



**AgEcon** SEARCH  
RESEARCH IN AGRICULTURAL & APPLIED ECONOMICS

*The World's Largest Open Access Agricultural & Applied Economics Digital Library*

**This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.**

**Help ensure our sustainability.**

Give to AgEcon Search

AgEcon Search

<http://ageconsearch.umn.edu>

[aesearch@umn.edu](mailto:aesearch@umn.edu)

*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*

## RESEARCH IN ECONOMICS AND RURAL SOCIOLOGY

### TAKING INTO ACCOUNT THE LEGAL CONSIDERATIONS OF THE PRECAUTIONARY PRINCIPLE

The legal consequences of the precautionary principle (PP) have been, for several years, the cause of much controversy. We will not go back over these debates which, certainly, would not help clarify the legal indeed, even civilian considerations. To stick to the assigned title, we shall skim through the legal aspects of the PP in an attempt to present developments on the matter, developments which may appear, either very slow and worrying for some, or too fast but just as worrying for others. Rather than reasoning in terms of a swift propagation of the PP or in terms of reservation with regard to its acknowledgement or non-acknowledgement, we thought it wiser to present, in concrete terms, the legal considerations of the PP on the part of the different authorities. In doing so, not only do we have in mind the practical confirmation of the PP by the authorities “making” the law, i.e. the “lawmakers”, in a general sense, but also the administrative independent authorities and “judges”.

By standing in favour of the PP, we believe that the report is somewhat discouraging from a national point of view whereas it is more encouraging from a European perspective. The genuine advances in this field are neither French nor international but come from the European community with, yet, a serious reserve.

#### **The genuine advances of the precautionary principle**

The genuine advances are illustrated in a general text, without any authoritative range, but which is a digest of the philosophy of EU legislation. These advances chiefly materialize in concrete examples of the PP in effect, such as labelling and traceability. The more the PP field widens, insidiously for some and happily for others, the more accurate its content becomes. The field and the content of the PP complement each other.

#### *The communication of the 2000 European Commission*

The Commission strongly asserts the legal standing of the PP and specifies notably to whom the PP is applicable. Although, nowadays, complaints are still voiced that the PP has no legal value, the commission leans on very strong arguments to refute this. Fully acknowledging “the gradual

strengthening” of the PP in international law, the Commission asserts that this proves that the PP is a real principle of international law with a wide-reaching impact.

Appearing first as part of environmental law, the PP is now considered by the European authorities as applicable to a larger area. It refers especially to human and animal health and, therefore, to all food-processing.

In its “communication”, the Commission delivers a thorough analysis of the legal grounds of the PP which tallies with that of a great number of lawyers. Indeed, it reaffirms the decision of judges as final in the law-making process. “*As for other general notions included in legislation such as the principles of subsidiarity or proportionality, it remains up to public decision-makers and, in the last instance, to jurisdictional authorities to define the PP’s guidelines*”. This text and others that follow clearly show that the recipients of the PP are not only public but also private decision-makers.

#### *The various forms of the precautionary principle*

The European Union has kept on adopting measures to specify its conception of food health and environmental protection, in the most objective way possible, with a view to preventing criticism and international dispute. Its approach is axed on two notions: traceability and labelling.

From 2000 to 2004, texts followed texts. The latest EU texts show unquestionable improvements in civilian consumer protection. As a response to the need for sustainable consumption in the case where the market hastens, authorities have turned to labelling and traceability which help keep more or less direct links with health and/or environmental protection, and the PP.

#### **The mistaken progress of the precautionary principle**

The French Environmental Charter, which was given extensive media coverage, was very disappointing with regard to the PP. Certain texts from the EU, that claim to link the precautionary and the polluter-pays principles, show

the mistaken progress of the PP; evidence of which being provided by the Directive on environmental responsibility.

#### *The French Environmental Charter*

Adopted on June 24 2004 by the Assemblée Nationale and the Sénat, the constitutional bill regarding the Environmental Charter should be an integral part of the whole constitutional text and boost environmental development and protection. The Charter dedicates introduces a good number of general principles, including the PP, to which the French President has committed himself.

Even before it was adopted, this text had aroused much discussion. Aiming at damage to be avoided, the Environmental Charter has a double requirement of seriousness and irreversibility. It is quite far removed from

#### *The European Union Directive on environmental responsibility*

Based on the polluter-pay principle, the white paper on environmental responsibility was clear: “it is only by introducing a responsibility for damage to the natural environment that economic actors may be held responsible for possible negative impacts of their business activity on the environment. So far, developers have seemed to feel only responsible towards the health or property of others and not towards the environment itself. To a certain extent, institutionalised responsibility enables citizens to become aware that they must also be answerable for the consequences of their acts on the natural environment”.

Finally, the adopted Directive is very much a step back and sanctions a clear shrink back from the PP. It is a modern

EU law and even more seriously a step back with regards to the recipients of the PP. The question is nothing new. The final version of the Charter has only met opposition from public authorities. The financial stakes of the PP are not slender. The economic actors should logically pay the price for progress. Yet, “some interests, just concerned with short-term profits, have set about stopping the expansion of the principle [...] with the help of a microcosm of intellectuals, who mainly belong to the Parisian elite”, anxious to prevent the juridical regulation of economy.

Considered as an evolution in thought, the PP, like the anticipation principle, was supposed to concern not only public entities but also citizens, companies, etc. However, the final version of the text seems directed solely at public authorities. This formulation can give way to a worrying interpretation aiming to promote a minimalist definition on the part of its recipients.

version of insuperable obstacles against which public authorities seem unable to compel polluters to observe the minimum compulsory rules of environmental protection. The tacit response of the private decision-makers always expresses the same refusal of the PP. Trade associations say that overall they are in favour of the PP, provided only public decision-makers are concerned. Above all, what strikes is the parallel between the final Directive content and an already old speech from a university doctrine, which is the lobbying front of the big companies. “The question inevitably arises of implementation of civil liability. In the present acceptance of the principle, its application being activated by public authorities, the possible responsibility of a third party could only be sought for the non-observation of regulatory measures of implementation. The responsibility could only be borne by the authorities”. *Ite, missa est...*

**Laurence BOY**, INRA-SAE2/Joint Unit CREDECO  
[boy@numericable.fr](mailto:boy@numericable.fr)

#### **For more information**

Communication de la Commission U.E., 2 Février 2000

**Boy, L (2004)**, *Précaution, traçabilité et droits du consommateur : L'exemple de la Directive UE du 12 Mars 2001 relative à la dissémination volontaire d'organismes génétiquement modifiés dans l'environnement*. In : Mélanges en l'honneur de Jean Calais-Auloy. Etudes de droit de la consommation, Coll. Etudes, Mélanges, Travaux, Dalloz, Paris, pp 131-153.

**Boy, L (2004)** La place de la Directive U.E. du 12 Mars 2001 relative à la dissémination volontaire d'organismes génétiquement modifiés dans l'environnement. *Revue Européenne de droit de l'environnement*, n°1, pp 5-24.

---

*Published by the Department of INRA Social Sciences, Agriculture and Food, Space and Environment  
Publishing unit*

*Editorial Director : Hervé Guyomard – Editor : Didier Aubert (Chief Editor), translation and composition : Ariel Gille*

*Parts of reproduction may be used only with mention of origin*

*Copyright : 1<sup>st</sup> term 2005. Joint commission n° 2147 ADEP*