

SCIENCE-BASED GOVERNANCE? EU FOOD REGULATION SUBMITTED TO RISK ANALYSIS

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Food safety is the only area of risk regulation in the European Union where a comprehensive risk analysis model and the precautionary principle have been introduced as general principles governing the policy, applied to both EU and national measures. This prescribed science-based character of food safety regulation is set out vertically not only at EU and national levels, but also at international level by the World Trade Organization (WTO) regime. The WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) introduces the requirement that national SPS measures be based on risk assessment and not maintained without sufficient scientific evidence.

The technocratic style of policy making may pose accountability problems to democracies. Risk regulation, by its very nature, interferes with market processes to protect fundamental welfare of citizens, such as health or safety. The challenge national and regional (EU) politics face to balance free trade and health protection in this highly technological area consists in balancing choices made in an ideally deliberative environment of experts and technocrats with popular will and laypeople's risk perception. EU policies are formulated and implemented by public actors, hence the involvement of private actors enjoying equal status in policy making process is difficult to find. EU decision-making is, however, diffused horizontally and characterised by a non-hierarchical interaction between different state actors. The Commission has the exclusive right to propose legislation. The Council of Ministers and the European Parliament are co-legislators. This diffused authority gives possibility for various interests to influence the process of formulating risk regulation. To be able to include in risk management a broad array of factors other than hard-core scientific facts, decision makers must be entrusted with a certain amount of discretion. From a trade perspective, however, such discretion may be used for protectionist purposes. Therefore, at international level, the system of trade rules aims to limit discretion as much as possible, by making 'scientific risk assessment' the criterion deciding which measures are justified.

This article analyses the scope of application of risk analysis and the precautionary principle in EU food safety regulation. To what extent does these technocratic, science-based methodology set limitations on the legislator in deciding on food safety measures that restrict trade? Can factors other than science be taken into account in food safety regulation? Are EU food safety measures legal under international trade obligations?