine of EUR 10.000 – later reduced to EUR 5.000 – on PH for breaching Article 2.1 of Regional Law No 5/2011
- Following PH's opposition, the District Court of Pordenone referred two questions to the ECJ for a preliminary ruling



C-24/21 - Reference for a preliminary ruling



- 1) Is the ban imposed by Article 2.1 of Regional Law No 5/2011 in the FVG region consistent with the overall scheme of **Directive 2001/18** (on the deliberate release into the environment of genetically modified organisms), particularly in the light of **Regulation No 1829/2003** (on genetically modified food and feed) and the **Commission Recommendation of 13 July 2010** (on guidelines for the development of national coexistence measures to avoid the unintended presence of GMOs in conventional and organic crops)?
- 2) Does that ban also constitute a measure having equivalent effect and is it thus contrary to **Articles 34, 35 and 36 TFEU** (regarding the prohibition of quantitative restrictions between MS)?

C-24/21 – Judgment (I)

First question

- *“Article 26a of Directive 2001/18, read in the light of Regulation No 1829/2003 and the recommendation of 13 July 2010, must be interpreted as **not precluding a national measure** which, for the purpose of **avoiding the unintended presence of GMOs in other products**, prohibits the cultivation in the territory of a region of the Member State concerned of GMOs authorised under Regulation No 1829/2003, provided that that measure enables the attainment of the **objective of ensuring that producers and consumers have the choice between products from genetically modified crops and products from organic or conventional crops** and that, having regard to the particular characteristics of those crops in that territory, that measure is **necessary** in order to attain that objective and is **proportionate** thereto.” (paragraph 59)*

C-24/21 – Judgment (II)

Second question

- *“where a national measure prohibits the cultivation in the territory of a region of the Member State concerned of GMOs authorised under Regulation No 1829/2003, in accordance with Article 26a of Directive 2001/18, read in the light of Regulation No 1829/2003 and the recommendation of 13 July 2010, **it is not necessary also to verify, separately, whether that measure complies with Articles 34 to 36 TFEU.**”*
(paragraph 67)

Guidance on the interpretation of EU GMO legislation

- Even if the placing on the market of a GMO is authorised pursuant to Regulation 1829/2003, it can be prohibited or restricted by a MS according to Article 26a(1) of Directive 2001/18, taking into account:
 - the aim of the preventive measure (avoiding the unintended presence of GMOs in other products)
 - the degree of admixture of genetically modified maize to be achieved
 - the probability of admixture, sources of risk and effectiveness of the methods of crop separation
 - the principles of necessity and proportionality

- Since Directive 2001/18 and Regulation 1829/2003 harmonised the conditions for the placing on the market of GMOs in products, food or feed, national measures prohibiting the cultivation and placing on the market of GMOs must be assessed only in the light of their provisions



Thank you for your attention!