

Soybean 'Intacta' ruling: Appeal filed at the European Court of Justice

Appellants seek clarity on fundamental legal questions regarding the risk assessment of genetically engineered plants

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Testbiotech, the European Network of Scientists for Social and Environmental Responsibility (ENSSER) and the environmental organisation Sambucus have together filed an appeal (C-82/17 P) at the European Court of Justice (ECJ) against the decision of the General Court of the EU from December 2016 (T-177/13). The appellants are contesting the ruling of the court, which approved the decision of the EU Commission to allow the import of the soybean. They are seeking clarity on fundamental legal questions concerning EU authorisation of genetically engineered plants. They hope that their legal action will put more pressure on the EU Commission to give higher priority to the protection of health and the environment than is currently the case in their decision-making.

The legal action was triggered by the decision of the EU Commission to allow the genetically engineered soybean Intacta to be imported into the EU. These plants, produced by Monsanto, inherit a specific combination of two genetically engineered traits; they express a so-called insecticidal Bt toxin and are resistant to glyphosate-based herbicides. The combinatorial effects between the residues from spraying with glyphosate and the insecticide were not investigated. Further, there are indications that these soybeans pose risks to the immune system.

Court action against the EU Commission was started in 2013. Monsanto, the European Food Safety Authority EFSA and the UK Government joined together to support the EU Commission. The General Court of the EU dismissed the legal challenge in December 2016. According to the Court, the applicants had no new evidence that the genetically engineered soybeans posed risks to health and the environment. Testbiotech, however, believes that the Court's legal interpretation was questionable: "The EU Court should not have requested civil society organisations to provide new evidence that these genetically engineered plants are dangerous. On the contrary, EU regulations, specifically those relating to the precautionary principle, put the burden of proof on the companies to show that their genetically engineered plants are safe, and it is not up to the public or the civil society to prove they are unsafe," says Christoph Then for Testbiotech.

In January 2017, Testbiotech experts published a peer-reviewed scientific publication showing that the risks associated with the genetically engineered soybeans had not been sufficiently assessed. The publication indicates that the court decision suffers from factual errors. The appeal, therefore, seeks to sort out some fundamental legal questions associated with the decision.

"It is important to push further to strengthen the interests of the public against those of industry," Angela von Beesten says for Sambucus. "We will continue to take action until the EU Commission is ready to give higher priority to the precautionary principle."

The court case is not the only action being taken by civil society organisations to establish higher standards in risk assessment: In 2016, ENSSER and Testbiotech, together with other experts, formed a scientific consortium called RAGES (Risk Assessment of Genetically Engineered organisms in the EU and Switzerland), which is independent of the interests of the biotech industry. One of the issues RAGES is working on, is the risk assessment of combinatorial effects that are also relevant for Intacta.

"Currently, the production of genetically engineered crops is profitable for companies, but the risks are left entirely with the public," Angelika Hilbeck says for ENSSER. "We have to reorganise the way in which the risks of genetically organisms are investigated and assessed. There is an urgent need for risk research to be independent of industry, and to take a look at the whole system of assessment that benefits only the few."

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