

The Birth of the European Journal of Risk Regulation

I am delighted to announce the birth of the European Journal of Risk Regulation. This new academic journal reflects the growing importance of both national and European regulations intended to protect health, safety, security and the environment – as well as the accompanying institutional challenges for the European Union governance.

This large body of law is known as risk regulation. It seeks to reduce the risks of harm to individuals and society, stemming from all threats whether industrial or natural, voluntary or involuntary. Arguably, this portion of EU legislation already represents the most important and widespread part of the internal market *acquis* and, due to its international success, it contributes to make the EU a de facto global regulator. As such, it provides a new and valuable lens through which to analyse the European integration process.

As European citizens have come to reap the benefits of free movement within the EU and open trade on a global scale, as well as extended lifespan and high quality of life, they also seem to expect public authorities to deliver more protection against risks. Amid contemporary preoccupations with risks – sometimes fuelled by the media and ‘availability cascades’ – managing threats to society has become one of the central tasks of government. The very legitimacy, accountability and effectiveness of governmental action are indeed measured against its capacity to cope with these challenges. Therefore, as there is no more fundamental function of government than that of protecting its citizens from harm, risk regulation, if successfully managed, may offer a unique opportunity for the EU to increase its credibility and popularity. Yet, when called upon to regulate risk, the EU legislator, caught between the Treaty-sanctioned competing goals of “high level of protection” and free movement, must strike a difficult balance between the two. Meanwhile, despite the progressive Europeanisation of risk regulation, the study of the different sets of legislation making up EU risk regulation (chemicals, food, pharmaceuticals, pollution, security, etc.) is still largely carried out along sectoral and local lines.

Any model of risk regulation has to come to terms with issues such as: how to integrate the best scientific advice into decision-making, how to proceed in situations of scientific uncertainty, what is the role of non-scientific values, how to ensure an open and participative form of decision-making, how to calculate the costs and benefits of regulation as well as their distributional and equity effects. Whenever confronted with these hard questions, which touch upon the most sensitive elements of democratic life, the European Union has, in the midst of a number of regulatory and policy failures, developed answers that vary substantially depending on the policy domains of intervention and on the historical circumstances triggering its regulatory action.

Though partly reinterpreted and adapted to the European context, the risk analysis model developed by the US National Research Council's landmark *Red Book* in 1983

has largely inspired both the institutional and normative structures of EU risk regulation. These tend to reflect a clear division between a scientific process of risk assessment and a political process of risk management. In terms of institutional design, the choice of promoting an institutional and functional separation between risk assessment and risk management, although fitting comfortably with the *Meroni* doctrine straightjacket, has yet to be tested as to whether it is a credible long-term arrangement or yet another *faux pas* in institutional design. For the time being, the most visible difficulties stemming from such an institutional choice, which is deeply rooted in EU agencies such as the European Medicines Agency, the European Chemicals Agency and the European Food Safety Authority, consist *inter alia* in the mixture of scientific and policy judgments involved in risk assessment as well as the problematical relationships between the agencies and their Directorates-General *de tutelle* within the EU Commission. In addition, because they are not in a position to deal with their homologous counterparts abroad on an equal footing, these agencies are currently struggling to achieve international regulatory cooperation. Moreover, due to the ad hoc nature of some agencies' institutional frameworks, a comprehensive system of procedural and substantive review of their activity is missing today and a serious problem of accountability is emerging with reference to a few particular agencies. On the normative side, the EU, supported by the European courts, has embraced a risk regulatory model in which scientific legitimacy is necessary but not sufficient for democratically-adopted risk regulation decisions. As a result, scientific advice must be incorporated with along with ethical and social values. While this seems *prima facie* a laudable position, allowing for a more pluralistic and holistic decision-making, this approach is responsible for very contentious decisions (lastly, the 'Southampton colours') and has brought the EU into conflict with the World Trade Organisation in several instances.

It is time to transcend these partial and fragmented approaches and recognise – through a new journal – the emergence of a novel field of studies: the EU law of risk regulation. It is true that many different approaches to risk and its management have been developed over the past decades. What is lacking is a unified theory of European risk regulation.

The main purpose of the Journal is therefore to promote and develop the study and understanding of European risk regulation. The EJRR offers a forum for informed and scholarly discussion on why, how and by whom new and old risks are managed and regulated across policy domains in Europe and beyond. It is open to contributions in this field from any country in the world and from any discipline. This Journal has a broad conception of the field of risk regulation, encompassing state and non-state sources of regulation (such as industry and professional associations) and other non-regulatory alternatives (such as self-regulation, third-party regulation), as well as 'nudges'.

Given the inherently multidisciplinary character of this nascent field of study, our wish is to encourage a new type of European legal studies that will cross over the too-often sealed disciplinary boundaries of law, sociology, political science, risk analysis, economics, cognitive psychology and behavioural economics, and the physical and life sciences as well. In this way, an innovative multidisciplinary approach may be embraced. As reflected in its advisory and editorial board, the EJRR is designed to build upon this rich scientific crossroads by attracting contributions from all key EU risk regulation actors such as agencies, policy-makers, consumers, the industry and trade associations, academics and - the repository of the ultimate source of democratic legitimacy - the public at large. In doing so, it will bring together people who are at the cutting edge of practice, the cutting edge of academia and the cutting edge of policymaking.

At the moment this Journal is being launched, the world is slowly recovering from one of its worst economic collapses in generations. The most direct challenge facing regulation therefore seems to be the restoration and reconfiguration of global financial markets rather than the protection of citizens' health and safety. The EJRR intends to cover these developments too, possibly by devoting to them a Special Issue.

Although many significant steps have been taken, EU risk regulation remains in its infancy and an enormous amount remains to be done. The EJRR is ready to play its part by not only promoting risk regulation scholarship. It will also seek to familiarise its readers with the basic concepts of risk analysis in order to spread a culture of risk regulation among the different communities involved in this emerging area. This will be done by hosting academic articles (both theoretical and empirical) as well as reports organised under different policy sections, in which our correspondents will be informing readers about the latest developments in order to fuel the debate and trigger future research. The EJRR will also provide a Case Notes section, critically analysing the latest judicial decisions, and a Book Review section, selecting and reviewing the best risk regulation books on the market.

In this issue, Giandomenico Majone, one of the 'founding fathers' of European Risk Regulation, provides us with a critical survey of both the institutional and normative European approaches towards the government of risk, focusing principally on the precautionary principle. The consequences of the EU's increased reliance on this principle at the international stage are then examined by James Flett, from the Commission's Legal Service. He illustrates the normative and judicial challenges brought about by this principle within the WTO legal order. Maria Weimer, an academic, and Jean-Philippe Montfort, an international lawyer, examine the future of risk regulation, offering us a fresh analysis of the two most controversial regulatory challenges recently brought about by technological development: animal cloning and nanotechnologies. James T. O'Reilly, a US law professor who helped to negotiate the details of the 1976 U.S. Toxic

Substances Control Act ("TSCA"), provides a comparative analysis of this US chemical control law and its EU counterpart, REACH.

I am grateful to the excellent scholars, friends and colleagues who have kindly accepted to serve on the board of this new editorial venture. As an acknowledgment of their direct support, this first issue lists the members of the founding editorial and advisory boards. Both boards will be extended and renewed in the coming years to allow a better representation of genders, nationalities and ages.

The EJRR is published by the Berlin-based Lexxion Publisher, one of the emerging European legal publishers in Europe, and is directed from HEC Paris. I would like to express my gratitude on behalf of the entire board to Wolfgang Andreae and his team for their enthusiastic support of this editorial project right from the beginning.

Again, I welcome you to this new journal. I hope that, by filling an important niche in the current European studies, the EJRR will be a source of enrichment for your own daily practice, research and teaching.

I look forward to engaging in fruitful risk discussions with you,

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Alberto Alemanno