

How to bring a legal action based on the precautionary principle ?

Advice for private individuals and environmental NGO's residing in the European Union and wishing to delve into contesting decisions taken on the basis of the misuse of the precautionary principle

I) Verify that the act can be contested

- Every act having environmental impacts taken by a Community organ can be contested
- National acts of EU origin can be contested when :
 - the secondary law on which it is based mentions it
 - the ECJ explicitly mentioned it (i.e legislation on the conservation of wild birds)

... if the act can be contested, you can verify the admissibility of your claim

II) Verify that you can be admitted to bring an action before a Court

- Most Member States recognize that some category of people are « victims » of environmental harm and can as such bring an action before national courts
 - Ngo's are generally accepted as such
 - Private individuals only in a few legal systems, such as in Italy
- Bringing an action in annulment before the ECJ is almost impossible

...If you managed to fulfill this criteria, time to find your legal arguments

III) Find legal arguments to base your claim on

There are two main types of legal arguments :

- **Material**
- **Procedural**

The Material arguments

There are two main material arguments that can be invoked

- The decision-maker should have adopted a zero risk approach
 - Limited to specific cases where there is an urgency requirement
- The decision-maker committed a manifest error in its application of the principle
 - Careful : limited substantial control of the judge → will only work if the precautionary approach was particularly rushed

The Procedural arguments

- Recommended, since the judge has a much more in depth appreciation of these arguments

There is an abundance of procedural obligation that is continuously expanding

- Duty to provide a comprehensive assessment based on reliable and recent scientific data
- Duty to examine carefully and impartially all the relevant aspects of the case
- Duty for the decisions to be motivated
- Duty to provide scientific proofs of a scientific level commensurate to the adversarial proofs

Good luck to you !!!!